# CONGRESSIONAL RECORD:

CONTAINING

# THE PROCEEDINGS AND DEBATES

OF THE

FORTY-FOURTH CONGRESS, SECOND SESSION.

VOLUME V.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

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## VOLUME V, PART II.

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So, during the civil strife, the Confederate States appointed no elect-s. The majority required was of the electors appointed by the Federal States.

But suppose, in such cases as Louisiana and Florida, both parties claim to be elected and no one can decide which claim is valid; has there been an appointment † Doubtless there has been. Our inability to decide does not negative the fact of an election of some one. And hence, where a legal election has been held, and electors have been voted for, though the result may remain undecided and in dubio, the legal conclusion is that electors were appointed, though we permit none to vote and reject all.

WHO SHALL DECIDE WHEN THE CONTINGENCY HAS ARISEN ON WHICH THE RIGHT OF EITHER HOUSE TO ELECT RESULTS TO IT!

When the contingency of no election by the colleges has happened, the House elects the President, and the Senate the Vice-President.

But who shall decide whether it has arisen? The Senate and the House are present. They act as separate bodies in judging upon the

election, and with co-equal authority.

If the views already presented are sound, the decision can be made without difficulty; for the counting must be made by a concurrent

vote of both House

when therefore the House, watching its own duty in the elective function, hanging on the contingency of no election by electors, shall adjudge that there has been no such election, what shall hinder its exercise of its prerogative? Who can stay its hand? Who can call it to account? Can the President of the Senate? That has been fully answered. Can the Senate? Who made it the final arbiter of duty, or the giver or withholder of prerogative power for the House? What is there or withholder of prerogative power for the House? What is there in the Constitution which gives color to the claim of a body representing, it may be, one-fifth of the people to become a ruler of the great representative of a majority of the people? When the contingent power to elect a President was expressly taken from the Senter and given to the House will be Senter and given to the House will be Senter and given to the House will be Senter as t ate and given to the House, will the Senate be now heard by construction to revive its power, by paralyzing the authority of the House and denying the use of a prerogative which the convention had taken from the Senate in order to vest it in the House? When the House says there has been no election, what gives constitutional potency to the Senate's declaration that there has been ?

The Senate declares A is President by vote of colleges. The House declares he is not. The Senate cannot elect him, or any one else,

President. What gives its declaration the effect of an election?

But not so with the House. Its declaration is the precursor of its

constitutional action. It can act on an event happening. The Senate cannot as to the President. The counter-declarations of the two Houses hang in even balance. But the House has another function not dependent upon the Senate—which it neither gave nor can take away, but which was given to the House in confidence by the Constitution, and was taken away from the Senate from jealousy.

The House in this matter has been left without check by the Con-

stitution. It has no mentor, nor master, nor guardian, nor guide. It is its own. As the representative of the populations of the States it holds a power in trust which it must, under the solemn sanctions of a sworn duty, execute without fear and for the best interests of the country. To hold its hand on the dictation of any power would be treason to its duty and infidelity to the trust reposed in it by the Con-

All authority, unless under express or clearly implied control of another, must ultimate in autocracy. The power of the Senate to confirm an appointment, or to ratify a treaty, the House cannot question. It is autocratic, for it is irresponsible, and cannot be checked, except that the results of its action may be tested by the judicial power. The President appoints to office, commands the Army and Navy. What authority can check him in the exercise of clearly granted power?

And it has been even decided that he is the exclusive and final judge

when the exigency has arisen for the call of the militia under the law of 1795. (Martin rs. Mott, 12 Wheat., 19; Luther rs. Borden, 7 How., 1.)

Now, it is utterly beyond comprehension why these special powers, vested in the Senate and President, and to be exercised upon contingencies named in the law or Constitution, are properly assumed upon the decision of each of them that the contingency has arisen, and yet that this House has no like right to decide upon its powers, but must bend to the bidding of others before it asserts its prerogative or

But it has been said that such action by the House would be revo-lutionary and an offense to the Government of the United States.

It is easy to answer such an averment. Against whom the House would revolt in this action it is difficult to conceive, unless it be the Senate or the President. It would be well to remember that the Gov-crnment of the United States is not centered in either the Executive or the Senate, and that the House is not centered in either the Executive or the Senate, and that the House is not only a part but a most powerful branch of it in its functions and authority; and it would be well for every department and officer to understand that while it cannot be revolutionary for the House to exert a constitutional power, though the other departments are not favorable to it, a resistance to the power exercised is an offense clearly revolutionary and against the Government of the United States and its Constitution.

But it has been said that in the evenly balanced scales of the two Houses the incumbent of the executive chair might decide according to his views of the Constitution and against the action of the House.

I will not attribute such a purpose to any man occupying the Presidency. For nothing can be more clear than that whatever others may have to say and do in the matter of the election of a President, his predecessor, the incumbent, has neither by law or Constitution, by suggestion, hint, or express grant, the shadow of right to speak or act in the decision of such a conflict. Whatever be the relative powers of Senate, House, and the President of the Senate, one department and one officer is never named in the twelfth amendment, under discussion, and that is the President in being; and the suggestion that, in some way, as Commander-in-Chief of the Army, the sword may decide a civil conflict of power between the two Houses, is as perilous to the peace as its realization would be fatal to the liberties of the country.

WHAT ARE THE PRECEDENTS

The conclusions reached by this discussion are strengthened and fortified by the uniform practice of the Government.

The precedents are properly divisible into three classes. provisional and pre-constitutional; the second, those which are constitutional, having constructively been sanctioned by the adoption of the twelfth amendment in 1804; and the third, those which are persuasive, post-dating the adoption of said amendment.

We will consider them in their order. First,

## THE PROVISIONAL AND PRE-CONSTITUTIONAL PRECEDENT.

When the convention of 1787 was about to adjourn, it took into consideration the preparatory steps to the starting of the new Gov-ernment under the Constitution it had framed and proposed to the ernment under the Constitution it had framed and proposed to the States for their ratification. It was not binding on any until ratified by the conventions of nine States, which "shall be sufficient for the establishment of this Constitution between the States so ratifying the same." (C. U. S., art. 7, sec. 1.) This was a part of the Constitution itself, and immediately preceded the words, "Done in convention by the unanimous consent of the States present," &c.

## PROVISIONAL ARRANGEMENT ABSOLUTELY NECESSARY.

Some preparatory arrangements were needed to launch the reformed ship from the stocks upon which the old Confederation had been lying for repairs. The machinery for launching her was necessarily different from that proper for navigating her. The Constitution could not go into effect of itself. The operations of the new Government required its own laws and its own organism to be perfected before it could be automatic. While therefore the convention did not hinge the establishment of the Constitution on the will of the Congress of the old Confederation (3 Med. Pap. 1541) it decided to use it as the the old Confederation, (3 Mad. Pap., 1541,) it decided to use it as the means of starting the machinery of the new Government of the Constitution.

Accordingly, a letter was prepared, and two resolutions, (which neither the papers of Mr. Madison nor the official journal of the convention show were adopted,) which were transmitted as the advisory action of the convention to the United States in Congress assembled. The resolutions are as follows, (3 Mad. Pap., 1570-1; Journal of Convention, 370-1:)

of Convention, 370-1:)

Resolved, That the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this convention that it should afterward be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each convention assenting to and ratifying the same should give notice thereof to the United States in Congress assembled.

Resolved, That it is the opinion of this convention that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that after such publication, the electors should be appointed, and the Senators and Representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, eigned, scaled, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

The need for such resolutions was obvious. The convention adjourned sine die. To whom could the ratification of the "constitutional nine" States be made known, which was the pre-condition to the establishment of the Constitution? When known, how was the election of the executive of the Government to be made, and when ? election of the executive of the Government to be made, and when for the time for choosing electors and their day of voting, was left to Congress to be determined by law which could not be passed until a President approved? When was the Congress to come together though elected under State law. How could the electors direct their certificates to an unappointed President of a non-existent Senate. And when the Houses convened how could they legislate until a President (whose approval was essential to law-making) was sworn in?

Again, when the two Houses met could they constitutionally act before being sworn in? and there was no rule and there could be no law for administering the oath. All was inchoate; no part of the organism was established.

A provisional arrangement was made, for a constitutional procedure was impossible. Hence, the mode in which the first presidential election was passed upon was not and cannot be a model for the mode prescribed by the Constitution. Let us now analyze these resolutions. They express "the

First. They do not pretend to be authoritative. opinion of this convention." They are advisory.

Second. The old Congress fixed the day of appointment and voting of the electors, not the Congress under the Constitution, for it was not and could not be organized for the purpose without a President

to pass on its legislation.
Third. The resolutions declared that the electoral certificates should be directed "to the Secretary of the United States in Congress assembled." The Constitution required them to be directed to the President of the Senate; but this was impossible, for there was no Senate, and hence it had no President.

Fourth. "The Senators and Representatives" were to convene at the time and place assigned by the old Congress. It does not say the Senate and the House should meet, but the Senators and Representatives. The language imports an unorganized meeting of men, not the Senate and House, organized out of them into the constitu-

Fifth. "The Senators should appoint a President of the Senate." It does not say "the Senate shall choose a President," as the Constitu-

does not say "the Senate shall choose a President," as the Constitution provides. (Constitution United States, article 1, section 3.) Indeed it could not do so under that clause, for it provided for the choice of a President pro tempore in the absence of the Vice-President; and as yet there had been no Vice-President elected.

Sixth. He was appointed, says the resolution, "for the sole purpose of receiving, opening, and counting the votes for President." This excluded the idea of any organic Senate or President thereof, but was simply a provisional appointment of one, who was named "President of the Senate" because the Constitution named that officer to receive and open the certificates.

Seventh. But all this is clearly confirmed by the closing sentence of the resolutions—

of the resolutions-

And that after he (the President) shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

After and not before the President is chosen, the Congress shall with him (having awaited his appointment) proceed to execute the Constitution.

It is, then, most clearly settled that the preliminary operations in the choice of President were preconstitutional, and were not con-ducted under the Constitution because Congress under the terms of the resolution was not to proceed (that is, go forward) to execute it

until the President was chosen.

As a matter of fact the proceeding as to the election of President was on April 6, 1789, and the members of the House were never sworn in until April 8, 1789, nor Senators until June 3, 1789, after a law of Congress had prescribed the manner of doing so. (1 Ann. of Cong., 44, 102.) Thus, at the moment of the joint convention on the presidential election, no member of either House had been sworn to support the Constitution, which is a prerequisite to all official duty, exthe mere process of organization. (C. U. S., article 6; McCrary

cept the mere process of organization. (C. U. S., article 6; McCrary on Elections, section 512.)

The actual punctum temporis of constitutional government was, therefore, after the President was chosen, though by a fiction, and agreeably to the order of the old Congress, the terms of office under it related back to the first Wednesday in March—March 4, 1789.

Nor was this provisional procedure without proper sanction of the ratifying States. The resolutions suggesting it were sent to them with the Constitution itself, and they acted under them in the election of Senators, Representatives, and electors. And the recognition of this sanction was evidenced in the proceedings of Congress, which resulted in its resolution of September 13, 1788. (4 Journal of old Congress, 781-2, 866-7.) Congress, 781-2, 866-7.)

## ANALYSIS OF THE PRECONSTITUTIONAL PROCEDURE.

Having thus conclusively shown that the first elective procedure of April 6, 1789, is no constitutional precedent, but was a provisional arrangement, when no action under the new Constitution was intended or was possible, let us examine the action then taken and see whether it really indicates any conflict with the principles we have maintained.

The language of the entry on the order of the Senate is this: "that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors," &c. This seems to indicate that the counting was done by the President of the Senate, and is claimed to be a contemporaneous exposition, &c.

But it will be observed that this is the exact language of the resolution of the convention, expressly sanctioned as the provisional and preconstitutional mode, by the conventions of the ratifying States. It had the impress of that same ratifying power as a preconstates. It had the impress of that same rathying power as a preconstitutional method, which established by other language the fixed and permanent mode of post-constitutional procedure. The Senate obeyed the conventional power which ordained this process in the launch of the ship of state, but is bound equally to obey the same power expressing itself through the Constitution for all procedure after it is

But mark what follows these words in the order of the Senate: "and that the Senate is now ready, in the Senate Chamber, to proceed, in the presence of the House, to discharge that duty." To what duty does the relative "that" refer? It can only refer to the opening or counting or to both. It proposes to discharge its duty, but requires the presence of the House, in deference to the terms of the resolution under which it was acting and to the new Constitution just about to be excepted. ecuted.

And observe how its members proposed to guard the counting: "The Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be declared, submitting it to the wisdom of the House to appoint one or more of their mem-

The House responded that it was ready "to meet them to attend the opening and counting of the votes," &c.; and two members were "appointed on the part of this House to sit at the Clerk's table with the member of the Senate and make a list of the votes as the same shall

be declared."

It is obvious from the record that the listing was done by the agents (we call them now "tellers") of the Senate and the House, and not by the President. He was the organ of their action, for it appears that the tellers of the House, on the return of the House to its Chamber, "delivered at the Clerk's table a list of the votes " " as the same were declared by the President of the Senate in the presence of the Senate and of this House; which was ordered to be entered on the Journal." So that the tellers made the lists as the agents of the respective Houses, and the President of the Senate declared or announced that he in their presence had opened and counted the votes, &c., which were the lists so made mediately through their the votes, &c., which were the lists so made mediately through their tellers by each House.

The House then sent a message to the Senate, agreeing that the Senate should notify the election of the President and Vice-President, as the Senate should be pleased to direct. "Whereupon the Senate should be pleased to direct."

ate appointed Charles Thompson, esq., to notify," &c.

This preconstitutional precedent therefore shows that the count of the electoral votes was made in the presence of the two Houses, meeting together, by their respective tellers, whose lists of votes were declared by the President of the Senate, that each House spread those lists upon their Journals, and that by the concurrence of the two Houses the title to his office was notified to the President and the Vice-President, respectively. It shows that even under this preconstitutional method, which in its terms put the counting of votes, as well as the opening of certificates, in the hands of the Senate's President, he exercised no controlling authority, but was subordinated to and was governed by the Houses in whose presence, and as the mere voice of whose tellers, he acted in declaring the will and decision of the two Houses, and that in the notification of title to the offices, he was ignored, and that was done under the absolute and exclusive orders and by concurrent votes of the two House

So far from being a precedent militating with the views previously maintained, this preconstitutional precedent confirms it, and for the reason that, if these things were so conducted under the resolution of the convention, a fortiori, they must not be disregarded, but more strictly conformed to under the terms of the Constitution; and we may well say, "If these things were done in the green tree, what

should be done in the dry ? "

## THE SECOND CLASS OF PRECEDENTS.

On the 5th of February, 1793, the House appointed a committee to On the 5th of February, 1785, the House appointed a committee to "join such committee as may be appointed by the Senate to ascertain and report the mode of examining the votes," &c., "and of notifying the persons who shall be elected," &c. The Senate concurred.

The report was made to each House by its own committee and was agreed to by both Houses. The action was concurrent.

It provided "that the two Houses assemble in the Senate Chamber," &c.; that two persons be appointed tellers on the part of the House and the part of the Senate "to make a list of the votes as they shall be

one on the part of the Senate "to make a list of the votes as they shall be one on the part of the schale to make a test of the votes as they shall be delivered; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote and the persons elected to both Houses assembled as aforesaid, which shall be deemed a declaration of the persons elected President and Vice-President, and, together with

of the persons elected President and vice-President, and, together with a list of the votes, be entered on the Journals of the two Houses. On the 13th of February, 1793, the Senate notified the House it was ready to meet them to attend the opening and counting the vote, &c. This entry then follows on the Senate Journal:

"The two Houses having accordingly assembled, the certificates of the electors of the fifteen States in the Union, which came by express more by the Vice President council and and declared to the or the electors of the liteen states in the Union, which came by express, were by the Vice-President opened, read, and declared to the tellers appointed for the purpose, who, having examined and ascertained the votes, presented a list of them to the Vice-President, which list was read to the two Houses, and is as follows:" Here follows the list. The entry then proceeds: "Whereupon the Vice-President declared George Washington," &c.

The same joint committee reported a resolution which each House adopted, that a committee of each House be named, who should wait

on the President and notify him of his election, &c.

Now let us observe what is settled by this precedent.

1. The absolute equality in dignity and authority of the two House

The concurrence of the two in order to any action.

2. The concurrence of the two in order to any action.
3. They resolved upon a mode of examining the votes.
4. The examination and ascertainment was made by one teller of the Senate and two of the House, who delivered the result of their examination to the President of the Senate.
5. The President of the Senate announced the state of the vote and the persons elected; that is, the result of the examination, according to the order of the two Houses.
6. This was entered on the Journal of each House.

6. This was entered on the Journal of each House.

7. The two Houses, by distinct committees appointed by each for itself, notified the persons elected.

Some expressions in the order of procedure are explained by the

Some expressions in the order of procedure are explained by the entry. For example: The tellers made a list of the votes as they were declared. By whom is this declaration and what does it import? The entry shows when it details what the President of the Senate did and what the tellers did. He "opened, read, and delivered" the certificates to the tellers. "Declare" means to show openly, to pronounce and proclaim. When he opens, reads, and delivers to the tellers of the two Houses he "declares" the votes, and this is all he did before the tellers acted; this is all his function, as settled by his acts in this precedent. And even this was done by order of the two Houses. His And even this was done by order of the two Houses. His

precedent. And even this was done by order of the two Houses. His power to do it was derivative, not original.

Again, the order says the tellers shall make a list and deliver the result to the President of the Senate. The entry shows what they did. They received the open certificates and "examined and ascertained the votes," and presented a list of them, which was read by the President of the Senate. He did not; they did examine and ascertain the votes. He read the list which they made. He was the physical organ through which their determinant act was made known to the two Houses.

WHAT IS THE TELLERS' WORK OF EXAMINING AND ASCERTAINING THE VOTE?

What is imported by the words "examine and ascertain?" Richardwhat is imported by the words "examine and ascertain" Richardson says, "examine" means to weigh, to balance, to try or prove the weight, and then generally to search, to inquire into, to question.

Richardson says ascertain (ad and certu) means to be or made sure or certain, to assure, to be or make surely or certainly known, to de-

termine, to establish.

termine, to establish.

It follows that the acts of examining and ascertaining done by the tellers in order to a report of the result, means a weighing, a trial, and proof of, a searching into, an inquiry into and question of the votes, as a means of making the resultsure, and determining and establishing it. With all this the President of the Senate had nothing to do. He delivered the certificates to the tellers for them to do this. When they determined the result he declared their result, and did not declare his own judgment at all. They were the determinant power, of whom he was but the mouth-piece.

The title of tellers first found in this precedent is significant. Richardson says: To tell means to reckon, to count. It means, moreover, to declare, to make known, to utter. So that a teller is a counter, who makes known his count. Thus in the very title used to designate the persons engaged in counting the votes in this precedent is realized the constitutional interpretation of the phrase "and the votes shall then be counted;" that is, counted by the tellers whom each House appoints to do its will in counting and delivering the result of the election.

points to do its will in counting and delivering the result of the election.

An amusing and striking confirmation of this meaning of the word "tell," and its synonym "count," and of the disciminating process involved in it, is found in the following passage from Sir Walter Scott's "Ivanhoe," in the interview between Gurth, the improvised squire of the hero, and Isaac, the Jew, when paying the hire for the use of the good steed by the knight in the lists of Ashby:

"Nay, nay!" said Isaac; "lay down the talents—the shekels—the eighty zecchins, and thou shalt see I will consider thee liberally."

Gurth complied; and telling out eighty zecchins upon the table, the Jew delivered out to him an acquittance for the suit of armor. The Jew's hand trembled for joy as he wrapped up the first seventy pieces of gold. The last ten he told over with much deliberation, pausing, and saying something as he took each piece from the table and dropt it into his purse.

"Seventy-one, seventy-two, thy master is a good youth; seventy-three, an excellent youth; seventy-flour, that piece hath been clipt within the ring; seventy-five, and that looketh light of weight; seventy-six, when thy master wants money, let him come to Isaac of York; seventy-seven, that is with reasonable security." Here he made a considerable pause, and Gurth had good hope that the last three pieces might escape the fate of their comrades; but the enumeration proceeded: "Seventy-eight, thou art a good fellow; seventy-nine, and deservest something for thyself."

Here the Jew pansed again and looked at the last zecchin, intending, doubtless, to bestow it upon Gurth. He weighed it upon the tip of his finger and made it ring by dropping it upon the table. Had it rung too flat, or had it felt a hair's-breadth too light, generosity had carried the day; but, unhappily for Gurth, the chime was full and true, the zecchin plump, newly coined, and a grain above weight. Isaac could not find in his heart to part with it, so dropt it into his purse as if in absence of mind, wit election.

But it is important to notice that this function of the tellers is the power of each House appointing them. Their determinant power is derivative, that of each House original and autocratic.

Now observe further that the result so made out by the tellers was reported after the Houses separated to each House by its tellers, and was spread on its journal. It was its act, by its agents, reported to it and sanctioned by its order entered on its own journal.

Again, neither House pretended to act without the concurrence of the other. The declaration of election was sanctioned by each, and the election was notified by both concurrently.

This analysis of the first precedent (I trust not too much in detail) sanctions fully all the principles already established by the fair interpretation and history of the clause. It shows that the real counting was a searching scrutiny into the legality and fairness of the votes, under the direction and control of the two Houses, as distinct and independent and co-equal guardians of the executive department from lawless and fraudulent machinations; that the scrutiny and questioning imported in the examination and ascertainment of the vote was a challenge to every vote by the two sentinels, without

whose concurrent consent it could not be counted, and that neither House alone, but both together, must give title to the executive office, under the election by the electoral colleges, by notifying the person chosen of his admission to the office by the joint sanction of the two Houses present on the angust occasion of its determination.

In the election of 1797 the same mode was adopted in almost every respect. In one or two particulars there was a variation, which I will

be excused for noting.

be excused for noting.

Mr. John Adams was then Vice-President and a candidate for the Presidency. When the two Houses met in the Hall of the House of Representatives Mr. Adams said that "the purpose for which we are assembled is expressed in the following resolutions." They were entirely like the concurrent resolutions passed by the two Houses in 1793. He proceeded to say he had received packets containing the certificates of the votes, &c.

I quote the Journal:

He then "took the packet from the State of Tennessee, and after having read the superscription, broke the seal, and read the certificate of the election of the electors. He then gave it to the clerk of the Senate, requesting him to read the report of the electors, which he accordingly did. All the papers were then handed to the tellers, namely, Mr. Seigwick, on the part of the Senate, and Messrs. Sitgreaves and Parker on the part of the House of Representatives.

Here note the separate agency of the tellers for their own Houses respectively, as showing not only their representative character, but the distinctness of the two Houses in their action. The entry proceeds:

And when they had noted the contents, the President of the Senate proceeded with the other States in the following order.

Here follows a list of the votes.

All the returns having been gone through, Mr. Sedgwick reported that, according to order, the tellers appointed by the two Houses had performed the business assigned them, and reported the result to be as above stated.

The entry then proceeds:

The President of the Senate then thus addressed the two Houses: "Gentlemen of the Senate and of the House of Representatives: By the report which has been made to me by the tellers, appointed by the two Houses to examine the votes, there are 71 votes for John Adams. \* \* The whole number of votes are 138; 70 votes therefore make a majority. So that the person who has 71 votes is elected President." \* \*

President." \* \* \*

The President of the Senate then sat down for a moment, and rising again thus addressed the two Houses: "In obedience to the Constitution and law (act of 1792) of the United States, and to the commands of both Houses of Congress, expressed in their resolution passed in the present session, I declare that John Adams is elected President." \* \*

Nothing could more emphatically exclude the idea of any authority of the President of the Senate to count the votes than this clear self-disclaimer by the elder Adams, as in obedience to the Constitution and law; nothing could more emphatically assert the commanding presence of the two Houses over the determination of the election, and nothing could more emphatically express the fact that the tellers, as the appointees of the Houses, examined the votes in order to the constitutional counting required.

Let the question now be asked, suppose the teller of the Senate

Let the question now be asked, suppose the teller of the Senate had decided to count Kentucky, from which no duplicate return had been received, and the two tellers of the House had refused to count it, could the vote have been counted by the one teller against the dissent of the two? The report affirms that Jefferson received that vote. Could that affirmation be sustained by the one teller when the

other two negatived it?

This requirement of concurrence is illustrated by a disagreement between the Houses at this election as to the mode of notifying the between the Houses at this election as to the mode of notifying the Vice-President of his election. Upon the disagreement no action was taken until upon a report of a committee of conference the Houses concurred in action. So that it appears on the question of notifying the Vice-President, who was to be the presiding officer of the Senate, the Senate claimed no right to act against or without the consent of the House. How can this fact be reconciled with an assertion of paramount power in the Senate, much less in its President, to override the dissent of the House, and to inhibit it from its constitutional right to elect a President, in respect to which the Senate has no right at all? no right at all?

This precedent of 1797 greatly strengthens the conclusions from that of 1793.

We come now to the election of 1801.

This was the great conflict between Jefferson and Burr, which shook the Union, and imperiled the peace of the country; for the party then in power menaced such proceedings for retaining it as were revolutionary, and armed resistance by the people was threatened to usurpation.

The usual concurrent resolution to report a mode of examining the votes was passed; and in view of the known equality of votes cast for Jefferson and Burr, the mode adopted had a clause referring to that fact.

The two committees could not agree upon a plan, and each adopted its own resolution for its own action. They were almost counterparts of each other, as they had been on the previous occasions, but each regulated its own action; and there was no concurrent agreement as

to the mode of action.

The resolutions, however, differed from those previously adopted in this, that the result ascertained by the tellers was to be delivered to the President of the Senate, who should announce the state of the vote, which was to be entered on the Journals; "and if it shall appear

that a choice has been made agreeably to the Constitution, such entry on the Journal," ["Journal" in the Senate resolution; "Journals," in the House resolution,] "shall be deemed a sufficient declaration thereof."

This resolution was followed by the assembling of the two Houses in the Senate Chamber, when Vice-President Jefferson "opened and delivered" the certificates "to the tellers appointed for the purpose, delivered" the certificates "to the tellers appointed for the purpose, who, having examined and ascertained the number of votes, presented a list thereof to the Vice-President, which was read, as follows." Here follows the list. "Whereupon the Vice-President declared the result of the votes, as delivered by the tellers, was that Thomas Jefferson, of Virginia, had 73," &c. "The whole number of electors who had voted," continued the Vice-President, "was 138, of which number Thomas Jefferson and Aaron Burr had a majority; but the number of those voting for them being equal, no choice was made by the people, and that consequently the remaining duties devolve on the House of Representatives.

The House Journal reads: "As the votes were read," (that is, declared,) "the tellers on the part of each House counted and took lists of the same, which, being compared, were delivered to the President of the Senate, and are as follows." Here follows lists. "The President of the Senate, in pursuance of the duty enjoined upon him, an nounced the state of the vote to both Houses," &c.

The resolution did not, as former ones had done, authorize the President of the Senate to declare who was elected. It would seem that the federal party, then in power in both Houses, left out that part of the announcement formerly made by the President of the Senate lest it might have given Mr. Jefferson the opportunity of declaring himself President. Be that as it may, the result reported by the tellers, entered on the Journals, was made the basis from which it was to appear that a choice had been made.

The resolutions required that from the Journals of both Houses a choice must appear. The language is, after stating that the result must be entered on the Journals: "And if it shall appear" (that is, from the entries on both Journals) "that a choice has been made agreeably to the Constitution, such entry on the Journals shall be

agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof." This indicates that both

deemed a sufficient declaration thereof." This indicates that both Houses must concur in such an entry of a choice.

But if from the House Journal such a choice did not appear to the House, however it might appear to the Senate from its Journal, the power of the House to elect was clear, and would be exercised; and no objection from any quarter could prevent the House from performing its duty by the exercise of its power.

This self-determining power of the House is further sustained by the House entry.

The two Houses then separated; and the House of Representatives, being returned to their Chamber, proceeded in the manner prescribed by the Constitution to the choice of a President.

It did not await the permission of the Senate, much less of its President, nor still less of Mr. Adams, the then President; but on its own motion it assumed to judge when its constitutional power to elect re-

These three precedents all occurred before 1804, when the twelfth amendment was adopted. They were open and well-considered modes of action; not objected to, as far as history tells us, upon any suggestion that they were not according to the true interpretation of the words we have discussed in the original Constitution.

In 1804 these words were re-adopted as part of the twelfth amendant of the base adopted ways were re-adopted in view of the con-

In 1804 these words were re-adopted as part of the twelfth amendment. Can there be a doubt they were re-adopted in view of the construction placed upon them in 1793, 1797, and 1801, and as a constitutional sanction of that construction? Their meaning is interpreted by those precedents, and that interpretation is sanctioned by the twelfth amendment; for it is obvious, if the precedents had erroneously interpreted the language of the original Constitution, the Constitution-making power would not have re-adopted it without qualification to guard against any future abuse. The absence of all change of phraseology makes these precedents a constitutional interpretation of these words. pretation of these words.

When the terms of a British statute have been construed by a long series of judicial decisions, and it is adopted by any American State, the courts conclude, and wisely, that the settled interpretation of the statutory words is adopted by the Legislature and must prevail in the construction of the law. The analogy to the present case is

We are therefore justified in concluding that the practice from 1793 to 1801 has been authoritatively sanctioned as a just interpretation of the constitutional phrase we are considering; and that the order of procedure deduced from these precedents may be regarded as ingrafted upon that phrase as establishing its real meaning.

THE THIRD CLASS OF PRECEDENTS.

These are cases arising after the adoption of the twelfth amend-

In 1805 the House proposed a joint committee to ascertain and report a mode of examining the votes. The Senate nonconcurred, so that no common plan was agreed on between them. But each House passed a resolution for its own action and the two resolutions were counterparts.

This resolution is identical with that adopted by each House in 1801, when they could not concur in common action, so that the prec-

edent of 1801, sanctioned by the twelfth amendment, ratified in 1804, was followed in 1805.

was followed in 1805.

Under the precedents of 1793 and 1797, the joint resolution of the Houses decided that the declaration by the President of the Senate of the person elected, according to the tellers, list and result, should be deemed a declaration of the persons elected. But when, in 1801 and 1805, the Houses passed no joint resolution, but each its own for its own guidance, no declaration is made by the President of the Senate of the person elected, but each House takes to its own Journal the list and result, and resolves that, if it shall appear (i. e., from the Journal entry) that a choice has been made agreeably to the Constitution, the entry shall be deemed a declaration of election. In other words, it is clear that, without joint action, each House is a law to itself, and the Senate's president has no power not allowed him by the resolution of each House, and that, where there is no joint resolution, but separate resolutions, each House assumes to decide from the entry on the Journal whether a choice has been made agreeably to the Constitution, without reference to the action of the other. If, therefore, the result as spread on its Journal does not appear to its judgment to show a choice agreeably to the Constitution, each House, the Senate for itself, the House of Representatives for itself, must do its duty and exercise its power, as the Constitution requires in case of

Senate for itself, the House of Representatives for itself, must do its duty and exercise its power, as the Constitution requires in case of the non-choice by the colleges.

Thus it is beyond doubt that the precedent of 1801, created in view of the probability of the failure to elect a President by the colleges, looked to the House of Representatives acting in respect of its resultant elective function, as the result should appear to it from its own Journal entry, and as it should adjudge the law to be from that entry, without any power by the Senate or its president, much less of the President of the United States, or any other officer, to molest and interfere with its own determinant act. And this precedent of 1801 is presumptively sanctioned by the twelfth amendment, re-adopting the same words as were in the old Constitution, and in one year afterward both Houses followed the precedent of 1801, so constitutionally sanctioned.

sanctioned.

If, therefore, the two Houses shall adopt no joint rule of action, nor pass any law on the subject, each must, in the case now imminent, be a law to itself, subject to the Constitution; and following the precedents of 1801 and 1805, sanctioned by the twelfth amendment of 1804, each House, for itself and to guide its own action, must decide whether a choice appears to have been made agreeably to the Constitution. If it so appears, that will declare sufficiently the election. If it does not so appear to the Senate, it is empowered and bound to elect the Vice-President. If it does not so appear to the House, it is empowered and bound to elect the President.

I propose now to examine only the salient points in the precedents since the adoption of the twelfth amendment. I call the attention of the House to one or two peculiarities in the precedent of 1805.

since the adoption of the twelfth amendment. I call the attention of the House to one or two peculiarities in the precedent of 1805. Aaron Burr, of whom it may be said (whatever differences of opinion may exist as to his character) that he was one of the most eminent statesmen, and possessed one of the most acute minds of the age in which he lived, (then Vice-President Burr,) announced that he had received packets which by indorsements thereon appeared to be the electoral votes, and he then addressed the Senate and the House: "You will now proceed, gentlemen, to count the votes as the Constitution and laws direct." He broke the seals and handed them to the teller of the Senate, who read them aloud, with the attestations of tution and laws direct." He broke the seals and handed them to the teller of the Senate, who read them aloud, with the attestations of appointment, and the House tellers compared them with the duplicates "lying before them." After the returns had all been examined, without any objection having been made to receiving any of the votes, Mr. Smith on the part of the tellers communicated the result, and the Vice-President said: "On this report it becomes my duty to declare," &c. In the House Journal the language is somewhat different: "As the votes were read the teller, on the part of each House counted them, and the President of the Senate in pursuance of the duty devolved. and the President of the Senate in pursuance of the duty devolved upon him announced the vote." A committee of each House joined in waiting upon the President and notifying him of his election.

Six corollaries are to be drawn from the action taken at that time.

First, that the President of the Senate disclaimed for himself, and in favor of the power of the two Houses to count the votes. Second that the Journals expressly declare that the tellers counted the votes Third, that there was no objection made to receiving the vote, and the question of receiving was therefore an affirmative one. Fourth, the question of receiving was therefore an aliminative one. Fourth, that the tellers reported and upon that report the President of the Senate declared the result of the vote in accordance with the duty enjoined upon him. Fifth, that the two Houses concurred in the notification of the election. Sixth, that the President of the Senate was not empowered to declare who were elected, but the entry was to be made upon the Journals of the respective Houses, as in the year 1801.

In 1809 there was a joint resolution as to the mode of procedure; and except in this respect, the Journal entries are like those on previous occasions. The President of the Senate in that case said: "Pursuant to the joint resolution of the two Houses I announce the state of the vote and declare the persons elected." There was one vote from Kentucky not counted, because the elector though elected was not present and did not vote, and his vote was excluded by the tellers. In that case you will find that the President of the Senate acted merely in a ministerial capacity as to the counting and declaring, and he did so nursuant to the order of the joint resolution. The tellers, who were so pursuant to the order of the joint resolution. The tellers, who were

the agents of each House, did all the counting, and they were appointed for that purpose. They counted the votes cast, not the electors appointed. There was on this occasion a joint resolution which vested in the President of the Senate the power to declare the election. The absence of such joint resolution in 1801 and in 1805 made it the duty of the President of the Senate only to announce the result, but with no power to declare the election. The point was raised by Mr. Randolph, of Virginia, that the President of the Senate could not take the Speaker's chair except by the courtesy of the House; that he was in no way superior to the Speaker of the House in the meeting of the Houses, except as he opened the votes; and the House sustained the point so made.

In 1813 the precedent was almost exactly the same. In 1817 it was the same with a single exception. The returns were read aloud by the tellers and were recorded on the Journal of the Senate and the Journal of the House of Representatives by the Secretary of the Senate and the Clerk of the House, respectively, before there was any announcement; and the House again declared that the President of the Senate should be introduced to the Speaker's chair by the Speaker of

the House.

In this case there was a difficulty about the vote of the State of Indiana, and I beg the attention of the House for a moment to that branch of the precedent. Indiana it seems had hardly got into the Union, or at least there was a doubt raised about it. The question was, Union, or at least there was a doubt raised about it. The question was, Shall the vote of Indiana be counted? An objection was raised to the counting of the vote of Indiana by a member of the lower House, and the two Houses separated. The House of Representatives, after debate, determined to lay upon the table the resolution against counting the vote of Indiana, and did no more about it. They then returned to the Senate Chamber and the Speaker informed the Senate that the House of Representatives had not deemed it necessary to come to any resolution on the subject which had produced a separa-tion of the two Houses; and then the vote of Indiana was counted.

Now I beg of gentlemen to say if the theory now propounded be true that the vote of one House was sufficient to count the electoral

vote of a State, what was the necessity of a separation of the two Houses by reason of objections arising in the House of Representa-tives, if the Senate were willing to count the vote of Indiana? And it nowhere appears that the Senate made or considered any objection In other words, if Indiana could be counted by the voice of one House alone, there was no reason for the Houses to separate when the House of Representatives objected, because the Senate would have said to the House: "There is no need for your going over to your Hall, for the Senate will count the vote of Indiana, and whether you consent or not it must therefore be counted." But the two Houses separated, and the Senate waited the return of the House of Representatives, which House declared that they had taken no action for the rejection of the count, and then the vote of Indiana was counted by the concurrent voice and judgment of the two Houses. In all this Procedure, as in the former ones, I beg to note as I go along that the President of the Senate had no voice except as he was the organ of the will of the two Houses under the joint resolution. He was their organ—their minister—acting under their orders, with no claim of any original power by himself, and no concession of it to him by either House

In the year 1821 a similar difficulty occurred about Missouri, and Missouri was then counted hypothetically by the concurrent voices of the two Houses. In that case the President of the Senate was also utterly ignored. And the President of the Senate, in pursuance of the resolution to which the two Houses came in respect to the State of Missouri, announced the result counting Missouri in the de-

State of Missouri, announced the result counting Missouri in the declaration only hypothetically.

In 1825, in 1829, and in 1833 there was nothing that I need note, except that in 1833 for the first time the entry of the procedure on the Journals is made "in the presence of the Senate and House of Representatives." There is a separate entry made of the joint procedure of the two Houses on the Journal of each.

In the election in 1837 I call the attention of the House to the precision with which the gentleman who was then a prominent statesman made the announcement as President pro tempore of the Senate; I mean the late Hon. William R. King, of Alabama, whose nice and discriminating precision in all matters of form was very celebrated in discriminating precision in all matters of form was very celebrated in his day. He, as President of the Senate, said:

The two Houses being now convened for counting the electoral votes of the several States for President and Vice-President of the United States, the President of the Senate will, in pursuance of the provision of the Constitution, proceed to open the votes and deliver them to the tellers in order that they may be counted.

If Mr. King had been attempting by the use of phraseology to fit the present exigency, he could not have adopted an apter form of words. He proceeded—

I now present to the tellers the electoral votes of the State of Maine.

The entry then goes on-

The tellers then counted the votes and announced them, the tellers also reading the qualifications of the electors and the certificates of their election. The President pro tempore of the Senate then announced the result as reported by the tellers.

Now it is curious that in this same year 1837 there was no election of a Vice-President by the electoral colleges. There was a declara-tion to that effect entered on the Journal of the Senate; and the Senate by its own judgment declared that, as there was no election of

a Vice-Presidant, it would now proceed to that election. By its own judgment it decided that the contingency had arisen for the exercise of its elective function, and it proceeded to the discharge of this constitutional duty.

In 1841 and 1845 the same entries were substantially made. In 1845,

Mr. Mangum, of North Carolina, a gentleman as distinguished for precision and accuracy as Mr. King, and a member of the whig party, was President of the Senate. He said that the object of the two Houses in assembling was to count the votes, and he then added-

I deliver to the gentlemen tellers the votes of the electors of Maine, in order that they may be examined by the tellers.

In 1849 the language of Vice-President Dallas is very precise, but

In 1853 the same entry is made.

In 1857, notwithstanding the discussion in reference to the count of the electoral vote of Wisconsin, like action was taken. Mr. James M. Mason, of Virginia, President of the Senate, despite all averments. to the contrary, expressly and with emphasis disclaimed all power for himself to count or decide upon the vote of Wisconsin, and declared it belonged to the two Houses. While many members almost passionately insisted on such disclaimer, no one in either House asserted the power for the President of the Senate or denied it to the House

I now come to three very important precedents to which I will call attention for a few moments. I mean the precedents under the twenty-second joint rule of the two Houses, adopted when the republican party were in power in both branches of Congress and when the democratic party was in a most woful minority. In 1865 the the joint resolution was passed "to exclude the electoral votes of the rebel States;" and it was passed by both Houses, Mr. Lincoln signing it are forms only disclaiming any right of interference on his contribution. it pro forma only, disclaiming any right of interference on his part in the matter. He said the two Houses in his view "have complete power to exclude from counting all electoral votes deemed by them

I now ask that gentlemen on the other side who now maintain the power of the President of the Senate will look at the twenty-second joint rule. Whether it was right or wrong on the question of requiring the concurrence of the two Houses to count a vote, one thing is settled by that precedent: the twenty-second joint rule ignores ut-terly the power of the President of the Senate in this matter, and asserts the exclusive power of the two Houses. Under that rule the last three presidential elections have been determined, by a tacit sub-mission to its authority, without re-adoption, though now it is claimed on the other side that it was not in legal force because not re-adopted.

on the other side that it was not in legal force because not re-adopted. In 1869 Louisiana was counted under this rule on an affirmative vote of each House, and Georgia was hypothetically counted under a rule adopted by both Houses, modifying the twenty-second joint rule. In 1873 the first entry that I find on the Journal is that the President of the Senate was authorized to appoint a teller on the part of the Senate. Magnificent power possessed by the President of the Senate, and possessed under an authority conferred upon him by the body over which he presided!

Now, there was an objection to Georgia; and it was not counted because the two Houses did not concur. There was also an objection to Mississippi; but the votes were counted because of the concurrence of the two Houses. In the case of Texas the objection was overruled, and the vote was counted by the concurrence of the two Houses.

ruled, and the vote was counted by the concurrence of the two Houses. In the latter case the objection is curious, and it may apply to the Oregon case in some respects. The objection was that there were only four electors who met, when eight constituted a full college; and that they did not constitute a quorum in a body of eight, and therefore had no right to fill vacancies. But the vote was counted by the concurrent voice of the two Houses. Arkansas lost its vote by the non-concurrence of the two Houses; and the vote of Louisiana

was also rejected.

Now, I beg the House to observe that not only was the twenty-second joint rule adopted by the republican party and followed in three presidential elections, but under the authority of that rule the voice of three States was stifled. The President of the Senate was by it ignored; and the concurrence of the two Houses was required by it ignored; and the concurrence of the two Houses was required in order to count any vote. Acting under that rule, the two Houses went into questions as to the legality of the votes and of the electors and of the election. They raised the question of the power of particular States to choose electors at all, and denied it to them. Let our new-born State-rights men on the other side of the Chamber explain how it was that in 1800 they stifled the voice of many Southern States, refusing them the right to vote at all, and yet now deny to this House any authority to say that the fraudulent action of a returning board shall not stand in lieu of the voice of a sovereign State.

RESULT OF THE PRECEDENTS

Now, I sum up on this point; that from 1793 to 1801 the prece-Now, I sum up on this point; that from 1793 to 1801 the precedents sanctioned the power of the Houses and the subordination of the President of the Senate to them as to counting and as their mere organ; and that these were all constitutionally sanctioned by the constitution-making power in the amendment of 1804; that from 1805 down to this time, though the power of the President of the Senate has been uniformly denied and disclaimed, and that of the Houses has been uniformly asserted and exercised, no proposition to amend the Constitution of the United States because it has been violated in these respects by the later precedents has ever been made in Congress or out of it. So that until now there is a perfect uniformity of precedents for eighty-six years; and by the silence of the constitution-making authority those precedents have its sanction as being in conformity to the Constitution.

Now, I need not say to the lawyers of this body how potential in the construction of any law, and of constitutional law, the opinions of lawyers and statesmen have always been held by the judicial authorities in England and in this country. Where the construction has been uniform for a long period of time there has been acquiescence in the interpretation as sound and fair. And it is on this ground that, where the law-making authority does not intervene to amend a law under the construction of which a practice has grown up, it is concluded that the power which could and does not change assents to the interpretation of the law by those who execute it. And so, where for eighty-six years the supreme authority of the two Houses has been uniformly exerted, and the President of the Senate has been uniformly treated as an agent under their orders and not superior to or co-ordinate with them, and when in the face of this an

perior to or co-ordinate with them, and when in the face of this an amendment was made, which, however, retained the very language under discussion, and no proposal has ever since been made to change it, in order to correct a supposed false and unconstitutional practice, can there be a doubt that these precedents have the sanction of the constitution-making authority? (See Ex parte Exeter, 70 G. C. L. R. 157; Gorham vs. Exeter, 69, ibid., 74.)

One single word in reference to the two tentative legislative acts of 1800 and 1824. In the act of Congress proposed in 1800, which in one form or another, although there was not a concurrence between the two Houses, was passed by both, the President of the Senate was wholly ignored, and the two Houses were directed to count. There was an amendment proposed and voted for by Mr. Pinckney and others, who were in the minority, also ignoring the President of the Senate, and claiming the power of counting for the two Houses. The bill passed with a claim of power to inquire into the returns, but with a proviso not to go into the votes cast at the polls. This proviso was of itself a self-imposed restraint upon the power of Congress, and indicated that without that self-restraint the power was claimed to exist, and might have been conferred by the bill.

exist, and might have been conferred by the bill.

At the risk of tediousness, I beg to note that this bill, to which in its general features Marshall and the great statesmen of that period gave their sanction, without any notable exception, was followed by the twelfth amendment, without any change of the language under discussion from what it originally was. Can it be denied that the constitution-makers did not see in that bill any violation of the Con-

stitution?

In Mr. Van Buren's bill, in 1824, the President of the Senate was ignored, as you will find by the language of the first section and of the fourth. The concurrence of the two Houses was required in order to reject an electoral vote. It passed the Senate. In the House it was reported back by Mr. Webster to the House of Representatives without amendment, but failed to be acted upon. So that again, after a quarter of a century, the general opinion of the country was expressed that the President of the Senate could not, and the Houses must, count the electoral votes.

Now, I assert that there is nothing that I have seen in this whole history which furnishes a pretext for the claim of the President of the

history which furnishes a pretext for the claim of the President of the Senate but one single fact, on which reliance is had, that the certificate of the President of the Senate in 1789 and down through several presidential elections was, that he had "opened and counted the vote."

As to this, I remark:

First. That ceased since 1817, sixty years ago, because it was regarded as an empty form and a sham.

Second. It never meant anything, for (1) it was never adopted by both Houses, but only by the Senate. (2) The Senate by its own order directed its President to make out the certificate and to sign it. order directed its President to make out the certificate and to sign it. He did not do it ex mero motu, but as the organ and minister of the Senate and under its mandate. (3) All that he says in it is that he opened all the certificates and counted all the votes. Suppose he did; yet it may not show any original authority to do it, or anything but his ministerial act, done by the authority of the two Houses, or a mere enumeration; and I suppose he never did it as a personal act, but as presiding officer of the Senate, and as its official organ he certified the truth of that which he knew, and which its Journal avouched as true. (4) The insufficiency of the certificate to prove the fact that he did the counting is shown by reference to the facts as appearing by the record. What does it say he did? We will interpret his words by his acts. The record shows that he never did count the votes in the sense of controlling and determining the count. Looking at what he did and what the tellers or the counters for the Houses did, the meaning of his certificate is satisfied without attributing to it a claim by him to have done what the facts of record show was never done by him to have done what the facts of record show was never done

by him?

The distinguished gentleman from Ohio [Mr. Garfield] the other day referred to the fact that in the early precedents there was no sufficient time allowed for a contest, no time for inquiry. The gentleman from Ohio knows very well that there was nothing in the Constitution of the United States which fixed any time for the presidential election, or any time for the electors to vote, or any time for a determination of the result of the vote. That was unfixed by the Constitution entirely, and left to the law-making power. And the

only precedent that the gentleman can claim is that the law-making power in 1792 had not the prescience to see that there would ever be an occasion for such a contest, and therefore supposed that thirty-four days allowed between the time of choosing electors and the day they were to vote would be sufficient to settle the difficulty of a pres-

Mr. GARFIELD. If the gentleman will allow me to interrupt him, I wish to make a remark. I am sure he wishes to answer the

point I did make.

Mr. TUCKER. I yield to the gentleman. Mr. GARFIELD. I said the Constitution and the laws together made the contest impossible. I referred to no particular precedent or case. I said between the time the law fixed for the general election and the time the electors were to meet there was no possibility of a contest. The rest of the time, two months and a half, the whole proceedings were locked up under the seals of the electoral colleges and there could be no contest. And after the time when the votes were opened certainly there could be no contest.

Mr. TUCKER. Then there is no contest between the gentleman

Mr. TUCKER. Then there is no contest between the gentleman from Ohio and myself and it will not take much time to settle the fact. He only relies upon the precedent of a law of Congress, which never anticipated such a state of things as disgraces the year 1876. Thus far I have discussed the question from a consideration of the Constitution itself; of the history of the convention which adopted it; of the three classes of precedents: those which were preconstitutional, those which being sanctioned by the twelfth amendment have the force of a constitutional interpretation of the language used, and those precedents subsequent to the adoption of that amendment; from a consideration of the laws passed by both Houses, and from the a consideration of the laws passed by both Houses, and from the opinions of statesmen and lawyers; and I have endeavored to show, with the aid of all these sources of light upon our inquiries, the resolutions of the committee are sustained fully and beyond doubt.

I now ask the indulgence of the House to express a few thoughts upon the bill for the tribunal, which has been reported by the committee of which the honorable gentleman from Ohio [Mr. PAYNE] is chairman. This bill obviously does four things:

First. It utterly ignores the power of the President of the Senate

to count the electoral votes.

Second. It claims the power of both Houses to count the votes.

Third. In all cases of one return from a State, it requires a concur-

rence of both Houses to reject a vote.

Fourth. In all cases of double returns, it submits the controversy to a tribunal whose decision is conclusive, unless overruled by the concurrent votes of both Houses.

If, therefore, the tribunal rejects a vote, both Houses must concur to count it. If the tribunal decides to count the vote, both Houses

must reject it.

It is obvious that the first and second principles above stated are in conformity with the first four resolutions of the committee on the privileges, powers, and duties of the House, of which I am a member. To this extent the bill has my cordial support.

The third principle of the bill is contrary to the views of the said

committee.

The fourth principle is partly in accord with the said committee, and partly not. But it makes the case in which a concurrence is required to reject a vote a very different one from that I have discussed; for if this tribunal decides to count a vote, it is like a judgment nisi, a strong case of presumptive right, against which a concurrence of the two Houses to reject is not unreasonable.

In candor I confess that upon this point I do not favor the bill. But it is a compromise between the two conflicting ideas; that is, whether the Houses must concur in counting or in rejecting an elect-

oral vote.

oral vote.

But this conflict is one in which I find very great authorities against me in the past; and now, with earnest convictions of the soundness of my conclusions, I am not prepared to stake the peace or the regular order of the Government on such an issue. In 1800, in 1824, and now, the difference has existed, and now (for we cannot shut our eyes to facts) probably exists between the two Houses.

It is this difference between the two Houses which makes some law necessary and proper to be passed.

Consider the status of the country in view of this conflict.

Take one State as the pivotal State in this contest. Two branches

Take one State as the pivotal State in this contest. Two branches of conflict are likely to arise. The first, one House may favor the count of its vote, and the other its rejection. The second, in the event of the conflict just named, one House may say it must be counted, because both Houses do not reject; the other, it must be rejected, be-

cause both do not agree to count.

The first conflict is one of fact; the second, one of power. It is in this last that I find "the nettle, danger," out of which I would "pluck

the flower, safety.'

candor to say that my humble conception differs from that presented It was to let each House work out the elective procedure according to its own idea; and even, perhaps, to elect different persons, as a result; and constitute a tribunal, exclusively judicial, to decide upon the title to the executive offices of each of the contestants, upon a hearing of the case between them. By this method each House would have done its duty according to its own views of their related powers, and left the decision of a case between claimants of the offices under the titles accruing to each from the diverse action of the Houses.

But I am not prepared now to venture a substitute of my own invention for the plan proposed, and which has been so fully digested by some of the best minds in both Houses of Congress. That plan comes with imposing force before us. Thirteen out of fourteen members of the two committees commend it to us for adoption. Time The crisis is at hand. We have no opportunity for full de-

iberation. The hour demands action.

And, indeed, when I come to look at this scheme, though it has not the form, it realizes the substance of my conception. For if a judicial tribunal would be proper to decide between the titles of Mr. Tilden and Mr. Hayes, after our conflict had resulted as I have indicated at the control of the con cated, may not this tribunal as well decide it in advance? We know

cated, may not this tribunal as well decide it in advance? We know that the case would be after the fact what it is to-day. We provide for the event to come as we would propose for that which is past.

And I am the better reconciled to this scheme because I am not certain we could agree upon the tribunal to determine after the event. The very power of this House, which I would jealously watch, may be lost in the future struggle now so imminent, or be overborne by the advantages of the antagonistic claim in the circumstances of this hour. I may be called to save so much of this right, as Imay by such a scheme as this, rather than peril all by its rejection.

We may thus be in a tri-lemma—not a di-lemma—a trilemma, of a

tame surrender of our right to what we believe would be unconstitutional and arbitrary dictation; or armed conflict to maintain the right, as we conceive it; or mutual concessions between differences of opinions on a doubtful issue, not expressly fixed by the Constitution, through a tribunal of honorable arbitration.

If this be a fair statement of the condition of things, I feel I would not be justified, upon a conflict of power such as this, to reject the only measure which is offered to preserve the peace and secure the happiness of the country.

One of the main difficulties is the question whether the bill is con-

stitutional.

Let it be considered that this bill is really a joint arrangement for the execution of a power and duty confided to two Houses for the present election. If it were for a future one the difficulty would be very great, for we would be conceding the constitutional functions of a future House by a rule which it may prescribe for itself, but by which we cannot bind it. This is a rule for this case, in which this House and the Senate must now do our duty or leave the Government

in partial paralysis.

But can we delegate our duty and power? it is asked. I do not think we can by irrevocable act put beyond our control and into other hands the duty devolved on us. But it will be perceived this bill does not do this. Where one return comes from a State we retain the whole power. Where there is more than one, we devolve on a commission to decide, subject to our review; and though in that review this House may not singly reverse the decision, yet it yields no more power in this regard than it is called on to do by the claim that both Houses must consumt to reject an electronly vote; and that claim both Houses must concur to reject an electoral vote; and that claim by the Senate we would have to meet without hope of a favorable issue, if we establish no commission.

And it may be added that, by passing this law, we do give the consent of this House to the counting of a vote which the commission

decides to count, unless both Houses agree to reject it.

But it is clear by this bill we do not surrender our power to count or reject by creating this commission, for the final action is with both Houses, though the advisory action is with the commission.

But can Congress pass a law to prescribe the procedure of the two

Houses ?

If we recur again to the twelfth amendment of the Constitution, we find its mandate "and the votes shall then be counted; the person having the greatest number of votes for President shall be the President," &c.

This clause is mandatory on us, on the two Houses, not only in terms but because if we do not count there will be no Executive, and if none, there can be no legislation and no execution of law, and

and if none, there can be no legislation and no execution of law, and if so there can be no judiciary. Upon our action depends the existence of the Federal Government. We must act. We must exercise our delegated power and duty. We have no alternative.

Our power and duty are to count the votes and decide who is President. It devolves on two bodies. But how can we do the duty if we differ ou the fact and as to the legal result of that difference? How can the conflict he harmonized? can the conflict be harmonized? If on distinct claims of power one House declares Tilden and the other declares Hayes elected, how are we to avoid a declaration of a dual Executive? And, if we do, how avoid armed conflict?

I repeat, upon the carrying into execution of this one power of counting electoral votes the execution of all the powers confided to the Government may depend.

The SPEAKER. The gentleman's time has expired. Mr. HUNTON. I believe my colleague is nearly through, and I ask

that his time be extended.

Mr. COX. There is no objection to that.

The SPEAKER. The Chair hears no objection, and the gentleman

The SPEAKER. The Chair hears no objection, and the gentleman from Virginia will proceed.

Mr. TUCKER. Is there no remedy in such a case? I believe there is, for it is a constitutional axiom that all granted power not self-efficient must be executed by means furnished by the co-efficient power of the law-making department. Ours is a Constitution which makes law the solvent of all problems of conflict between the departments of the Government itself. Within the organism no disorder can arise from the friction of its parts which will not be cured by the agency of law.

In the first article and eighth section of that great instrument we

find these important words:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

We have power to pass the law necessary to carry this counting power into execution, without which the powers of the executive department are paralyzed and on the paralysis of which the legislative and judicial powers depend. This law will do it. Reject it, and is there any hope of any other that will? I see none. This is tabula in

naufragio; yes, the only plank in the shipwreck.

"Necessary and proper" are words of limitation. "Necessary" is said from its roots (ne and cesso) to mean that which cannot cease or

said from its roots (ne and cesso) to mean that which cannot cease or stop, because, if it did, ruin would follow. Give to the word even this, its most stringent meaning, and this bill meets that necessity. For, if I have succeeded in showing that, if this power fails or ceases to operate, the executive department falls, and all its powers and of the whole Government will fail; that the very functions which each House claims cannot be exerted in this struggle between them unless and the struggle between them unless that the struggle between them the struggle between the struggle between the struggle between them unless that the struggle between the struggl mediation quells it, how can it be denied that something is absolutely necessary to be done to heal this dissension, from which such fatal results may flow?

All necessary laws which are proper, that is, "bona fide appropriate to the end" (1 Story, Constitution, section 1251) of preventing such a conflict between the departments or branches of the Government as will destroy it or paralyze its essential powers, are constitutional.

The power to count and thus declare a President must not fail because the operators fall out. They must be unified in action by law,

so as to secure the execution of the power. Congress must pass the necessary law to carry this power into execution; that is, the power to count the vote, upon which all the other powers depend. Is not such a law, without which the machinery of Government would stop, a necessary law? A law which will adjust this conflict of claims between the Houses in respect to the execution of this power must be constitutional. And it is all the easier that the law-makers are the contestants for the power; that is, the two Houses, who must concur in the law which will unite them, though now in conflict in the cooperative act of counting the electoral votes.

The law, as an umpire, directs an abatement of the claim of each, to save each from the usurpation of the other and the country from civil strife. It cannot but be constitutional to create such a tribunal to avoid such dire alternatives. We must find a channel for the ship of state between the Scylla of arbitrary dictation and the Charybdis

of popular revolution.

With these views of my duty and without going into the details of the tribunal provided by the bill, I avow that I will gladly embrace the solution of the present political problem which it proposes without allowing it as a precedent for the future, when, I trust, some law may satisfactorily put at rest the difficult questions which now embar-

If it is said we must stand by our rights, I answer that, while my convictions are very strong, yet I feel I am not infallible, and cannot expect to have my own views conformed to by others absolutely. He "who so wishes," says Mr. Bagehot, "cannot have weighed what Butler calls the doubtfulness things are involved in; to be sure you are right; to impose your will, or to wish to impose it, with violence upon others; to see your own ideas vividly and fixedly, and to be tormented till you can apply them in life and practice; not to like to hear the opinion of others; to be unable to sit down and weigh the truth they have, are but crude states of intellect in our present civilization.

At the same time I am free to say that the tribunal I look to as proper for the crisis is one which will "unkennel fraud," though clothed in the stolen robes of State sovereignty, and will protect the United States from the lawlessness of those who use State power to inflict State wrongs and to trample on State rights. If our tribunal of justice turns away from the scent of fraud or refrains from conof justice turns away from the scent of fraud of refrains from con-demning illegal action because done by men who, dressed in a little brief authority, play such fantastic tricks before high heaven as make the angels weep, "I would have none of it; for if fraud is to triumph, if tricks are trumps, if lawless power is to usurp places of authority, with a passport from the tribunal we constitute, let it be done without the mockery of judicial decision and by the mailed hand of military despotism.

of military despotism.

If the chicanery and false devices of the day shall succeed in placing in the Presidency one whose title is tainted with fraud, then may we,

in the language of an unpublished poem of a half century ago, follow the method therein described in respect to our children:

Hence, if you have a son, I would advise—
Lest his fair prospects in the state you spoil—
If you would have him in the state to rise,
Instead of Grotius, let him study Hoyle! A turn for petty tricks, indulge the bent;
A dextrous cut may rule some great event,
And a stocked pack may make a President!

God forbid, Mr. Speaker, on the threshold of our second century, a President should ascend the chair of state with hands stained with blood or begrimed with fraud. His triumph would be fruitless. A people's wrath would

Hurl the wretch from high; To bitter scorn a sacri And grinning infamy!

A title to the Presidency fifty years ago tainted with the mere suspicion of fraud consigned a great son of Massachusetts to com-parative retirement and barred the doors of the executive department forever against the favorite son of Kentucky. God in His mercy grant that we may start our second century with the noble purpose to elevate and purify our public morals; to return to the simple virtues and principles of our fathers; to cherish mutual respect, where self-respect has not been violated; to repair the breaches in our Con-stitution, by subordinating the military always and every-where to the civil power; and so to reduce the Army that, while it shall shield the civil power; and so to reduce the Army that, while it shall shield our borders from the invader and the savage, it can never be a sword to pierce the vitals of our liberties; to check expenditures; reduce taxation; and diminish the patronage of the purse, twin foe, with the sword of a people's freedom; to forget the troubles of our civil strife, except as admonitions to the practice of forbearance, justice, and truth, and as an incentive to deeper devotion to our federative Republic of self-governed Commonwealths: and, clearing the deck of the old ship Constitution of the debris of civil convulsion and of the corruption of male depining stration growing out of the war, may we with one heart Constitution of the debris of civil convuision and of the corruption of maladministration growing out of the war, may we, with one heart, as a gallant crew of brother-patriots, trusting with simple faith in the God of our Christian land, spread again her sails, direct her course by the chart of our free institutions and by the pole star of honor to the haven of an enduring peace, with our freighted liberties safe, and the true happiness and glory of the people of these sister States, in one common and united country, assured to them and their postarity forever. terity forever!

Mr. Tucker's hour having expired,
Mr. WOOD, of New York. I move to further postpone the consideration of the special order until to-morrow after the reading of the Journal

Mr. HOOKER. Before that motion is put, I hope the House will hear a motion made to extend the time of the gentleman from Vir-

The SPEAKER. The Chair did not hear any such motion made.

Mr. HUNTON. I rose for the purpose of making it, and will now submit that motion.

Mr. WOOD, of New York. I withdraw my motion for that pur

No objection being made, Mr. Hunton's motion was agreed to. Mr. TUCKER then resumed and concluded his speech. Mr. WOOD, of New York. I now move to postpone the further consideration of this subject until to-morrow after the reading of the

Mr. BUCHARD, of Illinois. Will the gentleman from New York, before he presses that motion, allow me to ask unanimous consent that an order be made for the printing in the RECORD of the views of the minority of the committee on this subject?

Mr. WOOD, of New York. Certainly.

There was no objection, and the order was made.

The views of the minority on the privileges, powers, and duties of the House in reference to counting the vote are as follows:

the House in reference to counting the vote are as follows:

The undersigned dissent from the propositions contained in the resolutions reported by the majority of the committee and question the necessity and propriety of presenting them at this time for consideration by the House.

In our judgment it was not our province, nor within the scope of the inquiry we were directed to make, in any manner to investigate and ask the House to pass upon the powers of the President of the Senate. Unless compelled to do so in order to ascertain the powers of the House, it seems to be an impropriety to present or pass at this time upon the question of his power. The grave duty devolving upon the committee cannot be fully performed by framing and reporting resolutions for the consideration of the House without eccompanying them with a statement of the facts and reasons which have led thereto. We therefore feel impelled to present our reasons for dissenting from the resolutions of the majority. We realize the grave responsibility of taking a false position or leading the House to a wrong conclusion. To ascertain and inform the House what powers and privileges it possesses, and what duties it has to perform in counting the electoral vote, requires the investigation of great constitutional and legal questions, concerning which contrary opinions have been menintained by the foremost statesmen and best jurists of the present and preceding generations. The majority, to justify the assertion of the extreme and arbitrary power claimed for the House, should show that their construction of the Constitution is unmistakably correct. The resolution under which the committee act requires them to ascertain and report what are the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States.

NATURE AND EFFECT OF THE ELECTORAL COUNT.

NATURE AND EFFECT OF THE ELECTORAL COUNT. What is the count, mentioned in the Constitution, required to be made upon opening the electoral certificates?

Does it include more than the clerical or ministerial duty of making the arithmetic.

metical computation of the number of duly certified and properly authenticated electoral votes cast for each candidate; or does it involve a right of judgment upon the action of the State in appointing the electors holding prima facts evidence of their appointment and transmitting their votes, as required by the Constitution and law?

Does the count, which the House attends as a witness or participant, have the effect of a final judicial investigation?

The settlement of this question would have aided the committee in considering whether the House is authorized or can be authorized, under the Constitution, to exercise such judicial power.

The power to decide contested elections other than of its own members is not conferred by the Constitution upon the House. The election of President and Vice-President, in all that relates to the appointment of the electors, was reserved to the States. No power was conferred upon Congress or either House to judge or decide upon their qualifications or invalidate their votes. Such power is clearly not among the enumerzated powers of Congress.

It has not been conferred upon the two Houses or either of them by any law carrying into execution powers vested by the Constitution in the Government of the United States.

On the contrary, the judicial power of the United States is, by the third article

On the contrary, the judicial power of the United States is, by the third article of the Constitution, vested in the courts of the United States, and made to extend to all cases in law and equity arising under this Constitution, the laws of the United States, &c.

States, &c.

The count upon opening the certificates, made simply by virtue of the directions of the Constitution, and without statutory provision, is merely a ministerial, and not a judicial, act, requiring only the arithmetical enumeration and summing up of the votes duly authenticated found in the certificates forwarded by the several electoral

Such count and action taken upon its announcement, and the recognition by the other departments of the result declared, doubtless constitute or secure a prima facie right to be inaugurated and hold the executive office.

WHO IS UNDER THE CONSTITUTION EMPOWERED TO MAKE THIS COUNT

WHO IS UNDER THE CONSTITUTION EMPOWERED TO MAKE THIS COUNT?

The Constitution does not expressly say. It requires the votes to be counted. The first three resolutions of the majority affirm that the Constitution confers mon the President of the Senate no power to count, but does confer such power upon the two Houses of Congress.

In respect to the first and second resolutions of the committee, the undersigned are unable, either from an examination of the Constitution itself or from the action and expressed opinions of its framers, to come to the conclusion that the President of the Senate has no voice in counting the electoral vote. On the contrary, the early practice strongly confirms the opinion of Chancellor Kent. He says:

"The President of the Senate, on the second Wednesday in February succeeding every meeting of the electors, in the presence of the members of both Houses of Congress, opens all the certificates, and the votes are then to be counted. The Constitution does not expressly declare by whom the votes are to be counted and the result declared. In the case of questionable votes and a closely contested election this power may be all important, and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors."

By express provision of the Constitution the President of the Senate counts the votes and determines the result, and that the two Houses, for anght that appears in the Constitution to the celetoral votes cast. He is enjoined to open the certificates. He is not required to deliver them when opened to any other person, officer, or body. Opening them in the presence of the two Houses, for anght that appears in the Constitution to the countrary, they still remain in his custody. The votes when opened are then to be counted. If it was intended that

## VOTES IN CONSTITUTIONAL CONVENTION.

VOTES IN CONSTITUTIONAL CONVENTION.

That the constitutional convention intended to confer upon the President of the Senate power to count the votes, or cause the count to be made, seems probable, if not certain, from the votes and proceedings in the convention, in the votes upon modifications of the original proposition.

The clause relating to the electoral count in the article on the executive, as reported by Mr. Brearly, September 4, 1787. reads:

"The President of the Senate shall, in that House, open all the certificates; and the votes shall be then and there counted."

The proposition was taken up on the 6th of September, and, by the vote of six States to four, the words "in the presence of the Senate and House of Representatives" were added after "counted;" so that the clause would read:

"The President of the Senate shall, in that House, open all the certificates; and the votes shall then and there be counted, in the presence of the Senate and House of Representatives."

The requirement that the counting should be "in the presence of the Senate and House of Representatives."

The requirement that the counting should be "in the presence of the Senate and House of Represence would be meaningless tantology. There is no record of any change of this provision by a vote of the convention, and the committee on revision reported the clause as it stands in the Constitution as a more concise and elegant form of conveying the expressed understanding of the convention.

CONTEMPORANEOUS CONSTRUCTION.

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CONTEMPORANEOUS CONSTRUCTION.

This is a case in which we may be aided by contemporaneous construction. Judge Cooley, in his work on Constitutional Limitations, page 67, says:

"Contemporaneous construction may consist simply in the understanding with which the people received it at the time, or in the acts done in putting it in operation, and which necessarily assume that it is to be construed in a particular way. In the first case, it can have very little force, because the evidence of the public understanding when nothing has been done under the provision in question must always necessarily be vague and indecisive. But when there has been a practical construction which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the courts with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the Constitution, and by those who had opportanity to understand the intention of the instrument, a strong presumption exists that the construction rightly interprets the intention."

If, then, any action was taken by the framers of the Constitution and those who adopted it in regard to this question, that action will throw strong light upon the question of the true meaning of the Constitution in this particular.

ACTION OF THE CONVENTION.

ACTION OF THE CONVENTION.

The framers of the Constitution in submitting their labors to Congress passed a resolution in regard to this very question. One week after voting upon the mode of counting the electoral votes, a resolution was reported by the committee on revision in regard to the first count of the votes under the Constitution. It was adopted and appended to the Constitution. The convention—
"Resolved, That it is the opinion of this convention \* \* \* that 'the Senators and Representatives should convene at the time and place assigned; that the

Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President.'"

And thus in doing an act in reference to putting in operation the Constitution they had framed, they used language which intrusted the President of the Senate with the counting they had provided should be made.

If they had understood that, under the Constitution, the President of the Senate had no power to count the votes, surely they would not have declared it to be their opinion that, after the ratification of that Constitution, the Senate should elect a presiding officer for the purpose of counting as well as receiving and opening the votes for President.

ACTION IN THE FIRST CONGRESS.

## ACTION IN THE FIRST CONGRESS.

When the First Congress convened under the Constitution, the Senate organized, as suggested by the constitutional convention, and "proceeded by ballot to the choice of a President for the sole purpose of opening and counting the votes for President of the United States." John Langdon was elected. When, the Senate "ordered, that Mr. Ellsworth inform the House of Representatives" of its action, "and that the Senate is now ready, in the Senate Chamber, to proceed, in the presence of the House, to discharge the duty" of opening and counting of the votes. To this message the House responded that it was "ready forthwith to meet the Senate, to attend" at the execution of that duty.

The Journal of the Senate states that "the Speaker and House of Representatives attended in the Senate Chamber for the purpose expressed in the message delivered by Mr. Ellsworth, and, after some time, [after the counting of the votes,] withdrew;" that "the President elected for the sole purpose of counting, withdrew;" that "the President the Senate and House had met, and that he, in their presses ee, had opened and counted the votes of the electors for President and Vice-President of the United States;" whereby it appears that George Washington, esq., was unanimously elected President and John Adams Vice-President of the United States."

Upon the return of the House to its own Hall, the Speaker resumed the chair, and Messrs. Parker and Heister "delivered in at the Clerk's table a list of the votes of the electors of the several States in a choice of a President and Vice-President of the United States."

The following members of the Federal convention that framed the Constitution were members of this First Congress assembled under it: In the Senate, John Langdon, of New Hampshire; William S. Johnson and Oliver Ellsworth, of Connecticut; William Paterson, of New Jersey; Robert Morris, of Pennsylvania; George Read and Richard Basset, of Delaware; Pierce Butler, of South Carolina; and William Few, of Georgia. In the House, Nicholas Gilman, of New Hampshire; Roger Sherman, of Connecticut; George Clymer, of Pennsylvania; Daniel Carroll, of Maryland; James Madison, jr., of Virginia; and Abraham Baldwin, of Georgia. Nearly all of them were present at the counting of the electoral votes, and tacitly assented to the proceedings and count and announcement by the President of the Senate in that Congress.

PROCEEDINGS AT THE NEXT THREE SUCCEEDING ELECTIONS IN COUNTING THE ELECT-ORAL VOTES.

## 1. Appointment of joint committees.

At each of these counts the Houses passed resolutions for the appointment of joint committees "to ascertain and report a mode of examining the votes for President and Vice-President."

## 2. Reports of committees and orders of House thereon

2. Reports of committees and orders of House thereon.

The committees appointed in 1793 and 1797 severally reported to each of their respective Houses resolutions, which were adopted, directing the time and place at which the two Houses shall assemble, the appointment of one teller on the part of the Senate and two on the part of the House "to make lists of the votes as they shall be declared;" that the result shall be delivered to the President of the Senate, who shall announce the state of the vote and the persons elected to the two Houses assembled as aforesaid; which shall be deemed a declaration of the persons elected President and Vice-President, and, together with a list of the votes, be entered on the Journals of the two Houses.

3. Notifications of readings to attend the counting

## 3. Notifications of readiness to attend the counting.

At each of these three counts the notifications of readiness to attend specified the purpose, namely, "to attend the opening and counting the votes for President and Vice-President of the United States, as the Constitution provides," and followed substantially the same form at each count.

In each count, the President of the Senate followed the joint direction of the two Houses and the mode of procedure in the First Congress, opened the certificates, delivered them to the tellers, who examined and ascertained the number of votes, presented a list to the Vice-President, which was read, and the result declared by him to the two Houses.

delivered them to the telefers, who examined and ascertained the presented a list to the Vice-President, which was read, and the result declared by him to the two Houses.

At these several counts the President of the Senate not only opened the certificates, but made all the announcements of the purpose of assemblage, action taken, and results. If there was any presiding officer on the occasion, he was such officer. The tellers were only authorized "to make lists of the votes as they shall be declared;" the result was delivered by them to the President of the Senate, and he announced the state of the vote and the persons elected.

At the third count of the electoral votes John Adams, then Vice-President, declared the result of the electoral votes John Adams, then Vice-President, declared the result of the Constitution and laws of the United States and to the commands of both Houses of Congress, expressed in their resolution"—
and then delivered to the Secretary of the Senate the votes of the electors, which apparently thus far had remained in his custody.

4. Certificates of election stated the President of Senate had counted the votes.

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4. Certificates of election stated the President of Senate had counted the votes.

The certificates of election issued by the orders of the Senate and House stated expressly that the President of the Senate had counted the electoral votes. Upon the completion of the first count James Madison, a member of the House of Representatives, was directed by that body "to inform the Senate that the House have agreed that the notifications of the election of the President and Vice-President of the United States should be made by such persons, and in such manner, as the Senate shall be pleased to direct;" when the Senate adopted and entered on its journal the following certificate, prepared under its order, by a committee of its members, consisting of Messrs. Patterson, Johnson, and Ellsworth, (who were also members of the constitutional convention,) and Mr. Lee:

"Beit known, that the Senate and House of Representatives of the United States of America, being convened in the city and State of New York, the sixth day of April, in the year of our Lord one thousand seven hundred and eighty-nine, the underwritten, appointed President of the Senate for the sole purpose of receiving, opening, and counting the votes of the electors, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and for a Vice-President; by which it appears that George Washington, esquire, was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.

"In testimony whereof I have hereunto set my hand and seal.

"JOHN LANGDON."

John Langdon, who signs this certificate, and who was elected by the Senate its President for the duty which he certifies he had performed, was also a distinguished member of the constitutional convention. In 1797 the Senate again adopted prac-

tically the same form. It was reported under its order by a committee consisting of Messrs. Mason, Hillhouse, and Sedgwick, and at successive counts, up to and including the tenth, the presiding officers of the Senate (respectively John Langdom, John Adams, Thomas Jefferson, Aaron Burr, John Milledge, William H. Crawford, and John Gaillard) states, under the order of the Senate, order of the House, that he—

"The underwritten, Vice-President of the United States and President of the Senate, for President of the Senate, for President and for a Vice-President of the United States and President and for a Vice-President of the United States and President and for a Vice-President of the United States."

It is the resolutions of the majority of this committee affirm, the Constitution gives the President and for a Vice-President of the United States."

It is the President and for a Vice-President of the United States.

It is the President of the Senate no authority to count the electoral votes, it is very remarkable that for a period covering almost half the history thus far of the Republic, this officer did this very thing, and the Senate and House of Representatives thus repeatedly and formally acknowledged his right to do this.

Fifteen membrase of this constitutional convention were members of the Senate or House at the presidential count in 1789; twelve at the count in 1793; and six at each of the counts in 1797 and 1801.

They participated in the proceedings and were witnesses or actors at these counts. The manner in which the count was conducted, the power asserted and exercised on these occasions by the parties required by the Constitution to be present when the act was performed, are practical expressions of the understanding of the framers of the Constitution as to the powers and duties of the Senate and House, and of the President of the Senate, in regard to the electoral votes.

These precedents are more; for, as they were the public and well-known exercise of a power or duty under an article of the Consti

counted.

"If any difficulty arises, in point of order, during the division, the speaker must take upon himself to decide it peremptorily, for as it cannot be decided by the house, and so have a division upon a division, there is no other mode but to submit implicitly to his determination." "Subject, however, to the future censure of the House if that determination appears to be irregular or partial."—2 Hatsell Precedents, 198.

BUBSEQUENT POLITICAL ACTION OF THE FRAMERS OF THE CONSTITUTION IN REGARD TO INTRUSTING THE COUNTING OF THE VOTES FOR STATE EXECUTIVE OFFICERS TO THE PRESIDING OFFICER OF ONE OF THE LEGISLATIVE BRANCHES.

Subsequent Political action of the Fermess of the Constitution in Regard to Intrusting the Counting of the vortes for State executive officers to the Pressident of the new States applying for admission. Such convention was held in Pennsylvania the year following the inauguration of Washington. Two delegates from the State who were members of the Federal constitutional convention, James Wilson and Thomas Mifflin, were members of this State constitutional convention, James Wilson and Thomas Mifflin, were members of this State constitutional convention, James Wilson and Thomas Mifflin, were members of this State constitutional convention, and signed the constitution there devised and adopted. Thomas Mifflin was president of the convention.

This State constitution, adopted in 1790, required that the returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the senate, who shall open and publish them in the presence of the members of both houses of the Legislature.

The State of Delaware formed a constitution in 1792. John Dickinson and Richard Bassett, delegates from the State in the Federal convention, signed the constitution framed for the State. It provided that the returns of every election for governor be \* \* \* delivered to the speaker of the senate, who shall open and publish the same in the presence of the members of both houses of the Legislature.

In 1796 the State of Tennessee was formed out of a portion of the territory belonging to and eeded by North Carolina to the United States. Its constitution is signed by William Blount, as president of the convention, who signed the Federal Constitution as delegate from the State of North Carolina. The constitution is finely william Blount, as president of the convention, who signed the Federal Constitution as delegate from the State of North Carolina. The constitution in the presence of a majority of the members of both houses of the General Assembly.

The State constitutions, signed by these

in 1876.

In the proceedings under these State constitutions, where the powers have been given to a presiding officer of one of the houses of the Legislature to open and publish the returns in the presence of the Legislatures, the houses have usually attended the count simply as witnesses or spectators, without doing more than recording the proceedings in their journals or appointing tellers, unless additional powers were conferred upon them by their State constitutions.

It is sufficient to cite as an illustration the proceedings as they appear in the legislative journal of the State of Indiana, in opening and publishing the returns for governor in 1837, when the late Speaker of this House was a member of the

Legislature of that State, and indicated his understanding of the duty to be performed under the constitution.

The speaker of the house of representatives of the State of Indiana on the 12th of January, 1857, made the following announcement:

"That the constitution of the State of Indiana requires that the speaker shall open and publish the returns of the election of governor and lieutenant-governor in the presence of both houses of the General Assembly, and, as the official terms of the governor and lieutenant-governor elect commence this day, I have communicated an invitation to the senate requesting them to meet the House in this hall, and in obedience to the constitution I shall, so soon as the senate appear, proceed to publish the returns for governor and lieutenant-governor."

Mr. Kerr offered the following preamble and resolution:

"Whereas the speaker of this house has announced his intention to proceed forthwith in this hall to open and publish the election returns for governor and lieutenant-governor, in pursuance of the requisitions of the constitution, and has given the senate notice thereof:

"Resolved, That the house will attend upon the appointment of the speaker in the discharge of the duties devolved upon them by the constitution, and that seats be provided for the members of the senate on the right of the speaker in the discharge of the duties devolved upon them by the constitution, and that the house is now ready to proceed to said business."

Which was agreed to.

The senate then, in pursuance of the invitation of the house, communicated through the speaker, came into the hall of the house, preceded by the president of the senate.

When,

through the speaker, came into the hall of the house, preceded by the president of the senate. When,

The joint convention was called to order by the president of the senate.

The president then declared:

"GENTLEMEN: We have assembled in joint convention, in accordance with the provision of section 4, article 5, of the constitution of the State of Indiana, which reads as follows: 'Section 4. In voting for governor and lieutenant-governor, the electors shall designate for whom they vote as governor, and for whom as lieutenant-governor. The returns of every election for governor and lieutenant-governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the General Assembly.

"The speaker of the house of representatives will now proceed to open and publish the returns for the election of governor and lieutenant-governor of the State of Indiana.

WHAT PRIVILEGES. POWERS. AND DUTIES IN RESPECT TO THE COUNT DEVOLVED UPON

WHAT PRIVILEGES, POWERS, AND DUTIES IN RESPECT TO THE COUNT DEVOLVED UPON THE HOUSE.

First. The Constitution expressly confers upon the House of Representatives the power and privilege of being present at the opening by the President of the Senate of the electoral certificates, and in case, upon a count of the votes, there is not a majority for any one candidate, the power and duty are expressly devolved upon the House itself to elect a President from the three highest candidates voted for by the electoral colleges.

The fact that no candidate had received a majority of the votes cast by the electors is jurisdictional to the action of the House. Its existence is essential to a subsequent valid election by the House of the existence of the fact would not make the election by the House legal. The House is not vested by the Constitution with the power to determine the extent of its own jurisdiction, and the courts will and have held repeatedly the invalidity of the acts of Congress which transcended the constitutional powers of the legislative department.

## POWERS OF THE HOUSE.

As the only express power given by the Constitution to the House in regard to the count itself is to be present with the Senate when the certificates shall be opened by the President of the Senate, any further power must be implied in this or some other express power found in the Constitution, or be conferred by law under the power given to Congress by section 8, article 1, of the Constitution. The power to be present at the opening of the certificates, or at the count, if that is included, does not imply a power to direct, control, or make the count. If the Constitution required the count to be made by an officer amenable to, and whose action was subject to revision and reversal by, the House alone, the latter might claim a constitutional power to control or direct the count.

But if such power exists, it cannot be the sole power of the House, but a power to be exercised by the Senate and House, or not at all.

The absurdity of supposing it was the intention that two independent legislative bodies, with different rules of procedure, having each its own presiding and subordinate officers, meeting in one hall and simultaneously considering, debating, and deciding upon its own action in regard to the reception of each certificate and the counting of each electoral vote found therein, without power to decide in case of disagreement between the Houses, is apparent upon a bare statement of the proposition. How should order be maintained? What an anomaly in legislative bodies! Two Houses in session and deliberating in the same hall, under different presiding officers, discussing at the same time different or even the same questions.

The conviction forces itself upon the mind that the proceeding under the count, in the absence of the prior exercise of congressional legislative power or of the concurrent direction from the two Houses, must be conducted and controlled, in the disposition of all questions that arise during the count, by the peremptory decision of the presiding officer charged with the custody of the pap

HAS THE HOUSE ANY POWER TO TAKE PART IN THE COUNT BY VIRTUE OF THE TWENTY SECOND JOINT RULE?

This rule has never been adopted by the vote of the present House of Representatives, and its existence as a joint rule governing this Congress has been expressly denied by vote of the Senate at present and last session. We attach the vote of the Senate by which, at this session, on an appeal from the decision of the President pro tempore that the joint rules were not in force, such was sustained. The vote was as follows:

"The question being taken by yeas and nays, resulted—yeas 50, nays 4; as follows:

"Yeas—Messrs. Alcorn, Allison, Anthony, Bayard, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cockrell, Conkling, Conover, Cooper, Cragin, Dawes, Dennis, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamilton, Harvey, Hitchcock, Howe, Ingalls, Kernan, Logan, McCreery, McDonald, McMillan, Mitchell, Morrill, Morton, Paddock, Patterson, Price, Randolph, Sargent, Sherman, Spencer, Teller, Wadleigh, Wallace, West, Windom, and Wright—50.

"NAYS—Messrs. Maxey, Merrimon, White, and Withers—4."

By the Constitution each House has the power to make rules for its own government, and each can adopt a rule in todidem verbis for the government of such House in its intercourse with the other House. It becomes a joint rule governing both Houses while assented to, but of no force under the Constitution to bind the House withdrawing its assent. Otherwise, one House would be incapacitated from its constitutional power to make rules for its own government.

The House has therefore no power derived from the so-called twenty-second joint rule that it can exercise at the approaching presidential count.

The mode of count under that rule is questionable as to its constitutionality, giving, as it does, the power to either House, without consideration or deliberation, or even assignable reason, to reject any electoral vote and at any time transfer the election of President and Vice-President from the electors appointed by the States to the House of Representatives and to the Senate respectively.

Practically, the choice of the people for President, expressed at the election, could be defeated when a majority of the Representatives of a majority of the States and a majority of the members of either House were opposed to the successful candidate. The numerical minority in the House of Representatives, happening to have a majority in the State delegations under an election occurring two years prior thereto, could, by the action of the Senate, defeat the popular will expressed at the later election.

The impropriety of the rule, its dangerous character and unconstitutional fea-

The impropriety of the rule, its dangerous character and unconstitutional fea-tures, have been pointed out and admitted, and by none more clearly and forcibly than Senators and Representatives of both parties who have seen its practical

than Senators and Representatives of both parties who have seen its practical workings.

The pernicious principle of the twenty-second joint rule is again re-asserted by the fifth resolution, that any electoral vote may be rejected and excluded from the count by the sole action of either House.

Of this rule, because of this doctrine, a distinguished Senator, Mr. Randolph, less than a year ago, said:

"That rule, now abrogated, is admitted on all sides to have been iniquitous in conception, dangerous in existence, and constitutionally without warrant."

We cannot refrain from expressing our alarm at the dangerous and, as it seems to us, revolutionary assumption of power in the House to defeat, on its sole motion and without law or other provision authorizing such action, the choice made by the electors pursuant to the Constitution and law.

The doctrine would virtually wrest the control of the election of President from the States and place it in a single branch of the legislative department when its members desired. A power clearly and expressly reserved by the Constitution to the States would by the exercise of power claimed by the resolution be usurped by one department of the General Government.

Under such a construction of the Constitution the House can defeat the election by the electoral colleges, for by excluding votes from the count it could prevent any candidate from receiving a majority, and itself, at every election, make the choice from the three candidates receiving the highest number of votes. We especially deprecate the assertion of such power in either House as a revolutionary attempt to arrogate to itself the power to choose an Executive.

We submit the following proposition, as expressing more accurately the nature of the constitutional count, and privileges, powers, and duties of the House in relation to it:

1. That the count required to be made upon opening the certificates is a ministerial duty.

2. That the so-called twenty-second joint rule is not now in force, so as to require

1. That the count required to be made upon opening the trial duty.
2. That the so-called twenty-second joint rule is not now in force, so as to require the proceedings at the count to be conducted under its provisions.
3. That it is the duty and privilege of the House to attend with the Senate at the opening of the certificates transmitted to the President of the Senate by the electors appointed by the several States, and to appoint tellers to make lists of and register and compute the votes as declared.
4. That the House, conjointly with the Senate, has power to examine the votes upon opening the certificates, and to agree with the Senate upon a mode of doing so.

50. That the privileges, the powers, and the duties of the House of Representatives, in the matter of the electoral votes for President and Vice-President, are no more and no less than those of the Senate.

While measures are being considered by joint committees of the two Houses to harmonize the differences and agree upon a satisfactory method of settling all disputed questions, we believe it to be injudicious, if not unpatriotic, to attempt, by any separate action of the House, to thwart the accomplishment of the object for which the joint committee was appointed; and, in lieu of the resolutions of the majority, submit the following resolutions:

\*Resolved, first, That it is the power and duty of the House, conjointly with the Senate, to provide by law or other constitutional method a mode for fairly and truly ascertaining and properly counting the electoral vote of each State, so as to give effect to the choice of each State in the election of President and Vice-President.

truly ascertaining and property and give effect to the choice of each State in the election of President.

Resolved, second, That in the absence of legislative provision on the subject or authoritative direction from the Senate and House of Representatives, the President of the Senate, upon opening the certificates, declares and counts the electoral votes for President and Vice-President of the United States.

HORATIO C. BURCHARD.
JULIUS H. SEELYE.
JAMES W. McDILL.
WILLIAM LAWRENCE.

Mr. KASSON. Before the question is taken upon the motion of the gentleman from New York, I would ask whether it will exclude, if this motion prevails, the privileged report from the joint committee on the electoral vote? If they chose to take the floor at the close of the morning hour, would they have a right to it under this order?

The SPEAKER. That committee have a right to report at any time, yet they cannot take a gentleman from the floor when he has it upon unfinished business. The Chair would recognize the gentleman from Lowa [Mr. McDull as entitled to the floor.

man from Iowa [Mr. McDill] as entitled to the floor.

Mr. KASSON. After the reading of the Journal?

The SPEAKER. Yes, sir.

The question was taken upon the motion of Mr. Wood, of New York; and it was agreed to, and the further consideration of the report was postponed until to-morrow.

## ORDER OF BUSINESS.

Mr. WOOD, of New York. I now call for the regular order of business, so that we may have a morning hour.

## NEW YORK POST-OFFICE.

I ask unanimous consent to submit a report from the select committee in reference to the investigation of the New York post-office. I ask that the report be laid before the House and recommitted, and ordered to be printed with the testimony.

Mr. HALE. I would inquire if this report covers anything except this post-office matter?

Mr. COX. Nothing but the investigation into the New York post-

Mr. BURCHARD, of Illinois. Not to be brought back on a motion to reconsider?

Mr. COX. I call for the printing and recommitting.
Mr. BURCHARD, of Illinois. But you do not wish it to be brought back on a motion to reconsider?
Mr. COX. I do not want to reconsider it at all.
There was no objection, and Mr. Cox submitted the report; which

was recommitted to the committee, and ordered to be printed.

## ORDER OF BUSINESS.

Mr. WOOD, of New York. I now call for the regular order of busines

The SPEAKER. The regular order of business being called for, the

The SPEAKER. The regular order of business being called for, the morning hour commences at fifteen minutes past four o'clock; and reports from committees of a public nature are in order, and the call rests with the Committee of Ways and Means.

Mr. WADDELL. I move that the House do now adjourn.

Mr. HOLMAN. O! I do insist that the House before adjourning should dispose of the Indian appropriation bill; and if I have the the Whole on the state of the Union for that purpose.

The SPEAKER. Nothing is in order except the motion to adjourn.

Mr. WATTERSON. The gentleman from North Carolina yields the

The SPEAKER. He cannot do that, because if he withdraws his motion it brings up the morning hour.

Mr. WADDELL. Then I insist on it.

Mr. WADDELL. Then I insist on it.
Mr. HOLMAN. I trust the House will not adjourn.
The SPEAKER. The question is not debatable.

The question was taken on Mr. WADDELL's motion; and on a divis-

ion there were—ayes 58, noes 49.

Mr. HOLMAN. I must call for the yeas and nays if the motion is

Mr. HOLMAN. I must call for the yeas and nays if the motion is insisted upon.

The SPEAKER. The Chair would suggest to the gentleman from Indiana [Mr. HOLMAN] that he first call for tellers.

Mr. HOLMAN. Then I will call for tellers, for it is absolutely necessary that the Indian appropriation bill should be passed.

Mr. HALE. But during the morning hour you cannot get at the appropriation bill to-day, for you cannot move to go into Committee of the Whole on the state of the Union.

Mr. HOLMAN. The gentleman from Maine must understand that

Mr. HOLMAN. The gentleman from Maine must understand that

my motion can be entertained in the morning hour.

The SPEAKER. The Chair desires to state to the House that, in his opinion, if the House desires a morning hour soon they had better take it to-day, for by information given to the Chair by the gentleman from Ohio, [Mr. PAYNE,] the chairman of the committee on the electoral vote, it is his opinion that there will not be a morning hour again

Mr. HALE. Has not the morning hour commenced, and which

Mr. HALE. Has not the morning hour commenced, and which shuts off the appropriation bill ?

The SPEAKER. It has.
Mr. HALE. So that shuts out the appropriation bill, as the gentleman from Indiana will see, for to-day.

The SPEAKER. Until after the morning hour has expired.
Mr. HOLMAN. I do not understand that the rule is that a motion to go into Committee of the Whole on the appropriation bill cannot be made during the morning hour. The language of the rule is that it may be made "at any time."

The SPEAKER. The Chair has not ruled to the contrary.
Mr. HOLMAN. The gentleman from Maine [Mr. HALE] stated a contrary proposition.

Mr. HOLMAN. The gentleman from Maine [Mr. HALE] stated a contrary proposition.

The SPEAKER. The Chair stated that the Indian appropriation bill could be reached at the expiration of the morning hour. It is not usual to interfere with the morning hour, but the rule permits the motion to go into Committee of the Whole on an appropriation bill to be made at any time.

Mr. HOLMAN. I call for tellers on the motion to adjourn.

The question was taken upon ordering tellers; and there were 20 in the affirmative.

So (the affirmative not being one-fifth of a quorum) tellers were not

Mr. HOLMAN. I call for the yeas and nays on the motion to adjourn. If members are willing to adjourn at this early hour of the day, when appropriation bills are pending, it is well enough to have

a record of it.

Mr. HALE. Taking the yeas and nays will not help the gentleman.

Mr. HALE. Taking the yeas and nays will not help the gentleman. Mr. HALE. Taking the yeas and nays will not help the gentleman.
Mr. HOLMAN. I will not insist upon the yeas and nays, but I hope
the gentleman who made the motion to adjourn will now withdraw it.
Pending the announcement of the result of the vote on the motion

to adjourn,

## ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a bill and a joint resolution of the following titles; when the Speaker signed the

An act (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States, relating to courts in Arkansas and other States; and

and other States; and
A joint resolution (S. R. No. 4) authorizing Captain Temple and
Lieutenant-Commander Whiting, of the Navy, to accept a decoration
from the King of the Hawaiian Islands.
Mr. HAMILTON, of Indiana, from the same committee, reported

that they had examined and found truly enrolled bills of the follow-

ing titles; when the Speaker signed the same:

An act (H. R. No. 3038) granting a pension to Almon F. Mills, late private Company K, Twenty-ninth Regiment Ohio Volunteers;

An act (H. R. No. 3511) granting increased pension to Thomas G.

Kingsley; and
An act (H. R. No. 3575) granting a pension to Eliza Blaze, widow
of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers.

By unanimous consent, leave of absence was granted as follows: To Mr. Wigginton, indefinitely on account of sickness in his family.

To Mr. Lord for one week on account of a death in his family.

## CHARLES METCALFE.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a copy of the report of the Commissary-General on the bill (H. R. No. 3283) for the relief of Charles Metcalfe; which was referred to the Committee on Military Affairs.

## W. STEIMETT AND G. AND M. MEALER.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting the petitions of William Steimett and George Mealer and Meridy Mealer, privates of the Tenth Regiment of Tennessee Volunteers; which was referred to the Committee on Military Affairs.

### HENRY FREEMAN.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a copy of the report in the case of Henry Freeman, private of Company E, Seventh Kentucky Infantry; which was referred to the Committee on Military Affairs.

## FEES OF CUSTOMS OFFICERS.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting a statement of fees received by customs officers during the fiscal year ending June 30, 1876; which was referred to the Committee of Ways and Means, and ordered to be printed.

## JAMES B. EADS.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, relative to the issue of United States bonds in favor of James B. Eads, of Saint Louis, in payment of warrants of the Secretary of the Treasury; which was referred to the Committee on Appropriations.

## ORDER OF BUSINESS.

The SPEAKER. Upon the motion of the gentleman from North Carolina [Mr. WADDELL] that the House now adjourn, upon a division there were—ayes 58, noes 49.

Mr. HOLMAN. I believe it is not too late for me to call for the yeas and nays on the motion to adjourn.

The SPEAKER. The Chair will submit that question to the

The yeas and nays were ordered; there being 37 in the affirmative, more than one-fifth of the last vote.

Mr. WADDELL. In order to save time, I will withdraw the mo

Mr. WILLS. And I renew it.

Mr. CLYMER. I move that this House now take a recess till eleven o'clock to-morrow morning. That will give us an hour for the Indian appropriation bill.

The SPEAKER. The motion for a recess is not in order pending a

The SPEAKER. The motion for a recess is not in order pending a motion to adjourn.

Mr. HOLMAN. It would be better to have a night session, in order to conclude the consideration of the Indian appropriation bill.

The SPEAKER. The yeas and nays have been ordered on the motion to adjourn, and the Clerk will now call the roll.

The question was taken; and there were—yeas 102, nays 90, not voting 98; as follows:

voting 98; as follows:

YEAS—Messrs. Adams, Ainsworth, Ashe, George A. Bagley, Ballou, Banks, Bell, Blackburn, Blair, Bradford, Bradley, Horatio C. Burchard, Samuel D. Burchard, Balleigh, Cabell, John H. Caldwell, William P. Caldwell, Cannon, Carr, Cate Chittenden, Cox. Crape, Crounse, Culberson, Danford, Davy, Dibrell, Dobbins, Dunnell, Eames, Felton, Forney, Gibson, Hale, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Harrison, Haymond, Hendee, Henderson, Hoskins, House, Hubbell, Hurd, Hyman, Kasson, Franklin Landers, Lapham, Lawrence, Levy, Lewis, Luttrell, Lynch, Lynde, Magoon, MacDougall, McDill, McFarland, Miller, Mills, Money, Monroe, Nash, Norton, Oliver, O'Neill, Page, John F. Philips, Poppleton, Reagan, William M. Robbins, Roberts, Robinson, Scales, Seelye, Sinnickson, Smalls, A. Herr Smith, Stowell, Strait, Tarbox, Terry, Thornburgh, Tufts, Van Vorhes, Robert B. Vance, Charles C. B. Walker, Warner, White, Whitthorne, Wike, Willard, Andrew Williams, James Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Yeates—102.

NAYS—Messrs, Anderson, Atkins, Bagby, John H. Bagley, jr., Bland, Blount, Bright, Buckner, Candler, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Covan, Cutler, Douglas, Durand, Durham, Eden, Field, Finley, Fort, Franklin, Frye, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Abram S. Hewitt, Goldsmith W. Hewitt, Hoar, Holman, Hooker, Hopkins, Humphreys, Hunton, Frank Jones, Thomas L. Jones, Kehr, Lamar, George M. Landers, Le Moyne, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Morgan, Neal, O'Brien, Payne, Pierce, Plaisted, Potter, Powell, Rainey, Rea,

John Reilly, Rice, Riddle, John Robbins, Sampson, Schleicher, William E. Smith, Southard, Sparks, Stenger, Stevenson, Stone, Teese, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Erastus Wells, Wigginton, Jere N. Williams, Will's, Benjamin Wilson, and Fernando Wood—90.

NOT VOTING—Messrs. Abbott, John H. Baker, William H. Baker, Banning, Bass, Beebe, Bliss, Boone, John Young Brown, William R. Brown, Buttz, Campbell, Cason, Caswell, Collins, Conger, Cook, Darrall, Davis, De Bolt, Denison, Egbert, Ellis, Evans, Faulkner, Flye, Foster, Freeman, Fuller, Garfield, Gause, Goodin, Hathorn, Hays. Henkle, Hereford, Hill. Hoge, Hunter, Hurlbut, Jenks, Joyce, Kelley, Kimball, King, Knott, Lane, Leavenworth, Lord, McCrary, Morrison, Mutchier, New, Odell, Packer, Phelps, William A. Phillips, Piper, Platt, Pratt, Purman, James B. Reilly, Miles Ross, Sobieski Ross, Rnak, Savage, Sayler, Schumaker, Sheakley, Singleton, Slemons, Springer, Stanton, Stephons, Swann, Thomas, Martin I. Townsend, Washington Townsend, Waddell, Walt, Waldron, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Walling, Walsh, Ward, Warren, Watterson, G. Wiley Wells, Wheeler, Whitehonse, Whiting, Alpheus S. Williams, Charles G. Williams, Wilshire, Woodworth, and Young—98.

So the motion was agreed to; and accordingly (at four o'clock and thirty-five minutes p. m.) the House adjourned.

## PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BRADLEY: The petition of 93 citizens of Bay County, Michigan, for the reduction of the tax imposed on banks, to the Commit-

igan, for the reduction of the tax imposed on banks, to the Committee of Ways and Means.

By Mr. CLYMER: The petition of citizens of Philadelphia, for the passage of the bill reported by the joint committee on counting the electoral vote, by Mr. DUNNELL: The petition of S. A. Davis and 50 other citizens of Minnesota, for the passage of an act granting arrears of pensions, to the Committee on Invalid Pensions.

sions, to the Committee on Invalid Pensions.

By Mr. FINLEY: The petition of citizens of Florida, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HALE: The petition of A. K. McKenzie and other citizens of Maine, of similar import, to the same committee.

By Mr. HARRIS, of Virginia: The petition of M. G. Harman and other citizens of Virginia, of similar import, to the same committee.

By Mr. HATCHER: The petition of citizens of Ripley County, Missouri, for a post-route from Doniphan to Van Buren, Missouri, to the same committee.

By Mr. HEWITT of Alabama: The petition of E. G. Chandler and

By Mr. HEWITT, of Alabama: The petition of E. G. Chandler and other citizens of Alabama, for cheap telegraphy, to the same commit-

By Mr. HOPKINS: Telegraphic memorial from 35 prominent law-yers, bankers, and business men of Pittsburgh, Pennsylvania, in favor of the passage of the bill reported by the joint committee on count-ing the electoral vote for President and Vice-President, to the com-

mittee on counting the electoral vote.

Also, resolutions of the Chamber of Commerce of Pittsburgh, Penn-

Also, resolutions of the Chamber of Commerce of Pittsburgh, Pennsylvania, communicated by telegraph, favoring the passage of the bill reported by the joint committee on counting the electoral vote for President and Vice-President, to the same committee.

By Mr. KELLEY: The petition of 28 citizens of Philadelphia, for the repeal of the tax on the deposits, circulation, and capital of all banks and the remission of the subject of bank taxation to the several States and Territories to the Committee of Ways and Manne.

and the remission of the subject of bank taxation to the several States and Territories, to the Committee of Ways and Means.

By Mr. KIDDER: A paper relating to the establishment of a post-route from Sioux City via Firesteel to Fort Thompson, Dakota Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. NEAL: The petition of T. C. Downey and 102 other citizens of Adams County, Ohio, for cheap telegraphy, to the same committee.

By Mr. O'NEILL: Memorial of the Philadelphia Board of Trade, against the passage of the bill for the imposition of a capitation tax on immigrants and vexatious conditions on the immigrant traffic, to

the Committee on Commerce.

By Mr. ROBBINS, of Pennsylvania: The petition of A. E. Borie,
A. J. Drexel, Daniel M. Fox, Fred Fraley, John Welsh, Henry Armitt Brown, and other citizens of Philadelphia, without distinction of party, for the passage of the bill reported by the joint committee on counting the electoral vote, to the committee on counting the electoral vote.

By Mr. STRAIT: A paper relating to the establishment of a post-route from Willmar, Kandiyohi County, Minnesota, to Beaver Falls, Renville County, Minnesota, via Whitefield and Henryville, to the Committee on the Post-Office and Post-Roads.

By Mr. THROCKMORTON: Papers relating to the claim of W. E. Davis, for compensation on account of depredations by the Kiowa Indians, to the Committee on Indian Affairs.

Also, papers relating to the claims of Jesse B. Maxey and John A. Gordon, of similar import, to the same committee.

Also, papers relating to the claim of Hiram Leaf, for compensation on account of depredations by Kiowa and Comanche Indians, to the same committee

same committee.

By Mr. WILLIAMS, of New York: The petition of W. D. Capron, John Hammond, and other citizens of New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WILSHIRE: The petition of William A. Britton, for re-imbursement of moneys expended by him while marshal of the western district of Arkansas in 1872, to the Committee on Expenditures in the Department of Instince. Department of Justice.

## IN SENATE.

## Wednesday, January 24, 1877.

The Senate met at eleven o'clock a. m.
The Journal of yesterday's proceedings was read and approved. CREDENTIALS

The PRESIDENT pro tempore presented the credentials of WILLIAM WINDOM, elected by the Legislature of Minnesota a Senator from that State for the term beginning March 4, 1877; which were read

and ordered to be filed.

He also presented the credentials of James E. Bailey, elected by the Legislature of Tennessee a Senator from that State to fill the vacancy occasioned by the death of Andrew Johnson; which were read

and ordered to be filed.

He also presented the credentials of Isham G. Harris, elected by the Legislature of Tennessee a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

### EXECUTIVE COMMUNICATION.

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, transmitting, in answer to a resolution of the Senate of the 16th instant, correspondence with the diplomatic officers of the United States in Turkey, concerning the revolt in the Turkish provinces; which was ordered to lie on the table and

be printed.

Mr. BURNSIDE. I move in addition to the usual number of copies

that five hundred extra copies of this correspondence be printed for the use of the State Department,

The PRESIDENT pro tempore. The motion to print extra copies will be referred to the Committee on Printing.

## PETITIONS AND MEMORIALS.

Mr. WALLACE presented a memorial, unanimously adopted by the Board of Trade of Philadelphia, praying for the passage of the electoral-count bill; which was ordered to lie on the table.

Mr. ALLISON presented the petition of J. T. Knapp and other citizens of Cedar Falls, Iowa, praying the repeal of the law imposing a tax on the deposits, circulation, and capital of national banks; which was referred to the Committee on Finance.

## REPORTS OF COMMITTEES.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, to whom was referred the petition of William O. Newman, praying pay-ment of certain claims purchased by him for supplies and stores furnished the United States, submitted an adverse report thereon; which was ordered to be printed; and asked to be discharged from its fur-

ther consideration; which was agreed to.

Mr. WRIGHT. I am instructed by the Committee on Claims, to whom was referred the bill (S. No. 1128) to extend for two years the act establishing the board of commissioners of claims and the acts relating thereto, to report it favorably, with the recommendation that the bill do pass. I wish to say that I shall ask the Senate to-morrow morning, or as soon thereafter as I can, to proceed to the consideration of this bill, as I think it is important that it should be disposed of at an early day.

## BILLS INTRODUCED.

Mr. MAXEY. I ask leave, by unanimous consent, to introduce a bill for the relief of the heirs and legal representatives of James T. Johnson, deceased. I will state to the chairman of the Committee on Appropriations, [Mr. Windom,] who is present, that a bill now pending before his committee may accomplish the purpose of the bill I now present.

By unanimous consent, leave was granted to introduce a bill (S. No. 1184) for the relief of the heirs and legal representatives of James T. Johnson, deceased; which was read twice by its title, and referred to the Committee on Appropriations.

## ORDER IN THE GALLERIES.

The PRESIDENT pro tempore. If there be no further morning business, the Chair will lay before the Senate the resolutions of prior days. The resolution introduced by the Senator from Ohio [Mr. Sherman]

will first be reported.

The Chief Clerk read the following resolution, submitted by Mr. SHERMAN on the 20th instant:

Resolved. That the Sergeant at Arms is hereby instructed to arrest, without further order, any person who by applause or dissent in the gallery shall disturb the order of the Senate, and hold him subject to the order of the Senate.

The PRESIDENT pro tempore. The Senator who introduced this resolution is not in the Chamber. If there be no objection, the Chair will put the question on concurring in the resolution.

Mr. WRIGHT. I suggest that the resolution be passed over until the Senator from Ohio is in.

The PRESIDENT pro tempore. The Senator from Iowa suggests that the resolution be passed over until the Senator from Ohio reaches the Chamber. The resolution will lie over.

## GOVERNMENT OF SOUTH CAROLINA.

The PRESIDENT pro tempore laid before the Senate the following resolution, submitted by Mr. GORDON, December 29, 1876:

Resolved by the Senate, That the State government now existing in the State of South Carolina and represented by Wade Hampton as governor is the lawful gov-

ernment of said State; that it is republican in form, and that every assistance necessary to sustain its proper and lawful authority in said State should be given by the United States, when properly called upon for that purpose, to the end that the laws may be faithfully and promptly executed, life and property protected and defended, and all violators of law, State or national, brought to speedy punishment for their crimes.

Mr. WITHERS. The Senator from Georgia is not in his seat to-day, and as the consideration of the resolution will necessarily lead to debate, I ask that it be passed over.

The PRESIDE: IT pro tempore. At the suggestion of the Senator from Virginia, the resolution will be passed over. This exhausts the resolutions of prior days. If there be no further morning business, the Chair will declare that the morning hour has expired. The morning hour has expired, and the Chair calls up the unfinished business.

## COUNTING OF THE ELECTORAL VOTES.

The Senate resumed the consideration of the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term

commencing March 4, A. D. 1877.

The PRESIDENT pro tempore. Upon the bill the Senator from New York [Mr. CONKLING] holds the floor.

Mr. SARGENT. The Senator from New York had not concluded his remarks at the time the Senate adjourned last night, and is entitled to the floor for the purpose of continuing. It has been suggested to me by several Senators, as I desire to speak on the bill, that I should proceed; but I shall have some delicacy in doing that in the absence of the Senator from New York, who may be here in the course of a very few moments; and perhaps it would be better to send for him to his committee-room, or otherwise. I should not like to be in-terrupted in the course of my remarks in order that another speech might be made, in case the Senator should come in, and at the same time I do not like to take advantage of the temporary absence of a Senator to interrupt his speech.

Mr. HAMLIN. I cannot doubt that the Senator from New York

will be here very soon. I should hardly think it advisable for any other Senator to take the floor until after we have waited for a rea sonable time. I move that we take a recess for ten minutes and by that time the Senator from New York may be here.

The motion was agreed to; and at the expiration of ten minutes

The motion was agreed to; and at the expiration of ten influtes the Senate re-assembled.

Mr. ALLISON. I suggest that the Senator from California be allowed to proceed in the absence of the Senator from New York.

The PRESIDENT pro tempore. The Senator from Iowa suggests that the Senator from California be allowed to take the floor.

Mr. EDMUNDS. Of course he is entitled to take it if he likes.

Mr. SARGENT. If that is the sense of the Senate, I will proceed, but I do it with great reluctance.

The Chair hears no objection, and

but I do it with great reluctance.

The PRESIDENT pro tempore. The Chathe Senator from California will proceed.

Mr. SARGENT. Mr. President, I have endeavored to bring my mind to an assent to the provisions of this bill, first, because I desire that a result may be worked out of this complication that will be that a result may be worked out of this complication that will be satisfactory to the whole country and, second, because I desire that equal and exact justice shall be done to every candidate who was voted for at the last presidential election, and to each of the parties who put those men forward. But I do not believe that every expedient which can be brought forward will bring about these results. I do not believe that this expedient will produce these results. I have been unable to find in the examination of this matter such proming of the results of the results of the results of the results. ise of satisfaction on the part of the people or such promise of justice to the candidates whose rights are involved or the people who have supported them, that I am confident that this unusual expedient is calculated for the emergency which it is intended to bridge

Our oaths forbid careless legislation where there are constitutional doubts as to our powers, and patriotism forbids doubtful expedients which may weaken fundamental powers and give rise to dangerous future complications. I am not satisfied that this bill will answer the hopes of its promoters. There are elements of weakness and indecision in it which should not characterize a bill designed to meet a crisis like this; and there are suspicions of unfairness about it-more than suspicions, almost grave certainties that there will be unfairness in the application of its provisions. Although the powers conferred by the bill seem ample—and it has been objected by my friend from Indiana [Mr. Morton] that the bill gives extraordinary powers in some directions, improper powers, powers to go behind the solemn decision of the States upon matters confided exclusively to them by the Constitution—yet in other directions the bill is not sufficiently ample or its provisions will not so work that some of the objections that ought to be considered by any tribunal deciding this question can be brought before the one formed by this bill or be entertained

I think that the constitution of this tribunal is unhappy if fairness is desired. The result depends upon one man. That man is entirely unknown except by some secret understanding, which may possibly have taken place and which would be in the nature of an intrigue if such understanding has been had. I propose to advert to these and other objections before I conclude what I have to say upon this bill, and more at length. I prefer, however, first to follow the argument

which has been made by the supporters of the bill. Their arguments seem to be to answer two questions: first, is the bill constitutional? and, second, is it expedient? The terms of the Constitution and the construction placed upon it by its framers show conclusively to my mind that Congress was not to count the votes or to discriminate be tween returns. If it had been intended by those who framed this provision of the Constitution that this power should be lodged in the Congress, a very few words would have made that fixed and certain. The fact that they did not use such words shows that they did not intend that Congress should have such a dangerous power. I say dangerous power because by its exercise Congress may create the very exigency which gives them a pretense to elect both a President and Vice-President of the United States; and these become creatures of

Congress, and not the creation of the people.

The Senator from New York [Mr. Conkling] argued at length to show that if it had been intended by the framers of the Constitution that the power to count the votes should reside in the President of the Senate that then apt words for that purpose would have been used, and it would have been said that he not only should open the certificates, but count the votes. The argument is just as strong that if it had been intended that Congress in joint convention or by the separate Houses should exercise this high power, then language would have been used to show that this was the intention, and it would have been provided that, after the certificates were opened, Congress

should count the votes.

There are peculiar reasons why this power should not be lodged in Congress, why it should not count the votes in the sense of determining what are the votes and the effect that shall be given to the cermining what are the votes and the effect that shall be given to the certificates. One reason springs from the necessity that the Executive of this country shall be independent of the legislative power. A dependent Executive, an Executive depending upon the varying will of Congress, would be a pitiable object. The framers of the Constitution intended that that co-ordinate branch of the Government should be as independent of the legislative and the judicial as that the legislative should be superior to the dictation of the President or that the judicial authority should exercise its judgment freely and untrammeled by either of the other departments. But there are other reasons. There is liable to be, and is now, a variance between the two Houses of Congress leading to discordant and it may be tumultuous action. Our history has shown such instances. A tribunal, great in its numbers, conflicting in its interests, and liable to be swayed by passion, is to decide on at least a semi-judicial question. Who does not know that every wave of passion that sweeps over the people beats its surges high in these legislative halls? Who does not know that if questions like this can be submitted to the two Houses of Congress for their final arbitrament, questions of what the States of Congress for their final arbitrament, questions of what the States have done in this matter placed by the Constitution solely in their power, the decision is liable to be the result of bargain and intrigue? One of the most illustrious men that this country ever produced wore One of the most illustrious men that this country ever produced wore to his grave the stigma, or at least the suspicion, that he had taken high office at the hands of an Executive whom he had caused to be made such by his action in the House of Representatives. If such suspicions can attach to men of such eminent service as Henry Clay what man within the sound of my voice or within the Halls of either House of Congress can escape suspicions of this character? You give the temptation was given the compostunity for bargain and intrigue by the temptation, you give the opportunity for bargain and intrigue by submitting to the legislative power the opportunity to create the exigency under which its highest and farther functions may be oper-

The argument of the Senator from New York proceeded further upon the assumption that there were somewhere in the laws or in the Constitution some provisions or inferences which made it incompatible with the duties of the President of the Senate or the Vice-P dent of the United States occupying that position to count these votes, and that this same Constitution and laws, by some provisions not distinctly stated, necessarily devolved those powers upon the two Houses of Congress. I regret that the Senator was not able to finish his remarks last night, so that we might have had the benefit of reading them in the Record this morning. Relying upon my memory, it seems to me that one of the illustrations was that a writ naturally was served by a sheriff because the law provided sheriffs should serve writs; and by a sheriff because the law provided sheriffs should serve writs; and other illustrations of that character were given by him, some facetious and some otherwise. When it shall be shown that the Constitution or the laws have determined this matter, have so marked out the duties of the President or of Congress that this duty falls upon one side of the line or the other, as it does in the case of the sheriff, then such argument might be competent. All such illustrations have very little worth. They can be changed according to the fancy of the person who deals in them. I saw a somewhat witty illustration the other day alleged to have been given by the chairman of the Judiciary Committee of the House, wherein it was said that upon persons being invited to a dinner, when it was provided that the bill of fare should be opened by the steward and then the dinner should be eaten, the implication necessarily was that the guests, not the steward, the implication necessarily was that the guests, not the steward, should eat the dinner. Now, that is all very funny; but suppose it was provided that at a concert a trombone should be delivered on the stage and the trombone should then be blown, would anybody say it was the audience who were to blow the trombone? [Laughter.] I say such illustrations may be varied according to the fancy of the person who deals in them. Illustrations at best are deceptive and all

such illustrations are hardly worth the time taken up in the Senate to call the attention of Senators to them.

The earth hath bubbles, as the water has, And these are of them.

The power to determine with reference to these matters before the certificates reach the hands of the President of the Senate, before they are opened in the presence of the two Houses, is plainly fixed by the Constitution of the United States, and I have not found any citation from any authority, from the Constitution itself, or any commentator upon it, certainly none has been presented in this debate, which weakens the plain intendment of the Constitution in this part. ticular. Article second, section 1, of the Constitution provides that:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

There is the whole power of the appointment, of the modes in which their appointments shall be certified to the President of the Senate. The whole subject is exhausted in those few terse and comprehensive lines. It was intended that they should be solely and supremely within the power of the States themselves. I object to this bill because it proceeds upon the theory that a tribunal is to be formed partly composed of members of Congress and partly of judges of the Supreme Court who are to have the power to revise the action of the States, to go behind their certificates, to go to the bottom of the poly, which they must do provided their action is to have any effect what, which they must do provided their action is to have any effect what-ever. They are not only to determine whether a governor has certified to a certificate, whether the electors met at a particular time, whether those electors were elected, but in order that the latter branch of the inthose electors were elected, but in order that the latter branch of the inquiry may be effectual to the purposes their proceedings must be in the nature of a quowarranto and they must call the last man in any disputed State whose vote is challenged to ascertain whether that man voted as he is assumed to have voted by the action of the States in sending the certificates to the President of the Senate. This is the function, in direct violation of the Constitution of the United States, which it is assumed to assign to this tribunal, not to assign to Congress but to a mixed commission partaking of none of the elements of Congress. They are not even a committee of Congress made up exclusively of persons who are members of Congress, but intermixed with persons foreign entirely to these halls, who have no executive power whatever, and whom we have no right to make a committee of Congress. This power is confided in their hands and for these purposes and

This power is confided in their hands and for these purposes and with the result if possible that it may be found as a conclusion that there was no election by the States, no matter what these have certified to, that the House of Representatives may make the President of the United States and that the Senate may make the Vice-President dent, both creatures of legislative will.

The fathers of the Republic have not been silent upon the powers which they designed should be conferred upon the legislative body. They looked with extreme jealousy upon the encroachment of one department upon another. Some of them, notably James Madison, feared that there would be an encroachment upon the executive by the legislative power. He feared that even where there were cases not of doubtful construction even, that in moments of passion, or under strong prejudice or great temptation, the power of the executive might be invaded as well as of the judicial department.

You, sir, sitting in that chair to perform the function of opening

the certificates and of counting the vote, belong to the executive department of this Government. It makes no difference that you took that place by virtue of the votes of the Senate of the United States, It makes no difference, as insisted by the Senator from New York that the votes which put you there may by a change place some one else in that position. While you occupy that position you do it as the Vice-President of the United States to all intents and purposes. as much so as though you were a Vice-President elected by the people, certainly as much so as if there being a failure to elect by the people the Senate of the United States had chosen a person as Vice-President of the United States. That which the fathers of the Republic feared I think is now taking place, that the Senate or Congress and experience to invest the shear exercise property. is endeavoring to invade the clear executive powers which are lodged in your hands under the Constitution of the United States.

I desire to call the attention of the Senate to the remarks of Mr.

Madison, found on pages 228 and 229 of the Federalist, wherein this distinction of powers between the legislative and the judicial departments is commented upon; and he, nearly contemporary with the adoption of the Constitution itself, points out the dangers which, in the operation of Congress, are liable to arise from legislative usurpation. He says:

tion. He says:

It is agreed on all sides that the powers properly belonging to one of the departments ought not be directly and completely administered by either of the other departments. It is equally evident that neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each against the invasion of the others. What this security ought to be is the great problem to be solved.

Will it be sufficient to mark with precision the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power! This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us that the efficacy of the provision has been

greatly overrated, and that some more adequate defense is indispensably necessary for the more feeble against the more powerful members of the Government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

In the spirit of the description here given by Madison was the remark of the Senator from New York [Mr. CONKLING] that you, sir, are a feeble folk, that you have no power to enforce your decrees. Congress can rifle State archives, it can send for persons and papers, it can make a law which will bind all others, and by virtue of this supreme and insolent power it can deprive you of your prerogative, although guaranteed by the Constitution of the United States, because you have no Army at your back, because you have no sergeant-at-arms that you can send forth through the country, because your process does not run beyond your chair.

ess does not run beyond your chair.

The founders of our republies have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty, from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which by assembling all power in the same hands must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerons and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions and are continually exposed by their incapacity for regular deliberation and concerted measures to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended on some favorable emergency to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power, and where the legislative power is exercised by an assembly which is inspired by a supposed influence over the people, with an intreplid confidence in its own strength which is sufficiently numerous to feel all the passions which actuate a multitude; yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes, it is a gainst the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

And yet that jealousy is to be suppressed, and we are told it is to be done to bridge over a present danger. We are to remit all precautions instead of exhausting them, and we are to place within the power of this tribunal, so beset by passion, so incapable by its Constitution as pointed out by Mr. Madison to clearly and fairly decide these constitutions this approach the second of the secon these questions, this supreme power where the principal benefit of the exercise of the power is to give them the great prerogative of selecting the rulers of the country for the next four years.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate

cated and indirect measures, the engineering at departments.

If Mr. Madison had had in his mind a bill like that pending at like the could not have used more apt words of

It is not unfrequently a question of real nicety in legislative bodies whether the operation of a particular measure will or will not extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrow compass and being more simple in its nature, and the judiciary being described by land-marks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all; as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former.

Now, it is proposed by this process, by this bill, to make the executive power the mere creature of Congress, for that is its effect, and therefore make its dependence during the whole term of its administration still more dependent on these, its creators.

Mr. Jefferson's opinions upon these matters were clearly expressed, and he shared the fear that was so ably stated by Mr. Madison. In his Notes on Virginia, page 195, he said:

All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one.

And so, sir, four hundred despots would be as oppressive as one despot they fear, who sits in your chair.

despot they fear, who sits in your chair.

Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason that convention which passed the ordinance of government laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made, nor, if made, can be effectual; because in that case they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly, in many instances, decided rights which should have been left to judiciary controversy; and the direction of the executive, during the whole time of their session, is becoming habitual and familiar.

I ask if this is not an apt description of the tendency of the bill

I ask if this is not an apt description of the tendency of the bill which we have before us at the present time? I should like to ask the serious attention of Senators who are acting I have no doubt conscientiously, as I claim to be, under an oath to support the Constitu-tion of the United States, whether a matter that should be left to judicial controversy is not here dragged in before the Congress of the United States and by it left to be determined by an arbitrary tri-

If it is said that the time that intervenes between the election in November and the meeting of the electoral college in December is not sufficient for the operation of a writ of quo warranto under the judicial power of the States and in the States themselves, so as to leave their certificates simply for the action of the President of the leave their certificates simply for the action of the President of the Senate of the United States, then this is the fault of the States themselves. The States can provide that remedy, and it is not for Congress to step in and usurp that function of the States. The Constitution says that they shall exercise and exhaust that power; that they shall determine the mode by which electors shall be appointed, and they shall take all proceedings necessary to inform the President of the Senate of their action. The remedy is ample and complete under the laws of every State in the Union, except it may be alleged that the time is too short. Then bring a wider form between the that the time is too short. Then bring a wider term between the meeting of the electors and their election in order that this power may be exercised in the States themselves, and not assume by Congress to decide a judicial question, if it is alleged that this is a judicial question requiring the intervention of judges of the Supreme Court in order to determine it.

He cites another case:

He cites another case:

The other State which I shall take for an example is Pennsylvania and the other authority the council of censors which assembled in the years 17:3 and 17:4. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the Constitution had been preserved inviolate in every part, and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution." In the execution of this trust the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the Legislature in a variety of important instances.

A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the previously printed for the consideration against improper acts of the Legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the Constitution.

Executive powers had been usurped.

The salaries of the judges, which the Constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

I will not pursue these citations further, although they might be

I will not pursue these citations further, although they might be extended to any length and are most useful as showing how legislative power encroaches upon the executive and the judicial; how it continually arrogates to itself a power supreme in the state to the sacrifice of the co-ordinate departments of the Government, and to sacrifice of the co-ordinate departments of the Government, and to infringement of the rights and liberties of the people. The history of the world has shown that bodies springing from the people, assuming to exercise their power and to speak directly for them, have continually absorbed powers not intended by the constitution of the government that they should hold. The history of England shows that Parliament is now the supreme body and the House of Commons is the Parliament. The powers of the Crown have been reduced to a mere shadow. The original conflict between the House of Commons and the English Crown showed a weakness on the part of the Commons. They were often ruthlessly overruled, unfairly and illegally snubbed, and a powerful executive, the king or queen, placed the foot upon many prerogatives which would naturally, speaking from our light, belong to that body. But the conflict was unequal, and it light, belong to that body. But the conflict was unequal, and it might almost be said temporary. Parliament gained step by step until finally it enforced its demands upon the Crown and stripped it of nearly all its powers, so that for a long series of years the veto power has not been exercised by the Crown of Great Britain. The power has not been exercised by the Crown of Great Britain. The queen assents to eyery measure, and year after year at every session "the queen advises" or "the king advises," concurs, as to the measures which Parliament dictates and passes. They brought to bear upon the Crown that same power alluded to by Jefferson, the power to withhold supplies. They held the purse of the nation. When the king endeavored to do without Parliament and sought by extraordinary, improper measures to obtain supplies the effort failed and produced only tumults and sometimes revolutions. The recourse was necessarily to Parliament again. Parliament then came back with new and greater demands, and as the price of its supplies wrested one after another the prerogatives from the Crown until there is a mere shadow of kingly power in England. The monarch of England could well say, with Macbeth—

Upon my head they placed a fruitless crown, And put a barren scepter in my gripe.

Jefferson shows that this is the tendency in one of the free States of this Republic, the great State of Pennsylvania; that even in his time, when constitutions were fresh and might be supposed to be most sacred, most within the hearts of the people, the legislative power, true to its tendencies, was absorbing to itself all these powers, encroaching upon the judiciary and the executive departments. Therefore I say that this bill tends in a dangerous direction, stripping the executive—ay, and the judicial power—of their proper function, and, more grave than all, depriving the States of the exercise of a

power given to them in express language by the Constitution of the United States, upon which there can be neither doubt nor dissenting comment.

As I remember the argument of the Senator from New York, he said that the power of the President of the Senate to count these votes rested upon two implications, and he therefore inferred that those implications should not be drawn, or, in other words, that that power cannot exist. Why, sir, if there be anything in an argument like that, I think it can be very well shown that the power of Congress to dispose of this matter rests not upon two implications, but gress to dispose of this matter rests not upon two implications, but upon four: First, upon their right to be present. Their right to be present at all rests upon an implication that, because the President might open and count in the presence of the two Houses, therefore they must be present. If it is in their presence, then they must be present and have the right to be there. Second, because they must be present for some particular purpose, Third, because they must be present for some particular purpose, therefore it is implied that that purpose is connected in some way with the counting of the electoral votes. Fourth, because it is supposed to be in some way connected with the count. nected in some way with the counting of the electoral votes. Fourth, because it is supposed to be in some way connected with the counting of the votes, therefore it is implied they have the power to count the votes. And a further implication arises out of this bill, that they not only have power to count the votes, but they have power to go behind the votes and the action of the States guaranteed by the Constitution. Here are implications at least four deep; and, taking the theory of this bill, they are piled up five deep; and it seems to me that it would be a natural and logical course to take that which implies the least implication, that which can be reached by the shortest and most direct course of reasoning.

est and most direct course of reasoning.

Now, sir, instead of such frail reasoning as this—and all this reasoning from implication is sophistical—I venture to go to the language of the Constitution, and the contemporary construction of the fathers of the Republic. They have furnished direct evidence of their own understanding of their own language. In this matter he who runs may read; and it is necessary to refine away their language and deny their action in order to avoid the necessary conclusions that they intended that the occupant of that chair should discharge all the functions that were necessary to be discharged in this matter which had not before that time been discharged by the States under the Constitution, and that it should be in the mere presence of the Senate and House of Rep-

The language of the Constitution as originally submitted and ratified was as follows:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

The Madison Papers, volume 3, page 1486, show that this clause was originally reported September 4, 1787, as follows:

The President of the Senate shall, in that House, open the certificates, and the otes shall then and there be counted.

September 6 this clause was considered by the convention, and, on several motions, the words "in the presence of the Senate and House of Representatives" were inserted after the word "counted," &c. Ibid, page 1509.)

The clause, therefore, as deliberately adopted, was intended to read, and did read:

The President of the Senate shall, in that House, open the certificates, and the votes shall be then and there counted in the presence of the Senate and House of Representatives.

On the 9th September the proposed constitution, with the amendments as made by the convention, were submitted to a committee on grammatical revision, whose duties were solely to redraft the Constitution as amended, correct clerical errors, and give it literary polish, without changing the obvious meaning.

September 12 that committee reported the redraft of that instru-

ment, and, in the process of condensing and polishing, the above clause was reported as it stands to-day, namely:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

Here is a plain statement of construction on the part of Hamilton and Madison and others of the revising committee; for they were members of the committee. They said, by the very report of that clause now existing in the Constitution, and the convention itself by subsequently adopting it said, that its meaning was the same substantially as that of the clause they had adopted. In other words, all the framers of the Constitution when they finally placed in the all the framers of the Constitution when they finally placed in the Constitution the words, "The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted," intended them to mean what they had with great deliberation agreed on, namely, "The President of the Senate shall open the certificates, and the votes shall be then and there counted in the presence of the Senate and House of Representatives," making the Senate and the House of Representatives mere spectators of the proceedings that then and there took place. No language more apt could be devised for that purpose; and however gentlemen may argue from policy, and however they may argue that the framers of the Constitution could not have designed a result like that, nevertheless they used language when they deliberately passed upon each word and re-arranged sentences by

which they said that this was all to be done in the mere presence of the Senate and House of Representatives. They took no means to make an organized body of "the Senate and House of Representa-tives." An implication might possibly arise in the minds of these tives." An implication might possibly arise in the minds of these gentlemen who are so fond of implications that these were first to be opened and the result to be declared in the Senate, and that then the opened and the result to be declared in the Senate, and that then the same process should be gone through in the House of Representatives, or first in the House of Representatives and afterward in the Senate. They did not provide otherwise than by implication that these bodies should be together at all. It was to be in their presence; naturally, therefore, they were to assemble. But how? Simply as witnesses of the proceedings that were going on. Not a single function was devolved on either House, and the Constitution does not recognize them in a joint capacity, certainly not for the purpose of counting the electoral votes, certainly not to perform any functions whatever except as witnesses; and if there has been since that time an infringement upon this plain meaning of the Constitution of the United States by upon this plain meaning of the Constitution of the United States by gradual steps of encroachment, by assuming first a power to examine, by afterward passing joint rules which gave to a single House the power to disfranchise a State, which has been repudiated by the Senpower to disfranchise a State, which has been repudiated by the Senate as monstrous during its present session; if any of these steps of legislative encroachment has taken place, it does not necessarily obscure the clear light of the Constitution upon this matter; and no argument of mere expediency can destroy the fundamental principles of the Constitution. Else we are adrift upon a boundless sea, we have no guide for us in the future, and those who come after us may well curse their fathers who broke away from the barriers of the Constitution and launched out in directions of crude experiment when the Constitution itself and a long course of construction gave a suffi-

As if to emphasize precisely what they meant, to place the proper construction of the clause beyond the shadow of a doubt, the same re-vising committee the very next day introduced a resolution, and the

convention adopted it, as follows:

convention adopted it, as follows:

\*Resolved\*, That it is the opinion of this convention that as soon as the conventions of nine States shall have ratified this Constitution, the United States, in Congress assembled, should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication the electors should be appointed and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, scaled, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convenie at the time and place assigned; that the Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President; and that after he shall be chosen the Congress, together with the President, should without delay proceed to execute this Constitution.

The Senator from New York says that these votes were not required to be sent to the President of the Senate but to the Secretary of the Confederation. It is most true. There was, at the time of writing this order or resolution, no President of the Senate to whom these documents could be sent. They were to the Secretary of the Senate

documents could be sent. They were to the Secretary of the Senate who was required—
Mr. CONKLING. No.
Mr. SARGENT. The Secretary of the Confederation, who was required himself to deliver them to the presiding officer of this body who should thereafter be appointed. That officer was required to receive them in the same manner that he now is required to receive them, and to receive papers made up by illegal bodies, but to receive certificates coming from States, under the authority of the States, under the sanction of the clause of the Constitution which I have read, the duty of receiving these was lodged in the presiding officer of this body, and what was his duty with reference to them? Said the committee on revision, who when they made the revision of that clause changed the order of its language, but who by the obligations of their position were not to change its meaning, and who knew therefore just what they meant—they said that this presiding officer, appointed in the manner in which we now appoint one, "should be appointed for the sole purpose of receiving, opening, and counting appointed for the sole purpose of receiving, opening, and counting the votes for President."

That embraces within its scope all the duties which were confided to any officer or any person or any body. He was not only to receive, not only to open, not only to count; but to receive, open, and count the votes for President and Vice-President of the United States. Here was contemporary construction of the highest value, materials which must not be overlooked by Senators who are conscientiously looking for the meaning of the Constitution, springing from the very bosom of the constitutional convention itself by its highest committee, chosen from men in whose discretion and knowledge there was peculiar confidence reposed, for they had been made the committee of revision, and in their hands, almost without examination, so far as the debates show, was confided and by them was executed the power of arranging the Constitution so as to give effect to the meaning of its framers and at the same time polishing its style so that there might be no verbal inaccuracies therein. The convention ratified this action coming from this committee so created, and made this an ordinance accompanying the Constitution to bind Congress and prescribe the

powers of the presiding officer.

But the Senator from New York sees the fatal force of this and, therefore, he avoids it by saying—eloquent as he always is in figures—

that here was a ship to be launched, and it was not of importance whether it should be launched by means of its sails or by some exwhether it should be launched by means of its sails or by some exterior power or by the machinery within it. On the contrary, all the analogies named in this resolution are those which are named in the Constitution itself. The two Houses are to assemble. The Senator says that this was not necessarily in the presence of the two Houses as the Constitution itself requires, and yet this very resolution requires Congress to be in session on that day. If he can draw implications so rapidly I should like to ask, if Congress is required to be in session on that day is so required by the resolution and the Sanata is reon that day, is so required by the resolution, and the Senate is required to select its presiding officer for this purpose, does not a simple, clear implication arise that this function was to be performed in their presence? But if in the idea of the framers of that order the presence of the two Houses while this act was being performed was of such slight importance that it was not even enjoined upon them, of such slight importance that it was not even enjoined upon them, whence now springs its importance? Ay, what magnifies it into a necessity, not only of being present, but that they shall usurp all power in the matter, go behind its certificates of States, depose the President from any function except that which might as well be performed by the Secretary of the Senate or the Clerk of the House of Representatives; that is to say, become a common carrier or messenger to deliver them into the hands of tellers appointed by these ger to

The two Houses, as I say, were to assemble. The President of the Senate is the *Deus ex machina* by this resolution. He receives the votes, receives them from the officer in whose temporary custody they are. He opens the certificates and he counts the votes. Is there votes, receives them from the officer in whose temporary custody they are. He opens the certificates and he counts the votes. Is there any doubt what the framers of the Constitution meant under such a conspicuous example? Why should they not follow closely the analogies of the Constitution? Why not closely follow the provisions, as they did, of that instrument which they were to launch out for the government of this people for all time? Was it not necessary that it should be properly launched? The Constitution was formed in no fair weather. It was necessary that the ship should not only be staunchly built, but that it should leave its ways safely in order that it might combat the waves of passion and prejudice which then surged in the country. Various were the opinions of statesmen as to its provisions; varying were the degrees of friendship for it in the different States, at that very time it not being determined whether it would be ratified at all. But, says the Senator from New York, the functions which this man performed at that time, John Langdon, who was elected President of the Senate, as the Senate itself said, "for the sole purpose of opening and counting the votes," performed only a formal duty; George Washington was unanimously elected. Ay, sir, but he was not unanimously elected or otherwise elected at the time that the original convention promulgated that order. It was not yet known which of the chieftains who had distinguished themselves in the way of the Recolution might even to the frent end box. not yet known which of the chieftains who had distinguished them-selves in the war of the Revolution might come to the front, and how much force there might be used in order to gain that glittering prize, so eloquently described by the Senator from New York. The surges were still beating and all was uncertainty, and our fathers looked out upon a dark and rainy sea. They could not penetrate the future. No man living at that day could tell that the Constitution would be ratified and safely placed in operation. At the time when this ordinance was promulgated it was uncertain whether George Washington or any other man would be President of the United States. These high and delicate duties were put exclusively in the hands of the President of the Senate. That is admitted by the argument of the Senator from New York, who seeks to belittle them on the ground that the action was merely formal, and, therefore, it mattered not whether they were put in his hands or those of some one else. It matters to the argument in whose hands they were put, because that man to whom this power was intrusted by the framers of the Conso eloquently described by the Senator from New York. The surges man to whom this power was intrusted by the framers of the Constitution, by logical reasoning, was the man that they designed should exercise those powers in all time, until the Constitution should be amended.

I contend that this resolve of that convention was a fair interpretation of this clause of the Constitution, and conferred the powers on the presiding officer that the Constitution, and the rest that the First Congress met. John Langdon, who had been a member and a prominent one of the constitutional convention, was chosen the President of the Senate contemplated by that resolution. He was elected the Presiding officer; and the Senate made the order which I will read. Now the Constitution was launched; now the President was elected; now the ship was moving by the machinery within itself, again to borrow the illustration of the Senator from New York, and the Senator ate ordered-

That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States.

Was that language carelessly used? Does any Senator, a member of this body in 1877, say that the Senate was careless in the use of language in 1789; did not know the purport of the messages which it sent to the House of Representatives, and that when it said in plain and unequivocal terms that an officer had been elected to open the certificates and "count the votes" it did not mean to "count the votes," or did not understand the language it did use? And yet such reserving as that is preserved to do ever with the sets and language. reasoning as that is necessary to do away with the acts and language

of the framers of the Constitution and of the Senate at that day And they further say:

And that the Senate is now ready, in the Senate Chamber, to proceed in the presence of the House to discharge that duty.

"What duty?" says the Senator from New York. He says the duty "What duty?" says the Senator from New York. He says the duty which the resolution says the President of the Senate is to do. I should like to ask if that is fair reasoning? I would like to say, had I not so much respect for the Senator's intellect, that it is absurd. What is the "duty?" The duty enjoined upon them by the Constitution was to be present; and they notified the House that they were ready to perform the duty devolved on them. They had previously will that they had released a President to every account the votes. said that they had selected a President to open and count the votes, and it would be an absurdity to say in the same resolution that they assumed by an implication that they were to do a duty which they had enjoined on the President.

And that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be declared.

That was all the duty devolved on their members, to make a list of votes. It was a mere clerical duty. They could just as well have devolved it on Mr. Otis, the Secretary of the Senate, to make this list, to make up a table. That is all that was done—(and the table follows in this proceeding,) to tabulate the vote, to be the pen of the presiding officer; his mind, under the Constitution, being the directing power—"to make a list of the votes as they shall be declared." Further proceeding in this process of refining, the Senator from New York says the word "declare" means "deliver." I beg to differ respectfully with the Senator in any such construction.

Mr. CONKLING. I did not say that any more than I said the other That was all the duty devolved on their members, to make a list

Mr. CONKLING. I did not say that any more than I said the other

Mr. CONKLING. I did not say that any more than I said the other thing which the Senator ascribes to me.

Mr. SARGENT. I am quite unfortunate in not being able to read the Senator's speech this morning in print. I assure him that I do not desire to do him injustice. What I say I shall leave unchanged in the RECORD; and, if I find that I have done him injustice, I will take early opportunity here to do him justice.

Mr. CONKLING. I will say to the Senator that my remark was this, that "declare" there, as I supposed, meant "read" or "report." I said nothing about "deliver."

Mr. SARGENT. Very well, the argument is not stronger in that respect; a part of the "declaration" of course is to read the votes. But that duty is devolved upon the President by the very terms of this resolution. He is to open the certificates and count the votes; and the Senator from Vermont [Mr. EDMUNDS] said that counting the votes necessarily implied that he was to open them; and counting them would necessarily imply that he was to read them. So that the argument of the Senator from New York would not be stronger even had I not made the misconception of his language which he even had I not made the misconception of his language which he thinks I did. They are simply to make a list of the votes:

Submitting it to the wisdom of the House to appoint one or more of their mem bers for the like purpose.

That is, sitting at a table to make a list of the votes as they shall be declared. Declared by whom? Declared by the tellers? Read by the tellers? Not at all, but declared to them. And the Senate— Ordered, That Mr. PATERSON be a teller on the part of the Senate

The description in the minutes of that which took place carries out the same idea:

The Speaker and the House of Representatives attended in the Senate Chamber, and the President elected for the purpose of counting the votes declared the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States, which were as follows.

And then comes the tabulated list made out by the tellers. Did anybody dissent? Did any of these Senators, many of whom had been members of the constitutional convention, arise and object that the order which I first read was unconstitutional? Did any one say that the President of the Senate had not this power which the minutes I have read recite he exercised? On the contrary, the action of the Senate and the description of their proceedings all concur in the same idea that this power was lodged by the Constitution in the hands of the presiding officer.

Now, the certificate, completing the provisions under this first election, tersely and clearly shows the powers that were exercised by John Langdon, the presiding officer of the Senate. He certifies:

John Langdon, the presiding officer of the Senate. He certines:

Be it known that, the Senate and House of Representatives of the United States of America being convened in the city and State of New York the sixth day of April, in the year of our Lord one thousand seven hundred and eighty-nine, the underwritten, appointed President of the Senate for the sole purpose of receiving, opening, and counting the votes of the electors, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and for a Vice-President; by which it appears that George Washington, esq., was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.

In testimony whereof I have hereunto set my hand and seal.

JOHN LANGDON.

And a certificate in the same form was made out for the Vice-President. In other words, the Constitution provided that he should open the certificates, and the votes should then be counted. The ordinance of the convention provided that a presiding officer should be elected by the Senate for the sole duty of receiving, opening, and counting the votes. The Senate took order, and by its message informed the House of Representatives that it had elected an officer for these spe-

cific purposes, these ample purposes, covering the whole ground, and that it had appointed a teller to make a list of the votes as they should be declared. Their minutes show that this was exactly performed, all being done by the President of the Senate except the mere tabulating, the mere clerical duty. Then follows the certificate of John Langdon, that officer certifying that he had performed these very duties; and no question was raised by the fathers of the Republic who sat in that Senate or those who were in the House of Representatives, but that everything was regular and in order and strictly in accordance with the Constitution of the United States.

Now, I ask Senators whether the same procedure is not objected to to-day; if they do not object that the President of the Senate has not the power to receive, to open, and to count the votes, and if they would be willing to send a message to the House of Representatives not the power to receive, to open, and to count the votes, and if they would be willing to send a message to the House of Representatives which should declare that the Senate is now ready to sit in the presence of their presiding officer while he should open all the certificates and count all the votes and needed their presence, and that they should appoint tellers to do like the teller of the Senate, make a list of the votes as they should be declared? There is the test of the whole matter. But you would drift away from that; you would refine all this away; you would give the word "count" meanings to suit the varying shades of your argument. In one case the word "count" means determination, discrimination between returns, going back of the electoral certificates; in another case, according to the arguments of these gentlemen, "count" means merely enumeration, that which may be done by a clerk, and not carrying with it any power of discrimination whatever. Why, sir, here were embraced the very word "count" and the very word "open" in the same sentence looking to the same purpose and no other function discharged by any other party whatever. If there is anything in contemporary construction, here is an example of the very highest value, and it cannot be overlooked. I say for myself that it bears upon my own oath and conscience.

I do not see how plainer language could be used to recognize the duty imposed on and performed by the President of the Senate. I do not see how the House and Senate could have been more passive spectators than they were at the scene which then took place. They themselves so arranged the matters that they should be mere passive spectators. The original Congress well understood that in joint convention they had no organized existence; and that idea was carried down through Congresses to the very last, and it was seen that there was no cohesion

original Congress well understood that in joint convention they had no organized existence; and that idea was carried down through Congresses to the very last, and it was seen that there was no cohesion between the two Houses of Congress when they met to act on this matter of the electoral votes. Eminent members of the House of Representatives made a point upon this distinction, and when they were assembled in the same room would address the Speaker of the House of Representatives instead of the President of the Senate, and Senators would address themselves only to the President of the Senate; and it was understood by these men, so explained in their debates, that they considered that the House and Senate were separate Houses in session and were not a joint body. So far as this was concerned in session and were not a joint body. So far as this was concerned they were mere passive spectators. They had provided the clerical assistance necessary to enable the President of the Senate to carry out his high function. As this commission by this bill is empowered to employ clerks to act as their agents in writing out their opinions, if opinions they may have, their distinctions, their judgments, so tellers were appointed by the House of Representatives to make out a tabulated list of the votes as they were declared—declared to them—giving them no power otherwise to interfere; and neither House at-

tempted it.

This renders the chain of evidence complete as to the meaning of the electoral-count clause in the Constitution, as understood by the framers themselves of that charter of our liberties. To summarize: The revising committee, and the convention of the fathers itself, agreed that the clause as finally adopted was the same in essence and substance as that which they first adopted, and by resolution declared that the essence and substance thereof was, and is, not merely the "receiving," not merely the "opening," not merely the "counting,"

"receiving," not merely the "opening," not merely the "counting," but the "receiving, opening, and counting the votes" by the President of the Senate "in the presence of the Senate and House of Representatives." And in adopting and signing the Constitution, the States adopted that full, clear, and undeniable meaning.

For a long series of years this power was uninterruptedly exercised by the President of the Senate. The two Houses appointed tellers to assist him in tabulating, but they did not otherwise interfere. At the second election, in 1793, the joint committee of the two Houses reported a resolution, which was agreed to in each House, which resolution declared the functions of the tellers to be "to make a list of the votes as they shall be declared," for the use of the Vice-President. the votes as they shall be declared," for the use of the Vice-President. The declaration of what were votes, and what was to be counted, was left to the President of the Senate, and merely clerical labor, such labor as might be performed by the Secretary of the Senate and Clerk of the House of Representatives, was confided to the tellers. Neither House by itself, or through its tellers, interfered with the discharge of the duty of the President of the Senate of opening and counting the votes. The message of the Senate to the House on that occasion conforms strictly to this idea.

The Constitution was now launched. It was working by its arms

The Constitution was now launched. It was working by its own machinery. The Senate message corresponded in all its terms with the order of the old convention. It may be useful to call attention briefly to this order as showing that at the second election, fours years removed from the first, still further removed from the constitutional convention, the Senate and House of Representatives clearly understood that the original interpretation and practice at the first election was regular and constitutional. The message sent by the Senate to the House of Representatives, through Mr. Otis, their Secretary, was:

I am also directed to inform the House that a President of the Senate is elected for the sole purpose of opening the certificates and counting the votes of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready in the Senate Chamber to attend with this House on that occasion.

The House assented to this idea, for it resolved-

That Mr. Speaker, attended by the House, do now withdraw to the Senate Chamber, for the purpose expressed in the said message.

† The purpose expressed was that the presiding officer should open the certificates and count the votes of the several States, functions still entirely lodged in his hands. It is true, probably, that in following closely the precedent of the first election the Secretary of the ing closely the precedent of the first election the Secretary of the Senate in his report made an error of supposing that the presiding officer at that time was elected for a special duty. John Adams was the presiding officer of the Senate, and he discharged the functions of the place, as he certified, of opening the certificates and counting the votes; but the material part of the message is not that which refers to the personality of the presiding officer, but that which declares that he was to act in the counting of the votes.

The proceedings at the third election were the same. The tellers were to sit at the table, as at the first and second elections, and make

The proceedings at the third election were the same. The tellers were to sit at the table, as at the first and second elections, and make a list of votes declared. The certificates authorized by the two Houses recognized that the counting was by the Vice-President.

At the fourth election the resolutions still more clearly expressed the fact that the function of the House was to be present only, but the usual tellers were appointed to make a list. This is their resolution, and certainly the Constitution was well launched by this time, propelled by powers within itself, no longer a question whether some outside power should give it a push, as was implied in the figure of the Senator from New York, it was acting by its own vigor, and Congress had become experienced in its duties and there had been discussions upon these very questions; a bill brought forward with regard to settling contested elections, and both Houses were familiar with all considerations arising out of them. If there was at that time, or had been suggested in debate, any doubt of the power of the President of the Senate to count the certificates regularly sent up by the States, it is not found in any of these debates, and it is not found in any of the subsequent orders made by the Senate or the House. In 1801 the Senate resolved:

That the Senate will be ready to receive the House of Representatives in the Senate Chamber on Wednesday next, at twelve o'clock, for the purpose of—

What? Counting the votes? Not at all-

for the purpose of being present at the opening and counting the votes for President of the United States.

That is all. This comes even so late that it can hardly be called contemporary construction. It had become incrusted into usage. It was the mere presence of the Senate and House of Representatives at the counting of the votes; and this idea so distinctly stated up to this point in the resolution obviously was not considered by its authors to be modified by the further provision.

† That one person be appointed a teller on the part of the Senate to make a list of the votes for President of the United States as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, &c.

· This was all the function they assumed to have in the matter, and the power of the President of the Senate remained unchanged and was

the power of the President of the Senate remained unchanged and was exercised unchanged and unquestioned up to 1803-'04, when a notable event took place in the history of this country. The twelfth amendment to the Constitution of the United States was submitted for the ratification of the people of the United States, and its design was to correct errors and supply deficiencies in the casting, reception, and counting of the electoral votes, or, in other words, any deficiencies which had been revealed connected with that subject.

† The Constitution before had provided that the President of the Senate should receive the certificates, should open them, and that they should then be counted. Contemporary and subsequent construction, down to 1803-'04, (for I have read the proceedings at every session down to that time,) at every election had recognized this power as existing in the President of the Senate; and if it was an unconstitutional assumption on his part, if, in the judgment of Congress or the people, the President of the Senate should not exercise that high function, this was the time to modify that provision and to use language which should assert that this power which, by disuse, Congress has lost, and which the original Constitution intended it should have. On the contrary, while modifying the Constitution by the twelfth has lost, and which the original Constitution intended it should have. On the contrary, while modifying the Constitution by the twelfth amendment in many other particulars in regard to the electoral votes, it leaves that language unchanged. The President of the Senate, by the twelfth article of amendment, is still to receive the certificates, to open them in the presence of the two Houses, and the votes are to be counted. How counted I have shown by the practice up to that time. It was considered a good argument in this Hall a few months ago that England before the adoption of our Constitution had certain forms of procedure, and those were in the minds of the framers of the Constitution, and that therefore it was legitimate and right to interpret the Constitution by reference to those forms of procedure. Here pret the Constitution by reference to those forms of procedure. Here

we have forms of procedure under the Constitution itself, the original Constitution, unvarying from the time the convention formed it first, expressed in their ordinance and then at each successive election of President of the United States down to the time they amended the President of the United States down to the time they amended the Constitution; and if they did not amend the Constitution in this particular and left those forms of procedure to interpret it, I ask who can say that it is not right and legitimate for us, whether we are not bound by high obligations to look to that precedent practice in order to determine what they intended by the language which they again re-enacted in the Constitution of the United States?

Not only is this argument sound, not only does it go to the very root of the matter: but you will find for years and years, from Ham-

Not only is this argument sound, not only does it go to the very root of the matter; but you will find for years and years, from Hamilton to Hamlin, through a long course of illustrious statesmen, through federalists and whigs and republicans, through democrats from Jefferson to Andrew Johnson, the power was denied to exist in the Houses of Congress in this matter; and you will further find that during all that time it was held that the President of the Senate could open and count the votes, if there is any reliance to be placed on the records of Congress and messages passing between the two bodies. It was left for modern innovation to devise new methods to put this thing upon the shifting sands of expediency instead of upon the firm basis of constitutional law. That has been of recent time, by assumption of power on the part of the legislative branch, by gaining inch by inch upon the powers of the executive and the judicial department; and those recent constructions or practices are scarcely worth the weight of a hair as against the practices and constructions of the framers of the instrument and those who served in these Halls who had formerly served in the constitutional convention and gave their voice and counsel and their action, ay, their pen in framing resolutions and orders to interpret the Constitution and carry out its provisions

In the debates which arose upon the bill which was rejected or fell between the two Houses, providing that this power should be lodged in the two Houses of Congress, not even divided into a partnership with the members of the Supreme Court, but in fact conferred on committees of the two Houses, which might in some sense be considered the Houses themselves or their organs, those who sat in the constitutional convention were not silent, and they denounced such a scheme. It was Charles Pinckney, of South Carolina, one of the framers, who stood in this body in 1800 and said:

Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present—not only the spirit, but the letter of that instrument—to give to Congress no interference in or control over the election of a President.

Congress no interference in or control over the election of a President.

Does this bill give to Congress no control or interference in the election of a President? There is one contingency where it is possible that this bill will give to Congress no control over the election of President, and I will endeavor to advert to that before I conclude, but the theory of the bill is that it gives this control directly and conclusively to Congress. He says further:

conclusively to Congress. He says further:

They well knew that to give to the members of Congress a right to give votes in this election or to decide upon them when given was to destroy the independence of the Executive and make him the creature of the Legislature.

It never was intended nor could it have been safe in the Constitution to have given to Congress thus assembled in convention the right to object to any vote, or even to question whether they were constitutionally or properly given. This right of determining on the manner in which the electors shall vote, the inquiry into the qualifications, and the guards that are necessary to prevent disqualitied or improper men voting and to insure the votes being legally given, rests and is exclusively vested in the State Legislatures. If it is necessary to have guards against improper elections of electors and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it. To give to Congress, even when assembled in convention, a right to reject or admit the votes of States would have been so gross and dangerous an absurdity as the framers of the Constitution never could have been guilty of. How could they expect that in deciding on the election of a President, particularly where such election was strongly contested, party spirit would not prevail and govern every decision? Did they not know how easy it was to raise objections against the votes of particular elections, and that in electroning upon these it was more than probable the members would recollect their sides, their favorite candidate, and sometimes their own interests?

O! says the Senator from Vermont, in this era of the millennium,

O! says the Senator from Vermont, in this era of the millennium, this happy time which is come, members elected to this commission from the House of Representatives for political proclivities and members elected by the Senate to counterbalance those political proclivities are to forget their party zeal; they are to act in harmony. The lion and the lamb are to lie down together. We are to have an era of peace and good feeling, where each will hasten to yield up his convictions. That very theory which he advances in support of the bill shows the absurdity of its provisions, and they are strongly shown by this extract from Pinckney. He further said:

Or must they not have supposed that in putting the ultimate and final decision of the electors in Congress, who were to decide irrevocably and without appeal, they would render the President their creature and prevent his assuming and exercising that independence in the performance of his duties upon which the safety and honor of the Government must forever rest!

Mr. HAMLIN. If agreeable to the Senator from California, I should O! says the Senator from Vermont, in this era of the millennium,

Mr. HAMLIN. If agreeable to the Senator from California, I should like to call his attention to a precedent which I think of very considerable importance in connection with that very part of the sub-

ject upon which he is now treating.

Mr. SARGENT. I yield to the Senator.

Mr. HAMLIN. I then call the attention of the Senator and the Senate to the precedent which is furnished to this body in the canvass of the vote in 1801. I refer to the vote of Georgia. I hold the

returns in my hand. From the very condition of things when that vote was presented to the two Houses in convention, or by whatever form you may denominate the body, the decision that that vote should be counted must have necessarily been made by Thomas Jefferson. I can find no record of any objections being made to the counting of this vote. There is a tradition which comes down to us that the tellers returned it to Mr. Jefferson and that Mr. Jefferson in turn handed it back to the tellers and declared that the vote was to be counted; that that was his decision. That the transaction as it took place corroborates essentially that tradition I think is established beyond every doubt when that return is examined and the fact known that it was counted. No record of any question raised at the time can be found. That return is addressed to Thomas Jefferson, the Vice-President of the United States and President of the Senate. There is no certificate upon it that it contains the votes given in the State of Georgia for President at that election. I turn on the back of the letter and I find this language:

We do certify the within to contain the votes of us, the electors on behalf of the State of Georgia, for a President and Vice-President of the United States.

JOHN MORRISON.

DENNIS SMELT.

HENRY GRAYBILL.

DAVID BLACKSHEAR.

I then open the return and I read:

GEORGIA, EXECUTIVE DEPARTMENT, Louisville, December 3, 1800.

List of voters and electors on behalf of the State of Georgia, authorized to vote for a President and Vice-President of the United States under the Constitution and an act passed and approved March 1, 1792, entitled, "An act relative to the election of a President and Vice-President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice-President."

General John Morrison, of Burke.

Dennis Smelt, of Richmond.

Henry Graybill, of Hancock.

David Blackshear, of Washington.

Certified to be a true list of the electors of Georgia, under the direction of the Legislature of that State.

Witness my hand and the executive seal of the State, at Louisville, the day and year above mentioned.

JAS. JACKSON. Governor.

JAS. JACKSON, Governor.

Countersigned by the secretary of state.

Now, sir, I turn to find what was the vote given by the State, and there, upon that return headed on the left hand of the column, is the name of Thomas Jefferson. Directly opposite to it is the name of Aaron Burr. Following that return appears to be the names—I am not quite certain whether they are all in one handwriting or not, but I will assume they are not—of these electors. Under the name of Thomas Jefferson are the names of these four electors; under the name of Aaron Burr on the right of that are the names of these four There is no certificate that they met and balloted. There electors. There is no certificate that they met and balloted. There is no certificate that there was a vote given for anybody for President, as that was all that was required at the time. Consequently that paper, when presented, I affirm, showed upon its face nothing that could enable the body clearly and distinctly to determine that any votes were given for anybody. Clearly they did not comply with the Constitution where it says that the electors shall vote by ballot. There is no such declaration here. That is all there is on it. That the vote was counted is shown by the records. How could it be counted says on the decision of him in whose custody that vote was? counted save on the decision of him in whose custody that vote was ? That vote was in the custody of the President of the Senate. It was neither in the custody of the House or of the Senate; and these electoral votes never are in the possession of either the House or the Senate. How they are to count votes of which they are never in possession. sion has been a mystery that no gentleman has solved within my

hearing.

Mr. EDMUNDS. If the Senator from California will allow me to add a word to what the Senator from Maine has stated, I might elucidate the paper he mentions. If the Senator from Maine will take the pains, as I have no doubt he has, to read the contemporaneous history of that event, he will see it stated substantially in this wise by those who were present and observed the ceremony, or whatever you call it, on that occasion: That Mr. Jefferson opened that paper, unsealed it, and handed it down to the tellers, who examined it, en-

you can be, on that occasion: Inta air. Jenerson opened that paper, unsealed it, and handed it down to the tellers, who examined it, entered the number of votes for Georgia in the proper column, and passed it again up to Mr. Jefferson, who then declared that the State of Georgia had voted so many votes so, and so many votes so, without any observation, or question, or discussion, or decision of anything. I think I am correct in my recollection of the history of those proceedings in what I have stated.

Mr. HAMLIN. The Senator is correct. I have examined the papers and my recollection corroborates his entirely. I do not think, however, that it changes the fact that the Vice-President at that time did actually decide this question as a question of both right and power. Mr. SARGENT. At the election where that incident took place there were 63 votes for Thomas Jefferson and 63 for Aaron Burr. There was no choice by the people and it was well known by both Houses that there was no choice by the people, because there was an attempt by means of resolutions passing between the two Houses to come to some conclusion in that contingency, and the House itself was seeking to regulate the proceedings that it should take on being notified that there was no choice by the people. That occurrence gives additional significance to the fact that the decision then and there made was by the President of the Senate who opened and ex-

amined this paper and passed it to the tellers; who tabulated it, and then passed it back as usual.

The Senator from New York said that the President of the Senate in discharging his duties need not pronounce a single word. That is most true; and there was an instance in that historical case where the President of the Senate examined a paper with its defects patent upon its face, with the rapid operation of the mind of Thomas Jefferson, saw exactly its bearing, its legality or illegality, decided that that should be counted, and passed it to the tellers who were sitting at that desk for the simple purpose of making out a list, as the resolution of the Senate, concurred in by the House, directed, of the votes as they should be declared. By that act he declared that vote. It was the decision of his mind, a decision reached under the Constitution and reached under circumstances where, if ever, there might be supposed to be a jealous watchfulness on the part of both the Senate and the House to see that every proper vote was counted, and that no improper votes were counted, it was then when an apprehended tie in the vote was anticipated.

I was calling attention to the observations of Mr. Pinckney, a mem-

ber of the constitutional convention, made upon this floor upon a subject somewhat kindred to that which now engrosses the attention of the Senate. I have shown how clear and express he was, not merely in the statement of his opinion on a given state of facts, but his recollection of the spirit of the constitutional convention, and their anxious desire to shield the executive from encroachments by the legislative power, to hedge around the legislative power from having any decision whatever as to the character of electoral votes, or the manner in which they should be disposed of, received, or rejected; because it would devolve upon them, if they exercised that power selfishly, as he holds that legislative bodies will exercise powers, the choice of a President of the United States who would not be the creation of the people, but the creature of the legislative power. It was less than twelve months since that a worthy bearer of that honored name, my honored friend from Maryland, [Mr. Whyte,] here, from his place in the Senate, denied that this power resided in Congress, and contended for the power in the hands of the President of the Senate as constitutional and necessary to the protection of popular rights.

One other observation with reference to the constitutionality of this bill and I leave that part of my subject. decision whatever as to the character of electoral votes or the manner

this bill and I leave that part of my subject.

The Senator from New York, in remarking upon the power of the President of the Senate, said that if you possess the power which was claimed for you under the Constitution, there was no power to intrude any one into partnership with you in the exercise of that power. I agree with that view, but I say that down to a very recent period there was no attempt on the part either of the Senate or of the House there was no attempt on the part either of the Senate or of the House of Representatives to intrude any partnership upon the President of the Senate in the discharge of his duty. The only function which they devolved on their teller was making a list, as I have said before. That duty is not devolved upon you by the Constitution; or if it is, it is one where you can call assistance to your aid, as we can call the assistance of the Secretary of this body to our aid. Is it intruding the Secretary of the Senate into partnership with the Senate because he reads the bills for us, or notes amendments, or performs other clerical duties, or makes out a list of votes when we vote for committees by hellots as required by a required by the lates of the committees. by ballots as required by our rules unless the rules are suspended? Is that an intrusion of an unauthorized person, unauthorized by the Is that an intrusion of an unauthorized person, unauthorized by the Constitution, into partnership with the Senate? In no higher or different sense was there an intrusion during the long scores of years in the history of the Republic when tellers were appointed for the purpose of tabulating the votes declared by the President of the Senate who counted them. Furthermore, we are told by the Senator from New York that if this power resides in you by the Constitution, this bill even if it passes would be void and of no effect; that it would not count in the decision of these matters. Unfortunately, sir, the history of the country shows that measures of this kind when wrongful do have a most deleterious effect. Who shall restore the rifled rights of the contestants for this office after this tribunal shall rifled rights of the contestants for this office after this tribunal shall have acted upon them? Who shall restore us to the pristine days of the Republic when this wide departure from the meaning of the Constitution shall have taken place? Who shall repair the demoralization which necessarily springs from bringing the Supreme Court into controversies of this character? Why, sir, this bill is not to be passed under the idea that it can do no harm if it is unconstitutional. It will be broad and far reaching in its effects, not merely upon the present time when its operations are to be deprecated, but upon the future, and I believe that its effect will be to weaken in the minds of our successors, if not in ourselves, our reverence for constitutional law and those interpretations which have been placed upon it by the fathers of the Republic.

fathers of the Republic.

If this bill is unconstitutional, no expediency can recommend it; if its constitutionality is doubtful, its expediency should be clear and unquestioned. I hold that its expediency is as doubtful as is its constitutionality. First, it degrades the Supreme Court and brings it into contempt by the necessary operations of the bill. Up to this time we have loved to think that there was one tribunal that was seated far above the influence of popular passion; that it was illuminated by the sunlight of reason beating upon its high eminence; that pure law was there administered, and that a man's political opinion or political action could have no effect in the decision of his private rights. We have had an idea of this highest judicial tribunal

such as the framers of the Constitution intended should surround it. The court itself has sedulously refrained from deciding mere political questions resting within the legislative power. They have hedged themselves in sometimes perhaps with extreme jealousy in that particular. Now we tear down all guards, and now we take, not the Supreme Court, but we select members therefrom chosen with regard to preme Court, but we select members therefrom chosen with regard to their political opinions, bring them down to this muddy pool of politics and require them to wade through it. We degrade them, because we associate in the minds of the people the idea that they are political judges. We give them to think that these men are partisans. Whenever a great constitutional question shall arise, unless the bench is reconstituted and those whose usefulness has been destroyed shall have been reconstituted. is reconstituted and those whose usefulness has been destroyed shall have been removed from it, partisans on either side will say, "What else is to be expected from these men? Did they not decide so and so when it was questioned whether Hayes or Tilden was elected? Did they not act upon partisan motives? Were they not chosen because they would so act upon partisan motives?" You degrade the ermine. You weaken the judges in the confidence of the people of the United States, ay, in the estimation of Senators themselves; and I am approach to it for that reason. If axis asserted, these are revolutionary opposed to it for that reason. If, as is asserted, these are revolutionary times and we are legislating in the face of an exigency, then I say that a partisan judiciary is the greatest evil we can fear in revolutionary times. A partisan judiciary is always subservient to power, its motives spring from no high source. Subserviency is its rule. Jeffreys and Scroggs were partisan judges, and the bloody assizes were the fruits of judicial subserviency.

I object because this court or a majority thereof are required under oath to determine in advance the right of these respective contest-ants. The bill as brought forward here contains a provision that nothing in its operations shall conclude or prejudice the rights of any person claiming this office. Yet here the bench which must decide it, or a majority of them, are required under oath to make that deit, or a majority of them, are required under oath to make that decision, not hearing it according to the forms of law before their tribunal, but taken from the bench and thus disqualified to pass upon these rights. Tell me, sir, what is the process by which the man defeated before this tribunal is to regain those unprejudiced rights? Shall it be by quo warranto, where the decision must reach the highest tribunal? Every fact has been prejudged before, every principle of law has been applied; it may be against him. No, sir; it is one of the hypocritical pretenses of this bill—and I say it having all due respect to the able and judicious committee which reported it—I say it is one of the hypocritical pretenses of this bill, putting a mask upon a face of hideousness, that this is not designed to prejudice rights, but that the courts are to be left open in order to have a vindication of these parties.

dication of these parties. Again I object because these judges are selected for partisan purposes and a thin veil of pretense is thrown over it that they are selected on account of locality. The pretense of locality will not hold water, because there are other localities, vast areas of territory, not represented and not intended to be represented by the judges named under this bill. If it is pretended that they should have been selected hav-ing view to the political sentiments of the people of the region which they represent, tell me what justice there is in selecting the judge of the ninth circuit to represent the three great States of the Pacific who unanimously cast their votes in a different way from what he did and whose opinions are as diametrically opposite to his on all questions springing out of this election as the poles are asunder. No,

did and whose opinions are as diametrically opposite to his on all questions springing out of this election as the poles are as aunder. Not, sir, these judges are selected for their political opinions, and the members of the House and the members of the Senate are to be selected for the same reason. The same thing may be said in reference to Judge Clifford. I do not single out these gentlemen because I have more objection to their serving than others. I am simply discussing the features of this bill and showing its unequal operation.

These men, I say, are selected for their partisan leanings, for their opinions already made up, and that is the fairness and judicial impartiality which is to be preserved, says the bill, in case one of them shall die or become physically incapable of discharging these functions! I should like to inquire what impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is intended where the phrase is used in the bill. An impartiality is the way impartially is the same thouse of Representatives is to select five Senators and the House of Representatives is t

opening remarks, there has been a secret understanding on the part of one side or the other which will partake of intrigue and would in that case be disreputable. Objection is made because there is under that case be disreputable. Objection is made because there is under one theory a one-man power residing in the executive department, and that you represent, sir, so far as this function is concerned, and not the legislative; they object to one man, removed from temptation, in that he may not himself at all be a candidate, passing upon these matters. Yet here is a power lodged in the hands of one man to overrule the will of the people. How much is it bettered when a single man, by the very necessity of the thing, and that a man whom you and I cannot intelligently consult about, that we cannot put into your chair by our vote or take out by reversing that vote, as the Senator from New York says, but a man perhaps to be chosen by lot, a man to be gambled for in some way, because if the two republican judges and the two democratic judges cannot agree upon a democrat or a republican, the bill fails, or else some method of lot has to be used by which that determination shall be reached.

I say this man, unknown to the Constitution, belonging to a body

used by which that determination shall be reached.

I say this man, unknown to the Constitution, belonging to a body never intended to exercise legislative functions, unknown to any living man, with whose passions, prejudices, opinions, peculiarities, or fidelities we have no knowledge, is to be put in this position. He is to have all this power, never before contended for by Congress, of going behind certificates, reversing the action of States, put in his hands in order to decide the destinies of this people. Is it reasonable; is it expedient? Is this the best that can be done in order to tide over this emergency; a temporary expedient like that, not a permanent tribunal, not one that will be respected in future, but made now in order that somebody may cheat somebody else and thereby get the Presidency?

Presidency?

I think that I am not extravagant in my statement of the firm political attitude the other members will take upon that commission. litical attitude the other members will take upon that commission. I should like to ask if any one believes that our honorable Senators, Mr. Thurman, or Mr. Bayard, or Mr. Bogy—excuse my mentioning their names—are to be convinced, if they are on that commission, to surrender up their opinions? Is that supposed at all? Or is it supposed the Senator from Indiana, [Mr. Morton,] the Senator from Ohio, [Mr. Sherman,] or the Senator from Vermont, [Mr. Edmunds,] are to yield their convictions, that they are to assent to the election of a presidential candidate of the opposite party? Of course men of pronounced opinions will be placed on this commission, placed there more as advocates than as indeed from the very necessity of their pronounced opinions will be placed on this commission, placed there more as advocates than as judges from the very necessity of their situation, to try to convince the fifteenth man if possible. That is all their function. They are put there to represent an idea, and they cannot surrender that idea without a suspicion of dishonor, and they will not. Every one within the sound of my voice knows that this will be the practical operation, and I reason from that practical operation the inexpediency of this measure.

If the power is too great in your hands six why is it not too.

If the power is too great in your hands, sir, why is it not too great in the hands of this unknown man?

I object to this bill furthermore because it invites a political party, defeated by ordinary forms in a close election, to clamor for another chance. We set a conspicuous example of the weakness of our insti-What difference does it make whether a man is elected Pres ident by one majority or one hundred majority, in the title to this high office? But here you say all that is necessary is that in a close election the party defeated, whether republican or democratic, in all time has but to clamor at the doors of Congress, has but to talk of send-

ing upon these matters. They know it is the mere decision of one individual, and they will go for the antecedents of that individual, and they will find weak spots which perhaps do not exist in the individual. They will go behind this "returning board" of yours, this congressional returning board. You will find that the partisan papers, disappointed, will load with smut and contumely this commission of yours, and these supreme judges that you drag down from the bench at your dictation to serve in a manner not intended by the Constitution. The people will not respect them; and those who are disappointed will be especially clamorous, and I do not believe that if civil war threatens—I think it does not—that this means will avert it.

I object furthermore to this bill, and I speak now as a republican Senator expressing the sentiments of the people of my State as they were at the time they elected me as a republican, and also speaking for my State at the present moment, which at the last election was consistent to the faith which it held at the time it elected me; repreconsistent to the faith which it held at the time it elected me; representing a constituency which is republican, on behalf of that great party of my State, pure as I know it is in its motives, desiring no injustice and disposed to yield to none, speaking on their behalf as well as my own convictions, I object to this returning board because it cripples, prevents the hearing of objections that might otherwise be raised by the republican party to the counting of the electoral vote of certain States in this Union.

If it is determined that the returns may be set aside that a tribunal

If it is determined that the returns may be set aside, that a tribunal may be formed which shall go to the bottom of the poll, that they shall determine whether there has been fraud in certain States, whether force has been employed or has not been employed, then I say that I want them to go still further in that direction and not permit advantage to be taken of the mere fact that the form of a sham electoral certificate has not been set up to figure by the side of a true one in other States. I want to know whether the terrible testimony taken recently with reference to proceedings in Mississippi, where in instances scores of men have been killed for political opinions, and whole districts have been revolutionized by force, and where that was not sufficient the lion's skin has been pieced out by the fox's hide and fraud has come in to complete the work-I want this tribunal, or any tribunal which is appointed to pass upon these things, to pass upon the question whether the certificate purporting to contain the vote of the people of the State of Mississippi, and perhaps some other States, represents the unbiased will of the people of that State, as it should in order to count in the election of President of the United States.

But, sir, before this tribunal—and I make the prediction—you will find abundance of red-tape, and you will find that unless there is a shade of a certificate which in itself would be a fraud, as many of those that have been sent up, as for instance from Florida by electors who have no existence, to figure by the side of the true return, because that shadow of a shade is not present, therefore they will have or take no jurisdiction of this matter!

I object to this bill, because while the House of Representatives, I might say the democratic party in order to be more distinctly under-stood, and perhaps to speak more within parliamentary bounds, yields but one point in this controversy, the republican party is required to yield two as the very necessary result of passing this bill. The House of Representatives takes the ground, which in my judgment is not tenable, that unless the House consents to the counting of a vote, it cannot be counted, and the desire of the Senate that it shall be counted does not avail, provided that its will is that it shall not be counted. The Senate, or members of the Senate, or the republican party, have held, I hold, that the power resides in the President can party, have held, I hold, that the power resides in the President of the Senate. That must be yielded up. Furthermore, it is held by the republican party, that if that is not true, then it requires the concurrent action of the two Houses in order to reject a vote; and that must be given up. In other words, we yield two points of the game; while our adversaries yield but one, and that the least tenable of all. Therefore that is not a compromise, and the Senator from Vermont was correct in saying it was not a compromise; it is a surrender.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. EDMUNDS. I ask whether the bill which was passed on his vote ten months ago did not provide in the case of double returns

vote ten months ago did not provide in the case of double returns that they should not be counted unless both Houses concurred in receiving them?

Mr. SARGENT. The Senator has asked that question of several Senators. I admit that I did vote for the Morton bill. The Senator can make the most of it. It is not an answer to any argument I have advanced to-day, and I would like to remark in that very connection that if he will turn to the debates, which I have not time to refer to, he will find a brief argument of mine made at that time and in his presence, because he asked me some questions in the course of that argument, in which I contended that the power under the Constitution resided in the President of the Senate and that that was the place where it could most safely be lodged.

Mr. EDMUNDS. I hope that my honorable friend did not suppose I was endeavoring to involve him in an inconsistency; but when he says that the committee have surrendered the republican party in providing that the House of Representatives shall not have the power that the Senator and his republican associates ten months ago said

they should have, I do not consider it a republican surrender but a

republican victory, if you talk about parties.

Mr. SARGENT. The Senator has, of course, a right to his opinion.

I respect his opinion, and I respect his ability; but when the Senator indulges in the hope that I will not think he intended to involve me in an inconsistency, I must tell him his hope is fallacious. I think that was the intention; and whatever he gains by it he is welcome to. I have only to say in reference to that former measure, that it was not clearly brought under the microscope of observation by myself and many other Senators, I think, on this floor. I have examined the matter with greater care since an exigency has arisen in this country. Whether my conclusions now are sound or otherwise, they must rest upon their own merit, and not depend upon any vote that I may have given months ago. But whether I did or did not vote for that bill, I certainly did not then or at any other time assent to the proposition that it was proper to drag the members of the Supreme Court down from their high eminence, to select them not with regard to the hypocritical pretense of locality but for their politics, in order that they might politically decide or stand politically opposed to each other, and therefore so far as they were concerned prevent a decision and throwing the power into the hands of some unnamed man. I have never assented to any bill that contained the monstrosities that this bill contains, and I have given the reasons why I think the bill itself ought not to receive the assent of the Senate.

I say this bill is not a compromise, in my judgment, for the reasons I have given. The Senator from Vermont is entitled to his opinion, and undoubtedly is sincere in it. I am not speaking of motives, but results. I consider this bill not a compromise, and not a victory, but a surrender. But if it is a compromise, I object to it. We ought not to ask anything but what is right, and I am not disposed to compromise away what I think is right. It is more than a question of expediency, it is a question of constitutionality. If we are wrong, let us yield at once. Compromises are always deleterious; they have been so in the history of the world; they have been lamentably so in the history of our own country. The compromises of the Constitution effected a union perhaps some few years sooner than would otherwise have been effected; but the result was that they planted in the Constitution and planted in the body-politic the seeds of a disease that broke out with terrible malignity within this generation. Heroic treatment at that time might have kept the Confederacy somewhat longer in existence and delayed the union of the States; results. I consider this bill not a compromise, and not a victory somewhat longer in existence and delayed the union of the States; but the result would have come, as there was a natural gravitation together of the parts in this country that had fought together for independence, and we should have had a Union without those elements of disease and disorder. So it was with the Missouri compromise. It gave license and strength to slavery; and the compromise of 1850 made every man of the North an auxiliary of the bloodhound. I do not believe in such compromises, compromising away right, especially compromising away constitutional duty.

I object further because we are acting under duress, under menace.

Threats of civil war are held out if Tilden is not counted in, by some process, to the Presidency. The Senator from Vermont himself told us what the sad result of our delay would be and wanted to insist that we should sit and vote on this bill almost without discussion at inconvenient hours of the night, when we were wearied out with listening to the arguments of those who were in its favor, because there was some impending disaster. Why, whose mind is so disturbed by these impending disasters that he cannot have the clearness of his ordinary functions? Who is pushed from his stool? Are threats like these worthy to be made or considered in the Senate of the United States? If they are, should they influence us? Had we not better sit like the Roman senate on the occasion of a noted invasion of their what they thought right? We are told that civil war impends upon us. We have drank deeply of that bitter cup. I hope that all such prophecies have no foundation, will never be realized. I certainly for one would do anything that I constitutionally could to avoid a result like that, and it is much to be deprecated for the sake of our liberties, for the sake of our homes. But war is not the greatest calamity that can befall a people. It is preferable to dishonor, to cowardice, to the loss of liberty. The liberties of this people are gone when violence or threats of violence can constrain the Senate to temporary and inconsiderate expedients by which the will of the people for the succession, lawfully ascertained, can be defeated and the can-didate of a party which has dealt in force and fraud to carry an elecdidate of a party which has dealt in force and fraud to carry an election, and nearly succeeded, can be foisted into the Presidency. From that result, and from all processes leading to it, I wash my hands. Let those who will take the responsibility do so. "I'll none of it."

Mr. CONKLING. Mr. President, I present a petition largely and strongly signed by citizens of New York, merchants of various kinds, praying the speedy passage of the bill which depends in the Senate. I move that it lie on the table.

The motion was agreed to. Mr. CONKLING. Mr. President, I should present, but that it is addressed to the committee and therefore is not technically a petition, a memorial which comes by telegraph from the State of Indian, signed by thirty-seven republicans and by three democrats, expressing the gratitude of the signers to the committee for the intelligent and patriotic labor which has resulted in the report of a bill for the settlement of disputed questions touching the election of President and Vice-President of the United States, and expressing the most earnest desire that Congress will promptly adopt the measure reported.

arnest desire that Congress will promptly adopt the measure reported. I repeat this telegram is signed by thirty-seven republicans and three democrats. Among the signatures appended to it are names not unknown here. I observe the name of Conrad Baker, who once was governor of that great State. I observe the name of Leonidas Sexton, who was lieutenant-governor of that State, both of them republicans, and the latter a Representative-elect. I observe the name of Mr. Gordon, the republican candidate for attorney-general in the last canvass, and I observe another, the name of Ben Harrison, who as the candidate for governor carried the flag and callantly led the canvass. candidate for governor carried the flag and gallantly led the canvass,

candidate for governor carried the flag and gallantly led the canvass, disastrous but dashing, which Indiana saw in October last.

Mr. President, I tried yesterday to answer in part the chief objection to the pending bill. That objection had then received little attention in the Senate. The honorable Senator from California has this morning given it the weight of his authority. Senators have asked why I devoted so much pains yesterday to disproving the authority of the President of the Senate, saying that nobody in the Senate contends for such a power, or believes it to exist. The Senator from California is I believe its only known advocate in the Senate; but nevertheless the chief objection to the pending bill prevailing in the press and in the country at large, is the idea that the Constitution clothes the President of the Senate with power to do whatever can be done in deciding on and making effectual electoral votes, and in judging conflicting certificates. If this objection be well founded, the bill has no footing. I dwelt yesterday on the text of the Constitution to show, first, that it does authorize the President of the Senate to receive, keep, and produce and open all the certificates; and that the Constitution and produce and open all the certificates; and that the Constitution does not empower him after they are opened to pass on the votes they may contain: second, that implication works power to do only those things incident and essential to an expressly authorized act, and that when the expressly authorized act is done and ended, implication

From this I had argued that as the opening of sealed certificates must take place before the votes they contained can be examined or touched, and of course before counting can begin, the power to open beforehand, cannot imply the power to do a separate, a different, a

are a thing, afterward.

I referred to the fact that every count from the beginning has been conducted and controlled by the two Houses, that from first to last tellers appointed by the Houses have enumerated, and that the President of the Senate has never even enumerated the votes; that the certificate reciting the count has been framed and ordered by the two Houses and signed by the President of the Senate as their organ expected and controlled to significant the formal forms. pressly authorized and commanded to sign it; that the form of the certificate remained identical from the beginning, and was used and signed on occasions when we know that the Houses entertained objections to votes, and when the record shows conclusively that the certificate did not and could not imply any power assumed by the President of the Senate of himself to determine anything touching the electoral votes

Allusion should have been made to the further fact that in no instance has the President of the Senate assumed to judge or to decide anything, or to do anything beyond opening the packets, except by the command of the two Houses. Georgia's vote in 1800 having been brought into the Senate this morning as it has been sometimes brought in before, I turn aside to remark that if the name of Jefferson is liable to injury now because of a suspicion that taking up a paper void of form and void of substance as a constitutional certificate, he silently in his seat induced the tellers, notwithstanding its latent and its patent vice, to count it for him; if, I say, the memory of Jefferson be exposed to such aspersion, it is exposed to serious aspersion indeed.—He was acting as the organ and agent of the two Houses, in their presence, authorized by their acquiescence, and the intimation is that he proceeded to do clandestinely something not revealed to them, and something by the clear mandate of the resolutions under which the Houses

were proceeding, not within his province, and something the success of which depended on secrecy and concealment from the Houses.

If such a thing were supposable in the case of Jefferson, what a light it casts on the danger of trusting one man in such a matter, and what a satire it is on the notion that the Houses can be effectual without the supposable in the state of the succession of

nesses knowing and verifying the truth, and yet leaving the whole matter in the keeping of the presiding officer.

I alluded yesterday to the fact that always till 1869, committees have been appointed to pre-arrange the process of verifying and as-certaining the result of presidential elections. This practice never ceased till the twenty-second joint standing rule was made in 1865. That rule has gone. The custom of raising committees to ascertain and report the mode of determining the result, has revived. Committees have been appointed, the report of the committees is the

mittees have been appointed, the report of the committees is the pending bill which awaits the action of the Senate, and the question is whether we are to have that method, or no method, or some other method not suggested and which no time remains to devise.

I now beg the attention of the Senate to a chapter of history. It begins in 1800. The Constitution was then ten years old. The men who devised it were still in the vigor of life, and the nation confided in them, and leaned on them. Many of them sat in Congress, for years. Among these men was James Madison. He has been called the father of the Constitution; a few years later he became President of the

United States. The Constitution on its face had specified five instances in which votes could not make a man President of the United States. Five disabilities were imposed upon the presidential office. One disability was imposed on the office of presidential elector. All this was true when the Constitution was launched in 1789. It has been said in this debate that the ken of man, the forecast of sages, did not in the beginning discern the possibility that serious problems might require solution in the count and ascertainment of electoral votes. I ventured yesterday to deny the assertion. I repeat the denial now. In 1796 a presidential election had been held; electors had been appointed by the States, Vermont among them. Madison and Jefferson, separated by distance, were in correspondence, and Madison wrote to Jefferson that the election was still in doubt—this was weeks after the electors had been appointed,—because of the allegation that there was "vice," (I use his word) in the vote of Vermont. He wrote that if her electoral votes turned out to be valid, the election would be one way, otherwise it might be the other way. What was the vice, or alleged vice, in the vote of Vermont? The State of Vermont was then living under a constitution wanting in provision for the choice of electors, no statute had been passed directing the mode been said in this debate that the ken of man, the forecast of sages, did mont was then living under a constitution wanting in provision for the choice of electors, no statute had been passed directing the mode in which electors should be appointed, and the Constitution of the United States ordained that they should be appointed by the States in the mode directed by their Legislatures. The Legislature of Vermont, in the absence of a statute, proceeded itself to appoint electors. That was the customary mode observed then in other States, except in those in which the governor alone appointed. Argument arose. On the one side it was said "the Legislature of Vermont has not directed the mode in which presidential electors shall be appointed; there is no statute; and the Legislature can speak only by statute." On the other hand it was said "when the Legislature proceeds itself to choose electors, does it not direct the process? Does it not say, by action speaking louder than words, how the electors shall be chosen." And it was of that doubt, and of the "vice" it suggested, that James Madison, on the 25th of December 1796 wrote to Thomas Jefferson these words: these words:

I cannot entirely remove the uncertainty in which my last left the election. Unless the Vermont election, of which little has of late been said, should contain some fatal vice in it, Mr. Adams may be considered as the President-elect.

Two weeks afterward, on the 8th of January, 1797, he wrote:

If the Vermont votes be valid, as is now generally supposed, Mr. Adams will have 71 and you 68, Pinckney being in the rear of both.

And you 68, Pinckney being in the rear of both.

Mr. President, these letters were written very soon after the Constitution first spoke; they are not the letters of one who was startled and amazed that such a question should arise, and who knew of no way in which it could be solved—the whole manner indicates quite the opposite. Other facts might be cited—the receipt in Congress of petitions from New England charging wrong in the appointment of electors, and not alone such petitions, to show that, immediately after the adoption of the Constitution, and, as I insist by reason of what appears even on its face, before its adoption, its authors foresaw that questions might arise requiring the power of deciding and judging the result of presidential elections.

Coming to the year 1800, I hold up the plain evidence that of both Houses of Congress, and the leaders of thought in the country, had their attention sharply fixed on the necessity of providing for the adjudication of some at least of the very questions involved in the count of votes which now awaits us.

of votes which now awaits us.

On the 23d of January, 1800, Mr. Ross in the Senate moved a committee to "inquire whether any and what provision should be made touching disputed elections"—I quote the language—"disputed elections of President and Vice-President of the United States." It was the 14th of February before report was made. It was the 28th of March before the bill reported was finally acted upon; and the interval is dotted on the skeleton record which has come down to us with the days and occasions on which the Senate, and afterward the House, bestowed upon it most carriest consideration. In the House the bill bestowed upon it most earnest consideration. In the House the bill was managed and the debate was led by John Marshall, who had already given evidence of those remarkable and rugged powers, and of that thorough knowledge of the elements of the Constitution, which were so soon to select him as the head of the new nation's which were so soon to select him as the head of the new nation's highest court. A year later he became Chief-Justice, and at once he began to fill all lands with his renown as a jurist and a statesman. It is said that at the age of twenty-seven Edward Coke was the greatest common lawyer in the world. As truly has it been said that John Marshall was as great a master of our Constitution as ever lived. I have words of his to read to the Senate. The bill, which I will presently refer to more at large, had passed the Senate; it was pending in the House in Committee of the Whole. Its title was "A bill presenting the mode of deciding disputed elections for President and prescribing the mode of deciding disputed elections for President and Vice-President." Here is the record:

The bill having been read, and the first section being under consideration, Mr. Marshall, after speaking of the importance of the subject before the com-

The Committee of the Whole Houseand the necessity-

I beg Senators to observe this-

and the necessity of some salutary mode being adopted for this object-

That is to settle disputed elections of President and Vice-Presidentexpressed his doubts of the propriety of two points in this first section of the bill, to-wit: first, that the Senate were to name the chairman of the grand commit-tee, and secondly that the opinion of this grand committee was to be final. He therefore moved to strike out of the section so much as related to those principles, and read what he wished to introduce for a substitute.

Here is an explicit statement both of the power of Congress to legislate, and of the "necessity" of adopting a "salutary mode" of conducting the count, and deciding disputes. I will presently show what Marshall deemed a "salutary mode." Before doing so however, I wish to advert to a statement made yesterday by the Senator from Ohio [Mr. Sherman.] He said Mr. Pinckney, Charles Pinckney, then a Senator, answered the arguments made in favor of the now pending bill. Did the Senator mean to lead the Senate to believe that Charles Pinck-ney or any other man who took part in the debate of 1800, intimated that an ounce of power, a feather's weight of authority, a particle of prerogative resided with the President of the Senate to judge an electoral vote or to determine the result of a presidential election?

Here is the argument of Charles Pinckney. I infer that, after the manner of later times, it was a verbally-prepared argument; it would so seem, because in this book and its fellow-volumes, "the Annals of Congress," it appears as one of the rare instances in which, in extenso, any man is reported, and short-hand writers did not exist then. I think I have a right to suppose that Mr. Pinckney was reported by himself. I will read a few of his words; the honorable Senator from

California also made allusion to Mr. Pinckney.

It is made their duty-

That is the duty of the two Houses-

It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has the majority of the votes of electors transmitted.

From this part of the Constitution it is evident that no power or authority is given to Congress, even when both Houses are assembled in convention, further than to open and to count the votes, and declare who are President and Vice-President, if an election has been made; but if no election has been made, &o.

I do not read these passages as contributions to the argument that more or less power resides in the two Houses. I read it merely to show how far it was from the purpose of Mr. Pinckney to assert any prerogative for the President of the Senate. His argument was quite different. The argument was that the electors were to be appointed by the States, that this was the function and attribute of the States, and that nothing was to be done by the two Houses, or by anybody, except to ascertain what the States had done. And I beg just here, to

and that nothing was to be done by the two Houses, or by anybody, except to ascertain what the States had done. And I beg just here, to say that I do not believe any Senator who concurred in reporting the bill now before the Senate holds any other doctrine.

To ascertain the act of the States, is the whole object of the bill. The sole inquiries authorized by the bill are, did the State appoint electors, who are they, how did they vote. These inquiries answered, the proceeding is ended, whether the State be New York or Louisiana. There is the mete and bound which no power can lawfully overpass. Whoever treads beyond, will trample on the Constitution, and attempt to establish brute force or partisan fraud on the ruins of law. Charles Pinckney said it was for the States to appoint electors; the electors were to speak, and then, with a confidence which a longer life would have shaken, he added, Who can suppose that any State will ever attempt to make an office-holder an elector, or will ever do any other thing which the Constitution forbids? If I were to say that he argued that the whole subject must be left literally to the States, I should overstate him. His argument was that it had better be so left, that it was not worth while to be pragmatic, nor to anticipate difficulties or problems, but rather to trust to the placid promise of a hopeful by and by; better to trust that all the States, observing the Constitution, would speak and act according to it. He said that no irregularity had then occurred, and that he believed no dispute about the election would ever come to vex the ear of Congress, or of the nation.

Ha said also that Congress had nothing to do with electing a Presination.

He said also that Congress had nothing to do with electing a President in the first instance, but he did not say that Congress had nothing to do with finding out who the people in the States had elected, No, sir, he said nothing of the sort, nor did he intimate that whatever was to be done in ascertaining the result of presidential elections, should or could be done by the President of the Senate, or by

anybody except Congress.

At the end of the argument of Mr. Pinckney the Senate passed the bill. Here it is. As reported by the committee in the Senate it provided that of the committee, the "grand committee," as it was called, to be created, the Chief-Justice should be chairman. The honorable Senator from Ohio [Mr. Sherman] was right yesterday in saying that the Chief-Justice was stricken out. I ask the attention of the Senator from California [Mr. Sargent] to the amendment by which the Chief-Justice was dispensed with. In lieu of the provision that the Chief-Justice should be chairman of the grand countities, was in-Chief-Justice should be chairman of the grand committee, was inserted this provision:

It shall be the duty of the Senate and House of Representatives of the United States to draw by lot in each House six members thereof.

I can state more briefly than I can read the residue of the amendment. By lot six members were to be drawn. Three were to be selected from the six, and of these three a chairman of the committee was to be found. There are several other provisions to which I ask attention. The title of the bill I have already indicated. Section I ask the Secretary to read it.

first provided for the constitution of a committee to be knewn as a grand committee, and I ask Senators to observe the power given to it:

And shall have power to examine and finally to decide all disputes relative to the election of President and Vice-President of the United States: Provided always, That no person shall be deemed capable of serving on this committee, who is one of the five highest candidates, or of kin to any of the five highest candidates.

Section 3:

Each House shall then proceed to choose, by ballot, two members thereof as tellers, whose duty it shall be to receive the certificates of the electors from the President of the Senate, after they shall have been opened and read.

Each member of the committee was to take and subscribe an oath, and to that oath I also call attention. The oath was

I will impartially examine the votes given by the electors of President and Vice-President of the United States, together with all the exceptions and petitions against them, and a true judgment give thereon according to the evidence.

Section 4 provides:

The President of the Senate shall then deliver to the chairman of the grand committee all the certificates of the electors, and all the certificates or other documents transmitted by them, or by the executive authority of any State, and all the petitions, exceptions, and memorials against the votes of the electors, or the persons for whom they have voted, together with the testimony accompanying the same.

The Senator from Ohio observed, erroneously, yesterday, that the pending bill provides for a secret session of the commission. Not so. This bill of 1800 made that provision. I will read it:

They shall sit with closed doors, and a majority of the members may proceed to act, rovided the number from each House is equal.

But for an unwillingness to consume the time of the Senate I would stop to remind the Senator from California how our fathers thought that impartiality might be gained by counterpoising against each other opposing predilections. One House at that time was largely federal; the other was largely republican; divided somewhat as the Houses are divided now, and this scheme provided that the committee to be composed of both Houses should act only when each House was represented with exact equality. Section 6 provided:

That the grand committee shall have power to send for persons, papers and records, to compel the attendance of witnesses, to administer oaths to all persons examined before them, and to punish contempts of witnesses refusing to answer.

Section 8:

That the grand committee shall have power to inquire, examine, decide and report, upon the constitutional qualifications of the persons voted for as President and Vice-President of the United States; upon the constitutional qualifications of the electors appointed by the different States, and whether their appointment was authorized by the State Legislature or not; upon all petitions and exceptions against corrupt, illegal conduct of the electors, or force, menaces or improper means used to influence their votes; or against the truth of their returns, or the time, place or manner of giving their votes.

Section 10: the report of a majority of the said committee shall be a final and conclusive determination of the admissibility, or inadmissibility of the votes given by the electors for President and Vice-President of the United States: and where votes are rejected by the grand committee, their reasons shall be stated in writing for such exclusion.

This bill being amended in several particulars, but in no particular changing the provisions which I have recited, save only to exchange the Chief-Justice as chairman for a chairman to be obtained by lot,

passed the Senate by a decided majority.

Mr. SARGENT. By a majority of 4.

Mr. CONKLING. Sixteen to twelve. Sixteen to twelve was a decided majority in a body so small. It passed the Senate after a vigorous and pertinacious opposition never for one moment grounded upon the idea, never in any instance suggesting the idea, that the power whatever it might be, to ascertain presidential elections, did not reside in the two Houses, or that any power touching the subject did reside in the President of the Senate, beyond opening the certificates.

It is to be observed that receiving, keeping and opening such documents, is not a duty of that paltry or menial nature described by the Senator from California when he spoke of "a common carrier of papers." It is a duty of honor and solemnity. It is to receive in trust, and in high trust, the secret certificates of what has been done by bodies of men in great matters, and to preserve them inviolate until in the presence of the representatives of States and the representatives of the people, and invested with more than the interest heirs feel when, in homely phrase, a will is opened, for the first time the whole nation and the world may know what has been consummated by the average and aggregated judgment of all the States. This is no undignified affair—it is not beneath a sovereign. Be this function great or petty, never was it hinted in the debate of 1800 that any power inhered in

the presiding officer to judge of anything.

Now I call attention to an amendment offered in the Senate by Mr. Nicholas. If distinguished for no other reason, this amendment will be heard with respect because it commanded not only the preference but the approbation of Thomas Jefferson. Those who have read his letters written at the time will remember that he says, everything offered by a republican is voted down by the customary majorthing offered by a republican is voted down by the customary majority of two to one; but he says in a few days an amendment will be offered which will express the republican view. Here is that amendment. I am not going to read the whole of it. Its chief feature, and that which commanded the approval of Mr. Jefferson, was that when objection was made to a vote, that objection was to be passed upon by the two Houses sitting in joint meeting and voting en masse and per capita, Senator by Senator and Member by Member. That was the The Secretary read as follows:

Amendments to the bill prescribing the mode of deciding diputed elections of President and Vice-President of the United States.

President and Vice-President of the United States.

Strike out the ten first sections, and insert:
Whereas, in an election of President and Vice-President of the United States, questions may arise, whether an elector has been appointed in a mode authorized by the Legislature of his State or not? Whether the time at which he was closen, and the day on which he gave his vote were those determined by Congress? Whether he were not at the time, a Senator or Representative of the United States, or held an office of trust or profit under the United States? Whether one at least, of the persons he has voted for, is an inhabitant of a State other than his own? Whether the electors voted by ballot, and have signed, certified and transmitted to the President of the Senate, a list of all the persons voted for; and the number of votes for each? Whether the persons voted for are natural-born citizens, or were citizens of the United States, at the time of the adoption of the Constitution, were thirty-five years old, and had been fourteen years resident within the United States? And the Constitution of United States having directed that the President of the Senate shall—

Mr. CONKLING. Now I heer the Senate to listen to the words

Mr. CONKLING. Now I beg the Senate to listen to the words about to be read.

The Secretary continued to read, as follows:

Having directed that the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and that the votes shall then be counted, from which the reasonable inference and practice has been, that they are to be counted by the members composing the said Houses and brought there for that office, no other being assigned them; and inferred the more reasonably as thereby the constitutional weight of each State in the election of those high officers, is exactly preserved in the tribunal which is to judge of its validity, the number of Senators and Representatives from each State, composing the said tribunal, being exactly that of the electors of the same State.

Same State.

Section 1. Be it enacted, &c., That whensoever the members of the Senate and House of Representatives shall be assembled for the purpose of having the certificates of the electors of the several States opened and counted, the names of the several States shall be written on different and similar tickets of paper, and put into a ballot-box out of which one shall be drawn one at a time—

Mr. CONKLING. That is enough. I do not wish to shock the ten-Mr. CONKLING. That is enough. I do not wish to shock the tender sensibilities of the Senate by making them hear that their fathers proposed to toss a penny or draw anything out of a ballot-box. They did, however, provide that the President of the Senate should not even determine for himself the order in which he would pick up and break the seals of these packets. They provided that putting in a box a paper each containing the name of a State, a member of one House should shake the box and a member of the other House should draw out a paper; and then the President of the Senate should open the certificate indicated by the lot, and no other, and that until every certificate indicated by the lot, and no other, and that until every exception taken to the votes of that State was adjudged and acted upon, no other certificate should be opened. But all this involved the doctrine of chance, and in the gladsome light of these better days who would be a dark idolater of chance. O no: not we: not we, who are endowed with scruples and virtues which our fathers never knew.

This amendment offered in the Senate failed. It failed not because of its preamble but because of the latter part of its substance, which

I will read:

The packet containing the certificates of that State, shall be opened by the President of the Senate, and shall then be read, and then shall he read also the petitions, depositions and other papers and documents concerning the same, and if no exception is taken thereto, the votes contained in such certificate shall be counted, but if the votes or any of them shall be objected to,—

Now comes the not acceptable provision-

the members present shall, on the question propounded by the President of the Senate, decide, without debate, by yea or may, whether such votes or vote are constitutional or not, and the votes of one State being thus counted, another ticket shall be drawn from the ballot-box.

It will be perceived these latter words required a call of the roll in the joint meeting in which every Senator as a unit, and every member as a unit, should respond yea or nay. Naturally enough the States would not surrender their preponderance of power in the Senate, and would not consent to having Senators merged with the more numerous House of Representatives; and therefore the Senate rejected this amendment; I repeat, the blunt recital in the preamble, that the power was with the Houses and none of it with the presiding officer, received no criticism in either House.

In the House the bill was reported with amendments not one of In the House the bill was reported with amendments not one or which bears upon the topic we are now considering. The two Houses differed, and the bill was rent on a rock. One House was republican in its majority, and the other was federal. It was said in one House that if either House decided against the count of an electoral vote it should be cast out; in the other House it was insisted that no vote should be cast out unless both Houses so said; and accordingly on the word "admit" or the word "reject" the Houses differed. They on the word "admit" or the word "reject" the Houses differed. They first insisted; they then adhered, in parliamentary parlance; and the bill fell, because a political party in the Senate would not yield into the hands of a political party in the House, the jus disponendi of an electoral vote; but all men, and both parties, and both Houses, concurred in affirming by words and by votes that it was for the two Houses of Congress as such, or for the law-making power to conduct, and conclude the exerct in words.

jection had been made to the count of her vote. In 1824 in the Senate jection had been made to the count of her vote. In 1824 in the Senate came forward Martin Van Buren, the organ of the Committee on the Judiciary of the Senate. He came forward in response to a resolution passed on the 16th of December, 1823, a resolution which summoned that committee to ascertain and report what, in regard to the count of electoral votes, the public interest and the public safety required. On the 4th of March he reported the bill which I hold in my hand. Not until the 19th of April and after much debate and consideration did it pass the Senate. It went to the House and was referred to the Judiciary Committee on the 21st of April, 1824. It was reported back in the House from the Judiciary Committee, unanimously as far as the record shows. Who reported it? Who was the organ of the Law Committee in the House when this bill was reported? Daviel Webster, of Massachusetts. He reported it without changing organ of the Law Committee in the House when this bill was reported? Daviel Webster, of Massachusetts. He reported it without changing the dot of an i or the cross of a t. No amendment or cavil was suggested. It had passed this body. It had been managed here by Mr. Van Buren who soon afterward led his party in the national canvass, and stood the acknowledged and visible head of the democratic church; and Mr. Van Buren was a lawyer of no mean attainments. It church; and Mr. Van Buren was a lawyer of no mean attainments. It was reported in the House with approval by Mr. Webster, who was known as the great expounder of the Constitution, but it was not reported until the 10th of May, 1824. It was then referred to the Committee of the Whole, and when the 10th of May has arrived in this latitude, the House of Representatives and the Senate have approached the term of the session. The Houses adjourned, and thus the bill was lost. I turn to two of its provisions. It provides, curiously enough, that on the first occasion when the votes were to be counted the joint meeting should be held in the Hall of the House counted the joint meeting should be held in the Hall of the House, and on after occasions the two Houses should assemble in the Rotunda.

The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the next occasion, and on all future occasions in the center room of the Capitol.

That I take it be the Rotunda. They were to meet under the Dome of the Capitol on neutral ground between the two Halls.

The bill provides that at twelve o'clock of the day appointed for the counting of the votes, the two Houses shall meet as I have described.

The packet containing the certificates from the electors of each State shall then be opened by the President of the Senate, beginning with the State of New Hamp-

And going through the States geographically-

and if no exceptions are taken thereto, all the votes contained in such certificates shall be counted; but, if any exception be taken, the person taking the same shall state it in writing, directly, and not argumentatively, and sign his name thereto; and if the exception be seconded, &c.

I pass over that:

And then each House shall immediatly retire, without question or debate, to its own department, and shall take the question on the exception, without debate, by ayes and noes. So soon as the question shall be taken in either House, a message shall be sent to the other informing them—

Of what?

informing them of the decision of the question and that the House sending the message is prepared to resume the count.

Not to resume witnessing a count to be conducted by somebody else, but to resume the count,

and when such message shall have been received by both Houses, they shall again meet in the same room as before, and the count shall be resumed. And if the two Houses have concurred in rejecting the vote or votes objected to, such vote or votes shall not be counted; but unless both Houses concur, such vote or votes shall be counted.

That, Mr. President, was the bill of 1824. Be it wise or unwise, it asserts again by a unity of voices with no recorded doubt, that the paramount law had reposed in the two Houses the duty, and commanded them to see to it, that constitutionally, lawfully, and truly, the result of presidential elections should be ascertained.

I have said that in 1817 the vote of Indiana was challenged. Her Senators sat in the Senate Chamber. In the House also she was rep-resented. The question was shall this vote be counted? The Houses

separated, entertained the objection, and deliberated.

In 1821 Missouri had come in. Before the day to count arrived on a motion made in either House a committee was appointed to consider and forecast the disposition to be made of an anticipated objection.

Just here it may be well to notice a suggestion we have sometimes heard. It is said that it is impracticable for the two Houses to attempt

to decide objections to votes when the count takes place; because if they have the legal power they have not the time to make the inquiry. Why is there not time? Why, because the second Wednesday in February is the day for the count to begin, and the interval before the 4th of March is too brief to permit inquiry. The first answer to this suggestion is that the day is fixed only by statute, and can be changed to a day early enough to leave ample time. The pending bill deep change the day so as to avoid insufficiency of concernments. bill does change the day, so as to avoid insufficiency of opportunity. red in affirming by words and by votes that it was for the two Houses of Congress as such, or for the law-making power to conduct, and conclude the ascertainment of electoral votes.

No one disputed this position.

Mr. President, begging pardon for occupying so much time upon the bill of 1800 which contained nearly every essential element, certainly every one to which most serious objection is made, to be found in the bill before us, I beg to ask attention to the legislation of 1824.

Objection had been made to the count of the vote of Indiana in 1817. Missouri had put into her constitution, touching free men of color, provisions obnoxious to a large portion of the nation, and ob-

was that the vote should be reported thus: if the votes be counted, the count will stand so and so, if not counted, so and so, but in either case James Morroe has received a majority of all the electors appointed, and is therefore President of the United States.

In effect the votes were rejected.

No suggestion was made that the presiding officer had any power over the question. I measure my expression in saying no power, because he was Vice-President, and not even a member of this body, and had not even a vote, except in the case of a tie. If he had been as you are, Mr. President, a member of the Senate, he would have had a vote. You have a vote not qua your Presidency of the Senate, but qua your Senatorship. It is because you hold the credentials of the great State senatorship. It is because you hold the credentials of the great State of Michigan as a Senator, and not because I had the pleasure of voting for you along with a majority of Senators to preside over us, that you have a vote and thereby one-seventy-fifth of the power of the Senate.

In 1837 the vote of Michigan was dealt with by the Houses, as Mis-

In 1837 the vote of Michigan was dealt with by the Houses, as Missouri had been thirteen years before.

In 1857 the certificate of Wisconsin was opened. A snow-storm had raged in Wisconsin. The electors were impeded in reaching Madison, the capital of that State. They arrived at Madison a day too late. The law said they must vote the day before. The question was, is the law in this respect mandatory or is it merely directory? James M. Mason of Virginia sat in your chair. The Houses met, to count the vote. Wisconsin's certificate was reached. Objection was made. The presiding officer said "this is not the time." The tellers wrote upon their table. The objection was insisted on. Mr. Mason said—I state it briefly, not wishing to dwell upon in, but I mean to state it accurately, and I invite review and correction if I am wrong—the President of the Senate said, "no proceeding is in order here, the two Houses sitting together, which requires debate or a vote here. That, I President of the Senate said, "no proceeding is in order here, the two Houses sitting together, which requires debate or a vote here. That, I rule as the presiding officer of these two bodies," as he was by the by, not because he was President of the Senate. No, Sir John Randolph early raised his voice against that idea; but because of the comity and agreement of the two Houses he was selected for that occasion to and agreement of the two Houses he was selected for that occasion to act as the moderator or presiding officer of the joint meeting. Mr. Mason ruled that nothing was in order there which involved debate or a vote in the two Houses sitting together. One of the tellers, Mr. Jones, of Tennessee, rose, as the record will show, and said I take it the true mode is for the Houses to separate and determine separately whether this vote shall be counted or not. Mr. Mason rose, I use his words now, and said, "the Chairso considers." During the proceeding, in every form of convenient words, he disclaimed all power. He said in substance I have no power to count this vote or to refuse to count it. I have no power to say it is a good vote or a bad vote. My business is to open the certificates. I do it. The two Houses must decide whether the vote is constitutional and can be counted or not. Stephen A. Douglas of Illinois then a Senator, broke into a somewhat lent, I prefer to say impassioned exclamation, and yet scarcely more impassioned than that in which John J. Crittenden expressed himself, and it may be said of him that the snows of seventy winters on his head never quenched the fires of patriotism that glowed beneath. He and Douglas and others rose and said, "I protest; I record my pro-test against the idea that the presiding officer has anything to do, even by ruling a question of order, with putting a curb or bit upon pro-ceedings here." The President of the Senate again disclaimed all inceedings here." tention to influence the proceedings. On the motion of a Senator the Houses separated. The Senate came here and debate took place, and again the presiding officer washed his hands and purged himself of what he said would have been an attempt at usurpation, saying that what he said would have been an attempt at usurpation, saying that he had nothing to do with the matter except to open the certificates, and then as authorized by the two Houses to act as the presiding officer of the joint meeting; but the Houses, and they alone, must determine whether a vote was good, or whether it was bad, or he might have added whether it was indifferent; an inquiry which would have been quite immaterial if the law had been, as announced here the other day, that no matter whether good, bad, or indifferent, in either alternative equally, votes are to be counted.

I come now to a resolution adopted by the two Houses in 1865, after much debate in the Senate. Rebellion stood with gory and uplifted hand. I will admit for the sake of the argument, or rather I shall not read the resolution to dispute, that acts might be proper in the presence of such events, which in their absence would have been with-

presence of such events, which in their absence would have been without justification, possibly without extenuation.

Mr. HOWE. The Senator admits it?

Mr. CONKLING. I admit it for the sake of the argument. I affirm nothing in regard to it. I never believed the Constitution was violated by asserting that the Government had the right to be. I never believed it was violated because it was asserted that the nation had authority by the beak and claw to put down rebellion. Here is the resolution:

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the States mentioned in the preamble to this joint resolution are not entitled to representation in the electoral college for the choice of President and Vice-President of the United States for the term of office commencing on the 4th day of March, 1865—

and no electoral votes shall be received or counted from said States concerning the choice of President and Vice-President for said term of office.

Approved February 8, 1865.

That resolution went to Mr. Lincoln, the President of the United States. Hear what Mr. Lincoln said:

The joint resolution entitled, &c., has been signed by the Executive-

I am reading the language of Abraham Lincoln-

has been signed by the Executive, in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress convened under the twelfth article of the Constitution—

Not the twenty-second joint rule,-that rule did not then exist-Not the twenty-second joint rule,—that rule the first energy have complete power to exclude from counting all electoral votes deemed by them to be illegal; and it is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting the electoral votes, and he also disclaims that by signing said resolution he has expressed any opinion on the recitals of the preamble, or any judgment of his own upon the subject of the resolution.

ABRAHAM LINCOLN.

EXECUTIVE MANSION, February 8, 1865.

I think it safe to stand with Abraham Lincoln in the view he stated. This brings me to the twenty-second joint rule. The Senator from Ohio [Mr. Sherman] said yesterday it was adopted on the report of the Judiciary Committee. No, sir. In 1865 the House and the Sen-ate passed, as the Senate and the House have passed this year, reso lutions raising committees to ascertain and report, in the immemorial language, the mode in which the electoral votes shall be examined, and the result ascertained. Who, Mr. President, was of that committee in the House? The Senator from Ohio will remember them well when they are named. The chairman of the committee was Thaddeus Stevens, of Pennsylvania. Next on the committee was Mr. E. B. Washburne, of Illinois. Next to him was Mr. Mallory, of Kentucky. Then came Davis,—Henry Winter Davis, of Maryland; and last upon the committee was Mr. Cox. Three of these gentlemen were very pronounced republicans. In the Senate, the committee was specified in the senate of the s cial also, consisting of Mr. Trumbull, of Illinois, Mr. Conness, of California, and Mr. Wright, of Indiana. These two committees reported, and reported unanimously, the twenty-second joint rule. Mr. Stevens reported it in the House, and demanded the previous question upon to which nobody objected; I state this to show that no debate took place, and according to my recollection, no republican, not one, re-corded himself against it. I believe no republican Senator voted against it. In the Senate the whole subject had just been elaborately against it. In the Senate the whole subject had just been elaborately debated for days on another resolution, and was well understood. Do not suppose, Mr. President, that I allude to the twenty-second joint rule to approve it. The rule is gone, and this is well; but the argument remains. The argument, like Banquo's ghost, will not down. If, by the Constitution, this province resides with the President of the Senate, the twenty-second joint rule, or any rule of the sort, and every proceeding of the Houses by which they judged of votes, has been a usurpation from the beginning as bald and wrong as manthorized interference could be.

as unauthorized interference could be.

Under the twenty-second joint rule Senators around me heard the certificate of Arkansas read. Objection was made. Why? Because the seal impressed upon it was the governor's seal as contradistinguished from the great seal of the State; and the two Houses sepa-

rated and in solemn action each House cast out the vote of Arkansas altogether, because of a supposed mistake in the seal.

Four votes from Georgia were cast out by one House alone. Why? Because, though regular in all respects, no flaw appearing on the face of the certificate, they were given for Horace Greeley, and Mr. Greeley

was dead according to report.

Yes, Mr. President, these votes and others, were cast out when the result did not depend on them we are told. But is this a migratory power? Does it live in the two Houses of Congress when nothing depends upon a vote; and when everything depends upon a vote, does the power to judge that vote migrate and pass out of the two Houses and pass into the presiding officer?

I come now to another resolution. The Senator from Ohio [Mr.

SHERMAN] may remember it—a resolution offered by him in Janu-nary, 1873. War had ceased. The clash of arms could no longer be heard. The Supreme Court had decided that eight years before the resolution was offered, in every intent of law and fact, the war was over. Peace stood in the land; peace stood adjudged on the record. A presidential election had occurred, and on the 7th of January afterward the Senator from Ohio proposed to the Senate this resolution:

Resolved, That the Committee on Privileges and Elections is directed to inquire and report to the Senate whether the recent election of electors for President and Vice-President has been conducted, in the States of Louisiana and Arkansas, in accordance with the Constitution and laws of the United States, and the laws of said States, and what contests, if any, have arisen as to who were elected as electors in either of said States, and what measures are necessary to provide for the determination of such contests, and to guard against and determine like contests in the future election of electors for President and Vice-President.

The resolution further provided in order that the answer to it may be speedy, that is to say that the information sought may be received in time to act on it in counting the electoral votes, that the commit-tee may employ persons to take depositions, in addition to taking depositions itself. It fell to me to assign some reasons for this resolution. I wish to read briefly from what I then said as it appears in the official record. I take leave to do so, lest it may be suspected that the views I maintain are of recent growth. Here are my words

What does it propose? To inquire whether in certain States the Constitution has, in this respect, been executed, and whether it has been executed according to

its own requirements and the requirements of the laws of the United States; that is all. Keeping before us for the moment the express delegations of authority to Congress, may we not inquire whether the electors appointed are persons holding offices of trust or profit under the United States! May we not inquire whether they were elected on the day specified! May we not inquire whether they are chosen at the place required! Undoubtedly we may.

Again:

One Senator says we have a right to inquire whether the claimants are the electors appointed by Louisiana. Take it so; how are we going to find out? Suppose it turns out that there has been no election at all; suppose the whole election went down, trodden out under the hoof of brute violence; suppose military power or a mob rode over the election, and there were no ballots or ballot-boxes at all, and certificates come here, may we not inquire whether those certified were in truth appointed by Louisiana?

And again:

But I go further than to maintain the naked power of Congress to inquire. I insist that we can utilize the result of the inquiry, and employ the facts in our action upon counting or refusing to count electoral votes for President and Vice-President. I see no reason to doubt that any State having provided a popular election as the mode of appointing electors, and it being alleged that no such election has been held, or that the election was a mere mockery or mob, violative not only of the laws of Louisiana, but in violation of the supreme law of the United States, we are within the scope of our power in sending a committee to find whether the allegation be fiction or fact.

Once more:

To ascertain and make record of the facts, I will vote for the resolution. This alone will be wholesome; and I will vote for it also for the use we may make of the facts in counting electoral votes, and determining any other proceeding which may come within our province.

The resolution passed, I believe without a dissenting voice. No dissent is recorded. In reply to it came a report from the Committee on Privileges and Elections. To one or two passages from that report I ask attention. It was submitted by the honorable Senator from Indiana [Mr. Morron.] He says:

Indiana [Mr. MORTON.] He says:

The third section of the act of Congress of 1792 declares what shall be the official ovidence of the election of electors, and provides that "the executive authority of each State shall cause three lists of the names of the electors of such State to be made and certified, to be delivered to the electors on or before the first Wednesday in December, and the said electors shall annex one of the said lists to each of the lists of their votes." The certificate of the secretary of state is not required, and the certificate of the governor, as provided for in this section, seems to be the only evidence contemplated by the law of the election of electors and their right to cast the electoral vote of the State. If Congress chooses to go behind the governor's certificate, and inquire who had been chosen as electors, it is not violating any principle of the right of the States to prescribe what shall be the evidence of the election of electors, but it is simply going behind the evidence as prescribed by an act of Congress; and, thus going behind the certificate of the governor, we find that the official returns of the election of electors, from the various parishes of Louisiana, had never been counted by anybody having authority to count them.

That, it will be observed, Mr. President, was to show that those votes could not properly be counted because the returns behind them had not been counted and certified by anybody authorized. Let me turn over and read what was said of the votes cast for the opposing electors:

The election of the Grant electors is certified by the Lynch returning board, but that board did not have the official returns before them, and their election is not certified by the governor of the State as required by the act of Congress.

Under that resolution, passed without dissent, answered by the committee, the two Houses when the day arrived proceeded to dispose of the electoral certificate of Louisiana.

Coming to a more recent period we had reported from the Commit-tee on Privileges and Elections a bill to which reference has several times been made. I refer to it in part to call attention to the fact that only three republican members of this body voted against it, the Senator from Vermont [Mr. Edmunds] the Senator from Wisconsin whosits before me [Mr. Howe] and myself. What was it? A bill which would have deposited with the House of Representatives absolutely the decision of the late election, a bill which passed this body twice, which at the end of the last session was arrested only by a motion to reconsider made by a democratic Senator, but for which motion it reconsider made by a democratic Senator, but for which motion it would be necessary now only for the House to take up the bill and under the previous question pass it—the call of the yeas and nays requires forty minutes. Like Shakespeare's fairy, the House could "put a girdle round about the earth in forty minutes." Unless the President of the United States could find in the Constitution some reason for a veto, the die of this presidential election would be cast in an hour—it would have been cast e'er now.

Under the bill, the express consent of both Houses was given in advance that one House alone, without exami-

uncer the one House alone, without cause assigned, without examination, without anything but its ipse dixit, might say the vote of a State should not be counted, provided only there were conflicting certificates. There are now conflicting certificates from four States, and on these States the result depends. It has been said that this last year's bill was more guarded than the bill on our table touching the recognition it gave to conflicting certificates, or papers purporting to be certificates. I read the second section:

be certificates. I read the second section:

That if more than one return shall be received by the President of the Senate from a State, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, all such returns shall be opened by him in the presence of the two Houses when assembled to count the votes; and that return from such State and that only shall be counted which the two Houses acting separately shall decide to be the true and valid return.

Whoever will go to the Secretary's table will find the words "and that only" introduced with the pen after the types had done their work, so as to clinch beyond peradventure the certainty that when from any State certificates, returns, or papers purporting to be certificates, con-

flict, no certificate shall be counted unless both Houses concur affirmatively in asserting that one certificate shall be received, and then that, and that only, shall be counted. The Senator from Indiana observed the other day that there was nothing in the bill now referred to authe other day that there was nothing in the one hold we reterred to authorizing anybody to go behind the electoral certificates, and that it was therefore safer than the bill before us. Mr. President, there can be but one true electoral certificate from a State unless they are duplicates. There can be but one; there cannot be two. One is genuine and one is counterfeit.

I read again from last year's bill:

And that return from such State and that only shall be counted which the two
ouses acting separately shall decide to be—

What?

The true and valid return.

It is said that when Adam and Eve came from Paradise, the world was before them, and where to choose. They can have been no freer than each House would have been under that bill: unbridled, unrestricted jurisdiction is there: no metes or bounds: each House may go at large into the illimitable domain of discretion, caprice, or power. If a majority, a bare majority, of one in either House said no, that was to be the end of all consideration or controversy in respect of the vote of a State. The bill gave to one House that power which the pending bill gives to no House, that power which the committee assert for both Houses, to be exercised only when a provisional examination made by both through its trusted members, and made also by five members of the judiciary, has been fully made, and the reasons and facts given, and then retaining to the last in the two Houses the

and facts given, and then retaining to the last in the two Houses the power to say whether that finding and report shall be effectual or not. We have been told this morning that the measure before the Senate is a surrender of the rights of the republican party. I should abhor it if it were a surrender of the rights of anybody, and especially of that great party which in war and in peace has for sixteen years conducted with marvelous success the affairs of the nation. Why is it a surrender and a surrender renugnant to those who only girlt months. surrender, and a surrender repugnant to those who only eight months ago were bent upon a measure which now would leave us without the ghost of a hope that the election may be declared in our favor? Why, it is a surrender because it guards the vote of every State against rejection, until both Houses, by a common tribunal, the fairest, the most learned, the most fit, the most impartial that ingenuity can invent, have investigated and found the law and the facts, and, in the light of day, with a full statement of the reasons to be spread before the world, have come to a deliberate judgment that the Constitution forbids the vote to be received. This is branded as a surrender by those who lately insisted that one House alone, in unbridled caprice, and with no statement of reasons required, might exclude a State by merely saying the vote shall not be counted. I am willing to let these two surrenders stand side by side, while the nation compares them with each other.

But, Mr. President, more recently than 1873 we have illustrations of the judgment of the two Houses of Congress touching the residence and possession of the power to ascertain and inquire into electoral votes. We have had committees sitting for weeks in the delta of the Father of Waters, and on the Atlantic coast, and a committee sitting here playing like a swivel-gun in all directions and at longer range. All this has happened during the present session. Let me read to the Senate what the Senate said in sending forth these investigating committees:

That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors; and whether the appointment of electors or those claiming to be such in any of the States—

Now observe-

has been made-

The appointment of electors has been made-

declared or returned, either by force, fraud, or other means, otherwise than in conformity with the Constitution and laws of the United States, and the laws of the respective States; and whether any such appointment or action of any such elector has been in any wise unconstitutionally or unlawfully interfered with.

This language authorizes a search of the polls in voting-precincts. No inquiry can go further, and in fact the committees have been holding inquest on the registration and casting of votes, and the appliances employed to carry the elections, in several States.

For what is such inquiry? If the two Houses have nothing to do with the result, or with ascertaining whether electors were appointed, if there is nothing to be done in regard to the authenticity of the electoral carriforate if all votes the

if there is nothing to be done in regard to the authenticity of the electoral certificates, if all votes the presiding officer has received, good, bad and indifferent, irrespective of quality, are to be counted, as you would count the chairs in this Chamber, why is all this?

I come now to speak of some and only of some of those who have expressed opinions on this subject, and who have expressed opinions not only authorizing the enactment of a law, but opinions irreconcilably repugnant to the idea that the presiding officer of the Senate in any contingency can lawfully exert the power in question. James Madison, Thomas Jefferson, Samuel Dexter of Massachusetts, Samuel Livermore, of New Hampshire,—he was President of the Senate; he was the colleague of John Langdon, the first President of the Senate, John

Marshall, and I may add the whole Congress of 1800, Martin Van Buren, Daniel Webster, Thomas H. Benton, Stephen A. Douglas, Jacob M. Howard, Jacob Collamer, Abraham Lincoln, John J. Crittenden, Lewis Cass, Humphrey Marshall, Thaddeus Stevens, Henry Winter Davis, John Bell, and many others whose names I will not read. I will rather read the words of one whose name I did not read, but whose name, whether it be the Mill-boy of the Slashes or Harry of the West, will long kindle enthusiasm wherever in our land it is heard. seen in newspapers that Mr. Clay concurred in the power of the President of the Senate to determine the count of electoral votes. In 1821 Mr. Clay, as chairman of a committee, having reported a resolution which would have been absurd upon such a supposition, a resolution which stood in sharp clear denial of the power of the presiding officer,

The Constitution required of the two Houses to assemble and perform the highest duty that could devolve on a public body—to ascertain who had been elected by the people to administer their national concerns. In a case of votes coming forward which could not be counted, the Constitution was silent; but, fortunately, the end in that case carried with it the means. The two Houses were called on to enumerate the votes for President and Vice-President; of course they were called on to decide what are votes.

Of course says Mr. Clay, the two Houses are called upon to decide what are the votes.

It being obvious that a difficulty would arise in the joint meeting concerning the votes of Missouri, some gentlemen thinking they ought to be counted and others dissenting from that opinion, the committee thought it best to prevent all difficulty by waiving the question in the manner proposed, knowing that it could not affect the result of the election.

Again:

Mr. Clay would merely observe that the difficulty is before us; that we must decide it when the Houses meet, or avoid it by some previous arrangement. The committee being morally certain that the question would arise on the votes in joint meeting, thought it best to give it the go-by in this way.

Now observe Mr. President here is the passage that has been quoted as meaning something else.

Suppose this resolution not adopted, the President of the Senate will proceed to open and count the votes; and would the House allow that officer, simply and alone, thus virtually to decide the question of the legality of the votes? If not, how then were they to proceed? Was it to be settled by the decision of the two Houses conjointly or of the Houses separately? One House would say the votes ought to be counted, the other that they ought not; and then the votes would be lost altogether.

This is strange language for a master of statement, if he meant that the power to decide upon the validity of votes lay with the presiding

Not meaning to refer by name to living men, I may schedule among the authorities all those who voted for the twenty-second joint rule in either House, all who acted under it; especially all who voted for the bill reported by the Committee on Privileges and Elections which passed this body a few months ago, and also those who voted for the resolution under which committees are now proceeding to inquire. Did any Senator of republican faith vote against that resolution?

Mr. President, what is the answer to this broad, deep, irresistible stream of historic precept and example? It was given by the honorable Senator from Indiana. He said: if nothing is done, a condition of affairs will exist in which the President of the Senate, to

revent a dead-lock, must act from necessity.

The honorable Senator from Indiana has broached that doctrine before. Here it is in a report made by him on the 1st of June, 1874, a report which I infer in an unusual sense was the expression of his individual views. I observe in it these words:

So powerful have been these obligations that  ${\bf I}$  believe scarce an instance is known where electors have violated these pledges.

The use of the personal pronoun there, seems to make this a personal and individual declaration, as well as a grave report from a committee. I read from it this paragraph. It cannot have been a loose opinion; chairmen of committees in the Senate do not, in writing, report loose opinions.

Clearly-

Says the author of this report-

Clearly the framers of the Constitution did not contemplate that the President of the Senate, in opening and counting the vote for President and Vice-President, should exercise any discretionary or judicial power in determining between the votes of two sets of electors, or upon the sufficiency or validity of the record of the votes of the electors in any State; but that he should perform a merely ministerial act, of which the two Houses were to be witnesses and to make record. But the exercise of these high powers may devolve upon him ex necessitate res.

Supplemented by the intimation made by the Senator during this

Supplemented by the initiation made by the Senator during this debate, we may all see what this means.

We, by refusing to make provision, are to create a necessity, and that necessity is to create a power and create a man to wield it.

The honorable Senator stigmatized the bill now before the Senate as "a contrivance." He might well have applied such a term to his own scheme of necessity. If ever there was a contrivance, if ever there was a political Hell Gate paved and honeycombed with dynamite there it is

Is a necessity, purposely created, to beget a power which "clearly the framers of the Constitution did not contemplate?" Is a contrived state of affairs to enthrone in this land a governing instrumentality which the Constitution does not sanction?

Is the pending bill to be defeated in order to bring on this neces-

sity?
Mr. MORTON. Will the Senator finish the reading of the sentence? He left off reading one of my sentences.

Mr. CONKLING. I shall read the whole paragraph. The Scripture says "a contented mind is great riches," and although I know how hard it is for the Senator from Indiana to listen to a dull speech, if he will possess his soul in patience he will hear read the whole paragraph. Let me first be sure to make plain so much as I have read. The argument, but little concealed the other day, was that the pending bill should be defeated, and this would bring on a necessity, which necessity would open the way to an exercise of power, in the language of the author of this report, clearly not contemplated by the framers of the Constitution. Mr. President "necessity knows no law." Who is to decide whether he is called and chosen by necessity to be the master of an opportunity?

Necessity: that arch fiend and foe of government, that prolific mother, and apology of anarchy, revolution, despotism, and fraud, ever since human government began. The pretensions of necessity have age after age affrighted humanity, trampled on right, gendered

wars, and swept realms and rulers

Through caverns measureless to man, Down to a sunless sea.

Let not the representatives of American States, in this century year, connive at bringing about a necessity, they know not what, fraught with consequences they cannot order or foresee. Suppose the Speaker of the House says he is the man of destiny, that necessity has created him to untie this tangled problem. Suppose the House says it from necessity is to be the Deus ex machina, borrowing a phrase from the Senator from California; suppose any man or any power chooses to deem himself or itself invoked by necessity, where are the limits of such a theory? Let me read from this same report a view of some of the consequences of this so-called necessity.

the consequences of this so-called necessity.

There is imminent danger of revolution to the nation whenever the result of a presidential election is to be determined by the vote of a State in which the choice of electors has been irregular or is alleged to have been carried by fraud or violence, and where there is no method of having these questions examined and settled in advance—where the choice of President depends upon the election in a State which has been publicly characterized by fraud or violence, and in which one party is alleged to have triumphed and secured the certificates of election by chicanery or the fraudulent interposition of courts. Such a President would in advance be shorn of his moral power and authority in his office, would be looked upon as a usurper, and the consequences that would result from such a state of things no man can predict.

Mr. President visits a because I weeks at varyer gaves which he law

Mr. President, it is because I mean, at every stage which the law and the facts shall justify, to maintain that the republican nominee has been chosen Chief Magistrate of the nation; it is because I believe him to be a patriot and incapable of wishing injury or disparagement to his country, that I would have his title so clear that it can never be challenged with a pretext for believing that he, and they who supported him, meant to clutch usurped power, or dared not submit to a fair and constitutional examination the truth of the elec-

Now I will read the climax of the paragraph of the report, which the Senator from Indiana wishes the Senate to hear:

But the exercise of these high power

The power to judge and decide between conflicting certificates, and to determine the result-

But the exercise of these high powers may devolve upon him ex necessitate rei, and whatever decision he may make between the two sets of electors or upon the sufficiency and validity of the record of the votes—whether on the evidence of the right of the electors to cast votes, or whether they have been cast in the manner prescribed by the Constitution—his decision is final.

And all this ex necessitate rei, although the framers of the Constitution meant, and meant "clearly," that he should never exert any such functions at all. This bastard child of destiny, born in the throes of an exigency specially arranged by the refusal of Congress to legislate, rising above the Constitution is to decide, and when he has decided, from the rising of the sun even to the going down of the same, there shall not be one man who does not bow mutely and reverently to his decision.

Again I say it is not for representatives of a patriotic party of law and order, in the presence of the events before which we stand, to refuse by law to constitute a peaceful, certain impartial mode under the Constitution, and above it, of ascertaining the true result of the

How shall this be done? Senators say that to ascertain the result of the election, is the attribute and duty of the two Houses. If that be the law, this bill does not overpass the law.

The pending measure has been called a compromise. If it be a

compromise, a compromise of truth, of law, of right, I am against it. My life has taught me not to contrive compromises but to settle issues. Every compromise of principle, is a make-shift and a snare. It never stood; it never deserved to stand. It is the coward's expedient never stood; it never deserved to stand. It is the coward's expedient to adjourn to another day, a controversy easy to govern in the fountain, but hard to struggle against in the stream. If this bill be such a compromise, I am against it. But I deny that it is a compromise, I deny that it compromises anything; and, above all, that it compromises right, principle, or the Constitution. To contest a claim, is not to compromise it. To insist upon the right, and submit it to an honest, fair scrutiny and determination, is not to compromise it. A presidential election has occurred. Unless there is a tic or a failure, somebody has been chosen. To ascertain and establish the fact, is not a compromise. To reveal and establish the truth of a thing already past and fixed, is as far from a compromise as the east is from the west.

Above all, Mr. President, this is not a compromise of the position of those who hold that the two Houses as such, are bound to count the votes; and there I address a Senator who differs from me in political belief, and who opposes this bill, as do others of his faith, because he holds that the Constitution commands the two Houses to count the votes. I say the bill is no compromise by those who entertain this view. The two Houses consist of four hundred members. Four hundred men cannot each handle and scrutinize, and examine and tabulate, all the contents, true and false, of these electoral certificates. They might act by tellers. What are tellers? The eyes, the ears, the hands, the faculties of the two Houses: that is all—the proxies of the two Houses, as one may be the proxy of stockholders in a corporation. Four hundred men cannot do the mechanical or actual office of counting. They may depute two men from each House to do it; they may appoint a committee to do it. That is what our fathers proposed; they called it a grand committee. There is no harm in my saying that in committee wished this tribunal to be called a committee: but names alter nothing. It is a committee in legal force and effect. It represents the two Houses, as tellers would represent them—no less a committee because five members of the highest judicial tribunal are part of it. Is the silver commission, at the head of which stands my distinguished friend from Nevada [Mr. JONES] less a commission of the two Houses because experts, three in number, not members of either House, belong to it? Suppose the Constitution made it the duty of Congress to observe the position of Jupiter, and a committee was appointed, of which the honorable Senator from Connecticut [Mr. EATON] ought to be one. Suppose on that committee was placed Professor Henry, to guard the Senator from Connecticut against observing Venus in place of Jupiter, [laughter,] would the committee or its character be destroyed by the presence of Professor Henry, not a member of either House? Recently a commission of the two Houses has been constituted in the commission of the second of the commission are distinguished. tuted to re-organize the Army, and on that commission are distinguished men not members of either House. Is it a void commission for that reason? If the General of the Army is on this Army commission, would any man like to go into history with it known of him that he supposed that in fact or in law the commission was impaired, or that it was not strengthened and dignified, by putting upon it the most instructed men, although they were not members of either

The honorable Senator from Ohio says the bill creates offices, and that the judges of the Supreme Court ought to be confirmed by the Senate. If their functions were such as he ascribed to them, I think they should at least be confirmed. He says they are "to make a President." Inasmuch as the Constitution has provided that the States and people are to do that, and has refused to allow either House to do and people are to do that, and has reduced to anow either House to do
it in the first instance, I quite concur with the Senator that they who
are to make a President, ought at least to be confirmed.

Mr. SHERMAN. If I do not interrupt my friend—
Mr. CONKLING. Not at all.

Mr. SHERMAN. I will mention to him the difference between what

is called the silver commission and the Army commission and this commission to make a President. When the silver commission report,

commission to make a President. When the silver commission report, their action is of no validity and either House may disregard it, and so with the report of the Army commission; but when this commission to make a President reports, it requires the affirmative action of both Houses consenting thereto to undo their work.

Mr. CONKLING. Mr. President, it often happens that when one is attempting a speech, particularly a poor speech, some Senator who interrupts him anticipates something important to another branch of the argument. When the Legislature of New York repealed the rule in Shelley's case, somebody asked Chancellor Kent why he did not strike out the chapter in his Commentaries relating to that subject? The Chancellor replied "Why, that is one of the most admired parts of the work; how could I strike it out?" And here comes the Senator from Ohio now, and is about to spoil one of the best of my points not yet reached. [Mr. Sherman rose.] I hope he will not do so.

Mr. SHERMAN. I will withdraw my interruption, then

Mr. SHERMAN. I will withdraw my interruption, then.
Mr. CONKLING. That is right. I hope my honorable friend will
forbear, because I have a definite theory on his point. I will not
take my seat without disputing his suggestion, and trying to confute
a theory, fallacious it seems to me, and put forth now for the third

The honorable Senator from Ohio thought that these judges of the Supreme Court should be confirmed by the Senate in order to act on this commission. The Senator from New Hampshire [Mr. CRAGIN] behind me, ejaculates from his seat that "they have been once," and the remark seems to me seasonable and pertinent. They have once, on the nomination of the President and by the action of the Senate been certified; or as Mr. Benton would have said "certificated" as men selected from the whole nation for their fitness to weigh evidence, and to examine and ascertain questions of law. anointed with the public confidence. But the suggestion of the Senator from Ohio is that this bill establishes offices. I say that it merely appoints a commission. From time immemorial in England, from time whereof the memory of man runneth not to the contrary, parliamentary committees and commissions have been established composed not only of members but of present the contrary. not only of members, but of persons not members of either They are not officers in the sense intended by the Senator. Again, was it ever heard that Congress cannot impose upon na-

tional officers additional duties? Is there any officer in the Government on whom Congress may not impose additional duties? I know the Supreme Court said, in the case of Prigg vs. The Commonwealth of Pennsylvania, that justices of the peace, being State officers, were not bound under the fugitive-slave act of 1793 to act as commissioners, but, said the court, if they choose to act it is entirely competent; not being national officers, however, Congress cannot compel them to act.

But what said the first pension law ever passed? It undertook to make the judges of the Federal courts commissioners. By a somewhat bungling phrase it spoke of "the court" and not the judges, and men queried whether under that language, denoting the court, there might not be doubt. But did anybody ever deny that Congress had power to make the judges of the Federal courts commissioners of pensions † I think it never was denied. Does the honorable Senator from Ohio doubt that Congress has power to employ a judge, whether of the court of Alabama claims, or Supreme Court, or any other court, to settle a doubtful boundary, or to exert any other faculty essential

to the public welfare?

I submit to the honorable Senator from Ohio in answer to his last objection, that the two Houses, from beginning to end, make this examination. They agree beforehand to make it in a particular way, to make it by a committee. That committee incarnates the two Houses; it is in law the two Houses. By action beforehand, both Houses agree not to be finally bound by what the commission shall do; but agree not to be finally bound by what the commission shall do; but they agree to the mode in which the examination shall be made. What is the mode? That the commission shall decide only provis-ionally; only conditionally. The two Houses retain the whole thing to the end absolutely in their own hands. A Senator said yesterday, and it has been repeated to-day, that if the two Houses were both required to approve by affirmative votes what the commission does, it would then be not a delegation of power—a devolution of the power of the Houses, but a retention and exercise of power by the Houses themselves.

Mr. President I deny this distinction. The power is neither more or less retained in the hands of the Houses, whether they approve the finding of the commission affirmatively, or by refusing to negative the finding. The bill provides that the examination being made by the finding. The bill provides that the examination being made by the Representatives of the two Houses, by those who constitute the eyes and ears and hands and faculties of the two Houses, and that action reported provisionally, it shall be deemed the action of the two Houses unless they disapprove it. The Supreme Court of the United States, when eight judges sit, and a decree or judgment comes up from a court below, by a foreordained rule provide that if four judges are for the decree and four against it, the decree is affirmed; it becomes the judgment of the court, nay, it virtually becomes in that case the unanimous judgment of the court. Why? Because the court, unanimously in advance has ordered and agreed that such a division of mously in advance, has ordered and agreed that such a division oc-curring, the judgment reviewed shall be affirmed. This is the rule of courts in general. A decision or finding coming before a court for reversal or affirmance, is affirmed unless a majority agree to reverse it. The honorable Senator from Indiana moves away. [Mr. Conk-LING while speaking had advanced toward Mr. Morton's desk, just mr. MORTON.

I retreated as far as I could. [Moves away.] Mr. MORTON. I retreated as far as I could. [Moves away.]
Mr. CONKLING. Mr. President, the honorable Senator observes
that he has retreated as far as he could. That is the command laid
on him by the common law. He is bound to retreat to the wall, before turning and rending an adversary; and as he has retreated as far
as he could, I will repay his coyness with a reminiscence. A few months
ago it was proposed in the Senate to import the Chief-Justice of the
Supreme Court into the proceeding of counting electoral votes and Supreme Court into the proceeding of counting electoral votes, and of him, and the presiding officers of the two bodies, to constitute a triumvirate which should be the umpire to cast the die between the two Houses when they differed about the count. The honorable Senator

from Indiana voted on call of the yeas and nays for that proposition, no constitutional doubt restraining him. Does he shake his head?

Mr. MORTON. I will satisfy you on that point.

Mr. CONKLING. The Senator promises to satisfy me. He seemed to shake his head. I was about to hold up the record, to hold the mirror up to nature, and satisfy him that the chairman of the Committee on Privileges and Elections did sanction with his great weight to the content of the conte and authority the right of the law-making power to snatch the Chief-Justice from his judgment-seat and bring him here, and make him one of a trinity which should arbitrate between the two Houses and conclude both by the vote he should give.

conclude both by the vote he should give.

Returning now to the point, I repeat, Mr. President, that when a court of first instance is constituted to inquire, to hear, and report to the two Houses, and it is left with the Houses to reverse or to refuse to reverse the finding, the tribunal is provisional, and the ultimate adjudication is reserved in the two Houses; and I submit to the Senator from Ohio that, speaking in the spirit of law, it makes not the slightest difference whether the provision is that the approval of the acts of the commission shall be by affirmative action, or by withholding affirmative action. I speak in the presence of trained lawyers, and yet I speak in the presence of no lawyer who on reflection will challenge the position.

Mr. President, had I discussed, as I have not done, clearly and fully, my views in regard to this subject, I should feel better authorized to

my views in regard to this subject, I should feel better authorized to inquire how shall the two Houses exercise the power and the duty

resting on them? We cannot summon the stars; we cannot command gods or angels. We must have recourse to men. We have provided that each House shall select its most trusted members. We have provided that added to these, shall be five judges of the highest court, five "sacred judges" the Senator from Ohio called them. Why "sacred?" Because they administer justice. What is the ancient and modern symbol of institue? A stary figure with blinded ever "sacred?" Because they administer justice. What is the ancient and modern symbol of justice? A stony figure with blinded eyes, with an arm unmoved by a throb of feeling, holding unshaken the even scales. Because these judges are so typified, the Senator from Ohio says they are "sacred judges." Then they can be trusted. Is the proposed duty beneath them? They never sat in a greater or a graver cause. John Jay, when Chief-Justice, crossed the sea to negotiate a treaty, not so great by far as that covenant of law and peace and right which these judges are to establish. Judge Nelson sat in a commission whose duty and privilege it was to hold up before the world the attainments of America in dignity and reason, by showing that the nation was strong enough and proud enough to withdraw from the forum of brute force and passion a great question, and submit it to legally constituted authority. One of the grandest empemit it to legally constituted authority. One of the grandest empemit it to legally constituted authority. One of the grandest emperors on earth acted as umpire in the same proceeding, and the fifteen millions obtained by the decision, was valueless compared with the tranquillity and composure of our land for a single day—paltry indeed, by the side of the inestimable advantage of proving by actual experiment that no emergency is so great that forty-five million freemen cannot meet it calmly and safely under the free institutions they cherish. If "he who ruleth his own spirit be greater than he who taketh a city," what shall be said of the grandeur of millions who by an act as quiet as the wave of a wand can calm the commotions of a an act as quiet as the wave of a wand can calm the commotions of a

Continent in an hour?

No jot or tittle of authority not reposed by the Constitution in the two Houses of Congress, acting separately or together, is broached in prescribing the jurisdiction of this commission. Familiarly in ancient and in recent times, deputing one to do an act for another, the customary phrase is "with like force and effect as if I myself did it." That in substance is the behest of this bill, with like force and effect by you who represent the two Houses for these purposes, as if the two Houses and every member were present, as the two houses of Parliament were in law present always when a full and free con-ference was held. The bill utters the voice of the Houses thus: To you the chosen deputies of the two Houses who on honor and on oath represent them in this investigation, we say that you are authorized to do exactly that which the two Houses, acting separately or together, themselves might do. Take the Constitution for your chart and guide. Whateveritand the now existing law commands, that do: thus guide. Whatever it and the now existing law commands, that do: thus far and no farther. You stand in lawyer's phrase in statu quo. Abstain from everything from which those who constituted you ought to abstain, do nothing except to deal with that which lies within the domain of constitutional duty, and report to us who repose special trust and confidence in you, all the reasons that move you, all the

onclusions to which you come.

I have heard it suggested that something in this bill implies, that going behind the faculties of the States, going behind the lawful exercise of that power which the Constitution reposes in the States, and wherewith the Constitution crowns them, this commission may inquire

wherewith the Constitution crowns them, this commission may inquire at large, by canvassing the votes cast in parishes or even precincts, by going into the question whether those who voted were all that should have voted, whether they voted as they wished to vote—in short that the commission may become a national "returning board." The law has this ancient maxim—"that is certain which can be rendered certain." We say in this bill, "take the Constitution as it stands; that is your guide; there you will find the boundaries of your power; you shall not overpass them; execute the Constitution, and stop."

But says one Senator why does not the bill specify all the things these men are to do. To ask the question is to suggest unnumbered answers. Answers spring up as the army of Roderick Dhu sprang from the heather, when a whistle garrisoned a glen. In the first place, there is an irreconcilable difference of opinion as to the nature and extent of the power of the two Houses, or either, to pry into or penetrate the act of the States. In the next place, were all agreed, it would be impossible in a bill to embody a treatise or commentary which should provide for every contingency or possibility. It was Dean Swift who made a written schedule for his attendant of all the things he was to do; each and several his duties were set down; but on a Sunday Dean Swift fell into a ditch and called for assistance, but the

would approve in advance, although a possibility in theory, would

be impossible in reality.

be impossible in reality.

The Senator from Massachusetts [Mr. Dawes] in a tone which few beyond me hear, inquires whether I mean that they have no limit in this bill. Mr. President I had supposed that the Constitution had raised not only a hedge and fence, but a wall of limit to the powers it confers. I supposed that when five of the most largely instructed and trusted members of the Senate, and five of the most largely instructed and trusted members of the House, were authorized to meet five judges of the highest and most largely instructed judicial tribulal of the land, we might trust to them to settle what a court of over and of the land, we might trust to them to settle what a court of over and terminer settles whenever it is called upon to determine whether it has jurisdiction to try an indictment for homicide or not. I supposed that giving it the instrument by which its jurisdiction is to be measured, we could trust this provisional tribunal of selected men to run the boundary and fix the line marking their jurisdiction, and to blaze the trees. I hear a voice ask "Where they please?" This cannot have been the voice of the Senator from Massachusetts. That Senator is a lawyer, and he knows that judges cannot lawfully do anything be-

a lawyer, and he knows that judges cannot lawfully do anything because they please. They must stop where the law stops.

I have repeatedly insisted that the Constitution and the existing law, is the boundary; and I believe the act of 1792 is the only statute applicable. No I am wrong, the act of 1845, touching the choice of presidential electors, may also have a bearing. Inasmuch as the Constitution, the law, and the acts of Congress of which I think there are but two, prescribe the power, inasmuch as we make the existing law the guide-board, inasmuch as we command and conjure the commission to according to the Constitution and to keep within its limits. sion to go according to the Constitution and to keep within its limits, I

supposed it could not be a roving commission to traverse at large the realms of fact, superstition, and fiction.

Mr. DAWES. Mr. President, will it interrupt the Senator if I say word?

Mr. CONKLING. Not at all.

Mr. DAWES. I hear the Senator state distinctly that this commission is to be bound by the Constitution; but I hear him state just as distinctly that in his opinion this commission, being bound by the Constitution, could not invade what I deem to be the prerogatives of the States to settle the title of their own electors. If I could hear him and all of the members of that committee make the same clear and unequivocal assertion I should be greatly comforted. My discontent apprehension arise from the fact that while I hear him make this and apprehension arise from the fact that while I hear him make this equally unequivocal expression of his own opinion of what the boundary is I hear others with equal distinctness and clearness and positiveness say that though they also believe this commission to be bound by the Constitution they believe the Constitution authorizes them to go into and settle questions which in my mind belong exclusively to the States to settle. That is what troubles me, and the Senator will pardon me for interrupting him in the way I have in order to get as distinctly as I could from the members of this committee, not only what I knew before every one of them would say, that the commission I knew before every one of them would say, that the commission would have to limit the exercise of their power by the Constitution, but, inasmuch as one member of this committee believes the Constitution will stop them at one point and another member of the committee believes it will not, I suggest to the Senator would it not be safer for us by a statute to limit them? Then we shall know where the boundary is.
Mr. CONKLING.

The boundary of this power is not only one of the bones of contention, but the very marrow of it. If there were no doubt in that regard, we should need no bill. If the two Houses, and the members of the two Houses, were clear and concurrent in their views, we should need no commission. It is because of an irreconcilviews, we should need no commission. It is because of an irreconcilable conflict of opinion that we propose to execute the Constitution in this way; and if I have not so said before, I want now to say that in my opinion it is not only a competent execution of the Constitution, but one substantial, effectual, and compliant with its spirit strictly. But the Senator from Massachusetts says he has heard the Senator from New York say something and the Senator from somewhere else say something; may I remind my honorable friend that what I may say in this regard, or even what he may say, is only a puff of air. The commission is to say on the oaths of its members and subject to our review what by the Constitution is committed to it. If the Senator review what by the Constitution is committed to it. If the Senator from Massachusetts shall be of this commission, what he might think, or if I were to be of it what I might think would then be of great moment. I submit to him it is anise and cumin, and not of the weightier matters of the law, to consider what may be thought by this Senator or that Senator of the range and province within which this commission may move. They must ascertain for themselves. If the question in the State of New York is whether the court of oyer and Sunday Dean Swift fell into a ditch and called for assistance, but the attendant produced his schedule and said he found nothing there which required him to help anybody out of a ditch on Sunday. It was supposed by the committee, as the sense of its members was only finite, and very finite, that when they called, in addition to five picked men of each House, five experts in the law, men who had been selected from the great body of the nation for their training and adaptation to exploring legal distinctions and ascertaining legal truth, it was hardly worth while to attempt to accompany this trust of provisional authority with a minute bill of particulars of all the things which might have been possible, by restraint and exclusion, to put feters on these fifteen members. Every Senator who hears me knows that any attempt to run the exact boundaries of the power to admit evidence, any attempt by the concurrent action of the two Houses to agree upon a universal solvent, to come to that exact unit of accuracy in defining jurisdiction and pertinence of evidence which all decision. On the contrary suppose they say "we will go behind the certificate, we will go behind the certificate in Louisiana, not to inquire about the weight of evidence, not to find out whether the returning board found rightly or wrongly, not even to inquire whether they found honestly or corruptly, but we will go behind the certificates merely to inquire as a jurisdictional question whether the returning board of Louisiana had before it, and was authorized to act upon, the evidence of the popular will." They so report, and the honorable Senator from Massachusetts, having one vote, and a potent voice, will pass upon the report. On the contrary suppose they say they have a right to go a little further than that, and to ascertain whether the returning board of Louisiana or the governor of Oregon was moved by corrupt motive. Suppose they hold that they may search even so far, and condemn what has been done in Oregon because greed or corruption moved the hand that held the pen when the certificate was written. Upon such a ruling, the Senator from Masscause greed or corruption moved the hand that held the pen when the certificate was written. Upon such a ruling, the Senator from Massachusetts sitting as a member of the court of review, is to pass, on his oath and on his responsibility as a representative of a State.

Mr. DAWES. I am sincerely anxious to understand the whole scope of this bill, and if I understand the Senator aright now he states that there was in this committee an irreconcilable difference as to how

Mr. CONKLING. The Senator must pardon me there. I did not so state. I spoke of nothing in the committee: I spoke at large, saying that there is an irreconcilable difference of opinion. I avoided saying

anything about the committee.

Mr. DAWES. I think the Senator is right. The Senator has corrected me properly. The Senator says the committee recognized an irreconcilable difference upon how far the Constitution will permit this commission to go into an investigation of matters that belong to the States. To meet that irreconcilable difference, as I understand him to say, they propose in the bill to take the construction of the Constitution from this commission.

Mr. CONKLING. Mr. President, the Senator from Massachusetts is too astute not to know, too alert to forget, that he who in advance can exactly fix and measure the limits and application of constitutional authority, holds in his hands the horoscope in which may be read with some distinctness the final issue of the whole matter. It was the purpose and the laborious effort of the committee, to establish provisional tribunal from which should some with impact of the committee. a provisional tribunal, from which should come, with impartiality as great as could be obtained by the instrumentalities of humanity, a result conforming to law and to the facts, a result resting neither on the wishes of the Senator from Massachusetts nor on the wishes of the most pronounced opposing partisan, but resting on the Constitution and the law as they were on that day in December—I believe it was the 6th,—when the electors in all the States cast their votes.

The sole object was to devise an instrumentality to reveal and establish, historically and constitutionally, the truth and fact of a past transaction. For us to undertake in advance to say definitely and in detail, what this commission should decide, was to abandon the attempt to present a measure which would command the approval of the fourteen members of the two select committees, and afterward of the Senate and the House with their four hundred members, and at last of that great constituency which stands behind us all. We held that a tribunal fit to be intrusted even provisionally with passing upon any part of this controversy, was fit to be intrusted with judging of their own powers after we had delivered into their hands, as their chart and compass, the Constitution and law of the United States, and told them to stand to and abide by that in every contingency.

If the honorable Senator from Massachusetts proposes to launch on the heady currents of debate in these Houses, the question what at every step would be correct in the proceedings of the commission, I say to him he proposes to set sail on a soundless and shoreless sea; the 4th of March, 1877, the 4th of March, 1878, would not see the end of a debate attempting to predict the solution of inquiries so intricate, varied, and entangled. We left the commission, as the law of Massachusetts leaves to the lowest court which in the first instance tries a man on a charge involving his life or his liberty, to determine whether it has power to entertain indictments for offenses such as that. We left it as the law leaves the most menial civil tribunal to determine whether, and how far it has power to entertain a controversy, the most insignificant, arising between one man and another, whether one owes the other money or not. The Senator in a subdued voice now suggests the other money or not. The Senator in a subdued voice now suggests the accuracy with which the jurisdiction of courts is asserted in the State of Massachusetts and he bids me make this as accurate as things are made in the State of Massachusetts. Mr. President, the sentiment of despair is the only sentiment produced by such an appeal. The idea of the representatives of all the States making anything as exact as things are made in the State of Massachusetts! [Langhter.] The Senator says that I stated we have done as is done in Massachusetts. I did not mean that. It was the Queen of Sheba who said that she never realized the glory of Solemon until she entered the inner tem-I did not mean that. It was the Queen of Sheba who said that she never realized the glory of Solomon until she entered the inner temple. The idea that the representatives of other States could breathe the upper air, or tread the milky-way, never entered into the wildest and most presumptuous flight of imagination. O no, Mr. President. Whenever the thirty-seven other States attain to the stature of the grand old Commonwealth, the time will come when no problem remains to be solved, and when even contested presidential votes will count themselves. [Laughter.] Then in every sphere and orbit everything will move harmoniously, by undeviating and automatic process.

Mr. President, I owe an apology to the Senate, and I make it feelingly, for the time occupied in this discussion.

I signed this report. I will vote for the pending bill; vote for it, denying that it is a compromise, believing that it is no compromise, believing that it surrenders the rights of none, and maintains the rights of all. It seems to me fair and just. Adopted, it composes the country in an hour. The mists which have gathered in our land will be quickly dispelled; business will no longer falter before uncertainty or apprehension. If thoughts of anarchy or disorder, or a disputed chief magistracy, have taken root, the passage of the bill will eradicate them at once. The measure will be a herald of order and calmness, from sea to sea: it will once again proclaim to the world that America is great enough, and wise enough, to do all things decently and in order. It may be denounced by partisans on the one side and on the other; it may be derided by the adventurous and the thoughtless; it may be treated with courageous gaiety, as it has been by the honorable Senator from Pennsylvania; it may not be presently approved by all the thoughtful and the patriotic. Still I will vote for it, because I believe it executes the Constitution, and because I believe it for the lasting advantage of all the people and of all the believe it for the lasting advantage of all the people and of all the States, including that great State whose interests and whose honor are so dear to me. It may be condemned now, but time at whose great altar all passion, and error, and prejudice at last must bow, will test it, and I believe will vindicate it. Those who vote for it can wait.

Yes, they can wait. Senators: in a matter of duty so exalted, we may "place our bark on the highest promontory of the beach, and wait for the rising of the tide to make it float."

Mr. MORTON. I do not rise, Mr. President, for the purpose of making a speech. I hope, before this debate closes, to have an opportunity of answering some things that have been said, to show that much that has been said is without foundation in logic, is without foundation in fact. But my purpose in asking the floor is to notice a dispatch which the Senator from New York thought proper to read a dispatch handed to him by the Senator from Vermont from the —a dispatch, handed to him by the Senator from Vermont, from the city of Indianapolis, signed by some thirty-seven or thirty-eight persons, all of whom, it was said, were republicans but three, this dissons, all of whom, it was said, were republicans but three, this dispatch indorsing this bill. I could see no reason for the introduction of the dispatch, except to show that I was not correctly representing the sentiments of the people of Indiana, and especially of the republican party of Indiana; for the Senator was careful to say that all the persons signing the dispatch were republicans but three. I immediately telegraphed to a gentleman in Indianapolis who was in a position to know something about this matter, and a few minutes ago I received a dispatch, which I will read:

That paper was carried about the streets here all day yesterday and many leading republicans refused to sign it. Sexton was in the Union League last night and voted for a resolution condemning the compromise. Gresham got it up. A resolution was passed by board of trade in favor of compromise; vote, It to 13—aparty

Mr. CONKLING. The Senator does not read the signature to that

dispatch.
Mr. MORTON. No, sir; but I can read the signature if it is re-

Mr. MONTON. No, sir, but I can read the signature.

Mr. CONKLING. I have no doubt of it.

Mr. MORTON. I have other dispatches here. Here is a dispatch giving the proceedings of a republican caucus of the members of the Legislature of Indiana the other night:

The caucus of republican members of the Legislature last night declared Hayes and Wheeler legally elected, and that it is the duty of the President of the Senate to declare the result; that the justices of the Supreme Court should not be vested with political power; and that we therefore indorse the action of our Senator, O. P. MORTON, in withholding his consent to the measure proposed by the joint committee of Congress.

Another dispatch signed by three very respectable gentlemen: The prevailing sentiment among our leading men is, "Hold the fort!"

Mr. CONKLING. What fort does that refer to? [Laughter.]

Mr. MORTON. It is the fort of the Constitution.
Mr. CONKLING. That is what we are trying to do.
Mr. MORTON. The fort the gentleman does not occupy. [Laugh-

That the compromise plan is a grave mistake, unfair to Hayes and favorable to Tilden. Your position is generally indorsed by our best republicans.

Another dispatch just received from the city of La Fayette within an hour is:

The republicans of Tippecanoe almost without exception sustain you in your position against compromise plan.

Mr. CONKLING. Are these all anonymous?

Mr. MORTON. The gentleman has had his eight-hour speech.

He might allow me to proceed a few moments without interruption. My friend is under the impression that he has a right to occupy all Here is a dispatch from a leading banker in the city of Indianapolis:

I have with all care tried to get expression of solid republicans on the plan for counting vote. It is universally condemned as conceding all constitutional and time-honored provisions. Not afraid of result, but of the precedent established. Your position approved; will stand by you.

I have here from my State, which have been received within three or four days since this bill was published and has been under discussion, a large number of letters. I have altogether here some two

hundred or more letters received from Indiana, Ohio, and other States. I have from my own State some fifty, and from different parts of it, giving the sentiment and sustaining my course, letters from leading republicans and from at least three very prominent and influential democrats; and while the Senator from New York was looking after the sentiment of Indiana and intimating that I did not represent it, it might have been well for him to turn his attention to the State of York. I have here some thirty letters from the State of New York, some received to-day, many yesterday, from the city of New York, from Buffalo, and from other towns in the State, indorsing the course I have taken and saying that I represent the sentiment of the republican party. I have as many letters, I think, as he has signatures to that dispatch, and I have quite a number of dispatches that

tures to that dispatch, and I have quite a number of dispatches that I have not here, that are at my room at the hotel. I have almost as many dispatches as I have letters indorsing my course.

So far as I am acquainted the republican press of New York as a general thing denounce this compromise. The New York Times, the leading republican paper of that State, has taken strong ground against it. The New York Tribune, the independent paper of that great city, has taken strong ground against it; and from my observation since this matter was first broached within the last few days, when the character of this measure was made known and the public first came to understand it there has been a very strong expression against it throughout the United States by the republican press. I do not say it is unanimous, but I believe it is more nearly unanimous than the republican press has been upon any question for the mous than the republican press has been upon any question for the last ten years. Some approve it or will sustain it now that it has been proposed who are apprehensive of trouble, who believe that we may have violence or a breach of the peace; but very few commend it from their own judgment. It is regarded as a contrivance; it is regarded as a compromise except by those who regard it as something

regarded as a compromise except by those who regard it as something worse, and that is a surrender.

This, Mr. President, is all I intended to say at this time.

Mr. McDONALD. Mr. President, as my colleague has referred to the state of opinion in the State of Indiana, I may say to the Senate that I was at Indianapolis on Monday and passed the day there. I saw quite a number of our leading citizens of both political parties. I heard but one opinion expressed in reference to the propriety of passing this bill, and that was in favor of it. I was at the Federal court-room for a short time and conversed quite freely with the attorneys there, and without regard to party the opinions expressed by them were all on one side. I was a short time in our State senate. My conversations there were principally with my political friends. There were but one or two republicans present at any of the conversations. Reference was made to a caucus that had been held a short time before that, and one of the republican senators engaged in the conversation referred to it and said that they had passed resolutions

conversation referred to it and said that they had passed resolutions of that kind, but by no means by a unanimous vote.

Among those whom I saw and talked with while I was there was the late Governor Baker of our State; John D. Holland, clerk of our court; Albert G. Porter, one of the leading lawyers of the State, a republican, my own partner, who was a candidate on the electoral ticket for Hayes and Wheeler, and other leading men of the republican party. Of course I do not know except as they expressed themselves to me, but I know of no measure which has come before our people on which they have seemed to be so thoroughly united as providing for a peaceful solution of the difficulties surrounding the presidential count.

Mr. CONKLING. I wish to say that nothing was further from my intention than to attempt to show that the Senator from Indiana [Mr. MORTON] did or did not represent his constituents. I supposed when these gentlemen, prominent as they are in their standing before

when these gentlemen, prominent as they are in their standing before the whole nation, had sent a dispatch to a committee of whom I was one that I might without impropriety read that dispatch, although the State from which it came was represented by the honorable Senator from Indiana. I will not go with him into a consideration of the question how the sentiment stands in other States. I merely read question how the sentiment stands in other States. I merely read this dispatch to show the opinion of those who had chosen to take the trouble and incur the inconvenience of transmitting it by the wires to a committee of whom I happened to be a member. If the Senator from Indiana supposes that it was my purpose or my wish to represent him as coming short in expressing the views of his constituents, I can only say, in the language of one of the great masters that—

Trifles, light as air, Are to the jealous confirmations strong As proof of holy writ.

I never thought of anything of the sort.

I never thought of anything of the sort.

Mr. MORTON. Mr. President, the Senator says that his purpose was not to show that I misrepresented the sentiment of Indiana, but it was a dispatch received by his committee. If that is the only dispatch the committee have had approving their course, I can readily excuse their desire to get it before the public; but if it was not the only dispatch, then the production of it at this time did cause me to think that the purpose was to show that I was not correctly representing the State of Indiana.

Mr. CONKLING. It was the only one at that moment.

Mr. MORTON. One word in reply to my colleague. I have great faith in my colleague, but I want no issue with him, for I have never

regarded him, I must say in all frankness, as a correct exponent of the republican sentiment of Indiana.

Mr. McDONALD. I never assumed that.

Mr. MORTON. My friend returning from New Orleans, where he was engaged in the investigation for the purpose of enabling his party to go behind the decision of the State authorities of Louisiana, would naturally fall into the hands of his friends in Indiana, who would inquire what progress he had made, and his impressions would most likely be drawn from them. If he expresses here the sentiment of the democratic party in Indiana in favor of this compromise, or surrender, or whatever you call it, I am not at all surprised, and I am not at liberty to impeach the correctness of his representations. If he means to say that Governor Hendricks has expressed his approbation of this remedy, I shall not be prepared to dispute it. The fact is, I have every reason to believe that he is in favor of it.

Mr. McDONALD. I wish to ask my colleague what standing Governor Baker holds in the republican party in our State; what standing Albert G. Porter holds in the party; what standing General Ben Harrison holds in the party; what standing Jonathan W. Gordon holds in the party; what standing Mr. Fishback holds in the party; what standing such men as my neighbor Sharpe, Mr. Hoyt, and other business men in our city, that I might name, hold in his own party. Mr. MORTON. The standing of those gentlemen whom my colleague has named is excellent. The most of them are my warm and earnest friends. I have nothing whatever to say against any man that my colleague has named; but I repeat here again, Mr. President, that, so far as I know, I am representing the general republican would inquire what progress he had made, and his impressions would

that my colleague has named; but I repeat here again, Mr. President, that, so far as I know, I am representing the general republican sentiment of my State. I am glad of it; but I want to say at the same time that I am not taking this course because I believe I do in that particular represent the republican sentiment of my State. I am doing what I do because I think it is right, I think it is due to the country, I think it is due to principles of justice, due to the law, and due to the republican party.

I shall have occasion hereafter to comment upon the extraordinary attempt that has been made to destroy the destripe upon which President.

attempt that has been made to destroy the doctrine upon which Presidents have been counted in for seventy-five years, to prove that it was all illegal and wrong, and this too at the very time when there is a case before us when, by the destruction of that position, we shall a case before us when, by the destruction of that position, we shall be driven to take another. If this fight had been made a year ago, or two years ago, or five years ago, under other circumstances, it would be less strange; but it comes at that precise time when it is to the interest of the man who I believe has been elected, when it is to the interest of the republican party, to the interest of truth, and the best interest of this nation that this vote shall be counted as it was for

interest of this nation that this vote shall be counted as it was for the first three-quarters of a century, and when this is not the time to make up a new plan. If we went along so well for so long, we can afford to go on a little longer just now; and now, when it is to our interest and I believe to the interest of the country that things shall stand as they are, we are to have a new plan forced upon us.

For years I have been laboring to bring this matter before the public. I received but little countenance; very little interest was taken in it; but now, when we have got to that point and under those peculiar circumstances when we can afford to let things go on as they have gone so long, it is insisted that we shall have a plan, a contrivance, and it is a contrivance which as I learn from my colleague does meet at least the approbation of the democracy of Indiana.

Mr. McDONALD. It does.

Mr. DAWES. Mr. President, I will detain the Senate but a mo-

Mr. McDONALD. It does.
Mr. DAWES. Mr. President, I will detain the Senate but a moment. I do not desire to debate the merits of this measure. The committee have had my support from the outset. Their report, in the main, has the support of the State of Massachusetts. The people whom my colleague and myself represent are, with considerable and I do not know but with great unanimity, expecting us to give our vote for this bill. But, sir, they will be pained to see in the debate of to-day that the commission which is to be created by the bill has no other limit to its jurisdiction than what its members themselves shall

other limit to its jurisdiction than what its members themselves shall put upon their own court. The State of Massachusetts has supposed that this commission, like her own courts, would be governed in its jurisdiction by a well defined and marked law.

When I pressed the Senator from New York to tell me what he understood to be its limit, how far this court could go in its jurisdiction, I drew out from him the confession that this bill has been so framed that the commission will have no other limit than what its discretion shall put upon this court. At first the Senator from New York told me that they had defined this court as every court in the State of Massachusetts was defined in the limitation of its jurisdiction; but when I called his attention to the fact that the first great prominent feature of a court in Massachusetts was a limit by law to prominent feature of a court in Massachusetts was a limit by law to prominent feature of a court in Massachusetts was a limit by law to its jurisdiction, the Senator felt it necessary then to treat the State of Massachusetts as out of the pale of any sort of construction which it was proper or good or wise to put upon the jurisdiction of this court. I say to him that in the object and purpose of this commission the people of the State of Massachusetts are in sympathy with the committee, and are ready to support it; but they are not ready to create a court that shall go into Massachusetts and take up the work, which they by law have confided to their governor and council, to count and determine the vote by which Massachusetts has appointed her electors. pointed her electors.

The Senator says that if everybody were as perfect as Massachu-

setts, the electoral vote would count itself. I only wish to say that, after the debate of to-day, I believe that Massachusetts would hold me responsible if I did not make some effort to define by law the jurisdiction of this court, so that it might not take jurisdiction of that which belongs to the State of Massachusetts, to the State of New York, and to all the States. However much I might have hesitated before this debate commenced to undertake to offer any amendment to the work of the committee, so anxious was I to see the bill become a law, yet after the debate of to-day has put upon the record that the phraseology of this bill has been so framed as to put no limit whatever upon the jurisdiction of this court except that which the court itself shall set to its jurisdiction, I beg to offer an amendment to the bill. Therefore, at the end of the eighty-sixth line, on the sixth page, I move to insert the following, and I will only say that it is the lan-guage taken from the bill of 1800 as it was reported to the Senate:

Provided. That no petitions, exceptions, or other paper shall be considered by said commission which has for its object to dispute or draw into question the number of votes given for an elector in any of the States, or the fact whether any elector was chosen by a majority of the votes of said State.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed

to the consideration of executive business.

Mr. EDMUNDS. I hope not. I hope the Senator will withdraw the motion. I wish to move that the Senate take a recess until seven

The PRESIDENT pro tempore. The motion for a recess has pre-

Mr. EDMUNDS. I move, then, that the Senate take a recess until seven o'clock

Mr. ALLISON and others. Say half past seven.

Mr. STEVENSON. It is a quarter to six now.
Mr. EDMUNDS. I will say half past seven.
Mr. CAMERON, of Pennsylvania. I should like the Senate to go into executive session for a few minutes.

Mr. EDMUNDS. I am sorry to disoblige the Senator from Pennsylvania

Mr. PADDOCK. If in order, I move that the Senate now adjourn.

The PRESIDENT pro tempore. The Senator from Nebraska moves that the Senate adjourn.

Mr. DORSEY. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. CAMERON, of Pennsylvania. I wish we could go into executive session for a few minutes.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Nebraska that the Senate do now adjourn, on which the yeas and nays are ordered. The Secretary will call the roll.

The question being taken by yeas and nays, resulted-yeas 8, nays 54; as follows:

YEAS—Messrs. Bruce, Cameron of Pennsylvania, Clayton, Conover, Dorsey, Paddock, Patterson, and Spencer—8.

NAYS—Messrs. Alcorn, Allison, Barnum, Bayard, Blaine, Bogy, Booth, Boutwell, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Cockrell, Conkling, Cooper, Cragin, Davis, Dawes, Dennis, Eaton, Edmunds, Ferry, Frelinghuysen, Goldthwaite, Gordon, Hamilin, Howe, Ingalls, Johnston, Jones of Florica, Jones of Nevada, Kelly, Kernan, McDonald, McMillan, Maxey, Merrimon, Mitchell. Morrill, Price, Ransom, Sargent, Saulsbury, Sharon, Sherman, Stevenson, Teller, Thurman, Wadleigh, Wallace, Whyte, Windom, Withers, and Wright—54.

ABSENT—Messrs. Anthony, Hamilton, Harvey, Hitchcock, Logan, McCreery, Morton, Norwood, Oglesby, Randolph, Robertson, and West—12.

So the Senate refused to adjourn.

The PRESIDENT pro tempore. The question recurs on the motion of the Senator from Vermont that the Senate take a recess until half past seven o'clock.

Mr. EDMUNDS. Before the question is put I merely wish to say that I shall hope and beg the Senate to dispose of this bill to-night;

that is all. Mr. BAYARD. Mr. President-

The PRESIDENT pro tempore. Debate is not in order. For what purpose does the Senator rise?

Mr. BAYARD. I rise to take the floor. I desire to take the floor at the commencement of the debate after the recess.

The PRESIDENT pro tempore. The Chair will recognize the Senator from Delaware. The Senator from Vermont moves that the Senate take a recess until half past seven o'clock.

The motion was agreed to; and (at five o'clock and fifty-two minutes p. m.) the Senate took a recess until half past seven o'clock.

## EVENING SESSION.

The Senate re-assembled at half past seven o'clock p. m. MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had appointed Mr. Milton J. Durham of Kentucky, Mr. Samuel N. Bell of New Hampshire, and Mr. Dudley C. Denison of Vermont, conferees on the part of the House on the disagreeing votes of the two Houses on the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the President pro tempore:

A bill (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow

of Abner T. Blaze, late a private in Company C, Thirteenth Indiana Cavalry Volunteers;
A bill (H. R. No. 3511) granting increased pension to Thomas G.

A bill (H. R. No. 3038) granting a pension to Almon F. Mills, late private Company K, Twenty-ninth Regiment Ohio Volunteers;
A bill (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States, relating to courts in Arkansas

A joint resolution (S. R. No. 4) authorizing Captain Temple and Lieutenant-Commander Whiting, of the Navy, to accept a decoration from the King of the Hawaiian Islands.

## COUNTING OF THE ELECTORAL VOTES.

The Senate resumed the consideration of the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the

term commencing March 4, A. D. 1877.

Mr. BAYARD. Mr. President, I might have been content as a friend of this measure to allow it to go before the Senate and the country unaccompanied by any remarks of mine had it not been the pleasure of the Senate to assign me as one of the minority in this Chamber to a place upon the select committee appointed for the purpose of reporting a bill intended to meet the exigencies of the hour in relation to the electoral votes. There is for every man in a matter of such gravity his own measure of responsibility, and that measure I desire to assume. Nothing less important than the decision, into whose hands the entire executive power of this Government shall be vested in the next four years is embraced in the provisions of this bill. The election for President and Vice-President has been held, but as to the results of that election the two great political parties of the country stand opposed in serious controversy. Each party claims success for its candidate and insists that he and he alone shall be declared by the two Houses of Congress entitled to exercise the executive power of this Government for the next four years. The canvass was prolonged and unprecedented in its excitement and even bitterness. The period of advocacy of either candidate has passed and the time for judgment has almost come. How shall we who propose to make laws for others do better than to exhibit our own reverence for law and set the example here of subordination to the spirit of law?

It cannot be disguised that an issue has been sought, if not actually raised, in this country between a settlement of this great question by sheer force and arbitrary exercise of power or by the peaceful, orderly, permanent methods of law and reason. Ours is, as we are wont to boast, a Government of laws, and not of will; and we must not permit it to pass away from us by changing its nature.

O, yet a nobler task awaits thy hand, For what can war but endless war still breed?

By this measure now before the Senate it is proposed to have a peaceful conquest over partisan animosity and lawless action, to procure a settlement grounded on reason and justice, and not upon force. Therefore it is meant to lift this great question of determining who has been lawfully elected President and Vice-President of these United States out of the possibility of popular broils and tumult and elevate it with all dignity to the higher atmosphere of legal and judicial decision. In such a spirit I desire to approach the consideration of the subject and shall seek to deal with it at least worthily, with a sense of public duty unobscured I trust by prejudice or party animosity. The truth of Lord Bacon's aphorism that "great empire and little minds go ill together" should warn us now against the obtrusion of narrow or technical views in adjusting such a question and at such a time in our country's history.

Mr. Persident from the very compensement of the attempt to form

Mr. President, from the very commencement of the attempt to form the Government under which we live the apportionment of power in the executive branch and the means of choosing the Chief Magistrate have been the subject of the greatest difficulty. Those who founded this Government and preceded us in its control had felt the hand of this Government and preceded us in its control had felt the hand of kingly power, and it was from the abuse of executive power that they dreaded the worst results. Therefore it was that when the Constitution came to be framed that was the point upon which they met and upon which they parted, less able to agree than upon almost all others combined. A glance at the history of the convention that met at Philadelphia on the 14th of May, 1787, but did not organize until the 25th day of the same month, will show that three days after the convention assembled two plans of a constitution were presented respectively by Mr. Edmund Randolph, of Virginia, and Mr. Charles Pinckney, of South Carolina. The first proposed the election of the Executive by the Legislature, as the two Houses were then termed, for a term of seven years, with ineligibility for re-election. The other proterm of seven years, with ineligibility for re-election. The other proposed an election, but left the power to elect or the term of office in blank. Both of these features in the schemes proposed came early up for consideration, and, as I have said before, as the grave and able minds of that day approached this subject they were unable to agree, and accordingly, from time to time, the question was postponed and no advance whatever made in the settlement of the question. Indeed so vital and wide was the difference that each attempt made during the course of the five months in which that convention was assembled only seemed to result in renewed failure. So it stood until the 4th day of September had arrived. The labors of the convention by that time had resulted in the framing of a Constitution wise and good and time had resulted in the framing of a Constitution, wise and good and

fairly balanced, calculated to preserve power sufficient in the Government, and yet leaving that individual freedom and liberty essential for the protection of the States and their citizens. Then it was that this question, so long postponed, came up for consideration and had to be decided. As it was decided then, it appears in the Constitution as subjunted to the States in 1727, but an appealment of the constitution as submitted to the States in 1787; but an amendment of the second article was proposed in 1804, which, meeting the approval of the States,

became part of the Constitution.

I must be pardoned if I repeat something of what has preceded in this debate, by way of citation from the Constitution of the United States, in order that we may find there our warrant for the present measure. There were difficulties of which these fathers of our Government were thoroughly conscious. The very difficulties that surround the question to-day are suggested in the debates of 1800. in which the history of double returns is forefold by Mr. Pinckney in his which the history of double returns is foretold by Mr. Pinckney in his objections to the measure then before the Senate. The very title of that act, "A bill prescribing a mode of deciding disputed elections of President and Vice-President of the United States," will show the difficulties which they then perceived and of which they felt the future was to be so full. They made the attempt in 1800 to meet those difficulties. They did not succeed. Again and again the question came before them. In 1824 a second attempt was made at legislation. It met the approval of the Senate. It seemed to meet the approval of the Committee on the Indicator of the House, by whom it was reof the Committee on the Judiciary of the House, by whom it was re-ported without amendment, but never was acted upon in that body, and failed to become a law. This all shows to us that there has been and failed to become a law. This all shows to us that there has been a postponement from generation to generation of a subject of great difficulty that we of to-day are called upon to meet under circumstances of peculiar and additional disadvantage; for while in the convention of 1787 there was a difference arising from interest, from all the infinite variances of prejudice and opinion upon subjects of local, geographical, and pecuniary interests, and making mutual concessions and patriotic considerations necessary at all times, yet they were spared the most dangerous of all feelings under which our country has suffered of late; for amid all the perturbing causes to intertry has suffered of late; for, amid all the perturbing causes to inter-fere with and distract their counsels, paraisan animosity was at least unknown. There the United States: There was in that day no such thing as political party in

Then none were for a party, But all were for the state.

Political parties were formed afterward and have grown in strength since, and to-day the troubles that afflict our country chiefly may be to arise from the dangerous excess of party feeling in our conneils.

But I propose to refer to the condition of the law and the Constitution as we now find it. The second article of the first section of the Constitution provides for the vesting of the executive power in the President and also for the election of a Vice-President. First it provides that "each State" shall, through its Legislature, appoint the number of electors to which it is entitled, which shall be the number of electors to which it is entitled. ber of its Representatives in Congress and its Senators combined. The power there is to the State to appoint. The grant is as complete and perfect that the State shall have that power as is another clause of the Constitution giving to "each State" the power to be represented by the Senators in this branch of Congress. There is given to the electors prescribed duties, which I will read:

The electors prescribed duties, which I will read:

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves: they shall not me in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

Then follows the data was a present of the presence of the senate and the votes shall then be counted.

Then follows the duty and power of Congress in connection with Then follows the duty and power of Congress in connection with this subject to determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States. The next clause provides for the qualifications of the candidates for Presidency and Vice-Presidency. The next clause gives power to the Congress of the United States to provide for filling the office of President and Vice-President in the event of the death resignation or inshill to of the incumbers to yest the of the death, resignation, or inability of the incumbents, to vest the powers and duties of the said office. The other clause empowers Congress thus to designate a temporary President. The other clauses simply relate to the compensation of the President and the oath he shall take to perform the duties of the office. Connected with that delega-tion of power is to be considered the eighth section of the first article which gives to the Congress of the United States power "to make all which gives to the Congress of the United States power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

It will be observed, so far, that the Constitution has provided the power but has not provided the regulations for carrying that power into effect. The Supreme Court of the United States sixty-odd years

ago defines so well the character of that power and the method of its use that I will quote it from the first volume of Wheaton's Reports, page 326:

Leaving it to the Legislature from time to time to adopt its own means to effectuate, legitimate, and mold and model the exercise of its powers as its own wisdom and public interest should require.

In less than four years, in March, 1792, after the first Congress had assembled there was legislation upon this subject, carrying into execution the power vested by this second article of the Constitution in a manner which will leave no doubt of what the men of that day believed was competent and proper. Here let me advert to that authority which must ever attach to the contemporaneous exposition of historical events. The men who sat in the Congress of 1792 had many of them been members of the convention that framed the Federal Constitution. All were its contemporaries and closely were they considering with master minds the consequences of that work. Not only may we gather from the manner in which they treated this subject when they legislated upon it in 1792 what were their views of the powers of Congress on the subject of where the power was lodged and what was the proper measure of its exercise, but we can gather equally well from the inchoate and imperfect legislation of 1800 what those men also thought of their power over this subject, because, although differing as to details, there were certain conceded facts as to jurisdiction quite as emphatically expressed as if their propositions had been enacted into law. Likewise in 1824 the same instruction is afforded. If we find law. Likewise in 1824 the same instruction is afforded. If we find the Senate of the United States without division pass bills which although not passed by the co-ordinate branch of Congress are received by them and reported back from the proper committees after exam-ination and without amendment to the Committee of the Whole House, we may learn with equal authority what was conceded by those Houses as to the question of power over the subject. In a compilation made at the present session by order of the House committee, co-ordinate with the Senate committee, will be found at page 129 a debate containing expressions by the leading men of both parties in 1857 of the leaving service of the levil o 1857 of the lawfulness of the exercise of the legislative power of Congress over this subject. I venture to read here from the remarks of Mr. Hunter, of Virginia, one of the most respected and conservative minds of his day in the Congress of the United State

minds of his day in the Congress of the United States.

The Constitution evidently contemplated a provision to be made by law to regulate the details and the mode of counting the votes for President and Vice-President of the United States. "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." By whom, and how to be counted, the Constitution does not say. But Congress has power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." Congress, therefore, has the power to regulate by law the details of the mode in which the votes are to be counted. As yet, no such law has been found necessary. The cases, happily, have been rare in which difficulties have occurred in the count of the electoral votes. All difficulties of this sort have been managed heretofore by the consent of the two Houses — a consent either implied at the time or declared by joint resolutions adopted by the Houses on the recommendation of the joint committee which is usually raised to prescribe the mode in which the view of the mode in which the President of the Senate and the tellers have acted. It was by this authority, as I understand it, that the President of the Senate acted yesterday. The joint resolution of the two Houses prescribed the mode in which the tellers were to make the count, and also required him to declare the result, which he did. It was under the authority, therefore, and by the direction of the two Houses that he acted. The resolutions by which the authority was given were according to unbroken usage and established precedent.

Mr. President, the debate from which I have read took place in

Mr. President, the debate from which I have read took place in 1857 and was long and able, the question there arising upon the pro-posed rejection of the vote of the State of Wisconsin, because of the delay of a single day in the meeting of the electors. A violent snow-storm having prevented the election on the 3d of December, it was held on the 4th, which was clearly in violation of the law of Con-gress passed in pursuance of the Constitution requiring that the votes for the electors should be cast on the same day throughout the Union. That debate will disclose the fact that the danger then became more and more realized of leaving this question unsettled as to who should determine whether the electoral votes of a State should be received or rejected when the two Houses of Congress should differ upon that subject. There was no arbiter between them. This new-fangled idea of the present hour, that the presiding officer of the Senate should decide that question between the two disagreeing Houses, had not yet been discovered in the fertility of political invention, or born perhaps of party necessity. The question has challenged all along through our country's history the ablest minds of the country; but at last we have reached a point when under increased difficul-ties we are bound to settle it. It arose in 1817 in the case of the State of Indiana, the question being whether Indiana was a State in the Union at the time of the casting of her vote. The two Houses disagreed upon that subject; but by a joint resolution, which clearly assumed the power of controlling the subject, as the vote of Indiana did not if cast either way control the election, the difficulty was tided over by an arrangement for that time and that occasion only. In 1820 the case of the State of Missouri arose and contained the In 1820 the case of the State of Missouri arose and contained the same question. There again came the difficulty when the genius and patriotism of Henry Clay were brought into requisition and a joint resolution introduced by him and adopted by both Houses was productive of a satisfactory solution for the time being. The remedy was merely palliative and the permanent character of the difficulty was confessed and the fact that it was only a postponement to men of a future generation of a question still unsettled.

It is not necessary, and would be fatiguing to the Senate and to myself, to give anything like a sketch of the debate which followed, of the able and eminent men on both sides who considered the question, arriving however at one admitted conclusion, that the remedy

was needed and that it did lie in the law-making power of the Government to furnish it.

Thus, Mr. President, the unbroken line of precedent, the history of the usage of this Government from 1789 at the first election of Pres ident and Vice-President until 1873, when the last count of electoral votes was made for the same offices, exhibits this fact, that the control of the count of the electoral votes, the ascertainment and declation of the persons who were elected President and Vice-President, has been under the co-ordinate power of the two Houses of Congress, and under no other power at any time or in any instance. The claim is now gravely made for the first time, in 1877, that in the event of disagreement of the two Houses the power to count the electoral votes and decide upon their validity under the Constitution and law is vested in a single individual, an appointee of one of the Houses of Congress, the presiding officer of the Senate. In the event of a disagreement between the two Houses, we are now told, he is to asthe power, in his sole discretion, to count the vote, to ascertain and declare what persons have been elected; and this, too, in the face of an act of Congress, passed in 1792, unrepealed, always recognized, followed in every election from the time it was passed until the present day. Section 5 of the act of 1792 declares:

That Congress shall be in session on the second Wednesday in February, 1793, and on the second Wednesday in February succeeding every meeting of the electors; and the said certificates, or so many of them as shall have been received shall then be opened, the votes counted, and the persons who shall fill the offices of President and Vice-President ascertained and declared agreeably to the Constitution.

Let it be noted that the words "President of the Senate" nowhere occurs in the section.

But we are now told that though "Congress shall be in session," that though these two great bodies duly organized, each with its presiding officer, accompanied by all its other officers, shall meet to perform the duty of ascertaining and declaring the true result of the action of the electoral colleges and what persons are entitled to these high execu-tive offices, in case they shall not agree in their decisions there shall be interposed the power of the presiding officer of one of the Houses to control the judgment of either and become the arbiter between them. Why, Mr. President, how such a claim can be supposed to rest upon authority is more than I can imagine. It is against all history. It is against the meaning of laws. It is not consistent with the language of the Constitution. It is in the clearest violation of the whole scheme of this popular government of ours, that one man should asscheme of this popular government of ours, that one man should assume a power in regard to which the convention hung for months undecided, and carefully and grudgingly bestowing that power even when they finally disposed of it. Why, sir, a short review of history will clearly show how it was that the presiding officer of the Senate became even the custodian of the certificates of the electors.

On the 4th September, 1787, when approaching the close of their labors, the convention discovered that they must remove this obstacle, and they must come to an agreement in regard to the deposit of this grave power. When they were scrupulously considering that no undue grant of power should be made to either branch of Congress, and when no one dreamed of putting it in the power of a single hand, the proposition was made by Hon. Mr. Brearly, from a committee of eleven, of alterations in the former schemes of the convention, which embraced this subject. It provided:

embraced this subject. It provided:

5. Each State shall appoint, in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and Members of the House of Representatives to which the State may be entitled in the Legislature.

6 The electors shall meet in their respective States and vote by ballot for two persons, one of whom at least shall not be an inhabitant of the same State with themselves; and they shall sign and certify, and transmit scaled to the seat of the General Government, directed to the President of the Senate.

7. The President of the Senate shall, in that House, open all the certificates; and the votes shall be then and there counted. The person having the greats number of votes shall be the President, if such number shall be a majority of the whole number of the electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the Senate shall choose by ballot one of them for President; but if no person have a majority then, from the five highest on the list the Senate shall choose by ballot the President. And in every case after the choice of the President the person having the greatest number of votes shall be Vice-President. But if there should remain two or more who shall equal votes, the Senate shall choose from them the Vice-President. (See Madison Papers—page 506, &c.)

Here we discover the reason why the President of the Senate was

Here we discover the reason why the President of the Senate was made the custodian of these certificates. It was because in that plan of the Constitution the Senate was to count the votes alone; the House was not to be present; and in case there was a tie or failure to find a majority the Senate was to elect the President and Vice-President. The presiding officer of the body that was to count the votes alone, of the body that alone was to elect the President in default of a of the body that alone was to clear the transfer of the body was naturally the proper person to hold the certificates until the Senate should do its duty. It might as well be said that because certificates and papers of various kinds are directed to the President of this Senate to be laid before the Senate that he should have the control to enact those propositions into law, as to say that because the certificates of these votes were handed to him he should have the right to count them and ascertain and declare what persons had been chosen President and Vice-President of the United States.

But the scheme reported by Mr. Brearly met with no favor. In the first place, it was moved and seconded to insert the words "in the presence of the Senate and House of Representatives" after the word

"counted." That was passed in the affirmative. Next it was moved to strike out the words "the Senate shall immediately choose by ballot" and insert the words "and House of Representatives shall immediately choose by ballot one of them for President, and the members of each State shall have one vote," and this was adopted by ten States in the affirmative to one State in the negative,

Then came another motion to agree to the following paragraph, giving to the Senate the right to choose the Vice-President in case of the failure to find a majority, which was agreed to by the convention; so that the amendment as agreed to read as follows:

The President of the Senate, in the presence of the Senate and House of Representatives, shall open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, the representation from each Scate having one vote; but if no person have a majority, then from the five highest on the list the House of Representatives shall in like manner choose by ballot the President.

And then follows that if there should remain two candidates voted for as Vice-President having an equal vote the Senate shall choose from them the Vice-President. Mr. President, is it not clear that the Constitution directed that the certificates should be deposited with the presiding officer of that body which was alone to count the votes and elect both the President and Vice-President in case there was a failure to find a majority of the whole number of electors appointed? There is a maxim of the law, that where the reason ceases the law itself ceases. It is not only a maxim of common law, but equally of common sense. The history of the manner in which and the reason for which the certificates were forwarded to the President of the Senfor which the certificates were forwarded to the President of the Senate completely explains why he was chosen as the depositary and just what connection he had with and power over those certificates. After the power had been vested in the House of Representatives to ballot for the President, voting by States, after the presence of the House of Representatives was made equally necessary before the count could begin or proceed at all, the President of the Senate was still left as the officer designated to receive the votes. Why? Because the Senate is a continuing body because the Senate always has a group of the senate in the senate in the senate in the senate is a continuing body because the Senate always has a group of the senate in the senate in the senate in the senate is a continuing body because the Senate always has a group of the senate in the senate is a continuing body, because the Senate always has a quorum. Divided into three classes, there never is a day or a time when a quorum of the Senate of the United States is not elected and cannot be summoned to perform its functions under the Constitution. Therefore you had the officer of a continuing body, and as the body over which he presided and by whom he is chosen was one of the two co-ordinate bodies to perform the great function of counting the votes and of ascertaining and declaring the result of the electoral vote, he was left in charge of the certificates.

You also find in the sixth section of the act of 1792 that Congress exercised its regulating power and declared "that in case there shall be no President of the Senate at the seat of Government on the arrival of the persons intrusted with the lists of votes of the electors, then such persons shall deliver the lists of votes in their custody into the office of the Secretary of State to be safely kept and delivered over as soon as may be to the President of the Senate."

What does this signify? That it was a simple question of custody, of safe and convenient custody, and there is just as much reason to say that the Secretary of State being the recipient of those votes had a right to count them as to say that the other officer designated as the recipient of the votes, the President of the Senate, had a right to count them.

Now here is another fact a denial of which cannot be safely chal lenged. Take the history of these debates upon the formation or the Federal Constitution from beginning to end, search them, and no line Take the history of these debates upon the formation of the or word can be discovered that even suggests any power whatever in any one man over the subject, much less in the President of the Sen-ate, in the control of the election of the President or the Vice-Presi-Why, sir, there is the invariable rule of construction in regard to which there can be no dispute, that the express grant of one thing excludes any other. Here you have the direction to the President of the Senate that he shall receive these certificates, or if absent that another custodian shall receive them, hold them during his absence, and pass them over to him as soon as may be, and that then he shall in the presence of the two Houses of Congress "open all the certificates." There is his full measure of duty; it is clearly expressed; and then after that follows the totally distinct duty, not confided to him, that "the votes shall then be counted."

I doubt very much whether any instrument not written by an inspired hand was more clear, terse, frugal of all words except those necessary to express its precise meaning, than the Constitution of the United States. It would require the greatest ingenuity to discover where fewer words could be used to accomplish a plain end. How shall it be that in this closely considered charter, where every word every punctuation was carefully weighed and canvassed, they should employ seven words out of place when two words in place would have fulfilled their end f If it had been intended to give this officer the power to count, how easy to read, "The President shall, in the presence of the Senate and House of Representatives, open and count the votes." Why resort to this other, strained, awkward, ungrammatical, unreasonable transposition of additional words to grant one power distinctly and leave the other to be grafted upon it by an unjust implication? No, Mr. President, if it were a deed of bargain and sale, or any question of private grant, if it did not touch

the rights of a great people, there would be but one construction given to this language, that the expression of one grant excluded the other. It was a single command to the President of the Senate that, as the custodian, he should honestly open those certificates and lay them before the two Houses of Congress who were to act, and then his duty was done, and that was the belief of the men who sat in that convention, many of whom joined in framing the law of 1792 which directed Congress to be in session on a certain day and that the votes should be counted and the persons who should fill the office of President and Vice-President ascertained and declared agreeably to the Constitution.

The certificates are to be opened by their custodian, the President of the Senate, in the presence of the Senate and the House of Representatives. Let it be noted this is not in the presence of the Senators and Representatives, but it is in the presence of two organized bodies who cannot be present except as a Senate and as a House of Representatives, each with its own organization, its own presiding officer all adjuncts, each organized for the performance of a great duty.

When the first draughts of the Constitution were made, instead of saying "in the presence of the Senate and House of Representatives," they called it "the Legislature." What is a Legislature? A law-making body organized, not a mob, but an organized body to make laws; and so the law-making power of this Union, consisting of these two Houses, is brought together. But it seems to me a most unreasonable proposition to withhold from the law-making power of this Government the authority to regulate this subject and yet be willing to intrust it to a single hand. There is not a theory of this Government that will support such a construction. It is contrary to the whole genius of the Government; it is contrary to everything in the history of the formation of the Government; it is contrary to the usage of

the Government since its foundation.

The President of the Senate is commanded by the Constitution to open the votes in the presence of the two Houses. He does not summon them to witness his act, but they summon him by appointing a day and hour when he is to produce and open in their presence all the certificates he may have received, and only then and in their presence can he undertake to open them at all. If he was merely to summon them as witnesses of his act it would have been so stated. But when did the President of the Senate ever undertake to call the two Houses together to witness the opening and counting of the votes? No, sir; he is called at their will and pleasure to bring with him the certificates which he has received, and open them before them and under their inspection, and not his own. When the certificates have been opened, when the votes have been counted, can the President of the Senate declare the result? No, sir, he has never declared a result except as the mouth-piece and the organ of the two Houses authorizing and directing him what to declare, and what he did declare was what they had ascertained and in which ascertainment he had never interfered by word or act.

Suppose there shall be an interruption in the count, as has occurred in our history, can the President of the Senate do it? Did he ever do it? Is such an instance to be found? Every interruption in the count comes from some member of the House or of the Senate, and upon that the pleasure of the two Houses is considered, the question to them to withdraw if they desire, and the count is arrested until they shall order it to recommence. The proceeding in the count, the commencement of the count is not in any degree under his control. It is and ever was in the two Houses, and in them alone. They are not powerless spectators; they do not sit "state statues only," but they are met as a Legi-lature in organized bodies to insure a correct result of popular election, to see to it that "the votes shall then be counted" agreeably to the Constitution.

In 1792 when some of the men who sat in the convention that framed the Constitution enacted into law the powers given in relation to the count of the electoral votes, they said, as I have read, that the certificates then received shall be opened and the votes counted, "and the persons to fill the offices of President and Vice-President ascertained agreeably to the Constitution," and that direction is contained in the same section of the law that commands Congress to be in session on that day. It is the law-making power of the nation, the Legislature, that is to perform this solemn and important duty, and not a single person who is selected by one branch of Congress and who

a single person who is selected by one branch of Congress and who is removable at their will, according to a late decision of the Senate.

Yes, Mr. President, the power contended for by some Senators, that the President of the Senate can, in the contingency of a disagreement between the two Houses, from the necessity of the case, open and count the vote, leads to this: that upon every disputed vote and upon every decision a new President of the Senate could be elected; that one man could be selected in the present case to count the vote of Florida; another, of South Carolina; another, of Oregon; another, of Louisiana; and the Senate could fill those four offices with four different men, each chosen for that purpose, and when that purpose was over to be displaced by the same breath that set them up for the time being.

Now, sir, if, as has been claimed, the power of counting the votes is deposited equally in both Houses, does not this admission exclude the idea of any power to count the votes being deposited in the presiding officer of one of those Houses, who is, as I say, eligible and removable by a bare majority of the Senate and at will? If the presiding officer of the Senate can thus count the vote the Senate can

control him. Then the Senate can control the count and the Senate appointing their President become the sole controllers of the vote in case of disagreement. What then becomes of the equal measure of power in the two Houses over this subject? If the power may be said to exist only in case of disagreement, and then ex necessitate rei, all that remains for the Senate is to disagree, and they themselves have created the very contingency that gives them the power, through their President, to have the vote counted or not counted, as they may desire. Why, sir, such a statement destroys all idea of equality of power

sire. Why, sir, such a statement destroys an local of the subject.

between the two Houses in regard to this subject.

When the President of the Senate has opened the certificates and handed them over to the tellers of the two Houses in the presence of the subject of the subj the two Houses, his functions and powers have ended. He cannot repossess himself of those certificates or papers. He can no longer control their custody. They are then and thereafter in the possession and under the control of the two Houses, who shall alone dispose of them.

Why, sir, what a spectacle would it be, some ambitious and un-scrupulous man the presiding officer of the Senate, as was once Aaron Burr, assuming the power to order the tellers to count the vote of this State and reject the vote of that, and so, boldly and shamelessly reverse the action of the people expressed at the polls, and step into the Presidency by force of his own decision. Sir, this is a reduction of the thing to an absurdity never dreamed of until now, and impossible while this shall remain a free Government of law.

Now, Mr. President, as to the measure before us a few words. It will be observed that this bill is enacted for the present year, and no longer.

This is no answer to an alleged want of constitutional power to pass it, but it is an enswer in great degree where the mere policy and temporary convenience of the act are to be considered.

In the first place the bill gives to each House of Congress equal power over the question of counting, at every stage.

It preserves intact the prerogatives, under the Constitution, of each House.

It excludes any possibility of judicial determination by the presiding officer of the Senate upon the reception and exclusion of a vote.

The certificates of the electoral colleges will be placed in the possession and subject to the disposition of both Houses of Congress in

joint session.

The two Houses are co-ordinate and separate and distinct. Neither can dominate the other. They are to ascertain whether the electors have been validly apppointed and whether they have validly performed their duties as electors. The two Houses must under the act of 1792 "ascertair and declare" whether there has been a valid election, according to the Constitution and laws of the United States. The votes of the electors and the declaration of the result by the two Houses give a valid title, and nothing else can, unless no majority has been disclosed by the count; in which case the duty of the House is to be performed by electing a President and of the Senate of elect-

ing a Vice-President. If it be the duty of the two Houses "to ascertain" whether the action of the electors has been in accordance with the Constitution they must inquire. They exercise supervisory power over every branch of public administration and over the electors. The methods they choose to employ in coming to a decision are such as the two Houses, acting separately or together, may lawfully employ. Sir, the grant of power to the commission is in just that measure, no more and no less The decision they render can be overruled by the concurrent votes of the two Houses. Is it not competent for the two Houses of Congress to agree that a concurrent majority of the two Houses is necessary to reject the electoral vote of a State! If so, may they not adopt means which they believe will tend to produce a concurrence? Finally, sir, this bill secures the great object for which the two Houses were brought together: the counting of the votes of the electoral college; not to elect a President by the two Houses, but to determine who has been elected agreeably to the Constitution and the laws. It provides against the failure to count the electoral vote of a State in event of disagreement between the two Houses in case of single returns, and, in cases of contest and double returns, furnishes a tribunal whose composition secures a decision of the question in disagreement and whose perfect justice and impartiality cannot be gainsaid or doubted.

The tribunal is carved out of the body of the Senate and out of the

body of the House by their vote viva roce. No man can sit upon it from either branch without the choice openly made by a majority of the body of which he is a member that he shall go there. judges who are chosen are from the court of last resort in this country, men eminent for learning, selected for their places because of the virtues and the capacities that fit them for this high station. I was pained to hear the Senator from Ohio who spoke yesterday [Mr. Sherman] referring to the language of the bill naming the circuits geographically arranged from which the four judges should be chosen, leaving to them by a majority to select their own means of choosing the fifth of their number. I was pained, I say, to hear him in his desire to defeat this measure suggest that these four upright and dignified jurists should find a fifth man by playing a game of cards or casting dice for his appointment. Sir, the inference was most unjust. It was not creditable to the Senator who made it. It is scarcely worth while to say how unjust it is to the tribunal upon whom it reflected.

Mr. SHERMAN. Mr. President, as my friend makes rather a criti-

cism on me, I ask him to read the language of the bill to the Senate, to see whether I did not draw a fair, legal, and just inference from that lauguage in saying that these supreme judges may if they choose draw cards, throw dice, or do anything else to determine the chance in exact harmony with the language of the bill? Will the Senator

Mr. BAYARD. The language of the bill is:

On the Tuesday next preceding the first Thursday in February, A. D. 1877, or as soon thereafter as may be, the associate justices of the Supreme Court of the United States now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission; and the person longest in commission of said five justices shall be the president of said commission. The members of said commission shall respectively take and subscribe the following oath. scribe the following oath.

Here we find five judges of our highest court, four selected by the bill, those four, in such manner as a majority of them shall deem fit, to select one of their brethren from the bench to make the fifth in

this tribunal, and yet the honorable Senator—

Mr. SHERMAN. Will my friend allow me to ask him one question and I will not interrupt him further, and I do not know that he ought to answer it. I will ask him whether the committee did not propose and contemplate a proposition to make this draw by chance propose and contemplate a proposition to make this draw by chance in the body of the commission; that is, the members of the two Houses. I ask because it was so published in the newspapers all over the country. I do not know that my friend ought to answer; perhaps I ought not to put the question; but it has been stated that the element of chance was to decide this fifth judge, and that was the impression that I had. It is the impression that other Senators here have; and if that was not contemplated by the committee the Senator can readily relieve us all and relieve the committee from that imputation because if he tells me that they did not contemplate that imputation, because if he tells me that they did not contemplate that this fifth judge was to be selected by chance, I would regard it at once as the absolute truth and would withdraw any supposition

Mr. BAYARD. Mr. President, I was discussing the bill before the Senate. I read the language of this bill. If the Senator thinks that the inference that he drew from this language which he read, which he has heard read just now, warrants him in stating that it is probable that this fifth judge is to be chosen by a gambling operation by the other four, I shall be surprised to hear him re-affirm it. It was in his exceeding anxiety to oppose the bill and throw discredit upon it that he did, whether inadvertently or not, or from what motive I do not speak, and he certainly did for the purpose of imputing to this bill an intent which I say is perfectly foreign to everything we can imagine in regard to the action of such officers and men as are now under discussion. That induced me to comment upon it. I am aware the honorable Senator has very little to say against the bill and therefore he is glad to create, if he may, interpretations unjust and unfavorable upon it, to asperse-for such it is-the character of these distinguished men in advance of their action. Sir, I apprehend that when these four distinguished jurists come to execute this, which will be as high a duty as they ever did or can perform, as any public men in any land can perform, they will approach it in a spirit worthy of the functions which they are to perform, and that nothing friv-olous, much less disreputable, will mark their course in carrying out

olous, much less disreputable, whi man their duties under this section.

Mr. President, objection has been made to the employment of the commission at all, to the creation of this committee of five Senators, five Representatives, and five judges of the Supreme Court, and the contract the objection have not been distinctly stated. The rea-

sons for the appointment I will dwell upon briefly.

Sir, how has the count of the vote of every President and Vice-President from the time of George Washington and John Adams in 1789 to the present day been made? Always and without exception by tellers appointed by the two Houses. This is without exception. Even in the much-commented case of Mr. John Langdon, who, before the Government was in operation, upon the recommendation of the constitutional convention, was appointed by the Senate its President for the sole purpose of opening and counting these votes. He did it, as did every successor to him, under the motion and authority of the two Houses of Congress, who appointed their own agents, called tellers, to conduct the count, and whose count being reported to him was by him declared.

From 1793 to 1865 the count of votes was conducted under concurrent resolutions of the two Houses, appointing their respective committees to join "in ascertaining and reporting a mode of examining the rotes for President and Vice-President."

The respective committees reported resolutions fixing the time and place for the assembling of the two Houses, and appointing tellers to conduct the examination on the part of each House respectively.

Mr. President, the office of teller or the word "teller" is unknown to the Constitution, and yet each House has appointed tellers and has acted upon their report, as I have said, from the very foundation of the Government. The present commission is more elaborate, but its objects and its purposes are the same, the information and instruction of the two Houses who have a precisely equal share in its creation and organization; they are the instrumentalities of the two Houses for performing the high constitutional duty of ascertaining whom the electors in the several States have duly chosen President and Vice-President of the United States. Whatever is the jurisdic-

tion and power of the two Houses of Congress over the votes and the judgment of either reception or rejection, is by this law wholly conferred upon this commission of fifteen. The bill presented does not define what that jurisdiction and power is, but it leaves it all as it is, adding nothing, subtracting nothing. Just what power the Senate by itself or the House by itself, or the Senate and the House acting together, have over the subject of counting, admitting, or rejecting an electoral vote in case of double returns from the same State, that power is by this act, no more and no less, vested in the commission of iffteen men; reserving, however, to the two Houses the power of over-ruling the decision of the commission by their concurrent action.

The delegation to masters in chancery of the consideration and adjustments of questions of mingled law and fact is a matter of familiar and daily occurrence in the courts of the States and of the United

The circuit court of the United States is composed of the district judge and circuit judge, and the report to them of a master is affirmed unless both judges concur in overruling it.

Under the present bill the decision of the commission will stand

unless overruled by the concurrent votes of the two Houses

I do not propose to follow the example which has been set here in the Senate by some of the advocates as well as the opponents of this measure, and discuss what construction is to be given and what defi-nition may be applied or ought to be applied in the exercise of this power by the commission under this law. Let me read the bill:

All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States, as provided in section 1 of this act, and when there shall be more than one such certificate or paper, as the certificates and papers from such State shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and therupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decide whether any and what votes from such States are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing.

It will be observed that all the questions to be decided by this com-

It will be observed that all the questions to be decided by this commission are to be contained in the written objections. objections are read and filed, their contents must be unknown, and the issues raised by them undescribed. But whatever they are, they are submitted to the decision of the commission. The duty of interpreting this law and of giving a construction to the Constitution and existing laws is vested in the commission; and I hold that we have no right or power to control in advance, by our construction, their sworn judgment as to the matters which they are to decide. We would defeat the very object of the bill should we invade the essential power of judgment of this commission and establish a construction in advance and bind them to it. It would, in effect, be giving to them a mere mock power to decide by leaving them nothing to

I heard the question asked of the honorable Senator from Ohio [Mr. Sherman] by his colleague [Mr. Thurman] the other day, why it was that he should have been condemned a year or so ago for not giving a construction to a certain act entitled "An act to provide for the resumption of specie payments." Why, sir, that act was, in all giving a construction to a certain act entitled "An act to provide for the resumption of specie payments." Why, sir, that act was, in all its terms, mandatory. It commanded the Secretary of the Treasury to do a certain act. Now, what we meant him to do was what we should have expressed; and when an order was given by Congress, it was but reasonable to ask, "What construction do you put upon your own order?" And it was such a question the honorable Senator [Mr. Sherman] declined to answer, or to say what he meant in his orders to the Secretary of the Treasury. But in the present case we submit the decision as to the matters in question their over index their over index. bunal, and we command them to do nothing but exercise their own judgment. What that judgment will be we cannot foretell and we have no right to ask. It is their judgment we seek. What does this commission decide? It is to pass upon cases of double returns. As to single returns there is no submission to it. What does it decide? That a certain one of two returns is the true return from a State. This decision being made, the returns are reduced in number to a single recision being made, the returns are reduced in number to a single return. The case assumes the condition contemplated by section 1 of the bill, relating to votes from any State from which but one return has been received, and which can be rejected only by the affirmative vote of the two Houses, the power of the two Houses is precisely the same in either case, and under both sections of the bill; nothing more of their power is relinquished in one case than in the

Mr. President, there are certainly very good reasons why the concurrent action of both Houses should be necessary to reject a vote. It is that feature of this bill which has my heartiest concurrence; for I will frankly say that the difficulties which have oppressed me most in considering this question a year or more ago, before any method had been devised, arose from my apprehensions of the continued absorption of undue power over the affairs of the States; and I here

declare that the power and the sole power of appointing the electors is in the State, and nowhere else. The power of ascertaining whether the State has executed that power justly and according to the Constitution and laws is the duty which is cast upon the two Houses of Congress. Now, if, under the guise or pretext of judging of the reg-ularity of the action of a State or its electors, the Congress or either House may interpose the will of its members in opposition to the will of the State, the act will be one of usurpation and wrong, although I do not see where is the tribunal to arrest and punish it except the great tribunal of an honest public opinion. But, sir, that tribunal, though great, though in the end certain, is yet ofttimes slow to be awakened to action; and therefore I rejoice when the two Houses agree that neither of them shall be able to reject the vote of a State which is without contest arising within that State itself, but that the action of both shall be necessary to concur in the rejection.

If either House may reject, or by dissenting cause a rejection, then it is in the power of either House to overthrow the electoral colleges or the popular rote, and throw the election upon the House of Representatives. This, it is clear to me, cannot be lawfully done unless no candidate has received a majority of the votes of all of the electors appointed. The sworn duty is to ascertain what persons have been chosen by the electors, and not to elect by Congress.

It may be said that the Senate would not be apt to throw the elec-

tion into the House. Not so, Mr. President; look at the relative majorities of the two Houses of Congress as they will be after the 4th of March next. It is true there will be a numerical majority of the members of the democratic party in the House of Representatives; but the States represented will have a majority as States of the republican party. If the choice were to be made after March 4, then a republican Senate, by rejecting or refusing to count votes, could of its own motion throw the election into the House; which, voting by States, would be in political accord with the Senate. The House of Representatives, like the present House in its political complexion, composed of a numerical majority and having also a majority of the States of the same party, would have the power then to draw the election into its own hands. Mr. President, either of these powers would be utterly dangerous and in defeat of the object and intent of

would be utterly dangerous and in detent of the constitutional provisions on this subject.

Sir, this was my chief objection to the twenty-second joint rule.

Under that rule either House of Congress, without debate, without law, without reason, without justice, could, by the sheer exercise of its will or its caprice, disfranchise any State in the electoral college.

Under that rule we lived and held three presidential elections.

In January, 1873, under a resolution introduced by the honorable Senator from Ohio [Mr. Sherman] and adopted by the Senate, the Committee on Privileges and Elections, presided over by the honorable Senator from Indiana, [Mr. MORTON,] proceeded to investigate the elections held in the States of Louisiana and Arkansas, and inquired whether these elections had been held in accordance with the Constiwhether these elections had been held in accordance with the Constitution and laws of the United States and the laws of said States, and sent for persons and papers and made thorough investigation, which resulted in excluding the electoral votes of Louisiana from the count. (See Report No. 417, third session Forty-second Congress.)

The popular vote was then cast, and it was cast at the mercy of a majority in either branch of Congress, who claimed the right to annul it by casting out States until they should throw the election into a resulting these of Popular States until they should throw the election into a re-

publican House of Representatives. I saw that dangerous power then, and, because I saw it then, am I so blind, am I so without principle in my action, that I should ask for myself a dangerous power that I refused to those who differ with me in opinion? God forbid.

This concurrence of the two Houses to reject the electoral votes of

a State was the great feature that John Marshall sought for in 1800. The Senate then proposed that either House should have power to reject a vote. The House of Representatives, under the lead of John Marshall, declared that they should concur to reject the vote, and upon that difference of opinion the measure fell and was never revived. In 1824 the bill prepared by Mr. Van Buren contained the same whole-some principle and provided that the two Houses must concur in the rejection of a vote. Mr. Van Buren reported this bill in 1824. It was amended and passed, and, as far as I can find from the record, without a division of the Senate. It was referred in the House of Representatives to the Committee on the Judiciary and it was reported back

sentatives to the Committee on the Judiciary and it was reported back by Mr. Daniel Webster, without amendment, to the Committee of the Whole House, showing their approval of the bill; and that principle is thoroughly incorporated in the present measure and gives to me one of the strong reasons for my approval.

Mr. President, this bill is not the product of any one man's mind, but it is the result of careful study and frequent amendment. Mutual concessions, modifications of individual preferences, were constantly and necessarily made in the course of framing such a measure as it now stands. My individual opinions might lead me to object to the employment of the judicial branch at all, of ingrafting even to any extent political power upon the judicial branch or its members, or confide to them any question even quasi-political in its character. or confide to them any question even quasi-political in its character. To this I have expressed and still have disinclination, but my sense of the general value of this measure and the necessity for the adoption of a plan outweighed my disposition to insist upon my own preferences as to this feature. At first I was disposed to question the constitutional power to call in the five justices of the Supreme Court, but the duty of ascertaining what are the votes, the *true votes*, under

the Constitution, having been imposed upon the commission, the methods were necessarily discretionary with the two Houses. Any and every aid that intelligence and skill combined can furnish may

why, sir, the members of the Supreme Court have in the history of this country been employed in public service entirely distinct from judicial function. Here lately the treaty of Washington was negotiated by a member of the Supreme Court of the United States; the venerable and learned Mr. Justice Nelson, of New York, was nominated by the President and confirmed by the Senate as one of the joint high commission. Chief-Justice Jay was sent in 1794, while he was Chief-Justice of the United States, as minister plenipotentiary to England and negotiated a treaty of permanent value and importance to both countries. He was holding court in the city of Philadelphia at the time that he was nominated and confirmed, as is found by reference to his biography, and-

Without vacating his seat upon the bench he went to England, negotiated the treaty which has since borne his name, and returned to this country in the spring of the following year.

His successor was Chief-Justice Rutledge, and the next to him was Chief-Justice Oliver Ellsworth. He, while holding the high place of Chief-Justice, was nominated and confirmed as minister plenipoten-By a law of Congress the Chief-Justice of the United States is ex officio the president of the Board of Regents of the Smithsonian Institution.

Mr. MORTON. I would inquire of the Senator whether that was an office to which Chief Justice Ellsworth was appointed and confirmed according to the Constitution? Chief-Justice Ellsworth went as minister to Spain; was that an office to which he was appointed and confirmed?

Mr. BAYARD. I do not consider the action of these justices upon the present commission as independent offices. I think it is nothing in the world but the employment of an officer in a manner useful to the country and not forbidden by the Constitution or by the policy of our law. That is all. I confine myself to the statement of their employment in the present case, and I mention the fact of their employment in these other conspicuous instances for the purpose of showing that it is proper, safe, discreet, and constitutional not to impose this duty upon them, but to create the duty and allow them to assume it; and I take it for granted in this case that we are dealing with men who being called upon to render service so high and important to their country that it is impossible with a knowledge of their character to suppose they would for a moment decline to per-

Mr. MORTON. I should like to ask the Senator, if it does not interrupt him, whether he regards the five judges acting on this commission as acting in their character as judges of the Supreme Court, if that is their official character, and that this bill simply enlarges

their jurisdiction in that respect?

Mr. BAYARD. Certainly not, Mr. President. They are not acting as judges of the Supreme Court, and their powers and their jurisdiction as judges of the Supreme Court are not in any degree involved; they are simply performing functions under the Government not inconare simply performing functions under the Government not inconsistent, by the Constitution, or the law, or the policy of the law, with the stations which they now hold. So I hold that the employment of one or more of the Supreme Court indges in the matter under discussion was appropriate legislation. We have early and high authority in the majorities in both House and Senate in the bill of 1800, in both of which Houses a bill was passed creating a commission similar to that proposed by this bill and calling in the Chief-Justice of the United States as the chairman of the grand committee, as they called it then a commission as we term it now.

As has been said before, many of the Senators and members of the Congress of 1800 had taken part in the convention that framed the Constitution and all were its contemporaries, and one of the chief act-Constitution and all were its contemporaries, and one of the contemporaries in the proceedings on the part of the House of Representatives was John Marshall, of Virginia, who one year afterward became the Chief-Justice of the United States, whose judicial interpretations have since that time clad the skeleton of the Constitution with muscles of robust power. Is it not safe to abide by such examples? And I could name many more, and some to whom my respect is due for other and

personal reasons.

In the debate of 1817, in the case of the disputed vote of Iudiana; In the debate of 1817, in the case of the disputed vote of Indiana; in 1820, in the case of Missouri; and again in 1857, in the case of Wisconsin, I find an array of constitutional lawyers who took part in those debates, among them the most distinguished members of both political parties, concurring in the opinion that by appropriate legislation all causes of dispute on this all-important matter of counting the electoral vote could be and ought to be adjusted satisfactorily. Why, sir, even the dictum of Chancellor Kent, that has been read here with so much apparent confidence by the honorable Senator from Indiana, is itself expressed to be his opinion of the law "in the abnce of legislation on the subject.

Mr. President, there were other objections to this bill; one by the honorable Senator from Indiana. He denounced it as "a compromise. I have gone over its features and I have failed to discover, nor has the fact yet been stated in my hearing, wherein anything is compromised. What power of the Senate is relinquished? What power of the House is relinquished? What power that both should possess is withheld? is relinquished? What power that both should possess is withheld? I do not know where the compromise can be, what principle is sur-

rendered. This bill intends to compromise nothing in the way of principle, to compromise no right, but to provide an honest adjudica-tion for the rights of all. Where is it unjust? Whose rights are endangered by it? Who can foretell the judgment of this commission upon any question of law or fact? Sir, there is no compromise in any sense of the word, but there is a blending of feeling, a blending of opinions in favor of right and justice.

But, sir, if it were a compromise, what is there in compromise that is discreditable either to men or to nations? This very charter of government under which we live was created in a spirit of compromise and mutual concession. Without that spirit it never would have been made, and without a continuance of that spirit it will not be prolonged. Sir, when the committee on style and revision of the Federal convention of 1787 had prepared a digest of their plan, they reported a letter to accompany the plan to Congress, from which I take these words as being most applicable to the bill under consideration:

And thus the Constitution which we now present is the result of a spirit of autity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

The language of that letter may well be applied to the present measure; and had the words been recalled to my memory before the report was framed I cannot doubt that they would have been adopted as part of it to be sent here to the Senate as descriptive of the spirit and of the object with which the committee had acted.

But, sir, the honorable Senator also stated, as a matter deterring us from our proper action on this bill, that the shadow of intimidation had entered the Halls of Congress and that members of this commit-tee had joined in this report and presented this bill under actual fear of personal violence. Such a statement seems to me almost incredible. I may not read other men's hearts and know what they have felt, nor can I measure the apprehension of personal danger felt by the honorable Senator. It seems to me incredible. Fear, if I had it, has been the fear of doing wrong in this great juncture of public af-fairs, not the fear of the consequences of doing right. Had there been this intimidation teufold repeated to which the Senator has alluded, and of which I have no knowledge, I should have scorned myself had I hesitated one moment in my onward march of duty on this subject.

Hate's yell, or envy's hiss, or folly's bray-

what are they to a man who, in the face of events such as now confront us, is doing that which his conscience dictates to him to do? It front us, is doing that which his conscience dictates to him to do? It has been more than one hundred years since a great judgment was delivered in Westminster Hall in England by one of the great judges of our English-speaking people. Lord Mansfield, when delivering judgment in the case of the King against John Wilkes, was assailed by threats of popular violence of every description, and he has placed upon record how such threats should be met by any public man who sees before him the clear star of duty and trims his bark only that he may follow it through darkness and through light. I will ask my friend from Missouri if he will do me the favor to read the extract to which I have alluded.

Mr. COCKELL read as follows:

Mr. COCKRELL read as follows:

Mr. COCKRELL read as follows:

But here, let me pause.

It is fit to take some notice of the various terrors hung out; the numerous crowds which have attended and now attend in and about the hall, out of all reach of hearing what passes in court, and the tunults which, in other places, have shame-fully insulted all order and government. Audacious addresses in print dictate to us from those they call the people, the judgment to be given now and afterward upon the conviction. Reasons of policy are urged from danger to the kingdom by commotion and general confusion.

Give me leave to take the opportunity of this great and respectable audience to let the whole world know all such attempts are vain.

I pass over many anonymous letters I have received. Those in print are public; and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty, unawed. What am I to fear? That merdax infama irom the press, which daily coils false facts and false motives? The lies of calumny carry no terror to me. I trust that my temper of mind, and the color and conduct of my life, have given me a suit of armor against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I hough tright. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I hough tright. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I hough tright in the popularity; but it is that popularity which soone or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this o

The threats go further than abuse: personal violence is denounced. I do not believe it; it is not the genius of the worst men of this country in the worst of times. But I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country, (for liberty is synonymous to law and government) Such a shock, too, might be productive of public good; it might awake the better part of the kingdom out of that lethargy which seems to have benumbed them; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.—Burrows's Reports No. 4, pages 2561, 2562, 2563.

Mr. BAYARD. Mr. President, in the course of my duty here as a representative of the rights of others, as a chosen and sworn public servant, I feel that I have no right to give my individual wishes,

prejudices, interests, undue influence over my public action. To do so would be to commit a breach of trust in the powers confided to me. It is true I was chosen a Senator by a majority only, but not for a majority only. I was chosen by a party, but not for a party. I represent all the good people of the State which has sent me here. In my sent all the good people of the State which has sent me here. In my office as a Senator I recognize no claim upon my action in the name and for the sake of party. The oath I have taken is to support the Constitution of my country's Government, not the fiat of any political organization even could its will be ascertained. In sessions preceding the present I have adverted to the difficulty attending the settlement of this great question, and have urgently besought action in advance at a time when the measure adopted could not serve to predicate its results to other the measure adopted could not serve to predicate its results to other them. advance at a time when the measure adopted could not serve to predicate its results to either party. My failure then gave me great uneasiness, and filled me with anxiety; and yet I can now comprehend the wisdom concealed in my disappointment, for in the very emergency of this hour, in the shadow of the danger that has drawn so nigh to us, has been begotten in the hearts of American Senators and Representatives and the American people a spirit worthy of the occasion—born to meet these difficulties, to cope with them, and, God willing, to con-

Animated by this spirit the partisan is enlarged into the patriot. Before it the lines of party sink into hazy obscurity; and the horizon which bounds our view reaches on every side to the uttermost verge of the great Republic. It is a spirit that exalts humanity, and important that the little is the same of the party side of the party size of the same of the great Republic. It is a spirit that exalts humanity, and imbued with it the souls of men soar into the pure air of unsellish devotion to the public welfare. It lighted with a smile the cheek of Curtius as he rode into the gulf; it guided the hand of Aristides as he sadly wrote upon the shell the sentence of his own banishment; it dwelt in the frozen earth-works of Valley Forge; and from time to time it has been an inmate of these halls of legislation. I believe it is hear taken and that the great halls of legislation. is here to-day, and that the present measure was born under its influence

Mr. CHRISTIANCY. I shall not detain the Senate long with what

I have to say upon this bill.

Many times heretofore in the history of our country have presidential elections occurred, after earnest and heated canvasses between two or more great political parties; contests in which not only all partisan passions and prejudices but all the honest patriotic impulses of our people have been aroused to nearly if not quite the same extreme pitch of intensity as in the election of last November; but in all of them the result, so far at least as depended upon the votes of the people, was so decisive or well known and understood, and the fact so clearly ascertained that one of the candidates had been beaten and the other elected, or that no one had the majority of the votes and the election must go to the House where the result must be clearly ascertained in accordance with the plain provisions of the Constitution, that no great strain upon the foundation principles of our institutions was felt, and little apprehension of actual disruption of the Government or of civil commotion or internecine war to arise from any contest growing out of the ascertainment of the result.

All the American people ever demanded in this respect was the fair, legal, and therefore satisfactory determination of the result in the mode established by the Constitution and the laws; and this having been always until the present year thus easily ascertained, that party or those parties, those portions of our citizens who saw their wishes defeated, like true patriots and true American citizens, submitted, as I believe, as I trust I may say I know they always will, to the will of the majority ascertained in the plain, constitutional, and legal way, knowing that in four short years they would have the opportunity for renewing the contest and again appealing to the people for the triumph of their principles; and that without such loyal submission the maintenance of popular government would be impossible. But now at length, in the last year of the first century of our independent national existence, has for the first time occurred a presidential election at the close of as earnest and heated a contest between the two great political parties as ever occurred in our hisbetween the two great political parties as ever occurred in our history, in which every partisan passion and prejudice as well as every sentiment of patriotism has been aroused to the utmost; and though the smoke of the battle rapidly cleared away, and the result was seen in all but two or three States, it was at once seen to be so close as to depend upon these two or three States over which the dense clouds still rested, shrouding in painful uncertainty the question of victory or defeat as the final result of the great conflict. Over two of them at least those clouds instead of clearing away only became more dense and impenetrable day after day, flashing forth only the forked tongues of rumors and contradictory reports and double returns: tengues of rumors and contradictory reports and double returns; charges on one side of fraud, of violence, and intimidation exercised against large masses of voters, of repeating and stuffing of ballot-boxes; and upon the other of falsifying returns, of frauds by canvassers and election boards, with just enough of plausibility and of evidence in reference to each to confirm in the minds of the masses of each party the conviction that it had fairly carried the election in of each party the conviction that it had fairly carried the election in those States; every day rendering each more confident of the result in its own favor, and that any contrary result would be the triumph of falsehood, violence, frand, or trickery. This conviction was growing stronger in the minds of the masses of each party day by day. It was, and is, beyond question in the minds of the masses of each party throughout the whole country an honest and intense conviction; and just because of, and just in proportion to, the honesty and intensity of the country in the winds of the masses of each party throughout the whole country an honest and intense conviction; sity of this conviction in the minds of the respective parties-one of

whom must be wrong, if not to some extent both-that those conflicting conclusions and convictions became dangerous and portentficting conclusions and convictions became dangerous and portent-ous of evil. For while all would readily yield to what they are sat-isfied is a fair mode of decision, and cheerfully abide the result though against their most ardent wishes, patriotism, intelligent patriotism itself, may often and properly doubt whether a quiet yield-ing to fraud or violence may not tend to encourage the like wrongs in future, and thus to increase and perpetuate them, and whether, therefore, it is not better upon the whole, to meet it with resistance in limine, even at the risk of civil discord and actual war, than to encourage and promote the wrong by tame submission. At all events, an honest and firm conviction in the minds of half the people in a popular government like ours, that their wishes have been crushed or violence and that their opponents have obtained possession of the Government by such means would in itself be a serious calamity to the country by weakening their confidence in and attachment to the government thus in their opinion wrongfully placed in power over them.

Such being the opposite but honest convictions of our people of the opposing parties, I have regretted and deplored the excesses of par-tianship on both sides, which have driven many doubtless honest men, with a zeal as I am compelled to think beyond their knowledge and with a zeal as I am compelled to think beyond their knowledge and appreciation of the temper and disposition of our people, to advocate very questionable measures or modes of deciding the result of the election—some merely technical, others merely bold and reckless, as if the Presidency could be boldly and defiantly seized by trick, by fraud, or by threats of force on either side, which if it could succeed would put an end to all hopes of safe and orderly republican or popular government in this country if not in the rest of the world.

All such schemes contemplate a decision by a single party to the contest, and all therefore threaten, if not the present peace of the country, at least the permanency of republican government; and as such they have created serious apprehensions in the public mind of great and impending dangers. Capitalists dare not invest; business men dare not incur the ordinary risks; laboring men are thrown out of employment, and a feeling of uncertainty and alarm has seized upon a large portion of our people. The whole country is looking with anxiety and keen solicitude to the wisdom and patriotism of Congress anxiety and keen solicitude to the wisdom and patriotism of Congress to devise some fair and satisfactory method of settling the disputed result of the presidential election. And I confess I have not myself been without serious apprehensions lest the madness of party spirit should prevent the adoption of any plan for settling this momentous question which should be entirely fair to both parties and therefore likely to be cordially acquiesced in by all. And whatever attributes of personal courage or recklessness I might possess—and I certainly did not fear any immediate collision—I felt that I had no right to try rash experiments, or by any inconsiderate action of my own to put at hazard the interests and the welfare of so many millions of people. ple.

In any of the ancient republics, in any other republic of modern times, in any popular government among any people not by long habit accustomed to reverence and ready submission to law, and fully appreciating the necessity of such submission to the orderly administration of government, such a crisis would have led to total disruption of the Government and ended in anarchy or the rule of the

But, while I have had my apprehensions, I have at the same time felt a strong confidence in the good sense and patriotism of the American people, and that the able men of both parties in this and the other House would be able to devise some plan of deciding the controversy House would be able to devise some plan of deciding the controversy which would make the result satisfactory to the great masses of our population and strengthen their confidence in the Government. Though not presenthere when the committees of the two Houses were appointed, I had high hopes, from the character and ability of the men composing the committees, that some substantially fair plan would be the result. But I hardly dared to hope for the adoption of any plan so absolutely and equally fair to both parties, and so likely to produce entire satisfaction and the willing obedience of all to the final result, whatever that may be as the plan which the committees have been whatever that may be, as the plan which the committees have been able to present. I hail it as the bright bow of promise in our troubled political sky, all the more welcome and cheering as the harbinger of peace and fraternal feeling that it comes before the tempest and deluge of excitement, of partisan animosity and public discontent, which would have been sure to agitate and imbitter the minds of one-half of our population had the decision either way been made through any of the one-sided and unfair methods previously proposed by either

I congratulate the committee that in the midst of so much partisan excitement they have been able to agree upon such a plan with so near an approach to unanimity. And I congratulate the American people who will see, and rejoice to see in this result, what the exascerbations of partisan zeal had lately made them doubt, that some at least of our leading political men—I hope the mass of them—though earnest and zealous partisans, are yet true-hearted American citizens; that they can be patriots and statesmen as well as partisans; that they are partisans because they are patriots—zealous for the success of their respective parties, as a means to a noble end, because they consider their own peculiar policy best for the common good and the national welfare.

Mr. President, I do not propose to go into the argument at length

upon the constitutionality of the proposed measure. This duty has been so ably and so thoroughly performed and the constitutionality of the bill so clearly demonstrated by the Senators from Vermont and the bill so clearly demonstrated by the Senators from Vermont and New York and the other members of the committee specially charged with the duty of considering the question, that it would be useless and unprofitable for me to go over the same ground. I could only follow them with very unequal steps, and I will not make the vain attempt to gild refined gold or paint the lily, yet there are two or three objections which have been raised to the constitutional validity of this measure to which I will barely allude.

The provisions of the bill in reference to cases where there is but one return from a State are so obviously fair, and so entirely in accordance with my own views as expressed here at the last session, that

no further comment is necessary by me.

The subsequent provisions of the bill in reference to cases where there is more than one return from the same State are intended not simply to determine how or by whom the votes are to be counted, in the mere arithmetical sense, about which there never was and never will be any difficulty, but to provide a method of deciding which or whether either is the true and valid return and what "rotes," if any, are to "be counted." This is, in its nature, more a judicial than a legislative or political question. It is a mixed question of law and fact, growing out of transactions which have already occurred.

I have not been able to discover any objection to this portion of the bill on constitutional grounds.

the bill on constitutional grounds.

The Senator from Indiana, a few days since, argued the question, judging from the precedents which he cited in proof of his propositions, as if the question were one merely of "counting" the votes in the arithmetical sense; whereas the real question involved and argued by the other members of the committee was, the proper mode of ascertaining what were the "votes" which should be counted.

These questions are as distinct from each other as light from dark-

And though it should be admitted that the precedents have, as as-And though it should be admitted that the precedents have, as asserted by the Senator from Indiana, been wholly uniform from the foundation of the Government that the President of the Senate counted and certified that he had counted the votes, (which I think is not true since the election of 1824 or 1828.) still all this has no bearing upon the real question here involved. There is not a single precedent, from the first institution of the Government to the present day, showing that the President of the Senate ever decided, or assumed to decide, between two conflicting returns from the same State. And when the Senator speaks of the uniform course since the organtraction of the Government for the President of the Senate to "count the votes," which is true, if at all, only in the arithmetical sense, he does not touch nor even approach the real question involved, and which is, in the first instance, to be decided by the commission created by the bill.

Mr. President, I had not intended to have said anything further upon any point of objection made to this bill until this afternoon. As to the objection that the members of this commission will be officers of the United States and are therefore required by the Constitution to be appointed by the President with the advice and consent of the Senate, it is, in my view, sufficient to say that this bill only devolves upon persons already properly in office certain new powers in the nature of public trusts, and does not create any new officers. The Constitution itself makes the distinction between an office and a public trust. Article 6, last clause, makes the distinction between an office and a public trust.

And in reply to the objection that this bill is an attempt to delegate to a distinct body powers vested by the Constitution in Congress, I will only say that it does not attempt to transfer to this commission the power of final decision of the question of election, nor to divest itself of that power or to relieve itself from its exercise when the final and decisive action is required. But the commission is made ancillary or auxiliary to Congress for the purpose of ascertaining facts and considering the legal questions involved upon principles analogous to those which apply to a committee or a referee, and providing that their determination shall stand as the decision unless overruled by the two Houses. The whole judicial power by the constitutions of the several States is vested in certain courts. But will it be questhe several States is vested in certain courts. But will it be questioned that such courts may be authorized to appoint referees in a court of law or a master in chancery, whose report shall be confirmed and judgment or a decree entered upon it unless overruled by the court? And would it make any difference when the judges of the court happened to be equally divided and the report could not be overruled? I am inclined to think such a law would be valid unless there were some other or peculiar provision of the Constitution that should forbid it. should forbid it.

I now call the attention of the Senator from Massachusetts [Mr. DAWES] for a moment to what I have to say in reply to the objection which he has made to the bill. My friend the Senator from Massachusetts objects to this bill because he says it allows this commission to determine for itself the extent of its jurisdiction. And in illustrating what he seems to think the absurdity of the bill in this respect, he says that in Massachusetts, when they establish a court, the law creating it always defines its jurisdiction, instead of leaving the court to determine it. And so, and for this reason he insists that this bill ought to declare whether this commission shall have the right to go into or consider evidence behind the returns. Now, with all deference to my friend, I must say that but for this suggestion it never would have occurred to me that this was a question of jurisdiction. I should certainly have said, and am compelled to say now, that to me it seems to be only a question of the admissibility of evidence unme it seems to be only a question of the admissibility of evidence unler existing laws; nothing more, nothing less. And taking his own illustration, I will ask my friend if there is anything in the constitution or any practice of legislation in his State which requires that whenever a court is established the act creating the court must declare the particular kinds of evidence upon which alone it could proceed. I do not by this mean that this commission created by this bill is a court; but so far as it is analogous to a court it seems to me his illustration is an unfortunate one for his argument.

I will say further, that the words in this bill which allow the commission to go behind the returns if competent so to do under existing laws neither add anything to nor take anything from the powers they would have under existing laws, if these words were left out. The other language of the bill submitting to them the law and the facts for consideration, would give them the right to go behind the returns.

for consideration, would give them the right to go behind the returns, if such evidence would be competent under existing laws.

if such evidence would be competent under existing laws.

But I will say further that I am opposed to this amendment, and every other amendment which would make the bill fairer to one side than to the other, or even appear to do so. In saying this I do not mean to express by the slightest implication that I think they would have the right to go behind the returns, nor do I here mean to express any opinion upon that question one way or the other.

Mr. President, it seems to have been assumed by many of the politicians and partisans in and out of Congress that all the members of the commission created by the bill, whether taken from the Senate, the House, or the Supreme Court, will necessarily, or as a matter of course, be governed in their decision by the partisan views, partisan

the House, or the Supreme Court, will necessarily, or as a matter of course, be governed in their decision by the partisan views, partisan bias, or partisan prejudices of the political parties to which they respectively belong, or with which they have generally voted, and without reference to the real merits of the legal questions involved. But while this may be true of mere partisans and mere pettifoggers, who sometimes intrude upon and always pollute when they do intrude upon the province of judicial investigation and judicial decision, I must enter my earnest protest against this argument when it is to be applied to lawyers and jurists of the high legal attainments, reputation, and self-respect which I take it for granted will be possessed by the gentlemen who will be selected by the respective Houses as members of this commission, and especially to the judges of the Supreme Court, who will be solemnly sworn to discharge their duties according to the Constitution and the laws. My own observation and some slight knowledge of the mode of exercising judicial functions satisfy me that all such conclusions are false, scandalous, and unjust; that eminent and reputable members of the bar who have been elevated to the bench, if they have a particle or vestige of self-respect, elevated to the bench, if they have a particle or vestige of self-respect or any regard for their oaths, their reputations, or the good or evil fame which is to follow the performance of judicial duties, will at once feel the importance, the vital importance of exercising judicial imfeel the importance, the vital importance of exercising judicial impartiality, forgetting or promptly suppressing the habit of looking only to one side of the case as a mere advocate, and at once appreciating the necessity of giving due attention to the real merits and the weight of argument upon both sides, and above all to watch and promptly to check in their own minds the influence of party bias or prejudice. No, I will not, I dare not think so meanly of the legal profession, to say nothing of the members of the most august judicial tribunal in the world, as to take it for granted that, notwithstanding their solemn oaths, they will sacrifice their own self-respect, the respect of their fellow-citizens, and their fair fame in the history of their country, for any paltry consideration of mere party or partisan advantage. I will never believe that such men will thus degrade and prostitute their high functions and crush out their own self-respect until the damning fact shall be made clear by unimpeachable evidence. When all confidence shall thus be lost in the integrity of the judicial character, farewell at once and forever to all hopes of liberty and law.

And now, in conclusion, I will say that this bill, being equally and obviously fair to both parties, that party which shall reject it without offering something equally fair will, if the other party accepts it, in my judgment, forfeit the support of the people, and necessarily, if not descreedly go down.

In my Judgment, for left the support of the people, and necessarily, in not deservedly, go down.

Mr. THURMAN. Mr. President—

Mr. DAWES. Will the Senator from Ohio allow me a minute? I should like to say a few words in reply to the Senator from Michigan.

Mr. THURMAN. I shall not speak so long that the Senator cannot say them very well after I am done.

Mr. DAWES. If the Senator will give me five minutes, it will restrict me.

Mr. DAWES. If the Senator will give me live minutes, it will gratify me.

Mr. THURMAN. Very well, I will do so.

Mr. DAWES. The concluding words of the remarks of the Senator from Michigan are so exactly what I should like to say myself that I hardly think it possible that our views could be so far apart. The Senator, however, is not entirely accurate when he says that I object to the bill because of some doubt about the jurisdiction of the commission which it creates. I do not object to the bill, nor do I object to what is considered by those who have thus far advocated the bill to be the jurisdiction conferred. I object to certain phraseology in the bill because the t phraseology, I am told, has been put into the bill to meet different and antagonistic views; and, under that phrase-

ology, men holding different views are authorized to say that the language of this bill is broad enough to cover their views. Inasmuch as my friend from Michigan, as well as the distinguished Senator from New York, both disclaim any such construction upon this language, New York, both disclaim any such construction upon this language, at the same time admitting that without this equivocal language it could not command the support of those that maintain the very thing which they disclaim, anxious to make this bill as perfect as possible, and with a desire that it shall accomplish just what the Senator from Michigan hopes it will, and because with him I do not desire that the bill shall give to one side any advantage whatever that it does not accord to the other, I want this bill to be explicit and to express what the Senator from New York and what the Senator from Michigan agree with me it could be expressed as the Conwith me it ought to express, and what they agree with me the Con-

stitution itself commands.

This phraseology which troubles me, and which the Senator says is nothing but a questical of the admission of evidence, covers the whole jurisdiction. It is in this language that jurisdiction is given to the commission. After these double returns are committed to this commission, the only jurisdiction they acquire and the only power to adjudge and determine they have is gathered from the papers to be

submitted to them:

And may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law—

Which my friend from Michigan says does not alter it allbe competent and pertinent in such consideration

Mr. CHRISTIANCY. The Senator from Massachusetts must certainly have misunderstood me, for I said expressly that I intended to

express no opinion whatever upon that point.

Mr. DAWES. Then I am the more surprised that the Senator from Michigan is not willing to express an opinion upon the point whether the functions of the State authorities are to be taken possession of by the functions of the State authorities are to be taken possession of by this commission; whether this commission can, if it see fit, turn itself into a returning board for Louisiana, or a board of canvassers for the State of Michigan, or take to itself the functions which the laws of Massachusetts have clothed the governor and the council of that State with, to say what is its voice, to say whom it has made an elector. If my distinguished friend from Michigan is unwilling to east the beautiful beautiful the says there where a beautiful in page 2000 and 1000 are the beautiful to the says the say that because there are those whose support is necessary to this bill who will not give it that support unless its language may be so uncertain and equivocal that they can claim that it is broad enough to lead them to this conclusion, then I regret very much that this measure, if it has my support, must have it, feeling that he and I surrender to the necessities of this bill that bulwark of State rights without which the States cease to elect a President and the two Houses of Congress benceforward become the body that is to choose

Houses of Congress henceforward become the body that is to choose the President of the United States.

It is because I want to make this bill clear and speak the language of the Senator from Michigan and speak the language of the Senator from New York, that I desire to strike out of it any words that convey an uncertain sound, and they are these words. For what purpose, as has been well asked, are they to take into consideration any paper, or testimony, or deposition that is pertinent, unless we point out what is pertinent by our declaration? This is all the more necessary if there are several and diverse interpretations of the Constitution itself. It is competent to us under the Constitution to enlarge or tion itself. It is competent to us under the Constitution to enlarge or tion itself. It is competent to is under the constitution, make it greater to limit and confine the jurisdiction of this commission, make it greater or less under the Constitution as seems proper and just in our eyes. If in the limit of the Constitution we do not know where that leads us, inasmuch as we are not agreed where that limit is, it becomes us, it seems to me, to set up the milestones ourselves under that Constitution.

Mr. THURMAN. Mr. President, if there were fit opportunity I should be disposed to discuss this bill more fully perhaps than I ever yet have discussed a measure in the Senate. I should be disposed to give at very considerable length, and with much historic illustration and many references to authorities, the reasons which have brought my mind to the conclusion to support this bill and to support it earnestly; and also with something of boldness, and no small reference to authority and the opinions of able men who have lived in this country and whose names are revered to attempt to show that not one single and thority and the opinions of able men who have I'ved in this country and whose names are revered, to attempt to show that not one single point of opposition that has been made against the bill can be sustained by sound reasoning or by any respectable authority. But I am admonished by the lateness of the hour, by the fatigue of the Senate, by I might say a regard for the health of the Senate and my own, to forego what I should so much wish to perform. Therefore the remarks that I shall submit will be comparatively brief. Indeed I have been said so much more ably by those who have preceded me deed I have been so well anticipated in much that I would say, and it has been said so much more ably by those who have preceded me in support of the bill than I could say it, that it is not a matter of regret to me that I am confined to a limited space of time. I want especially to express the gratification with which I have listened to the speech just made by the Senator from Michigan, who took so clear, so lawyer-like, and so judicial a view of the subject.

Mr. President, it has been said that this bill is novel. It is novel neither in principle nor in its frame-work; and he who thinks it is novel must think so because he has not carefully studied the Constitution of his country or read its history with profit. Again, it has been said that it goes outside of the Constitution. It does not go outside of the Constitution, unless the opinions of the most eminent

men who have lived since the Government was formed are worthy of no regard. Again, it is said that it constitutes a court to decide a single and existing case. Why, sir, if that were true, the ease to be decided by it is one of such transceadent importance, one upon which decided by it is one of such transcendent importance, one upon which the interest and prosperity, and perhaps the peace of forty-odd millions depend, a question so transcendent that the very perpetuity of the Republic itself may depend upon its peaceable solution—if it were so that the bill constitutes a court for the decision of a single case, there never was greater reason teconstitute a court. Before the importance of this subject other jurisdictions sink into comparative insignificance. If the tribunal to be created by this bill shall render a judgment that in the opinion of enlightened history shall be a sound, and honest, and just judgment, it will be one of the grandest tribunals in the minds of students and in the reverence of the people of this Republic that ever sat in this land.

Again, it has been said that the bill provides for a secret tribunal. There is not a word in the bill that looks to secrecy. This tribunal may sit in public or in private, just as a court sits in public and consults in private. It may do the one or the other. It may do as we did in the impeachment case, hear the evidence and the arguments in public, and then, as a court does, retire to its chamber to consult upon its judgment; but there is no more injunction to secrecy in this tribunal than there was upon the Senate in the trial of the impeachment or than there is upon the Supreme Court of the United States

in the conduct of its business.

Again, it is said that it will give the making of the President to one man. Assuming that the five Senators who are chosen will be so partisan, that the five Representatives who are chosen will be so so partisan, that the five kepresentatives who are chosen will be so partisan, that the five judges who may be on that tribunal may be so partisan and corrupt that every one of them, disregarding his honor, disregarding his obligation to truth and to law and to justice, disregarding the solemn oath that he is to take as a member of the commission, will be so corrupt that he will have no other guide for his decision than the behest of party, it is said that the decision will be that of one man, as the fifteenth member happens to be a democrat or a republican. I say with teenth member happens to be a democrat or a republican. I say with the Senator from Michigan that if the public men of this country have reached that depth of corruption and degradation our institu-tions have lasted too long. It is time to cease to have judges of your Supreme Court; it is time to cease to honor and to respect Senators and Supreme Court; it is time to cease to honor and to respect Senators and Representatives in Congress; it is time to cease to ask the people to yield a willing obedience to the laws and a willing and reverential obedience to the decisions of the courts, if those who constitute the highest officers in all the land, members of the highest judicial tribunal, members of the highest legislative assembly, are so utterly corrupt that they are willing to be forsworn, in the decision of a cause submitted to them, at the behest of their party. I do not believe it, and I believe it the less that I come from the committee that reported this bill; and after three weeks' constant labor on that reported this bill; and after three weeks' constant labor on that committee, I say now, democrat as I am and firm as a democrat can be, that I would be willing to submit the decision of this cause to that committee itself; because I did see in the deliberations of that committee, I did feel it in the very atmosphere that surrounded us, that when the appropriate content of the co

that when the emergency comes, when the trial comes, men can rise above party, and that they do rise above it.

But, sir, a very novel objection was started by my colleague, and although it is a little out of order to notice it now I will dispose of it at once. Speaking of the fact that it would require the concurrence of the two Houses to overrule the decision of this tribunal, he quotes a provision in the Constitution which is in these words, a familiar provision of the Constitution :

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Why, did my colleague forget that that provision has reference solely to legislation, purely and entirely to legislation; that it is in that part of the Constitution that defines the legislative power? Does he suppose that, in deciding who has been elected President of the United States by the people, Congress exercises a legislative power? Does he suppose that we legislate a man into the Presidency? Does he not know that all our duty is to ascertain who has a majority of the votes of all the electors are interested and that that is a majority of the votes of all the electors appointed, and that that is a quasi-judicial, and not a legislative, function † Does he not know one thing further, that we are to inquire if any man has received a majority and who that man is, and, if not, then to ascertain that no man has received a majority; and then the Constitution says what shall be the consequence? There is not one particle of legislation involved in any such thing, and the

is not one particle of legislation involved in any such thing, and the clause of the Constitution to which my colleague refers on this subject has no more to do with it than a chapter in the Koran.

Mr. SHERMAN. If it does not disturb my colleague, I would ask what cases can be give where a concurring vote of the two Houses is required except in the exercise of legislative authority?

Mr. CONKLING. Amending the Constitution, for example.
Mr. SHERMAN. That is legislative.
Mr. THURMAN. The twenty-second joint rule, for example.
Mr. SHERMAN. That is admitted to be void.
Mr. THURMAN. O, admitted, is it?

Mr. SHERMAN. It is void now; it was not proper legislation; and my colleague concurred in voting it out of existence.

Mr. THURMAN. If my colleague will give me room to say it, I never had a chance to vote it out of existence that I ever heard of

myself.

Mr. SHERMAN. I again repeat my question, for I wish it answered.

Mr. THURMAN. It is answered.

Mr. SHERMAN. Congress is the law-making power of this countries of the concurrence of the concurre try, and I ask my colleague to tell me what cases require the concurrence of the two Houses that are not of a legislative character. Making a constitution is legislative and the question about an amendment to the Constitution. Tell me the cases and then I perhaps shall have my doubt removed. I used this argument simply to show that the two Houses were not invested with the power, by concurring votes, of rejecting a vote, because, according to the plain language of the Constitution, every concurring vote of the two Houses must be submitted to the President, and it could not be possible that the framers of the Constitution contemplated that a vote in the count of presidential electors should be submitted to the President.

Mr. THURMAN. If my colleague is right, then it follows that, if we proceed to count the votes without any rule at all, and an objection is made to a count, and the two Houses separate, and we concur in either admitting the vote or rejecting it, we must send a message up here to the White House to ask President Grant whether he agrees

our proceeding!
Mr. EDMUNDS. And wait ten days for an answer.
Mr. THURMAN. And wait ten days, until we get a veto message

or an approval.

Mr. SHERMAN. On the contrary, I denied that the framers of the Constitution would do so silly a thing. They have provided that every concurring vote of the two Houses shall be submitted to the President, and therefore I say it is not possible that they contemplated that the two Houses should, by a concurring vote, count a President in or count a President out.

Mr. THURMAN. Ishould like to know from my colleague, although

he interrupts the thread of my argument, who is to count, in his esti-

Mr. SHERMAN. I have already stated it.
Mr. THURMAN. Who?
Mr. SHERMAN. I will repeat it. I believe that the count proair. Shekman. I will repeat it. I believe that the count provided for by the Constitution, according to the established forms, is the mere reading of certain acts of the State governments in accordance with their laws, noted down by the presiding officer of the Senate in the presence of the two Houses, they no doubt having more ate in the presence of the two Houses, they no doubt having more or less to do in counting those votes; precisely what, has never been ascertained either by law or otherwise. If I have the leave of my colleague, I would be glad to say that what I assert is this: that they simply tabulate the results of the acts of States; they have no right to make electors for the States. All they do is to read over and tabulate the votes cast by the electors and announce the result.

Mr. THURMAN. Very well, now we will begin to count. If this bill pass we will go at it alphabetically. We come to Colorado, and here is an objection that Colorado is not a State, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Missouri in 1821, just as there was in respect to Indiana in

respect to Missouri in 1821, just as there was in respect to Indiana in 1817. Then who is to decide it? My colleague has not told us yet who is to decide it. He says that the Houses are to have more or less to do with that question. I do not care whether they are to have to do with that question. I do not care whether they are to have more or whether they are to have less; the two Houses have something to do with it, and that implies that they are to vote upon it, and then, according to his logic, they send the vote to the other end of the Avenue, and wait ten days to know what the President thinks

No, Mr. President, that will not do at all. I certainly mean to treat my colleague with the highest respect, but in the haste of speaking he has laid down a proposition that will not bear investigation, and

so I dispose of it.

It has been further said that this bill infringes the prerogative of the President of the Senate. After the argument of the Senator from Vermont and of the Senator from New York I shall certainly not speak upon that point. I have one single remark, however, to make to those who are talking about adhering to precedents, and who say that we want no law, that all we have to do is to go on as we have done for eighty years or more. I want to say to them that I defy any man to show me one single instance in which the President of the Senate ever decided a disputed question in respect to an electoral vote. You cannot find in all our history one single instance. The only time that ever there was an expression by a President of the Senate upon that subject was the positive disclaimer by Mr. Mason that he had any such authority. So much for that.

Now I come to the amendment of the Senator from Massachusetts,

[Mr. Dawes.] Really I should have liked very much better if the Senator from Massachusetts had come out boldly against the bill, for his amendment is a dagger-thrust at the heart of the bill and nothing less. He says that this bill is framed because of conflicting views. He is entirely right about that. If there had been no conflicting views in respect to the interpretation of the Constitution among the members of the Senate and the members of the House of Representatives, and between the two Houses, there would be no necessity what-ever for the bill. If both Houses were agreed that no vote should be counted unless both Houses concurred in receiving it, there would

be no necessity for a bill. If we were all agreed that no vote should be be no necessity for a bill. If we were all agreed that no vote should be rejected unless both Houses concurred in rejecting it, there would be no necessity for a bill. It is simply because there are these conflicting opinions and that in the present position and posture of affairs these conflicting opinions are likely to plunge the country into discord, to paralyze business, paralyze trade, unsettle the habits and opinions of the people, destroy respect for the Government and jeopard the best interests of the Republic, that a mode of getting out of this difficulty is provided by the bill. Have Senators reflected how numerous are the points upon which there are conflicting opinions on this subject? Let me enumerate a few of them. I will not say a few, either, but not all by any means.

not all by any means.

When your committee got together, after a free and friendly con-When your committee got together, after a free and friendly conversation and discussion of the subject, and the reading of no small amount of history, it was soon discovered that to frame a bill upon the idea of defining by law what the Constitution means, settling that by law, would be a simple impossibility, and that no such bill could pass; for you could not frame a bill according to the onetheory or the other opposite theory without its being supposed that it gave advantage to one party or to the other party. In the present circumstances of our country, and as the majorities of the two Houses are of different polities, it was perfectly clear that any bill that gave the least advantage. politics, it was perfectly clear that any bill that gave the least advantage, ay, the weight of the dust in the balance, to either party, could not become the law of the land. Therefore it was that we did not attempt to do what the Senator from Massachusetts thinks is so easy to do, namely, to interpret the Constitution in a statute. It would have been the most idle work that ever sane men attempted had we tried to do any such thing. All that we could do was to constitute a tribunal as honest and impartial and fair as we could make it, as likely to be intelligent and learned and honest as we could find, and as likely to command the respect of the country as any we could frame, and submit to that as we submit to our supreme judicial tribunal, the Supreme Court of the United States, the constitutional questions that are involved in this subject. Is there anything strange or novel in that? Is there a constitutional question or can there be one that we do not submit to the final arbitrament of the Supreme Court of the United States? In a case like this, where there is no opportunity of any such submission, where such a submission would be of doubtful constitutionality in view of the power conferred by implication at least upon Congress, is there anything strange in getting the aid, the advice, the judgment of a tribunal so carefully framed to make it houest, to make it able, to make it learned, to make it command the honest, to make it able, to make it learned, to make it command the respect of the country, as the tribunal provided for in this bill? Is there anything strange in that, and especially is there anything strange in it when the two Houses of Congress, being charged with this great duty, reserve the power to overrule the decision of that tribunal and to decide otherwise, if the two Houses consider its decision to be wrong? I should like to know where there is anything that is justly subject to censure in a proposition like that.

But I said that I would state some of the conflicting opinions upon the interpretation of the Constitution to show with what your con-

the interpretation of the Constitution to show with what your committee had to grapple, and to show what would be the field of inquiry upon which we should have to enter if we were to take the suggestion of the Senator from Massachusetts and proceed to interpret the Constitution by statutory provisions. Let us see what they are. One proposition is that both Houses must concur to count the vote. That is a proposition very strongly and very logically supported by able men. On the other hand, it is said that the true interpretation is that both Houses must concur to reject a vote. Right upon that fundamental question, so important, there is a direct antagonism of opinion. That is number one.

Let us go to number two. It is said that the two Houses act as

one body, as a joint convention, in counting the vote, and the opone body, as a joint convention, in counting the vote, and the opposite opinion is that they act as separate organized bodies; the first opinion having the sanction of the great name of Mr. Jefferson and nearly all his supporters in 1800. The second proposition, directly antagonistic to the first, having the support of the more practical men of later times, and, indeed, it had the opinion of the party in the majority in 1800 in the Government. There is the second case of directly arteresistic consistency.

directly antagonistic opinions.

directly antagonistic opinions.

Let us proceed to a third, that the House of Representatives is the sole judge whether there has been an election, and the opposite opinion is that the House is not the sole judge, but that the Senate has an equal right to decide. What more important question than that was or could be mooted? What question more fundamental in its character could be considered? And yet here are the most antagonistic opinions upon it. Writer after writer, men who have been chiefjustices of the supreme courts of their States, men who have held positions in the highest judicial tribunals of the land, are out in elaborate opinions on one side or the other side of that great question. How are you to decide that in a bill and expect it to pass both Houses of Congress?

That is the third. Let us proceed to the fourth; that touches the amendment. It is that it is competent to go behind the certificate of the governor, and the directly opposite opinion that it is not competent to go behind the certificate of the governor.

The fifth is that it is competent to go behind the decision of a canvassing or returning board, and in opposition that it is not competent to do so. Are you going to decide that question and are you go-

ing to decide that in a bill? The Senator from Massachusetts intimates that if his amendment be put in the bill there are certain Senators here who will not vote for it. He is quite right. He knows he is right. He knows it would not get one vote on this side of the Chamber and it would not get one vote of a particular party in the other end of the Capitol, and yet he urges it, and still he talks about being in favor of the bill. Why, sir, upon that question and upon other questions we are obliged to submit in the first instance to this tribunal, composed as it is, to decide, reserving to ourselves power to reverse

its decision if the two Houses can agree to reverse it.

This question of going behind a returning board has a great many points in it. The Senator from Massachusetts seems to think that the only point in going behind a returning board is whether we can go clear to the bottom and find out how seven millions of people vote. If he says that he is opposed to that, I say so am I. But that is one thing. Going behind the decision of a returning board is quite another thing. And that brings me to notice this point of difference. It is held by some that the decision of a returning board may be impeached for want of jurisdiction and by another set that it cannot be. I commend that to my friend from Massachusetts who is a lawyer. On the one side it is said that every act done by any tribuual from the highone side it is said that every act done by any tribunal from the highest court in the country to that of a single individual, if it is beyond his jurisdiction, is utterly null and void, and that returning boards are no exception to this rule, and if they, beyond their jurisdiction, ultra vires, undertake to disfranchise people, every act of disfranchisement is utterly null and void. On the other hand, this proposition is denied. Let me submit to my friend from Massachusetts that the decision of the proposition the one way or the other does not take him down to the seven millions of voters who cast their votes at the last presidential election nor one step toward it. Furthermore let me tell him that that does not even touch the integrity of the returning board, for, if these returning boards had been composed of the eleven him that that does not even fouch the integrity of the returning board, for, if these returning boards had been composed of the eleven apostles after Judas Iscariot had hung himself and were they as pure as human tribunals could be, yet, if they went beyond their jurisdiction, in the opinion of some men their acts would be utterly void. Then, sir, comes another question: Supposing them not to have gone beyond their jurisdiction, but to have acted fraudulently, some say that their decision may be impeached for the fraud. because fraud vitiates everything, even the decisions of a court, and others say that no such inquiry is admissible at all.

Then it is said that if the decision of a returning board can be reviewed the decision of all other election officers may in like manner.

viewed the decision of all other election officers may in like manner be reviewed, and so you would have to review the decision of the one or two or three hundred thousand election officers in all the United States and see whether they complied with the law or not. other hand, it is said that no such absurdity follows. That is the

eighth case of conflicting opinion.

Then the ninth case is this: It is said that, if the acts or omissions of election officers can be reviewed, the qualifications of the voters, the people themselves, and all the circumstances of the election, of bribery, intimidation, &c., may be inquired of; and that proposition is denied on the other side.

Then the tenth case is: that the decision of the highest State court as to the powers of her returning board is conclusive. The opposite opinion is that it is not conclusive.

Then the eleventh case of antagonism is that in adjudicating what are electoral votes the strict rules of courts of law must govern in the

are electoral votes the strict rules of courts of law must govern in the reception of testimony; and the opposite opinion that a broader rule, the parliamentary rule of evidence, is the true rule.

Now, sir, not to fatigue the Senate with further illustrations, here are eleven clear and well-stated propositions upon which the most directly antagonistic opinions are held, and the decision of any one of these propositions in this bill, if it could be made, would most probably decide the present contest in regard to who is President-elect. How then could anybody expect that your committee would undertake a task that would make their bill a felo de se, that would he certain to defeat it and hold them up as more partisans or as men be certain to defeat it and hold them up as mere partisans or as men without sense in the conduct of public affairs?

Sir, we took the only course that was open to us. We provided a tribunal, just as individuals who cannot settle their controversies tribunal, just as individuals who cannot settle their controversies must go to the courts in order that they may be settled by a judicial tribunal. Just so when these two Houses cannot agree, they must call in the benefit of an honest, an able, and a learned tribunal, and weigh its decision before they ultimately decide; and that is all that this bill does. Therefore it is that this bill leaves every question to this tribunal with the power, as I said before, of review and reversal by the two Houses. I will speak more about that presently. It decides not one of them; it does not intend to decide one of them, except one single one; that is, it puts an end to the pretension that the President of the Senate is the sole judge who is to determine whether States are in the Union and whether this body of men or that body of men are the electors of President or Vice-President of the United of men are the electors of President or Vice-President of the United

Mr. President, what are the advantages of this bill? I can only enumerate them; I cannot dilate upon them. In the first place it does just what I have said; it puts an end to the pretension that the President of the Senate is the sole judge. In the second place it requires him to produce everything purporting to be a return, for if it did not require him to do that it would in effect leave him to be the

so'e judge by keeping one return in his pocket and producing the other only. In the third place it requires him to produce the returns in the alphabetical order of the States.

I do not mean it to be understood from anything I am saying here that I have the slightest idea that the present occupant of the chair would do any unfair thing—not the slightest in the world. It is from no want o' confidence in him that these provisions are put in the bill, but it is that because they are right and will be of good example. In fact they are taken from the bill of the Senator from Indiana, which massed the Senate at the last session, long before it was known there passed the Senate at the last session, long before it was known there would be any such contest as now exists in reference to the election of President. That had therefore, sir, not the slightest reference to

It requires him to produce the returns in the alphabetical order of the States; a very proper provision, and that ought long ago to have been adopted; for, otherwise, if this country should be and the Sen-ate should be cursed with an unscrupulous President, if he had the

ate should be cursed with an unscrupulous President, if he had the discretion to produce the returns just in such order as he saw fit, he might give a manifest advantage to one side or to the other.

In the fourth place it gives time for the consideration of objections, and in respect to that I beg leave to say that I wholly dissent from the remarks of the Senator from New Jersey the other day and from those of my colleague too, who drew an inference as to the meaning of the Constitution from the want of time to consider these objections. This bill does give time to consider them and to consider them with a reasonable decrease of certainty and intelligence. a reasonable degree of certainty and intelligence.

In the next place it provides for the meeting of the two Houses in a given place, and prevents any conflict between them as to the place

of meeting.

Sixthly. Ascending from these smaller matters, it provides for a tri-bunal as fair and competent as could be devised. If any man can find a fairer tribunal consistent with the Constitution, I beg him to pro-

pose it. But no such proposition has yet been made.

In the next place it secures a regular and orderly mode of procedure, and next it secures a decision and thereby avoids a resort to violence. At the same time it leaves the circumstances of the election open to future and legitimate criticism. In the mean time it tends to bring peace and prosperity to the country and to strengthen and preserve our republican institutions.

preserve our republican institutions.

These, sir, are the advantages of this bill, and they can scarcely be overest mated. I shall indulge in no rhetoric upon them. If the bare statement of them does not impress every Senator, it would be vain in me to attempt to do it by elocution. Then, sir, if this bill is advantageous, the only remaining question is, is it constitutional?

Upon that subject let it be granted that the Constitution contemplates that the votes shall be counted by the two Houses, which is certainly my understanding of the Constitution; yet it must be admitted that no mode of procedure is prescribed. That is left to the mitted that no mode of procedure is prescribed. That is left to the law-making power. The case in its present condition comes within express provision of the concluding paragraph of section 8 of article 1 of the Constitution, the familiar paragraph that Congress shall have power to make all laws necessary and proper, &c. Congress may, according to its best judgment, prescribe the mode; and this will does not him a more.

bill does nothing more.

But it has been asked, may the concurrence of both Houses be re-Suired to almit or to reject a vote? Certainly if the two Houses are to count there must be some rule on this subject. It cannot be that the concurrence of the two Houses is required to accept and that the concurrence of the two Houses is required to accept and that the concurrence of the two Houses is not required to reject. Those propositions cannot very well stand together. It must be that there is some rule which necessity requires to be adopted, and who is to prescribe that rule? Who can prescribe it but the law-making power? The Constitution has devolved a duty-here just as we devolve a duty on two judges who hold our circuit court. The court is held by two judges. What do we do in the case of the circuit court? The circuit judge and the district judge constitute the court. What do we do in such a case but prescribe a rule of decision? and that rule is that where they differ in opinion the opinion of the circuit judge

that where they differ in opinion the opinion of the circuit judgeshall prevail.

Mr. EDMUNDS. That has been the law since 1802.

Mr. THURMAN. Certainly it has; but take a State court; take the old supreme court of the State of Ohio, so renowned in the history of the State, two of the judges going together to hold the circuits, and what was the rule? That both must concur to make a decision. Sopsir, is there anything strange in this? Here is the judicial power of the United States vested in the courts, the Supreme Court and such inferior courts as Congress may from time to time ordain and establish, and do we not regulate in respect to those courts court and such interior courts as Congress may from time to time or-dain and establish, and do we not regulate in respect to those courts how many judges there shall be, what shall be a quorum, and how many of them must concur to render a decision? Do you not so pro-vide by law, although the judicial power is vested in those courts by the Constitution itself? Why, sir, it will not do to say that there can be no law that shall regulate this mode of procedure and settle this great question. What do we hear to-day?

this great question. What do we hear to-day?

What is the argument in favor of the President of the Senate, one man, deciding this question? It is said he must decide it ex necessitate rei to save the life of the Government and to prevent our being without a Chief Magistrate. It is the necessitas upon which the argument is founded; but when the law enables you to provide that the two Houses, not one man—not one man who holds his position by the will

of one of the Houses alone, who may be made and unmade a dozen times a day—when the law provides that the two Houses shall decide this question, pray where is the necessitas? What becomes of that, I should like to know, when by the lawful and constitutional exercise of the power expressly conferred upon us we put all necessity out of the case and furnish a fair and honest tribunal?

But again, sir, this rule commends itself for another reason. In considering this question of whether the concurrence of the two Houses may be required to admit a vote or to mixet it we must have been

may be required to admit a vote or to reject it, we must never lose sight of the great principle which lies at the foundation of the inquiry. That great principle is this, that no State shall be unjustly deprived of its vote, and that any mode that opens a wide door for the perpetration of such injustice is inadmissible and could not have been contemplated by the framers of the Constitution. That is the guiding star for us, and tried by that standard this bill, which requires the concurrence of the two Houses, is infinitely more defensible, infinitely better in principle, and in time if it should grow into a precedent, will be infinitely more beneficial in its effect than the twenty-second

joint rule could ever be.

To say nothing of the absurdity of a State losing its vote because a single House of Congress saw fit to vote to reject it, to say nothing of the apparent injustice of such a thing as that as the twenty-second rule allowed, even where there was a single return, to say nothing about that, does not every man see what a temptation is held out to one of the two Houses to reject the vote of a State and thereby take one of the two flouses to reject the vote of a State and thereby take to itself the election of President of the United States. Why, sir, suppose the Forty-fifth Congress were now in existence, were sitting in the other end of the Capitol with a democratic majority of 6 or 8 members when counted per capita and with a republican majority when counted by States of nearly 2 to 1, how would the proposition look to take the vote away from the people and put it in the hands of that

body alone?

Mr. President, I do not wish to illustrate by the present state of affairs particularly; but I hope the Senate will look beyond the present state of affairs, and see that they are making a precedent, one that is to endure and the principles of which must endure and ought to endure, or the bill ought not to pass; and I do say, therefore, that every man who believes as I do, that the counting of this vote believes to the two House of Courses as anarytic premiud hodies. every man who believes as I do, that the counting of this vote belongs to the two Houses of Congress as separate organized bodies, standing on a perfect plane of equality, one having no superiority whatever over the other, must say that any construction of the Constitution which gives to one House the right to decide, and the proposition that it belongs to the President of the Senate, which would practically give to the other House alone the power to decide, is an inadmissible interpretation of the Constitution and fraught with evil and destruction to our institutions. No, sir, this trust of counting the electoral votes is a great, a mighty trust. It is a trust of the most high and delicate nature. It requires all the intelligence and patriotism of Congress to perform it, and to perform it well. It is not given to one-half of Congress or to the other half of Congress, much less is it given to one man.

much less is it given to one man.

Sir, this leads me to say, in respect to the details of this bill, that the first section of the bill provides for cases in which there is but one return. But before I proceed to that I ought to refer to the bill of 1800 and that of 1824. The bill of 1800, as it passed the Senate, made the decision of the grand committee provided by that bill final, and the Houses had nothing to do with it. The House of Representatives amended that by providing that the vote of no State should be rejected unless both Houses concurred in rejecting it; and I say to my democratic friends here that for that proposition that no vote should be rejected without the concurrent vote of both Houses of Congress, every single republican of that day, of whom we are the political successors, every single democrat in Congress at that day, headed by the most illustrious names in democratic history almost, voted; and not most illustrious names in democratic history almost, voted; and not only they, but a large number of the most distinguished federalists

of the day.

Then we come to the bill of 1824 which passed the Senate, and I beg leave to refer to that. I will refer to the first section of that bill upon a point that I have already mentioned as showing how it was under-

This bill was read a third time and passed, as follows:

I will only read a few sentences. The fourth section reads:

That, before the Senate and House of Representatives shall assemble for the purpose of counting the votes, as hereinafter directed.

It assumes directly that the counting of the votes belongs to the two Houses and prescribes a mode in the fifth section. When it comes to the fifth section it says:

So soon as the question shall be taken in either House.

That is, where objection has been made and the two Houses have separated to vote upon it.

A message shall be sent to the other, informing them of the decision of the question and that the House sending the message is prepared to resume the count; and when such message shall have been received by both Houses, they shall again meet in the same room as before, and the count shall be resumed. And if the two Houses have concurred in rejecting the vote or votes objected to, such vote or votes shall not be counted; but unless both Houses concur, such vote or votes shall be counted.

This was the bill introduced by that democrat, Martin Van Buren, and that passed the Senate and was reported without a single change of a letter in the other House by no less distinguished a man than

Daniel Webster, and its passage by the House recommended. I think, then, there is some authority in these great names for saying that it is competent for us to provide that both Houses must concur in the is competent for us to provide that both Houses must concur in the lecision rejecting a vote. I need not go to the illustrations that were so well put by the Senator from Michigan, of the report of a master commissioner to a court; but let me put one single case by way of illustration. A chancery court, we will say, consists of two jndges; they send a case to a master commissioner for report; the constitution of the State vests the judicial powers in that court, but they send a case to a master commissioner; he makes a report upon the facts. What then? Every lawyer knows that that report stands like the special verdict of a jury, and cannot be overturned except by the concurrent vote of the two judges; and who ever heard in a case like that that the judges had abdicated their judicial power? Who ever decamed of it?

We have had in my State ever since 1802, ever since the State existed, a most salutary law, extremely popular, which enables people who have controversies to submit them to arbitration and to make the submission a rule of court, and when the arbitrators come in

who have controverses to submit them to arbitration and to make the submission a rule of court, and when the arbitrators come in with their award the court renders judgment upon that award, unless exception shall be sustained on the ground of fraud or excess of jurisdiction. But it takes both the judges, when the court consists of two, to sustain the exceptions, and if they do not vote to concur the award stands; and yet the constitution of my State vests the judicial power in the courts just as fully as any power is vested in Congress, or as the judicial power is vested in the Supreme Court of the United States, and does not say one word about arbitrators or the effect of their finding.

Sir, in my judgment, the error into which people have fallen in supposing that the concurrence of both Houses must be necessary in order to count a vote results just as the error of my colleague, I submit, from treating this thing of counting an electoral vote as a legislative act; and one objection to this bill is founded on that misconception. I have seen it gravely put in a newspaper "Could Congress send to this tribunal a bill and agree beforehand that just as the decision of the tribunal upon that bill should be it should be the law of the land unless both Houses of Congress overruled it?" Yes, sir, as absurd a question as that has been put, and I have no doubt in real, downright earnestness, utterly forgetting that the passage of a bill is a legislative act, no part of which can be delegated, and that no part of the power of Congress can in any mode be grauted away. The counting of these votes is in its nature a judicial act, and we have a right to get all the aid that is within our power to enable us to perform that act wisely, and justly, and well. There is no analogy whatever between the sending of a bill to a commission and sending an investigation of these facts to a commission.

Now, sir, the first section of this bill provides for a case in which supposing that the concurrence of both Houses must be necessary in

Now, sir, the first section of this bill provides for a case in which there is but one return from a State, and provides that that shall not be rejected without the concurrent vote of both Houses, just as the House of Representatives contended in 1800; just as the Senate declared in Mr. Van Buren's bill in 1824; just as the Senate, by a considerable majority, declared not nine months ago, upon the bill of the Senator from Indiana, which is the foundation of this bill, which is the bill we took up in committee and amended and have reported to

If I am right, then, in saying that it is constitutional where there is but one return, I think it is very easy to demonstrate that the second section of the bill is likewise constitutional, and I beg the attention of the Senators to the very brief argument I have to make upon this question and then I will relieve them from hearing me any fur-

ther.

Why ought both Houses to concur to reject the vote where there is but one return? It is because every presumption ought to be in favor of that single return in order that the vote of the State may not be lost, and it ought not to be rejected unless its illegality is so clear that the concurring minds of both the Houses shall say "we cannot receive that vote." It is a presumption necessary to preserve the right of the State; it is a presumption necessary in order to do justice; and it is a presumption so strong that it would be an absurdity in lockie to say that it was overthrown when one House said this justice; and it is a presumption so strong that it would be an absordity in logic to say that it was overthrown when one House said this is a valid return and the other House said "it is not," for that would be to give to the House that denied its validity a pre-eminence over the House that asserted its validity, and enable the one House against the voice of its co-equal in this decision to overrule the presumption in favor of the validity of the return. There is no good logic in saying that one House should have that rower. ing that one House should have that power.

Then, sir, we come to the case of two returns. That is different. There there is no presumption perhaps in favor of either of them, and that is what creates the trouble. There is no presumption in favor of either of them. We have had them here. We had two returns from the State of Louisiana at the very last count of the presidential votes. The official character of the electors in each list was certified by a man calling himself governor, and to each of them the seal of the State was attached. There may be in that case, there may be in other cases, no presumption in favor of the one or the

What, then, does the second section of this bill do? It sends those returns to a competent, able, and impartial tribunal, and says to that tribunal, "Investigate this subject; you have the time to do it; Con-gress has not; Congress must proceed with its appropriation bills, and for Congress to take the time to do what you are directed to do

might consume all its time and the Government would fail for want

of means to carry it on."

Take this honest, learned, impartial tribunal says the bill; let them examine the case and give us their judgment upon it. When that judgment comes from a tribunal of this character in favor of one of these returns it creates a presumption in its favor that ought not to be overthrown except by the concurrent voice of the two Houses. It creates a presumption in its favor as strong, if not stronger, than that which existed in favor of a single return; and that is the philosophy of this existed in favor of a single return; and that is the philosophy of this bill. It is the presumption in favor of a return, so as not to deprive any State of its vote; that presumption which exists where there is but one return, or that presumption which is created by the decision of this tribunal, which shall not be overthrown except by the concurrent voice of the two Houses. But it is said, "Well, now, that is practically to leave it to the tribunal. Nay, further, that is practically to leave it to one man." Why, Mr. President, suppose it were left to this Senate alone, might not the vote be 35 against 35, and then would it not be the thirty-sixth man that settled it? Suppose you were to leave it to five hundred and one men and there were two hundred and fifty on one side and two hundred and fifty-one on the other, might you not just as well say it is the one-man power? Why significant is the content of the suppose the same tributes and the suppose the same tributes and the same tributes and the suppose that the suppose you were to leave it to five hundred and one men and there were two hundred and fifty on one side and two hundred and fifty-one on the other, might you not just as well say it is the one-man power? Why significant is the suppose the suppose you were to leave the suppose the sup might you not just as well say it is the one-man power? Why, sir,

might you not just as well say it is the one-man power? Why, sir, there is nothing in that at all.

Nor does it militate against the constitutionality of this bill one particle that in the present state of affairs—that is to say, with two Houses having different political majorities—practically the decision of that tribunal may settle the question. That does not militate against the constitutionality of this bill in the slightest degree. Y unight just as well say that it would militate against the constitutionality of a law if you was a proposed. tionality of a law if you were to provide that a case involving a constitutional question might be appealed from the Court of Claims

up to the Supreme Court.

It might be said, "Why, the practical effect will be that, as the judges of the Supreme Court are six republicans certain and two democrats, and one that cannot be counted, therefore, as a matter of course, the judgment will be in favor of the republican interpretation of the Constitution." Would that be any argument against a bill conferring jurisdiction on that court? Where do you find in the Conconterring jurisdiction on that court? Where do you find in the Constitution anything about the politics of the members of the Supremo Court? Where do you find in the Constitution anything about the politics of Senators on this floor? Where do you find in the Constitution anything about the politics of members of the House of Reptution anything about the politics of members of the House of Representatives? And can you say that a bill is unconstitutional because it may so happen that the court that is to decide the case, be it the Supreme Court of the United States, or a circuit court, or a State court, or a congressional tribunal, will happen to be composed of more members of one political party than the other? That is not constitutional reasoning. That is politicians' reasoning; that is office-holders' reasoning; that is office-holders' reasoning; but that is not constitutional reasoning. That is politicians' reasoning; that is once-noncess con-oning; that is office-seek-rs' reasoning; but that is not constitutional reasoning. This is the act of the two Houses, and this bill contem-reasoning. reasoning. This is the act of the two Houses, and this bill contemplates nothing else; and it is just as much in a constitutional sense the act of the two Houses and the decision of the two Houses as if both Houses were of the same political complexion, and no man who is a lawyer can deny it; and therefore it is a simple absurdity in any man reasoning as a lawyer to say that this bill is an abdication of the powers of the two Houses

A friend suggests to me that it is said it is a delegation of authory. What I have just said is a sufficient answer to that. You might as well say that there was a delegation of authority whenever we send a committee out to investigate, or when we made a committee on coinage at the last session of Congress, or a conference committee, or any other agency. As long as the power to decide in the last resort is reserved to the two Houses, there is no delegation of autho ity. The provisions are only means to acquire information to get light to aid the two Houses in making the ultimate final decision, and therefore the resort is resorted.

fore there is no delegation.

fore there is no delegation.

Mr. President, I have taken up more time than at this late hour I ought to have done, but I feel and I have felt the responsibility to which I have been subjected in helping to frame this measure. I have one satisfaction that I shall never lose, and that I should with difficulty find words to express, in the fact that in that committee there never was an unkind, or short, or harsh remark or word; but we performed our duty as men anxious to do what the country needed and what the country had a right to expect from us. For what we have done I take my full share of responsibility. Praise it, or blame it I want no better praise hereafter no kinder recollection in the it, I want no better praise hereafter, no kinder recollection in the minds of my countrymen than that I contributed my humble efforts to bring to a peaceable solution this question which now agitates this

country and endangers it.

[Mr STEVENSON addressed the Senate. His remarks will appear

in the Appendix.]
Mr. MORRILL.

Mr. MORRILL. Mr. President, it is not my purpose to fatigue either myself or the Senate at this late hour of the night, and I shall therefore occupy but a brief moment in submitting some observa-

therefore occupy but a brief moment in submitting some observations that have occurred to me in the progress of this debate.

Whoever contributes to the rescue of his country from peril, whether
real or only imaginary, deserves well of his country and will receive
its plaudits. The committee who have reported this bill have been
engaged in an important work, and whether it receives approval or
not, it will be admitted that it has been done patriotically and with
ability. The remedy proposed is for what has been long held, by ability. The remedy proposed is for what has been long held, by

statesmen and by eminent commentators upon the Constitution, to be a weak point in the practical working of our frame of government—a point which this year, after the lapse of three-fourths of a century, is point which this year, after the lapse of three-fourths of a century, is once more brought prominently into view by an almost equal division of the electoral votes. Most of the present Senate of all parties are committed to the doctrine of the propriety of legislation for the purpose of deciding all disputes relative to electoral returns of the votes for President and Vice-President. It is too late to say that no legislation is required. The question to-day is whether the legi-lation proposed is better or worse than no legislation. My respect for the committee, and admiration for the eminent ability displayed by them in their explanation and defense of the measure, has led me to displayed. in their explanation and defense of the measure, has led me to dis-trust myself when I feel it necessary to obtrude any comments upon their work.

their work.

I am one of those who believe that Hayes and Wheeler have been fairly and legally elected, and that this would be conceded but for the undue eagerness of a party so long out of power that they have claimed victories before they were won, and have I fear resorted to desperate expedients to mystify and cover up actual defeats. Too much has been surrendered to this party, as it appears to me, by our republican friends. With a bad case, as we think, they are to have almost an equal chance of success as against a good one.

It may be asked, if you are so confident that the men of your choice have received a majority of the true and valid electoral votes, why are you unwilling to submit that question to the decision of a fair and impartial tribunal. Here is my grief. The make-up of the commission assumes that fourteen-fifteenth parts of it are to be partisans, and the other fifteenth part is left to an uncertainty, and this supreme

mission assumes that fourteen-inteenth parts of it are to be partisans, and the other fifteenth part is left to an uncertainty, and this supreme fraction, about which absolutely nothing can be known, is after all the only part upon which all parties base their hopes and reliance. This one of fifteenth part is expected to be true and unbiased. But for this, the bill would nowhere find any support. With this part left out, the commission would be just half and half, republicans and democrats, and all of them "as fixed as fate and foreknowledge absolute". lute" in their convictions as to the merits of the election returns as

well as of the merits of the candidates.

I should have greatly preferred, if there was to be a submission of the questions involved to the arbitrament of any tribunal, that that tribunal should have been the Supreme Court in its entirety. thad appealed to that court in their pre-eminent judicial character as the great court of the nation, accustomed to decide weighty matters wholly aloof from the party strifes of the day, we might have a well-grounded hope that each one of them would have brought nothing into consideration in rendering a final judgment upon all of the questions in dispute but the law and the facts, nothing but truth and the Constitution. Instead of this we have the geographical selection of four of the judges according to their ancient political affinities and one is as yet the Great Unknown. I think it would have been better not to have recognized any one of the Supreme Court as a political partisan, and certainly better not to have directly employed any one of them as such. As it is they seem to be invited to rekindle the old

of them as such. As it is they seem to be invited to rekindle the old slumbering embers of party hate or of party attachment, from which their prayer should be "Good Lord deliver us!" It is true that they may all exercise a more elevated standard of judicial propriety than we are imputing to them; but I would have preferred not to have started on a suspicion. "Give me your confidence and I will deserve it," said the elder Pitt to the King; and if that confidence had been given to the whole court, I feel sure it would have tried to deserve it. As the Constitution does not declare in plain terms by whom the votes for President shall actually be counted, I am ready to admit that we have under consideration a case which Congress has been clothed with constitutional authority to regulate by law and which it is its duty to exercise, that is to say, to make all laws necessary and proper to carry into execution all powers vested by the Constitution in the Government of the United States; and, if I venture once more with some diffidence to criticise some parts of this bill, it is not because of any denial of constitutional authority to legislate upon the subject, or because of any unconstitutional provisions of the bill, but because I think something more was required than a mere expedient subject, or because of any unconstitutional provisions of the bill, but because I think something more was required than a mere expedient to bridge over the exigencies of the present occasion. The life of this bill by its terms is confined to the month of February, 1877, and after that it is to be consigned to the tomb of the Capulets and to have no force or virtue forever either for good or evil. I shall be pardoned for suggesting that it might have been wiser, certainly more expedient, to have provided a measure of broader scope, fit to live for the next century, and appropriate to whatever party should happen to wield power or to control the destinies of the country.

Undoubtedly the difficulties of the situation were of a grave character—perhaps too grave to admit of solution so soon after the heat of a presidential contest—but if the measure could have contained provisions of a suitable form and character to be worthy of perpetuation, such statute law as would command the irrepealable support and acquiescence of future generations, the authors would have been en

requiescence of future generations, the authors would have been en-

Notwithstanding these objections and with some reluctance, I am yet inclined to support the bill, and for the reason that if no law is to pass we shall be left to drift on a troubled sea with no harmony in the crew, officers, or pilots as to which way to steer. I have sometimes been disposed to think, in the absence of any law regulating the count of the electoral vote, and in presence of any disagreement be-

tween the Senate and the House of Representatives, that from the necessity of his position the Vice-President or the President pro tempore of the Senate must count the vote.

It may be, as has been wittily suggested by the Senator from New Jersey who usually sits upon my right, [Mr. Free Inghuysen,] that we might at once solve all difficulties by electing the Nestor among

we might at once solve all difficulties by electing the Nestor among democratic Senators as our presiding officer; but on the whole it might be said "that won't do." [Laughter.]

It is right here that we encounter a mixed and very heterogeneous record of senatorial votes with a very large majority of all parties against the exercise, on the part of the presiding officer of the Senate, of any power to count disputed votes. Besides many other instances on the record I call attention to the vote of the Senate, on the 22d of March, 1876, upon an amendment proposed to the bill then under consideration, in these words:

The CHIEF CLERK. It is proposed to insert at the end of the second section of the bill the following:

"But, if the two Houses fail to agree as to which of the returns shall be counted, then the President of the Senate shall decide which is the true and valid return, and the same shall then be counted."

Upon that amendment the result of the vote was—yeas 7, nays 38. Four republicans and three democrats only voted for the amendment. After such a vote, I submit that the number of adherents to the doc-

After such a vote, I submit that the number of adherents to the doctrine of power on the part of the President of the Senate to decide upon returns when the two Houses fail to agree are, however respectable, too few to rely upon in a great emergency. They might be enough for good leaders, but there would be none left for followers. Officers enough, but no army.

If this bill fails, then the whole question will be remitted to a controvers; between the House and the Senate, with the probability that no agreement could be reached before the 4th of March next, and with the possibility of a result not creditable to our institutions nor satisfactory to any party. Of course it is less labor to criticise a measure of this sort than to frame it. I might not have favored the report of precisely this bill, but, it having been matured, after the most elaborate consideration, and reported by the highest judicial authority of the Senate, and as no other measure having any chance to be acted of the Senate, and as no other measure having any chance to be acted upon is now possible, I feel constrained not to withhold from it my

vote.

Mr. MORTON, (at twelve o'clock and thirty minutes a. m. Thursday, January 25.) Mr. President, although I do not believe that this bill will be defeated or that anything which I can say will change the vote, I desire to say something with regard to it, which I feel utterly unable to do to-night. I am quite worn out and I shall ask that the Senate now adjourn. I make that motion.

Mr. EDMUNDS. I am sorry to disoblige my friend, but the public exigency I think must compel us to go on.

The PRESIDENT pro tempore put the question upon the motion and declared that the noes appeared to prevail.

Mr. SHERMAN. I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a second?

Mr. EDMUNDS. Certainly; the Senator shall have a second with all my heart.

all my heart.

The yeas and nays were ordered.

Mr. ALLISON. Before I vote upon the motion to adjourn I desire to know of the Senator from Indiana whether or not he is unable to proceed with his remarks to-night. If he is unable to go on, I shall

vote to adjourn. Mr. MORTON. Mr. MORTON. I will say that I feel quite worn out. I have been here and in committee since ten o'clock this morning, and am certainly physically unable to do myself and the subject any sort of

Mr. EDMUNDS. May I make a little speech on this motion to ad-

The PRESIDENT pro tempore. Is there objection, debate not being in order? The Chair hears no objection. By unanimous consent the Senator from Vermont may proceed.

Mr. EDMUNDS. The Senator from Indiana is one of the many

Senators in this body to whom it always gives me great pleasure to listen. I have listened to him twice in this debate already with great listen. I have listened to him twice in this debate already with great attention. This bill has been dragging on day after day with one misfortune and another, and we had better defeat it to-night than let it drag itself to death when the day of inevitable doom comes, good or bad, with the bill undisposed of between the two Houses and unsigned by the President, if it is to pass at all. Therefore I am sure my friend will not feel that it is out of any want of consideration to him personally that I ask the Senate to do what I know is an unpleasant thing, to sit here and finish this bill now. I can do no less than that in doing what I think to be my duty.

Mr. SHERMAN. I hope the Senate will indulge me in making a single remark.

The PRESIDENT pro tempore. Is there objection? The Chair

Mr. SHERMAN. It must be remembered that this bill has been pushed with an unusual degree of celerity for a bill of its grave importance. The Senator from Indiana, as is known, is the only member of the committee opposed to the bill. He is known to have been unwell the day that he addressed the Senate. It is well known that on the day he opened his remarks he spoke for about three-quarters of an hour with manifest debility, so marked that I at least, sitting

by his side, urged him not to proceed with his remarks until finally he said he could not go further. It must be remembered that as to division of time those who have been opposed to the bill have occupied about four or five hours at the utmost in point of time, while one Senator who defends the bill has spoken many more hours than that. Certainly I would not have desired that Senator to have abbreviated his remarks in the least, because his speech was very able and interesting. Yet under these circumstance it does seem to me that to insist that a gentleman in the position of the Senator from Indiana, the only member of this committee who dissents from the bill, and who will be better prepared to give us the ground of opposition to the bill to-morrow, shall speak at this hour, half an hour after midnight, after a continuous session of fourteen hours, is carrying a process of forced debate further than I have ever seen it carried in the Senate. This remark I can make: I have heard that to-morrow the discussion will go on upon this bill in the other House, and consequently no time will be lost if the vote is taken here sometime to-morrow. Under those circumstances there is no occasion to time to-morrow. Under those circumstances there is no occasion to press a vote to-night, and no time is gained by forcing the vote. It is supposed that when the Senator from Indiana speaks the Senator from Vermont himself will desire to reply to him, and that will be the end of the debate, so far as I know. I do not desire to participate in the debate any further; and I make this appeal and this statement of facts must be apparent to Senators; it is manifest to me. I trust, therefore, the Senator from Vermont will allow an ad-

me. I trust, therefore, the Senator from Vermont will allow an adjournment, and to-morrow I have no doubt we shall be able to reach a vote at a reasonable hour.

Mr. EDMUNDS. I shall do everything that the Senator proposes, and with cheerfulness, if that is the desire of the body. If the Senate wishes to see this bill go down into the tomb of death from sheer inanition before next Tuesday, which is the first day upon which it is to act, then it must do so; I shall not stand in the way. The bill is not my bill; the case is not my case; but the country is my country. If this bill is to get through this body, let us pass it; if it is not, let it die. Remember, after we pass it, it is to have three readings in another body on three different days, and be debated, and to go to another body on three different days, and be debated, and to go to the President between now and that time. So Senators can readily see that it is merely killing it to adjourn now. If the Senate wishes to do it, very well; it is the business of the Senate, not mine.

The PRESIDENT pro tempore. The question is on the motion to adjourn, on which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 25, nays 41. as follows:

41; as follows:

41; as follows:

YEAS—Messrs. Allison, Boutwell, Bruce, Cameron of Pennsylvania, Clayton, Conover, Dorsey Eaton, Ferry, Hamilton, Hamlin, Ingalls, McCreery, McMillan, Mitchell, Morton, Paddock, Patterson, Sargent, Sharon, Sherman, Spencer, Teller, Waileigh, and West—25.

NAYS—Messrs. Alcorn Barnum, Bayard, Blaine, Bogy, Booth, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Cockrell, Conkling, Cooper, Davis, Dawes, Dennis, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Howe, Johnston, Jones of Florida, Jones of Nevada, Kelly, Kernan, McDonald, Maxey, Merrimon, Morrill, Price, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, Whyte, Windom, Withers, and Wright—41.

ABSENT—Messrs. Anthony, Cragin, Harvey, Hitchcock, Logan, Norwood, Oglesby, and Robertson—8.

So the Senate refused to adjourn.

Mr. MORTON. Mr. President, I will endeavor briefly to express some of the views which I have upon this bill. The haste in the consome of the views which I have upon this bill. The haste in the consideration of this bill which is made by the Senator from Vermont is without good foundation upon his own showing. That it would advance this bill in any respect to pass it to-night instead of passing it to-morrow night at five o'clock it would be impossible for him to show. I refer to this not expecting that any change will be made but simply in reference to the spirit of this demand. I believe I have never been west in sources to courtee to the very lower than the bedy nor m reference to the spirit of this demand. The never been wanting in any act of courtesy toward any member of this body, nor do I intend, however scantily they may have served me. The whole argument in favor of this bill is in my opinion a mistake, to put it in the mildest phrase. It proceeds upon the idea that unless this bill is passed that all is lost; that some great disaster is impending over the country and unless this bill is passed it will inevitably occur. If this bill should not be passed, if no bill is passed, it will leave this country medicals in the ardition in which it was from 1750 up to 1855 when precisely in the condition in which it was from 1789 up to 1865, when the twenty-second joint rule was first adopted; that is, without any law, rule, or regulation upon the subject. During that time the country got along without having the public peace endangered and

country got along without having the public peace endangered and without disturbance, and I do not see now why we could not proceed in the future at least so far as this election is concerned in the same way, and as I believe without the slightest danger.

I know that an alarm has been created by threats upon the part of the democratic party in various portions of the country. I know that a panic now exists in this country and in this body far greater than that of 1873, and equaled only I believe by that of the battle of Bull Run in 1831. We are asked to do this upon the score of magnanimus was a party. We of magnanimity. We are asked to be magnanimous as a party. We are asked to sacrifice and surrender advantages which belong to the republican party as a matter of law, as a matter of right, and as a matter of practice, since this Government was first founded. We are asked to do that by the democratic party, to meet them half way, to surrender to them certain rights to which they now have no title and to give to them certain chances which they will not have unless this bill is passed. The republican party is in a condition to be magnanimous. It has been strangled to death in every Southern State

but three. It is struggling for breath in those three States with the hand upon its throat. The attempt has been made in Oregon, and yet we are asked now to come forward and be magnanimous and, if it is necessary, to surrender our future chances of existence for the

purpose of obtaining that character.

Mr. President, I believe I am as magnanimous as most men. I believe that my desire to do right is as strong as that of most men. I could, if I would, very cheaply indulge in lofty and patriotic expressions, such as I frequently hear in this country; but they are very cheap and so often they are the mere cover for treachery and desertion that I think a man is liable to suspicion when he indulges in them. If this matter shall be left without the passage of this bill as it has been from the foundation of the Government, what have we to apprehend? Let us come right to the question; what have we to apprehend? Are we to apprehend violence? Are we to apprehend the invasion of this capital? Are we to apprehend that if the President of the Senate shall proceed to count this vote as it always has been done, the House of Representatives will take some revolutionary action by which our institutions perhaps may be overturned, or that we shall have a dual government? I am not afraid of that believe that any individual or any party who attempts that will be utterly crushed out; I believe if we go on just as we have gone for more than three-quarters of a century no man, no party, will dare to raise their hand.

We are asked to provide a bill, a method of counting this vote, by which the republican party is to be the loser and the democratic party is to be the gainer. I do not blame the democracy for their desire to succeed. I do not blame them for their purpose in getting new advantages; that they will take all that we will give is very certain. I have just seen from the vote which has been taken here to-night that they are very nearly unanimous in favor of the passage of the bill, because it is to give to them certain advantages, certain chances that they will not have outside of the passage of this bill. As the Senator from Pennsylvania [Mr. CAMERON] said the other day, it is emphatically a democratic measure. I do not care where it comes from; I do not care who originates it; I say the bill is in the interest

of the democratic party; and that party so understands it, and their action in the Senate to-night will verify what I say.

Let me consider for a very few minutes the clause in the Constitution which has been so often recited. I am not going to give my own convince about it as much as to refer to it historically. opinions about it so much as to refer to it historically. In the first place, I must say that the fathers of the Constitution and the men who conducted this Government for the first forty or fifty years did understand that the President of the Senate counted the vote, and that he would count it until there was legislation providing otherwise. I am not now arguing whether this understanding was right or wrong, but I am simply saying that they so understood it. That they did not understand the Constitution as well as many of our people do now, I may perhaps safely admit; but, according to the perfect understanding of the men who made the instrument, they thought in the absence of legislation the President of the Senate would count the vote. Before the Constitution was put into operation, before we had a President and a Vice-President, when it became necessary to launch the ship of state, a President of the Senate pro tempore had to be appointed. There was but one single purpose for the appointment, and that was to open the certificates and count the vote, so that the President and Vice-President might be installed. Therefore, in the resodent and vice-President might be installed. Therefore, in the resolution that was passed by the Continental Congress it was expressed that this President of the Senate pro tempore should be chosen for the purpose of opening and counting the votes only; that is, they meant to say when those duties were performed his office expired. They did not mean to invest him with the power to open the certificates and count the vote; not at all; because if Congress had the power to count the vote it would have taken both Houses to authorize him to count the vote; but, inasmuch as the Senate only passed that resolu-tion, we must give it the simple construction that they gave it at the time. That resolution described the President of the Senate as appointed for the sole purpose of opening and counting the vote, and when that was done his office expired, and he was to last no longer as the President protempore of the Senate, and that is all they meant. The Senator from New York [Mr. CONKLING] very ingeniously argues that he was empowered to count the vote by the resolution of the Senate just as much as he was empowered to open the certificates, and not a bit more; that it simply defined the purpose of his appointment, and that then his office should expire. After the President of the Senate pro tempore had counted the votes and General Washington was elected President and declared to be so, this President of the Senate issued a certificate of election to General Washington over his signature, in which he declared that a certain day add in a certain law. ture, in which he declared that at a certain day and in a certain place he had opened the certificates and had counted all the votes. The Senator from New York and others say he did not count the votes. Well, he thought he did. He certified that he had done so over his signature. We are now told that he was mistaken; that he never counted the votes, and that no President of the Senate ever did count the votes, and that no Presidents of the Senate ever did count the votes. Nine successive Presidents of the Senate, from 1789 to 1825 inclusive, issued certificates of election to the President-elect in which they solemnly declared that they had opened the certificates and had counted all the votes. This declaration they made for thirty-six years, during nine consecutive presidential elections. After that the practice changed; certificates of election were no longer issued to the

President-elect, but a joint committee of the two Houses notified the President of his election. If you will look through the different en-tries of the Journals of the Senate and the House of Representatives you will find during the first election it was recited that the House had repaired to the Chamber of the Senate to attend the opening and the counting of the votes, or, in another entry, to witness the opening and the counting of the votes, not that they pretended they had taken a part in the actual count of the votes, but they recited that they had attended the Senate to witness the counting of the votes.

There is another thing that is very significant, and that is that in the resolutions passed by the two Houses, beginning in 1787 and coming down to 1865, inclusive, up to the time of the adoption of the twenty-second joint rule, each and every resolution recited that they had appointed one teller or two tellers to sit at the Clerk's desk and there to make a list of the votes as they were declared, not to count the votes, not to take any part whatever in this performance except to make a list of the votes as they were declared? Who was to declare the votes, and how were they to be declared? The very first entry in the Journal of the House in 1789 shows by whom the votes were to be declared. It will take but a moment to refer to it:

Mr. Parker and Mr. Heister then delivered in at the Clerk's table a list of the votes of the electors of the several States in the choice of a President and Vice-President of the United States as the same were declared by the President of the Senate in the presence of the Senate and of this House; which was ordered to be entered on the Journal.

This was the way they understood it. Perhaps they were all wrong in regard to it. Let me consider for a few moments the article in the Constitution itself which recites that the electors shall seal up their votes and transmit them to the President of the Senate, and that he shall open all the certificates in the presence of the Senate and House of Representatives, and the votes shall then be counted. In the first place he is to do it in the presence of the Senate and House of Repreplace he is to do it the beassembled in one chamber. We must suppose that the contact is close. The chamber is comparatively small and well filled. It would be physically impossible that the two Houses, each acting as a House, preserving its autonomy, could count the votes together in the same chamber and at the same time. Physically as we know that would be impossible; but it was to be done ically, as we know, that would be impossible; but it was to be done in their presence. They were to be there as witnesses. It is a common provision of the law that deeds and other legal instruments shall be executed in the presence of witnesses, in the presence of third par-ties. It was as well known to the lawyers of that day as it is to the lawyers of this day. When it was said that a thing was to be done in the presence of a person or of a body of persons it was understood in the presence of a person or of a body of persons it was understood that they were there simply as witnesses, and not to take a part in the performance of the act itself. In looking over the statutes of the States now in regard to the votes of electors in different States you will find in some eight or nine of them, perhaps not quite so many, but in five or six certainly, that it requires that the electors shall east their votes in the presence of the governor of the State. Would you say that he is to take part in the vote in the electoral college because the statute of the State requires them to vote in his presence? In looking over your statutes now for various purposes, for a thousand purposes, how often do you find that a thing is required to be done in purposes, how often do you find that a thing is required to be done in the presence of another who is to take no part whatever in the performance of the act? Bids are to be opened by the Postmaster-General in the presence of the public, where everybody can be present. Sometimes the law specifies the names of the persons who shall be present when bids are opened, but it does not follow that they are to take any part in the giving out of the contracts; they are simply to be present. This seems to have been the way in which the fathers the Republic understood this provision that the Senate and House of Representatives were to be present. There is some significance in the fact that when the convention came to pass upon that clause they the fact that when the convention came to pass upon that clause they passed upon it in this form: The first part adopted was, "The President of the Senate shall, in that House," meaning the Senate, "open all the certificates, and the votes shall then be counted." After that they added by an amendment, "in the presence of the Senate and House of Representatives," those words coming in after the word "counted;" so that all that was to be done, both opening and counting, was to be done in the presence of the Senate and House of Representatives. resentatives

Let us consider for a moment what certificates are to be opened. Here is perhaps the main question in the case. Without regarding who shall make the mere count of the votes, whether they are to be counted by the President of the Senate or by the two Houses, let us consider what is the duty of the President of the Senate. The electconsider what is the duty of the President of the Senate. The elect-ors are to send their votes sealed up to him. He is to be the custo-diau. In the next place, he is required to open all the certificates in the presence of the two Houses, and the votes shall then be counted. What certificates is he required to open under the Constitution of the United States? Clearly none but those that come to him from the electors of the State. He is not bound to open a bogus certificate; he is not bound to open a bogus certificate; electors of the State. He is not bound to open a bogus certificate; he is not bound to open a fraudulent, made-up package purporting to be a certificate. He is required to open the certificates that come from the electors of Maine, as the case may be, whatever the State, and none other; and although there may be a half dozen packages in his possession, or sent to him purporting to be from the State of Maine, he is not required to open them all and place them before the two Houses, but he is only required to open that certificate that comes

from the electors. The question is asked, how shall he know what certificate does come from the electors? He is bound to take notice who have been chosen as electors in the State of Maine. As an officer of the United States, he is bound to take notice of a public event of that kind, and he is bound to act upon his intelligence just as public officers are required to do in a thousand other instances, and where they are responsible if they make a mistake. The names of the elect-ors are to be indersed upon the outside of the certificate, and he can see from the names indorsed there whether they come from the government of the State, or whether they come from persons outside and officially unknown. Take the case of the State of Louisiana, if you please. There are two certificates said to be in the hands of the Presplease. There are two certificates said to be in the hands of the President of the Senate. Is he required to open both of them under the Constitution of the United States? I say not clearly. When he takes the certificate that comes from the authorities of the State of Louisiana and opens that and it is read, he cannot be required to open the other or the bogus certificate; and if he refuses to present it, I will ask you how you are to get it officially? So much then upon that subject.

Suppose now that from the State of Louisiana he opens the certificate that comes from the authorities of Louisiana. cate that comes from the authorities of Louisiana. That certificate has been made out by the electors who were certified by the authorities of Louisiana as having been elected. Is that a cause of revolution? Do I understand that the democratic party threatens violence or revolution if he takes that responsibility? There is the question. It is not that the elector may happen to have the certificate of the governor even of the State of Louisiana. The governor's certificate is an attestation or evidence prescribed by an act of Congress. As that kind of evidence is prescribed by a law of Congress, it is possible that Congress by another law may go behind that; but there is another kind of evidence that Congress cannot go behind, and that is the certificate of the returning board of every State hind, and that is the certained of this Union. The returning boards or canvassing officers are appointed by the laws of the States to determine the result of the election. That is the binding authority behind which the Congress of the United States cannot go. I may remark that every State in this Union has its returning board. The States of Nebraska, of Maine, of Vermont, of Indiana, all have their returning boards. They are not called by that name in every State, but they have essentially that character. Their powers are different in different States. In some it with more or less discretionary power to be exercised by them; but the extent of their power does not change their character. The State of Maine has its returning board, that is to say, it has certain officers provided by the laws of Maine who are to count the votes and determine who have been chosen as electors in that State. officers thus appointed have counted the votes and made their returns, there is no power, I maintain, in the Congress of the United States or anywhere to go behind that certificate or return; and if they do that, it is the end of presidential elections.

Mr. PADDOCK. I would remind the Senator from Indiana that the returning board of the State of Nebraska is the Legislature of the

Mr. MORTON. There the Legislature has been made the returning board. In my own State that is not the case; it consists of certain State officers. In the State of Oregon it is a single officer. The secretary of state in the State of Oregon is made the returning board. He is required to count the votes and his certificate stands as the evidence of the result. We have no power to go behind it and the governor of Oregon has no power to defeat it by giving a false certificate.

Now, Mr. President, I have referred you simply to the opinions of

the fathers and the practice of the Government upon this subject, not as advancing my own opinion. I want to say right here that up to 1865, under the operation of the twenty-second joint rule that is now generally considered to be unconstitutional and to have been a monstrosity, neither House of Congress ever declared a vote. You may look through these records in vain to find the evidence that either House ever declared a vote. On two or three occasions, where the question was whether the State was in the Union and had a right to vote, it will be found that they dodged the question by requiring the vote to be counted thus and thus, if it made no difference in the result; but in the only cases where they assumed that power it was not a matter of count as to whether the electors were eligible or had voted by ballot, or whether the candidate was eligible, but the quesvoted by ballot, or whether the candidate was eligible, but the question was whether the State was in the Union, a question that does properly belong to the whole political department of the Government. So it was in regard to Missouri. So it was in regard to Indiana. So it was in regard to Mishigan, and so it was in regard to Tennessee, Arkansas, and Louisiana, in 1865 when the joint rule was adopted for the express purpose of meeting those cases in which it was claimed by a large part of the republican party that they were not States in the Union, but had lost their position as such; and to keep out their votes that rule was very unnecessarily and improperly out their votes that rule was very unnecessarily and improperly

out their votes that rule was very unnecessarily and improperly adopted without a word of debate.

I have listened in vain for a discussion of the question here as to what is the condition of things if there is no legislation. I started out the other day with a proposition conceding the right to legislate, and as I have heretofore urged upon the Senate the duty to legislate, but that, in the absence of legislation, the President of the Senate must, to use a common phrase, ex necessitate rei, count the votes.

have listened in vain to hear that position answered. I wanted to hear the Senator from New York and the Senator from Vermont and the Senator from Ohio tell us what was our condition if there was no legislation. The effect of the argument of the Senator from Vermont the other day was that neither the President of the Senate nor the two Houses had a right to count a vote in the absence of legislation; so that, in point of fact, for seventy-five years the votes were counted without authority of law. I did not believe that position then. I do not believe it now. I do not believe that, for three-quarters of a century, this government went on in violation of law; yet that is the argument that has been made. I wanted these Senators, to use a common phrase, to face the music and to tell us what was our condition in case there was no legislation. I wanted to hear them upon that point; but we have not heard them. If there is no legislation hereafter, as there has been none heretofore, I think the Government

must go on as it has gone on heretofore.

The Senator from New York read from a report that I had made and I want to call attention to something else that he did not read in that The Senator undertook to read a sentence of it and when he read half the sentence he took an intermission of half an hour and made a very long speech and then went back and finished the sentence. I want to read that sentence just as it is here, without this long intermission:

But the exercise of these high powers may devolve upon him ex necessitate rei, and, whatever decision he may make between the two sets of electors or upon the sufficiency and validity of the record of the votes—whether on the evidence of the right of the electors to cast votes or whether they have been cast in the manner prescribed by the Constitutior—his decision is final.

The authority of that declaration is sustained by Chancellor Kent; it is sustained by the practice of this Government for three-quarters of a century; and are we now to be told for the first time that that position is not correct?

In another place in the same report I used this language:

It seemed to be a necessary conclusion from these discussions that it was a casus omissus in the Constitution, and that the power of the President of the Senate to count the vote resulted ex necessitate rei, from the failure of the Constitution to give to the two Houses any jurisdiction over it; but they were to be present at the counting as solemn witnesses of its accuracy and result.

Mr. EDMUNDS. May I ask the date of that report? Mr. MORTON. The report, I believe, was made in 1874.

Mr. MORTON. The report, I believe, was made in 1874.
Mr. CONKLING. June 1, 1874.
Mr. MORTON. The Senator from New York and, I think, the Senator from Vermont, argue that if it had been the intention of the Constitution to give to the President of the Senate the right to count the vote, it would have said so. Might I not ask this question: If it had been the intention of the Constitution to give the two Houses the right to count the vote, would it not have said so? Would it not have been as easy to say so in the one case as in the other? But inasmuch as the President of the Senate was mentioned for one thing and nobody else was mentioned, it was very naturally inferred by the fathers of the Republic for a great many years that the President of the Senate was to count the votes as well as to open the certificates. I will remark here that the framers of the Constitution anticipated none of this trouble. They did not look forward to two sets of returns. They did not look forward to ineligible electors. They did not look forward to irregularities in action. They provided for a very simple process, that the certificates should be opened in the presence of the two Houses and the votes should then be counted. That was all there was to do; first, to open the certificates and then to count the votes contained in those certificates. We are now told that these votes must be assorted; that when they are opened they must be canvassed to see whether they are lawful votes or not, whether they were cast by eligible persons and for persons having the proper qualifica-tions. There is no time for such an examination. The process was to be simple and brief, to open all the certificates and then count the It might be that the votes were east for a man who was not votes. It might be that the votes were cast for a man who was not thirty-five years old. That objection is to be met at once. Somebody gets up and says, "He is thirty-five years of age," Here is a very grave issue of fact. Is there any time or place to try that question? Suppose it is stated that the electors were not eligible, that they were all office holders. On the other hand it may be denied. It may be asserted that they never were office-holders, or that they had resigned their office in due season; and here is an issue of fact that may require depositions and may require witnesses. Is there any room or place there to try that question in the presence of the two Houses? Was it thought about? I think not. The whole process contemplated was to open the certificates and count the votes contained in those cerwas to open the certificates and count the votes contained in those certificates. Where does the judicial power come in? If there be judicial power there, it was in the President of the Senate, and that is where he should determine which was the right certificate and bring that forward. I think somebody said yesterday, when this question was being discussed, that he had no more judicial power than a porter has in opening a bale of goods. The porter, perhaps, may be required to take notice whether he is opening a bale of silks or opening a bale of shoddy blankets. He may be required to take notice what is the bale of goods that he is called upon to open; and the duty imposed upon the President of the Senate is to take notice that he opens the certificates from the electors of the State, and from nobody else.

I wish to notice very briefly a quotation the Senator from New York

read from the report which I made on the Louisiana case in 1873. I

If Congress chooses to go behind the governor's certificate, and inquire who had been chosen as electors, it is not violating any principle of the right of the States to prescribe what shall be the evidence of the elec ion of electors, but it is simply going behind the evidence as prescribed by an act of Congress.

There is the distinction that so many have lost sight of, that the law requiring the certificate of the governor of a State is an act of Congress that may be repealed at pleasure. But that is not the evidence of the election prescribed by the State. The States have their own laws; they have their own officers for determining who has been elected, and behind their determination Congress has no right to go.

And, thus going behind the certificate of the governor, we find that the official returns of the election of electors from the various parishes of Louisiana had never been counted by anybody having authority to count them.

That was the point made at that time in regard to the votes for President, that the votes in Louisiana had not been counted by the returning board at all. The votes for President of the United States never were counted by the returning board of Louisiana in 1873. If they had been counted by the returning board, we could not go behind them according to the very position that I took here at that time. It will be remembered by some Senators who have been here since 1873 that in all that Louisiana struggle, first in regard to the proposal to call a new election and afterward in regard to the admission of Pinchback, I took the ground from first to last that Congress had no right to go behind the decision of the returning board in Louisiana; that when they found that certain members of the Legislature had been elected, although they might have found that fact lature had been elected, although they might have found that fact upon insufficient testimony or upon no testimony at all, still it was an act of the board appointed by the laws of the State for that purpose, and we had no right to go behind it. That was my position then, as it is my position now. I believe it is a vital point in the constitutional doctrine of our country; and I believe that this very bill that I am opposing in vain to-night will violate, and I believe it is intended to violate, that doctrine. I wish to consider very briefly this bill, and first to speak in regard to this commission. This tribunal is called in the bill a commission. The Senator from New York designates it as a committee. It would be an odd sort of a committee of Congress made up in part of men who are not members of Congress, and therefore calling it a committee seems to be a misuomer.

gress, and therefore calling it a committee seems to be a misuomer. Now we come to the character of this commission, and my labor Now we come to the character of this commission, and my labor in the argument has been very greatly reduced by the admission tonight of the Senator from Ohio. He stated to-night distinctly that this power of the two Houses to pass upon the returns and count the votes is a judicial power. He did not leave that in doubt. He did not leave the power floating through the Constitution to be located by an act of Congress, as the Senator from Vermont did the other day; but he described it as a judicial power, and he said that it belonged to the two Houses. Then we are brought face to face with the proposition that here is a judicial power which the Senator says the proposition that here is a judicial power which the Senator says is placed in the two Houses, and the question arises, can this power be delegated to a commission? I do not care whether it is composed entirely of members or whether it is composed entirely of outsiders, can this power be delegated at all? I say it cannot, except in violation of the plainest principles of the Constitution of the United States. If the power belongs to the two Houses, as the Senator from Ohio says it does, it must be exercised by the two Houses, and cannot be transferred to the Supreme Court or any intermediate tribunal made up half and half. If it is a mere floating power, to be located only by an act of Congress, then this objection may not prevail; but the Senator from Ohio places it squarely as a judicial power belonging to the two Houses. How does he and how does the Senator from New York get over this difficulty? They say, Congress is in the habit of appointing commissions made up of members and persons who are not members, and he instances the silver commission, composed partly of Senators and Representatives and of learned persons who do not belong to Congress. This is lame and impotent and the proposition that here is a judicial power which the Senator says sons who do not belong to Congress. This is lame and impotent and shows the futility of the whole doctrine, for in this very case of the silver commission its findings amount to nothing and have no force until they are embodied in a law and passed by both Houses of Congress. It comes merely as information; it comes merely as instruc-tion. But suppose it was provided that the finding of this silver commission should stand as the law unless reversed by both Houses commission should stand as the law unless reversed by both Houses of Congress, would not that be clearly a delegation of legislative power? There the case entirely changes. If you say that their action shall be binding as law, unless both Houses of Congress shall reverse it, then you have conferred upon them the power to legislate subject only to reversal by the affirmative action of both Houses of Congress. Will any man in his senses pretend that that can be done, that legislative power can thus be transferred? Why cannot legislative power be transferred? Because the Constitution has placed it in the two Houses. Why can you not transfer and delegate a judicial power. Houses. Why can you not transfer and delegate a judicial power that has been placed in the two Houses? Simply for the same reason that the Constitution has placed it in the two Houses. I do not care bloody blankets. He may be required to take notice what is the bale of goods that he is called upon to open; and the duty imposed upon he President of the Senate is to take notice that he opens the certifiates from the electors of the State, and from nobody else.

I wish to notice very briefly a quotation the Senator from New York

power belonging to the two Houses. It is begging the question when you compare this to the silver commission or to a conference committe. As I said the other day in regard to a conference committee, the action of a conference committee amounts to nothing until it has the action of a conference committee amounts to nothing until it has been ratified by both Houses of Congress. We cannot appoint a conference committee and put into the resolution that their findings shall be valid and stand as a law until both Houses shall reverse it. Everybody will admit that that would be unconstitutional. Why? Because it would be the delegation of legislative power. If this judicial power is placed by the Constitution in the two Houses of Congress, you cannot delegate it any more than you could the legislative power. I do not care what the character of the power is, if it has been plead in the two Houses by the Constitution it cannot be delegate. been placed in the two Houses by the Constitution it cannot be delegated, be it legislative or judicial.

Now, Mr. President, I come to the character of these supreme judges. There has been a haze, a cloud, over this whole debate until the Senator from Michigan to-night took bold and clear grounds upon it. understood the Senator from Delaware to take the same ground, but upon asking him a question I found he did not exactly do so. The Senator from Michigan said that we were not creating a new office and that we were not giving to these men a new official character, that they were appointed as judges in their official judicial character, and that this new jurisdiction was to be cast upon them by this bill. So I understand the Senator from Ohio and the Senator from Delaware that these supreme judges are acting as judges in their official capacity except that their jurisdiction has been enlarged. This brings us to the strange anomaly that has no foundation in the Constitution, that we can make up a judicial tribunal partly of members of Congress and partly of judges of the Supreme Court. It seems to me that a proposition of that kind need only to be stated to be condemned by everybody. According to the Senator from Michigan and these other Senators, here is a commission partly made up of five supreme judges, as such, in their official judicial character, but having new jurisdiction cast upon them. Then here are ten Senators and members of the House, as such, but they have new powers cast upon them. As members of the House they each have one vote, as members of the Senate they simply have one vote; but in this capacity they are enabled to make in conjunction with five supreme judges a finding which will stand as a law which we can only reverse by the judgment of both Houses. It is a mongrel institution. It is, as I said before, a contrivance, patchwork. that these supreme judges are acting as judges in their official capacity before, a contrivance, patchwork.

I come now to the question, is it a court? Undoubtedly it is. That has been denied here to-night. It is a tribunal in which the members are sworn to do their duty, in which they are clothed with extraordinary powers. The members of this tribunal hold an office and it is a new office, entirely different from that which they hold as members of the Supreme Court and as members of Congress, and they are appointed in violation of the Constitution. The Constitution requires every officer to be appointed by the President of the United States except those the appointment of which may be vested in the several Departments. Here is to be a body of officers who are appointed not by the President. They were not appointed by him at all as members of this body, but they are to compose a judicial tribunal, strictly judicial, and thus the obligation of the Constitution is entirely evaded, that all officers shall be appointed by the President of the United

I come to another question, in regard to the jurisdiction of this tribunal. Here I must be excused if I partly repeat what I said day before yesterday. I certainly could not improve it. The Senator from Ohio admits that if this bill provides that the commission shall not go behind the returning boards of the several States no democratic member of either House will vote for it. He admits that frankly. member of either House will vote for it. He admits that trankly. He says it will not get a vote. Then they vote for the bill with the understanding that this commission can go behind the returns made from the several States. But, says the Senator from Ohio, the bill does not give them leave to go behind the returns, but leaves them at liberty to do so if the general principles of law will allow them to do it. O, no, Mr. President, that is the fatal mistake about this bill. It does not leave it free to decide whether Congress as a returning board has a right to go behind the returns from a State; but it requires them has a right to go behind the returns from a State; but it requires them to do certain things which will compel them to go behind these returns and to find the fact, and that is a position which I assume has not been met by any Senator upon this floor. This bill requires them to find the fact whether electors have been duly appointed, that is, duly elected, and not whether they have been duly certified by the officers of a State; not whether they have been duly returned by the officers of the State, but to find the fact that they have been duly elected. What I maintain is that this commission cannot carry out this part of the bill without going behind the returns from a State, and that is what our democratic friends understand by it. It is and that is what our democratic friends understand by it. It is sprinkled with very white, pretty meal, but I think the democratic cat is reposing beneath it. They are required to find what are the constitutional votes from a State. How? Whether the elector was eligible or not, whether he voted by ballot or not, whether in all respects they have complied with the law. Here are questions to be submitted to this commission that were never intended by the fathers of the Constitution to be relied at the time the vertex was expected. of the Constitution to be raised at the time the vote was counted. It was to be a simple process to open the certificate and count the votes contained in that certificate. I used the phrase the other day, good, bad, and indifferent, and so I say now; but the count is to be made

in the presence of the two Houses; it is not to be made in the Senate Chamber and in the House of Representatives. We are not to separate and to make the count in these two chambers apart. We cannot separate under the Constitution and do that, but the count is to be made in the presence of the two Houses when the two Houses are together; and all that goes to make a count, all in which a count consists, is to take place and transpire in the presence of the two Houses. The votes are to be counted in the presence of the two Houses.

Then this bill, as I believe, violates the Constitution. First, it requires these commissioners to do a thing which neither the President of the Senate nor the two Houses have a right to do.

of the Senate nor the two Houses have a right to do.

In the next place, if this is a judicial power and belongs to the two Houses, it must be exercised by the two Houses, and cannot be delegated to an outside tribunal. In the next place, if this tribunal is a court, and these men are officers, they must be appointed by the President of the United States; they must be appointed as other judicial officers are. I remember that Justice Nelson, from New York, was placed on the commission to reget that a treaty with Careat Brit. was placed on the commission to negotiate a treaty with Great Britain; but he was confirmed by the Senate just like the other members were; and after they had been appointed by the law that authorized their appointment, and confirmed by the Senate, their treaty still was not binding until it was ratified by two-thirds of the members of the Senate.

Something has been said about Colorado. There is a very good illustration of this doctrine and of the difficulties in the way. sible that, when the vote comes, the question as to whether Colorado is a State in the Union can be raised at the desk, and is then to be decided; that the votes shall stop until the whole question whether Colorado is a State or not has been decided? If so, it ceases to be the short and simple process that was contemplated by the fathers. That Colorado is a State in the Union, I am required to take notice. The President of the Senate is required to take notice of that as much as he is that Vermont is a State in the Union; and I do not believe that the question can be made when it comes to the count of the vote whether Colorado is a State in the Union. Something must be received as settled, something must be accepted as having been consummated, and it is only in harmony with the theory of our Government to say that Colorado is a State and that everybody must take notice of it, and that no question can be made when we come to count that

vote.

I know, Mr. President, that because of the position that I have taken I am charged with being a partisan. I do not believe that I am any more a partisan than the Senator from Ohio or the Senator from Delaware. I admit that I am a republican and that I desire the success of that party, if it has honestly and lawfully succeeded. I believe that it has. I believe that if this vote is counted as it was for the first seventy-five years, Rutherford B. Hayes must be counted in and inaugurated, and that by the adoption of this plan his opponent would have chances that he has not now. A tribunal is to be created, a technical tribunal, and every question is to be submitted to that tribunal. If it decides against us upon one out of forty questions it is tribunal. If it decides against us upon one out of forty questions it is

the same as deciding against us upon all.

The Senator from Ohio says the democratic party is the legitimate descendant of the republicans of 1800. I do not think that the democratic party as we have it now is the legitimate descendant of anybody. I think it has "growed" up, like Topsy. We are members of parties and we will be. I have my conviction as to what is right, as to what is proper. I believe that the best interests of this country, the what is proper. I believe that the best interests of this country, the best interests of all parties and of all men, are bound up in the success of the republican party; and believing that as I do I am not willing now, when the case is made up and when we have what is called a sure thing, to adopt a plan to throw away one-half of our chances or more. That is the whole of it.

Why is this extraordinary exertion made at this time? Why is this great effort to argue that, legislation or no legislation, the President of the Senate cannot count the vote? Why are we to have

two-story speeches day after day put in to prove the proposition that the President of the Senate cannot count the vote? Suppose that is established. That is a victory over somebody, and I imagine at this time it is a victory over the republican party. For several years I have tried to bring this matter to the attention of the Senate of the United States in my feeble way. I may have been right or I may have been wrong. I may remark right here that the Senator from New York did not give the proper construction to the bill that passed the Senate. I am not going into a defense of that bill nor the reasons for its introduction in the particular form that it was introduced, but it is enough for me to say that he did not give to it the construction that I give to it, because it did not recognize as double that return which came from outsiders, which was a bogus return, and did not come from a State. According to my construction this second bogus return from Louisiana and from Florida could not come in, even if that bill were now a law.

Mr. President, enough upon that point. That I may have been inconsistent in the views that I have taken upon this question from time to time is entirely possible. I do not think there are any popes in this body. The doctrine of infallibility has never been proclaimed in regard to any Senator here. If it were necessary to open these volumes I think I could show that every member of that committee has expressed different sentiments from those expressed in this bill. As my friend the Senator from New York did me the honor to read from an address of mine in regard to this matter, I want to read from a resolution which he introduced in the Senate, I think as long ago as 1873, in which he advanced sentiments which are entirely hostile to the doctrine of this bill. I only do this because the Senator referred to my language to-day. It was the question of receiving the vote in to my language to-day. It 1873. The resolution was:

Resolved, That the electoral votes for Georgia cast for Horace Greeley be counted.

The Senator from New York moved to amend it as follows:

The function of the joint convention being ministerial merely, and this question being independent of the question of the effect of the votes or of the count.

He brought it forward several times, and finally in this form:

The function of the two Houses in counting the votes being ministerial merely, and this question being independent of the effect of the votes or of the count.

If that doctrine was applied to this bill it would be entirely useless. The Senator, in the course of his speech in this body a year or two ago, speaking of the amendment and the bill, said:

Either House or both Houses may do whatever is committed to it or to them; but Congress cannot delegate to anybody else legislative power or any other power which is reposed in Congress, and located there and nowhere else. So we may make a rule which shall commit to the presiding officers of the two Houses the duty of scribes and chirographers, to set down and count up and state these figures; but when you come to the last act, to the act accomplished of making the count, in all senses which the Constitution imports, that is the act of the two Houses. "The votes shall then be counted," the two Houses being there.

That is the doctrine which I have stated here to-night, not half so

well, but in my feeble way.

Mr. President, there is very much more that I should like to say on this question, but I have not the strength nor does the time admit of it. I can only say that in the position which I have taken I have been doing what I believe simply to be my duty. I accord to every other Senator conscientious purposes and motives. I agree that all are doing what they think is right. I claim for myself simply the same consideration. If I am called a partisan or if it is said that I am advocating the interests of my party, I am willing to admit it, within the limits of what I have stated here to-night. I believe that the republican party has saved this nation; I believe that it has saved the republican party has saved this nation; I believe that it has saved this Constitution, and I believe that the greatest considerations of humanity and of public and private interest now demand that it should be continued in power. If that demand can be complied with, keeping within the law and keeping within the facts, it ought to be complied with. What I say now at this particular juncture is that it is not our duty, it is not our interest to depart from that method pursued for seventy-five years simply to give to our political oppo-

ments advantages and chances that they now have not.

Mr. BLAINE. Mr. President, I have, I trust, as profound an appreciation as any Senator on this floor of the gravity of the situation. I would not if I could, underrate it, and no public good can result from overstating it. I have felt anxious from the first day of the session to join in any wise measure that would tend to allay public uneasiness and to restore, or at least maintain, public confidence. In this spirit I followed the lead of the honorable chairman of the Juthis spirit I followed the lead of the honorable chairman of the Judiciary Committee [Mr. EDMUNDS] in December in an effort to secure a constitutional amendment which would empower the Supreme Court of the United States to peacefully and promptly settle all the troubles growing out of the disputed electoral votes. I knew there were weighty objections to any measure connecting the judiciary with the political affairs of the country; but I nevertheless thought, and I still think, that under the impressive sanction of a constitutional amendment the angry differences growing out of a presidential contest might with safety and satisfaction, he adjusted by that tial contest might with safety and satisfaction be adjusted by that supreme tribunal which, combining dignity, honor, learning, and presumed impartiality, would be regarded by men of all parties as a

It was in that spirit and with those views that I voted for the constitutional amendment, which I regret to say failed to commend itself to the Senate. It was defeated, and I refer to it now only to show that I have not been reluctant to make any proper and constitutional adjustment of pending difficulties. I am not wedded to any particular plan except that of the Constitution, nor have I any pet theories outside of the Constitution, and, unlike a good many gentlemen on both sides of the Chamber with whom I am newly associated here, I have no embarrassing record on this question of "counting the votes.

But, Mr. President, looking at the measure under consideration and looking at it with every desire to co-operate with those who are so warmly advocating it, I am compelled to withhold the support of my vote. I am not prepared to vest any body of men with the tremendous power which this bill gives to fourteen gentleman, four of whom are to complete their number by selecting a fifteenth, and selecting a fifteenth under such circumstances as throughout the length and breadth of the land impart a peculiar interest, I might say an absorbing interest to what Mr. Benton termed in the Texas indemnity bill, "that coy and bashful blank." I do not believe that Congress bill, "that coy and bashill blank." I do not believe that Congress itself has the power which it proposes to confer on these fifteen gentlemen. I do not profess to be what is termed, in the current phrase of the day, a "constitutional lawyer," but every Senator voting under the obligations of his oath and his conscience must ultimately be his own constitutional lawyer. And I deliberately say that I do not believe that Congress possesses the power itself and still less the power

to transfer to any body of fourteen or fifteen or fifty gentlemen that with which it is now proposed to invest five Senators, five Representatives, and five judges of the Supreme Court. I did not at this late hour of the night rise to make an argument, but merely to state the ground, the constitutional and conscientious ground, on which I feel compelled to vote against the pending bill. I have had a great desire to co-operate with my political friends who are advocating it, but every possible inclination of that kind has been removed and dispelled by the very arguments brought in support of the bill, able and exhaustive as they have been on that side of the question.

I beg to make one additional remark through you, Mr. President, to the chairman of the Judiciary Committee and through him to his able associates who serve on that committee, that while this subject s now in the public mind as it never has been before from the foundation of the Government, when the leading jurists of the country have been investigating it as never before, that they will not allow this session of Congress to close without carefully maturing and submitting to the States a constitutional amendment which will remove so far as possible all embarrassment in the future. The people of this country, without regard to party, desire in our Government due and orderly procedure under the sanction of law, and that I am sure is what is desired by every Senator on this floor and by none more ardently than by myself. Let us then if possible guard against all rouble in the future by some wise and timely measure that will be ust to all parties and all sections, and, above all, just to our obligations under the Constitution.

tions under the Constitution.

Mr. HOWE. Mr. President, I had a fervent hope that I should get through this debate and get to a vote upon this bill without opening my head in the course of the discussion, and I believe I should have been that victorious over myself if it had not been for some remarks, some very able and very forcible, some remarkably ingenious remarks; but some, I must be allowed to add, in my opinion, not entirely just remarks just now submitted to the Senate by the honorable Senator

from Indiana, [Mr. MORTON.]

I was far distant from this city when I first read the bill we are now considering. I am free to confess that I hailed it with great gratification and pride. I was afraid it would not meet with the unanimous cation and pride. I was alraid it would not meet with the unanimous support of the two Houses, and yet I had a sort of hope that that support would come near to unanimity. If I had not been compelled to read at the same time that I read the bill that the Senator from Indiana was not able himself to give to it his assent, I should have supposed that the bill would have received the unanimous vote of the two Houses of Congress. But I was utterly unprepared to hear any Senator say that this bill was addressed to the magnanimity of any political party. If that be so, and if a vote for the bill is to be recorded as an evidence of the magnanimity of the republican party, I do not know that for that single fact I as an individual should shrink from voting for it. I have not been open to such accusations perhaps any more than is good for me; and if in these closing days of my public career I should be overtaken by some such novel grace, I should stand up under it as well as I am able, but I do not yield my assent to the bill upon any such consideration. I am bound as a truthful man to oni upon any such consideration. I am bound as a truthful man to confess that; and I did not expect to hear from any republican Senator that this bill was framed in the interest of the democratic party. I have not been conspicuous for my services in the interest of that party heretofore and do not propose to embark, with my eyes open, in its service now, and if I had supposed the bill was so framed, I am very much afraid that I should have shrunk from it even with loathing. but I did not so expect.

very much afraid that I should have shrunk from it even with loathing; but I did not so suspect.

After all I have heard (and I have been a very patient and attentive listener to this debate, one of the most remarkable, by the way, which has illustrated the annals of our Congress) I am not able to see how or wherein this bill is of itself to promote the interests of the democratic party. Why? What interest has the democratic party staked upon this bill? I suppose none will be suggested in the world except that of the success of that ticket which it supported during the late presidential election. But is any republican Senator or citizen prepared to say that this bill promotes the success of that ticket? Why so, I beg to know. Nothing can be done under this bill to promote the success of those candidates unless in the execution of the law you shall secure an opinion from five picked men of the Senate and from five picked men of the House and from five picked judges from the highest court in the land that that ticket did succeed; and where is the republican in or ourside of this Chamber who cares to advertise to the country that such a tribunal as I have who cares to advertise to the country that such a tribunal as I have just called over is bound to adjudge that that ticket did succeed at the late election? I have not seen any evidence upon that point which has led me to believe that fifteen such men would be bound to come to any such conclusion and therefore I did not feel called upon to distrust such a tribunal. I know of no human interest which, if it must be adjudged by human beings, I would not be willing to submit to the arbitrament of fifteen such men as the bill provides for.

Mr. President, the Senator from Indiana says we do not need any legislation now, we have got a sure thing, and we had better not give away any part of it that if we fail to legislate, still all pending controversies will be adjudicated as like controversies have been adjudicated in all the prior years of our national existence. Mr. President, was that a fair statement of the case with which we have to deal? Unless our previous history has been misread in my hearing during this debate, unless I have misread it myself, we have had no

occasion like this which now confronts us in all our previous history. Sir, if the result of the late presidential contest is not left in doubt, which I will not affirm, I do think I am authorized to say that it is left in dispute. While I was on my way to the Gulf not long since I read in dispute. While I was on my way to the Guir not long since I read a pronunciamiento over the signature of Mr. Abram S. Hewitt, the chairman of the national democratic committee—if that is the office he fills—in which he advertised to all the people of this Republic that Tilden and Hendricks were elected President and Vice-President of the United States, hurrah! It was but a day or two after that that I read a similar advertisement over the signature, well kown to you and myself, of Z. Chandler, chairman of another committee, representing another party, advertising to the very same people that not Tilden and Hendricks, but that Hayes and Wheeler were elected President and Vice-President of the United States; pretty high authority you would think on both sides of this question. Is it not enough to authorize me to say that the result of the late election is at least a matter

How stand the people of the United States on this dispute? Will the forty-five millions regard this pronunciamiento of Mr. Hewitt as mere bluster and bravado and see as with one eye how absolutely truthful and accurate was the advertisement of Mr. Chandler; or will they on the other hand see that Chandler was bragging, and Hewirr was dealing in plain unadulterated truth? For my single self I doubt if those millions, all of them, will agree to accept either of these pronunciamientos. I have seen a great many things in the newspapers nunciamientos. I have seen a great many things in the newspapers and elsewhere which lead me to the conclusion that the people themselves do not all regard this thing alike; but some of the people actually believe that Tilden and Hendricks were elected. Some of them, on y utter surprise, thought that they ought to be elected, and voted for them; and I think, inasmuch as there was a difference of opinion as to who ought to have been elected, which of these tickets ought to have succeeded, there is still a difference of opinion among the

people as to which has succeeded. But before this time has any such dispute ever existed in the United States? I think the Senator from Indiana and other Senators would have us understand that heretofore, in some occult way, legitimately or illegitimately, the Vice-President of the United States or the President dent of the Senate has taken upon himself the duty of ascertaining what was the result of an election, and making it known to all the people. I do not understand that that has ever been the case. I do understand that the President of the Senate has ever counted the votes given for President and Vice-President in any other sense than every member of the Senate and every member of the House has counted them, each man counting for himself; and I do not understand that any one of them, or all of them together, have counted the votes in any one instance in any other sense than the votes have been counted by every citizen; and more than that, I do understand it to be a historical fact that the people of the United States have really canvassed and decided every previous election for President and Vice-President before the President of the Senate ever opened a certificate from a State; and therefore what the President of the Senate has done heretofore has been merely to spread before the two Houses in joint meeting the verification, the papers, which authenticated the count which the people had made before, and which the press had made known not only to all the people of the Republic but to the people of the world. Hitherto there has been no such dispute. Now there is such a dispute, and somebody must decide that dispute.

Now there is such a dispute, and somebody must decide that dispute.

Mr. President, I think the Senator from Indiana or some one else
during this debate and during this day read some remarks from Mr.
Clay, in which he termed this power that we are now talking about,
this power to decide disputes as to a presidential vote, a power not
provided for in the Constitution, an omitted case in the Constitution.
I myself think that remark was entirely just. I think so for three
reasons at least, which I can readily state. One is that I do not find
in the text of the Constitution any adequate term for it to clothe any
known tibunal under this Government with that power of decision. known tribunal under this Government with that power of decision. Secondly, I do not think it ever entered into the head of a single one of those men who made your Constitution that such a case as confronts us would ever arise in our history, that it would happen in the history of our Government that a State authorized to give a certain number of votes in the choice of a President and Vice-President and authorized to appoint them just as her Legislature pleased would ever permit two certificates declaring two different choices or selecever permit two certificates declaring two different choices or selec-tions to come to the National Government. Unless I had seen it done myself several times, I would not have believed that any such inci-dent could have transpired. And I would say in passing that if for thirty days I could have concentrated in myself the prerogatives of the Government in any one of these States which have permitted two such certificates to go out from its midst I would give good guarantee that it would be the last time such certificates should go from that State. Here, sir, a man slanders the title by which you hold the house you live in; you treat him as a criminal and punish him as such, and justly so. But here a set of miscreants is allowed to slander the title to the first magistrate of the first republic on the earth, and you treat it rather as a joke, as a little difficulty that is to be got along with in some way as well as possible and exposed as completely and as effectually as possible. A man utters a counterfeit ten-dollar bill, and you send him to the penitentiary for a term of years; but they forge a certificate purporting to utter the voice of a State in the great matter of choosing a President and Vice-President, and what do you the Government in any one of these States which have permitted two

do about that? Occupy the time of Congress for days and for weeks

an about that? Octoby the time of contended to the conten framers of the Constitution is this: You know, sir, that that convention met with a great many difficult problems to solve. Among others was the great question whether in the new government they proposed to institute each of the States should have the same quantity of power, or whether the power of the several States should be in proportion to the number of their people. You know how that was—compromised, I believe is the term; how that was settled in reference to the legislative department of the Government. Then came the question about the constitution of the executive branch of the Government. It was deemed generally to be necessary to have an executive, generally necessary to have a single executive. The question was how to constitute that executive. The most natural suggestion, and that which occupied the attention of the convention the gestion, and that which occupied the attention of the convention the longest, was that he should be elected by the Congress; but the grave objection to that was that he would be the creature of Congress, and so instead of being independent of the legislative branch of the Government would be absolutely dependent upon the legislative branch. It was suggested that he should be elected by the governors of the States; it was suggested that he should be elected by the people of the States. To this last suggestion it was answered first that the great body of the people would not be sufficiently acquainted with the nublic men to know which were the fittest for the office; and see the public men to know which were the fittest for the office; and secondly to make him elective by the people would make him represent the States precisely in proportion to the number of people in the States. It was suggested that he should be elected by the governors. That was open to this last objection But finally when the plan of the Constitution was referred to the committee on style, the plan said that the President should be elected by Congress and should not be re-eligible. In that shape it was reported back to the convention by that committee. Still the convention were dissatisfied with the plan. The problem still confronted them, how shall we contrive to elect a President in some way so that he shall fairly represent the large and President in some way so that he shall fairly represent the large and the small States and still not be dependent upon the legislative branch of the Government. That problem was finally, and but a short time before the adjournment of the session of the convention, referred to the committee of eleven, and that committee contrived this plan of the electoral college. They were so intent upon avoiding these two difficulties which had confronted them all through the convention, that they were in an executive to the convention, that they were in an executive to the convention. that they were in an exceedingly unfortunate frame of mind to anticipate any such obstacles as we have found in our path.

So then I do not find in the Constitution any very express authority to any existing tribunal to decide these disputes; but the dis-

putes are here. There is nothing more certain than that; and these disputes must be settled by somebody. I have formerly said in this Chamber, and I still hold of my individual self, that the only tribunal which can finally settle this dispute is the judicial branch of the Government; but before the judicial tribunals can get hold of it, Government; but before the judicial tribunals can get hold of it, there must be a prima facie case made, somebody must be inducted into the office and somebody must question his right to the office being in. Until that happens no case can arise under the Constitution or laws of the United States which can set the judicial tribunals in motion. In all the States that I know of, there is some tribunal which makes what you call a prima facie case of title to offices, not conclusive upon anybody, a title which can be reviewed by the courts, and often is reviewed by the courts and upset. But where is the tribunal which can make this prima facie title, which can settle pro forma for the time being the disputes which confront us?

Mr. President, I shall not attempt to add one word, and I could not if I were ever so well prepared for it add one word, to the argument

if I were ever so well prepared for it add one word to the argument by which the right of the President of this body has been denied-the right of the President of this body to decide these disputes. shall not attempt to add one word to the argument by which the right of the two Houses, whether acting separately or acting together, to decide the same disputes has been denied here. I say the debate has proved, and I think almost the united testimony of your statesmen and your lawyers from the foundation of the Government to this time ought to be sufficient, that no such tribunal is provided for in the Constitution; and yet these questions stand here and must be settled,

settled by somebody.

Now it is proposed by this bill—and this is all that I understand to be proposed by this bill which is seriously objectionable to anybody—to take the opinion of this commission, this high joint commission—I like that expression for it was introduced into our vocabulary on a very important occasion, and I think performed a very admirable work for the country—to take the opinion of this commission. It seems to me a fair commission. If it does not legally and authoritatively close out the whole question and put it beyond dispute, it will at least have great weight both with these two Houses and with that at least have great weight both with these two Houses and with that great constituency which these two Houses represent. I was not only willing to take the opinion of such a tribunal upon this very existing question; I was not only not afraid to take that opinion, but for myself I was absolutely afraid to refuse to take the opinion of such a tribunal. When a question is to be settled, must be decided, I know of no fairer way to do it than to leave it to the judgment of henest, able, intelligent men. I should hate to shrink from subcatting to such a reference any interest which concerned me.

Mr. President, I rose mainly to disclaim any purpose to serve the inter-

ests of the democratic party in the support I give this bill. I will not sit down, however, without saying one thing more in reference to this bill. I notice, and have noticed all through this debate, that it is not only opposed vigorously by many very able and very eminent men, but that many of those who support it support it tamely if not impotently. I do not give it any such support. I really believe—and that is about the last thing I wish to say on this bill—that the bill is the proudest tribute to the Congress of our country, the proudest monument to our statesmanship which has been produced since that convention adjourned which framed the Constitution of the United States. They met graver difficulties than this, and they provided for the settlement of them. I admit this is a very grave question which confronts us; but in point of gravity it does not begin to weigh with many of the questions of infinite moment which pressed upon the attention of that convention. This is a grave one. Two parties, numbering in the aggregate forty-five millions of people, are concerned in the questions which are to be solved under this bill if it becomes a law, and a committee representing those two parties evenly did so far come together as, with one exception, to approve of this plan which compromises the honor, the rights of no man, and no party, and no cause; did, with one exception, agree to this plan. I hold it to be a great triumph, even if the bill finally fails. If it could have met the united approval of that committee, I should have been still more rejoiced. If it could have met, as I think it deserves to meet, the unanimous approval of the two Houses, I should almost feel, I think, as one much better than I did feel when he first looked upon the infant Saviour of mankind—feel as if I had seen the salvation, not of my kind, but the salvation of my country.

of my country.

Mr. EATON. Mr. President, I feel that I ought to offer an excuse at this early hour of the morning for presuming to occupy even a few minutes of the time of the Senate. I find that I am pretty nearly alone on this side of the House and I regret that my friends do not view the matter as I do. I regret that my colleague does not view it as I do. I deeply regret that the senate of my State last Saturday by a unanimous vote requested me to vote for this bill; but they were wise enough to get together yesterday and reconsider that vote. What is to be the end of it I do not know. It is not very pleasant to be in a minority of one or two in your own party in a body like this. But, sir, I have learned to stand on my ewn convictions.

What is to be the end of it I do not know. It is not very pleasant to be in a minority of one or two in your own party in a body like this. But, sir, I have learned to stand on my own convictions.

I ought to say here that I have the utmost confidence in the integrity, in the honor, in the character of the committee who have had this bill in charge, every one of them, without regard to party. I have no doubt that they have produced a bill to the Senate that in their judgment will act for the best interests of the country. I only regret that I cannot vote for the bill.

Under the Constitution the electoral vote of the country has been counted once in four years since 1789, nearly a century. Then, sir, there must have been somewhere a well-defined power. Where is that power? Either, first, in the President of the Senate or, second, in the House of Representatives or, third, in the two Houses, acting either interly or concurrently.

either jointly or concurrently.

A great deal has been said here—I am not going to read books tonight—to show that the President of the Senate has not the power,
under the Constitution, to scrutinize, investigate, and determine the
electoral votes. One Senator has said that he had no greater power
than the Sergeant-at-Arms. I shall not be led into a lengthy argument on that subject. I simply want to state my view. I read from
article 12 of the amendments to the Constitution:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

I will read a little further:

The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

I want to comment on this for a moment; a mere statement of the case will save elaboration. It is utterly impossible that the framers of that instrument could have intended that the President of the Senate should be the conscience-keeper of the House of Representatives. It is an absurdity. Under a certain contingency the House of Representatives are then and there "immediately" to elect a President of the United States. Upon the count of the President of the Senate? Not so, sir; but upon their own scrutiny, their own investigation; not anybody else's; neither that of the Senate nor that of the President of the Senate. How will they exercise that great duty which is devolved upon them under this contingency, except by making the scrutiny themselves then and there? And that, let me tell the honorable Senator from Ohio and the honorable Senator from Delaware, is the reason why this contrivance of their's ought to sink into the earth. I shall allude to that in another connection

Great reliance has been placed here by my honorable friend from

Great reliance has been placed here by my honorable friend from Indiana upon a certain, not opinion—it is not to be called an opinion—but a certain remark made by Chancellor Kent in one of his lectures. It is not an opinion. It lacks everything that goes to make up an opinion. I read from Kent, volume 1:

The President of the Senate, on the second Wednesday of February succeeding every meeting of the electors, in the presence of the members of both Houses of Congress, opens all the certificates and the votes are then to be counted. The Constitution does not expressly declare by whom the votes are to be counted and the re-

sult declared. In the case of questionable votes and a closely contested election, this power may be all important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators, to witness the fairness and accuracy of the transaction and to act only if no choice be made by the electors.

No lawyer of the eminence of Chancellor Kent could, with thought and reflection, give an opinion of that character. If by the Constitution of the United States the power is placed in the President of the Senate, then it is to be exercised by him, no matter what is the character of the certificates which he has opened or of the votes which are there. Therefore this presumption of Chancellor Kent is not worthy of the opinion of a lawyer of his character. Then I think, as I had the honor of saying here a year ago—and I have not found it necessary to change my opinion—that the scrutinizing, the counting, and the determining of votes is not a part of the duties of the presiding officer of the Senate.

Now I come to the second point: is it lodged in the House of Representatives <sup>‡</sup>. A very strong argument can be made and has been

Now I come to the second point: is it lodged in the House of Representatives? A very strong argument can be made, and has been made, that the very fact that, under a certain contingency, the House of Representatives is immediately called upon to elect a President of the United States is sufficient evidence that they are to determine whether a President has been elected. In my judgment, that does not follow. They are to be satisfied by the examination which they make as one of the Houses that there has been no President elected; and then and there, immediately after they have satisfied themselves of that fact, the duty is devolved upon them by the Constitution of the United States to elect a President of the United States. Perhaps I ought to say here, not to take up much time, that it seems to me absolutely necessary, by the very terms of the instrument, that they must have the power to determine for their own satisfaction the existence of the fact.

Then I say I differ with very eminent lawyers, now residents of this city, who have placed that position before the public mind, while I agree that the House by its own action must be satisfied that no candidate for President has a majority of appointed electors. If such be the opinion of the House, obtained by a scrutiny of the votes after you, sir, have opened the certificates, it is their duty to proceed then and there to elect, and they and they only can determine. What does the Constitution of the United States mean when it says that, unless a President is elected, then "immediately" the House of Representatives shall proceed to elect? It means that the House must take action; that the House must determine whether a President has been elected, and, if not, then to perform the duty which the Constitution devolves upon it.

I am not of the opinion that the House of Representatives has the sole power to count and determine the votes. That power does not rest with the House of Representatives in its single capacity. Now, it is somewhere. If this power is lodged anywhere by the Constitution, where is it? It is somewhere. My honorable friend from Ohio, my honorable friend from New York, with whom by and by I propose to take, with Professor Henry, a little expedition—but I shall not permit the professor to take me anywhere in the neighborhood of Venus when my distinguished and handsome friend from New York is with me, because, however much admiration I might have for Venus, Venus would have none for me, [laughter]—I say that my friend from Ohio, my friend from Delaware, and my friend from New York agree with me that this power is vested by the Constitution in the two Houses of Congress. My distinguished friend from New York spoke yesterday hours, strongly, ably, eloquently. Two hours did he labor in order to establish to his own satisfaction and the satisfaction of all that you, sir, had not the power to count, but that that power was vested in the two Houses. If there, it is not anywhere else. If there, it cannot legally, constitutionally, and lawfully be placed anywhere else. Is it there? My friend from Ohio says yes; my friend from Delaware says yes; my friend from New York says yes.

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

When? Let us see whether you can contrive a commission to get this business into the hands of. "The votes shall then be counted." When? "Then." Then it goes on further to say that, if a President is not elected by the electoral colleges, the House of Representatives shall choose "immediately," and "immediately" does not mean unext week; "immediately" does not mean until after it has had this matter in hand. It means then instantly, when the House and Senate have determined on the subject, not the Supreme Court, not a committee, but the House and the Senate. When they have determined the count, if there be no election, then the House is to proceed at once to elect the President of the United States.

Now, I say that in my judgment this power to count and determine is by the Constitution conferred upon the two Houses, to be executed by joint or concurrent action. I think Mr. Jefferson said—I have it not at hand before me—that it should have been done by joint action. I think that was his view. However, the practice of eighty years would govern in that matter. Whether it should or should not, there is one pregnant fact that I desire every Senator to take into his mind, and that is this: the number of Representatives and Senators is just exactly the number of your electoral yote.

exactly the number of your electoral vote.

Mr. BAYARD. May I state to the honorable Senator that I think he will find in the debates of the convention that there were two votes

taken upon that very proposition whether the Senators and Representatives should vot per capita in this decision as a joint assembly, and it was decided in both cases in the negative. I have been therefore surprised to find that the notion should still prevail that there was, in any discussion of the Constitution or of the history from which the Constitution came, the idea that there could be a commingled vote of the two Houses en masse to determine questions.

Mr. EATON. I was not about to suggest that. I said Mr. Jeffer-

son thought so.

Mr. BAYARD. I only state to the honorable Senator that that question was raised in the convention and decided. There were two

and the series of the theorem and decided. There were two absolute votes on that question.

Mr. EATON. I understand it so, and it was voted and decided six times that the word "national" should not be applied to the Government of the United States; that it was "Federal," and not "national." We have forgotten that fact; and yet it was so under the vote of Oliver Ellsworth and Roger Sherman of Connecticut. I said that Mr. Jefferson thought that that would have been the better way, and I simply wanted to say that it is a striking and pregnant fact that the exact number of Senators and members of the House of Representatives, when you come into convention, is the precise number of the electoral votes of the whole country; and therefore if it was so determined it would not be a very bad way of determining it.

Mr. THURMAN. Will my friend allow me—

Mr. EATON. Certainly. I want my friend to remember that I am not suggesting that that is the way in which we should count.

Mr. THURMAN. No. The Senator is entirely right in saying that Mr. Jefferson declared in a letter which he wrote that a proposition to that effect probably would receive the support of the republicans of that day; but the fact is that the proposition which did receive their support was quite another proposition, and that was that it should require the concurrent vote of both Houses to reject the vote of a State.

Mr. EATON. I and mr. I want my triend that was that it should require the concurrent vote of both Houses to reject the vote of a State.

support was quite another proposition, and that was that it should require the concurrent vote of both Houses to reject the vote of a State.

Mr. EATON. I understand that concurrent action has been required. I was about to observe merely, passing by that as a matter of history, that I thought it would have been very well if they had carried out the power in that way. There is now, as I remember, but one State in the United States where, when the two houses of the Legislature come together, they do not form a joint convention either by statute or by rule under the chairmanship of the president of the senate or the lieutenant-governor of the State; and that State is, I think, Ohio. There may be others, but in all the New England States, New York, New Jersey, Virginia, North Carolina, and, so far as I know, in all the States except Ohio, when the two houses meet in convention they are in joint convention.

Mr. THURMAN. What would become of the smaller States?

Mr. EATON. I do not know what becomes of the large ones now.

[Laughter.]

[Laughter.]
But, Mr. President, let me hasten on. Concurrent action has been But, Mr. President, let me hasten on. Concurrent action has been the rule and precedent for nearly a hundred years; but I now desire to assert—and I have not yet heard it denied by any Senator who favors this bill—that the power to count, scrutinize, and determine the electoral vote is conferred by the Constitution upon the two Houses and must be by them exercised until the instrument is amended. I know that my honorable friend from Ohio sought to take shelter under the eighth section of the first article, which confers on Congress power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Now, permit me to say right here that that section does not refer to a conferred power which can be executed by the officer or the body on whom it is conferred, any more than you can legislate upon an

to a conferred power which can be executed by the officer or the body on whom it is conferred, any more than you can legislate upon an absolute power conferred by the Constitution upon the President of the United States to be Commander-in-Chief of the Army and Navy. You cannot make him lieutenant-general or rear-admiral. No sort of legislation can do it. If this power is absolutely conferred, either directly or by implication, it does not come under that section of the Constitution at all. It executes itself as the ballot executes itself.

Mr. THURMAN. Does the Senator mean to say that Congress cannot courted the power of the President as Commander in Chief of the

not control the power of the President as Commander-in-Chief of the

not control the power of the President as Commander-in-Chief of the Army and Navy?

Mr. EATON. No, I did not say so. I meant to say that you cannot take from him that position; and I meant to say that if you and I have the authority to count and scrutinize and determine these votes, no power on earth can take it from us and we cannot divest ourselves of that power. That is just what I mean to say if it be so, and it is my opinion that it is so; I believe it is so. On my constitu tional oath I believe that I have that power, and therefore I cannot vote with you for this bill. I should sacrifice my honor as a man and a gentleman in doing it. The men who believe differently will vote differently. I cannot. I believe this power is vested in the Senate and House of Representatives, and it is for us to exercise it, not dodge nor shirk nor avoid it, but do our duty under it. I shall so far as I am able. am able

Mr. THURMAN. Those are hard words "dodge" and "shirk."

What does the Senator mean?

Mr. EATON. I beg the Senator to understand that I meant this: I cannot dodge or shirk a power that I believe is vested in me by the Constitution. I had before that said I should be dishonored to do it. God forbid that I should say that my honorable friend here or my

honorable friend there should be dishonored in carrying out what they believe to be their constitutional power. I speak for myself, for

nobody else.

I say, then, in my judgment it is a duty to be performed, and let us perform our duty. So far as I know I mean to do it. I vote against this bill, not for the reason that governs my honorable friend from Ohio [Mr. Sherman] or California [Mr. Sargent] or Indiana, [Mr. MORTON,] not because I believe that it will injure one party and benefit worther. another. I cannot well say that I have any belief on that subject. Somebody did say as I came up to the Capitol this morning that he rather thought that both parties would get cheated in some way.

[Langhter.] I do not say so.

Again, will any member of the committee who reported this bill assert on the floor of the Senate that by the Constitution the two Houses have not this power? Is there anybody who will so assert on that committee? Will either of the members of that committee? I think they will not assert that for eighty years the two Houses have not exercised the power. I know the honorable Senator from Indiana said they had not. I am astonished that he should say so. I do not wish to take up the time of the Senate in going through the book which has been referred to so often; it has been done very thoroughly by the distinguished Senator from New York [Mr. Conkling] and more or less so by the honorable Senator from Ohio, [Mr. THURMAN,] but there has never been but one instance where the count, so far as I am able to discover, has been by the President of the Senate and that by an express order of the Senate. I think I am not mistaken in asserting that that was by an express order of both Houses, cer-

in asserting that that was by an express order of the state, tainly of the Senate,
Now I hold in my hand something—I think it was alluded to by
the honorable Senator from New York—but it is striking that I desire to read it. A joint resolution was passed in 1865 with regard to
the electoral votes of certain of the States of the South, Virginia,

Carolina North Carolina &c. This resolution was sent to South Carolina, North Carolina, &c. This resolution was sent to Mr. Lincoln, and as I have taken it out, although the Senator from New York read it, I desire to read again his message upon it:

New York read it, I desire to read again his message upon it:

To the honorable the Senate and House of Representatives:

The joint resolution entitled "joint resolution declaring certain States not entitled to representation in the electoral college." has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress, convened under the twe-fit article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal; and it is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes; and he also disclaims that by signing said resolution he has expressed any opinion on the recitals of the preamble, or any judgment of his own upon the subject of the resolution.

Edward 8, 1865.

EXECUTIVE MANSION, February 8, 1865.

Here we see that the opinion of Mr. Lincoln was precisely the opinion of the gentlemen of the committee, that under the twelfth article of amendments to the Constitution the two Houses had entire power over this matter. Did anybody doubt the correctness of that opinion at that time that the two Houses had entire and complete

opinion at that time that the two Houses had entire and complete power over this question?

Mr. President, I am giving my reasons why I cannot vote for this bill. I do not suppose anybody will conceive that they are of the slightest value, but they are to me. Two new factors are introduced by this bill entirely unknown before. First, outsiders, five men not known; the very committee who say (not perhaps all of them, but many of them) that the House and Senate have absolute power over this matter bring in a new factor in the shape of five judges of the Supreme Court. The next factor they bring in is the President of the United States. What business has he in this matter? You cannot make a bill; you cannot pass a law; you cannot legislate upon this make a bill; you cannot pass a law; you cannot legislate upon this subject, unless the President of the United States agree with you, without having two-thirds of the House and two-thirds of the ate; and it will take two-thirds of both Houses under this bill in order to count an electoral vote, unless the gentleman at the other end of the Avenue agrees to it. It is an absolutely new factor. Here-tofore a majority of each House has had the power to count and de-termine; but the committee say under this bill that they must have

two-thirds, unless they can get another factor with them—the President of the United States.

Mr. THURMAN. The same objection would lie to the bill of 1824.

Mr. EATON. I did not say, far be it from me to say, that some gentlemen had not gotten up bills that have never passed and become

Mr. THURMAN. This bill has not passed yet.

Mr. EATON. No, and it never will pass with my vote. I know that in 1824 a certain bill was gotten up by which this new factor was introduced, but it did not become a law. Neither of them became

Mr. THURMAN. Twenty-four years before that a bill was proposed.

Mr. EATON. Isay once in 1800 and once in 1824 there were bills, but they did not meet the approval of such men as Macon and very many other democrats, or republicans, as they were called then Van Buren was in favor of it; Webster, who was not a republican, was in favor of it, but neither of those bills became laws.

Under this bill the power of the House is taken from it which is conferred by the Constitution. The House, as I said before, under

certain contingencies, is to elect the President of the United States. By this bill the House cannot determine whether that contingency

arises; it is to be determined by somebody else, not the House.

I do not care to elaborate on this matter. The measure, in my judgment, is in violation of the Constitution; in violation of that power which is vested in the two Houses, and cannot by them be delegated to any other body or class of men. Therefore I cannot vote for this

Much has been said by gentlemen, by the honorable Senator from New York, and the honorable Senator from Ohio, and others, in vindi-cating this bill, that it did not cripple the powers of the two Houses. I think the language used in the debate was that it left them as they were. Why pass it then, if it leaves them as they were? They have got all power now. With this bill will any man undertake to say to Senators that they have all power? I do not undertake now to say what the power is; but it is complete, full, comprehensive. Under this bill, in a certain contingency, there must be a union of the two this bill, in a certain contingency, there must be a union of the two Why pass it then, if it leaves them as they were? They have

this bill, in a certain contingency, there must be a union of the two Houses in order to effect any action against the bill. No, no, Mr. President, it is not so; there is a very great change made.

There are many things that I have on my memoranda that I will not detain the Senate by referring to. I suppose this bill is to pass. I regret that I cannot vote for it. All I can say is that I hope to God it may prove as beneficial as it authors can desire. I hope it may be a panacea to all our evils for the time being. There is not anybody that wants this creature to live over thirty days. It was not a thing that its authors desired to make permanent. That I rejoice at. But many of my friends, gentlemen in whom I have boundless confidence. many of my friends, gentlemen in whom I have boundless confidence, who have my personal as well as political regard, believe that this will save the country from carnage perhaps, from bloodshed perhaps; at all events, that it will revive trade and bring a better feeling back to the people. I pray that it may. I have not given one moment of factious opposition to the bill. I would have been willing to let it pass yesterday, if you could have done so. I would have been willing to sit it out last night if my honorable friend from New York had ing to sit it out last night if my honorable friend from New York had been able to go on, because I well see and appreciate the fact that, if this bill is to become a law, the sooner the better. While I do not believe in it, while the principles of the bill do not commend themselves to my view of the doctrine of the Constitution, otherwise I have not one word to say against the bill. I do not think it will hurt the honor of the judges of the Supreme Court to fulfill the duties of an office of this character, and God forbid that I should think it would injure them any more than it did Judge Nelson when he crossed the ocean for the number of performing adults to his country. There are many for the purpose of performing a duty to his country. There are many things about the bill which I like; but there is one thing which I believe is wrong; and therefore, hoping that if it passes it will be a universal panacea for all our political ills, I shall be compelled to record my vote against it.

Mr. THURMAN. Mr. President, I have but a word to say, and that is only in answer to a remark made by the Senator from Connecticut which imported that this bill was only for this particular occasion. I would be willing that it should be a bill for every occasion if I did not believe, and most sincerely believe, that this country cannot stand the strain of quadrennial elections for President under the present system, and it is because I believe that before four years shall elapse the people of the United States will become sensible of that fact and

remove by constitutional amendment all such questions as now embarrass us that I am willing to limit this bill to the present election.

Mr. WHYTE. Mr. President, before proceeding to make a few remarks upon the bill now under consideration, I ask unanimous consent to present the memorial of A. Moffit, Henry Hardy, R. W. Hooe, Robert Howard, and other citizens of Uniontown, Washington County, District of Columbia, remonstrating against the passage of the bill to District of Columbia, remonstrating against the passage of the bill to provide a mode for counting the electoral vote. I move that this memorial lie on the table.

The motion was agreed to.

Mr. WHYTE. Mr. President, the reasons which impel me to the support of this measure are probably widely variant from those which may actuate other Senators in their adhesion to its provisions.

Whatever others may say, I have doubts of its constitutionality, and if it were a measure to be permanent in its character I should certainly vote against it. The Senate may possibly remember that last session I took occasion to give utterance to what I deemed a true interpretation of the clause of the Constitution relating to the count of the electoral votes. The registron assumed was that the of the electoral votes. The position assumed was, that the appointment of electors was placed solely under the direction of the State Legislatures, and that the votes given in accordance with State laws were to be certified to the President of the Senate and in the presence of the Senate and House of Representatives were to be opened and counted by him, and that he discharged merely the ministerial duty of ascertaining the number of votes cast for the several candidates, while the two Houses examined the certificates and verified the count and in the case of the failure of the electors to choose, then the House were to proceed immediately to elect the officers specially designated

were to proceed immediately to elect the officers specially designated as to be chosen by the respective Honses.

The ministerial duty of counting or canvassing the returns is one thing; the power to judge of a contested election upon testimony regularly taken under law is another and quite a different thing. They are as distinctly and sharply defined as the ministerial duty of the clerk of a court and the judicial duty of the court itself.

I believe that the greening and counting of the votes in the present.

I believe that the opening and counting of the votes in the pres-

ence of the two Houses was for the purpose of enabling each House, before entering upon the discharge of the contingent duty imposed upon them respectively by the Constitution, to verify the count made by the presiding officer, and that it was only for their inspection that these certificates were laid before them. I believe that that was the intention of the framers of the Constitution. Mr. Hamilton, who was one of the strongest advocates for the system of electoral colleges, advocated that provision most strenuously, and he afterward in the Federalist spoke with complacency and with pleasure of the acceptance that this portion of the Constitution met with from the people. He proposed, however, in the draft of the Constitution which he handed to Madison toward the close of the deliberation of the convention, that instead of lodging the power to elect a President on the failure of the electors with the House of Representatives and on the failure to elect a Vice-President with the Senate, there should be a second college of electors; and in that proposition be laid upon the second college of electors precisely the same duties that are now laid in the Constitution upon the House of Representatives and upon the Senate in the event of the failure on the part of the electoral colleges to choose the President and Vice-President. To show what was his understanding of laying these lists before the Houses, the Senate will perceive upon an examination of this draft of a constitution prepared by him that he used these clear and explicit words: after describing the first electors, providing for their casting their ballots almost in the same words as provided in the Constitution itself, he goes on to say:

A copy of the same list, signed and certified in like manner, shall be transmitted by the first electors to the seat of the Government of the United States, under a sealed cover directed to the president of the Assembly; which, after the meeting of the second electors, shall be opened for the inspection of the two Houses of the Legislature.

Then when he provides for the second college of electors, he says:

Then when he provides for the second college of electors, he says:

The second electors shall meet precisely on the day appointed, and not on another
day, at one place. The Chief-Justice of the Supreme Court, or, if there be no ChiefJustice, the judge senior in office in such court, or, if there be no one judge senior in
office, some other judge of that court, by the choice of the rest of the judges, or of a
majority of them, shall attend at the same place and shall preside at the meeting, but
shall have no vote. Two-thirds of the whole number of the electors shall constitute a sufficient meeting for the execution of their trust.

Now how is the second college of the state in the second of their trust.

Now here is the second college of electors in the presence of a President, just as the House of Representatives and the Senate are called together in this Chamber in the presence of the President of the Senate, only that the Chief-Justice presided over the second college of electors instead of the President of the Senate over our combined assembly. Now what was to be done?

At this meeting the lists delivered to the respective electors shall be produced and inspected; and if there be any person who has a majority of the whole number of votes given by the first electors, he shall be the President of the United States; but if there be no such person, the second electors so met shall proceed to vote by ballot for one of the persons named in the lists, who shall have the three highest numbers of the votes of the first electors.—The Madison Papers, volume 5; Elliot's Debates, page 586.

Going on, therefore, to provide precisely as is provided in the case of the House of Representatives or of the Senate in regard to their choice of President or Vice-President as the case may be. So that these votes cast by the electoral colleges were to be produced before the second electors to be inspected; and so, Mr. President, they are sent to you and you are made the custodian of them; you are to produce them, to count them here in the presence of the Senate and House of Representatives, and then "immediately," in the language of the Constitution, coinstanti, the House of Representatives proceeds to elect if the electoral colleges have not chosen a candidate when they cast their votes for President. It was my opinion that neither House nor both Houses had the right to

reject the vote of a State, (properly entitled to be considered as a State,) reject the vote of a State, (properly entitled to be considered as a State,) and duly authenticated under the act of Congress of 1792. They were to be opened in the presence of these two Houses for their inspection, for their verification of the certificates, those delivered by the messenger, those that came through the mail, all delivered, all subjected to the inspection of the two Houses and the votes declared by the President of the Senate. Why, Mr. President, the governor of my State performs the duty that you perform under the Constitution the same ministerial function, in examining the returns made by the clerks of the courts and he issues a commission to the man having the highest the courts and he issues a commission to the man having the highest number of votes; and if the election is to be contested, if there is a provision of law to contest an election, then you go into the forum provided by the Constitution or by the law to carry out the contest. Only last year in my State the court of appeals by a mandamus com-pelled the governor to issue a commission to the returned attorney-general because there was no power lodged in him by which he could take testimony and inquire into the rightfulness of the election of the

take testimony and inquire into the rightfulness of the election of the attorney-general, although the constitution said he should be the judge of the election and qualifications of the attorney-general.

Mr. President, I concur with Chancellor Kent in the opinion expressed by him in the letter which Mr. Washburne read in the other House as emanating from that jurist. That was not, as I have heard some learned gentlemen say in these latter days, the opinion "of the poor old chancellor." No, Mr. President, it was the opinion of the clear-sighted chancellor, whose book to-day is in the hands of students all through this country as a text-book by which they shall learn to understand the Constitution of their country. I agree with him and with Heavy Clay and with Senator Barbour, of Virginia, who

in 1821, when the difficulty arose about Missouri, said that there was a casus omissus in the Constitution; and I have always, since I have been a member of the Senate, been ready to vote for a proper amendment to the Constitution to provide for the case of a contested election of President and Vice-President of the United States.

That it was the understanding of those who framed that instru-ment, that there should be no contest, that the President of the Sen-ate was to perform a mere ministerial office, that the whole power was lodged with the States to control the appointment, to control the qualification of electors, I thought was sufficiently indicated in the resolution of the framers of the Constitution and in the proceeding of the first Congress which put the machinery of the Government in mo-tion. The certificate given by the President of the Senate was under tion. The certificate given by the President of the Senate was under the direction of that body; some Senator seemed to think that because the Senate directed him to give the certificate, the Senate had laid violent hands upon the power and, therefore, had from the beginning exerted it. No, Mr. President, that will not do. No Senate ever directed, by an order, the President of the Senate to certify to what was not true. No Senate would have told John Langdon to certify that he had opened and counted the votes if John Langdon had not opened the certificates and counted the votes. No Senate would have dared to tell Thomas Lefferson to give to himself in 1801 a certificate that to tell Thomas Jefferson to give to himself in 1801 a certificate that he, Thomas Jefferson, had opened all the certificates and counted all the votes if Thomas Jefferson had not opened all the certificates and counted all the votes.

No, Mr. President, I do not believe it. I believe that power, such as it is, is merely ministerial, a power which governors all over the country exercise, a power which clerks of courts somewhere exercise, a power which boards of canvassers exercise everywhere. I do not see why such power as that cannot be lodged in the gentleman called to preside over the highest legislative body in our land. Our fathers only meant to make him "a porter opening a bale of goods," suggests some one! Why did they not make the Sergeant-at-Arms; why did they not make the clerk of the court at Washington; why did they not make some other subordinate officer the man to receive the returns?
Why select the highest officer next to the President of the United States to be the custodian of the electoral votes of the States? They meant that you should exercise the purely ministerial power of counting the vote, and left it to the House of Representatives, if you counted falsely and pronounced a man elected who had not a majority of the votes cast, immediately to proceed and exercise their jurisdiction in choosing a President over the man that you had falsely

Am I to be told that when our fathers resorted to every means to prevent Congress electing a President, they did their work so bunglingly as to allow Congress to defeat a President elected by the people? It never was expected by the framers of the Constitution people? It never was expected by the framers of the Constitution that there could be dual State governments within the borders of a State. It never was contemplated by the framers of the Constitution that any man could act in a State as governor while a rival governor claiming to be elected by the people also exercised executive power within the limits of the same State. They never intended to make either or both Houses or the President of the Senate judge of the election of President of the United States. They never dreamed of lodging with either of them any such power. They meant only to give power when the people in the electoral colleges failed to meet the requirements of the Constitution by casting a majority of the electoral votes for some candidate. The whole subject was to be under the control of State Legislatures where provision was to be made to meet all such cases. If the early legislators after this Constitution was put in operation, when they were passing the act of 1792, when they put in operation, when they were passing the act of 1792, when they knew the requirements of the Constitution in regard to the votes to be cast by the electors in the several States, had dreamed of giving power to judge of the election to the President of the Senate or to the House or to the Senate, will any man tell me that they would not have used apt words to express so great and tremendous a power as that

Did they leave the House of Representatives, did they leave the Senate to grope amidst parliamentary decisions as to their powers in regard to their own members? No. Each House of Congress, says the Constitution, 'shall be the judge of the election, returns, and qualifications of its own members." But giving them their power, what was it worth without legislation. In the absence of laws giving to the Senate and House respectively the direct power of examining witnesses in such cases upon oath, neither body would have such power. The legislation of Congress proves conclusively that it is the universal judgment in this country that no legislative body can, unless there be an express power given to it in the organic law, or by some statutory provision, examine witnesses upon oath.

Such power was, therefore, given to the President of the Senate, the Speaker of the House of Representatives, to the chairman of a Committee of the Whole, or of any committee of either House of Congress by the act of Congress of May 3, 1798. A further provision for enforcing the attendance of witnesses and compelling them to answer interrogatories was made by the acts of Congress of January 24, 1857, and of January 24, 1862.

Congress, therefore, understanding in the beginning of our national history that the power given by the Constitution to each House to judge of the election, returns, and qualifications of its own members carried with it no implied power to examine witnesses upon oath in Did they leave the House of Representatives, did they leave the

carried with it no implied power to examine witnesses upon oath in

relation to such questions, made, as it ought to have done, express

relation to such questions, made, as it ought to have done, express provision by law for taking evidence in cases of contested elections, by an act passed as early as January 23, 1798, and has since made further provision upon the same subject by the acts of February 19, 1851, and January 10, 1873, incorporated in our Revised Statutes.

If power is lodged in Congress to decide disputed elections of President, why has not Congress in the last eighty years passed some law regulating the mode of taking testimony and making such contests? You cannot unseat the humblest member of the Lower House of Congress except upon testimony taken in pursuage of law and re-You cannot unseat the humblest member of the Lower House of Congress except upon testimony taken in pursuance of law, and under notice; and shall it be contended that you can deny the presidential office to a candidate who has been chosen by the people, who comes to you certified from the electoral colleges and authenticated by the executive authority of the State? Can you turn him off and deny him the high office to which he is chosen, upon unsworn petitions and upon testimony of which he had no knowledge when it was taken and no notice to cross-examine the witnesses? No. Mr. President taken and no notice to cross-examine the witnesses? dent, under the rulings of the past, under my understanding of law, under my view of this case, Samuel J. Tilden has one hundred and eighty-five electoral votes properly authenticated for President, and Thomas A. Hendricks the same for Vice-President.

Thomas A. Hendricks the same for Vice-President.

I do not agree with the Senator from Indiana when he tells me that this is a republican surrender. It requires all my patriotism to surrender what I think belongs of right to the democratic party. The bill of 1800, as we have seen from this discussion, greatly similar to this bill, and intended as a permanent measure, met with the most determined opposition of the old republicans of that day "whose lineal descendants we are." It passed the Senate by a vote of 16 to 12. It was supported in that body by nine or ten of those very Federalists who had passed the alien and sedition laws in 1798. I walk with faltering hesitation in such footsteps as those. Langdon, and Pinckney, and Baldwin, who had been brave men, carnest advocates of State rights in the constitutional convention, gave this bill the most severe throttling when it came before the Senate. The debate seems to have been confined almost to them. Quietly, steadily, as I used to see in this body a few years ago when the republican party marched on, the Federalists went on, paying no attention to the minority until they had done their projected work. Mr. Baldwin called the attention of the Senate to the dangers of that bill. He said:

Gentlemen appeared to him, from their observations, to forget that the Constitutions of the second of t

Gentlemen appeared to him, from their observations, to forget that the Constitution in directing electors to be appointed throughout the United States equal to the whole number of the Senators and Representatives in Congress for the express purpose of intrusting this constitutional branch of power to them, had provided for the existence of as respectable a body as Congress, and in whom the Constitution on this business has more confidence than in Congress.

And then, as he concluded his remarks, he said:

And then, as he concluded his remarks, he said:

His own opinion, however, was what he had before stated, that the provisions on this subject were already sufficient; that all the difficult questions which had been suggested were as safely left to the decision of the assemblies of electors as of any body of men that could be devised; and that the members of the Senato and House of Representatives, when met together in one room, should receive the act of the electors as they would the act of any other constitutional branch of the Government, to judge only of its authentication, and then to proceed to count the votes, as directed in the second article of the Constitution.

That refers to the ministerial power of ascertaining whether the person who certifies to a return is the proper certifying authority, but the idea never entered into their brains of what is known as a contested-election case. Mr. Pinckney, whose speech has been read in a great measure, also discussed it very fully and I will only read one or two passages not before referred to:

Knowing that it was the intention of the Constitution to make the President ompletely independent of the Federal Legislature, I well remember—

Stating it, not as we interpret it at this late day, but as an intelligent action, who had part and lot in the formation of this very in-

Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present not only the spirit but the letter of that instrument, to give to Congress no interference in or control over the election of President. It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has the majority of the votes of the electors so transmitted

That is the language used in the resolution of the House of Representatives and the language on the Journal of the House of Representatives of 1789. They had counted the votes as they were declared by the President of the Senate.

Said he again, in another place-

To show the extreme impropriety of adopting this bill, I will, for argument's sake, suppose that there might be some irregularities in the votes of electors, or even in the conduct of the executive of a State on this subject; and ask whether, even under these circumstances, it would not be safer and less injurious to the interest of the people that these few irregular votes, if transmitted and certified by an executive, shall be received and counted, than that a new and unknown power like this should be created, under whose control not a few, but every vote that is given, must be reviewed, and received or rejected, as they decree.

My distinguished friend the Senator from Kentucky [Mr. STEVEN-SON] has read to the Senate a letter from Mr. Madison, the importance and aptness of which justify me in presenting it again:

[To Thomas Jefferson.]

DEAR SIR: Since my last I have been favored with the following inclosures: The bill relating to electors, Ramsey's oration, the report on ways and means, a motion by Brigham, and the resolution for excluding the judges from other offices.

It is not to be denied that the Constitution might have been more properly full in prescribing the election of President and Vice-President; but the remedy is an amendment to the Constitution, and not a legislative interference. It is evident that this interference ought to be, and was meant to be, as little permitted as possible, it being a principle of the Constitution that the two departments should be independent of each other and dependent on their constinents only. Should the spirit of the bill be followed up it is impossible to say how far the choice of the executive may be drawn out of the constitutional hands and subjected to the management of the legislative. The danger is the greater as the Chief Magistrate for the time being may be bribed into the usurpations by so shaping them as to favor his re-election. If this licentiousness in constructive perversions of the Constitution continue to increase we shall soon have to look into our code of laws, and not the charter of the people, for the form as well as the powers of our Government.

Indeed, such an unbridled spirit of construction as has gone forth in sundry instances would bid defiance to any possible parchment securities against usurpation.

- Writings, volume 2, page 157.

JAMES MADISON.

Mr. President, I well remember that I cited to the Senate last spring an umber of opinions of gentlemen high in the councils of the nation in the past, Mr. Toucey, Mr. Collamer, Mr. Stuart, and a number of distinguished Senators, in regard to this very subject, and Mr. Benjamin, who proposed only that a law should be passed instructing the President of the Senate in a certain mode and manner of counting the votes, recognizing the President of the Senate as the officer to do the ministerial counting. the votes, recognizing the President of the Senate as the officer to do the ministerial counting. I remember when the veto message of Andrew Johnson came into this Chamber, a seat in which I was then a humble occupant of. On the 28th of July, 1868, President Johnson returned to the Senate his veto of joint resolution No. 139, "excluding from the electoral college votes of States lately in rebellion, which shall not have been organized," &c., and among his objections was the following: the following:

The mode and manner of receiving and counting the electoral vote for President and Vice-President of the United States are in plain and simple terms prescribed by the Constitution. That instrument imperatively requires that the President of the Senate "shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." Congress has therefore no power under the Constitution to receive the electoral votes or reject them.

The whole power is exhausted when in the presence of the two Houses the votes are counted and the result declared. In this respect the power and duty of the President of the Senate are, under the Constitution, purely ministerial.

That was the opinion of Andrew Johnson, who had made the Constitution his life study and who risked all in doing what he thought the Constitution required him to do.

"Suppose there are two returns?" asked several Senators.

There cannot be two returns authenticated by the governor of a State. Therefore, I say you cannot go behind the certificate of the governor of Oregon. The governor of Oregon had lawful authority to certify the vote, and that governor ought to have as much consideration as the governor of any other State in the Federal Union. You are bound to obey the statutes of the United States as much as its Constitution, and the law was passed by the men who made the Constitution, and you have lived under it since 1792.

What took place then? On the motion of the Senator from Vermont [Mr. Edmunds] the joint resolution was taken up. Mr. Garrett Davis, of Kentucky, said that the reasoning of the message was perfectly conclusive. Said he:

I think that the message is one of a great deal of logical power and of truth

I think that the message is one of a great deal of logical power and of truth in its interpretation of the Constitution. I do not doubt the time will come when most of the gentlemen who will vote on the present occasion to overrule the President's veto and to pass this joint resolution against his veto will themselves subscribe to the truth of the message.

The joint resolution was passed, notwithstanding the President's objections, and the democratic Senators present voted to sustain the veto as follows:

NAYS—Buckalew, Davis, Doolittle, Hendricks, McCreery, Patterson of Tennessee, Vickers, and Whyte.

Sir, I have lived to see the day when some at least of the gentle-men who voted to pass that bill over the President's veto have subscribed to the doctrine that the President of the Senate shall count the votes. That is not all. I find that the Senator from Indiana made a report from the Committee on Privileges and Elections with-

made a report from the Committee on Privileges and Elections without objection May 28, 1874. What did he say?

The Constitution provides that the President of the Senate shall be the depositary of the electoral votes of the States, and that he "shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." It has been generally conceded that this means that the two Houses shall be present in their separate characters, and not as a joint convention; that they cannot act and vote as one body; that the two bodies cannot deliberate and act as separate bodies in each other's presence; that they are simply brought together to witness the result of the opening and counting of the vote as reported by the President of the Senate. The fact that tellers have been generally appointed by the two Houses in no wise affects the question, for they are mer facilities to actually count and make record of such votes as the Vice-President hands to them for that purpose.

Then he goes into a statement of what took place in regard to the Wisconsin vote in 1857, too long for me to read, but here is the way in which he concludes:

It seemed to be a necessary conclusion from these d scussions that it was a casus omissus in the Constitution, and the power of the President of the Senate to count the voic resulted exnecessitate rei, from the fallure of the Constitution to give to the two Houses any jurisdiction over it; but they were to be present at the counting as solemn witnesses of its accuracy and result.

I do not care who chooses to take back anything. I am standing upon my record of the past, and I am going to show before I conclude

that I lay down upon the altar of my country every constitutional doubt that I may have and submit it to the five judges of the Supreme Court, before whose decision I shall bow with the utmost respect. I do not change with the weathercocks upon the vanes on the public buildings.

Gentlemen of intelligence talk of Mr. Clay's inquiring what are rotes, and they speak of that, as if Mr. Clay meant, for a moment, to inquire as to which set of electors were chosen, when everybody knows that he was talking about the votes of States, what States were entitled to vote. He knew that Congress under another clause of the Constitution had power to admit States into the Union, and Congress had power to determine when States had complied with the laws for their creation, and had clothed themselves in the habiliments of States. Long before the count the inquiry was set in motion, and he warned them not to wait for the count, but to determine in advance States. what States were entitled to votes; and to provide for a contingency which might occur on the count. What did they do? They did what my friend from Vermont did in regard to Georgia. They provided that if it did not change the result you could count it in or count it So much for Missouri.

That report came from the Committee on Privileges and Elections. That report came from the Committee on Privileges and Elections. I have searched the archives of the Senate to find the minority report "from the lineal descendents of the old republican party." Who objected to it? Who said it was not true? Let us see who were on the committee. I guess there were some very able men at that time on the committee. Mr. MORTON, Mr. Carpenter, Mr. LOGAN, Mr. ALCORN, Mr. ANTHONY, Mr. MITCHELL, Mr. Sumner, Mr. Hamilton of Maryland, (my predecessor,) and my young friend from Delaware, Mr. SAULS-

Mr. THURMAN. Was it not the former Senator from Delaware, Mr. Saulsbury ?

Mr. WHYTE. If it was not my young friend who is here now, it was his brother, who was an uncommonly able man, and to whom we listened with great pleasure, but certainly I think he went out in

Mr. ALCORN. It was the present Senator from Delaware.
Mr. WHYTE. Yes, the present Senator. The former Mr. Saulsbury went out in 1869 or 1871. I know there was one first-rate "descendant of the old republican party" on that committee at that time. Let us see what he said about it. I refer to my predecessor, Mr. Hamilton. The Senator from Vermont [Mr. EDMUNDS] proposed an amendment to the bill then under discussion, which I think was the bill reported by the Senator from Indiana, and Mr. Hamilton, of Maryland said:

amendment to the bill then under discussion, which I think was the bill reported by the Senator from Indiana, and Mr. Hamilton, of Maryland, said:

What does the amendment of the Senator from Vermont propose to do? To appoint a joint committee, and they are to inquire into something and then report? What is to be the reach of their power? Are they to inquire simply as to what arises on the face of the certificate only? How far is the inquiry to extend, whether it be made by a joint committee, or by the tellers, or by the two Houses separated? Is it merely and purely to look at the certificates, to see whether they are properly executed and have been duly attested? Is that the limit of the power, I ask, or can other questions, as to the appointment of electors, or in the case of the return of two or more votes of electors to ascertain the rightful set, and then considering this to go back and behind all for that purpose? There is no such authority given. There is nothing provided if there should be a contest as to electors. There is not all usion to a case of the kind. The duty of the President of the Senato and of the two Houses is as simple as words can make it. And can we upon these words ingraft a whole system for contest and ascertainment?

The framers of the Constitution evidently never contemplated any such things as have transpired within the last eight or ten years. They took it for granted that the States would appoint electors, and in whatever manner it suited each State; that they would cast their votes, and that that was the end of their functions and of the action of the State, and that as they were sovereign bodies in this respect they would see to it that this important act should not be left in doubt or in any manner wanting in legal validity, and that, each State see speaking, the only simple electors. The States were given the power to appoint the electors in any way the pleased, and it was supposed that the power would be so exercised and so conclusively exercised that all that in any way cou

But I will not quote passages from other speeches, as it will take up the time of the Senate. I have only been making quotations for the purpose of showing that down to 1873 what was supposed to be the power of the President of the Senate and the two Houses of Congress when present at the counting of the electoral vote. Therefore when I express doubts of the constitutionality of this bill, I may be, as one of the distinguished members of the lower House (outside of the House) said, "in a hopeless minority;" but if I am overcome by the paucity of numbers supporting me, I can at least hide behind the shadow of names as illustrious among men of wisdom and learning as any that now adorn the rolls of any department of the Federal Government.

A few moments more, and I shall cease to weary the patience of the Senate. The Constitution was made for peaceful times and for honest men, for States governed by law and peopled by law-abiding citizens. Its intricate machinery was wisely contrived for smooth and easy working as long as the States remained in the normal condition of but during the throes of the civil war the Constitution was strained to its utmost tension, and we cannot expect that, like an India-rubber strap, it will go back to its original place as soon as the strain is removed from it. After years of peace we find ourselves confronted by new difficulties, the result of extraneous interference in the local governments of some of the restored Southern States. We find there cunningly devised contrivances to nullify and thwart the will there cunningly devised contrivances to nullify and thwart the will of the people; anti-republican combinations to destroy the elective principle in the States an oligarchy of irresponsible men, to perpetuate the power of one political party. Therefore we feel to-day the agonies and struggles which bad men can bring upon our country. In the midst of this peril we turn to the Constitution to find a refuge from disaster; but do we find it there? The discoverers of that saving power in the sacred instrument are as discordant and clamorous for their widely differing theories as were the tongues at Babel. Above the din and the confusion we have presented to us this bill as the less path out of this labyrinth of constitutional conthis bill as the best path out of this labyrinth of constitutional construction. In such a crisis it is the supreme duty of every patriotic citizen who has a voice in the settlement of this momentous subject to subordinate his own views upon doubtful constitutional questions and to unite in the support of the best measure which he can get that will harmonize conflicting opinions; bring peace and quiet to the dis-turbed and distracted interests of our country, and avert, what is

turbed and distracted interests of our country, and avert, what is worse than all, the possible chance of turbulence and bloodshed. I come, then, Mr. President, with my constitutional doubts; I come with my views acquired after long years of study of the principles of the party in which, from my earliest years I was reared, and I lay them upon the altar of my country. I vote for the bill in the interest of peace. I find that in its first section it is a vast improvement upon the twenty-second joint rule in requiring the concurring vote of both Houses to reject the vote of a State where there is but one return. I doubt your power, I confess it, to confide to the justices of the Supreme Court the decision of the questions arising on double returns. If you have any power at all over them, it is judicial, and I find no warrant in the Constitution for your judicial power. If it is judicial you have no authority to depute it to another. My lessons of the law, even from that first book, Bacon's Abridgment, have taught me that no person endowed with judicial power can deputize

another to exercise it.

But I vote for the bill for another reason. There is no Vice-President occupying that chair; it is occupied, and I am glad that it is occupied, by the Senator from Michigan, whose fairness, whose impartiality, whose strict adherence to duty not a member of the Senate on this side of the Chamber will gainsay. I am glad it is occupied by you, sir, who I know and believe would not walk one inch beyond the you, sir, who I know and believe would not walk one inch beyond the boundary which is set to your authority; but you are only, speaking in parliamentary language, the creation of a majority of this body. You are there to vote or not to vote, bound to vote now, unless you are excused, by the very rule you helped to force upon us in the minority the other day. A Senator from Michigan, we take from you no power that cannot be confided to another in your place. We do not by this bill strip the Vice-President of his power; and I do not think we could take it away from him. You are here participating as a Senator in our deliberations. You will obey, I know, the commands of the majority of the two Houses of Congress and of the President when he puts his executive approval to the bill. That is an agreement with every member of the Senate. The majority holds the power here to make it. It is an agreement with the House if it passes the bill. So that, no matter where the power is lodged, it shall passes the bill. So that, no matter where the power is lodged, it shall be exercised in this form, for this occasion only. Therefore, I shall vote for the bill upon that consideration.

Mr. President, thanking the members of the Senate for their kind Mr. President, thanking the members of the Senate for their kind patience at this, I was going to say, late hour, but early hour of the morning, I assure you that, while I shall vote for the bill with many scruples, it is not because I am not willing to trust to the justices of the Supreme Court the determination of this question. I hope, even as that august tribunal in the early days of the Republic, in Marbury vs. Madison, although they had not the constitutional power to dispose of the case, yet to prevent litigation and to quiet title to office went outside to determine to whom the office rightfully belonged, that these indges will, as the highest indicial officers of our country that these judges will, as the highest indicial officers of our country give us the benefit of their opinion and their judgment upon this contested question. When they do, I shall hail that decision as a

heavenly message, giving us peace in the land and quietude, until we shall provide by some constitutional amendment to prevent the recurrence of this unfortunate trouble in regard to our election of President and Vice-President. The Supreme Court has ever been held up to my admiration. I inherited a love, a veneration, a reverence tribunal which my ancestor described as a more than amphietyonic council. I have been ever taught, from my love for the departed Taney, to look with respect upon the decisions of that tribunal and never, never to deride them or to bring public scorn among the people upon them, whether they were favorable to my views of legal questions or unfavorable, but to teach the great body of the people that this was a country of law; that we were bound to abide by the decisions of our high tribunals and bow to them as the supreme

majesty that should govern us now and while we last as a Republic.
Mr. MERRIMON. Mr. President, I have very serious doubts as to
whether so much of this bill as provides for a commission harmonizes
with the Constitution or its spirit. The bill is the handiwork of a
very able committee of this branch of Congress and the other. They very able committee of this branch of Congress and the other. They have devoted a month's anxious labor to it, and they have come to a conclusion upon this provision of the Constitution about which I have some doubt. However, some of the framers of the Constitution, including the late Chief-Justice Marshall, gave the sanction of their names to the principles involved in this bill so far as the commission goes. In view of the existing emergency I feel constrained to yield my doubts in favor of this bill. It may have the effect of preserving the life of the Republic. I trust in God it will. I trust that it will save this country from civil strife, the people of every section from armed conflict. Although I have doubts, I surrender them in favor of peace and a satisfactory settlement of the difficulties involved in the result of the late presidential election. I will not detain the Senate result of the late presidential election. I will not detain the Senate

In the late that to make this word of explanation.

Mr. BURNSIDE. Mr. President, in the discussion of important questions like this it becomes a Senator young in the service, and particularly one unskilled in law and debate, to listen attentively to the arguments presented by eminent members of the Senate, and then to apply to the arguments and precedents his common sense, patriotism, and sense of justice, with a view of casting a correct vote. In that view, I had not intended to detain the Senate for a moment with any word from me upon the subject until the remarks of the Senator from Indiana [Mr. Morton] the other day with reference to the intimidation or rather fear of the Senators on this side of the House. I will refer more particularly to his remarks. The honorable Senator said:

I do not believe there are half a dozen republicans on this floor who would want this bill if their judgments were to be consulted and if they were not under the influence of apprehension.

The words of my friend from Indiana are of great import and are read with great interest by all political parties in all sections of the country. I will briefly ask the honorable Senator from Indiana to turn to the debate of the Senate last year upon the bill introduced by him for counting the electoral vote, where he will find himself recorded in almost exact variance with the principles which he and nounced yesterday, that under the Constitution the President of the Senate absolutely holds the right to count the electoral votes. I well remember that during that debate I presented an amendment to his bill and accompanied it with some remarks which looked to devolving the duty of counting the electoral vote upon the Supreme Court, as a board of arbitration. This was long ago; we were in the absence of any immediate trouble; but the exact trouble has arisen which I predicted in my remarks. I will detain the Senate but a moment in order to read that amendment and from the remarks which I made upon it.

Mr. BURNSIDE. I now offer my amendment. There is a misprint; the amendment is intended to take the place of the second section of the bill, instead of the third, as printed.

The Chief Clerk read the amendment; which is to strike out all of section 2 and

The Chief Clerk read the amendment; which is to surace our and insert in lieu thereof—
"That if more than one return shall be received by the President of the Senate from a State, purporting to be the certificates of electoral votes given at the last preceding election for President and Viee-President in such State, he shall immediately make a report thereof to the Chief-Justice of the Supreme Court of the United States, who shall at once cause the said Supreme Court to proceed to examine as to who are the legal electors of said State, and shall have power to send for persons and papers; and the said Chief-Justice shall, on or before the last Tuesday in January next succeeding the meeting of the electors of President and Vice-President, report to the President of the Senate which of the said electors were legally elected; and the returns sent by the electors so designated shall, if in all other respects they are legal, be counted before the two Houses."

On that amendment I made this remark in connection with others:

I am aware that there may be a supposed constitutional objection to this, but I think in an emergency like this, if it is possible for Congress to give the Constitution a liberal construction which will enable us to avoid the discord that may arise from double sets of returns from any single State at the next election, we ought to do it. Take, for instance, the case of Louisiana. If the electoral votes should be so equally divided as to make the return from that State decide the election, it is clear to me, and must be clear to every Senator here, that the two Houses would disagree upon that subject.

I also said on a subsequent occasion:

The more I hear this discussion the more I am convinced that the amendment which I submitted to the committee's bill suggests the proper course to be pursued in order to meet the case in all its points. It is clear to me that Congress has a right to delegate to a court the power to decide as to the electoral returns where there is a dispute in regard to them.

I will further add that it is my belief now that, in the absence of any concurrent action on the part of the two Houses of Congress,

the President of the Senate has the right not only to open but to count the votes and it becomes his absolute duty to count the votes, because the Constitution says they shall be counted. If Congress gives him no direction upon that subject at all it becomes his clear and plain duty to open and count the votes in the presence of the two House

Now, Mr. President, I will beg the honorable Senator from Indiana to excuse me from occupying a position on the list of Senators who support this bill under the influence of apprehension. I do not mean by this remark to imply that I believe such a list of Senators exists, nor can I believe that the honorable Senator from Indiana meant to cast that reflection upon any of the Senators on this side of the cast that reflection upon any of the Senators on this side of the Chamber, who have fought under his leadership so many gallant political battles. I do not think he meant that they were influenced by intimidation or by anything but a high sense of duty and patriotism, as men interested in the welfare of their constituents and the good of the whole country. I have faith in the tribunal or commission to be appointed under this bill. I believe it will be actuated by great wisdom and a pure patriotism. I thank the Senate for their attention attention.

Mr. EDMUNDS, (at four o'clock and fifty minutes a.m.) Mr. President, I think I shall finish what I have to say in a few minutes. It is quite obvious that the time has gone by now for debate. If there were time, I should be glad to take up in detail the very strange and anomalous objections that have been made to this bill touching its constitutionality, touching also its justice and fairness. It has been denounced as a sham, a mere trick, when it appeals to the solemn judgment of five Senators and five members of the House of Representatives and five members of the Supreme Court. If that be a sham, then we must suppose that the real truth would be to appeal to the men who denounce it as a sham and that they, and they alone, possess the pure faculties of upright justice. If they do, we had better change it and appeal to them.

possess the pure faculties of upright justice. If they do, we had better change it and appeal to them.

I have just a word to say after the somewhat excited speeches of Senators of my party to them. I have not anything to say to the democrats. I have not before had anything to say either to democrats or to republicans; but now I have something to say to republicans. I beg my honorable friend from Ohio, [Mr. Sherman,] primus inter pares in this body, if not primus inter illustres, to look at the history of our own attitude, and to tell me some day, if not now, whether stultification and dishonor, in order that we may gain a temperary advantage, is a good thing. I know he will tell me it is not. When the republican party is called upon to stultify its own record and to go back, as the phrase is, upon the mission it has performed in this very respect in every time of question and dispute, and because we can gain the beggarly prize of a temporary victory, to dishonor ourselves, I ask whether the prize is worth the cost. I know my honorable friend will say it is not. Where have we stood? I will not go back over all our history, where in every dispute, as nobody denies, not the President of the Senate, but somebody else, rightfully or wrongfully has always decided, but I will take republican action alone. When in 1865, the first time in the republican career that a question as to what was the constitutional vote of a State arose, a republican majority in both Houses, almost complete in its unanimity, having all the power of the two Houses, declared by a joint rule that no vote from a State, whether it were a single vote or a double vote or a paper purporting to be either, should have any effect upon the election of a President of the Senate, not anybody under law even, but unless both Houses of Congress, in their constitutional character and witha President of the United States unless both Houses of Congress, not the President of the Senate, not anybody under law even, but unless both Houses of Congress, in their constitutional character and without law, should admit it. That was the twenty-second joint rule. Everybody knows it; and yet, by some strange obliquity of vision, our great party leaders, from that great valley of the Mississippi to which the Senator has referred, sound the cry of treachery and treason to party because others are not willing to stultify themselves.

We had three elections under that joint rule, and then at last, when it was apparent to some and believed by many that for the time being the stress of emergencies might change the composition of the lower

it was apparent to some and believed by many that for the time being the stress of emergencies might change the composition of the lower House of Congress, it was thought desirable to abolish the joint rule, to regulate this matter by law. When that law came, after careful and matured deliberation, to be brought forward by the Committee on Privileges and Elections, of which the honorable Senator from Indiana was the chairman, the facile princeps in all points of constitutional law and consideration, what did they do? They proposed a bill which provided in its first section what is in the bill which your committee has recommended to your consideration. I need not dwell upon it for a moment, for they are identical. It provided in its second section this, and I shall beg leave to read it, although it may take a moment's time:

That if more than one return shall be received by the President of the Senate from a State, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State, all such returns shall be opened by him in the presence of the two Houses when assembled to count

"When assembled to count the votes." Mark that. Not when assembled to see you count the votes, but when they are assembled to count the votes themselves—

and that return from each State shall be counted which the two Houses, acting separately, shall decide to be the true and valid return.

Where was your constitutional prerogative then, sir? Where was

that most august duty pregnant with the fate of the Republic then? On the solemn report of this committee, by the honorable Senator from Indiana himself, to whom we lesser lights looked for counsel and guidance, we were told upon the authoritative and I believe the unanimous report of that committee, that it was competent for Congress to provide that thing, either as reposing a power under the law-making authority of Congress in that body, or as regulating the exercise of it where the Constitution had reposed it. For that bill, only ten months ago, on the 27th of March, 1876, there voted the following Senators:

Allison, Anthony, Booth Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Dawes, Dorsey, Ferry, Frelinghuysen, Hamiton, Hamlin, Hitchcock, Ingalls, Jones of Nevada, Key, Logan, McMillan, Merrimon, Mitchell, Morrill of Maine, Morton, Oglesby, Paddock, Patterson, Sargent, Sherman, Spencer, Thurman, Windom, and Wright.

All republicans save three.

The poor minority of republicans, now supposed to be false then to their party faith, who then did not see their way clear to provide that thing which would effectually have placed the present dispute in the hands of the House of Representatives alone, and destroyed every hope of victory, were only three:

Conkling, Edmunds, and Howe.

Undoubtedly, Mr. President, we may have been wrong; but I cannot help feeling a little chagrin that only after ten months of time we should be again reproached, justly perhaps, I do not say, with a want of party faith, with treachery and dishonor, as the honorable Senator from Indiana put it, because we do not now agree with him in his great and patriotic and constitutional aspirations. To what lights shall we turn if the great luminaries of the heavens darken themselves

shall we turn if the great luminaries of the heavens darken themselves in such clouds and go backward against the course of nature?

That was the republican attitude ten months ago; and in that attitude, with a joint rule that had been good enough for us when we had both Houses of Congress, and with a law which it was supposed was good enough for us then, which did not stand upon the prerogative of one man who might, as has been so often stated by the honorable Senator from Indiana himself, be a judge in his own cause; and with the memory before us, so familiar to my honorable friends who have reproached some of us, of that most famous or rather infamous of all indees whose name has come down to us blozoped with disof all judges whose name has come down to us blazoned with dis-honor through twenty centuries, who was the judge in his own cause—I believe it was Appius Claudius; if I am mistaken the hon-orable Senators will correct me—we now are addressed in terms of orable Senators will correct me—we now are addressed in terms of reproach because we do not go backward with them and restore the decemvir to his place; and because we strive by fair and lawful means to withdraw our great cause from the brink of fate, to which the twenty-second joint rule, and the bill of the Senator from Indiana and the vote of the Senator from Ohio had carried it.

Let us look a little further. It is not merely the attitude of events; it is the great reasons that great men give in times when thoughts are calm and passions are still, when neither the selfishness of personal ambition nor the pride or warmth of party feeling shall stir the paright soul but when only reson and law beging its count sway.

sonal amoution nor the pride or warmtn or party feeling shall stir the upright soul, but when only reason and law bearing its equal sway are to have effect that we look for what the Romans called the responsa prudentum. Now, I turn, Mr. President, to read briefly to you but fairly these responsa prudentum. On this same bill the honorable Senator from Indiana, who, I am sorry not now to see in his seat.

Mr. CONKLING. He is sitting right behind you.

Mr. EDMUNDS. O; he said this:

Mr. MORTON. I will ask to have the amendment which I suggested printed also.

His own amendment to this same bill to which I have called at-

The PRESIDENT pro tempore. The suggested amendment will be read. The Chief Clerk read as follows:

"That the judges of the Supreme Court of the United States shall be assembled in the chamber of the Supreme Court at the same time that the two Houses of Congress are counting the electoral votes for President and Vice-President; and in case the two Houses shall fail to agree as to which is the true and valid return as provided for in this section, the returns shall be immediately submitted to the said judges, who shall summarily decide which is the true and valid return, which return shall be counted."

Mr. SHERMAN. From what page does the Senator read?
Mr. EDMUNDS. Page 569. Where were the constitutional objec-

tions then to importing into the decision of such great questions the judgment of these eminent men, not by a new commission as officers, but by the imposition of a new duty for a particular case? If it be lawful in the constitutional sense to remit such a question to nine, will somebody tell me why it is not lawful to remit it to five? Then I turn on. On page 587 the honorable Senator from Indiana said:

The twenty-second joint rule has been abolished. We have no rule. Suppose we fail to pass any law, and when we count the presidential vote less than a year hence there are from the State of Louisiana, if you please, two packages of electoral

How prophetic!

each purporting to be certified to by a governor of that State and each bearing the fac-simile of the seal of the State, so that you cannot tell by inspection which is the genuine and which is the false. I ask myfriend, if we do not pass this bill and we have no rule, who is to determine the question between those two sets of votes? How is the question to be settled? Are you to cast aside both or are you to count one? And, if you are to count one, who is to select the one to be counted?

Then again, on page 603, in the same debate of March last past, with

this very election of which we now speak, and with which we now wish to deal, before us, the Senator from Indiana said:

Will the Senator allow me to call his attention to the fact that if this matter is to be left entirely to the President of the Senate, it includes the power to disfranchise a State where there is only one return because of an imperfection in the return? He may say that the return does not show that the electors voted by ballot, and in his judgment that should reject the return from a State; but that return would not be rejected under this bill unless both Houses concurred in saying that it should be rejected; or, where there were two returns, he might decide which was the proper one.

And in the same debate, and in the same March last, on page 613, on an amendment proposed by the Senator from Texas [Mr. Maxey] to leave this question to the presiding officer in case of dispute and disagreement, Mr. Maxey said:

That umpire is a part of our own body.

Speaking of the President of the Senate.

He is not an outside body, but is a part of Congress.

What next?

Mr. Morrox. That may be true. He is a member of this body, either as Vice-President or as a Senator; but the power conferred upon him is not given by the Constitution; it is a new power which we are conferring upon him. Our right to confer it does not depend upon the fact that he is a member of this body. If we have the power to confer this extraordinary function upon anybody, that power does not depend upon the fact that the person upon whom we confer it belongs to this body. We may confer it as well upon the Supreme Court as upon the President of the Senate.

And again in the same debate and in the same March, page 651, he

The Senator from North Carolina, in his proposed amendment, strikes out that part of the second section which requires the joint action of the two Houses, and the leaves the same question to be decided by his amendment. He requires that return to be counted which "shall be duly authenticated by the State authorities recognized by and in harmony with the United States."

A very sound rule when properly applied, I will submit as I go along, and one in which I believe the honorable Senator from Indiana and myself, perhaps, agree.

ana and myself, perhaps, agree.

There is the question still to be decided which of these two pretended governments is recognized by and which one is in harmony with the United States. There being two returns and two pretended governments, somebody must decide that question. We say the President of the Senate cannot decide it; the House cannot decide it alone; the Senate cannot decide it alone. Therefore that government must be selected by both Houses; and the amendment of the Senator still leaves the main question open to be decided which is the government acting in harmony with the United States; in other words, which is the lawful government of the State. I submit to my friend that that question can only be determined by both Houses, and, where the two Houses disagree about that the question is left open just as it was before.

And again on the next page, and on the same point, he says:

submit that is to be decided by both Houses, and my friend in his amendment strikes out that part which requires the concurrence of both Houses.

Then again in the same debate, on page 667, he says:

It was suggested by the Senator from Delaware a while ago that, in case an officer shall make a wrong decision, the moral reprobation of the world would fall upon him, and he said perhaps physical punishment; that is, he might fall like Casar—

Stabbed in the Senate house by the Senators in the exercise, as I suppose, of their constitutional duty ex necessitate rei, as my honorable friend from New York suggests.

We can understand when such vast consequences are to depend upon the exercise of a power that may be a clear usurpation—

A hard word, Mr. President, "usurpation." It is that word against which the spirit of liberty always and rightly rebels

and would be in the opinion of a majority of the people of this country, that that usurpation could not pass with impunity. How, then, can we decide that it shall be done by a joint convention in the passion and excitement of the hour and with such vast consequences depending upon it?

That, Mr. President, is the very question that your committee has produced to the Senate, whether you shall leave this question where my honorable friend from Ohio and my honorable friend from Indiana chose to leave it ten months ago to be decided by the passion and the prejudice of this joint convention or of either branch of it; or whether we shall place it on more secure foundations?

How, then, can we decide that it shall be done by the two Houses, acting separately? It might be understood that, if the two Houses were to act separately, the question might be decided one way; if by a joint convention, another way; and if by the President of the Senate, possibly another way; and the immediate result of the adoption of one or the other of these methods would come in largely to influence the judgment and increase the confusion and the danger of the hour.

Ah, Mr. President, that unhappy word "danger!" "Danger" is a word, I have been recently told, that is thought of only by cowards. Danger! What noble soul should shrink from that? Danger! and when it was ten months off, too!

Therefore-Said he-

Therefore, I exhort Senators to avoid this danger by agreeing upon some method. It is not so important what that method is as that there shall be some plan agreed upon that will avoid these dangers which are right before us.

And again, as the prophet spake to a reluctant people, from day to day, he speaks again; and I certainly shall endeavor to read so much as not to put it out of its connection and place:

So that you can hardly imagine a tribunal that might be created, even if we had the power, where this contingency would not happen; but if the second section of the bill were stricken out altogether the first is of inestimable importance. If there

be a contingency in the second section that is not quite provided for, still it does not take away the importance of passing the first section, or the second section either, because that contingency is exceedingly remote. We can understand in view of what took place three years ago last month the necessity of providing some method for counting these votes. We cannot as common lovers of our country and patriots, sworn to stand by this Government, pass over the duty of providing against such dangers as lie right at the door.

And again in the same debate and on the 16th of March, 1876, the honorable Senator from Indiana for his committee and speaking as the Senator in charge of this bill, of which I have read the second section

Then the question comes, which is the more reasonable, which is the better, which is the safer of the two: to adopt that construction which gives this great power to one man, the President of the Senate, who may be counting the votes for himself, as it has turned out six times in our history; or would it be safer to leave it to the determination of the two Houses of Congress, representing the States and the people? If we are open to adopt either one of these constructions, I say the latter is the safer, it is the more reasonable, it is in conformity with the spirit of our Government and of popular institutions. I then adopt the latter construction.

Mr. President, I have not read these extracts to put any Senator in the wrong; but I have read them as those safe lights and beacons that the wise ruler before the tempest comes places on the headlands of his stormy shores. And if, when the clouds darken and the tem-pest seems to threaten, that wise ruler becomes so blind that he cannot

pest seems to threaten, that wise ruler becomes so blind that he cannot see his own light, shall we cast the ship of state ashore because he will not be guided by the calm, clear light of the beacon he himself has provided? It appears to me not.

I shall say nothing (because time presses and for another and a better reason) respecting the personal allusions of the honorable Senators who have spoken on this bill. I shall leave them in that best of all custodies, that of the gentlemen who utter them. They belong nowhere else. But as I look at this measure, spanned by the adjustments of previous attempts at legislation by the same eminent gentlemen who now condemn this, I find that in every principle they are on all-fours with it and that the only essential difference in the measures is that the measure of 1876 dismissed republican hopes from the calendar of even possibilities and this measure saves them, if by the calendar of even possibilities and this measure saves them, if by

the calendar of even possibilities and this measure saves them, if by a just and upright judgment under the law they are entitled to be saved. Let republicans choose which of these paths they would choose to follow. The way is open to every man and there is no disguising the plainness of those two ways; and we are to decide here and row whether we shall go to sea without a compass and without a rudder, and shall trust to the inexorable Fates for a victory that we believe we ought to attain, or whether we shall resort to the agencies that the Constitution and justice and the previous teachings of those who now revile us have taught us to pursue. I believe—and if I am wrong my learned friends will correct me—that there is an old Roman legend that when the Fates had destroyed Laocoon in the embrace of serpents, because he had tried to save his country that the gods had determined to destroy, Ensas, with the old Anchises and with his household gods, sought a happier home in a western land, where he founded a republic. And if this be the western land where in later days freedom secured by law has found a resting-place from oppress days freedom secured by law has found a resting-place from oppression, is it not fit that we may at some time and in some way, without meeting with large reproach from those who think that we are still to defy the gods, embrace the opportunities to secure the peace and happiness of the people of our fair Republic?

When you look over that long history, spanning a period of more than twenty centuries, of buried hopes in government and find, whether under republics or under kings, that advances in human liberty and human happiness have always been thwarted by just this decisive ordeal of the Chief Magistracy of the government, and when

erty and numan nappiness nave always been thwarted by just his decisive ordeal of the Chief Magistracy of the government, and when you look, in our own better days and on this western continent and near to our beneficent Government, and see the sad examples of such disputes in republics around us, is it not wise that we should risk something in order that the great experiment of a Republic of peace and of law among men may not utterly fail? It appears to me, sir, that it is; and I am somewhat disinclined therefore to feel that I am that it is; and I am somewhat disincined therefore to feel that I am greatly a coward or little a republican for seeking these ends and for following the guidance of the principles so recently laid down by my honorable friend from Indiana, as he warned us of the dangers of the times and urged us to find measures of security by law.

Mr. SHERMAN. Mr. President, I am very much surprised at the feeling evinced by the Senator from Vermont.

Mr. DAWES. Will the Senator allow me to withdraw my amend-

Mr. MORTON. I desire to offer an amendment.
Mr. SHERMAN. It is not necessary that I should yield for that.
Mr. MORTON. Very well.
Mr. SHERMAN. Mr. President, I am surprised very much at the
feeling manifested by the Senator from Vermont [Mr. EDMUNDS] at remarks which he seems to impute to the Senator from Indiana [Mr. MORTON] and myself, as if we had pursued in our opposition to this bill an unkind or ungenerous or unusual course.

bill an unkind or ungenerous or unusual course.

Now, as he has made a joint indictment against my friend from Indiana and myself, I beg leave to ask the common privilege of a defendant of a separate trial. My friend from Indiana is perfectly able to defend his own record, his own speeches, and his own course; and now since the Senator commenced by singling me out, I should like to ask him to specify what I have said in the whole progress of this debate that is unkind to him or any member of the committee, anything but a just and moderate criticism of this measure? Where

have I alluded in any word I said to treachery to party? I never thought of charging my friend from Vermont with being treacherous to the republican party. Never; he will not find it in anything I have ever uttered. Where have I uttered terms of reproach? Never in this whole debate. I commenced the speech I made on this bill by what might be called a little overcharged compliment to the committee; but it expressed no more than I feel now, my consciousness that they undertook a great task and that they endeavored to fulfill it with the highest motives for the greatest good of the country. I closed my remarks by regretting that I had occasion to criticise their work for I had the highest respect for their persons, their characters, and their motives. Now why should the Senator show so much feeling when I had dealt with this measure with a degree of kindness that is proper enough but which is not usual with my honorable friend when he assails and arraigns a measure? Indeed I think if you will compare my language in opposing this bill, with the course my friend ordinarily pursues in opposing a bill, the contrast on the score of courtesy will be in my favor. Therefore, I must beg to disclaim having used any terms of repreach or as justly subject to criticism.

It is true that I voted for the joint rule in 1865. I presume I did, for I believe it was passed without a yea or ray vote, reported by Judge Trumbull and as I supposed from the Judiciary Committee.

Mr. CONKLING. A special committee.

other committee.

Mr. CONKLING. A special committee.

Mr. SHERMAN. It was reported and agreed to nem. con. I voted for it; and to that extent I am responsible like every other member of the Senate. When the subject was thoroughly discussed and the for it; and to that extent I am responsible like every other member of the Senate. When the subject was thoroughly discussed and the provisions of that joint rule were brought to my attention, I was the first to move its repeal; and it was on my motion, if I remember aright, that it was abrogated. If in this there was a change of opinion, I am willing to acknowledge it.

Now in regard to the bill introduced by the honorable Senator from Indiana I generally supported that and voted for it because it was the work of a committee of the body carefully considered. Now when I come to study it carefully Learning wantly not the second.

I come to study it carefully I certainly would not vote for the second section of the bill. Perhaps there may be other clauses of the bill that I would not vote for; but with the exception of the second section of the bill there is no such radical objection as I have pointed tion of the bill there is no such radical objection as I have pointed out in regard to the bill before us. In treating that bill and discussing it I may have said some things that are inconsistent with what I said here on the day before yesterday. I have not stopped to inquire how that may be. I very rarely place a Senator in a position where he would feel bound to explain why he happened to have entertained one opinion three or four years ago under different circumstances from what he entertained one applied to the contraction of the cont tertained one opinion three or four years ago under different circumstances from what he entertains now. I do not think this kind of an argument ought to move the Senate very much. If my friend from Vermont should be able to prove that I have been guilty of holding some opinion a few years ago that I do not entertain now, I should not consider myself worthy of the penitentiary for that reason. If I would be, then all the Senators ought to be put on trial, and my honorable friend from Vermont would himself be in that category.

Mr. President, I referred to that clause with regard to the Supreme Court in the bill proposed by the Senator from Indiana. That is infinitely better than the provisions of this bill. If this case now could be transferred to the Supreme Court of the United States in its organized capacity as a court, with all its surroundings as a court.

could be transferred to the Supreme Court of the United States in its organized capacity as a court, with all its surroundings as a court, my great objection to this bill would be removed. The principal objection I made to this bill was that it picked out, singled out, of the Supreme Court five judges and transferred them to a political tribunal to decide a great case. The provisions of the section in the bill of last session I should be very glad indeed to see embodied in this bill; and although it would not meet other constitutional objections, it would go far to induce me to vote for it as I desired to vote for any report made by this committee. It is quite a different thing to transfer a case to the Supreme Court of the United States organized with the nine judges and to pick out for political reasons two republicans and two democrats and then make the fifth depend upon a lot or chance or draw by the four selected associates. That is quite a different tribunal. Therefore the bill proposed by the Senator from Indiana in that respect was far better than this bill.

Now let me briefly and very briefly, for I know it is no time now to discuss matters, state the objections I made to this bill, that remain yet unanswered. If by the use of a single word hastily uttered

main yet unanswered. If by the use of a single word hastily uttered by me any Senator feels hurt, let him point it out here now and I will withdraw it. I do not wish to wound the feelings of any gentleman, but I must state in my own way my strong conviction that

tleman, but I must state in my own way my strong conviction that this bill ought not to pass.

I objected to this bill that it took judges from the Supreme Court and created for them a new office, and therefore they must be appointed to the new office by the President and confirmed by the Senate. In support of that I cited at least two precedents, one the case of Chief-Justice Jay in 1794 and the other the case of Justice Nelson appointed on the Geneva award commission. I have inquired if there were any exceptions to this rule, and I find one, and that is where the Chief-Justice is by a law ex officio one of the regerts of the Smithsonian Institution. Members of Congress are very often designated by law to be members of boards of trustees of charitable institutions, and in that one case the Chief-Justice is made regent of the Smithsonian Institution. That is not a public agency, but it is practically

a private corporation administering a private trust aided somewhat

by public appropriations.

Mr. EDMUNDS. May I suggest to my friend, as it is probably out of his mind at this moment, that by the act of 1823—I think was the date—Congress imposed on the district judge of Florida the duty of settling claims under the Spanish treaty and reporting to the Secretary of the Treasury?

Mr. SHERMAN I depost think even in that case, if that is a case

Mr. SHERMAN. I do not think even in that case, if that is a case

where there was no confirmation—

Mr. EDMUNDS. No; the law said the judge should do it.

Mr. SHERMAN. Probably there was the exercise of semi-judicial

Mr. EDMUNDS. But the Supreme Court said that he did not per-form judicial functions and therefore refused to review his decisions. Mr. SHERMAN. The Senator might be able to point out here and there where a judge was called upon to perform duties outside of the ordinary jurisdiction of the tribunal over which he presided; but in ordinary jurisdiction of the tribunal over which he presided; but in the striking cases that are given the two great cases confirmation was refused. The case of John Jay was a remarkable one in our history. The case of Judge Nelson we all remember. In these cases the names were sent to the Senate and they were confirmed. It will not do to say that, because a man is confirmed as a judge of the Supreme Court of the United States, therefore upon the faith of that confirmation he may be charged with all kind and manner of duties. If so, the President might take a judge of the Supreme Court and make him the head of the Department of War, or Secretary of the Treasury, or the like. Because he has been confirmed as a Chief-Justice or associate justice, ergo he can act as Secretary of War or Secretary of the Treasury or the like! That will not do at all. A man who is appointed to a particular office, confirmed for that office, can exercise the duties of that office upon the confirmation; but if he is appointed to another office, to perform a different class of duties, he appointed to another office, to perform a different class of duties, he

exercise the duties of that office upon the confirmation; but if he is appointed to another office, to perform a different class of duties, he ought to be appointed by the President and confirmed by the Senate. I ventured to make that objection. Now, has it been answered?

Again, I objected that this bill delegates legislative powers. It is clear that it does so. I read the maxim of law that legislative powers cannot be delegated, nor can judicial powers be delegated. Has that been answered? I do not think it has been. I do not think that any of the Senators who have spoken upon it have answered that point. This bill does delegate legislative powers. This bill is based upon the idea that Congress may pass a law to carry into execution a power in the Senate and House only, if at all, by implication from their presence at the counting of the electoral vote. It is not to carry into execution an express power, because there is no express power granted. Not a single Senator, not my colleague, not the honorable Senator from Delaware, not the honorable Senator from New York, has pretended to say that there was any express power given to the Senate and House to do the counting. They are present, and from their presence is implied a power. If we have got that power, either express or implied, it is a power that belongs to the Senate and House, and cannot be delegated by them; nor can it be transferred from the Senate and House to the Supreme Court or any part of it, or to anybody else. That power cannot be delegated; and in my judgment, if this power does exist in the Senate and House, the Senate and House themselves, by their own members or by their own committees, must exercise the power. They cannot call upon other persons and give to those other persons the powers that they possess.

But it has been said in the argument, and by the honorable Senator from New York very strongly, that these judges are but the instruments, the agents, the convenient means by which the Senate and House exercise their power to count. But

judges and these members of Congress do not merely exercise this power of inquiry and examining the papers and reading them, but they decide. They decide so that neither House can revoke that decision. The power is transferred to them to decide, and all that the Houses reserve to themselves is the right by a concurring vote to avoid the judgment of the tribunal they have created. I may be all wrong about this; but it seems to me that it is unconstitutional to confer on persons outside of the Senate and House some power which the

Senate and House alone can exercise.

Senate and House alone can exercise.

I submit that objection has not been answered. I repeat it now. Again, the powers of Congress are purely legislative. They have no others. Here is section 8 of article 1 of the Constitution defining their powers. My colleague endeavored to evade the force of an argument which I drew from the clause of the Constitution. The previous sections give to each House certain defined powers to make rules and to perform various duties necessary to their legislative powers; and these are all the powers that Congress or either House has. By the sixth section of the same article which I read and which powers; and these are all the powers that Congress or either House has. By the sixth section of the same article which I read, and which my colleague commented upon, every vote, order, or resolution requiring the concurrence of these two Houses, every one which they have the power to pass, except a resolution of adjournment, must be submitted to the President. Did I say that the two Houses in counting the vote must send their resolution up to the President and wait ten days to see whether it would not be vetoed? Not at all; but it was to show that the power implied from the words "and the votes shall then be counted" could not be held to convey the right to take votes and pass resolutions. I used the argument ad absurdum, to show that the power to pass a joint vote, to take up and consider, reject, change, or alter the electoral vote cannot be drawn from this clause of the Constitution, because by the express provisions of the Constitution, by its plain words, every order, vote, or resolution requiring the concurrence of both Houses must be submitted to the President. And as no one could suppose that the powers of the Constitution would require a resolution in regard to counting the vote for President to be submitted to the President himself, who might be a candidate for re-election or the rival of the candidate, such a power could not have been intended to be conferred on the Senate and House; but their presence was simply to witness a ministerial act.

Now I know very well that the Senate and House have in the counts

heretofore made exercised some control over the count, especially where the question arose as to whether a vote was by a State entitled to vote. That was the question in 1865. So where the question was whether a State had been admitted into the Union, as in the cases of Missouri and Indiana, it was some question which affected the existence of a State or its right to vote. In such a case the Senate and House by common consent have acted upon the question. I did not in my argument undertake to define a boundary line between the power of the President of the Senate and the power of the Senate and House. I did not go into that argument. It had been discussed much more ably and with far better information than I had by the much more ably and with far better information than I had by the Senator from Indiana and by other Senators. I simply showed that all this implied power, upon which they base the superstructure of this bill, was derived from the simple "presence" of the Senate and House when the count goes on, and is not a power in the Houses to pass concurrent resolutions, reject the votes of electors or States, or make or unmake Presidents. That is purely the business of the States.

These are about the chief points I made. I also endeavored to show that the powers conferred on this commission were undefined. The Constitution has taken great care to define the powers of the differ.

Constitution has taken great care to define the powers of the different departments of the Government; we in passing laws take great care to define the power of an officer charged with the execution of law; for instance, we require certain proof to be made and with great care define the limits of every power of an officer. One objection to this bill was that the powers conferred on this commission were unthis bill was that the powers conferred on this commission were unlimited, and that the commission was left to judge of their powers; they were left to decide how far they should go back of returns and what faith they would give to executive certificates. The law did not seek to define or limit as was usually done in ordinary acts of legislation. I objected to the bill on that account. I thought there ought to be some rule prescribed, as that this commission should not go behind the returns from the legal officers of the State government or the like. I mentioned that as an objection. That has not been answered answered.

But, Mr. President, I now repeat that my chief objection to this bill is that the tribunal was not constituted properly. My friend from Michigan, [Mr. Christiancy,] whom I have learned to respect from Michigan, [Mr. CHRISTIANCY,] whom I have learned to respect for his legal ability, says that a judge does not act in regard to these matters as a Senator would, or a politician would. He asks me why I object to this tribunal? My friend from Wisconsin, [Mr. Howe,] who has been a good judge and a good lawyer, says "Why distrust such a tribunal; are they not all good men, supreme judges?" Yes; but the reason why I distrust this tribunal is because it is a packed tribunal selected out—I use the word not in an offensive sense—the judges are pointed out and selected, four of them, and the fifth is left to chance. If the bill had taken the Supreme Court for the tribunal If the bill had taken the Supreme Court for the tribunal to chance. If the bill had taken the Supreme Court for the tribunal I could not have objected to it, and no one could. If they had taken the five first judges in the order of seniority, including the Chief-Justice, it would have been natural; but the very mode and manner in which this tribunal has been selected creates distrust. I confess that when I heard this bill first read by the Clerk (for I was ignorant of its contents, except the vague impressions we had from the news-papers) that was the thing that struck me; there was a tribunal packed to try a case already made up and existing. I did not like it, and I expressed my opinion. The common sense of every Senator present will see that just criticism will be made by the public to the organization of this tribunal, which will greatly affect its usefulness if that bill passe

I have heard some words said about partisans. They say parti-I have heard some words said about partisans. They say partisans denounce this proceeding. I do not know that I am any more partisan than a good many other Senators about me. My friend from Vermont when he got up said he was a partisan. I do not think I am quite so much a partisan as he is; but we are both partisans to some extent, as we are both republicans; and I beg him not to entertain the idea that I said anything at all that would question his sincere and earnest devotion to the republican party. That party has, as I firmly believe, duly and legally elected a President of the United States, and I am both partisan and patriot enough to demand that he States, and I am both partisan and patriot enough to demand that he be inaugurated, that his vote should be counted in the usual way, and that his right to his office should not depend upon the judgment of a that his right to his office should not depend upon the judgment of a packed and unconstitutional tribunal, organized by chance and with unlimited powers. Are we partisans because we do not want the Supreme Court sorted, shuffled, in order to make a tribunal to try a great cause in which every citizen of the United States is interested? Not at all. Indeed, the part of a partisan seems to me the devising of such a tribunal. It is very natural that any man who honestly believes Governor Hayes is elected should look with disfavor upon a proposition that sorts a court to try a cause rather than takes a court now fully organized and which commands the respect of the whole people. people.

They have taken into consideration the political tendencies of the selected judges all the way through; and vet they charge us who deselected judges all the way through; and vet they charge us who demand the whole court with being partisans. They have balanced two judges against two for their known political opinions, affinities, and tendencies, and call us partisans because we object to it; supreme judges may have their political opinions; but, when selected for that reason to try a cause, it is the act of a partisan. When a jury is thus selected it is called packing a jury. When we object to this process we are called partisans. And the contrivance to select the fifth or controlling judge, that his bias or political tendency may not be known or may be uncertain, admits the purpose of this scheme to leave the result of this great election to chance rather than to the legal returns in your custody.

Those are the criticisms I made upon the bill. Now, sir, this bill will pass. The votes of the Senate already indicate that. It is the end of it. I have stated reasons which appeared to me to be clear

will pass. The votes of the Senate already indicate that. It is the end of it. I have stated reasons which appeared to me to be clear against it, and the more clear as we have discussed it. Indeed the arguments that we have heard to-night in my judgment are against the bill, but the bill will pass. I never arraign or suspect any man's motives. Republicans will vote for this bill, as earnest and sincere friends of the republican cause as I or the Senator from Indiana or anybody who votes against it. I never have suspected anything else. Differences of opinion will naturally be developed among men, epecially among men engaged in political life as we are all here. The natural tendency of debate always is to create irritation and feeling; but there is no ground for any arraignment of motives. I have made none, though I do not conceal my profound apprehension of the injustice of this bill, its evil effects, and its dangerous exercise of unconstitutional power.

neonstitutional power.

Yet, sir, I can enter upon the future processes of this counting whenever it shall occur, with only the same partisan feeling that anybody else will have; I can attend and witness this count, and do whatever it is necessary for me to do without any more partisan bias than the gentlemen who vote for the bill. I do not consider myself a better gentlemen who vote for the bill. I do not consider myself a better republican for voting against it than those who vote for it. I vote as my convictions lead me, and so far as I know with the general assent of the republicans of Ohio. Although I have not counseled with them, yet, from the information I derive from telegrams, letters, papers, and personal intercourse, I think my course has the general and hearty approval of the great body of the republicans of the State of Ohio. They believe that Governor Hayes is elected and that this bill will deprive him of the plain and simple count of the electoral vote prescribed by the Constitution. My hope is now, though we have struggled over this bill, that from our struggles good may come. I have apprehensions of the result of the passage of this bill. I will have apprehensions of the result of the passage of this bill. I will not even state them, nor did I in my opening remarks; but I have honest, serious apprehensions that what I regard as the verdict of the people in a great popular election will be diverted and thwarted and overthrown, not so much by the desire of this committee as by the unusual and unconstitutional mode by which it proposes to ascertain the result. I fear such will be the end of their work; and in discharging my duty as a Senator from the State of Ohio, I cannot help but express that opinion with all the earnestness of conviction and with the sadness of disappointed hope with which I regarded the appoint-ment of this committee. Senators will bear witness that I have shown perfect respect for my colleague although I differ from him in political opinion. I do not believe he wants to trick any party out of a fair majority if they had it. I have no doubt he has entered into this arrangement not for the purpose of promoting the interests of the democratic party or injuring the rights of the republican party, but because he thinks this work will contribute to the peace and but because he thinks this work will contribute to the peace and honor of our common country, and I believe he will give me credit for the same motive in opposing it. I fear it will not bring about the results that he hopes for. I fear that the working of this cumbersome machinery will create the very friction that is sought to be avoided, and will plant a sense of wrong and injustice. I believe that a count by the President of the Senate in the presence of the Senate and House of Representatives, in the same way in which the count has been made for years in this country, would be peacefully acquiesced in and would more likely bring peace and quiet to our people than in and would more likely bring peace and quiet to our people than the decision of this grand commission, packed and organized out of incongruous elements, and using unconstitutional powers which may hereafter endanger the right of the States and the people to elect a President without subjecting their returns to the party heats of an

President without subjecting their returns to the party heats of an expiring Congress.

Mr. MORTON. Mr. President, the Senator from Vermont, with a voice tremulous with emotion, which indeed affected me almost to tears, arraigned me for inconsistency and read certain extracts from speeches which I had made. I can only say that upon this subject within the last three or four years I have spoken often. I brought the subject to the attention of the Senate first, I think, in 1871; afterward in 1872 1874 1875 and 1876. I thought I have recorded. the subject to the attention of the Senate first, I think, in 18/1; afterward in 1873, 1874, 1875, and 1876. I thought I saw years ago the necessity for some action upon the subject, and especially to get clear of the twenty-second joint rule. I prepared a speech upon that subject as early as February, 1873, setting forth what I considered the dangers of the rule and its very gross unconstitutionality. Afterward I brought forward a bill which was reported by the Committee on Privileges and Elections, and which has been before the Senate a number of times for consideration. The bill at that time was a speculative bill. There was no case before the country, and I became some tive bill. There was no case before the country, and I became some-

what interested in the passage of the bill, and I spoke of it ardently At that time, if I remember correctly, the Senator from Vermont did not take much interest in this subject. His interest consisted principally I tbink, as the record will show, in the nature of objections to the bill. Of course I have no right to complain of that, but it was a very proper time then to consider such a bill when there was no ease on hand. The subject came to be regarded as a sort of bore, but still

on hand. The subject came to be regarded as a sort of bore, but still so impressed was I with the importance of it that I did not give it up. When the question first came here of proposing a tribunal in the case of two returns from a State, various propositions were made. I remember distinctly of saying to the Senate that I doubted the power to go outside for a tribunal, and I saw to-day an extract from the debate in which I uttered that sentiment; but upon one occasion I said that if we did go out I thought the Supreme Court was the best outside tribunal, and I offered such an amendment. I accompanied it with the statement, uttered I think on various occasions, that I doubted or denied the power to go outside and fix a tribunal; but if one was to be adopted I believed that the Supreme Court taken as the Supreme Court was the best one that could be resorted to.

Now, as I remarked this afternoon, there are no popes here, no infallible boutiffs. The committee which reported this bill is not much more intallible than I am. I would not taunt any member of that committee with a change of his opinion. I know very well it is one thing to consider a subject in a general way when there is no case on hand, and it is another thing to consider it under feelings of excitement and when the public is taking a deep interest in it and there is a case on hand. As I had occasion to say two or three days ago, there has been more light thrown on this subject in the last thirty or sixty days than for years previously and many things have been brought to my attention of which I had no knowledge before.

The Senator from Vermont is hardly in a condition to tax me with inconsistency. I have found a passage in a speech of his made a year or two ago which I will read, in which he took stronger ground I think in favor of the President of the Senate counting this vote than I have ever taken. I believe I have insisted on the right of legislation to control it from the first, and also on the condition and with the understanding that in the absence of legislation the President of the Senate must count the vote, and that is what I have said in this debate and that is the vital point now in this controversy. But the Senator from Vermont went a little further than I did, and I want to read what he said. Speaking of the twenty-second joint rule that Senator said:

rule that Senator said:

It is plain enough, I think, that Congress cannot by a law declare that the Vice-President of the United States, or rather the President of the Senate, whoever he may be, should not open and count the returns made from the various States; but the manner of such a count, what should be regarded as in law a vote of a State, the means of ascertaining whether it is the legal vote of the State, it appears to me must be the subject of legislative provision. And so also I think it safe to say—perhaps safer than what I have already said—that Congress may provide by law a tribunal which, in case of a dispute after the function named in the Constitution has exhausted itself of this opening and counting of the votes, shall have the power to decide who is legally elected President of the United States; not to review the action which the Constitution declares the presiding officer of the Senate shall take in the presence of the two Houses, but to ascertain in a method pointed out by law what are the votes that the States have given, and who therefore is the person who has received, in the language of the Constitution, the greatest number of votes

I think this is the strongest recognition of the absolute right of the President of the Senate to count the vote that I know of. In fact so President of the Senate to count the vote that I know of. In fact so strong is the right that he says it cannot be taken away by law. But he says after the function has been exercised by the President of the Senate, after he has opened and has counted the votes, there may be some method provided for trying what votes are legal and what votes are not. It is a distinct and strong recognition that he is the man to open and count the votes; and if that position is entirely consistent with the provisions of this bill, then I am under a mistake. I say this in perfect good nature without any inclination to tears.

Mr. EDMUNDS. Certainly I am glad you have got over your tears. Mr. MORTON. Now, Mr. President, I have no doubt if I took the interest to go through the Senator's speeches, and I ought to do so because they are always very interesting reading, I could find many other things to the same effect. But there are other members of this committee and as I simply desire to show that I am not the only fallible creature in the world, I might refer to what the Senator from New

creature in the world, I might refer to what the Senator from New York has said—but I believe I did that to-day—when he pointed out the ground on which he stood.

Mr. CONKLING. I wish the Senator would refer to that. I did not feel at liberty to do it. I wish the Senator would read it.

Mr. MORTON. I think the Senator will remember it.

Mr. CONKLING. I do, and I indorse it now and affirm it now.

Mr. MORTON. If the Senator wants me to refer to it again I will do so. I have it right here. The Senator said:

Either House or both Houses may do whatever is committed to it or to them: but Congress cannot delegate to anybody else legislative power or any other power which is reposed in Congress and located there and nowhere else. So we may make a rule wh ch shall commit to the presiding officers of the two Houses the duty of scribes and chirographers, to set down and count up and state these figures; but when you come to the last act, to the act accomplished of making the count, in all senses which the Constitution imports, that is the act of the two Houses. "The vote shall then be counted," the two Houses being there.

It looks to me very strongly against the right to delegate any power as provided for in this bill.

Mr. CONKLING. I deny that this bill delegates power.

Mr. MORTON. I do not think the doctrine is stated more strongly than it is stated there. Now I come to another distinguished Senator who is on this committee, and there is some comfort in knowing that he is not entirely infallible. I now read from the Senator from Ohio, [Mr. Thurman,] because if the Senator from Ohio is fallible almost anybody else may be expected to be. He said in speaking about this

I know it was suggested, and I think a proposition to that effect was offered at a previous session, that the votes should be counted in case of a disagreement between the two Houses by the Supreme Court. I for one must say that I hardly see how that could be done. The Supreme Court is a part of the judicial system of the United States. It is a dissinct department, clothed with judicial power and no other powers; and I for one am not able to see how Congress can devolve on the Supreme Court any powers that are not judicial. It has certain original jurisdiction conferred upon it by the Constitution.

It will be remembered that the Senator argued to-night with great ability that this power in the two Houses to count the vote was a

Judicial power.

It is no part of that original jurisdiction to count the votes for President and Vice-President, or to decide any question relative to the election of President or Vice-President. Then what other jurisdiction has it? All the rest of its jurisdiction is appellate jurisdiction, such appellate jurisdiction as shall be conferred upon it by Congress. And now, what is meant by the appellate jurisdiction of the Sn. preme Court? It is the jurisdiction by appeal from the decisions of inferior courts. It is not meant appeals from the decisions of the executive department; much less is it meant appeals from the decisions of the executive department or from the two Houses of Congress when they are assembled together to count the votes for President and Vice-President. I do not see, therefore, that you can confer this power upon the supreme judges as judges, sitting as a Supreme Court, to decide this question, because it is not a judicial question within the meaning of the Constitution of the United States. And to say that you could confer it upon them as nice individuals is to say that you can confer it upon any other nine individuals in the United States.

I might refer to other remarks made by the Senator from Ohio. I

I might refer to other remarks made by the Senator from Ohio. I have seen them. I have here some remarks made by the Senator from Delaware, [Mr. BAYARD,] another distinguished member of this committee. On the 25th of February, 1875, the Senator from Delaware

And nowhere is power given to either House of Congress to pass upon the election, either the manner or the fact, of electors for President and Vice-President; and if the Congress of the United States, either one or both Houses, shall assume, under the guise or pretext of telling or counting a vote, to decide the fact of the election of electors who are to form the college by whom the President and Vice-President are to be chosen, then they will have taken upon themselves an authority for which I, for one, can find no warrant in this charter of limited powers. This was the belief, and the action of the country has been in accordance with this belief from its foundation until February 6, 1865; and then, for the first time, did the Congress of the United States assume the authority by the vote of either House to put a veto upon the count of a State's vote. That such a rule was without constitutional warrant, I cannot doubt; and I do not think I am going too far when I say that the unconstitutionality of that rule is generally admitted.

Further on he said after quoting the Constitution.

Further on he said, after quoting the Constitution:

Further on he said, after quoting the Constitution:

There is nothing in this language that authorizes either House of Congress or both Houses of Congress to interfere with the decision which has been made by the electors themselves and certified by them and sent to the President of the Senate. There is no pretext that for any cause whatever Congress has any power, or all the other departments of the Government have any power to refuse to receive and count the result of the action of the voters in the States in that election as certified by the electors whom they have chosen. That questions may arise whether that choice was made, that questions may arise whether that election was properly held or whether it was a free and fair election, is undoubtedly true; but there is no machinery provided for contest and no contest seems to have been anticipated on this subject. It is casus omissus, intentionally or otherwise, upon the part of those who framed this Government, and we must take it as it is, and if there be necessity for its amendment, for its supplement, that must be the action of the American people in accordance with the Constitution itself; and I am free to say that some amendment on this subject should he had. But because there is no machinery provided, no tribunal appointed by which this most important issue and contest may be decided as to who was chosen an elector for President and Vice-President in any State, that certainly does not justify Congress in assuming either by direct formal claim of the power in the enactment of a law, or by adopting rules which shall give them such power as will be equivalent to the control of the subject; that is to say, a power of veto, which, under the present twenty-second joint rule, is given to either House, or under the present bill is to be assumed by both Houses acting together. I have been able to find, and I believe there exists, no such power either for one House or for both.

I might refer to other passages even more striking, but I simply

House or for both.

I might refer to other passages even more striking, but I simply refer to these to show the attitude of members of the Senate upon this question. And now I desire to say, Mr. President, that in all I have said I have had no other feeling than that of kindness. I have dono full credit to the motives of every Senator with whom I have differed. I have said so and I say so now. I simply claim for myself the same honesty of purpose that I accord to others. I did say that I thought it somewhat strange that now when there was a case on hand that was made up, the doctrine was so strongly pushed that the President of the Senate cannot in the absence of legislation count the vote. I had supposed until very recently that that power would be accorded; that if there was no legislation the President of the Senate must count the vote. That is what I insist upon here and I have thought that this was the time for him to do it; that as the thing had run along so many years without any legislative action, this was not the along so many years without any legislative action, this was not the

along so many years without any legislative action, this was not the time to push that action in the face of a case made up.

Last year and the year before when the bill I reported was up the body of the democratic party upon this floor opposed it and made very little attempt to perfect the bill. They were willing that no action should be taken. I could refer here to the remarks of the distinguished Senator from Maryland, [Mr. Whyte.] I do not know what he has said to-night; but I do know that he declared in the most resistive terms a very contract that the research the restate. positive terms a year or two ago that the power to count the vote belonged absolutely to the President of the Senate. I suppose that he

holds the same opinion still. So of the Senator from Kentucky, [Mr. Stevenson.] I remember that he denied in the strongest terms a year or two ago the power of Congress to make any law on this subject, and that he voted against the bill both times upon the ground that Conthat he voted against the bill both times upon the ground that congress had no power to legislate upon the subject at all. I suppose he has changed his ground; I have no doubt honestly. For one I do not complain of it; but I might go on and enlarge the list and show how many Senators have changed their ground upon this subject. I think I have changed my ground quite as little as any of the rest of them. I do not claim to be infallible, and whenever I am wrong I am always decimate admits it.

desirous to admit it.

Mr. EDMUNDS. Mr. President, in order to extricate my alleged inconsistency from the interlarded remarks of the Senator from Indiand as he went on—it was very proper he should make his comments as he went on; I do not complain of that at all—I wish without a single word of comment to read exactly what I said, and all that I said, and then the intelligent people of this country, if they take any interest in the subject and in Senators, can measure me and weigh me in the balance:

me in the balance:

Mr. Edmund. There is great force in what the Senator from New York has said touching the doubts that may arise respecting the twenty-second joint rule. I think myself that there is constitutional power in the legislative branches of the Government to regulate the exercise of the power conferred in the Constitution respecting the election of President and Vice-President, just as in all other powers granted in the Constitution Congress has always exercised and must always exercise the authority to regulate the methods and manners through which the ends looked to in the Constitution are to be reached. We have always done that as to the courts, in many respects as to elections, and in fact respecting the exercise of almost every one of the powers granted in the Constitution. But whether it is competent for the two Houses, not acting in a legislative capacity, but each acting for itself, to provide a rule by which it is in the power of either House to prevent the counting of every vote that may be returned from a State is open to very grave question indeed.

It is plain enough, I think, that Congress cannot by a law declare that the Vice-

for itself, to provide a rule by which it is in the power of either House to prevent the counting of every vote that may be returned from a State is open to very grave question indeed.

It is plain enough, I think, that Congress cannot by a law declare that the Vice-President of the United States, or rather the President of the Senate, whoever be may be, should not open and count the returns made from the various States; but the manner of such a count, what should be regarded as in law a vote of a State, the means of ascertaining whether it is the legal vote of the State, it appears to me must be the subject of legislative provision. And so also I think it safe to say—perhaps safer than what I have already said—that Congress may provide by law a tribunal which, in case of a dispute after the function named in the Constitution has exhausted itself of this opening and counting of the votes, shall have the power to decide who is legally elected President of the United States; not to review the action which the Constitution declares the presiding officer of the Senate shall take in the presence of the two Houses, but to ascertain in a method pointed out by law what are the votes that the States have given, and who the refore is the person who has received, in the language of the Constitution, the greatest number of votes. If I am not mistaken in my recellection, I at one time prepared and presented a bill on that subject, and I have given considerable attention to it, because no man, no matter what party he belongs to, (after the experience we have had, when the candidates of a certain party received a large majority of the votes, of the disorder, the excitement, the difficulties, the disputes that arose in respect of what were called the votes of States, which, if counted or not counted, would produce no difference in the result,) can fall to see that when the counting of the vote of a particular State, or of a paper that is presented as the vote of a particular State, or of a paper that is presented as the vote o

I do not wish to make a word of comment, Mr. President.

The PRESIDENT pro tempore. The amendment of the Senator from Massachusetts [Mr. DAWES] is withdrawn.

Mr. MORTON. I offer the following amendment, to come in at the

close of the second section of the bill:

Provided, That nothing herein contained shall authorize the said commission to go behind the finding and determination of the canvassing or returning officers of a State, authorized by the laws of the State to find and determine the result of an election for electors.

Mr. EDMUNDS. As the possible effect of that amendment, if rejected, as I hope it will be, might be to raise in the mind of some doubtful Senator or judge an implication that by refusing to adopt such an amendment we had intended to confer the power to do what such an amendment we had intended to confer the power to do what is there negated, I move to amend the amendment by striking out after the word "provided" the negative words, so that it will read "provided, that this tribunal shall be authorized to go behind the returns." I shall vote against that amendment to the amendment, as a matter of course, for the object of the committee, I believe successfully and undeniably attained, was to have this great cause tried upon the law as it is now, and not to declare that it should be tried upon some new principle of law, whichever way we might think we would be glad to have a new principle of law. In order, therefore, to guard against the slant which the rejection of this amendment might in some minds produce in respect of the opinions of the passers of this bill, I move to amend the amendment so that it will read conof this bill, I move to amend the amendment so that it will read conferring authority to do the thing that my friend does not wish to have them do and which I do not wish to have them do. I shall vote against my own amendment, and I shall ask everybody else to do it, and then I shall vote against the amendment itself, and that, being rejected, will leave it without any implication.

The PRESIDENT pro tempore. The amendment to the amendment

will be reported.

The CHIEF CLERK. It is moved to strike out of the amendment the words "nothing herein contained shall authorize" and insert after

the word "commission" the words "shall have authority;" so as to read:

That the said commission shall have authority to go behind the finding and de-ermination of the canvassing or returning officers, &c.

Mr. THURMAN. Whatever may be my opinion on the subject of the amendment offered by the Senator from Vermont or the amendment offered by the Senator from Indiana, I shall vote against them I have a very strong and decided opinion, I may say, that to a both. I have a very strong and decided opinion, I may say, that to a certain extent the decision of a canvassing or returning board may be inquired into, gone behind, in the language here used; but whatever may be my opinion upon those subjects, I shall not vote for either of these propositions, because to attempt to decide either of them is to kill the bill.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Vermont to the amendment of the Senator from

Mr. CONKLING and Mr. FRELINGHUYSEN called for the yeas and

nays, and they were ordered.

Mr. SARGENT. I think nothing can be more evident than the fact made to appear by the remarks respectively of the Senators from Vermont and Ohio, that if this bill honestly and fairly expressed just what it meant in reference to going behind the action of returning boards, the bill would have no chance. On the one side expressing honestly what it means, the Senator from Vermont would vote against the bill; on the other side, the Senator from Ohio. There can be no higher evidence that this bill is shuffling and evasive, that one side or the other is being cheated upon it, and it confirms my judgment that the bill ought not to pass.

Mr. EDMUNDS. I shall be obliged to ask the indulgence of the

Senate to say a word or two. If this bill were framed upon the principle that the cause that is to be submitted to the commission is to that the cause that is to be stomitted to the commission is to be decided at the same moment that it is submitted, by the very law that submits it, then the Senator would be perfectly correct, and it ought to say either that the vote of Louisiana should be counted or should not be, or that the vote of Oregon should be counted or should not be, and leave nothing for the commission to do except that which in the clerical sense perhaps everybody would admit that you were to do. Now if my honorable friend from California wishes to have the bill submit a dispute in that way, then it would be better to put it right in the bill plainly that they shall not make any inquiry as to Loui-siana, but they shall take the certificate of the governor, and they shall not make any inquiry as to Oregon, but shall take the certificate of the governor. If you put both in we might agree to have it that way. It is very likely our democratic friends on the other side would say yes. That is all I have got to say. All the committee desired to do was not shuffle anything and not to cheat justice out of her fair

do was not shall anything and not to cheat justice out of her fair and impartial dues by undertaking by a change in the existing law to decide a dispute beforehand.

Mr. MORTON. This amendment does not say anything about the certificate of the governor; it speaks about the certificate of returning officers of a State created by State laws and authorized by State laws to decide the result of an election. There is in this bill a direction that this commission shall find out who have been duly appointed tion that this commission shall find out who have been duly appointed electors, and for that purpose they are authorized to take into consideration reports, petitions, depositions, and other papers. We know the vital part of this bill is this very question of going behind the returns. The Senator from Ohio [Mr. Thurman] avows that he believes they can go behind to a certain extent, and he undoubtedly believes that this bill will permit them to go behind. Nay, more, I fear that this bill requires them to go behind. It requires them to find a fact independent of State certification, and that fact is who have been elected as electors. Six months ago perhaps you could hardly have found a lawyer in this whole country who would say that Congress or anybody had a right to go behind the return from a State in a matter of this kind; and now in fact we find a great party that stands upon that doctrine; and here is an equivocating, a shuffling bill, a juggle of words, a tangle of phraseology, under which the democratic party expect to be able to go behind the returns from a State, and they would not vote for this bill unless they expected to be able to do it. As the Senator from California has said, somebody is to be cheated. They do not expect to be cheated. They are not going into this thing with a blindfold on; they understand what they are about; and in taking this bill they expect to be allowed to do just that which is absolutely vital to democratic success, to go behind the returns.

Mr. EDMUNDS. I am not going to take time in debate; but inasmuch as I have seen, in some decisions of the Supreme Court, references to debates to find out what the law meant, I cannot let what the Senator from Indiana has just said go ex parte as the opinion of the Senate. I wish to say that I disagree with him entirely with respect to the construction he puts on this bill. It does not confer power to go behind or to stay before returns, but it imposes the duty of taking the law as it is and applying it to the question that they are to electors, and for that purpose they are authorized to take into con-

of taking the law as it is and applying it to the question that they are to determine; and if one of the questions that somebody is to determine is not what is the electoral vote of the States and who are the electors of the State, then I do not know what is the use (to use an Irish phrase) of having these double returns at all to give us so much trouble. But, as I say, I do not rise to debate at all, but only to remark that I disagree entirely with the construction the Senator from Indiana has put on it. That saves my distance if the debate should ever be referred to as to what this law means.

Mr. THURMAN. Mr. President, this bill gives to this commission Mr. THURMAN. Mr. President, this bill gives to this commission the same powers that the Houses of Congress separately or together have, whatever those powers are. If constitutionally they may go behind the decision of a returning board, this commission can go behind it; if constitutionally they cannot go behind that decision, this commission cannot go behind it; and therefore it is a mere license of speech to call this a shuffling bill. You might as well call any bill such as we so often pass authorizing the Court of Claims to decide on a claim against the United States, or authorizing any other court to decide a claim, a shuffling bill, because in the act we pass we do not decide the case itself, but submit it to the indicial determination not decide the case itself, but submit it to the judicial determination

I have as strong convictions on this subject perhaps and as lawyer-like convictions as any other member on this floor. I say to the Sen-ator from Indiana that not sixty days ago, but six centuries ago, it was the law that the acts of everybody who acted without jurisdic-tion were utterly void. I hope that this tribunal that will be estab-lished will decide in the same way and follow the precedents of six centuries; but I do not know, and I will not restrain them by any act

Mr. SARGENT. I certainly do not wish to prolong the session of the Senate. I am myself, as every other Senator is, nearly worn out. I think, however, it is only just that I should make one remark, show-ing the distinction that I think should be drawn by the Senator from Vermont. It certainly is very clearly drawn in my own mind. This debate all through, upon both sides of it, has proceeded upon the assumption that something is necessary in order to determine which is the true return. The picture has been presented of the Senate and House being in the presence of the presiding officer of the Senate, and House being in the presence of the presiding officer of the Senate, and he picking up a return, selecting one out of several that might have reached him, and passing it over to the tellers, suppressing perhaps illegally, as might be contended, other returns, and not submitting them for consideration, or submitting two or more returns to the Senate; and, there being no more power then and there to decide which was the true return, it was held that there must be some tribunal. Do the advocates of this bill say that to decide which is the true re-Do the advocates of this bill say that to decide which is the true return is a function that might well be exercised by some appropriate tribunal, if there is one? When it shall have been decided whether the true return is that sent up by the McEnery electors from Louisiana or that sent up by the Kellogg electors, then I ask if anyone contends that you can go behind that true return in order to search the poll itself and go to its bottom? That is the point on which I wish this bill to speak definitively, and it does not. When the Senator from Vermont says that this power may or may not be conferred, and, if it were conferred, that he might not vote for it, and the Senator and, if it were conferred, that he might not vote for it, and the Senator from Ohio says exactly the reverse of it, and both of them are obscure and doubtful in their declarations whether it is contained obscure and doubtful in their declarations whether it is contained herein or not, then I say I am justified, and there is no license of language in saying that the bill is shuffling. If the bill simply by its terms provides that the true return shall be ascertained, which has been held to be the high necessity in this debate, then why not say that this tribunal shall be confined to determining what is the true return and that it shall respect it then as the act of the State, which

the Constitution provides may determine the question?

Mr. EDMUNDS. Not any more time for debate for me, sir; but a word again to guard against the false inference that from such a commentary from a learned lawyer on this bill might be raised by some astute casnist. I wish to say that in my respectful judgment the Senator from California has totally misconceived the plain language of this bill. When these people have found the true return, by constitutional processes, their mission is ended. The question is by what means and upon what evidence and upon what principles of law it is

that the true return is to be found.

Mr. SARGENT. The true certificate.

Mr. EDMUNDS. Or the true certificate or the true elector. It is all a mere variation of phrase. But, as I say, I do not wish to spend a moment of time except to guard against the danger that sometimes arises from comments.

Mr. THURMAN. I only want to add that I shall vote against both these amendments, because either one of them kills the bill, and that without any reference to their intrinsic merits at all.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Vermont to the amendment of the Senator from Indiana. ator from Indiana.

The question being taken by yeas and nays, resulted-yea 1, nays 61; as follows:

YEA.—Mr. Cooper—1.

NAYS—Messrs. Alcorn, Allison, Barnum, Bayard, Blaine, Bogy, Booth, Boutwell, Bruee, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christianey, Clayton, Cockrell, Conkling, Conover, Cragin, Davis, Dawes, Dennis, Dorsey, Eaton. Edmunds, Frelinghuysen, Goldthwaite, Gordon, Hamilton, Hamlin, Howe, Ingalls, Johnston. Jones of Florida, Jones of Nevada, Kelly, Kernan, McCreery, McDonald, McMillan, Maxey, Merrimon, Mitchell, Morrill, Morton, Paddock, Patterson, Price, Randolph, Ran-om, Robertson, Sargent, Sherman, Stevenson, Teller, Thurman, West, Whyte, Windom, Withers, and Wright—61.

ABSENT—Messrs. Anthony, Ferry, Harvey, Hitchcock, Logan, Norwood, Oglesby, Saulsbury, Sharon, Spencer, Wadieigh, and Wallace—12.

So the amendment to the amendment was rejected. The PRESIDENT pro tempore. The question recurs on the amendment proposed by the Senator from Indiana.

Mr. THURMAN. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CONKLING. I have an opinion and a clear opinion about this amendment, if I understand what it means. In the vote I shall give, I do not design to express that opinion or any opinion. I vote against this amendment because I believe that the bill as it stands is not calculated to cheat somebody, but to cheat nobody. I believe that it fairly submits to this tribunal, without any balance cast upon either side, the true question of the Constitution and the laws.

The question being taken by yeas and nays, resulted—yeas 18, nays

47; as follows:

YEAS—Messrs. Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin. Claytor, Dawes, Dorsey, Hamilton, Hamiln, Ingalls, Mitchell, Morton, Paddock, Patterson, Sargent, Sherman, Teller, and West—18.

NAYS—Messrs. Alcorn, Allison, Barnum, Bayard, Blaine, Bogy, Booth, Burnside, Chaffee, Christiancy, Cockrell, Conkling, Conover, Cooper, Cragin, Davis, Dennis, Eaton, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Howe, Johnston, Jones of Florida, Jones of Nevada, Kelly, Kernan, McCreery, McDonald, McMillan, Maxey, Merrimon, Morrill, Price, Randolph, Ransom, Robertson, Sanlsbury, Sharon, Stevenson, Thurman, Wallace, Whyte, Windom, Withers, and Wright—47.

ABSENT—Messrs. Authony, Ferry, Harvey, Hitchcock, Logan, Norwood, Oglesby, Spencer, and Wadleigh—9.

So the amendment was rejected.

Mr. SARGENT. I offer the following amendment: After the word "therein," in line 89, page 6, to insert:

And said commission shall sit with open doors, except when in consultation on questions pending before it.

Mr. EDMUNDS. I hope that amendment will not be adopted. If you cannot trust to these people, like any other committee or commission, to determine what the fitness of things is about such a matter,

you had better not have it.

Mr. SARGENT. I sincerely trust the amendment will be adopted, provided it is intended that the people of the United States shall know what is said before this commission. The Supreme Court of the United States would not think of sitting in secret. No committee of Congres passing upon this matter and hearing the arguments of counsel and suggestions made by those who are sent before it would think of sitting in secret. In order that this commission may have any moral sitting in secret. In order that this commission may have any moral force with the people of the United States at all, that the people of the United States when it shall make its decision shall be assured that everything has been done in perfect good faith, it is necessary that they shall sit with open doors, that suggestions of counsel, that briefs, that arguments shall be made, so that, to the very last word, they can be understood by the reporters of the press who circulate intelligence and by the people themselves day by day as this matter progresses; that they may have this news at their breakfast tables; that they may understand what this commission is doing; that the light of day may be poured upon their impost acts, except in those acts of day may be poured upon their inmost acts, except in those acts, which I reserve, where they retire for consultation; and there, in analogy to the Supreme Court, no one can invade their chamber. I hold that this proceeding should be with the full blaze of noonday upon it. Let the people understand just what is done. If it is to be done It. Let the people understand just what is done. If it is to be done fairly, there can be no objection to its being done as our open sessions are, in the full light of day. There is nothing compromising the opinions of the judges themselves because their consultations are kept in secret; it is only that which others may say before them that we desire may be known; that every suggestion tending to influence their minds made outside of their own body shall be known to the public. Do this, and there is some chance that your tribunal may be respected, that its decision may be acquiesced in by the people of the United States. Refuse this now, and it is because you propose that this may that its decision may be acquiesced in by the people of the United States. Refuse this now, and it is because you propose that this may be, shall be a secret tribunal burying its acts in that obscurity which is the badge of trick and wrong, keeping the United States out of the presence of this tribunal, which is to decide its destiny. I say that is the very touch and test of this whole matter. Let us understand whether it is intended that this shall be a secret star-chamber investigation, or whether the people of the United States shall be invited to look on as they have a right to do where such momentous interests to them are being determined. interests to them are being determined.

Mr. EDMUNDS. Mr. President, I am sorry that the fate of the Republic at last depends upon this particular amendment.

Mr. SARGENT. No; not the fate of the Republic, nor does that depend on whether the bill is carried or lost.

Mr. EDMUNDS. Perhaps not. Fate is one of those things that depends on nothing; everything depends on fate. Those who believe a bill to be unconstitutional and otherwise improper are not those to whom we look with the greatest confidence for amendments. If I a oil to be inconstitutional and otherwise improper are not those to whom we look with the greatest confidence for amendments. If I were that celebrated Kentuckian, if he is a Kentuckian, who was coming with his hundred thousand men to witness the performance, I should want this amendment adopted, in order that I with my hundred thousand men might have a right by law, at every step of the examination of a witness if under any conceivable circumstances a witness could be examined, at everything except the consultations, to be present and delay by the presence of a great crowd and the noise and confusion, to say nothing worse that takes place in such a case, the operations of these judges. The last section of the bill provides that these fifteen persons may make their own rules and regulations, just as the statutes of the United States authorize the Supreme Court to make its own rules and regulations; just as the two Houses of Congress in respect of their committees as a general rule authorize the same thing for convenience to decide whether a mob shall attend as I have seen in the Judgiary Committee room once though attend as I have seen in the Judiciary Committee room once, though that was a very nice mob of well-dressed ladies once on the subject of the sixteenth amendment, but it interrupted the proceedings to a very considerable degree and delayed them. Now, whether in a particular day or case it is best that you should have what is called open doors by statute or not is a pretty doubtful thing. Why not leave it to this tribunal to determine whether it is convenient to-day to let the hundred thousand citizens who are to attend, or even the five thousand or the five hundred or the fifty that may fill up the room where operations are going on † It is a matter that properly and justly ought to belong to the fifteen commissioners. If you go on the assumption that my honorable friend from California does, that the thing is a shuffling, miserable contrivance, designed, as he said, to cheet someholy. to cheat somebody-

Mr. SARGENT. I did not say that.
Mr. EDMUNDS. I so understood the Senator from California.
Mr. SARGENT. The Senator will excuse me. I have not spoken of motives, only of results. I honor the Senator's motives.
Mr. EDMUNDS. Well, that the nature of the bill is a delusion,

which is to mislead somebody.

Mr. SARGENT. I do not believe the Senator himself designs to

cheat the republican party.

Mr. EDMUNDS. I understood my friend—

Mr. SARGENT. But I do believe one party thinks it will cheat the

other.

Mr. EDMUNDS. I do not think one party thinks it will cheat the other; I think that one party thinks it will beat the other fairly and honestly, for I think so myself; and there are other gentlemen on the other side of the Chamber equally sincere and equally learned, who think that the fair course of law will deliver their wishes in the right way. Very well; that is exactly the reason why we wish to have a fair and square trial about it. Now, I submit to my friend from California whether it is not better, if we have any respect left at all for these fifteen men, to leave them under their own rules and regulations to determine whether to-day or to-morrow or next day they will let to determine whether to-day or to-morrow or next day they will let everybody come in who behaves in an orderly and proper manner. If you get a great crowd of persons on an occasion of this kind you will you get a great crowd of persons on an occasion of this kind you will really stop proceedings; you cannot do anything. Why not leave them under their rules to regulate the number of admissions as they may prescribe, by ticket or in some other way? It is much safer for the orderly administration of justice than it is to command by statute that their doors shall be always open. That is all I have to say. Mr. DAVIS. I believe the Senator from California is chairman of a committee that recently visited Florida and I should like to ask him whether when investigating this subject there he let light in and had the doors open?

the doors open?

Mr. SARGENT. There was nothing depending; we were merely taking evidence, not making a decision there. The minority of the committee was ably and zealously represented in the person of my friend from Tennessee, [Mr. Cooper.] I admit that under the exigencies of the case; I admit that in the community where after it was decided that Drew, the democratic candidate for governor of the State had been elected by I believe an unwarrantable action of the supreme court of that State, white men came to us and said "We no longer dare testify; please excuse us, our lives are in danger," and when colored men were afraid to come forward and we found difficulty in getting witnesses, then in order to carry out the commission. culty in getting witnesses, then in order to carry out the commission confided to us by the Senate, anticipating that result, we sat with closed doors for the mere purpose of taking evidence. We should have been very glad to have welcomed the Senator there or any one who perhaps would not exercise a bull-dozing influence on the wit-

nesses we were trying to get.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from California.

Mr. SARGENT. I should like to have the yeas and nays

The yeas and nays were ordered; and being taken, resulted—yeas 13, nays 47; as follows:

YEAS—Messrs, Blaine, Cameron of Pennsylvania, Clayton, Dorsey, Hamilton, Hamilin Mitchell, Morton, Patterson, Sargent, Sharon, Sherman, and West—13. NAYS—Messrs. Alcorn, Allison, Barnum, Bayard, Booth, Boutwell, Burnside, Cameron of Wisconsin, Chaffee, Christianey, Cockrell, Conkling, Conover, Cooper, Cragin, Davis, Dawes, Dennis, Eaton, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Howe, Ingalla, Johnston, Jones of Florida, Jones of Nevada, Kelly, Kernan, McCreery, McDonald, Maxey, Morrill, Price, Randolph, Ransom, Robertson, Saulsbury, Stevenson, Teller, Thurman, Wallace, Whyte, Windom, Withers, and Wright—47.

ABSENT—Messrs. Anthony, Bogy, Bruce, Ferry, Harvey, Hitchcock, Logan, McMillan, Merrimon, Norwood, Oglesby, Paddock, Spencer, and Wadleigh—14.

So the amendment was rejected. Mr. SARGENT. I have here another amendment which I intended Mr. SARGENT. I have here another amendment which I intended to propose, which I thought might improve the bill, but I see there is an imperious necessity in the judgment of the friends of the bill that everything shall be voted down. I shall therefore content myself with calling for the yeas and nays on the passage of the bill and recording my vote against it. I regret that it is not to be provided by law that the people of the United States shall have full access to such proceedings of this comprision and a part particle of by law that the people of the United States shall have full access to such proceedings of this commission as do not partake of the nature of judicial deliberation; that the people of the United States cannot understand that everything is conducted fairly and in order; but that there is a dread of 100,000 men, which perhaps somebody has mentioned in jest, invading this Capitol, which so frightens Senators that they do not dare to provide that this commission shall be held openly, with their proceedings in full view.

I regret that, and I regret that an iron rule of necessity requires

that everything in the shape of an amendment to the bill shall be voted down, no matter what may be its merit or demerit. As I said, I shall content myself with calling for the yeas and nays on the pas-

Mr. EDMUNDS. The only thing that I dare to do just now is to second the demand for the yeas and nays with all my heart.

The bill was ordered to be engrossed for a third reading, and was

read the third time.

The PRESIDENT pro tempore. Is there a second to the demand for the yeas and nays on the passage of the bill?

The yeas and nays were ordered; and being taken, resulted—yeas

47, nays 17; as follows:

YEAS—Messrs. Alcorn, Allison, Barnum, Bayard, Bogy, Booth, Boutwell, Burnside, Chaffee, Christiancy, Cockrell, Conkling, Cooper, Cragin, Davis, Dawes, Dennis, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Howe, Johnston, Jones of Floride, Jones of Nevada, Kelly, Kernan, McCreery, McDonald, McMillan, Maxey, Merrimon, Morrill, Price, Randolph, Ransom, Robertson, Saulsbury, Sharon, Stevenson, Teller, Thurman, Wallace, Whyte, Windom, Withers, and Wright—47. ANYS—Messrs. Blaine, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Conover, Dorsey, Eaton, Hamilton, Hamlin, Ingalls, Mitchell, Morton, Patterson, Sargent, Sherman, and West—17.

ABSENT—Messrs. Anthony, Ferry, Harvey, Hitchcock, Logan, Norwood, Oglesby, Paddock, Spencer, and Wadleigh—10.

So the bill was passed.

Mr. EDMUNDS. I believe that under the rules it is now in order to move that we adjourn until Friday at twelve o'clock without any

to move that we adjourn until Friday at twelve o'clock without any preliminary motion?

The PRESIDENT pro tempore. It is.
Mr. EDMUNDS. I move then, considering that we have been up all night, that the Senate adjourn until Friday at twelve o'clock.
Mr. COOPER. Will the Senator from Vermont permit me to say a word in reply to a statement made by the Senator from California

Mr. SARGENT] in regard to the committee sent to Florida?

Mr. EDMUNDS. I withdraw the motion for a moment.

Mr. COOPER. I have been told, although I did not notice the remark at the time, that the Senator from California gave as a reason for closing the doors of the committee in the senatorial investigation in Florida that there were witnesses who came to the committee and said that they would be in danger of their lives if they testified openly. I wish to say that no such communication was made to me as one of the members of the committee by anybody.

Mr. SARGENT. I did not say that witnesses came to the committee in that manner and made that statement; but they came to the chairman and made the statement to him, and the chairman of the committee, in conference with his republican associate, determined on account of those facts that the doors should be closed.

Mr. EDMUNDS. I renew my motion to adjourn until Friday at

Mr. EDMUNDS. I renew my motion to adjourn until Friday at twelve o'clock

Mr. SHERMAN. I move that the Senate adjourn.

Mr. SHERMAN. I move that the Senate adjourn.
Several SENATORS. O, no.
The PRESIDENT pro tempore. The motion of the Senator from
Ohio [Mr. SHERMAN] has priority.
Mr. SHERMAN. I thought we had agreed to adjourn to Friday.
If not, I move that the Senate adjourn until Friday at twelve o'clock.
The PRESIDENT pro tempore. That is the motion of the Senator from Vermont. Does the Senator from Ohio withdraw his motion to

adjourn. Mr. SHERMAN. Yes, sir.

The PRESIDENT pro tempore. The question recurs on the motion of the Senator from Vermont that the Senate adjourn until Friday at twelve o'clock.

The motion was agreed to; and (at seven o'clock and ten minutes a.m. Thursday, January 25) the Senate adjourned till Friday, Jan-

## HOUSE OF REPRESENTATIVES.

## WEDNESDAY, January 24, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

COUNTING THE ELECTORAL VOTE.

Mr. STONE, by unanimous consent, presented a preamble and resolutions of the Merchants' Exchange of the city of Saint Louis in regard to the bill reported by the joint committee to provide a method for counting the electoral vote; which were read, as follows, and laid on the table:

SAINT LOUIS. MISSOURI. January 22, 1877.

Hon. William H. Stone,

House of Representatives, Washington, D. C.:

At a meeting of the Merchants' Exchange held this day the following preamble and resolutions were adopted with but one dissenting vote:

Whereas the Merchants' Exchange of Saint Louis, an organization for strictly commercial purposes, embracing a membership of nearly two thousand engaged in nearly all the commercial and financial pursuits of this trade center, have viewed with solicitude and alarm the recent political complications of the country and felt their disastrous effects on her commerce and on that of our city;

And whereas we rejoice at the results of the deliberations of the joint committee of the Senate and House of Representatives, and believe the plan reported by them to be the best available one for the solution of our presidential complications: Therefore,

Be it resolved. That we approve of the provisions of the bill reported to Congress by said joint committee, and urge upon our Senators and members of the House of Representatives a hearty support of the same.

Resolved. That a copy of this preamble and resolutions be sent to each of our Senators and Representatives in Congress by the president and secretary of this exchange.

JOHN A. SCUDDER, President. GEO. H. MORGAN, Secretary.

ORDER OF BUSINESS.

Mr. HOLMAN. I call for the regular order.
The SPEAKER. The regular order is the unfinished business coming over from yesterday, being the report of the select committee upon the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States. On this question the gentleman from Iowa [Mr. McDull] is entitled to the floor.

Mr. HOLMAN. If there is not to be a morning hour, I trust there will be no objection to finishing up the Indian appropriation bill before we resume the consideration of the subject on which the gentleman from Iowa proposes to speak. It is very important that the Indian bill should go to the Senate at the earliest possible moment. I hope, therefore, the House will at once go into Committee of the Whole and finish that bill. I do not think it will take more than half an hour.

an nour.

Mr. WOOD, of New York. I shall insist on the morning hour, if the business before the House shall be postponed.

The SPEAKER. The Chair did not understand the gentleman from New York as making a motion that the unfinished business be

Mr. WOOD, of New York. The regular order, I believe, is that the unfinished business of yesterday shall be proceeded with.

The SPEAKER. The gentleman from Iowa, in consequence of the call for the regular order, is now on the floor to proceed with the unfinished business. The Chair will, however, at the end of the hour recognize the gentleman from New York.

Mr. WOOD, of New York. I do not wish to take the gentleman from Iowa from the floor.

from Iowa from the floor.

Mr. COX. Will there be a morning hour to-day?

The SPEAKER. There will be if the House should determine by a majority vote to postpone the unfinished business until a fixed time; but the gentleman from Iowa cannot be taken off the floor.

Mr. HOLMAN. If this debate is entered upon, it is very clear that it will continue through the day.

Mr. WOOD, of New York. Not necessarily.

Mr. HOLMAN. I think it is inevitable.

Mr. WOOD, of New York. I suggest to the gentleman from Indiana that he can accomplish his purpose by permitting the gentleman from Iowa and the gentleman from Tennessee [Mr. Bright] to make the remarks which they intend to make; then postponing this business until to-morrow in order to have the morning hour, and after that going into Committee of the Whole upon the Indian appropriation bill.

Mr. HOLMAN. If the House will agree that after these gentlemen are heard we shall go into Committee of the Whole on the Indian bill,

I have no objection.

I have no objection.

The SPEAKER. The Chair desires to state that it is not competent in the present position of affairs, the gentleman from Iowa having been recognized, to take him off the floor; that, in the opinion of the Chair, is clear. But at the end of his hour it will be competent for the House to vote to postpone the unfinished business until a fixed time. The Chair would recognize the gentleman from New York for that motion, so that the disposition of the House may be determined.

Mr. HOLMAN. I shall ask then at the end of an hour that the House or into the Committee of the Whole to dispose of the Indian.

House go into the Committee of the Whole to dispose of the Indian

appropriation bill.

The SPEAKER. At the end of the hour the gentleman will have the right to make that motion.

Mr. LAWRENCE. I hope that will not be done. The members of the committee at least ought to have an opportunity to speak on the

pending question.

Mr. HOLMAN. That is what I expected. I supposed that if this debate was entered upon it would go on through the day.

The SPEAKER. That is entirely within the control of the House.

Mr. HOLMAN. When the gentleman from Iowa gets through I shall make my motion. The House must see that the Indian appropriation bill ought to be passed to-day.

## COUNTING THE ELECTORAL VOTE.

The House resumed as the unfinished business the consideration of

The House resumed as the unfinished business the consideration of the report of the select committee upon the privileges, powers, and duties of the House of Representatives in counting the votes for President and Vice-President of the United States.

Mr. McDILL. Mr. Speaker, the committee charged with the duty of inquiring into the privileges, powers, and duties of the House in counting the electoral votes have made their report. I regret exceedingly that there is a minority view as well as a majority view with reference to this important question. It certainly would have been a spectacle worthy of admiration in these times if the gentlemen to whom were referred these important questions could have come together as lawyers, agreeing as to what gi'ts were in the hands of the House from the Constitution. But such has not been the case,

The majority have presented resolutions which I, for one, cannot indorse. Some of them I could probably approve; but others seem to me entirely subversive of the true doctrines that are to be found imme entirely subversive of the true doctrines that are to be found imbedded in the Constitution or which are to be derived from its reasonable and fair construction. For this reason, although in four years' service here I believe I have never before asked the indulgence of the House, yet being a member of the committee and being constrained to differ from the majority, I have felt it my duty to ask the House to indulge me in a statement of my reasons for differing from the majority of the committee upon so grave and important a question.

It is not necessary for me to make any remarks with reference to the gravity and importance of the situation. There is not an intelligent man or woman or child in this land who does not understand that we are face to face with grave and threatening facts, and that it is our duty as patriots and statesmen to endeavor to guide the ship

of state safely through the dangers that surround it.

of state safely through the dangers that surround it.

The first and second resolutions of the majority absolutely cut out the President of the Senate from any participation in the count. The third resolution declares that the power of the Senate and House of Representatives is given to them by the Constitution, and taken in connection with the first and second, which say that such power is not conferred upon the President of the Senate, we may fairly infer that according to the doctrines of the majority the power to make the count is exclusively and absolutely in the House and the Senate. The fourth resolution declares that "in the execution of their power in respect to the counting of the electoral votes the House of Representatives is at least equal with the Senate." The fifth resolution, which in my judgment is the most erroneous of all, declares that "in the counting of the electoral votes no vote can be counted against the in my judgment is the most erroneous of all, declares that "in the counting of the electoral votes no vote can be counted against the judgment and determination of the House of Representatives." If that be true, the House of Representatives has a practical veto on every election of the President of the United States by the electors chosen by the people of the States. If that be true, it seems to me that from the formation of the Government down to the present time, in common with our fathers, in common with the framers of the Constitution, in common with jurists and lawyers, we have totally misunderstood the Government under which we have lived and prospered so long.

The minority of the committee objected strenuously, as will be found by examination of their report, to any declaration with reference to the power of the President of the Senate. It seemed to us logical and proper we should not discuss the powers of outside bodies or parties, but that we should confine ourselves to a discussion which should lead us to determine exactly what powers and privileges the House

itself possessed.

The SPEAKER. If better order is not preserved in the House the Chair will be compelled to revoke the privilege of the floor granted

Chair will be compelled to revoke the privilege of the floor granted to gentlemen by courtesy.

Mr. McDILL. Mr. Speaker, I was about saying it seemed to the minority of the committee illogical and improper to enter upon a declaration of the powers, duties, and privileges of the House by declaring negatively that some person, or body, or party, or officer not a member of the House and in no way connected with the House, was not entitled to any participation in the count. It did not seem to us that the House of Representatives had instructed us to inquire who were not to participate in the count: but the simple and sole inquire were not to participate in the count; but the simple and sole inquiry was, What are the powers, duties, and privileges of the House in reference to that count? And it would only become proper to determine that question, it seemed to us of the minority of the committee, if in the discussion of our powers, privileges, and duties we should meet the claim and declaration that the sole power vested in the President of the Senate. Now, I think I may say, so far as any report is concerned from the majority or minority, there is no declaration of that

of the Senate. Now, I think I may say, so har as any report is concerned from the majority or minority, there is no declaration of that kind before us to-day.

I have observed those gentlemen who take the opposite view of the case, and who support the views of the majority, have been spending most of their time, most of their arguments, and most of their learning in maintaining the proposition that the President of the Senate has not the sole power to participate in the count. That seems to me an imaginary view which is not presented here by these reports, although it may be held by some individuals that the sole power, the exclusive power to participate in and make the count is vested in the President of the Senate. The resolutions of the minority do not bring that question before the House to-day. The resolutions of the minority, which they offer as a substitute for the resolutions of the majority, say first, that it is the power and duty of the House jointly with the Senate to provide by law, or other constitutional method or mode, for fairly and truly ascertaining and properly counting the vote of each State so as to give effect to the choice of each State in the election of President and Vice-President.

I may pause here to say I am glad to know that progress is being made in the direction indicated by this resolution. I am glad to know that a joint committee of distinguished and patriotic men, composed of both parties, have with almost unanimity agreed upon a plan which I hope to see adopted and made the law which shall govern the country in this case.

The other proposition of the minority is that in the absence of leg-

the country in this case.

The other proposition of the minority is that in the absence of legislative provision, or in the absence of authoritative direction from the Senate and House of Representatives, the President of the Senate on opening the certificates declares and counts the votes for President and Vice-President. I think that proposition will bear the test of scrutiny. I think it will bear the test of the constructions which were put upon the Constitution by the acts of the framers thereof. Take the duty which is to be performed. What is it it I t seems to me, in order that we should come to a clear understanding of what are our duties and powers and privileges in reference to this matter, we must come to an understanding of the nature of the count to be

And I here make this proposition, which I believe can be maintained—that whoever counts, whether it be the President of the Senate, or whether it be the President of the Senate and the Senate and House of Representatives combined, or whether it be the Senate and House of Representatives combined, or whether it be the Senate and House of Representatives without any participation on the part of the President of the Senate—whoever counts, the duty devolved is purely ministerial. There are no judicial powers to be found in and about or in connection with this count. None can be granted to the Senate and House of Representatives. The Constitution excludes them from exercising judicial power. The Constitution only gives them judicial power in my judgment upon one occasion, and that with reference to the election and qualification of their own members and in ease of the Senate in impresement trials. And then gather. and in case of the Senate in impeachment trials. And then gathering up all the judicial power that is left, it has vested it in one Supreme Court, and such inferior courts as Congress may from time to time establish.

We may infer this count which is to be performed is purely ministerial from the word itself. Who ever heard of judicial powers intended or conveyed by the word "count?" Count means to reckon one tended or conveyed by the word "count?" Count means to reckon one by one. It means to number. It has not even as high a significance as the word "canvass," for the word "canvass" means to examine into. This body that counts, or these bodies that count, whoever they may be, are there to count, not to judge. There is an inferior kind of judgment involved in counting votes, and so the person counting or the body counting must have the power to distinguish between a false or feigned and a real vote; and that power is conferred upon canvassing boards generally. Although such a power is conferred upon canvassing and returning boards there is no rule better established than that canvassing boards and returning boards have only ministerial authority. In support of this proposition I shall read from McCrary on Elections, section 81: section 81:

SEC. 81. It is well settled that the duties of canvassing officers are purely ministerial, and extend only to the casting up of the votes and awarding the certificate to the person having the highest number; they have no judicial power. In State rs. Steers, 44 Mo., 223, which was a case in which the canvassing board had undertaken to throw out the returns from one voting-precinct for an alleged informality, the court said: "When a ministerial officer leaves his proper sphere and attempts to exercise judicial functions, he is exceeding the limits of the law, and guilty of usurpation." And again: "To permit a mere ministerial officer arbitrarily to reject returns, at his mere caprice or pleasure, is to infringe or destroy the rights of parties without notice or opportunity to be heard, a thing which the law abhors and prohibits."

In the next section, the eighty-second, the writer goes on to say:

SEC. 82. But of course it does not follow from this doctrine that canvassing and return judges must receive and count whatever purports to be a return, whether it bears upon its face sufficient proof that it is such or not. The true rule is this: They must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose; and this necessarily implies that if a paper is presented as a return, and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself.

I refer also to section 84 of the same work, where we find this declaration:

laration:

SEC. 84. The doctrine that canvassing boards and return judges are ministerial officers, possessing no discretionary or judicial power, is settled in nearly or quite all the States: Dishon vs. Smith, 10 Iowa, 212; State vs. Cavers, 22 Iowa, 343; Att'y General vs. Barstow, 4 Wisconsin, 749; People vs. Van Cleve, 1 Michigan, 362; Thompson, circuit iudge, 9 Alabama, 338; Mayo vs. Freeland, 10 Missouri, 293; State vs. Harrison, 38 Missouri, 540; State vs. Rodman, 43 Missouri, 266; State vs. Steers, 44 Missouri, 228-9; Bacon vs. York County, 26 Maine, 491; Taylor vs. Taylor, 10 Minnesota, 107; O'Farrall vs. Colby, 2 Minnesota, 180; Marshall vs. Kerns, 2 Swan, Tennessee, 66.

In Attorney-General vs. Barstow, supra, the supreme court of Wisconsin say that the canvassing officers "are to add up and certify by calculation the number of votes given for any office; they have no discretion to hear and take proof as to frauds, even if morally certain that monstrous frauds have been perpetrated."

Nor is it believed that statutes of the States which confer upon canvassing boards power to refuse the returns—that is, to take proofs and in their discretion to reject such votes as they deem illegal—are unconstitutional.

At the time this book was printed there was such a statute in the State of Texas. There was also such a statute in the State of Alabama. There was such a statute in the State of Louisiana. There was such a statute in the State of Florida. And the House of Reprewas such a statute in the State of Florida. And the House of Representatives, in the Forty-second Congress, passed upon the question, and decided, so far as they could do so, that the action of such a board, in pursuance of the power thus conferred, is prima facie correct and to be allowed to stand until shown by evidence to be illegal and unjust. In that case the House of Representatives had a right to consider the evidence, because the Constitution had given the House of Representatives the power to examine into and determine upon the election and qualification of its own members. But we shall make search in vain in the Constitution for the gift of such a power to the Congress of the United States with regard to this great national count. An examination of the provisions of the Constitution,

it seems to me, will exclude from the mind of every candid man any suspicion that any such power was ever granted. As regards the legislative powers of Congress, they are all conferred by express grant. They are enumerated and limited in the Constitution by exact and fitting terms. They cannot be extended beyond the grant. By an amendment to the Constitution it is provided that—

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

No doubt then exists where the residuum of power not reserved or granted stays. It stays and rests with the body of the people. Again, it seems as if our fathers were fearful that in later days schools of political constructionists might arise who would attempt to encroach upon the rights of the people, and as if to guard forever against such an encroachment, they embalmed, as it were, in the body of the Constitution a canon of construction which should ever be applied to all doubtful cases, in the words following:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

No claim in consequence of a right granted shall ever in any way be construed to disparage or to deny the rights retained by the people. Now there is nothing clearer than that the Constitution provides that the mode of appointing electors for President and Vice-President shall be in the manner prescribed by the Legislatures of the several States. This power not only belongs to the people under the general language of the Constitution, but it is expressly reserved in the Constitution itself. Dictation by Congress with reference to such election is usurpation. Dictation by Congress with reference to such election carried to any great extent is revolution. It is an upturning of the institutions of our country. It is a subversion of the Constitution itself. It is forbidden by the written law and forbidden by our rules of construction.

When we pass on to examine the mode of choosing electors we will find that every care was taken to prevent dictation from any source whatever. So careful were the fathers that they segregated and sepwhatever. So careful were the fathers that they segregated and separated the electors, not allowing them to come together in convention, but compelling them to vote on the same day in their own States; requiring them further to vote by ballot; the spirit of this provision of the Constitution being that the result of their votes should be secret. These ballots were to be sealed up and to be sent to the President of the Senate, to be by him carefully kept until a day fixed. Then this custodian, this keeper of the ballots, was to open them all at one time and in the presence of the Senate and the House of Representatives and then it one they were to be counted. And then by the constitution, by the declaration of the Constitution, not by the declaration of a House of Representatives, nor by the declaration of a Senate, nor by the declaration of a Senate and House of Representatives combined, but by the facts developed, if it should be a fact, the persons having the greatest number of votes shall be President and Vice-President.

It seems to me that a careful study of these facts leads us to this, that the person or persons nominated in the bond to count, no matter who they may be, are nominated to do a purely ministerial duty and who they may be, are nominated to do a purely ministerial duty and to register a decree, the decree of the sovereign and independent people, a decree made up by the people in their own way, carefully guarding themselves from interference by the Congress of the United States. It is a decree that cannot be reversed. There may be questions sometimes whether the decree was made, but that decree when made can never be reversed by Congress, and any attempt to disparage or defeat this right of the people is, in my opinion, unconstitutional and expressly so declared by the Constitution of the United States. It is usurpation. It is an interference with and a pressing down of the right of the people, and, if persisted in and carried out, it is revolution.

This is no new doctrine, no modern doctrine, but it is the doctrine of those who framed the Constitution; of those who participated in framing it. I desire to read from a speech which has several times been quoted in this debate, but which, it seems to me, cannot be too often quoted, not because I subscribe to all the doctrines contained in it, but because it comes from one who had carefully studied the Constitution; from one who had helped to frame it, and because it seems to have been a thoughtful speech, one made after due consideration and deliberation on the questions involved. I read from Charles Pinckney's speech made in 1800:

Charles Pinckney's speech made in 1800:

Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present, not only the spirit but the letter of that instrument, to give to Congress no interference in or control over the election of a President. It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has the majority of the votes of the electors so transmitted; nor could it have been safe in the Constitution to have given to Congress thus assembled in convention the right to object to any vote, or even to question whether they were constitutionally or properly given. This right of determining on the manner in which the electors shall vote, the inquiry into the qualifications, and the guards that are necessary to prevent disqualified or improper men voting and to insure the votes being legally given, rests and is exclusively vested in the State Legislatures. If it is necessary to have guards against improper elections of electors and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it. To give to Congress, even when assembled in convention, a right to reject or admit the votes of States, would have been so gross and dangerous an absurdity as the framers of the Constitution never could have been guilty of.

I wish to call special attention to what follows:

How could they expect that in deciding on the election of a President, particularly where such election was strongly contested, party spirit would not prevail and govern every decision? Did they not know how easy it was to raise objections against the votes of particular elections, and that in determining upon these it was more than probable the members would recollect their sides, their favorite candidate, and sometimes their own interests? Or must they not have supposed that in putting the ultimate and final decision of the electors in Congress, who were to decide irrevocably and without appeal, they would render the President their creature and prevent his assuming and exercising that independence in the performance of his duties upon which the safety and honor of the Government must forever rest?

It seems to me that those words and thoughts were almost prophetic. Are we fit custodians of that power? Does party spirit prevail here? In every decision and on all occasions do men recollect their sides? If we can throw out, pass upon the vote of a State and their sides? If we can throw out, pass upon the vote of a State and decide all these questions, who does not know that from this time forth the President of the United States would be our creature, our puppet to do our will, and not an independent executive as it was intended by the Constitution be should be.

Now, at the close of this grand speech a vote was taken on the measure under discussion, and among those voting with Mr. Pinckney, and it would seem to me, from the course of the discussion, co-inciding with him in the main on the question, were Mr. Baldwin, Mr. Langdon, Mr. Livermore, Mr. Marshall, Mr. Mason, and Mr. Nicholas. All these are worthy names, and the best versed in constitutional lore might be proud to be named as the peer of any one of them. Most of us might sit at their feet and learn wisdom for many years

The honorable chairman of the committee in speaking upon this subject the other day, and opening this debate, said there were some things which our fathers had not foreseen. He said our fathers had not foreseen or supposed that there would ever be military interference; that they had not foreseen or supposed that there would ever be many other things often spoken of on the other side of the House. That may be, but our fathers did foresee that Congress would be an unfit custodian of the power to throw out votes of States. did foresee that by our partisan organization, by our habits of voting politically, by our habit of ranging ourselves on sides, that it would be unsafe to trust the power with us. It seems to me then, if I am right from the review I have endeavored to make in a feeble way of what the Constitution teaches, if I am right as to the nature of the count and all could agree with me, there would not be much contest about a participation in that count.

The vexed question now comes, who counts the vote? On this the Constitution is absolutely silent. The majority of the committee assert that the President of the Senate has no part in that count. How they arrive at that conclusion is a mystery, it seems to me, for a logical mind.

Here are three parties named in and about the count, but no declaration made that any one of them shall count. The President of the Senate is named before in connection with the vote. He is named as the custodian of the votes. He is the one who is to produce these sa-cred votes, and who is to open them. And the House and the Senate, by the express terms of the Constitution, are only to be present. Yet the receiver, the keeper, the custodian of the vote, is by this construction of the Constitution excluded from any participation in the count, while those who are to be present only claim the power and all the power of counting.

I understood the argument of the honorable chairman of the committee to be this, that the President of the Senate could not have the power to count the vote unless it was necessarily implied from the express powers granted to him; and that the express powers granted to the President of the Senate were the powers to receive the votes, to keep them, and to open them in the presence of the Senate and House of Representatives. That argument may be good for exclud-ing the President of the Senate from the count, but the same line argument would also exclude the Senate and House of Representthe state and House of Representatives. The only things declared with reference to the Senate and House of Representatives, the only express requirement that is made is that they shall be present. It is not necessarily to be implied from their being present that they must count the votes. They may be

present without the power to count.

The argument of the gentleman from Kentucky [Mr. Knorr] and the arguments of other gentlemen made on that side of the House seem to me to go too far. The arguments that would exclude the one would also exclude the others. It seems to me to be an honester way of looking at this question to say that the Constitution is silent about who shall count but we are to gather from all the acts performed in who shall count, but we are to gather from all the acts performed in putting the Constitution into operation what was the inference and the meaning of the Constitution as understood by those who framed it. There can be no objection in the mind of any man to that course of construction. Judge Cooley, in his work on Constitutional Limitations, says that is often the most satisfactory mode of ascertaining the meaning of an instrument. He says:

Contemporaneous construction may consist simply in the understanding with which the people received it at the time, or in the acts done in putting it in operation, and which necessarily assume that it is to be construed in a particular way. In the first case it can have but little force, because the evidence of the public understanding when nothing has been done under the provision in question must always necessarily be vague and indecisive. But when there has been a practical construction which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the courts

with a plausibility and force which it is not easy to resist. Indeed, where a particular construction has been generally accepted as correct, and especially when this has occurred contemporaneously with the adoption of the Constitution, and by those who had opportunity to understand the intention of the instrument, a strong presumption exists that the construction rightly interprets the intention.

Now, with such a rule before us let us see what our fathers did

when they were about to put the Constitution into operation. Let us see what our fathers did when they were about to put the Constitution into operation. Let us see what acts of theirs there are to help us in determining this doubtful question as to who shall count these votes.

We find that the framers of the Constitution, after they had completed their labors, passed a resolution which gave the opinion of the convention as to how this Constitution should be set into operation. They gave their opinion as to what the instrument meant which they had just framed. Now let any gentleman take the rule of contemporaneous construction laid down by Judge Cooley and apply it to the consideration of this resolution of the members of the constitutional convention. The resolution I will read:

Resolved. That it is the opinion of this convention that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that after such publication, the electors should assemble and the Senators and Representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opining, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

Now I do not claim, and I do not think it could be justly claimed, that the use of the words "sole purpose" would indicate that it was the understanding of the fathers that the President of the Senate the understanding of the fathers that the President of the Senate alone was to do the counting. But it does indicate that he had some part in it, for he was appointed "for the sole purpose of receiving, opening, and counting the votes for President." Not that he was to usurp to himself all powers, but he was to participate in the count, he was necessary to the count. If they had understood the Constitution to mean simply that he was to open the certificates and that the House of Representatives and Senate together were to count the votes, then certainly our fathers with their exact use of language would have said "for the sele number of opening the certificates that would have said "for the sole purpose of opening the certificates that the Senate and House of Representatives may count the votes." But there is no such language. The President of the Senate is appointed for the purpose of opening and counting the votes.

It does seem to me that in the very beginning when this instrument was being put into operation there is an intimation that the fathers understood that in some way the President of the Senate was connected with and participated in the count.

The learned and able gentleman from Virginia [Mr. Tucker] yesterday seemed to see the force of this reasoning, and he adopted what

I recarried and able gentleman from Virginia Lar. Torked what terday seemed to see the force of this reasoning, and he adopted what I must call an exceedingly ingenious argument to avoid the force of that reasoning. He called attention to the latter part of the resolution, in which it was declared that after the President was chosen tion, in which it was declared that after the President was chosen "the Congress, together with the President, should without delay proceed to execute this Constitution." He claimed that the performance of this act by the constitutional convention, as well as the act of Congress of 1789 in accordance with the opinions therein expressed, are, so to speak, ante-constitutional. The argument seemed to be that we had no living, vital Constitution until this act was performed; that it was the last act of high so to speak of a new potion, and that it it was the last act of birth, so to speak, of a new nation, and that it could not be considered as a construction of the Constitution.

Now, taking even that view of it, and applying the rule of contempo-Now, taking even that view of it, and applying the rule of contemporaneous construction, it was an act done by the framers of the Constitution in and about putting this instrument into operation. It think, however, the gentleman is mistaken in his views that that act was an ante-constitutional act. I think the decisions of the Supreme Court have informed us when the Constitution went into force and operation. It will be remembered that this action by the Federal Congress did not take place until the 6th of April, 1789. Congress attempted to meet on the 4th day of March, 1789, but wanting a quorum, which was a constitutional requirement, and acting under the Constitution they were unable to transact business until the 6th day of April. of April.

I read from Paschal's Annotated Constitution, page 52:

This Constitution went into operation on the first Wednesday, the 4th day of

The authority for that declaration is found in Owings vs. Speed, 5 Wheaton, 420, and in Kent's Commentaries, volume 1, page 219, show ing that the Constitution under the decisions of the courts was in effect and operation at the time of this count.

More than that, we have the action of Congress itself upon this very subject. I read from volume 4 of the Journals of Congress, page 866, by which it appears that on the 13th day of September, 1788, the

following resolution was adopted: Resolved. That the first Wednesday in January next be the day for appointing electors in the several States which before the said day shall have ratified the said Constitution; that the first Wednesday in February next be the day for the electors to assemble in their respective States and vote for a President; and that the first Wednesday in March next be the time and the present seat of Congress the place for commencing proceedings under the said Constitution.

So that it seems to me there can be no doubt that the Constitution was put into operation, not on the 6th day of April, but on the first Wednesday in March. That is the decision of the courts; it is the Wednesday in March. That is the decision of the courts; it is the declaration of law-writers; it is the declaration of Congress itself; and it seems strange to me that any one should hold that the choice of electors by the States, their meeting to cast their votes, the solemn assembling to count, and the solemn declaration by which George Washington came to be the first and the unanimously chosen President of the United States were all ante-constitutional and informal. All this to escape the plain principle of contemporaneous construction which is planted firmly upon the idea of the fathers that the President of the Senate had something to do with the count.

I might, if I thought it profitable, detain the House longer in order to show that the construction which was put upon the Constitution by the members of the constitutional convention in the resolution to which I have just referred was followed and adopted and indorsed by both the Senate and House and the President of the Senate.

dorsed by both the Senate and House and the President of the Senate. dorsed by both the Senate and House and the President of the Senate. An examination of the matter will show that the Senate first took action; that it then sent to the House of Representatives a message in which it declared that it had taken action, that it had toosen John Langdon as President of the Senate for the sole purpose of opening and counting the votes and that the House should be present at that count. It will also appear that the House resolved that they would attend to do what was set forth in the message of the Senate. It will appear that they united in declaring that the certificate and notification of election should be given by the President of the Senate; and it will appear that from that time until far down in the history of this nation certificates of election were in fact given by the President of nation certificates of election were in fact given by the President of the Senate, which in terms declared that the Vice-President did coun. Not that he counted the votes to the exclusion of the House and the Senate, but that he did count the vote. Far down in our history comes that form of certification.

Now apply the rule laid down by the gentleman from Virginia ves terday, that when there has been for a period of time a particular construction of a constitution or a law, and then the constitution or construction of a constitution or a law, and then the constitution or law is re-adopted, that re-adoption carries with it all the constructions which have been previously put upon the law. By way of illustration, when the laws of England were adopted in this country we adopted with them the constructions which had been put upon them up to the time of their adoption. Taking that rule of construction, it seems to me fixed beyond a doubt that the President of the Senate has power to participate in this count, the twelfth amendment to the Constitution being adopted totidem verbis as to the count, after this construction. And it is a fact which is established by an examination of all the precedents, which is established by the proceedings of every Congress that has participated in a count, that at all times the President of the Senate has been considered a part and parcel of the counting body. Whether or not he has power to vote is not determined by the Constitution, whether or not he acts independently of the Senate and as one of three distinct authorities is certainly not determined and not clear under the Constitution. But that he is there as a part and parcel, a factor in the count, seems to me to be evident.

So that I cannot for a moment give my assent to the propositions of the majority of the committee that the Constitution confers no

of the majority of the committee that the Constitution confers no power on the President of the Senate except simply to receive the papers and to open them. That the Constitution does confer upon the Senate and House of Representatives the power to examine and ascertain the votes to be counted as the electoral votes, I would not be inclined to dispute, unless it is meant in this connection to exclude the President of the Senate from a participation in that count.

But it does seem to me that there is danger in the fourth resolution. That resolution, it seems to me, has been very skillfully worded. It declares that "in the execution of their power in respect to the counting of the electoral votes the House of Representatives is at least equal with the Senate." What assumptions of power on the part of the House of Representatives may lie behind those little words "at least!" The views of the minority are expressed when they state that the privileges, powers, and duties of the House of Representatives in the matter of counting the electoral votes for President and Vice-Presimatter of counting the electoral votes for President and Vice-President are no more and no less than those of the Senate." We are willing to assert absolute equality of power on the part of the House of Representatives. But behind these little words "at least" are lurking, in my judgment, many a heresy, many a danger to the liberties of the people, many a trouble which we may have seen already fore-shadowed; and we find it bursting forth in the next resolution, almost as a legitimate result of that declaration:

Fifth. That in the counting of the electoral votes no vote can be counted against ne judgment and determination of the House of Representatives.

Here we find that terrible power on the part of the House which lurked beneath and concealed itself behind those little words "at least," declaring for the House of Representatives a veto, an absolute veto, upon the votes of electors of States cast.

And there is an ingenious argument in support of this claim to which And there is an ingenious argument in support of this claim to which I desire to call attention, and which I am anxious to notice because it seems to me it is more ingenious than sound. I think the best statement of it I have found is in a little work entitled The Presidential Count, published by Appleton & Co., of New York. It is said to have

distinguished authority, but of that I know nothing. The argument there is stated in these words:

The counting of the vote is an affirmative act. It involves the examination of the certificate, the reading of it in the presence and hearing of the two Houses, the entering of the votes upon the list, and the enumeration of the votes in the footing which states the result. All these steps are affirmative acts. In the case where two persons or two bodies are required to concur in the doing of an act and each has discretion to do it or not, if they cannot concur the act cannot be done. It is the familiar case of two judges who do not agree: the result is no judgment can be rendered.

I think no stronger statement of that position can be given than that which I have read. I have quoted it in the exact words of the unknown writer to whom I have referred.

Now there is a degree of plausibility about it as stated, but it is believed to be an unsound and untenable position.

The Constitution says "the votes shall then be counted." This command is imperative. It is the command of the Constitution; higher than all law, higher than all claim, all right in any body. An examination, on the part of those required to count, which develops the spurious character of the votes will alone excuse from the imthe spurious character of the votes will atone excuse from the imperative requirement to count. Suppose this examination leads to the conclusion that the vote is spurious; in other words, though claiming to be a vote, it is not in fact what it purports to be. Now, to reach this judgment in an affirmative act. Then, if they were restant to the power restant in the power restant in the spurious contraction of the power restant in the spurious contraction. ing to be a vote, it is not in fact what it purports to be. Now, to reach this judgment in an affirmative act. Then, if the power rests in the House and Senate to make this judgment, they must concur or there is no judgment. Applying the same argument to the real condition of affairs, remembering the imperative requirement of the Constitution that the votes must be counted; remembering what every man must admit to be true who has studied this subject with any degree of care, namely, that the regular vote has a prima facie standing, then I think it must clearly be admitted that there should be affirmative and concurrent action in order to reject a vote. So be affirmative and concurrent action in order to reject a vote. So that the argument itself is to me strong and convincing of the view that no vote can be rejected except by the concurrent action of the two Houses.

two Houses.

The proposition that the House alone can reject a vote has no sanction, it seems to me, unless it be from the celebrated twenty-second joint rule. I feel I can speak freely of that rule, as I was not a part or parcel of any party that framed it. I may have belonged to the political party which was in power when it was framed, but I am not bound, nor does any gentleman feel bound, to indorse an act if he feels it to be wrong or unconstitutional, even though enacted by members of his political party. Be that as it may, there is something to be said in any event on behalf of those who framed that rule. They were in perilous times. The question was, not whether they could go into the States and count votes and reject polls and precincts and let in parishes or turn out parishes, but the question was what was the true condition of the States which were then in rebellion. Had they such an actual and real relation to the Union that they might actually send up a vote, and while levying arms against the United they such an actual and real relation to the Union that they might actually send up a vote, and while levying arms against the United States compel the Congress of the United States to count their votes by virtue of their relation to the Union? And it was to meet such a case as this that this rule was made. And I admit it worked fearfully; and let me in this connection show how unfit these bodies are to act on such a question by referring to what is now a historical fact. A sovereign State of the Union in 1873 had its vote rejected simply because there was not a seal attached to the certificate; and after it was done, but too late to remedy the mischief, it was discovered by the very body which rejected it that the law of Arkansas did not require a seal. Yet it seems to me those who now seek under that joint-rule or in any other way to claim for any one body of Congress—the Senate or House of Representatives—the right to reject a vote on a simple objection must ever be meeting with such difficulties as this.

But it is claimed the House has the right to count and pass upon

But it is claimed the House has the right to count and pass upon the votes because in a certain contingency the House must choose the President. But that is the last dire resort in the Constitution. Every attempt has been made in the Constitution to keep the House of Representatives from electing a President. Every attempt has been made to give to the people, and the people alone, the right to choose a President; but if they fail—if they fail, being so divided in action that no one has the greatest number of votes, then comes the jurisdiction on the part of the House of Representatives to choose the President of the United States. It is a jurisdictional fact. And the argument, when it is stated plainly, of those who claim on this ground the right of the House to interfere is, because the House in a certain case has jurisdiction to elect a President, it has a power which will bring about the contingency which gives the jurisdiction. To state it in that way, it seems to me, is to show its fallacy; that because it has the power, in a certain unfortunate contingency, to elect, it may be allowed to bring about that unfortunate contingency. Why was it that the Constitution prohibited Senators and Members of Congress from acting as electors? Why is it that only in the last and direst resort the House of Representatives is allowed to choose a President by virtue of its State representation, not by virtue of its popular number? All these things tend to show that it was the intention of the Constitution to keep the House of Representatives free and clear from any dictation or interference with the election.

Now there can be no doubt that it is highly proper that the House and the Senate should be witnesses of the great count. For, perforce, the votes because in a certain contingency the House must choose

they must know the result to enable them to perform the resulting duties. But it would have been an unwisdom on the part of our fathers that, for one, I am unwilling to charge them with, to suppose that they had intended in any manner to give to the body which was to have the jurisdiction the right to make the jurisdiction by making the fact. The very idea that it has jurisdiction in one contingency excludes in my mind the idea that it could for a moment interfere to make that fact exist.

Mr. Speaker, in lieu of these resolutions, which seem to me to be so full of error, so full of danger to the people, so full of danger to our institutions, the minority in its first resolution declares that it is our duty to agree upon a mode by which this electoral vote shall be fairly

That it is the power and duty of the House, conjointly with the Senate, to provide by law or other constitutional method a mode for fairly and truly ascertaining and properly counting the electoral vote for each State so as to give effect to the choice of each State in the election of President and Vice-President.

Chancellor Kent said many years ago:

If, however, the tranquillity of this Union is to be disturbed and its liberties endangered by a struggle, it will be upon the subject of choosing for President.

That danger is upon us now. That danger is great. The people are imploring us to provide relief. Business, we are told, is at a standstill in consequence of the uncertainty which surrounds our transactions. Fear is in every heart; care upon every brow. The situation calls for action. An almost unbroken line of precedents calls upon calls for action. An almost unbroken line of precedents calls upon us for action. And as I said in opening, I rejoice to know that an attempt has been made to provide a mode. I hope it is a wise mode. As I now understand it, and if it should not be amended so as to make it objectionable, it shall certainly have my voice and support. For it is but in the line of what is our duty; it is but in the line of what our fathers have proposed; it is but in the line of all precedents; and we can but be doing right if we follow this safe line of precedents. If we fail in this duty, then comes the other or second proposition and conclusion from the Constitution, which is almost in the language of the eminent law-writer, Chancellor Kent. I have seen a statement that that proposition of Chancellor Kent ought not to have much weight because it was merely a hasty statement. I do a statement that that proposition of Chancellor Kent ought not to have much weight because it was merely a hasty statement. I do not know by what right men pass back the dial of time from twenty to forty years and say Chancellor Kent did not deliberate before he made this statement. I remember reading in the debates which resulted from the condition of affairs with regard to the Wisconsin electoral vote in 1857 the statement of a gentleman from Virginia, who declared he had a letter from a gentleman in New York who had frequently conversed with Chancellor Kent on this very question, and that his mind dwelt freely and fully and often on what he believed to be the great danger of the Constitution.

If we shall bring ourselves safely past this danger, if we shall adopt a mode which shall give us a fair and free count, which shall ascertain the votes of the States, then we will have added a crowning glory to our institutions; we will have fitly and properly begun the new century of our national life; we will have told the world, we will have told all who shall read in future times of what was done in this good wear that there is a viriality in free institutions which constantly good year, that there is a vitality in free institutions which constantly asserts itself and which constantly adds new life. But if we shall not do our duty, if we shall sit idly by, does it not seem that the imperative requirements of the Constitution must be carried out by the only remaining party named in reference to the count? He must count those votes. Does any one suppose that, if the Senate and House of Representatives should become so lost to a sense of duty as to refuse to be present at the count, they could hinder an election of the President by the people. Take that extreme case which I admit can never

happen.

Suppose the Senate and House should refuse to go near the place of count; the day comes; the custodian has the votes. He is required to open them in the presence of the House and Senate, but they refuse to come. Will any man tell me that our great nation shall go to ruin; that we shall have an interregnum with no President; that the voice of the people shall be stifled and silenced because the House of Representatives and the Senate have not done their duty? I think not. I hope every member will see that the propositions contained in the minority report and the resolutions offered by them are safe,

just, and proper resolutions.

Mr. BRIGHT obtained the floor.

The SPEAKER. The gentleman from New York [Mr. Wood] asked to be recognized to inquire whether the unfinished business can be

resumed.

Mr. WOOD, of New York. After the conclusion of the speech of the gentleman from Tennessee, [Mr. Bright,] it is my intention to make a motion to postpone the further consideration of this subject.

Mr. HOLMAN. I am very desirous, as I have already intimated, that the House should complete the consideration in Committee of the Whele on the state of the Union of the Indian empropriation bill. that the House should complete the consideration in Committee of the Whole on the state of the Union of the Indian appropriation bill. As the gentleman from New York desires to postpone the morning hour until the speech of the gentleman from Tennessee is completed, I ask that by unanimous consent it shall be ordered now that, after the hour to which the gentleman from Tennessee is entitled and the morning hour, the House will go into Committee of the Whole to consider the Indian appropriation bill.

The SPEAKER. The Chair would be bound to recognize the gen-

tleman from Indiana to make that motion, because the rule reads that he can make the motion at any time.

Mr. HOLMAN. But, if by unanimous consent that can be agreed upon now, it would save any trouble.

Mr. WOOD, of New York. I give notice that I shall oppose any such motion until we have had a morning hour.

The SPEAKER. The gentleman from Indiana does not seek to interfers with the morning hour.

The SPEAKER. The gentleman from Indiana does not seek to interfere with the morning hour.

Mr. HOLMAN. There is no interference with the morning hour in my proposition. I propose that the gentleman from Tennessee shall speak; that then we shall have a morning hour and then go into Committee of the Whole on the state of the Union.

Mr. WOOD, of New York. When that time arrives the House will determine what business it will take up.

The SPEAKER. The gentleman from New York objects.

The SPEAKER. The gentleman from New York objects.
Mr. HOLMAN. Then I give notice that I shall ask the floor as soon

Mr. HOLMAN. Then I give notice that I shall ask the floor as soon as the gentleman from Tennessee is through.

Mr. BURCHARD, of Illinois. Ihope the gentleman will allow equal debate to each side and that he will not call the morning hour until the gentleman from Tennessee and the gentleman from Ohio, [Mr. LAWRENCE,] who has the floor, shall have been heard.

Mr. WOOD, of New York. Two hours a day on this question are

quite enough.

Mr. LAWRENCE. All the members of the committee should have

an opportunity of being heard.

The SPEAKER. The committee have not been neglected in any particular; they have had entire control of the matter up to this time. Mr. BRIGHT. I speak in place of one of the members of the com-

The SPEAKER. The gentleman from Tennessee is recognized and will proceed

Mr. BRIGHT. Mr. Speaker, much has been written, much has been spoken on the subject of our recent presidential election. It is agreed on all hands that it is almost impossible to exaggerate the importance of the question. The eyes of the nation are concentrated upon Congress with the intensity of a burning focus. Our action here upon this important question will be monumental for either good or evil. I approach the discussion of this question with that degree of modesty which I hope is becoming in every representative who sees the magnitude of the question. I propose to argue, not to declaim; to reason, not to rant.

The question involves the rights and jurisdiction of the Congress of the United States, the rights of the State governments, and the rights and duties of the people. My first proposition will be, Mr. Speaker, that the Constitution of the United States has not remitted Speaker, that the Constitution of the United States has not remitted this question to the State governments for final arbitrament. We say so because the election of President of the United States is a question in which all the States are interested. We say so because the Constitution of the United States has prescribed the qualifications of the President; because the Constitution of the United States has prescribed the qualifications of the voters; because the Constitution of the United States has prescribed the qualifications of the electors; because the Constitution of the United States has prescribed the time when they shall vote; because the Constitution of the United States has prescribed the manner in which the electors college shall vote. has prescribed the manner in which the electoral college shall vote; because the Constitution of the United States has prescribed the manner of authentication of the action of the electoral college; because ner of authentication of the action of the electoral college; because the Constitution of the United States has prescribed the depository of that electoral vote; because the Constitution of the United States requires that it shall be opened and that the votes shall be counted before the Senate as an organized body and before the House as an organized body; because the Constitution of the United States prescribes that in the event of a non-election then the House of Representatives shall resolve itself into an electoral college and proceed to the election of a President, and that the Senate shall resolve itself into an electoral college for the purpose of electing a Vice-President.

With all these ample powers lodged in the Constitution of the United States we maintain that they have not committed judgment to the State governments to determine all these vast questions which

now rest upon the mind of the nation.

In addition to these powers which are here enumerated in the Constitution which require no argument to illustrate, because we have no need of following precedents as long as we have the Constitution before us, any more than the traveler follows the stars after the sun has risen above the horizon, so in the first place we have the Constitution with all these grants of powers, coupled with the grants of duty imposed upon somebody, not upon State governments. This borrows force from the construction which may be placed on these grants of powers in the Constitution of the United States. If it is not set of order I have leave to call the attention of the borrows force from the constitution of the United States. out of order, I beg leave to call the attention of this honorable body to the opinion of Chief-Justice Marshall in explanation of the powers granted by the Constitution of the United States. In the case of Cohens rs. The Bank of Virginia, 6 Wheaton, page 414:

A constitution is framed for ages to come, and is designed to approach immortality as near as mortality can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen indeed if they have not provided it, as far as its nature will permit, with the means of self-preservation from the perils it is sure to encounter.

If it be not out of order to refer to the opinion of the present Su-

preme Court, I beg the indulgence of the House to a further construcion of the powers of the Constitution, to be found in 12 Wallace, Knox vs. Lee, page 533:

The same may be asserted also of all the non-enumerated powers included in the authority expressly given "to make all laws which shall be necessary and proper for carrying into execution the specified powers vested in Congress, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof." It is impossible to know what these non-enumerated powers are, and what are their nature and extent, without considering the purposes they were intended to subserve. These purposes, it must be noted, reached beyond the mere execution of all powers definitely intrusted to Congress and mentioned in detail. They embrace the execution of all other powers vested by the Constitution in the Government of the United States or in any department or officer thereof. It certainly was intended to confer upon the Government the power of self-preservation.

In the same case the court further say:

And here it is to be observed it is not indispensable to the existence of any power claimed for the Federal Government that it can be specified in the words of the Constitution or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferenced.

Now, from the powers actually granted, from the rule of construction which has been laid down by the Supreme Court of the United States by Chief-Justice Marshall, the highest judicial mind that the country ever produced, also by the present judiciary, I maintain that there is ample power in the Constitution of the United States for the solution of this vexed question. If the power is not directly delegated, then, as laid down in 12 Wheaton, the power may be inferred from all the powers granted by the Constitution. If we were pushed to an extremity in regard to the construction of the powers of Congress, we would resort to the precedents which have been set by our fathers, some of whom were actors contemporaneous with the adoption of the Constitution of the United States.

some of whom were actors contemporaneous with the adoption of the Constitution of the United States.

We have had twenty-two presidential elections; and the powers of Congress over those elections, I mean of the two organized bodies, have been recognized legislatively in regard to everyone of them from the beginning to the ending. It is unnecessary for us to stop and repeat the precedents which have been established in relation to this matter. I state, furthermore, that the substance of those precedents was embodied in the twenty-second joint rule which was adopted by both Hauses which has been recognized and sangtioned by both poliboth Houses, which has been recognized and sanctioned by both political parties. Here is the rule, (twenty-second joint rule, February 6, 1865, second clause:)

If, upon the reading of any such certificate by the tellers, any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall, in like manner, submit said question to the House of Representatives for its decision. And no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses; which being obtained, the two Houses shall immediately re-assemble, and the presiding officer shall then announce the decision of the question submitted; and upon any such question there shall be no debate in either House.

If this be so, if we have a Constitution which has received the legislative sanction, the sanction of the two political parties, and the submission of the people to the construction of its powers, then he must have a hard current to stem who attempts to oppose the force of the Constitution, the force of the law, and the torrents of the precedents which have been set. I think that it shuts the door of controversy upon this subject.

Then we approach our second proposition: we state that this authority has not been delegated or conceded or reserved to the States. What is the authority reserved to the States? "The States shall appoint electors in such manner as shall be prescribed by the Legislatures thereof." Appoint them; how? Appoint them precisely under the limitations which have been imposed by the Constitution of the United States, and not otherwise. The States have voluntarily taken upon themselves these obligations; the States have also submitted

to these limitations upon their powers.

How shall these obligations be answered? I answer, in obedience to the obligations of the Constitution of the United States. These to the obligations of the Constitution of the United States. These obligations I have already enumerated, and it is unnecessary to repeat them. The States have no right to appoint illegal voters, nor to authorize legal voters to vote for ineligible persons. The principle of the Constitution would exclude the illegal voter as well as exclude an ineligible person from the Presidency. There is a constitutional vinculum between the humblest voter and the highest officer. There is really no necessity for any conflict between the State and Federal Governments. They are purely co-operative and auxilliary, one to support the other and both aiming at the grand object of perpetuating the American Republic. Both State and Federal Governments rise up out of the will of the people.

If I am correct in these principles which I have laid down—and I do not believe that they can be denied or gainsaid—then I maintain that no returning board can oust Congress of its jurisdiction. It can as easily overturn the Constitution of the United States, as it can pluck the everlasting hills from their roots. And just here is the

pluck the everlasting hills from their roots. And just here is the heart of the question; all besides is mere machinery, which is intended to put into operation the principles and the rights for which we have been contending.

We take our stand upon the election in Louisiana. I invite those gentlemen upon the other side who may differ with me—I throw the gauntlet boldly down and dare the man to take it up. I maintain that your returning board is not final, that it cannot be final, that there is no power known to the laws of the land that can make it final. Why do I say so? We are met by gentlemen who march out in the panoply of the décisions of the supreme court of Louisiana, who tell us that we are to receive this construction of their statutes from their own judicial decisions. I deny the proposition that the supreme court of Louisiana has ever decided this question of the finality of the action of the returning board. The supreme court of Louisiana has never had the question before it to decide; that is, the finality of the re-turning board in its action upon the return of votes for presidential

That court, however, has decided sundry cases involving the right

to local offices between the citizens of that State.

The leading cases are Collin vs. Knoblock, 25 An. La. R., 263, being a contest for the office of parish judge; Bonner vs. Lynch, 267, same report, being a contest for district judge, Justice Wyley dissenting: by far the ablest opinion and most in harmony with the settled train of decisions; Kemp vs. Ellis, 253, same report, being a contest for district index. district judge.

The Supreme Court held that the jurisdiction to decide even a State election upon its merits must be conferred by statute; and, such jurisdiction not having been conferred, the courts did not have the right

If it be not out of order, Mr. Speaker, I propose simply to read a paragraph from the leading decision of Louisiana. I ask the attention of the House, (Bonner vs. Lynch, 25 An. R. 268:)

But it has been said the returns are only prima facie proof of the results of the election. This is true. The question, however, as to the election of officers is a political question; and courts of justice have jurisdiction over them only so far as the political department may have authorized them to exercise jurisdiction. If there were no statute authorizing the trial of contested-election cases before the courts they would be without authority to do so.—13 An. R., 90.

No statute conferring upon the courts the power to try cases of contested elections or title to office authorizes them to revise the action of the returning board. If we were to assume that prerogative, we should have to go still further, and revise the returns of the supervisors of elections, examine the right of voters to vote, and, in short, the courts would become in regard to such cases mere offices for counting, compiling, and reporting election returns. The Legislature has seen proper to lodge the power to decide who has or has not been elected in the returning board. It might have conferred that power upon the courts, but it did not. Whether the law be good or bad it is our duty to obey its provisions, and not to legislate.

So then Mr. Speaker I maintain that the supreme court of Loui-

So then, Mr. Speaker, I maintain that the supreme court of Louisiana has not decided this question. I maintain that the statutes of Louisiana did not confer upon it the authority to decide it. Then, if that be so, the supreme court is stripped of the authority, and the foundation of the whole argument on the other side is taken away. If that be so, Mr. Speaker, let us advance a step further in themater. I maintain that the Legislature of Louisiana never conferred upon the returning board the power of final judgment, because they say here in the statute, act of 1872, section 2, that it shall be only prima facie evidence before the courts, and that the power conferred by the real intendment and meaning of it was to settle the controversy between citizens of its own State, and not to decide the quesversy between citizens of its own State, and not to decide the question of the presidential election.

So all the decisions have run. I further maintain that under the constitution of Louisiana the Legislature cannot confer upon that returning board the judicial powers claimed for the board, simply because the constitution which I have before me has vested all the judicial powers of that State in the supreme judiciary, in the district courts, in the parish courts, in the justices of the peace; and that is the end of it; and as a matter of course it is excluded from the omipotent powers which are claimed for it upon the other side. The constitution says title 4 article 73: constitution says, title 4, article 73:

The judicial power shall be vested in a supreme court, in district courts, in parish ourts, and in justices of the peace.

Then, Mr. Speaker, following up the argument, if the supreme court of Louisiana has not had the question before it; if it is impossible that the returning board can be vested with a judicial power, then what is the result of it? Why, sir, according to all the authorities, without one single dissenting voice, unless the statute confers final powers, the returning board can only act ministerially in the matter. Here is the authority, supported by an abundant number of cases. Cooley, in Constitutional Limitations, pages 622, 623, says:

As the election officers perform for the most part ministerial functions only, their returns and the certificates of election which are issued upon them are not conclusive in favor of the officers who would thereby appear to be chosen, but the final decision must rest with the courts. This is the general rule, and the exptions are of those cases where the law under which the canvass is made declares the decision conclusive, or where a special statutory board is established with powers of final decision. And it matters not how high and important the office; an election to it is only made by the candidate receiving the requisite plurality of legal votes cast; and if any one, without having received such plurality, intrudes into an office, whether with or without a certificate of election, the courts have jurisdiction to oust as well as to punish him for such intrusion.

Again, the same author, pages 621, 622, says:

In all this the several boards act for the most part ministerially only, and are not vested with judicial powers to correct the errors and mistakes that may have occurred with any officer who preceded them in the performance of any duty connected with the election, or to pass upon any disputed fact which may affect the

result. <sup>1</sup>Each board is to receive the returns transmitted to it, if in due form, as correct, and is to ascertain and declare the result as shown by such returns; <sup>2</sup> and if other matters are introduced into the returns than those which thelaw provides, they are to that extent unofficial, and such statements must be disregarded. <sup>3</sup> If a district or State board of canvassers assumes to reject returns transmitted to it on other grounds than those appearing upon its face, or to declare persons elected who are not shown by the returns to have received the requisite plurality, it is usurping functions, and its conduct will be reprehensible, if not even criminal. The action of such boards is to be carefully confined to an examination of the papers before them, and a determination of the result therefrom, in the light of such facts of public notoriety connected with the election as every one takes notice of, and which may enable them to apply such ballots as are in any respect imperfect to the proper candidates or officers for which they are intended, provided the intent is sufficiently indicated by the ballot in connection with such facts, so that extraneous evidence is not necessary for this purpose.

Then according to the same authority following it up if they only

Then, according to the same authority, following it up, if they only act ministerially, they have power only to act within and upon the face of the returns as they have been made out and submitted to them. They have no power to go outside of the face of the returns; to do no act to change the result of the election; and if they are limited and confined to the face of the returns, I maintain according to the facts that there are 12,000 votes that have been cast out by the usurped judgment of a returning board which had neither constitu-

tional nor legal power to do it.

If that be so, it is the end of the question. Debate is unnecessary If that be so, it is the end of the question. Debate is unnecessary further to follow it up. But then, as a matter of fact, did the Legislature of Louisiana intend to confer such enormous powers upon this returning board? I argue not; and why do I argue so? It was admitted upon the other side the other day by the distinguished gentleman from Ohio [Mr. Garfield] that this was the gravest and the greatest question that ever came before the American people; and greatest question that ever came before the American people; and that being so, why is it possible that the Legislature of Louisiana should so far forget itself as that it could confer these omnipotent powers upon a set of men who were not legal gentleman—no one of them; two of them planters, one an undertaker, and the other a saloon-keeper—to resolve these great questions which appalled the great minds of Kent and Story and the fathers of the Republic, all the great statesmen along down the line of our political history. If such were the case-

Good God! on what a slender thread Hang everlasting things.

No, I cannot believe that the Legislature of Louisiana would have turned these men loose to make havoc of the ballot-boxes of the State, to feel for the very heart-strings of liberty and make them crack, even at the expense of the safety and the integrity of the Republic. It cannot be possible that such powers ever could have been conferred upon men of that description. No, sir, it is impossible to believe it. It would stultify the nation to believe that they can shelter themselves behind a statute of Louisiana, defy the Constitution of the United States, defy all the other States, and hold at bay all the other powers known to this Government. It is impossible to believe such a thing. Why, Mr. Speaker, if this returning board should have such power to go outside of the face of the returns and adjudicate the rights of all the voters in this State, it would put it into the power of that board to confiscate the liberties of the people of that State and to destroy the rights of the State government. No, I cannot believe that the Legislature of Louisiana would have

board to confiscate the liberties of the people of that State and to destroy the rights of the State government.

Then, Mr. Speaker, to draw this branch of the argument to a close, I maintain that the returning board of Louisiana was confined to the face of the returns; and if that be so, as there were 10,000 white voters and 2,000 colored who were cast out and who were lawful voters, when these are re-instated it inevitably insures the election of Samuel J. Tilden and Thomas A. Hendricks; and whenever that fact is proclaimed to this nation the exploding thunders of a nation's joy will reverberate to the blue arch above and resound from sea to sea.

But Mr. Speaker, is the country to be deprived of the result of this

But, Mr. Speaker, is the country to be deprived of the result of this election by appealing to a different tribunal for the purpose of counting the vote? Now I understand that it is seriously insisted that the Vice-President of the United States is the delegated power for the purpose of counting these votes. I deny it. I maintain that it cannot be found in the Constitution. The powers of the Vice-President are very simple. They are very few. They are limited, so far as the actual discharge of his duties are concerned. First, he has to preside actual discharge of his duties are concerned. First, he has to preside over the Senate. He has no power to vote except where it is equally divided. He is made the depository of the electoral votes. He is authorized to open the seals of the votes which have been placed in his custody. And I maintain after the discharge of these duties the Constitution in its language stops short, except that he is to succeed to the Presidency in the event of the death or removal of the President.

Where is the power in the Constitution which confers upon him the right to count the vote, to judge the votes, to be made the judicial tribunal of the Union in this respect? I maintain it is not to be found.

It would be a solecism in the Government of the United States. Why to would be a solecism in the Government of the United States. Why so I Look over all your judicial tribunals, I mean the final appellate judicial tribunals, they are never deposited in one head. There is always a multiplicity of them. There is always a concurrence of a certain number of them in order to stamp judicial authority in this

Are we to suppose, in violation of all precedents, judicial and legislative, that our fathers forgot this and reposed unlimited judicial power in the Vice-President of the United States, who perhaps, as power in the Vice-President of the United States, who perhaps, as argued and recited by old authors on the subject, may be a candidate for the Presidency, when he may have it in his power to count himself in; when he may not only succeed to the Presidency, but to the commandership of the Army and the Navy, and to make treaties with the concurrence of the Senate and the House; in other words, to succeed to all these powers and yet be the depositary of counting the vote? Not at all. As has been argued before, the language of the Constitution does not authorize any such construction. The Constitution says that he shall open the votes and there it stops. There the collocation of the words in the sentence changes.

There, for the active, the passive form is substituted. There we have the important fact, if it be true, that you stamp the fathers who framed that instrument with those who are incapable of dictating what should be its terms, in the face of the fact, and I believe it has been so considered, that the scholars of the old revolutionary day were more profound and accurate than they are at the present time. No, gentlemen, do not impeach our fathers with such madness. Do not impeach them with such a want of scholarship. Do not impeach them with the greatest folly which could be inherited by their suc-

But who are to count? Both Houses are to act. What is the language of the Constitution? That in the presence of the Senate and House of Representatives the votes shall be counted. They shall be guage of the Constitution? That in the presence of the Senate and House of Representatives the votes shall be counted. They shall be counted before these bodies in their organized capacity; the Senate fully organized and the House fully organized. And there is no other power before whom they can be counted. If either one is absent, they cannot be counted. It requires the concurrence of the two Houses to count the vote. They have the power to decide what is a count, and what is a vote. These two concurring leave the judgment just where our fathers intended to leave it. They make it consistent with the wisdom and the policy of our fathers. It was to erect two tribunals who should be the great returning board, where the results of the election should all pour in from the States as rivers into the sea, where they were to finally determine the issue.

That being so, then, Mr. Speaker, we inquire simply as to the functions of the teller or counter. They are nothing but agents and organs of the House. They are appointed by the Senate and the House. The tellers of the Senate are the organs of the Senate and the tellers of the House are the organs of the House. They are the agents, the eyes, the mouths, if you choose, of these two bodies. They perform their duties. They are joint because the Constitution makes them joint. They cannot be separated. They are indissoluble by the Constitution of the United States, and unless there is concurrence in these counters or tellers under the sanction of these two organs or bodies, there can be no judgment rendered constitutionally.

bodies, there can be no judgment rendered constitutionally.
You see the point: These tellers cannot act individually.

Because their duties are joint. They cannot act individually any more than this House in its individual capacity can pass laws without the concurrence of the Senate. I hope this point is understood; and, if understood, it settles the question, and leaves the final judgment with both Houses.

ment with both Houses.

But the inquiry comes up here, Suppose there should be a disagreement. Why, sir, the Constitution provides for such a disagreement. If the votes cannot be counted, it results in no election; and then the House, as an electoral college, elects its President, determines the vacancy and fills the vacancy, independently of the Senate; and in like manner the Senate, as an organized body, determines when a vacancy for the Vice-Presidency exists, and fills that vacancy according to its own law, without the assistance or co-operation of the

Mr. LAWRENCE. May I ask the gentleman a question?
Mr. BRIGHT. Certainly, sir.
Mr. LAWRENCE. Who is to declare and determine when there is no election by the people? If the gentleman claims the duty devolves upon the two Houses of Congress, suppose the Senate should declare one way and the House another way: what then?
Mr. BRIGHT. I can answer the gentleman's question without any trouble. Suppose there is no President declared elected, then the House indees whether there is a vacancy and declares that there is

House judges whether there is a vacancy and declares that there is no election. And so the Senate decides. And if they disagree, why the Constitution cuts the Gordian knot, resolves them into two electoral bodies, and they make the election accordingly. Am I understood, sir ?

stood, sir?

Mr. LAWRENCE. I understand what is your proposition.

Mr. BRIGHT. But, Mr. Speaker, just here an inquiry may be presented. If these are delegated powers in Congress, judicial powers, can this delegated power be redelegated to another power? If it be once conceded that the power is judicial, this power cannot be delegated. It cannot be delegated any more than a judge with a commission in his pocket can leave the bench and call a stranger to decide a proposition which is pending before him. If, however, it be legis-

¹State vs. Charleston, 1 S. C. (N. S.) 30. And see cases cited in the next note.

\*\*2Ex parte Heath, 3 Hill, 42; Brower vs. O'Brien, 2 Ind., 423; People vs. Hilliard,
29 Ill., 413; People vs. Jones, 19 Ind., 357; Ballon vs. York County Commissioners,
13 Shep., 491; Mayo vs. Freeland, 10 Mo., 629; Thompson vs. Circuit Judge, 9 Ala.,
338; People vs. Killduff, 15 Ill., 492; O'Farrell vs. Colby, 2 Minn., 190; People vs.
Van Cleve, 1 Mich., 362; People vs. Van Slyck, 4 Cow., 297; Morgan vs. Quackenbush, 22 Barb., 72; Disbrow vs. Smith, 10 Iowa, 212; People vs. Cook, 14 Barb., 259,
and 8 N. Y., 67; Hartt vs. Harvey, 32 Barb., 55; Attorney-General vs. Barstow, 4
Wis., 567; Attorney-General vs. Ely, ½, 420; State vs. Governor, 1 Dutch., 331;
State vs. Clerk of Passaic, ½, 354; Marshall vs. Kerns, 2 Swan, 68; People vs. Pease,
27 N. Y., 45.

\*\*Ex parte Heath, 3 Hill, 42.

lative, then I am prepared to concede that the Constitution provides vent for it. If it be conceded and adjudged necessary and proper by the two legislative bodies constituting the Congress of the United States—that is the only vent that I can see for this constitutional

States—that is the only vent that I can see for this constitutional question—I reserve to myself the right and the privilege still further to ponder, still further to determine whether I shall accept the one or the other, as my conscience and judgment may dictate.

But as to the power of the two Houses as organized bodies for counting this vote; why, if there were any doubt left upon the subject we have but to recur to the precedents again. We have had twenty-two presidential elections, and the two bodies have ever exercised these powers—not the Vice-President. I have these precedents here, but I will simply give a sample or two without wearying the patience of the House with a repetition of the whole of them.

Both Houses appointed committees under concurrent resolutions, February, 1793, "to ascertain and report a mode of examining the votes for President and Vice-President." Action:

The certificates of the electors for the several States were opened by the President of the Senate and delivered to the tellers, appointed for the purpose, who, having examined and ascertained the number of votes, presented a list thereof to the President of the Senate, which read as follows," &c.

I would remark that our present difficulty could be settled by the operation of the twenty-second joint rule, without convulsing the country as has been done; and the country ought to understand that the fault does not lie at the door of the House of Representatives. The House has never receded from the rule and is now willing, in my opinion, to stand by it.

These proceedings were uniform down to the adoption of the twen-These proceedings were uniform down to the adoption of the twenty-second joint rule—substantially the same. The twenty-second joint rule embodied the former action of the two bodies, which I have before read, and provided for the decision—yes, that is the word—of these questions. And they did proceed to the decision.

Mr. HOAR. Would it trouble the gentleman from Tennessee if I were to ask him a question?

Mr. BRIGHT. I do not know. My time is running. The sands are very few. I will hear the gentleman's question, however.

Mr. HOAR. I wish to ask the gentleman from Tennessee a question in regard to the proposition he has just stated, that under the Constitution the House must determine whether a President has been elected, and proceed to elect one if it determine no has been elected.

elected, and proceed to elect one if it determine none has been elected; and so the Senate in regard to a Vice-President. Under the original Constitution, suppose that, of the two highest candidates, the House, determining that there has been no election, elects one; the Senate, differing, thinks that the other was elected President. Then according to the gentleman the Senate is to proceed to execute this direction, if there shall remain two or more:

In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President.

Now, according to the gentleman's theory, would it not clearly result that, as against all mankind, the same man was both President and Vice-President of the United States at the same time, the House electing him President and binding everybody to that, the Senate holding that he was the person having second position and binding

everybody to that.

Mr. BRIGHT. Why, Mr. Speaker, that is a hypothetical ques-

Mr. HOAR. I should think it was. Mr. BRIGHT. Under the Constitution as it existed before, and not

under the Constitution as it exists at the present time.

Mr. HOAR. But the language of the Constitution as it existed at the beginning and the language of the Constitution as it exists now, we far as the gentleman's proposition is concerned, are the same.

Mr. BRIGHT. Not at all. I differ with the gentleman in relation to the construction he gives to the Constitution.

Mr. HOAR. Does the gentleman claim that the House of Repre-

entatives has a power now which it did not have at the origin of the Government

Mr. BRIGHT. I claim no greater power for the House now than is guaranteed by the Constitution of the United States. I have stated my proposition, that in the case of a non-election this House resolves itself into an electoral college, and it alone adjudges then whether there is a vacancy or not, and in the event of a vacancy proceeds to elect a President; and so of the Senate. In the case of a non-election of a Vice-President by the people, or default by the people, the

I am not to be diverted from the argument which I am making. I know how the truth hurts sometimes. I remember how on one occasion our Saviour was applying the truth to the conscience of the woman at the well and she then began to talk about the mountains, and Jerusalem, and all of those things around about, instead of listening to the arguments addressed to her.

Mr. HOAR. Will the gentleman permit me.

Mr. HOAR. Will the gentleman permit me—
Mr. BRIGHT. I cannot be further interrupted.
Mr. HOAR. Is not the analogy that of the Pharisees who could not answer the Saviour's questions?
Mr. BRIGHT. And the Saviour did not want to answer theirs,

either, or heed them.

But, I was recurring to the precedents, to this twenty-second joint rule to which the honorable gentleman from Massachusetts agreed,

and under which he has acted, and under which both Houses have acted and have assumed the jurisdiction of this question. And, sir, what is more, the great weight, the overwhelming weight of authority is in favor of counting the vote by these two bodies.

I simply allude to the opinions of a few of our great statesmen.

Mr. Clay, in 1821, said:

The two Houses were called to decide what are votes.

Mr. Lincoln, in his message of February 8, 1865, said, upon the joint resolution before the two Houses:

The two Houses of Congress have complete power to exclude from counting all ectoral votes deemed by them to be illegal.

In 1869, on the vote of Louisiana, the joint rule was objected to as unconstitutional, and the President of the Senate (Mr. Wade) said:

I believe the rule in accordance with the Constitution. (Votes counted.)

In 1876, Mr. MORTON, in speaking of counting, &c., stated:

The duty is imposed upon the two Houses of Congress; they alone can perform it.

Mr. BOUTWELL said, in 1876:

The power and the duty are in Congress.

Mr. Dawes said, in 1876:

I think the Constitution means that they shall be counted by the two Houses.

Other gentlemen who concurred in this opinion may be mentioned, and among them Crittenden, Cass, Douglas, Humphrey Marshall, Van Buren, George W. Jones, and Judge Black, the peer of the greatest living lawyers of the United States.

Then the country, both Houses of Congress, the Vice-President, and ablest lawyers of the country have acquiesced in it for a century, and therefore, if it is possible that any question should be settled within parties. If the question has been settled by the acquiescence of all parties. If the question cannot be settled in that way, how can it ever be settled? Has the Vice-President ever complained? Surely he has not. If, then, it has been acquiesced in for all these years; if

he has not. If, then, it has been acquiesced in for all these years; if the power applied to these objects was properly exercised; if it was not a usurped power which belonged to the Vice-President, then the question is fairly barred by the statute of limitations of a century. Then, Mr. Speaker, we have been told here, in order to have a sort of moral effect upon the country, that intimidation has been used over the voters of the United States, and particularly in Florida, Louisiana, and South Carolina. Where does the intimidation come from? When the God of heaven speaks in his thunder man is silent; when the Government speaks in the roar of its artillery, in the tramp of its legions, the citizens are silent and are in terror. Who had possession of these sections of the country? The Government had the

when the Government speaks in the roar of its artillery, in the tramp of its legions, the citizens are silent and are in terror. Who had possession of these sections of the country? The Government had the power of the Army and Navy, and of the officials, and if there was intimidation to be exercised, against whom was that intimidation to be exercised? It was exercised against those who were subject to the power of the Government; the democratic party and not the republican party, they were shielded by the power of the Government. But while all that is so, Mr. Speaker, permit me to say that according to English policy and according to American policy the parade of soldiers upon the occasion of election day has been reprobated and discarded and punished as they were in the days of the corrupt Sir Robert Walpole in the British government. It will not do to refer to the whisky rebellion in Pennsylvania, which was an insurrection against the lawful authorities, a refusal to pay the revenues of the Government. But here was the exercise of the highest duty of the American citizen, here all law waives the Army away as a terror to the freedom of ballot upon the occasion and holds them in the distance and out of view, but here they were paraded with as a terror to the freedom of band upon the occasion and notes them in the distance and out of view, but here they were paraded with martial tread, with fife and drum, and glistening bayonets, all to impress terror, whether so meant or not.

But they tell us that there are individuals in the State of Louisiana who refused employment to the freedmen there unless they should

vote as they willed. Why, sir, the estates belong to the white men, and they had a right to do what they wished with them. But if there is any truth in that, without conceding the fact, would it be worse than turning a man out of office simply because he was a democrat, and exacting tribute of 80,000 or 100,000 office-holders to carry

or at, and exacting tribute of 80,000 or 100,000 office-holders to carry on in behalf of a party a presidential contest? No, sir; if there was intimidation at all, it was on the other side.

I do not propose to weary the House with a discussion of these questions. I do deprecate, however, the effort that I have seen made to stir up sectional strife with a view of influencing the presidential election of the United States. I have no words of burning denunciation sufficient to strike and rive the man from whatever section who is so unpatriotic, so truant to duty, so unjust as to stir up these fires merely for political purposes and to transmit the virus of our distem-

per to posterity.

Ay, sir, let shame roll its burning fire over his memory. Let him go and worship the volcano which buried Pompeii and Herculaneum go and worship the voicano which ouried Pompeli and Herculaneum beneath its streams of burning lava. Let him go and worship the earthquakes which swallowed up Lisbon and Aleppo. Let him go and worship the conflagrations which devoured the cities of London, Moscow, Chicago and Boston, and then perhaps he may be suffi-ciently demonized to stir up the dying embers of sectional contro-versy to light the torch of his unhallowed ambition, to illumine his pathway to the Presidency of the United States over the fragments of the American Constitution. Sir, we wish no more of it; we have seen this great Republic rent and torn asunder as the rocks and hills in some mighty convulsion of nature, leaving a deep chasm flowing

with fraternal blood.

We of the South propose not only to shake hands across the bloody chasm, but to have it healed and cicatrized so that the scar will disappear like the course of the eagle in the air or the path of the ship in the sea. Let us have peace; such peace as will make the land ra-diant with joy; such peace as will make heaven bend to kiss the

Let the old national standard be planted deep in the affections of the people, and let each star upon the fold be a symbol eye beaming on each State, and the symbol stripes ever remain parallel, denoting the equality of the States. And God forbid that those stars shall ever

the equality of the States. And God to out that those stars shall ever be merged into one blazing sun of despotism to scorch and consume the remnants of American liberty.

Mr. FAULKNER. I ask consent of the House to have printed in the RECORD, as a portion of the debate, some remarks which I have prepared upon this subject.

No objection was made, and leave was accordingly granted. [See

Appendix.]

Mr. HOLMAN. I move that the further consideration of the present order be postponed until to-morrow after the reading of the

The motion was agreed to.

#### ORDER OF BUSINESS.

Mr. WOOD, of New York. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour now begins at eighteen minutes past two o'clock, and reports of a public nature from committees are now in order.

#### ARTICLES FOR EXHIBITION FREE OF DUTY.

Mr. KELLEY, by unanimous consent, introduced a bill (H. R. No. 4528) to provide for the free entry of articles imported for exhibition by societies established for encouragement of the arts and sciences, and for other purposes; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

#### DESTITUTE POOR OF THE DISTRICT.

Mr. BANKS, by unanimous consent, introduced a bill (H. R. No. 4529) for the relief of the destitute poor of the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, informed the House that the Senate had passed without amendment a bill of the following title:
An act (H. R. No. 2461) for the relief of certain officers of the Third

United States Artillery who suffered by fire at Fort Hamilton, New York Harbor, on the 3d of March, 1875.

The message further announced that the Senate insisted upon its

amendments disagreed to by the House to the bill (H. R. No. 3156) entitled "An act to approve the revision of the statutes of the United States," and asked a conference of the House upon the disagreeing votes thereon, and had appointed as conferees on the part of the Senate Mr. Boutwell, Mr. Christiancy, and Mr. Wallace.

### MARY FEARON AND JESSIE CROSSIN.

Mr. WELLS, of Missouri, from the Committee on Appropriations, reported back the joint resolution (H. R. No. 178) authorizing the Secretary of the Treasury to pay Mary Fearon and Jessie Crossin, executrices of Samuel P. Fearon, deceased, certain registered United States bonds redeemed by the Government on forged assignments and power of attorney, and moved that the committee be discharged from its further consideration and that it be referred to the Committee of Ways and Means.

The motion was agreed to.

### CHANGE OF REFERENCE.

Mr. WELLS, of Missouri, also, from the same committee, reported back the following petitions; which were referred to the Committee of Claims:

The petition of David Allen, Company C, Second United States Ar-

tillery, for salary due; and
The petition of William L. Riley, of the District of Columbia, praying for relief for work done on the grounds of the Smithsonian Institution.

### ADVERSE REPORTS.

Mr. PAYNE, from the Committee on Banking and Currency, reported adversely upon the following; which were laid upon the table:

A bill (H. R. No. 3752) to repeal section 3412 of the Revised Statutes which imposes a 10 per cent. tax on the notes of State banks and State banking associations used for circulation and paid out by them;

A bill (H. R. No. 3971) to establish the legal-tender quality of the silver coins of the United States as it existed prior to the enactment of section 3586 of the Revised Statutes of the United States, and for the reueal of said section; and

the repeal of said section; and A bill (H. R. No. 3789) to amend section 5200 of chapter 3 of title

62 of the Revised Statutes.

### BANK-NOTES REDEEMABLE IN GOLD.

Mr. PAYNE, from the Committee on Banking and Currency, reported back the bill (H. R. No. 3725) to amend sections 5185 and 5186 of the Revised Statutes, and the bill (H. R. No. 3724) to amend sections 5185 and 5186 of the Revised Statutes, and the bill (H. R. No. 3734) to provide for the redemption of national-bank notes payable in gold at the office of the assistant treasurer of the United States in San Francisco, California, together with a substitute for the same, being a bill (H. R. No. 4530) to amend sections 5185 and 5186 of the Revised Statutes; which was read a first and second time.

The bill provides that section 5185 shall be amended so as to read

as follows:

Associations may be organized in the manner prescribed by this title for the purpose of issuing notes payable in gold; and upon the deposit of any United States bonds, bearing interest payable in gold, with the Treasurer of the United States, in the manner prescribed for other associations, it shall be lawful for the Competroller of the Currency to issue to the association making the deposit circulating notes of different denominations, but none of them less than \$5, and not exceeding in amount 90 per cent. of the par value of the bonds deposited, which shall express the promise of the association to pay them upon presentation in gold coin of the United States, and shall be so redeemable.

The bill further provides that section 5186 shall be amended so as to read as follows:

The offi further provides that section 5150 shall be amended so as to read as follows:

Every association organized, or which may be organized, under the preceding section in the State of California shall at all times keep to its credit, in the office of the assistant treasurer of the United States at San Francisco, a sum equal to 5 per cent. of its outstanding circulation in gold coin of the United States, and shall receive at par in the payment of debts the gold notes of every other association which at the time of such payment is redeeming its circulating notes in gold coin of the United States, and shall be subject to all of the provisions of this title: Provided, That in applying the same to associations organized for issuing gold notes, the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States. And when the circulating notes of any such association, assorted or unassorted, shall be presented for redemption in any sum to the assistant treasurer of the United States at San Francisco, the same shall be redeemed in gold coin of the United States. All notes so redeemed shall be charged by the assistant treasurer of the United States at San Francisco to the respective associations issuing the same; and he shall notify them once each week, or oftener at his discretion, of the amount of such redemption. And whenever the redemption for any association shall amount to the sum of \$1,000, such association so notified shall forthwith deposit with the assistant treasurer of the United States at San Francisco as um in gold coin of the United States equal to the amount of its circulating notes redeemed: Provided, That the expense incurred in transmission of notes redeemed by said assistant treasurer, shall be borne by such associations from redemption of their circulating notes at their own counters. And any expense which may be incurred in the office of the assistant treasurer by reason of the provisions of this act shall be borne retably by such

Mr. PAYNE. I call the previous question upon ordering the bill to be engrossed and read a third time.

be engrossed and read a third time.

Mr. HOLMAN. I trust the gentleman from Ohio [Mr. PAYNE] will explain in what respect this bill proposes to change the present law.

Mr. PAYNE. This bill proposes merely two alterations in the present law. The statute in regard to the currency notes permits banks to have of such notes 90 per cent. of the par value of their bonds on deposit with the Treasury. But the gold banks of California are allowed but 80 per cent. of circulation on their bonds deposited. It is proposed by this bill to give to the gold banks of California the right to receive as circulation 90 per cent. of the securities deposited, and thus not them upon the same footing as the currency banks.

to receive as circulation 90 per cent. of the securities deposited, and thus put them upon the same footing as the currency banks.

The effect of the other provision of the bill is this: the currency banks are required by law to keep on deposit at the Treasury Department 5 per cent. of their circulation as a redemption fund. This bill proposes to require the gold banks to deposit with the subtreasurer at San Francisco 5 per cent. of their circulation for the redemption of their notes that may be presented.

These are the only alterations which the bill proposes to make in the present law. They merely assimilate our policy in regard to the gold banks of California to the policy which has been adopted with

the present law. They merely assimilate our policy in regard to the gold banks of California to the policy which has been adopted with reference to the currency banks. The bill has the approval of the Treasury Department and is unanimously recommended by the committee.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and

Mr. PAYNE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

### NORTHERN PACIFIC RAILROAD.

Mr. LAMAR, from the Committee on the Pacific Railroad, reported back, without amendment, the bill (S. No. 14) to extend the time for the construction and completion of the Northern Pacific Railroad.

The bill was read, as follows:

The bill was read, as follows:

Be it enacted, &c., That eight years' additional time is hereby granted to the Northern Pacific Railroad Company to construct and complete its main line of its road by way of the valley of the Columbia River to its terminus on Paget Sound under its charter and the resolutions of Congress relating thereto. That this extension is granted upon the express condition and understanding that where premption and homestead claims were initiated, or private entries and locations were allowed, upon lands embraced in the grant to said company prior to the receipt of the orders of withdrawal at the respective district land offices, the land embraced in such entries shall not be beld as within the grant to said company, and shall be patented to the parties lawfully entering the same, and in case of abandonment by

them shall be open to pre-emption and homestead entry only by actual settlers; but the company shall be entitled to indemnity therefor as now provided by law.

SEC. 3. That entries remaining unadjusted and suspended in the General Land Office on account of an increase in price of the even sections within the limits of the grant, where the same were made or based upon settlement made prior to the receipt of the orders of withdrawal aforesaid at the respective district land offices, shall be relieved from such suspension and carried into patent; but nothing in this act shall be so construed as to affect existing adjustments nor to authorize the refunding of any moneys received for such lands under existing laws.

SEC. 4. That the extension of time granted by section 1 of this act shall not apply to the branch line of said road from Lake Pend d'Oreille, across the Cascade Mountains, to Puget Sound, in Washington Territory; and at the expiration of the time allowed by existing laws for the construction of said branch the lands herefore granted therefor, and not then earned by said company by constructing said branch line of railroad, shall be restored to the public domain, to be dealt with as other public lands, under the direction of the Secretary of the Interior.

SEC. 5. That this act shall not be construct to affect existing private rights otherwise than as hereinbefore expressly provided, and shall, as well as said charter and other acts and resolutions hereinbefore mentioned, be subject to alteration, amondment, or repeal at the pleasure of Congress.

SEC. 6. That the said Northern Pacific Railroad Company shall file with the Secretary of the Interior, within six months from the date hereof, its assent to, and acceptance of, the provisions of this act, or be forever debarred from taking or receiving any benefit from or under the same.

Mr. HOLMAN. I rise to make a question of order on this bill. It

Mr. HOLMAN. I rise to make a question of order on this bill. is that by the provisions of the first section the condition on which this company is entitled to receive lands from the Government is changed. Under the present law the condition is that the road shall be completed by July 4, 1877, the 4th of next July. This bill proposes to extend the time within which the company shall have the right to become the owner of this land for the period of ten years. I submit that this extension of time, this creation of a new condition, is the granting of property within the meaning of Rule 112. This not only touches property of the United States, it actually appropriates property by an extension of the time within which the grant shall take effect. I submit that the bill comes very clearly within the purview of Rule 112, to which I desire to call the attention of the Chair.

All proceedings touching appropriations of money and all bills making appropriations of money or property, or requiring such appropriations to be made, or anthorizing payments out of appropriations already made, shall be first discussed in a Committee of the Whole House.

I therefore insist that the effect of this bill is to grant property. It makes an appropriation of property direct and immediate by creating a new condition upon which this company shall be entitled to the benefit of this grant; and, Mr. Speaker, inasmuch as this involves a very large appropriation of lands—I should think some thirty-six million acres—the question becomes one of grave public concern un-

der the provisions of the rule.

Mr. LAMAR. If this point has not already been decided upon measures of this kind, I am sure that as an original question this cannot be considered a measure of appropriation. It does not appropriate one acre of the public domain or one dollar of the public money; nor does it pledge the credit of the country in any way whatever to the extent of one dollar. It is simply an act extending the time for the construction and completion of the railroad and relieving the company of the consequences of not complying with the conditions al-

ready imposed upon it by law. But, of course, I will cheerfully submit to the decision of the Chair.

The SPEAKER. The Chair, being aware that this question was to arise, has given the subject very careful consideration. The original act of July 2, 1864, contains in its eighth section the condition "that the said company shall commence work on said road within two years from the approval of the act by the President, and shall com-

plete not less than fifty miles per year after the second year, and complete the road by the 10th day of July, 1876."

The joint resolution of July 1, 1868, contains the following condition: "that the said company shall commence the work on said road within two years from and after the 2d day of July, 1868, and shall brild not less than one handred wiles build not less than one hundred miles per year, and complete the road by the 4th day of July, 1877."

The act of May 31, 1870, provides: "And twenty-five miles of said line, between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the 1st day of January, A. D.

The pending bill extends the time for the completion of the entire ad. The Clerk will read Rule 112.

The Clerk read as follows: road.

112. All proceedings touching appropriations of money shall be first discussed in a Committee of the Whole House.

The SPEAKER. The pending bill is certainly a measure touching appropriation of property, not incidentally but as to a vital feature of its appropriation, namely, the fundamental condition on which this company is entitled to receive this appropriation of land. It creates a new condition and grant of land on a new condition that the company shall complete the road within a new period. The bill therefore is not only a measure touching the appropriation of property. But pany shall complete the road within a new period. The bill there-fore is not only a measure touching the appropriation of property, but is a direct, material, vital feature of the appropriation. It is virtu-ally and directly a new grant of that property upon a new condition. Time is an element to be considered in connection with the grant. And by the existing law time is of the essence of the grant.

It is not an answer to say the company might become entitled to the land by completing the road within the time now fixed by law, for it will be observed that the application to change the terms of the grant and extend the time implies a necessity for such change of

time to enable the company to obtain the benefit of the grant. It can

be, the Chair believes, justly held that the extension of the time is of itself property within the meaning and spirit of the rule.

While the Chair has no doubt on the point raised, he begs to say to such as may have doubts that such doubts should, at least by the Chair under existing circumstances, be given in favor of the Government, because there is no mutuality of interest in this contract. The point of order, therefore, the Chair holds is well taken.

Mr. LAMAR. I ask by unanimous consent that in the Committee of the Whole House on the state of the Union this bill may be consid-

ered on next Monday at two o'clock.

The SPEAKER. The Chair suggests the gentleman will be more likely to get consent to consider if he named some other day, because on Monday next at two o'clock the Chair would be compelled to recognize the Committee for the District of Columbia under the arbitrary and heart the arbitrary are the relative to the consider of the relative to the r trary reading of the rule fixing that day and hour for the consideration of District business

Mr. KASSON. Say Tuesday next, then.
Mr. LAMAR. I ask, then, that Tuesday next at two o'clock this matter be set down for consideration in the Committee of the Whole on the state of the Union.

on the state of the Union.

Mr. HOLMAN. I believe I will have to object.

Mr. LAMAR. I hope the gentleman will withdraw his objection.

Mr. KASSON. Will the gentleman from Indiana allow me a single statement in connection with this request?

Mr. HOLMAN. Certainly.

Mr. KASSON. Mr. Speaker, we have found in committee there are about thirteen thousand paragons who have been driven by stress of

Mr. KASSON. Mr. Speaker, we have found in committee there are about thirteen thousand persons who have been driven by stress of misfortune to be stockholders in this road; that they are chiefly people of very small means who have been persuaded to take bonds. surprise I found among my own farmer constituents some of those who had stock forced upon them in that way. I am also informed in committee if this bill passes so they can have additional time, they will immediately make contracts for about forty thousand tons of iron and go on with this work. Many members of this House also find their constituents in the same condition. Unless this is done this session the whole thing expires, and no contracts can be made and no work continued. We have believed, therefore, the public interest, as well as the interest of these poor stockholders, would be greatly promoted by this act; and in that view I make an appeal in behalf of these unfortunate men to the gentleman from Indiana to withdraw his objection

Mr. HOLMAN. I wish to say a word in answer to that suggestion.

The SPEAKER. This debate is proceeding by unanimous consent.

Mr. HOLMAN. I wish only to say a word, as time is of some consequence now. As I understand, the greater portion of these unfortunate persons who were induced by false pretenses and fraudulent representations to become stockholders in this company—

Mr. MASSON. Now holders of bands.

Mr. KASSON. No; holders of bonds.
Mr. HOLMAN. Unless they are prepared to advance further sums of money, are to be deprived of all benefit resulting from the completion of this road, if it shall be completed. Indeed, this stock was extinguished by the judicial sale of the road. It is quite manifest the benefits of this road and this proposed legislation, if secured, will necessary to the complete of the road. will accrue only to a comparatively small number of persons, and those only who are able to advance further sums of money and aid in its completion. The investments made by widows and guardians of orphan children are already lost. The number who will derive benefit from this renewal of the grant will be small, and will be confined to the leading capitalists who heretofore have had control of this whole enterprise and for whose benefit the original grant was made. The small investors will take no benefit under this bill. Sub-

made. The small investors will take no benefit under this bill. Subsidies from Government further enrich great capitalists and skillful and unscrupulous adventurers, but are fatal to the honest investors who only seek legitimate gains.

Mr. KASSON. Let me say a word.

Mr. HOLMAN. One word further. This whole subject of subsidy by the Federal Government, in all of its forms, has uniformly ended in fraud, not only upon the Government, but upon the people, and has been a most fruitful source of dishonesty and of national humiliation, and the scoper the whole system is put an end to the better it ation, and the sooner the whole system is put an end to the better it will be for the Government, the public honor, and the people. Its continuance will be ultimately fatal to the integrity on which our free institutions rest.

Mr. GARFIELD. I hope the gentleman from Indiana will allow this to be considered by the House.

Mr. MAGINNIS. Mr. Speaker, as the bill is in a position wherein one objection may prevent its consideration, I wish to call the attention of the gentleman from Indiana to the history of this case, with the hope of inducing him to withdraw his objection to the designation of a day for the consideration of this important bill in the Committee of the Whole. Of course he is as familiar as I am with the circumstances under which the Northern Pacific Railroad Company was formed and began its operations. He remembers as well as I do that tormed and began its operations. He rememoers as well as I do that it undertook to build a great transcontinental line of road over the most feasible of routes, through the richest of our Northern Territories, and to connect the great lakes and the Pacific Ocean, without any subsidy from the Government, but by private enterprise alone, directed and organized by one of the great monetary houses which then commanded the confidence of the people of this country; that

it received no bonds from the Government; that it contracted no great loan abroad and received no aid from foreign capital, but that it was carried on entirely from the proceeds of the sale of its bonds which were floated among our own people by the great firm which had helped to organize the war credit of the Union and which so entirely possessed the confidence of the country that its recommendations and promises were ranked second only to those of the Government itself. Everywhere throughout the Union the subscription-lists were opened. The legacies of widows and of orphans, the small savings of superannuated clergymen, the trust-funds of benevolent institutions, the selender pittances of aged spinsters, the savings of the farmers, mechanics, and laborers were everywhere freely invested, and even the bonds of the Government were exchanged for the bonds of the company by those who wished to secure a little larger income from what pany by those who wished to secure a little larger income from what they regarded and were assured was an equally reliable investment. They had reason to think so, for the bonds were floated by the same house that had placed the bonds of the United States, and the assurances of that house were regarded as infallible. By those means \$30,000,000 were raised and about six hundred miles of the road were built and are now in successful operation.

Then came the panic. The crash of the great firm was unjustly said to be the cause thereof, but time has proven it to be merely one of its incidents. The road could not go on. It was stopped in the middle

incidents. The road could not go on. It was stopped in the middle of the plains. It could not even reach the mines and settlements at the eastern base of the mountains. A year or more passed, and then by one of the wisest and best adjustments ever made in railroad matters a change of ownership and management was effected. The original stockholders, the charter-members, the Credit Mobilier stockholders, if you please, those who had hoped to profit rather by their interest in the franchise than by the investment of their money, were put aside; the road, its franchises, and its equipment were delivered over to the the road, its franchises, and its equipment were delivered over to the bondholders, to these people who had actually put in the money to build it, and to secure themselves they took the property, canceled the bonds and all other debt, and took the road and its management into their own hands. They now come with the property on their hands, and representing to Congress that they have invested their money in a work of great public benefit ask that it may not be confiscated, but that they may be granted time to make their investment good and complete the road for their own benefit and the benefit of the country. The gentleman from Indiana is entirely mixtaken in his good and complete the road for their own benefit and the benefit of the country. The gentleman from Indiana is entirely mistaken in his proposition that they will be in a way to forfeit their stock unless they put in more money to go on with the road. If it were so it would be no worse than to forfeit their property from lack of time. But I assure the gentleman from Indiana that, without disturbing the rights of a single owner, the railroad, which is entirely free from debt of any kind, can now procure the means to go on. Great iron companies and other industrial interests, anxious to set the wheels of business again in motion, are desirous to take the bonds of the company and a lien mount the finished and unfinished portions and to mean it within a lien upon the finished and unfinished portions, and to push it within the year up the rich valleys of the Yellowstone to the gold, silver, lead, and copper mines of Montana and to the coal-fields of the Columbia, where a business awaits it sufficient to pay not only expenses but interest on all its bonds.

Now these people, not a few people as the gentleman says, but 13,000, a list of whose names is in the hands of your committee, living in twenty-three States of this Union, to be found in almost every gentleman's district, have been engaged in a great and worthy undertaking. It may not have been very remunerative to them, but certainly has been of great public good. It has opened to settlements lands that without it would be of no more value to the country than those traversed by Livingstone in the center of the African continent. It has enabled you to reach the hostile Indian tribes at less cost, and It has enabled you to reach the hostile indian tribes at less cost, and promises to open their very strongholds to our people; it will develop the rich mines along the route and unlock untold treasure for your benefit; it will give the rich territories that it traverses an outlet and break down monopoly and give the East another highway to the Pacific, and all without asking for a dollar in subsidy, but merely making the reasonable request for time to go on with their own money.

money.

Unless they can go on, the road is worthless. And if you deny this motion you virtually confiscate the property of 13,000 citizens engaged in a laudable and beneficial enterprise. Let gentlemen take notice that this will be the effect of it. But it is not asked that actually the bill comes up every gentleman will you notice that this will be the effect of it. But it is not asked that action be now had. When the bill comes up every gentleman will vote on its merits. Now all we ask is that a day may be set for the hearing of this case. And I say that when 13,000 of the people of the United States, having put \$30,000,000 into a great public work, which by no fault of theirs has not been completed in the time specified, and they desire to go on with it, knowing that if they do not all they have put in will be lost, confiscated, and they come to this House of Congress and ask for a hearing, that they should not be deried a day in court.

Mr. KASSON. I desire to say to the gentleman from Indiana—
Mr. COX. I rise to a point of order. Is debate in order?
The SPEAKER. Debate is proceeding by unanimous consent.
Mr. COX. Then I object to debate, and I object to fixing this bill for a day certain.
Mr. WALLING. I also object.
The SPEAKER. One objection is sufficient.
Mr. LAMAP. Describe certleman insist on his chiestion?

Mr. LAMAR. Does the gentleman insist on his objection?

The SPEAKER. Two other gentlemen have objected, and the bill is referred to the Committee of the Whole House. Reports are still in order from the Committee on the Pacific Railroad.

#### TEXAS PACIFIC RAILROAD.

Mr. LAMAR. I am instructed by the Committee on the Pacific Railroad to report, as a substitute for sundry bills relating to the same subject, a bill amendatory of and supplementary to the act entitled "An act incorporating the Texas Pacific Railroad Company, to aid in the construction of its road, and for other purposes," approved March 3, 1871, and the act supplementary thereto approved May 22, 1872, and the act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Ocean," approved July 27, 1866.

The bill (H. R. No. 4531) was received and read a first and second time.

The SPEAKER. Does the gentleman from Mississippi desire that the bill be read at length?

Mr. LAMAR. I do not if it is to be referred to the Committee of

the Whole.

Mr. HOLMAN. The point of order is not waived on this bill.

The SPEAKER. The Chair understands that the gentleman from Mississippi does not desire the present consideration of the bill.

Mr. KASSON. I submit the views of the minority in relation to

Mr. KASSON. I submit the views of the minority in relation to the bill, and ask that they be printed with the report of the majority. Mr. FRYE. What has become of the bill?

The SPEAKER. The Chair understood that the gentleman from Mississippi, who reported the bill, did not desire its present consideration, and consents that it go to the Committee of the Whole House on the Public Calendar.

Mr. FRYE. Is it too late to have the bill read?

Mr. HOLMAN. I make the point of order that the bill appropriates money and land.

money and land.

The SPEAKER. The point of order is not necessary when the gentleman from Mississippi himself moves to refer the bill to the Committee of the Whole House on the Public Calendar.

Mr. FRYE. I did not rise to make a point of order but to ask for the reading of the bill.

The SPEAKER. That is the gentleman's right. The bill will be

The SPEAKER. That is the gentleman's right. The bill will be

The bill was read.

Mr. LANDERS submitted a substitute for the bill; which was ordered to be printed.

ordered to be printed.

Mr. LAMAR. I ask unanimous consent that this bill be made a special order in Committee of the Whole on the state of the Union for the 3d day of February next, after the morning hour, and from day to day until disposed of.

The SPEAKER. That would require unanimous consent.

Mr. HOGE. I object.

The SPEAKER. The bill will then be referred to the Committee of the Whole on the state of the Union, and the report of the committee, with the views of the minority, will be printed.

### BRIDGE AT OMAHA.

Mr. THROCKMORTON, from the Committee on the Pacific Railroad, reported a bill (H. R. No. 4532) to provide for the fixing of the rates and charges for freights and passengers passing over the bridge constructed across the Missouri River at Omaha, Nebraska, on the line of the Union Pacific Railroad; which was read a first and second time.

The question was upon ordering the bill to be engrossed and read

a third time.

Mr. THROCKMORTON. I move that this bill be referred to the Committee of the Whole on the state of the Union and made a spe-Committee of the Whole on the state of the Union and made a special order for the 6th day of February after the morning hour, and from day to day thereafter until disposed of.

Mr. HOLMAN. I understand that the only effect of this bill is to reduce the tolls over the bridge at Omaha.

Mr. THROCKMORTON. It is a substitute for a bill which was intended for that purpose, but this bill leaves the Government to adjust the rates.

just the rates.

Mr. HOLMAN. That is the entire effect of the bill?
Mr. THROCKMORTON. Yes, sir.
Mr. HOLMAN. There being no other subject in the bill, I will not object.

Mr. THROCKMORTON. I ask that the bill and report be printed.

No objection was made, and it was so ordered.

Mr. THROCKMORTON. And I also ask that the bill be made a pecial order in Committee of the Whole after the morning hour on the 6th day of February next, and from day to day until disposed of.
Mr. HOLMAN. Subject to the appropriation bills.
Mr. THROCKMORTON. Of course.

Mr. KASSON. If the gentleman will include the Northern Pacific Railroad bill, I will not object; but I think that bill is as important

The SPEAKER. The objection must be absolute, and not conditional.

Mr. KASSON. I object to picking out these bills and giving them

preference over others of equal importance.

The SPEAKER. The gentleman from Iowa objects.
Mr. KASSON. Unless the other bill is included.

The SPEAKER. The gentleman cannot make his objection conditional.

Mr. KASSON. I name the condition simply as a notice to the gentleman, so that he can withdraw his request if he desires to do so.

ORDER OF BUSINESS.

Mr. DURHAM. Has the morning hour expired ? The SPEAKER. It has.

REVISION OF THE STATUTES.

Mr. DURHAM. The Senate has returned House bill No. 3156, to perfect the revision of the statutes of the United States, with their amendments disagreed to by the House, and have asked a committee of conference upon the disagreeing votes of the two Houses. I move that the request of the Senate be granted.

The motion was agreed to.

The SPEAKER announced as the conferees on the part of the House Mr. DURHAM, Mr. BELL, and Mr. DENISON.

BUSINESS ON THE SPEAKER'S TABLE.

Mr. WOOD, of New York. I move that the House now proceed to the consideration of business on the Speaker's table. The motion was agreed to.

TROOPS EMPLOYED IN THE SOUTHERN STATES.

The SPEAKER. The first business upon the Speaker's table is the message of the President in reply to the resolution of the House of Representatives of December 9, 1876, in relation to the employment of troops in the States of Virginia, South Carolina, Louisiana, and Florida since the 1st of August last. That message has already been read and is printed in the RECORD. Is it desired that the message be

read again f
Mr. WOOD, of New York. I move that the second reading of the message be dispensed with.
Mr. HURLBUT. I object to that, and I call for the reading of the

documents accompanying the message.

Mr. WOOD, of New York. The message has already been read.

Mr. HURLBUT. I want the documents accompanying the message

The SPEAKER. The Chair thinks the demand for the reading of the documents cannot be entertained. The rule provides for the read-

ing of the message.

Mr. BANKS. If the reading of any paper is called for, the question

must be submitted to the House.

The SPEAKER. The Chair will submit the question to the House under Rule 141:

When the reading of a paper is called for and the same is objected to by any member, it shall be determined by a vote of the House.

Mr. HOAR. I desire to inquire if the present occupant of the chair did not the other day rule on this very question, that a document must be read when its reading is called for by any member?

The SPEAKER. The Chair ruled that the message must be read. Mr. HOAR. And that the documents called for must be read. The SPEAKER. The Chair will submit that question to the consideration of the

sideration of the House, for he desires to do what is exactly in order.

Mr. WOOD, of New York. Are not the documents very voluminous and in writing, and would it not take two or three days to read

The SPEAKER. The Chair is unable to say how long it would take to read them; there are three large boxes of documents.

Mr. HOLMAN. I submit that only the reading of the message can

be called for.

The SPEAKER. The Chair is quite willing to submit the question to the House.

Mr. HOAR. I desire to know if the House is not entitled to have

Mr. HOAR. I desire to know if the House is not entitled to have a ruling of the Chair upon the point I have suggested, and whether the Chair did not rule the other day, when this precise question came up, that we were entitled to the reading of the documents?

Mr. WOOD, of New York. The gentleman opposite may be technically entitled to make the call, but I suggest whether they are willing to take the responsibility of interposing purely dilatory motions and calling for the reading of telegraphic messages and details which will take an indefinite period of time, when to-morrow morning they will have the whole thing in print, and when the morning they will have the whole thing in print, and when the message has been read and has been printed in the RECORD.

Mr. HURLBUT. If the gentleman intends to move to print I will

not insist on the reading.

Mr. WOOD, of New York. The printing is included in my resolo-

Mr. HURLBUT. I will hear the resolution read.

Mr. KASSON. I would inquire whether a motion to go into Committee of the Whole upon an appropriation bill would not be in order

The SPEAKER. The Chair thinks not, pending this question. It would have been if it had been a prior motion.

Mr. KASSON. But is it not in order pending this business? I think the rule makes it in order.

The SPEAKER. The Chair would have entertained a motion to go

into Committee of the Whole on the state of the Union, but it was

not and has not been made.

Mr. KASSON. I supposed the gentleman from Indiana [Mr. Hol-Man] desired to make it.

Mr. HOLMAN. The gentleman from New York supposed that the

mr. HOLMAN. The gentleman from New York supposed that the message would be disposed of in a few minutes.

Mr. KASSON. It cannot be, for the reading of these documents will take a large portion of the afternoon.

Mr. HOLMAN. If the documents are to be read, I am satisfied that a great deal of time will be consumed. In that event I shall feel justified in raking a motion to go into Committee the Whole. feel justified in making a motion to go into Committee of the Whole on the state of Union.

Mr. HURLBUT. I desire to call the attention of the Chair to

page 194 of the Manual and to page 97, which is explicit on this ques-

Where papers are laid before the House or referred to a committee, every member has a right to have them once read at the table before he can be compelled to vote on them.

If the Chair will allow me I will refer to a precedent in the Journal, which was cited once before when this question was up.

Mr. COX. To what page of the Manual does the gentleman refer?

Mr. HURLBUT. To page 194 of the Manual and to page 97.

Mr. COX. I call for the reading of the Digest upon page 97, which confirms the Speaker's opinion that the will of the House has to be taken on the reading of a paper. This message has been read. These various accompanying papers cannot be read independently of the will of the House. If the Speaker should submit that question to the House I think it would be decided very promptly and would save much time. much time.

The SPEAKER. The passage on page 147 clearly alludes to the message proper:

All messages from the President are in writing and are sent to the House by his Private Secretary.

And then at the close of the paragraph is the following:

Whenever taken up, messages from the President are always read in extenso.

That would seem to imply that it refers to the message proper, but the Chair is clearly of the judgment that the question should be sub-

mitted to the House, under Rule 141 already cited.

Mr. WILSON, of Iowa. What is it that it is desired to have read?

The SPEAKER. The papers accompanying the message.

Mr. COX. It would take a week.

The question was put upon reading the accompanying papers, and

it was decided in the negative.

Mr. WOOD, of New York. I now submit the following resolution, on which I ask the previous question:

Resolved, That the message of the President, and the accompanying documents, in answer to the resolution of the House, calling for copies of all dispatches, orders, &c., relating to the use of troops in the States of Virginia, South Carolina, Louisiana, and Florida since the 1st of August last, be printed and referred to a select committee of eleven members, with instructions to report whether there has been any exercise of authority not warranted by the Constitution and laws of the United States in the use of the troops in the States referred to within the period stated, for which the President is justly responsible; with power to send for persons and papers, and to administer oaths.

Mr. BANKS. I raise the question of order upon the last clause of that resolution; that is, as to the power to send for persons and papers, not as to the power to administer oaths, which is given by statute. The power to send for persons and papers changes the rules of the House, and under the rules of the House, where a question is pend-ing, no motion can be made except that series of motions with which the Chair is familiar, of which the motion to commit is one. It canthe Chair is familiar, of which the motion to commit is one. It cannot be offered in any other way than simply as a motion to commit or refer, if gentlemen choose that expression.

The SPEAKER. The gentleman from Massachusetts considers that the word "refer" is equivalent to the word "commit."

Mr. BANKS. Yes, sir.

The SPEAKER. It is so held throughout the Manual.

Mr. BANKS. It is. I say that the message cannot be committed with this power given to the committee without a change of the rules or a motion to suspend the rules.

or a motion to suspend the rules.

Mr. WOOD, of New York. I will hear the judgment of the Chair before submitting some remarks in reply to the gentleman from Massachusetts

The SPEAKER. The Chair would prefer to hear anything the gen-

tleman has to say upon that point before making his ruling.

Mr. WOOD, of New York. I desire to say that the gentleman from

Massachusetts [Mr. Banks] has for the first time raised this question;
it is the first time within my experience that it has been raised in

it is the first time within my experience that it has been raised in this House. Almost every resolution under which an investigation has been ordered by the House during this Congress has included these precise words, and by a majority vote those resolutions have been adopted, no gentleman raising this question of order upon them. Mr. BANKS. The gentleman will allow me to express the opinion that he is mistaken in regard to the practice of the House. In my opinion the practice, where this special power to send for persons and papers is asked, is for a committee to come into the House with the declaration that evidence is required which cannot be obtained the declaration that evidence is required which cannot be obtained without this order; and then unanimous consent being asked for the without this order; and then unanimous consent being asked for the granting of this power, it is very rarely or never refused. But to grant it without any suggestion of its necessity or of the use to which it is to be put is something which has never been conceded by any House; and such a proposition cannot be in order under the rule regulating the series of questions which may be propounded to the House in a matter of this kind, the motion to commit being one. Mr. WOOD, of New York. During the present Congress more committees of investigation have been constituted than during any prior Congress; and I ask the gentleman whether in any case where a resolution has been presented for the institution of inquiry by a committee, a resolution containing precisely this same language, any gentleman has raised a question of order upon it?

Mr. BANKS. These resolutions of inquiry have in many cases been pressed upon the House in such a way that members who did not approve them did not object. I have not approved them myself; but I have not made objection. But I say at this time that we have had enough of them. I do not object to a special committee upon this President's message if gentlemen ask it; and if the gentleman from New York, as chairman of this committee, or any other man, shall be reafter report that information necessary for the House is in New York, as chairman of this committee, or any other gentleman, shall hereafter report that information necessary for the House is in existence and cannot be obtained without these powers being granted to the committee, I do not think anybody will object. But until that is done I must insist upon an adherence to the rules of the House.

Mr. WOOD, of New York. If almost any other gentleman than my friend from Massachusetts had raised this question of order, placing it upon the ground that he does, I should have strongly suspected that there was some motive in preventing this proposed com-

pected that there was some motive in preventing this proposed committee of investigation from sending for persons and papers. The gentleman tells us that if this committee shall find that they cannot gentleman tells us that if this committee shall find that they cannot procure certain testimony or certain papers they can then report the fact to the House, which will probably give them the necessary power. Now we all know that almost every hour of the time of the House up to the 4th of March is pre-occupied by special orders, by appropriation bills, and by the pending proposition with reference to counting the electoral vote. Hence this committee, deprived of the right to report at any time, which I have consented to, will find it almost impossible to get an opportunity to present to the House the request for these powers. Hence I am obliged to suppose that there must be some motive or some reason why some gentlemen—I do.not intend to apply this personally to my friend from Massachusetts—are desirous that this committee shall be deprived of an opportunity to make a full, fair, and free investigation.

Mr. WILSON, of Iowa. I raised this same point when the message was read the other day purely out of a desire to keep the gentleman

was read the other day purely out of a desire to keep the gentleman from New York straight in the traces. [Laughter.] Now, when he speaks about the difficulty of reporting to the House, he should remember that the resolution does not give him power to report at any time; and any report which he may make asking this power must come in under a suspension of the rules or by unanimous consent.

It will be well for the Chair to consider before making his decision

It will be well for the Chair to consider before making his decision the extent of the power proposed to be conferred. The power to send for persons and papers goes to the extent of taking any member out of his seat or from committee service or any other business in which he may be engaged. Hence, I am inclined to believe with the gentleman from Massachusetts, that it requires a suspension of the rules to give the committee power to send for persons and papers, as well as

Mr. KASSON. If the Chair will allow me, I wish to say that the last clause of the resolution is not only unnecessary, but it changes the character of the committee in two respects. First, it proposes to confer by a mere resolution the power to administer oaths; but that power is already provided for by statute. The other point is that the resolution does not propose to refer the subject to such a committee as can be created under the rules and without a suspension of them. as can be created under the rules and without a suspension of them. I agree in part with the previous ruling of the Chair upon this point; but it will be observed that this is a proposition to create a committee of investigation, and that is certainly not in order under the rules pending the other orders of the House. I am inclined to think that the gentleman from New York has the right to include in the reference the creation of a select committee as suggested by the Chair, under the general rule as to the selection of committees in a certain order. But this is not now a more motion of reference. It becomes order. But this is not now a mere motion of reference. It becomes an independent motion to create a new committee of the House called an investigating committee, and to give this committee powers which do not belong to ordinary select or standing committees. I simply make these remarks in support of the point made by the gentleman from Massachusetts.

from Massachusetts.

Mr. HOAR. I desire to address myself distinctly to a reply to the suggestion of the honorable gentleman from New York, that there must be some motive on the part of members who object to endowing this investigating committee with power to send for persons and papers. There is such a motive. My motive is that it does not seem to me a decent thing in the relations of the different departments of the Government to propose to inquire into the action of the President or any of the Departments through the mode of sending for persons and papers by a committee of this House until the ordinary, respectful, proper mode of asking for information has been tried and exhausted. I do not deny there may be cases looking to an impeachment, looking proper mode of asking for information has been tried and exhausted. I do not deny there may be cases looking to an impeachment, looking by an investigation to the prevention of abuses in the public service, in which this mode of approaching the subject would be proper and courteous and the duty of the House, if the resolution should be offered and passed within its rules.

But it does seem to me, Mr. Speaker, that it is for the interest of all parties in this Government alike that the courtesies, the etiquette, the proprieties which attend our official life, should be preserved where it can be done without sacrificing the essentials of truth, and

that it is not wise to introduce elements which create and excite an-

tagonism.

Now, here is a question of what has been the constitutional action of the President of the United States in what I conceive is a very grave and important particular. It seems to me if there is any person who knows any specific fact the proper legal constitutional method is to ask for it, and if the President gives the House the fact that is all; if he says he cannot give it to us without a violation of the public interest, then consider whether that answer is on the whole satisfactory or not. The question will then come up whether an application of this kind will be proper. That is my opinion.

The SPEAKER. The Chair desires to read from the Manual, page 59, in connection with this point:

A motion to commit may be amended by the addition of instructions

Mr. BANKS. Certainly.

The SPEAKER-

Also by striking out one committee and inserting another.

That is found decided in various places in the Journals of the House. A division of the question is not in order on a motion to commit with instructions, or on the different branches of instructions.—Journals, 1, 17, page 507; 1, 31, pages 1395, 1397; 1, 32, page 611.

And further on in the Manual it is stated that, "on a motion to commit, the whole question is open to debate," and therefore open to

instructions and open to amendments.

The Chair thinks the House, having the power to commit a subject to a committee, has the power to instruct such committee how they shall proceed, and the Chair, if he had time, thinks he could show many instances of such action by the House.

The question as to the right to report at any time is a very different one, because the question of the right to report at any time changes the order of committee reports and interferes with the rights of committees in that respect. Therefore he held that the rule of the House which recognizes the order of reports from committees would be interfered with by permitting a special committee to report at any time, and such change of the rule would require a suspension of the

The Chair overrules the point of order raised by the gentleman from Massachusetts [Mr. Banks] that it is not within the power of the House to commit with instructions.

Mr. Banks. I ask for a vote of the House on that question.

The SPEAKER. That is the right of the gentleman from Massachusetts

Mr. BANKS. I take an appeal from the decision of the Chair.
The SPEAKER. The gentleman will submit his appeal in writing.
Mr. COX. I move to lay that appeal upon the table.

Mr. BANKS. I beg your pardon; I have the floor and desire to be heard.

The SPEAKER. The gentleman will submit his appeal in writing.

Mr. BANKS. The Clerk will take it down, that I take an appeal from the decision of the Chair.

Now, Mr. Speaker, it is not often, and never with my own choice, I trouble the House on questions of this kind.

The gentleman from New York [Mr. Wood] has suggested certain

The gentleman from New York [Mr. Wood] has suggested certain motives which are possible in reference to this matter. For myself, I have no personal motives. I object to this extension of the power of the committee, because it is an abuse of power for which no cause is assigned. Under this power, the committee, if it shall be appointed, can send all over the United States for information, and it can bring individual after individual here in troops, and when they are here monopolize the time and attention of the House. Everything connected with their presence and applications is a question of privilege, and if there is to be an end to this session to which the gentleman refers, the House may see the defeat of its appropriation bill and all the great, important matters connected with the presidential election. election.

It is upon this ground, first, that it is an abuse of power, absolute and unlimited, for which there is no cause assigned, and, then, that it may, in the natural course of things, take up the time of the House, which, at this stage of the session, is of absolute and, lasting importance to the House.

In reference to the suggestion of the Chair that it is competent for the House to commit a measure with instructions, I have this to say: that the instructions must relate to the bill or the question or the matter which is to be committed. No instructions are given to any committee except in reference to the bill or measure committed to it. If the Chair takes time to consider he will see the necessity of this interpretation of the rule, which requires the instructions to relate to the measure committed.

The SPEAKER. The gentleman from Massachusetts will allow the

Chair to direct his attention to Rule 47, which provides that "motions and reports may be committed at the pleasure of the House."

Mr. BANKS. I know it. I am perfectly familiar with that rule, that they may be committed at any time at the pleasure of the House, but they are committed under the rules of the House, and the rules of

the House cannot be changed except by suspension of the rules.

Mr. WOOD, of New York. Is this appeal debatable? If it is, I desire to reply to the gentleman from Massachusetts.

Mr. BANKS. The gentleman from New York will have an oppor-

tunity to reply, no doubt.

Mr. WOOD, of New York. Is the appeal debatable?
The SPEAKER. It is. The gentleman from Massachusetts is

speaking in his right.

Mr. BANKS. The privilege of the House to commit reports or measures at any time is one that is known to every member of the House, and is never contested. If the House chooses to give instruc-tions as to the mode of committing the measures, it can do so; but those instructions always have reference to the matter committed. Now, this motion to confer authority, to send for persons and papers, has no reference to the matter committed. It affects the powers of the committee. It has no other object and effect than that. But those powers are established by the rules of the House, and cannot be

changed at this time without unanimous consent.

I trust the Chair will not, under this construction of the rules of the House in regard to instructions that may be given to a committee, give the House at any time the power to confer upon committees, the right to send—to any extent, without any limit, for any purpose whatever—for persons and papers.

I now yield to the gentleman from Maine, [Mr. HALE, ] who desires to address the Chair on this question.

to address the Chair on this question.

Mr. HALE. I want to appeal to the gentleman from New York, if he will give me his attention for a moment—

The SPEAKER. The Chair desires to suggest to the gentlemen that they speak to the question of appeal.

Mr. HALE. I will endeavor to do that. It is on this point of the extensive powers that are sought to be lodged in this committee that the point of order as I understand arises. Now the gentleman from New York should bear in mind that the origin of this matter was an inquiry of the President which the President has respectfully and the president

New York should bear in mind that the origin of this matter was an inquiry of the President, which the President has respectfully answered. He has held back nothing. He has sent in the message read, with all the accompanying documents, very voluminous; embracing many papers, many orders, many reports. Now is it a good thing to do if the gentleman wants more—

The SPEAKER. The Chair would suggest to the gentleman from Maine that that is not an argument upon the appeal. It is an argument upon the question of policy in passing the resolution.

Mr. HALE. I was about coming to this very point of the extended power. The gentleman from New York himself does not know—these documents are sealed; that is, they are closed up; they are sent in here in large boxes—he does not know but everything that he desires has been sent in here by the President of the United States until he has found on perusal as they are ordered to be printed, or may be that more is wanted from the Executive than he has sent. The gentleman, from his long experience, must know that it is hardly courteous to the head of the Executive branch of the Government to appoint a committee, giving it power to send for persons and papers, when everycommittee, giving it power to send for persons and papers, when everything has been answered. Would the gentleman go on and summon officers of the Army who have acted under the order of the President, who is the Commander-in-Chief? How does he know that he needs more information upon that than the papers themselves afford? Does

the gentleman want to go on and insist upon this committee with these extra powers in this condition of affairs?

Mr. WOOD, of New York. I only wish to say a word or two in reply to the gentleman from Massachusetts and the gentleman from Maine. The gentleman from Maine is entirely accurate in his statement that we have a large quantity, I do not know how many, of sealed packages. We do not know what they contain; we do not know what they purport to be or will be upon examination, and we cannot tell whether it would be necessary for that committee to exercise and use the power which this resolution proposes to give them. That is quite true. But, sir, the gentlemen appeared to assume that it is the design of this committee to do something that will be offensive to the dignity of the President of the United States. I can assive to the dignity of the Fresident of the United States. I can assure those gentlemen that if that is their apprehension, so far as I am concerned, if I shall have the honor to be a member of that committee, I have no such intention. The Executive has been treated with the greatest respect by this House upon this whole question. We have not exercised what, in my judgment, was our just prerogative in calling the Executive to account for these alleged military interferences on the very first day of this session. But, sir, when a resolution of inquiry waterially not find at the prescript that resolution of inquiry, materially modified at the suggestion of these gentlemen, was adopted by the House the President waited forty days before he sent in a reply. And if we are forced at the end of the session to be crowded into a few days in which to investigate and report upon the most important question to-day before the American people, higher in my judgment than that which relates to the election of a temporary Executive for four years, the President and his friends here are responsible, and not myself and others on this side of the House.

We do not intend to commit any disrespect to the President or to any other person, but we do not want to be obstructed in a fair and full investigation, so that, if it be true that there has been any violation of the Constitution and laws of the United States in ordering troops into the Southern States to interfere with the election, to interfere with the organization of the State Legislatures, we may be enabled to place upon the archives of the Government our condemnation of those acts which are contrary to the theory and genius of our institutions. That is what I desire to do and what I think gentle-

institutions. That is what I desire to do and what I think gentlemen on this side of the House desire to do.

Mr. HALE. It is not a question of what the committee want to do; that is not the point. It is the act of the House in appointing a

special committee to inquire into this matter when the President has

done all the House asked him to do.

Mr. WOOD, of New York. When the committee reports, if they perpetrate any wrong, it will be time enough for the gentleman to

complain.

omplain.

Mr. WATTERSON. In continuation and explanation of the closing remarks made by the gentleman from New York, [Mr. Wood] and in response to those made by the gentleman from Massachusetts [Mr. Hoar] and the gentleman from Maine, [Mr. Hale,] I wish to say that, in the early part of the present session, when there was time for impeachment, the majority on this floor declined to institute so much as an inquiry looking to that end. They declined at the instance and request of those who are described by the republican journals as the confederate brigadiers. We did not doubt that the President was impeachable. But, as he had befriended us in time of need, we took that method of paying the debt. In other words, in his hour of need we simply declined to prosecute. I submit therefore that the refusal of his apologists and defenders to sanction a modest and proper search after that comes at this time in exceeding bad grace.

refusal of his apologists and defenders to sanction a modest and proper search after that comes at this time in exceeding bad grace.

The SPEAKER. The Chair does not desire that the House shall wander from the question before it. It is not a question of public policy, nor is it a question of political propriety. The question before the House is simply this: an appeal is taken from the decision of the Chair, which is, that it is within the power of the House to instruct a committee in connection with a reference.

Mr. HURLBUT. O, no.

Mr. BANKS. I made no such question as that

Mr. BANKS. I made no such question as that.

The SPEAKER. The gentleman from Massachusetts [Mr. BANKS] questioned the right of the gentleman from New York [Mr. Wood] to embrace in his resolution certain matters, which in the opinion of the Chair, are instructions from this House. This is a very simple matter. Rule 47 states that "Motions and reports may be committed at the pleasure of the House." Further, the Journals of the House, in at the pleasure of the House." Further, the Journals of the House, in almost every part of them, show a uniformity of decision that a motion to commit may be amended by the addition of instructions. In the Journals of the House of Representatives are to be found decisions to this effect; a division of the question is not in order on a motion to commit with instructions or on the different branches of the instructions. The Chair therefore entertains the resolution of the gentleman from New York, [Mr. WOOD,] not only as in order under Rule 47, but as in accordance with the uniform practice and decisions of the House. The question before the House is, Shall the decision of the Chair stand as the judgment of this House?

Mr. COX. I move to lay the appeal on the table.

Mr. BANKS. I ask for the yeas and nays on that question.

The yeas and nays were ordered.

Mr. BANKS. I desire—

The SPEAKER. The motion to lay on the table is not debatable.

Mr. BANKS. I desire—

The SPEAKER. The motion to lay on the table is not debatable.

Mr. BANKS. I desire that the question shall be stated to the House, that I appeal from the decision of the Chair that the request for per-

mission to send for persons and papers is in order at this time.

Mr. MILLS. I ask that the gentleman from Massachusetts [Mr. Banks] shall reduce his appeal to writing, in order that we all may know what it is.

The SPEAKER. The gentleman from Massachusetts will reduce

The SPEAKER. The gentleman from Massachusetts will reduce his appeal to writing.

Mr. BANKS. I have done so. I appeal from the decision of the Chair just given, that the resolution of the gentleman from New York [Mr. WOOD] with the power included therein to send for persons and papers is in order at this time.

The SPEAKER. The Chair did decide, and he again decides, that the propositions embraced in the resolution of the gentleman from New York are in the nature of instructions and are in order.

Mr. COX. Lwithdraw my motion to law the appeal upon the table.

Mr. COX. I withdraw my motion to lay the appeal upon the table

for the purpose of saying one word.

Mr. PAGE. I object; that cannot be taken without the consent of the House.

Mr. FORT. The yeas and nays have been ordered upon that mo-

Mr. COX. We allowed your side to debate this question; I have not said a word.

Mr. CONGER. The yeas and nays have been ordered upon this

The SPEAKER. The call of the roll has not been begun, and the gentleman has the right to withdraw his motion.

gentleman has the right to withdraw his motion.

Mr. COX. I withdraw the motion to lay the appeal on the table. I merely wish to call the attention of the House to the importance of this power to send for persons and papers. Having been on a committee which had the power of investigation without the power to send for persons and papers, the committee were more or less embarassed in the discharge of their duties.

After looking over the authorities, my best impression is that any order of this House for investigation implies the right to send for persons and papers. I know it is customary to add to these resolutions the words "with power to send for persons and papers." But when the gentleman from Massachusetts [Mr. Hoar] and others make the point that it is indecent on the part of the Honse to question the Executive as to his military orders, or to inquire into their propriety priety— Mr. HOAR. O, no.

Or something to that effect.

Mr. HOAR. The gentleman will pardon me. I stated that to approach such an inquiry without first making the request of him was

very indecent.

Mr. COX. I think the indecency would come in when the inquiry Mr. COX. I think the indecency would come in when the inquiry was answered. But all I desire to say, before I renew the motion to lay this appeal on the table, is that the resolution of my colleague [Mr. Wood] (striking out of it the right for this committee to report at any time, which has been done) is in perfect order, and this House will do itself but justice as a parliamentary body by laying the appeal on the table. I now renew the motion to lay the appeal on the table. Mr. BANKS. I hope the gentleman from New York [Mr. COX] will allow me to say a word about this latter branch of discussion.

The SPEAKER. The gentleman has already spoken on the appeal. Mr. BANKS. The gentleman from New York [Mr. COX] I hope will withdraw his motion to lay the appeal on the table.

The SPEAKER. The gentleman from Massachusetts [Mr. BANKS] asks consent of the House to be allowed to speak a second time on this appeal.

this appeal.

Mr. BANKS. I do not ask any such thing.
Mr. COX. I have no objection to withdrawing the motion.
Mr. BANKS. If the Chair decides that no member of this House shall speak a second time to any question, I have no objection to sub-

mitting equally with other members.

The SPEAKER. The Chair desires to have read—
Mr. BANKS. I know the rule perfectly well. If it is to be enforced, let it be enforced upon others as well as upon me.

The SPEAKER. There is no occasion for any warmth about this

matter. Mr. BANKS.

Mr. BANKS. Well, that depends. [Laughter.]
The SPEAKER. It will depend upon the gentleman himself and not upon the Chair. The Clerk will read Rule 2.

The Clerk read as follows:

2. He [the Speaker] shall preserve order and decorum; may speak to points of order in preference to other members, rising from his seat for that purpose; and shall decide questions of order, subject to an appeal to the House by any two members; on which appeal no member shall speak more than once, unless by leave of the House.

The SPEAKER. The Chair, while obeying the rule, was desirous to give the gentleman the opportunity to speak twice.

Mr. BANKS. I do not wish to have that question put to the House. The SPEAKER. The action of the Chair was in the direction of extreme courtesy to the gentleman from Massachusetts.

Mr. BANKS. If I have not the right to speak, I do not ask to have the privilege given to me by a vote of the House.

The question was taken; and there were—yeas 146, nays 79, not voting 65: as follows:

voting 65; as follows:

The question was taken; and there were—yeas 146, nays 79, not voting 65; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Burchard, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cowan, Cox, Culberson, Cutler, Davis, Dibrell, Durand, Durham, Eden, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Faller, Gause, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hooker, House, Humpbreys, Hunton, Hurd, Frank Jones, Thomas L. Jones, Knott, Lamar, George M. Landers, Le Moyne, Lewis, Lynde, Mackey, Maish, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, O'Brien, Payne, John F. Philips, Piper, Poppleton, Potter, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Watterson, Ernstu Wells, Whitthorne, Wike, James Williams, Fernando Wood, Yeates, and Young—146.

NAYS—Messrs, Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Caswell, Conger, Crounse, Danford, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Foster, Freeman, Frye, Garfield, Haralson, Benjamin W. Harris, Hahorn, Hendee, Henderson, Hoge, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Kasson, Kelley, Kimball, Leavenworth, Magoon, McCrary, McDill, Millier, Morroe, Nash, N

So the appeal from the decision of the Chair was laid on the table.

During the roll-call the following announcements were made:
Mr. VANCE, of North Carolina. My colleague, Mr. Ashe, is detained at home by illness.

Mr. HARTRIDGE. My colleague, Mr. Cook, is detained from the

these papers.

House by sickness.

The result of the vote was announced as above stated.

Mr. WOOD, of New York. I demand the previous question.

Mr. BANKS. I hope the gentleman from New York will allow an amendment to the resolution so as to provide for the printing of

The previous question was seconded and the main question ordered; which was upon the adoption of the resolution. Mr. HOAR. I call for the yeas and nays.

Mr. WOOD, of New York. That is already in the resolution.

The yeas and nays were ordered.

Mr. BANKS. I did not see it.

The question was taken; and there were-yeas 134, nays 76, not voting 80; as follows:

The question was taken; and there were—yeas 134, nays 76, not voting 80; as follows:

YEAS—Messrs. Abbott, Ainsworth, Atkins, Bagby, John H. Bagley, Jr., Banning, Beobe, Blackburn, Bliss, Bloant, Bradford, Bright, John Young Brown, Bnckner, Cabell, John H. Caldwell, William P. Caldwell, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, Clymer, Cochrane, Cowan, Cox, Culberson, Cutler, Davis, Dibrell, Durand, Durham, Eden, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harris, Ohr, Harris, H

So the resolution was adopted.

Mr. WOOD, of New York, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. HUBBELL. I move that the House adjourn.

The motion was agreed to; and accordingly (at four o'clock and fifty minutes p. m.) the House adjourned.

### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BLACKBURN: The petition of W. C. P. Breckinridge and other citizens of Kentucky, that no innovation or novel expedient be resorted to in counting the electoral vote, but that the precedents of Congress be allowed to have force and control, which are unpartisan in their nature and which were adopted and acted upon at a time when Congress, free from party influence, gave mature and fair expression to their conviction of the sense and intent of so much of the Constitution as applies in the case, to the committee on the powers and duties of the House of Representatives in counting the vote for President and Vice-President of the United States.

By Mr. DENISON: The petition of J. M. Stevens and other citizens

of East Hardwick, Vermont, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. CANNON, of Illinois: The petition of John Underwood and others, of Macon County, Illinois, of similar import, to the same com-

By Mr. HAMILTON, of New Jersey: The petition of citizens of Sussex County, New Jersey, that pensioners be paid from the date of their discharge from the Army, to the Committee on Invalid Pensions. By Mr. HARRIS, of Massachusetts: The petition of M. S. Stetson and other citizens of Abington, South Abington, and Rockland, Massachusetts, for the repeal of the bank tax, to the Committee of Ways and Manne. and Means

By Mr. LEAVENWORTH: The petition of Matilda Joslyn Gage, of New York, for a removal of her political disabilities, and that she may be declared invested with full powers to exercise her rights of self-government at the ballot-box, all State constitutions and statutes

self-government at the ballot-box, all State constitutions and statutes to the contrary notwithstanding, to the Committee on the Judiciary. By Mr. MACKEY: The petition of B. B. Comegys, A. J. Drexel, John C. Bullitt, Edwin M. Lewis, and 75 other citizens of Philadelphia, without distinction of party, for the passage of the presidential electoral bill, to the committee on counting the electoral vote. Also, the petition of Alexius and Thorvald Lundquist, for the adoption by the Post-Office Department of their post-office letter-boxes, to the Committee on the Post-Office and Post-Roads.

By Mr. MAGINNIS: The petition of citizens of Montana, for cheap

By Mr. MAGINNIS: The petition of citizens of Montana, for cheap telegraphy, to the same committee.

By Mr. McFARLAND: The petition of 203 citizens of Washington County, Tennessee, for the establishment of a post-route from Carter's Depot to Fall Hill, Tennessee, to the same committee.

By Mr. O'NEILL: Resolutions of the Board of Trade of Philadelphia, Pennsylvania, unanimously indorsing the bill reported by the joint committee on counting the electoral vote for President and Vice-President, to the committee on counting the electoral vote.

Also, the petition of citizens of Philadelphia, for the passage of the same bill, to the same committee.

By Mr. McGPNIETON: The petition of L.R. Lytle, J. H. Humphreys.

By Mr. POPPLETON: The petition of J.R. Lytle, J. H. Humphreys, J. H. White, and 25 other citizens and soldiers of Delaware County, Ohio, that pensioners be paid arrears of pension from the date of their discharge from the Army, to the Committee on Invalid Pen-

Also, the petition of Francis W. Morrison, Samuel Wells, and 32 other citizens and soldiers of Delaware County, Ohio, of similar im-

port, to the same committee.

By Mr. SWANN: Resolutions of the Board of Trade of Baltimore,

favoring the repeal of the oppressive tax on banks, to the Committee on Banking and Currency.

By Mr. THROCKMORTON: Papers relating to the claim of John Stroud, for compensation on account of depredations by Kiowa In-

dians, to the Committee on Indian Affairs.

By Mr. VANCE, of North Carolina: The petition of W. H. Jones and others of North Carolina, for cheap telegraphy, to the Committee

on the Post-Office and Post-Roads.

Also, the petition of J. T. C. Hood and other citizens of North Carolina, for a post-route from Lenoir to Collettsville, North Carolina,

to the same committee.

Also, a paper relating to the appointment of a special messenger for the folding-room of the House of Representatives, to the Committee of Accounts.

# HOUSE OF REPRESENTATIVES.

THURSDAY, January 25, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND

The Journal of yesterday was read and approved.

### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced the passage of an act (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D., 1877; in which the concurrence of the House was requested.

### PERSONAL EXPLANATION.

Mr. HOOKER rose.

The SPEAKER. For what purpose does the gentleman rise?
Mr. HOOKER. For the purpose of making a personal explanation in reference to a vote given on yesterday in this House.
The SPEAKER. There being no objection the gentleman will

state it.

Mr. HOOKER. I will state, Mr. Speaker, that when the vote was taken on the resolution offered by my honorable friend from New York [Mr. Wood] my name was called as I entered the Hall just as the list of members was about being finished, and I inadvertently cast my vote in the affirmative, forgetful of the fact that I had made arrangement with the honorable gentleman from New York [Mr. MacDougall] to pair with him during yesterday on all political questions. I therefore ask unanimous consent of the House that my name may be withdrawn from the list in the affirmative, and I may be reported in the Record as saying, during the roll-call on that

name may be withdrawn from the list in the affirmative, and I may be reported in the Record as saying, during the roll-call on that vote, that I had paired on that occasion with the gentleman from New York, [Mr. MacDougall,] who would have voted in the negative, while I would have voted in the affirmative.

Mr. HOAR. I suppose, as it makes no difference in the result, the statement made by the gentleman puts him right upon the record, and that nothing further need be done. But it seems to me there is a constitutional difficulty in ever giving the consent of the House to do something that will amount to a change of the Journal which we are required to keep. That objection was sustained two or three Congresses ago in a like case. However, as the gentleman has made his statement which goes into the Record, perhaps nothing need further be done.

Mr. HOOKER. In all probability the gentleman from Massachu-Mr. HOOKER. In all probability the gentleman from Massachnsetts is right. My only desire was to correct the inadvertence into
which I fell in voting yesterday so far as it could be done, and perhaps the explanation which I have already made is sufficient if the
RECORD of to-day will show the fact just as I have stated it.

Mr. MacDOUGALL. The fact will be spread upon the record on
the statement made by the honorable gentleman from Mississippi;
and I have only to add that it is perfectly satisfactory to me.

The SPEAKER. The gentleman's statement of course will go into

the RECORD. In reply to the gentleman from Massachusetts the Chair will state that the Constitution says the yeas and nays shall be entered on the Journal on the demand of one-fifth of those present.

Mr. HOAR. It is a constitutional direction to keep a journal. Now, if the Journal shall be permitted to assert what was not the fact of actual occurrences yesterday, by the withdrawal of the vote given by the gentleman from Mississippi, then we will not have a correct journal of yesterday's proceedings. The Journal will merely state what was desirable to have go upon the record, and not what actually occurred. ally occurred.

The SPEAKER. The Journal of to-day as read and approved is

orrect as to the transactions of yesterday.

Mr. HOAR. I understand that unanimous consent is asked by the gentleman from Mississippi to withdraw from the Journal the record of a vote given yesterday.

The SPEAKER. Does the gentleman from Massachusetts state that

unanimous consent cannot be given for that purpose?

Mr. HOAR. Yes, sir; that is, I do not say unanimous consent cannot be given, but that it would be a violation of the sworn duty of

the House to keep a journal of its proceedings.

The SPEAKER. The Chair thinks the object of the gentleman from Mississippi has been reached, and that the point of honor which he has properly raised has been fully satisfied by the statement which he has made in the presence of the House.

#### CORRECTION OF THE JOURNAL.

Mr. HOLMAN. I voted in the affirmative on the resolution submitted by the gentleman from New York, [Mr. Wood,] but I am recorded as not voting. As it does not affect the result, I ask that my vote be recorded.

The SPEAKER. There being no objection, the gentleman's vote will be recorded in the Journal and in the RECORD in the affirmative.

There was no objection, and it was ordered accordingly.

#### MARY A. SECOR.

Mr. BLISS, by unanimous consent, introduced a bill (H. R. No. 4533) for the relief of Mary A. Secor, as executrix of Zeno Secor; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

#### ESTATE OF S. H. HILL.

Mr. HARRIS, of Georgia, by unanimous consent, introduced a bill (H. R. No. 4534) for the relief of the estate of S. H. Hill, of Columbus, Muskogee County, Georgia; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## HARBOR OF REFUGE, OHIO RIVER.

Mr. JONES, of Kentucky, by unanimous consent, submitted the following resolution; which was referred to the Committee on Commerce:

Resolved, That the Secretary of War be requested to report upon the expediency and utility of constructing a harbor of refuge in the Ohio River in what is known as "Mill Bottom," above Newport, on the Kentucky shore, and opposite the city of Cincinnati.

### WARREN MITCHELL.

Mr. MILLIKEN, by unanimous consent, introduced a bill (H. R. No. 4535) for the relief of Warren Mitchell; which was read a first and second time, referred to the Committee of Claims, and ordered

### CREEK ORPHAN FUND.

Mr. VANCE, of North Carolina, by unanimous consent, introduced a bill (H. R. No. 4536) to transfer to the Secretary of the Treasury all stocks and evidences of indebtedness due and held in trust by the Secretary of the Interior on account of the Creek orphan fund; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

### SPECIAL MESSENGER, FOLDING-ROOM.

Mr. VANCE, of North Carolina, also, by unanimous consent, submitted a resolution to appoint a special messenger for the folding-room; which was referred to the Committee of Accounts.

### ROBERT H. MILROY

Mr. HAYMOND, by unanimous consent, introduced a joint resolution (H. R. No. 186) for the relief of Robert H. Milroy, late superintendent of Indian affairs of Washington Territory; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

## METRIC SYSTEM OF WEIGHTS AND MEASURES.

Mr. O'BRIEN, by unanimous consent, submitted the following resolution; which was read, considered, and adopted:

Resolved. That the Secretary of the Treasury be requested to report to Congress as to the feasibility of providing by law that the system of weights and measures known as the metric system be exclusively used in the assessment of duties for the customs service of the United States, and also to indicate the earliest date from and after which such provision if considered by him feasible may in his opinion properly go into effect.

Mr. O'BRIEN moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### COUNT OF ELECTORAL VOTE.

Mr. WHITING. I ask that the resolution of the Peoria Board of Trade, which I send to the desk, may be read and printed in the RECORD.

There being no objection, the resolution was read, as follows:

The following resolution was this day adopted by the Peoria Board of Trade, with directions to be forwarded to you by telegraph:

\*Resolved\*\*, That the report of the joint committee recommending a plan for counting the electoral vote is a wise and just one, honorable to both parties, and that we as members of the principal commercial organization of Central Illinois heartly indorse the same, and respectfully request our Senators and Members in Congress to use all their influence for its adoption.

\*\*SAMUEL WILKINSON.\*\*

SAMUEL WILKINSON, Secretary Peoria Board of Trade.

The resolution was ordered to lie on the table.

#### SAMUEL B. ROBERTSON.

Mr. ROBINSON, by unanimous consent, introduced a bill (H. R. No. 4537) granting a pension to Samuel B. Robertson, late a second lieutenant in Company B, Seventieth Indiana Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### THOMAS DILL.

Mr. ROBINSON also, by unanimous consent, introduced a bill (H. R. No. 4538) granting a pension to Thomas Dill, late a private in Company B, One hundred and twenty-fourth Regiment Indiana Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### SECTION 833 OF REVISED STATUTES.

Mr. DURHAM, by unanimous consent, introduced a bill (H. R. No. 4539) to amend section 883 of the Revised Statutes of the United States; which was read a first and second time, referred to the Committee on Expenditures in the Department of Justice, and ordered to be printed.

#### A. B. STEINBERGER.

Mr. FAULKNER, by unanimous consent, from the Committee on Foreign Affairs, reported the following resolution; which was read, considered, and adopted:

Resolved. That the President of the United States be requested, if not incompatible with the public interest, to communicate to this House all dispatches, letters, reports, and other papers not already communicated under a previous call, connected with the agency and residence of A. B. Steinberger in the Samoan Islands

Mr. FAULKNER moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### WITHDRAWAL OF PAPERS.

On motion of Mr. BLAND, by unanimous consent, leave was given to Mrs. Helia A. Cooksey, of Dent County, Missouri, to withdraw from the files of the House the discharge papers of the soldier Cooksey, her late husband.

## ORDER OF BUSINESS.

Mr. GOODIN. I call for the regular order.
Mr. CONGER. I ask leave to withdraw the papers in the case of
Augustus Sprague, being a soldier's discharge.
Mr. COX. I call for the regular order.

## COUNTING OF THE ELECTORAL VOTE.

Mr. PAYNE addressed the Chair. The SPEAKER. For what purpose does the gentleman from Ohio

Mr. PAYNE. I rise to ask unanimous consent that the House proceed to business on the Speaker's table for the purpose of taking there-from the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, in order that it may be referred to the select committee on counting the electoral vote.

Mr. HALE. Let me suggest to the gentleman from Ohio, if he is ready, as probably the House is, to go on with this important matter, that, instead of taking up the Senate bill to be referred to the committee, he should ask to take up the Senate bill for action. I believe no change was made in the bill during its consideration by the Senate. If the gentleman accepts that suggestion, the bill may be taken up for consideration at once, and the gentleman will not have to assemble his committee in order to report it back to the House. If the gentleman makes that proposition I think there will be no objection to it.

The SPEAKER. The Chair desires to say that if the bill is referred, the committee having the right to report at any time, the Chair would feel bound to recognize the chairman of the committee when-

ever he desired to report it. Mr. HALE. Undoubtedly. But it would take some little time. The committee perhaps would have to meet, and there would be nothing gained by the reference. If the gentleman asks permission to take up the bill and bring it before the House for consideration at once I believe there will be no objection. I suppose the gentleman wants to get it before the House,

Mr. McCRARY rose,

Mr. PAYNE. If referred, the committee will instantly report the bill back to the House.

Mr. McCRARY. I rose for the purpose of making that statement.

Mr. McCkary. I rose for the purpose of making that statement.
Mr. HALE. Suppose something else should intervene?
Mr. PAYNE. It will be reported back instantly.
Mr. HALE. Very well.

Mr. LAWRENCE. I hope that will not be done, but that the Honse will proceed with the regular order, which is the consideration of the report of the committee on the powers, privileges, and duties of the House in regard to counting the electoral vote.

The SPEAKER. That is the regular order; but it is competent for the House by a majority to postpone it.

for the House by a majority to postpone it.

Mr. CONGER. Before giving consent to the proposition of the gentleman from Ohio, [Mr. PAYNE,] the chairman of the committee, I would like to inquire what course he proposes in regard to the dis-

Mr. COX. What is the point of order?

The SPEAKER. There is no point of order. The gentleman from Ohio [Mr. PAYNE] asks unanimous consent to take the Senate bill from the Speaker's table for reference.

Mr. COX. Is there any objection to that?

The SPEAKER. The gentleman from Maine [Mr. HALE] rose to suggest another mode of reaching the same object.

Mr. HALE. My object was to hasten the consideration of the

The SPEAKER. The gentleman from Ohio [Mr. LAWRENCE] now seems to object. The Chair would like to know whether he does or

Mr. LAWRENCE. If I can have an opportunity to speak to the bill when reported I am perfectly willing—
Mr. COX. I object to debate. If unanimous consent is not now given, the gentleman from Ohio [Mr. PAYNE] can move at the end of the morning hour to proceed to business on the Speaker's table.

The SPEAKER. The gentleman from Ohio, [Mr. PAYNE,] recognized as having charge of the bill, desires that the manner of treatment he has indicated shall be adopted, and the Chair is asking unanimous consent for that nursose.

inous consent for that purpose.

Mr. COX. The gentleman from Ohio is now asking leave to make a speech upon this subject.

Mr. TOWNSEND, of New York. I hope the question asked of the chairman of the committee by the gentleman from Michigan [Mr. Conger] may be answered, because there are a great many members who desire to speak upon this question, and they will be ready to facilitate the action of the committee in hastening this matter, if in so facilitating it it does not cut them off from an opportunity of be-

ing heard. I hope the chairman will answer the question.

Mr. HOLMAN. I trust the gentleman from Ohio [Mr. PAYNE] will explain the course he proposes to adopt in regard to this bill, and as to the time to be consumed in its consideration. How long a time

does he propose to allow for debate on the bill?

Mr. CONGER. I have already requested him to state that.

Mr. KASSON. And he is waiting to tell you, but you will give him

no chance.

Mr. GARFIELD. It occurs to me that if the House will hear my colleague from Ohio [Mr. PAYNE] we shall all be satisfied.

Mr. PAYNE. I shall be very glad to explain to the House the course that the committee propose to adopt in reference to the disposition of this bill. There are two courses which have suggested themselves to the mind of the committee. If it is the general sentiment of the House that the bill shall be put upon its passage to-day, or at once on its reading, the committee will eneerfully waive their right to discuss it in deference to the wish of the House, but otherwise it is proposed that the discussion of this bill shall commence immediately and continue until two o'clock to-morrow, at which time we propose to ask the previous question on the passage of the bill; and in the mean time it is proposed that the debate shall be continued during this evening until as late an hour as is agreeable to the House, and that then a recess shall be taken until eleven o'clock to-morrow and the discussion to continue until two o'clock in the afternoon, after the discussion to continue until two o'clock in the afternoon, after

the discussion to continue until two o'clock in the afternoon, after which time they will call for a final vote on the bill.

Mr. BUCKNER. When does the gentleman propose to demand the previous question, so that the House may pass upon the bill?

Mr. PAYNE. To-morrow at two o'clock.

The SPEAKER. The Chair will repeat the proposition of the gentleman from Ohio, [Mr. PAYNE,] which is that if the House consents that this bill shall be taken up immediately it shall be discussed during this morning's session and the House shall then take a recess and continue the discussion during the evening session until such hour as the House may see fit, and then that there shall be a further recess until to-morrow morning at eleven o'clock, and that it is his purpose to call the previous question to-morrow at two o'clock.

recess until to-morrow morning at eleven o'clock, and that it is his purpose to call the previous question to-morrow at two o'clock.

Mr. GARFIELD. I desire, with my colleague's permission, to make a suggestion to him. I am sure, so far as I know, that every member of this House will give due diligence to prosecuting this matter without anything like undue delay or factious opposition. But I do suggest that a longer time than two o'clock to-morrow ought to be granted. granted.

If the debate is carried on until to morrow night so that we may have a vote on it before the legislative day closes to-morrow, certainly nothing can be lost. I think my colleague will find that a large num-

ber of gentlemen who desire to be heard will be thus accommodated who could not be heard at all if the debate were to close at two o'clock. The difference between two o'clock and any other hour of the same day can be but slight in its bearing on the public interest, and I trust my colleague will make it a later time with the general agreement that we shall come to a vote before we adjourn to-morrow.

Mr. HALE. I did not understand the gentleman from Ohio [Mr. Paywell to state that as a part of his proposition it should now be

PAYNE] to state that as a part of his proposition it should now be fixed that the previous question should be ordered at two o'clock.

He only indicated his intention to ask it at that time.

Mr. PAYNE. At two o'clock I will endeavor to be recognized by the Chair to move the previous question.

Mr. HALE. Then I think if that is the purpose of the gentleman from Ohio the suggestion of his colleague [Mr. GARFIELD] should be regarded, and that if by devoting all of to-day and this evening and to morrow and to morrow evening, sitting late as the Senate did—if by that time we can get a vote, the gentleman ought to assent to it. by that time we can get a vote, the gentieman ought to assent to it. There would be no factious opposition made to this bill. Some of us are opposed to the bill and desire to state the reasons; still we see the importance of its being acted on at once, and the suggestion which I made, if the Chair pleases, a moment ago, was in the interest of accelerating action upon the bill and not of delaying it.

The SPEAKER. The Chairso understood.

Mr. HALE. If there is objection to this proposition, cannot the gentleman from Ohio [Mr. PAYNE] report the bill of the House committee at once so that a single objection cannot ston the discussion.

mittee at once, so that a single objection cannot stop the discussion of it?

The SPEAKER. A single objection could not prevent that; but the gentleman from Maine [Mr. Hale] will recognize the fact that if the committee report their bill it would not be the bill upon which the House desires to act now.

Mr. HALE. I see the advantage of getting the Senate bill before the House at once.

The SPEAKER. The bill upon which the House desires to act is The SPEAKER. The bill upon which the House desires to act is the Senate bill. The Chair can suggest another mode by which by a postponement of a single hour the object will be accomplished of reaching the bill. The Chair would state that the unfinished business of yesterday comes up this morning and can by a majority vote be postponed to a day certain. The effect of that would be to reach a morning hour by any member calling for the regular order. After that morning hour had expired, then it would be in order for the gentleman from Ohio [Mr. PAYNE] to move to go to the Speaker's table and reach this bill. The plan which the gentleman from Ohio [Mr. PAYNE] suggested now practically secures one hour longer debate on

Mr. HOLMAN. Has there been any objection made to the proposition of the gentleman from Ohio, [Mr. PAYNE?]

Mr. CONGER. I myself made the first proposition to arrest action on this matter, not that I desired to object at all to the immediate action of the House, for I did not, but I did wish to know what course in regard to debate should be adopted before giving consent.

The SPEAKER. It is a very proper inquiry.

Mr. CONGER. I would like, in addition to what has been said by the gentleman from Ohio, [Mr. PAYNE,] who has charge of the bill, that he would indicate the time which would be given to the oppo-

nents of the bill, if there be any.

The SPEAKER. The Chair will endeavor to so regulate it that members shall speak first one on one side and then one on the other,

and will conform to that rule.

Mr. HUNTON. My understanding was it was the desire of the committee that there should be no debate upon this bill, but that the House should proceed at once to vote upon it. But in deference House should proceed at once to vote upon it. But in deference to the opinions of some gentlemen here who desire to debate it, they decided, as I understand, that the debate may run until to-morrow at two o'clock, and the time between now and to-morrow at two o'clock may be made longer or shorter for debate as the House may determine by the length of its sessions or may agree to hold a session before twelve o'clock to-morrow. But I trust the committee will not recede from the conclusion at which they arrived, that the gentleman having charge of the bill shall call the previous question to-morrow at two o'clock. morrow at two o'clock.

Mr. FRYE. I rise to a parliamentary question, and that is whether or not it is in the power of the House now to determine that the last two hours of the debate prior to two o'clock to-morrow, when the previous question is called, shall be in ten-minute or five-minute

The SPEAKER. It is competent for the House by unanimous con-

sent to do it.

Mr. FRYE. I would like an arrangement of that kind, because there are many gentlemen on the floor who do not propose to make extended speeches, but who desire very much to give a reason for their vote. Now, if we devote two hours to ten-minute and fiveminute speeches many gentlemen will have an opportunity to give a reason for their vote and thus explain to their constituents their

The SPEAKER. The Chair desires to state to the House that more than fifty members have indicated to him a desire to speak on this question, so that the Chair thinks that two hours as suggested by the gentleman from Maine would not be a sufficient time, and would suggest to him to make it four hours.

Mr. FRYE. There are gentlemen too modest to indicate to the Speaker a desire to speak and yet who wish to explain their votes. I now ask unanimous consent that the last four hours of the debate shall be limited to ten-minute speeches.

Mr. PAYNE. I will agree to that.

Mr. WADDELL. In accordance with the suggestion made by the chairman of the committee, as I understand with the consent of the committee, and in order to test the sense of the House as to whether it is the desire of the House to have any discussion of this question, I move, if it be in order, that, when the bill is reported for the consideration of the House, gentlemen desiring to make speeches on the bill shall have leave to print them in the RECORD and that the House

mr. CONGER. I object.

The SPEAKER. It is not in order, as the gentleman from Michigan [Mr. CONGER] objects. The magnitude of this bill in its effects cannot well be overstated, and the Chair hopes that order will be preserved in the House so that gentlemen may understand all that is

being done.

Mr. PAYNE. I am willing, under the authority of the committee, to modify my proposition to this extent: that the debate shall now proceed as indicated in my remarks a few minutes ago, and that the last three hours of the debate, or if more agreeable to the House, all of the debate to-morrow, (and the House can meet at ten o'clock instead of eleven o'clock, as I first suggested,) shall be devoted to tenminutes speeches, with permission to every member who desires to do so to have printed in the RECORD such remarks upon this subject as he may desire. I cannot consent, however, to a later hour for calling the previous question, unless, perhaps, I say three o'clock instead of two o'clock. [Cries of "Three o'clock" and "Two o'clock."] I think I am authorized by a majority of the committee to say that the previous question will be called at three o'clock to-morrow. I hope that will be satisfactory to the House.

The SPEAKER. The Chair will state to the House what he understands to be the proposition submitted by the gentleman from Ohio, [Mr. PAYNE.] It is that the bill from the Senate be now taken from the Speaker's table and referred to the select committee of which the gentleman from Ohio is chairman; that the debate upon the bill when reported shall continue until three o'clock to-morrow, at which time the gentleman will call the previous question upon the bill; that the last four hours of the debate before calling the previous question shall be confined to speeches of not more than ten minutes each, and that any member of the House who may desire to have printed in the RECORD his remarks upon this bill shall have that permission. Is there objection to that proposition? [After a pause.] The Chair

hears none, and the order is made.

The bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, was then taken from the Speaker's table, read a first and second time, and referred to the select committee upon that subject.

Mr. PAYNE. The select committee on counting the electoral vote, to which was just referred Senate bill No. 1153 upon that subject, have instructed me to report the same back and to recommend its

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock p. m. on the first Thursday in February, A. D. 1877; and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and, the votes having been ascertained and counted as in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper when there shall be only one return from a State, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall state clearly and concisely, and without argument, the ground thereof, and shall state of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections of the question s

During the session of each House on the Tuesday next preceding the first Thursday in February, 1877, each House shall, by viva voce vote, appoint five of its mem-

bers, who, with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this sec-

order.

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

hours, it shall be the duty of each House to put the main question without further debate.

SEC. 5. That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday secepted, at the hour of ten o'clock in the forenoom. And while any question is being considered by said commission, either House may proceed with its legislative or other business.

SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected or who shall claim to be President or Vice-President of the United States, if any such right exists.

SEC. 7. The said commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

Mr. PAYNE. I now enter a motion to recommit this bill, in order

Mr. PAYNE. I now enter a motion to recommit this bill, in order that that motion may be pending. I will merely state to the House that this bill as it comes from the Senate is precisely the same as the bill reported to the House by the select committee, so that members who have not yet considered this bill in print, may do so by referring to the House bill.

I do not myself propose to occupy any part of the hour to which I may be entitled for the purpose of opening the debate upon this bill. Whatever I may have to say, if there be any occasion for me to say anything, I will reserve until the closing hour to which I will be entitled. The members of the committee of course will each be entitled to their hour under the rule. The gentleman from Iowa [Mr. McCrary] who first introduced into this House the substance of the proposition contained in this bill will open the discussion.

Mr. CONGER. The gentleman has made a motion which was not in contemplation when the unanimous consent was given; I refer to the motion to recommit, the effect of which is to cut off all opportunity to offer amendments to this bill. I submit to the gentleman from Ohio [Mr. Payne] that it was not in contemplation of the House, or of the Speaker when he submitted the proposition to the House, that the motion to recommit should now be entered.

that the motion to recommit should now be entered.

Mr. PAYNE. Does the gentleman make a point of order against that motion? I will state frankly that my purpose in entering the motion to recommit is to cut off amendments. Unless compelled by order of the House to do so I do not propose to admit any amendment to this bill.

Mr. CONGER. I submit that that is not in order under the unanimous consent given by the House, which left this bill open to amendment or suggestions of amendment. It is not in order to make a motion now which places the bill in a different condition from what it occupied under the order of the House. It is not fair to the members of the House, it is unexpected, and in my judgment it is not the

proper course to pursue.

Mr. PAYNE. I now yield to the gentleman from Iowa, [Mr. Mc-

CRARY.]
Mr. CONGER. My point of order is that the distinct course of proceeding upon this bill, even to the minutiae of the order of debate, was agreed upon by unanimous consent.

Mr. HOAR. I desire to suggest to my friend from Michigau, [Mr.

Mr. CONGER. I hope the gentleman will allow me to finish my

point.

Mr. HOAR. Certainly; I beg pardon of the gentleman for interrupting him, I thought he had stated his point.

Mr. CONGER. My point is that the mode of proceeding by the House, even to the minutiæ of limiting the time of debate and fixing the time when the call for the previous question should be made, was all submitted to this House and determined by unanimous consent. The motion now made to take away rights which were left to members under that unanimous consent, by the motion to recommit, which is a motion to cut off rights which we possessed under that unanimous consent, is not in order. That is my proposition.

Mr. HOAR. I desire to suggest to the Chair and to my friend from Michigan that every experienced parliamentarian must of course have

Michigan that every experienced parliamentarian must of course have understood, when this unanimous consent was granted, that the gentleman having the bill in charge would enter this motion to recommit; but if any gentleman did not so understand, and if the arrangemit; but if any gentleman did not so understand, and if the arrangement entered into by unanimous consent was an arrangement of all the minutiæ of proceeding, if it cut off a motion to recommit on the part of the majority, it would equally bind the honor of every gentleman in the House not to move an amendment.

The SPEAKER. The Chair thinks the statement made by the gentleman from Massachusetts [Mr. Hoan] is correct. The motion made by the gentleman from Ohio was not necessary at all. The control of the bill was in his hands under the rules, and it would not be compared to for any gentleman during the disension contrary to

be competent for any gentleman during the discussion, contrary to the wish of the House, to offer amendments. If any gentleman desires to offer amendments, the House can give its consent by voting down the previous question when called, and thus throw the bill open to amendment.

Mr. CONGER. This, then, is one of those cases which frequently

Mr. CONGER. This, then, is one of those cases which frequently happen when by waiving a right for the purpose of conciliating and accommodating gentlemen we lose it entirely.

The SPEAKER. The gentleman lost no right. He had not the right to amend if the gentleman having charge of the bill called the previous question. The House, if it desires to have the bill amended, can vote down the previous question. If the previous question is sustained, then of course the House expresses its wish against any

amendment being offered. That is the usual practice.

Mr. CONGER. The Chair will recollect that all the power gentlemen had was to object to the consideration of the bill at this time.

Whatever that power might have availed, every gentleman on this floor had.

The SPEAKER. If the House were forced to vote on amendments, the gentleman in charge of the bill could of course call the previous question, the effect of which would be to cut off all debate. The effect question, the effect of which would be to cut off all debate. The effect of the understanding reached is to give greater latitude to debate. The bill is now before the House for consideration, and is not open to amendment. The House, if it desires to entertain amendments, can vote down the previous question. The Chair thinks the motion of the gentleman from Ohio was not necessary; that it does not change the position of the bill.

Mr. McCRARY. Mr. Speaker, the duty and the privilege of opening this important discussion have been devolved upon me by the kindness of the chairman of the committee and the other gentlemen upon

ness of the chairman of the committee and the other gentlemen upon

it, for which I return them my thanks. As a result of very careful, very earnest, and I may add very anxious consideration of this great and important question, I, in common with the other members of the committee, have reached the conclusion that this bill ought to pass. It is not necessary for me to remind the House of that fact of which every gentleman is so painfully conscious that we are in the presence of a very great and very dangerous emergency. It is that crisis in our national affairs which the fathers of the Republic foresaw in 1800, and which at various periods in the course of our history the great statesmen of this country have foreseen and have dreaded. We have on several occasions in our history reached a point where the votes for President and Vice-President of the United States were to be counted, when disputes existed as to the legality of some of those votes; but we have never until now met the occasion when the disputed votes were decisive of the result.

In all the instances in our history when disputes of this character In all the instances in our history when disputes of this character have arisen, statesmen have commented upon the danger which would threaten the very existence of the Government, if a case should arise in which the election would turn upon the disputed votes in the absence of any provision by legislation for settling such disputes. If gentlemen will look into the debates which have occurred from time to time in the course of our history, which have been engaged in by nearly all the great men of the past and many of the great men of the present, they will find that this has long been regarded as one of great danger, rising above every other and liable at the end of any four years to involve us in conflicts for the settlement of which peaceful methods would be wholly inadequate. If the statesmanship of to-day shall, as I hope and believe it will, prove itself equal to the to-day shall, as I hope and believe it will, prove itself equal to the emergency so long predicted, so much dreaded, and meet it by a peaceful and lawful solution, all good men will rejoice, and faith in the stability of our free institutions and in the continued peace, progress, and prosperity of our beloved country will be made firm and

We are confronted not only with a great and wide-spread difference We are confronted not only with a great and wide-spread difference of opinion in this country upon the merits of the questions that have arisen, but we are confronted also with that which is a thousand-fold more perilous, namely, with the fact that the American people, the American statesmen, the American lawyers and jurists are almost equally divided not only, I say, as to the merits of the question but as to the authority that shall decide them. That, Mr. Speaker, I say is the occasion of the alarm, of the anxiety which pervades the public mind from one end of this land to the other. There would be no danger to our institutions, there would be no occasion for alarm, there would be no real peril in consequence of the great diversity of opinwould be no real peril in consequence of the great diversity of opinion as to the merits of this controversy if it were not for the fact that we are divided as to the authority that shall decide.

Now I submit that that statesman is false to his duty, that that man does not come up to the exigency of this great occasion, who will stop short of the most earnest endeavors to provide some lawful mode for

does not come up to the exigency of this great occasion, who will stop short of the most earnest endeavors to provide some lawful mode for the decisions of these questions by a tribunal whose authority nobody can question and in whose decision all men will acquiesce.

Sir, there could be no greater danger than that which grows out of a fact like this. On one side of the question there are some 20,000,000 people who honestly believe that Governor Hayes has been fairly elected President of the United States and who honestly believe (at least the greater part of them) that in the absence of any legislation upon the subject it is the duty of the President of the Senate to count these votes and that in order to count these votes, and that in order to count them he must decide what are these votes, and that in order to count them he must decide what are votes. They are honest, they are sincere, they are earnest in this belief and in this position. On the other side, sir, we are bound to concede the fact that there are some 20,000,000 people who as honestly believe that Governor Tilden has been elected, that the President of the Senate has no authority in the premises in the absence of legislation, and that no vote can be counted unless with the consent of both Houses of Congress. These are the differences of opinion.

It is not my purpose to day, Mr. Speaker, to enter into discussion as to who is right and who is wrong. It is idle to suppose that either side can convince the other. I say, sir, that, if we fail to pass this bill and no tribunal is provided which we shall all agree is competent to decide these questions, we shall drift upon a rock upon which the

to decide these questions, we shall drift upon a rock upon which the ship of state may be broken to pieces.

It may be, sir, that, in the absence of any law and in the presence of this great wide-spread difference of opinion, in the presence of this known difference of opinion as to the authority which shall decide these questions—it may be, if this bill is defeated and the two Houses fail to present the wholes the state of these difference of the wholes the state of t these questions—it may be, it this bill is deteated and the two Houses fail to pass any other measure on the subject, one or the other of these two parties will peaceably submit to the other. I hope, I earnestly pray, sir, that if we should meet that exigency one or the other party would submit, but I confess to very grave doubts and grave fears such would not be the case. And I would ask gentlemen on the one side or the other, who think their position is impregnable and the other side must submit, to consider whether it is probable in such an analysis of a dual Presidency and the possibility of civil emergency we can avoid a dual Presidency and the possibility of civil commotion and civil war.

I have said that upon this question as to the authority that shall

decide upon these disputed votes there is a wide-spread, honest difference of opinion. I do not, as I have already said, propose to discuss the merits of this controversy upon the question who shall decide upon disputed votes. What I desire to do is to impress upon the House this one fact, that there is an irreconcilable difference as to the true interpretation of the Constitution which can be settled and ad-

justed only by legislation.

Now, to show that, let me call the attention of the House to some of the authorities on the one side and upon the other of this question. Those who claim that the President of the Senate has the absolute right to count these votes in the absence of legislation are sustained by very high authority, and I wish to refer to some of them, not to indorse or to argue whether they are sound or unsound, but to show how idle it is to expect those who hold that view, in the absence of legislation, to give up that position and agree to the inauguration of a person who is declared President without the consent and against the decision of that officer.

In the debates in Congress from time to time, this question has been discussed. In the debate in 1857 there was some discussion of it; and while I am not able in the time I shall occupy to refer to all that was said on one side or the other, I have made a few selections to which I will call the attention of the House.

Senator Thompson, of Kentucky, speaking in the Senate of the United States on the 12th of February, 1857, used this language, ad-

dressing the President of the Senate:

As the presiding officer of the Senate, the direction of the Constitution is that you, sir, shall open and count the votes—that is your duty—before the Senate, and the members of the House of Representatives are to be present as witnesses. In the contemplation of the framers of the Constitution, what could have been meant by this? The idea was that we were not to go into executive session, nor, by some secret cabal or clandestine arrangement, get together here and have a coup d'état, and make a President. But the contemplation of the Constitution was that the House of Representatives were to be present as witnesses, to see that the count was fair; that the Senate were to regulate the mode of counting, and that we should not have a secret session and exclude the other House.

In the same debate, Mr. Stuart, a Senator from the State of Michigan, a very able and distinguished lawyer, made use of this language:

My view was and is that the duty of counting the votes devolves upon the President of the Senate, and nobody else.

Mr. Shellabarger, of Ohio, who is known to this House and to the whole country as one of the ablest lawyers of the country, delivered a very able and exhaustive argument in 1869 on the same side of the

question, but I will not stop to quote from that.

Senator BAYARD, of Delaware, in a debate which occurred in the first session of this Congress, expressed his view in these words.

After quoting the clause of the Constitution in question, he said:

This latter clause contains all the power that is delegated to the two Houses of Congress or to any other officer of the Government in respect to the counting of the electoral vote; and the present bill provides simply the legislative machinery to accomplish this result. There has been argument heretofore before Congress, which I have concurred in, to the effect that the two Houses are mere witnesses to the counting of these votes. The only officer named is the presiding officer of the Senate into whose custody the certificates shall have been delivered in accordance with the mandate of the Constitution by the electors or their agents, their messengers, and those certificates being in his hands are to be opened by him and the votes are then to be counted; by whom is simply a matter of inference, perhaps of necessary inference; but they are to be counted.

Senator Whyte, of Maryland, expressed his views very decidedly on the same side of the question in the course of the same debate.

I do hold that the Vice-President of the United States is the proper person to state which vote shall be counted, because the Constitution has put it in his hands. I do say that, probably, except for the military interference, there never would have been any question as to what was the right return or the proper exhibit of the popular will in any of the States of this Union. Our fathers lodged the power with the people, in their Legislatures, in their States, to regulate the election of electors, and only left it to Congress to enunciate the voice of the people, the result of the action of the people in the several States. The Constitution puts the power in the President of the Senate in plain and unmistakable words.

Senator Stevenson, of Kentucky, in the same debate expressed his deliberate opinion in these words:

I am aware, Mr. President, of the difficulty involved in the solution of this question, nor do I undervalue its magnitude. I have given to its consideration the time and reflection which its importance demands. I have sought light in the ways of our fathers in the early Congresses. I have listened with great interest to the very able discussion which the subject has evoked in the Senate; and I frankly confess, sir, I have been unable to reach the conclusion that any of the legislation proposed by the pending amendments is sanctioned by the Constitution.

I concur in the able argument of the Senate of the United States is the only agency selected by the framers of the Constitution and named in that instrument as invested with the sole power of receiving, opening, and counting the votes for President as returned by the electoral colleges and of declaring the result of that election.

These views, Mr. Speaker, are also sustained, as every gentleman knows, by the opinion of Chancellor Kent, whose statement is as

The President of the Senate, on the second Wednesday in February succeeding every meeting of the electors, in the presence of both Houses of Congress, opens all the certificates, and the votes are then to be counted. The Constitution does not express by whom the votes are to be counted and the result declared. In the case of questionable votes and a closely contested election this power may be important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes and determines the result, and that the Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.

Now, Mr. Speaker, it may be said, as it has been said by a great many people who agree with me in their political opinions, that these authorities are conclusive; that there can be no doubt, after such ex-pressions as these, as to the right of the Vice-President to decide these questions and declare the result, and that all citizens should at once submit to these views. But, sir, gentlemen who say that have looked at but one side of the question; for the opinions on the other side are equally potential and equally numerous. Let me call the attention of the House to a few of them. In the debate of 1857 the venerable John J. Crittenden, of Kentucky, took an active part. That was a dispute over the vote of the State of Wisconsin, which had been cast, not upon the day fixed by the Constitution, but on a later day. Mr. Crittenden offered in the Senate of the United States the following resolution, which expressed his idea as to the power of the Vice-President and the power of the two Houses:

Resolved. That the vote of Wisconsin, being given on a day different from that prescribed by 'aw, ought not to have been included in the count of the electoral vote, and that any member of either the Senate or House of Representatives had the privilege and right to object to the counting of said vote, and that it was competent for the Senate and House of Representatives alone to decide upon that objection.

Mr. Pugh, of Ohio, then a leading member of the Senate, expressed his views in these words:

The presiding officer of this bedy may be the Vice-President of the United States, and may claim to be the President-elect, and he is to stand there, in the presence of both Houses of Congress, and reject votes or admit votes by his single will, and thus make or unmake himself President. It is a power higher than the veto. I am bound to say, under my construction of the Constitution of the United States, no such power is lodged in any individual, whatever may be his station.

In the course of the debate in 1869, which grew out of the trouble over the vote of Georgia, Mr. Colfax, of Indiana, then Speaker of the Honse of Representatives and subsequently Vice-President of the United States, made these remarks:

I remember the scene well which took place in the old Hall, but I will not take up the time of the House by describing it. Subsequently, in 1865, in consequence of the troublous condition of the country and the disorganized condition of many of the States, and in order that there might be no difficulty in reference to counting the votes, it was decided to adopt this joint rule, which declares that, whenever the vote of any State is objected to by any person, the two branches should retire, each to its own Chamber, there to decide upon the question. That rule gave Congress the power which it has this day exercised. I believe it to be constitutional and wise.

He referred in these remarks to the now famous twenty-second joint rule, which certainly was not consistent with the doctrine that the Constitution vests in the President of the Senate independently of

Congress the right to count or reject votes.

Mr. Schenck, of Ohio, in the course of the same debate, speaking on this very point, said:

I hold that it is a casus omissus in the Constitution; that the Constitution requires not that the President of the Senate shall count the votes at all. There is no such declaration in the Constitution; but it declares that he shall open the certificates and that the votes shall be counted.

Mr. BOUTWELL, of Massachusetts, in the course of the debate in the Senate at the last session, used this language:

I do not accept at all the suggestion that the Vice-President of the United States has anything more to do in the business of counting the votes for President and Vice-President than that specific duty which is prescribed for and enjoined upon him by the Constitution. That duty is, in the presence of the Senate and House of Representatives, to open the certificates. There being no other duty assigned to him, I infer naturally that he is to do nothing more.

I quote now from what was said by Mr. THURMAN, of Ohio, in the same debate, in answer to a question by Senator Eaton, of Connecticut:

Mr. EATON. I did not suppose myself that the Vice-President counted the votes

Mr. Thurman. That was exactly the conclusion I would have come to, that the counting is not by the Vice-President, and these facts show that it never could have been contemplated that he should be the judge of the election. What his duty is, is prescribed in the Constitution.

Senator Christiancy, of Michigan, in the course of the same de-bate, expressed his view of the subject in these words, after quoting the clause of the Constitution:

It does not say by whom the votes shall be counted; and as it does expressly provide that the President of the Senate shall open all the certificates, and then immediately declares that "the votes shall then be counted," without saying by whom, there is, as it seems to me, a fair though not conclusive inference that it is not made the duty of the President of the Senate to count them, because, if this had been intended, the language in that connection would naturally have been, as already suggested by several Senators, "the President of the Senate \* \* \* shall open all the certificates and count the votes."

Senator Frelinghuysen, of New Jersey, expressed the same opinion in these words:

I was somewhat impressed by the argument made by the Senator from Maryland Mr. Whytel for the purpose of showing that the Constitution contemplated that the vote should be counted by the President of the Senate; but I am satisfied, on reviewing that subject, that my first impressions were correct, and that the Constitution does not contemplate that the President of the Senate should count the vote. The fact that the Constitution does in terms provide what duty the President of the Senate is to perform, to wit, that he is to open all the certificates, and omits to provide that he shall count the vote, I think is conclusive that it was not intended that he should do more than he is expressly authorized to do by the Constitution.

Senator Dawes, of Massachusetts, expressed the same opinion. He

I think that the Constitution means that they shall be counted by the two Houses. I cannot quite agree with the Senator from Maryland, that they are to be counted by the President of the Senate for the reason that the framers of the Constitution kept in their mind, when they prepared for the election of President, the States. They provided, as I have said, that the States should appoint the electors, that the college of electors should in the first instance choose the President, and the Vice-President; they provided that, if the college of electors shall fail to do their duty, then the States in the House of Representatives, as States, shall elect the President, and the States as represented in the Senate shall elect the Vice-President. They have kept up the idea of the States all through, until, as they supposed, they had secured beyond peradventure the election of a President.

I am not discussing the question whether we can now in this day afford to stand upon the ground of the States as against the people in the popular branch. I am one of those who believe in State rights, and I am one of these who, so far as State rights are defined in the Constitution, are for preserving them with sacred care, and I shall stand up for them. More than any other feature of this whole Constitution this idea is prominent, running from the time when the States reserved to themselves the power in such manner as they pleased of appointing the electoral college to the time when, if the electoral college fail to make that choice, they devolved it upon the States in the House of Representatives to choose the President, and upon the States in the Senate to choose the Vice-President. I infer, therefore, that, if these two bodies are there for any purpose whatever, they are first there to aid in the counting of the votes; and the question is whether they are there as one body or as two.

These quotations might be greatly extended did time permit or the occasion require it. I have quoted nothing from any of the very numerous and very able arguments and opinions on both sides of the question which have appeared since the late election. I have quoted only the utterances of statesmen and lawyers made under circumstances which render it certain that they spoke without bias. I have reason to know that many people in the country have read in partisan news-papers the utterances of these and other men on one side of this ques-tion, and have straightway decided that there is no other side. But

the situation is too grave and the subject too important to be decided by any member of this House upon any such ex parte examination of it.

Now, Mr. Speaker, in view of the fact that neither the two Houses nor the two parties behind them can agree as to the manner of settling these questions, I submit to the House whether it would be wise, thing these questions, I submit to the House whether it would be wise, whether it would be patriotic to refuse to adopt a proposition which all men must agree is fair and just by which these questions may be settled by a tribunal in whose decision all men of all parties will acquiesce? Would it be wise to decline such a proposition and drift on to the 14th of February and the 4th of March with these conflicting opinions dividing the two Houses, dividing the people, and take the chances of a dual government with all its evils, or of one side or the other peaceably acquiescing in the views and opinions of its opponents.

other peaceably acquiescing in the views and opinions of its opponents. But, sir, there is another question upon which there is and can be no agreement. There is a class of gentlemen in this House and in the country who assume that a single House of Congress has the right, under the Constitution, to exclude the vote of a State for any reason which may seem to it sufficient, whether technical or substantial. I submit to gentlemen who hold that view that they cannot expect the country to acquiesce in it, or to acquiesce in any declaration of the result of this presidential election that might result from it, and I beg to call their attention to some of the opinions of the great men of this country upon that question, and upon this point I shall be very brief. In the Senate of the United States, on the 18th of January last, Senator Bayard, of Delaware, used these words:

I will only say now in response to the Senator from Indiana that I do regard the

I will only say now in response to the Senator from Indiana that I do regard the present power which has been assumed by the action of Congress over this subject as utterly unwarranted by the Constitution. Virtually as we are now acting under this joint rule and as Congress has acted for the last ten years, a veto founded in nothing but caprice is vested in the Senate or vested in the House, to defeat the result of the popular vote for President and Vice-President. Such has been the state of affairs under which the people of this country have lived for eleven years, and it is in the power of the Senate or of the House under the assumptions of this rule to throw the election into the House by refusing to have the votes counted for any pretext whatever. Such a state of things is simply monstrous; such a state of things has been monstrous all the time it has continued.

Senator Maxey, of Texas, spoke in terms scarcely less emphatic. He said:

Now, in so far as the question as to the joint rules, with the exception of the twenty-second, is concerned, I have not one word to say. In so far as this twenty-second joint rule is concerned I have sufficient knowledge from this debate for myself to say that there may be a dangerous power to the existence of this Union by granting to one or the other of these two Houses the power to destroy the political interests and the elective franchise of an entire State, and not only of one, but of

So far as I am concerned personally, it is a question above and beyond all political parties. It is a question that involves the very integrity of the Union, for here is a function which may confer unjustly and improperly the power to strike down the power in the electoral college of a State or of many States; and what may be of value temporarily for one party may be destructive to the entire country.

Senator Whyte, of Maryland, expressed the same views in language quite as clear. He said:

It was wise at the beginning of this session of Congress that the Senate of the United States should undertake the work of reform and annikilate a joint rule which was not intelligently discussed at all or its defects properly pointed out. It passed through the Rotunda to the other side of the Capitol, and there at a night session, without debate, under a suspension of the rules, a rule of such a grave character as that received the votes of a majority of the Representatives of the people. That rule put it in the power of either House of Congress to defeat the will of the people expressed at the preceding presidential election. It was extraordinary in its character, and I was glad to see the Senate of the United States so soon repudiate it.

The result of this debate in the Senate of the United States when no man could say that a decision one way or the other would favor either party, was summed up by Senator RANDOLPH, of New Jersey, in these words:

Debate has elicited these facts: That as to this important subject there is a vital omission in the organic law; that for many years there has been in force as a remedy for the defect a joint rule of Congress. That rule, now abrogated, is admitted on all sides to have been inquitous in conception, dangerous in execution, and constitutionally without warrant. With its paternity denied by all, and its abrogation delayed by none, it seems to have been a political bastard whose usefulness was contingent upon a partisan emergency and whose life closed with the first dawn of pure public sentiment.

And I may say in one word that in the whole course of that debate there was not one man upon the floor of the United States Senate who disputed the proposition that the twenty-second joint rule, if construed to authorize one House to throw out the vote of a State admitted to be a State in the Union, was utterly in violation of the Constitution of the United States

As early as 1821, in the course of a debate in the House upon the right of Missouri to vote for President and Vice-President, John Randolph, of Virginia, denounced the doctrine to which I refer in words of fiery eloquence. As reported in the debates of that day-

Mr. Randolph argued that to reject the vote of Missouri, was not in the power of the House, as Missouri was a State in the Union. He also went back to first principles. The electoral colleges are as independent of this House as this House is of

them. "Your office," said he, "in regard to the electoral vote is merely ministerial; it is to count the votes, and you undertake to reject votes." "If," said he, "you do for the first time now reject the votes of a State it will be created into a precedent, and that in the lifetime of some of those who now hear me, for the manufacture of Presidents by this House.

So I say to my friends who now claim that one House can exercise this extraordinary power, you cannot stand upon that doctrine and expect the American people to acquiesce in it. At the same time I say to my own friends on this side who claim that the whole power is in the hands of the Vice-President, I solemnly believe that you cannot stand upon that doctrine without grave danger that a large part of the people of the country will not acquiesce in it. Sir, if in the end there has been an utter failure on the part of the two Houses to agree upon any method, there may be nothing left but for the Vice-President to exercise this power and to trust to Providence for the result. I hope such an emergency may not arise and I intend by my voice and vote to endeavor to provide against it.

I say that upon this question there are irreconcilable differences of opinion. I repeat, for I wish to impress it upon the mind of every member in this House, that they are differences of opinion not merely upon the merits of this question, but such differences as throughout the whole history of the world have been argued with shot and shell and decided at the point of the bayonet. They are differences as to the right, the power, the authority to decide who for the time being is to be the ruler of a great nation. A dispute like this between claimants for supreme power in any other nation on earth would inevitably lead to war, and could be settled only through the blood and carnage of the battle-field. Let us show to the world, Mr. Speaker, the superiority of our free institutions, while at the same time we

secure for our country repose, peace, and prosperity.

Let me say in passing (and the point is so important that I wish I had more time to discuss it) that, even if it were clear that the Vice-President has power to count the votes, the question would still remain whether he has the further and vastly larger power of deciding what are votes, of deciding which of two returns from the same State is the true one. This latter power, which is at least quasi-judi-cial in its nature, has seldom been claimed for him. Its exercise now, for the first time in the history of our Government, would be the exercise of a doubtful power, to say the least, and is to be avoided if

Mr. Speaker, the way out of these difficulties is plain. We must Mr. Speaker, the way out of these difficulties is plain. We must provide for the emergency by enacting a law by which, when enacted, we must all abide. Our right to do so is clear. There is and has always been an agreement that it is within the power of Congress by legislation to prescribe an orderly, regular, lawful, peaceable, constitutional mode of settling every question that may arise upon the count and of declaring the result; and it is in pursuance of that power that this hill have been recorded. that this bill has been reported.

We are met in some places with the objection that the bill is unconstitutional. It is said that it delegates to the commission powers which belong to the two Houses of Congress. Well, sir, I will answer that, in the first place, by saying that the greatest legal minds of this or of the past age have thought differently. If gentlemen will examine the records of Congress for the year 1800 they will discover that John Marshall then held a seat upon the floor of this House as a Representative from the State of Virginia—John Marshall, who subsequently became the Chief-Justice of the Supreme Court of the United States and whose name and fame as a jurist, I think I may say, surpasses that of any other of our countrymen, living or dead.

When the difficulty which now confronts us was first presented in 1800, John Marshall, as a member of the House of Representatives, reported a bill which involved every principle that is embodied in this bill to which any objection has been made upon constitutional grounds. It created what was known as a grand committee, and it confided to that committee the decision of all questions that might arise upon the count. It provided, exactly as this bill does, that the decision of the grand committee should be final and conclusive unless overruled by the concurrent vote of the two Houses.

In the Senate the statesmen of that day passed a bill somewhat dif-ferent from the one introduced by Mr. Marshall in the House. The Senate bill provided for a grand committee composed of six members from each of the two Houses and the Chief-Justice of the United States, the Chief-Justice to be its officer, and to that committee all questions were confided, with a provision that their decision should be final.

In 1824, when the question again came before Congress, Martin Van Buren, as the organ of the Committee on the Judiciary of the Senate of the United States, reported to that body a bill for settling these disputes, which went upon the theory, as the bill of 1800 had done, that the whole matter was within the control of Congress by legisla-

That bill passed the Senate and came to the House, where it was eported from the Committee on the Judiciary by Mr. Webster, of Massachusetts, with a recommendation that it be passed. It was late in the session and the bill was referred to the Committee of the Whole House and was never again reached. But that bill involved a declaration on the part of those who reported it and supported it of the power of Congress to regulate this matter by legislation.

As I have not much time for the discussion of this question, I will read a sentence or two from one whose opinion I think will be con-

sidered by the majority at least of this House as worthy of great respect, and who when he states my view of anything always states it so much better than I can that I prefer to take his words. I mean Senator Thurman, of Ohio. In advocating the passage of a bill to regulate the counting of the votes for President and Vice-President, Senator Thurman at the last session of Congress answered the objections to which I have referred with these words:

I repeat, when a power is vested in any department of this Government and the mode of its exercise is not prescribed by the Constitution, the prescribing of that mode belongs to the law-making power, the Congress of the United States; and, therefore, in this case, where the Constitution simply says that these votes shall be counted, without prescribing in detail the mode of their count, it follows necessarily, from the structure and genius of our Government and from the very nature of legislative power, that that mode is to be prescribed by law. I never believed, therefore, that a joint rule was the proper mode; and I believe that that law binds everybody, binds each House of Congress as much as any law binds us until it is repealed.

The truth is that the Constitution is silent as to the mode of

The truth is that the Constitution is silent as to the mode of counting, and the inference is that Congress may prescribe the mode. There is no delegation of power in this bill. The count is made by the two Houses. When returns are regular and single there is a prima facie case, and the votes are to be counted according to the face of the returns, unless the two Houses concur in ordering otherwise. two returns come from the same State then there is no prima facie case, and the reference to the commission is no more than a convenient mode of establishing the prima facie case, which, being established by the report of the commission, is to stand precisely as if es-

tablished by a regular return until overruled by concurrent action. It has been said that no legislation is necessary, that the Constitution is all-sufficient, and the "old way" is good enough. We are accused of yielding up somebody's rights by passing this bill. I would like to ask these people to tell us what is the old way of deciding such questions as are now to be decided. When, in the whole history of our Government, did the President of the Senate decide which of two conflicting returns from the same State was genuine, or any other

question touching the validity of an electoral vote? Never.

In 1821, when the dispute arose as to the vote of Missouri, it was not submitted to the Vice-President of the Senate, and nobody suggested that it should be. It was provided for by a resolution of the two Houses, presented by Henry Clay, which instructed the Vice-President what to do. He was directed to declare that whether the votes of Missouri be counted or not James Monroe was elected. At the previous count, in 1817, the vote of Indiana had been objected to and the objections considered, not by the Vice-President, but by the two Houses separating for that purpose. In 1837, when the vote of Michigan was objected to, a decision was avoided, as in the case of Missouri, on the ground that the disputed votes did not affect the result. The case of Wisconsin, in 1857, comes nearer than any other to the point of establishing a precedent in favor of the power of the Vice-President to decide such a question; but a careful examination of the record in that case will show that Mr. Mason, then holding that office, disclaimed any such authority and claimed that he was simply executing the orders of the two Houses as expressed in their joint resolution directing the mode of counting. And it is a fact, and a very important one, that the two Houses have uniformly agreed upon a mode of counting and embodied it in the form of resolutions, and the Vice-President has always obeyed them.

The old way, therefore, is for Congress to provide the mode, and not for the Vice President to decide these questions. I have shown that Congress has the power to provide such a mode, that it has uniformly in some manner exercised it. I add, in conclusion, that under existing circumstances it is our imperative duty to do it. If we negexisting circumstances it is our imperative duty to do it. If we neglect so grave and important a duty, if we are false to so high a trust, we must act at our peril, and may justly be held to answer to our constituents, and to those who come after us, for the consequences.

The SPEAKER pro tempore, (Mr. CALDWELL, of Tennessee.) The time of the gentleman has expired.

Mr. BURCHARD, of Illinois. I have the time of the gentleman

Mr. BURCHARD, of Illinois. I hope the time of the gentleman will be extended until he shall have concluded his remarks.

Mr. McCRARY. I do not ask to have my time extended; I am about through.

Mr. WILSON, of Iowa. I ask that the time of my colleague may

Mr. PAYNE. To avoid any repetition of this request, I will take more liberty with my friend from Iowa [Mr. McCrary] than I might with some others, and will object to any extension of his time. There Mr. PAYNE. are more than sixty members who have expressed a desire to be heard upon this subject, and we cannot, in deference to the rights of others,

upon this subject, and we cannot, in deference to the rights of others, vary the rule in the case of any one of them.

Mr. HUNTON. Mr. Speaker, I approach the discussion of this great question with profound diffidence. I feel in the strongest manner that I cannot add to the reasons given for the support of this bill, and which have already been so ably and forcibly given both in this House and in the other end of the Capitol. And yet, sir, having been appointed as one of the committee that framed and reported it, I feel it somewhat incompany upon me to defain the House a form single form. what incumbent upon me to detain the House a few minutes from a vote on this important measure in order that I may give some of the reasons which influenced my mind in concurring in the report.

Mr. Speaker, we are, in the history of our country, approaching a period when we have to deal with a contested presidential election—a period in our history always looked forward to by the greatest states-

men of the country as constituting a rock on which our ship of state would founder if it foundered at all. We know that in the history of this country, at different times, contested presidential elections have occurred. The first of any moment was in the year 1801, the memorable contest between Thomas Jefferson and Aaron Burr. Fortunately for the country, that contest between those two distinguished men ended in an election by the House of Representatives in which all the people of this country acquiesced. On that occasion the patriotic statesmen of the land made an earnest and an honest effort to come to some conclusion by a bill which would prevent the recurrence of the danger of that period. In both Houses the attempt was made and pressed earnestly by the best men of the country to pass a bill regulating the mode of settling a contested presidential election. The bill as originally introduced contained the following provisions:

A bill prescribing the mode of deciding disputed elections of President and Vice-President of the United States.

President of the United States.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on the day before the second Wednesday in February of any year when a President and Vice-President of the United States shall have been voted for by electors in the preceding December, it shall be the duty of the Senate and House of Representatives of the United States to choose, by ballot, in each House, six members thereof, and the twelve persons thus chosen, together with the Chief-Justice of the United States, or if he is absent from the seat of Government, or unable to attend, then with the next senior judge of the Supreme Court of the United States who is present and able to attend, shall form a grand committee, and shall have power to examine, and finally to decide, all disputes relating to the election of President and Vice-President of the United States: Provided, always, That no person shall be deemed capable of serving on this committee who is one of the highest candidates, or of kin to any of the five highest candidates out of whom a President of the United States to be chosen by the House of Representatives in case no person shall be found to have a majority of the whole number of electors by the different States.

SEC. 10. And be it further enacted, That on the 1st day of March next after their appointment, the grand committee shall make their final report to the Senate and House of Representatives, stating the legal number of votes for each person and the number of votes which have been rejected; the report of the majority of the said committee shall be a final and conclusive determination of the admissibility or inadmissibility of the votes given by the electors for President and Vice-President of the United States; and where votes are rejected by the grand committee, their reasons shall be stated in writing for such exclusion, and signed by the members of the committee who voted for rejecting them, and the report shall be entered on the Journals of both Houses, who shall, on the day after the report is made, meet and declare the persons duly elected, and if no election of President has happened, then the House of Representatives shall immediately proceed, as the Constitution directs, to elect a President.

SEC. 11. And be it further enacted, That when the grand committee shall have been duly formed according to the directions of this act, it shall not be in the power of either House to dissolve the committee or to withdraw any of its members.

It is noteworthy that in the original frame of that bill of 1801 the tribunal to settle the controversy and the contested election was composed of six members of each of the two Houses and the Chief-Justice of the United States. So that the minds of some of the very framers of the Constitution under which this power was delegated to Congress originated a bill for settling this controversy similar in its most important features to the one under discussion. That bill, after receiving a favorable indorsement from many of the best minds of the country, was lost by amendments to which the two Houses could not agree. The essential features of this bill received the warm support of John Marshall, of Virginia, who within one year was made the Chief-Justice of the United States, and who

before the American people in 1824, and again the patriotic minds of the country undertook to pass a bill to settle this vexed question without any controversy and dispute. A failure was the result again; and that election, in which Andrew Jackson, John Adams, Crawford, and Clay were candidates, was settled by the House of Representatives and the country opioted.

tives and the country quieted. The bill was as follows:

The bill was as follows:

A bill in addition to the act relative to the election of a President and Vice-President of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That before the Houses shall assemble for the purpose of counting the votes, as directed by the act to which this is an addition, each House shall choose, by ballot, two members thereof as tellers, whose duty it shall be to receive the certificates of the electors from the President of the Senate, after they shall have been opened and read, and to note, in writing, the dates of the certificates, the names of the electors, the time of their election, and the time and place of their meeting, the number of votes given, and the names of the persons voted for, and also the substance of the certificate from the executive authority of each State accompanying the certificate of the electors; and the minutes thus made by the tellers shall be read in the presence of both Houses, and a copy thereof entered on the Journals of each House.

SEC 2. And be it further enacted, That on the day appointed for counting the votes for President and Vice-President, the Senate and House of Representatives shall meet at such place as may be agreed on for the purpose, the names of the several States shall then be written, under the inspection of the Speaker of the House of Representatives on separate and similar pieces of paper, and folded up as nearly alike as may be, and put into a ballot-box and shaken by a member of the House of Representatives to be named by the Speaker thereof, out of which box shall be drawn the paper on which the names of the States are written, one at a time, by a member of the Senate, to be named by the President thereof; and so soon as one is drawn, the packet containing the certificates from the electors of that State shall be opened by the President of the Senate, and if no exceptions are taken thereto all the votes contained in such certificate shall be counted;

shall be taken in either House, a message shall be sent to the other, informing them that the House sending the message is prepared to resume the count; and when such message shall have been received by both Houses they shall again assemble in the same apartment as before, and the count shall be resumed. And if the two Houses have concurred in rejecting the vote or votes objected to, such vote or votes shall not be counted; but unless both Houses concur such vote or votes shall be counted. The vote of one State being thus counted, another ticket shall in like manner be drawn from the ballot-box, and the certificate of the votes of the State thus drawn shall be proceeded on as is hereinbefore directed, and so on, one after another, until the whole of the votes shall be counted.

This bill, introduced into the Senate by Mr. Van Buren, passed with some additional sections. In this House it was referred to the Judiciary Committee, was reported back by Mr. Webster without amendment, and committed to the Committee of the Whole House,

where it was never considered.

where it was never considered.

In 1865, (for I shall pass over these things very rapidly,) while war was raging between the United States and the Confederate States, an effort was made in some of the seceded States, through what they termed their "loyal legislatures," to vote for President of the United States. And when it was discovered that the votes from these Southern States were certified and an effort would be made to count them in the presidential count of 1865, an effort was again made, and successfully made, to decide this great question before the day arrived for counting the presidential vote. We all recollect, as a part of the history of the country, that a joint resolution was passed by the two Houses of Congress and signed by the President of the United States, declaring that the electoral votes of eleven of the Southern States could not be counted in that presidential election. The joint resolution was in the following words: tion was in the following words:

Whereas the inhabitants and local authorities of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee rebelled against the Government of the United States, and have continued in a state of armed rebellion for more than three years, and were in said state of armed rebellion on the 8th day of November, 1864: Therefore

fore,

Be it resolved by the Senate and House of Representatives of the United States of
America in Congress assembled. That the States mentioned in the preamble to this
joint resolution are not entitled to representation in the electoral college for the
choice of President and Vice-President of the United States for the term of office
commencing on the 4th day of March, 1865; and no electoral votes shall be received
or counted from said States concerning the choice of President and Vice-President
for said term of office.

This joint resolution was signed by the President, who sent to the two Houses the following message:

To the honorable the Senate and House of Representatives:

To the honorable the Senate and House of Representatives:

The joint resolution entitled "Joint resolution declaring certain States not entitled to representation in the electoral college" has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal; and it is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes, and he also disclaims that, by signing said resolution, he has expressed any opinion on the recitals of the preamble or any judgment of his own upon the subject of the resolution.

ABRAHAM LINCOLN

ABRAHAM LINCOLN.

EXECUTIVE MANSION, February 8, 1865.

Then, again, to avoid further difficulty, both Houses united in adopting what is known as the twenty-second joint rule, which was designed to cover this question of a disputed presidential election for all time; and by this joint rule we know that when a State was called and its vote about to be counted, the objection of either House of Congress was sufficient to prevent its count. The joint rule is as

of Congress was sufficient to prevent its count. The joint rnle is as follows:

\*Resolved by the Senate.\* (the House of Representatives concurring therein.)\* That the following be added to the joint rnles of the two Houses, namely:

The two Houses shall assemble in the Hall of the House of Representatives at the hour of one o'clock p. m., on the second Wednesday in February next succeeding the meeting of the electors of President and Vice-President of the United States, and the President of the Senate shall be their presiding officer. One teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, the certificates of the electoral votes; and said tellers having read the same in the presence and hearing of the two Houses then assembled, shall make a list of the votes as they shall appear from the said certificates; and at he votes having been counted, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with the list of the votes, be entered on the Journals of the two Houses.

That is the usual form, as far as I have read, of the resolutions heretofore adopted. The committee have proceeded further to provide for a contingency:

"It, upon the reading of any such certificate by the tellers, any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives for its decision; and no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurring vote of the two Houses, which being

"Such joint convention shall not be dissolved until the electoral votes are all counted and the result declared, and no recess shall be taken unless a question shall have arisen in regard to the counting of any such vote, in which case it shall be competent for either House, acting separately in the manner hereinbefore provided, to direct a recess not beyond the next day at the hour of one o'clock p. m."

This remained the joint rule of the two Houses while both were under control of the republican party. But as soon as this House became democratic under the influence of the great political wave that swept the country in 1874, the Senate repealed the rule.

These are some of the troubles that have arisen in the country in

regard to the presidential elections, but they all sink into absolute insignificance compared with the present one that is staring both Houses of Congress and this country in the face now. What is the trouble we have to meet? We know that the campaign for President and Vice-President of the United States which was conducted dent and Vice-President of the United States which was conducted in the year 1876 was unusually vehement, highly heated in its partisan character, and terminated by the election of Mr. Tilden, one of the candidates for the Presidency by a popular vote approaching 300,000 in its majority, and, as is contended by his party, (the one to which I belong,) he had a majority of the electoral votes.

It is alleged that when this was known to be the case, a conspiracy was formed to so manipulate enough of these States which had voted for Mr. Tilden as to give it to his competitor. And in this way we find that, when these two Houses shall meet to count the electoral vote from at least four of the States of this Union, there come up to be counted two different sets of electoral votes. This is the grave question that stares Congress in the face to day.

question that stares Congress in the face to-day.

Now the question we have to meet, not, I trust, as partisans, but as patriot statesmen, is, How shall these votes be counted, and this great controversy settled between the two parties, so that the candidate rightfully elected shall be peacefully inaugurated? It is maintained by very many of one party that the President pro tempore of the Senate has a right to open and count the electoral votes and declare which of the two candidates is elected President of the United States. On the other hand, it is maintained by a larger portion of the people of this country—very much larger in my opinion—that the President of the Senate has no earthly authority to count the electoral votes, but that the power resides in the two Houses of Congress.

but that the power resides in the two Houses of Congress.

Now, Mr. Speaker, I do not mean to go into elaborate discussion as to which of these theories is correct. It has been ventilated by the able argument of my colleague upon this floor; it has been thoroughly argued in the other branch of the Congress of the United States; and I should be wasting the valuable time of the House to go over the arguments presented by those gentlemen.

I only desire to say here that I subscribe earnestly and heartily to the doctrine that the power to count belongs to the two Houses of Congress, and that the Vice-President has no more right to count the votes than any member of this House. I believe the pretense if car-

votes than any member of this House. I believe the pretense, if carried into execution by the Vice-President of the United States, would

ned into execution by the Vice-President of the United States, would be the purest usurpation on his part, and ought not to be submitted to, but resisted at all hazards.

Now, Mr. Speaker, when these two great parties, numbering four or five millions each, have divided themselves upon these two modes of settling this vexed question, and neither party is willing to yield its conviction to the other, the time has arrived when the members of the two Houses of Congress should rise above partisan feeling, and agree upon some mode of settlement to tide over the difficulty impending and avoid the perils of war.

and agree upon some mode or settlement to tide over the difficulty impending and avoid the perils of war.

I believe, sir, that both Houses of Congress, acting each for itself, has equal rights in the counting of the electoral votes. The Constitution of the United States, which grants this power, says that the Vice-President shall open the votes in the presence of both Houses, and the votes shall then be counted. I believe that, according to the precedents, according to the construction of the Constitution which

precedents, according to the construction of the Constitution which has been given by our fathers and by the best men of the present day, that power belongs to the two Houses of Congress, and belongs to them equally.

Ay, more, sir; I believe the counting of an electoral vote is an affirmative act, and to count that vote both Houses of Congress, without some regulation on the subject, must concur in its count. I believe the twenty-second joint rule best formulated the idea of counting, when the two Houses, without a previous law or agreement of some kind, undertook to count the electoral vote. I give some of the opinions of the distinguished men on the subject of the powers of the two Houses.

two Houses

Henry Clay, of Kentucky, (February 4, 1821:)

The two Houses were called on to enumerate the votes for President and Vice-President. Of course they were called on to decide what are votes.

John Randolph, of Virginia, (February 4, 1821:)

For what purpose do they [the two Houses] assemble together, unless it be to determine on the legality of the votes l

Senator Robert Toombs, of Georgia, (February 11, 1857:)

It is our duty to count the votes, and to decide what are vote

Senator A. P. Butler, of South Carolina, (February 11, 1857:)

Let him add up the votes and announce the result to me. I am one of the judges, or why do you call me there?

Senator John A. Logan, of Illinois, (February 25, 1875:)

The mere addition of the number of votes, done merely as a clerical duty by these persons, certainly is subject to the supervision of the two House's of Congress, the same as, for instance, in many States where the State constitution refers the

counting of the votes for governor to the house of representatives and the senate of the State. They are to count the vote; that is the language of several of the State constitutions. But the vote is never actually counted by the Legislature; it is counted in their presence by the secretary or clerks, as may be. But the meaning of it evidently is that they count the vote. The clerks merely are those persons designated by the bodies to count the vote. Should they make a miscount of the vote there in the presence of the two houses, the two houses would have jurisdiction over it certainly. Hence it certainly means the counting of the vote by the two Houses of Congress, although the mere enumeration of the number is done by persons who are selected for that purpose. \* \* \* The idea is that the two Houses count the vote. Of course they designate some person to do the mere ministerial office of counting the vote and making the addition, but it is in fact constructively done by the two Houses. Now, if you put in the words "by them," they refer to the men selected as the persons to make the count, and leaves them the persons to count the votes, instead of the construction that the Constitution certainly bears that the Houses count the votes.

Senator Morton, of Indiana, (March 16, 1876:)

Senator Morton, of Indiana, (March 16, 1876:)

We could, without doing any great violence to the Constitution, adopt either of these constructions. Each is possible under the language. The Constitution says:

"The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."

It does not say who shall count them; it leaves it open to inference that they shall be counted by the two Houses on the one hand or by the President of the Senate on the other. I will assume, for the sake of the argument, that you can give to it either construction. I will assume that it is open to both views. Then the question comes, which is the more reasonable, which is the better, which is the safer of the two: to adopt that construction which gives this great power to one man, the President of the Senate, who may be counting the votes for himself, as it has turned out six times in our history, or would it be safer to leave it to the determination of the two Houses of Congress, representing the States and the people? If we are open to adopt either one of these constructions, I say the latter is the safer; it is the more reasonable; it is in conformity with the spirit of our Government and of popular institutions. I then adopt the latter construction.

Senator Bourwell, of Massachusetts:

Senator Boutwell, of Massachusetts:

Almost always, I think, when the subject has been discussed, the question has been presented whether Congress is to count the votes; and by Congress I mean the two Houses met in convention, according to the terms of the Constitution. Our best answer to that is the fact that, from the first convention that assembled until the last, the two Houses in convention always did count the votes. A teller was appointed by the Senate, two fellers by the House, The votes, or certificates, or returns, whatever they are called, were handed by the Vice-President, after he had opened them, to the tellers. The tellers were the organs, the instruments, the hands of the respective Houses. The votes were counted by the tellers, and, being counted by the tellers, they were counted by the two Houses; and, therefore, there never has been any difference of practice, and no different practice could have arisen under the Constitution. The two Houses in convention have from the first until now counted the votes.

Believing as I do that this power reposes in the two Houses of Congress and reposes in them equally, that this House has at least equal power with the Senate in counting the vote and declaring who is elected, the question recurs, has this House—have the two Houses of Congress—a right to pass the bill under consideration? I, for one, must maintain that the passage of this bill is no more taking away from this House the power of counting the vote than the mode here-tofore existing and adopted by the two Houses of Congress since the first election of President.

tofore existing and adopted by the two Houses of Congress since the first election of President.

Mr. Speaker, this is not a permanent bill. If it were permanent in its character, it would be open to very many objections which I think are not applicable to it. We do not undertake to bind the House which shall succeed this. We do not undertake to say that the House which shall count the electoral vote in 1881 shall be governed by the rule which we shall adopt; but we say here for this occasion, to meet this trouble, that we will agree before the counting upon the mode to count the electoral vote which must result in a reaccful determine. count the electoral vote, which must result in a peaceful determina-

tion of this great controversy.

Is this anything new? Has there been a presidential count since the foundation of the Government when the two Houses of Congress did not agree by concurrently adopting a common report upon some mode of counting the electoral vote? It is perfectly manifest the two Houses cannot together take part in the presidential count. There must be a mode and manner of arriving at the count which the two Houses are engaged in. Hence we find ever since the origin of this Government down to the present time, whenever the presidential count was to be made, the two Houses by concurrent action have agreed upon some plan, ay, sir, and some plan which for that occasion took away from the two Houses some of the powers claimed for it, as this

bill does.

I desire to call the attention of the House to one single case, and I will not delay them by further reference. In 1857 there was some trouble about the State of Wisconsin. The question was whether she had cast her vote on the day prescribed by law; and the two Houses made this resolution, came under this order by concurrent resolu-

That the two Houses will assemble in the Chamber of the House of Representatives on Wednesday the 11th instant, at twelve o'clock, and the President  $\ensuremath{\textit{pro tempore}}$  shall be the presiding officer.

Where did the right come from for this House to give up the right for its Speaker to preside over its deliberations when the two Houses according to this resolution that the President of the Senate should preside for that occasion at least the House of Representatives gave up one of its rights in the presidential count?

That one person shall be appointed teller on the part of the Senate and two on the part of the House of Representatives, to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate protempore, who shall announce the state of the vote and the persons elected to the two Houses assembled; which shall be deemed a declaration of the persons elected President and Vice-President of the United States, and, together with a list of votes, be entered on the Journals of the two Houses.

Now, when the two Houses, by concurrent action, agreed that the Vice-President of the Senate should preside, that tellers appointed by the two Houses should examine and declare the vote, and the Vice-President should announce who was elected President and Vice-President of the United States, it was pro hoc vice giving up some powers which the two Houses now claim for the presidential count.

Well, sir, when the count was completed, the tellers made this

announcement:

Mr. Jones, of Tennessee, one of the tellers, reported. He said: Mr. President, the tellers appointed on the part of the two Houses to count and report the votes given for President and Vice-President of the United States report that they have examined all the returns and find that they were all regular and that the votes were cast on the day required by law, except in the case of the votes cast by the electors of the State of Wisconsin. Their returns show that they cast their electoral vote in that State on the 4th of December, instead of on the first Wednesday of December, (which was the 3d,) as required by law. All the returns show that James Buchanan, of the State of Pennsylvania, received 174 votes for President of the United States; that John C. Frémont, of the State of California, received—including the votes of Wisconsin—114 votes for President of the United States.

Now, sir, when the two Houses empowered these tellers not only to count—that is, to enumerate—but empowered them to examine and count, it was taking from this House and from the Senate the power which they had a right to exercise: to count the vote themselves. I am aware that it will be maintained that these tellers were but the organs of the two Houses; and I maintain, sir, with equal confidence that this commission provided for in this bill is but the organ of the two Houses of Congress to do what they themselves could have done two Houses of Congress to do what they themselves could have done in the absence of any such commission or tellers. I make this point to show, Mr. Speaker, that whenever a count has been made the two Houses of Congress, by concurrent action, had yielded up some of their rights in the presidential count to tellers or to somebody else. Well, now, while the two Houses concurrently possess the power to count the votes, they concurrently have a right to agree, when the time approaches to count the presidential vote, upon the mode of counting; they have a right to declare, as they did in this case, that the persons selected to examine, to count, and to declare shall make their count and make their declaration, and it shall be final; because, in all these precedents that I have examined. I do not think one can be found precedents that I have examined, I do not think one can be found where the two Houses have authorized tellers to examine and report the count of a presidential election where the count and the report of

the tellers were not made a finality.

I say therefore, Mr. Speaker, that when the two Houses of Congress approach a presidential count, they for that time, for that occasion, have a right by concurrent action to agree to any mode of counting the vote which may seem to them best for that occasion; and, when the two Houses agree by concurrent action upon any mode of counting the presidential vote, that is the counting of that vote by the concurrent action of the two Houses of Congress. And it does seem to me that the most strenuous advocates for the rights of this House, of whom I am one, cannot object on the score of precedents at least to this bill, because in their opinion it may surrender some of the to this bill, because in their opinion it may surrender some of the rights of this House to a commission. But where it is done by concurrent action, either by bill, the appointment of tellers, the twenty-second joint rule, or by a joint resolution signed by the President, whatever may be the mode adopted for that occasion by the concurrent action of the two Houses, it is a counting of the vote by the concurrent action of the two Houses. I suppose no gentlemen who agree with me as to the precedents that are scattered all through the books will hesitate for a moment to declare that on all these occasions the two Houses everyised each its separate right and did nor casions the two Houses exercised each its separate right and did participate on equal terms each with the other in counting the presidential vote. That is my belief. But yet we find in consulting these precedents, one of which I have read in the hearing of the House, hat on that occasion the two Houses by concurrent action did agree that somebody else, although a portion of the two bodies, namely, tellers, should examine and count and report and declare, and the action of those tellers became the final action of the two Houses. Not only could it not be reversed by the vote of one House, but it could not be reversed according to these precedents by the concurrent action of the two Houses. But when those tellers reported the result of their examination and count it became a finality to which both

Houses of Congress had to bow in absolute obedience, because it was done in the manner and mode established by their concurrent action.

Now this is the condition of affairs that we have to meet, and we believe the idea is abroad throughout the whole land that, unless some plan-whether it be the plan of the old precedent, the twentysecond joint rule, or some other plan—be adopted, there is no power on earth that can prevent war, bloodshed, confusion, chaos, and an end of this Government and of republican institutions. If that be so, Mr. Speaker, then it becomes a high and a solemn duty devolving so, Mr. Speaker, then it becomes a high and a solemn duty devolving upon this Congress to provide some mode which will bring about a peaceful solution of the difficulty and tide over this eventful period in the history of our country. Now, Mr. Speaker, the bill under consideration in my opinion does not at all interfere with any of the rights of either of the two Houses any more than the precedent to which I have alluded interfered with the rights of the two Houses in that day. This bill originates in the two Houses, originates like the appointment of tellers in the old precedents, by a joint committee of the two Houses; and that joint committee, instead of resorting to the old formula of a joint report and the adoption of that report by both Houses of Congress, have departed from the old precedents and both Houses of Congress, have departed from the old precedents and

have reported to both Houses of Congress a bill to establish for this occasion the mode of counting the electoral vote and settling this great question that is now convulsing the country. And when this bill shall have received the concurrent sanction of both Houses of Congress, establishing, as the old precedents did establish, a mode of counting the electoral votes on this occasion, when the votes shall have been counted in conformity with the provisions of this bill, they will have been counted by the concurrent action of the two Houses and received the sanction of each through the bill they have passed into law.

If any member of the House thinks it is giving up any of its rights, if this bill takes from the House any of its prerogatives it takes them by the consent and the action of the House itself. It seems to me, without going now into the character of the commission, that the commission here established to determine this vexed and disputed question is no more a relinquishment of its rights than the tellers appointed under the precedents from 1800 down to the present time.

The mode is different because the questions arising are different and more difficult of solution.

The provisions of this bill have been so carefully conned over by

tion of the two Houses

the members of this House that I will not undertake to go over every point, but will glance at some of its details and its most important provisions.

The first section provides that where there is but one return from The first section provides that where there is but one return from a State the vote shall be counted unless rejected by both Houses. It is maintained by some gentlemen that that provision in itself takes from this House a right which it would have without it, but if it does it takes it from it by its own action, by the concurrent action of this House with the Senate, and when the two Houses have agreed that this shall be the rule, then the vote is counted by the concurrent action of the two Houses.

We all know the trouble that will meet us when the vote comes to be counted. We know the status of the vote of every State in dispute, and therefore we have provided for a case familiar to us all, and with our eyes open, evils to be met. We know that no two returns come up from any States except the four States in dispute, and, if the two Houses have agreed, by their concurrent action in the pasagreed, by their concurrent action in the passage of this bill, as to the votes of all the States except the four in dispute, those votes shall be counted, unless it shall appear when the certificates are opened that there is some such gross defect in the casting of the vote by the electors or some other defect as should induce both Houses to reject the vote, they will be counted. I cannot see, therefore, that when the two Houses have agreed, as to all the States but the four—all the States from which there is but one re-States but the four—all the States from which there is but one return—the votes shall be counted according to the certificates of the returns, unless both Houses concur in ordering otherwise, it is not giving up any of the power of the House over the question, because this House and the Senate, with every fact which will meet us when we count the vote before us, have said by their concurrent action that as to those States we agree they shall be counted unless both Houses reject it as their concurrent action. We agree beforehand that they shall be counted; that when the two Houses meet în joint convention the votes from the States not in dispute shall be counted unless both Houses agree in rejecting the vote on some point that may come up which is not now known. Surely the two Houses have the same right to agree to that now as they will have when the certificates are opened in the presence of both Houses and the certificates are opened and handed over to be counted. So that it seems to me are opened and handed over to be counted. So that it seems to me that when the two Houses of Congress shall say in advance, by bill, joint resolution, or concurrent action in any shape or form, that the two Houses of Congress agree that the votes of certain States shall be counted unless the two Houses shall reject them, it is the concurrent action of the two Houses counting the vote. The first provision of the bill does not infringe upon any doctrine maintained that it is the right of the two Houses in concurrent action to count the electoral

But if that were all there was in the case it would be plain sailing, and the old precedents might have been followed with safety and without fear of resort to war or violence, but unfortunately, as I intimated a while ago, among the States voting for President and Vice-President there are four from which double certificates have been re-President there are four from which double certificates have been returned and two sets of electors have cast their votes, one for one candidate and the other for the other; and that is the case which both Houses of Congress know to-day, as well as they will know when the certificates are opened. That case must be provided for now, before the day arrives for counting the vote; some solution of the difficulty must be provided. It is like the case of Michigan and the case of Wisconsin which I read a while ago. The State of Wisconsin had voted on the day after the day fixed by law, and both Houses knew it before they met in joint convention. They provided a mode of counting the vote of Wisconsin. It so happened that the vote of Wisconsin did not affect the presidential election, and the scheme re-Wisconsin did not affect the presidential election, and the scheme resorted to on that occasion was to count the vote of Wisconsin, which did not alter the result hypothetically. The two Houses, before the day for counting arrived, came together and both agreed how the vote should be counted.

Now we know that we have more trouble than that upon our hands in this case, because unfortunately upon the solution of the difficulty in counting the electoral votes of four disputed States the result of the presidential election depends. If they are all counted one way

they decide the election in favor of Mr. Hayes as President of the United States; if any one is decided against him, then Mr. Tilden is President of the United States; and that is the reason why the diffi-President of the United States; and that is the reason why the diffi-culty which we meet now is greater—tenfold greater—than any which was ever met before by Congress in the history of our Gov-ernment. That state of affairs had to be provided for in this bill. How was it to be done? We could not get an equal number of gen-tlemen selected from the two Houses without getting partisans, gen-tlemen on one side who believed Mr. Tilden was elected and on the other they believed Mr. Hayes was elected, and therefore some means had to be devised by which a tribunal should be selected that would decide the question as we hoved and believed, so as to avoid difficulty. decide the question, as we hoped and believed, so as to avoid difficulty, fairly and justly, and hence the committee has reported the second section of the bill. It provides that when there are two returns from any State on the day when the votes are to be opened and counted all the papers, certificates, or papers purporting to be certificates shall be referred to a commission composed of five members of the House of Representatives, five members of the Senate, and five justices of the Supreme Court.

Supreme Court.

These justices are selected by circuits partly because they represent widely different sections of the United States and partly because it is believed they are equally divided in political opinions. It cannot be supposed that these judges will be influenced in their decision of this case by party politics. They are accustomed to view questions judicially, and have decided political questions without regard to politics. But to prevent charges of unfairness in the bill, to satisfy both parties that fairness was the aim of the bill, no preponderance of political bias was allowed in the bill. The selection of the fifth justice is left to the four, and the country has a right to expect at their hands the selection of a non-partisan, and I feel sure there will be no disappointment. With such a tribunal to decide this great question, absolute fairness in the decision must be expected. Napoleon said, "Providence was on the side of the heaviest artillery." In this case, the victory will be on the side of the stronger case. We must expect the decision will be fair and that whoever is elected under the Constitution and laws will be so declared. Having entire confidence in stitution and laws will be so declared. Having entire confidence in the strength of our case, I shall trust implicitly this tribunal and confidently expect a favorable decision.

Another apprehension felt about the bill is that the powers of the court to inquire into the legality of the action of the returning boards may be limited by its provisions. This apprehension is believed to be groundless. It is provided by the last paragraph of the second section that-

All the certificates and papers purporting to be certificates of the electoral votes of each Stare shall be opened, in the alphabetical order of the States, as provided in section I of this act; and when there shall be more than one such certificate or paper, as the certificates and papers from such State shall so be opened, (excepting duplicates of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote. or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and by a majority of votes decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two Houses shall again meet and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order sh

This provision gives to this commission all the powers now possessed for the purpose by the two Houses acting separately or together. It can do in the premises whatever the two Houses, or either of them, may lawfully do. Surely this is broad enough to satisfy all. For this commission ought not to have any power not possessed by the two Houses under the Constitution and the laws. Another objection made is that it is unconstitutional, because it takes from the two Houses the right to count and reposes it in this commission. Can this be valid? I have endeavored to show that this bill, which only provides for this occasion, does not deprive the two Houses of their powers and rights, but only establishes a mode by which they (the two Houses) have it done. If this power is lodged in the legislative department of the Government. By the last paragraph of the eighth section of the first article of the Constitution it is provided that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government, or in any department or officer thereof."

The twelfth amendment gives to the two Honses the right to count, but does not required the reader remover. This was left wright to This provision gives to this commission all the powers now pos

The twelfth amendment gives to the two Houses the right to count, but does not provide the mode or manner. This was left, wisely or unwisely, to legislation, which seems to be necessary to carry into execution this power vested in the legislative department (the two

Houses) by the Constitution. It will not do to say no legislation has been found necessary up to this time, all the precedents established by the concurrent action of the two Houses providing a mode of counting for each election. The joint resolution approved by Lincoln and the twenty-second joint rule is quasi-legislation; each provides for this occasion. Whether the provision is made by concurrent or joint resolution, joint rule or by bill, cannot affect the constitutionality of the measure.

Shall such a bill fail to become a law? What will be the consequences? The 14th of February is reached without an agreement upon the mode of counting. It is seriously feared—nay, it is most certain—that the President pro tempore of the Senate will undertake certain—that the President pro tempore of the Senate will undertake to count the votes—will count only the votes contained in the certificates from the unscrupulous and fraudulent returning boards of the three disputed States and will declare Rutherford B. Hayes and William A. Wheeler President and Vice-President of the United States. It is equally certain that this House would, as it should, refuse to submit to this flagrant usurpation, would retire from the joint convention with the Senate and elect Samuel J. Tilled. With two Presidents dents, there must be conflict of authority and consequent conflict of arms. Is the country prepared for war? Already the uncertainty and apprehension which have surrounded this question have paralyzed the business of the country, thrown hundreds of thousands of people out of employment, and brought starvation to the poor man's

Shall we hesitate in our duty in this hour of peril? Shall we prove ourselves mere partisans, or statesmen? Shall we meet the just expectations of the forty-four millions of people whose anxious eyes are turned toward us; or, by the refusal to pass the bill, turn them to the dire calamities of war, devastation, and ruin?

I know not how others may feel and act; as for myself I shall vote for it cheerfully, confident that it will afford a fair and honest and just solution of this vexed question. Then with Tilden in the Presidency, and reform and economy in the Government, our country will start on the road to prosperity and happiness. Then will be work for the idle and bread for the hungry, and generations yet unborn may rise up and call us blessed. rise up and call us blessed.

Mr. GOODE. By the courtesy of my friend and colleague I am allowed to occupy twenty minutes of his time. The report of the joint committee on counting the electoral votes for President and Vice-President has imposed upon the two Houses of Congress a very grave responsibility. We would be either more or less than men if we did not feel profoundly impressed with the sense of that responsibility. The duty is now incumbent upon us to accept or reject the plan of adjustment which has been proposed by the joint committee. In my opinion, the members of that joint committee are eminently entitled to

ion, the members of that joint committee are eminently entitled to the thanks of the Congress and of the country for their patient, self-sacrificing, and patriotic labors. And I have no hesitation in declaring that, so far as I am concerned, I am prepared now to accept my share of the responsibility, and to accord to the plan which they have proposed my earnest and cordial support.

It is refreshing in these times of high political excitement, when the voice of party and of faction is so often heard to vex the public ear—it is refreshing I say to find that the members of this joint committee, composed of equal numbers of both the great political parties of the country, are imbued with a spirit of patriotism sufficiently broad and comprehensive to enable them to forget that there is a party to serve when they have a country to save. It is an auspicious circumstance, and I hail it as the harbinger of a better and a brighter circumstance, and I hail it as the harbinger of a better and a brighter

day.

The scheme of adjustment which has been proposed may be liable to criticism; it may perhaps be defective in some of its particulars. But I believe that it is the best that is now attainable, and I believe it is always the wisest statesmanship to do the best that can be done under the circumstances by which we are surrounded. It is easier to pull down than to build up; it is easier to criticise a scheme of adjustment than to devise one.

In common with the great body of the democratic party of this country I entertain the belief that their candidates were legally and fairly chosen at the recent election. I respect the honest indignation of those of my countrymen who insist that we, the representatives of the people, should stand here as a rock in mid ocean and clamor for their rights like the barons at Runnymede. But it behooves us in this perilous crisis of the country's history to pause before we reject this plan of adjustment, unless we are prepared to suggest something

this plan of adjustment, unless we are prepared to suggest something more just and feasible in its stead.

In the consideration of this question there are several important facts which cannot be disregarded. It cannot be denied that the great body of the republican party in this country profess to believe that their candidates have been legally and fairly elected. It cannot be denied that some of the more daring and bold of the republican leaders, encouraged and sustained by a powerful element in the country, seem determined to inaugurate Mr. Hayes at all hazards.

The significant utterances of the President of the United States immediately after the election, who persisted in asserting that Mr. Hayes was certainly elected, notwithstanding the whole country, including Mr. Hayes himself, seemed prepared to accept the fact of his defeat; the selection of a partisan committee and the concentration of troops at New Orleans for the purpose of watching the count of

the votes; the extraordinary manipulation of the returning boards of three States by a high Cabinet official; the virtual overthrow of the supreme court of South Carolina by the simple edict of a Federal judge; the abrogation of the twenty-second joint rule under which, on three several occasions, the candidate of the republican party had been declared duly elected President; the unwarrantable interference of the military arm of the Government by which the long-suffering and proud-spirited people of South Carolina and Louisiana have been each at three deam from the service when the service is three deam from the service in the again thrust down from the very pinnacle of hope, and again sub-jected to the ignominious rule of the bayonet; the preconcerted clamor of a large portion of the republican press from one end of this land to the other against the inherent right of democratic citizens peaceably to assemble and to concert measures for the public safety; all these things, in my opinion, demonstrate the existence of a wide-spread and dangerous conspiracy to attempt the inauguration of Governor Hayes against the forms of law and in reckless disregard, as I believe, of the wishes of a large majority of the American people

I say these are facts which cannot be disregarded in the discussion of this question. It is my firm conviction that it is the earnest wish—and I have been strengthened in that conviction by listening to another debate within the last twenty-four hours in another forum— I say it is my firm conviction that it is the earnest wish of a portion of the republican leaders that there shall be no agreement upon any plan of counting the electoral vote. I believe if this plan is rejected none will be agreed upon; that when the two Houses come together to count the electoral vote, there will be a disagreement as to the result of the election.

In that event, the House of Representatives, in the exercise of their onstitutional functions, will proceed immediately to the election of Mr. Tilden. And the President of the Senate, in obedience, as I believe, to the requirements of his party, will feel himself obliged to arrogate to himself the right to declare Mr. Hayes the President-elect. What then ? We will have a dual Executive. And in my humble

judgment we will then be brought to the point where one party or the other must make an ignominious surrender, or we must fight. Are gentleman prepared for the latter alternative? Are they or the people whom they represent prepared for a conflict of arms? Are they prepared to "Cry 'havoe' and let slip the dogs of war?" If not, then I appeal to them by all the memories of the past and by all the hopes of the future to pause before they enter upon a struggle the consequences of which must be disastrous and the end of which no

Now, are there any insurmountable objections to this plan? Let us inquire. If it be objected that the scheme proposed by the adoption of this bill is to erect a tribunal unknown to the Constitution,

tion of this bill is to erect a tribunal unknown to the Constitution, then I submit that if that be true, it is equally true that the issue to be decided is one which, if the framers of the Constitution ever contemplated it, they failed to provide for.

The Constitution merely provides that the President of the Senate shall open the certificates in the presence of the Senate and House of Representatives, and that the votes shall then be counted. That is all. It is a historical fact that from the foundation of our Government some of our ablest commentators and some of our wisest statesmen have entertained the belief that the Constitution is in this respect

signally defective, and that here lies the rock upon which our governmental system must finally split and fall to pieces.

Sir, in my humble judgment, the fair construction of that clause of the Constitution is that the power to count the vote is lodged in the two Houses of Congress, and when I say the two Houses I mean the two Houses of Congress, and when I say the two Houses I mean the two Houses acting concurrently. And, sir, according to my apprehension, this bill provides for carrying out that power. The two Houses of Congress are authorized to pass all laws necessary and proper for carrying into execution all powers vested in the Government of the United States or in any department thereof. According to the scheme of this bill the two Houses agree before the count begins that, where there is but one return from a State, it shall be counted unless rejected by the concurrent action of the two Houses; and when there is more than one return the certificate and all the and when there is more than one return the certificate and all the papers connected with it shall be submitted to a joint commission for their judgment; and their decision shall be final unless reversed by the concurrent action of both Houses of Congress.

It seems to me that according to the scheme of the bill the action of the joint commission is substantially the action of the two Houses; that the count of the vote according to the recommendation of the joint commission is, in effect, a count by the two Houses, and that in assenting to this measure it cannot fairly be said that the two Houses of Congress have delegated any power conferred upon them by the Constitution. Gentlemen seem to suppose that the so-called arbitration feature is a novel one, and that it involves the establishment of a precedent which may be dangerous in the future. But they forget that in 1800 the Senate of the United States passed a bill embodying this very principle, the title of the bill being "A bill to prescribe the mode of deciding disputed elections of President and Vice-President." That bill was adopted in the Senate by a vote of 16 to 12, and in the House of Representatives by a vote of 52 to 37, with amendments, which amendments afterward caused the defeat of the bill. But I call the attention of gentlemen to this fact, that the arbitration feature now so vigorously assailed was sanctioned and indorsed by the ablest and wisest men in the two Houses of Congress at that day, including John Marshall, of Virginia, afterward Chief-Justice of the joint commission is, in effect, a count by the two Houses, and that in

United States, and the highest model the world has ever known of the able, learned, and incorruptible judge. It is objected in certain quarters that according to the theory of

our Government the executive, legislative, and judicial departments ought to be kept entirely separate and distinct; and that according to this bill the judicial department is called upon to decide this issue between the parties. The judicial department is called upon to decide nothing. It is true that five of the fifteen men selected to decide this great issue happen to be judges of the Supreme Court. But the joint commission decides nothing; their action is simply advisory. They merely recommend; and the two Houses can reject or adopt the recommendation according to their pleasure. Nothing can bind the two Houses except their own agreement. But it is fair to presume that all wisdom will not die with these two Houses, and that they may be assisted in coming to their agreement by the advice and recommendation of such an existent religious. mendation of such an eminent tribunal.

Now, Mr. Speaker, is it not high time that a Christian people such as we profess to be shall find some other method besides the employ-ment of brute force for the settlement of these difficulties. If international courts are organized for the settlement of difficulties between nations, if local courts are organized for the settlement of difficulties between individuals, why, I demand to know, is it that this tribunal cannot be organized for the settlement of this great difficulty between the two Houses of Congress and between the two great

political parties in the country ?

Sir, we have just been celebrating the centennial year of our national existence. We have invited the people of all nations and all climes to come to our shores for the purpose of witnessing the grandeur of our American system of Government and the unexampled progress which our people have made in the peaceful arts of industry; and shall it be said that there is not intellect and patriotism enough in the American Congress to devise some fair scheme for the adjustment of a controversy which threatens the postration of all our industries, the overthrow of all our liberties, and the destruction of our republican institutions? Shall it be said that in this hour of great public peril, in this supreme moment of our destiny as a people, five Senators and five Representatives and five judges from a people, live Senators and live Representatives and live Judges from the most august tribunal upon earth cannot be found who are capa-ble of rising superior to all party considerations and deciding this great question like patriots and men, according to the Constitution and the laws? I will not believe it. I am willing to trust such a tribunal. I believe that they will decide fairly and impartially, in the fear of God and in the spirit of the oath which they will

But, whatever the decision may be, we will at least have the satisfaction of knowing that the successful candidate will be inaugurated according to the peaceful forms of law, and without violence to our according to the peaceful forms of law, and without violence to our republican system of government. According to my judgment, the chief merit of this plan consists in the fact that it affords a certain guarantee of a safe and speedy deliverance from the military arm of the Government. Its adoption will be equivalent to the service of a formal notice upon all concerned that the two Houses of Congress propose to dispense with the presence of an armed soldiery when they come to exercise their constitutional function of counting the electoral vote; that they intend to inaugurate, for the next four years, a government of opinion, and not of force, the rule of law, and not the rule of the bayonet. And is not this a consummation most devoutly to be wished?

Mr. Speaker, the people whom I have the honor to represent are tired of war and rumors of war. They have fully realized all its multiplied and untold horrors. For the preservation of the public peace they would willingly sacrifice everything but their honor and that priceless heritage of freedom which their fathers have bequeathed to them. Next to the preservation of our constitutional form of Government there is nothing which they more ardently desire than a lasting and enduring peace. The earnest aspiration of their hearts is that the white wings of the sweet messenger of peace may once more

overspread the entire land.

overspread the entire land.

More than one hundred years ago Virginia stood side by side with Massachusetts when the infant colonies invoked the blessing of Almighty God upon the declaration that they would be free and independent States. If the voice of Massachusetts was heard through her eloquent Otis, Virginia contributed her Henry, with his lips touched as it were by a live coal from off the altar. If Massachusetts furnished her Warren to bleed and die for the common cause, Virginia sent her Washington to Boston as the accepted leader of the patriot forces in their heroic effort to be free. And now to-day, as one of the humblest of her sons, I stand in the name of Virginia to respond to the invocation for peace which was heard from Massachusetts day before yesterday. I re-echo the patriotic sentiment contained in the eloquent peroration of her distinguished son when he said that, if this bill could be ratified by this Congress with the unanimity with which it has been reported by the committee, it would shed a glory over the opening year of the second century of our Independence which not even any year of the past century could excel. "Peace hath her victories no less renowned than war," and the greatest of all victories is that of reason over passion, of man over himself.

Mr. HOAR. Mr. Speaker, the danger which our wisest writers on the Constitution years ago predicted and dreaded now confronts the American people. The Constitution contains no express provision her Warren to bleed and die for the common cause, Virginia sent her

for that determination of disputed questions of law or fact which it terms counting the electoral vote. The wisest students of its com-plicated mechanism have expressed their fear that it would give way, parateu mechanism have expressed their fear that it would give way, not in resisting foreign force or civil dissension, not even by decay or corruption, but because of its vague and imperfect provisions for determining that most vital of all questions, the title to executive power. With that peril, under circumstances of special difficulty, we have now to deal.

In estimating this danger I am not affected by any fear of civil war or any menace of violence. Such threats, if made in the spirit of empty bluster, deserve nothing but contempt; if serious, the swift and indignant scorn and condemnation of the whole people.

I do not dwell upon any apprehension of violent resistance to the lawful authority of the Government. The evil of civil war—so great that even to threaten it is a grievous crime—is only surpassed by the greater evil of yielding one jot of lawful authority to menace. But I do hold that nothing could be more injurious to the whole Republic, nothing more destructive to the principles that I myself hold dear, than that a man holding them shall be placed in the presidential office whom at least one-half of the American people will regard as an usurper by an act of power which at least one-half of the people will regard as an usurpation. If any gentleman thinks otherwise, his judgment differs from mine as to the influences which commend the truth to the approbation of mankind.

I shall not attempt to add another to the arguments of the consti-

I shall not attempt to add another to the arguments of the consti-tutional question: With whom is the power to determine those grave questions of law and fact which may arise in determining what votes have been lawfully east for President and Vice-President by the elect-oral colleges? I admit that those persons who believe that the Con-stitution requires the President of the Senate in all cases to perform stitution requires the President of the Senate in all cases to perform that office must deem this bill unconstitutional. I do not expect the votes of such persons for the bill, unless they think that the recent almost unanimous acquiescence of Senate and House in a different construction, supported by a current of great authorities, including John Marshall, Daniel Webster, and Abraham Lincoln, may include them to treat the question as concluded, or at least so far to yield their individual judgment as to deal with it as one of doubt. This consideration may perhaps especially commend itself to those gentlemen who have honestly changed their opinions on a grave question of constitutional law in the presence of a great temptation. Fortunate is stitutional law in the presence of a great temptation. Fortunate is that statesman to whom long-settled and matured convictions are sufficient for the solution of the ever new and various problems of his public life,

Who in the height of conflict keeps the law In calmness made, and sees what he foresay

For myself three considerations make me deem it incredible that the framers of the Constitution or the people who accepted it ever meant or could mean to intrust the power of deciding these vast ques-

meant or could mean to intrust the power of deciding these vast questions to the President of the Senate, subject to no control of the two Houses of Congress or of the law-making power.

First. They were a generation of men that dreaded above all other things the usurpation of executive power.

Second. They expected that the President of the Senate would ordinarily be one of the candidates whose claim to the office was to be decided. They provided that two persons should be voted for for President, of whom that one having the second highest number of votes was to become Vice-President, and President of the Senate. The President of the Senate. The President of the Senate, therefore, must within four years have been a leading candidate for the Presidency. The habit of continuing the same persons in public station doubtless led them to anticipate that he would be a leading candidate for the succession, as has first happened when Adams succeeded Washington, when Jefferson succeeded Adams, when Van Buren succeeded Jefferson, and in many cases of unsuccessful competition. The same suggestions apply to all cases where the Vice-President is a candidate for re-election.

Third. As in Great Britain, from which our institutions were derived, Parliament for centuries has regulated the inheritance of the crown and determined all questions of right to the succession, so, in every American State in existence when the Constitution of the United States was adopted, the Legislature at that time, either itself, elected the governor or counted the votes of the people and decided all disputes as to the popular choice.

As the Vice-President-

Says Alexander Hamilton-

may occasionally be a substitute for the President, all the reasons which recom-mend the mode of election prescribed for the one apply with great if not equal force to the manner of appointing the other.

There are three other theories, with none of which is this bill in

First. That the President of the Senate must count the vote in the absence of concurrent action by the two Houses, or of other pro-

absence of concurrent action by the two Houses, or of other provision by the law-making power.

Second. That under the power expressly conferred by the Constitution upon Congress to make "all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," the law-making power may provide a method for counting the vote.

Third. That the power of counting the vote is vested by the Con-

stitution in the two Houses voting separately. The two Houses of Congress are the tribunal which according to this bill is to execute this grave authority. If they have it by the Constitution, it is left undisturbed. If it needs the forces of the law-making power to confer it, this bill confers it. The only case when any other aid comes in is when the two members of which the final tribunal is composed differ in their judgment. Certainly it is within the law-making power to provide what shall happen when the members of a constitutional tribunal composed of even numbers are equally divided in the support of the sup tutional tribunal composed of even numbers are equally divided in judgment. We may surely provide by law that, if the Supreme Court composed of six or ten members be equally divided in opinion, the judgment of the court below shall stand or a report of a reference shall be accepted. The commission is not an umpire. It is not an arbitration. It is an agency inferior to the two Houses, reporting to them, its action wholly subject to theirs, but only to stand when the two Houses are divided. The warmest advocate of the constitutional powers of the Houses must concede that this bill comes within the very letter of the definition of the law-making powers of Congress. powers of the Houses must concede that this bill comes within the very letter of the definition of the law-making powers of Congress; a "law necessary and proper for carrying into execution the powers vested in the Government and in every department thereof." Unless this power exist in Congress of providing by law for the case where the two members of this tribunal composed of an even number, House and Senate, stand divided on any question one to one, the advocates of the power of the two Houses to count the vote must believe that the framers of the Government meant it should perish when the not improbable case should arise of a division in sentiment between two political leadies on any question of law or feet which should arise in litical bodies on any question of law or fact which should arise in

counting the vote.

Some gentlemen have spoken of this as a compromise bill. There is not a drop of compromise in it. I do not mean that, after it was found that the principle of securing an able and impartial tribunal is not a drop of compromise in it. I do not mean that, after it was found that the principle of securing an able and impartial tribunal conformed to the opinions and desires of all the committee, there was not some yielding of individual views as to detail. But how can that man be said to compromise who, having a just and righteous claim, asserts it, maintains it, enforces it by argument and proof, yields no jot or tittle of it before a tribunal so constituted as to insure its decision in accordance with justice and righteousness so far as the lot of humanity will admit? I think justice and right are compromised when they are submitted for their decision to force. They are compromised when they can only be maintained by doubtful disputed exercises of power. They never can be compromised when they are permitted to stand before a tribunal clothed with judicial powers, surrounded by judicial safeguards, invested with legal authority by the law-making power of the country.

Let it not be said that this reasoning implies that truth and error stand on an equality; that it makes no difference whether matters be settled right or wrong provided only they be settled. It is precisely because truth and error differ; it is because of the vast difference between the righteous result and its antagonist, that we propose to submit the differences between them not to force, not to heat and passion, but to that tribunal which, among all mechanisms possible to be executed by law, is least liable to be diverted from the truth. But it is charged that this commission is in the end to be made up of seven men who of course will decide for one party and even men we of seven men who of course will decide for one party and even men we of seven men who of course will decide for one party and even men we are also and the seven men we of seven men who of course will decide for one party and even men.

But it is charged that this commission is in the end to be made up of seven men who of course will decide for one party, and seven men who of course will decide for one party, and seven men who of course will decide for the other, and who must call in an umpire by lot, and that therefore you are in substance and effect putting the decision of this whole matter upon chance. If this be true, never was a fact so humiliating to the Republic confessed since it was inaugurated. Of the members of our National Assembly, wisest and best selected for the gravest judicial duty ever imposed upon man, under the constraint of this solemn oath can there be found in all this Sodom not ten, not one to obey any other mandate but that all this Sodom not ten, not one to obey any other mandate but that of party? Far otherwise was the thought of Madison when with exultant aspiration he commended the Constitution to his countrymen:

In cases where it may be doubtful on which side justice lies, what better umpires could be desired by two violent factions, flying to arms and tearing the state to pieces, than the representatives of confederate States not heated by the local flame? To the impartiality of judges they would unite the affection of friends. Happy would it be if such a remedy for its infirmities could be enjoyed by all free governments; if a project equally effectual could be established for the universal peace of mankind.—James Madison in Federalist of No. 43.

But I especially repudiate this imputation when it rests upon those members of the commission who are to come from the Supreme Court. It is true there is a possibility of bias arising from old political opinions even there, and this, however minute, the bill seeks to place in exact equilibrium. But this small inclination, if any, will in my judgment be overweighted a hundred-fold by the bias pressing them to preserve the dignity, honor, and weight of their judicial office before their countrymen and before posterity. They will not consent by a party division to have themselves or their court go down in history as incapable of the judicial function in the presence of the disturbing element of partisan desire for power, in regard to the greatest cause ever brought into judgment. Mr. Speaker, the act we are about to do will, in my judgment, be one of the greatest in history. Our annals have been crowded with great achievements in war and peace, in art, in literature, in commerce. But other countries, other republics have equaled us in these things. But in this great act we shall stand without a rival or an example. For a thousand years our children, with tears of joy and pride, will read that while in the fierce strife for executive power the sun of other republics has gone down in darkness But I especially repudiate this imputation when it rests upon those

and in blood, in their own country, too, the same great peril has arisen. Their sky has been darkened by the same cloud; their ship with its costly freight of love and hope encountered the same storm and was driven near the same rock; but in the midst of storm and darkness and conflict the august and awful figure of law rose over the face of the waters, uttering its divine, controlling mandate, Peace, be still!

Mr. HOAR. I yield the remainder of my time to the gentleman from Maine, [Mr. HALE.]

Mr. FORT. Before the gentleman from Massachusetts takes his seat, will he answer a question?

Mr. HOAR. Yes, sir.

Mr. FORT. I desire to ask the gentleman whether he can give any reason either on his own behalf or on behalf of the committee why the entire Supreme Court as an organized body was not taken to make up this tribunal, or why all the members of that court were not

Mr. HOAR. One very good reason was that it did not seem to be proper to take an entire department of the Government and put it on an equality with committees chosen by the two branches of another. But another-a franker, better answer-is this: for one I desired (I speak only for myself) to have an absolute equilibrium of any possible political bias, however small, in the gentlemen who are to constitute this commission.

Mr. HALE. Mr. Speaker, in opposing this bill I am aware that I lay myself open to the charge of being an "intense partisan," for I read what has been said elsewhere:

In the intense criticisms that have been made upon this bill in the very few days that it has been known, by the extreme upholders of party wishes upon both sides, I have never observed any criticisms upon the absolute fairness and justice of such a mode, provided we could get over the constitutional objections that these newspaper writers and intense politicians seem so suddenly to have discovered and with which no doubt they are so very familiar.

I am glad to say, Mr. Speaker, that in the debate on this measure here there has been upon the part of no gentleman discussing it favorably any disposition to withhold due credit from the honest objections that may be found in the minds of gentlemen opposing it. What I have read was not uttered here. What an "intense politician" may be in other men's estimate I cannot tell. I may suppose that what is meant is an American citizen who shows by his acts that he takes a deep interest in the elections at which the American people choose their Chief Magistrate; who believes that so far as principles choose their Chief Magistrate; who believes that so far as principles and results go one party is right and the other is wrong; and who when the battle is at its thickest contributes or attempts to contribute something to bring the right side out uppermost; who during presidential contests does not linger by the sea-side or rove in the mountains or retire to home seclusion, but who gives and takes hard blows for the sake of his beliefs, and who is "intense" enough to think when he has helped to win a fair victory that it should not be thrown away by those who have shirked the battle or have proven themselves better in criticising its plan than in fighting it out to the heard selves better in criticising its plan than in fighting it out to the hard end.

Nor am I unaware, Mr. Speaker, that he who sets himself up against this measure will be charged with obstructing a pacific settlement of a dispute which it is said threatens the peace of the Republic and involves its business interests in further doubt, and, it may be, in ruin. The voice of the great cities has been heard, and day by day petitions and memorials are presented here from all the large aggregations of business communities expressing themselves in favor of this bill. And I have seen in a newspaper circulating far and wide in New York City the direct enunciation of the proposition that if Congress does not at once accept and pass this bill the business men of New York City will take both the matter and Congress in hand. As I read the menace I remembered that a great lawyer of New York City not many months ago stood up in Cooper Institute and revived memories of the day when the Republic rocked on its foundations in the early months of 1861, and drew a picture not soon to be forgotten of the loyalty of 1861, and drew a picture not soon to be forgotten of the loyalty of New York City, declaring that when Abraham Lincoln needed that New York City, declaring that when Abraham Lincoln needed that his hands be sustained and upheld as never before, six faithful souls met in that city and deliberated and considered whether it was safe to call a meeting to show that New York sustained the Republic and the Union, being then fearful that her business men wanted some kind of settlement or compromise which would give up the real issue then involved before the American people.

It was the tramp of men from the valley and hillside hurrying to the defense of an imperiled country which showed the timid souls in the city that there was something worth fighting for besides bonds and stocks and even quotations at the exchanges.

The cities, sir, are entitled to respect; but God made the country and man made the town, and from the Saint John's waters to the Colorado every scattered township and county has as great a stake

and man made the town, and from the Saint John's waters to the Colorado every scattered township and county has as great a stake in this contest as the dwellers in New York or San Francisco. Nor do I question the motives and purposes of gentlemen who have devised this measure and have given many laborious days and nights to shape it. The trouble has been, sir, not in their will or lack of patriotic endeavor, but in the profound fundamental errors upon which their structure is built, in my belief. Carefully scrutinizing that belief, as I was bound to do in the face of the conclusion of the able and thoughtful men who have made this report and presented us with this bill, I started with doubting my own doubts, but my search for

light in the direction in which these gentlemen have gone has been vain, and my doubts and fears have ripened into what is positive con-

viction against their conclusions.

To say nothing, Mr. Speaker, at present of the make-up and details of this bill, or the difficulties which must arise in its practical oper-

of this bill, or the difficulties which must arise in its practical operation, it startles me by its bold assumption of a power in the Congress to regulate and control the election of a President of the United States, which, in my judgment, was never lodged in the two Houses by the framers of the Constitution; and which, whatever the popular impulse may be at this speaking, will never be sustained by the American people when they shall have had time to measure the assumption and contemplate its consequences.

Objection has been taken because of a close election, and the natural claim set up by each side giving rise to embarrassment, and no doubt to sincere regrets that a more clearly expressed method has not been fixed in the Constitution by which to arrive at a determination of the votes of the electoral colleges to go far away from all attempt to cure or remove this uncertainty, and to strike a blow at the whole structure of the electoral college, which must shatter it from foundation stone to turret; and when it has fallen, build up in its place a power in Congress which at any time may thwart the will of the people and render nugatory their deliberate and expressed sentiment; for, Mr. Speaker, there is nothing in this bill from line 1 to the close which maintains or tends to maintain which maintains or tends to maintain

THE INTEGRITY OF THE ELECTORAL COLLEGE.

We are confronted with difficulties, it is said, in arriving at a result in the electoral college; but the bill is not one which by its methods brings us to a conclusion what the electoral college has done, but is a bill which in the boldest manner assails and destroys the electoral system. The first class of electoral votes that are tried by this bill are those where but one set of electoral certificates has been presented. The bill provides that even these may be rejected by the two Houses without reason or from such reason as may seem sufficient in the judgment of the two Houses. Have gentlemen reflected how early in this bill the fell blow which some gentlemen, I must believe, intend to strike at the electoral college, and to set up a congressional assumption instead, has been struck? The first one hundred lines show it. Massachusetts may come here with her vote certified as she has always sent it; she may have given 40,000 majority for Governor Hayes; and New York may come here with 40,000 majority which she has given for Governor Tilden; there may be no question whatever about a certificate, there is no duplicate return, but yet this committee could not, in treating such clear expression of the States, leave it without declaring in terms that all these claims, presumably covering nine-tenths of the electoral vote, may be rejected by both Houses without reason, or, as I have said, for reasons that seem to them fitting.

And the second class carries out the thought which must have all the time been possessing the minds of some or all the gentlemen of this committee, that although disputes have arisen and double certhis committee, that although disputes have arisen and double certificates have been presented from certain States giving rise to doubts as to what the electoral college had done, and the intervention of this tribunal is provided for, yet the question is not left for this tribunal to decide finally, as it had selected nine-tenths of the votes of the electoral college which may be overslanghed by both Houses where there is no dispute, it leaves the other tenth after it has passed through this commission, yet to be passed upon by the two Houses, and if they agree, to be rejected by them.

All the way through this bill—and that is what has alarmed me in studying its provisions—pitilessly moves along this

NEWLY CREATED POWER IN THE TWO HOUSES TO REGULATE AND CONTROL THE VOTE OF THE ELECTORAL COLLEGE.

OF THE ELECTORAL COLLEGE.

Where is this right gained, sir? By what provision? The electoral college stands as high as a constitutional monument as anything else that is provided in the Constitution for the American people; as high as the Presidency, the two Houses, or as the Supreme Court; and is the medium for the most supreme exercise of the free-man's right in this Republic. The power of Congress to throttle the electoral college is not under the right to "carry out" and put in operation constitutional provisions. It is not under the general power as to methods that so much talk has always been made about—this goes deeper, and inflicts wounds that are deadly.

The electoral college, Mr. Speaker, was adopted by the framers of the Constitution after much thought, discussion, and comparison and rejection of other plans for electing a President. It was the result

the Constitution after much thought, discussion, and comparison and rejection of other plans for electing a President. It was the result of the straining out of other plans, the infirmities and vices of which were thoroughly considered. In the convention of 1787—and I have not the time to quote from the debates, but only to refer cursorily to the course this discussion and settlement finally took—the first view was to elect the President by the National Legislature. The convention at first seemed generally favorable to this plan. The States voted nine to one against popular election. Its advocates upon the floor of that convention, led by Mr. Wilson, of Pennsylvania, were at first in a meager minority. Objections to the plan of electing by Congress were urged, that the Executive would not be independent; that the election would become open to corruption; and other plans were sought to be substituted. Elbridge Gerry, of Massachusetts, had a scheme by which the State governors were to elect the Executive of the United States. Finally, when the convention seemed to be in-

clining toward the selection of a President by the t = 0 Houses, the question of eligibility to re-election changed the currents of its

Roger Sherman, the grandfather of the gentleman from Massachusetts [Mr. HOAR] who has so ably and impressively spoken just now, gave the great weight of his opinion against the limitation of ineligibility to re-election, and re-election was clearly seen to be inconsistent with an election by Congress. Finally when the discussion seems to have lagged a new difficulty presented itself. If the two Houses elected how should it be done? On joint ballot or by vote of the separate Houses? This obstacle was fatal and the plan went to pieces. A special committee of one from each State was raised, to which the whole subject was committed; and as a result of its dewhich the whole subject was committed; and as a result of its deliberations the plan for congressional control and interference in this matter was deliberately abandoned and the electoral college was substituted and adopted. The advocates for a central government, like Mr. Hamilton, joined with the advocates for a direct popular election, and out of it came the provision for the electoral college.

That provision, sir, stands to-day as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

And, to fix methods by which the vote of the electors should be arrived at, the framers of the Constitution embodied the provision

The President of the Senate shall, in the presence of the Senate and House of tepresentatives, open all the certificates and the votes shall then be counted.

On the 4th of September, 1787, the clause providing for opening the certificates and counting the votes was reported to the convention in this form:

The President of the Senate shall in that House open the certificates, and the votes shall be then and there counted. (See page 1486, third volume, Madison Papers.)

On the 6th of the same month (see page 1509) the following passage occurs in the journal:

On several motions, the words "in presence of the Senate and House of Representatives" were inserted after the word "counted," &c.

Turning to page 1513 the clause is reported thus:

The President of the Senate shall, in the presence of the Senate and House of depresentatives, open all the certificates and the votes shall then be counted.

This is the form in which it stood and still stands in the adopted Constitution. Why the words "in the presence of the Senate and House of Representatives" were inserted before and not after the word "counted," as required by the amendment, does not appear by the Journal. If the clause had conformed to the amendment it would have read as follows:

The President of the Senate shall open all the certificates, and the votes shall then be counted in the presence of the Senate and House of Representatives.

But the "committee on style" changed the order of the sentence, not, as it will be seen, in any such way as to lodge in Congress any control over the matter.

General Dix, in his letter to Mr. Kasson upon this subject, says:

The first action of the framers of the Constitution in regard to this clause shows that it was not contemplated to open the certificates and count the votes in the presence of the House of Representatives, and that their final action was only designed to bring both branches of Congress together as spectators of the formality, according to the interpretation of the clause by Judge Kert, Judge Story, and other eminent public jurists, and not to confer on them any authority in regard to opening the certificates and counting the votes.

Now, Mr. Speaker, I have not the time nor the inclination to enter into any ingenious discussion upon the force of these express words as though we were beginning to construe this provision before we should let it go into operation. That clause, Mr. Speaker, has stood from that day to this. That clause is the clause that to-day is constitutional law. Under it for forty years, with but one exception, the President of the Senate did proceed to count and declare the vote. Indeed, if gentlemen will dip at a venture into the volume of precedents compiled by order of this House, by its Committee on the Privileges and Powers of the House, they will see that in the years since 1830 the power of the Vice-President or President of the Senate has been regarded and acknowledged by both Houses.

Let any gentleman read the following journalized record of the

Let any gentleman read the following journalized record of the proceedings following the elections in 1844 and 1848 and see if he finds anything conflicting with the vice-presidential count:

ELECTION FOR THE FOURTEENTH TERM-1841. WILLIAM HENRY HARRISON, President. JOHN TYLER, Vice-President.

IN SENATE, January 28, 1841.

Resolved, That a committee be appointed to join such committee as may be appointed by the House of Representatives to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election.

Mr. Preston, Mr. Hubbard, and Mr. Huntington were appointed the committee.

IN THE HOUSE OF REPRESENTATIVES, January 30, 1841.

On motion of Mr. Cushing, the House concurred in the following resolution of the Senate adopted on the 28th instant:

\*Resolved\*\*, That a committee be appointed to join such committee as may be appointed on the part of the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election.

The following Representatives were appointed the committee on the part of the House: Messrs. Cushing, J. W. Jones, Granger, Dawson, and Atherton.

IN SENATE, February 2, 1841.

In Senate, February 2, 1841.

Mr. Preston, from the joint committee appointed on the subject of counting the, electoral vote, reported the following resolution; which was read:

Resolved, That the two Houses will assemble in the Chamber of the House of Representatives on Wednesday, the 10th instant, at twelve o'clock, and the President of the Senate shall be the presiding officer; that one person be appointed a teller on the part of the Senate and two on the part of the House of Representatives to make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall amounce the state of the vote and the persons elected to the two Houses assembled as aforesaid; which shall be deemed a declaration of the persons elected President and Vice-President of the United States, and, together with a list of votes, be entered on the Journals of the two Houses.

The resolution was agreed to and

The resolution was agreed to; and The Vice-President appointed Mr. Preston the teller on the part of the Senate.

IN THE HOUSE OF REPRESENTATIVES, February 3, 1841.

The House of Representatives agrees to the foregoing resolution, and appoints Mr. Cushing and Mr. J. W. Jones tellers on its part.

On motion of Mr. Briggs, it was Ordered. That the Clerk inform the Senate that the House is now ready to receive the Senate, and to proceed in opening the certificates and in counting the votes of the electors for President and Vice-President of the United States.

IN THE PRESENCE OF THE SENATE AND HOUSE OF REPRESENTATIVES

The Senate attended in the Hall of the House; the President of the Senate was invited to a seat provided for him on the right of the Speaker, which he occupied, and the Senators having taken seats set apart for their accommodation. The Vice-President of the United States, in the presence of the two Houses of Congress, proceeded to open the certificates of the electors of President and Vice-President of the United States, beginning with those of the State of Maine and ending with the State of Michigan; and the tellers, Mr. Preston, on the part of the Senate, and Messrs. Cushing and John W. Jones, on the part of the House, having read, counted, and registered the same, making duplicate lists thereof, and the lists being compared, they were delivered to the Vice-President of the United States, and are as follows:

Number of electors of each State.	States.	President.		Vice-President.			
		William H. Harri- son, of Ohio.	Martin Van Buren, of New York.	John Tyler, of Vir- ginia,	R. M. Johnson, of Kentucky.	L. V. Tazewell, of Virginia.	James K. Polk, of Tennessee.
10 7 14 4 8 7 42 8 30 3 10 23 15 11 11 15 5 4 9 9 5 7	Maine New Hampshire Massaebusetts Rhode Island Connecticut Vermont New York New Jersey Pennsylvania Delaware Maryland Virginia North Carolina South Carolina Georgia Kentucky Tennessee Ohio Louisiana Mississippi Indiana Illinois Alabama Missouri		23 11 5 7	10 14 4 8 7 42 8 30 3 10 15 11 15 21 5 4 9	92	ii	i
3 294	Arkansas	3 234	60	3 234	48	11	1

The Vice-President of the United States then announced to the two Houses the state of the vote for President of the United States, as delivered by the tellers, to

For William Henry Harrison, of Ohio. 234
For Martin Van Buren, of New York. 0

And the state of the vote for Vice-President of the United States, as delivered by the tellers, to be—  $\,$ 

For John Tyler, of Virginia.

For Richard M. Johnson, of Kentucky

For Littleton W. Tazewell, of Virginia.

For James K. Polk, of Tennessee.

The Vice-President of the United States then declared that William Henry Harrison, of Ohio, having received a majority of the whole number of the electoral votes, was duly elected President of the United States for four years, commencing on the 4th of March, 1841; and that John Tyler, of Virginia, having received a majority of the whole number of electoral votes, was duly elected Vice-President of the United States for four years, commencing on the 4th of March, 1841.

IN SENATE, February 10, 1841.

Mr. Preston from the joint committee, reported, in further execution of their duties, the following resolution; which was agreed to:

\*Resolved\*\*, That a committee of one member of the Senate be appointed by that body, to join a committee of two members of the House of Representatives, to be appointed by the House, to wait on William Henry Harrison, of Ohio, and to notify him that he has been duly elected President of the United States for four years, commencing with the 4th day of March, 1841.

Mr. Preston was appointed on the part of the Senate.

Mr. Preston submitted the following resolution; which was agreed to: Resolved, That the President of the Senate do cause John Tyler, of Virginia, to be notified that he has been duly elected Vice-President of the United States for four years, commencing with the 4th day of March, 1841.

IN THE HOUSE OF REPRESENTATIVES, February 10, 1841.

Mr. Cushing, from the joint committee appointed to ascertain and report a mode for ascertaining the votes for President and Vice-President of the United States, and of certifying the persons elected of their election, presented the following in continuation of their report:

Resolved, That a committee of one member of the Senate, to be appointed by that body, to join a committee of two members of the House of Representatives, to be appointed by that House, to wait on William Henry Harrison, of Ohio, and to notify him that he has been duly elected President of the United States for four years, commencing with the 4th day of March, 1841.

Adopted.

#### UNIFORM TIME OF PRESIDENTIAL ELECTION.

An act to establish a uniform time for holding elections for electors of President and Vice-President in all the States of the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the electors of President and Vice-President shall be appointed in each State on the Tuesday next after the first Monday in the month of November of the year in which they are to be appointed: Provided, That each State may by law provide for the filling of any vacancy or vacancies which may occur in its college of electors when such college meets to give its electoral vote: And provided also, When any State shall have held an election for the purpose of choosing electors, and shall fail to make a choice on the day aforesaid, then the electors may be appointed on a subsequent day in such manner as the State shall by law provide.

Approved January 23, 1845.

### ELECTION FOR THE FIFTEENTH TERM-1845.

JAMES K. POLK, President. GEORGE M. DALLAS, Vice-President.

IN SENATE, February 3, 1845.

Resolved, That a committee be appointed, to join such committee as may be appointed by the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election.

The President pro tempore appointed Mr. Walker, Mr. Woodbury, and Mr. Dayton the committee on the part of the Senate.

IN THE HOUSE OF REPRESENTATIVES, February 4, 1845.

Mr. Burke moved that the House take up and concur with the following resolu-

Mr. Burke moved that the House take up and consistent to from the Senate:

Resolved, That a committee be appointed, to join such committee as may be appointed by the House of Representatives, to ascertain and report a mode of examining the votes for President and Vice-President of the United States, and of notifying the persons elected of their election.

The motion was agreed to and the resolution was concurred in; and Mr. Burke, Mr. A. A. Chapman, Mr. J. R. Ingersoll, Mr. D. L. Seymour, and Mr. Vance were appointed the committee on the part of the House.

IN SENATE, February 7, 1845.

In Senate, February 7, 1845.

Mr. Walker, from the joint committee, reported the following resolution; which was considered and agreed to:

Resolved, That the two Houses will assemble in the Chamber of the House of Representatives on Wednesday, the 12th day of February, 1845, at twelve o'clock; that one person be appointed teller on the part of the Senate, and two persons be appointed tellers on the part of the House, to make a list of the votes for President and Vice-President of the United States as they shall be declared; that the result shall be delivered to the President of the Senate, who will announce to the two Houses assembled as aforesaid the state of the vote and the person or persons elected; if it shall appear that a choice hath been made agreeably to the Constitution of the United States; which amuniciation shall be deemed sufficient declaration of the persons elected; and that the said proceedings, together with a list of votes, be entered on the Journals of the two Houses.

Mr. Walker was appointed the teller on the part of the Senate.

IN THE HOUSE OF REPRESENTATIVES, February 7, 1845.

Mr. Burke submitted the report of the joint committee identical with that Mr. Walker submitted to the Senate as above.

The report was concurred in; and Mr. Burke and Mr. J. R. Ingersoll appointed tellers on the part of the House.

Mr. Burke announced that Mr. Ingersoll, one of the tellers appointed by the House, was unable, through indisposition, to attend, and he moved another teller be appointed in his place. The motion was agreed to; and Mr. J. P. Kennedy was appointed to serve as teller in place of Mr. Ingersoll.

IN THE PRESENCE OF THE SENATE AND HOUSE OF REPRESENTATIVES

The hour set apart by a joint resolution of the Houses for counting the votes of electors for President and Vice-President, Mr. Brodhead moved that the Senate be informed that the House was now ready to receive them and proceed to the opening of the certificates and counting the votes given by the electoral colleges; which was agreed to.

The Senate soon after entered the Hall of the House of Representatives, two abreast, preceded by their Sergeant-at-Arms, who was succeeded by their President, Hon. Willie P. Mangum, and Secretary. Asbury Dickins, esq. 'The Senators took the seats prepared for them in the central area of the House, and the President of the Senate took the chair of the Speaker, (Hon. John W. Jones,) the lastnamed officer being seated on his left. The tellers took their seats at he Clerk's desk, assisted by the Secretary of the Senate and B. B. French, esq., Clerk of the House.

The President of the Senate rose, when the mean test of the seat of the Senate and B. B. French, esq., Clerk of the House.

House.

The President of the Senate rose, when the members of the House and Senators were all seated, and stated the object of their thus assembling to be to count the votes cast by the electors of the respective States of this Union for President and Vice-President of the United States; and handing to Mr. Walker (one of the tellers) a sealed packet, he said, "I deliver to the gentlemen tellers the votes of the electors of the State of Maine for President and Vice-President of the United States in order that they may be counted."

Mr. Walker received the packet, and, having broken the seals, the tellers examined the votes, which were announced to be nine in number, all of which were given for James K. Polk, of Tennessee, as President of the United States. The same number of votes for the Vice-President were given for George M. Dallas, of Pennsylvania.

The President next delivered to the tellers the votes of the electors of New Hamp-

shire, and of all the other States of the Union in succession in the same manner, and they were examined by the tellers, and the result was announced with the same formalities. The final result stood thus:

Number of electors of each State.		Pres	ident.	Vice-President.		
	States.	James K. Polk, of Tennessee.	Henry Clay, of Ken- tucky.	George M. Dallas, of Pennsylvania.	Theodore Frelinghuy. sen, of New York.	
9 6 12 4 6 6 6 6 7 26 3 8 8 17 11 9 9 10 11 12 13 23 6 6 6 6 12 9 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7	Maine New Hampshire Massachusetts Rhode Island and Providence Plantations Connecticut Vermont New York New York New Jersey Pennsylvania Delaware Maryland Virginia North Carolina South Carolina Georgia Kentneky' Tennessee Ohio Louisiana Mississippi Indiana Illinois Alabama Illinois Alabama Missouri Arkansas Missigan	26 17 9 10	19 4 6 6 6 6 7 7 3 8 8 11 12 13 23	9 6 36 226 226 22 29 9 9 7 7 3 5 5	12 4 6 6 7 7 3 8 11 12 13 23	
275		170	105	170	105	

The President  $pro\ tempore$  then announced to the two Houses the state of the vote for President of the United States, as delivered by the tellers, to be:

And the state of the vote for Vice-President of the United States, as delivered. by the tellers, to be:

For George M. Dallas, of Pennsylvania.
For Theodore Frelinghuysen, of New York.

The President of the Senate pro tempore then declared that James K. Polk, of Tennessee, having received a majority of the whole number of the electoral votes, was duly elected President of the United States for four years, commencing on the 4th day of March, 1845; and

That George M. Dallas, of Pennsylvania, having received a majority of the whole number of the electoral votes, was duly elected Vice-President of the United States for four years, commencing on the 4th day of March, 1845.

The Senate then returned to its Chamber.

IN SENATE, February 12, 1845.

Mr. Walker, from the joint committee, reported the following resolution; which as considered, and agreed to:

Resolved, That a committee of one member of the Senate be appointed by that body, to join a committee of two members of the House of Representatives, to be appointed by that body, to wait on James K. Polk of Tennessee, and inform him that he has been duly elected President of the United States for four years, commencing with the 4th day of March, 1845; and also to wait on George M. Dallas, of Pennsylvania, and inform him that he has been duly elected Vice-President of the United States for four years, commencing with the 4th day of March, 1845.

Ordered, That Mr. Walker be the committee on the part of the Senate.

IN THE HOUSE OF REPRESENTATIVES, February 14, 1845.

The House concurred in the foregoing resolution, and appointed Mr. Burke and Mr. Boyd the committee on its part.

He will see that the whole proceeding recognizes the count and declaration by the Vice-President. The tellers merely compute. The Vice-President "declares" everything. As in 1837, he "declares" that nobody has been elected Vice-President and announces the two names from whom the Senate may proceed to select a Vice-President for the next four years. He will find, if he looks at the record, and I will presume that it is given faithfully here, that, while in the proceedings taken by either House, in each case leading up to the ceremony of the count and declaration, the heading of Senate proceedings was: "In the Senate, January the 31st, 1849," and in the House was: "In the House of Representatives, February 2, 1849." That in the journal of proceedings when the count took place they are headed the journal of proceedings when the count took place they are headed in each case, "In the presence of the Senate and House of Represent-atives." If the two bodies were here to count and determine themselves, why was it that it was so carefully preserved and recorded that it was simply done "in the presence of the two Houses."

The provision remains, Mr. Speaker, and has stood from that day to this. It does not stand because it is obscure or because it has not been questioned. I do not deny that it has been assailed. It stands to-day unchanged and unamended in the Constitution. There is no law upon the statute-books put there by the two Houses of Congress that conflicts or interferes with it. So much for the sanction that

time gives. The provision, assailed and contemned and despised as it is, in the view that it justifies the count by the President of the Senate, or Vice-President, a man who four years before the time he is to act has been intrusted with the second place in the gift of the people—that provision stands to-day, and I say again that there is no constitutional provision that has ever been able to be put there against it; there has been no legislative enactment put upon the statutebook that conflicts with it.

But it has been questioned, sir. By whom? It has been questioned by members of the House of Representatives and members of the Senate. For it was not to-day, Mr. Speaker, it was not yesterday nor last year when the tendency of the Congress to aggress and encroach on the rights of other departments of the Government began. The first blow was struck early in the history of the Gevernment, and from that day to this there have been members of Congress in either branch that assailed this construction of the counting and declaring of the votes by the Vice-President. And the utterances of these members are carefully marshaled by gentlemen as proof that this clause of the Constitution cannot be so construed. Why, sir, taking them at their best they are but citations from sources naturally seeking to encroach and gain power. Is there any citation of a precedent of a single State Legislature ever resolving that the President of the Senate shall not count the vote in the electoral college, unless at the present time there may have been some such resolution passed under pressure?

Why, sir, the precedents that are so much talked of are all in the line where they would naturally be found. No assault upon this provision has come from the people or from the State Legislatures that direct the appointment of these electors. From these sources there has never been a voice against the count being made by the President of the Senate and the integrity of the electoral college maintained thereby. Through it all the Constitution remains precisely as it was found when in 1789 Congress was met by the count of the electoral vote. The provision stands to-day as it stood then. And what did vote. The provision stands to-day as it stood then. And what did
the first Congress do, in which there were many men who had helped
to frame the Constitution? They found this provision; it had to be
carried into effect. There was no Vice-President. The Constitution
had not been set to work, so far as the officers elected under it were
concerned. What did the first Congress proceed to do? They were
confronted, as we are confronted, with the presence of the vote of the
electoral college. Did they proceed to consider it in the two Houses and
decide? No. Did they proceed to legislate as to a method or a court?
By no means. Did they create any tribunal? The farthest from it.
But as the Constitution had provided what officer should do this important duty, and as no such officer was in existence. Congress proportant duty, and as no such officer was in existence, Congress proceeded to make a President of the Senate for the purpose of counting

and declaring the vote of the electoral college.

I transport myself, sir, in imagination back to that scene. The framers of the Constitution sitting in the Senate and in the House, confronted as we are confronted by the presence of the electoral college. I fail to find, because three generations had not sharpened the thirst for congressional assumption—I fail to find any indication that any member of either body had a question but that the only thing to do was to create the officer that the Constitution had provided for to count and declare the vote, which they then and there proceeded to do.

Here is the record of what the fathers did. It speaks for itself. April 6, 1789.

April 6, 1789.

The Senate proceeded by ballot to the choice of a President for the sole purpose of opening and counting the votes for President of the United States.

John Langdon, esq., was elected.

Ordered, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready, in the Senate Chamber, to proceed in the presence of the House to discharge that duty; and that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be declared; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose; who reported that he had delivered the message.

The House responded as follows:

Mr. Boudinot, from the House of Representatives, communicated the following verbal message to the Senate:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House is ready forthwith to meet the Senate to attend the opening and counting of the votes of the electors of the President and Vice-President of the United States.

The votes having been counted and the two Houses having returned to their respective Chambers, the following occurred, as appears by

the Journal:

Mr. Madison, from the House of Representatives, thus addressed the Senate:
Mr. President, I am directed by the House of Representatives to inform the Senate that the House have agreed that the notifications of the election of the President and of the Vice-President of the United States should be made by such persons and in such manner as the Senate shall be pleased to direct.

And he withdrew.

Whereupon the Senate appointed Charles Thompson, esq., to notify George Washington, esq., of his election to the office of President of the United States of America, and Mr. Sylvanus Bourne to notify John Adams, esq., of his election to the office of Vice-President of the said United States.

Ordered that Mr. Patterson, Mr. Lee, Mr. Ellsworth, be a committee to prepare the certificates of the election of the President and of the Vice-President of the United States, and to prepare letters to George Washington, esq., and to John Adams, esq., to accompany the said certificates respectively.

The following is the form of the certificates respectively.

States of America, being convened in the city and State of New York, the sixth day of April, in the year of our Lord one thousand seven hundred and eighty-nine, the underwritten, appointed President of the Senate for the sole purpose of receiving, opening, and counting the votes of the electors, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and for a Vice-President; by which it appears that George Washington, esq., was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.

"In testimony whereof I have hereunto set my hand and seal.

"One word Mr. Speaker as to the

One word, Mr. Speaker, as to the

CONSTRUCTION OF THIS TRIBUNAL.

It is provided that five members may be taken from the Supreme Court, who shall have a controlling influence in its deliberations.

I see, Mr. Speaker, that the time yielded to me by the gentleman from Massachusetts [Mr. HOAR] has expired, but inasmuch as I shall have in my own right directly after the members of the committee have finished one hour, perhaps there will be no objection to my going on for ten minutes, the same to be counted as a part of that hour, and then I will yield the remainder of it, when I obtain the floor, to the gentleman from Ohio [Mr. Garfield] and to my colleague, [Mr.

FRYE.]
Mr. PAYNE. I hope that may be done by unanimous consent.

Mr. PAYNE. I hope that may be done by unanimous consent. No objection was made.

Mr. HALE. To begin with, the Chief-Justice of the Supreme Court of the United States is carefully left out in framing this commission. Was it because of infirmity in him, or infirmity in the scheme? Some officer is to preside over this great commission. The bill provides that the senior associate justice shall perform that important duty. Why not the Chief-Justice? If it was thought desirable to select four from the associate justices, why was it not left to them in their discretion, if they should see fit to do so, to select the successor of Marshall and Taney to preside over the tribunal? If you assume that such a tribunal should be created, there is nothing in the office of Chief-Justice that should exempt him from such a duty.

that such a tribunal should be created, there is nothing in the office of Chief-Justice that should exempt him from such a duty. When Great Britain made up the tribunal at Geneva, so far as she made it up, she selected Chief-Justice Cockburn who there acted. If you go into the Supreme Court at all, why not take its head to preside over this commission? The gentleman from Massachusetts, [Mr. Hoar,] in reply to a question from the gentleman from Illinois, [Mr. FORT,] said that it was done for political reasons, from a desire to avoid anything that might seem to be unfair in indicating the selection.

Mr. HOAR. I said so far as I was concerned.
Mr. HALE. Yes, so far as he was concerned. That throws light upon what really governed in the construction of this tribunal so far as the Supreme Court is concerned. The explanation that has been given that one judge was taken because he represents Maine, another because he represents Pennsylvania, another because he represents Iowa, and another because he represents California, cannot hold at all. Represents what? Represents law? Represents in the presidential election? Sir, there is nothing in the nature of representation affected by these localities.

The sober fact, the undoubted fact, is that these gentlemen were selected because two of them were known or believed to be of one selected because two of them were known or believed to be of one party in politics and two of the other. Behind the two who are democrats will be in solid column five democratic Senators and Representatives. Behind the two who are republicans will be five Senators and Representatives who are republicans, and the two forces are to be there, with the two judges in front of each, as political forces; and the fifth justice who is to be selected is to be the man who de-

I listened the other day in the Senate to the stately march of tropes, metaphors, and illustrations framed in a rich setting, picturing what might be the manifold evils of a single man deciding this presidential contest. In the midst of it all there seemed to be forgotten or ignored what is the fact, that out of this bill, scan it as you may, apply practical common sense to it as you must, will come the result that a single man is to decide who has been elected President of the United States. And because of the fear that the Vice-President, second in the Republic holding a political office, shall do it, the judiciary is rudely invaded, and a man is taken from there and brought to confront this political contest and to decide it for the American people.

Sir, this is a step that should have been the last taken. There is danger enough already of bringing the members of that court into politics. Why was it done? Whether it is because one of those judges was thought likely to be selected that he has already been selected by one of the political parties in this land for the office of United States Senator, I cannot tell. But it is unfortunate that the selection comes so closely upon the heel of the plan of this tribunal. No man here has been so careful to keep the judiciary clear of any charge of interference with politics as the gentleman from Massachusetts on my left, [Mr. Hoar.] But now he has aided to select a judge of the Supreme Court of the United States to pass upon the question of electing a President. Sir, this is a step that should have been the last taken. There is

WHAT SHALL THIS TRIBUNAL DO AND HOW FAR MAY IT GO?

I see that I have not the time fully to go into that question. I hope gentlemen will with the greatest care examine the provisions of this bill in relation to the jurisdiction that this commission may take. The bill declares that, where two or more sets of electoral certificates are presented-

When all objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and by a majority of votes decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration.

How far under this may this tribunal go in wresting from the States their last rights? There is no charter in this bill that limits and controls the commission. It is a charter that extends and amplifies. I should hold, notwithstanding, that the commission would have no power to go into the questions as to who have been elected in the several States. But who can tell what the tribunal may do? Here is what an eminent lawyer of New York wrote a few weeks ago for the people to read:

If what has been said be founded in sound reason, the two Houses of Congress, when inquiring what votes are to be counted, have the right to go behind the certificate of any officers of a State, to ascertain who have and who have not been appointed electors. The evidence which these Houses will receive upon such inquiry it is for them and them only to prescribe, in the performance of their highest functions and the exercise of their sincerest judgment.

The gentleman who wrote these words, [Mr. FIELD,] largely because of having written them, is now a member upon this floor. He was taken from his profession in New York and brought here. And although he is a modest man, and since he has been here has taken no part though he is a modest man, and since he has been here has taken no part in the proceedings, I am bound to believe that my friend on the other side will not consent to lose the opportunity of securing his efforts and ability as a member of this tribunal. When all this has been done, Mr. Speaker, and you have at last got a President, not quite likely the one elected by the American people under the forms of the Constitution and the laws, the mischief and woe of the future begin.

You have broken down the electoral college; you have put a premium on presidential contests carried on after the November elections; you invite the Congress to come in and arbitrarily settle the

tions; you invite the Congress to come in and arbitrarily settle the question. Indeed, if at any time a Congress has betrayed its trust and has fallen out of the favor of the people, you will yet be unable to elect a President over it.

The rights of the people, the rights of the States dissolve and disappear. They are represented by the shifting, receding shore, constantly melting away, being swallowed up by the resistless, aggran-

Against such an assumption of power in Congress I set myself as firmly as I may. Whatever the danger that may be in the sky, it is better met by adherence to the spirit of the Constitution.

Irresponsible power always seizes upon some occasion of exaggerated danger to the state as an excuse for its encroachments. The

American people have never been threatened with such an aggression as to-day seeks to ride rough-shod over all the forms and observances of the past

Should the bill pass, whatever measure of support the American people may seem to give to it will be no test of the after-view which thoughtful men will take of the movement. It is fraught with the

gravest of dangers, and time will show it.

Mr. HEWITT, of New York, obtained the floor.

Mr. HOAR. The gentleman from New York yields to me for a moment that a dispatch may be read.

The Clerk read as follows:

BOSTON, MASSACHUSETTS, January 25, 1877.

Hon. GEORGE F. HOAR, M. C. : A resolution fully indorsing and approving the electoral bill now before Congress passed the Massachusetts house of representatives this afternoon by a vote of 189 to 19.

STILLMAN B. ALLEN.

Mr. HEWITT, of New York. Mr. Speaker, although I think that this bill transcends in importance any measure which is likely to come before Congress during the present generation of men, if I were to consult my own inclinations I would be quite content to refrain from taking any part in the debate, and to let the question be decided upon its intrinsic merits, with the clear light which has been shed upon it by the conclusive arguments of the members of the committee who by the conclusive arguments of the members of the committee who have preceded me. But unhappily circumstances which I never could have anticipated, have placed me in such a position with reference to one of the great parties of the country as to give to 4,000,000 or 5,000,000 of voters the right to ask me a question which I am bound to answer, and I may as well admit that they are exercising this right with unbounded liberality by post and by telegraph. They have acquired this right because I have assured them of my belief that the election in November last resulted in the choice of the democratic candidates for President and Vice-President. As nothing has occurred since, which could otherwise than strengthen this conviction, as well in their minds as in my own, they are naturally led to ask me why, as a member of the joint committee which has reported this bill I have given my assent to a measure which departs from the "ancient ways" by which the result of twenty-two presidential elections have been determined, and which, if adhered to, would surely result in the formal declaration of the election of our candidates. This question I propose to answer fully, freely, and without any reserve whatever.

The main opposition which we had to meet in the late election was the influence of the Administration, exerted in the organization of its partisans, in the use of patronage, in the control of the personal services of the office-holders, in the levying of assessments, in the direction of the press, and in countless other channels, which a party long in power knows well how to use. After their defeat in November there still remained intact the organization, and the powerful will to direct it to its own preservation and perpetuation. The electoral votes necessary to insure the success of its candidates were claimed without delay, and the means taken to have them counted through the agency of State administrations and returning boards under the control of the republican leaders in Florida and Louisiana. disputed vote in Oregon, 185 votes were thus nominally secured for Hayes and Wheeler, with prima facie certificates more or less regular to sustain the claim.

It only remained to find some means by which these votes could be counted and declared under the existing statute regulating the time and manner of opening the certificates and declaring the result. The plan for effecting this object was speedily agreed upon. The twenty-second joint rule, under which the results of the three last presidential elections had been ascertained and declared, was repealed by the Senate. This deprived the House of the right previously existing to throw out the vote of a State by an objection to its validity. Thus the votes of Florida and Louisians, no matter how fraudulent might be the returns and worthless the certificates besed thereon were be the returns and worthless the certificates based thereon, were made secure to the republican candidate. But in order that they might be counted at all, it became indispensable to assert the claim of the Vice-President not merely to open, but to count the votes, first deciding upon their validity, in all cases where there were duplicate certificates or disputed elections. This claim was therefore promptly set up, and during this week has been boldly maintained in the Senate Chamber by the men who have been most conspicuous in the management of the late election.

The scheme was thus complete for counting Tilden out, and counting Hayes in. I became satisfied that unless this reheme should meet with opposition from the more conservative members of the republican party, it would be executed; that the President of the Senate would count the votes and declare the result; and that the President of the United States would deliver up his high office to the successor so declared, and by the use of the troops already concentrated in Washington see that he was duly inaugurated.

Of course the House of Representatives would not be silent and passive spectators of this programme. They would insist upon their constitutional right to participate in the counting of the vote, the ascertainment and declaration of the result. They would count the votes of Florida and Louisiana for Tilden and Hendricks, and would record the result on the Journal and make the formal declaration of their election to the offices of President and Vice-President. This duty made incumbent upon them by the Constitution and their oaths of office they could not, from any fear of the consequences, refuse to

Thus would result two Presidents and two Vice-Presidents claiming each to be lawfully chosen, and demanding recognition at home and abroad.

The logical result of such a state of affairs is civil war, or possibly, but hardly in the light of contemporary experience among our neighbors, one or the other party might content himself by asserting his rights upon paper, and be satisfied with the empty honors of a pronuctamiento. But such a course is scarcely to be expected from a race which carried on the wars of the Parliament, which executed Charles I, carried on the wars of the Parliament, which executed Charles I, deposed James II, threw off its allegiance to George III, and preserved the Union against attempted secession, at a countless cost of blood and treasure. But if acquiescence were possible, it would not be peace, prosperity, and plenty for the people. Usurpation never brings contentment or confidence. The springs of industry would be dried up and the fountains of capital cease to flow. But, what would be worse, the respect for the Constitution, essential to free government, would be destroyed in the minds of more than half the voters of the country. It would be greenfly accented that resurration was of the country. It would be generally accepted that usurpation was to be the law of succession, and by common consent we would be glad to take refuge in military despotism as the only panacea "for all our

to take refuge in military despotism as the only panacea "for all our woes." The experiment of free government would thus utterly fail at the close of the first century of its existence, thus confirming the experience of all history as to the ultimate decadence of free nations. But if the usurpation were not acquiesced in, civil war with all its horrors would ensue, and the strife would penetrate into every household in the land. The end no man could foresee, save the refuge sooner or later in the all-embracing guardianship of an imperial ruler. In either event, then, the objects which the democratic party had most at heart in the recent struggle would be utterly lost. These objects were not the election of any man to the Presidency, or the es-

objects were not the election of any man to the Presidency, or the establishment of any special financial policy as contrasted with that of our opponents. In fact the platforms of the two parties were scarcely distinguishable from each other in principle. What we aimed to

First. Reform in the administration by which the personal character it had of late years assumed should cease to exist, and public offices filled by men who could comprehend and act upon the old-fashioned principle, which has been better formulated in the constitution of Massachusetts than elsewhere within my knowledge, that "government is instituted not for the profit, honor, or private interest of any

one man, family, or class of men."

The second and still more important object, underlying indeed all other motives, was to preserve the Constitution from being destroyed by the use of the military power in the elections, or in the main-tenance in the several States of government, not resting upon the will of the people.

A series of statutes doubtless the inevitable fruit of the war of the secession had been enacted, under color of which the Federal authority had been used in a manner which excited the alarm, and called for the condemnation of patriotic and thoughtful men without regard to party. Especially in the State of Louisiana in 1872 had been enacted a scene unprecedented in our history, filling the minds of men with fear for the permanence of constitutional government. By the order of a dranken judge, signed in the dark hours of the night, away from the domicile of justice, the lawful government of a sovereign State had been rudely overturned, and the usurping power which had taken its place was sustained by the arm of Federal power, acting through files of soldiers invading the halls of legislation, and dragging from their seats, the representatives of a people to whom a republican form of government had been guaranteed by the Constitution of the United States.

The pretended and fraudulent government thus created had been kept in its place only by the military power of the Federal Governkept in its place only by the military power of the Federal Government; and when once overthrown by a sudden breath of popular discontent, it had been promptly restored by the orders of the President of the United States, through his Secretary of War, the military and not the judicial branch of the Government. Against this violation of the Constitution the best men of all parties did not hesitate to protest, and yet, when the late election came to pass, this fabricated government still existed in Louisiana, controlling all the machinery of justice of legislation and of election. Its arturning heart approach justice, of legislation, and of election. Its returning board pos

ernment still existed in Louisiana, controlling all the machinery of justice, of legislation, and of election. Its returning board possessed an odor peculiarly its own, with which every voter in the United States was familiar. Many of these who had heretofore acted with the republican party perceived, that if this practice of military interference should become incorporated, by the tacit consent of the people into the permanent fabric of the government, the Constitution would be destroyed, the principles of liberty undermined, and the way prepared for the early establishment of a military despotism. Hence, reluctantly, but moved by convictions of conscience, they joined themselves to the democratic party, and engaged as they believed in a death struggle for the preservation of their rights and liberties.

Now these rights and liberties, for which we had made so gallant and successful afight, would equally perish whether a President should come in by usurpation, even if acquiesced in by the people, or whether, if not acquiesced in, civil war should be the result.

There was no escape from this deplorable position except by agreement between the conservative and patriotic men of both parties, who prefer the good of the country to the success of party, upon some method by which the incoming President should be accepted by all parties as the lawful Executive of the General Government. For one, partisan as from my position I was supposed to be, but patriotic as I hope henceforth to be regarded, I deemed it my plain duty to labor zealously toward the attainment of some just and constitutional plan, whereby but one President should be declared, and by a title which all citizens would respect, and no considerable number of voters would dispute. It was essential to the formation of such a plan that it should be constitutional; that it should be so absolutely fair between the two political parties, that neither could possibly claim or take any advanbe constitutional; that it should be so absolutely fair between the two political parties, that neither could possibly claim or take any advan-tage by reason of its provisions; that the scales of judgment should be so evenly poised that the dust in the balance would incline the be so evenly poised that the dust in the balance would incline the beam. Such a plan, in my judgment, the committee were able to agree upon and have presented to Congress, and this plan has already received the sanction of the Senate by a majority so overwhelming as to indicate its triumphant passage through this House. No man can predict who will become President by virtue of its operation, but all men can predict that it will be the man who is lawfully entitled to be President. If the law should violate the equity of the case, it is ground for the amendment of the law, but not of rebellion against its decrees.

The proposed plan of sattlement for it is a measure of with

The proposed plan of settlement, for it is a measure of settlement and not of compromise, provides for a commission on which each branch of Congress and each political party is equally represented by five of their members to be chosen viva voce and not by the presiding officer. To these are added five men who by their elevated position and long service in the Supreme Court of the land have gained the respect and absolute confidence of the country. They have been long removed from the influence of party politics, and, holding life offices, are above all the temptations and blandishments of power. For them, then, there is neither reward nor higher honors. They have already reached the summit of human preferment, for a great and just judge is the glory of humanity. To no men in history has ever been confided a greater trust than this bill proposes to confer, the duty of deciding between conflicting parties as to who shall be the ruler of forty-five millions of free people. It is impossible to conceive that such a trust shall not be faithfully discharged, with the eyes not only of this people, The proposed plan of settlement, for it is a measure of settlement of free people. It is impossible to conceive that such a trust such a

great duty will be performed with an eye solely to the glory of God

and the good of His people.

On the subject of the constitutionality of this measure it does not

On the subject of the constitutionality of this measure it does not become me as a layman to say more than that I am bound to accept the opinion of the twelve lawyers with whom I have been associated on the country, that the bill is not unconstitutional.

On the subject of the composition of the committee it is however proper for me to say that I found myself on a committee with thirteen lawyers. As a matter of course, it was to be expected that it would be very difficult for one layman to keep straight thirteen lawyers, each having his own construction of the provisions of the lawyers, each having his own construction of the provisions of the Constitution on this subject. [Laughter.] I did what I could. I labored without ceasing to keep their minds in the right direction; and they assure me—all but one—that I succeeded, and that the plan upon which we have agreed is constitutional.

But even if no express warrant for it could be found in that instrument, it is clearly within its spirit, which we have so often invoked in times of peril, as when we made the Louisiana purchase; when we preserved the Union against the heresy of secession; and when we adopted the policy of reconstruction, rendered necessary by oc-currences which the Constitution had never contemplated. That in-strument declares that it was established "to form a more perfect strument declares that it was established "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." Surely none of these ends will be gained, and they will all irretrievably perish, if by neglect of Congress the country is allowed to drift into civil war, or be ruled for four years by a President who, by a majority of the people, will be regarded as a usurper, when, by the establishment of a fair tribunal, the questions in controversy can be settled to the satisfaction of the great mass of the people of this country.

There are men, it is true, who think that the Constitution was not established for these beneficent purposes, so much as to give occasion for

tablished for these beneficent purposes, so much as to give occasion for casuists to draw nice distinctions and for the display of the powers of the human intellect, just as a great German physician frankly thanks divine Providence for the existence of disease, because it enables man to develop his marvelous skill in effecting cures. Doubtless when the last trump is sounded there will be found men splitting hairs, unconscious that the day of judgment is at hand.

nnconscious that the day of judgment is at hand.

So far as one can judge from public utterances, the proposed measure of settlement is sustained by the country at large and opposed only by the office-holding and office-seeking interests. A hundred thousand place-holders in esse and an equal number of place-hunters in posse are busily attacking this bill and its authors, and for the same reason as did the Ephesian "worker in copper" the early Christians, "it threatens to spoil their trade." Whetever be the real motives of this class, they shoot the arrows of opposition from behind the shield of the Constitution. Admitting the gravity of the situation, involving perchance war and the very existence of the Republic, they shake their frowning heads and declare "nothing can be done; the Constitution forbids." stitution forbids."

A story is told of a young Oxonian, that he stood on the river's bank and saw a fellow-student drown without making an effort to save him, because a formal introduction had not passed between them. Shall a ship be allowed to drift upon the rocks because the right man Shall a ship be allowed to drift upon the rocks because the right man does not happen to be on deck to give the order to "port the helm?" Are constitutions intended to be ends or means, means for the preservation of liberty and order? The framers of the Constitution of the United States drew in bold lines the great principles and framework of Government. Sensible men, they left details to be worked out, as occasion might arise, in the light of necessity and experience, by the legislative department. They did not cut out a tight, inelastic garment to fit the five millions of people strung along the Atlantic slope, and intend to bind the limbs and smother forty millions of their descendants, spread over a continent.

descendants, spread over a continent.
Unconstitutional! Why, the very Unconstitutional! Why, the very spirit and essence, the pineal gland of the Constitution is in the proposed measure. The old Saxon love of liberty and order is there. It contains the genius of Magna Charta, the great petition of right, the settlement of 1688, the Declaration of Independence. It substitutes law and order and right for strife, anarchy, and wrong. It means that whoever shall hold the executive office, shall hold it by the consent, and with the support of all the people of this land. It means that the wheels of business shall again be put in motion, and the welcome hum of vast industries shall again be heard, that the waiting laborer shall have work and his wife and children bread. It means the supremacy of the civil to the military power, teaching the needed lesson that the soldier is the servant, tary power, teaching the needed lesson that the soldier is the servant, and not the master, of the people, who pay his wage, the drone in the human hive, to be dispensed with when he becomes troublesome to the workers. It means the preservation of the autonomy of the States, and the right of the people therein to regulate and administer their local affairs, without interference from any quarter. Lastly, it means oblivion of all the bitterness of the past, security for the present, hope for the future.

shape, and reduce their intellect to the measure of those of a Flat-head Indian.

One more objection and I am done. It is alleged on the republican side that it is a measure to make Tilden President, and on the demoside that it is a measure to make Tilden President, and on the democratic side that it is a measure to make Hayes President. Can a greater tribute be paid to the absolute fairness of this legislation? For myself I frankly declare that I do not know, and have not allowed myself to speculate upon the result, except that both candidates cannot come in; that the one who has been lawfully elected will be inaugurated, and that, while the dangers of civil war will thus be averted, the Constitution, and the respect for it in the popular mind, which is essential to the preservation of that great charter of our rights and liberties, will not be weakened or destroyed.

The passage of this measure of peace and conciliation will fitly close the great events of the first century of the Republic, and inaugurate that era of peace and prosperity which, if our free institutions can be maintained, will mark the second century of our existence as the most

maintained, will mark the second century of our existence as the most marvelous period in the history of the human race. Let it be re-membered that the establishment of our Government was contemmembered that the establishment of our Government was contemporaneous with the birth of chemistry, the invention of the steamengine, and the declaration by Adam Smith of these principles of exchange between nations, which have revolutionized the commerce of the world, and made it possible for mankind to realize hereafter the doctrines of "liberty, equality, and fraternity" for which enthusiasts have dreamed, and men have waited through the weary ages, erying out of the depths "How long, O Lord, how long?" With peace and freedom assured, the great problem of the relations of capital and labor, will find its solution in a land which has been endowed with a wealth of resources beyond the wildest dreams of avarice, whereof the proper development and the just distribution will leave no man the proper development and the just distribution will leave no man, who is willing to labor, without the means of living a life worthy of the high destiny for which humanity was intended by the Great Author of its being. To this great end, the men who record their votes in favor of this measure will surely contribute, and be remembered, with everlasting gratitude, as statesmen who preferred country to party, order to anarchy, constitutional government to civil strife, and steady progress in civilization to the premature decay and needless destruction of the only nation with whom rests, so far as human judgment can see, the present hope of the oppressed sons of toil, from whatever clime they may turn their weary gaze to this land of promise, with the unceasing prayer, springing from countless souls, "Peace be within thy walls, and prosperity within thy palaces."

Mr. WILLIS. My colleague yields to me that I may read a telegram which I have just received, and which is pertinent to the discussion of the present bill:

New York, January 25, 1877. the proper development and the just distribution will leave no man,

NEW YORK, January 25, 1877.

Hon. BENJAMIN A. WILLIS, House of Representatives:

House of Representatives:

The committee on memorial to Congress of citizens of New York, presented by you to the House of Representatives, unanimously unite in congratulating you upon the passage by the Senate of the electoral commission bill, and beg leave to express the hope that the House of Representatives will speedily relieve the anxieties of the country by the passage of the bill as it comes from the Senate.

WM. E. DODGE, Chairman.

THEODORE ROOSEVELT, Secretary.

I am much obliged to my colleague for his courtesy.

Mr. HEWITT, of New York. I yield ten minutes to the gentleman from Ohio, [Mr. Monroe.]

Mr. PAYNE. I move that the House now take a recess.

The SPEAKER. The Chair would suggest that the debate continue this afternoon until the expiration of the hour of the gentleman from New York, [Mr. Hewitt.] The Chair understands that gentleman to yield to the gentleman from Ohio [Mr. Monroe.]

New York, [Mr. Hewitt.] The Chair understands that gentleman to yield to the gentleman from Ohio, [Mr. Monroe.]

Mr. Monroe. Mr. Speaker—

Mr. Springer. I think unanimous consent might be given that the gentleman from Ohio shall occupy his ten minutes after the recess and that the House adjourn now.

The SPEARER. The Chair thinks that the House had better make use of all the time it possibly can. There are more than seventy gentlemen who desire to be heard.

Mr. MONROE. Mr. Speaker, I have sincerely desired to lend my support to some bill to regulate the counting of the electoral vote which should relieve Congress and the country of solicitude and give assurance of satisfactory results. When the joint committee of the two Houses was appointed, I hoped to be able to vote for such measures as they should agree in recommending. Certainly, the pathe two Houses was appointed, I hoped to be able to vote for such measures as they should agree in recommending. Certainly, the patience, the industry, the ability, and the patriotism exhibited by the committee, justified the expectation that they would present some plan, if it were at all practicable, upon which all could unite. And now I deeply regret that I cannot vote for the measure which has been reported. I have given it much careful and candid consideration, but have encountered difficulties which have proved insuperable.

1. In discussing this bill, the first question which presents itself is, what are its relations to the Constitution?

The twelfth article of the amendments declares that the electoral

what are its relations to the Constitution?

The twelfth article of the amendments declares that the electoral votes "shall be counted." This language both imposes a duty and grants a power. There must then be somebody—some man, or body of men—upon whom the obligation is laid, to whom the power is granted. We cannot conceive of a command which is addressed to no one, of a grant of power made to no one. There are but three parties named in the Constitution in connection with this grant of

power. These are the Vice-President, the Senate, and the House of Representatives. Hence the power to count the vote, which we have agreed exists somewhere, must be found in one or more of these. There is no pretense whatever that the power has been granted to other parties outside of these. To which of them then does the power belong ?

Upon this question, there have been three theories, which have received such a degree of favor as to entitle them to notice.

According to the first of these, the Vice-President is to count the electoral vote. This means not merely that he is to receive the cercleetoral vote. This means not merely that he is to receive the certificates, retain the custody of them, and open them in the presence of the two Houses, of which he is to act as the presiding officer. This theory further holds that the Vice-President is the final authority upon disputed questions. He alone decides what are, and what are not, votes to be counted, and, having completed the count, he declares what number of votes has been received by each candidate, and which of the candidates, if any, has a majority of the votes of all the electors appointed.

the electors appointed.

I do not propose to discuss the merits of this theory here—to inquire I do not propose to discuss the merits of this theory here—to inquire whether it is right or wrong. It is sufficient for the purposes of my argument to state, what is well known, that it is a theory which is firmly held, not only by many great lawyers in the country, but by a considerable number of members of this House—especially upon this side of the House. They may be entirely mistaken, but they honestly believe that the Constitution grants to the Vice-President the power to count the electoral vote in the sense here explained. To such members of the House it is a matter of the greatest practical moment to inquire what has become of their cherished constitutional doctrine—one which they believe they have sworn to support in the doctrine—one which they believe they have sworn to support—in the measure now before the House. I was about to say that this doctrine is entirely ignored in the bill of the committee. But this would trine is entirely ignored in the bill of the committee. But this would be a very inadequate and incorrect statement of the case. The bill absolutely and irrevocably deprives the Vice-President of all power to ascertain and decide what are the lawful electoral votes of a State. If the Constitution confers any such power upon the Vice-President, it is wholly abrogated by this measure, which permits him to perform only the humblest clerical duties. If he has this power, what right has this House—what right has Congress to give it to another? How can members of Congress who hold this theory regard this bill otherwise than as unconstitutional? It attempts to repeal what is to them a portion of the Constitution. How then are they to vote for it? to vote for it?

to vote for it?

It may be said that this theory is an extreme one, that it is held only by a comparatively small number of members on this side of the House, and that hence it will not stand much in the way of the passage of the bill. But, if I mistake not, other doctrines, held in other parts of this Hall, are equally inconsistent with the proposed plan. The second of the three theories of which I was to speak, is to the effect that the two Houses of Congress, under the Constitution, are to count the electoral vote, but in the sense that no electoral vote can be received without the approval of both. According to this theory either House can, at will, reject the vote of any State. The power to reject is supposed to exist especially in the House of Representatives. This theory is held generally on the other side of the House. The chairman of the select committee on counting the electoral votes for President and Vice-President, recently submitted a report which declares:

That in the counting of the electoral votes, no vote can be counted against the

That in the counting of the electoral votes, no vote can be counted against the judgment and determination of the House of Representatives.

The doctrine is that the Constitution has vested in the House, without limit, this power over the votes of all the States. I regard this view as a very dangerous one. It is strongly disapproved on this side of the House, but it is as strongly held on the other, and to our friends there, a question is unavoidably raised as to the disposition the bill before us makes of this theory. The answer is that it plainly deprives the House of this supposed constitutional right. For instance, the commission may decide that the electoral votes furnished by the returning board of Louisiana shall be received and counted. When that decision is reported to the two Houses, the House of Representatives has lost its right, if right it had, to reject these votes on its separate "judgment and determination." It can reject only by concurrent action with the Senate. If the power to reject at will has been conferred upon the House by the Constitution, what right has the House, what right have both Houses, to delegate this power to others? What right has Congress, even with the help of the President, to annul any constitutional power of the House? And how can those who have so earnestly contended for this power of the House, sustain by their votes the measure now under discussion?

The last theory to be noticed is, that the Houses must count the out limit, this power over the votes of all the States. I regard this

The last theory to be noticed is, that the Houses must count the votes, but with the limitation that an electoral vote can be rejected only by the concurrent action of both. This doctrine is earnestly advocated by many members as containing an indispensable safeguard of the rights of the States. But it is disregarded by this bill. If the vote of a State is rejected by this commission, its decision must stand unless overruled by the concurrent action of both Houses. In this case, if either House continues in favor of rejecting the vote of the case, if either House continues in favor of rejecting the vote of the State, it cannot be received. It is difficult to see how those of us who have insisted that the maintenance of this doctrine is essential to the protection of the rights of the States, can support a bill which so entirely disregards it.

I pass to another topic wholly distinct from the question who is to do the counting. Can the person or body that counts go back of the returns from a State to ascertain how those returns were obtained, and to decide upon the legality of the methods which were employed? Many of us hold that the Constitution forbid this; that it is a plain invasion of the proper sphere of the State, and that neither the Vice-President nor one nor both of the Houses can do it. It is very prop-President nor one nor both of the Houses can do it. It is very properly urged that if it can be done in one case it can be done in another; that if the returns from Louisiana may be rejected, so may be those of Massachusetts, and that, let the precedent be once fully established, the rights of the States are wholly at the mercy of that person or body which shall count the electoral vote. The conservative principle which would protect the States from this danger, is disregarded by the bill. The commission is to judge for itself whether it may go behind the returns from a State, and, in any case where it may do so, it requires the concurrent action of both Houses to overle its decision. Certainly such a plan cannot be supported by those rule its decision. Certainly such a plan cannot be supported by those who hold that, not even Congress, by the concurrent, affirmative action of both its Houses, can set aside the regular returns which the duly authorized officers of a State may forward.

Mr. Speaker, I felt much gratified, when the very able report of the

joint committee was read to the House, to hear it stated in a portion of that report that "the law proposed is inconsistent with few of the principal theories on the subject." Subsequent examination has, however, convinced me that the committee, in their earnest desire to however, convinced me that the committee, in their earnest desire to do the country a great service, had not sufficiently considered this point. I cannot resist the conclusion myself, and I think I have proved that the bill conflicts with most of the principal theories on the subject which have obtained in this House. The practical difficulty is that we are asked to vote for the bill which thus sharply conflicts with our cherished constitutional theories. Whoever may be charged with disregard of constitutional convictions, the charge certainly cannot be made against those who in obedience to such convictions refrain from voting for this very propular measure.

certainly cannot be made against those who in obedience to such convictions refrain from voting for this very popular measure.

2. A grave objection to this bill is found in the use which it proposes to make of the judges of the Supreme Court. It is commonly reported that the four gentlemen referred to in the bill are selected with some reference to supposed political antecedents, with the intention of giving to each of the two great parties precisely equal advantages. These four are to choose a fifth, and in case of a vacancy by death, or otherwise, the remaining justices in filling it, are to have regard to "the impartiality and freedom from bias sought by the original appointments." Now all this is quite in accordance with the spirit of fairness by which the committee were evidently governed in all their work. We honor their motives, but we may well question the soundness of the policy which assigns to judges of the Supreme Court this representative, political relation. The position is a painful and embarrassing one. It exposes them to the possibility of bitter denunciation in case they should fail to meet the expectation of political parties. It impairs that unquestioning confidence which the whole people have heretofore reposed in the judges of their highest tribunal. Let this bill become a law, and hereafter appointments to the Supreme Bench will be closely scanned with reference to their political characters. Bench will be closely scanned with reference to their political character, and partisan fidelity will gradually become a condition of being placed in this high office. The same heated political contests would soon be carried on in regard to the appointment of our highest judges which now exist in connection with the election of governors and members of Congress. The bill provides, that nothing in it shall be held to impair the right of any one to prosecute his claim to the office of President or Vice-President before the courts of the United States. But there would certainly be small encouragement to any defeated candidate to contest his election before a court a majority of feated candidate to contest his election before a court a majority of whose judges may already have virtually decided against him in the tribunal established by this measure. It would seem as if the right of a candidate would have been in this way about as effectually im-

of a candidate would have been in this way about as effectually impaired as it could be by anything short of absolute destruction.

3. There are other objections to this bill, but I must not detain the House by dwelling upon them. It is true that this is a temporary expedient—that it passes out of existence with the occasion which produced it. But its influence as a precedent, will be more lasting, and will, I fear, be fraught with dangerous consequences. Let Congress announce to the country, by passing this bill, that it has abandoned the course pursued by the fathers—that there is no established and permanent method of making the electoral count—that it may provide new legislation for each contested presidential election as it shall arrive, and contested presidential elections will multiply upon our hands. There will be more double returns from the States; more Oregons and more Louisianas. What chronic condition of political hands. There will be more double returns from the States; more Oregons and more Louisianas. What chronic condition of political faction and disorder might follow upon this, no man can say. But rather than incur the risk of entering upon it, I would prefer that we should undertake to count the electoral vote in the old way, and trust to the good sense, the moderation, and the patriotism of Congress and the country for a peaceful and satisfactory result.

Mr. SPRINGER. I believe the agreement is that the House now take a recess until half past seven o'clock this evening, when the gentleman from Tennessee [Mr. CALDWELL] will occupy the remaining fifteen minutes of the gentleman from New York, [Mr. Hewitt,] and that then the debate shall continue until the House may take another recess.

If there is no objection, I would like to call up a joint resolution for concurrence in an amendment of the Senate providing that the stitched copies of the compilation in reference to counting the electoral vote be bound in cloth.

Mr. HOLMAN. I think we had better devote ourselves exclusively

to this busines

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] ob-

Mr. SPRINGER. I move that the House take a recess till half past

The SPEAKER. At the evening session the gentleman from Mississippi [Mr. Hooker] will occupy the chair.

The motion was agreed to; and accordingly (at five o'clock and five minutes p. m.) the House took a recess till seven o'clock and thirty minutes p. m.

#### EVENING SESSION.

The House re-assembled at half past seven o'clock p. m., and was called to order by Mr. Hooker as Speaker pro tempore.

### COUNTING THE ELECTORAL VOTE.

The House, according to order, resumed the consideration of the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

Mr. CALDWELL, of Tennessee. Mr. Speaker, I had the honor to propose on the 24th day of July last for the adoption of the House the

following resolution:

Whereas the head of each Executive Department of the General Government is an officer of the people, receiving liberal compensation from the public Treasury for the performance of official labors which are presumed to require his entire time and undivided attention: Therefore,

\*Resolved\*, That it is the sense of the House of Representatives that the performance by such officer of the duties of chairman of a partisan committee having in charge the management and prosecution of a political campaign is inconsistent with the relations that exist between him and the whole people whose salaried servant he is; is incompatible with the faithful, impartial, and efficient discharge of the ardnous duties and responsibilities that attach to the exalted position of head of an Executive Department and member of the Cabinet; is at war with every rational idea of civil-service reform, and as such challenges in the strongest terms public criticism and condemnation.

While this proposition received, as the record shows, the sanction and approval of many of the most thoughtful and considerate men of this body, it did not meet the concurrence of a majority. I believed then, as I think now, that there should have been a unanimous expression of censure touching the unseemly spectacle then presented for the first time in the history of the country, of a high Cabinet officer assuming the rôle of manager of a political campaign and subjecting himself to the temptation to abuse his high functions to subserve the mere purposes of party. This expression of disapproval, in my judgment, became imperative, as it became manifest that he had been placed in that position so that the patronage and power of the Administration might be rendered more efficient factors in the result of the then approaching presidential election. Said Mr. Benton:

When laws are executed by civil and military officers, by armies and navies, by courts of justice, by the collection and disbursement of revenue, with all its train of salaries, jobs, and contracts, we behold the working of patronage and discover the reason why so many stand ready in any country and in all ages to flock to the standard of power wheresoever and by whomsoever it may be raised.

The patronage of the Government, which at its origin was founded upon a revenue of \$2,000,000, had reached at the date of Mr. Benton's report twenty-two millions, and was regarded by the illustrious men who signed that report as constantly tending to sully the purity of our institutions and to endanger the liberties of the country. We have now reached a period in our history when our annual collections and disbursements amount to more than one-half billion, and the objects of natronage have expended and multiplied in a corresponding deof patronage have expanded and multiplied in a corresponding de-gree, until their influence upon our popular elections is simply incal-culable. A fair expression of an enlightened public will at the ballotbox is rendered difficult, if not impossible, when a President who wields this vast patronage so mistakes the character of his high office as to speak of himself as "the representative of a party," and when one of his advisers and Cabinet counselors can be guilty of the indecency of abdicating his high functions in the face of the world for the part of a scheming partisan. A learned American jurist, speak-ing of the radical and dangerous change that is going on in the execu-tive department, if not in the Government itself, describes in terse phrase some of the alarming symptoms. Says Judge Campbell:

phrase some of the alarming symptoms. Says Judge Campbell:

A body of active, alert, trained, and disciplined politicians have been found whake politics a trade, and who subsist upon the partialities, benefactions, expenditures and corruptions, of the Government. To accomplish their aims they have brought the Government directly into the management and control of elections, and the powers of the Government to accomplish the ends of party ambition at the ballot-box. The Department of Justice, through its marshals, sends battalions of deputies throughout any State when a contest is close. The Secretary of War sends the standing army for the same purpose, under a pretense of preserving peace. Instances have occurred of details from the Army to do clerical work for party committees and of officers regulating the order of a political meeting. A Secretary of the Interior takes upon himself the office of comptroller-general of the presidential campaign and the President himself has thrown off all the reserve and all the decorum which heretofore has governed the conduct of that officer in such an election. The mighty evils of influence, intrique, cabal, corruption, and circumvention are aggravated by the menaces of violence and the conversion of the Army into a body of janizaries to enforce the will of the chiefs of the party.

Who will say, Mr. Speaker, that our present complications would exist—subjecting to deadly peril our political system, and exciting alarm and apprehension throughout the country—if madness and folly had not brought the Government itself directly into the management and control of elections, and the power of Government to the accomplishment of partisan ends at the ballot-box? To this criminal interference, in my judgment, with the ballot-box in the three doubtful States, all our present woes may be traced. If the Secretary of the Interior did not know that these States had been secured to his candidates by agencies that could not miscarry, why should he so confidently assert the day following the election that each of them had chosen republican electors and that the election of the republican nominee was assured? Why did he claim the success of the recan nominee was assured? Why did he claim the success of the republican ticket, when the country generally accepted the election of Mr. Tilden as a fact? His confidence, Mr. Speaker, was placed in that new factor in American elections, the returning board, and in the conviction that whatever the people of those States might do, a compliant returning board could and would undo. Whatever the people might determine, that board could undetermine. Whomso-ever they might elect, that board could reject. His bulletin following the election was an evidence of his implicit trust in the fidelity of these hoards and the certainty of their adherence to his pre-pression. of these boards, and the certainty of their adherence to his pre-arranged plans. The returning boards, heard from at last, vindicated their claim to the Secretary's confidence. They certified to the country the election of twenty-one electors—needed to elect the republican ticket; and the question is now presented for some tribunal to settle, shall the verdict of the returning boards stand as the will of the people under the Constitution and laws, and as such be executed?

THE RETURNING BOARDS AND THE BALLOT

The ballot, Mr. Speaker, is the instrument by which the citizen gives expression to his will. When cast into the ballot-box, the only question, as I conceive, that can arise in a free government is, Did the law authorize such a vote; did the voter have the necessary qualifications as to age, residence, &c., and was the ballot such a one as is authorized by the law of the State? No question, it seems, can rightfully arise as to whether he voted otherwise than as he desired, for I take it that the presumption that the ballot he cast express his will is conclusive upon him and upon the whole world. He is estopped to deny this presumption; and if he cannot for himself, what power on earth can deny it for him? Shall it be said, sir, that some man styled a supervisor or commissioner can make a statement on affidavit of three citizens that "riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influence" led the citizen to vote otherwise than as he desired? And shall a set of men called a returning-board presume to say to this voter, "It is true, sir, you were of lawful age and residence; all is regular about the time, place, and manner of your voting; but we have some affidavits before us that convince us that you did not vote the ticket of your choice. You voted for certain candidates; these affidavits convince us that you wanted to vote for certain other candidates, and would have done so had you voted according to your feelings. We will not have done so had you voted according to your feelings. We will not count your vote for those certain other candidates, as we think would be just and proper, (in which opinion we are glad to have the concurrence of the visiting brothers,) but we will see for you that your vote is not counted at all. Don't worry about this; for although you may at the time of voting have thought, and although you may think now, that you wanted to vote as you did, we are satisfied that you felt so on account of the 'riot, tumult, acts of violence, intimidation, armed disturbance, and bribery' that prevailed; and if none of these existed, we are sure there were some 'corrupt influences' at work that led you to feel that way. Don't talk to us about your wanting to vote that way. A colored man could never want to vote against his party. He is a registered republican voter, and is conclusively presumed to be a republican. The color of his skin puts a perpetual estoppel upon him. He can't be heard to say that he is not a republican, and never does say so unless he is bull-dozed. Our business here is to counteract the work of the bull-dozers and mar all their well-laid schemes. We intend to see that no amount of bulltheir well-laid schemes. We intend to see that no amount of bull-

their well-laid schemes. We intend to see that no amount of bull-dozing can secure your vote to the common enemy, and we are exceedingly sorrowful, along with the visiting republicans, that the law does not allow us to count you as having voted on the other side."

Not only, Mr. Speaker, does it seem to me that the ballot is the best and only evidence of the will of the qualified voter, and that it is conclusively presumed to express his will, but there is another presumption equally important and well established in our system, namely, that those who absent themselves and do not vote are presumed to be indifferent as to the result of the election. What an absurdity in our system is the introduction of an agency with authority to inquire as to how men would have voted if they had voted at all; as to what would have been the result if everybody had voted. Every to what would have been the result if everybody had voted. Every man in contemplation of law does vote who wants to vote, and to go into an inquiry as to the will of the absentees is to ignore the election and remit the government of the State to the tribunal making the inquiry. It does in fact become the elective body, invested to as high a degree with the appointing power as the President of the United States. While in such a system there is nothing conclusive in the ballot, nothing presumed from the absence of the voter, it is consoling to know that somewhere there is a presumption upon which we may rest. We reach it at last in the absolute infallibility of that

tribunal. Its judgment, we are told, cannot be impeached. It may suppress thousands of votes or it may coolly and deliberately transfer the votes of thousands of freemen from one candidate to another, so give that candidate a majority of 4,000 who was in a minority of 8,000 at the ballot-box, and there is no remedy anywhere on earth or among men either to the disfranchised voter or to the outraged candidate. The finding of the tribunal imports absolute verity and can nowhere be reviewed.

I am reminded here, Mr. Speaker, that this anomaly in our free institutions, this power above the ballot, this court or tribunal authorized to collect the public will in some other way than by the ballot, this wicked device of wicked men to perpetuate a power thrust into their hands by the executive power of this nation, is no improvement upon the machinery devised soon after the war in my own State to perpetuate a minority rule. I recur to a melancholy period in the history of Tennessee, when the executive of the State was authorized history of Tennessee, when the executive of the State was authorized by statute to disfranchise entire counties by proclamation; which power he did time and again exercise. No candidate in sympathy with the opposition to the executive could calculate with any certainty upon receiving any vote; for the governor could, the very eve preceding election, by a tyrannous edict wipe out the franchise in any county. If by any omission or oversight such candidate should receive a majority of votes, the power could still be exercised and his competitor counted in, as was often done. The people obtained relief at last through a civil revolution, which was resisted at every stage by that minority. And thus was an end put forever to a most iniquitous system of oppression, which could have peaceful way among no people.

system of oppression, which could have peaceful sway among no people not held down by the application or dread of actual force.

I trust, sir, that the day is not far distant, whatever may be the issue of our present complications, when an enlightened national sentiment will demand the elimination from our political system of a power higher than the ballot, that assumes to proclaim what the publications is the statement will be able to the system of the proclaim what the publication is the system of t power higher than the ballot, that assumes to proclaim what the public will ought to have been, instead of declaring what it actually was; that presumes to collect it from rumor and ex parte testimony, if indeed it may be called such, and that passes in review upon the judgments of the people and is itself not subject to review. The mills of the gods are slow, but they are sure. Nothing so anti-republican, so much at war with the whole theory of popular institutions, has ever appeared in American politics, and for the credit of those institutions its departure should not be long delayed. Let it go at once, and "stand not upon the order of its going." An invention that helps the weak to govern the strong, the few to rule the many, the ignorant to command the wise, and the vicious and vile to dominate the virtuous and decent, is better suited to other countries and peoples virtuous and decent, is better suited to other countries and peoples than ours. And if, indeed, Mr. Speaker, "riot, tumults, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences" should occur to affect the freedom of the ballot, let the law prevent by punishing them. If such law cannot be enforced, then it becomes evident that either the government is that of a minority or of a majority incapable through ignorance or corruption of administering re-

publican government.

Though it be conceded, Mr. Speaker, that it is competent for a State and not at all in conflict with the spirit and genius of popular instiand not at all in conflict with the spirit and genius of popular institutions to provide a tribunal and vest it with power to ascertain the public will in some other way than by the ballot—which is, I take it, the power of this returning board—this limitation ought in reason and law to exist, that its power and jurisdiction shall be exercised in good faith. Its fraudulent or corrupt exercise would vitiate its findings, which surely there should be power somewhere to review and remedy. If it be assumed that the returning board itself is vested with the power of appointing electors, that the ballots previously cast are so many nullities, and that no appointment is made until the board announces its decision, the reply to that is, then, the State of Louisiana did not appoint her electors on the day prescribed by law, which is the Tuesday after the first Monday in November, but on some other day a month afterward. Such a position is fatal to the action of the returning board. The appointment of the electors must be made returning board. The appointment of the electors must be made on the day prescribed by law, and the State of Louisiana appointed hers upon that day or she did not, in legal contemplation, appoint at

THE COUNT.

Now, sir, as to whether this anomalous jurisdiction over the ballot and to whether this anomatous jurisate to nover the ballot is repugnant to republican government or not; as to whether the tribunal ever had under the law the powers claimed and exercised by it; as to whether it exercised that jurisdiction fraudulently and corruptly; as to whether its judgments, however unjust, are conclusive upon the to whether its judgments, however unjust, are conclusive upon the people of Louisiana and upon the country, are some of the great questions by which we are now confronted. Discussions thus far in either branch develop irreconcilable differences of opinion, and bring into painful prominence the absolute necessity for the organization of some tribunal with jurisdiction to settle them. The Constitution declares that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." Anybody can count, the President, the tellers, or a page; but who can decide what are votes, for they only are to be counted?

One conclusion may be said, Mr. Speaker, to have been evolved from the consideration and discussion of this subject thus far by the country: the framers of the Constitution never clothed the presiding officer of the Senate with jurisdiction of this mighty inquiry. He

shall not decide what are States and what are not, for only States can vote. He shall not decide whether electors were appointed or not in accordance to the direction of the Legislature of a State, for a State can vote only through electors so appointed. He shall not decide whether certain votes are in accordance to the constitution and and acts of Congress passed in pursuance thereof, for only such can be counted. He shall not decide whether the certificate opened is genuine and true, or a false and fraudulent representation of a vote. In short sir, he shall decide no question that is necessary to the determination of the grand final inquiry, is it a vote? To confer so vast a jurisdiction by implication merely upon the President of the Senate is to my mind an amazing absurdity. So vast a power could never have been left by the framers of the Constitution to mere implication. Where then does such necessary jurisdiction reside ? In my judgment, Where then does such necessary jurisdiction reside? In my judgment, Mr. Speaker, in just such tribunal as Congress may see proper to organize and vest with it; for I take it that the legislative powers may do whatever is necessary to carry into effect the requirement "the votes shall then be counted." It may not only do, but it is its solemn binding duty to do whatever may be necessary by legislation to carry into effect this plain constitutional duty. When it shall be determined what are the votes, then the duty to count will be an easy one—and one that the President of the Senate may perform without objection from early quarter. from any quarter.

Mr. Speaker, the question now presented to the conscience and judgment of this body is "shall such a tribunal be established?" That the exercise of this transcendent jurisdiction shall be admitted That the exercise of this transcendent jurisduction shall be admitted to the President of the Senate and its creature, against all the precedents in all the past history of the country, against that principle of justice and right and decency that no man shall sit as judge in a cause in which he himself is directly interested, against the reason and spirit, if not the letter, of the supreme law—that this vast jurisdiction shall be conceded to him must not be demanded, and if demanded cannot be yielded. Shall the Houses themselves exercise it? In ordinary times and under ordinary circumstances they might do so, as they have done in all time past. Heretofore, it must be remembered, that while there have been disputed votes offered it mattered little as to the disposition of the controversy, for a settlement either way had no effect upon the result. Now for the first time in our history the result depends upon votes that are in dispute, and the great office of Chief Magistrate of the nation, with its vast powers and vast opportunities, hangs upon the issue of the controversy. It is, in my judgment, now utterly impossible for the Houses to agree. The absolute certainty, now so generally confessed, of a disagreement between them presents the emergency that must be provided for. Here is the casus omissus in the Constitution and the laws. There is no umpire to settle the dispute on the one side or the other. If I could bring my mind to the belief that a disagreement between the Houses would be such a failure of any one capilidate to receive a majority of the votes. to the President of the Senate and its creature, against all the prece mind to the belief that a disagreement between the Houses would be such a failure of any one candidate to receive a majority of the votes as to vest jurisdiction in this House to elect, the path of duty might become plainer. But, sir, if the two Houses may count, how can jurisdiction ever come to the one to elect a President or to the other to elect a Vice-President until the two Houses that are to count, declare a con-

a Vice-President until the two Houses that are to count, declare a constitutional failure by the colleges?

I know, sir, with what ability and earnestness it has been urged by some partisans that this House itself may judge of the contingency upon which it may proceed to elect; but to my mind the claim has as little reason or constitutional sanction to rest upon as the claim of power for the President of the Senate. I see no power, sir, in either House to elect until they agree that the contingency provided for in the Constitution has arisen. And does any sane man believe they will ever agree upon such a decision? It seems now, sir, utterly improbable that there can ever be any concurrent judgment that "no person has received a majority of the electors appointed," upon which judgment only could our right to elect the President and that of the Senate to elect a Vice-President be predicated.

Foreseeing then a disagreement in the count, should it be attempted by the Houses; foreseeing a disagreement on the proposition that

Foreseeing then a disagreement in the count, should it be attempted by the Houses; foreseeing a disagreement on the proposition that there is a constitutional failure by the colleges; foreseeing the perils to the peace to the country that would follow an assumption by the President of the Senate of the unauthorized power, claimed in certain quarters for him, we can see the rock that lies in the channel, menacing the ship of state and her precious cargo. In the language of an accomplished Senator, "if we drift we shall strike it; if passion steer we shall run upon it." Duty and patriotism demand that sails be set now, so as to avoid it and that too before we make too near approach. It may be too late when we shall have tried and failed to agree upon a count. It will be too late when the House shall have assumed the power to choose a President, and when the President of the upon a count. It will be too late when the House shall have assumed the power to choose a President, and when the President of the Senate shall have declared another elected. It may be too late when there are rival claimants for that high office, each of them supported by a body of zealous and unreasoning partisans, not a few of whom are incapable of realizing the unutterable, the supreme folly and madness of civil war. I should hesitate long before accepting the responsibility of rejecting the only measure now before us which seems to present a hope of an amicable and peaceable adjustment of our complications. I should hesitate long before setting up my own judgment upon questions of constitutional power against that of some of the eminent gentlemen who have prepared and recommended this measure to us. We may not be able to free ourselves from dispositions to look at and speculate upon the probable action of this

commission; and while doing so myself, sir, with that confidence that a righteous cause inspires, I shall commit, so far as I may by my vote, that cause to this tribunal, assured that in its success the country will find peace and prosperity, and in a defeat it will at least find comparative repose.

Mr. SPRINGER obtained the floor and said: I yield ten minutes to

my colleague, [Mr. STEVENSON.]

Mr. STEVENSON. Mr. Speaker, a few evenings ago the citizens of the city in which I reside assembled in great numbers, without regard to party, without reference to political differences, and adopted the resolutions which I will ask the Clerk to read.

The Clerk read as follows:

The Clerk read as follows:

At a large meeting of citizens of Bloomington, Illinois, without regard to party, held on the evening of January 22, 1877, the following resolutions were unanimously adopted:

Whereas, from the closeness of the late presidential contest and the deplorable condition of the public affairs in the three contested States of the South, honest differences of opinion exist as to who was really elected President and Vice-President of the United States;

And whereas grave doubts also exist as to the proper constitutional method of counting and declaring the electoral votes, each party, with rare exceptions, favoring that plan most conducive to its success;

And whereas to remove the doubts and to calm a popular excitement which has seriously menaced the public tranquillity a congressional conference committee, consisting of fourteen of the most prominent and influential members of the two Houses of Congress, and divided equally by party lines, have, with almost perfect unanimity reported to the two Houses a compromise plan, popularly known as the conference bill, which, for fairness and impartiality, commends itself to the favor of a grateful people: Therefore,

\*Resolved\*, That we hail with the liveliest emotions of pleasure this great national peace-offering as comprehending not only a just and proper solution of our existing troubles, but affording, in all reasonable probability, the only feasible plan at all likely to be adopted to ward off impending dangers and restore peace and confidence to our distracted country.

\*Resolved\*, That the members of the congressional committee who framed and agreed upon the patriotic conference bill are entitled to the everlasting gratitude of the American people.

of the American people.

[Mr. STEVENSON addressed the House. His remarks will appear

the Appendix.]
Mr. SPRINGER. I yield fifteen minutes to my colleague, [Mr.

CAULFIELD.]

Mr. CAULFIELD. Mr. Speaker, I do not rise for the purpose of discussing the question before the House in a partisan spirit. The question which we have to decide is not one that addresses itself to one party or the other. It addresses itself to the members of this House and of the Senate as a legal question. We are to discuss it with the lights which the Constitution itself throws around it. I care not what passion may have been aroused by the recent election. I care not whom the voice of these two Houses, when assembled for the counting of the electoral votes, may declare the President and Vice-President of the United States. I for one am anxious only that the Constitution and the laws shall be carried out in the declaration of that vote. I address myself to this body to-night as I would address myself to the Supreme Court if I were arguing a case before that tribunal.

I address myself to the simple legal questions that belong to the

proposition now before the House.

The question is, what is the Constitution of the United States in regard to the election of President? The question is, how are we under the Constitution of the United States to decide who has been elected President and Vice-President? There seems to be a doubt in the minds of some gentlemen of this House and of the Senate as to the minds of some gentlemen of this House and of the Senate as to whether the Constitution contains sufficient power for the purpose of declaring whether A B or C D has been elected President of the United States. It may be that the weakness of my intellect is not able to grasp this great question, but I confess that for one with my humble ability I can see no difficulty whatever in the question. The Constitution has not made in detail all the laws that govern this country. The Constitution is simply the fundamental basis upon which the laws of this country are made. The Constitution is to be carried out by Congress. When the Constitution prescribes a power existing in the one House or the other, or in both Houses, it leaves to the one House or the other, or to both Houses together to designate how that power shall be carried out. power shall be carried out.

The Constitution says in regard to the counting of the electoral

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit scaled to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted

What power is given to the President of the Senate? The power to open the certificates. Who is this President of the Senate? Is he a member of the Senate? Is he not originally prescribed by the Constitution as the Vice-President, who is not a member of the Senate? Constitution as the Vice-President, who is not a member of the Senate? When the Senate and the House meet together the President of the Senate, who is or may be the Vice-President of the United States, has no more power under the Constitution to preside over that body than the Speaker of the House of Representatives. The Constitution does not prescribe who shall preside over this joint meting. The two Houses meet with their respective powers. While I am willing to admit that the House is not a House of Representatives unless presided over by its Speaker, nor is the Senate a Senate unless presided over by its presiding officer, (the Vice-President of the United States or President of the Senate,) still when they meet together they are co-equal and co-ordinate branches of the legislative department of this Government. But the President of the Senate has no more right to preside over these two joint bodies than the Speaker of the House. Who, then, is to preside? This question must be settled by law. The question must be settled either by legislative act of the two Houses or by the two Houses themselves when they meet in joint session; and when those two Houses meet together any member of either House has the power to rise in his place, in the absence of law or a joint rule, and move that the Speaker of the House shall preside over the deliberations of the joint bodies. What power, then, has the Vice-President or presiding officer of the Senate if this is done? When this act is done, when the two Houses decide that the Speaker of the House shall preside, the Vice-President has no more power in these two joint bodies than if he were not a member, as he is not, of either of them, except to open the certificates.

Shall it be said that the man who is not even elected to preside by the vote of the two Houses together shall decide who shall be the President and Vice-President of the United States? The only power prescribed to him, if the Speaker of the House is chosen to preside over the deliberations of these joint bodies, is that he may take a seat at some member's desk if accorded to him by the member, or some other seat provided for him at the time, and open the certificates of electors the only power which the Constitution prescribes to him. And

other seat provided for him at the time, and open the certificates of electors, the only power which the Constitution prescribes to him. And will it be said that he who has no other power than this, even under the joint action of the two Houses, shall have the power to declare who has received the majority of the electoral votes, and declare who is the President, when he himself is not even the presiding officer of the two bodies when they meet together in joint session? The only power he has to declare the vote comes from the joint resolution of the two Houses, or by some law such as we have here before us now for

But I have been amazed, Mr. Speaker, at the doubt which seems to surround this question in the minds of my fellow-members. What doubt is there? The Constitution itself provides a solution, if there is any doubt. Does the Constitution prescribe the mode and the means of carrying out all the provisions of the Constitution? Not at all. It simply announces the law and leaves the Legislature of the nation to prescribe the means of carrying out the provisions of the Constitution. What is the provision of the Constitution? The provision of the Constitution is that the President of the Senate shall, in the presence of the Senate and House of Representatives, open the certificates and the votes shall then be counted. How shall the votes be counted? According to law. Who shall make the law? The Congress of the United States, which has power to provide for carrying out all the provisions of the Constitution. Where is that power found? The power prescribed to Congress is "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." What powers, then, have been vested in any department or officer thereof? The power has been vested in these two Houses when they meet together—to do what? To count the votes. How shall they be counted? In the mode prescribed by law, in the mode prescribed by that law by which the Constitution says that "all the powers herein vested shall be carried out by such laws as may be necessary for carrying them into execution."

What law then is necessary to carry into execution this power of counting the vote? Any law prescribed either by rules of the two Houses when they meet together or by a legislative enactment of the two Houses. The two Houses when they meet can prescribe the mode by which the vote is to be counted, or before they meet they may prescribe it by precisely such a law as we have before us to-day for our consideration. When gentlemen say that this law is unconstitutional. I sak them to point out in what respect it is unconstitutional.

our consideration. When gentlemen say that this law is unconstitutional, I ask them to point out in what respect it is unconstitutional when the Constitution says that "all powers herein vested shall be carried out by such laws as Congress itself shall enact."

What is the power of these two Houses in the question before us? The power to count the votes. How count the votes? Either by a joint rule of the two Houses, or by a law enacted for that purpose. The twenty-second joint rule has been heretofore followed as a precedent for some time. Before that, resolutions were adopted either by the two Houses, or at a meeting of these two Houses when they got together. But the Congress has the power to prescribe the mode of counting the vote under the Constitution. counting the vote under the Constitution.

It is said that this is a causus omissus in the Constitution. It is no causus omissus any more than any other power prescribed by the Constitution is causus omissus, because it does not point out the manner of carrying it into execution. The power of carrying into execution the mode of counting the vote by the two Houses when they assemble together is vested in the two Houses either by joint resolution or by an enactment in the form of a statute such as is offered to us here to-day. When it is said that the powers of the two Houses are ns here to-day. When it is said that the powers of the two Houses are abridged by this bill because a member can object to the decision of the joint tribunal only by obtaining the concurrence of four members of his own and five members of the other House, I admit it struck me at first with a good deal of force, as an abridgment of the constitutional rights of the American Representative. But, Mr. Speaker, when the two Houses meet together, they do not meet together for

legislative purposes. They meet together for a single purpose, pointed out by the Constitution; not to enact any law, but for the purpose of carrying out a provision of the Constitution or a law already enacted.

And if Congress has the power to say how this vote shall be counted when the two Houses meet together, then they have the right to prescribe any mode whatever that they choose for the counting of this

I have not been able, Mr. Speaker, after a careful examination of of the law which is now before us for consideration, to discover one solitary objection that makes it obnoxious to the Constitution of this country. And I believe that the law which we have before us to-day is a safe and judicious law for the present exigencies in which we are placed. I do not say that I would be willing that this law should govern us for all time to come; but I say that in the absence of all laws upon the subject it is probably the best that could be devised

for the present emergency. But my time is drawing to a speedy conclusion. I shall vote for this bill because I believe it will settle the vexed questions which are now threatening the peace of this nation. I see a nation burdened with debt, a prostrate commerce, an agitated and anxious people, fearful of the future of our Republic, looking hopefully to us for an assurance that we shall do all in our power to perpetuate the magnificent heritage which our fathers have left us. Their voice is magnificent heritage which our fathers have left us. Their voice is for law and for peace. To me it is potential. As one of their representatives I shall obey their bidding. I shall yield to their demands, not simply for the mere purpose of acquiescing, but because their demand is reasonable, just, and patriotic. Let us then adopt this measure of peace; let us revive the drooping hopes of our people; let us send hope and joy and love on the switt wings of lightning throughout the bread expresses of our peiple in the bread expresses of our people. send hope and joy and love on the swift wings of lightning throughout the broad expanse of our nation, and let the hoarse voice of dissension be forever hushed in our glorious land. Let the temple of liberty be re-opened; let the arms of the Republic be suspended from its inner walls; let the hearts and voices of a grateful people swell in choral anthem through its lofty dome, and from its highest altar let the white-winged angel of peace go forth with golden trumpet to proclaim the peace of God to all men of good will through the present and all future generations of this great Republic.

But I close, Mr. Speaker, with saying that the power to declare how this vote shall be counted rests in the House and in the Senate, either by joint rule when they meet together or by a legal enactment which shall become a law and remain a rule until repealed by the

which shall become a law and remain a rule until repealed by the

which shall become a law and remain a rule until repealed by the ordinary legislation of Congress.

[Here the hammer fell.]

Mr. SPRINGER. I yield a portion of my time to the gentleman from Texas, [Mr. HANCOCK.]

Mr. HANCOCK. Mr. Speaker, the succession to the chief magistracy has ever been a prolific source of fierce contests in human governments; often resulting in political convulsions and the disasters of civil were of civil wars.

The framers of our Federal Constitution, admonished by these dangers, sought to guard against their occurrence by providing for the election of a President and Vice-President under as few and as easily understood provisions as were deemed practicable. The plan adopted was to have these officers selected by electors appointed in such manner as the Legislatures of the several States shall direct, subject to certain conditions and limitations imposed by the Constitution and authorized to be prescribed by Congress.

It was expected that the importance of the duty to be performed by the electors would secure the selection of men conspicuous for their intelligence and public virtue. How far the plan has been marred by political contests transforming the electors from their position of responsibility for the selection of wise and patriotic men for these exalted and honorable positions to that of mere machines, directed by

political parties, it is not deemed important here to inquire.

Whatever the departure from the course expected to be pursued in the election of a President and Vice-President, the conditions imposed by the Constitution and the limitations prescribed by Congress are of by the Constitution and the limitations prescribed by Congress are or equal binding force; and when not met by those performing any functions pertaining to the right and duty of electing a President, the omission becomes proper to be considered as to its influence on the vote or votes affected by it. I do not doubt that Congress may rightfully inquire into the action of a State in selecting or appointing electors, and the acts and character of the electors appointed, to the extent of the limitations of the Constitution and the laws passed in pursuance

It is believed to be as equally within the cognizance of and incumbent upon Congress to maintain and enforce all legislative and political rights and duties under the Constitution and laws as it is for the judicial tribunals of the Federal Government to enforce all rights and penalties cognizable by and arising or incurred under the Constitution and laws of the United States. I think the power of the judicial department of the Government furnishes, in the reason of its existence, an analogy for the exercise of power by a co-ordinate department of the Government in maintaining rights and enforcing duties

that pertain to that department.

The modes of exercising the power claimed may be, and probably ought to be, prescribed by Congress, and undoubtedly it would be better that all necessary regulations should be provided in advance of and unprejudiced by a pending emergency. But I am not willing to admit that Congress is impotent to protect itself and the country

against violations of the Constitution and the laws in the attempted or pretended exercise of functions which become effective only by the acquiescence of Congress.

Whatever difficulty might exist as to the exercise of the power by

reason of a failure to have provided therefor by appropriate legislation is entirely removed by the pending bill reported by the select committee on counting the electoral votes, &c. The provisions of the bill now before us seem ample for the consideration and determinabill now before us seem ample for the consideration and determina-tion of all questions that may arise on the counting of the votes, and the tribunal contemplated to be created is as little objectionable as any now probably attainable. I leave the special presentation of its provisions to the able gentlemen who have prepared and reported it. This House, I think, will not hesitate in giving it favorable consider-ation. Should it, however, from any cause fail to become a law, Congress, or either House thereof, has the inherent power of prevent-ing the consummation of a fraud or the violation of the Constitution when attempted to defeat the rights of the people to have the Chief Magistrate of the Government elected as directed by the Constitution and laws passed in pursuance thereof.

Magistrate of the Government elected as directed by the Constitution and laws passed in pursuance thereof.

Whatever may be the opinion entertained by others, as to the right of Congress to inquire into the regularity and legality of the election of electors, as provided by the laws of the States respectively, outside of and unaffected by the conditions imposed and authorized to be imposed by the Constitution of the United States, I am not unmindful of the constitution of the work in the great importance of care imposed by the Constitution of the United States, I am not immindful of the gravity of the subject or of the great importance of carefully guarding against partisan zeal or the promptings of a conviction that great wrongs have been committed, leading to an encroachment on the unrestricted right of a State to appoint electors of President and Vice-President, subject only to an observance of the conditions imposed by the Constitution and the limitations prescribed by

The second clause of the first section of article 2 of the Constitution provides as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The third clause of the same article provides that the electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves, and the fourth clause authorizes Congress to determine the time of choosing electors and the day on which they shall east their votes.

These clauses contain the compact between the States then forming the Federal Union and others that might become members of it as to the election of the President and Vice-President, binding on all and each, all being entitled to have the conditions and stipulations observed and carried out. They are the conditions on which each State is entitled to cast a certain number of votes for President and Vice-President. The State that fails to observe these conditions must be deprived of her electoral vote in whole or in part, as the act must be deprived of her electoral vote in whole or in part, as the act of omission may reach all or any number of them. For instance, if a State entitled to several electors appoints a Senator or Representative in Congress, or a person holding an office of trust or profit under the United States, such person so attempted to be appointed an elector would not be authorized to act as such because of the constitutional inhibition, and that vote would be lost to the State. So if the Legislature of a State failed to take any action, either to appoint or provide for the appointment in any manner of electors, no other branch of the State government could do so, and consequently the State could have no voice in the election of a President and Vice-President could have no voice in the election of a President and Vice-President. Or when the Legislature directs that the electors shall be elected at a different time and that they shall cast their votes at a different time from that prescribed by Congress for both these events, or when the Legislature undertakes to have electors selected in a manner in contravention of the clauses of the Constitution referred to, or of any other provisions of the Constitution, such action would be as if not

And again, the Legislature of a State exists in virtue of the constitution of the State, is amenable to it, and is utterly without power to give legal effect to any act in violation or contravention of the provisions of the State constitution under which the body acts and to which it owes its existence. Such an act would be merely as the act of private citizens, and not that of the Legislature of the State. As directed, it shall appoint the electors as before cited, subject to the

conditions prescribed.

Without looking further into these conditions, let us examine into the constitution and several acts of the State of Louisiana with reference to elections, and especially the selection of electors of President and Vice-President, and see whether the acts of the Legislature of that State on this subject are of a character consistent with the provisions of the State constitution, and also the Constitution of the United States.

The existing constitution of the State of Louisiana was adopted or ratified by the people on the 13th of April, 1868, and certain amendments not affecting the questions to be considered were adopted on the 7th of November, 1870. Under it the general elections are held on the first Monday of November every two years.

An act "relative to elections in the State of Louisiana," &c., was

approved and put in force on the 19th of October, 1868, statute 218. This act is incorporated in the revised statutes in force on and after the 1st of April, 1870, sections 1379 to 1435.

In 1871 nothing was enacted in regard to elections. An act "to regulate the conduct and maintain the freedom and purity of elections," &c., was approved on the 20th of November, 1872, statute 15, Warmoth being governor and Pinchback lieutenant-governor and president of the senate, by which a board of returning officers was provided for and William P. Kellogg became governor de facto of the State. I hold that this act attempted to confer judicial powers on its creatures and was, therefore, utterly unconstitutional.

It provides as follows:

It provides as follows:

SEC. 2. That five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers.—Stat. of 1872, page 15.

Once elected by the senate this returning board is a corporation, with perpetual succession; self-renewing, self-perpetuating. I find no provision of the law making it amenable to any department, tribunal, or officer of the State. The provision in regard to filling a vacancy is probably directory, not mandatory, for it is not said that there shall be no legal board without five members; and it is said that the provision of five that is these shall be a concern. I do not see that a majority of five, that is, three, shall be a quorum. I do not see what remedy there is by law if the board, reduced to three, should persistently continue so.

The five original members were to be elected by the senate "from

The five original memoers were to be elected by the senate "from all political parties," but nothing in the act requires the member of the board who may be appointed to fill a vacancy to be of the same political party with his predecessor. Even to the senate the law is merely directory, and its violation of the direction can neither be

punished nor remedied.

The powers of the board are, in the first instance, ministerial only: to compile the statements from all polls or voting places where there has been a fair, free, and peaceable registration and election. But when there comes to it a statement of a supervisor or commissioner, when there comes to it a statement of a supervisor or commissioner, in form required by section 26, and based on certain affidavits, then the board is to "investigate the statement of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place;" and, if "convinced that these did not materially interfere with the freedom and purity of the election" there or "did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election," "then, and not otherwise," it is to canvass and compile that vote. (Same statute, section 3.) But if not fully satisfied the returning officers are to examine further testimony and to have nower to send for persons and papers; and, if after such examination power to send for persons and papers; and, if after such examination they are "convinced" that the riot, &c., did so materially interfere or prevent, then they are not to canvass or compile that vote, but to exclude it from their returns. (Same, section 3.) Nothing in the law requires the action of the board to be public and in open day. They may meet in secret and examine witnesses in secret, inquisitorially. It is only provided that any candidate interested in the result "shall be allowed a hearing" before these officers if he applies within the time allowed for forwarding the returns of the said election. (Same, section 3.)

These returning officers are to meet within ten days after the closing of the election and continue in session until the returns have been

In these returning officers are to meet within ten tays after the closing of the election and continue in session until the returns have been compiled. "The presiding officer is to open the statements in the presence of the returning officers." They may exclude all other persons. (Section 2.) And these returns made and promulgated are prima facie evidence in all courts and before all officers until set aside by due judicial procedure upon contest for an office. (Section 2.)

Special jurisdiction is thus given to these persons to adjudicate as to the facts whether there was rioting, tunult, &c., and whether either or part or all of these did actually prevent registration or voting by a number of the voters "sufficient to materially change the result of the election;" and therefore, as the Supreme Court of the United States has several times held as to the decisions of the registers and receivers of land offices as to the existence or non-existence of the facts necessary to entitle to a pre-emption, their finding and decision as to the facts of tunult, riot, intimidation, &c., and their sufficiency so to change the result, are final, and cannot be reviewed or the facts re-inquired into by any judicial tribunal. They are to be "convinced" that the facts are so or not so; and if they are "convinced" that conviction is final. No court can say they were not convinced that conviction is final. No court can say they were not convinced or that they ought not to have been. They need give no reasons, they need hear no arguments; they are not required to hear argument. How a candidate shall be "allowed a hearing" is not defined; no rules in regard to the manner of receiving evidence are prescribed; no notice of its taking need be given to any one; it may be wholly ex parte. They are not required to sit with open doors. They need not even let it be known where they meet. They can meet anywhere in New Orleans, in a private dwelling or in a gambling-house; and they may if they see fit steal under cover of midnight into the place where the rights of the people are to be assassinated.

Andrew Fletcher, of Saltoun, said, in one of his speeches in Parlia-

One would think of all men law-givers should be of the most undoubted probity, and that selfish ends and disingenuity should have no place in their assemblies.

Nothing is more hateful than a treacherous duplicity and a pretense of fairness merely delusory and intended to defraud. Everything which seems to be fair in this act of legislation is merely spe-

cious, insincere, and deceptive.

cious, insincere, and deceptive.

The board is to be at first composed of persons from all political parties, but it is not provided that it shall continue so. A vacancy occurring should be filled with one from the same political party as the last tenant, but it is not promised that it shall be, and those who are to elect cannot be made to elect at all. A person interested as a candidate is to be allowed a hearing, but there is no promise that the hearing shall be full or fair. The returning officers are to hear testimony, but it is not provided that they shall do this publicly, or that there may be cross-examination or opportunity for rebuttal, or previous notice to any one in all the world. Their conclusions are to be considered prima facie correct, and may be gone behind in a formal proceeding to contest; but their findings as to the material facts are final and it cannot be shown that they ought not to have been convinced. To sum all up in a word, they can truly plead they had ample warrant

inal and it cannot be shown that they ought not to have been convinced. To sum all up in a word, they can truly plead they had ample warrant in the letter of the law for doing all they have done and for abundant sharp practice besides. There is no limit to the amount of villainy which the law makes possible and permits.

It has been said to be "the common method of all governments now received in the world to allow almost everything that tends to the corruption of manners, and then to restrain those corruptions; a work," it is added, "far beyond the power of the longest experience and greatest prudence." The act in question is a resort to one of those permicious practices that tend to destroy public liberty. It and greatest prudence." The act in question is a resort to one of those pernicious practices that tend to destroy public liberty. It proposes to legalize the ill-designs of inveterate knaves, never boldly attempted to be carried into effect by legislation in a republic until it is declining to its fall. It was most truly said by Fletcher that "a government is not only tyranny when tyrannically exercised, but also when there is no sufficient caution in the constitution that it may not be exercised tyrannically." "All governments," he said, "are tyrannical which have not in their construction a sufficient court tyrannical which have not in their construction a sufficient security

against arbitrary power."

This act is tyrannical because it intrusts arbitrary power to five men or a less number, to be exercised without power of control or security against abuse in any quarter. It puts it in their power ar-bitrarily to annul the votes of whole parishes and cities, and so makes the right of suffrage of all the citizens depend upon their favor, their caprice, their interest, their irresponsible will. It is, therefore, not only violative of the rights of men; it not only makes the elective franchise and title to office, both of which are property, exist or disappear at the pleasure of four or five men having perpetual succession, but it makes the government of the State a tyranny and not republicant even even in form can even in form.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.—Constitution of the United States, article 4.

This board, not elected by the people, is above the courts of justice, has fraudulently imposed a government on an unwilling people of a State, and now attempts to make a President for the United States.

A tribunal so constituted and so perpetuating itself must be often corrupt and always dangerous. It is invested with judicial powers, the judicial powers of a star-chamber or inquisition. Three of them constitute a quorum, and it is only necessary that two of these should be "convinced" that certain allegations of matters of fact are true, and that these facts materially changed the result of an election in a parish or in the State, to empower them to declare as not given the votes of whole parishes. Their decision is equally final if they falsely pretend to be convinced, and whether they are or pretend to be convinced by much or little evidence, or by none at all, or against the overwhelming weight of evidence clashing with their private in-terests or their allegiance to the factions whose instruments they are.

The constitution of the State of Louisiana contains the following

provisions:

Returns of all elections for members of the General Assembly shall be made to the secretary of state.—Title 2, article 46.

Each house of the General Assembly shall judge of the qualifications, elections, and returns of its members.—Article 34.

The qualified electors for representatives shall vote for governor and lieutenant-governor at the time and place of voting for representatives; the returns of every election shall be sealed up and transmitted by the proper returning officer to the se-retury of the State, who shall deliver them to the speaker of the house of representatives. \* \* \* The members of the General Assembly shall meet in the house of representatives to examine and count the votes.—Title 3, article 48.

No judicial powers, except as committing magistrate in criminal cases, shall be conferred on any officers other than those mentioned in this title, except such as may be necessary in towns and cities, and the judicial powers of such officers shall not extend further than the cognizance of cases arising under the police regulations of towns and cities of the State.—Title 4, article 94.

This title 4 is judiciary department, and the officers mentioned in

This title 4 is judiciary department, and the officers mentioned in it are judges of the supreme, district, and parish courts, justices of the peace, attorney-general, district attorneys, sheriffs, and coroners, consequently "no judicial powers" could by law be "conferred on" the returning officers created by a law subsequent to the adoption of this constitution of 1868, and so far as the act of 1872 attempts to invest the returning officers with any judicial powers it is absoluted with and word. absolutely full and void.

The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult, or other improper practices.—Title 6, article 103.

But the creation of a returning board is an invention not contemplated by or within the letter or spirit of this article. The objects for which the Constitution is made are declared to be: "To establish for which the Constitution is made are declared to be: "To establish justice;" but the invention of a returning board, irresponsible, and with power of final decision upon pretended ascertainment of certain facts, is a device to establish injustice, because it is a device in the interest of party. "To insure domestic tranquillity;" but the device of such a returning board is a device to create perpetual discontent, dissension, and civil discord. "To promote the general welfare;" but such a device will constantly be made the means to promote private interests and the interest of party, at the expense of the general welfare. "To secure the blessings of liberty;" but such a device is calculated, and may not unjustly be said intended, to establish a despotism of party, and to nullify, when private or party interest may require it, the will of the lawful majority expressed at the polls. It is not an engine fit to be employed in a republic, and its certain result is to inflict the curse of political bondage and servitude on the people, and not to secure to them the blessings of liberty.

I think it is very clear that, as to members of the Legislature, the governor, and the lieutenant-governor, no such agency as a returning

overnor, and the lieutenant-governor, no such agency as a returning board could be interposed between the primary returning officer and the General Assembly, and that, if it could, it could not be invested with any other functions than that of merely compiling the votes as received by them. Even this I think is not warranted by the Constitution, which evidently means by the words "returns" and "proper returning officer" the returns made by the officers who actually superintended the elections at the various polls, and those officers only. The General Assembly is to "examine and count" the votes for governor and lieutenant-governor, and this excludes the idea that some other person or body is to count them previously and report the result. To "examine and count" the votes they must have the original returns, as each House must have them to judge of the elections and

returns as each riouse must have them to judge of the elections and returns of its own members.

The act of 19th of October, 1868, (acts of 1868, page 222, Revised Acts of 1870, page 277,) required the supervisors of registration within two days after the closing of the polls in each parish to go to the court-house of the parish and there, in the presence of at least two witnesses and of as many other persons as might attend, "to compile the returns sent in by the commissioners of election at the several presents of the parish and the parish that the parish the parish that the parish the parish that the parish that the parish that the parish the parish that cincts, to make public proclamation of the result, and make due return thereof to the secretary of state, making out triplicate returns, and sending two of these, one by mail and one by the next most speedy mode of conveyance, to him, and depositing the third in the office of the clerk of the district court." (Sections 24 and 25 of the

act; sections 1402 and 1403 of Revised Statutes.)

The governor, secretary of state, and a district judge were to "proceed to ascertain from the returns the persons elected Representatives in Congress," (act, section 30; Revised Statutes, section 1408.) Elections for electors of President and Vice-President were to be "held tions for electors of President and Vice-President were to be "held and conducted in the manner and form provided for general State elections," (act, section 32; Revised Statutes, section 1410.) And all the preceding provisions of the act, except as to the time and place of holding election, were to apply in the election of all officers whose election is not otherwise provided for," (act, section 33; Revised Statutes, section 1411.) And by section 8 of the act, power to inquire into the question in any case whether a fair, peaceable, and full vote had been anywhere prevented by riot, tumult, acts of violence, or armed disturbance, was conferred upon the district judges, to be exercised upon notification by the governor, based upon certificate to that effect by the commissioners of elections or supervisors of registration for the parish or district; and upon their finding the governor could "disregard the returns." And provisions were made for a fair and full hearing by the judges of those who might deny the correctness of the statements of the commissioners or supervisor, and full consideration of all evidence offered on both sides, (Revised Statutes, section 1386.) Now by article 82, title 4, of the constituand full consideration of all evidence offered on both sides, (Revised Statutes, section 1386.) Now by article 82, title 4, of the constitution it is provided that "no duties or functions shall ever be attached by law to the supreme or district courts, or the several judges thereof, but such as are judicial," and therefore, unless these functions wherewith the district judges were invested by the act of 1868, re-enacted in 1870, were judicial in their essence, they could not be invested therewith, and these provisions of section 8 are null and void.

They were the same powers, essentially and actually in all respects. which were in 1872 conferred upon the returning officers. They are judicial in their nature and essence, were properly conferred on the district judges, and could not be conferred on the returning officers. It has been all the time claimed by Senators that the action of the returning board of Louisiana is final, because it is invested with judicial powers, however the case may be in Florida or South Carolina. And these powers and functions being judicial, the law conferring them on the returning board is as absolute a nullity as it it had never been

enacted, proposed, or dreamed or thought of.

The constitution of Louisiana, article 93, title 4, provides that "the judicial power shall be vested in a supreme court, in district courts, parish courts, and justices of the peace." And section 38 of the act and 1416 of Revised Statutes provided that the commissioners of elections should receive the ballots of all legal voters offering to vote, deposit them in the box, keep duplicate lists, open the box immediately after closing the polls, count the votes with open doors, "and make duplicate returns of the number of votes polled for each candidate, and deliver

one of them to the deputy sheriff or other officer in attendance, to be conveyed by him to the returning officer or officers of the parish." These provisions conform to and carry out the provisions, letter and Inese provisions conform to and carry out the provisions, letter and spirit, of the constitution. They were sufficient and they were fair. If nothing more than that had been desired they would have continued to be the law. No good motive can be conceived of for their abrogation by the act of 1872.

abrogation by the act of 1872.

To enact the law of 1872 it was necessarily openly and flagrantly to violate the constitution; and the result of this violation is that, as the eighth section of the act of 1868 was repealed by the act of 1872, the judges ceased thereby to be invested with the special powers conferred on them; and these powers were not transferred to the returning officers, because, they being, in their nature and essence, judicial, the constitution expressly forbade it, and made these officers incapable to take and incompetent to exercise them. There is, then, no tribunal or officer or board of officers in Louisiana invested with the functions of inquiring whether a return ought to be disregarded the functions of inquiring whether a return ought to be disregarded or the votes of a precinct or parish excluded, because of the existence of the facts for which this could be constitutionally done. Or, if the eighth section of the act of 1868 is not repealed by that of 1872, because so much of the latter as was intended to supplant the former is unconstitutional, and therefore to all intents and purposes null, then the judges have not acted, and no returns have been constitutionally

impeached or excluded. The returns as made by the supervisors of registration upon compilation or "consolidation" of the lists transmitted to them by the commissioners of election at the polls cannot be impeached, because no tribunal or officer or board is constitutionally invested with power to inquire into the facts for which by law the returns of actual count of votes can be disregarded or excluded. It is the returns received by the returning board that are final, impeachable only in a formal contest in the manner prescribed by law. The House of Representatives knows and the country knows what the vote was according to the actual returns; and as the action of the returning officers and their exercise of judicial powers in excluding and casting aside of returns, the basis of their action being their ascertainment by judicial inquiry the basis of their action being their ascertainment by judicial inquiry of certain facts and their being "convinced" by these facts proven that the tumult, riot, bribery, acts of violence, &c., were sufficient "materially to change the result" was absolutely null because forbidden by the Constitution, this action may be collaterally impeached anywhere, and must be treated everywhere as never having been had. All that they could constitutionally do was to compile the votes actually cost and returns whereaf were made in due form and with actually cast and returns whereof were made in due form and with sufficient authentication. All that the returning officers can con-stitutionally do is to see what returns are regular and made in due form, and to compile or consolidate these and to certify the result. If there is any way of escaping these conclusions I cannot see it. The constitution of 1868 has not been amended so that judicial powers could be conferred on the returning officers, and the question seems to me to have absolutely but one side. It is not conceived how the most acute and dextrous lawyer can make an argument now the most acute and dextrous lawyer can make an argument against these conclusions. No officers except those specially mentioned in title 4 of the constitution can by possibility be invested with any judicial powers or functions. The powers conferred on the district judges by the eighth section of the act of 1868 were judicial, because no other than judicial powers and functions could be conferred on them. The powers conferred on the returning board are the same powers, and therefore are judicial powers; and, being judicial, cannot be conferred on them or exercised by them. What chicanery of dialectics can answer this? alectics can answer this?

In the few minutes of my time remaining, I would offer a few observations on the clauses of article 12 of amendments to the Constition, that is:

Which lists they—the electors—shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

Now, sufficient reason for having the lists of the votes placed in the hands of the President of the Senate is found in the expediency of having matters of so great importance intrusted to the custody and care of some one of the highest trust and confidence; and the President of the Senate, from the position conferred upon him by the votes of the people, or of the Senators, would very naturally command that confidence and perfect belief that, without mutilation or change, he would produce all the certificates received by him, "in the presence of the Senate and House of Representatives," and "open all the certificates." This is the only duty required of him. When he has performed that, he has met the only requirement and exercised the only power expressly directed to be done by him. But it is maintained that by reason of this grant of power he is authorized to go further, and exercise another and very different power, that of counting the votes. The two powers are very different power, that of counting the votes. The two powers are very different in character. The first is ministerial only; the second requires the exercise of discretion, judgment, determination of probably both law and facts. The first directs him "to open all the certificates." He has no right to stop short of "all the certificates." At present there are, I believe, forty-two certificates of electoral votes from the different States that have been delivered to him, and now in his possession; four more than can rightfully be counted by any authority. To hold that he may examine, judge, and determine which of the thirty-eight, or a Now, sufficient reason for having the lists of the votes placed in the

less number, shall be counted, is to derive this higher grade of power by implication from the first and lower grade of a mere ministerial power, which he may do without any aid of additional power from any other source. Such a mode of deriving power would violate all rules of construction and stand unsupported by a precedent. Any other officer, the Postmaster-General, the Secretary of the Senate, or any like official commanding trust and confidence, might with equal propriety have been selected to discharge the ministerial duty devolved on the President of the Senate; but neither they any more equal propriety have been selected to discharge the ministerial duty devolved on the President of the Senate; but neither they, any more than the President of the Senate, would have ex officio possessed the functions necessary to perform the other and higher power of counting the votes. Investigation might become necessary in order to determine whether one or even all the conditions imposed by the Constitution had been complied with. He has no power, and none has been vested in him, to determine whether the votes have been given by a State or given for one qualified to hold the office of President whether he be alien or native born, of the required age or length of resither he be alien of native born, of the required age of length of residence; and so of any other question that might become necessary to be decided on the provisions of the Constitution. In point of fact the precedents relied on in support of this power of the President of the Senate to count the votes, because having heretofore been done by him—in every instance, even the first, the votes have been counted by tellers appointed by the respective Houses, or by their authority expressly given. The tellers were the agents or officers of the respective Houses, and the President of the Senate, in declaring the result thus obtained, acted merely as the presiding officer of the two deliberative obtained, acted merely as the presiding officer of the two deliberative bodies, conformable to previous arrangement agreed upon by both Houses. The clause "and the votes shall then be counted" contains Houses. The clause "and the votes shall then be counted" contains a grant of power, and not being specifically directed to be exercised by any other department of the Government, it devolves on the legislative department to give effect to and see that it is properly carried out and performed. Whatever methods or instrumentalities may be deemed proper for its execution Congress alone has the power to provide, within the limitations bounding the powers of Congress. The bill under consideration proposes to do this, in aid of and advisory but still subordinate to the ultimate decision of Congress. To admit the inability of Congress for want of power to provide for the employment of suitable agencies to properly and peacefully determine the ment of suitable agencies to properly and peacefully determine the questions of difference in the present exigency would be to declare the Government deficient in a particular essential to its existence. To fail to do so would be a humiliating reflection on the patriotism

Mr. SPRINGER. Mr. Speaker, we have just passed through one of the most trying ordeals of republican governments, namely, the election of a Chief Magistrate. Unfortunately for the peace of the country, the contest still remains undecided in the popular mind. The friends of each of the candidates are quite as earnest at this time in asserting that the candidates of their choice have been elected, as they were prior to the election confident that they would be elected. Whatever may be the merits of these respective claims, it cannot be doubted that the peace of the country is seriously threatened in view of the apparently irreconcilable differences that exist. As the 4th of March approaches, the complications seem to increase, and the respective political parties seem more than ever determined to insist upon the inauguration the complications seem to increase, and the respective political parties seem more than ever determined to insist upon the inauguration of their own candidates. This condition of public affairs has produced in the country a general feeling of insecurity and uncertainty as to the future. The business interests are suffering materially in consequence of the threatening aspect of the presidential contest. Thousands and hundreds of thousands of our laboring-people, in the midst of a winter of unusual severity, are without employment, and many of them are reduced to the condition of absolute want. Merchants, bankers, manufacturers, as well as the masses of the people, have held meetings in all parts of the country for the purpose of counseling together as to the best means of relieving present embarrassments and of averting political complications. No new business enterprises are being started; existing enterprises are being contracted, wound up, or forced into bankruptcy. Capital is unemployed, and ordinary business collections are made with difficulty. During the past year there have been over nine thousand business failures in the country, an increase in number of thirteen hundred and fifty as compared with the year 1875, and the total liabilities of those who failed during the two years last passed have reached nearly four hundred millions of dollars. The failures during the past four years have been nearly twenty-eight thousand, and their total liabilities have reached nearly eight hundred millions of dollars. This strain on the business of the country cannot continue much longer without producing universal harkrupters and financial min. Political complications and

nearly eight hundred millions of dollars. This strain on the business of the country cannot continue much longer without producing universal bankruptcy and financial ruin. Political complications and the fear of strife and tumult, if not of civil war itself, have greatly aggravated financial embarrassments and increased business failures. The people, without regard to party, and especially the representatives of the great business interests of the country, are looking to Congress for relief. Shall we prove ourselves worthy of the great trusts which have been committed to our care? Can we not rise above the prejudices of party above the above the prejudices of party, above the passions of the hour, above individual opinions or preferences, and bring about a speedy, honorable, and peaceful settlement of the presidential contest?

Mr. Benton, in concluding his Thirty Years' View, said he had seen the capacity of the people for self-government tried at many points, and always found equal to the occasion. But, said he:

Two other trials now going on remain to be decided, to settle the question of

that capacity. 1. The election of President; and whether that election is to be governed by the virtue and intelligence of the people, or to become the spoil of intrigue and corruption. 2. The sentiment of political nationality; and whether it is to remain co-extensive with the Union, leading to harmony and fraternity, or divide into sectionalism, ending in hate, alienation, separation, and civil war.

Our Government has already passed safely through the second of these trials. Sectionalism and civil war have done their worst, and yet they have not shaken the confidence of our people or of the world in the capacity of the American people for self-government. But we are now confronted with that which Mr. Benton and other great statesmen who have preceded us have regarded as the most danger-ous ordeal of republican government. Shall the election of our Chief Magistrate be governed by the virtue and intelligence of the people,

or become the spoil of intrigue and corruption

or become the spoil of intrigue and corruption?

A disputed succession has ever been a fruitful source of strife, of war, and bloodshed. No other cause has produced more devastation and ruin than this one. The contests in England between the houses of York and Lancaster, and the hundred years of European war, growing out of the absurd claim of Edward III of England to be king of France, should remind us of the dangerous ground upon which we are now standing. Of all wars those which have grown out of disputed was according have been the most sanguingary and long continued. The successions have been the most sanguinary and long continued. The dangers that now threaten us have been predicted often by the statesmen of the past, but unfortunately no adequate legislation has been devised heretofore to meet such an emergency. On the one hand, it is contended that the President of the Senate may count the electoral votes and declare the result, and that he will do so in the absence of legislation is claimed by his friends as a duty under the Constitu-tion. This pretension—for such it is—is utterly repudiated by the majority of the members of this House, and I believe that this majority would regard such a proceeding as revolutionary, and as having no validity whatever. The inevitable result of these grave differences, unless harmonized by legislation, is that Mr. Hayes would be proclaimed President at one end of the Capitol, and Mr. Tilden at the Who can contemplate such a condition of things without

other. Who can contemplate such a condition of things without trembling for the future of the country?

In view of these grave and alarming complications, it becomes the duty of the Representatives of the people in this House and in the Senate to use their utmost endeavors to bring about an honorable and peaceful adjustment. All pride of opinion, all party prejudices, all selfish ambitions must be buried out of sight, and a pure and unselfish patriotism, such as inspired the founders of the Republic, must guide and control all our actions. The Senate and House of Representatives have appointed special committees to consider the grave questions at issue and report such measures as may be deemed necessary to meet the present difficulties. A bill has been prepared and reported to the two Houses. It is accompanied by a report recommending its passage, which is signed by thirteen of the fourteen members of the joint committees. Having been a member of the House committee, and having concurred with all my colleagues of the House in recommending the passage of the bill, it may not be amiss for me to explain in detail the various features of the measure, and to give my reasons for supporting it.

my reasons for supporting it.

The bill reported and now under consideration provides in the first The bill reported and now under consideration provides in the first section for the manner of counting the electoral votes where there is but one return from the State. As to such votes, when objections are made, the two Houses separate, and unless both Houses concur in rejecting the vote or votes objected to, such vote or votes shall be counted. In the second section of the bill provision is made for counting votes from a State where two certificates, or double returns, are made. These double returns, together with the objections thereto and all papers accompanying the same, shall be submitted to a commission, consisting of five justices of the Supreme Court of the United States, five Senators, and five Representatives. Four of the justices are indicated in the bill by reference to the circuits to which they are assigned, and these are to choose another from their associates who shall constitute the fifth judicial member of the commission. are assigned, and these are to choose another from their associates who shall constitute the fifth judicial member of the commission. The venerable senior associate justice (Mr. Clifford) is named as the president of the commission. The five Senators and Representatives are to be appointed by the respective Houses by a viva voce vote. This commission is authorized to consider these double returns, and the objections thereto, and all papers accompanying the same, with the same powers now possessed for that purpose by the two Houses acting separately or together. The decision of the commission, or of a majority thereof, shall be in writing, and the counting of the votes shall be in accordance therewith, unless it shall be otherwise ordered by the concurrent action of the two Houses. The other sections of the bill merely provide for the meetings of the two Houses and the mode of procedure therein during the counting and the deliberations mode of procedure therein during the counting and the deliberations of the commission.

It will be seen that these provisions are based upon the assumption It will be seen that these provisions are based upon the assumption that the Constitution imposes upon the two Houses of Congress the duty of counting the electoral votes, and of ascertaining and declaring the result. Two tellers are to be appointed by each House, to whom shall be handed, as they are opened by the President of the Senate, all the certificates, or papers purporting to be certificates, of the electoral votes, which certificates are to be acted upon by the two Houses as the bill provides. But from the moment the President of the Senate opens and presents the certificates to the tellers he loses all further control over them. He cannot even read the contents of the

packages, as this duty is assigned to the tellers, and hence he cannot know anything of their contents, and can make no announcement of the result, except as thereunto authorized and directed by the two

The provision of the Constitution in reference to the count of the electoral vote is as follows:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

The words "and the votes shall then be counted" have perhaps caused a greater diversity of opinion that any other phrase in the Constitution. By whom the count shall be made is not expressly stated. But if it is deducible by necessary implication it is as much a part of the Constitution as if the words were expressly given. But there can be no implied power to do anything under the Constitution where there is no implied power to do anything under the Constitution. there can be no implied power to do anything under the Constitution unless there is some power expressed which cannot be carried out without doing something else which is not expressed. For instance, Congress has express power "to borrow money." But there is nothing said in the Constitution about the power of Congress to establish a Bureau of Printing and Engraving. Yet it is just as constitutional to print and engrave bonds as it is to borrow money. Where an express power is given or duty imposed all other powers necessary to carry it into effect are implied. What then is the expressed power or duty of the President of the Senate in reference to the count? He "shall, in the presence of the Senate and House of Representatives, open all certificates." That is all that is expressed in the Constitution except that he is to receive them. If he has any other duty to open all certificates." That is all that is expressed in the Constitu-tion except that he is to receive them. If he has any other duty to perform it must be implied or it must be something that is necessary or proper to be done in opening the certificates. But there is no power to count the votes implied from a power to open the certifi-cates. Hence we may infer that the counting is to be done by the Senate and House of Representatives, as they are there as organized bodies for some purpose. And such implication is strengthened, if not abfor some purpose. And such implication is strengthened, it not assolutely confirmed, by a subsequently expressed power imposed upon the two Houses, namely, the power of the Senate to choose a Vice-President and of the House to choose a President if no person has received a majority of the votes of all the electors appointed. The two Houses could not know this fact unless they had first counted the votes, as the Constitution requires them to proceed immediately to perform this duty.

The Constitution has lodged the power to count the votes somewhere, as it is evident they cannot count themselves. It is important then to know what has been the practice of Congress, or the two Houses thereof, in counting the votes for President and Vice-President. Upon a careful examination of these precedents it will be seen that there has been but one course pursued. The President of the Senate has never counted the votes, on any occasion, but, on the contrary, the two Houses have uniformly exercised this power, by the

appointment of tellers and by resolutions and joint resolutions directing the manner in which it should be done.

In the convention which framed the Constitution the question as to who should count the votes received little or no attention. the greater portion of the time in which the convention sat the sub ject was not before the body, as the plan of electing a President through the electoral-college system was not reported until late in the session. The convention assembled on the 14th of May and concluded session. The convention assembled on the 14th of May and concluded its labors on the 17th day of September. After long discussion and the consideration of various propositions the whole subject-matter was referred to a special committee of five; which committee, on the 6th of August, reported "a draught for a Constitution," which consisted of twenty-three articles. This draught was the basis of future action, and contained the main features of the Constitution as it was finally agreed upon. But the appendments made afterward were many and and contained the main features of the Constitution as it was finally agreed upon. But the amendments made afterward were many and some of them exceedingly important. The tenth article provided for the election of a President by the Legislature or Congress, by ballot, who should hold his office for seven years and be ineligible for re-election. There was to be no Vice-President. The Senate was authorized to elect one of its own members to preside over that body. Subsequently, on the 4th day of September, Mr. Brearly reported from a special committee certain additions and alterations, among which were the various features of the electoral-college system. But in this draught the Senate was left in complete control of the count of the electoral votes, the provision on this subject being as follows: the electoral votes, the provision on this subject being as follows:

The President of the Senate shall, in that House, open all the certificates, and the votes shall be then and there counted.

It was also provided that in case there was no election by the people through the electoral colleges, then the Senate was authorized to elect the President by a per capita vote.

These provisions were objected to on the ground that they gave the Senate too much power in the election of a President. Hence the proposition to open the certificates "in that House" was amended so

proposition to open the certificates "in that House" was amended so as to require this to be done "in the presence of the Senate and House of Representatives," and the votes were then to be counted. The power to elect the President was also taken away from the Senate and given to the House of Representatives.

Much stress has been placed upon a provision in the resolutions which were transmitted by the convention to the Congress of the Confederation, together with the Constitution. The resolutions constituted what is commonly called a schedule, and gave directions for bringing the Constitution into effect. The provision in question rebringing the Constitution into effect. The provision in question related to the organization of the Senate prior to the announcement of the election of President and Vice-President. Without this provision in the schedule, there might have been some doubt as to who was authorized to preside before and during the count; hence the clause in the schedule which has been so much quoted and so little understood, namely:

That the Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President.

The resolution containing this clause was merely advisory. The language of the resolution is this:

Resolved. That in the opinion of this convention that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed, &c. And that the Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President.

The resolution, therefore, merely expressed the opinion of the con-

And it seems that this recommendation was followed by the Congress; for it appears in the record of the first session of the Senate that the Senate, as soon as a quorum appeared, "proceeded to the choice of a President for the sole purpose of opening and counting the votes for President of the United States." This appointment was for a specific purpose in purpose of the recommendation of the the votes for President for the Sole purpose of opening and counting the votes for President of the United States." This appointment was for a specific purpose, in pursuance of the recommendation of the resolutions of the convention, and the temporary office expired as soon as the result of the election was announced. All this temporary appointee could do was "to open and count the votes." He was not the President of the Senate for any other purpose. Neither was he the presiding officer of the two Houses. His duties were wholly ministerial. He could not ascertain whether the votes were legal or illegal. And it is to be observed that the Senate and the House of Representatives supervised this very count, the Senate having appointed one teller and the House two "to sit at the Clerk's table to make a list of the votes as they shall be declared." Let us suppose that, at this first election, one of the States had, without intending to violate the Constitution, but as an act of gratitude, voted for General La Fayette, who was not a citizen of the United States. Or, let us suppose that in some of the States a reaction had set in, and that the party favoring the Constitution had been defeated in the election party favoring the Constitution had been defeated in the election for presidential electors, and that the electors, in order to show their opposition to and contempt for the republican form of government just set up, had voted for George III for President of the United States. Would such votes have been counted? According to the procrustean theory that the President of the Senate alone has the right to open and count the votes, and that he must count them as he right to open and count the votes, and that he must count them as he finds them, these votes for George III would have been entered on the Journals and counted. But this would have been not only unconstitutional but preposterous. There is something more implied in "counting the votes" than mere arithmetic. The arithmetical part could be done by the clerk. And if such duty had been imposed upon the Secretary of the Senate at the first election there would have been required denial of right and duty on the part of the two been no implied denial of right and duty on the part of the two Houses there assembled to supervise the counting in a judicial way and to direct the Secretary what votes to count and what not to count. At every count of the electoral votes from the first election count. At every count of the electoral votes from the first election of President down to the present time, one teller has been appointed on the part of the Senate and two on the part of the House for the purpose of counting or adding up the votes. If the Constitution had read: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and there shall then be appointed three tellers, one by the Senate and two by the House of Representatives, for the sole purpose of counting the votes for President and Vice-President," the practice would have been precisely what it has been at every election. But who would say that these tellers by virtue of such appointment held in their hands the power of determining in case of double returns or other disputed questions who should be the President of the United States? The power would still reside in the two Houses of Congress, as it now power would still reside in the two Houses of Congress, as it now does, to ascertain what are the constitutional votes of the State, and to direct their tellers what votes to count and their presiding officer what announcement to make as the result. The presiding officer of a legislative body is sometimes denominated the "mouth of the House." The appellation of Speaker comes down to us from the earliest parliamentary history, from which it appears that he "was to express the will of the Commons, and to speak for them, in all proceedings of the Parliament in which they were allowed or required to participate." Mr. Cushing, in his Law and Practice of Legislative Assemblies, (section 294,) thus defines the character and duties of this official:

The presiding officer, though entitled on all occasions to be treated with the greatest attention and respect by the individual members, because the power, and dignity, and honor of the assembly are officially embodied in his person, is yet but the servant of the House, to declare its will, and to obey implicitly all its commands. He is selected and appointed to the trust of presiding officer in the confidence, and upon the supposition, of the conformity of his will to that of the assembly.

A part of his duties are "to decide in the first instance, and subject to the revision of the House all questions of order that may

ject to the revision of the House, all questions of order that may arise or be submitted to his decision." The right of appeal from the decision of the presiding officer has never been denied, except where the rules expressly provide otherwise. In fact all the duties of a presiding officer are such, and such only, as are imposed upon him by the assembly over which he is to preside, or by the Constitution or laws of the land. He does nothing by implication; and in all cases of

doubt he is to submit the question to the House, and be governed by its orders. Mr. Calhoun, being Vice-President and ex officio President of the Senate, decided in 1826 in effect that as President of the Senthe Senate, decided in 1820 in effect that as President of the Senate he had no power of preserving order or of calling any member to order for words spoken in debate, upon his own authority, except in so far as he was authorized by the rules of the Senate. Speaker Lenthall, of the House of Commons in the reign of Charles I, had a keen sense of the duties and dignity of his position.

When that ill-advised monarch-

Says Mr. Hatsell-

came into the House of Commons, and having taken the speaker's chair, asked him "whether any of the five members that he came to apprehend were in the house; whether he saw any of them; and where they were?" made this answer: "May it please Your Majesty, I have neither eyes to see nor tongue to speak, in this place, but as the house is pleased to direct me, whose servant I am here; and humbly beg Your Majesty's pardon that I cannot give any other answer than this to what Your Majesty is please to demand of me."—2 Hatsell, 242.

Presiding officers in this country might well learn their proper func-Presiding officers in this country might well learn their proper functions from Speaker Lenthall's heroic example. He recognized higher obligations to the house, whose servant he was, than to the king, whose subject he was. His eyes could not see, nor could his tongue speak, except as the house was pleased to direct. His becoming modesty was in striking contrast with the extraordinary powers claimed by some as belonging to the presiding officer of the Senate. Suddenly, and for a specific purpose, as revolutionary as it is unconstitutional, that temporary official is clothed with kingly powers and prerogatives. He is exalted by certain newspapers and interested placemen into the grand returning board of the nation. All the votes for President and Vice-President of the United States are to be sent to him. He, it is claimed, should open the certificates, count the votes, and declare who is elected. His count is to be final and his declaration subject to no review. There is a kind of kingly prerogative in this sublime assumption. But how absurd are all such pretensions to authority and superiority in the person of one who is but the creature

of law and the servant of the Senate and the people.

In the year 1792, before the second presidential election occurred, an act was passed relative to the election of the President and Vice-President. Section 5 of this act provided as follows:

SEC. 5. And be it further enacted, That Congress shall be in session on the second Wednesday in February, 1793, and on the second Wednesday in February succeeding every meeting of the electors, and the said certificates, or so many of them as shall have been received, shall then be opened, the votes counted, and the persons who shall fill the offices of President and Vice-President ascertained and declared agreeably to the Constitution.

agreeably to the Constitution.

This act or the portion of it I have cited has never been repealed and is to-day the law of the land. (See Revised Statutes, 1874, section 142.) This law is a fair legislative interpretation of this subject. It requires that Congress should be in session on a particular day and for a particular purpose. That purpose was "to ascertain and declare agreeably to the Constitution" the persons who shall fill the offices of President and Vice-President. In this no duty is assigned to the presiding officer of the Senate. He is not even mentioned. The statutes require four specific things to be done: first, to open the certificates; secondly, to count the votes; thirdly, to ascertain who are Vice-President who reside in the same State; that they shall name in their ballots the person voted for as President and in distinct ballots the person voted for as Vice-President, as is now required by the twelfth

amendment; that they shall sign and certify the respective lists.

The Constitution further requires that the persons voted for as President and Vice-President shall be natural-born citizens of the United States; that they shall have attained the age of thirty-five years, and been fifteen years resident within the United States. All these facts the law requires Congress to "ascertain" agreeably to the Constitution. But mark the language of the law further:

The persons who shall fill the offices of President and Vice-President [shall thene] ascertained and declared agreeably to the Constitution.

This covers the contingency of there being no election by the people through the electoral college. If no person voted for as President shall have a majority of all the electors appointed, then the House of Representatives shall choose by ballot from the three highest the President. And if no person voted for as Vice-President shall have a majority of all the electors appointed, then the Senate shall choose from the two highest the Vice-President. All these things must be "ascertained" by Congress, "agreeably to the Constitution." The law, then, as it now stands, and as it has stood since 1792, expressly empowers Congress to ascertain these facts and to declare "the persons who shall fill the offices of President and Vice-President." But suppose Congress fails by reason of a disagreement between the two suppose Congress fails by reason of a disagreement between the two Houses to ascertain all these facts and declare by joint or concurrent action who has been elected by the electors? Now such facts have not been ascertained and they are, in the contemplation of law, as unknown as if there had never been an election.

Upon a careful examination of the precedents, it will be seen place. Upon a careful examination of the precedents, it will be seen that Congress has followed the provisions of this statute at all subsequent elections. An examination of those precedents will throw much light upon this subject, and will not fail to point to a correct solution of the great question which now agitates the minds of all the people of this country, namely: What are the powers, prerogatives, and duties of the two Houses of Congress in reference to counting the electoral vote? And whether the pending bill is in accordance with the Constitution and established precedents?

ing the electoral vote? And whether the pending bill is in accordance with the Constitution and established precedents?

At the second presidential election, in 1793, the House initiated the subject of the count on the 5th of February by appointing a committee of three, one of whom was James Madison, "to join such committee as may be appointed by the Senate, to ascertain and report the mode of examining the votes for President and Vice-President, and of notifying the persons who shall be elected of their election." This resolution was concurred in by the Senate, and a committee of three appointed for that purpose. On the 11th of February each of these committees reported to the respective Houses "the mode of examining the votes" in the presence of the two Houses. The two Houses were to assemble in the Senate Chamber at twelve o'clock of that day; one Senator and two Members of the House were appointed tellers on the Senator and two Members of the House were appointed tellers on the part of the two Houses; the result was to be delivered to the Presipart of the two Houses; the result was to be delivered to the President of the Senate, who should announce the state of the vote and the persons elected, and a list of the votes cast should be entered on the Journals of the respective Houses. All this was done agreeably to the resolutions of the two Houses of Congress. A joint committee was then appointed to wait on the President-elect and notify him of his unanimous re-election to the office of President of the United States. It is important to consider what the Vice-President, who was the President of the Scate dwing this second equat of the Scate should be president of the Scate should be entered on the Journal of the Scate should be entered on the Journal of the Scate should be entered on the Journal of the Scate should be entered on the Journal of the Scate should be entered on the Journal of the Scate should be entered on the Journal of the Scate should be entered on the Journal of the Journal the President of the Senate during this second count of the electoral vote, did. The official record is as follows:

The two Houses having accordingly assembled, the certificates of the electors of the fifteen States in the Union, which came by express, were, by the Vice-President, opened, read, and delivered to the tellers appointed for the purpose, who, having examined and ascertained the votes, presented a list of them to the Vice-President, which list was read to the two Houses, and is as follows.

Here follows the table of the votes cast by each State. dent of the Senate opened, read, and delivered the certificates to the dent of the Senate opened, read, and delivered the certificates to the tellers, who, having examined and ascertained the votes, presented a list of them to the Vice-President. There is no pretense here that the counting of the votes was any part of the duty of the President of the Senate. John Adams was the Vice-President at the time. He is noted for his strict adherence to the letter of the law and to all the formalties of official requirement.

At the third election, in 1797, John Adams, being then Vice-President, was elected President, and it became his duty to preside at the time the votes were counted in his own election. On the 31st of Janu-

time the votes were counted in his own election. On the 31st of January, 1797, there was appointed in the Senate, and on February 1, in the House, a committee of three, "to ascertain and report a mode of examining the votes for President and Vice-President," almost in the exact words of the resolutions at the previous count in 1793. Tellers were appointed and they acted in precisely the same manner as at the previous election. The certificates of the electors were read by the Vice-President, and he then gave them to the Clerk of the Senate, who read the report of the electors. "All the papers were then handed to the tellers, who noted the contents, examined and ascertained the number of the votes, and presented the list to the Vice-President, John Adams, who then addressed the two Houses, as follows:

Adams, who then addressed the two Houses, as follows:

Gentlemen of the Senate and House of Representatives: By the report which has been made to me by the tellers appointed by the two Houses to examine the votes, there are 71 votes for John Adams; 63 for Thomas Jefferson; 29 for Thomas Pinckney; 30 for Aaron Burr; 15 for Samuel Adams; 11 for Oliver Ellsworth; 7 for George Clinton; 5 for John Jay; 3 for James Iredel; 2 for George Washington; 2 for John Henry; 2 for Samuel Johnston; and 1 for Charles C. Pinckney. The whole number of votes are 138; 70 votes, therefore, make a majority; so that the person who has 71 votes, which is the highest number, is elected President, and the person who has 68 votes, which is the next highest number, is elected Vice-President.

The President of the Senate them eat down for a superior of the Senate them eat down.

The President of the Senate then sat down for a moment, and rising again thus

The President of the Senate then sat down for a moment, and rising again thus addressed the two Honses:

In obedience to the Constitution and law of the United States and to the commands of both Houses of Congress, expressed in their resolution passed in the present session. I declare that John Adams is elected President of the United States for four years, to commence with the 4th day of March next, and that Thomas Jefferson is elected Vice-President of the United States for four years, to commence on the 4th day of March next. And may the Sovereign of the universe, the Ordainer of civil government on earth, for the preservation of liberty, justice, and peace among men, enable both to discharge the duties of these offices conformably to the Constitution of the United States with conscientious diligence, punctuality, and perseverance. (See Counting the Electoral Vote, page 15.)

The Adlicate situation in which the Vice-President was placed in

The delicate situation in which the Vice-President was placed, in being required to announce his own election, will explain his evident embarrassment and account for his fervent prayer in behalf of the the persons elected. But this short speech is valuable for the precedent which it establishes in reference to the prerogatives and duties of the President of the Senate in respect to the count of the electoral vote. Mr. Adams did not count the vote. He said:

By the report which has been made to me by the tellers appointed by the two louses to examine the votes, there are 71 votes for John Adams, &c.

And his announcement of the persons elected is equally significant. He said:

In obedience to the Constitution and law of the United States and to the commands of both Houses of Congress, expressed in their resolution passed in the present session, I declare that John Adams is elected President of the United States, &c.

He learned officially the number of the votes cast from the tellers, and his announcement was made in obedience "to the commands of both Houses of Congress."

But this important precedent is sought to be perverted by those who, at this late day, are claiming the right of the President of the Senate to count the votes, by reference to the certificate of election which was issued to Thomas Jefferson, who was elected Vice-President. In this certificate it is stated that the President of the Senate did "open all the certificates and count all the votes of the electors. This was an error, for the record shows that the President of the This was an error, for the record shows that the Fresident of the Senate did not count the votes or examine them in any way. The form of this certificate was taken from that used at the first election in 1789, and is in the exact words thereof, except where changes of place and names are required. It was merely the official form evidently prepared by the clerks to notify the person elected of his election, and cannot be cited to contradict the record of the proceedings as they actually occurred. A similar error occurred in 1793, at the second election, when the Secretary of the Senate, following the form used at the first election, announced to the House that "a President of the Senate is elected for the sole purpose of opening the certificates and Senate is elected for the sole purpose of opening the certificates and counting the votes of the several States in the choice of a President and Vice-President of the United States." The truth was that no such and vice-resident of the United States." The truth was that he such election took place, and that the Vice-President actually presided at the counting of the votes of the two Houses, and his right to preside at the joint meeting was derived from the concurrent resolution of the two Houses, and was not by virtue of his being the presiding officer of the Senate.

PRECEDENTS FROM 1801 TO 1865.

The uniform practice of the two Houses of Congress in counting the electoral votes from 1801 to 1865 has been substantially as follows: A joint committee has been appointed prior to the day fixed by law for the count, which committee was authorized "to ascertain and report a mode of examining the votes for President and Vice-President and Vice-Presid dent, and of notifying the persons who shall be elected of their elec-tion." The appointment of one teller on the part of the Senate and two on the part of the House was always made prior to the joint meeting. With four exceptions the joint meetings have always been held in the Hall of the House of Representatives. The joint committees have reported resolutions fixing the hour of the meetings and authorright the President of the Senate to preside and announce the state of the vote. The certificates were uniformly opened by the President of the Senate and then handed to the tellers, who read and tabulated the same and handed the result to the presiding officer for announce-

At the count in 1817 objection was made to counting the votes of Indiana on the ground that the State had not yet been admitted into the Union. The two Houses separated, and the resolution to reinto the Union. The two Houses separated, and the resolution to reject the votes of Indiana was indefinitely postponed by the House; the Senate was notified of the fact, and the two Houses again reassembled and the count was continued. There was not the faintest suggestion at that time, however, that it it was not the prerogative of the Houses to decide what votes should be counted.

In 1821, the joint committees appointed "to ascertain and report a mode of examining the votes for President and Vice-President," anticipating an objection to the counting of the vote of Missouri, on the ground that that State had not been admitted into the Union, reported a resolution, as follows:

reported a resolution, as follows:

Resolved. That if any objection be made to the votes of Missouri, and the counting or omitting to count which shall not essentially change the result of the election, in that case they shall be reported by the President of the Senate in the following manner: Were the votes of Missouri to be counted, the result would be, for A B for President of the United States,—votes. If not counted for A B for President of the United States,—votes. But in either event A B is elected President of the United States. And in the same manner for Vice-President.

This resolution was adopted, and the vote of Missouri was counted or not counted, as the case may be, inaccordance with this resolution. It was at all events the action of the two Houses, and no one then pretended that this action interfered with the prerogatives of the President of the Senate.

President of the Senate.

In 1837, precisely similar proceedings occurred in reference to the vote of Michigan. The joint committee, however, submitted on this occasion, in addition to the usual mode of proceedings at the joint meeting, a report in reference to the ineligibility of electors. The Senators on this committee were Felix Grundy, Henry Clay, and Silas Wright; and on February 4, 1837, Mr. Grundy submitted the report of the committee. This report took strong ground against the election of persons as electors who held offices of trust or profit under the United States, and urged the adoption of suitable legislative provisions to ascertain and determine upon the qualifications of electors. The report also held that: also held that:

This provision of the Constitution excludes and disqualifies deputy postmasters from the appointment of electors, and the disqualification relates to the time of the appointments; and that a resignation of the office of deputy postmaster after his appointment as elector would not entitle him to vote as elector under the Constitution.

No action was taken on this part of the report, and the vote of Michigan was disposed of as was that of Missouri in 1821.

In 1857 objection was made to counting the votes of Wisconsin, on the ground that the electors did not meet on the day required by law. A violent snow storm occurred in that State about the time

for the meeting of the electors, so that they were prevented from reaching the capital of the State in time to cast their votes on the legal day. They met, however, on the succeeding day, voted, and forwarded the result to Washington. The tellers appointed by the two Houses made a written report of the facts, and the vote of Wisconsin not changing the result, whether counted or not, the announcement of the vote was made in accordance with the tellers' report. In the discussion of the two Houses at the time there was a general review of the precedents and exhaustive arguments on the power of review of the precedents, and exhaustive arguments on the power of the two Houses, the prerogatives of the President of the Senate, and the rights of the States to participate in the election of a President and Vice-President. The final determination of the question seems to have been embraced in the following colloquy, which constitutes a part of the proceedings at that time:

Mr. Letcher. \* \* \* I desire so far as I am concerned now, as a Representative of the people, to present my objection to the reception of this vote.

The Presidence Officer. The presiding officer considers that debate is not in order while the tellers are counting the vote.

Mr. JONES, of Tennessee. I suppose, Mr. President, the proper way would be for the tellers to report the facts to the convention of the two Houses and let them decide.

The Presiding Officer. The presiding officer so considers.

PRECEDENTS FROM 1865 TO 1873.

In 1865 the following joint resolution was adopted:

Whereas the inhabitants and local authorities of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee rebelled against the Government of the United States, and have continued in a state of armed rebellion for more than three years, and were in said state of armed rebellion on the 8th day of November, 1864: Therefore

were in said state of armed rebenium on the components of the United States of fore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the States mentioned in the preamble to this joint resolution are not entitled to representation in the electoral college for the choice of President and Vice-President of the United States for the term of office commencing on the 4th of March, 1865; and no electoral votes shall be received or counted from said States concerning the choice of President and Vice-President for said term of office.

President Lincoln signed this joint resolution, and sent to the two Houses his message, explaining his action, as follows:

To the honorable the Senate and House of Representatives:

To the honorable the Senate and House of Representatives:

The joint resolution entitled "Joint resolution declaring certain States not entitled to representation in the electoral college" has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be filegal; and it is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes, and he also disclaims that, by signing said resolution, he has expressed any opinion on the recitals of the preamble or any judgment of his own upon the subject of the resolution.

ABRAHAM LINCOLN.

EXECUTIVE MANSION, February 8, 1865.

The committee to whom was referred the subject of ascertaining and providing a mode for canvassing and counting the votes for President and Vice-President of the United States, February 6, 1875, reported for adoption what has since been known as the twenty-second joint rule. This rule, in effect, provided that the vote of no State should be counted when objected to except by the concurrent action of both Houses of Congress. Its provisions were evidently intended to be permanent, for the electoral vote was counted under it in 1865, 1869, and 1873, without its re-adoption by either House. It was taken for granted that it continued in force until rescinded.

In 1869 it was doubted whether the vote of Georgia should be counted, as there was a dispute as to whether that State had complied with the reconstruction acts. A resolution was passed providing that the electoral votes of that State for President and Vice-President should be counted hypothetically, in almost the identical words of the resolution for counting the votes of Missouri in 1821. When the two Houses met objection was made to counting the vote of Georgia, and the two Houses separated. The Separate resolved to of Georgia, and the two Houses separated. The Senate resolved to adhere to the resolution to count the vote hypothetically, and the House resolved to reject it. The President of the Senate, in the joint convention, decided that the vote should be counted hypothetically as provided by the concurring resolution of the Houses.

It is scarcely necessary to cite individual opinions of Senators and Representatives in Congress on these various occasions relative to the power of the two Houses to count the vote. But a few brief ex-tracts will serve to illustrate the general current of authorities on this question.

Henry Clay, of Kentucky, (February 4, 1821,) said:

The two Houses were called on to enumerate the votes for President and Vice-President. Of course they were called to decide what are votes.

John Randolph, of Virginia, (February 4, 1821,) said:

For what purpose do they [the two Houses] assemble together, unless it be to determine on the legality of the votes.

Senator Robert Toombs, of Georgia, (February 11, 1857,) said: It is our duty to count the votes, and to decide what are votes.

Senator A. P. Butler, of South Carolina, (February 11, 1857,) said: Let him add up the votes and announce the result to me. I am one of the judges, or why do you call me there.

Senator John A. Logan, of Illinois, (February 25, 1875,) in dis-

cussing the merits of the Morton bill, and advocating its passage,

said:

The mere addition of the number of votes, done merely as a clerical duty by these persons, certainly is subject to the supervision of the two Houses of Congress, the same as, for instance, in many States where the State constitution refers the counting of the votes for governor to the house of representatives and the senate of the State. They are to count the vote; that is the language of several of the State constitutions. But the vote is never actually counted by the Legislature; it is counted in their presence by the secretary or clerks, as may be. But the meaning of it evidently is that they count the vote. The clerks merely are those persons designated by the bodies to count the vote. Should they make a miscount of the vote there in the presence of the two houses, the two houses would have jurisdiction over it certainly. Hence it certainly means the counting of the vote by the two Houses of Congress, although the mere enumeration of the number is done by persons who are selected for that purpose. \* \* \* The idea is that the two Houses count the vote. Of course they designate some person to do the mere ministerial office of counting the vote and making the addition, but it is in fact constructively done by the two Houses. Now, if you put in the words "by them," they refer to the men selected as the persons to make the count, and leaves them the persons to count the Votes, instead of the construction that the Constitution certainly bears, that the Houses count the votes.

Senator MORTON, of Indiana, (March 16, 1876.) advocating the pas-

Senator Morron, of Indiana, (March 16, 1876,) advocating the passage of his own bill, said:

sage of his own bill, said:

We could, without doing any great violence to the Constitution, adopt either of these constructions. Each is possible under the language. The Constitution says:

"The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."

It does not say who shall count them; it leaves it open to inference that they shall be counted by the two Houses on the one hand or by the President of the Senate on the other. I will assume, for the sake of the argument, that you can give to it either construction. I will assume that it is open to both views. Then the question comes, which is the more reasonable, which is the better, which is the safer of the two; to adopt that construction which gives this great power to one man, the President of the Senate, who may be counting the votes for himself, as it has turned out six times in our history, or would it be safer to leave it to the determination of the two Houses of Congress, representing the States and the people of the ware open to adopt either one of these constructions, I say the latter is the safer; it is the more reasonable; it is in conformity with the spirit of our Government and of popular institutions. I then adopt the latter construction.

Senator BOUTWELL, of Massachusetts, (March 13, 1876,) discussing

Senator Boutwell, of Massachusetts, (March 13, 1876,) discussing the same bill, said:

Almost always, I think, when the subject has been discussed, the question has been presented whether Congress is to count the votes; and by Congress I mean the two Houses met in convention, according to the terms of the Constitution. Our best answer to that is the fact that, from the first convention that assembled until the last, the two Houses in convention always did count the votes. A teller was appointed by the Senate, two tellers by the House. The votes, or certificates, or returns, whatever they are called, were handed by the Vice-President, after he had opened them, to the tellers. The tellers were the organs, the instruments, the hands of the respective Houses. The votes were counted by the tellers, and, being counted by the tellers, they were counted by the two Houses; and, therefore, there never has been any difference of practice, and no different practice could have arisen under the Constitution. The two Houses in convention have from the first until now counted the votes.

Senator Epmunds of Vermont. (February 25, 1875.) said:

Senator EDMUNDS, of Vermont, (February 25, 1875,) said:

No; all the President of the Senate shall do is to open the package; and the votes shall then be counted.

Senator Garret Davis, of Kentucky, (February 2, 1865,) said:

This power to count the presidential votes is certainly vested by the Constitution somewhere. It is vested in the two Houses. The manner in which the count shall be made is not prescribed by the Constitution. Then comes in the general power given to Congress to pass all laws necessary and proper to execute any of the powers vested by the Constitution in the Government or in any department or officer thereof.

Senator Douglas, of Illinois, in 1857, when the Wisconsin return was under consideration, protested against even "the tellers authenticating the certificate until the two Houses had passed upon it as being a true count." He said the convention should not be dissolved until the two Houses had passed upon the certificate and decided whether it should be counted or not.

It is needless to continue citations of such authorities. The almost unbroken current has been, from the foundation of the Government down to the late presidential election, that the President of the Senate had no function to perform save to open the certificates, and that the two Houses alone had the power to count the votes.

Several important attempts at legislation on this subject have been made, but unfortunately none of them have been successful. I desire to call the especial attention of the House to the important measures considered by Congress in 1800, in 1824, and in 1875–76.

THE BILL OF 1800.

The small majority by which John Adams was elected over Thomas The small majority by which John Adams was elected over Thomas Jefferson, and the danger of serious contests in reference to disputed elections, caused members of Congress to endeavor to remedy by legislation any difficulties that might subsequently arise. John Ross, a Senator from Pennsylvania, offered in the Senate, January 23, 1800, a resolution creating a committee "to consider whether any, and what, provisions ought to be made by law for deciding disputed elections of President and Vice-President of the United States, and for determining the legality or illegality of the votes given for those officers in

An important debate ensued. Senator Brown, of Kentucky, was of the opinion that Congress had no right to legislate on the subject, and suggested an amendment to the Constitution as the only means of reaching the desired end. Senator Ross defended his resolution, and thought Congress should legislate upon the subject.

Said he-

persons should claim to be electors who had never been properly appointed, should

their vote be received? Suppose they should vote for a person to be President who had not the age required by the Constitution, or who had not been long enough a citizen of the United States, or for two persons who were both citizens of the same State; such cases might happen, and were likely to happen, and is there no remedy? What a situation would the country be in if such a case was to happen?

Senator Charles Pinckney, of South Carolina, who was a member Senator Charles Pinckney, of South Carolina, who was a member of the Federal convention, spoke at length on the subject. He maintained that Congress had no right to meddle with the question, as the whole subject was intrusted to the State Legislatures, and that they must make provision for all questions arising on the occasion. Senators Dexter, of Massachusetts, and Livermore, of New Hampshire, both contended for the constitutionality of the proposed measure, and the latter read many of the directions in the Constitution as to the appointment of presidential electors:

Is it possible Said he-

that the gentlemen can suppose all these may be violated and disregarded, and yet that it is nobody's business to interpose and make provision to prevent it?

Senator Baldwin, of Georgia, who was also a member of the Federal convention, thought no legislation by Congress was necessary; "that all the difficulties which had been suggested were as safely left to the decision of the assemblies of electors as of any body of men that could be devised; and that the members of the Senate and House of Representatives, when met together in one room, should receive the act of the electors as they would the act of any other constitutional branch of the Government, to judge only of its authentication, and then to proceed to count the votes, as directed in the second article of the Constitution."

the second article of the Constitution."

The resolution of Senator Ross was adopted, and aspecial committee, consisting of Messrs. Ross, Lawrence, Dexter, Pinckney, and Livermore, was appointed to consider the subject and to report by bill or otherwise. On the 14th of February, 1800, this committee reported a bill prescribing the mode of deciding disputed elections of President and Vice-President of the United States. This bill consisted of fourteen sections, and its various provisions are of the utmost imof fourteen sections, and its various provisions are of the utmost importance at this time as legislative interpretations of the power and duties of Congress in counting the electoral vote. And a careful study of this bill of 1800, and the votes and proceedings of Congress thereon, will throw much light on the pending bill reported by the joint committee of the two Houses.

The first section provided for a grand committee consisting of six Senators and six Representatives, chosen by each House by ballot, and the Chief-Justice of the Supreme Court. To this grand committee was to be referred according to subsequent sections of the

mittee was to be referred, according to subsequent sections of the bill, all the returns of the election, and the committee were required to take an oath to "impartially examine the votes given by the elect-ors of President and Vice-President, together with the exceptions and petitions against them, and a true judgment give thereon according to the evidence." The committee was authorized to send for persons, papers, and records, and "to punish contempts of witnesses refusing to answer as fully and absolutely as the Supreme Court of the United States may or can do in causes pending therein."

A motion was made in the Senate to strike out the first ten sections

of the bill, and insert in lieu thereof a preamble and one section. This

preamble recited this fact:

And the Constitution of the United States having directed that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted," from which the reasonable inference and practice has been that they are to be counted by the members composing said Houses, and brought there for that office, no other being assigned them; and inferred the more reasonably as thereby the constitutional weight of each State in the election of those high officers is exactly preserved in the tribunal which is to judge of its validity; the number of Senators and Representatives from each State, composing said tribunal, being exactly that of the electors of the same State.

The section of the bill provided for a joint convention of the two Houses; and if any vote was objected to, the members present were to decide by yeas and nays, without debate, "whether such vote or votes were constitutional or not." This preamble and section were not adopted; but on the motion to strike out the ten sections (a division of the question having been called for) the yeas were 10 and nays 15. Among the affirmative votes were Baldwin, Langdon, and Pinck-

Mr. Charles Pinckney then took the floor and spoke at great length in opposition to the bill. His speech is printed in the House compilation of the proceedings and debates of Congress in reference to counting electoral votes, (page 692.) He advanced the doctrine that the "right of determining on the manner in which the electors shall vote, the inquiry into the qualification, and the guards that are necessary to prevent disqualified or improper men voting, and to insure the votes being legally given, rests and is exclusively vested in the State Legislature." But he declared that it was the duty of Con-State Legislature." But he declared that it was the duty of Congress to count over the votes in a convention of both Houses, and that Congress had no agency in the election except merely in counting the votes. Notwithstanding the opposition of Messrs. Pinckney and Baldwin, the bill passed the Senate by a vote of 16 to 12. Before the bill passed the Senate it was amended in several important particulars. The Chief-Justice of the Supreme Court was dropped from the grand committee, and the Senate was to nominate three of its members to the House, one of whom the House should choose as the chairman of the committee. The grand committee of thirteen were empowered to

examine and finally to decide disputes relative to elections of President and Vice-President. Section 8 of this bill, as it passed the Senate, contains a complete recognition of the constitutional authority of Congress over the whole subject. It is as follows:

SEC. 8. And be it further enacted. That the grand committee shall have power to inquire, examine, decide, and report upon the constitutional qualifications of the persons voted for as President and Vice-President of the United States, upon the constitutional qualifications of the electors appointed by the different States, and whether their appointment was authorized by the State Legislature or not; or made according to the mode prescribed by the Legislature; upon all petitions and exceptions against corrupt, illegal conduct of the electors, or force, menaces, or improper means used to influence their votes, or against the truth of their returns, or the time, place, or manner of giving their votes: Provided, always, That no petition or exception shall be granted or allowed by the grand committee which shall have for its object to draw into question the number of votes on which any elector in any of the States shall have been appointed.

The bill was sent to the House in this shape, and was referred to a special committee of which John Marshall, afterward Chief-Justice, was chairman. He reported the bill back to the House, with important amendments. The grand committee was to consist of four Senators and four Representatives, and they were merely to investigate and report all the facts to the two Houses. And it was then provided:

So soon as this report shall have been made and entered on the Journals, the Senate and House of Representatives shall meet at such place as may be agreed upon for the purpose of counting the votes for President and Vice-President of the United States.

When a State was called, if the vote were objected to, "then each House shall immediately retire without question or debate to its own apartment, and shall take the question on the exception without debate, by ayes and noes." If the two Houses should concur in rejecting any vote such vote should not be counted. But unless both Houses concurred in rejecting any vote or votes, they were to be counted. Mr. Albert Gallatin moved an amendment to the effect that, instead of the two Houses retiring to vote separately on exceptions, the question should be immediately put as in joint convention, and taken by yeas and nays and decided by a majority of the members of both Houses then present. This amendment was lost by the very close vote of yeas 44, nays 46. After several ineffectual efforts to amend the bill,

the Body struck out, by the decisive vote of 52 to 37. (House compilation on Counting the Electoral Vote, page 27.)

The bill having gone to the Senate again for concurrence in the amendments, that body struck out, by a vote of 15 to 11, the word "rejecting" and inserted the word "admitting" in lieu thereof, so as to require both Houses to concur in admitting the disputed vote, instead of rejecting it. With this amendment the House amendments were concurred in, and the bill again went to the House for its But the House refused to concur in this amendment, by a vote of yeas 15, nays 73. The Senate refused to recede, and the House adhered to their disagreement. Hence the bill was lost. But the fact of its passage by both Houses with all the provisions recognizing the constitutional right of Congress to go behind the certificates, and to count or reject any votes cast, constitutes the most valuable precedent in the legislation of Congress on this important subject. This was only eleven years after the organization of the Government under the Constitution, and several of the members of Congress at that time were also members of the Enderal convention, and ernment under the Constitution, and several of the members of Congress at that time were also members of the Federal convention, and many of them had been members of State Legislatures when their States ratified the Constitution. And it is also worthy of remark that no one of the persons who spoke, or of the amendments offered, pending the debate on this bill, gave the slightest indication that the President of the Senate had anything to do with the count except to open the certificates, and deliver them to the tellers appointed by the two Houses, and then they were to be entirely in the control of Congress.

the certificates, and deliver them to the tellers appointed by the two Houses, and then they were to be entirely in the control of Congress. If the Constitution had conferred any power upon the President of the Senate in reference to the count, here would have been the opportunity for the strict constructionists to have asserted that constitutional right, and some speech, protest, or amendment would have been made by those who framed the instrument or were their contemporaries. There is an entire absence of the assertion of the modern doctrine of constitutional authority in the President of the Senate to count the votes. The days of constitutional interpretations to

ern doctrine of constitutional authority in the President of the Senate to count the votes. The days of constitutional interpretations to suit the exigencies of political parties had not yet come, and were not even predicted by the alarmists of that period.

But, Mr. Speaker, I desire to call especial attention to the vote of the House of Representatives in 1800 on the bill in reference to disputed presidential elections. On the 9th of May of that year the House took yet he Senate appropriate the property which received experiences. House took up the Senate amendment which required concurrent action to admit a vote after the decision of the grand committee, instead of concurrent action to reject, as the House had passed the bill. Mr. Robert Goodloe Harper and Mr. James A. Bayard opposed the Senate amendment, as it materially changed the principle of the bill, by putamendment, as it materially changed the principle of the bill, by putting it in the power of either House to reject the vote of a State. "This," they said, "was contrary to the former will of the House after mature deliberation." The yeas and nays were taken on this Senate amendment, and it was overwhelmingly defeated, receiving but 15 votes in its favor to 73 in the negative. Among the negatives were such distinguished statesmen as James A. Bayard, Albert Gallatin, Edward Livingston, Nathaniel Macon, John Nicholas, Thomas Pinckney, and John Randolph. This decisive vote furnishes a most important precedent in favor of the provisions of the conference committee's bill, which require concurrent action of the two Houses to reject an electoral vote

The next most important precedent on this subject is that which is The next most important precedent on this subject is that which is embraced in the bill of 1824, which was reported in the Senate of the United States by Mr. Van Buren. That bill was passed in the Senate without opposition. It was reported from the Committee on the Judiciary, which consisted at that time of Martin Van Buren of New York, John Holmes of Maine, Horatio Seymour of Vermont, Isham Talbot of Kentucky, and Ethan Allen Brown of Ohio. Among the Senators at that time were Rufus King, Nathaniel Macon, Thomas H. Benton, and others equally distinguished, as will be seen by the following list of Senators who were members of the Eighteent Conlowing list of Senators who were members of the Eighteenth Con-

gress in 1824:

gress in 1824:
Samuel Bell and John F. Parrott, New Hampshire; James Loyd, Massachusetts; Henry W. Edwards and James Lauam, Connecticut; Nehemiah R. Knight, Rhode Island; William A. Palmer and Horatio Seymour, Vermont; Rufus King and Martin Van Buren, New York; Mahlon Dickerson and James McIlvaine, New Jersey; Walter Lowrie and William Findlay, Pennsylvania; Samuel Sniith and Edward Lloyd, Maryland; James Barbour and John Taylor, Virginia; Nathaniel Macon and John Branch, North Carolina; John Gaillard and Robert Hayne, South Carolina; John Elliott, Georgia; Isham Talbot and Richard M. Johnson, Kentucky; Benjamin Ruggles, Ohio; James Brown and Henry Johnson, Louisiana; David Holmes and Thomas H. Williams, Mississippi; James Noble and Walter Taylor, Indiana; William Kelley and William R. King, Alabama; Jesse B. Thomas, Illinois; John Chandler and John Holmes, Maine; David Barton and Thomas H. Benton, Missouri; Thomas Clayton, Delaware; Barton and Thomas H. Benton, Missouri; Thomas Clayton, Delaware; John H. Eaton, Tennes

The bill was passed by the Senate without a division. It then went to the House of Represensatives and was referred to the Judiciary Committee, of which Daniel Webster was chairman, and Philip P. Barbour of Virginia, William Plumer of New Hampshire, Hutchins G. Burton of North Carolina, William L. Brent of Louisiana, and R. M. Saunders of North Carolina were the other members. By that it was unanimously reported to the House with the recommendation was unanimously reported to the House with the recommendation that it pass. Owing to the late period of the session no action was taken upon it. But if gentlemen will examine the sections in that bill, as given on page 59 of the House compilation of precedents, they will find that the bill of 1824 contains substantially the provisions of the bill now under consideration in reference to returns from States

where but one return is received.

The bill then was taken by the joint committees as the basis for the first section of the bill now under consideration; and it had the sanction of some of the greatest men of this country who have gone before us; so that in reference to this measure it may be safely affirmed that the wisest statesmen of the country have voted in favor of the

substance of its chief provisions and have recognized their propri-ety and constitutionality.

The next important precedent upon this question is found in the The next important precedent upon this question is found in the bill of Senator Morron, of Indiana, which was introduced in the last session of the Forty-third Congress and passed the Senate at the first session of this Congress. That bill passed the Senate after a most exhaustive discussion and as able as was ever given to any measure in the Congress of the United States. That bill is printed on page 459 of this compilation and the first section of it is substantially the first section of the bill under consideration. When that bill was upon its passage it received the votes of nearly every republican Senator and was only opposed by democratic Senators upon the ground that there was no provision made in the case of double returns to save the vote of a State if one House voted to receive one return and the other House voted to receive the other. In this contingency the vote of the State would be lost, and it was to save every vote of every State that another effort was made to perfect that bill at the last session.

The action of Congress on the Ross bill of 1800, the Van Buren The action of Congress on the Ross bill of 1800, the Van Buren bill of 1824, and of the Morton bill of 1875-76 constitute precedents fully establishing the authority of Congress to pass the first section of the joint committees's bill, now under consideration. And the precedent goes even further than the first section of the bill. In 1800, the bill as reported by the special committee of the Senate, Messrs. Ross, Lawrence, Dexter, Pinckney, and Livermore, created a grand committee, consisting of six Senators and six Representatives, chosen by ballot, and the Chief-Justice of the Supreme Court of the United States, which grand committee, it was provided in the bill. United States, which grand committee, it was provided in the bill, should "have power to examine and finally to decide all disputes relating to the election of President and Vice-President of the United States." It is true that the bill did not pass the Senate in this shape, It is true that the bill did not pass the Senate in this shape, but there is no speech reported or word uttered against this provision by any Senator on the ground that it would be unconstitutional to create such a grand committee with the Chief-Justice as President thereof.

There was an amendment moved to the Morton bill by Senator Frelinghuysen, March 14, 1876, which referred disputed or double returns, in case the Houses differed as to which should be counted, to the Speaker of the House, the President of the Senate, and the Chief-Justice of the Supreme Court, whose decision should be final. Upon moving this amendment, Senator Frelinghuysen said:

This is a judicial question; a question of law and fact; but judicial, whether of fact or law; and it seems to me that there is a propriety in referring it to the

presiding officer of the judicial department. It is true that it is judicial, and yet it is political in its nature. The Constitution has imposed certain duties upon the presiding officer of the Senate, and the presiding officers of the Senate and of the House are competently associated with the Chief-Justice. If it be said that nothing will result excepting the loss of the vote of one State unless we make this arrangement, the loss of one State is a great loss; it is an organic loss; it is a loss that may change the character of the whole election; it is a loss that the people of this country would not quietly submit to. It seems to me it is very important that before we pass this bill we should make such arrangement as will secure the vote of every State, for thereby we may avoid civil war.

This amendment of Senator FRELINGHUYSEN having made the decision of the Chief-Justice and the Speaker of the House and President of the Senate final, was opposed in the Senate by those who held that the two Houses ought to have the final decision of the question as well as by those who thought it inexpedient to refer so important a question to the decision of one man, the Chief-Justice. The amendment was not adopted, but it received the votes of the following Senators, namely:

Messrs. Allison, Anthony, Bruce, Burnside, Cameron of Pennsylvania, Conkling, Dawes, Ferry, Frelinghaysen, Hamlin, Howe, Logan, McMillan, Morrill of Vermont, Morton, Paddock, Robertson, Sharon, West, and Windom—20.—House compitation, Counting Electoral Votes, page 599.

Among these affirmative votes are the names of at least five Senators who voted against the bill under consideration when on its passage in the Senate this morning, and among them will be noticed the name of the Senator from Indiana, who has opposed this bill because he says it is unconstitutional.

These precedents would seem to remove all constitutional objection to the creation of the commission proposed in the second section of

this bill.

But it is objected to this section that there is a delegation to a com-But it is objected to this section that there is a delegation to a com-mission of power which rightly belongs to the two Honess. And the well-recognized maxim of the law, *Delegata potestas ann potest delegare*, is cited against such assumed delegation of power. Sir, there is no delegation of power in this bill. There is a refer-

ence of certain questions to a joint committee of the two Houses, who will be assisted in their efforts by five members of the Supreme Court. This high commission is authorized to consider and report to the two Houses in reference to double or disputed returns received by the President of the Senate from any State. The commission will find which are the true returns or certificates of the State. After that report has been made the return takes its place upon the same basis with the single returns and is to be counted, unless both Houses vote to reject it.

So that all that this commission does is to make out a prima facie case for the two Houses to act upon in the case of double returns. There is no delegation of legislative power. The counting of the vote or votes is the act of the two Houses. It is our act; and this mode of counting the votes is made effectual and is only authorized by the consent of the two Houses in the passage of this bill. The counting which is authorized becomes the act of the two Houses when they

make this bill a law.

I hold that there must be concurrent action of the two Houses to count a vote. And those who contend that there must be concurrent action to count may well support this bill; for the mode of counting, and hence the counting itself, is done by the concurrent action of the two Houses in the passage of this bill. But those who hold that no vote can be rejected without concurrent action of both Houses may also support this measure, because the rejection of a vote can only be accomplished by concurrent action. There is no casus omissus in the Constitution on this subject. It has lodged the power and duty of counting the electoral vote in the two Houses, and Congress may by law regulate the mode or manner of exercising this power and performing this duty. The Constitution having vested in the two Houses the power to count the electoral votes, Congress may pass all laws necessary for carrying into effect this power. This bill, therefore, may be passed without any violation of the letter or spirit of the Constitution, but in the strict enforcement of its expressed provisions.

The other sections of the bill relate merely to the details of getting

The other sections of the bill relate merely to the details of getting together and voting upon the various questions that may arise.

What are the advantages of this measure? We have now double returns from four States of the Union, and it is charged that in some of those States gross frauds have been committed by the returning boards in making their returns of the electoral vote. Are you not willing to virtually take an appeal from these returning boards and submit your case to a tribunal which is the highest and most impartial that can be devised under our form of government—a commission consisting of five members selected by this House from the Representatives of the people; five selected from the Senators representing the sovereign States of the Union, and five selected from the judges of the Supreme Court of the United States on account of their eminent learning, unimpeachable integrity, and supposed impartiality in all cases? We propose to let these distinguished statesmen and jurists consider a question which it is claimed on the other side has been passed upon and decided irrevocably by a returning board the legality of which is questioned, and the integrity even of whose members is seriously doubted by a great portion of the American people. An appeal from the Louisiana returning board to this high tribunal is like stepping from the diminutive mole-hill to the sublime heights of Mont Blanc. It is transferring the case from the very lowest order of adjudication to the very highest that our Government can create.

I believe, Mr. Speaker, that either of the presidential candidates ought to be perfectly willing to submit his case to this tribunal. I believe that any American citizen charged with crime against the Government would be perfectly willing to submit his liberty, his property, and his life to this tribunal. If we would be willing to submit to such a tribunal everything that we hold dear on earth, we should be willing to submit also to its decision this question whether our candidates for the Presidency have been elected by the people. I believe that the decision will be impartial, that it will be just, and will meet the approval of the American people.

There can be but little difference between requiring this decision to be final unless rejected by the two Houses and making it final when concurred in by both Houses, because, sir, no political party can afford to go before the country after rejecting the finding of this tribunal. It will be effectual and final, no matter whether it is submitted to the concurrent action of both Houses or whether it is to

stand unless rejected by both. I believe that the bill will pass and that it will be hailed by the people of this country as an assurance that this great question is to be settled in accordance with law, in accordance with justice, and in such a manner as will give satisfaction to all the people of this country.

Mr. LAWRENCE. Will the gentleman permit me to ask him a

Mr. SPRINGER. Certainly.
Mr. LAWRENCE. Is there anything in the report of the committee which holds that this bill authorizes an appeal from the return-

ing boards of the States?

Mr. SPRINGER. No, sir.

Mr. LAWRENCE. Is it the purpose of the bill to have the commission revise the decisions of the returning boards of the States?

Mr. SPRINGER. I have not used the word "appeal" in a tech-

Mr. LAWRENCE. In what sense then was it used?
Mr. SPRINGER. I will explain the sense in which it was used.
It is said that the returning board had not authority of law to do what they did. They may have had or they may not have had. This matter will come before a tribunal which is authorized to consider that question with all the powers that the two Houses would have to consider it, whatever those powers are. The commission itself is the judge of its own powers in the premises; and in considering that question it will consider it just as members of this House might consider it, just as Senators might consider it in making up their judgment as to whether they will vote to approve the findings of the commission or to reject them. The commission's powers are not defined, from the fact that it was impossible to go into a definition of them. They take the case just as the representatives of the people take it—for what it is worth and upon the law as they may understand the law.

Mr. LAWRENCE. Does the gentleman say that the powers of the

commission are not defined; that they are left undefined?

Mr. SPRINGER. I do.
Mr. LAWRENCE. Is that question left to them to determine?
Mr. SPRINGER. They are to enter upon these questions with all the powers of the two Houses acting separately or together.

Mr. HOAR. With an appeal from their judgment to that of the

two House

Mr. SPRINGER. Yes, sir; as my learned and distinguished col-league on the committee suggests, with an appeal from their judg-ment to that of the two Houses acting in their capacity of Senate and House of Representatives, these bodies being after all the final arbiters of each case

This measure is not a compromise. No litigant compromises any of his rights by submitting his case to an honorable arbitration. of ms rights by submitting ins case to an informatic arctifation. It is a fair, a constitutional, and a peaceful method of settling a serious political complication. Let us pass it unanimously. The people without regard to party favor it. The business interests of the country demand it. It will re-assure all hearts. It will firmly establish the capacity of the American people for self-government. We have already set a good example to the world in the peaceful arbitration of a great international dispute with Great Britain. Let us settle our domestic differences with like honorable and peaceful methods.

When this measure becomes a law, as it surely will, there will be a feeling of relief all over the country. A great threatening calamity will have been averted. The revival of trade and commerce will be assured; the hum of industry will again be heard in the land; and our posterity will realize the fact that

Peace bath her victories No less renown d than war.

[Here the hammer fell.]

Mr. WILLARD. Mr. Speaker, the astute Hannibal, after his defeat Mr. WHLLARD. Mr. speaker, the astute Hannidal, after his deteat at Zama, encouraged his remaining few and dispirited soldiery to wait for another opportunity to renew the warfare against Rome by applying to that republic the observation that "no great nation long remains quiet." He judged truly that all political communities of extended scope are liable to agitation and are never free from the elements of conflict and disturbance. This, Mr. Speaker, is the lesson of history. Every nation passes from one crisis to another, and great nations meet eventful periods in quick succession. They need constant oversight, and are never safe unless real statesmanship is at the

Accordingly it is not remarkable that to-day the American Republic confronts a new danger. The peril of yesterday, for escaping which our felicitations are scarcely concluded, is succeeded by another which certainly has this importance, that almost from the foundation of the Government its prospect has excited the apprehensions of the wisest of our statesmen, and the crisis we now encounter has ever hung like a lowering cloud with an omen of tempest in the horizon of our political sky. That we on the occasion of its impending outburst may rise to that measure of patriotic wisdom that all serious calamity may be averted, is the imperative demand of the hour; and it is to be hoped that the popular expectation in this regard shall not be doomed to disappointment, and that this Congress will meet the requirements of duty in such a way that not alone the storm may pass harmlessly by, but that the cloud itself, with all its ominous threatenings, may be made to disappear forever.

For nearly three months, Mr. Speaker, this nation has been drifting

upon a dangerous sea and exposed to the threatening perils to which I allude. On the 7th day of last November the American people in the several States of this Union and the various election precincts, under the prescribed constitutional method, resorted to the usual mode of expressing their choice for President and Vice-President of the United States. On similiar occasions in our previous history, at least during the memory of the present generation, this choice of the people for their respective candidates had been rendered with such spicuous clearness that no doubt could arise respecting the validity of the title by which, to use the language of Washington, "a citizen was designated to administer the executive government of the United States." But in the instance now presented it has been otherwise. Hardly had the two great parties of this country been permitted to take breath from the anxiety and exertion incident to the presidential campaign, and especially to election day, before they were roused into new and increased excitement by the doubts thrown around the election in three States of the Union. These three States, by a singular, but perhaps not wholly unfounded coincidence, are Latin in their origin, and one of them, in which the chief dispute exists, is still largely Latin in the character and spirit of its people; though I wish, sir, that it should be distinctly understood that I say this with no reproach upon the people of those Commonwealths, for I recall the fact that the first colonists in my own State were also of Latin source and that many of her best and most distinguished citizens have a just pride in recognizing a Latin ancestry. But by those who search for the more remote influences and tendencies which culminate in historic events, this fact can hardly be overlooked and should serve to moderate the judgments of men who too frequently forget that wise, impartial, and just statesmanship imposes the duty of a more scrupuimpartial, and just statesmanship imposes the duty of a more scripulous care that no harm be done to the principle of self-government, and that no wrong be inflicted in the course which shall be pursued in relation to populations and communities where constitutional liberty as understood and cherished in other sections may not have received its full measure of growth.

The doubt thus thrown over the election created not alone that anxiety which would be apt to arise among those whose hopes and fears had been especially excited during a heated canvass, but there fears had been especially excited during a heated canvass, but there arose also another fear, a fear that, with even greater intensity than mere partisan feeling, pervaded the great body of the people of all parties. We had been able to point to the eighty-eight years of the history of our Government in its present form, and to justly boast that no Chief Magistrate of the Republic had taken the solemn oath of his high office under circumstances which should permit the suspicion that his inauguration to the Presidency was not justified by every sanction of constitutional right. During these eighty-eight years we had faced the criticism of Europe, had quieted the fears of our friends and had triumphantly silenced the sneers of our foes; and the thought that we were to enter upon the second century of our pational existence we were to enter upon the second century of our national existence by disclosing a chapter which should not alone bring discredit upon ourselves, but upon popular institutions, was a reflection which brought most minds to the conclusion that the preservation of the national character, in seeking a just and fair count of the electoral vote, was a duty which every American, of whatsover party he might be, was obligated to support and aid to the extent of his ability.

That any citizen should appear in the illustrious list of Presidents

of this nation without a clear and undoubted title was a result which every patriot desired above all things to avoid and which he shuddered to even contemplate. As men thought of the impartial judgment which history must finally render to all human conduct and action, they could not endure that any President of this Republic should pass into the future memories of men with the stigma that he had not been rightfully placed in the succession of our Chief Magistrates. Sir, among the portraits of the doges of republican Venice, to be seen in one of the palaces of that once proud and imperial seat of the world's commerce, there is a vacant space in the list, a mere frame without a portrait, and hung in black, indicating the reprobation without a portrait, and hung in black, indicating the reprobation with which the people of successive generations regard the memory of him who filled that place in the succession. It is safe to assert that no considerable portion of either party in this country, though they might not have any similar reason to deprecate the acts of a Chief Magistrate as in that instance, can by any means desire that his accession to power and authority shall be associated with any mistrust of the lawfulness of the methods and agencies by which it is secured. Meanwhile another evil became apparent. The prospect of serious

trouble in the settlement of the presidential succession caused an immediate arrest of industrial and commercial activity among the fortymediate arrest of industrial and commercial activity among the forty-five millions of our people. The hope that the cessation of political excitement at the arbitrament in November would result in the re-newal of business energy was blighted, and there ensued the most complete paralysis upon every department of production and trade that has ever been witnessed in our annals. Capital, sensitive and fearful, retired from nearly every theater of business enterprise, either hiding in apprehension from the looked-for storm or waiting for what-soever sphere might be opened for it in a future as yet wholly be-yond the conjecture of the wisest spacity and foregight. Labor withyond the conjecture of the wisest sagacity and foresight. Labor without employ has waited with a heroic patience for relief, a patience, sir, which demands recognition at our hands, and which is a proof of the abiding patriotism of the people and a lasting credit and honor to the nation. For nearly one-quarter of an entire year has business already been benumbed by the paralyzing touch of this presidential difficulty, and that, too, throughout the wide bounds of our extended empire. This fatal depression rests not upon one State or one section empire. This fatal depression rests not upon one State or one section alone, but upon all States and all sections. No city, no community, no sequestered spot, from the great Lakes to the Gulf, from one ocean to the other, is exempt. It weighs with irresistible impartiality upon the whole Union, and suggests to every one that, whatever may be our differences and contests in these legislative halls, however strongly may wage the strife of party conflict and dispute, the interests and hopes of the entire people are, after all, bound together by one common tie and are subjected, for weal or for wee, to one common destiny. Business, Mr. Speaker, is not separated by party lines. The industries, the commercial intercourse, the wide internal and even foreign trade the commercial intercourse, the wide internal and even foreign trade of the American people, are jealous of geographical and partisan dis-tinctions; while, as for distress and want, it is perhaps one of the most fortunate circumstances of our present situation that they are divided from competence and comparative abundance by no mere party discrimination. Republicans and democrats, the people of the North and the people of the South, those of the East and those of the West, the inhabitants of cities and the inhabitants of the rural sections, all trades and all classes experience how fully the public tranquillity is allied with personal prosperity and how unerringly political disturb-ance affects and impairs individual welfare.

There is no doubt that the irreconcilable difference in the positions toward which the two great parties of the country have of late been gravitating, in relation to the authority in which the Constitution vests the right to determine the electoral result, has had no little influence in exciting popular apprehension and in awakening fears for the public safety. Prominent leaders have not been wanting, in either of the rival political organizations, who assume conclusions which would severally secure the recognized selection of their candidates; and party opinion has for the past few weeks been rapidly concentrating around two opposing theories, one holding that the concentrating around two opposing theories, one holding that the President of the Senate alone is authorized to examine, adjudicate, and count the electoral vote; the other, that the House of Representatives, without the concurrence of the Senate, can determine whether an election has been made by the elective college, and proceed to make its choice of the candidates under the provisions of the Constitution. To prove these positions to be respectively untenable, in the judgment of a portion of the people, was by no means to silence the opposing voices which, clamoring for these respective views, were loud in their determination to urge them with something more than loud in their determination to urge them with something more than the logic of words and were already, with more or less earnestness, threatening an appeal to the "ultima ratio regum," the stern arbitra-

The menace of the situation has been increased by the unwarranted extent to which the rancor of party has been carried. Heedless of the warnings of the Father of his Country in the farewell address which he made to his countrymen, ultra partisans are demonstrating that he spoke with prophetic wisdom when he said:

Let me warn you in the most solemn manner against the baneful effects of party spirit generally. This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, repressed; but in those of popular form it is seen in its greatest rankness, and is truly their worst enemy.

\* \* In governments purely elective, it is a spirit not to be encouraged. From their natural tendency it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warning it should consume.

Who can deny, sir, that the Republic has recently been led to realize the truth of these utterances of the most thoughtful, the most pruthe truth of these utterances of the most thoughtful, the most prudent, and the most moderate of all the great statesmen who are named among its founders? For either party, therefore, in this aspect of affairs, to push its favorite method to extremity, and to take the responsibility of deciding the question at issue, is to abandon all substantial hope of that fairness of decision which can alone meet the demands and quiet the fears of the country. Parties, like nations, are too apt to act on the principle that might makes right. When they desire a result, they readily devise an expedient for its accomthey desire a result, they readily devise an expedient for its accomplishment. And what adds to the evil is that unfortunate trait of all partisan conflict, that it becomes the effort of each party to force its rival into the most extreme positions and into measures fatal to the public welfare and to the maintenance of constitutional liberty; thus impressing with perpetual emphasis of example the lesson which

more than twenty centuries ago the philosophic and eloquent Isocrates drew from his survey of Athenian parties and their contests. "In a Republic," he observes, "there are always at least two parties, each of which hopes that the other will misgovern the country as grossly as possible." He could hardly have found language more fitting to portray the aims of extremists to frustrate efforts and designs for the public interest.

At all times, Mr. Speaker, partisan differences should yield to the paramount requirement of the peace and safety of the Republic. Especially should this be the case when, as now, these differences are not concerning questions which vitally affect either the national existence or the liberty of the citizen. They are questions of importance indeed, for all questions of administration in a free government are important; but they are such as might well sink from sight if by remaining they shall afford the least possible chance that they may become the fatal rocks upon which republican freedom on this conti-nent may incur that disastrous and irreparable shipwreck which we all believe would be one of the greatest calamities that it would be possible to inflict upon mankind. Can it be the part of patriotism to listen to the uncompromising and unyielding clamors of party at this hour? Is it the voice of wise and true statesmanship, that what each party wishes to accomplish it should proceed to accomplish without regard to the consequences that may ensue? Must the differences of sections, which the national interest certainly requires should be adjusted as speedily as possible, and which I have believed to be in some particulars exaggerated beyond their real significance, must these differences become the means of our final overthrow? power of dispensing official patronage, important as it may be to the public welfare, be insanely crowded as the overmastering issue until it shall become the agency of national destruction? I trust not. It is to be hoped that both parties will pause before bringing the nation to the dreadful abyss. Let us at this time invoke the spirit of wisdom, which in the present instance certainly is the spirit of concord. Let us apply for our guidance, and for the inspiration of our purpose at the crisis which we have now reached, the patriotic counsel which was given for the moderation of British strife a century and a half since by that eminent advocate of freedom, the accomplished Boling-

It is time, therefore, that all who desire to be esteemed good men and to procure the peace, the strength, and the glory of their country, by the only means by which they can be procured effectually, should join their efforts to heal our national divis-ions, and to change the narrow spirit of party into a diffusive spirit of public

The bill under discussion, Mr. Speaker, is a measure designed to check this manifest tendency of parties to assume an attitude which must inevitably perpetuate the disquiet that now reigns throughout the country, and may perhaps introduce an era of agitation and discord whose dread results no man can undertake to predict. The bill is proposed in the exercise of that vigilance imposed by the admonition of Washington, to stifle, control, and repress the fire of party spirit now ready to burst into flame, and to prevent, if possible, the least chance that a conflagration may break forth for the ruin of the fairest political fabric ever reared for the liberty and happiness of man. It is to nip in the bud an evil which ruined every republic of ancient Greece; which prostrated every hope and blasted every effort for Roman freedom; which afterward disappointed every patriotic aspiration indulged for Venice, Florence, Genoa, and all the fair galaxy of communities in the Middle Ages, which braved foreign despotism only to succumb to civil commotion and disputes about the succession of power; and which, finally, on this continent, has made Mexico, in its conflicts and divisions, in its sudden revolts and countless revolutions, the very antithesis of that destiny which every American has been proud to anticipate for his own more fortunate The bill under discussion, Mr. Speaker, is a measure designed to American has been proud to anticipate for his own more fortunate country. If history had recorded the destruction of republican gov-ernment in a single instance by any other method than by the un-reasonable strife of parties; if it had shown a single other road to the ruin of free governments than this one alone, public apprehension, at this time might seem less groundless; but when we come near the gateway which all the teachings of history and all the warnings of our fathers assure us to be the sole and exclusive entrance to destruction, no patriot can hesitate in the adoption of some measure that

shall prevent its being opened.

The advisability of the measure now proposed is enforced with the greater emphasis from the consideration that it appears to be the only one practicable for avoiding a recourse to unsafe expedients and the introduction of methods which in the future would prove detrimental, even if we should have the good fortune to escape serious trouble at the present. For the first time in our national history we are permitted to witness an absolute practical demonstration of the consequences of two conflicting claims of power under the Constitution to count the electoral vote. We see brought face to face assumptions of jurisdiction which place the settlement of disputes arising in presidential elections respectively in a single fragment of the Government. Doctrines are asserted which make the great depositories of legislative power in the nation completely powerless, and which oblige every department of authority to submissively bow to the dictation of the presiding officer of a single branch of the legislative body on the one hand or of a bare majority of either branch on the other. That either of these warrants of power was designed to be conveyed to the respective claimants by the framers of the Constitution, I cannot bring

myself, for one, to believe; nor do I find any warrant for the conclusions thus urged, either in the language of the Constitution itself or in the earlier precedents of practice under it. Either by rule or by law the two great depositories of legislative power and authority in this nation have, under the Constitution, provided for every pro-cedure, for every regulation, for every scrutiny, for every adjudica-tion of the electoral vote, from the foundation of the Government to the present time. Unless under some provision of the Senate and House of Representatives previously agreed upon or virtually assented to, no step has been taken to proceed to that most high and solemn to, no step has been taken to proceed to that most high and solemn of all duties in our Government, to determine the person in whom the people have signified their wish to repose the chief executive power. In the absence of law, certainly, the jurisdiction qualified to make this high decision does not reside in any single fraction or part of the National Legislature, but in the whole of the two branches designated in the Constitution for its exercise. They are the sole judges and umpires if no law be provided, and if a law be provided it is only to regulate the power which the Constitution has assigned to them. The jurisdiction constitutionally resides in both Houses acting separately but together.

Now suppose it to be possible under the Constitution for either House to retain its reserve of power in the performance of the duty House to retain its reserve of power in the performance of the duty to count the vote, and to refuse to agree upon a proper method of adjusting the differences of judgment that might arise, and which in the present instance would be most certain to arise between them, would such a refusal be either patriotic or wise? Is the position to be assumed that the Senate and House of Representatives must in that case come to a dead-lock of judicial action, to the irrepressible conflict of divided judgment upon one of the most momentous questions that can be submitted to them, and that there is no way, either by mutual arrangement or by the forms of law, to escape the difficulty? For one, Mr. Speaker, I will say that I have too profound a reverence and too exalted an estimation of the wisdom and statesmanship of the founders of this Republic to believe that they ever intended to the founders of this Republic to believe that they ever intended to the founders of this Republic to believe that they ever intended to put any clause into the organic law of the nation which should compel the two Houses of Congress to defy each other's judgment, and forbid them to harmonize that judgment under the provisions of that great and solemn trust which is confided to Congress "to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof."

We come thus to the question whether the jurisdiction of the two Houses in this matter can be safely left unregulated by law at this

Houses in this matter can be safely left unregulated by law at this juncture. The difficulties which must inevitably be encountered without such regulation are clearly obvious; for the doctrine that a vote cannot be counted unless by the concurrent affirmative action of the two Houses of course implies that if that affirmative is not given both by the Senate and House of Representatives to the vote of a State then the vote of that State is lost. Now, Mr. Speaker, I have only to say in relation to that view that any method which tends to facilitate such a result and to make it a common occurrence in this facilitate such a result and to make it a common occurrence in this country is a practical evil which the highest demands of justice require us as far as possible to avoid. To stifle the voice of one of our republics in the hour when the Chief Magistrate of the nation is to be selected is a solemn responsibility which Congress should alone take under the safeguards of the deepest caution and in the exercise of the most watchful care. In a republican government, to disfranchise a single citizen legally qualified to vote is one of the highest crimes against liberty, but to disfranchise a whole people, the people of an entire Commonwealth is an act of immensely greater importance and entire Commonwealth, is an act of immensely greater importance and one which should only be permitted to occur in a contingency wherein such an act shall be justified as the conclusion of the most patient and impartial scrutiny which it is in the power of the nation to provide or of the human mind, in its clearest intellection and most un-

vide or of the human mind, in its clearest intellection and most unclouded judgment, to render.

The two Houses, and they alone, may decide upon returns and receive or exclude the vote of a State. If both agree in their judgment, the question is settled. But if they do not agree, unless some provision is made to the contrary, no judgment is rendered. The vote is neither received nor rejected and, like Mohammed's coffin, is suspended in midair, belonging neither to the shining ranks of the electoral list nor to those which have been cast out to be trodden under foot. The Constitution is not obeyed. The vote is not counted, nor, on the other hand, has there been a decision that the return made is not a constitutional vote. A great function of duty in the Government is practically for the moment annulled, or rather waits for the required exercise of its power and authority. Grant that the House ment is practically for the moment annufied, or rather waits for the required exercise of its power and authority. Grant that the House and Senate, being but two units, can neither give an affirmative nor negative judgment unless when they concur; grant that, as with the dunmviri of the Romans, difference is silence, and that to disagree is to do nothing; is it to be conceived that the framers of the Constitution supposed that there would be so little wisdom in the two Houses of Congress that they would not devise a method by which a judge. of Congress that there would be so little wisdom in the two rootses of Congress that they would not devise a method by which a judgment on so important a matter as the temporary disfranchisement of a sovereign State of this Union or the determination of the result of a presidential election would be unattainable by any of the processes of law, by any of these time-honored customs and regulations of justice which have been confided to the law-making power and which it is the confidence of the sayon the distribution of the sayon the distribution of the sayon. have for centuries been the distinguishing characteristic of the Saxon race? It is fair to infer that the fathers believed that in making the

two Houses judges and umpires in a case which involved the succession of executive power and authority in this great nation, they also supposed that these bodies would not rashly and foolishly neutralize each other, but that, each preserving its independence to act and to judge, they would separately agree to provide some plan for avoiding not alone the nullification of all judgment of either House but also the nullification of the will of the people of one or more States of this Union, and perhaps even the nullification and reversal of the will of the people of one or more states of this union, and perhaps even the nullification and reversal of the state the nation in regard to the future administration of its affairs and the policy of its Government.

For these reasons, Mr. Speaker, I have given my approval to the

bill while it was under consideration in the committee and now give my cordial support to it in the House. I believe that while it may be regarded in one sense as the offspring of a great public necessity, it is also the natural outgrowth of the Constitution and a wise and just method for the adjudication and settlement of a most important ques tion. To provide by law for an equal scale of justice to weigh the evidence and determine the result of a contest in which the hopes of both parties in the nation are enlisted with almost unexampled earnestness, would appear to be the only means of adjudication wholly accordant with the genius and spirit of our institutions. Whether we look at the plain language of the Constitution or at the precedents we look at the plain language of the Constitution or at the precedents of proceeding under it, we can come to no other conclusion than that some such measure as this is the only one really consistent with the fairness, the candor, the intelligence, the dignity, and the self-control which characterize the people of the United States. Indeed, Mr. Speaker, it is with a sentiment of pride that I contemplate the prospect of the peaceful adjudication of a question which in almost any other nation of the globe save our own, would have lift the height state. other nation of the globe, save our own, would have lit the lurid flames of civil war, that kind of war which leads to a losing result, whichever side may succeed.

The very spirit of the fathers breathes in the pacific measure now before the House. The memories of the great patriots of American history are again awakened by the resolves of an American Congress to so far relinquish the fervor of partisan zeal as to unitedly seek and bow before the shrine of equal and impartial justice. The Republic has in other periods demonstrated its greatness; it has won on other occasions the admiration of mankind for the successful example which it has afforded of self-government; it has hitherto wrested confidence from the unbelieving and extorted unwilling praise from every enemy of free institutions both at home and abroad; but the assertion may well be ventured that the peaceable and just disposal of the differences now existing among the American people will be regarded, wherever the light of the sun may rest, or an interest in human affairs may be felt, as the very highest proof that this nation has yet given, that the star of its destiny is forever ascendant, and that the future of the Republic is anchored upon the immovable

foundations of justice and of law.

Mr. SMITH, of Pennsylvania. Mr. Speaker, a correct determination of the question who shall count the electoral votes can only be had by a resort to the Constitution of the United States. It must be our guide. From it we gather that-

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

By whom are these votes to be counted? If it had been the intention of the framers of the Constitution to have the Senate or House of Representatives, or both combined, to count the votes, it would doubtless have been so expressed, and the mode of voting, either per capita or by States, would have been indicated. It was not so done, and presumably because such was not the intention. The President of the Senate is the party designated to receive and open the certificates; he is made the custodian of the certificates. On a certain day named by the act of 1792 he is to open them in the presence of day named by the act of 1792 he is to open them in the presence of the Senate and House of Representatives, when the votes shall then be counted. We repeat, by whom? Naturally, as at the very first count, by tellers, under the supervision of the President of the Senate. The words "shall then be counted" relieve the President of the arithmetical work of adding up columns of figures. If it had said "he shall count" as it said "he shall open" it might require the labor to be strictly performed by him in order to comply literally with the instrument; but the words "shall then be counted" justify the universal practice of counting them by tellers. The tellers do the work under his direction, and announce the result to him, not to the Speaker of the House or to the House and Senate. All other parties except the President of the Senate are utterly ignored. No business has ever been done in this body except to count the votes, and to this effect has been the ruling of all the Presidents of the Senate whenever an attempt was made to raise a side-issue.

In some States deeds and wills have to be signed in the presence of

witnesses, but this attesting privilege gives to the witnesses no control over the contents of the instruments. In my State, Pennslyvania, capital executions are to be carried into effect by the sheriff "in the presence of twelve reputable citizens." It would be the height the presence of twelve reputable citizens." It would be the height of absurdity to contend that these citizens had a right to question the verdict of the jury or the sentence of the court. They are there to witness a fact and certify, if need be, that the death-warrant of the governor has been executed. Logically, the House of Representatives and Senators are present to certify to the opening of the certificates and the counting of the electoral votes. And this was Chancellor Kent's opinion. Hear him:

The President of the Senate

Says Kent-

on the second Wednesday in February succeeding every meeting of electors, in the presence of both Houses of Congress, opens all the certificates, and the votes are then to be counted. The Constitution does not expressly declare by whom the votes are to be counted and the result declared. In case of questionable votes, and a closely contested election, this power may be all important; and I presume, in the absence of all legislative provision on the subject, that the President of the Sente counts the votes and determines the result, and that the two Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.

To aid in the construction of the Constitution, if it is ambiguous, resort must be had to the contemporaneous views of its framers. first order, emanating in 1788 from the convention that formed the Constitution, directed the Senate to elect a President for the sole purpose of opening the certificates and counting the votes. At the election for the first term, 1789, (George Washington, President, John Adams, Vice-President,) the following record occurs:

April 6, 1879.

The credentials of the members present being read and ordered to be filed, the Senate proceeded by ballet to the choice of a President for the sole purpose of opening and counting the votes for President of the United States.

John Langdon was elected.

John Langdon was elected.

Ordered. That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sale purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States; and that the Senate is now ready, in the Senate Chamber, to proceed, in the presence of the House, to discharge that duty; and that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be declared; submitting it to the wisdom of this House to appoint one or more of their members for the like purpose.

Mr. Ellsworth reported that he had delivered the message. Mr. Boudinot, from the House of Representatives, informed the Senate that the House is ready forth.

inttaing it to the wisdom of this trous, to appear the like purpose.

Mr. Budinot, from the House of Representatives, informed the Senate that the House is ready forthwith to meet them, to attend the opening and counting of the votes of the electors of the President and Vice-President of the United States.

The record of the proceedings continues thus:

The Speaker and members of the House of Representatives attended in the Senate Chamber; and the President elected for the purpose of counting the votes declared that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States.

Whereby it appeared that George Washington, esq., was elected President, and John Adams, esq., Vice-President of the United States of America.

The President of the Senate made the following certificate of election :

Be it known that, the Senate and House of Representatives of the United States of America being convened in the city and State of New York. April 6, in the year of our Lord 1789, the underwritten, appointed President of the Senate for the sole purpose of receiving, opening, and counting the votes of the electors, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and a Vice-President; by which it appears that George Washington, esquire, was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America. In testimony whereof I have hereunto set my hand and seal.

JOHN LANGDON.

A similar certificate was given to the Vice-President. At the election for the second term, 1793, (George Washington, President, John Adams, Vice-President,) the following entry occurs:

A message from the Senate, by Mr. Otis, their Secretary:

Mr. Speaker: I am also directed to inform the House that a President of the Senate is elected for the sole purpose of opening the certificates and counting the votes of the several States in the choice of a President and Vice-President of the United States, and that the Senate is now ready, in the Senate Chamber, to attend with the House on that occasion.

Resolved, That Mr. Speaker, attended by the House, do now withdraw to the Senate Chamber for the purpose expressed in the said message.

At the election for the third term, 1797, (John Adams, President, Thomas Jefferson, Vice-President,) the following certificate was ordered to be transmitted to Thomas Jefferson:

dered to be transmitted to Thomas Jefferson:

Mr. Mason reported from the committee as appointed, and the report, being read was amended and adopted, as follows:

Resolved, That the President of the United States be requested to cause to be transmitted to Thomas Jefferson, esq., of Virginia, Vice-President elect of the United States, notification of his election to that office; and that the President of the Senate do make out and sign a certificate in the words following:

"Be it known that, the Senate and House of Representatives of the United States of America, being convened in the city of Philadelphia on the second Wednesday of February, in the year of our Lord 1797, the underwritten, Vice-President of the United States and President of the Senate, did, in presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and for a Vice-President; by which it appears that Thomas Jefferson, esq., was duly elected, agreeable to the Constitution, Vice-President of the United States of America.

"In witness whereof I have hereunto set my hand and seal this 10th day of February, 1797."

Ordered, That the Secretary lay this resolution before the President of the United States.

At the election for the fourth term, 1801, (Thomas Jefferson, President, Aaron Burr, Vice-President,) the following certificate was ordered:

February 18, 1801.

The Senate, having been notified by the House of the election of Thomas Jefferson as President of the United States, adopted the following resolution; which was ordered to be laid before the President of the United States:

\*Resolved\*\*, That the President of the United States be requested to cause to be transmitted to Aaron Burr, esq., of New York, Vice-President of the United States, notification of his election to that office; and the President of the Senate do make out and sign a certificate in the words following, namely:

Be it known that, the Senate and House of Representatives of the United States of America being convened at the city of Washington on the second Wednesday of February, A. D. 1301, the underwritten, Vice-President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for President; whereupon it appeared that Thomas Jefferson, of Virginia, and Aaron Burr, of New York, had a majority of the votes of the electors and an equal number of votes; in consequence of which the House of Representatives proceeded to a choice of a President, and have this day notified to the Senate that Thomas Jefferson has by them been duly chosen President; by all of which it appears that Aaron Burr, esq., of New York, is duly elected, agreeably to the Constitution, Vice-President of the United States of America.

In witness whereof I have hereunto set my hand and seal this 18th day of February, 1801.

\*\*THOMAS JEFFERSON.\*\*

THOMAS JEFFERSON. At the election for the fifth term, 1805, (Thomas Jefferson, President, George Clinton, Vice-President;)

At the election for the sixth term, 1809, (James Madison, President,

George Clinton, Vice-President;)
At the seventh term, 1813, (James Madison, President, Elbridge Gerry, Vice-President;)

At the eight term, 1817, (James Monroe, President, Daniel D. Tomp-

kins, Vice-President;) and
At the tenth term, 1825, (John Q. Adams, President, John C. Calhoun, Vice-President,) similar certificates were issued. No certificate appears on the ninth, none on the eleventh, and so on to the end.

pears on the ninth, none on the eleventh, and so on to the end.

In the record of proceedings in the election of Zachary Taylor, February 14, 1849, (Hon. George M. Dallas, Vice-President,) in the presence of the Senate and House of Representatives, after the returns from the State of Maine had been read, Mr. Stephens arose and suggested that the reading at length of the returns from each State in detail be dispensed with. The Vice-President stated that no motion was in order and no other mode of proceeding could be adopted than that pointed out by the Constitution of the United States, but that the tollers wight a bridge the record so far as to give merely the that the tellers might abridge the report so far as to give merely the

results of the electoral ballotings of each State.

On the 11th of February, 1857, at the election for the eighteenth term, (James Buchanan, President, and John C. Breckinridge, Vice-President,) the presiding officer, Mr. Mason, used the following lan-

Pursuant to law and in obedience to the concurrent order of the two Houses, the President of the Senate will now proceed to open and count the votes which have been given for a President and Vice-President of the United States for the term prescribed by the Constitution to commence on the 4th day of March, 1857.

Senator Cass said:

I wish to submit a single remark to the President and to the Senate, for I do not consider that this convention can be addressed. We can take no vote. How are we to vote? Per capita or by States? Are we to vote as representatives of the people or representatives of States? If we cannot vote here we cannot discuss. The only thing which remains for us to do, if there are insuperable difficulties in the way, is to adjourn immediately to our respective Halls. By the present proceeding we are overturning the Government; we are making this a national convention.

The Presidne Officer. It is the opinion of the presiding officer that no vote can be taken by the two Houses thus assembled, and no motion calling for a vote is in order.

In 1800, Senator Charles Pinckney, of South Carolina, in speaking of the intent of the framers of the Constitution, made this emphatic statement, namely:

Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present not only the spirit but the letter of that instrument, to give to Congress no interference in or control over the election of a President. It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has the majority of the votes of the electors so transmitted. It never was intended nor could it have been safe, in the Constitution, to have given to Congress thus assembled in convention the right to object to any vote, or even to question whether they were constitutionally or properly given.

Thus it appears that from the time the Constitution went into operation, to wit, on the first Wednesday of March, 1789, until the 6th of February, 1865, the uniform practice was for the President of the Senate, through the medium of tellers, to count the electoral votes. All attempts to change or vary this procedure utterly failed until the adoption of the twenty-second joint rule, now, thank Heaven! abrogated. Is this uninterrupted usage of seventy-six years, recognized as sound by the framers of the Constitution and its eminent expound-

ers, now to be changed?

Under the Constitution the States are expressly authorized to determine the manner of choosing their presidential electors. In some States these were chosen by the State Legislatures; in others by districts, each district having one; and in others by the popular system now in vogue. These electors represent the States, the number being equal to the number of Representatives and Senators to which each State is entitled. The States enact laws regulating the manner in which these electors shall be chosen. Whether these laws are agreeable to Congress is wholly immaterial, nor is it indeed mandatory for the States to choose electors. If the laws are obnoxious,

it rests with the Legislature to repeal the same. No authority is creit rests with the Legislature to repeal the same. No authority is created to go behind the returns of a canvassing board. Had the Constitution designed that the choosing of electors should be revised, the framers would have said so. Moreover a tribunal would have been indicated to try any issues of fact raised. This tribunal might have been the Senate or House or the two acting concurrently. No such tribunal exists by express power nor by implication; it is fair therefore to presume that none such was intended to be created.

To settle the difficulty growing out of the action of the canvassing board of Louisiana recourse must be had to the law of 1872, by which it was created. The following section indicates the duty of said board:

board of Louisiana recourse must be had to the law of 1872, by which it was created. The following section indicates the duty of said board:

Sec. 3. That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting-place there shall be received the statement of any supervisor of registration or commissioner of election in form as required by section 26 of this act, on adiabatt of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statements of votes from such poll or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed d

From this it appears that the board exercised judicial authority. Whether it was properly exercised or not, is a point not be inquired of by Congress. All that even a court could do would be to quired of by Congress. All that even a court could do would be to compel them to act, leaving it to them to exercise their own judgment as to how to discharge their duty. From the facts they are to draw conclusions, and they, not Congress, must be the judges of the facts. Whether there were the violence, intimidation and terrorism which under the act justified them in excluding certain parishes, was their province to determine. Their decision is a finality and cannot be reviewed by Congress. It is the solemn action of the State of Louisiana, for the canvassing board is the creature of the State of Louisiana, if Congress can revise the action of the can-State, not of Congress. If Congress can revise the action of the canvassing board of Louisiana, it follows necessarily that it can travel into every other State in the Union and examine and revise and overturn all other canvassing boards. The supreme court of Louisiana says:

"No statute conferring upon the courts the power to try cases of contested elections or title to office authorizes them to revise the action of the returning board. If we were to assume that prerogative, we should have to go still further and revise the returns of supervisors of elections, examine the rights of voters to vote, and, in short, the courts would become in regard to such cases mere officers for counting, compiling, and reporting election returns. The Legislature has seen proper to lodge the power to decide who has or has not been elected in the returning board.
"It might have conferred that power on the courts, but it did not. Whether the law be good or bad, it is our duty to obey its provisions, and not to legislate."

But if it is necessary here to vindicate the correctness of this Lou-isiana canvassing board, it can easily be done. A thousand witnesses show intimidation, terrorism, fraud, and murder, such as are a disgrace to the nineteenth century. From the volume in my possession abundant evidence is furnished that the South has failed signally to carry into effect the fifteenth amendment. In no honest sense has the carry into effect the fitteenth amendment. In no honest sense has the South adopted the same. It is a dead article in the democratic creed. Universal suffrage was to be the twin-sister of universal amnesty. How universal! the suffrage has been, recent startling events must answer. Barbarians would blush to be charged with these inhuman crimes. No age, sex, or condition have been spared. These political crimes do not occur in the North. Here the right to vote is not abridged or depied to any citizen on account of race color or waveling. crimes do not occur in the North. Here the right to vote is not abridged or denied to any citizen on account of race, color, or previous condition of servitude. Here Ku-Klux bands are unknown; here no masked rifle clubs armed disturb peaceful citizens, or shoot or murder white or colored on account of political differences. These organizations are to the manner born and are the outgrowth of that dogma, "This is a white man's government." Here let the affidavits, taken at random from the book now on my table containing the evidence of over one thousand witnesses, speak for themselves. I submit a few: over one thousand witnesses, speak for themselves. STATE OF LOUISIANA,
Parish of Orleans:

Parish of Orleans:

I, Louis K. Polk, was commissioner of election at the first ward poll in the parish of West Feliciana. About twelve minutes after the poll was opened a crowd of white men, about thirty-five in number, came up, there being a crowd of colored men at the poll. They pushed their way, and said, "Let the first ward club come in here and vote," using force to do so, and compelled the colored men to fall back from their position in line, where they were waiting their chance to vote. During the day a colored man came to the poll with a republican ticket in his hand, and the democrats asked him if he had a ticket. He told them yes, and showed them a republican ticket. They then took the ticket from his hand and tore it up, and

said, "O, h-l, that is not the ticket." This was when he was at the box ready to vote. They then gave him a democratic ticket, and told him "that was the ticket he must vote."

vote. They then gave him a democratic ticket, and told him "that was the ticket he must vote."

About eleven o'clock in the day the democrats received information that the road was crowded with negroes coming into town to vote. They then mounted their horses and started away to prevent them from reaching the polls, swearing that they should not come there to vote the republican ticket, and after that no colored man reached the poll from that direction. During the past year the parish has been patrolled by armed men, who threatened the colored men, swearing that they should not vote the republican ticket; that they must come with the white people or they would make them leave; and since the election I know of about sixty colored men who voted the republican ticket who have been turned out of employment and notified to leave, and these men, being in fear of their lives, were compelled to quit the parish. Since the election a great many of my friends in the town of Bayou Sara, at Saint Francisville, have come to me and told me they had been compelled to vote the democratic ticket through fear of losing their lives and property. Some who had been turned away because they had refused to join the democratic club before election, and through fear voted the democratic ticket, were skapped on the shoulder by the democrats around the poll and told to come to them the next day and they would set them to work, and some of those who voted the republican ticket have been repeatedly cursed and threatened upon the streets since election.

On the Sunday before election there was a barbecue in the parish of Pointe Carnéa et the search because the search be

republican ticket have been repeatedly cursed and threatened upon the streets since election.

On the Sunday before election there was a barbecue in the parish of Pointe Coupée, at the court-house at New Road. Myself, Senater Weber, and others went over to attend in the evening. There were a crowd of men on the river-bank. They were white men, armed with pistols. One went down to the ferry-boat inquiring for Senator Weber. The ferryman told him that Senator Weber had failed to reach the river before he left, and that he had left him over there. He then wanted to know if he did not intend to go back for him. The ferryman told him, "No; he did not intend to go back that night." They posted themselves upon the river-bank and watched every skiff that came over. I then got a skiff and recrossed the river and went to the post-office, where I met the band. I was looking for Senator Weber, fearing that he might go aboard the steamboat R. E. Lee, being convinced that these white men were hunting for him, and that if they met him they would kill him. I then went back to the lower part of Pointe Coupée, where I staid all night. The next morning I took a horse, and met Senator Weber and others who were coming toward the ferry landing, when I warned him of his danger, and then he went down to below the island, crossed over, and returned to his home through the wood. The first skiff which crossed the river from Bayou Sara Monday morning, six or seven white men, all armed, met the skiff, and inquired for Senator Weber. Not finding him, they wanted to know when he was coming over. They were evidently anxions and determined to find him, and I am convinced they intended to do him bodily harm. I have also heard them say that they would not quit bull-dozing until they had succeeded in doing away or getting rid of Senator Weber and his republican colleagues.

LOUIS K. POLK.

Subscribed and sworn before me November 15, 1876.
F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

13. Jared M. Harrill, planter in East Feliciana, seventh ward. He employs fifty co ored men. Has often been notified that he must attend democratic meetings and vote the democratic ticket or that he must leave the parish.

His hands were taken from their work and compelled to vote the democratic ticket.

He saw them. They told him they did it not from choice, but because they had

ticket.

He saw them. They told him they did it not from choice, but because they had been vold that unless they did so they must leave the country.

Democrats would appoint a meeting and then ride through the country and notify all the colored and many white men that they must come. They came to him and expressed their nuwillingness. He told them that he could not protect them.

To intimidate me, the bull-dozers took one of the women in my house and whipped her nearly to death. They were armed with shot-guns and pistols; arrested him; threatened to hang him. He defled them. Then they broke into the house, took out the woman, stripped her, and beat her most to death. I armed myself to resist. They told me if I had any of them exposed or attempted to arrest any one they would hang me.

Such acts of violence were perpetrated on nearly all the white republican planters in my parish.

ers in my parish.
Out of the voters, 3,000 in number, more than 2,100 are republicans—less than 900

Out of the voters, 3,000 in number, more than 2,100 are republicans—less than 300 democratic.

On election day the bull-dozers kept a record of all men who voted the republican ticket; called out their names in a loud tone, and said that register was to guide their future lives, as they would only visit those who were found on their black list.

guide their future lives, as they would only visit those who were found on their black list.

He names parties who whipped the woman.

When summoned here, he was warned that he should be held accountable for his statements, and if he injured them he should be put out of the way.

4. William Hansberry, of poll 1, ward 8, parish of East Feliciana. He owns and works a large plantation there:

About four weeks before the election there was a democratic meeting. He attended to hear Governor Nicholls speak. After the speaking was over William Maxwell, a white democrat, asked him did he intend to vote for Nicholls, and told him he must, as the colored man who did not vote for him would be smitten from among us. You cannot be allowed to vote the republican ticket and live among us. Fearful, he joined democratic club and voted republican ticket. After he joined democratic club a body of white democrats called on him and said they heard he had been abused for it, and if he would tell them the parties they would get them at the risk of their lives. He told them he had never been disturbed.

Word was sent him by his son, who was also a voter, from the gentleman who told me I must vote democratic ticket to remember what he had said.

No republican ticket distributed to colored men. It was not allowed.

On November 7, 1876, the following vote was cast for electors:

Repub-East Feliciana West Feliciana None East Baton Rouge
Amite County, Mississippi.....

At the last election, 1874, there was cast:

	Demo- cratic.	Repub- lican.
East Feliciana West Feliciana East Baton Ronge Amite County, Mississippi, majority.	847 501 1, 556	1, 688 1, 358 2, 546 641

Deponent says the cause of this remarkable change was intimidation persistently practiced ever since the last previous election.

On October 7, 1875, a large body of men, on horseback, and armed with Winchesters and revolvers, came to Clinton, the county seat of East Feliciana Parish, (the French name for county.) while the court was in session.

They interrupted the court, threatened the judge, a white man, drove away the sheriff, a man of color, and, as he ran, shot him. They swore no colored man should hold office, and, for that reason, compelled the recorder to resign. The sheriff, wounded, escaped, and has since resided in New Orleans. The recorder did resign, and also fled the parish.

Since that time there has been no court there—no law and no protection. It is generally understood that unless a colored man joins a democratic club and votes that ticket he is not safe. He may be whipped, killed, or driven from the parish at the pleasure of these so-called regulators.

These "regulators," or "bull-dozers," have, since August, 1875, committed the following outrages in East Feliciana:

That month they killed Jerry Norman in church.

In September, 1875, they shot and killed Joseph Johnson, Samuel Smith, (!) a colored man, name unknown, on Channeey plantation. In September, 1875, they shot and killed Full Nelson, a colored boy. October, 1875, a colored man, name unknown, on Channeey plantation. In September, 1875, they shot and killed Full Nelson, a colored boy. October, 1875, a colored man, name unknown, and here a member of the Legislature, and a leader of the republicans in the parish, who had been driven away, was brought from Baton Rouge by the sheriff and a posse under an accusation believed to be false, that he had instigated a sister-in law to give poison to one Dr. Saunders. On the way the regulators attacked the posse, and Gair was literally shot to pieces. The same evening the girl, a wet-nurse to Dr. Saunders's sick wife, was seized and hung in the yard of the jail. Saunders is yet alive, strong an

yet alive, strong and hearty. The real motive for the villainy was said to be halred of Gair as an infinential, zealous republican, and a revolution to be led by him. November, 1875, a colored man named P. Branch was shot and killed by this band near Shady Grove.

November, 1875, two colored men were killed by Gardner Blount, a white-leaguer. March, 1876, a colored man was shot and killed by them on Redwood plantation. November, 1875, Marshal Ryer and Webster Dyer were shot in Clinton and killed, and the sheriff and his posse endeavoring to arrest them were resisted and dispersed. Dr. T. T. Wood, a white man living on the plantation of Mrs. Woodward some miles northeast of Clinton, passed sentence of death, by banging, on two colored girls for stealing some clothes, and the sentence was executed by about one humfred armed and masked men.

A written statement embodying these facts, signed by about fourteen persons, was presented to General Augur. A detachment was ordered to Clinton a few weeks before election.

But two hundred colored men, whose names have been published, fied the parish. Many other murders and whippings occurred not here mentioned, and before the coming of the soldiers.

The habit of this band is to appear at night on horseback, armed with Winchester rifles and revolvers. They call on obnoxious persons, and by whippings and other means have inspired the colored people with terror.

Ex uno dicere omnes. The concluding words of the report submitted to Congress December 7, 1876, of the committee sent South by order of the President of the United States, are as follows:

mitted to Congress December 7, 1876, of the committee sent South by order of the President of the United States, are as follows:

There were in the State of Louisana on the day of the election 92,996 white registered voters and 115,310 colored, a majority of the latter of 24,314. It was well known that, if left free to vote uninfluenced by violence or intimidation, the blacks would be almost unanimously republican, and that with the white republican vote its majority would be about equal to that above indicated. The plan appears to have been to select for purposes of intimidation and violence as few parishes as possible, (for in forty or lifty-seven parishes where these were not employed the republican majority was 6,000,) but to select those in which the colored vote, as compared with the white, would be large unless unlawfully prevented; for in so doing it might be expected that should any majority they could thus obtain in such parishes be rejected, they would nevertheless attain their purpose by the suppression of a large republican vote.

In pursuance of this plan, five of the parishes selected in which the greatest violence and intimidation were practiced were East and West Feliciana, which border upon that portion of Mississippi in which murder and outrages oprevailed, during and preceding the election, as substantially to prevent any republican vote; East Baton Bouge, which borders upon the southern portion of East Feliciana; Morehouse, which adojions the State of Arkansas; and Omehit, which adjoins and lies directly south of Morehouse. The geographical position of these five parishes was well suited to the purpose to be attained; for it was casy for the members of the clubs to be formed therein, and who usually perpetrated their outrages with musiked faces, to pretend that they were committed by border ruffinas from Mississippi and Arkansas, where like outrages had been perpetrated. The location of these five parishes was not, however, better suited to the plan to be accomplished than over the first se

of witnesses, were the means employed in Louisiana to elect a President of the United States. And when they shall succeed, the glories of the Republic will have departed, and shame and horror will supplant in the hearts of our people that love and veneration with which they have hitherto regarded the institutions of their

and veneration with which they have hitherto regarded the institutions of their country.

The proof of violence and intimidation and armed disturbance in many other parishes is of the same general character, although more general and decisive as to the five parishes particularly referred to. In the others these causes prevailed at particular polling places, at many of which a republican vote was to a considerable extent prevented.

The members of the board, acting under oath, were bound by law, if convinced by the testimony that riot, tumult, acts of violence, or armed disturbance didmaterially interfere with the purity and freedom of election at any poll or voting-place, or did materially change the result of the election thereat, to reject the votes thus cast and exclude them from their final return. Of the effect of such testimony the board was sole and final judge, and if in reaching a conclusion it exercised good faith and was guided by an honest desire to do justice, its determination should be respected, even if upon like proof a different conclusion might have been reached by other tribunals or persons.

To guard the purity of the ballot; to protect the citizen in the free and peaceful exercise of his right to vote; to secure him against violence, intimidation, outrage, and especially murder, when he attempts to perform this duty, should be the desire of all men and the aim of every representative government. If political success, shall be attained by such violent and terrible means as were resorted to in many parishes in Louisiana, complaint should not be made if the votes thus obtained are denounced by judicial tribunals and all honest men illegal and void.

From the foregoing views it follows necessarily that I am opposed

From the foregoing views it follows necessarily that I am opposed to this novel tripartite judicial tribunal. It is a huge, unwieldy arbitration, reaching no final result, and craftily devised to develop the position of the adversary. It is a skirmish, not a battle. Undisguisedly it a partisan tribunal, a grand consolidated lottery, in which the highest gift of a free people is to be distributed by lot. It is not a court, for that is a place where justice is administered through judges selected for their learning, not their political bias. This tribunal has no parallel in history. The grand committee that was to be created by the bill in 1800 was to be headed by the Chief-Justice. For a reason quite obvious under the present bill the Chief-Justice is not named. Four judges are selected ostensibly by circuits, really on account of their well-known political bias. Those are equally divided account of their well-known political bias. Those are equally divided and they are to choose the fifth judge. How, is not indicated. If they cannot agree they must use the straw, the copper, or the dice. The relative position of the other members of the court taken from the Senate and House is painfully and shamefully patent. And by this tribunal a great constitutional question is to be settled.

Why not resort to the tribunal known to the law? No one ques-

why not resort to the tribunal known to the law! No one questions the integrity and profound learning of the judges of the Supreme Court of the United States. The material facts are not controverted. Make a case stated. Let this be submitted and the decision, whatever it may be, will be acquiesced in by the great republican party. If this cannot be done then let us take the usual course pursued from the foundation of the Government, and let the party

aggrieved take his legal remedy.

And this indeed has been contemplated under the present bill: SEC. 6. That nothing in this act shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceeding in the judicial courts of the United States, the right or title of the person who shall be declared elected or who shall claim to be President or Vice-President of the United States, if any such right exists.

And the distinguished Senator, Mr. Edmunds, in explaining this feature of the bill, if it needed explanation, said:

So that we felt perfectly free, not only free but more than free, we felt it to be our bounden duty that no right should be affected in respect of the candidates of either of these great parties by the law that we pass, and that the right of A or B to this great office must be determined by the law as it stands on the date of the passage of this act.

Nothing, therefore, is gained to the public or to the parties by the passage of this bill. The decision of this tribunal is not final; it does passage of this bill. The decision of this tribunal is not final; it does not conclude, though it may greatly prejudice, the parties interested. The case does not come up de novo, as in ordinary appeals; it will have been passed upon by five of the nine judges who are to decide it, and it is hoping too much to expect that these judges, eminent and impartial and honest though they may be, shall be wholly unbiased in that which is a substantial rehearing of the same matter.

I oppose the bill, therefore: first, because it is unnecessary; second, because it is delegating to a commission that power which is given exclusively by the Constitution, either expressly or by implication, to the President of the Senate. I oppose the bill, thirdly, because it delegates legislation to a commission. Strictly speaking, it is a court. It determines the constitutional right to go behind can-

because it delegates legislation to a commission. Strictly speaking, it is a court. It determines the constitutional right to go behind canvassing boards constituted under State laws. It is to receive petitions, depositions, and papers that may be competent and pertinent in such consideration. The oath of the judge requires him to examine and consider all questions submitted to the commission. It is to settle controverted facts and questions of constitutional law, and render a decision, which is substantially final, because it cannot be reversed without the concurrent action of both Houses. By the action therefore of this tribunal the original position of the Representatives is changed, so that the Gordian knot cannot be untied. Now we deal with the House, then with the Senate and House combined, and controlled by a foreign element not sanctioned or authorized under the Constitution as belonging to the legislative department. In a word, it is joining the legislative with the judicial department, designed to be kept distinct and separate by the framers of the Con-

The Representative must think and act for himself. He cannot

ask any one on a complicated question to vote in his stead; he cannot indirectly delegate that power. His duty is ministerial and quasi-judicial. He can delegate the former, not the latter. He can say to a teller, "Add up the figures in this certificate." But whether the certificate and evidence connected with it are legal is a judicial question, which he must settle for himself. He is sworn to support the Constitution, and it is his duty to determine whether, under the law and the Constitution, such paper can properly be received as evidence. Now, this tribunal takes from Congress this judicial power.

4. As neither the Senate nor the House, nor both combined, can go

4. As neither the senate hor the House, nor onth other can go behind the returns made by canvassing boards, Congress has no power to confer that right upon the commission.

5. The bill is unconstitutional, as it comes in conflict with that provision of the Constitution which declares that "no Senator or Representative shall, during the time for which he was elected, be ap-pointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office."

6. If the Constitution needs a change in this particular, it must be effected by an amendment, not by a special law. This remedy, by article 5 of the Constitution, is expressly provided for, and was followed wherever the organic law was deemed defective. If the organic law is to be changed, let it not be done indirectly by a temporary expedient, but by an amendment to be approved of through the Legislatures of the several States.

The passage of this bill is urged to allay excitement. I fail to discover any excitement that is to be dreaded. The hundred thousand

cover any excitement that is to be dreaded. The hundred thousand unarmed men that are to be brought here to bull-doze the Senate and House, I do not fear. It is a useless threat and can injure none but its partisan authors. Grave constitutional questions are to be settled by argument, not menaces.

"Big words do not smite like war-clubs, Boastful breath is not a bow string, Deeds are better things than words are, Actions mightier than boastings."

Nor do the bitter hard words of the gentleman from New York, [Mr. Willis,] charging the republican party with being conspirators, terrify. I am surprised and mortified at his harmless slanders, and experience a feeling of astonishment that they should come from one whose kind and genial manners indicate that he has "sat at good men's feasts and lives where bells do knoll for church."

Out of Congress no excitement exists; here it seems to have been manufactured. The 8th of January was made infamous as intimida-tion day. Jackson's commemoration day was seized upon as a fit time tion day. Jackson's commemoration day was seized upon as a ni time to create partisan capital. In this a great wrong was done to the dead, for the memory of the honored dead should be a sacred trust with all the living. No, there must be no intimidation here or elsewhere. "Men must be permitted," as Tacitus said, "to think what they please and say what they think."

Mr. GARFIELD. Mr. Speaker, nothing but the gravity of this sub-

ject would induce me to make a speech in my present condition of voice. But I must attempt it and trust that the kindness of the

House will enable me to be heard.

I desire in the outset to recognize whatever of good there is in this bill. It has some great merits which I cheerfully recognize. It is intended to avoid strife in a great and trying crisis of the nation. It is intended to aid in tiding over a great present difficulty, possibly a great public danger. It will doubtless bring out a result. And when it has brought out a result it will leave the person who is declared to be the elect of the nation with a clearer title, or rather with a more

be the elect of the nation with a clearer title, or rather with a more nearly undisputed title, than any method that has yet been suggested.

These are certainly great results. At a time like this, no man should treat lightly a bill which may and probably will produce them all. Furthermore, I feel bound to say, if I were to speak of this bill only as a partisan—a word much abused just now—I should say that I am not afraid of its operation. The eminent gentlemen who are to compose the commission, eminent for their character and abilities, will, I have no doubt, seek to do and will do justice under its provisions. And therefore, believing as I do that Rutherford B. Hayes has been honestly and legally elected President of the United States, I confidently expect that this commission will find that to be the fact and will declare it. Should they find otherwise, all good men everywhere will submit to their decision.

But neither the wishes nor the fate of Mr. Hayes or Mr. Tilden should be consulted in considering this bill. I presume no one here is authorized to speak for either of these gentlemen on the question. I certainly am not. It is our business to speak for ourselves and for the people whom we represent.

Before considering the bill itself, I pause to notice one of the reasons that have been urged in its favor.

sons that have been urged in its favor.

We have been told to-day in this Chamber that there is danger of civil war if the bill does not pass. I was amazed at the folly which could use such a suggestion as an argument in favor of this or any

measure.

The senate at Rome never deliberated a moment after the flag was hauled down which floated on the Janiculum Hill, across the Tiber. That flag was the sign that no enemy of Rome, breathing hot threats of war, had entered the sacred precincts of the city; and when it was

struck the senate sat no longer. The reply to war is not words, but swords.

When you tell me that civil war is threatened by any party or When you tell me that civil war is threatened by any party or State in this Republic, you have given me a supreme reason why an American Congress should refuse, with unutterable scorn, to listen to those who threaten, or to do any act whatever under the coercion of threats by any power on the earth. With all my soul I despise your threat of civil war, come it from what quarter or what party it may. Brave men, certainly a brave nation, will do nothing under such compulsion. We are intrusted with the work of obeying and defending the Constitution. I will not be deterred from obeying it because somebody threatens to destroy it. I dismiss all that class of because somebody threatens to destroy it. I dismiss all that class of motives as unworthy of Americans.

On this occasion, as on all others, let us seek only that which is worthy of ourselves and of our great country.

Self-reverence, self-knowledge, self-control— These three alone lead life to sovereign power. Yet not for power, (power of herself Would come uncalled for,) but to live by law, Acting the law we live by without fear; And, because right is right, to follow right, Were wisdom in the scorn of consequence,

Let such wisdom and such scorn inspire the House in its consider-

ation of the pending measure.

What, then, are the grounds on which we should consider a bill like this? It would be unbecoming in me or in any member of this Congress to oppose it on mere technical or trifling grounds. It should be opposed, if at all, for reasons so broad and so weighty as to overcome all that has been said in its favor, and all the advantages which I have here admitted may follow from its passage. I do not wish to diminish the stature of my antagonist; I do not wish to undervalue the points of strength in a measure before I question its propriety. It is not enough that this bill will tide us over a present danger, however great. Let us for a moment forcet Hayes and Till propriety. It is not enough that this bill will tide us over a present danger, however great. Let us for a moment forget Hayes and Tilden, republicans and democrats; let us forget our own epoch and our own generation; and, entering a broader field, inquire how this thing which we are about to do will affect the great future of our Republic; and in what condition, if we pass this bill, we shall transmit our institutions to those who shall come after us. The present good which we shall achieve by it may be very great, yet if the evils that will flow from it in the future must be greater, it would be base in us to flinch from trouble by entailing remediless evils upon our children. In my view, then, the foremost question is this: What will be the effect of this measure upon our institutions? I cannot make that inniry intelligibly without a brief reference to the history of the Con-

quiry intelligibly without a brief reference to the history of the Constitution and to some of the formidable questions which presented themselves to our fathers nearly a hundred years ago, when they set

up this goodly frame of government.

Among the foremost difficulties, both in point of time and of magnitude, was how to create an executive head of the nation. Our fathers encountered that difficulty the first morning after they organized and elected the officers of their constitutional convention. The first resoelected the officers of their constitutional convention. The first resolution introduced by Randolph, of Virginia, on the 29th day of May, recognized that great question and invited the convention to its examination. The men who made the Constitution were deeply read in the profoundest political philosophy of their day. They had learned from Montesquieu, from Locke, from Fénelon, and other great teachers of the human race that liberty is impossible without a clear and distinct separation of the three great powers of government. A generation before their epoch, Montesquieu had said:

When the legislative and executive powers are united in the same person or in the same body of magistrates there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.

There would be an end of everything were the same man or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting the laws, that of executing the public resolutions, and of trying the causes of individuals.

This was a fundamental truth in the American mind, as it had long

been cherished and practiced in the British Empire.

But there, as in all monarchies, the creation of a chief executive was easily regulated by adopting a dynasty and following the law of primogeniture.

But our fathers had drawn the deeper lesson of liberty from the inspirations of this free new world, that their Chief Executive should be born, not of a dynasty, but of the will of a free people regulated

In the course of their deliberations upon the subject, there were suggested seven different plans, which may be grouped under two principal heads or classes. One group comprised all the plans for creating the Chief Executive by means of some one of the pre-existing ating the Chief Executive by means or some one of the pre-existing political organizations of the country. First and foremost it proposed to authorize one or both Houses of the National Legislature to elect the Chief Executive. Another was to confer that power upon the governors of the States or upon the Legislatures of the States. Another, that he should be chosen directly by the people themselves under the laws of the States. The second group comprised all the various plans for creating a new separate instrumentality for making the choice.

At first the proposition that the Executive should be elected by the

National Legislature was received by the convention with almost unanimous approval; and for the reason that up to that time, Congress had done all that was done in the way of National Government. It had created the nation, had led its fortunes through a thousand perils, had declared and achieved independence, and had preserved the liberty of the people in the midst of a great war. Though Congress had failed to secure a firm and stable Government after the war, yet its glory was not forgotten. As Congress had created the Union it was most natural that our fathers should say Congress shall also create the Chief Executive of the nation. And within two weeks after the convention assembled, they voted for that plan with absolute unanimity.

after the convention assembled, they voted for that plan with absolute unanimity.

But with equal unanimity they agreed that this plan would be fatal to the stability of the Government they were about to establish, if they did not couple with it some provision that should make the presidential office independent of the power that created him. To effect this they provided that the President should be ineligible for re-election. They said it would never do to create a Chief Executive by the voice of the National Legislature, and then allow him to be re-elected by that same voice; for he would thus become their creature.

And so, from the first day of their work in May to within five days of its close in September, they grappled with the mighty question. I have many times, and recently more carefully, gone through all the records that are left to us of that great transaction. I find that more than one-seventh of all the pages of the Madison Papers are devoted to this Sampson of questions, how the Executive should be chosen and made independent of the organization that made the choice. This topic alone, occupied more than one-seventh of all the time of the convention. the convention.

After a long and earnest debate, after numerous votes and reconsiderations, they were obliged utterly to abandon the plan of creating the Chief Executive by means of the National Legislature. I will not stop now to prove this statement by a dozen or more pungent gent quotations from the masters of political science in that great assembly, in which they declared that it would be ruinous to the liberry of the people and to the permanence of the Republic if they did not absolutely exclude the National Legislature from any share in the election of the President.

They pointed with glowing eloquence to the sad but instructive fate of those brilliant Italian republics that were destroyed because there was no adequate separation of powers; and because their senates overwhelmed and swallowed up the executive power, and, as secret and despotic conclaves, became the destroyers of Italian liberty.

and despotic conclaves, became the destroyers of Italian liberty.

At the close of the great discussion, when the last vote on this subject was taken by our fathers, they were almost unanimous in excluding the National Legislature from any share whatever in the choice of the Chief Executive of the nation. They rejected all the plans of the first group, and created a new instrumentality. They adopted the system of electors. When that plan was under discussion, they used the utmost precaution to hedge it about by every conceivable protection against the interference or control of Congress.

In the first place, they said the States shall create the electoral colleges. They allowed Congress to have nothing whatever to do with the creation of the colleges, except merely to fix the time when the States should appoint them. And in order to exclude Congress by positive prohibition, in the last days of the convention they provided that no member of either House of Congress should be appointed an elector; so that not even by the personal influence of any one of its members could the Congress interfere with the election of a President.

The creation of a President under our Constitution, consists of three

The creation of a President under our Constitution, consists of three distinct steps: First, the creation of the electoral colleges; second, the vote of the colleges; and third, the opening and counting of their votes. This is the simple plan of the Constitution.

The creation of the colleges is left absolutely to the States, within the five limitations I had the honor to mention to the House a few days ago: first, that it must be a State that creates it; second, that the State is limited as to the number of electors they may appoint; third, that electors shall not be members of Congress, nor officers of the United States; fourth, that the time for appointing electors may be fixed by Congress; and fifth, the date when their appointment is announced, which must be before the time for giving their votes, may also be fixed by Congress.

These five simple limitations, and these alone, were laid upon the States. Every other act, fact, and thing possible to be done in creating the electoral colleges, was absolutely and uncontrollably in the power of the States themselves. Within these limitations Congress has no more power to touch them in this work than England or

has no more power to touch them in this work than England or France. That is the first step.

The second is still plainer and simpler, namely, the work of the coileges. They were created as an independent and separate power, or set of powers, for the sole purpose of electing a President. They were created by the States. Congress has just one thing to do with them, and only one; it may fix the day when they shall meet. By the act of 1792, Congress fixed the day as it still stands in the law; and there the authority of the Congress over the colleges ended.

There was a later act, of 1845, which gave to the States the authority to provide by law for filling vacancies of electors in these colleges, and Congress has passed no other law on the subject.

The States having created them, the time of their assemblage having

been fixed by Congress, and their power to fill vacancies having been been fixed by Congress, and their power to fill vacancies having been regulated by State laws, the colleges are as independent in the exercise of their functions as is any department of the Government within its sphere. Being thus equipped, their powers are restrained by a few simple limitations laid upon them by the Constitution itself: first, they must vote for a native-born citizen; second, for a man who has been fourteen years a resident of the United States; third, at least one of the persons for whom they vote must not be a citizen of their own State; fourth, the mode of voting and certifying their returns is prescribed by the Constitution itself. Within these simple and plain limitations, the electoral colleges are absolutely independent of the States and of Congress. States and of Congress.

States and of Congress.

One fact in the history of the constitutional convention, which I have not seen noticed in any of the recent debates, illustrates very clearly how careful our fathers were to preserve these colleges from the interference of Congress, and to protect their independence by the bulwarks of the Constitution itself. In the draught of the electoral system reported September 4, 1787, it was provided that Congress "may determine the time of choosing and assembling of the electors and the manner of certifying and transmitting their votes."

That was the language of the original draught; but our fathers had determined that the National Legislature should have nothing to do with the action of the colleges, and the words that gave Congress the power to prescribe the manner of certifying and transmitting their votes were stricken out. The instrument itself prescribed the mode. Thus Congress was wholly expelled from the colleges. The Constitution swept the ground clear of all intruders, and placed its own imperial guardianship around the independence of the electoral colleges by forbidding Congress even to enter the sacred circle. No Congressman could enter; and, except to fix the day of their meeting, Congress could not speak to the electors.

These colleges are none the less sovereign and independent be-

Congress could not speak to the electors.

These colleges are none the less sovereign and independent because they exist only for a day. They meet on the same day in all the States; they do their work summarily, in one day, and dissolve forever. There is no power to interfere, no power to recall them, no power to revise their action. Their work is done; the record is made up, signed, sealed, and transmitted; and thus the second great act in the presidential election is completed. I ought to correct myself: the second act is the presidential election. The election is finished the hour when the electoral colleges have east their votes and scaled. the hour when the electoral colleges have cast their votes and sealed

up the record.

Still there is a third step in the process; and it is shorter, plainer, simpler than the other two. These sealed certificates of the electoral colleges are forwarded to the President of the Senate, where they rest under the silence of the seals for more than two months. The Constitution assumes that the result of the election is still unknown. But on a day fixed by law, and the only day, of all the days of February, on which the law commands Congress to be in session, the last act in the plan of electing a President is to be performed.

How plain and simple are the words that describe this third and

last step! Here they are:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

Here is no ambiguity. Two words dominate and inspire the clause: They are the words open and count. These words are not shrouded in the black-letter mysteries of the law. They are plain words, understood by every man who speaks our mother-tongue, and

need no lexicon or commentary

need no lexicon or commentary.

Consider the grand and simple ceremonial by which the third act is to be completed. On the day fixed by law the two Houses of Congress are assembled. The President of the Senate, who, by the Constitution, has been made the custodian of the sealed certificates from all the electoral colleges, takes his place. The Constitution requires a "person" and a "presence." That "person" is the President of the Senate and that "presence" is the "presence" of the two Houses. Then two things are to be done. The certificates are to be opened and the votes are to be counted. These are not legislative acts, but clearly and plainly executive acts. I challenge any man to find anywhere an accepted definition of an executive act that does not include both these. They cannot be tortured into a meaning that will carry them beyond the boundaries of executive action. And one of these acts the President of the Senate is peremptorily ordered to perform. The Constitution commands him to "open all the certificates." Certificates of what? Certificates of the votes of the electoral col-Certificates of what? Certificates of the votes of the electoral colleges. Not any certificates that anybody may choose to send, but certificates of electors appointed by the States. The President of the Senate is presumed to know what are the States in the Union; who are their officers; and when he opens the certificates, he learns from the official resident of the field. the official record who have been appointed electors; and he finds their votes.

The Constitution contemplated the President of the Senate as the Vice-President of the United States, the elect of all the people. And to him is confided the great trust, the custodianship of the only official record of the election of President. What is it to "open the certificates?" It would be a narrow and inadequate view of that word to say that it means only the breaking of the seals. To open an envelope is not to "open the certificates." The certificate is not the paper on which the record is made; it is the record itself. To open the certificate is not a physical, but an intellectual act. It is to make patent the record; to publish it. When that is done the election of President and Vice-President is published. But one thing remains to be done; and here the language of the Constitution changes from the active to the passive voice, from the personal to the impersonal; to the trusted custodian of the votes, succeeds the impersouality of arithmetic; the votes have been made known; there remains only the command of the Constitution: "They shall be counted," that is, the numbers shall be added up.

No further act is required. The Constitution itself declares the

The person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed.

If no person has such majority, the House of Representatives shall immediately choose a President; not the House as organized for legislation, but a new electoral college is created out of the members of the House, by means of which each State has one vote for President, and only one

To review the ground over which I have traveled, the several acts that constitute the election of a President, may be symbolized by a pyramid consisting of three massive, separate blocks. The first, the creation of the electoral college by the States, is the broad base. It embraces the legislative, the judicial, and the executive powers of the States. All the departments of the State government and all the voters of the State co-operate in shaping and perfecting it.

The action of the electoral colleges forms the second block, perfect in itself and independent of the state co-operate in the second block, perfect in the second block is the second block.

in itself and independent of the others, superimposed with exactness

upon the first.

upon the first.

The opening and counting of the votes of the colleges, is the little block that crowns and completes the pyramid.

Such, Mr. Speaker, was the grand and simple plan by which the framers of the Constitution empowered all the people, acting under the laws of the several States, to create special and select colleges of independent electors to choose a President, who should be, not the creature of Congress, nor of the States, but the Chief Magistrate of the whole nation, the elect of all the people.

When the Constitution was completed and sent to the people of the States for ratification, it was subjected to the severest criticism of the ablest men of that generation. Those sections which related to the election of President not only escaped censure but received the highest commendation. The sixty-seventh number of the Federalist, written by Alexander Hamilton, was devoted to this feature of the instrument. That great writer congratulated the country that the convenment. That great writer congratulated the country that the convention had devised a method that made the President free from all pre-existing bodies, that protected the process of election from all inter-ference by Congress and from the cabals and intrigues so likely to arise in legislative bodies.\*

The earliest commentator upon the Constitution, St. George Tucker, of Virginia, writing at the beginning of the present century, made this clause of the Constitution the subject of special eulogy, and pointed to the fact that all the proceedings in relation to the election of a President were to be brief, summary, and decisive; that the right of the President to his office depended upon no one but the people themselves; and that the certificates of his election were to be publicly opened "and counted in the presence of the whole National Leg-

These anthorities I have quoted show that, great as was the satisfaction of the people with the mode of choosing a President, there was still an apprehension that trouble would arise from Con-

\*The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system of any consequence which has escaped without severe censure or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded. I venture somewhat further and hesitate not to affirm that, if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages the union of which was to be wished for. It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it not to any pre-established body, but to men chosen by the people for the special purpose and at the particular conjecture. \* \* \* They have not made the appointment of the President to depend on any pre-existing bodies of men who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust all those who from situation might be suspected of too great devotion to the President in office. \* \* \*

Another and no less important desideratum was that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to duration of his official consequence. This advantage will also be secured by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.—

\*\*From the sixty-secenth number of the Federalist.\*

† The electors, we perceive, are to assemble on one and the

gress, by the only avenue left open for its influence, namely, the contingency in which the House might elect. Every other door was shut and barred against the interference of Congress or any member of Congress.

THE BILL. Now, Mr. Speaker, contrast with the plan I have sketched, the theory of this bill. I have studied its provisions in the light of the Constitution; and I am compelled to declare that it assails and overthrows, to its very foundation, the constitutional plan. Congress, finding itself excluded from every step in the process of electing a President until the very last, from the mere fact that its presence is deemed necessary at the very last, from the mere fact that its presence is deemed necessary at the opening of the certificates and counting of the votes, takes occasion of that presence to usurp authority over the whole process from beginning to end. Coming only as an invited guest to witness a grand and imposing ceremony, this bill makes Congress the chief actor and umpire in the scene, and, under cover of the word "count," proposes to take command of every step in the process of making a President.

Recurring again to the illustration I have used, Congress, having a simple part to play in reference to the little block that crowns the pyramid, proposes to reach down through all the others and supervise the whole from apex to base; or, rather, it proposes to overturn the whole pyramid and stand it upon its apex, so that it shall rest, not upon the broad base of the people's will, but upon the uncertain and

despotic will of Congress.

This is usurpation in every meaning of the word. Though the Constitution has sought to keep Congress away from all the process of making a President, this bill creates and places in the control of Conmaking a President, this officerates and places in the control of Congress the enginery by which Presidents can be made and unmade at the caprice of the Senate and House. It grasps all the power, and holds States and electors as toys in its hands. It assumes the right of Congress to go down into the colleges and inquire into all the acts and facts connected with their work. It assumes the right of Congress to go down into the States, to review the act of every officer, to open every ballot-box, and to pass judgment upon every ballot cast by seven millions of Americans. by seven millions of Americans.

I know the bill is not proposed as a permanent law; but I know equally well that if the Congress of our centennial year pass this measure, they will destroy forever the constitutional plan of electing a President. Pass this bill, and the old constitutional safeguards are gone. Congress becomes a grand returning board from this day forward; and we shall see no more Presidents elected by the States until the people rebuke the apostacy and rebuild their old temple

Gentlemen on the other side of the House have expressed their

indignation that one or two States in the Union have established indignation that one or two States in the Union have established returning boards to examine and purge the returns from the ballot-boxes of their States; and I must say for myself that I would not tolerate such a board unless intimidation, outrage, and murder made it necessary to preserve the rights of voters. All the evils that have been charged against all the returning boards of the Southern States, this bill invites and welcomes to the Capitol of the nation. It makes Congress a vast, irresponsible returning board, with all the vices of and none of the excuses for the returning boards of the States.

Now, if this general arraignment of the bill be not justly and fairly made, I should be glad to hear the distinguished gentlemen who approve it show in what respect I have misrepresented or exaggerated its provisions.

approve it show in what respect I have misrepresented or exaggerated its provisions.

Mr. Speaker, our people have lived under the Constitution for eighty-seven years; and in all that time, until our Government was nearly wrecked by rebellion, the Congress has never ventured to touch with the smallest of its fingers the action of any recognized State of the Union in creating the electoral colleges, nor the action of the colleges themselves in the election.

Why, sir, in 1857 the electoral college in one of our States did not cast its vote on the day fixed by law; but the democratic President of the Senate counted the vote of Wisconsin and declared the result in spite of all the clamor that was raised against him by both Houses;

in spite of all the clamor that was raised against him by both Houses; and that vote stands on record as a part of the official count.

For more than three-quarters of a century, there has been but one ground on which Congress has ever challenged and excluded an electoral vote; and that ground was that some political organization calling itself a State was not a State in law and in fact. When Missouri tried to vote before it was admitted into the Union, and when Indiana

tried to vote before it was admitted into the Union, and when Indiana and Michigan tried to vote under like circumstances, their right to an electoral vote was challenged. That challenge might be defended on the ground that Congress alone can admit new States into the Union; and no political society except the original thirteen States is entitled to an electoral vote without previous recognition by Congress.

In 1805, while the fires of our great war were still blazing, when the vast war powers of the Constitution had been awakened from their sleep of half of a century, and when eleven States had broken away from their normal relations to the Union, the Congress, without reflection, and, as they have since discovered, without the warrant of the Constitution, adopted the twenty-second joint rule for the sole purpose of keeping States from voting that were not yet restored to their places in the Union. This rule was based on the same principle on which Congress had challenged the right of Missouri, Indiana, and Michigan to vote; but unfortunately it did not in terms restrict objection to that ground alone. From that joint rule has sprung most of our present entanglement; and the republican party is responsible.

It was one of the many mistakes of that party during those years, when, too powerful for its own good, or the good of the country, and flashed with victory, it went recklessly forward into acts that were

unwarranted by sound policy, and of doubtful constitutionality.

But for the adoption of the twenty-second joint rule, in the midst of war, and its continuation after the war had ended, the hasty judg-

of war, and its continuation after the war had ended, the basty judgments of Senators and Representatives would not now complicate and embarass this Congress in solving the present problem.

But it should not be forgotten that before this question arose, a republican Senate confessed the wrong and abolished the rule. At the last session of Congress, every Senator, without distinction of party, voted to declare it unwarranted by the Constitution. Even at this session, and in spite of the passion and heat of this presidential contest, all but four of the Senators who were present voted that the rule was no longer valid or binding. Every precedent which Congress made during the last fifteen years under that rule has come back to plague and disturb those who are seeking to find the way out of our present difficulties by following the Constitution and laws. Without reflection, men of both parties have committed themselves to the theory of the twenty-second joint rule, and their committals embartheory of the twenty-second joint rule, and their committals embar-rass their action to day. It is best for men and parties frankly to confess their errors and correct them.

But to return to the pending bill. Besides the general arraignment I have made, I find in this first section of the bill that it invites objections to counting the votes of the States. It commands the presiding officer that whenever a State is called, he shall call for objec-

siding officer that whenever a State is called, he shall call for objections; and as many objections as any two members of Congress, one from each House, shall please to make, shall be filed, no matter what the ground of objection may be; and immediately the two Houses shall separate to consider all such objections. If both Houses agree so to do, the vote of any State shall be rejected.

That first section deliberately provides that though a State has appointed electors in perfect accordance with the law, and through its electoral college may have fulfilled all points of the law; though the certificates may be regular and perfect in every particular, yet on the objection of two members of Congress, the two Houses may throw it out, may stifle the voice of that State, may nullify the constitutional out, may stifle the voice of that State, may nullify the constitutional election of a President. A legislative body is not obliged to give reasons for what it may lawfully do. It can act for bad reasons if it choose. I know the presumption of law is that all functionaries will choose. I know the presumption of law is that all functionaries will do their duty; but when we are conferring powers, we should ask what it is that we permit to be done. And the plain declaration of this first section is that Congress may at its discretion, for any reason good or bad, or for no reason, stifle the vote of any State. The Constitution commands that the votes shall be counted: this bill declares that the votes may be rejected. It is a monstrous assumption, a reckless usurpation of power. Congress may not use the vast powers herein granted; but a vote for this bill is a vote that Congress may thus act.

In opposition to this grant, I hold that neither House acting separately, nor both Houses acting concurrently, has any more authority to refuse to hear the voice of the State when it speaks through the law in electing a President, than Great Britain has to say that the State shall not vote. Yet this first section invites contests, and assumes the right of Congress, at will, to reject the vote of any State. If this section becomes a law, every close State will hereafter grow a luxurious crop of contests and unload their noxious harvests in the National Capitol. Not as in the past, one in the century, but squadrons of Cronins will invade the electoral colleges in each election in

the future.

From what part of the Constitution is this measureless assumption of power drawn? I have carefully read the debates in both Houses to find the source of this alleged authority, and I find but two clauses on which the allegation is based. The first is the simple fact of the on which the allegation is based. The first is the simple fact of the presence of the two Houses at the opening and counting of the votes. How much power can be evoked from the word "presence?" We have seen that in all the previous steps in the process of electing a President, the little that Congress was permitted to do by the Constitution was merely to fix a date; and finally, in the concluding act, the agency of Congress is narrowed down to a mere shadow, to a presence. That is all. But a great deal of ingenuity and eloquence have been expended to add "power" to that "presence." We are told it would be trifling with the dignity of Congress to call the two Houses as mere spectators of a dumb show. It may throw some light upon this word "presence" to ascertain what the different States of the Union have done in the matter of opening and declaring the votes of their people done in the matter of opening and declaring the votes of their people for State officers. I have taken the pains to examine the constitutions of thirty-seven States of the Union, all except that of Colorado, which I have not seen; and I find this: In thirty of the thirty-seven States the act of opening the votes and counting and declaring them is definitely and absolutely described in their constitutions as an executive act. In thirty States of the Union the duty is devolved upon executive officers. There are seven States, most of them the older States, in which the Legislature itself eating its officers. in which the Legislature itself, acting jointly or by means of joint committees, is the canvassing and returning board to examine the votes and declare the result.

Mr. HOAR. Does not my honorable friend know that in every American State in existence when the Constitution was adopted, the vote for governor was counted by the two branches of the Legisla-

Mr. GARFIELD. I will answer my friend with a great deal of Mr. GARFIELD. I will answer my friend with a great deal of pleasure by saying that in a majority of all the original thirteen States, in 1787, the Legislatures elected the governors. The people did not elect their supreme executive officer; and, as a matter of course, when the governor was elected by the Legislature, the Legislature managed the whole process from beginning to end. But it is true that in the gentleman's own State, and in Connecticut, and in New Hampshire the popular votes for governor were and in some States. New Hampshire, the popular votes for governor were, and in some States are still, returned, canvassed, counted, and declared by the Legisla-

Mr. HOAR. My friend does not answer the question to its full extent. Does he not know that, in every one of the old thirteen States, the vote for governor was counted by the Legislature, it being true that in some of them the Legislature cast the vote as well as counted it?

Mr. LAWRENCE. Let me say that it is not true of New York. On the contrary, the votes there were canvassed by officers designated, and the Legislature had no power over the subject.

Mr. GARFIELD. Allow me to read the provision of the constitution of my own State, made in 1802, under the immediate inspiration of the constitutional era, and the same language still stands in the constitution of Ohio with only a slight verbal change.

Here is the provision:

The president of the senate shall open and publish the returns in the presence a majority of the members of each house of the General Assembly.

of a majority of the members of each house of the General Assembly.

Substantially, the same language is used in the present constitutions of twenty-one States of the Union. In these States it is the unbroken practice that the presiding officer of the senate or house does open and does publish and does declare the result; and only where a contest arises, regulated by law, is the result as declared by him questioned at all. Though their constitutions require the presence of a state of both houses they have no function event that of with the context of the

tioned at all. Though their constitutions require the presence of a majority of both houses, they have no function except that of witnesses. If the dignity of twenty-one Legislatures is not affronted by this provision, the dignity of our two Houses ought not to suffer by granting its presence one day in four years.

An incident occurred in the State of Ohio nearly thirty years ago which is worthy of mention. The election for governor was close and doubtful. In obedience to the constitution both houses of the Legislature assembled, and the president of the senate proceeded to open and publish the returns. As the tellers were making the lists and footing up the votes an objection was made to counting the vote from one of the counties and the business was delayed by tumult, when the president of the senate, taking the certificates from the hands of the tellers, completed the count and declared the result, in obedience to the constitution. He did not permit the performance of an executo the constitution. He did not permit the performance of an execu-tive duty to be prevented or hindered even by the presence of legis-

lative witnesse

The claim is set up that the presence of the two Houses implies that they are to do something; that they are to count the votes. Formulate that construction in definite words and it will read: "In the presence of the two Houses the votes shall be counted by the two Houses." That is they shall count the votes in their own presence. Let us not charge the framers of the Constitution with such stupid tautology.

We have seen that in the third step, two things were to be done, two acts to be performed; not acts of legislation, not laws to be devised, but acts to be done, executive acts. And the only executive officer present is the President of the Senate. One of these two acts he is expressly commanded to perform; he "shall open all the certificates." That is past question.

In reference to the other, the Constitution says it shall be done. We are asked why the language changes from the active to the possive

are asked why the language changes from the active to the passive voice. I have already suggested the reason: that when the roll of voice. I have already suggested the reason: that when the roll of the States is called, each answers through the certificates which announce their votes for President and Vice-President. The States speak through the electoral colleges when their certificates are read, and nothing is left but the imperial command; the "votes shall be counted." Arithmetic does the work. It may be in the person of the President of the Senate, a teller, or a clerk.

What can be plainer than that our fathers intended that a certain, summary, and unquestioned result should be had? They determined to create a President; and they established a method which, if not

to create a President; and they established a method which, if not to create a President; and they established a method which, if not overthrown, would certainly accomplish the result. Mr. Speaker, I am not controverting the position taken by my friend from Massachusetts, [Mr. Hoar,] and I think justly, that, under the general clause in another section of the Constitution, Congress may regulate the method of doing anything that the Constitution orders to be done. I admit most fully that Congress may regulate the act of opening the certificates and may regulate the work of counting; but it cannot push its power to regulate, beyond the meaning of the words that describe the thing to be done. It cannot ingraft a judiciary system upon the word "open." It cannot evolve a court-martial from the word "count." It cannot erect a star chamber upon either or both of these words. It cannot plant the seeds of despotism between the these words. It cannot plant the seeds of despotism between the lines or the words of the Constitution.

I have no doubt that Congress, under the general clause referred to, may regulate how the opening of the certificates shall be done, whether in alphabetical or chronological order; and may make any regulation necessary and appropriate. I have no doubt that Congress may provide by law who shall count or add up the votes; how the lists of votes shall be recorded—whether on paper or parchment. I do not hold that the Constitution has made it the exclusive duty of the Pres-

ident of the Senate to count the votes. That is no part of my argument. It makes no difference who counts, only so that the counting is done. I am seeking to find what authority Congress may exercise in reference to the election of the President. I insist that Congress may legislate upon the subject wherever the Constitution has made legislation possible. But I insist that Congress can go no farther. In reference to the last act of the process, Congress cannot go beyond the just scope and meaning of the word "count." If gentlemen want to "stick in the bark" in their construction of this clause, let me follow their example for a moment. If you tell me that the power of the President of the Senate ends with the word "open," then I tell you that the presence of the two Houses is dispensed with at the same instant. He shall, in the presence of the two Houses, open all the certificates. Stop there. If at that point "the Constitution turns its back upon the President of the Senate," it also at the same moment turns its back upon the two Houses. The "presence" and the President disappear together.

But I do not propose thus to read the Constitution with a microscope. I admit the difficulty of the situation. I recognize honest differences of opinion in regard to the true construction of the clause. But after reading them all, I return to that clear and comprehensive exposition of the venerable Chancellor Kent, which was full of wisdom and of prophecy. It was his opinion that, in the absence of legislation on the subject, it would be the duty of the President of the Senate to count the votes and declare the result.

I do not object to an act of Congress to regulate all that can be regulated. I have never objected to such legislation. In 1868, on my motion, a resolution was passed by this House directing our Judiciary Committee to inquire into this question of such vital and transcendent importance, and report what legislation was possible. But no action was taken; and in the absence of legislation we are re-manded to the Constitution itself. If we obey it we shall find a plain way out of our troubles

gain I return to the bill before us, and call attention to the second Again I return to the only before us, and call attention to the second section, to the case where there are two returns. And here again is an invitation to anybody to get up a contest by sending "papers purporting to be certificates of electoral votes." It does not limit the contest to double returns from the officers of a State; but two or more returns from anybedy residing within the territory of a State may be considered under the provisions of this section. If anybody within a State manufactures a return, calls it a certificate of votes of electors, and forwards it to the President of the Senate, he must re ceive it and treat it as a return, and submit it to the tribunal provided by this section.

[Here the hammer fell.]

The SPEAKER pro tempore, (Mr. HOOKER.) The time of the gentleman from Ohio [Mr. Garfield] has expired.

Mr. HUBBELL. I move that the time of the gentleman be ex-

Mr. GARFIELD. Am I not speaking in my own right and entitled

to one hour?

The SPEAKER pro tempore. The gentleman was speaking in fifty minutes of the time of the gentleman from Maine, [Mr. HALE.]

Mr. GARFIELD. I supposed I was speaking in my own right; but if the Speaker rules otherwise I submit to his decision.

Mr. HOAR. I suppose that no other gentleman will desire to speak to-night, and I ask consent that the gentleman from Ohio [Mr. GARFIELD] have leave to proceed with his remarks.

The SPEAKER pro tempore. If there be no objection, the gentleman will be allowed to proceed.

There was no objection.

Mr. GARFIELD. I thank my friend from Massachusetts, [Mr. HOAR,] and also the House, for this courtesy.

Now in the case of a double return, a course is to be taken wholly unlike that which is laid down in the first section, where the vote of the State is left at the mercy of the two Houses. But double returns from a State are to be sent to a mixed commission, consisting of an equal number of members from each House of Congress and the Suequal number of members from each House of Congress and the Supreme Court. That commission is virtually clothed with power to hear and determine the vote of any such State, and its decision is the law, final and conclusive, unless both Houses shall concur in revers-

ing the decree.

The commission is authorized to do whatever the two Houses of Congress may do in reference to the presidential election. That is, Congress may do in reference to the presidential election. That is, Congress delegates its power to fifteen persons. If it be a delegation of legislative power, it is clearly in conflict with the Constitution; for all authorities concur in the doctrine that legislative power cannot be delegated. If the power conferred on the commission be executive or judicial power, then the members of the commission are officers of the United States, and their appointment is a legislative appointment. But the Constitution has placed the appointing of all officers in the hands of the President and the heads of Departments. When, in 1871, an associate justice of the Supreme Court, the late

When, in 1871, an associate justice of the Supreme Court, the late When, in 1871, an associate justice of the Supreme Court, the late Judge Nelson, was appointed on the joint high commission to negotiate the treaty of Washington, his name was sent to the Senate and confirmed on the 10th day of February, as were the nominations of the Secretary of State and the Attorney-General to the same commission. It was found necessary in order to comply with the Constitution that those commissioners should be appointed by the President and confirmed by the Senate. If the commissioners here proposed are officers, how can you take five Senators and five members of the House and make them officers when the Constitution forbids that a member of either House shall hold any office under the United States? Notice these difficulties that beset you at every step as you walk through the mazes of this bill.

the mazes of this bill.

But a far more important question is that of the powers conferred upon this commission. Here is certainly a new thing under the sun. This commission of fifteen persons is empowered to roam at will throughout the realms of the constitution and laws, and to assume whatever jurisdiction they think they are entitled to assume in reference to the subject. No jurisdiction limits are prescribed; but the commission is endowed "with the same powers now possessed by the two Houses acting separately or together." The two Houses of Congress say in effect to the commission: "We transfer our powers to you. Construe them for yourselves. Use or refuse them, as you please. If you choose to confine yourselves to the papers that have been delivered to the President of the Senate, halt there. If you conclude to enter the electoral colleges and overhaul them, enter. have been delivered to the President of the Senate, halt there. If you conclude to enter the electoral colleges and overhaul them, enter. If you choose to content yourselves with such an examination, stop there; but if you wish to go deeper and embrace within the sweep of your examination all the States and all the officers of the States, all the ballot-boxes and all the ballots in them, do so. Take the Sherman report, take the Morrison report, take the Howe report, take the Palmer report, take the Florida report and the South Carolina report, and the Cronin report. Accumulate cart-loads of reports and documents upon your tables, and sit down at your leisure to digest and make the most of them."

This, Mr. Speaker, is the scope of possible power given to this commission. And that is not enough. They may "take into view such petitions, depositions, and other papers, if any, as shall by the Constitution be competent and pertinent in such consideration." They may also send for persons and papers, because they have all the powers possessed by the two Houses or either of them; and this House certainly has shown its power to send for persons and papers beyond any other of its great powers. [Laughter.]

Now, I would treat this bill with all respect, for I do most sincerely respect the men who made it. But when the members of this commission come to verify and explore their powers, they will find one

respect the men who made it. But when the members of this commission come to verify and explore their powers, they will find one limitation so thoroughly Pickwickian, that I am sure they will enjoy it as literature, if not as law. That limitation is in the brief and crisp language of the bill "if any." The commission may do all these things enumerated; may exercise all the vast powers residing in the Constitution, or conferred upon either House of Congress, or both, "if any."

In reading this clause I was reminded of a speech delivered in this Hall about the years ago by a gentleman who was imploring up to

Hall about ten years ago by a gentleman who was imploring us to receive our southern brethren who came knocking at the doors of Congress, and not keep them out any longer. A distinguished gentleman from Illinois rose and said:

I desire to ask the gentleman from New Jersey what he would do if our southern brethren, as he calls them, should come to our doors with certificates of election to Congress and ask to be admitted while their hands are still red with the blood of our brethren of the North?

Pausing solemnly for a moment, the orator replied:

If our southren friends come to the door of this House and ask to be admitted, I, sir, for one, am in favor of receiving them in the very spirit in which they come to us, provided they come in that spirit.

[Laughter.]

[Laughter.]
So the commission may do all and singular and exercise all powers that are given, "if any;" but of the "if any" they must judge.
Now, Mr. Speaker, I call the attention of my distinguished friend from Massachusetts [Mr. Hoar] to what may happen if this bill should become a law. From a careful reading of its provisions, it appears entirely possible for the two Houses and the commission to revent the deal postion of any result relatives. appears entirely possible for the two Houses and the commission to prevent the declaration of any result whatever. Remembering that there are thirty-eight States, and that in each case the President of the Senate must call for objections, and that upon each objection the two Houses must separate, and that the debate may proceed for two hours upon each objection, and that the House may take a recess for one day on each of these objections, a failure to reach a result is altogether possible. Suppose the case of Florida is reached, and one party finds itself disappointed in the judgment of the tribunal, and is so determined not to be pleased with the result that it prefers to present a completion of the count; how can such an attempt be prevented under the provisions of this bill?

There are buttwenty-eight secular days from the day when the count

Prevented under the provisions of this bill?

There are buttwenty-eight secular days from the day when the count begins, before this Congress will expire by limitation. I want to ask my friend from Massachusetts whether he thinks there is no danger in that direction; whether he does not also see that this bill may make it impossible for the President of the Senate to obey the plain mandate of the Constitution that he "shall open all the certificates and the votes shall then be counted." There may be no then left in which to open the certificates near the foot of the list.

Mr. HOAR. As my distinguished friend from Ohio has invited.

Mr. HOAR. As my distinguished friend from Ohio has invited my attention to his argument, he will allow me to ask him whether the case he puts is not precisely such a one as may happen under any government under the sun; whether in any government the constituent parts may not refuse to do their duty. And what would happen under his theory if the President of the Senate did not choose to count the votes? Does the gentleman suppose the two House of to count the votes? Does the gentleman suppose the two Houses of

Congress are any more likely than any one man to refuse to perform their constitutional duty and thus permit the Government to go to

Mr. GARFIELD. My friend strengthens my argument. If the President of the Senate should refuse to open the certificates the Senate can depose him in an hour and put another President in his place who will obey the Constitution.

Mr. HOAR. Suppose the Senate should refuse to do it?

Mr. GARFIELD. Then you have a legislative body which you cannot control; and this illustrates the radical evil of this bill. It aomits to a share in counting the votes, two uncontrollable legislative bodies; but when that duty is in the hands of one person he is liable to punishment for neglect or malfeasance in office. And precisely for that reason my theory of the Constitution is safer and more

cisely for that reason my theory of the Constitution is safer and more practicable than that of my friend.

Mr. HOAR. Then the body that you cannot control is the only thing you have got to control him.

Mr. GARFIELD. Impeachment, expulsion, personal disgrace, all bear with tremendous force upon the individual officer. He is more amenable to public opinion and to the law that can seize him, and acts with a keener sense of personal responsibility than a legislative body, where responsibility is divided. The bad behavior of the two Houses is my friend's problem, not mine. When the Houses go wrong there is no remedy in a case like this. Quis custodiet ipsos custodes?

Mr. HOAR. That is a doctrine you cannot find in the American Constitution or the utterance of a single one of its framers.

Mr. GARFIELD. I think my friend will acknowledge that all executive officers are subject to impeachment and removal and punishment; but will he find anything in the doctrines of the fathers, in the Constitution, or the laws, by which a legislative body can be punished for a dereliction of duty?

The radical and incarable defect of this bill is that it puts a vast,

punished for a dereliction of duty?

The radical and incurable defect of this bill is that it puts a vast, cumbrous machine in the place of the simple, plain plan of the Constitution; it adopts a method which invites and augments the evils from which we now suffer. That there are difficulties in the present situation, I freely admit; that there may be doubt, honest doubt, in the minds of honest men as to who is elected President, I admit. But I think the bill introduced by my colleague from Ohio, [Mr. FOSTER,] which provides for submitting to the Supreme Court those questions of constitutional law about which we differ, would be far better. To the adjudication of that great and honored tribunal all would bow with ready obedience; but this novel, dangerous, and cumbrous device is, in my judgment, unwarranted by the Constitution. If we adopt it, we shirk a present difficulty, but in doing so we create far greater ones for those who come after us. What to us is a difficulty will be to them a peril.

will be to them a peril.

Mr. Speaker, I have trespassed too long upon on the indulgence of the House; but I cannot withhold from the gentleman from Massachusetts [Mr. Hoan] the tribute of my admiration for the earnestness and eloquence with which he closed his defense of this measure. I even shared his enthusiasm when looking forward to the future of this nation he pictured to our imagination the gratitude of those who this nation he pictured to our imagination the gratitude of those who may occupy these Halls a hundred years hence, for the wisdom which planned and virtue which adopted this act, which my friend believes to be the great act of the century; an act that solves a great national difficulty, that calms party passion, that averts the dangers of civil war. Let us hope, Mr. Speaker, that they will not be compelled to add that, though this act enabled the men of 1877 to escape from temporary troubles, yet it entailed upon their children evils far more serious and perils far more formidable; that it transmitted to them shattered institutions, and set the good ship of the Union adrift upon an unknown and harborless sea. I hope they may not say that we built no safeguard against dangers except the slight ones that threatened us. It would be a far higher tribute if they could say of us: "The men of 1876, who closed the cycle of the first century of the Republic, were men who, when they encountered danger, mct it with clear-eyed wisdom and calm courage. As the men of 1776 met the perils of their time without flinching, and through years of sacrifice, suffering, and blood conquered their independence and created a nation, so the men of 1876, after having defended the great inheritance from still greater perils, bravely faced and conquered all the difficulties of their own cpoch, and did not entail them upon their children.

"No threats of civil war, however formidable, could compel

"No threats of civil war, however formidable, could compel them to throw away any safeguard of liberty. The preservation of their institutions was to them an object of greater concern than present ease or temporary prosperity; and, instead of framing new devices which might endanger the old Constitution, they rejected all doubtful expedients; and, planting their feet upon the solid rock of the Constitution, they stood at their posts of duty until the tempest was overpassed, and peace walked hand in hand with liberty, ruled by law." [Applause.]

During the many calm years of the century, our political pilots have grown careless of the course. The master of a vessel sailing down Lake Ontario has the whole breadth of that beautiful inland sea for his pathway. But when his ship arrives at the chute of the La Chine there is but one path of safety. With a steady hand, a clear eye, and a brave heart, he points his prow to the well-fixed landmarks on the shore, and with death on either hand, makes the plunge and shoots the rapids in safety.

We too are approaching the narrows; and we hear the roar of angry

waters below, and the muttering of sullen thunder overhead. Unterrified by breakers or tempest, let us steer our course by the Consti-tution of our fathers, and we shall neither sink in the rapids, nor compel our children to "shoot Niagara" and perish in the whirlpool.

[Great applause.]
And then, on motion of Mr. PAYNE, (at eleven o'clock p. m.,) the House took a recess until ten o'clock to-morrow.

AFTER RECESS.

The recess having expired, the House re-assembled at ten o'clock a. a., (Friday, January 26.)
The SPEAKER. The gentleman from Mississippi [Mr. HOOKER]

is entitled to the floor.

Mr. HOOKER. Mr. Speaker, I am aware that it will be very diffi-cult after the discussion which has transpired in this Capitol in both Houses of so exhaustive a nature upon the subject-matter of the bill now before the Congress of the United States for any one, much less myself, to expect to add anything to the information or instruction of the House in what he may say. And in the few remarks that I shall offer I shall simply state the reason for the vote I shall subsequently give rather than attempt to enter into an argument covering

quently give rather than attempt to enter into an argument covering the ground already so completely occupied.

The objections to this bill have proceeded, Mr. Speaker, on two grounds: First, it is contended by certain of the opponents of this measure that it is inexpedient to pass it, for the reason that the Constitution provides that the President of the Senate, the Vice-President of the United States, should he occupy that position, or the President-elect of the Senate, would have the right, under the Constitution, to open and count the votes. And as a reason for this it has been urged that under all precedents from the beginning of the Government down to the present time such has been the case; and especially was it referred to by the gentleman from Maine [Mr. HALE] and the gentleman from Ohio, [Mr. Garfield.] They referred to what occurred in the first election and the second election of President of the United States as a reason and a precedent why the framers of the Constitution and those who lived contemporaneously with its adoption had yielded to this idea. But, on the contrary, so far from adoption had yielded to this idea. But, on the contrary, so far from that being correct, in 1841 and 1845 and 1849 and 1853 and 1857 and 1861 and 1865 and 1869 and 1873, as in every presidential election since 1797, and including that, the official record states—and I now quote from that record—that—

The two Houses of Congress having assembled the certificates of election of the several States for President and Vice-President were, in their presence, opened by the Vice-President and delivered to the tellers, who, having read and ascertained the number of voxes, presented to the Vice-President a list thereof.

And here ends the quotation. In 1793, when General Washington was unanimously re-elected, the proceedings differed somewhat from all that followed. The record states with reference to the count:

The two Houses having accordingly assembled, the certificates of the electors of the fifteen States in the Union, which came by express, were, by the Vice-President, opened, read, and delivered to the tellers appointed for the purpose, who having examined and ascertained the votes, presented a list of them to the Vice-President, which list was read to the two Houses, and is as follows:

It will be observed that even on this occasion in 1793, on the reelection of General Washington, while the President of the Senate opened and read the returns from the respective electoral colleges, they were yet delivered to the tellers appointed by the two Houses to examine and ascertain what the votes were and they were then they were yet derivered to the teller's appointed by the two hoses to examine and ascertain what the votes were, and they were then returned to the Vice-President, who simply performed the function of announcing the result. So much, then, for the precedent which was so much relied upon by the gentleman from Maine [Mr. HALE] in the argument which he made enforcing the idea that the Vice-President the Scatch half the secretary of the scatch half the scatch hal

the argument which he made enforcing the idea that the Vice-President of the Senate had the power to count.

In 1857, when the vote of Wisconsin was not cast upon the proper day, owing to the fact that the electors could not reach the capital of the State, but cast upon a subsequent day, the inquiry arcse as to whether the vote of Wisconsin should be counted; and after debate in each House, and the report of the tellers requiring it, it was counted. But in the course of the debate, the Vice-President was bitterly accused by men of both parties of having usurped a power with reference to counting the electoral vote with which he was not invested by the Constitution.

In reply to that the then Vice-President said that he "did not under

In reply to that, the then Vice-President said that he "did not undertake to decide whether the vote of Wisconsin was a good vote or a bad vote."

He disclaimed-I now quote his own language-

Having assumed on himself any authority to determine whether that vote or any ther vote was a good or a bad vote.

In the joint convention which assembled, Mr. Jones, one of the tellers, remarked:

I suppose, Mr. President, the proper way would be for the tellers to report the facts to the convention of the two Houses, and let them decide.

To which the Vice-President replied:

The presiding officer so considers. In the debate which ensued after the two Houses had separated, Mr. Seward said, speaking of the power which the Vice-President was accused of assuming:

A misunderstanding exists in both Houses of Congress whether the President of the Senate, acting, as I hold, as the organ of the Senate, has not passed upon the question and counted the votes from the State of Wisconsin, and whether that may not be drawn into a precedent hereafter. I am one of that number who think that the President has not counted them.

Mr. Douglas, then a distinguished Senator from the State of Illinois, commenting upon the same subject-matter of the assumed power of the Vice-President, said:

I rise to state that in my opinion the tellers have no right to authenticate the certificate until the two Houses have passed upon it as being a true count.

Mr. Crittenden said-

That any member of either House has the privilege and right to object to the counting of a vote.

And this is sufficient to answer the argument of the gentleman from Ohio, [Mr. Garfield,] that the first section of this bill gives to any member of either House the right to object. It existed under the Constitution. The bill does not give it, but it existed under the Constitution prior to any such proposition as that now submitted. But I proceed with the remarks of Mr. Crittenden. He said—

That any member of either House has the privilege and right to object to the counting of a vote, and that it was competent for the Senate and House of Representatives alone to decide upon that objection.

Speaking of a supposed assumption of authority by the Vice-President to declare the vote, he said:

It involves the privilege of determining a presidential election and declaring who shall be President. I protest against any such power.

So much, then, Mr. Speaker, for the early precedents upon this subject and the manner in which they run through the several occasions

ject and the manner in which they run through the several occasions when the powers of the two Houses were called in question.

The bill now before the House for consideration does nothing more than designate that five members of this body and five members of the Senate, together with five other persons to be selected in the mode in which the bill provides, shall act for the two Houses in counting the returns. This was a subject, Mr. Speaker, which was considered very much at length by the distinguished men who framed this Constitution. It is by no means a new question. It was debated in that convention at great length and debated in the convention of every State where the Constitution was subsequently considered. In the State where the Constitution was subsequently considered. In the convention of Pennsylvania a distinguished member of the convention of 1787 and also a member of the State convention to ratify and adopt the Constitution submitted by it, I allude to Mr. Wilson, of Pennsylvania, used this language:

The convention, sir, were perplexed with no part of this plan so much as with the mode of choosing the President of the United States.—Eliot's Debates, volume 3, page 297.

So that it will be observed that in that convention we have the testimony of Mr. Wilson that no subject engaged more largely the attention of the convention than the method and mode of counting the electoral vote. Then, sir, we have the testimony of Mr. Mason in the Virginia convention on the same subject, who used this lan-

grage:

We know the advantage the few have over the many. They can with facility act in concert and on a uniform system; they may join, scheme, and plot against the people without any chance of detection. The Senate and President will form a combination that cannot be prevented by the Representatives. The executive and legislative powers thus connected will destroy all balances. In its present form the guilty try themselves. The President is tried by his counselors. He is not removed from office during his trial. When he is arraigned for treason he has the command of the Army and may surround the Senate with thirty thousand troops. But I suppose that the cure for all evils, the virtue and integrity of our Representatives, will be thought sufficient security.—Elliot's Debates volume 2, page 364.

I will refer to what was said by Mr. Iredale in the convention of North Carolina, when, commenting on the manner in which the Pres ident was to be elected and the vote counted, Mr. Iredale used this

language:

The committee will recollect that the President is to be elected by electors appointed by each State, according to the number of Senators and Representatives which the State may be entitled to in the Congress; that they are to meet in the same day throughout the States and vote by ballot for two persons, one of whom shall not be an inhabitant of the same State with themselves. These votes are afterwards to be transmitted under scal to the scat of the General Government. The person who has the greatest number of votes, if it be a majority of the whole, will be President. If more than one have a majority and equal votes, the House of Representatives are to choose one of them. If none have a majority of votes, then the House of Representatives are to choose which of the persons they think proper out of the five highest on the list. The person having the next greatest number of votes is to be the Vice-President, unless two or more shall have equal votes, in which case the Senate is to choose one of them for Vice-President. If I recollect right, these are the principal characteristics. Thus, sir, two men will be in office at the same time: the President, who possesses in the highest degree the confidence of his country, and the Vice-President, who is thought to be next person in the Union most fit to perform this trust. Here, sir, every contingency is provided for. No faction or combination can bring about the election. It is probable that the choice will always fall upon a man of experience and fidelity. In all human probability no better mode of election could have been devised.

Governor Randolph, of Virginia, in the debates in replying to the criticisms of Mr. Henry on the large powers invested in the President and in favoring the adoption of the Constitution, used these significant words in regard to the election of a President:

How is the President elected? By the people, on the same day throughout the United States, by those whom the people please. There can be no concert between the electors. The votes are sent sealed to Congress. What are his "powers?" To see "the laws executed."—Elliot's Debates, Convention of 1787, volume 2, pages 168, 358, and 359.

So that it will be observed that two of the most prominent members of the convention of 1787, afterward acting in their State conventions, Mr. Iredale, of North Carolina, and Mr. Randolph, of Virginia, in speaking of transmitting the votes, did not speak of transmitting them to the Vice-President or the President of the Senate,

but of transmitting them to Congress, showing that the idea was that

Congress possessed power to supervise the count of those votes.

We have witnessed, sir, in later days, an extraordinary assumption We have witnessed, sir, in later days, an extraordinary assumption of authority and power, and particularly in this last election, by those controlling the military forces of the Government. That too was a subject under consideration by this convention. It was denounced by no man in terms more emphatic than it was by Mr. Dawes, when he reminded the convention that Charles II in England had kept in pay an army of 5,000 men, that James II had increased it to 30,000, and that this justly excited the alarm, indignation, and apprehension of the English people, so that when William III ascended the throne they ingrafted that principle on the English constitution which so many of the States have borrowed, declaring that in no case should the Executive arm, equip, or direct troops except by the assent of the Legislative Department of the Government.

So it will be observed that in every one of the conventions they

So it will be observed that in every one of the conventions they spoke of returning votes to Congress, and not to the Vice-President. The gentleman from Ohio [Mr. Garfield] in the course of his remarks said that the first section of this bill destroyed the electoral college entirely in the States. How so? On the contrary, it will be found in the sixth clause of the bill that it provides that the action of this commission shall be reviewed by either House upon the motion of five members of the House and five Senators. I quote that portion of the bill in order to show that the gentleman from Ohio has neither construed the first section nor the subsequent one correctly in reference to this matter:

Whereupon the two Houses shall again meet; and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith—

That is, in conformity with the finding of the commission-

unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise; in which case such concurrent order shall govern.

There is, therefore, no surrender of the power of either House. five members of the Senate and five members of the House should desire it, instead of being bound by the finding of the commission, they shall act as they always do, by concurrent resolution or order of

It was further insisted by the gentleman from Ohio that these electoral colleges were despotic in their powers; that they meet as representatives of the people, appointed by the people, but yet, that they were so despotic that when they had assembled and cast their vote there was no power on earth that could correct it. He went on further to remark in regard to the provision of the Constitution that required the presence of the two Houses when the vote was counted. What sort of presence did the gentleman from Ohio say it should be? Why, that they were to be here as dull spectators of the count which the Vice-President was to make; that they were to be here with lips closed and minds sealed, and no one of the five senses able to be exercised save those of sight and hearing; that they were to be here as witnesses of the count of the vote by the Vice-President or President of the Senate, without power to open their lips, without power to object to wrong, without power of resisting corruption, and without power to prevent an unfair return by the Vice-President of the United

Why, sir, the proposition of the gentleman from Ohio is a monstrous why, sir, the proposition of the gentleman from Ohio is a monstrous proposition, clothing this electoral college under the Constitution, not with the power of representing the people, but with a despotic power, and saying that though the Constitution provides that the two Houses shall be present, they shall be present without any authority to ask whether the Vice-President has counted correctly or not. This theory is in violation, as I have shown, of all the precedents; for invariably in the larger number of cases since the first election of President of the United States it will be found that in some way or other, by concurrent action of the two Houses tellers some way or other, by concurrent action of the two Houses, tellers have been appointed, to whom, when the Vice-President has performed the function of breaking the seals of the returns, they have been submitted for examination and computation.

Can these tellers, the mere creatures of the House, compute improperly and yet the Senate and the House be powerless to correct their action or object to it? Suppose the tellers should make a miscount of a vote actually returned, are the two Houses necessarily dumb while this wrong is perpetrated by their own agents? Should the President of the Senate, after the tellers have computed and ascertained the count, report to the two Houses that a different man was elected from

the one whom they knew to be elected; are they to sit quietly by and see this assumption of authority and not be able to control it?

It was argued by the gentleman from Ohio that this power was confided to one man because the framers of the Constitution wanted to devolve this duty upon some one who would be amenable to law, who would be subject to impeachment, and thus within the power of who would be subject to impeachment, and thus within the power of the two Houses. For this reason, he argued, the power was confided, not to the two Houses, but to a particular individual. So far is this from being true, that this officer is but the agent of the electoral colleges, the conduit pipe as it were by which the votes of the people, as cast by their electors, may be transmitted to the two Houses.

No question, Mr. Speaker, excited profounder attention in the convention of 1787 than the manner of selecting the Executive. There was no subject upon which the framers of the Constitution felt greater

jealousy than the power of the Executive. It was urged by some of the members of that convention that as the Senate would have the right to try any case of impeachment, the President of the United States would thus be tried by his own counselors and advisers. This was the argument made in reference to that body. There was great jealousy of its power from the fact that it was to have the right to confirm the appointments made by the President. Mr. Monroe, of Virginia, who was a member of the convention of his own State, when Virginia, who was a member of the convention of his own State, when he came to discuss the question of the Vice-President and his powers, used this remarkable language: "The Vice-President is wholly unnecessary." A very large number of members of the convention of 1787 and of many of the State conventions were of opinion that the presiding officers of the Senate should in all cases be an officer chosen from that body and not elected from any outside source. Yet shall it be said that this convention would so jealously guard the Excentive from infringing upon the powers of the legislative department by assuming authority not granted in the Constitution, and yet would confide to this officer whom one of the most prominent members of the convention thought unnecessary under our form of Government the power to determine who should be President? Mr. Monroe, in the course of his observations in the Virginia convention, makes the recourse of his observations in the Virginia convention, makes the remark that the Vice-President, for whom this extraordinary power is claimed, would, in many cases, have the right to make a President and that he might be interested himself in the result of an election.

In the short time allotted to me this morning, I shall not be able to cover entirely the ground which would naturally be consumed in an argument of this discussion; but so much has been said on this subject that it is unnecessary to travel over it. I simply repeat that all the precedents from 1793 down to the present time show that the mode of counting the vote for President and Vice-President has always been fixed by the two Houses in some way, and never arranged by them in such a manner that the two Houses were not present. I take it for granted that the framers of the Constitution did not intend to make an idle provision, and that when they provided for the presence it for granted that the framers of the Constitution did not intend to make an idle provision, and that when they provided for the presence of the two Houses they meant that these Houses should be present for the purpose of inspecting the vote through their tellers or their agents. It is proposed in this instance to do that through a commission; and I will say, so far as regards the report of the committee who have given us this bill, that it comes to us sanctioned by the wisest and ablest men of our own body, who have devoted to this subject close study of several weeks, and by the wisest and ablest men of the other side of the Capitol, men of both parties, who believe that this is the most feasible method of meeting the difficulties that now stare us in the face. us in the face.

Sir, it was said by the gentleman from Ohio, in commencing his speech, that he had scorn and contempt for anything looking like force. I have yet to hear on this side of the Chamber, and especially from any southern man, any idea other than that there is virtue enough in the Constitution and laws of the land, and virtue enough in the great heart of the people, to decide this question without even a reference or an allusion to the subject of war. I never have doubted that this question would be solved by the wisdom of the American people and of their representatives in Congress without regard to anything like force. I have believed that the same sagacity, prudence, and wisdom which have characterized those who have preceded us in settling questions of this nature will also characterize our action. I think, Mr. Speaker, that there is no time for appealing to partisan passion and prejudice, for arousing the feeling of the people by unwise, incantious, and uncertain words. On the contrary, whatever is spoken here should be spoken in words of wisdom and prudence and caution, but at the same time with firmness for whatever of constitutional right either House may possess. They should be words of wisdom and truth designed

truth designed

To shed
On ears abused by falsehood, truths of power In words immortal—not such words as flash From the fieree demagogue's unthinking rage, To madden for a moment and expire—Nor such as the rapt or artor imbues
With warmth of facile sympathy, and mold To mirrors radiant with fair images
To grace the noble fervor of an hour;
But words which bear the spirit of great truths
Winged for the future; such as the dying breath of Freedom's martyr shapes, as it exhales,
And to the most enduring forms of earth
Commits—to linger in the craggy shade of the huge valley, 'neath the eagle's home, or in the sea-cave where the tempeet sleeps,
Till some heroic spirit bid them wake
To thrill the world with echoes.

[Here the hammer fell.]

Mr. HARTRIDGE. I do not propose, Mr. Speaker, to enter at any great length into the argument of the questions involved in the bill pending before this House. Even if I desired to do so the limited period of time which is alloted to me for my argument would prevent any extensive elaboration of the thoughts I propose to present for the consideration of this House.

I may be permitted to premise my observations by declaring that I have arrived at a conclusion upon this subject after long and careful and anxious thought and study. I may say that I have arrived at it after many vacillations of purpose and of mind, for the principles involved in this bill, the great principles of its constitutional

purity and strength, are such that any mind might well hesitate at arriving at a conclusion promptly.

If there be any section of this broad land which more than another

requires the preservation, in all its purity, all its sanctity, all its strength, of the Constitution of this country, it is that section of which I have the honor to be one of the representatives. If there be any portion of the American people who more than another should guard and criticise anything which is said or done in reference to that Constitution, it is the people who are suffering now from what they once conceived to be their proper interpretation of that Constitution, but which interpretation was met by force of arms and another placed upon it, issuing almost in their ruin, certainly in the prostration of all their material interests and all their interests in

Therefore, I am tender in approaching the Constitution. I feel that when I do so I come like the patriarch of Israel when approaching the Litrael when secret ground, and I must put my the burning bush: I tread upon sacred ground, and I must put my shoes from off my feet. Therefore, I have sternly investigated my own mind before I could come to a conclusion upon this subject.

I know that the Constitution may suffer from the mistakes of its own friends as well as from the assaults of its enemies. I know that it makes no difference whether the blow be inflicted by the hand of an open enemy or of a mistaken friend. It matters not whether the

an open enemy or of a mistaken friend. It matters not whether the rent be one which an envious Casca makes or one through which a well-beloved Brutus stabs. In either case as the "cursed steel" is plucked away the blood of liberty will follow it.

Therefore, I say, I have struggled and striven with my own mind and my own intention. But as I speak under the sanctity of the oath I have taken to support that Constitution, I am conscientions when I declare to these my fellow-members that I do believe that this bill presented for our consideration is perfectly constitutional and safe. If it be constitutional in its provisions then there is but one other question to ask: that is, is, it fair to all parties and to all the people?

question to ask; that is, is it fair to all parties and to all the people? Is it fair to all parties? Sir, the tribunal that we seek under this bill is one that will be bound by the solemnity of an oath; a tribunal chosen from both Houses of Congress and from the Supreme Court of the United States; a tribunal which is to be selected for the wisdom, the patriotism, the fairness of mind of those who shall take part in its deliberations and its actions.

I am not one of those who believe in the utter depravity of human an not one of those who believe in the utter deprayity of human nature. I am not one of those who believe that because men belong to a political party they cannot rise above the atmosphere of passion and of prejudice. We have seen recently, in this very bill itself we have seen, how noble men, politicians, friends of particular party creed, could cast aside their passions and their prejudices and array creed, could cast aside their passions and their prejudices and array themselves almost unitedly upon the side of patriotism and of their country. Therefore, what has been done I believe can be done again. I believe that this tribunal will be one governed by fairness, governed by law, governed by patriotism, governed by the Constitution. If this bill is fair and constitutional, why cannot we support it? Is it not our duty to support it? Constitutional? Why not? The Constitution of the United States is silent upon the points involved in this bill. After declaring that the presiding officer of the Senate

in this bill. After declaring that the presiding officer of the Senate shall open the certificates and that the vote shall then be counted, the shall open the certificates and that the vote shall then be counted, the Constitution is silent. No mode is pointed out by that Constitution for examining into a disputed case. No tribunal is pointed out by that Constitution to decide between contesting applicants for an office. It is silent; there is something wanting. It may be that those who framed that Constitution never contemplated the responsibility of such an extremity as is now upon us. But, whatever were their motives, nothing is said, nothing is declared, nothing is determined, nothing is marked out in that Constitution for our guidance.

But the power is left to Congress. Power is given to Congress to

But the power is left to Congress. Power is given to Congress to see to the counting of these votes, to see that the President of the United States is fairly elected by the count of the legal votes cast by

the different electoral colleges.

And this Congress now seeks to do this thing. Time and again other Congresses have sought to do it. This is not the first time the question has arisen, this is not the first time the question has been presented to the consideration of the American Congress. again efforts have been made in this direction, but through some cause or other failed. But now there is a necessity for this action.

Sir, I would prefer for myself an amendment to the Constitution,

marking out for all time provisions of a bill like this. And if this were a bill to govern more than this present Congress it might not receive my sanction.

But this bill amounts to nothing more nor less than this, that these but this oill amounts to nothing more nor less than this, that these two Houses by concurrent vote will declare how the vote shall be counted. They bind this and no future Congress. They simply declare that we, having the power to count these votes, decree concurrently that they shall be counted in a certain way. That is all. But, sir, if this bill took it entirely out of the hands of Congress, gave Congress no revision, gave Congress no control, allowed Congress no action upon the action of this committee or commission, then

gress no action upon the action of this committee or commission, then I would not give it my support. For I do not believe we can entirely disencumber ourselves of our task. I do not believe we can impose our duty entirely upon somebody else to discharge and perform for us. But this bill keeps in the hands of Congress the power of revision. It declares emphatically when this commission shall make an award or a judgment that that shall stand unless the two Houses by con-

current vote shall reject it, leaving the two Houses power by concurrence of action to reject whatever may be the judgment of this commission.

What greater power than that can be claimed for Congress? know that some parties still persist in advocating the doctrine that the presiding officer of the Senate alone has the power to discharge this duty, to count these votes, and decide whether they are right or wrong. Sir, I shall not undertake now, at this late day, to answer that argument. It would be like fighting with windmills, or belaboring an opponent prostrate upon the ground, for the argument has

been entirely overthrown.

I know that there are members of my own party, persuasion, and politics who believe that the two Houses must by concurrent vote politics who believe that the two Houses must by concurrent vote count in, instead of by concurrent vote reject; but, sir, that doctrine is not held by all members of the democratic party. There is doubt even in that party line which is the right and which is the wrong doctrine. There always has been, and if we go back to the times when the Constitution was young, when it was interpreted by its framers, we will find the ablest and best exponents of the doctrine of State rights, the most strict constructionists of the Constitution itself held to the doctrine set forth in this very bill, that it required the concurrent action of the two Houses to reject a vote.

current action of the two Houses to reject a vote.

Mr. Speaker, I find in 1800, when this very subject was under consideration, a bill like this passed the Senate, but it did not have in it the power retained in the two Houses to reject a vote. The House of Representatives put in an amendment, reserving to the two Houses the right concurrently to review the vote, to reject a vote. That went to the Senate. In the Senate it was amended by striking out the word "reject," and putting in the word "count;" and that amendment came back to the House of Representatives, and when it came what happened? The House received this bill with amendments, one of which, "respecting the election of President," was, instead of the word "rejecting" (in the bill) any vote or votes by a concurrent vote of the two Houses, the word "admitting" was proposed by the Senate. Mr. Harper—Robert Goodloe Harper—and Mr. Bayard hoped the House would not concur, and the yeas and nays were taken, and the amendment was rejected, 15 yeas, 73 nays. Among those voting to reject that amendment, therefore among those to retain the provision that it required the concurrent action of the two Houses the provision that it required the concurrent action of the two Houses to reject a vote just like this bill does, I find these names: James A. Bayard, William C. C. Claiborne, Samuel J. Cabell. Albert Gallatin, Robert Goodloe Harper, Thomas Pinckney, Edward Livingstone, Nathaniel Macon, John Nicholas, and John Randolph of Roanoke. Surely if I had any doubts, if I had any doubts of the propriety of this provision, I, a humble individual, might well yield them to an array of such a list of names of earnest supporters of the rights of the States, earnest supporters of strict construction of the Constitution. Therefore I have no doubt about the constitutionality of this tion. Therefore I have no doubt about the constitutionality of this bill.

I believe it to be fair. I believe it to be equitable. I believe it to be demanded by the exigencies of the times and of the country. I believe it, above all, to be constitutional. And for these reasons I shall

give it my support.

Sir, I am not one of those who apprehend war or difficulty arising from the troubles now around us. I never have apprehended or believed that there would be a clash of arms growing out of this quesneved that there would be a clash of arms growing out of this question. I know that the American people in their great heart are too much wrapped up in constitutional liberty to have arms clashing over a constitutional question like this. I am not one of those who believe in the approaching downfall of that constitutional liberty. Constitutional liberty has been before in as great straits as now. But it never has been destroyed entirely. From the day when it was wrested in an unshapen, unformed condition from an English tyrant wrested in an unshapen, unformed condition from an English tyrant at Runnymede, by the iron-mailed hands of English barons, to the present hour, when it stands invested with the full stature and majesty of manhood; through all the vicissitudes of change and time and blood, it has never died. Time and again it has seemed to be overthrown in the tunults of temporary revolution, or destroyed by the vacillating changes of the popular will. Time and again the hand of some Tudor or Stuart, or the power of some star chamber, or the grasp of some military despotism, has seemed to crush it into dust. But each time the example of some Hampden, or the sacrifice of some Warren, has proved to the world that it still existed, and still claimed its followers and apostles. Ay, time and again the life has seemed warren, has proved to the world that it still existed, and still claimed its followers and apostles. Ay, time and again the life has seemed to depart from its body, and that body, clothed in the cerements of the grave, has been put away out of sight into what seemed to be its eternal tomb. But its disciples had only to labor and to wait, and each time some hand has been found to roll away the stone from the door of the sepulcher; and issuing forth in all its pristine vigor and beauty, it has again shed sunshine and safety all over the land.

Sir, I stand almost beneath the coat of arms of my native State, engraved upon the ceiling of this Hall. There is the arch of the Constitution, supported by the three pillars, upon which respectively are inscribed the words "wisdom," "justice," and "moderation." If these three words can be the talismans to control our action-wisdom in the concert of measures, justice in executing them for the benefit of all alike, moderation in the exercise of power—if we will act under the inspiration of those words, and so contain and so control ourselves, we will hand down and perpetuate for posterity the great principles of constitutional liberty. [Applause.]

yield what remains of my time to my colleague, Mr. Felton. Mr. FELTON. Mr. Speaker, there is nothing in the plan of adjust-ment proposed by the committee which in my judgment conflicts with the provisions of the Constitution.

It is simply a commission created by Congress, clothed with its powers to inquire into the law and the facts, and when a decision is reached by that commission their report becomes a guide to congressional action.

It is not a compromise, for that would imply a concession of prin-

ciple, a surrender of opinion for a common benefit.

In this bill each party and every shade of opinion connected with the vexed question of counting the electoral vote is respected and guarded from attack until it can be ascertained by the wisest, purest, and most patriotic tribunal that this country can organize whether this or that political party and what previously-formed opinions are in harmony with the constitutional law of the land.

It is a movement in the interest of peace and in opposition to all revolutionary measures. This country for weeks has been on the verge of a most terrible political and social convulsion. Law, order, and prosperity were equally poised in the scale of chance with violence, fraud, and financial ruin. Good men awaited in breathless expectancy the crash which seemed inevitable. Business was paralyzed in every section of the country, and confidence, which is so essential to prosperous business communities, was being destroyed just as it

was on the eve of a permanent restoration.

By the conservative stand taken by this House of Representatives, their determination to maintain the Constitution and the laws, and never to tolerate any proceeding that was revolutionary in its character, we have been instrumental in bringing to pass that which occurred in 1821 under the wise and conservative influence of the statesmen of that day; also, that which occurred in 1833 by the houest and intelligent leaders of that period; and that which should and would have occurred in 1860, if our statesmanship had been equal to the demands of the occasion, namely, existing difficulties have been adjusted, the Constitution and the laws have been respected, the Union has been preserved, civil strife has been averted, and a prosperous future secured for us and our children.

The strength of republican governments has frequently been called into question. From the beginning it was charged by our enemies that these institutions were well enough adapted to a young government, in a formative condition, with a circumscribed territory, homogeneous population, identified in all their interests and pursuits. But when our population should increase and approximate in numbers the population of the oldest and most substantial monarchies of Europe; that when our interests and pursuits became diversified and necessarily antagonistic; that when the products, labor, and customs of one section began to clash with those of another section; that as wealth concentrated and the multitude found it more difficult to sustain themselves; that as avarice and ambition should develop a party spirit, inflamed by a common desire for place, power, and personal enjoyment of the revenues and patronage of the Government as all these elements of disintegration and dissolution should be evolved by time and growth, our form of government would gradually weaken and, like all its predecessors, disappear in blood, anarchy, and despotism.

One of our great orators has expressed this doubt and uncertainty in language made memorable by its eloquence: "We stand the latest and perhaps the last experiment of self-government." Is it true that self-government is still an experiment? Is the doctrine that governments derive their just powers from the consent of the governed still a problem in process of solution?

The man of science asserts what he supposes a truth. He has expended time, labor, and fortune in its attainment. If it be truth, it is valuable to the world. The doubt can only be settled by experi-

That "idea," with all its accompaniments, is thrown into the crucible to be tested; an hour may establish its falsity, or it may emerge from that crucible "more precious than gold tried in the fire."

Republican forms of government have been attempted in nearly every age of the world, but never under so favorable circumstances as in this country and in our one hundreth year.

We are constrained to believe that it is yet watched by the patriot as an experiment; watched not only in this country, but watched by the purest and best of our race thoughout the world. We have been notified by the exigencies of this presidential muddle that the experiment approaches its culmination. The supreme moment is at hand, and we are to take off the lid of the crucible and find either the hopes of the world turned to ashes or find those hopes consolidated and perfected, bearing these glowing words, "In perpetuum."

The question to be considered in estimating the strength of our

Government and its adaptation to the necessities of our rapidly-increasing population is simply the capacity of the people through their representatives to preserve and perpetuate the Constitution and the laws of the Republic.

A constitution is sometimes defined as the fundamental law of a state, containing the principles upon which the government is founded.

In American constitutional law the word "constitution" is used as implying the written instrument agreed upon by the people of the Union as the absolute rule of action and decision for all departments and officers of the Government, in respect to all the points covered by it, until it be changed by the authority which established it, and in opposition to which any act or regulation of any such department, or officer, or even of the people themselves, will be altogether void.

A government may have a constitution and yet not be a constitutional government. The mere grant of a constitution does not make the government a constitutional government, until the executive, the legislative, and the judicial departments of the government, and until even the people themselves, unless acting in a constitutional way, are deprived of power to set it aside at will.

Magna Charta did not make the English a constitutional monarchy, and it was not until after the Crown was deprived of all power to set

and it was not until after the Crown was deprived of all power to set it aside that civil liberty was protected by constitutional guarantees and the government became constitutional.

The product of constitutional government is civil liberty; this is the resultant of all governments of limited and enumerated powers. Our founders were assured of this truth, and they declared the object of our Constitution to be the establishment of justice, domestic tranquillity, the general welfare, and the blessings of liberty to themselves and their posterity.

Every lover of his country is interested in preserving the Constitu-

Every lover of his country is interested in preserving the Constitution of his country. Its preservation means liberty to ourselves and our posterity. It is the anchor which in the storm holds fast the ship which is freighted with all the blessings of peace, prosperity, and happiness that may be in store for us and our children. It is the rock in the wilderness which our fathers under the inspiration of the hour commanded to send forth that stream which is to irrigate and enrich the political wastes of the world. Wherever its refreshing waters touch there the wilderness is made to "blossom as the rose."

It is said that some of the deserts—the wild, barren, burning, sandy plains which abound in the East—give signs of having been once fertile and productive lands, perchance crowded with a dense and thrifty population. Magnificent cities were there, as is proven by the broken columns and sculptured marbles which are occasionally

thrifty population. Magnificent cities were there, as is proven by the broken columns and sculptured marbles which are occasionally brought to light by the excavator. Flowers bloomed around happy homes. By some convulsion in nature, the streams which traversed those lands were dried up at their sources or diverted from their channels and sought the sea through other outlets. Is it possible that somewhere in the future some author of the "Decline and Fall of the Republic" shall, in prosecuting his inquiries, excavate from the débris of history some fragment, some broken column of American constitutional liberty, revealing the fact that there once existed a government securing to its inhabitants the "blessings of liberty" where only the dreary, bitter rule of despots shall appear?

Every act of a people outside of their written constitution is revolutionary, and the product of almost all revolutionary measures undertaken by the citizens of a constitutional government is despotism.

dertaken by the citizens of a constitutional government is despotism.

Where a new form of government is desirable, where existing evils are insupportable, then revolution may relax the hold of the oppressor or may at least modify the exactions of unjust rulers or disperse the conspirators against the public welfare.

perse the conspirators against the public welfare.

But when the citizens of a free republic undertake to correct real or imaginary evils; to right wrong-doing or maladministrations, or to enforce the will of a faction or party, by measures outside their written constitution, the result is generally the destruction of all that is valuable in that republic. Nay, more. When a free people desire to enforce the constitutional provisions of their government, that enforcement must be according to constitutional requirements.

It will not do to resort to unconstitutional or revolutionary measures for the preservation of the Constitution. We elect a President every four years. Heretofore there has been no difficulty in determining who was constitutionally elected, or in the event there was no election by the electoral college, the election passed into the House and the chosen man was inaugurated.

no election by the electoral college, the election passed into the House and the chosen man was inaugurated.

But now honest men cannot agree. I am sincere in my convictions that Mr. Tilden is elected. Others, equally sincere, believe that we must take the results of returning-boards, and thereby inaugurate Mr. Hayes. There are others whose personal ambition and partisan corruption may incline them to intervene between the ballot-box and the inauguration of the constitutionally chosen President. Will you find the solution of such a crisis in revolutionary measures? Never. We think every act which has for its object the stifling of the popular will at the ballot-box is revolutionary in its character. Shall we meet these revolutionary acts by counter-violations of our fundamental law? Never! Rather let us meet them by constitutional and legal remedies, and by exposing the frauds, plots, and conspiracies of men who are seeking a partisin triumph by overturning the supremacy of the ballot-box. Let us make political trickery odious, and at the same time forever establish the vital principles of free government.

government.

The men who would resort to force to throttle the verdict of the ballot-box, to make any man President who has been rejected by the

ballot-box, to make any man President who has been rejected by the people, or to prevent any man from being President who has been constitutionally elected, are public enemies, and, to the extent of their ability, are destroying the foundations of our free institutions. The man who dreams of military power as a remedy for any difficulty arising out of the exercise of the elective franchise has never appreciated the beautiful delicacy, the wonderful complexity, or the glorious purposes of republican forms of government; he has certainly read history to little advantage.

History teaches that in all elective governments, whether they be republics or monarchies, the critical period with them is when the administration of public affairs is passing from the hands of one man or party into the hands of another; that has been the time when personal ambition, partisan prejudice, or an inordinate desire for public plunder, have found it most convenient to array themselves against the will of the cation as expressed at the ballot-box.

Take Poland for an example. From 1573, when Poland became an elective monarchy, and Henry Duke of Anjou was called to the throne by the votes of the nobles, until the abdication and death of Stanislaus, in 1798, at nearly every election for a new monarch personal feuds, civil dissensions, and the clashing swords of rival aspirants impoverished and disgraced that unhappy country.

Take our neighboring republic, Mexico. Since 1821, when this country declared her independence and Iturbide was emperor, and during the time that Santa Anna was made its first president, in all about fifty-six years, I am told there have been fifty-five revolutions to found as many dynasties in that faction-cursed republic. Nature made Mexico an earthly paradise. In climate, soil, mineral wealth, and facilities for commercial enterprises there is no land on the globe excelling Mexico. Yet her civilization and prosperity have been reexcerning stexico. Let her civilization and prosperity have been retarded, her resources undeveloped, her government made a by-word and reproach among the nations; revolutionary factions determined to advance their own personal interest, as ignorant of and as indifferent to the claims of the public welfare as the brutal savages they profess to have supplanted, having no conception of self-government

to advance their own personal interest, as ignorant of and as indifferent to the claims of the public welfare as the brutal savages they profess to have supplanted, having no conception of self-government and no idea of constitutional remedies as separate and distinct from the rattle of musketry or the less harmless rattle of pronunciamientos. In Mexico aspirants for office and an unwise partisanship among the people are the exciting causes of all their troubles. The leaders, who are generally military men and unfitted by their professional training for the administration of civil affairs, and who are surrounded by a multitude of impecunious attachés, succeed in their insurrectionary purposes. They involve the people in fratricidal war; property is destroyed; all business pursuits are suspended; there is not sufficient intelligence and virtue among the people to resist the pressure of these military adventurers and attachés, and the result is the government passes for a short time into the hands of a few idle, scheming, corrupt, and unprincipled politicians, who in turn are driven away by a swarm of more desperate political brigands.

I apprehend no such fate awaits this Republic. Our politicians and partisan leaders may be crafty and ambitious; they may have lost that delicate sensitiveness to public honor which characterized our fathers; the bulwarks which the old régime threw around the national escutcheon may have been swept away; political corruption and official peculation may have been setartling in their dimensions, but as long as the people remain as they are, intelligent, virtuous, and patriotic, we have an unquestioned security against all attacks upon constitutional liberty by corrupt and ambitious leaders.

The people must and will govern this country. They will govern it according to the Constitution and the laws, and political overthrow and disgrace awaits the man or party which is arrayed against the popular will constitutionally expressed. Leaders of a party may be capable of the most palpable

tricks or the legerdemain of State canvassing boards.

The object of this commission is to determine among other matters how and for whom the people voted.

Again, sir, this commission will give strength to the incoming Ad-Again, sir, this commission will give strength to the incoming Administration. If by any means a man becomes President of this Republic with the taint of illegality or fraud attaching to his inauguration, with a large number of his fellow-citizens believing that he unjustly occupies the position of Chief Magistrate, he will have done more to weaken confidence in our republican institutions than all the errors, mistakes, and unconstitutional acts of his predecessors, for he will have struck a blow at the very source of free government and will have given a precedent for future usurpations that may lead to the permanent overthrow of the Constitution.

I cannot believe that either of the honorable competitors for the next Presidency would be willing to accept the position under such damaging surroundings. I cannot believe that either of the great political parties which control this country would be willing to see their favorite go into office under the imputation of fraud, or even of irregularity, for they must love country better than party ascendency, they must value the happiness of their children, which is inseparably bound up with our country's Constitution, more than the partisan triumphs of the hour.

partisan triumphs of the hour.

This commission will free the incoming Administration of all taint of irregularity or fraud.

I care not who had been made President by the action of Congress without the intervention of this board of arbitrators, he would have

been met at the threshold of his administration with the charge of usurpation and dissension; party strife and desperate political measures would have characterized the next four years, to the utter prosares would have characterized the next four years, to the utter prostration of business and the possible overthrow of the Government. As much as I desire to see Mr. Tilden President, I never wish him to occupy that exalted position charged by a large and controlling party as a usurper. No, sir; by the passage of this bill respectability is guaranteed to whoever may be President, and no barrier will be thrown in his pathway of duty.

The passage of this bill will be the proof that in moments of great peril the American people are prepared to subordinate all partisan excitement to the general welfare, and that our Government, under the guidance of an intelligent citizenship, is self-adjusting in all its

the guidance of an intelligent citizenship, is self-adjusting in all its parts. As time rolls on, with increasing population and wealth, we will apprehend no trouble from increasing friction or multiplying

The passage of this bill may sweep to destruction many things which have long barricaded the progress and prosperity of this country. Like the ice-gorge which oftentimes gathers in navigable rivers, blocking up and arresting all trade, when under more genial suns and influences the final break-up occurs, there is carried to the bottom in the crash the partition, the plunge, all that lies in its path-

way.
So this political and presidential gorge, which has been gathering and threatening for weeks, will carry under, when it breaks, many of the worm-eaten men and parties which have obstructed the nation's progress; and nothing shall be seen on the broad, deep stream of liberty but the Constitution and Union of our fathers.

Mr. MILLS obtained the floor. When he had spoken ten minutes,

he was interrupted by
Mr. BAKER, of Indiana, who said: I rise to a question of order. My
point of order is that the gentleman from Texas has spoken ten minutes, and that under the order made by unanimous consent yesterday the last four hours preceding three o'clock were to be devoted to speeches not exceeding ten minutes in length. I send to the Clerk's desk, to be read, the remarks of the Speaker in having that order made.

The SPEAKER. The Chair desires to state that the reason why The SPEARER. The Chair desires to state that the reason why he did not call the gentleman from Texas to order at the expiration of ten minutes was that on this question, as is well known, each side is somewhat divided in judgment. It seemed proper to the Chair that each division of the two sides should be heard upon this question at length in argument. The friends of the bill on the left of the Chair have been heard and the opponents of the bill on the left of the Chair have been heard at some length, indeed at considerable length, while the friends of the bill on they have been heard. while the friends of the bill on the right of the Chair have been heard at considerable length and no member of the House on the right of the Chair who desires to vote against this bill has yet been heard. The Chair thought that, in administering the hour, it was nothing more than right and just that some one should be heard at length in opposition to this bill upon the right side of the House, and up to this time the opportunity has been denied them. If the House desires the execution of the order and puts the interpretation upon it as indicated by the gentleman from Indiana, there is no help but for the

Chair to enforce it.

Mr. BAKER, of Indiana. I ask that the Clerk read the language of the order of the House made yesterday in regard to debate.

The SPEAKER. The Chair recognizes the fact that the order of the House was that the last four hours of the debate should be confined to ten-minute speeches, but the order is not distinct whether that does or does not include the hour after the previous question.

Mr. HOLMAN. I suggest to my colleague [Mr. BAKER] that under the circumstances he consent that ten minutes additional time be al-

lowed to the gentleman from Texas, [Mr. MILLS.]

Mr. BAKER, of Indiana. I should be as much gratified as anyone to hear the gentleman from Texas. I did not make the objection in consequence of any indisposition to listen to him, but because under the order of the House there is now only four hours left for debate before the previous question is to be called. There are a very large number of gentlemen who desire to be heard, and if the gentleman from Texas [Mr. Mills] is allowed to consume an hour at this time it will deprive at least five other members of the opportunity to be heard.

Mr. HOLMAN. Let him have ten minutes more.

Mr. BAKER, of Indiana. So far as I am personally concerned, if the gentleman from Texas desires only ten minutes more, I will with-

draw my objection.

Mr. TOWNSEND, of New York. The time for debate having been limited to three o'clock this afternoon, if the order be not enforced, there are twenty-five members who have put down their names for remarks who cannot be heard. I do think that the majority of this House have had their share of this debate and that the minority ought to be heard. I must object to extending the time to any one.

ought to be heard. I must object to extending the time to any one.
Mr. PAGE. I would suggest to the gentleman from Texas that
some gentleman on that side belonging to the minority upon this
question can be recognized and yield his time to him.
Mr. MILLS. I hope I shall not be placed in that situation. I
appeal to the sense of justice of the majority of this House to permit
the minority to be heard. This bill is as good as passed, and there is
no need for indecent haste about it. I want that our ideas may go

upon record in this centennial year, so that a hundred years from now, when it is again proposed to violate the Constitution, the reasons of those who now oppose it may be found upon the record.

Mr. HUNTON. I trust that the objection of the gentleman from New York [Mr. Townsend] will be withdrawn, and that the gentleman from Texas will be allowed to go on for ten minutes longer.

Mr. TOWNSEND, of New York. I will withdraw my objection if

the time for calling the previous question can be extended to ten minutes after three o'clock.

Mr. HUNTON. I hope the gentleman will say half an hour.

Mr. TOWNSEND, of New York. I am willing to allow the gentle-

man a half an hour, if the time for calling the previous question can be extended after three o'clock for half an hour, so that the additional time shall not be taken out of that which should be given to

The SPEAKER. The Chair thinks that would be the most fair and just way. The Chair understands that unanimous consent is asked that the gentleman from Texas [Mr. MILLS] may continue his remarks for thirty minutes longer.

Mr. MILLS. I ask for one hour from the time I commenced, and

that the time for debate be so far extended.

The SPEAKER. The gentleman asks for one hour from the time he commenced, and that the previous question shall not be called until four o'clock, instead of at three o'clock.

Mr. HUBBELL. I object to that.

Mr. BANKS. I hope there will be no objection.

The SPEAKER. That will interfere with no right that any other members were here.

member may have.

Mr. HUBBELL. I will withdraw my objection.

Mr. HOGE. I renew it.

Mr. BAKER, of Indiana. I must object to any extension of time, unless the understanding is that the previous question shall not be called until four o'clock

The SPEAKER. That is what the Chair stated.

Mr. HOAR. In regard to the order made by unanimous consent yesterday concerning debate upon this bill, I have this suggestion to make: The committee have had and have exercised to a large degree, if not entirely—I gave away my own time to my friend from Maine, [Mr. Hale]—the power of beginning this debate. That practice usually obtains where the committee are divided in sentiments, as they ordinarily are, in regard to the questions that are considered and reported upon by them.

Mr. MILLS. I hope this is not coming out of my time.

The SPEAKER. It is not.

Mr. HOAR. In this case the report was made by a united commit-

ee, so that five hours of the debate to start with (not including the hour to which I was entitled as a member of the committee) have been controlled by five gentlemen friendly to the measure, which does operate a certain injustice to the opponents of the bill. The SPEAKER. So the Chair thinks.

Mr. HOAR. I do not think the House thought of that at the time the order was made. I thought of it and gave a great deal of my time to the gentleman from Maine, [Mr. Hale.] Perhaps the House will see that a brief extension of time to be enjoyed by the opponents of the bill would not be unjust under the circumstance

The SPEAKER. The Chair desires to state that under the arrangement made on yesterday in regard to the debate the gentleman from Texas would have been entitled to the floor when the House met at ten o'clock this morning. But last night unanimous consent was given to the gentleman from Ohio [Mr. Garfield] to extend his remarks beyond the hour to which he was entitled. That was one of the hours for which general debate was allowed. The consequence was that the gentleman from Texas is thrown an hour or a part of an hour beyond the

man from Texas is thrown an hour or a part of an hour beyond the time when he was to have the floor.

Mr. BANKS. I have never known a question of this magnitude to be pressed within so small a compass of time for debate.

Now the committee had almost the entire day yesterday. The tenminute speeches of to-day are of no account. Nobody wants to speak under that limitation upon a question of this sort. I would like to speak myself; but I waive my privilege that I may hear others. I hope there will be no objection to the gentleman from Texas proceeding in the way he has proposed.

ing in the way he has proposed.

The SPEAKER. The Chair thinks this additional time will really be but justice to the gentleman from Texas who, by reason of the extension of time on the other side of the House, was this morning

cut out from the first hour.

Mr. LAPHAM. If the order of yesterday fixing the hour for closing this debate is to be changed, I trust that no definite time for terminating the discussion will be now fixed. This measure occupied two legislative days in the Senate besides one whole night embracing twelve hours of discussion. Yet in this body, much more numerous than the Senate, it is proposed to occupy but half the time which was given to the debate in the Senate. I ask, therefore, that the time for closing this debate may be left undetermined at present, to be fixed

by the House after the discussion has proceeded further.

Mr. PAYNE. There is great propriety and justice in allowing the opponents of this bill the additional hour that has been suggested; and for one I do not propose to antagonize that proposition. But beyond that I must object to extending the time for calling the pre-

vious question.

Mr. FORT. I trust the committee will let loose the gag on this question and allow some others to speak besides those whom the comquestion and allow some others to speak besides those whom the committee select. I think that a question of this importance ought not to be run through in this manner. I appeal to the gentleman from Ohio [Mr. PAYNE] to loosen the gag and allow gentlemen to talk without any extraordinary restriction.

Mr. MILLS. I hope gentlemen will defer this debate till I get through with my remarks.

Mr. SPRINGER. The committee do not undertake to control the

The SPEAKER. All of yesterday except one hour was controlled

by the committee.
Mr. SPRINGER. I mean that the time to-day is not under the con-

trol of the committee.

Mr. BANKS. I hope the House will consider that when the committee occupied the time yesterday they occupied practically the whole time allotted for debate. Ten minutes is no time for any one who wants to discuss the principles of this bill. I hope the gentleman from Texas will be allowed to speak his hour. I trust nobody

man from Texas will be allowed to speak his hour. I trust nobody on this side will object to it.

The SPEAKER. Unless that arrangement be assented to, gentlemen on the right who are opposed to this measure will have had no opportunity to argue the question fully.

Mr. HOAR. I hope my colleague [Mr. Banks] will understand that the committee agree with him entirely.

Mr. BAKER, of Indiana. I trust that our friends on this side will interpose no objection to the order extending the debate one hour and giving the gentleman from Texas that hour.

The SPEAKER. The Chair hears no objection to the proposition of the gentleman from Texas.

Mr. CLYMER. Does this arrangement extend the time for demand-

Mr. CLYMER. Does this arrangement extend the time for demand-

ing the previous question?
The SPEAKER. It extends it till four o'clock.

Mr. MILLS resumed and concluded his speech, which is as follows: Mr. Speaker-

I feel like one
Who treads alone
Some banquet-hall deserted,
Whose lights are fled,
Whose garlands dead,
And all but he departed.

Laughter.]

My convictions of duty compel me to oppose the compromise of the joint committee. Having sworn to support the Constitution, without any "mental reservation or purpose of evasion," I will endeavor to keep the obligation that oath imposes without variableness or shadow of turning. It is the supreme law of the land, and it exacts obedience from every citizen. I have been taught to believe that it created a Government whose power was divided into three co-ordinate and independent departments: that every step toward the concentration of these three into one was a step fraught with great peril to popular liberty, and when the union is consummated we should have the very essence and definition of despotism.

It was most aptly said by Mr. Justice Davis in the Milligan case, and said for all of his brethren:

The Constitution is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all

For well nigh a century it has borne us along through storms as well as calms. It has carried us victoriously through foreign wars as well as through the most gigantic civil insurrection ever seen on the earth since the morning stars sang together. It has been subjected to every conceivable test, and it still remains to us a fortress and a strong tower where the genius of free institutions may stand and defy all the storms of partisan rage and disappointed ambition. The very object of a constitution is to guard the public safety in times of peril; but now we are told, after its reign of almost a hundred years, that safety can better be secured by abandoning its protection and fleeing for aid to temporizing expedients. If democratic statesmen abandon its defense, as their adversaries have done, we shall soon see the end of its authority, and its beneficent reign end in clouds and darkness and storm. Had it not been for their strict vigilance and unfaltering and storm. Had it not been for their strict vigilance and unfaitering devotion to it at all times and under all circumstances; had it not been that they had kept the eyes of the people constantly fixed upon its infractions and the dangers that threatened it with overthrow and ruin, it would have been to-day nothing but the form of a republic driven to anarchy by madness and ambition and governed and misgoverned by military pronunciamentos.

What is needed, sir, is not a more accurate method of ascertaining what is needed President. It is not that the law is not sufficiently clear to enable us to learn and obey the public will. But what is

who is the elected Fresident. It is not that the law is not sufficiently clear to enable us to learn and obey the public will. But what is wanting among the people, or a portion of the people, is a disposition to obey the popular will when that will has been expressed against their own inclinations. I care not how clear the law may be, it is utterly powerless without the disposition to support and obey it. That is a virtue without which it is impossible to sustain republican government. Let us stand upon that magnificent platform which was given to the country by General Grant a few years ago in a letter addressed by him to President Johnson. He said:

This is a Republic where the will of the people is the law of the land. I beg that their voice may be heard.

Let us all get upon this platform and let us invite the President to come upon it himself, and all apprehensions for the public safety will at once be dispelled. Believing that the Constitution is adequate to every emergency, that it provides for every contingency, that there is no necessity to resort to extraneous aids to preserve the Government, I cannot consent to give my vote to a measure that paralyzes the power of this House and transfers that which it cannot transfer to a tribunal unknown to the Constitution, the power to determine to a tribunal unknown to the Constitution, the power to determine who is the elected President of the United States. It is a practical abdication of power by the House. To pass this bill is to surrender the trust reposed in us by our constituents and abandon them to the hazard of the die.

We are told, sir, that there is a difference of opinion about who is elected and who shall count the electoral vote, and unless this compromise is adopted the worst of consequences may ensue. For nearly a century we have had presidential elections, and they have always been contested with great earnestness and attended with high popular excitement. At the end of each of those campaigns the votes have been returned, the electors appointed, their votes have been cast and sent to the Vice-President. They have been opened by him, as

directed by the Constitution, and counted by the two Houses.

Never on one single occasion has the Vice-President exercised the right, or claimed it even, to determine what votes should be counted. Such a doctrine is a new revelation that was made during the last canvass. The disciples of this faith are now very zealous and profess to be profoundly sincere in their convictions. This power they derive from the power granted him to open the certificates. The canons of interpretation tell us that language in the Constitution is to be construed like language in any other law. If that be true, the expression of the power conferred on him would exclude all other perpression of the power conferred on him would exclude all other persons from opening said certificates, and would likewise exclude all other power except that of opening the certificates. When that is done, and the certificates delivered to the two Houses, his power over them ceases. But does not the Constitution say that "the votes shall then be counted." Yes. By whom? There are but two parties present; it must be by one or both of them. The Senate and House of Representatives are there, with their officers. The Vice-President is there, but the Sergeant-at-Arms is there also, as is the Speaker and Sergeant-at-Arms of the House. The Vice-President detached from the Senate is an official nonentity. There are three departments in the Government; he is an officer of the Government, and must belong to some one of them. He must be a part of the executive, a part of the judicial, or a part of the legislative. If he is not a part of one of these, he is a myth. We know that he is not a part of the execution of any of the laws. We know that he is not a part of the judicial, for he neither exercises judicial powers nor enforces the orders of those who do. Then he must be a part of the legislative. That is divided into neither exercises judicial powers nor enforces the orders of those who do. Then he must be a part of the legislative. That is divided into two branches, a Senate and a House of Representatives. He is certainly not a part of the House; he must be a part of the Senate. He has his seat there, presides over its deliberations, votes with them, preserves order, opens and delivers to them all communications addressed to him as Vice-President that require the action of the Senate. Then, sir, when he is present in the joint session, he is there as a part of the Senate, and can be there in no other capacity. As the returns are directed to him, he is to open them. They are directed to him rather than the Speaker because he is a higher officer, and that deference was due to the dignity of the position as well as the officer who filled it. The Constitution requires the votes to be counted then and there. Why should the presiding officer of the Senate open them rather than the presiding officer of the House? Because he presides in the joint session by the law of courtesy, and the presiding officer was the proper person to open them, he already having them in his custody. them in his custody.

But there is another insuperable objection to the right asserted. The Constitution provides that in a certain contingency the House of Representatives shall elect the President, and it is an undisputed of Representatives shall elect the President, and it is an undisputed rule of law that where a power is to be exercised upon the happening of a contingency the body upon whom it is conferred must determine for itself when that contingency shall happen. But if the Vice-President is the sole judge of the vote, and his judgment cannot be questioned, he can elect whom he pleases and the House could never elect; or you must have two elections and Presidents, both provided for by the Constitution. You have two tribunals, each supreme, and each having jurisdiction to determine the same fact. But that is not the end of the tangled web. The Senate in a certain contingency, of which it is the sole judge, is to elect a Vice-President. The Vice-President counts the vote and decides two persons are elected President and Vice-President. The Senate says the count between the candidates for Vice-President was a tie and proceeds to elect. The House says the same of the count between the candidates for Presidents, and all legally elected. The Constitution never contained such folly. How are these inconsistencies to be reconciled? Certainly not upon the hypothesis that the encies to be reconciled? Certainly not upon the hypothesis that the Vice-President has anything to do with the count at all. The pretensions of the Vice-President are as inconsistent with common sense

as they are with a correct construction of the Constitution.

Thus far I have no objection to the bill. It settles that question, which was from the beginning a bold and palpable absurdity. I wish

it had gone no further; but it has, and established a tribunal two-thirds legislative and one-third judicial, and to that tribunal it has transferred the settlement of the question that the Constitution im-posed upon the two Houses. Impolitic as this measure is, it would not have been in violation of the Constitution if it did not deprive one branch of Congress of its equal power to hear and determine the ques-tion. If when this award is made and submitted to the two Houses the bill had provided that it should not be adopted until both of them agreed to it, it would leave the power of each House unimpaired. Each House is equally the judge of what votes shall be counted and who is elected; but this bill provides that when the award of the joint commission is made that it will require the concurrence of both Houses to reject it; or, in other words, the assent of but one House will sustain it, thereby allowing one House to count the votes and declare the President elected. When votes are opened in the presence of the two Houses, they cannot be counted except by the assent of both Houses. Each has exactly the same powers as the other. If they both agree to count a vote or not to count, they will both agree when a President is elected and when he is not; they will both concur when the contingency happens that the one must elect a President and the other a Vice-President. There can never be any collision between them. There is no provision in the Constitution where joint action is required that anything can be accomplished without the concurrence of both Houses. The two Houses are a legislative unit, and the assent of a part of it is not sufficient to meet the demand upon the whole; wherever they are required to join in the performance of a duty, if they do bill had provided that it should not be adopted until both of them agreed

part of it is not sumicient to meet the demand upon the whole; wherever they are required to join in the performance of a duty, if they do not agree, everything remains as though they had not met.

The idea is obscured by the way it is presented by the bill. The whole subject is obscured by standing the proposition on its head instead of its feet. The proposition of the committee is that it will require both Houses to concur to reject the decree of the commission, or one House assenting to it counts its vote. The other House is ignored. It should have required both Houses to have consented to the decision of the commission. Then their power would have remained unimpaired. Every count of the electoral vote, from the origin of the Government to the present time, has been by the concurrence of both Houses. Such is the unbroken line of precedents; such is the twenty-second joint rule, from which the Senate seceded last session to deprive a democratic House of any voice in counting the electoral vote at the present time. The practical effect of this bill is that the body controlled by the party for whose benefit the vote is to be cast can admit it, though it be a gross and palpable fraud, and the other House is powerless to prevent it. The legislative department of the Government is designated as the tribunal to count the vote because it can exercise both legislative and judicial powers on that question. The legislative department only can decide political questions. If there are two governments in a State, an illustration which we have before our eyes, both send electoral votes to be counted, the first question to be determined is a political one, which is the rightful State government? And to determine it Congress must act; that is, both Houses. After the political question is settled then come the judicial questions, ineligibility, fraud, or other. have required both Houses to have consented to the decision of the

the political question is settled then come the judicial questions, ineligibility, fraud, or other.

The Supreme Court held in Luther w. Borden that the judiciary could not determine who was the chief magistrate of the little State of Rhode Island. But this bill says five of its judges have the power to determine who is the Chief Magistrate of thirty-eight States. The people never designed to confer on the Supreme Court power to determine who should be their President. That is a power they lodged far beyond the reach of the judiciary. And if the Supreme Court had not the power to enjoin the President from doing an unlawful act, as they held they had not in the Georgia and Mississippi cases, how could they in all the solemnity of their assembled gowns determine who was the legal Chief Magistrate of forty-five millions of people? This question the people have left with the representatives of the States and the representatives of the people, and they must be left untrammeled in the exercise of their judgment and neither House must be fettered or its equal power in the least impaired.

No man can be legally the President of the United States unless both Houses have concurred in declaring him elected, or both Houses

No man can be legally the President of the United States unless both Houses have concurred in declaring him elected, or both Houses have concurred in declaring no one is elected and the House elects. In this proposition I am sustained by the unbroken practice of the Government from its beginning. Mr. Clay announced this doctrine in 1821, and it was not controverted by a single Senator or member in that Congress. The gentleman from Georgia [Mr. HARTRIDGE] eulogized the names of Randolph and Macon and other American eulogized the names of Randolph and Macon and other American statesmen who in the great contest of 1800 had voted for a measure like this to avoid the evils of a threatened civil war. He extolled their patriotism and their great abilities, and in doing it he touched a chord in my bosom that responded to every sentiment he so eloquently uttered. But, sir, when I produce the name of Henry Clay, who when besought by anxious friends to espouse that which conscience said was wrong, that which he felt while bringing weal to him would bring woe to his country, said, "I had rather be right than be President;" the man whose sleepless devotion to the people won for him the title of "the Great Commoner"—when I can produce his name to sustain the position I take here, I can more than match any other name that has ever attracted the admiration of the American people. Mr. Clay, after stating that in determining the question "the people. Mr. Clay, after stating that in determining the question "the two Houses must decide what are votes," said:

Will the House allow that officer-

The Vice-President-

singly and alone, thus virtually to decide the question of the legality of the votes? If not, how then were they to proceed? Was it to be settled by the decision of the two Houses conjointly or of the Houses separately? One House would say the votes ought to be counted, the other that they ought not; and then the votes would be lost altogether.

Another American statesman who is still with us, and advocating now the power of the Vice-President to decide the question, held a few years ago that it required the concurrence of both Houses to count a vote. In the debate in the Senate in 1875 he said:

You cannot leave it to one House alone; they do not agree. You cannot read both sets; you can only read one set, and therefore read that set which both Houses of Congress, supposing men to be patriotic and to be honest and acting under the obligations of the Constitution and their oaths, shall decide to be the true and valid return. I think that is the fairest way.

Mr. EATÖN. Suppose they do not agree on the same return. What then?

Mr. MORTON. The vote goes out. The State has no vote.

In the same debate Mr. THURMAN said :

Something must be done for a case where there are two conflicting returns; and what can you do but require the two Houses to consider each of those returns, and then determine which of them shall be received? They can make no decision to receive one unless both Houses congur. One House has no superiority over the

I will give a quotation from a recent letter by Judge Comstock, formerly of the supreme court of the State of New York, and one of the ablest judges that ever sat in that court. He says:

the ablest judges that ever sat in that court. He says:

Howillusive and deceptive, then, must be all devices and all contrivances conceived with the end in view of counting electoral votes against the constitutional protest of either Houses of Congress. All such devices and contrivances terminate in the denial of a great and vital power, the existence of which is conceded at the very point where the work of circumvention and fraud begins. I believe the people earnestly intend that the Constitution shall not be thus made the sport of political parties. They cannot tolerate one interpretion to-day and another to-morrow, as partisan necessities may vibrate and change on one side or the other. In the justly aroused state of the public feeling it is dangerous thus to sport and play with the Constitution. The great and delicate powers which it confers must be executed. They cannot with impunity be openly trampled upon or fraudulently circumvented. In my opinion, most deferentially entertained, they are ample to meet all the phases of the present emergency. New and untried expedients are as unnecessary as they are without warrant in the fundamental law or in the precedents and usages of our past history.

Some weeks ago this House appointed a select committee to examine and report to it what were the powers and privileges of this House in counting the electoral vote. They made a report to the House embracing six points; the fifth was—

That in the counting of the electoral vote no vote can be counted against the judgment and determination of the House of Representatives.

On that committee were, among others, Messrs. Knott, Tucker, and Field, three of the ablest lawyers in the House. A week ago, if this House had been called on to vote on the adoption of that report, it House had been called on to vote on the adoption of that report, it would have received every democratic vote in this House. Why have they retreated from it now? Have they taken counsel from their fears? Will they abandon the powers and prerogatives of this House, which is the voice of the people, because the republican party threaten to seize the Government by force? A wonderful change has come over the spirit of their dreams in a few short days.

For myself, sir, I will not shun the responsibility that attaches to my position. I will never give my vote to disarm this House of the power it has to assert and maintain the rights of the people. If popular government is to be overthrown, and a minority is to dictate to the majority and enforce its orders by the military power of the Government, I will not legalize the robbery nor do any act to screen its deformity from the eyes of the people.

There is a serious objection to this bill on the score of policy. It

deformity from the eyes of the people.

There is a serious objection to this bill on the score of policy. It is the first step toward an alliance between the legislative and the judicial departments; and when the union is completed the judiciary must pass completely under the influence of the legislative department; it will lose its independence and its integrity and become the mere serf of political power. It will be degraded. Each of these departments must be kept perfectly independent of each other or civil liberty must perish. This is the lesson we read on all the pages of history. Are we, sir, without instances illustrating this truth in our own history? Within the last few years we have passed through the dark night of civil strife. Storms of passion have swept the land, and Congress has been filled with political madmen. The Supreme Court, independent of them, holding their places for life, have stood like a rock against which the waves have dashed and broken. Congress twice changed the number of its members to compel it to conform to the legislative will, but it continued in the even tenor of its way, and that way was always to stand by the Constitution in its way, and that way was always to stand by the Constitution in every utterance that fell from the bench. In December, 1866, the Supreme Court decided the Milligan case,

declaring that civil liberty and martial law could not endure together, that the antagonism was irreconcilable, and in the conflict one or the that the antagonism was irreconcilable, and in the conflict one or the other must perish. They declared that all the safeguards of personal liberty secured by the Constitution remained inviolate, excepting alone the privilege of the writ of habeas corpus, and when that was suspended by Congress the highest stretch of arbitrary power was to detain the body of its victim; that it could not try him; that he could only be tried by jury, after an indictment by another jury; that when tried he could only be convicted by the unanimous voice of the whole panel. They declared that there was no place in our system where such a monster as a military commission could live; that it had no powers; its judgments were without authority except the yet, sir, as soon as that decision was rendered, the Congress of the United States passed an infamous bill that will stand a perpetual blot upon our civilization. It annihilated States that the authority of the highwayman's code that might makes right. blot upon our civilization. It annihilated States that the Supreme Court say are indestructible. It subjected the civil power to the military when the court held that the military was subordinate to the civil. In willful and wanton defiance of the Constitution and the decision of the court it created military commissions and invested the monsters with power to drag its victims from the tribunals ordained monsters with power to drag its victims from the tribunals ordained by the Constitution and deprive them of life and liberty without cause and without trial. The Executive, then independent, vetoed the bill, and in his message returning it called the attention of Congress to the decision of the Supreme Court, condemning their pretended authority to pass such a law under the Constitution which they had sworn to support, but they shut their eyes and rushed headlong to the consummation of their purposes. They voted again to stab the Constitution which they had sworn to support "without purpose of eyasion". Do you think it is safe to subject the indiciary to the of evasion." Do you think it is safe to subject the judiciary to the influences of such red-bonneted Jacobins? Do you propose to wed the judiciary to this department that for ten years has been engaged in a revolution to overthrow the Government and erect a military despotism upon its ruins? If you do, as one of the representatives of the people and in their name I forbid the bans.

Sir, after that bill had become a law and the present Executive was in the presidential chair, a citizen of Texas was seized at the bar of one of her civil courts, where he stood covered with the panoply of the Constitution and the laws, ready to make his defense before a jury of his peers; he was hurried before a military commission, passed the ordeal of a mock trial, and was condemned to be hanged. The record ordeal of a mock trial, and was condemned to be hanged. The record of this court was laid before the President, who required the opinion of his Attorney-General before he would approve it. This officer, under the pernicious influences of the legislative department, gave an elaborate opinion in the face of the decision of the Supreme Court, telling the President that the military commission had the right to try and condemn a citizen to death, and advising him that he saw no good

reason for withholding his approval. Whether or not the sentence was executed I am not informed, but if it was I have the authority of the Supreme Court for saying it was murder.

On the 14th of January, 1867, the Supreme Court decided the cases of Cummings and Garland, declaring that test oaths which deprived or cummings and dariand, decraring that test daths which deprived a citizen of any right by legislative enactment for past conduct, under any form, however disguised, was a bill of attainder, and called by name and interdicted by the Constitution; and yet, sir, this House on the 22d day of the same month passed a bill prohibiting persons from practicing law in the courts of the United States for past con-

In Garland's case they declared that the Constitution conferred the pardoning power on the Executive; that it was beyond all interference by Congress; that mercy and clemency had been placed in a citadel above the power of hate and revenge; that when the President exercises this act of clemency all civil and political rights were restored. Yet Congress in six weeks after the decision enacted a law prohibiting citizens who had executive pardons from voting and hold-

When we contrast these independent judges of the Supreme Court with the creatures of the executive and legislative departments as represented by the Underwoods, the Bonds, and the Durells, we should pause and deliberate with great care and caution before we strike down the first barrier that separates them and keeps them in-dependent of either executive or legislative control. In all the peril-ous hours of our history an independent judiciary has always stood the immovable bulwark of civil liberty, against which the rage of madness and the intrigues of ambition have dashed and broken as the boisterous waves dash and break against the rock. The judiciary stands to-day, as it has always stood, firmly grounded in the confidence of the people. Let us stand by the Constitution which has separated these departments and divorced them perpetually from each other. Let us assiduously cultivate habits of obedience to its authority, and we shall not stand in need of miserable expedients like this to extri-

we shall not stand in need of miserable expedients like this to extricate us from threatened danger.

When we look back into the history of our English ancestors we see upon every page of her history that their rights were preserved, not by concessions to bold and impudent pretension, but by a persistent and courageous adherence to them whenever they were assailed. A bold, independent, and honest judiciary has always been the strong support of personal and public liberty in Great Britain. The unshaken confidence of the people in its honesty and ability gave it a moral power that caused its indements to be respected and obeyed The unshaken confidence of the people in its nonesty and ability gave it a moral power that caused its judgments to be respected and obeyed throughout the kingdom. In the fifteenth century a chief-justice of England committed the Prince of Wales to prison for insulting conduct in his presence in court. In the seventeenth century, when the judiciary had been prostituted by its alliance with the throne, a chief-justice of England was scorned and spit upon as he rode through the streats of London. the streets of London.

But laying aside objections to the bill, let us see what will be the results of its application. The republicans have taken by force the electoral vote of three States—Louisiana, Florida, and South Carolina. They have taken them in the face of day and in spite of majorities, and in the case of Louisiana a large majority. Upon the re-

sults in these States the presidential election depends. If the bill should not pass these fraudulent votes could not be counted, because they could not obtain the consent of the House. If the bill should pass, these votes can be counted without the consent of the House and in spite of its wishes. Is not that a surrender of the power of the House I is it my duty to surrender a certainty for a chance because some one is alarmed? Are we to take counsel from our fears and abandon the Constitution and betray the confidence and trust of the people? Is it not our duty to stand by the rights of this House and depend of every one challenges to the law?

demand of every one obedience to the laws? Let me ask my friends what answer they will make to their constituents when they return to their homes and they shall ask them why they surrendered the rights of the people represented in this House. When they shall ask you if the House of Representatives do not possess an equal power with the Senate in counting the electoral vote and determining who is President, you will answer, a committee of this House have so reported to it at this session, and that no vote can be constitutionally counted without its concurrence; when they shall ask you what has been the practice of the Government on that subject, you will answer them, no vote for President has ever been counted without the concurrence of the House since the Govern-ment was formed; when they shall ask you if the Constitution does not confer on you the power to elect a President if no candidate has received a majority of all the electors appointed, you will answer

has received a majority of all the electors appointed, you will answer yes; when they ask you if you did not have a democratic majority both of members and States in the House and the ability to elect a democratic President, you will answer yes.

What, then, will be your answer when they ask you why you abandoned a certainty for an uncertainty—why you did not discharge the duty imposed upon you by the Constitution, instead of creating a tribunal for that purpose whose determination was to be confessedly a game of chance? What answer can you make for putting up to lottery the Presidency of forty millions of people? The only answer you can make is that you were afraid of the present Executive; hat the assembling of soldiers and artillery here and the open menaces of the friends and supporters of the Executive had filled your bosoms with apprehenand supporters of the Executive had filled your bosoms with apprehenand supporters of the Executive had med your bosons with apprehensions of civil war. Grantit. But is it wise states manship to encourage intrigues and conspiracies by making concessions to them? Is it not rather our duty to stand by the Constitution and laws and declare him President whom the people have elected? It is our duty to stand by the ballot-box, not the dice-box.

If in this game of chance the dice should fall against the people's choice and elect a man reprobated by them at the ballot-box; if it should re-instate an administration which they have condemned and renounced and continue over them the misrule that has banished renounced and continue over them the misrule that has banished their prosperity and paralyzed their industries; if to maintain by force what they have won by fraud they shall annihilate the political power of the South by remanding her States to territorial vassalage, as that party is now proposing in the Senate and House; if arbitrary power and the swarm of vultures which follow its shadow to prey upon the victims of its lusts shall be given again to an oppressed and suffering people, what answer will you, what answer can you give for surrendering the keys to their fortress which they have intrusted to your faithful keeping?

For myself, I will stand by the Constitution and the sovereignty of the people, and leave it to them to determine whether or not they will abandon their Government to a bold, insolent, and palpable

will abandon their Government to a bold, insolent, and palpable fraud. Concessions to fraud never added strength to the right and only defers the evil we would avoid, and, while deferring, increases its strength. If we are right, then let us stand by the right for the sake of the right. If the Constitution is assailed by a powerful combination for its overthrow, we can best do our duty by rising to the highest courage in its defense. In the language of a great American statesman, let us "cling to the Constitution as the mariner clings to the last plank in the shipwreck when night and tempests gather round him." Let us imitate the high courage of that other great American name, and adopting his motto, "Ask nothing but what is right and submit to nothing that is wrong." These, sir, are the lights that fall along my pathway, and these are the lamps by which my feet are guided, and I will follow them with the faith and devotion that the philosophers followed the star that led them to the Author of truth.

We are creating a commission of five democrats and five republicans from Congress and two democrats and two republicans from the Supreme Bench, and the four judges are to choose the odd man from three republican judges. If these opposites, whose equality in num-bers is so carefully provided for, cancel each other like plus and minus quantities in algebra, as it is supposed they will, the democratic pros quantities in algebra, as it is supposed they will, the democratic prospect for the Presidency is to be found in one republican judge who will hold the balance of power. It has been the boast of our Government that it was of the people, by the people, and for the people; but this is a government selected by chance, and a very poor chance for him who was chosen by the people if the representatives of the two parties must in the present condition of the country resort to this mode of settling the controversy.

If peace at any price is the controlling idea, then both parties ought to have equal chances in the toss of the dice. Let us see if we have. Louisiana voted democratic by over eight thousand majority, but a vile and infamous returning board, created to defraud the people of their right to have such officers as they chose, gave the certificates to the republican electors. The same was done in Florida and South Carolina. The votes of these three States are necessary to elect Hayes, one of their electoral votes is necessary to elect Tilden. The Senate refuses to join us in counting the vote this year as it has always been done before, without a single exception, to prevent a democratic House from throwing these votes out. As the votes stand they are presumed to be correct; if submitted to the Senate and House they could not be counted, because both Houses would have to concur. But they are referred to this mixed commission and when it decides, if it be for Hayes, as the fifteenth man who holds the casting vote is a republican and the chances are that way, then the House has lost its power, and the Senate being republican will of course abide by the decision, and as it cannot be rejected except both Houses concur, it will stand and give the Presidency to Mr. Hayes. We have exchanged a demonstrate of the course of the contract of and give the Presidency to Mr. Hayes. We have exchanged a demo-cratic House having power to elect a President by itself for a mixed commission with a republican majority on it. Any man who would make such a trade in ordinary times and under ordinary circum-stances ought to be confined in a lunatic asylum. We have given up all our advantages and the rights of our constituents with them out of pure fear, and that alone. I do not mean fear of personal vio-lence to the members, but fear of civil war. If it is justifiable to surrender the Government to a usurper in order to preserve peace, then government has lost all authority and is a mere rope of sand. The success of this conspiracy is an invitation, and a very seductive one, to other schemers to conspire again to seize it and hold it; and when the favorable opportunity presents itself, it will be repeated and on a larger and grander scale.

The proper way to have treated this bold and impudent conspiracy as to have confronted it with equal andacity. When we met here was to have confronted it with equal andacity. When we met here in December, instead of doubting, debating, and halting, confronting an insurrection with investigating committees, we ought to have assured the confidence of the people by accepting the issue tendered by sured the confidence of the people by accepting the issue tendered by the conspirators, planted ourselves squarely upon the supremacy of the Constitution and the people, and called upon them to prepare to vindicate their rights. If that course had been taken—and I advised it in the first conference held with my party associates—this thing would have disappeared like a dream. The people everywhere would have responded with a storm of indignation against the leaders in the plot that would have silenced them forever. But instead of this, our leaders exhibited a want of that high courage necessary to meet and repress a gathering revolution, and the conspirators boldly pressed forward in their plans. If the people of the West had not spoken in terms so defiant and determined, I doubt if the conspirators would have faltered or accepted any terms. After the western meetings on the 8th of January, I doubt very much if the leaders would have attempted to carry their plans into execution. They stood trembling and hesitating over the coveted prize, "letting I dare not wait upon I would." Their counsels were as stormy and discordant as the counsels of the synod of fallen angels called to deliberate upon the assault and overthrow of heaven and heaven's dread Sovereign, and had they screwed their courage to the sticking point, and dared the enterprise, they would have been hurled

With hideous ruin and combustion, down To bottomless perdition, there to dwell In adamantine chains and penal fire, Who durst defy th' Omnipotent to arms.

Seeing their divided counsels and appreciating their weakness, they wisely decided that "discretion was the better part of valor," and pressed for the arts of diplomacy rather than the arts of war. In accepting their proposition, and to that extent recognizing their revolutionary pretensions as a power too potent to be suppressed by the power of the Government, we have acknowledged the strength of their

conspiracy and confessed a weakness in the Government to meet it.

I fear we have made a mistake. The leaders in this conspiracy have certainly made a very grave mistake in attempting to overthrow the will of the people, the only annointed sovereign in this land; and the President, by lending to it the aid of his own name and character and the official power belonging to his station, has made the gravest of all the grave mistakes of an administration of eight years characterized throughout by usurpation, fraud, and misrule. To an American citiand contrast it with what it was ten short years ago. Before he rose to the Chief Magistracy he was the idol of the Union people. His to the Chief Magistracy he was the idol of the Union people. His reputation was the theme of their constant admiration. They determined that he should be President that he might wear for their gratification as well as his own their highest civic honor, as he had worn their highest military honor, and they trusted with unfaltering faith that he would adorn the one as he had adorned the other. When called by the will of the people to exchange the camp for the court, the sword for the scepter, unhappily for his reputation and for the well-being of his country he called around him for his advisers a cotterie of politicians who danced about his feet with fawning and flattery. Alast for a weakness to common among rulers his ears were tery. Alast for a weakness too common among rulers, his ears were open to the voice of flatterers, pretenders, and hypocrites, the worst enemies of himself and the State. They poured into his ears a ceaseless stream of fulsome laudation. They won their way to his bosom, obtained his confidence, inspired his counsels, conducted his administration, and like false and treacherous sirens have lured him from his course and made him steer the ship of state over sunken rocks and boiling maelstroms, until to-day he is brought by their wicked

and perpicious counsels to look upon a reputation once the admiration of the world now marred and stained by the grossest usurpations of power and a country hanging upon the ragged edge of revolution and rnin.

As a southern man, conscious of his magnanimous bearing as a soldier toward a people who had fallen under the edge of his sword, remembering as I do that perilous hour when a recusant son of the South, himself President of the United States, demanded of the Warwick of her armies that he would consent that Robert E. Lee might be brought to the scaffold and stand upon its treacherous triggers to make treason odious—a name that was written in the heart of hearts of the fallen people; a name that they hugged to their bosoms and cherished with their holiest affections; a name that was left as the only idol they could worship when land and liberty were lost and property and peace had gone down in the storm of battle; a name that came back to them unstained by one unmanly act, to occupy the that came back to them unstained by one unmanly act, to occupy the vacant places of the loved and lost who slept in undistinguished graves all over a blighted and ruined land—Lee, who had piled the memorial rocks of victory on every rolling hill and beside every murmuring stream that guarded the gates to the confederate capital, must die upon the scaffold, that treason might be made odious and the love of liberty lost in the land—the thought could only have come from a heart that was the habitation of cruelty; it was a deed of darkness demanded by the passions which civil strife had loosed from their prisons, and if it had been done it would have blotted the fair face of victory with a smirch of blood that all the waters of the multitudinous seas could not have washed away: it would have been the trudinous seas could not have washed away; it would have been the thrust of a poisoned dagger leaving a rankling wound whose lips would never heal. If the great captain had yielded then, as he has yielded since, to the insolent demands of those who were far beneath him in all the qualities of head and heart, he would have done a deed that would have caused tears to rain for a generation upon the faces of twelve millions of people. Had he done the deed he was entreated to do—and entreated by a President—he would have washed his hands in the blood of one of the purest, noblest, and best of the sons of the sires of '76, and left an enduring spot upon his fair name and fame, a spot upon which the American people would fain have gone backward and covered with a mantle of perpetual oblivion. But with the same high resolve, the same unconquerable will, the same chivalrons sense of honor that had always characterized the man, he spurned the deof honor that had always characterized the man, he spurned the temand, high though the source, and standing like a soldier upon his plighted honor, informed the President that not a hair of his head should perish as long as he held unbroken the faith he had pledged to the Union. Look upon the pictures, then and now. Then he stood to the Union. Look upon the pictures, then and now. Then he stood before the country like Saul amidst the hosts of Israel from his shoulders and upward higher than all the people.

Now lies be there,
And none so poor as do him reverence.

Mr. LAMAR began his remarks; but before concluding, Mr. CLYMER said: As it is now very near twelve o'clock, I ask the gentleman from Mississippi [Mr. LAMAR] to yield to me to move that the House now adjourn.

Mr. LAMAR. I will yield for that purpose.
Mr. CLYMER. I now move that the House adjourn.
The motion was agreed to; and accordingly (at eleven o'clock and fifty-nine minutes a. m.) the House adjourned.

#### IN SENATE.

# FRIDAY, January 26, 1877.

Prayer by Rev. E. D. Owen, D. D., of the city of Washington. The Journal of the proceedings of Wednesday last was read and approved.

#### EXECUTIVE COMMUNICATIONS.

The PRESIDENT pro tempore laid before the Senate a letter of the Secretary of War, transmitting an estimate from the Commissary-General of Subsistence to supply a deficiency in the appropriation for subsistence of the Army for the fiscal year ending June 30, 1877, the amount (\$36,840.71) being required to replace subsistence stores lost by the burning of the Montana in the Gulf of California, December 14, 1876; which was referred to the Committee on Appropriations.

#### BUILDING FOR SMITHSONIAN COLLECTIONS.

The PRESIDENT pro tempore presented a resolution of the Board of Regents of the Smithsonian Institution, adopted at a meeting held January 24, 1877, asking an appropriation by Congress for the erection of a suitable building, in connection with the present edifice, for the accommodation of additional collections; which was referred to the Committee on Public Buildings and Grounds.

#### PETITIONS AND MEMORIALS.

Mr. WINDOM presented a resolution of the Legislature of Minnesota, in favor of such legislation as will appropriate the proceeds of the sales of the public lands in the several States afflicted with grass-hoppers to those States, to be used in the payment of bounties for the destruction of such grasshoppers; which was referred to the Committee on Public Lands

He also presented the petition of Henry R. Wells, of Preston, Minnesota, praying the repeal of the law imposing a tax on the deposits, circulation, and capital of national banks; which was referred to the Committee on Finance.

Mr. BOUTWELL presented a petition of John Cummings, C. A. Grinnell, and others, of Boston, Massachusetts, praying for the adoption of the proposed plan for counting the electoral votes; which was ordered to lie on the table.

He also presented a petition of E. R. Mudge, Sawyer & Co., and others, of Boston, Massachusetts, praying for the adoption of the proposed plan for counting the electoral votes; which was ordered to lie on the table.

Mr. JOHNSTON presented a petition of A. W. Wilson and others, of the District of Columbia, praying that the charter of the Washington City Inebriate Asylum be so amended as to place it upon a footing with the other public charities of the District of Columbia, and that an annual appropriation be made for it; which was referred

and that an annual appropriation be made for it; which was referred to the Committee on the District of Columbia.

Mr. WRIGHT presented resolutions of the Board of Trade of the city of Burlington, Iowa, favoring the adoption of the plan for the counting of the electoral votes for President and Vice-President reported by the joint committee of Congress; which were ordered to lie

Mr. COCKRELL. I hold in my hand a resolution passed by the Kansas City Board of Trade on the 22d of January, approving the ac-tion of the joint committee of Congress in regard to the counting of the electoral votes. I move that it lie upon the table. It represents all the different political sentiments of this great city of the West, Kansas City, which has 35,000 inhabitants, and it was passed by the board of trade unanimously.

The motion was agreed to.

Mr. INGALLS presented a concurrent resolution of the Legislature of Kansas, in favor of an appropriation of money out of the Indian civilization fund for the payment of attorneys' fees and expenses incurred by settlers on the Osage ceded lands in that State in contesting the title of the same, and for the prosecution of certain suits against certain railroad companies in the United States courts; which was referred to the Committee on Indian Affairs, and ordered to be

Mr. INGALLS. I present also three petitions, numerously signed by citizens of Johnson County, Dickinson County, and other places in Kansas, praying for the passage of an act allowing pensioners the amount of arrears to which they would be entitled by the removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pension from the date of discharge of the soldier.

I take the occasion which the presentation of this petition offers me to say that on the 20th of April last the Committee on Pensions reported to the Senate a bill of the House of Representatives granting additional pensions to the soldiers of the war of 1812, with amendments, covering this among other subjects of very great importance; and I give notice that on Monday next, at the expiration of the morning hour, or as soon thereafter as I can obtain the attention of the Senate, I shall move the consideration of House bill No. 2454, relating to this subject. I move that the petitions lie on the table.

The motion was agreed to.

Mr. WHYTE. I present a petition of John T. Pickett and Joseph J. Stewart, attorneys for the heirs of James H. Causten, deceased, and others, praying that the unappropriated balance of the Geneva award fund be devoted to the payment of the French spoliation claims. I move its reference to the Committee on the Judiciary inasmuch as that question is now before that committee; and, as it is a curious proposition and seems to be very well argued, I move that the petition

The motion was agreed to.

Mr. BOOTH presented a petition of citizens of California, praying an amendment of the pension laws so as to allow arrearages of pen-sions; which was ordered to lie on the table.

Mr. HOWE. I present a couple of petitions from citizens of Suamico and Holley, Wisconsin, praying the passage of an act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the limitation which has debarred many from receiving their just dues. I move that it be referred to the Committee on Pensions.

Mr. INGALLS. I would say to the Senator from Wisconsin that

the Committee on Pensions have reported a bill on this subject, and I have given notice that I will call it up for action on Monday, and I

have given notice that I will call it up for action on Monday, and I hope the Senator will be here to assist in its passage.

Mr. HOWE. Let the petitions lie on the table.

The PRESIDENT pro tempore. The petitions will lie on table.

Mr. HOWE presented a memorial of the Chamber of Commerce of the city of Milwaukee, in favor of the proposed appropriation of \$50,000 by the General Government to aid in the establishment of a temporary colony for the purpose of exploration and scientific research at or near the eighty-first degree of north latitude under the direction of the President of the United States, and with the advice and counsel of the National Academy of Sciences; which was referred to the Committee on Appropriations.

#### REPORTS OF COMMITTEES.

Mr. WRIGHT. The bill (S. No. 1161) for the relief of Nathan Butler, of Minnesota, which was introduced by the Senator from Minnesota, [Mr. Windom,] was referred to the Committee on Claims by mistake, when it should have gone to the Committee on Pensions. I move that the Committee on Claims be discharged from its further consideration and that it be referred to the Committee on Pensions.

The motion was agreed to.

Mr. WRIGHT. The Committee on Revolutionary Claims, to whom was referred the bill (S. No. 1103) for the relief of the heirs or legal representatives of François Cazeau, have had the same under consid-

representatives of François Cazeau, have had the same under consideration and recommend its indefinite postponement. I am requested to ask that the bill be placed upon the Calendar.

The PRESIDENT pro tempore. The bill will be placed upon the Calendar with the adverse report of the committee.

Mr. ALLISON. I am instructed by the Committee on Indian Affairs to report a bill to ratify and confirm an agreement made by ertain commissioners appointed under authority of an act passed last year with the different bands of the Sioux nations. This is a very important measure, it affacts a very large territory and a very greet. important measure; it affects a very large territory and a very great number of people in the United States. If there is no objection to the bill I should be glad to put it upon its passage.

Mr. SHERMAN. Has the bill been printed?

Mr. ALLISON. It is just reported. The bill is very brief. It only confirms an agreement made with these Indians.

Mr. INGALLS. Which has been local contains.

Mr. INGALLS. Which has been long in print.
Mr. ALLISON. It has been long in print. The articles have been printed, but I do not know that the matter has been examined by members of the Senate.

The bill (S. No. 1185) to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the northern Arapahoe and Cheyenne Indians, was read the first time by its title.

The PRESIDENT pro tempore. The bill will be read for informa-tion, subject to objection.

The bill was read the second time at length.

Mr. SHERMAN. I have no doubt that I shall vote for the bill, but I think that on account of the great importance of the subject-matter and for the sake of example, it ought to lie over until the next day's

Mr. ALLISON. Very well. Mr. SHERMAN. If the Senator from Iowa calls it up at our next ession I shall have no objection to it and I shall vote for the bill from

what I know of it, but I object to its consideration to-day.

Mr. ALLISON. I shall not press its consideration to-day, but I give notice that if we shall have a session to-morrow I will call up this bill. I think it will take a very short time to dispose of it. If we do not have a session to-morrow, I shall call it up on Monday. I move that the bill lie on the table and be printed.

The motion was agreed to.

Mr. ALLISON, from the Committee on Appropriations, to whom was referred the bill (H. R. No. 4306) making appropriations for the sup-port of the Military Academy for the fiscal year ending June 30, 1878,

and for other purposes, reported it with amendments.

Mr. WINDOM, from the Committee on Appropriations, to whom was referred the bill (H. R. No. 4188) making appropriation for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, reported it with amendments.

### REVOLT IN TURKISH PROVINCES.

Mr. SHERMAN, from the Committee on Printing, to whom was referred a resolution to print additional copies of the message of the President of the United States communicating correspondence in relation to the revolt in the Turkish provinces, reported it without amendment, and it was agreed to, as follows:

Resolved, That 500 additional copies of the message from the President of the United States communicating correspondence with diplomatic officers of the United States in Turkey in relation to the revolt in the Turkish provinces be printed for the use of the Department of State.

#### REPORT OF DISTRICT BOARD OF HEALTH.

Mr. SHERMAN, from the Committee on Printing, to whom was referred a resolution in regard to printing the report of the board of health of the District of Columbia, reported it without amendment, and it was agreed to, as follows:

Resolved by the Senate, (the House of Representatives corcurring.) That 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for use and distribution by said board.

#### PACIFIC RAILROAD ACTS.

Mr. THURMAN. I wish to give notice that as soon as the morning hour expires I shall ask the Senate to proceed to the consideration of the bill (S. No. 934) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act. This bill has twice been made a special order; once postponed at the request of the Senator from Nebraska [Mr. HITCHCOCK] who is now absent, and the other day it was overslaughed by the unfinished busi-

Mr. PADDOCK. I wish that the Senator from Ohio would consent when my colleague, who is still absent, who is a member of the committee and has had much to do with this proposition, will be here.

Mr. THURMAN. Will the Senator excuse me? I did not hear a

word that he said.

Mr. PADDOCK. I suggest that the Senator from Ohio consent that this bill go over until the day after to-morrow, when I am advised that my colleague, who has given this matter a great deal of attention and who is still absent, will be here. I think that one day more, or two days more, will make no difference in the ultimate de-termination of the matter. My colleague is very anxious to be here when the bill is considered. He is a member of the committee, and

when the bill is considered. He is a member of the committee, and has given the matter much attention.

Mr. THURMAN. This session is fast running to a close and it is agreed on all hands that something should be done on the subject of this bill. If something is to be done there is no time to lose; but I am perfectly content if the bill can be taken up so as to be the unfinished business to-day, and then if we adjourn over until Monday the Senator from Nebraska will be here. If he should not, nevertheless I am quite certain that the debate will take up the whole of to-morrow, so that the Senator from Nebraska will be here in time before the vote is taken. If there can be an understanding that we shall take up the bill and leave it the unfinished business at the close of our session to-day, I will consent to that very willingly.

Mr. PADDOCK. The proposition is entirely acceptable to me.

Mr. WEST. May I inquire of the Senator from Ohio what his proposition is, with respect to this bill?

Mr. THURMAN. My proposition is that it shall be the understanding that it be taken up so as to be left the unfinished business at the adjournment to-day.

standing that it be taken up so as to be left the unfinished business at the adjournment to-day.

Mr. WEST. You propose to call up the bill at the termination of to-day's session so as to make it the unfinished business for to-mr. rrow?

Mr. THURMAN. Yes, sir.

Mr. PADDOCK. Or on Monday?

Mr. THURMAN. Yes, sir. If we sit to-morrow it will be the unfinished business for to-morrow, but if we do not sit to-morrow it will be the unfinished business on Monday morning.

Mr. PADDOCK. I wish to have the further understanding with the Sengtor from Ohio that if we shall hold a session to morrow and

Mr. PADDOCK. I wish to have the further understanding with the Senator from Ohio that if we shall hold a session to-morrow and my colleague has not yet arrived he consent that the bill shall go over as the unfinished business until Monday.

Mr. THURMAN. If it is made the unfinished business at the close

Mr. THURMAN. If it is made the unfinished business at the close of to-day's session and comes up to-morrow, then after the bill and the report and the other bills, for they will all come up together it is very clear, shall have been read, I shall not have any objection to the bill going over until Monday, if it can be passed by informally and not lose its place as unfinished business. I want to say now, although it is a little out of order, that manifestly the attention of the Senate will be drawn to this subject and the points that are in dispute by the different propositions. There is a House bill which has already passed, and is on our Calendar; there is this bill reported by your Judiciary Committee; there is a bill on the same subject reported by the Railroad Committee, and there is a substitute to that offered by the Railroad Committee, and there is a substitute to that offered by the Senator from Georgia, [Mr. GORDON,] and it will be by bringing the "arious differences between these propositions to the attention of the Senate that the subject will be finally understood. The discussion will take place upon those differences, I think, so that I shall be perfectly willing if the various bills shall be read to-morrow and the reports upon them to consent that this bill shall preserve its place so as to be the unfinished business for Monday.

Mr. PADDOCK. I am quite as anxious as the Senator from Ohio

or any one else can be that this matter shall be amply considered and finally determined, and I shall be unwilling to place any obstacle in the way of an early consideration. The arrangement which the Sentine state of the stat ator now assents to will be entirely satisfactory. I hope the bills will

be read to-morrow.

#### BILLS INTRODUCED.

Mr. CLAYTON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1186) for the relief of Charles H. Moseley; which was read twice by its title, and referred to the Committee on

Military Affairs

Mr. MERRIMON asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1187) authorizing the Secretary of War to allow interment in the National Cemetery at Newberne, North Carolina, of the remains of the late R. F. Lehman, lately a commissioner of the United States circuit court in the eastern district of North Carolina; which was read twice by its title, and referred to the Committee on

Military Affairs.

Mr. INGALLS. I have been requested to introduce a bill to attach to the Territory of Wyoming a certain portion of the Black Hills country for judicial purposes. Whether this bill should properly go to the Committee on the Judiciary or to the Committee on Territories, I am not aware. I believe the latter committee have the subject under consideration.

By unanimous consent, leave was granted to introduce a bill (S. No. 1188) to attach to the Territory of Wyoming a certain portion of

the Black Hills country for judicial purposes; which was read twice by its title, and referred to the Committee on Territories.

Mr. ALLISON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1189) to extend the jurisdiction of the district and circuit courts of the United States, for the punishment of crimes, over Indian reservations within the limits of any State or

organized Territory; which was read twice by its title.

Mr. ALLISON. I move that the bill be referred to the Committee on the Judiciary. I was about to say that this bill ought to receive the attention of that committee at this time. It relates to a very important subject connected with the Indians on the various Indian

ervations.

The motion was agreed to.

Mr. CAMERON, of Wisconsin, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1190) to establish a post route from Kasheno to Langlade, in the State of Wisconsin; which was read twice by its title and referred to the Committee on Post-Offices and Post-Roads.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1191) authorizing the Commissioners of the District of Columbia to receive and report upon unadjusted claims for damage to real estate in the District of Columbia; which was read twice by its title and referred to the Committee on the District of Columbia.

REPORT ON EUROPEAN SHIPS OF WAR.

Mr. SARGENT submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the Secretary of the Navy be directed to communicate to the Senate the report of Chief Engineer J. W. King, United States Navy, on European ships of war, &c.

COURT OF COMMISSIONERS OF ALABAMA CLAIMS.

Mr. FRELINGHUYSEN. I wish to submit a resolution, which I ask to have put on its passage. It is a resolution authorizing the printing of five hundred copies of the report on the Alabama claims for the use of the Secretary of State. I offer the resolution at the instance of the Secretary of State:

Resolved, That 500 extra copies of the message from the President of the United States, communicating a report from the Secretary of State, with accompanying papers, relating to the court of commissioners of Alabama claims, be printed for the use of the Department of State.

The resolution was considered by unanimous consent and agreed to. PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. CLAYTON, it was

Ordered, That the petition of Charles H. Moseley, of Little Rock, Arkansas, be taken from the files and referred to the Committee on Military Affairs.

#### BILL RECOMMITTED.

Mr. WRIGHT. Some time since a bill passed the House of Representatives in accordance with a recommendation of the Commissioner of Internal Revenue—a bill (H. R. No. 2922)—to authorize the Secretary of the Treasury to make allowances for compensation to collectors of internal revenue who went out of office prior to February 8, 1875, upon final settlement of their accounts. This bill was reported upon some time since by the Finance Committee, and its indefinite postponment recommended and agreed to. My attention has been called to it, and, after consultation with the chairman of the Commit-

the on Finance, I move that the order for the indefinite postponement of the bill be reconsidered, and that the bill be recommitted.

The PRESIDENT pro tempore. The Senator from Iowa moves the reconsideration of the order by which the bill was postponed indefinitely. nitely, and that it be recommitted to the Committee on Finance.

The motion was agreed to.

#### WARREN MITCHELL.

Mr. JONES, of Florida. I move that the Senate proceed to the consideration of the bill (S. No. 2145) for the relief of Warren Mitchell. The Chief Clerk read the bill.

The PRESIDENT pro tempore. Is there objection to its present con-

Mr. CAMERON, of Wisconsin. I object to the consideration of the bill. I would prefer that the Senator from Florida, who made the report, would allow it to go over until some day early next week. I report, would allow it to go over until some day early next week. I dissented from the report made by the Committee on Claims, and would much prefer, if there be no special objection, that the bill should go over until the early part of next week, when I shall have no objection to its being taken up, and considered, and disposed of.

Mr. JONES, of Florida. Is the Senator willing to designate any particular day that will suit his convenience?

Mr. CAMERON of Wisconsin, Trackley would sait me.

Mr. CAMERON, of Wisconsin. Tuesday would suit me. Mr. JONES, of Florida. Very well, I accept that.

#### DR. J. MILTON BEST.

Mr. MITCHELL. I move that the Senate proceed to the consideration of the bill (S. No. 174) for the relief of Dr. J. Milton Best, of Kentucky

Kentucky.

The PRESIDENT pro tempore. Is there objection to this motion?

Mr. INGALLS. When the Senator from Oregon gave notice on a
previous day of his intention to call up this bill, it is my recollection
that the Senator from New York, [Mr. CONKLING,] who is now absent, the Senator from Vermont, [Mr. EDMUNDS,] who is now absent,
and the Senator from Kentucky, [Mr. STEVENSON,] whom I do not

see in his seat, expressed some desire to be heard upon this bill when see in his seat, expressed some desire to be heard upon this bill when it should come before the Senate for consideration; and as the subject is one confessedly of very grave importance, the bill having been before passed and vetoed by the President, it seems to me to be inappropriate to take it up during the morning hour.

Mr. MITCHELL. I will state that I did not observe that any of the Senators referred to by the Senator from Kansas were absent, and I shall not insist upon the consideration of the bill in their

The PRESIDENT pro tempore. The motion is withdrawn.

#### MARKET HOUSE IN WASHINGTON.

Mr. INGALLS. I move that the Senate proceed to the consideration of the bill (H. R. No. 2157) to provide for building a markethouse on square 446, in the city of Washington, District of Co-

The PRESIDENT pro tempore. Is there objection to the motion? The Secretary will report the bill for information.

The Chief Clerk read the bill.

Mr. MITCHELL. Is that bill up for consideration?

The PRESIDENT pro tempore. The Chair will put the question if

Mr. MITCHELL. I notice that the Senator from New York [Mr. CONKLING] and the Senator from Vermont, [Mr. EDMUNDS,] who have generally taken a very active interest in District matters, are not present, and I do not know whether it would be proper to pro-

Mr. DAVIS. I suggest that this is an important bill, a long bill, and one which gives unusual powers. I know nothing about the merits of it. I do not know whether it ought to be considered in the absence of some Senators who have taken an active part in such matters; but I rather think it ought to be. I do not know whether the bill is called up for explanation or whether the Senator from Kansas wishes to press it in the absence of those Senators who have usually

taken an interest in such matters.

Mr. INGALLS. To whom does the Senator from West Virginia

Mr. DAVIS. The Senator from Oregon just said that the Senator from New York and the Senator from Vermont each had taken an

interest in the subject-matter.

Mr. INGALLS. The Senator from Oregon was purely facetious in his remark, I would say to the Senator from West Virginia. He was endeavoring to requite me for a remark that I made in regard to a bill of his. This subject has never before been under consideration, and is one that affects purely local interests in which those Senators have never taken the slightest concern.

While the bill is somewhat long, its provisions are exceedingly sim-

ple. It relates to a matter of very great interest to a considerable portion of the people of this city. I hope, therefore, the Senator will interpose no objection to its consideration.

Mr. DAVIS. I have no objection to its consideration, but I cer-

tainly should like to have an explanation of the necessity of it, and why the corporation cannot be formed under the general law instead of a special bill. Why the necessity for a special bill? My own opinion is that nearly all provisions of unusual grants of power to corporations are dangerous, and that as a rule all such things should come under the general provisions on the subject. I ask the Senator whether or not the bill has been considered by a committee, and what committee? committee

Mr. INGALLS. The bill which is now before the Senate was passed unanimously by the House of Representatives at the last session. It was reported to the Senate and referred to the Committee on the District

reported to the Senate and referred to the Committee on the District of Columbia, by whom it was very carefully considered and unanimously reported to the Senate on the 7th day of June last, and it has since remained upon the Calendar awaiting time for consideration.

Mr. COOPER. Will the Senator permit me to ask whether the committee examined the legal questions involved in the bill?

Mr. INGALLS. I will say to the Senator from Tennessee that the bill has met with considerable opposition, and the legal questions were elaborately argued by Ex-Senator Carpenter and one or two other gentlemen, whose names I do not now recall, before the committee. They received very careful consideration, and it was the unanimous opinion of the committee that the bill was one that ought to pass.

Mr. COOPER. I made the inquiry simply because a similar bill was before the Committee on Public Buildings and Grounds and that

committee reached a different conclusion.

ommittee reached a different conclusion.

Mr. INGALLS. I regard it as the misfortune of the Committee on Public Buildings and Grounds that it differed from the Committee on the District of Columbia.

Mr. COOPER. It may be; but I thought I should let the Senate know that committees differed on the legal question.

Mr. INGALLS. In further response to the Senator from West Virginia, I will say that this is not an act creating a corporation, is not an act conferring any power whatever upon any association of individuals. It merely authorizes the District commissioners to build a an act contenting any power whatever upon any association of individuals. It merely authorizes the District commissioners to build a market-house on square 446 in this city. The commissioners purchased the tract of land upon which this building is proposed to be erected from W. W. Corcoran, esq., for this specific purpose. The ground is paid for. The foundations for the market-house have been

partly completed; but owing to some matters, to which it is not necessary for me now to refer, the building was suspended.

The bill that is now under consideration before the Senate proposes, in brief, simply to prepare a plan and specification, and then to sell the right to occupy stalls to such persons as may wish to purchase, and from the funds that are thus obtained to build the markethouse. The bill expressly forbids the contracting of any debt upon the District, and provides that the funds for the construction of this building shall be obtained solely from the persons who desire to occupy stalls therein. Unless the funds are thus provided the building cannot be constructed. Therefore, as it is a matter that concerns these individuals who may themselves desire to purchase stalls, and unless they see fit to pay the money for the purchase of them the unless they see fit to pay the money for the purchase stains, and unless they see fit to pay the money for the purchase of them the construction will not take place, I can conceive of no reason why Congress should not authorize this proceeding to be had.

Mr. DAVIS. I inquire whether or not there is a report accompany-

ing the bill made from either committee.

ing the bill made from either committee.

Mr. INGALLS. There is no written report.

Mr. DAVIS. The Senator from Kansas says that the square has been purchased from Mr. Corcoran, by the city I presume, and paid for, by the city I presume, as the Senator says it is paid for.

Mr. INGALLS. For a market-house.

Mr. DAVIS. For the purposes of a market-house. Will the Senator be kind enough to tell us how much was paid and whether or not the property will revert to the benefit of any individual whatever, or whether it is solely to be managed by and for the benefit of the city of Washington?

Mr. INGALLS. It is solely to be managed by and for the benefit of the inhabitants of the city of Washington; and the terms of the bill provide that in addition to the payment of the structure that is

bill provide that in addition to the payment of the structure that is bill provide that in addition to the payment of the structure that is proposed to be erected on these premises, there shall be a reservation that shall be sufficient to extinguish bonds outstanding that were given as purchase-money for the lot. It is exceedingly well guarded, I have never known a bill for any purpose which guarded the public so explicitly and so directly and carefully as this does. There is an absolute prohibition of the imposition of any burden whatever upon the people by reason of the construction of this building.

Mr. DAVIS. The Senator, no doubt unintentionally, avoided two questions which I propounded. One is as to the amount that had been paid for this square. The other was whether or not any individual was connected with the bill by which that individual would receive a benefit that ought to go to the city.

Mr. INGALLS. I do not remember the amount that was paid for

Mr. INGALLS. I do not remember the amount that was paid for the property, but I believe it was \$100,000. I am not sure; I do not state definitely. In response to the other question, I would state that there is no privilege or advantage given by which any individual will receive any benefit that properly belongs to the corporation.

Mr. DAVIS. Still the question is open. The Senator says that no individual will receive a benefit which properly belongs to the corporation. The Senator does not say, however, that ne individual will receive a benefit that the corporation might receive or ought to receive

ceive.

Mr. INGALLS. That I do not know anything about.
Mr. MORRILL. I have not carefully examined this bill; but the same subject-matter was before the Committee on Public Buildings and Grounds at the last session, upon which an adverse report was made after carefully examining the question; and since that time I have understood that they had confided the measure to the Committee on the District of Columbia in the House, and from that committee this

So far as I now remember, the objections of the Committee on Publie Buildings and Grounds were of a twofold character. One was, that subsequently to the purchase of this square by the District from Mr. Corcoran a market had been built by private contributions on the part of the owners so near this location that no other market was required. Any one, by examining the square on which this is located and looking at two other markets, will see that this market is probably not located where it would be for the convenience of the District

or the city of Washington. They will be too near together.

In the next place, this property cost the District about \$120,000.

They paid for it some years ago, and gave their bonds for it, I think, to the amount of \$100,000 or \$106,000, and the interest upon those bonds to the amount of \$100,000 or \$106,000, and the interest upon those bonds makes it cost at the present moment somewhere about \$120,000 to the District of Columbia. These bonds are outstanding against the District. It was thought by the committee that it was inexpedient for the District or for Congress to have any other partnerships with market-houses, with one of which we have heretofore been concerned which has resulted disastrously to the interests of this city, and perhaps not to the credit of the legislation or the judicial decisions in selection theorets. relation thereto.

The Committee on Public Buildings and Grounds would have had no reluctance to allow these parties to purchase this square and put up a market-house thereon, provided they would have assumed the amount of the cost of this land as it stands against the District. Be-

youd that they were unwilling to go.

The effect, I suppose, of this bill—for I have not had time to examine it since it came up—is to loan this company the amount of the money already invested for the cost of the land, and to trust to the success of the venture as to the future repayment. In my judgment,

it is a bill that we may well pause before we take it up for consideration; in other words, I think the bill is unnecessary and inexpedient if it is based on the principles of the bill that has been hereto-

fore considered by the Committee on Public Buildings and Grounds.

The PRESIDENT pro tempore. The question is on taking up the

hill for consideration.

Mr. INGALLS. One remark made by the Senator from Vermont has disclosed the whole secret of the opposition to this measure. It springs from the hostility of a private corporation that, having invested its money in an unprofitable venture, is unwilling that the public should be accommodated if they themselves are willing to pay for that accommodation. He alludes to the fact that there is another that accommodation. He alludes to the fact that there is another market-house somewhere in the vicinity of the one proposed to be authorized to be erected by this bill. That is very true. What is known as the Northern Liberty Market House Company, or the K Street Market House Company, have erected, at an enormous expense, a palatial structure at the intersection of Fifth and K streets, upon grounds that belong to the District of Columbia. Owing to the fact that that building is remote from the centers of population, it is unfrequented; the stalls in that building are not merchantable; people do not congregate there to purchase their supplies: and therefore the venture up to this time has not been exceedingly remunerative. The venture up to this time has not been exceedingly remunerative. The owners of that property are naturally unwilling that there should be any structure erected in the neighborhood, either immediate or remote, that shall accommodate the people, if it still further interferes with their profits.

There is upon the ground proposed to be covered by this market-house already a miserable, inferior wooden structure, consisting of dilapidated sheds, in which the business of marketing is carried on; it is a fact that every day in the week when markets are open and it is a fact that every day in the week when markets are open for the transaction of business, there are three to one who resort to these wooden sheds upon this ground to those who resort to the pala-tial building at the intersection of K and Fifth streets. That is the only objection that exists to this bill, and it springs from the hostility of that private corporation, who are unwilling that the public shall

be accommodated.

be accommodated.

Now, with regard to loaning, as the Senator from Vermont says, the sum of \$100,000 or \$106,000 to this corporation, he says this bill proposes to loan these men the sum of \$100,000 or \$106,000 to enable them to put a market-house upon the lot that has thus been paid for. The fact is that that ground at the present time is lying idle so far as any revenue is concerned, so far as any compensation is concerned. This bill provides a measure by which not only will that ground be covered by a building, as contemplated by its original purchase, but that from the revenues derived from it a sinking fund shall be established that will liquidate the entire obligation that exists as purchase-money for the payment or these premises.

chase-money for the payment or these premises

what objection then can there be in any quarter to the passage of a bill like this? If there is any point in which the bill is not guarded; if there is any point that leaves the question open so that any obligation can be imposed upon the inhabitants of the District; if, as the Senator from Vermont says, there is any partnership proposed between Congress and the District and a market-house corporation, let it be pointed out, and I will certainly join him in striking it from the bill; but he certainly has not examined it and is not familiar with its provisions. There is nothing of the kind contemplated. On the convisions. There is nothing of the kind contemplated. On the contrary, this is a bill to enable these parties, at their own expense, to erect a structure from the profits of which a revenue will be derived that will relieve the community from the obligation that is now imposed upon them for the purchase-money of the ground.

Mr. MORRILL. Just a word.
The PRESIDENT pro tempore. The morning hour has expired.

## ELECTORAL VOTE OF FLORIDA.

Mr. JONES, of Florida. I gave notice last week that I would ask indulgence in the course of the present week to submit a few remarks on a memorial I introduced on the 18th instant in regard to the election in Florida

The PRESIDENT pro tempore. Does the Senator make a motion ? Mr. JONES, of Florida. I move to proceed to the consideration of

the memorial presented.

The PRESIDENT pro tempore. The memorial will be regarded as

before the Senate.

Mr. JONES, of Florida. Mr. President, before I proceed to the consideration of the question which I propose to discuss this morning, I wish to make a few preliminary remarks in regard to what was said by the Senator from California [Mr. SARGENT] not now in his seat, in the debate on the 25th, in regard to my State. That Senator said:

in the debate on the 25th, in regard to my State. That Senator said:

Mr. Davis. I believe the Senator from California is chairman of a committee that recently visited Florida and I should like to ask him whether when investigating this subject there he let light in and had the doors open?

Mr. Sargent. There was nothing depending: we were merely taking evidence, not making a decision there. The minority of the committee was ably and zealously represented in the person of my friend from Tennessee, [Mr. COOPER.] Iadmit that under the exigencies of the case; I admit that in the community where, after it was decided that Drew, the democratic candidate for governor of the State, had been elected by I believe an unwarrantable action of the supreme court of that State, white men came to us and said "We no longer dare testify; please excuse us; our lives are in danger," and when colored men were afraid to come forward and we found difficulty in getting witnesses, then, in order to carry out the commission confided to us by the Senate, anticipating that result, we satwith closed doors for the mere purpose of taking evidence. We should have been very glad to have welcomed the Senator there or any one who perhaps would act exercise a bull-dozing influence on the witnesses we were trying to get.

This involves a very grave and serious imputation upon the character and condition of my State. When this declaration was made by the Senator from California I did not feel disposed to protract a debate which had carried us into the morning, by attempting to say anything upon the subject then; but it is due to myself as one of the representatives of the State of Florida on this floor, to the people whom I have the honor to represent here, and to Governor Drew, who now wields the executive authority of that State, to say something in the outset in regard to the opinion of the Senator from California,

touching the state of society in Florida.

The condition of Florida has been somewhat different from that of nearly every southern State since the era of reconstruction began, and nearly every southern State since the era of reconstruction began, and I believe it has been universally conceded that we have enjoyed peace and tranquillity and order there to an extent that has not been surpassed in any northern community; and before I sit down I will show from the most unquestionable authority, and that republican, that the opinion of the Senator from California is not correct. I hold in my hand an executive document of the State of Florida. The government, as you know, has lately been transferred to democratic hands; but in 1874, while there was there a republican administration, a republican expired the government in a very well, temperated message. a republican cabinet, the governor, in a very well-tempered message, a very fair message, presented to the people of Florida and to the people of the United States the true condition of affairs in that Commonwealth, and I think what he said and what his cabinet ministers said, wealth, and I think what he said and what his cabinet ministers said, if such expression may be considered applicable to any person who belongs to the executive government of Florida, ought to have some weight. Now I will ask the Secretary of the Senate to read what I have marked in the report of the commissioner of immigration, Mr. Fagan, in 1874, touching the condition of affairs in Florida at that day, and which was addressed to the whole people of the Union inviting them to come there, because, as he said, they would be perfectly secure. I might say here that I feel more than a common anxiety on this subject, because we are indebted to northern immigration for a great deal of the prosperity which we now enjoy, and I am not disposed to stand here and hear anything said which will tend to keep from among us any of the good people of that section.

The Chief Clerk read as follows:

#### STATE OF SOCIETY HERE, AND ITS EFFECT ON IMMIGRATION.

The Chief Clerk read as follows:

STATE OF SOCIETY HERE, AND ITS EFFECT ON IMMIGRATION.

Among the many causes that have operated favorably in securing this large addition to our wealth and population, not the least potent has been the confidence that is universally felt that every man coming among us will be protected in life and property, and will not encounter that anarchy and disorder which have convulsed many of the other Southern States. There is nothing that has operated so disastronsly to the cause of southern immigration as the disorders that have grown out of the late war, and which, in some of our sister States, still distract society. Under such conditions progress is impossible. Wealth and population shun such places as plague-spots, and it is folly of an aggravated type to expect immigration to such sections. It is a matter for profound congratulation that, while the bitterest passions of prejudice and hate have held uncontrolled sway in other portions of the South, Florida reposes in absolute peace, and, forgetful of the past extends the right hand of friendship to all, and invites them ungrudgingly to share the honors, equally with the duties, of citizenship. The history of the late election furnishes a forcible proof of the restoration of that social peace and tranquility essential to the welfare of any State. While elsewhere race antipathies, section hatred, and violent political prejudices have manifested themselves in the most abhorrent forms of bloodshed and revolution, we enjoyed entire freedom from even the milder forms of disturbance, which seem inseparable from the exercise of the rights of suffrage in the most peaceable and best governed portions of our country. The race issue has not been mooted here, and its malignant influences, which seem to threaten the most dangerous consequences in Louisiana, Alabama, aloeorgia, have not been felt with us. We know nothing of White Leagues, or those numerous political organizations which flourish throughout the South, and the existence of which i

Mr. JONES, of Florida. That, Mr. President, is a description of the social and political condition of Florida in the year 1874 from republican authority of the very highest character. This is a State the social and political condition of Florida in the year 1874 from republican authority of the very highest character. This is a State paper; it is part of the report of the commissioner of immigration in my State, a cabinet officer, directed to his excellency the governor and referred to in the message of the governor of that year, which I have not now before me, and wherein sentiments equally strong and decided are set forth on the same subject, affirming the peaceful and orderly condition of the State.

So much, sir, for the political condition of Florida at that day. Now I need hardly say that nothing which has taken place since that period has changed the condition there. We enjoy a large immigration from the North. We are dependent in a great measure upon it for prosperity and wealth, and we are anxious that our reputation for peace and order and personal security shall remain as it has hitherto,

unimpeached.

Now, sir, a word in regard to the distinguished gentleman who has lately been elevated to the office of governor, and I do this for the purpose of showing the temper and the honorable disposition of our people. When he was inaugurated into office he did not follow the example of some of his predecessors and indulge in a very lengthy

discourse, but he set forth in a few brief words the principles which he said should govern him in his public office; and in this address he shows to the people of Florida what they all knew before, that there was no violent spirit there and there was nothing but an anxiety for just and good government, that there was no prejudice against northern men because in the person of Governor Drew we elevated to the high-est position in our State a man of northern birth and of Union pro-What does he say?

est position in our State a man of northern birth and of Union proclivities. What does he say?

Fellow-citizens, having taken the oath of office as prescribed by the constitution, I am about to enter upon the grave and responsible duties appertaining to the position of chief magistrate of the State of Florida.

The will of the people, as legally expressed at the ballot-box, has been enforced by the mandate of our highest judicial tribunal, and it must be a source of supreme gratification for every citizen to feel that, whatever results may flow from the excitements of political contests, he has the broad shield and protecting arm of an impartial judiciary as the final arbiter of his rights. And the quiet and entire submission of citizens of all parties to the decision of the supreme court is the surest guarantee that we are a law-abiding people, resolved to perpetuate free institutions, and to transmit to our posterity the blessings of constitutional government.

As the contest is over, let us hope that the animosities engendered thereby have died away, and that as your chosen executive I may be able to rise to the true and broad statesmanship of occupying the position of the governor of the State of Florida, and not the head of a political party. Our immense territorial dimensions demand a population commensurate with its capacity. Let us demonstrate by wise measures that our feelings and interests combine to generously invite an immigration that will promote this most desirable result.

Reflecting upon the past ouly as a guide for the future, let us endeavor to bring about an era of good feeling between all classes and build up the prosperity of Florida by the combined efforts of her entire population. A large portion of that population, recently enfranchised, have been tanght to feel solicitous of the continuance of their newly-acquired rights if the party of which I have been the honored candidate came into possession of our State government. Their fears are groundless, and our colored fellow-citizens may f

When I have received and considered the reports of the various heads of departments, I shall, in accordance with duty and usage, transmit them to the Legislature with such suggestions as I may deem appropriate. Then I can more appropriately refer to details affecting the political and material interests of the State.

Returning my heartfelt thanks to the people of the State of Florida for their confidence and support in elevating me to this position, and hoping that I may be able to meet all their just expectations, I ask their kind indulgence upon my administration of public affairs, and in my earnest efforts for their welfare and prosperity I invoke the assistance of an overruling Providence.

That is all that I deem it necessary to say in regard to Governor Drew, whose character and political antecedents are fully set forth here in his own strong language. But there is enough in that to show that our citizens are not the lawless, reckless people which some might be led to suppose by what was said here the other night by the distinguished Senator from California.

Now I have a word to say about the supreme court whose judgment has been alluded to in no complimentary terms. It is true, as Governor Drew says in his inaugural address, that the people are living under the security of the law, under the security of the courts, and that it ought to be a matter of pride to the citizens of the State that they are able to look up to their highest tribunal with pride and satisfaction. I say so, too, Mr. President; and it affords me extreme gratification to be able to say here that that court, composed as it is gratification to be able to say here that that court, composed as it is of republicans, at least a majority of them, have vindicated their character and have put themselves upon such high ground in the recent decision they have made, that no lawyer, no statesman, no intelligent citizen can impeach its exalted judgment. That decision will stand for what it is worth. It needs no support of mine. The principles of law which it sets forth, the facts upon which it is founded, will be scanned by the intelligent judgment of every intelligent citizen, and the people of this country, I thank God, are able to decide for themselves whether a thing is obviously wrong or obviously right. This decision carries in it the inherent evidence of its own correctness, which will appear from the slightest investigation by any man who feels interest enough to look into it.

Who are these judges whose judgment the honorable Senator from

by any man who feels interest enough to look into it.

Who are these judges whose judgment the honorable Senator from California says is unwarranted? I know them personally and professionally, and I say it here in the presence of the United States Senate, in the presence of the country, that three more high-minded, more capable men do not occupy public station in the United States to-day. I know that some think we cannot produce anything down there; that it is impossible to get an elevated judiciary; that it is hard to find a man with a good knowledge of the law or who is capable of deciding anything rightly: but, sir. I will put the supreme court of Florida in anything rightly; but, sir, I will put the supreme court of Florida in comparison with any other court of like character in the United States for ability and integrity, and it is due to the men who compose it and to the State to which they belong that I should say this here, because I know whereof I speak. They are republicans. What matters that to me? They are honorable men, who have ever enjoyed the confi-

dence I be even free even more firmly their reputations, which cent decision establishes even more firmly their reputations, which were before pretty well founded. A gentleman originally from Wisconsin is the chief-justice, Mr. Randall, who came to our State after the reconstruction measures went into operation, a lawyer of high character, not unknown to many gentlemen on this floor, a man of very great ability. Another is Mr. Van Valkenburg, formerly a member of Congress from New York, not unknown to fame, who represented for search a resolution district in the other and of the Capital sented for years a republican district in the other end of the Capitol. The third is a man "to the manner born," J. D. Westcott, who has as pure a heart and as bright a mind as any man in the country. He is a son of Ex-Senator Westcott, formerly a Senator in Congress, and of whom it can be said, I believe, that since he went upon the judicial bench he has had nothing to do with the contests of party. These are the gentlemen who rendered this decision unanimously and gave an interpretation to the law of Florida which the Senator from California said was unwarranted.

Now I should like to ask how these judges could have decided otherwise than they did. In 1871 they had a case before them similar in principle to the one which they recently decided. There was not much said about it outside of the State, because it did not interest so much outsiders as the recent case; but then that same court was called upon to make a decision upon this very election law which has been the subject of interpretation within the last few weeks. Their decides in the property of the subject of the decision is here. The same court was then called upon to decide a case very similar to the one recently decided.

What was the occasion of that decision? The canvassing board as

then constituted in a State election undertook to usurp judicail powers and did usurp them; for when they came to canvass the vote of the State for the office of lieutenant-governor they threw out the re-turns from eight counties and arrived at an unwarranted result. The defeated candidate appealed to the highest judicial tribunal in the State for relief, and the court made a decision in 1871 expounding the statute and defining the powers of the board. This was before the presidential contest now upon us. It was only a State election; and this decision was not heard of outside the State, I suppose; but here is what the court then said:

The object of the law is to ascertain the whole number of votes cast and who had received the highest number of such votes, so that the choice of the majority of the voters might be ascertained and respected. If the facts are correctly stated by the relator, the respondents neglected to perform this duty, and therefore did not comply with the law, in which case they did not conclude their duties as canvassers, nor put an end to their powers as canvassers by adjournment sine die. Their duties and functions are mainly ministerial, but are quasi-judicial so far as it is their duty to determine whether the papers received by them and purporting to be returns were in fact such, were gennine, intelligible, and substantially anthenicated as required by law; in other words, whether they contained within themselves evidence that they were authentic returns of the election. If, as is alleged, the respondents neglected to examine and include returns duly and legally made from several of the counties, and therefore but partially performed what they were required by law to do, it must be considered that they have not complied with the law, and that they may be required to do so by means of the process here invoked.—State ex rel. Bloxham vs. Board of Canvassers, Florida Reports, volume 15, page 73.

That is the language of the court, not in 1876 but in 1871, when there

That is the language of the court, not in 1876 but in 1871, when there That is the language of the court, not in 1876 but in 1871, when there was no presidential question to decide. It is the decision of the court on this very statute. What, I ask, would lawyers have had the supreme court to do when they were brought face to face with this same question in 1876? Was it to be expected that they should stultify themselves, go back upon their own record, and arrive at a different conclusion from what they did in 1871? O, no, Mr. President, the trust convent to expect from the supreme court of Februage. dent; that was too much to expect from the supreme court of Florida; and I am proud and happy to be able to say that it has vindicated its judicial character by pursuing an impartial course and re-affirming their former judgment.

I know this statute was amended after this decision was made; and so confident am I of the justice of the case which I represent here that I have no disposition to keep from full view this whole case in all its parts. After the decision was made the Legislature passed an act in 1872 amending the statute. They had this decision before them in which, as you have seen, the court held that those officers had no judicial power, that they were ministerial, and that they were confined in their duties to an examination of the returns and a declaration of the result of the election from an inspection of them.

How did the amendment affect the question?

How did the amendment affect the question? The Legislature amended the statute by the addition of a few words which did not have amended the statute by the addition of a few words which did not have the effect of changing in the slightest degree the character of the duties of these officers as prescribed by the judgment of the highest court in our State. If they meant to give the canvassing board judicial power, with this decision before them fixing their duties as ministerial officers, then was the time to do it. In 1871 this decision was made. In 1872 the amendment was enacted; and there is nothing in the amendment from which any man can infer that it was the intention of the Legislature to confer upon these men the extraordinary power that hear from which any man can thier that it was the intention of the Legislature to confer upon these men the extraordinary power that has been set up for them. The mere statement of this proposition is sufficient to show to any reasonable man that no such thing was ever proposed, no such thing was intended. The debates in the Legislature at the time show that it was not the intent or purpose to confer judicial authority, and they had before them at the time that amendment took place, staring them in the face, this judgment, which I have read, fixing and defining in the clearest possible terms the duties and the powers of this board.

Now, sir, for fear that I may do injustice to anybody in this discussion, I will here read the words of this amendment. I will first

read the law as it stood at the time the decision which I have read was made, and then I will read it as it stood after the amendment of

On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and comptroller of public accounts, or any two of them, tog-ther with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State can wassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns.

That was the law in 1871, upon which the supreme court of Florida rendered this decision, stating as they did that it was a mere ministerial duty the canvassers had to perform; but in 1872 this provision was added:

Was added:

If any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers.

The said board shall make and sign a certificate containing, in words written at full length, the whole number of votes given for each office, the number of votes given for each person for each office, and for member of the Legislature, and therein declare the result; which certificate shall be recorded in the office of the secretary of state in a book to be kept for that purpose; and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government.

That is the law under which it is claimed that the canvassers That is the law under which it is claimed that the canvassers could exercise judicial powers, the denial of which authority the court has been blamed for by the honorable Senator from California. The supreme court in its recent decision re-affirmed, as I said awhile ago, the principle of its decision in 1871. If it had not done so it would not now be entitled to the respect of any lawyer or citizen in the country, because, if it had arrived at a different conclusion in 1876 from the one it reached in 1871, it would be pointed to as a political tribunal where the wrongs of persons could not find redress. It has, therefore, been consistent. The court in 1876, following its decision in 1871, said: in 1871, said:

While the general power of the board is thus limited to and by the returns, still as to these returns the statute provides that "if any such return shall be shown or shall appear to be so irregular, false, or fraudulent, that the board shall be unable to determine the true vote for any officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers." The words "true vote" here indicate the vote actually cast, as distinct from the legal vote. This follows, first, from the clear general duty of the canvassers, which is to ascertain and certify "the votes given" for each person for each office; and second, because to determine whether a vote cast is a legal vote is beyond the power of this board. As to the words "irregular, false, and fraudulent" in this conection, their definition is not required by the questions raised by the pleadings in this case. These respondents have not alleged that they have before them any return "so irregular, false, or fraudulent;" that they are unable to determine the actual vote cast in any county as shown by the returns; and nothing can be clearer than that the counting of returns sufficiently regular to ascertain the whole number of votes given, and signing a certificate, are merely ministerial acts.

Is anything clearer?

#### Is anything clearer?

Under these pleadings the genuineness and regularity of the particular returns in question here are admitted. We will say, however, that the clear effect of this clause in the statute is that a return of the character named shall not be included in the determination and declaration of the board; and that it has power to determine the bona fide character of the returns dehors their face. It is not within the power of this board to refuse to count some of the votes embraced in a return and to count others embraced therein. They must count the whole of the return or must reject it in toto. We will also say that the powers here conferred are ministerial powers. It is true that in some respects these powers are something more than simple counting or computing, but they are powers which necessarily appertain to the discharge of every ministerial duty of this character. Their existence is no obstacle to the control of such officers by mandamus from a court having Jurisdiction of the subject-matter.

The court goes on to say that this view of the law is sustained by The court goes on to say that this view of the law is sustained by a series of decisions in this country which no lawyer can impugn. While I am at this part of the case I might refer to what Judge Cooley says in regard to this jurisdiction, and I find on looking into the notes that he cites a decision of the supreme court of California, which is not now in my hand, affirming the very jurisdiction that the court in Florida exercised in the case referred to. Judge Cooley says:

If the election is purely a local one, the inspectors who have had charge of the election canvass the votes and declare the result. If, on the other hand, their district is one precinct of a larger district, they make return in writing of the election over which they have presided to the proper board of the larger district; and if the election is for State officers, this district board will transmit the result of the district canvass to the proper State board, who will declare the general result. In all this the several boards act for the most part ministerially only—

The very language employed in the Florida decision-

and are not vested with judicial powers to correct the errors and mistakes that may have occurred with any officer who preceded them in the performance of any duty connected with the election, or to pass upon any disputed fact which may

And in support of this principle he cites a number of authorities. Each board is to receive the returns transmitted to it, if in due form, as correct, and is to ascertain and declare the result as shown by such returns.

The language here in the text of Cooley is the very language that is employed in the Florida statute; they are to declare the result of the election from the returns before them, and the statute seems to

have been framed in conformity with the text of Cooley's opinion on this subject:

Each board is to receive the returns transmitted to it, if in due form, as correct, and is to ascertain and declare the result as shown by such returns; and if other matters are introduced into the return than those which the law provides, they are to that extent unofficial, and such statements must be disregarded. If a district or State board of canvassers assumes to reject returns transmitted to it on other grounds than those appearing upon its face, or to declare persons elected who are not shown by the returns to have received the requisite plurality, it is usurping functions, and its conduct will be reprehensible, if not even criminal. The action of such boards is to be carefully confined to an examination of the papers before them, and a determination of the result therefrom, in the light of such facts of public notoriety connected with the election as every one takes notice of, and which may enable them to apply such ballots as are in any respect imperfect to the proper candidates or offices for which they are intended, provided the intent is sufficiently indicated by the ballot in connection with such facts, so that extraneous evidence is not necessary for this purpose. If canvassers refuse or neglect to perform their duty, they may be compelled by mandamus; though as these boards are created for a single purpose only.

That is his opinion, that they may be controlled by mandamus; and that is all that the supreme court of Florida in the case recently before it attempted to do, to exercise the very jurisdiction which is

before it attempted to do, to exercise the very jurisdiction which is here stated, and which is supported by a number of authorities from other States of the Union. Will any man tell me that a judgment so obviously correct, in point of jurisdiction and upon the merits of the controversy, should be arraigned as unwarranted?

So much in regard to the law which controlled the action of this tribunal. And now, sir, a few words in regard to the facts of the case. The votes of the thirty-nine counties in Florida at the last election, according to the returns now on file in the office of the secretary of state were 24 440 democratic and 24 349 republican. I mean retary of state, were 24,440 democratic and 24,349 republican; I mean retary of state, were 24,440 democratic and 24,349 republican; I mean upon the electoral ticket. These include all the frauds said to have been committed in the various counties before the State canvass. This is the largest vote ever polled in the State, being 5,727 in excess of the republican vote of 1874 and 6,885 in excess of the democratic vote of the same year. It may be asked, why this great increase in the democratic vote since 1874? If it has increased 6,885, the republican vote has increased 5,727; but it is a matter of general notoriety that the tide of immigration into Florida since that time, and which is now going on I am bany to say is chiefly of white propulation and is now going on I am happy to say, is chiefly of white population, and the larger part of the increased democratic vote is from that population. The State canvassers changed this result on their first canvass, and made the vote to stand 23,849 republican and 22,923 democratic, throwing out over 2,000 votes actually east at the ballot-boxes, and thus creating an apparent majority for the republican ticket of 926. How this was done is shown by this table:

Counties.	Republican elector, Humphreys.			Democratic elector, Yonge,		
	Vote.	Increased.	Decreased.	Vote.	Increased.	Decreased.
Alachua Baker Bradford Brevard Calhoun Clay Columbia Dade Duval Escambia Franklin Gadsden Hamilton Hernando Hillsborough Holmes Jackson Jefferson La Fayette Leon Levy Liberty Madison Manatee Marion Monroe Nassau Orange Polk Putnam Saint John's Santa Rosa Sumpter Suwannee Taylor Volusia Wakulia Wakulia Wakulia Washington	1,990 143 202 588 64 126 64 126 67 1,602 97 1,602 97 144 186 1,178 2,600 62 3,033 207 83 1,524 1,552 208 6 586 3388 409 173 186 6 182 458	1 4	233 233 121 60 2 26	1, 254 238 703 1111 215 311 1903 5 1, 437 1, 426 157 835 211 736 300 961 736 309 1, 003 488 147 1, 078	24	10 40 43 43 43 40 40

The returns from nine counties were tampered with, and while over 500 votes were deducted from the republicans over 1,500 votes

taken from the democrats, all because of the manner in which the election was conducted in the counties to whose returns objections were tion was conducted in the counties to whose returns objections were made. Mark you, sir, that this whole action is founded upon the conduct of the election officers, and upon the conduct of the election officers alone. The canvassers attempted to disfranchise over two thousand citizens of my State because of the manner in which the election officers discharged their duty.

I am not here to give my judgment upon this case, but to submit the facts in regard to it, but I must say that, in any point of view in which it can be regarded, you cannot uphold the judgment of the canvassing board which sustained the most flagrant frauds in Alachua Connty, where the returns were altered, and put aside democratic

canvassing board which sustained the most flagrant frauds in Alachua County, where the returns were altered, and put aside democratic majorities because of the irregularities of the election officers, and republicans at that. It was not denied that the votes returned from said counties were honest and true. The objection went to the conduct of the election, and to that alone. I say here that every one of the objections urged against the returns from these counties, if made before a tribunal invested with power to pass upon them, could not for a moment be sustained by the principles of law as settled by the authorities. Judge Cooley has well stated the rule in such cases. Speaking of election laws, he says: Speaking of election laws, he says:

Their provisions designed merely for the information and guidance of the officers must be regarded as directory only, and the election will not be defeated by a failure to comply with them, providing the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared.—Cooley's Constitutional Limitations, page 617.

So that even if this board possessed the power which it claimed to exercise in this case, its judgment cannot be maintained by any man in view of the facts before it. But how much stronger does the case appear against these canvassers when we remember that they had no legal or rightful authority whatever to disregard a single return be-fore them from which the actual vote cast could be ascertained. There were no facts shown by the evidence to call for the exercise of judicial power, if the board had it; but there was no jurisdiction in judicial power, if the board had it; but there was no jurisdiction in the board to go behind the returns, even if they desired to deal with the case in a judicial way. So that it matters not what view may be taken of the proceedings of these men, they carry with them no validity. If they had judicial power, it was not general, but special, and their record must show upon its face that they had a case before them which justified the judgment which they gave. And while I am right here on this point, I wish to say a word in regard to the Louisians against way of illustrating ways into the Floridaese. siana case by way of illustrating my position touching the Florida case.

The opinion of the Committee on Privileges and Elections of this body has been referred to heretofore for another purpose, but I will show from the report of that committee that in the view entertained by it the Louisiana board had no jurisdiction to act there unless all the requirements of the law had been complied with. What does it

the requirements of the law had been complied with. What does it say?

The statute of Louisiana authorizes the supervisors of registration in the parishes, or the commissioners of election, to make affidavit in regard to any violence, tumult, fraud, or bribery by which a fair election has been prevented, which shall be forwarded to the returning board, along with the returns, and upon which the returning board may reject the vote of a poll in making the count; and if the evidence of the officers of the election is not sufficient to satisfy the minds of the returning board in regard to the matters charged, they are authorized to send for persons and papers and take further testimony upon the matter; but they have no authority to make such investigation unless the foundation is first laid by the sworn statements of the officers of the election, as before mentioned. The Lynch board, in making their count without having the sworn statements of the officers of the election to give them jurisdiction to investigate, received affidavits, the statements of supervisors of election appointed under the act of Congress, letters and verbal statements upon which they assumed the authority, in some cases, to reject the entervote of particular polls and wards, and in others to estimate and fix the vote at about what they supposed it ought to be from their knowledge of the political status of the parish or locality. The evidence submitted to the board, and which has been described to the committee, undoubtedly produced the conviction in their minds that the election had been an organized frand. Governor Warmoth, under the act of 1870, had the whole machinery of the election in his own hands. He had the appointment of the supervisors of registration in the different parishes, and they the appointment of commissioners of election, and those officers, with but few exceptions, were appointed from the ranks of those who were opposed to the republican party, and we think, from the informal evidence before the returning board and from

This was the opinion of the chairman of the Committee on Privileges and Elections of this body, stating that unless these statements, about which my friend from Missouri [Mr. Bogy] the other day said so much and said so well, are part of the returns, the returning board can take no action in the matter. It is without jurisdiction upon the principle here stated, that being a special tribunal it must have before it every fact necessary to give it power. This distinction between

courts of special jurisdiction and courts of general jurisdiction is well established by Mr. Cooley, page 405:

The records of the one must show affirmatively that it had jurisdiction to render the particular decree, while the authority of the other is always implied from its recorded proceedings.

Now, sir, our law does not differ from the laws of every State of the Union on this subject. It prescribes ministerial powers for three sets of canvassers: first, the canvassers of the votes of the precinct, second, or canvassers: first, the canvassers of the votes of the precinct, second, the county canvassers, and thirdly, the State canvassers; and I will say here that the duties of each class of canvassers are prescribed in almost identical language. They have no authority to go behind the returns, no authority to inquire into the legality of votes, no authority to do anything but to ascertain the result of the election in the one case from the votes actually cast in their presence, and in the others from the returns that have been sent to them duly certified; so that under this law the authority of the inspectors is equally as great as that of the State board, and indeed it is far more important because the law takes the precaution of requiring precinct officers to take an oath to discharge their duty faithfully and impartially before they enter upon it, while in the case of the State canvassers no such they enter upon it, while in the case of the State canvassers no such obligation is required, and will any man say, after a review of this law, that the board of inspectors who are required under it to canvass the vote on the night of the election would dare to throw out a single vote that they found in the box, unless it was found under circumstances prescribed in the statute which might impeach its honesty and validity?

Even in the case of challenges over which the inspectors have jurisdiction, if the voter swears that he is authorized to vote under the laws of Florida, although the inspector may know that he is not thus qualified, he has no option to disregard his vote, but is bound to accept it and to include it in the return. And so it is with the county canvassers when they come to pass upon the returns from the various precincts in the county, they canvass the returns just as the inspectors do the votes; and they certify the result to the State board in a single certificate, in which they are not permitted to say whether this man or that man has been elected. O, no; but their very judgment is prescribed by the terms of this very particular and important law. They are not permitted to say in general language that this or that candidate has succeeded; but they are required, in the language of the statute, to write out in words at full length the whole number of votes cast or given for each person for each office, in order that the public, in order that the citizen may see from that record for himself who is the duly elected candidate. So it is with the State board. They are required in the very same language to declare the result in the State as the county returning officers are required to state the result in the county, from the whole number of returns before them, and to write out in words in full length—they are not permitted to laws of Florida, although the inspector may know that he is not thus and to write out in words in full length-they are not permitted to put them down in an ordinary way—but they must write in words at full length the whole number of votes actually given for each office and the persons for whom they were given; and this has been called judicial power. Why, sir, who ever heard of a statute undertaking to give judicial power, which is the right of unqualified decision, that to give judicial power, which is the right of unqualified decision, that prescribed for the judge the very nature and form of his judgment? Would it not be an insult to any tribunal to say to it when called upon to pass upon a case, "Here is the form of your judgment, here is the substance of your decree, here is the manner in which you must decide the case before you?" Is that the way the law gives judicial power? If it is, I must confess that my knowledge of judicial power is very different from that of other gentlemen who maintain that view. No, sir, when you give judicial power you give power to decide, according to the judicial function, in any manner that the principles of justice and equity may dictate. You are not to say to a tribunal that is vested with judicial power "Here is your judgment; it can under no circumstances be recorded in any other way." That is just what the statute does. It prescribes the judgment that the is just what the statute does. It prescribes the judgment that the board must give, and still there are gentlemen who entertain a notion that this is a great judicial power, and that the supreme court of Florida had no right to interfere with the exercise of this power by the State board.

But, sir, what does the constitution of Florida say on this subject? It says that all judicial power in the State shall be vested in four courts, which it designates; and it is a remarkable fact that at the time when the act of 1872 was passed the Legislature, in pursuance of the power conferred by the constitution, had vested all the judicial power of the State in the four courts that that instrument designated as the repositories of it; and this was one of the questions designated as the repositories of it; and this was one of the questions that was presented to the supreme court in the recent cases. It said, and said with great reason and force, the board had no judicial power for two reasons: First, that the Legislature did not have the judicial power to confer, because all the judicial power of the State vested in the government by the constitution had in 1868, when the government was re-organized, been transferred to the fon courts which the constitution designated to be the only repositories of it: the supreme court, the circuit courts, the county courts, and the justices of the peace. They had all the judicial power of the State, every bit of it. Hence the Legislature in 1872 had none to give these canvassing officers. That is a proposition that nobody can deny.

Then, sir, there was another difficulty even greater and graver than

the one I have mentioned, in the way of giving this board any judicial authority. Who are the gentlemen that compose the canvassing

Mr. MITCHELL. Will the Senator from Florida permit me to ask

Mr. MITCHELL. Will the Senator from Florida permit me to ask him a question?

Mr. JONES, of Florida. Certainly.

Mr. MITCHELL. Suppose they had the power under the constitution, would the words used by the Legislature have conferred judicial power on that board in the Senator's judgment?

Mr. JONES, of Florida. I think not. Both views of the subject to take by the convergence court and they decide first that second

are taken by the supreme court, and they decide, first, that according to a fair interpretation of the statute it was not the intention of the Legislature to confer judicial power, and, in the second place, that they could not have done so under the Constitution, because all judicial power had been conferred in the manner designated in the

organic law. I was about to say that there was another and graver difficulty in the way of giving this board any judicial powers. Mark you, under the law they performed the duties assigned them ex officio, by virtue of their offices, the attorney-general, the secretary of state, the comptroller of public accounts. They are not, like the individuals named in the Louisiana law, persons required to do this thing. There the men are named, but here officers are named. Now who are these officers under the constitution of Florida? They compose a part of what is known there as the administrative department under the organic The powers of the government are divided up into executive, legislative, and judicial departments. Then they put on what they call an administrative department, something a little novel, and something that we were not very well able to bear at the time, but which we had to accept under the conditions that then existed. I say, sir, that the constitution of Florida defines in terms the duties of these officers, and then it was not competent for the Legislature, even if it had the power to do so, to superadd to the duties here given them any judicial function. Why?

There shall be a cabinet of administrative officers-

Says this organic law-

consisting of a secretary of state, attorney-general, comptroller, surveyor-general, and superintendent of public instruction—

who shall assist the governor in the performance of his duties.

What are the duties of the governor ? We know very well that the What are the duties of the governor? We know very well that the duties of a governor under all constitutions are purely executive, and that in the organic laws of nearly, if not every. State in the Union the powers of government are distributed between three departments, known as the executive, legislative, and judicial. In this very constitution it is furthermore declared that no person properly very constitution it is furthermore declared that no person properly belonging to the executive department shall exercise any duty or authority appertaining to either the legislative or judicial departments. Note the words "properly belonging." I will ask, then, what are the duties of these administrative officers under this organic law? They are put down here as aids to the governor, and the governor is the chief executive of the State. They are to assist him, and that is all, in the performance of his executive duties, and the constitution declares that no person thus situated under any circumstances can be called upon to perform judicial duties without violating the very law which gives existence to his office. How then, I ask, was it possible for the Legislature of Florida to confer upon these men judicial power when they had before them this constitution which tied their hands and their consciences by the oath required to uphold its provisions? Is it to be supposed that the members of the Legislature in 1868 and 1872, with the solemn obligation resting upon their souls, to obey this organic law, went to work when they organized the State government to disregard it in one of its most fundamental principles? I have more charity for the Legislature of that day than to raise such a presumption against their integrity and their ability. I will not presume that when they enacted this statute giving to those men the power to canvass the returns of elections they meant to violate this fundamental law.

The secretary of state

The constitution says-

shall keep the records of official acts of the Legislature and executive department of the government, and shall when required, lay the same and all matters relative thereto before either branch of the Legislature, and shall be the custodian of the great seal of the State.

That is the constitutional duty prescribed by the constitution upon this officer. Then the constitution provides:

The attorney-general shall be the legal adviser of the governor and of each of the cabinet officers, and shall perform such other legal duties as the governor may direct or as may be provided by law. He shall be reporter for the supreme court.

These are the officers then upon whom the Legislature cast the duty of ascertaining the result of the late election from the returns before them; but, instead of undertaking to declare the result, they went to work to destroy the effect of over two thousand honest votes of the

people under the assumption that they were judicial officers.

The election law of Florida prescribes the duties of the various canvassers in almost the same language. First, we have a section devoted to a canvass by the inspectors; second, a canvass by county officers; and, third, a canvass by the State board. And in each case a

certificate is required to be given by each board in precisely the same language, which must contain a statement of the whole number of votes given for each office and the number of votes cast for each person for such office. Now it is a well-settled rule of construction, which I need not bring to the attention of legal gentlemen in this body, that the same words when found repeated in a statute should receive the same construction or interpretation unless it should clearly appear that it was not the intention of the Legislature to employ them in a uniform sense. So that we can readily understand what the Legislature meant by the word "canvass" when we look at the powers of the inspectors whose duties are indicated by this very term the same as those of the State board. It will be remembered that the inspectors in the various counties who are sworn officers are required at the close of the election to canvass the votes cast at such election, and certify the result to the county judge and clerk. What is the difference between the two? The one class of officers are required to canvass the votes cast, the other are required to canvass the votes given as shown by the returns before them, and the duty is devolved upon them in almost identical language. Still we are told that this State board, this self-erected judicial tribunal, was brought into being to refine away the votes of the people and may trample under foot the constitutional privileges of two thousand voters.

The inspectors at the election are the officers who receive the bal-

lots from the voters and who decide all challenges. of Florida they have no authority to refuse a single ballot, and when a voter is challenged and takes the oath required, the inspector must receive his vote. What kind of a construction would it be to say that these officers who presided over the polls, and who have no power to reject votes during the progress of the election, may at its close and because they must canvass the votes cast disregard ballots which on the same day they were compelled to deposit in the box ?

The law says that if the challenged voter takes the oath his ballot

must be received; and then it goes on to say that at the close of the election the officers who are thus required to receive them must canvass the votes just the same as the State board are required to canrass the returns of the counties, and the duty is put upon them in the same language in both cases.

the same language in both cases.

The power to reject returns cannot, any more than the power to reject votes, be derived from the right to canvass. The canvass by the State board does not differ in principle from the canvass by the inspectors and county officers. The duty is a purely ministerial one when exercised by either of the three classes of canvassers, and is governed by the same principles. The statute leaves nothing to the discretion of these officers. The canvass by the inspectors must be public. This is to secure a compliance with the law, and if an attempt was made to defeat the will of the people by throwing out any of the ballots found in the box, a remedy could be found in the courts to prevent the wrong. But suppose the inspectors, contrary to their duty, had not counted all the votes cast and gave a certificate based upon a canvass of only half of the ballots? Would there be no redress for such a violation of law? There is not a lawyer in the land who would say that the judicial authority was not competent to give who would say that the judicial authority was not competent to give relief in such a case. And what would such a certificate be worth? It would be utterly void and of no effect. It is only when an officer follows the law that his acts are legal. When he violates it he is a wrong-doer and nobody is bound by his action.

Then look at the duties of the county canvassers. They are re-

quired to canvass the precinct returns on the sixth day after the election and to declare from these returns the number of votes given for each office and the persons for whom they were given. They make and sign certificates in duplicate and send them to the secretary of state and the governor of the State.

Here I want to draw the attention of the Senate to a very important point. It will not be affirmed, I suppose, by any Senator that this county board, composed of the clerk, the sheriff, and the county judge, has any judicial authority. Their duty and authority are conferred in precisely the same language as the authority of the final canvassing board and they are required to make the county can be a senated as a senated and they are required to make the county can be senated. ing board, and they are required to make the county canvass on the sixth day after the election, and the State board is required to make the canvass on the thirty-fifth day. If the law intended to give any other or different kind of duty to the State canvassing board than that given to the county board, is it not reasonable to suppose that they would have enlarged the time for the performance of that duty? On the thirty-fifth day after the election the State board is required.

to canvass the county returns, and declare from them who has been elected to any office, and to state the whole number of votes given for each office and the number given for each person for each office. The very same time is fixed by the law for the performance of the duties assigned to the State board that is prescribed for the performance of the duties of the county canvassers, a single day. If the Legislature intended that the State board should exercise judicial powers, hear evidence and arguments touching the legality of the powers, near evidence and arguments touching the legality of the election, the rights of voters, and the duty of officers, it would certainly have made use of different language in regard to the time to be employed for that purpose than it did in reference to the time allotted to the county canvassers. But the law in both cases clearly implies that the duties of both boards may be performed in a single day. We know as a matter of fact that when the board in Florida first entered upon the discharge of judicial functions it took more than a single day to arrive at the conclusion that it did.

It must clearly appear from this view of the law that the duties of the State board were purely ministerial—to canvass the county returns, and state from them the whole number of votes given for each office. This they did not do. We have seen that by the first canvass a majority of 926 was declared for the Hayes electors, and have explained how this was done. The subsequent canvass, made by order of the supreme court, reduced this majority to 206, and gave the State ticket to the democrats.

The proceeding in which this order originated was instituted by George F. Drew, the democratic candidate for governor. The judgment of the court directed the canvassers to canvass and count all the returns on file before them for the office of governor. said about any other office. How came the canvassers to intermeddle with the previous determination in regard to the electoral vote? They were not commanded to do so by the court. If Governor Hayes had 926 majority, why was it not permitted to stand? Why change it to 206? The order of the court only required the canvass to show who had the highest number of votes for the office of governor. Ah, Mr. President, the purpose is too plain. If ever there was any doubt about the unfairness of this business, a scrutiny of this part of the transaction ought to remove it. The first canvass gave the honest vote of Baker and Clay Counties to Samuel J. Tilden, for whom it was intended by the people. The canvass demanded by Mr. Drew related to the counties of Manatee, Jackson, Monroe, and Hamilton, the returns from which had been changed by the board in order to create the majority of 926. If these returns were recanvassed and counted for the office of governor alone, it would have established beyond doubt the right of the Tilden electors to the votes rejected, which, added to the majorities in the other counties, would have shown conclusively that Governor Hayes had lost the State. The board knew that the court would compel them to count the returns from these counties for Drew, and when thus counted the Tilden majorities previously rejected would in law and conscience rise up and claim recognition. Clay and Baker Counties were not in dispute. Why were the returns from them, which at the first canvass were conceded to Drew and Tilden, under an order issued in the interest of Drew alone, recanvassed and the rightful majorities in both taken away from Tilden, who was not before the court and whose interests and rights ought not to have been affected by a proceeding to which he was not a party? Here is the judgment of the court:

was not a party? Here is the judgment of the court:

This day came the parties by their attorneys; and thereupon, the matters of law arising upon the relator's demurrer to the answers, original and amended, of the respondents, being argued, it seems to the court that the said answers and the matter therein contained are not a sufficient answer in law to the alternative writ issued herein, and that said return is insufficient. Therefore it is considered that a peremptory writ be awarded directed to the said Samuel B. McLin, secretary of state; William Archer Cocke, attorney-general; and Clayton A. Cowgill, comptroller, board of canvassers of elections of the State of Florida, commanding them that they forthwith meet and convene and re-assemble as a board of State canvassers in the office of the secretary of state, to canvass and count all the election returns on file in the said office of the secretary of state, of the said election for the office of governor, held on the 7th day of November, A. D. 1876, and that as such board of State canvassers they canvass and count the returns for said office from each and every of the counties of this State wherein an election was held for said office; and especially that they do canvass and count the neutrum for said office from each said counties of Jackson, Hamilton, Manatee, and Monroe, and that they determine from a canvass and count and examination and tabulation of all the votes east for the said office of governor at said election received at the office of the State, as shown by the election returns of said election received at the office of the State, as shown by the election returns of said election for povernor, as shown by the said returns, and that they do, as such board, make and sign a certificate, as required by law, containing in words and figures written at full length the whole number of rotes given at said election, as shown by said returns for the said office of governor of the State of Florida, and the number of votes given for each person voted for fo

It appears from this judgment that the command to those canvassers was to canvass the returns from all the counties in the State for the

office of governor, and for the office of governor alone.

Under this judgment, the canvassers had nothing to do with the electoral vote. They were tied to a naked compliance with the order requiring them to canvass the returns for the office of governer. The legality of the recanvass resulted from the judgment of the supreme court, which commanded it in the interest of the suitor who invoked its jurisdiction. The court had no power to compel or the board to allow the proceedings to go beyond the case made by the pleadings. And how does this case stand before the country? The votes given for Drew and the presidential electors were first canvassed by the state heard indiciably. Democratic maintains in four country were State board judicially. Democratic majorities in four counties were reversed or thrown out by the board, which gave the State and electoral tickets to the republicans. Clay and Baker Counties were counted for the democrats. Drew appealed to the supreme court and obtained a writ of mandamus to compel the canvassers to recanvass and count the returns from the four counties for the office of governor. The writ issued and directed a recanvass. The majorities for the demo-crats in the rejected returns added to those conceded in the first canvass would show a majority of votes for both Tilden and Drew. The board, instead of confining its action to a recanvass of the returns for governor, went on and recanvassed the returns for electors. It gave to Tilden the benefit of the majorities in the four counties the can-vass of whose returns was alone prayed for by Drew. It took away

from Tilden his majorities in Clay and Baker Counties, which were conceded in the first canvass, under a judgment directing a recanvass of the entire vote of the State in favor of Drew; and it did this for of the entire vote of the State in lavor of Dew; and it did this for the express purpose of preventing the judgment of the supreme court of Florida, based as it was upon law and justice, which gave Drew his office, from being set up as a precedent in behalf of the Tilden electors, who had been deprived of their rights by them.

Yes, Mr. President, Clay and Baker Counties were in the first can-

vass counted for the democratic tickets, both State and national, and both showed majorities for those tickets. The returns from four other counties were thrown out. When the canvassers were required to recanvass the returns from the four rejected counties, instead of following the mandate of the supreme court they went and took up the returns from Clay and Baker that they had previously counted in favor of the democratic tickets, and, while including the others for Tilden and Drew, threw out the returns from Baker and Clay.

But, Mr. President, what shall we say of the reasons which were assigned by the board for reversing their first decision in regard to the returns from Clay and Baker Counties? It will be remembered that the true return from Baker County was signed only by the clerk of the circuit court and a justice of the peace, for the reason that the county judge refused to attend the canvass at the clerk's office as the law required him to do. This return was based upon a canvass of the four precinct returns, all that were in the county, and showed 143 votes for Hayes and 238 for Tilden. The county judge's return, which the board rejected at the first canvass as fraudulent and which they accepted at the last canvass as true and honest, was based upon only two of the precinct returns, and showed 89 votes for Tilden and 130 for Hayes

These officers knew positively that the county returns which they accepted as true at the last canvass did not embrace the full vote of Baker County, and that two precinct returns had been omitted from the county judge's return. But the objection to the clerk's return was that it was not signed by the county judge, who refused to attend the canvass. But, sir, the republican county of Duval sent up its returns in the same way as that of the rejected return from Baker, is reduced to the results in the same way as that of the rejected return from Baker, its returns in the same way as that of the rejected return from Baker, signed only by the clerk and a justice of the peace. The democrats objected to that return because the judge had been unlawfully excluded from the canvass; but the board sustained the return because it gave 941 majority to the republican ticket.

Here was a fair test of impartiality and justice and right. Here were two returns coming before this board executed in the same way, we with a democratic painting and the other with a resulting resulting and the same way.

one with a democratic majority and the other with a republican majority; the one executed by a clerk and a justice of the peace in favor of the democrats, the other executed by a clerk and a justice of the peace in favor of the republicans. When they came to the democratic return they rejected it because the return was not valid. When they came to the other they accepted it as in every respect unobjectionable. It must appear that the action of the board was partial and par-

I say this for there could be no other reason when you reflect upon I say this for there could be no other reason when you reflect upon the ground assigned for the rejection of the clerk's return from Baker with its democratic majority. And then look to the reasons given for the rejection of the entire vote of Clay County. On the second canvass the board, you will remember, pretended to act ministerially under the order of the court. At the first canvass the returns from Clay County were accepted and the precinct vote, which was rejected by the county canvassers for technical reasons, was counted. The vote stood 122 for Hayes, 287 for Tilden.

These figures cannot be denied. It seems that when the county board came to canvass the returns from the various precincts in the county they found that the return from one of them was irregular.

county they found that the return from one of them was irregular. It did not appear upon the face of the papers that the inspectors had taken the oath required by the law to be taken. The consequence was that they rejected the vote from that one precinct, but as honest men, anxious to do their full duty and not desirous to commit any fraud upon the rights of the people, while they rejected this return, they certified the reason of their action to the State board. They said, "Here is this honest vote of this district which was returned by us. We cannot include it in our consolidated certificate because we do not find that the oath required by law had been taken by the inspectors, but we are satisfied that the vote was an honest one, and we return it in this way, that the board may decide whether we exceeded our authority or not." This was the position taken by the county canvassing officers with respect to the vote or the return from Clay County. The State board at that time, in the exercise of ap-parent liberality and justice, felt the force of this argument and ex-amined, I suppose, the law and found that the canvassing board below acted erroneously, and they included this return in the vote of Clay County and proclaimed a majority in accordance with that return. The vote was, as I have stated, 122 for Hayes and 287 for Tilden. This appears from their first canvass. No one attempted to impeach the honesty of this vote. Still the vote of the entire county was thrown out on the second canvass, and for what? This will furnish the key to the whole case. Why was the vote from the whole counth thrown out on the recanvass when these same officers were acting under the order of the court? Had anything happened in the mean time to change the character of the case? Was not the recanvass directly under the order of the court and did not the canvassers have the same facts before them? The men who performed this duty were

conversent with the law; they had investigated the case; they had rendered their judgment; but now they proposed to reverse it and deprive the people of Clay County of their vote.

Mr. President, it was said of a judge in England, who went to the West Indies in the days of Lord Ellenborough, that his judgments were universally sustained so long as he did not assign any reasons for them. When he went to that distant colony he was in the habit of entering up very short indements without reasons; but after a little of entering up very short judgments without reasons; but after a little while he became more confident of his superior knowledge of the law, and he began to write out his opinions; and as soon as they began to appeal from the colonial courts to Westminster Hall whenever his judgments got there they were generally reversed, not so much for the inherent error of the judgments as on account of the reasons that had been assigned for them. This judgment should be reversed on account of the reasons assigned for it, laying aside the abstract justice of the case, which it clearly violates.

No one attempted to impeach the honesty of this vote. Still, sir,

the vote of the entire county was thrown out on the second canvass. And for what \(^{\frac{1}{2}}\) Sir, I dislike to pursue this subject; it gives me no pleasure to follow the devious path of concerted wrong. The return from Clay County was rejected by the board for the reason that it was false and fraudulent, as the county canvassers had omitted in their consolidated certificate the return from one precinct with 23 demo-

consolidated certificate the return from one precinct with 23 democratic majority, I think.

Mark the amendment of the election law passed by the Legislature in 1872, upon which the supreme court in the case recently decided gave its opinion that, when any return shall appear to be so false, fraudulent, or irregular that the true state of the vote cannot be ascertained, such return shall not be included in their determination, but shall be put aside. When the board came to Clay County on the second canvass, they, with the full knowledge of all the facts that were certified before them by the local officers, showing no case of fraud whatever, but a mere mistaken judgment, pronounced that return false and fraudulent within the meaning of the amendment of return false and fraudulent within the meaning of the amendment of the statute of 1872. There was no falsity or fraud about it. It was a case of three men who were honestly mistaken in regard to their powers. They did not find a copy of the oath in the papers, but they certify the fact to the State board and invite its impartial and honest judgment, and that board, when called upon to advise and to instruct these officers, pronounced that act to be fraudulent and void which did not have in it a single element of fraud. What is fraud? The law very wisely refuses to define it. Why? Because the indications of fraud cannot escape the perception of man. It is that which every man can detect when he sees it. Everything was open, everything was fair that was done by the county canvassers, and the State board so decided on the first canvass, but on the second omitted this return because it was false and fraudulent. They held that the failure to return one precinct justified the disfranchisement of the county, with a majority of 105 for Tilden, as before stated.

Now, these gentlemen accepted a false return from Baker County which omitted the returns from two precincts and thus made to show

You will remember the history I gave of Baker in the first instance.

When the returns from this county were first presented to the board the clerk's return was received as the honest one, because it embodied the full vote of the county. The board knew there were four vot-ing-places in the county. The clerk canvassed the vote at his office at the time fixed by law and sent to the State board a certificate showing the result. The sheriff and the judge met away from the court-house and canvassed the vote of two precincts in the county in violation of the law, and certified both in favor of Governor Hayes and the republican ticket. In the first canvass this return of the judge and sheriff was pronounced fraudulent and void, because it did not contain the whole vote of Baker County as shown by the precincts' returns.

It was not like the case of Clay, where the inspectors sent up the certificate, showing that they did not include the whole vote in their return because of a misconception in regard to law; but in this case the true precinct returns were intentionally omitted by the judge and the sheriff, and on the first canvass their return was rejected by the canvassing board. On the second canvass in the mandamus proceeding, strange to say, they were adopted as the true return, and the return first pronounced to be valid was rejected, although it was positively known that the clerk's return embodied the full vote of that county. Now, I say if it was competent for the board to reject the return of Clay County because it did not contain a consolidation of all the precinct returns in the county, why was it that the return from Baker County was accepted when it was positively known to the canvassing officers that that return, the last accepted, did not contain all the returns of the precincts in the county? Minds not even skilled in the business of investigation can see at a glance the purpose of all this unfairness and inconsistency.

I have shown the law and constitution of Florida as they bear

I have shown the law and constitution of Florida as they bear upon the subject of elections. I have stated the facts connected with the rejection of the returns by the State canvassers, as I have learned them from the most authentic sources. Under the law, the canvassers had a simple ministerial duty to perform. They were empowered to examine the consolidated returns sent by the county canvassers and to declare from them, and them alone, what persons had received the highest number of votes for the several offices which the

people intended to fill at the election. They were required most positively to state the whole, not a part, of the votes given for each office, and the whole number of votes given for each person voted for. They were not even permitted to do this in a general way by saying that this man or that man was duly elected; but the statute required them to put down in figures, written at full length, the exact state of the vote as it appeared from the returns, so that every citizen of the State might see the precise grounds upon which the declared majority was founded. And for fear that any one might suppose that the law intended to confide in the least to the judgment or integrity of the canvassers the secretary of state was required to or integrity of the canvassers the secretary of state was required to record in his office a full statement of the votes shown by the returns and ascertained by the canvassers in the manner pointed out by the statute. Can it be seriously contended that a law thus precise and careful, not only in prescribing the duties of these men but in pointing out the exact manner in which they shall be performed, intended to confer upon them an arbitrary, unlimited power, in every respect at war and inconsistent with the painfully explicit duties which it prescribed? If it be claimed that these canvassers, in the exercise of judicial power, could go behind the county returns to the precinct returns and behind the latter to the election at the polls and from the election pass on to the registration which preceded it, it is fair to ask how and in what manner has this authority been conferred?

Is there any law except the single one alluded to which creates the board and all its powers that can be pointed to as the source of it? Not one. Can the power be implied from the nature of the functions and duties, as I have already shown, imposed upon the board? We know that these functions and duties according to the understanding of the legal profession and the usages and practice of the whole country are in their nature ministerial, and it would be absurd to claim that judicial power, or discretionary power of any kind, can result by implication from an authority strictly ministerial. You might as well say that a part is greater than the whole, as to contend that a person who is invested with a limited power, which he must exercise in a particular way, may disregard the statute which con-fers it, set himself above the source of his authority, and by inference and implication extend the range of his duties to the utmost limits of his own discretion.

The State canvassers under the Florida statute are tied down to a simple examination and consolidation of the returns sent them by county canvassers just as much as the latter are to the returns which they receive from the inspectors of the election. Each class of officers have distinct and co-equal powers. They are not to review, by appeal or otherwise, the action or proceedings of each other. The county canvassers cannot set aside the work of the inspectors. The duties and powers of the latter extend only to the polls at which they preside; but as far as they do go they are binding upon the can-vassers of the county, whose duties begin where the others end. As there are several polls and sets of inspectors in each county, there must be a common organ within such district to consolidate and communicate to the State authorities the vote of the county. The reason of this is obvious. All commissions emanate from the executive of the State. Each county is for many purposes a distinct political organism. Officers in nearly all the States are elected at general elections whose duties and powers are confined to each county. These are called county officers. They are selected by the people of each county, acting separately and distinctly from the people of

Then there are, as we know, another class of officers usually elected at the same time and places, whose duties and powers are co-extensive with the whole State. These are likewise commissoned by the I believe it is only customary and usual to send the county governor. I believe it is only customary and usual to send the county returns to the seat of government when commissions are required to be issued by the governor. But in some cases no such commissions issue, and the local officers' rights are determined by the result of the county election as declared by the county board. This is the case with constables under the Floridalaw. The clerk of the circuit court issues to them certificates of election. The county canvassers' work is conclusive as far as it respects them. It will be remembered that we only elect members of the Legislature and constables under our Floridalaw. All the other officers in the State are appropried by the Florida law. All the other officers in the State are appointed by the authority of the executive. I shall not raise the question of the wisdom of the constitution; but that is the kind of an instrument we

Now, the county canvassers' authority only extends to the county, and as regards State officers whose election depends upon the votes of all the counties, it is proper that the returns of the votes for such officers should be canvassed by officers whose authority is as broad as the limits of the State. Still there is not the slightest difference between the nature and extent of the powers of the two boards, State and county. The one is confined to a smaller district than the other. The county. The one is confined to a smaller district than the other. The county canvassers perform precisely the same duties with respect to the precinct returns which the State canvassers perform in regard to the county returns, and for the same reasons, the want of authority in the local officers to exercise any functions or powers touching the rights of persons residing outside of their counties. It must be plain that the acts of each class of officers are absolutely conclusive and binding upon the other when performed in accordance with the statutes, and he who affirms that the State board has judicial power to go behind the county returns and review the proceedings of the county boards must concede the like power to the latter over the precinct returns, because the duties assigned to each are prescribed in the same language. Such a construction of the statute would defeat the plainest provisions of the law. The inspectors of the election receive the votes and decide challenges. They perform their duties under a solemn oath. The county canvassers are not sworn, but canvass the returns ex officio.

Says the law; and this is a very important article-

who shall receive the highest number of votes cast for any office shall be elected to such office.

It does not say that the canvassing board shall declare that. This follows as a legal inference irresistibly from the law. The canvassing board is required to ascertain from the returns who has the highest

number of votes actually cast.

Mr. MITCHELL. Will the Senator allow me to state that that is just what the constitution and laws say in reference to Oregon. I should like to know what the Senator thinks of that.

Mr. JONES, of Florida. I have no complaint to make with regard to the Oregon law.

to the Oregon law.

Mr. MITCHELL. Has the Senator any complaint of the action of the executive of Oregon under that law?

Mr. JONES, of Florida. I not do think that is pertinent to this question. I may be called to pass upon that case hereafter, and if I am I shall not hesitate to give my opinion.

Mr. MITCHELL. I think it is pertinent.

Mr. JONES, of Florida. I am not discussing that question, and I have not bestowed upon it the same thought that I have upon that of Florida.

But how can this be, if two men five hundred miles off have the power to undo what was done at the polls, and say that the person who received the lowest number of votes cast is elected? Who can reconcile the positive provisions of the law which gives the election to the person who has the highest number of votes with a discretionary power on the part of the election officers to reject any votes they ary power on the part of the election officers to reject any votes they please and thus give the election to a minority candidate? Can it be claimed for a moment that the law in providing means to communicate the result at the polls to the seat of government intended to put it in the power of any man to defeat at will the voice of the people? Is it not the object of the law to carry forward from the polls to the State board the several results as indicated by the ballots received under all the restrictions and safeguards which the Legislature thought proper to prescribe? Are we to suppose that the statute, while it states with great exactness the conditions upon which the votes shall be cast and the power of the inspectors over them, meant to give to another class of officers, whose duties in no way relate to the receipt or counting of the ballots, an implied or undefined power to trample alike upon the rights of the voters and the actions of the inspectors? It is as clear as anything can be, that the inspect of the inspectors? It is as clear as anything can be, that the inspectors of the election, and they alone, are charged with the duty of seeing that part of the law carried out which prescribes the conditions under which all votes shall be cast. And it is equally clear that all votes thus cast must be considered by all officers connected with the election as the only avidence which and deads the clear of the see election as the only evidence which can decide the choice of the peo-

The duty and powers of the canvassers are intended to give effect to the votes actually cast. No system of laws worthy the name ever gave to such a board the power to revise or pass judgment upon votes of the people.

That one entitled to vote-

Says Judge Cooley-

shall not be deprived of the privilege by the action of the authorities, is a fundamental principle.

And what, I ask, is the difference between depriving a person of the right to vote and throwing out his ballot after he has polled it? That cannot be called an election-

Says the same high authority-

where a part of the electors have been allowed to be heard and the others, without being guilty of fraud or negligence, have been excluded.

Apply these principles to the action of the Florida canvassers and you cannot uphold their proceedings. In nearly every instance they selected the returns from one or more precincts and, for reasons in no way impeaching the rights or conduct of the voters, arbitrarily rejected them. What had the honest voters in Hamilton County, whom the board disfranchised, to do with the indiscretions of the two republican inspectors who left the polls for a time in order, as it appears, to make their own conduct a ground for defrauding the people?

Is there a tribunal on earth or a man with the smallest sense of right and justice that would say that four hundred citizens ought to be deprived of their votes because these officers adjourned to take a drink or for any reason neglected their duties? Is this the way to guard the purity and integrity of the ballot? What hope can you have or can any man have for the success of free institutions if it is left in the power of men like these to defeat, by the shallowest trick, the voice of the people. What kind of justice is it to say that the officers appointed to take the sense of the public may discriminate against those whose voice they wish to stifle; select the number and kind of votes

that will serve a party end and disregard all others; take away from the majority its majesty and power; set up the few against the many, and with brazen effrontery tell the people that, as their consciences are insensible to sting of shame, their acts and persons are secure through the moderation of our laws and the temper of public opinion?

Over two thousand honest voters of my State who complied with all the requirements of the law in casting their ballots, against whom no charge or even suspicion of crime or fraud was directed, were, by the injustice of this self-constituted board, deprived of the most sacred rights that belong to an American citizen. And this, too, without

rights that belong to an American citizen. And this, too, without trial or defense; for, while each of these voters was robbed of one of his highest privileges by the judgment of this board, not one of them had an opportunity of being heard in opposition to the iniquitous proceedings. And yet there are lawyers who dignify the action of these men with the title of judicial judgment.

What is judicial judgment? As I said a while ago it is a judgment which proceeds after notice, and always gives the person whose rights are affected by it an opportunity to be heard. Not one of the voters in my State whose rights were trampled upon had that opportunity before the State board. It is true there were counsel there representing candidates; but the great question was whether the individual voter should have the right to have his ballot counted for the candidate for whom he voted.

date for whom he voted.

I have heard that this board had judicial power. I deny it. They get their authority from an act of the Degislature, and the Legislature had no judicial power to give them. When the people of Florida adopted their constitution, I presume they read it. At least its provisions were intended to be read. I have always heard that it was a cheat and a snare, and if the view taken by some of the powers of this board is true, it certainly is. Article 7 creates the offices of secretary of state, attorney-general, and comptroller, and specifies their duties. (See art.) duties. (See art.)

The one which precedes it vests the whole judicial power of the State in four courts which it specifies, and did not leave a particle of such power to the administrative officers.

These officers by the very words of the constitution are aids of the governor. The latter is intrusted solely with executive duties, and hence the duties of his aids must be of a like character on the same principle that the stream cannot rise above its source.

Then, sir, we have another very important provision in this consti-

tution:

The powers of the government of the State of Florida shall be divided into three departments: legislative, executive, and judicial; and no person properly belonging to one of these departments shall exercise any functions appertaining to either of the others.

Now, I say, sir, that it would be doing violence to the words of this election law to give it a construction which would make it unconsti-

When you say that these officers may exercise judicial power although they are appointed as aids to the executive and form his cabinet, you fly in the very face of the constitution, which, for its own wise purposes, has placed all judicial power in other hands. And is not the wisdom of this provision vindicated by what we see in Florida to-day? At the late election the governor was a candidate for re-election. All the officers who controlled it were subject to his cover and under their authority it was conducted. The returns for re-election. All the officers who controlled it were subject to his power, and under their authority it was conducted. The returns which they sent to the seat of government were their own work. Every single certificate from the thirty-nine counties in the State to the State board was a solemn admission made against the interests of the parties making it that the democrats had honestly carried the State. Does anybody doubt that these local officers while discharging their public duties did all in their power to advance the interests of the party to which they belonged? Fortunately for the cause of right and justice, the importance of the election was not foreseer; for if it had been the work which has been so clumsily done at Talla. if it had been, the work which has been so clumsily done at Talla-

But to the question of power in the board. The returns, which as I said were all made up by men of the republican party, although covering huge frauds, were all regular on their face. That they presented the largest vote ever given in the State is admitted; but still, according to the face of these papers, the majority was in favor of the democratic ticket. The influence of the State and Federal administrations was felt throughout the canvass. Every officeholder of both governments yied with each other in their efforts to being sucboth governments vied with each other in their efforts to bring suc-

cess to their party.

But I mean to show the wisdom of the constitution in denying ju-

dicial powers to the State board.

The inspectors and county canvassers, not having the benefit of any light from abroad, followed the law and performed their duties ministerially. They sent forward their returns to the capital, and I am credibly informed that these returns, tested by every rule of law applicable to the subject, did not present the slightest difficulty to a fair and just declaration of the result of the election.

It is true there were two returns from one county, (Baker,) and I admit that the board had to decide between them, and, in order to do so intelligently and justly had a right to look into the facts which

so intelligently and justly, had a right to look into the facts which gave rise to these double returns. But this case was plain and simple. The judge of the county refused to meet the clerk of the county at his office at the time fixed by law to canvass the precinct returns. Time and place are matters material in elections. The law required

the canvass to be made from the returns in the clerk's office. It could be made in no other way. The clerk called to his aid a justice of the peace; made up the canvass from all the precinct returns in his office, and sent the certificates to the secretary of state. The judge evidently in pursuance of a bad purpose canvassed the returns from two out of four precincts, according to the duplicate certificates in his possession. This was done away from the clerk's office and in a private way. The clerk's return gave a majority to Tilden. The judge's, a majority to Hayes. The State board accepted the clerk's rejudges, a majority to Hayes. The State board accepted the clerk's return as the true one. But after this began the judicial labors of the board. I have stated that the members of the board are by the constitution the cabinet of the governor; that the governor was a candidate for re-election, and upon the decision of these ministers de-

latitle for re-election, and upon the decision of these limiters depended the future power of his excellency.

Is it possible, sir, that in a case so vitally important to the rights of the people, so open to the operations of intrigue, the power of continuing their own master, at least their patron, it may be themselves, in authority and station has been devolved upon the will and pleasure of this board. Why, no such argument as this can be urged against the Louisiana board, for there the law, obnoxious as it is, makes it at least possible for the men whom it invests with power to hold with an even hand the scales of justice. It is the abuse of that law which now agitates the country. But the power claimed by the Florida board and which has been exercised in violation of all law is founded in a union between favor and patronage, between creator and creature, which destroys every element of independence and leaves its possessor as unfit for judicial fairness as the eastern slave who records the edicts of an oriental master.

When the Legislature of Fiorida gave to certain members of the governor's cabinet the power to canvass the election returns of the counties, it had before it the constitution, which showed that all judi-

counties, it had before it the constitution, which showed that all judicial power, as I said, at that moment was vested in the several courts then in existence. It was impossible, therefore, for the Legislature to confer such power upon them, more especially as their respective duties had been defined with great explicitness in the constitution. It will not be denied by any one that the power exercised by the canvassers was judicial in its character. They undertook to determine certain matters touching the election which involved determinations of law and fact. They had before them numbers of witnesses whose testimony was given under oath. They heard able and learned arguments, and by their judgment attempted to deprive a large number of citizens of their rights. It is not an open question in the courts of this country that the privilege of voting is a valuable one. All lawyers know that an action will lie and that damages may be recovered against an inspector of election for refusing to receive the vote of a qualified elector. This principle has been asserted in Massavote of a qualified elector. This principle has been asserted in Massachusetts and in other States of the Union. And yet this board, in the exercise of its unwarranted power, without notice or the observance of any of the rules which govern judicial proceedings, tried to destroy the legal effect of more than 2,000 votes by deciding that they could not be counted for the candidates for whom they were given, in consequence, too, of the conduct of the election officers whom the law appointed to facilitate and not to destroy the expression of the public will. Now is it not plain to the most obtuse understanding public will. Now is it not plain to the most obtuse understanding that the question whether the acts or omissions of the officers at the election had the effect stated by the board or not is eminently judicial. Are not our books full of cases in which the highest courts in the land had all their abilities and learning taxed to the utmost in deciding what couduct and irregularities on the part of such officers would vitiate an election? Where do we get our notions of those nice legal distinctions which tell us of the qualities of acts and duties which are directory rather than mandatory in their character, and of the consequences which flow in point of law from both?

Is it not possible that if the Florida board of canvassers had been created under the belief that it would ever be called upon to refine away by judicial judgments the rights and liberties of the people,

away by judicial judgments the rights and liberties of the people, our Legislature would have secured us fit persons to decide all vexed questions of law? They certainly saw that there was a provision in questions of law? They certainly saw that there was a provision in our constitution which secured to every citizen whose rights of person or property are imperiled the benefit of a trial and judgment before a person of legal training and education. And it is surely matter of astonishment, if one view of the power of this board be correct, to find that the most insignificant cause, either criminal or civil, must be tried and determined before a man who has been elevated from the law to the heart of the law to the from the bar to the bench, while upon the other hand cases involving the most delicate rights of the citizens in their relations to society and government, and the peace and security of the State, may be summarily disposed of in a judicial way by a majority of a board who are absolutely ignorant of those rules of justice which reason and wisdom have established for the detection of error and the protection of libert v and truth.

There is not a citizen in the country that would be willing to abide the judgment of such a tribunal in a case involving \$100 if he could carry it beyond it. And yet it is claimed that its decision, unsustained by law or justice, should be regarded as conclusive upon a question which agitates the minds of forty-five millions of people.

I admit that the laws of Florida must decide all questions arising out of the election there, and are binding upon this Government. But where are we to go to ascertain what the law of the State is 7 Are

we bound to accept the decision of the two men acting in violation

of law and with no authority to give judicial judgments; or shall we observe the rule which has been followed from the foundation of this Government and accept the decision of the highest tribunal in this Government and accept the decision of the highest tribunal in the State interpreting its own local laws and constitution? The Constitution of the United States has left to the Legislatures of the States the power to appoint electors. The Legislature of my State has provided by law for the election of these officers, and its laws declare that the persons who shall receive the highest number of votes shall be deemed elected to the offices for which they were given. Two things are to be observed in connection with these provisions: First, that it is the duty of every member of this Government to see that the Constitution is not violated and to maintain the right of each State to select in its own way electors for President and Vice-President; second, to observe and respect the laws of the States which provide for the election of electors. None but persons appointed in the manfor the election of electors. nor the election of electors. None but persons appointed in the manner prescribed by the Legislatures of the States can be treated as electors. Every officer must be able to show title to his office from a true legal source. It is well settled in cases of elective officers that the right and title flow from the election by the people and not from the commission of the executive. It is well settled in cases of elective officers that the

The act of March 1, 1792, requires the executive authority in each State to cause three lists of the names of the electors to be made out and certified by a given day. This, as we know, was for the purpose of enabling Congress to ascertain with certainty, and without inquiry beyond an examination of the certificates, who were the legally appointed electors. The very words of the act imply that the electors are not dependent upon the certificate for their legal rights or official character, for the lists are to contain the names of the electors, and are to be delivered on or before the first Wednesday in Decemand are to be delivered on or before the first wednesday in December to the electors. The first section of the same act, as we know, provides for the appointment of the electors within thirty-four days preceding the first Wednesday in December. It is very clear that the certificate required by the third section, and which is made out on the first Wednesday in December, can add no legal force or effect to an appointment or election which was to have taken place thirty-four days previous, and which if good at all must have been so on the very day when it was made, because under the law it could not have been made at any other time. Besides, the appointment of electors under the Constitution must be left to the Legislatures of the States, and it is certainly not competent for Congress to invest the governor of

a State with any power over such appointment.

The purpose and the only purpose of this part of the law, in my judgment, was to establish a rule of evidence to be observed, for the sake of uniformity and certainty, by the sovereign power of the Union. This is not a law which addresses itself as in ordinary cases to the citizen, when a rule of conduct for them has been adopted; but it is a law the obligation of which rests exclusively upon the power that made it. It is a law of the sovereign and for the sovereign, to aid and make easy the performance of a high constitutional duty. A construction therefore which would prevent the sovereign power from putting aside this rule of convenience, when it stands in the way of the performance of a duty imposed by the Constitution on

that power, cannot in my opinion be maintained. Sir, you cannot take away the freedom and independence of this or the other House by act of Congress. You may make laws which will control the citizen, however high he may be in his individual character, but you cannot lay down an absolute rule now which our successors must follow in discharging their duties under the Constitution. They will have the same power to measure their own rights and duties as we have, and it would be destructive of legislative independence to maintain that one Congress has the right to shackle another or tie it down to the observance of any fixed rules in the discharge of its high duties. Such a doctrine, while it violates the Constitution, insults the people. For what is the great principle of our representative system? Is it not that our liberties are more secure under the constantly changing policy of varying opinions and dissimilar judgments than they would be under the stern and unyielding decrees and maxims of permanent establishments, which never receive an impulse from the healthy reactions and changes of popular sentiment.

Sir, a great constitutional duty like that of counting the electoral sir, a great constitutional duty like that of counting the electoral votes, resting as it does solely upon this and the other House of Congress, cannot be controlled by any provisions of law. True it is that the Houses that are called upon to perform this recurring duty may agree between themselves for the time being to any rule they deem wise to be observed in the performance of it. But then it is only a self-imposed obligation, that binds them no longer than they wish to consent to it. It is not in strictness a law; for that is a rule of action prescribed by a superior power for the control of an inferior or sub-ordinate one and which the latter is bound to obey. The Constitu-tion of the United States, following the example of that great parlia-mentary prototype, the English House of Commons, declares that each House of Congress may determine the rules of its proceedings. This, as we know, is an independent power which no other authority in the Government can impair or draw in question. The manner or mode of exercising it belongs exclusively to the bodies upon which it has been conferred. They alone are to judge of its extent and limitations. They may carry out this power in any manner they please. Their intentions and wishes may be embodied in usage or custom or at forth in the case. set forth in express terms on their records. They may fix the occa-

sion and time for the application and continuance of any regulation; and whatever they do in the furtherance of this power can be altered by no authority except their own unfettered will.

The right of each House to determine the rules of its proceeding, which is nothing more nor less than the power of deciding the mode and manner in which it shall perform all its constitutional functions, and manner in which it shall perform all its constitutional functions, rests upon the very same principles of sovereignty and independence which uphold the legislative power of Congress. It is the settled law of this country that one legislature cannot by its own act disarm its successor of any of its powers or rights, unless the constitution has authorized it to be done. This was the decision of the Supreme Court of the United States in the case of the Ohio Life Insurance Company. (16 Howard, 431.)

It follows, therefore, that, if both Houses cannot tie the hands of succeeding Houses by restricting their sovereign power of legislation, they cannot impair or in any manner shackle the separate and independent powers of each succeeding House with which the Constitution has invested it the better to secure complete freedom of action. I argue then that there is no difference whatever between the duties of this body under the Constitution respecting the electoral votes of the States and its other duties, and that it has a perfect right to decide for itself in the one case as well as the other what shall be its rules of

proceeding when it comes to ascertain the votes of the States for President and Vice-President.

If it should be found that the third section of the act of Congress of March 1, 1792, can have no greater effect upon the Senate and House than separate rules of these bodies containing like provisions, then it is plain that each House, acting up to the principle of independence which the Constitution has set up for its government, may determine that its hands are free, and in discharging the highest duty confided to it by the people that it is not concluded even by the certificate of to it by the people that it is not concluded even by the certificate of a governor. If the way be open, as I believe it is, for the two Houses of Congress to ascertain the true votes of my State, how, it may be asked, are they to do so in view of the conflicting claims which will be presented before them? Sir, I have always been of opinion, and no argument I have heard has changed it, that electors for President and Vice-President are State officers, although the single duty devolved upon them concerns the whole people. I arrive at this conclusion by a perative kind of resoning. I say they are not officers clusion by a negative kind of reasoning. I say they are not officers of the United States, and if this can be shown they are officers of the States or they are not officers at all.

It would be remarkable if, notwithstanding the plain provision of

the Constitution, which declares that no officer of the United States shall be appointed an elector, that when a person not thus dis-qualified is so appointed, he becomes such officer. Officers of the United States are all appointed in the manner prescribed in the Constitution, by the President of the United States and Senate, the heads of Departments, or the courts of law. Besides all officers of the United States are required to take an oath to support the Constitution, and electors are never, I believe, compelled to do so.

The President commissions all officers of the United States, but

he never was known to commission an elector. I take it, then, that these officers are representatives of the people of the several States in their political character, and that their obligations are due to those who elected them. But how shall the claims of rival electors be determined? The Legislatures of the States have alone the power of prescribing the manner of their appointment. We have seen that the law of Florida has given to the people the right to elect them, and the question is who have the people selected? It will not be denied the persons who have received the highest number of votes, and no others, had a right to cast the vote of the State. The Louisiana law is not the law there. There are some things which all the departments of the General Government will take notice of without special proof. Among these are the laws and public acts of the governments of the States. The courts of the Union take notice of them, and the legislative department, which is governed less by technicalities than the courts, cannot be more strict.

We know that an election was held in Florida on the 7th of November 1 and 1 and 2 and 2 and 3 and 3

ber last for President and Vice-President of the United States. The returns of that election have been made and are now part of the records of the State. They have been made and are now part of the records of the State. They have been publicly canvassed by the officers designated by law for the performance of that duty. These officers arrogated to themselves powers which the law did not confer upon them, and instead of giving the result of the election from all the returns before them came to a conclusion from a consideration and returns before them came to a conclusion from a consideration and review of only a part. This they have avowed in the most solemn public manner and under oath in a judicial proceeding. The record of their own proceedings also shows that the return they made was false and illegal. It is also well known that the certificates which were issued by the governor are based upon that return and are also illegal and void. It is a wonder that the mysterious power of divine justice is not put forth to prevent the emblem of its majesty and purity from bearing attestation to the greatest of public lies. Sir, the seal of Florida is sadly out of place on that paper which is brought the seal of Florida is sadly out of place on that paper which is brought up here to give effect to a fraud upon her people. It never was designed for such a purpose as that. The emblem which it bears was intended to remind the officials who should affix it that its verity and power resulted from its being the symbol of justice and truth. It can impart no false character to anything. God in his wisdom and goodness has so arranged the moral government of the universe that it is

not in the power of the wit of man to shield by his devices the best schemes of trickery and fraud. All the forms and solemnities of the law when employed for such a purpose are considered at best as but links in the chain of falsehood and deception.

The most conclusive judgments and decrees, the most veritable records and parchments, though they are covered all over with ribbons and seals, cannot when they shield fraud stand one moment in the way of the scrutiny and condemnation of justice. And are we to be told that this great principle of divine equity, which is as broad as God's universe and may be traced to the remotest regions and the highest and lowest tribugals can have no place here in this the only highest and lowest tribunals, can have no place here in this the only living temple of popular liberty? Sir, I do not, I cannot believe it.

And what is the law and justice of this case as it stands now?

I have said that the vote of Florida is known to the whole people.

It is a great public fact which cannot be hid. There is not the slightest difference of opinion between any two persons in the country as to what the actual vote of the State is. The official papers and returns show this with unerring certainty. The whole controversy turned upon the legal powers of the canvassing board under the law of the State. The highest judicial authority there has settled this question, or it cannot be settled at all. We hear of the want of authority in the State courts to expound their own local laws and constitutions and of the interference of Federal courts. This is a strange doctrine. It is an elementary principle, applicable alike to the State and Federal Governments, that the judicial power is co-extensive with the legislative. What does this mean if it does not imply that any laws which it is competent for the Legislature to enact the judicial power of the State may expound and interpret. It is a great public fact which cannot be hid. There is not the slight-

power of the State may expound and interpret.

Can it be denied that the Legislature of Florida had a right to provide by law for the election of electors? The Constitution of the United States has made it its duty to do so. It has not separated the election of these persons from that of other State officers; both are conducted under the same law. The power of the Legislature to enact this law will not be disputed by any man in the country. The persons whom it designates to canvass the returns of all elections claimed that this statute invested them with judicial powers, and they exercised them to the prejudice of the citizen. The citizen appealed to the highest court in the State against the board in a well-known proceeding, often before resorted to in other States in like cases. The constitution of the State was invoked for the protection of the suitor. The board relied upon its own interpretation of the statute. The constitution and statutes were critically examined, and the supreme court decided that the Legislature did not confer upon the board the power which it claimed, and that it was not within its power to confer it under the constitution. According to this interpretation of the law the face of the returns ought to decide the election. These returns show a majority for the whole democratic ticket, State and national, and they will remain a perpetual record either to agitate the fears or to quiet the doubts of the man who shall found upon them a title to the Presidency.

I have said that we must look to the laws of Florida for a decision

of this question. The controversy turns upon a purely legal proposition. If we accept the law as laid down by the supreme court of the State, there is an end to the whole controversy. That law is that the vote actually cast and returned determines the election. This is the law of the State as announced by her highest tribunal, and ought in my judgment to settle forever the question of title between the two sets of electors. There can be but two grounds taken in re-gard to this part of the case.

First. That the judgment of the supreme court of the State is ob-

ligatory upon all parties, and especially binding upon us. Second. That the authority of the canvassing board and the action

of the governor based upon it are superior in legal effect and dignity to the decision of the court. In support of the first proposition little need be said. It is upheld by a long line of decisions of the Supreme Court of the United States, and the opinions of distinguished members of this body.

The Senator from Indiana stated this doctrine very forcibly last

year in the Pinchback case, which was one that did not call for its

application; and that opinion is as follows:

application; and that opinion is as follows:

This is a question that rises above all party. Party considerations are trifling and contemptible when brought into connection with the decision of questions of this character. This is the true doctrine upon which the State governments alone can be preserved. I am inflexibly determined, so far as my own action is concerned, that the true province of the State shall not be infringed; that State rights shall be preserved in all their integrity, because the States have rights sacred, unapproachable, and that ought to be inviolable; and among these, and indispensable to the existence of the State, is the right through their own tribunals to determine who are their officers, to determine by their own courts, under the special tribunals that may be created for that purpose, who is the governor of the State, who compose the members of the Legislature, who are entitled to sit upon the bench and to administer the laws; because if the Government of the United States may enter into the consideration of the questions, may review State elections and determine who has been elected a member of the Legislature or the governor or the treasure of the State, then indeed the State governments exist only by sufferance. Then indeed the Government of the United States is supreme. Then indeed the contralization.

That is the doctrine for which I contend now, and it can be applied at this time without clashing with the exclusive right of the Senate under the Constitution to judge of the elections and returns of its members. The Supreme Court of the United States has held in a number of cases that the decision of the highest court of a State expounding its own local laws and constitution is just as binding as

though such decision was incorporated into the text of the statute.

We are to read the decision of the supreme court of Florida as though it was a part of the election law of that State. What would be the state of the case if at the time the State canvassers usurped judicial powers the statute under which they acted was as clear and explicit as the decision of the court has made it? Suppose the language of the court in their late opinion was the language of the Legislature in 1872, and that the canvassers despite this verbal explicitness had gone on and violated the law, is there a lawyer or a citizen in the country who would say that any advantage could result to any one from such a palpable wrong? Such a clear, unmistakable usurpation as that would be condemned here and elsewhere, and no man would attempt to justify it. The case as it now stands is just as strong in point of law against the canvassers as it would be under the strong in point of law against the canvassers as it would be under the facts supposed. It is true that the degree of moral guilt would be greater where the duty violated was plain than in a case where its obscurity would justify the presumption of unintentional error.

But the intentions of the canvassers cannot by any possibility affect the question of power, or alter in the least the legal quality of their acts or the consequences which the law forces from them.

And what authority is there for setting the judgment of the board above that of the court? It has been said that the supreme court had no jurisdiction over the canvassers. But who is to decide between them? If this board is omnipotent, who made it so? All its powers are derived from the Legislature. It has none beyond. Will any one affirm that the Legislature may create a board of State can-vassers, invest it with judicial powers, and withdraw from the su-preme court all jurisdiction over it? That is, the Legislature may not only violate the constitution, but go further, and say that no one shall say that it has done so. But the Legislature did not do this. It passed a simple and plain law, similar in principle and detail to the laws of other States on the subject of elections, and the supreme court gave to it a judicial construction adverse to the opinions of the canvassing board.

Mr. Webster said in his day that a statute was just what it was judicially ascertained to be; and that is the case here. This power has been exercised in nearly every State of the Union; but it seems that we are in such a state in the South that everything which is done there is called in question or impeached for some reason or other if it does not advance the interest or suit the opinions of outsiders.

While on that subject, I am reminded of the celebrated passage in

one of the greatest orations of Mr. Burke, when he undertakes to speak of geographical morality. Speaking of the argument which was made by the coursel of Hastings, that it was proper to do certain things in India which would not be proper in England, he said:

things in India which would not be proper in England, he said:

My lords, we positively deny that principle. I am authorized and called upon to deny it. And having stated at large what he means by saying that the same actions have not the same qualities in Asia and in Europe, we are to let your lordships know that these gentlemen have formed a plan of geographical morality by which the duties of men, in public and in private situations, are not to be governed by their relation to the great Governor of the universe, or by their relation to mankind, but by climates, degrees of longitude, parallels not of hife but of latitudes; as if, when you have crossed the equinoctial, all the virtues die, as they say some insects die when they cross the line; as if there were a kind of baptism, like that practiced by seamen, by which they unbaptize themselves of all that they learned in Europe, and after which a new order and system of things commenced.—Burke's Works, volume 3, pages 325, 326.

The records of my State held, an election in November last which

The people of my State held an election in November last which for peace, order, and general fairness was not surpassed by any in the country. As soon as it became known that the vote of Florida if decountry. As soon as it became known that the vote of riorida it declared one way would settle the presidential contest, and before the official count took place, a small Army of regular troops was hurried there, as if there was an enemy to meet who had invaded the integrity of our soil. And what did they find upon their arrival at Tallahassee? They found a country blessed with the rarest gifts ever bestowed by nature upon any land; a climate salubrious, mild, and healthful; a soil teeming with fertility on every hand and offering the finest possible prospects to capital and labor. They found, also the finest possible prospects to capital and labor. They found, also, the still-remaining traces of wealth and happiness in the neglected appearance of stately homes, the abodes of independence, culture, and

hospitality.

But they also saw what surprised them more than all this: they saw eaceful, law-abiding citizens, distinguished alike for moderation and intelligence, chastened by poverty and misrule, and struggling to establish an honest government through the peaceful agencies of the law and Constitution. They found much to admire, more to deplore; but they did not find what their hurried and warlike mission led them to expect, a single enemy to the peace and liberty of the country. The votes in Florida were counted and recounted. The first gave the whole election to the republicans. The last surrenders the State ticket and one member of Congress to the democrats. The electoral vote was declared for Governor Hayes. It is curious to see how these results have been reached. The canvassers professed to obey the court. The object of the proceeding by mandamus was to compel the board to canvass and count the returns from four counties which were thrown out on the first canvass. These counties are Jackson, Monroe, Manatee, and Hamilton. There was no issue raised by the pleadings in regard to the action of the board touching the returns from the other counties. No change in the canvass was asked for except in regard to the returns from the counties named.

Now is it not plain that if these men intended to act fairly they

Now is it not plain that, if these men intended to act fairly, they

would have been content with a literal compliance with the law, and have recanvassed the disputed returns only? But when they found, as they did, that by canvassing the rejected returns in accordance with the order of the court, and permitting all the others to stand as they were under the decision of the first canvass, it would appear to the whole world that the Tilden electors had a majority of ninety-four on whole world that the Tilden electors had a majority of ninety-four on the face of the papers, this was not to be permitted to appear under official sanction under any circumstances, although every man of intelligence in the State of both parties knew that this was the true state of the vote according to the returns. But how was the Hayes majority maintained? The false return from Baker County, which had been rejected at the former sitting, was substituted for the true one, the former containing, as everybody knew, the vote of but half the county, and the latter of the whole.

The entire return from Clay County, which no one chiested to at

The entire return from Clay County, which no one objected to at the former meeting, was thrown out, with its 165 democratic major-ity, and thus the State was confirmed to Governor Hayes. Sir, such tricks and manipulations as these would not attract much notice if they only concerned the ordinary interests of men. But when we find the first office in the world in point of dignity and power and the liberties and peace of forty-five million of freemen trifled with by reckless men as they would deal with a common gambling-stake, it is time that we at least were asserting and exhibiting in the interest of the Republic something of the independence, the statesmanship, I might add the patriotism, which the founders of the Constitution so confidently expected would result from the creation of the high offices we now occupy. For my part I cannot be brought to feel that this is a purely party contest. I know too well the force and cogency of party feeling and passions to underestimate their hold upon the human heart. And yet occasions have arisen when the love of country and the love of justice were powerful enough to extinguish the attachments of party and to force strong men, and weak men too, to give up the interests of a sect for the welfare of a nation.

When the great contest of 1801 was pending and the cause of popular government was trembling in the balance, Hamilton wrote to Morris: "If there be a man in the world I ought to hate, it is Jefferson." And still be pleaded for the latter's election harder than any republican. For, said he, "in a case like this it would be base to listen to personal considerations." And do we not know that the most important event of the seventeenth century, and which did more to secure the liberties of the human race (except our own Revolution) than any other, was effected by the mutual sacrifices of par-ties, who in that moment of their country's peril buried their animosities and passions and staked everything to preserve the liberties

of England.

How well does Lord Bolingbroke record their patriotism:

Though the king was not the better for his experience, parties were. Both saw their errors. The tories stopped short in the pursuit of a bad principle. The whigs reformed the abuses of a good one. Both had sacrificed their party to their country, but sacrificed on this occasion their party to their country.

We have shown to the world recently the great perfection we have reached in science and art. We ought to be able to exhibit also increased capacity and skill in the domain of popular government, for to what purpose do we labor to improve ourselves in knowledge and power unless we have the virtue and patriotism to secure protection to the fruits of our toil. In this great crisis it is easy to stir up bad passions and obscure the light of reason, now so much needed, by par-

What all desire to know is the truth. I do not believe that it is in the power of any man or set of men to prevent it reaching the minds of the people or from asserting its majesty here. The petty shuffling and trickery of returning boards may for the moment give rise to doubts and uncertainty. An anxious and excited public may have doubts and uncertainty. An anxious and excited public may have been mislead by their partisan judgments and lent ear to their deceptive arguments; but the sober second thought will come to dispet the mists of error, just as the rising sun overcomes with light and joy the darkness of the morning. Be assured that no one will in that hour of triumph be found powerful or brave enough to oppose the decrees of God's divine minister. The living principles of justice, which for the wisest of purposes is planted in every human heart, will be touched by the first and faintest revelations of error. Truth, sir, will not stand in need of argument or persuasion. These are shifts which error uses at times against her power. She will assert her supremacy over the heart and conscience of man. The virtuous and strong will embrace her as they would an old, familiar friend—the best guide of their youth and manhood. The wayward and indifferent may turn away from her at first as from one whom they had not seen from their childhood. But even they, sir, will at length recognize her authority and power. They will be reminded of the maxims of their early life instilled into their youthful hearts by the affectionate tones of a lovinstilled into their youthful nearts by the allectionate tones of a loving mother. The testament of a dying father, delivered in the half andible whispers of approaching death, will recur to them and urge a fulfillment of its sacred injunctions. But if all these should fail, the almighty Power itself, unwilling to stake the cause of justice upon the failure of its divine agencies, will interpose directly for the protection of truth and the overthrow of falsehood and error.

## PACIFIC RAILROAD ACTS.

Mr. THURMAN. I move that all pending orders be postponed and that the Senate proceed to the consideration of Senate bill No. 984,

the railroad bill that I gave notice this morning that I would ask the

Senate to take up.

The PRESIDING OFFICER, (Mr. CLAYTON in the chair.) The question is on the motion of the Senator from Ohio.

The motion was agreed to.

The PRESIDING OFFICER. The bill (S. No. 934) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to expresse the Government the rese of the same for postal miliand to secure to the Government the use of the same for postal, miliand to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, is before the Senate as in Committee of the Whole.

Whole.

Mr. THURMAN. Now I am willing, if there is any other business that any Senator wishes to transact, that this bill may be considered as passed by infomally for the transaction of that business.

Mr. EDMUND 3. There is nothing but an executive session.

Mr. THURMAN. Then it is not necessary to say anything on the subject. I want this bill to be the unfinished business of to-day.

The PRESIDING OFFICER. That is the understanding.

## PROPOSED ADJOURNMENT TO MONDAY.

Mr. WEST. I move that when the Senate adjourn to-day it be to

meet on Monday next.

The question being put, there were, on a division—ayes 12, noes 14;

no quorum voting.

Mr. MERRIMON. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BAYARD. I desire to ask a question. This is a proposition, I understand, to adjourn until Monday.

The PRESIDING OFFICER. The motion is that when the Senate

adjourn to-day it be until Monday next.

Mr. BAYARD. I am under the impression that it would be a very serious matter to subtract one day now from the legislative business of the country. I do not think that day can be spared with the amount of business yet before Congress—

The PRESIDING OFFICER. The Chair will remind the Senator

from Delaware that the motion is not debatable.
Mr. HAMLIN. O, yes, it is.
Mr. BAYARD. I ask the Chair to decide.

The PRESIDING OFFICER. The Chair is advised that the motion

is not debatable.

Mr. INGALLS. The Chair is very badly advised.

Mr. BAYARD. This is not a motion simply to adjourn, but a motion to adjourn to a day certain.

The PRESIDING OFFICER. The Clerk will read the forty-third

rule, which relates to this subject.
The Chief Clerk read as follows:

43. When a question is pending, no motion shall be received but— To adjourn. To adjourn to a day certain, or that when the Senate adjourn, it shall be to a day

To adjourn to a day certain, or that when the Senate adjourn, it shall be to a day certain.

To take a recess,
To proceed to the consideration of executive business,
To lay on the table,
To postpone indefinitely,
To postpone to a day certain,
To commit,
To amend;
which several motions shall have precedence in the order in which they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to executive business, and to lay on the table, shall be decided without debate.

Mr. BAYARD. The decision of the Chair, I apprehend, is based on the new rules of the Senate, of which I have not yet been furnished with a copy. Do I understand the Chair, upon an examination of the rule as read by the Clerk, to decide that a motion to adjourn to a day certain, or to fix the day to which the Senate shall adjourn, is not debatable?

The PRESIDING OFFICER. That is the decision of the Chair.

The PRESIDING OFFICER. That is the decision of the Chair. The Secretary will call the roll.

Mr. HAMLIN. Mr. President, this is the first time that we have had this rule up, and I think we had better settle it wisely. I am, in my judgment, very clear that the construction of the Chair is wrong in relation to the rule as it now stands. I think the rule as it now stands has an application only to the simple motion for adjournment, which is not debatable; it never was; but the motion fixing to what day we shal! adjourn is not excluded from debate by the terms or the spirit of this rule.

The PRESIDING OFFICER. If the Senator from Maine has concluded his remarks, the roll-call will proceed.

Mr. HAMLIN. I raise no further question.

The question being taken by yeas and nays, resulted—yeas 9, nays

The question being taken by yeas and nays, resulted—yeas 9, nays 39; as follows:

YEAS—Messrs. Bruce, Cameron of Wisconsin, Christiancy, Clayton, Hamilton, Mitchell, Patterson, Sargent, and West—9.

NAYS—Messrs. Alcorn, Bayard, Blaine, Bogy, Booth, Boutwell, Burnside, Chaffee, Cockrell, Cooper, Davis, Dawes, Edmunds, Frelinghaysen, Goldthwaite, Gordon, Hamlin, Howe, Ingalls, Johnston, Jones of Florida, Kelly, McCreery, McDonald, McMillan, Maxey, Merrimon. Paddock, Price, Randolph, Ransom, Robertson, Sharon, Sherman, Stevenson, Thurman, Wallace, Withers, and Wright—39.

ABSENT—Messrs. Allison, Anthony, Barnum, Cameron of Pennsylvania, Conkling, Conover, Cragin, Dennis, Dorsey, Eaton, Ferry, Harvey, Hitchcock, Jones of Nevada, Kernan, Logan, Morrill, Morton, Norwood, Oglesby, Saulsbury, Spencer, Teller, Walleigh, Whyte, and Windom—26.

So the motion was not agreed to.

## PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. U. S. Grant, Jr., his Secretary, announced that the President had on the 25th instant approved and signed the act (S. No. 1040) to authorize sundry allowances to James Atkins, late collector of internal revenue for the fourth district of Georgia, in the settlement of his accounts.

HOUR OF MEETING.

Mr. EDMUNDS. I move that when the Senate adjourn it be to meet at eleven o'clock to-morrow instead of twelve.

The PRESIDING OFFICER. The question is on the motion of the

Senator from Vermont.

The motion was agreed to.

## AMENDMENT OF RULES.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed to the consideration of executive business.

Mr. INGALLS. Before that motion is put I ask leave to offer a resolution to amend Rule 43, which will lie over under the rules one day for consideration. I offer the following resolution:

Resolved. That Rule 43 be so amended as to read, after the word "arranged," in line 13, as follows:

Motions to adjourn, to take a recess, to proceed to executive business, and to lay on the table, shall be decided without debate.

### EXECUTIVE SESSION.

Mr. CAMERON, of Pennsylvania. I renew my motion for an ex ecutive session.

The motion was agreed to; and the Senate proceeded to the con sideration of executive business. After nine minutes spent in executive session the doors were re-opened, and (at four o'clock and thirty minutes p. m.) the Senate adjourned.

# HOUSE OF REPRESENTATIVES.

# FRIDAY, January 26, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The SPEAKER. The Journal of yesterday will be read.

Mr. HOAR. I ask unanimous consent that the Journal of yesterday may be read to-morrow, when the Journal of to-day is read, with the same opportunity for correction as if it were read now.

There was no objection, and it was ordered accordingly.

# DISTRIBUTION OF MILITARY FORCES.

The SPEAKER announced the appointment of the following as the committee under the resolution of Mr. Wood, of New York, for the purpose of inquiring into the matters embraced in the message of the President relative to the disposition of the military forces: Mr. Wood of New York, Mr. Goode, Mr. Southard, Mr. Throckmorton, Mr. Caldwell of Alabama, Mr. Smith of Georgia, Mr. Harrison, Mr. Kasson, Mr. Foster, Mr. Eames, and Mr. Page.

## COUNTING THE ELECTORAL VOTE.

The House according to order, resumed the consideration of the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

Mr. MILLS. How much time have I left?

The SPEAKER. Eleven minutes.

Mr. LAMAR. I do not think I had quite occupied all the time accorded to me

The SPEAKER. The gentleman has one minute remaining of his twenty minutes. The gentleman from Texas has eleven minutes, one minute of which he had previously yielded to the gentleman from Mississippi, [Mr. LAMAR.]
Mr. ROBBINS, of North Carolina. As under the arrangement of

speeches I shall be recognized very soon, I would like to yield my time to the gentleman from Mississippi.

The SPEAKER. Except by consent of the House, the time of the

The SPEAKER. Except by consent of the House, the time of the gentleman from Texas must run without interruption. But the Chair asks consent for the arrangement suggested, so that the gentleman from Mississippi may now occupy eleven minutes, the Chair recognizing subsequently the gentleman from Texas for his remaining ten minutes. The Chair hears no objection.

Mr. LAMAR. Mr. Speaker, I have listened, sir, with great pleasure to the able argument just submitted to the House by the gentleman from Texas, mixed, however, with regret that I am forced to combat the views and to oppose the course of one with whom I have so long had warm political sympathies, for whose talents I entertain so high a respect, and in whose patriotism and integrity I have such perfect confidence. If I understand his position properly he holds that this bill, by requiring a concurrent vote of the Senate and House to reject the conclusion of the commission, deprives either House of that which is not only its constitutional power but its constitutional duty; that is not only its constitutional power but its constitutional duty; that is, to exercise an effective veto upon any act of legislation which it

may disapprove.

Now, the fallacy here lies in the assumption that a decision of either Senate or House upon any question in counting the electoral vote or

witnessing that count is a legislative act by a legislative body. It is nothing of the sort.

When the Constitution declares that the vote shall be counted in the presence of the Senate and House, it does not bring them together as a Congress or a Legislature in any sense. They are the Senate and House, it is true, but only as those words describe the constituents of the assembly. They are as separate and distinct a body from the Senate and House in Congress assembled as a body composed of any other constituents would be

Mr. MILLS. In order that my friend may understand me exactly, state that the tribunal is one ordained by the Constitution and

clothed with both legislative and judicial powers.

Mr. LAMAR. Yes, sir, I understand. The gentleman says it is a body ordained by the Constitution and clothed with legislative powers and judicial powers, and it is from this proposition, as he states it, that I dissent. Now, sir, if as the gentleman contends it is a body under the Constitution clothed with legislative powers it can do no act nor adopt any resolution nor make any order or take a concurrent vote without having the President of the United States to approve such action. For such is the requirement of the Constitution prove such action. For such is the requirement of the Constitution as to all proceedings of the two Houses when acting as a legislature. But, I repeat, it is no legislature in the contemplation of the Constitution. It cannot perform any legislative act. Could a bill be introduced and passed in such an assembly? It could not even make an appropriation to pay its employés. The very tellers, by whom the count is made, are appointed for it by the two Houses severally when in session as branches of Congress. It is an organized body provided by the Constitution, called into being once in every four years, the two Houses being its constituent parts, but it has only a single function, and that is to count the electoral vote, as one party contends, or to witness that count, as the other party holds. The method therefore which this bill provides for ascertaining the legal votes which one but to which this bill provides for ascertaining the legal votes which ought to be counted, and distinguishing them from the illegal votes which ought not to be counted, may be a good or bad method, a wise or foolish method, but an unconstitutional one it is not. For, in the first place, whatever of power is given to this commission is not given to it by the body intrusted with the duty of counting the electoral vote, but by Congress, by regular legislation of the Senate and House with the approval of the President.

If I am right in the proposition that the duty to be performed in

counting the electoral vote does not attach to the character of the Senate and House as the National Legislature, but is the single function of a special organization provided by the Constitution, I think it cannot be doubted that Congress may by law prescribe the means and agencies whereby the assemblage may perform its function with facility and efficiency. If in order to perfect the machinery of that special organization Congress by law supplements it with this commission, it cannot be objected to unless it violates some constitutional provision as to its character. The power given to this commission is not the power intrusted the Senate and House thus assembled of determining who has received a majority of votes, but is simply the power to test the genuineness of a certain class of contested votes, power to test the genuineness of a certain class of contested votes, the result of which the two Houses finally determine. Has Congress not the power to do this? Why, sir, the law of 1792 provides the means by which the President of the Senate shall be guided in receiving the electoral certificates, and requires that the certificate of the vote from each electoral college shall be attested by the governor of each State. Does that law substitute the governor for the Senate and House or infigure upon their power? So wheat the certificate and and House or infringe upon their power? So where two returns come from the same State, this bill submits them to the scrutiny of the commission and requires its attestation to the genuineness of the one which is to be counted, unless the Senate and House determine to reject the finding of the commission.

I desire to examine for a moment the position which has been pressed by gentlemen, in this discussion, that the President of the Senate has the right not only to open the certificates but to count the votes. For the sake of the argument let us admit this assumed pre-rogative of that officer with whatever of power may be incident to its exercise. It is certain that if he has the right to count the vote its exercise. It is certain that if he has the right to count the vote he has the right to count it only "in the presence of the Senate and House." Now, sir, give to these words of the Constitution the very minimum of significance which gentlemen have allowed them. Say that they mean only the two Houses shall be present as witnesses, and these words are replete with positive and affirmative power. If they are witnesses surely no one will pretend that they are blind witnesses and deaf and dumb. Sir, if these two Houses are present under a constitutional duty to witness the count, are they not under a correlative obligation to refuse to witness that which they hold to be not a count? If either of these witnesses denies that it is an honest count, the count is not a legal one. Suppose each of these honest count, the count is not a legal one. Suppose each of these two Houses retire to its own chamber and there puts on record that it has not witnessed a count but a fraud and a lie, what is the result? It has not witnessed a count but a fraud and a he, what is the result? Why, sir, the whole proceeding becomes null and void. It is like the case of a man who is about to make his will. He and he alone has the power to make it; but the law requires him to make it in the presence of three witnesses. If the witnesses, or any one of them, refuses to attest, and swears that the signature is not genuine, or that the testator was not of sane or disposing mind, what becomes of the validity of the will? If, then, the Senate or the House refuses to testify to the count, or if they declare upon record that what pur-

ported to be a count was a cheating, deceptive, fraudulent pretense, what, I ask again, becomes of the validity of the count?

Surely the two Houses alone can testify whether the right vote was counted. If, therefore, the assumed right of the President of the Senate be granted the count cannot result in an election unless the witnesses, the Senate and the House, agree in giving their testimony to its correctness. But to do all this implies the right to discriminate the legal from the illegal vote. To accomplish this result it is proposed by this bill that Congress, under its power to pass all laws necessary and proper to the execution of any power vested in any depart-ment of the Government, shall provide a method by which in case of two certificates the Senate and House may ascertain the legal vote

which ought to be counted.

Believing this bill to be constitutional, I shall support it for reasons which I will now give as well as I can in the short time allotted to

My first reason is that it furnishes a provision which secures our Government against what has been considered by all our wisest states men as the weakest and therefore the most dangerous point in our system. They have feared that the election of President, in which nearly all the honors and emoluments of Government are staked as prizes to be contended for, would soon degenerate into a struggle and contest for these honors and emoluments, in which party ascendancy and party triumph will be objects of far greater solicitude than the prosperity and good of the country. This apprehension was twentyfive years ago expressed by a great American statesman in words which seem to be peculiarly appropriate to the present condition of public affairs. Speaking of the vast and growing patronage of the President and the number of offices of distinction and profit in his control, he

These, and especially the latter, have made the election of President the great and absorbing object of party struggles; and on this the appeal to force will be made whenever the violence of the struggle and the corruption of parties will no longer submit to the decision of the ballot-box. If it comes to this it will be in all probability in a contested election, when the question will be, which is the President! The incumbent, if he should be one of the candidates; or, if not, the candidate of the party in possession of power, or of the party endeavoring to obtain possession of power! On such an issue, the appeal to force would make the candidate of the successful party master of the whole. The contest would put an end, virtually, to the elective character of the department. The form of an election might, for a time, be preserved; but the ballot-box would be much less relied on for the decision than the sword and bayonet. In time, even the form would cease, and the successor be appointed by the incumbent; and thus the absolute form of a popular election would end in the absolute form of a monarchical government.—Cathoun on the Constitution of the United States, page 378.

Sir, this measure, unanimously recommended by men representing both political parties, I regard as certain proof that in this Congress devotion to party is not stronger than devotion to the country, and that the promotion of the prosperity and interest of the country are objects of deeper and more intense solicitude than all the honors and emoluments which may be reaped as the rewards and spoils of a presidential triumph. Its enactment into a law will be a grand triumph of patriotism, nationality, harmony, and zeal for the public good over faction, selfishness, and the struggle for party ascendancy. For this

reason alone I would give my support to this bill.

I proceed to my next reason. As I understand the measure it rests on three propositions: First, that the President of the Senate has not the right to decide what votes to count and what to reject; second, that both the Senate and the House have the right to decide and direct what is an honest count of legal votes; third, that, as neither can surrender this right to the other and that there are differences of opinion as to the extent of this power whether it is limited to the ascertainment of the authenticity of the certified returns or extends to the right of going behind them, it provides for a tribunal to de-cide these questions in cases of conflicting returns and to determine which return is the true and which of the controverted votes are the proper ones to be counted. In other words, they will take the advice commission the character of which will guarantee a thoroughly considered and impartial opinion. Upon that opinion the two Houses assembled will finally act.

Now, sir, if I had doubts of the wisdom of this plan, which I have not, I would accept it in preference to the alternative which is now

not, I would accept it in preference to the alternative which is now before us. If no mode of adjusting or reconciling the present differences can be found, what is the result? Why that the next President will have to be inaugurated by a method and through processes and agencies advocated and pressed by one party alone with the view to a single object, and that is the consummation of its own triumph, to which it believes itself entitled. However this presidential contested election may be ended, unless this bill passes, one or the other party must determine to submit to what it believes to be a fraudulent perversion of law, Constitution, and right, or to resist by force. Either of these results would be an incalculable calamity. In case of submission the whole moral force of the Government would be destroyed. sion the whole moral force of the Government would be destroyed. Both to those who win and those who lose, the Constitution will have become a mere weapon of party warfare, and the manipulation of a venal and corrupt popular vote will be perfected in the hands of bold and bad political adventurers, and in all succeeding elections the forms of constitutional procedure will be more and more recklessly disregarded until finally the result will be determined, not by the bailot, but by sword and bayonet.

As to the alternative of resistance there is no necessity to pretend to ignore it, for we all know that a good deal has been said about it,

both by those who would scorn to think it possible and those whom (I am sorry to say it) would be glad to hear it threatened. Now, sir, the man who says that he despises such indications, who feels a contempt for the menace of civil war, no matter from what quarter it comes, permits himself to overlook one of the most important features in the problem of government, the contentment, the harmony, and repose and security of the society for which he legislates; and he forgets the first lesson in the elementary book of practical politics.

For one, I am not unwilling to say that the former alternative (of

submission) would be the one adopted and that resistance would not be made, at least by the democratic party. And in saying this, I wish to repel the disparagement which has been expressed of the courage and patriotism of our northern political associates and friends which we sometimes hear. I believe them to be wanting in neither. As to the charge that in the past they have encouraged us with promises of support that were not fulfilled, I deny it. They did sympathize with us as to the causes which provoked our secession. But while a few public men made extravagant declarations as to what they would do in a certain event, our northern democratic friends as a party pleaded with us to remain and defend our institutions with their support inside of the Union. They did not as a party give assurances of co-operation and aid to us against their own States should war result from our secession. And, sir, if there existed with us at that time any bitter feeling of disappointment toward our former political associates, it has been effaced by their undeviating fidelity since the war to the constitutional rights of our people and by their unwavering support and sympathy, coming up on every question as true as the needle to the pole, without the needle's variations. No, sir, whatever of responsibility the South incurred in that movement she has no desire to shrink from. The sorrowful lesson we have to teach our children is all our own. It is that we undertook a great political movement which time and the fortunes of war disclosed that we had not the strength and resources to carry on to a successful consummation. Our vindication—and a generous victor will not deny us that—lies in our solemn conviction that we were defending the institutions and the principles of constitutional liberty, the heritage of the fathers of the Republic. It was this sentiment which inspired the courage of our soldiers in battle and now renders our section all the more precious

solders in battle and now renders our section all the more prectous to us in defeat, giving her to our eyes at least dignity in her desolation and beauty and majesty even in her ruin and woe.

I repeat, this bill avoids the necessity of any submission of the defeated party to what it may consider either fraud or force. The result, whatever it may be, will have been reached by the patriotic consent of both parties. And if it involves any addition to the methods heretofore observed, it will have been an addition fairly discussed, openly and legally adopted, ratified by the will and approved by the good sense of the whole people. It leaves the frame-work of the Constitution unshaken, the sanctity of law inviolate. Indeed, it is so in harmony with the genius of the Constitution, so promotive of the scheme of its framers, that had this commission of reference been part of the original Constitution itself, there would have been no language

too extravagant to describe its far-sighted wisdom.

To have solved so dangerous and difficult a question so simply, so calmly, and so justly is the highest tribute which can be paid to those principles of constitutional liberty which have trained the American people to such a possibility. The spirit in which the bill has been framed by its authors of both parties is no slight guarantee of the fairness with which the representative men of both political parties will administer its provisions; and if I cannot rely upon the patience and ability and the justice which the members of the Supreme Court

and ability and the justice which the members of the Supreme Court will bring to the discharge of perhaps the most solemn duty ever imposed upon the magistrates of a free country, with what confidence could I accept or ask others to accept the decision of the same question by a mere party majority either of the Senate or the House?

There is another consideration which commends this bill to my support. It cannot be denied that this presidential campaign has been marked by some painful characteristics. It cannot be denied that strong sectional prejudices and passions were appealed to and excited in its progress. It cannot be denied that a large majority of Northern States were found on one side and that an almost unbroken body of Southern States were found on the other. Now, sir, in such an issue, in the presence of such parties, in full view of all the unjust and unconthe presence of such parties, in full view of all the unjust and unconthe presence of such parties, in full view of all the unjust and unconstitutional action to which party passion has stimulated party power, I feel that this bill is a declaration that in the future this tyranny of force must cease; that hereafter in any conflicts to which the South as a part of the Union must be necessarily a party, the sword shall not be thrown into the scales of justice nor military power be permitted to silence the law, but that all questions of difference must be referred to the arbitration of reason. I feel that my section at least has been permitted to stand forth once more in the pure air of free dis-cussion, and that whatever be the decision, we have been allowed to appeal to men acknowledging a common citizenship under an equal

Nor does the fact that the justices of the Supreme Court are made Nor does the fact that the justices of the Supreme Court are made parties in this commission lessen my conviction of its propriety or weaken the sentiment of approval with which I regard it. I have no fear of disturbing the balance of constitutional powers, nor have I any mistrust of the spirit of honest impartiality in which that duty will be discharged. I listen with no patience to imputations upon this august tribunal. I cannot forget that one of the greatest of

American statesmen, the man who least of all who have left their mark on our constitutional history, was disposed to compromise either rights or duties, who spoke of such compromise as shifting-sands and the Constitution as a rock of support, taught me this confidence. When in 1848 the question of the power of Congress over slavery in when in 1848 the question of the power of Congress over slavery in the Territories was perplexing our councils and presaging the civil troubles which came upon us afterward, it was proposed in the Clay-ton compromise to refer that question, political and sectional as it was, to the Supreme Court for decision; that reference was warmly supported by Mr. Calhoun, who declared that such a reference was leaving it where it ought to be left, to the Constitution.

And, sir, so we may say that this measure refers this question to the tribunal of the Constitution.

Sir, I do know that in the dark hour of our distress it was from that court, just as it is now constituted, and from it alone of all the departments of this Federal Government, that we of the South have had protection against the legislation that forgot the Constitution in the vengeful spirit of its harsh and oppressive provisions. Its decisions in the Slaughter-house and other cases justified us in believing that there was one refuge for those who claimed that protection.

An additional recommendation (and I confess it is no light one) of

this plan to my support is that to a certain extent it frees either candidate from the exactions of party obligation. It is true that either will have owed his elevation to the party which supported him, but the closeness of the contest, the possibility of a failure in the election, the scrutiny of all the doubtful and dishonorable elements which unavoidably mix in a great popular vote, the solemn recognition by such a court of the awful responsibility which they are about to place in the hands of him whom they shall confirm—all these incidents so impressive and so unusual cannot fail to teach the coming President that he is not the President of a party but of the people; that the fortunes and the character of a great commonwealth depend upon the elevation, the purity, the patriotism of his administration; that the conscience of the country cries aloud for the old-fashioned honesty of its past honorable life, and that everywhere over this vast continent, amid the distraction of party passion and the honest perplexity of political differences, the popular heart is yearning for "the old good nature and the old good humor. [Applause.]

Mr. BAKER, of Indiana. Mr. Speaker, at the threshold of the second.

ond century of our national existence the country stands confronted by a question which agitates the public mind, paralyzes industry, and threatens revolution. It is a question which gives pause to pa-triotic thought and leads many to despair of the preservation of the republic. Although a similar question—the count of the electoral votes—has statedly recurred at the expiration of periods of four years since 1789, it has never happened that party interest and success seemed to depend upon a particular construction of the Constitution in reference to such count. The propriety and necessity of adopting the pending bill, reported by the joint committee of the two Houses, depend upon the question whether the Constitution itself has devolved the count upon some specific officer or department of the Government; and, if so, whether a rule of decision is provided for every question known to be involved in the count of the electoral votes. In the consideration of these questions I think the discussion of the following propositions is involved:

What officer or department of the Government, if any, is clothed with the power under the Constitution to count the electoral votes and declare the result?

In making such count is such officer or department of the Government clothed with power to reject the electoral vote or votes of a

If an electoral vote or votes may be rejected how and under what circumstances may it be done?

These are questions of the most delicate and important character, both in their bearing on the relation of the States to the National Government and in their bearing on the relation of the legislative and executive departments of the General Government to each other. They involve considerations the correct solution of which is essential to the harmonious working of the State and National Governments and vital to the peace and permanence of the Union. In the presence of such tremendous interests party spirit should stand rebuked, all passion, bitterness and excitement should be hushed into silence. Any attempt by partisan conventions and inflammatory and warlike threats to influence or overawe the tribunal charged by the Constitution with the duty of deciding these great questions is a crime of the most flagrant character. It is the highest political crime; it is a mistake. The people want peace; they want a right decision in the interest of peace. But with agitation and excitement aroused by partisan criminations, a single indiscretion may light a torch which will explode the magazine of latent passion and envelope the country in the flames of civil discord. Partisan conventions, local, State, and national, are a menace to peace and good order whenever society is agitated by conflicting emotions or is nearly evenly divided on questions of great public interest.

If a national convention of the character suggested by some Jacobin spirits, anxious for cheap notoriety, did convene, if it did not throw the nation into anarchy it would greatly augment the chances of that calamity. It is a gratifying and hopeful sign, full of inspiration for the lover of his country, that the great and patriotic masses of our countrymen of all parties remain calm and serene amid this storm. I take it as an admonition to their representatives to occupy the same high and patriotic ground. For one I shall endeavor to do it. The success of this or that party is of little moment so long as peace is preserved and the Constitution in all its parts maintained, respected, and cheerfully obeyed. Parties may rise and fall without detriment, nay, with profit to the country. The fabric of constitutional government erected by the wisdom and sanctified by the toil and blood of our fathers cannot fall without ruin and disaster to the people. Any attampt by agree to decide questions of constitutional law must end attempt by arms to decide questions of constitutional law must end in the destruction of the Constitution itself. It must plunge the people into a gulf shoreless and fathomless, lighted only by the glare and murky with the sulphurous smoke of battle. The highest patriotism, the highest statesmanship, alike demand that these questions shall be settled in the forum of debate and by the light of reason.

I propose to examine these questions, anxious alone to reach a correct conclusion. A sense of patriotic duty impels me to seek the true meaning of the Constitution, and when I have ascertained what I believe it is I shall be governed by it.

First. What officer or department of the Government, if any, is clothed with the power under the Constitution to count the electoral votes and declare the result? The only language in the Constitution directly bearing on the energies is as follows: directly bearing on the question is as follows:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. Article 12.

What is the meaning of this language? There has been a divergence of opinion on the question dating back to a period almost contemporaneous with the adoption of the Constitution. Many men of learning and eminence have at different periods insisted that the right and duty of counting the electoral vote are devolved on the President and duty of counting the electoral vote are devolved on the President of the Senate. Of this number, some have contended that the count is purely ministerial, involving only an arithmetical compilation of numbers and a declaration of the result thus arrived at. They argue that a fair construction of the different clauses of the Constitution establishes the conclusion that the election of the President and Vice-President was intended to be confided to the States; that the States are exclusively and without power of review vested with power to appoint electors of President and Vice-President in such manner as the Legislature thereof may direct: that the States were igalous of the Legislature thereof may direct; that the States were jealous of the exertion of national authority and would never have consented to the exertion of national authority and would never have consented to grant to the General Government a right to review the decision of State, and perhaps to defeat its right to have any voice in so important and interesting a function as that of choosing a Chief Magistrate; that to concede to the President of the Senate any jurisdiction or discretionary power would enable one man, perhaps chosen from among the body of the people for the sole purpose, to override the clearly expressed will of the people and thus defeat the very object sought to be accomplished by the framers of the Constitution; that the authors of the Constitution and the people who adopted it could never have meant to place such vast power in the hands of any one man, however exalted his station. Hence this class of reasoners have strenuously maintained that, while the President of the Senate alone possessed the constitutional power to open and count the electoral votes, he must count the votes as they were transmitted to him if votes, he must count the votes as they were transmitted to him if authenticated in due form; that the remedy for fraud or other wrong was by an appeal to the people when another opportunity occurred for the exercise of their constitutional power in choosing presidential electors.

Another electors

Another class of reasoners, who maintain that the President of the Another class of reasoners, who maintain that the Frestdent of the Senate is vested with the power of counting the electoral vote, insist, however, that he is possessed of limited judicial powers in the execution of this duty. They argue that, being in direct terms charged with the duty of opening all the certificates of electoral votes, he must have the power of deciding what are such certificates as are meant by the Constitution; that, as there can be only one electoral college lawfully appointed by a State, when there are transmitted to him there are transmitted. to him two or more sets of papers purporting to be certificates, he must decide between them and ascertain, open, and count the gen-nine; that, to enable him to do this, he may officially take notice of the result of the election in each State, to determine who were ap-pointed electors, whether they were eligible to be appointed, and the genuineness of their signatures to the certificates of votes; that he may acquire this knowledge historically or in such other manner as he shall think best; that it could not have been intended to have every certificate apparently in due form counted without any power to inquire into its authenticity; that such a construction of the Constitution would invite its own overthrow by opening the door to the reception of fraudulent votes without any power of correcting the

This divergence in the views of those who maintain the power of the President of the Senate to count the electoral votes and the dangerous consequences which might and doubtless would result in practice from carrying either of the above theories to its logical conclusions would seem to throw doubt upon the existence of such power; and this doubt is confirmed by giving attention to the principal arguments adduced to prove the existence of this power in the President of the Senate. Those who maintain that he is clothed with this power argue that the Constitution does not give the power to the Senate and House in terms to count the votes or to decide any question in regard to that matter; that the "counting the electoral vote"

is not the exercise of any legislative power; that Congress cannot take the power by implication, for it has no implied powers, except such as are necessary to carry out and put in operation those expressed; that the Constitution of the United States is a delegation of power, and is distinguished from a State constitution, which is a reserration of power, and that it thence follows that Congress can do only those things which it is authorized to do, while a State Legislature may do anything not prohibited; that there is no express power granted the two Houses except to be present; that the being present implies a mere passive state or condition; that the only affirmative act specially required to be performed is by the President of the Senate, who is to open the certificates; that to open the certificates does not mean simply to break the seals, but to publish and make known the contents and declare the result.

The foregoing I believe is a fair summary of the arguments adduced to prove that the Constitution has invested the power in the President of the Senate, to the exclusion of Congress, to open, count, and declare the result of the electoral votes. If he is clothed with this great power, it cannot be delegated or surrendered by him, nor can Congress challenge or interfere with his exercise of it. He must hold it irrevocably, except there be an amendment of the Constitution, for weal or woe. It is true that nearly fifty years ago Chancellor Kent cautiously expressed the opinion that in the absence of legislation the President of the Senate was to count the votes. So believed

Henry Clay, who declared-

Unless the two Houses of Congress agree upon a different method the President of the Senate would proceed to open and count the votes.

Such, too, was the practice from 1789 to 1825. On each occasion between those periods the President of the Senate gave a certificate to the officers elected, declaring that he had counted the votes. He seems to have overlooked the real difficulty. If the Constitution invests him with the power to count he must exercise the power, and no legislation can place the right or power elsewhere. If the Constitution does not give him the power to count then he can acquire it only by the act or consent of Congress, in which case he would perform the duty as the mere hand or organ of Congress. I believe that if Congress failed to make provision to regulate the count, and both Houses met in the manner provided by the Constitution to attend the count, the President of the Senate would be authorized to count the votes on the principle of implied consent and to effectuate the obvious purpose of the convention. Perhaps this is what the learned

judge meant, and, if so, I assent to it.

The Constitution clearly requires the President of the Senate as such to perform only one single act in the presence of the Senate and House of Representatives. He must open all the certificates transmitted to him. He has no discretion to open some and fail to open others. All must be opened in the presence of the two Houses. After the certificates are opened one additional thing remains to be done: "The votes shall then be counted." The Constitution does not in terms say who shall count them or what scrutiny they shall undergo. terms say who shall count them or what scrutiny they shall undergo. The framers of the Constitution, in reference to every other officer who was to perform any important constitutional functions, have designated him by name in connection with the enumeration of his powers. If this, the greatest power which can be delegated to man, was intended to be confided to the President of the Senate, it is marvelous that he is not directly charged with it, as he is with all his other powers of less importance. The sages of the Constitution were too cautious and apt in legal phraseology to have adopted the language used if they had intended to confer this power on him. The apt and natural language to have conferred the power would have been: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and then count the votes." then count the votes.'

We find a duty enjoined, "the votes shall then be counted," but how or by whom is not stated. The imposition of a duty must of necessity imply the *power* in some officer or department of the Government to perform it. It cannot execute itself. Hence the power, the right to count rests somewhere and somebody must execute the duty. The power to count not being in terms confided to any par-ticular officer, it must reside in some one of the great departments of ticular officer, it must reside in some one of the great departments of the Government. It is in its nature a political power, and hence it must reside in Congress as the repository of that power. No one I apprehend will insist that the power resides in either the executive or judicial departments of the Government. The power resides in the Government of the United States to count; it is vested there in apt and suitable words. The powers vested in the Government can only be exerted and executed by Congress, unless some officer or department is in express terms clothed with them. Every power conferred by the Constitution, unless specifically and in terms confided elsewhere, must reside in Congress. It is the great reservoir in which is absorbed every power not otherwise appropriated or reserved. This is a political axiom necessarily resulting from our form of representative Government.

This is a pointest axiom necessarily resulting from our form of representative Government.

This principle perhaps can be demonstrated with equal precision in another way. The power to count the votes is vested by the Constitution somewhere in the Government of the United States. It cannot be claimed to exist elsewhere. The power, the duty is "the votes shall then be counted." Now the Constitution in express terms provides thatThe Congress shall have power \* \* \* to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Here is the constitutional power to count the votes granted. No person is in terms empowered to do it. Congress shall have power, the Constitution declares, to make all laws necessary to carry into execution all powers vested in the Government of the United States, or in any department or officer thereof. To my mind the conclusion is irresistible that this power to count can be carried into execution by no other officer or department of the Government but Congress.

But it is argued that the precedents, the practical contemporaneous

construction of the Constitution are otherwise; that for many years after the adoption of the Constitution, while the framers of it were living actors in giving form and character to our institutions, the President of the Senate invariably counted the electoral votes. I do not think upon any fair construction of the precedents that they will sustain this view. The first count of the electoral votes in 1789 is claimed to be a precedent sustaining the right of the President of the Senate to count. This count was made by John Langdon, President pro tempore of the Senate in the presence of the two Houses of Conpro tempore of the Senate in the presence of the two Houses of Congress. It was necessary, in order to set in motion the new government, to elect a President of the Senate at least for the purpose of opening the certificates. He was elected for the purpose of both opening and counting the electoral votes. The House was notified of the purpose of Mr. Langdon's election. The House resolution on the subject is not reported, but the substance of it is contained in the message of the House to the Senate through one of its members, Mr. Ellsworth. He said to the Senate that the House is ready to meet the Senate that the Gounting of the votes of the Ellsworth. He said to the Senate that the House is ready to meet the Senate to attend the opening and counting of the votes of the electors of the President and Vice-President of the United States. It therefore appears that both the Senate and House by vote authorized the President pro tempore of the Senate to count as well as to open the votes of the electors. True, the authority to count was not conferred by direct formal enactment; but the action of the two Houses, although informal, was a sufficient authority to have constituted him their agent to count the votes. Hence, this cannot fairly be claimed as settling any construction of the Constitution favorable to the powers of the President of the Senate in opposition to that of to the powers of the President of the Senate in opposition to that of

At the second and every subsequent presidential election the Senate and House have always, without question, asserted and exercised ate and House have always, without question, asserted and exercised the right to ascertain the mode of examining the votes of President and Vice-President. This power to examine the votes involves the right of control and the power of judgment. The particular mode of examination has been by tellers appointed by each House. The tellers have always received the certificates and made a list of the votes. The proceedings had in 1793 show clearly enough that the power of the President of the Senate to count the electoral votes was practically decided.

tically denied. The record says:

The two Houses having accordingly assembled, the certificates of the electors of the fifteen States in the Union which came by express, were by the Vice-President opened, read, and delivered to the tellers appointed for the purpose, who, having examined and ascertained the votes, presented a list of them to the Vice-President, which list was read to the two Houses.

The practice then adopted has always since been substantially followed. The two Houses, through their tellers, have always examined and ascertained the votes and presented a list of them to the President of the Senate. If any doubt existed as to the true construc-President of the Senate. If any doubt existed as to the true construction of the Constitution, the Senate and House have so long and uniformly asserted a paramount and supervisory power over the count that it cannot now be questioned. It is not only a contemporaneous construction of the Constitution, but it has been the continuous and uniform practice since. The question of the power of Congress to control and regulate the subject of counting the votes of the electors came before Congress distinctly in 1800. While many distinguished men discussed the question of providing by law for deciding disputed elections of President and Vice-President and for determining the legality or illegality of the votes given for these officers in the different States, very few asserted the power of the President of the Senate over the count of the electoral votes. Mr. Pinckney, who opposed legislation on the foregoing subjects, stated that—

It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has the majority of the votes of the electors transmitted.

And the Senate by a vote of 16 to 12 asserted the power of Congress over the whole subject of deciding disputed elections and determining

over the whole subject of deciding disputed elections and determining the legality or illegality of electoral votes. The House by the decisive vote of 73 to 15 asserted the same doctrine.

Again, in 1824 the Senate passed a bill asserting the same principle. The bill went to the House, was referred to the Judiciary Committee, and reported back to the House favorably and without amendment by that great constitutional lawyer, Daniel Webster. Thus the Senate and the Judiciary Committee of the House were committed to the doctrine asserted by so extends a majority of the House with 1800.

the doctrine asserted by so strong a majority of the House in 1800.

If any further proof were needed that Congress is possessed of the power to count the votes of electors and determine their legality or illegality, it is afforded by the uniform practice of the Senate and House to assert and exercise such power whenever an electoral vote has been discreted. been disputed. It was asserted in 1817 upon the occasion of exception

being taken to the electoral vote of Indiana. It was again asserted in 1821 upon the occasion of exception being taken to the electoral vote of Missouri. It was again asserted in 1837 upon the occasion of exception being taken to the electoral vote of Michigan. The fact relied upon to invalidate the electoral vote of these States was that they had not been invalidate the electoral vote of these States was that they had not been formally declared by act of Congress admitted into the Union before the appointing of their electors. The power of Congress to inquire into electoral votes and supervise and control the count was again asserted in 1857 on the occasion of exception being taken to the electoral vote of Wisconsin. The ground of exception was that the electoral vote of Wisconsin. The ground of exception was that the electoral 1856, as required by law. The electors had been delayed by a severe snow-storm and were unable to meet until the day after the time fixed by law for so doing. Here are four distinct occasions when exceptions were taken to electoral votes, and on each occasion the Senate retired to its Chamber and the two. Honses separately considered the objectors. to its Chamber and the two Houses separately considered the objec-

Had Congress on these several occasions believed that the power to count the votes of the electors was vested in the President of the Senate, and not in it, and that the sole function of the two Houses be present at the count, it seems incredible that they should

was to be present at the count, it seems incredible that they should have taken the action they did.

The action of Congress in 1865 growing out of the unsettled and anomalous condition of the States lately in rebellion led to the adoption of the twenty-second joint rule of the two Houses. The action thus taken could only be vindicated on the theory that Congress possessed full and ample authority over the whole subject. While I cannot doubt-that some of the principles embodied in the twenty-second joint rule were wrong and violative of the true intent of the Constitution, I do not entertain this opinion from any belief that Congress does not possess constitutional authority over the count. The provision in the joint rule that no electoral vote could be counted without the consent of both Houses seems to me to be a doctrine ill-founded in law and most dangerous in its tendencies. Such a principle founded in law and most dangerous in its tendencies. Such a principle never ought to have been adopted, and its abrogation by the Senate was justified by a due regard for the Constitution and the rights and dignity of the States.

Such uniformity and weight of authority leave no doubt upon my mind that the power to count the electoral votes resides in Congress. And this power, correctly speaking, is neither judicial nor ministerial,

but political.

may be and doubtless is true that the thought lying in the minds of the framers of the Constitution never touched the questions now confronting us. When the Constitution was framed there were thirteen States each with perfect organization. A national government was about to be instituted. It was believed that the States could be safely trusted with the appointment of electors. It was expected that the States would choose electors from its citizens most eminent in ability and weighty in character; that the electors, animated by a lofty sense of patriotic duty, and from a calm and dispassionate survey of the interests of the whole country, would select a President and Vice-President from its most illustrious citizens, and not confine their choice to previously designated candidates of party conven-

It doubtless never entered the minds of the sages of the Constitu-tion that more than one electoral college would claim to be appointed in any State, nor that two sets of certificates from rival electoral col-leges would ever be transmitted to the President of the Senate. They provided for a condition of peace and good order; for an honest vote as well as an honest count and an honest return. Entertaining such sentiments, the count would be considered a duty involving little or no difficulty. It would involve no inquiry; it would require no investigation. It would be a duty which could as well be performed by a clerk or a page, as by a Washington or a Lincoln. It could as well be intrusted to the President of the Senate as to Congress or the Supreme Court. Perhaps it is fortunate that the fathers did not foresee the evil times on which we are fallen. It would have been another and perhaps fatal obstacle to the formation of a national government.

While such was the underlying thought, it is but another proof While such was the underlying thought, it is but another proof that national life and growth enlarge or narrow the construction of general constitutional expressions so as to adapt them to the various conditions and novel questions constantly arising in the progress of nations. It demonstrates that national life and growth flow in no predetermined channels; and that they build wisest who build to meet the largest variety of human contingencies.

Second. In making such count is Congress vested with power to reject the latteral votes of a State and if so lower and under what

reject the electoral vote of a State; and, if so, how and under what circumstances may it be done?

In considering this proposition we find ourselves confronted by arious theories. By one class of reasoners it is argued that no vote various theories. can be counted without the consent of Congress first obtained; that this consent is always implied when a vote is counted and recorded on the Journals of the two Houses without objection; that where on the Journals of the two Houses without objection; that where objection is made by any member of Congress to an electoral vote, it cannot be counted without an express decision of Congress in favor of it. By some it is claimed that the two Houses meet for this purpose in joint convention and that the votes of the Senators and Representatives are to be taken per capita. By another class it is claimed that the Houses meet in their separate organic capacities; that when

any question arises for consideration the two bodies must separate, deliberate, and vote in their respective Chambers; that unless both Houses concur in overruling the objection, it must prevail and the vote be lost; that in determining what votes shall be counted the Congress may go behind the authentication of the electoral college, Congress may go behind the authentication of the electoral college, behind the certificate of the governor and secretary of state, behind the seal of State, behind the returns of the State returning or canvassing board, and inquire for itself what was the true state of the vote for electors; that Congress may investigate all questions of fraud and violence attending the election in a State, and if a different conclusion is reached on that question from that reached by the State tribunals, it may reverse and nullify such decision; that in the last analysis Congress is to determine for itself whether the State has appointed electors and who were so appointed; that in prosecuting this inquiry it possesses a final and uncontrollable authority, so that this inquiry it possesses a final and uncontrollable authority, so that it may in its own good pleasure, and for such reasons as seem to it sufficient, reject the votes of any or all of the States, however regular and complete their authentication. This class of reasoners hold that it is a great national returning board, vested with unlimited power, and that it may count in or out whom it pleases by rejecting the electoral votes of States, and that it may wholly defeat an election by the people, and, by throwing the election into the House always draw to itself the power of choosing a President.

Another class of reasoners argue that the election of a President

Another class of reasoners argue that the election of a President was confided exclusively to the States; that it was intended to remove the election as far as possible from the influence or control of any department of the National Government; that the States were jealous of the exertion of any influence in this important function by Congress; that this jealousy is made manifest by forbidding the ap-pointment of any Senator or Representative in Congress as an elector, and by providing that when the election of a President should devolve upon the House the Representatives should vote not in their ordivoive upon the House the Representatives should vote not in their ordinary capacity, but as the delegates of their States and as a secondary electoral college; that the sole duty of Congress is to count the electoral votes; that the duty to count does not include the power to reject; that the only power possessed by Congress is to ascertain whether the votes laid before it are so authenticated as to furnish prima facie evidence of their genuineness; that there is no power vested in Congress to control or reverse the action of the proper tribunals of the States; that Congress may examine the directions of the Legislature, and if the proper tribunal created by the State has decided that certain persons have been appointed electors their appointment is binding on Congress and can only be questioned by a proper tribunal authorized by the State to hear and decide such a contest; that, in fine, the power of Congress is, first, to count only such votes as the President of the Senate opens and lays before it, and, second, in mak-

President of the Senate opens and may before u, and, second, it making such count its duty is merely ministerial.

These widely divergent views show the difficulty to be encountered in settling such grave and delicate constitutional questions in a numerous political body animated by party hopes and passions. It seems to me, however, that some questions on this subject may be considered or satisfied.

1. The two Houses meet in their separate organic character and so not mingled in one common mass as a joint convention. This are not mingled in one common mass as a joint convention. This conclusion seems inevitable from the language of the Constitution, "the Senate and House of Representatives" are to meet as such. Again, the uniform and unvarying practice of Congress from the organization of the Government recognizes the integral character of each body. On every occasion when any question has arisen for consideration during the count the two Houses have separated. These

considerations seem decisive of the question.

2. As the duty enjoined upon the two Houses is to count the votes it would seem to follow that the dissent of one House could not defeat the performance of this constitutional duty. The objection to a vote is in the nature of an exception, and on principle and authora vote is in the nature of an exception, and on principle and authority the supervising tribunal cannot upon an equal division sustain such exception. On an equal division the vote must stand and the exception fail. This conclusion would seem to be strengthened from the fact that the Houses act separately; that they are equal and possessed of co-ordinate power. If the House of Representatives may by its dissent defeat the vote of a State, these consequences would follow: (1) Greater effect is attributed to the negation of the House than to the affirmation of the Senate, otherwise the prima facie right of the State to have its vote counted could not be overcome thereby; (2) the House, which is vested with power to elect a President on the failure of the electoral college to elect, could always create the contingency and thus for ever defeat any election by the people in the mode provided by the Constitution. This last consideration would seem a conclusive answer to the claim that no vote can be counted without the concurrence of the House.

It seems incredible that the authors of the Constitution, who were of itseems incredible that the authors of the Constitution, who were so jealous of the rights of the people of the States to elect a President and Vice-President without congressional control that they forbade the appointment of a Representative as an elector, should have purposely put the power into the hands of the Representatives of always defeating the very object sought with so much care to be accomplished. It would have better comported with the wisdom attributed to them, if they did intend to grant this power to the House, to have in the first instance confided the appointment of a President to the Representatives. This claim of the House is manifestly un-

founded. No such folly can be attributed to them. Nor ought this question longer to be considered an open one. On the 1st of May, 1800, the House of Representatives passed an act prescribing the mode of counting the votes for President and Vice-President of the United States. The bill came from the Senate and was greatly United States. The bill came from the Senate and was greatly changed in the House by amendment. In the eighth section of the act it is provided as follows:

And if the two Houses have concurred in rejecting the vote or votes objected to, such vote or votes shall not be counted; but unless both Houses concur such vote or votes shall be counted.

The bill passed the House by a vote of 52 ayes to 37 noes.

On the 2d of May, 1800, the Senate took into consideration the amendments of the House of Representatives to the bill for deciding disputed elections of President and Vice-President, and they were referred to Messrs. Ross, Dexter, and Livermore to report thereon. On the 8th of May, 1800, Mr. Ross, from that committee, reported amendments thereto. Among others, in section 8, to strike out of the above-quoted clause the word "rejecting" and insert in lieu thereof the word "admitting;" so that the clause would read:

And if the two Houses have concurred in admitting the vote or votes objected to, such vote or votes shall be counted; but unless both Houses concur, such vote or votes shall not be counted.

The amendment was adopted in the Senate by a vote of 15 for to 11 against it. Some other amendments reported were agreed to in the Senate, and the bill, as amended, passed by a vote of 16 for to 11 against the measure. On the 9th of May, 1800, the House received the bill with the Senate amendments, one of which, "respecting the election of President," was, instead of the word "rejecting" (in the bill) any vote or votes by a concurrent vote of the two Houses, the word "admitting" was proposed by the Senate.

Mr. Harper and Mr. Bayard hoped the House would not concur, as this amendment very materially changed the principle of the bill, inasmuch as it would put it in the power of one or two members of either House to require the majority of both Houses to admit a vote

inasmuch as it would put it in the power of one or two members of either House to require the majority of both Houses to admit a vote or votes in default of which the whole votes of a State might be totally rejected; that this was contrary to the former will of the House after mature deliberation. The yeas and nays were called by Mr. Nicholas on the question, "Shall the amendments of the Senate be concurred in?" and was decided in the negative—yeas 15, nays 73. The Senate by the vote of 16 yeas to 11 nays adhered to their amendments. The House adhered to their disagreement and refused to recede and the bill was lost. It will be borne in mind that this occasion. ments. The House adhered to their disagreement and refused to recede, and the bill was lost. It will be borne in mind that this occurred within eleven years from the time of the adoption of the Constitution, when many of the great men who had participated in its framing and adoption were still in public life. The Senate was nearly evenly balanced on the question, while the vote of the House stood almost five to one in favor of the doctrine that an electoral vote could only be rejected by the concurrence of both Houses. It will also be observed by an examination of the recorded vote that both in the Senate and the House the division was very closely on party lines; the federalists voting in favor of the doctrine that each House must concurr to justify the reception of an electoral vote, and the republicans voting that it required the concurrent vote of the two Houses to reject it. to reject it. It may seem surprising to some that the democracy of to-day stand on the ground occupied by the old federal party in the days of the alien and sedition laws. It is only another proof that a political organization may be held together by the cohesive attraction of public plunder long after every distinctive principle of the party has perished. It may be said of the democratic party, Stat nominis magni umbra. It stands the shadow of a great name—the substance, the reality, are forever dead. This solemn and authoritative contemporaneous decision of the power of the House under the Constitution could be a found to the constitution of great party available to the constitution of the power of the standard party and the constitution of great party available. ought to bind us. Surely in time of great party excitement we can do no better than to stand where the fathers stood by so overwhelming a majority.

ing a majority.

Nor is this the only solemn precedent we have for our guidance on this question. On the 16th of December, 1823, Mr. Eaton, a Senator from Tennessee, offered a resolution instructing the Judiciary Committee of that body to inquire if any, and what, amendments are necessary to an act entitled "An act relative to the election of a President and Vice-President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices of both President and Vice-President," passed the 1st of March, 1792. This resolution was agreed to. On the 4th of March, 1824, Mr. Van Buren, from the Committee on the Judiciary, reported to the Senate a bill "in addition to the act relative to the election of a President and Vice-President of the United States." This bill contained a provision in the fifth section as follows: vision in the fifth section as follows:

And if the two Houses have concurred in rejecting the vote or votes objected to such vote or votes shall not be counted; but unless both Houses concur such vote or votes shall be counted.

This passed the Senate April 19, 1842, and was sent to the House. It was there referred to the Judiciary Committee, and on the 10th of May it was reported to the House without amendment by Mr. Webster. It was committed to the Committee of the Whole House, where it was never considered. The only exception to the doctrine that it required the concurrence of both Houses to reject a vote or votes is found in the twenty-second joint rule, a rule growing out of the exigencies of the war. This feature of the rule received no serious con-

sideration at the time of its adoption. When attention was drawn to it this feature met the strongest reprobation, and before the commencement of the last campaign it was repudiated by the Senate. Senators of all political opinions united in condemnation of it. It cannot prove profitable to protract the discussion of this question

If any doubt existed as to the true intent and meaning of the Constitution, looking alone to the language employed, none can be left when we examine it in the light shed upon it by the great and illustrious men who were living actors in the great drama of setting in motion the Government under the Constitution. Penetrated by a pro-found knowledge of the instrument they fashioned, they left as a dying testimony to posterity the solemn judgment that the concurrence of both Houses of Congress was required to justify the rejection of an

electoral vote. Let us be wise and heed their voice.

3. This brings me to consider under what circumstances an electoral vote may be rejected. Admitting as I do that by the concurrence of the two Houses an electoral vote or votes may be rejected, still it of the two Houses an electoral vote or votes may be rejected, still it must be evident that Congress must be governed by fixed and settled principles of law and fact to justify such rejection. It would be abhorrent to our sense of justice and repugnant to the soundest principles of constitutional law to admit that Congress possessed an arbitrary and uncontrollable power over this subject. Their decision must be reached by legal methods, and in pursuance of the powers delegated to them in the Constitution. The consideration of this question necessarily turns upon the following words found in the Constitution:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.—Article 2, section 1.

to which the State may be entitled in the Congress.—Article 2, section 1.

The statement of a few elementary principles will aid us in this discussion. The powers possessed by Congress are delegated to it in the Constitution by the people of the States. Its powers are distinguished from those possessed by a State Legislature in this, that the Legislature of the State is possessed of complete and sovereign power, except in so far as its power is limited by constitutional inhibition. The Congress possesses no powers except such as are conferred upon it in express terms or by fair implication. The powers of the State Legislature are inherent; the powers of Congress are delegated. the State Legislature are inherent; the powers of Congress are delegated and derivative from the people of the States. Whenever Congress would do a lawful act it must find its warrant of authority in

the Constitution.

It is admitted that in the enumeration of powers granted to Congress in article 1, section 8, of the Constitution no authority is con-ferred upon it in relation to the election of a President and Vice-President. The whole power of Congress over the subject must rest upon those clauses of the Constitution found in article 2, section 1, article 12, and article 14, section 3. The twelfth article relates so far as electors are concerned to the manner in which they are to perform their duties, and is unimportant in this discussion. The third section of the fourteenth article declares that certain classes of persons who have been engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, shall not be electors. Hence if Congress possesses any power in relation to the appointment of electors it must be found in the clause in article 2,

It has been argued that the right of the States to appoint electors is delegated to it by the Constitution, and that in consequence Congress has the right to supervise the action of the States in the execution of the power. I do not concede that this right of supervision would follow if we were to admit that the power in the State was delegated to it. On the theory that the power of the State has been delegated to it, the legislature would necessarily possess the same authority over the subject as Congress would if this power had been delegated to it. The people, acting by States for the accomplishment of certain ob-jects, delegated certain powers to one body and certain other powers jects, delegated certain powers to one body and certain other powers to another body. Each delegated body deduces its power from a common principal, and neither can interfere with the other in the execution of the delegated powers unless by express authority. Where a common source of power, i.e., the people in the Constitution, charges one delegated body with the performance of a specific duty, no other delegated body charged with the performance of other duties can claim any implied power to interfere with or supervise the execution of the duty devolved upon the other body. The two stand exactly equal. They deduce their powers each from the same common source. Each is co-ordinate, and must be wholly independent of the other in the execution of the duties confided to it by the same constitution. Hence Congress deducing its authority from the same constitution. Hence Congress, deducing its authority from the same constitution. Hence Congress, deducing its authority from the same common source as the State, cannot be possessed of power over the State in relation to the appointment of electors unless this paramount power is given in terms to it. But it is admitted that it is nowhere given in terms. Thus much on the theory that the power of the States to appoint electors is in the proper sense a delegated power. But it seems to me clear that the power possessed by the States is in no sense a delegated power. The States, i. e., the original thirteen, existed before the Constitution was framed. These States each had an inherent right to have a voice in the selection of any expression.

had an inherent right to have a voice in the selection of any common ruler over the whole. This right was clear and undeniable. Unless the people of the States surrendered this right to a common government about to be established under the Constitution, they have never parted with it. This, manifestly, would be true as regards the origi-

nal thirteen States of the Union. The States since admitted possess, by the express language of the Constitution in this regard, all the rights, dignity, and equality of the original States of the Union. Hence it follows that, unless the power of appointing the electors of President or Vice-President, or of supervising their appointment by the States has been in terms delegated to Congress, it remains in each State. The framers of the Constitution, jealous of the rights of the States and anxious to retain every power not inconsistent with the existence of the Government about to be organized by them, in express terms declared that this original inherent power of the States should still remain in and be executed by them. It is an abuse of terms of modern growth and of more degenerate times to speak about the Constitution delegating rights or powers to the States. The States were the source of all power. Such power as was not specifically delegated to the General Government still remains with the States or the people thereof. And that there should exist no doubt on this question the sages of the Constitution set it at rest. Article 10 pro-

The powers not delegated to the United States by the Constitution, nor prohib ited by it to the States, are reserved to the States respectively, or to the people.

The power to appoint electors of President and Vice-President is not delegated to the United States. It is not prohibited to the States. Hence it remains where it existed, in the States respectively. This conclusion is inevitable both upon principle and from the explicit language of the Constitution. The power to appoint electors then being a right absolutely reserved to the States, it is a power above and beyond Federal control. In reference to this there was no conflict of opinion among the great men fresh from their labors in framing the Constitution. In March, 1800, Mr. Pinckney said:

lifet of opinion among the great men fresh from their labors in framing the Constitution. In March, 1800, Mr. Pinckney said:

Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present not only the spirit but the letter of that instrument, to give to Congress no interference in or control over the election of a President. It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has a majority of the votes of the electors transmitted. It never was intended, nor could it have been safe, in the Constitution to have given to Congress thus assembled in convention the right to object to any vote, or even to question whether they were constitutionally or properly given. This right of determining on the manner in which the electors shall vote, the inquiry into the qualifications, and the guards that are necessary to prevent disqualified or improper men voting, and to insure the votes being legally given, rests and is exclusively vested in the State Legislatures. If it is necessary to have guards against improper election of electors and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it. To give to Congress, even when assembled in convention, a right to reject or admit the votes of States, would have been so gross and dangerous an absurdity as the framers of the Constitution never could have been guilty of. How could they expect that in deciding on the election of a President, particularly where such election was strongly contested, that party spirit would not prevail and govern every decision! Did they not know how easy it was to raise objections against the votes of particular elections, and that in determining upon these it was more than probable that members would recollect their sides, their favorite can

Attention to the language of the Constitution will show the extent of the power of Congress to make inquiry into this subject. "Each State shall appoint electors," &c. Congress must have power to determine whether the electors are appointed by a State of the Union. That is a political question which is open to inquiry where it has not been settled so as not to be irrevocably set at rest. Whenever all three of the great departments of the Government have recognized the existence of a State as a member of the Union, its State existence can-not be questioned by a single department. Would it be competent for Congress alone to deny that Indiana is a State of the Union? question is open to Congress further than to inquire whether a State has been admitted into the Union, and when admitted its right to be recognized as a State is beyond the power of Congress except by law. Hence no question is open on this head so far as Florida and Louisiana are concerned.

2. The State shall appoint electors "in such manner as the Legislature thereof may direct." Congress certainly can do no more than to 2. The State shall appoint electors "in such manner as the Legislature thereof may direct." Congress certainly can do no more than to examine the directions of the State Legislature to see in what manner the electors are directed to be appointed. The manner of their appointment is absolutely and without power of review reserved to the State Legislature. The mode of appointment may be very foolish or very wise, but the right is not given to us to sit in judgment upon it. The Legislature may itself appoint the electors as has often land. it. The Legislature may itself appoint the electors, as has often happened. It may confide the appointment to the governor, or, as often happens, to a majority of the electors appointed when a vacancy

It may confide the appointment to a returning board, if you please,

and the appointment is as constitutionally binding as though every man, woman, and child in the State had concurred in it.

But it is argued that in Louisiana the Legislature directed the appointment of electors by popular vote and declared that the persons having a majority of votes should be appointed electors; that the returning board of that State has overturned the will of the State as expressed at the heallet have and appoint the state as expressed at the ballot-box, and wrongfully given the certificates of election to the men who received a minority of the votes; that the character of the men composing the returning board is bad, so bad that nobody has any confidence in anything they may do. It will not

be necessary to spend much time in disposing of the question of character. If I were disposed to indulge in the argumentum ad hominem, I think I could easily demonstrate that in all the essentials of manhood they were quite the peers of many men who with extended

hood they were quite the peers of many men who with extended palms and upturned eyes were calling Heaven to witness that no such infamous men ever before held official position.

But it seems to me puerile to attempt to impeach the decision of a court of competent jurisdiction by attacking the character of the judge. It would be a novel spectacle indeed for an attorney to urge an appellate court to nullify the decision of the court below because the judge's character was not as spotless as the fastidious tastes of the appellant's attorney might demand. An attorney who would induce in such discussion in a court would be esteemed at the least dulge in such discussion in a court would be esteemed at the least unwise. It would be indelicate to characterize the same practice when indulged in here when the gravest and most delicate constitutional questions are under consideration. It is sufficient to say that the question of character has nothing to do with the discussion,

and that it is introduced only for bad party purposes.

The State Legislature has the power to constitute tribunals to ascertain and determine the state of the vote. It may make the deciscertain and determine the state of the vote. It may make the decision of such tribunal either prima facie or conclusive evidence of the title to an office. If such tribunal is vested with the power by law to ascertain and decide the legality or illegality of the vote cast at a polling-precinct, no one can question the decision except in a tribunal created by the State for that purpose. The Constitution declaring as it does that the Legislature may direct how the electors shall be appointed, no one can deny the right of the State Legislature to direct their appointment by the majority of votes as finally determined by any tribunal it may designate. It will not do to say that because the tribunal has reached a wrong conclusion that therefore the electors designated are not lawfully appointed by the State. To deny their lawful appointment would unsettle all rightful authority and leave every man to act on his own judgment. It would lead to anarchy. It would destroy all constitutional government. The argument that a would destroy all constitutional government. The argument that a decision is wrong and hence is not binding, is not lawful, unsettles the very foundations of government and strikes a fatal blow at the social compact. The majority of the States believed the decision in the Dred Scott case was not correct, and yet all yielded obedience to it. To have resisted it would have been a crime. All tribunals may err. They may reach a conclusion unfounded in law and unsupported by evidence; it must be respected and obeyed until reversed. The decision is the law of the case. It is the voice of the State expressed in the only mode the State can speak. It is binding on us if binding in the State. The Constitution (article 4, section 1) implies as much:

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.

The acts and proceeding of each State being entitled to full faith and credit in every State, are entitled to the same faith and credit here. The acts and proceedings of each State bind every man in every State, and every right affected by them, as fully and completely as they bind the people of the State. It is the law of comity sanctified by the voice of the Constitution.

The Congress can go no further, without lawless usurpation, than to inquire what direction the Legislature has given; to see whether the tribunal empowered by law to decide has decided who have received a majority of the lawful votes of the State. When Congress ascertains what that decision is it is the end of controversy, because

the State has so determined.

I shall not discuss the law under which the board in Louisiana acted. It is sufficient to affirm, as I do affirm, that the Legislature of the State gave it ample power to hear and determine all the questions passed upon by it; and that the supreme court of that State has decided the law constitutional and the decisions of the board as to the true state of the vote conclusive and final.

These conclusions seem to me to be the true principles deducible

from the Constitution:

1. Congress may by appropriate legislation supervise and regulate the count of the electoral vote.

the count of the electoral vote.

2. Whenever Congress fails to exercise its appropriate jurisdiction over the subject of the count, the President of the Senate may lawfully open the certificates, count the votes, and declare the result.

3. When Congress provides for supervising and regulating the count by legislative action, it cannot reject any electoral vote except by the separate concurrent vote of both Houses.

4. In examining the question of the appointment of electors by a State the inquiry must be limited to an ascertainment of the direction of the Legislature on the subject; and whenever the Legislature has

of the Legislature on the subject; and whenever the Legislature has imposed upon any officer or tribunal the duty of counting, canvassing, and declaring the state of the vote, that is the end of the inquiry, so far as Congress is concerned.

The application of these principles will demonstrate that Hayes and Wheeler have been legally elected as President and Vice-President of the United States, as I have no doubt they have been honestly and fairly elected. Limiting the inquiry in the manner above indicated leaves the vote of South Carolina, Florida, and Louisiana where they lawfully belong, to be counted for the republican candidates. The same rule will give the vote of Oregon to the same candidates. The law of that State provided for the appointment of electors by popular vote. It directed that the persons having a majority of votes

should be elected. It directed that the votes of the several counties should be elected. It directed that the votes of the several counties of the State when canvassed should be transmitted to the secretary of state, and that he should compile the votes and ascertain and declare the persons who had received a majority of the votes. His dnty was solely ministerial. The public records of the secretary's office furnish the evidence provided by the Legislature for ascertaining who were appointed electors in Oregon. This public record shows that the republican electors received a majority of votes, and hence they were appointed, as the Legislature directed. The act of the governor in attempting to defeat the will of the people is unavailing. It would be an everlasting reproach if the dark and perfidious scheme of defeating the will of the people by a plain defiance of the law should succeed. The attempt to obtain success by nullifying the plain and unambiguous direction of the Legislature of Oregon will

plain and unambiguous direction of the Legislature of Oregon will stand out as a blot upon the history of our times. Nor will it do to attempt to draw a parallel between Oregon and Louisiana. The giving of a certificate to Cronin was in defiance alike of the clearly ing of a certificate to Cronin was in defiance alike of the clearly expressed will of the people and a plain and positive statute. The decision of the returning board was justified by the law, even if the facts were found on insufficient proof, which is denied. In Oregon the democratic governor gave a certificate to Cronin in defiance of law and popular vote. The returning board at most only rejected votes the legality of which they had a lawful jurisdiction to decide. The governor of Oregon acted without any authority of law; the returning board had a clear warrant of law for everything it did.

Beligving as Ido Lean see no precessity for greating a commission out.

Believing as I do I can see no necessity for creating a commission ontside of the Constitution and foreign to the genius of our institutions to settle this question. If we cannot agree upon the mode of counting the electoral votes, let them be counted as they have been counted on like occasions, by the President of the Senate. The power to count and to pass upon every question lawfully arising in connection therewith, it is everywhere agreed, is vested by the Constitution either in the President of the Senate or in Congress. Whether vested in the one or the other, it is a delegated power, involving the exercise of

judgment and discretion.

In considering the propriety of creating a commission to decide upon the questions to be committed to its decision, four questions are nec-

essarily involved:

1. Can we constitutionally delegate this question to such a tribunal?

2. Is the commission fitly constituted for the safe settlement of the matters confided to its decision?

3. Is its jurisdiction defined with apt and sufficient clearness?

4. Are the modes of its procedure sufficiently defined?

I have not sufficient time to enter at large upon these questions, and shall content myself with a brief statement of my conclusions

1. Can we constitutionally delegate the question of settling disputed votes to such a joint commission? Whatever power we possess over the subject of the counting of the electoral vote is a delegated power. It is a familiar principle that where a power involving discretion and judgment has been committed to any body, it cannot be by that body delegated to another. The body in whom the trust or power is confided must execute it, and none other can lawfully do so. power is confided must execute it, and none other can lawfully do so. Congress, then, cannot transfer this duty to another tribunal newly created, a stranger to the Constitution. Besides, this bill proposes to give a power to this commission to bind by its decision the judgment and conscience of either House. Its decision, except in the contingency that both Houses concur in reversing it, is final and conclusive. The reasoning which will sustain the creation of a tribunal vested with such a power would sustain the creation of a tribunal whose dewith such a power would sustain the creation of a tribunal whose decision should be final and conclusive on Congress and every other decision should be final and conclusive on Congress and every other de-partment of government. It would make the secret judgment of such a tribunal the final arbiter as to who should be the executive head of this great nation. I should be pleased to have the friends of this measure point out the clause of the Constitution authorizing Congress te farm out the discharge of its high functions or any of them to such a secret conclave. I do not propose to discuss, but only to state the constitutional difficulty. I affirm my belief that whenever we go outside of Congress to get any man or set of men for the purpose of deciding this dispute, we go outside of the letter and the spirit of the Con-

2. Is the commission fitly constituted for the safe settlement of the matters confided to its decision ?

It is safe to say that our country has never witnessed the estab-It is safe to say that our country has never witnessed the establishment of a great court on such principles. Five Senators are to be designated by the Senate by ballot. These men may all be taken from one political party or they may be chosen from each. It is probable, but not required, that there will be an equitable division between the contending parties. If this should occur, then these five members of the commission would be chosen from political considerations. The same observations would apply to the choice of the five members from the House. Here then we have ten members of the commission chosen confessedly on account of their known partisan associations and bias. But this feature in the mode of creating the commission is not the most obnoxious.

It provides for the appointment of five associate justices of the Supreme Court as members of this commission. It purposely excludes the Chief-Justice of that court as not a fit person to become a mem-ber of this new court. I look upon it as an odious and unjust reflection on a great and upright magistrate. Had the commission been

composed of ten Senators and Representatives, equally divided po-litically, to be presided over by the Chief-Justice, with a right to vote on questions on which the members of the court were equally divided, it would have been more satisfactory. In addition to this the mode of choosing the judges is calculated to derogate from the weight of their opinions. Two of them are named evidently because of their being known to be democratic in politics, and the other two because of their being known to be republican in politics. The pretense of selection from geographical considerations, I may be pardoned for saying, is too puerile to deceive any one. If the distribution was to be made on geographical grounds why evaluate all that was section be made on geographical grounds, why exclude all that vast section of country stretching from the Alleghanies to the Mississippi, and from the lakes to the Gulf, from this commission? This selection is most unfortunate and unwise. If the aid of the justices of the Supreme Court were at all to be invoked, the whole court should have been selected. The fifth justice will doubtless be selected by lot. Thus the question as to which of the great political parties shall have a political majority on the commission is to be settled probably by chance. Neither party can trust to the honesty of the members of the other, and hence the question of advantage is given over to chance. How sad and humiliating, to be driven to invoke blind chance as a settlement of the grandest question ever submitted to human

Is it fit to abdicate our judgment and invoke chance in settling the gravest duty which can be devolved on Congress f I should consider the precedent a most unhappy one indeed, injurious to that great

tribunal the Supreme Court and unsatisfactory to the people.

3. Is the jurisdiction of this commission defined with apt and suffi-

cient clearness and certainty?

It is too plain to require discussion that one of the most important rinciples involved in the creation of any tribunal clothed with judicial powers is to define its jurisdiction with clearness and certainty. In a government proceeding according to settled principles of fundamental law, it is too clear for argument that nothing can be more perilous or fatal to constitutional liberty than creating a tribunal whose jurisdiction is left solely to its own discretion. Now what is the jurisdiction conferred on this commission? What is to be the scope of its investigations? It is to have all the jurisdiction possessed by Congress, or either branch of it. This is as indefinite and uncertain as human language can make it. Congress cannot agree on its own jurisdiction. We therefore shirk our duty to decide the question. We call in five judges of the Supreme Court, selected as I have shown, to aid our ten Senators and Representatives to decide a question which we are unable to decide. But suppose they fail to ascertain what our jurisdiction is. Suppose they err, as well they may.

This attempt to define the jurisdiction is novel and unheard of. Whatever the commission may think is the jurisdiction of Congress,

that is the measure of their jurisdiction. It is limited by no boundaries except the opinion of a bare majority of the commission. Bound by no limits except the opinions, feelings, or caprices of a majority, the jurisdiction of this commission is as absolute and boundless as that of the autocrat of Russia or the Tycoon of Japan. I cannot believe it wise to create a new master, vested with autocratic power to settle disputes whose solution has been wisely placed elsewhere.

4. Are the modes of its procedure sufficiently defined?

Here we find more vagueness and uncertainty, if possible, than on the subject of jurisdiction. The bill seems to me like a carefully de-vised scheme to so fix the instruments to be used in evidence as to open the whole question of the State vote, to require the commission to go behind the decision of the State canvassing boards, behind the scal of the State, behind every act of State authority, and in effect to overthrow the authority and independence of the States.

The bill provides that the commission "may take into view such

The bill provides that the commission "may take into view such petitions, depositions and other papers, if any, as shall by the Constitution and existing laws be competent and pertinent" in deciding what persons were duly appointed, that is elected, as electors. The word "may" take into view such petitions, &c., in such a statute must be construed as imperative. The question that is to be decided by this bill is what persons were duly elected as electors. The Constitution and existing laws referred to are the Federal Constitution and laws. The commission is not bound to pay any regard to State constitutions and laws. It can do with them as it players so far as any witutions and laws. It can do with them as it pleases so far as any express limitation upon this power is concerned. The commission may use petitions, depositions, and papers as instruments of evidence. Why allow petitions and papers other than sworn testimony to be used unless it is proposed to try the title to the office of an elector, not by the law and decisions of the State, but by affidavits, petitions, papers, depositions, in short anything and everything human ingenuity can suggest? Where can the power be found to anthorize any human tribunal to settle the title to the great office of President by depositions? How can this great question be settled by competition in multiplying and heaping up petitions and depositions. No, no; the election is to be determined by counting the votes of the electors appointed by the States, and not by the weight and number of affidavits and depositions which may be taken by the rival parties. Such inquiry is unwarranted by the Constitution, degrading in its character and, I fear, fatal in its endencies. When we come to that time when faith is so far lost in the rectitude of the decision of State tribunals that we may overhaul them by considering conflicting affidavits, we shall have seen the end of constitutional government on this contiwitutions and laws. It can do with them as it pleases so far as any

nent. This bill seems to me to vest this fatal power in the hands of this commission.

If this measure shall be defeated, I cannot believe that Congress is so madly partisan, so reckless of constitutional obligation, that we cannot provide for a lawful and constitutional count of the votes. And should we fail in doing our duty in this regard, then there yet remains the President of the Senate, who may, in the absence of legislation, count the votes and declare the result. I believe in any event the count will be honestly and lawfully made, and the duly elected President and Vice-President will be peacefully inaugurated. elected President and Vice-President will be peacefully inaugurated. I doubt not that in this, as in all former times, men will be found whose patriotism is so exalted that a happy issue will come to our troubles. And may a beneficent Providence grant that now, and in all the coming ages, men may be found in public and private life penetrated by sentiments of patriotism so profound, of statesmanship so enlarged, and wisdom so exalted that the life-time of the Republic may be contained in the control of the public may be contained to the control of the republic may be contained to the control of the republic may be contained to the republic may be contained to the control of the republic may be contained to the republ

may run coeval with time and her glories outshine the stars.

Mr. WATTERSON. Mr. Speaker, I have listened with attention to whatever has been said on either side of the House touching this most important question. I have done so not merely on account of the distinguished character and talents of the gentlemen who have preceded me, but because, entertaining a distinct opinion of my own, I have been curious, not to say anxious, to discover how far that might be altered or curious, not to say anxious, to discover how far that might be altered or modified by the reasoning of those who have made the consideration of problems in constitutional law the business of their lives, and who are therefore able to bring to this present inquiry the severe training and copious information of professional experience. Being a layman purely, and having no fuller or larger knowledge of such concerns than should be possessed by every citizen who loves his country, and who, valuing its free institutes, has sought to compass the spirit and forms under which they exist, I shall make no pretense of adding to the law of the case. I would not trespass upon the time and courtesy of the House at all, but that, intertwisted with the legal points submitted to us, are a multitude of practical, every-day suggestions bearing upon our whole political economy and affecting this immediate issue beyond the scope and power of technique. For behind this conflict of jurisdictions are arrayed the forces of half a century of sectional agitation. The conflict itself is based upon the disputed votes of one northern and three southern States. These latter bring before us the results of a vast scheme of reconstruction, while upon the final us the results of a vast scheme of reconstruction, while upon the final issue another reconstruction may depend. Not merely the rights, powers, prerogatives, and duties of the two Houses are involved therefore, but the existence of political society in certain parts of the country and a just understanding between the people in every part of it, all referable more or less to the action of the proposed commission, as bound up in the administrative policy to flow from the selection of the one or other contestant for the office of Chief Magistrate.

A PERILOUS OUTLOOK.

That the situation is something more than critical; that, with reference to the present, it may involve a perilous exigency, while with reference to the future it does involve a vital principle in republican government, will hardly be denied by any thoughtful person. It must also be admitted to be an extraordinary circumstance that an organic question of such magnitude and moment as that embraced by a series of disputed matters of fact and law in the count of the electoral vote, and behind that of the popular vote for President and Vice-President, should be the occasion of so little tumult. In the dead of a winter of unusual rigor, thousands of people begging in the streets of the great cities for bread, thousands of people everywhere out of employment, the business of the country prostrate, what do we see? The rich man hugs his millions in security, while the people, clasping their free fabric to their bosom, conscious alike of the danger which menaces it and of the hardships which press upon of the danger which menaces it and of the natusings which press upon themselves, pursue the even tenor of their way in a manner conserv-ative enough to satisfy the most infatuated believer in Napoleonic ideas. I shall take leave in the remarks which I have to offer to go outside the record of tittle-tattle which has constituted so large a outside the record of little-tattle which has constituted so large a portion of our discussions—nay, outside the record of the written law, which is not always a certain panacea—and ask your consideration of some odds and ends, partly of belief and partly of observation, picked up in the course of considerable migration between the blue bird and the brown, between war and peace, the North and the South, during the stress of weather encountered by our peculiar system the last two decades. Conceiving that these may not fall in precisely with the conventional routine of debate, I venture to hope that they may give on this floor some partial expression of that whimsical love of country and kind which warms the Anglo-Saxon heart in the United States to deeds of gentleness and violence, verifying the lines of our republican poet-laureate:

The bravest are the tenderest, The loving are the daring.

THE HOMOGENEITY OF THE AMERICAN PEOPLE.

Sir, the American people are a brave and loving people. The two sections of our Union, never quite married, originally held together by strong ties of natural affection only, got on well enough until the stronger, as is wont to be the case, pressed for a closer relationship, and with more power became more exacting. The weaker resisted, incantiously of course. She resented, passionately of course. The open rupture came, whose end was a matter of course, for the weaker always

goes to the wall. And now we behold in our public affairs, what we often see in private life, that, because submission and affection have not proved to be convertible terms, unwise and dogmatic power would smirch the character, as well as blight the future, of the victim. Mr. Speaker, as we say to our little ones "easy is so much better than hard." To-day it is the South which represents the woman in the quarrel. To-morrow it may be the East. Why is it that where the woman cannot be debauched she must be destroyed?

But we are told that "nobody wants to destroy the South." tainly not; because, apart from considerations of a sentimental sort, the prosperity of the whole country depends upon the well-being of each of its sections. Baleful as I think the republican policy has been and harshly as I sometimes feel toward the authors of that policy, I shall not allow myself to believe the republican mas policy, I shall not allow myself to believe the republican masses so deliberately malignant as the results of eleven years of maladministration would make them, could they have foreseen its consequences. I take it that they have been honestly mistaken as to the true nature of the case, and shall try to show before I sit down some of the causes which have misled them. Whatever its origin, all of us should desire to have done with disturbing criminations and recriminations, which can bring profit only to such as trade upon the ignorance and passions

It used to be urged that the soldiers of the two contending armies in our sectional war would be able to make a speedy and lasting peace if they were given the opportunity. The same may be said of the whole people. If the people of the South could traverse the pleasant highways and byways of New England, if they could behold the adnighways and byways of New England, if they could behold the admirable public and domestic economy that prevails there, if they could have personal knowledge of the still more admirable hospitality and geniality which warm the true New England heart, they would recognize in the mingled obstinacy, narrowness, and goodwill of the New Englander much of their own exuberant spirit of provincial defiance. On the other hand, I maintain it to be true that wherever the New Englander has gone South with a fair purpose he has encountered an honest welcome and has found a race of men and women kindred to his own. There is no sectional line, no air-line or water-line in this country, east or west or north or south, which marks off distinct and separate species. There are local peculiarities everywhere. The habits, customs, and manners of the people in Maine and Mississippi differ certainly, but not more than those of the people in Arkansas and South Carolina. Take two communities lying along-side, like Kentucky and Tennessee, and we find each pursuing its bent, having ways of its own not shared by the other. There is no natural having ways of its own not shared by the other. There is no natural antagonism between any of those States. But it is easy enough to raise up artificial antagonism. "How great a flame a little fire kindleth," hate begetting hate as love begets love. The process is as old as the world, familiar to all mankind. In this place and at this time I wish to deal with it only as it concerns ourselves.

My reading of American history may not be very close or deep or accurate, but if it tells me one thing more than another it is that the American people are a homogeneous people, and that if they can once more establish themselves upon the home-rule principle of the Constitution, which leaves each section and State to settle its domestic affairs in its own way, we shall see the dawn of an era of solid progress and power hitherto undreamed of by the most ardent. To the ress and power interto undreamed or by the most arent. To the policy of interference, the spirit of intermeddling, we can trace all our ills, for we may be sure that so long as the politicians in one section are able to make capital off the conditions prevailing in another section there will be misrepresentation, the party holding the General Government holding the whip-hand of prejudice and passion. To-day we have merely a reversal of the forces which filled the land with darkness twenty years ago. The lines may be deeper, the portents more ominous; but the spectacle of intolerance is just the same.

THE BLACK PROBLEM.

No fair-minded man can say, and no honest historian will record, that our great sectional conflict was one-sided; all the right here and all the wrong there. The North found out very early in the race that slave labor was not profitable. So, consulting a prudent sagacity, it sold its slaves, never failing to put the money it got for them in its pocket. That was a long time before the morality of slavery entered into our politics. Nay, for a quarter of a century thereafter the slavery question was remanded to the custody of a handful of enthusiasts who were hardly more odious in the one section than in the other. At length the politicians, seeing in it the materials for agitation, seized it, and for another quarter of a century, and on both sides, much perverted it. The calm reviewer of the future, be his predilecmuch perverted it. The calm reviewer of the future, be his predilections what they may, will peruse those old debates with mingled curiosity and contempt; passionate declamation everywhere, each party for itself, the unhappy cause of disturbance being slowly but surely ground between the upper and nether mill-stone. Sir, that is the spectacle in this country to-day, particularly as to the black man. During all these years he has been the one patient, unoffending sufferer. When he was a slave his lot was made harder by the war which was levied in his behalf. Now that he is a freeman, a new contention has arisen which makes it harder still. His real interest has been and is the very last thing considered. And yet, seeing that his existence has proved almost as tormenting to the white man as to himself, one would be led to ask why he is such a favorite with partisans of every description, if all of us did not know that it was at the

first and is now and will always be as long as the race question is continued in our politics—to use the homely but expressive phrase of Hosea Bigelow—

To git some on 'em offis an' some on 'em votes.

The black man is a freeman, a citizen, and a voter. If these pos.

The black man is a freeman, a citizen, and a voter. If these possessions do not protect him, no more can troops of laws or troops of soldiers. But they are ample to protect him, and they do protect him, wherever they are left to their natural operation.

Take, for illustration, the States of Maryland, Kentucky, and Missouri, which did not pass through the ordeal of reconstruction, and compare the condition of the negro therein with his condition in Louisiana and South Carolina. I can speak with some assurance for Kentucky, and I ought to be held to be a competent witness, for I have given proofs of being a steady friend to the black man. At the close of the warit was my belief that, since there was no way to supply ourselves war it was my belief that, since there was no way to supply ourselves with another labor system, our interest, as well as our duty, was to improve such as we had; to make the best of a bad bargain; to take the negro in his rags, ignorance, and squalor, and try to make a man of him; to protect him, educate him, elevate him. A movement in this direction was bound to meet resistance and obstruction. But, step by step, within the good old Commonwealth of Kentucky, and within the democratic party which controlled Kentucky, the fight was made. There were no trumped-up legislatures imported from alien made. There were no trumped-up legislatures imported from alien regions for hostile purposes, seeking to do by force that which was destined to be done by simple, popular arts. There were no belicose proclamations from bogus governors, saddled upon the people by martial appliance, intended to incite violence in order that arbitrary power might secure its pretext for renewed exaction. The Federal authority happened to be exercised with moderation through officials, who, whatever opinions they may have had, were responsible men. Kentuckians to the manner born. There were conflicts of jurisdiction, undoubtedly, and wherever these appeared they retarded the forward march of events. But they were not sharp enough to stop it. Thus, by easy stages, and by the consent of society, the negro presently found himself vested with such legal rights as the States have exclusive power to give; he was established in the rights which the excusive power to give; he was established in the rights which the General Government had given him; he was made secure in his home, and he is to-day surpassed by no laboring-man in any part of the world in the advantage which he enjoys for getting on in life. He is sought by all parties—a very popular person indeed with candidates for office. In the city where I live, his churches and schools are numerous, well ordered, and well attended. He has no conflicts with the whites. In a word, he is a freeman, a citizen, and a voter.

That is the solution, as it is the history, of the black problem submitted to natural laws. If the negro cannot be protected by the domestic system under which he lives, far less is he likely to be protected by misapplied and misused Federal agencies. The conservative forces of society, however, when left to their particular accountability, will always assert themselves. They have an interest at stake beyond all other interests. It is when society has been overawed and silenced, when irresponsible men have been put above it, as in Louisiana and South Carolina, that we see physical disturbance and com-

CONCERNING THE PECULIAR CIVILIZATION OF THE SOUTH.

The plea that there is an exceptional civilization and humanity in the South ineradically opposed to the negro is false. There is no more hostility toward the negro in the South than in the North; if I spoke my full mind I should say that there is less. Precisely the same system of civilization and humanity exists in the one section that exists in the other. Its manifestations differ merely as I have said. The vicious elements in an old-established body-politic are less violent than in a newly-settled community. The educated rascal in New En-gland who forges paper and raises checks finds his counterpart in the Southern swashbuckler who wears a ruffled shirt and is handy with his revolver. Each, taking his one from the conditions around about his revolver. Each, taking his one from the conditions around about him, engages in that department of crime which he thinks safest. Thus the one or other becomes the fashion among rogues. An ancient, thickly populated region finds it necessary to hold life by its surest fastenings. Its laws against murder are, therefore, rigidly enforced. Bad men turn their attention to less dangerous pursuits and murder is left to ruffians, who are too ignorant or too hardened to have the fear of the gallows constantly before their eyes. Life hangs more loosely in new communities and murder is at once cheaper and easier. But crime is crime the world over—acts perpetrated by bad men—and it is as fair to judge New England by her Winslows and Pomeroys as to judge the South by such examples as are paraded in support of the argument touching her peculiar civilization. No society. roys as to judge the South by such examples as are paraded in support of the argument touching her peculiar civilization. No society, however, should be judged by its baser elements; for they do not rule. The better elements of society govern in the South as in the North, whenever society is put upon its responsibility. Suppose, to take a ready example, that after Tweed and his followers had got possession of the city of New York they had been supported in their predatory work by the Government of the United States. Suppose the great body of the people of New York had been disfranchised. Suppose every peaceful effort at relief had been met by troops sent by orders from Washington at Tweed's call. Suppose for years the majority on this floor had extolled the Tweed system and the Tweed operators, and had described the mass and body of society in New York as rebels and traitors, having two rights only, the right to be hanged and

the right to be damned, what would the result have been † I ask any candid man whether he thinks it would differ materially from the existing state of affairs in Louisiana and South Carolina, even as that is depicted by the unfriendliest hand? It would be the same, believe me, for New York and New Orleans, Boston and Charleston, are made up of the same race, moved by the same interests, stirred by the same passions. Those who seek to create a different impression have either learned nothing by their experience or are consciously and purposely malignant. National gatherings are constantly illustrating the absurdity of such partisan outgivings. Church assemblies, trade meetings, educational and scientific and political conventions, made up of delegates from all the States, come together year after year, and there is no sign whatever of a diversified humanity and civilization. On the contrary, there is fellowship, thorough and complete. But when it suits a body of partisans to do a job of work of which they have reason to be ashamed, then we hear the sectional tocsin sounded, appealing to passions of the baser sort. Sir, the American people have listened to that unreasoning clangor for five and twenty years, and they are tired of it. They want a rest on it. The men of my generation were in no wise responsible for our sectional war. They can be fairly were in no wise responsible for our sectional war. They can be fairly said to have no political antecedents. They are competent to utter the things they will about that war as well as about passing events, and they ought to do so freely and fully, nay, the better souls and better nature of the country wish them to do so. Such controversies as we have should be settled in our day and by ourselves. They should not be committed to our children, to rankle in their hearts, planting all over the land the seeds of future disturbance.

#### THE POLITICAL SITUATION.

Less than this as to the circumstances which have produced the present complications and their underlying cause I could not say. It may not be true that we stand upon the brink of civil war; but it is true that grave dangers stare us in the face, threatening every public and private interest. I wish to inveigh against no party, to abuse nobody, but that a well-organized conspiracy exists to put a President in the White House who in my judgment was not elected by the people, I do not doubt. Nor is this the worst of it, for it has long seemed inevitable, embodying a peril which the wisest have feared might be inherent to our system. The demogratic party of a feared might be inherent to our system. The democratic party of a by-gone era was strong enough to make its exit from power the signal for a sectional war. The republican party of this present day, equally strong and arrogant, regards itself as holding the Government in feestrong and arrogant, regards itself as holding the Government in fee-simple, and, using the sectional question as the democratic party formerly used the slavery question, it is able, through its leaders, to precipitate the country into civil war. The transfer of power by peaceful process from one great party to another is an unsolved prob-lem in the practical operation of domestic government. Therefore, I have looked to the present crisis for years with misgiving, conceiv-ing that sooner or later it would surely come. Nor have its dramatis personæ, its implements and resources, surprised me. They are large and potent. It is even claimed that they are sufficiently equipped to be more than a match for the unorganized messes of the records to be more than a match for the unorganized masses of the people. We may as well talk plainly of things as they are. The republican party, intrenched in its position, is compact and united. If it is magnificent in nothing else, it is magnificent in its organization and handards. The democratic party is as one who has his right arm tied behind him. If forced into civil war, it would proceed under the greatest possible disadvantage. I speak thus not merely because I wish to be clear in my line of argument, concealing nothing, but bewish to be clear in my line or argument, concealing nothing, but because there are evils to be more dreaded than civil war. Rather than see a cabal of party managers using the power placed in their possession as a supreme party to seat a usurper in the Chief Magistracy, the people would, after having exhausted peaceful agencies to prevent it, be justified in a resort to stronger measures. In this connection I may say that, dreading the arrival of this exigency, I have from the first urged upon my political associates proper agitation as to the danger, so that the public opinion of the time might be fully advised, and, being advised, might organize itself to avert it. fault is not with me that this was neglected until the bare suggestion came to be dismissed with alternate derision and odium, by some as a came to be dismissed with alternate derision and odium, by some as a piece of empty bravado, by others as downright sedition. I do admit that the time has gone by when the people at large could act effectively for themselves. If the two Houses of Congress fail to agree, then indeed we shall have come upon an emergency. We shall see the Senate, throwing the blame upon the House, proceed to the counting in of Hayes and Wheeler; we shall see the President of the United States supported by the Army and Navy prepare to seet them. United States, supported by the Army and Navy, prepare to seat them in office; we shall see the Chief-Justice ready to administer to them the oaths of office. The House, acting under its construction of its rights, privileges, and duties, proceeds to elect a President. Then follows either civil war or a case in law, but no matter which, continuous suspense, commotion, and discontent. Let us assume, what I believe, that there will be no war. Let us assume that the Senate, acting for itself, declares Hayes and Wheeler elected, and that upon this the country settles down into sullen acquiescence. What have we then? There are those who tell us that four years hence we shall obtain the desired change of parties in the Government, brought about by such overwhelming majorities as will leave no room for conspiracy or doubt. I think not so. On the contrary, we shall have four years of planning and disturbance, with another and a better substantial bloody-

shirt campaign at the end of them; a North more prejudiced than now; a South thoroughly demoralized; no such organization, no such issues, no such opportunities as the opposition had in the last cam-

### CONTENGENT PROBABILITIES.

Usurpation goes backward as little as revolution. The inaugura-Usurpation goes backward as little as revolution. The inauguration of Hayes by a process such as the extreme members of the Republican Senate will be reduced to, if the two Houses fail to agree upon a joint plan, would be regarded as a usurpation by considerably more than one-half of the people. In the South it would be universally held as a step forward in revolution. By its authors it would be taken as evidence of their ability to go ahead without fear of the consequences. Another reconstruction, justified by the condition of affairs in Louisiana and South Carolina, will loom into view. This will include Mississipni. Florida, and perhaps Alabama: and, to comwill include Mississippi, Florida, and perhaps Alabama; and, to commend itself to any approval, it must be "thorough," for the country will submit to no more half measures. Thus, already ruined in their material concerns, the southern people will be quite bereft of hope. They will have no political future, and we shall see society divided into three classes: into three classes:

First, the despairing, who will say "There is no use of voting any more, because we elected a President whom the country would not inaugurate."

Second, the time-servers, who will make terms with the republicans, and, like self-seekers in general, will become useful only for mis-

Third, the constitutional opposition, weakened in every way, and of no particular value to its fellow-class in the North.

These, Mr. Speaker, I regard as the almost certain consequences of

seating a President in office by a process and on a title which a large majority of the people cannot approve, but which they will believe to be fraudulent. The ultimate end of such an invasion of the spirit of our Government must be the overthrow of the Government itself, civil war, and all the evils which such experiences entail. We, no more than other people, can claim or expect immunity from the ills which, from the beginning of time, have beset the nations of the earth. To prevent therefore a catastrophe so dire, no less than to escape the perils immediately before us, every nerve of brain and heart should be strained. I take issue with those who think that any good can flow from usurpation. Whoever succeeds to the Chief Magistracy, I want to see him seated in office on an undisputed title. This brings me to the bill under consideration.

# THE PROPOSED COMPROMISE.

I have said, sir, that I shall not undertake to add to the law of the case. It seems to me that an eminent jurist in the other House, the distinguished Senator from Vermont, [Mr. EDMUNDS, ] has made it perfeetly clear that the bill is constitutional. I accept and adopt his view without reservation. It not only settles all constitutional doubts in my mind, but it smoothes an original objection which I had entertained to the scheme as a mere compromise. Since Congress has power to legislate in this wise the bill is not a compromise, although it accomplishes that for which compromise is usually invoked. That the proposed commission is established in accordance with law and that it is to be equitably organized, have been the only questions on which I have allowed my mind to rest. Because, considering the present state of affairs, not as I would have it, but as it is, I believe that if some arrangement be not reached between this and the middle that if some arrangement be not reached between this and the middle of February, we shall find ourselves drifting in an open boat upon a shoreless sea, compassless and rudderless, nobody to lead us whom we can trust and no concert of action among ourselves, but, in room of these essentials to useful endeavor, a desperate partisan conspiracy in front of us, armed cap-a-pie and prepared for emergencies. The sole hope of that conspiracy is the non-agreement of the two Houses of Congress. The sole hope left the people—a choice of evils, I grant—is the proposed commission. That it is to be fairly constituted, and that as made up it will compose a tribunal which men can respect, I believe, and so believing I am willing to rest the case with it. I am believe, and so believing I am willing to rest the case with it. I am the readier to do this since I regard Tilden's case as a good one; but I shall vote for the bill with the full consciousness that the action of the commission may bitterly disappoint me and those who feel and think with me. If it does, I shall still have discharged a most unpleas-

ing duty in that manner which was best calculated to preserve constitutional forms and keep the peace of the country at a time when the Republic was menaced and the people were not prepared for war. Mr. Speaker, sixteen years ago the people of this country were brought face to face with an undetermined point in constitutional law touching the right of a State to second from the Union. Thousands of intelligent and honest men believed that right to exist. There was no tribunal, however, to which they could refer it. War, the result of which no one could foresee, whose consequences will outlast this and the next generation, ensued. It is idle at this late day to speculate upon what might have been if the States had possed some constitutional means of arbitration. But it is quite cersessed some constitutional means of arbitration. But it is quite certain that had they known what we know, they would have gone greater lengths to keep the peace. We now confront a dauger just as real and just as great. No less than the rulership of the country is involved. The Houses of Congress are controlled by opposing political bodies. There is confusion in the returns of the electoral vote. The terms of the Constitution lack explicitness and furnish the minds of

many a reasonable doubt as to what, speaking precisely, is lawful to be done. Setting aside the passions and interests of partisans, the non-partisan classes, embracing at least one-half the total vote polled in the election, share this doubt to such an extent that they have held aloof thus far from public demonstration. They are at length making their wishes known with emphasis. They understand the danger and see in the proposed commission the means of averting it. making their wishes known with emphasis. They understand the danger and see in the proposed commission the means of averting it. For my part, if my objections were even greater than they are, I should give it to them. Let it place whom it may in the presidential office, it will, without dishonor, bring us that repose which, of all things, the country stands most in need. In other words, it is this, or the Senate, or civil war. I may not, and I do not, like it as an original proposition. I may, and I do, feel a sense of indignation that such a contingency has been forced by the operations of what I believe to be conspiracy. But, reduced to a choice of evils, I take this tribunal, entertaining no doubt that it will be composed of competent and patriotic men, by whose judgment I shall abide, something more than party being at stake. The happiness and peace of forty millions of people will press upon the commission raised by this act; its members will cease to be partisans; they will sit for the whole country; and, as they discharge their full duty, they will be honored in the land. It seems to me that, if arbitration is our only recourse, as I believe it is, that proposed is both legal and just. Upon it, therefore, good men everywhere will rest the issue, trusting that the God from whom we received our fair, free system, building wiser than we knew, will bring it safely through this present danger.

Mr. HURLBUT. It is not my purpose, Mr. Speaker, nor will the time allotted to me in this debate permit me, to enter at any length into the constitutional questions which have been so elaborately and fully argued by better and wiser constitutional lawyers I have no doubt than myself

fully argued by better and wiser constitutional lawyers I have no

But the high contracting parties who have taken the responsibility of President-making after the event by this bill have presented it to this House, and what we have to pass upon now is the question of the merits or demerits of this bill.

It is perfectly well-known that no amendment will be entertained or permitted. It is perfectly well-known that the bill must be taken bodily as it stands. It is perfectly well known to every member here that every form of influence, in the weight of the body at the other end of the Capitol, in the reputation of the gentlemen who represent this bill have in the three required by the representation of the gentlemen who represent the best consistent of the gentlemen who represent this bill have in the three required by the result of the consistency of the gentlemen who representation of the gentlemen w this bill here, in the threats occasionally thrown out by injudicious men of possible civil war and of possible complications—all these pressures are brought to bear upon this House of Representatives to induce individual members to forego their own conclusion upon what the Constitution requires of them.

For one, I cannot yield my opinion upon a constitutional question nor my sense of duty to any question of expediency, or even of the weight of authority. I must stand in the discharge of my duty upon my own responsibility to my constituents. And, in the few minutes that remain to me, I desire to present to this House the objections that we realized to my minute against this present.

that remain to me, I desire to present to this House the objections that are palpable to my mind against this present bill.

I affirm that undoubtedly the power to count the electoral vote, in the broadest sense of the word, rests either in the President of the Senate, in one of the two Houses of Congress, or in both Houses. Now, these are the only three possible issues under the Constitution. And in every one of these cases that power, wherever vested, is a trust, a public trust, coupled with an official position, which cannot be delegated any more than the trust of a judge can be delegated.

Again, each House by parliamentary law and by the necessity of the case must be the sole judge of its own powers, privileges, and duties. Yet this bill divests both Houses, and passes upon the powers

ties. Yet this bill divests both Houses, and passes upon the powers and duties of the House of Representatives and of the Senate in this question, and transfers them to another tribunal; and the decision of that tribunal, although it may overthrow the whole constitutional power of this House, can only be overruled by the joint action of

both Houses of Congress

Again, the bill limits the jurisdiction of this commission only to the cases of double returns. But we know that there are other questions that will necessarily come up in cases where single returns are made. I will give you the case of Colorado. This House has not yet determined that Colorado is a State in the Union. The question whether Colorado is or is not a State is a question of a political nature, essentially to be determined upon the reception of that vote; and that question is remitted to precisely the same state of confusion

which this bill proposes to remedy.

Again, I am opposed to the mode of constituting this tribunal. I do not care by what words it may be sought to be masked. It is perfectly well known to every member here, and to the country, that, so far as the judges of the Supreme Court are concerned, this commission is based simply upon partisan grounds. This committee has directed that the four judges of this commission selected by the House shall be so selected on their partisan standing. I use the word "partisan" not in an improper but in a proper sense; for I hold that every man of thorough conviction and honest judgment must be of necessity a partisan. This bill delegates that question to these four judges, and the final arbiter of the whole matter is to be selected by them. In other words, we have gravely inaugurated here the great national "game of draw." [Laughter.]

of draw." [Laughter.]
Again, I oppose the loose and uncertain jurisdiction that is given to this commission. What kind of a law is it which says that the

commission is to have the same powers, "if any," now possessed by the two Houses, acting separately or together? There is neither an affirmance nor a denial of power. There is no admission that either House has power or that both have, but it is a grant to this commission of whatever power there may be in either of the Houses, and the extent of that power is to be determined by the commission it-self and not by the two Houses.

It is simply a quit-claim deed to this commission of any possible power that there might be in either House of Congress or in both together. So that the jurisdiction is unlimited, and depends not upon the law, not upon the will of Congress, but upon the construction that this tribunal itself may put upon the powers which they may decide to have been granted to it. In the end that tribunal almost necessity will be controlled, guided, directed, and handled by that fifth judge to be selected in some form or other. You create in this way a one-man power that is, to say the least of it, infinitely more dangerous than the power claimed as residing in the President of the

Again I oppose this bill because of the solemn emptiness of the sixth section. It proposes to save the right of any party to litigate in the Supreme Court the title to the presidential office; and yet it takes a majority of that court in advance and makes them commit

themselves by their own finding. So that any subsequent resort must be to a court that has already rendered judgment in the matter. Again, sir, and finally, I oppose this bill because it drags into this vexed question of heated politics a body which has hitherto been rein its sphere from all that class of associations; because it seeks to bolster up the confessed incapacity or unworthiness of Congress by the credit of the Supreme Court; and the effect is not, I am sorry to say, to raise the standard of congresssonal capacity or consorry to say, to raise the standard of congressional capacity of congressional morality, but to drag the other down to the level that ill-judging men charge belongs to this political body.

Is it not cowardly to escape or seek to escape from our own just and constitutional responsibility, and to smirch the judicial ermine in

the popular estimation ?

For one I will not take shelter behind the gown of the Supreme Court, but insist on the performance according to my judgment and conscience of the plain duty before me as a Representative of the

Mr. HILL. Mr. Speaker, when this Congress assembled on the first Monday of December last, I confess, my mind was filled with apprehension for the future of the country. We had passed through one of the most bitter of partisan contests known to our history. The party fires were still at white heat. The people were almost equally divided as to the result of that heated partisan contest. The spirit of party reached to the highest functionaries of the Government, beginning even with the President, and extending, I was sorry to see, to the first intellects in this and in the other branch of Congress.

To solve these difficulties we heard the most startling and alarming propositions of constitutional interpretation known to the statesmanship of this country. It was said, among other things, that the power to count the electoral vote and determine all questions arising power to count the electoral vote and determine all questions arising upon the validity of that vote was vested by the Constitution of the country in the President of the Senate. A more untenable proposition was never announced in any country. Early in the session, with much care and reflection, I prepared an argument on that question. Owing, however, to the rules and proceedings of the House I did not have the opportunity of delivering it. I shall not do so row, because I could not do so in the ten minutes allowed me, and because, further and chiefly, it is wholly unnecessary to do so. The apprehensions and chiefly, it is wholly unnecessary to do so. The apprehensions which filled my mind at the beginning of this Congress, I am happy to say, have been dispelled; and they have been dispelled by the bill now pending and the conviction I entertain that this bill will become a law by an overwhelming majority of both Houses of Congress. This bill and its certain adoption inspires me with renewed confidence in the wisdom and patriotism of this Congress, in the capacity of the people for self-government, and in the perpetuity of our Union under our great constitutional system.

I support this bill, Mr. Speaker, first because in my humble judgment it is constitutional in character—wholly so. I support it, secondly, because in my humble judgment it is wise in its every provis-

ion—remarkably so. I support it, thirdly, because in my humble judgment it is patriotic in every purpose, and eminently so.

The bill, sir, will pass. I am therefore relieved of the necessity of arguing its merits, even if I had the time. I know apprehensions have been expressed on this floor that the high commission which will be organized under this bill will be in some degree influenced by partisan considerations. I wish to say here, in the pride of an Amer-ican citizen, that I do not believe it.

Sir, if the people of this country cannot intrust to such a tribunal Sir, if the people of this country cannot intrust to such a tribunal the adjudication of their rights arising upon a mere question of fact to be ascertained upon simple principles of law, pray tell me to what jurisdiction they could intrust the adjudication of their rights? I predict now that the decisions of that high commission, on every important question submitted to it, will be unanimous; and those decisions will be respected by the two Houses of Congress; they will give peace to the country and satisfaction to the people.

I have availed myself of the courtesy of the House to occupy ten minutes of time simply to express not my constrained support of this bill but my hearty and warm approval of it. And I trust I shall

be pardoned if on this occasion I allude to the section of the country from which I come.

Mr. Speaker, I was born, raised, and educated in the South. Whatever I am, is the product of southern institutions. I have been the witness of the sorrows of that people and the willing sharer of all their sufferings. May I therefore be pardoned on this occasion for calling the attention of this House and the country to the spirit which has been manifested by that derided people during this entire controversy. On another occasion I defended their manhood, their civilization, their humanity from what I knew to be unjust charges, and while I have breath I shall continue to defend them. If the argument then was insufficient to demonstrate the truth of the proposition that the people of the South are patriotic and manly, let the answer be found in the spirit they have manifested during the last sixty days. Sir, there is scarcely a man in that country who does not be-lieve that the democratic ticket was elected, and who does not believe that the democratic ticket was elected, and who does not believe that all our people have remaining of property, of right, and of constitutional justice depends upon the inauguration of the candidates on that ticket. Yet, sir, during this whole controversy—I say it with pride and pleasure—the South has manifested but one spirit; and that has been the spirit of forbearance, of kindness, and of fairness. Neck-deep in the ashes of her property, her ambition, and her power, with the chains of the usurper still upon her limbs, with the greed of the strangers still rifling her already exhausted coffers, with the Army of the United States now scattered throughout her borders and standing sentinel for the protection of her plunderers, the South utters to those who have been her despoilers, and who now threaten to be the despoilers of each other, but one voice, that voice is "Peace! peace! Civil war redresses no wrong, preserves no right; if you

to be the despoilers of each other, but one voice, that voice is "Peace! peace! Civil war redresses no wrong, preserves no right; if you doubt, look here and be convinced."

Sir, will I go too far, am I asking too much if I venture to utter the wish that hereafter we shall never again be derided with those charges of rebel and traitor solely for offering up our lives in vindication of what we honestly believed to be our rights? In the future let me express the hope that he alone will be regarded as the chief rebel, who, after the passage of this measure of peace, shall first again whisper the word of sectional hate. Let him be regarded as the chief traitor who shall again seek to breed the horrors of sectional strife. For myself I feel a pride in being able to say I can look upon every foot of soil upon the American continent and thank God it is part of my country. I can look upon every person on this continent and say

foot of soil upon the American continent and thank God it is part of my country. I can look upon every person on this continent and say "this is my fellow-citizen;" and I can raise my vision to the uttermost boundaries of the Republic and say "My country, my whole country; blessed is he that blesseth thee, and cursed is he that curseth thee." [Applause.]

Mr. DAVIS. Mr. Speaker, thirteen of the fourteen members of the conference committee, composed of seven Senators among the ablest and most experienced of that body and of seven among the ablest members of this House representing equally both political parties, have

and most experienced of that body and of seven among the ablest members of this House, representing equally both political parties, have agreed in reporting and recommending the passage of the bill now before us as both constitutional and necessary. The whole country recognizes the importance of the measure, as is evidenced by the interest everywhere manifested. Conceding it to be constitutional, the bill is to be considered, as any other important matter of legislation, upon grounds of necessity or expediency.

While I condemn as outrages the means and measures and events which have given rise to the necessity for this bill, I give to the bill itself my hearty support, as promising quiet and peace to the country; and I feel that it is a cause for congratulation that we are about to arrive at a conclusion which will calm the waves of popular passion, already excited, and which at any moment, unless this question is adjusted, may be lashed into furious storm. But while supporting this measure, I disclaim any approval of or acquiescence in the measures and events which have made the necessity for it, and I desire now to avail myself of this opportunity to make some comments upon now to avail myself of this opportunity to make some comments upon these measures and events in connection with the subject of the late elections in the South.

I think the facts will warrant the assertion that whatever of fraud, illegality, unfairness, and intimidation existed in that section may be traced directly to the incompetency and utter worthlessness of the governments which have had their existence in some of those States, not by the will and free choice of the people, but by the force and support of Federal power, and that the present disturbed condition of the country, which renders some such measure as that now before the House necessary to give quiet and peace, is the result of an organized and premeditated plan concocted by partisans in this city to secure a continued lease of power to a certain class of politicians. I think I am further warranted by the facts in saying that this plan embraced my own State, and if it had been necessary to count her also, to secure the desired result, the charges and falsehoods necessary to that end were ready made and at hand. As these charges have been frequently made outside this Hall and have found expression on this floor, I shall say a few things in regard to them before I close.

Mr. Speaker, if we would have a republican government and have it perpetuated, we must have fair and honest elections of the officers who are to administer it—officers who shall be, not the masters but I think the facts will warrant the assertion that whatever of fraud,

who are to administer it—officers who shall be, not the masters but the servants of the people, watching and guarding their interests, and so making and so executing the laws as to secure quiet and peace to the country, stimulate industry in all departments of labor and trade, thus promoting the happiness, the wealth, and prosperity of

all classes of people, strengthening their love and attachment for law and order and producing that kindly feeling toward the Government that induces a ready and cheerful support. We have had a ernment that induces a ready and cheerful support. We have had a presidential election and the question presents itself in a very different aspect now from that of the campaign preceding the election. Then it was a question simply of choice, open and debatable on questions of policy and general interest upon which each elector or voter had a perfect right to the exercise of his own judgment, and party leaders in addressing themselves to popular assemblies had a right to use such arguments and to make such statements (provided they were true) as they might think calculated to influence the judgment or true) as they might think calculated to influence the judgment or choice of the voter.

choice of the voter.

It is one of the evils incident to popular government that politicians, and even those who call themselves statesmen, often feel at liberty to address themselves to the passions and prejudices of the people, and too often willful misrepresentation and base slanders are resorted to and excused upon the plea that the desirable end justifies the means, that all is far in politics. There is perhaps no practical remedy for this, except to the limited extent that popular intelligence and public virtue may hold it in check; but now, the election having been held the voice of the people having been expressed at the ballet. and public virtue may hold it in check; but now, the election having been held, the voice of the people having been expressed at the ballot-box, it seems to me not only unpatriotic, but destructive of the principles of representative government, to attempt to thwart the will of the people by false statements and misrepresentations. Before the election it is a matter of choice, after the election it is a question of fact, who has been chosen. We have nothing to do but to declare the result of the popular will. We should act as judges divested of all partisan bias, and decide as the facts and the law applicable to the facts may determine but instead of thus acting rating at the same all partisan bias, and decide as the facts and the law applicable to the facts may determine; but, instead of thus acting and thus deciding, a persistent effort has been made to influence the decision by gross misrepresentations and in many cases willfully false statements in regard to the conduct of the southern people, and this because unscrupulous partisans find it easy to re-open old wounds and re-arouse old passions and prejudices begotten of the differences and sectional hates that preceded and unhappily culminated in the late sectional war, and which must be healed if the country is again to be prosperous and happy and united in heart and spirit as well as in name. Sir, may I not say of the people of the South—I will say it with emphaous and happy and united in heart and spirit as well as in name. Sir, may I not say of the people of the South—I will say it with emphasis—that they are actuated by as sincere a devotion to civil liberty and constitutional government as were their fathers, their Washingtons, their Henrys, their Lees, their Davies, their Nashes, their Caswells, their Pinckneys, and the hosts of their heroic comrades who in the field and in counsel labored with the Adamses, with Hancock, Warren, Knox, Hamilton, and Franklin, and their compatriots of the Warren, Knox, Hamilton, and Franklin, and their compatitors of the North and East, in establishing the independence of the colonies and laying the foundation of our Government? These southern people constitute a large body of the citizens of the United States. The States of the South are States in the Union, with all the rights of States, and, though the idea seems to be unpleasant to some gentlemen, "the State of Mississippi has a right to have her vote counted side by side with that of Vermont."

The gentleman from Kansas [Mr. PHILLIPS] said the other day: The republican party in the moment of victory might have confiscated the large landed estates of those who had aided the rebellion and divided them into small tracts for the liberated bondsmen, first, as an act of stern justice; second, as an act of policy, on the theory that the freedman to maintain his rights must be the owner of the soil on which he places his feet.

What would have been the effect of such a policy? I will not ask what warrant or authority could have been found in the Constitution or laws for such an act, (for these questions have never bothered some or laws for such an act, (for these questions have never bothered some people,) but the effect would have been, not only the emancipation of four millions of hereditary bondsmen, whose fathers were not liberty-loving immigrants, fleeing from despotic governments to this boasted land of freedom, but were mostly barbarians seized in Africa and brought to this continent in British and northern vessels as a part of that commerce which, against the voice of Virginia, New England wished to prolong as a source of profit, and did prolong to 1808, and which constituted the germ of much of her present wealth. It was, perhaps, the misfortune of the South that a slave ever entered her borders, but I say it was the good fortune of the negro, for it is absolutely certain that nowhere else in the world has he attained to such an advanced state of civilization as in the South, and, all the absolutely certain that nowhere else in the world has he attained to such an advanced state of civilization as in the South, and, all the lamentations and horrors of our republican friends to the contrary notwithstanding, I defy them to point to a spot on the globe where any large number of the black races are in so happy a condition as they are in the South. I say the only effect that could result from the course intimated by the gentleman from Kansas would be, while enfranchising these four millions of colored people, to enslave more than eight millions of white people; the descendants of revolutionary fathers, whose blood enriched the soil made free by their courage and their heroism. Such a policy would possibly have preserved a union, but not the Union our fathers established. Such a policy would not have materially benefited the negro, for, in the light of experience, it may be safely assumed that his philanthropic brother of the carpet-bag would soon have kindly and lovingly cheated him out of his lands as would soon have kindly and lovingly cheated him out of his lands as a reward for emancipating him; and though the gentleman from Kansas says:

There are many now in our party (republican) who believed that when a State failed to maintain a government loyal to the Union, and went to war against it, there was of necessity an end to its powers as a State in the Union, \* \* \* and that it should be treated as a Territory, &c.

Yet I apprehend no wise friend of free government would venture ret i apprenent no wise triend of tree government would venture upon such a plan, for it would involve a manifest admission of two things: first, a dissolution of the Union by the destruction of States constituting a part of it; and, second, a denial of the doctrine for which our fathers fought, "that all rightful government is derived from the consent of the governed." An Irish statesman is reported to have said that he was willing to sacrifice a part of the constitution and if necessary the whole of it to preserve the balance. It seems that many of our republican friends would be willing to blot out States of this Union, destroy the Union, not to save it, but to save the party. All the evils which have rendered the measure now before this House necessary have resulted from this idea, that the Southern States, though in the Union, are in it and remain in it by the sufferance of the republican party; that they have no rights which that party is bound to respect, and unless they will make themselves tributary to its power they must be remanded to a territorial condition. Hence returning boards; hence the intervention of troops, and hence partian commit-tees to give countenance and support to these returning boards in their illegal, arbitrary, and unjust acts. I trust there is not a man of honor who has had any hand in any way in sustaining or defending these boards who may not live to be ashamed, if he is not already ashamed, that he ever saw or heard of them; for their infamy is assured, and is already historic. It is a terrible thing to say of a man as General Sheri-dan has said of the chief of them, "He has not a friend who is an hon-

"For ways that are dark and tricks that are vain" the heathen Chinee is no longer "peculiar." In the presence of the "darker ways and vainer tricks" of these returning boards, the character of the heathen Chinee becomes bright and respectable. They violated the law of their own constitution that required that both parties should be repreown constitution that required that both parties should be represented on the board in Louisiana, but no democrat was allowed on it. There was not the first element of fairness or honesty in constituting these boards. All the machinery for conducting the elections in Louisiana, South Carolina, and Florida was in the partisan interest of the republican party. With all the power of those States in their notoriously corrupt and unscrupulous hands; with their partisan supervisors, registrars, judges of election, and poll-holders all working in the interests of their party; with the corrupting aid of Federal patronage and of Federal bayonets; with the aid of money corruptly drawn from the salaries of clerks and other office-holders; with all the office-holders at work, not in the discharge of their legitimate duties for which they were paid by money drawn from the people, but for office-holders at work, not in the discharge of their legitimate duties for which they were paid by money drawn from the people, but for the party, they yet tell us that the elections were not fair; that there was fraud, intimidation, and that though the actual returns showed a majority against them, yet the republicans had a large majority if the election had been fair—15,000 or 20,000 in Louisiana, some say more, and a like a majority in South Carolina. This statement carries falsehood and absurdity on its face, for is it possible that in any free State so large a majority of the people thus sustained by all the power of the State government, exerted legally and illegally to secure a republican result, aided by Federal power and patronage and the bayonet, could have been intimidated by so small a minority as is alleged? No, sir, it is not true; it cannot be true; it is false; it is a slander upon manhood; it is a slander upon the negro; it is a slander upon the carpet-bagger and upon the whole republican party. If they had had a majority, it would have been made to appear.

had had a majority, it would have been made to appear.

But suppose it were true that this large majority did exist? Are gentleman willing to admit that their party can only be sustained in gentleman willing to admit that their party can only be sustained in power by the controlled suffrages of men who have so little spirit, so little regard for the rights of freemen as these men have? Are they willing to admit that their party can only be kept in power in these States by alien, outside force? But by the aid of this outside force the majority is counted out and the minority is counted in and then gentlemen tell us that you cannot go behind these returning boards, that it would be an invasion of the rights of the States to question their acts. Let us look at it for a moment. It is quite certain that if the aid of Federal power were withdrawn from Louisiana and South Carolina Nicholls in the former State and Hampton in the latter and the government represented by them would at once command the quite and cheerful support of the people of those States; this is made manifest by the support given to them; there would be not the slightest danger of bloodshed. On the other hand, Packard and Chamberlain hold their places only by the aid of outside power. All the patronage and power of the Federal Government were invoked to aid them in carrying the election, and when it was found that the free spirit of the rying the election, and when it was found that the free spirit of the people was not broken, that they went to the polls, voted for and elected men of their own choice, then came in these returning boards, with their fraudulent and iniquitous practices, and, for fear that they with their fraudulent and iniquitous practices, and, for fear that they might lack courage, in the face of an outraged people, to consummate the crowning act of infamy, they are not only sustained by troops, but the President of the United States, in a manner never before thought of, acting either on his own motion or on the suggestion of others, invites a committee composed, not of men of both parties chosen for their impartial characters, but of partisans to go down to these States; and for what? In any capacity known to or recognized by the law? No, but professedly to see a fair count! a fair count! that and nothing more!

And now, after having arranged the game in a manner that would make a "heathen Chinee" blush, they gravely tell us that, whether the game has been fairly or unfairly played, we have won; that it

would be an invasion of State rights to go behind and inquire into these frauds and outrages and see what was the unbought, the free voice of the people of these States! As if a man were to seize my watch and seek to hold it on the plea of superior force or steal my horse and endeavor to hold him on the plea of insanity. The latter plea might secure him from punishment, but it would be impudent plea might secure him from punishment, but it would be impudent and contemptible as a basis of title. There are no barriers behind which fraud can so intrench itself as to find a legal home, and I was surprised the other day to hear the distinguished gentleman from Ohio [Mr. Garffeld] say: "If the fraud in the State of Oregon has been so committed that we have no power to inquire into it without violating the limitations of the Constitution, then I hope Mr. Tilden will be counted in by fraud and installed," as if the limitations of the Constitution could present a barrier behind which fraud could safely enthrone itself enthrone itself.

But I do not propose to argue the question of power to go behind the action of the returning boards. Whether the power exists or not, one party is, by every principle of estoppel, precluded from denying it. Under the twenty-second joint rule, adopted when the republican party had a majority of two-thirds in each House of Congress, the power to go behind the returns and throw out States was asserted and acted upon by that party in three successive counts of the presidential vote; but now, all of a sudden, they have discovered that it was unconstitutional, and we are told by one of their leaders that a "flood of new light has been thrown upon the subject." It is just the "new light" that changed the lawyer's opinion when he found it was his own, and not the farmer's ox, that was gored. It was "the circumstance that altered the case;" both Houses were then republican and it was safe. One is now democratic; that alters the case. Will not the country lose confidence in and laugh at the pretenses of such advocates of the constitutional rights of the States? It is to be feared that wocates of the constitutional rights of the States? It is to be feared that this new devotion is begotten of loyalty to party, and not to the people, who, in the opinion of our fathers, were the sovereigns in this land, from whom all just power was derived? I wish I had time to discuss this doctrine of sovereignty and loyalty about which we hear so much. I will only now say that they are terms born of monarchies and of despotisms and most frequently used in these latter days by men whose policy would degrade the people to the condition of loyal slaves to the power created and delegated by themselves and to an aristocracy of office-holders instead of masters in a free Government.

office-holders instead of masters in a free Government.

I desire now to show that North Carolina was embraced in the programme for counting in a President. Nothing more is needed than to call attention to the action of Mr. Chandler, chairman of the national republican committee. His telegrams are before the country; but the worst feature was in sending Judson Kilpatrick to confer with the republican authorities in Raleigh. North Carolina had a republican governor, and they expected him to do their bidding; and this man Kilpatrick, who knew how to carry Indiana if he could only get the money to buy "needy independents" and a little more of the "bloody shirt," is chosen and indorsed by the chairman of the national republican committee as the man for this work. The gentleman from Kansas [Mr. PHILLIPS] said the other day:

Louisiana, Florida, and both the Carolinas may be considered in an unsettled condition. Georgia, under a fair, impartial system, would probably be democratic; but I doubt if an unprejudiced man at all competent to pass upon the question, or familiar with the character of the population or the statistics of elections for the past ten years in all the others mentioned, believes that one of them of its own free will would have gone other than republican.

And he asks:

Shall we throw out the votes and reject the representation from Mississippi, Alabama, Florida, and South Carolina, and shall we examine the vote of North Carolina?

Now, Mr. Speaker, if I were to say that upon a fair election Kansas would have voted democratic, I doubt not the gentleman from Kansas would think that I had been grossly misinformed or that I had but little regard for the truth. I can inform him in all sincerity that he has been grossly misinformed in regard to the election in North Carolina, and I can assure him that there never was a fairer, a more quiet or peaceable election held in any State in this Union (not even excepting loyal Kansas) than that which was held in North Carolina last November, and though it has been time and again asserted that but November, and though it has been time and again asserted that but for fraud and intimidation that State would have voted republican, I venture to declare that there cannot be found a man in the State who has any character for truth and intelligence to lose who will upon has any character for truth and intelligence to lose who will upon oath say that but for frauds and intimidations that State would have voted republican, and if one should possibly be found whose partisan bias should so far warp his judgment as to so declare, he would find contradiction by the oaths of tens of thousands of the most reliable and truthful men (I will not say "best" men because the gentleman from Kansas does not like the "best blood") of both parties to be found in the State. Now, what is the source of these false impressions which have been fastened upon the mind of the gentleman from Kansas and hundreds of others in the North? Just such false state-Kansas and hundreds of others in the North? Just such false state-ments as are made by such men as this man Kilpatrick, who is in-dorsed by the chairman of the national republican committee who is also a high Cabinet officer, devoting much of his time and labor not to the duties of his office but to the interest of his party, setting an example followed by the tens of thousands of Federal office-holders all over the land. And what does this man, thus indorsed, say and cause to be published in the leading organ of the party, the New York Times, and circulated all over the land † In a letter purporting to have been written from Raleigh, Thursday, November 9, 1876, and published in the New York Times of November 13, he says:

"North Carolina has gone overwhelmingly democratic." I suppose this state ment is almost as familiar to you now as it has become to me within the last two days. I admit that this State is not to be counted as in favor of the republican nominees, but I believe the democratic candidates may not have ultimately the large majority of the votes now claimed for them by their supporters.

\* \* \* What I saw on Tuesday last and what I have heard since horrify me, and I know a recital of the facts must appall every true American citizen. Fraud, treachery, and intimidation are the means by which this State has been carried against the republican party, and these instruments were used by men of resolute wills who are not encumbered by a particle of conscience. The republicans of North Carolina have never been well organized, else I might not now have such a tale of shame to detail.

When they went to the polls on the election day they found those places in the possession of the democracy, who were well armed and determined to resist any endeavor to expel them. Even in thoroughly republican counties was this plan of seizing the polls carried into effect by the democrats. So thorough were their method and organization, the republicans could do nothing. The hypocrisy of the Tildenites was such that it almost surpasses belief, and it is certain that if any violent attempts to dislodge them had been made the apparent blame of causing bloodshed would have fallen upon the republicans. They desired, they said, to have a fair election and would protect every citizen in his right to vote. The republicans accepted their assurances for two reasons: They could not, on the instant, cope with such the roughly organized bands and they did not at first penetrate the hypocrisy of their opponents. Well, the rebels, for such they were in spirit, kept guard over the polls. They admitted voters one by one, and whenever a republican approached the ballot-box they challenged and harrassed him with questions. In this way they consumed time, and in every precinct, as far as heard from, when the sun went down it was found that numbers of the republicans had been challenged and talked out of their votes. As for themselves, the Tilden and Vance men voted early in order to have time to harass their opponents, and the indications are that they also voted early and often.

After further statements of a general character equally untrue he

After further statements of a general character equally untrue he goes on to say:

I have hitherto been writing very generally of the methods of the democrats, but I will now relate a special instance:

Colonel Young, whose home is about forty miles northeast of Raleigh, was a republican candidate for Congress. When he arrived at the polling-place in his town on the morning of Tuesday, (election day,) he found that it was in the hands of the democrats, who had a barricade around it and had stationed a guard to repel any assault. Followed by some friends, he advanced to the entrace of the booth and asked permission to go in and act as a challenger. He was met by five armed men who styled themselves policemen, and who peremptorily refused to allow him to enter as a challenger. He then demanded to be permitted to vote. This permission was granted him; he entered the voting-place, voted, and then refused to leave. After considerable bluster the rebels determined to permit him to remain. He states that every negro that entered the polling-booth was challenged, and time was lost in discussing every case. Republican ballots were snatched from the hands of colored men by the self-constituted policemen, and democratic tickets given to them in exchange, and long before the sun went down the democratic declared the time for closing the polls had arrived. Over one hundred negroes were thus waiting to vote, and if the poll was closed would have been cheated out of their rights. The wrongfulness of the attempt caused a violent discussion, and there might have been bloodshed over the matter were it not for the sudden appearance of the sun, which came from behind a cloud and lighted with his golden rays the raffered and ruinous old room in which the angry dispute was. This overcame the arguments of the democrats, and the voting went on. Yet when the polls did close it was found that twenty-seven negroes had been disfranchised by the persistent challenging of the voters in advance of them, which kept them in line until sundown.

RALEIGH, Thursday, November 9, 1876.

Now, Mr. Speaker, I have to say that the statements contained in that letter are utterly untrue. He speaks of what he "saw on Tuesday last" (election day) as horrifying him. Why, sir, it is painful to say so, but so is the fact the man was not in North Carolina on that Tuesday. I am reliably informed that he was up North. [Laughter.] But it may be that he had powerful optics and saw down into North Carolina from his home in New Jersey. [Laughter.] Sir, if Dobson & Fogg, attorneys in the celebrated Bardell-Pickwick suit could only have found just one such witness their fortunes would have been made, and that poor, loving, injured woman, Mrs. Bardell, would have had pockets filled with smart-money from the hard-hearted Pickwick's treasury. And what a glorious victory Sergeant Buzfuz would have had! Imagine his triumph, if, instead of poor Sam Weller, he could have just had Kilpatrick as a witness! The "deal-door and flights of stairs" would not have been in his way. O! no; such paltry excuses as Sam found in lack of "wision" would not have stood in the way of justice to injured innocence. [Laughter.] Now, Mr. Speaker, I have to say that the statements contained in that have stood in the way of justice to injured innocence. [Laughter.]

"Do you tell me, Mr. Weller, that you saw nothing of this fainting on the part of the plaintiff in the arms of the defendant which you have heard described by the

witness?"

"Certainly not," replied Sam, "I was in the passage till they called me up, and then the old lady was not there."

"Now, attend, Mr. Weller," said Sergeant Buzfuz, dipping a large pen into the inkstand before him, for the purpose of frightening Sam with a show of taking down his answer. "You were in the passage and yet saw nothing of what was going forward. Have you a pair of eyes, Mr. Weller?"

"Yes, I have a pair of eyes," replied Sam, "and that's just it. If they wos a pair o' patent double million magnifyin' gas microscopes of hextra power p'raps I might be able to see through a flight of stairs and a deal door, but bein' only eyes, you see, my wision's limited."

[Great laughter.]
It has been said that the eagle not only has a strength of wing that enables him to soar among the clouds and bathe his plumage amid the vapors of the thunder's home, but he has an eye that can look with steady gaze the god of day in the face, and, undazzled by the brilliant or he some whomes whence amandas the light the with steady gaze the god of day in the face, and, undazzled by the brilliant orb, can pierce the source whence emanates the light that illumines worlds; but the eye of the eagle is weak and dim compared with that of Kilpatrick's, for he, standing on the low plains of New Jersey, with an eye quickened by suggestions from Mr. Chairman Chandler, and all aglow with patriotic fervor in his party's cause, can look through the dark hills of Pennsylvania, whose rich mines of black coal serve but as crystal lenses to aid his sight as it pierces on through Maryland and through the deep blue menutains of Virginia. through Maryland and through the deep-blue mountains of Virginia away down into North Carolina, where these "optics keen behold what is not to be seen," and the beholder is horrified. [Laughter.] But to be serious, Mr. Speaker, the great dramatist has characterized the man who "steals character" as worse than the man who "steals a purse." What shall be said of those who defame whole States?

In contradiction of the statements contained in Mr. Kilpatrick's letter, I desire to have read the following extracts from a letter of George Badger Harris, esq., indorsed by Mr. Harvil Harris and others. I have only to say that these gentlemen possess high characters and are entirely truthful and reliable, and add that there are only about eleven hundred instead of eighteen hundred voting places in North Carolina, and even eighteen hundred multiplied by ten wouk!, by every honest arithmetic, make only eighteen thousand; but he can make even figures, which, it is said, "do not lie," tributary to his exaggeration:

and even eighteen hundred multiplied by ten woulk, by every honest arithmetic, make only eighteen thousand; but he can make even figures, which, it is said, "do not lie," tributary to his exaggeration:

Young's home is Henderson, Granville County, and then Mr. Kilpatrick says, when the colonel arrived at the polling-place on the morning of the 7th instant, that it was in the hands of democrats, who had built a barricade around it and stationed guards to repel any assaults, &c. It is proper here to state that we never had the honor (!) of a personal acquaintance with Kilpatrick, and would not know him if we were to meet him, but we think we heard nothing in saying that he was not personally present at Henderson on the 7th instant, therefore conclude that he either the honor of the provision of the tributal tributant, therefore conclude that he either the heart of the provisions of letter 24 and title 26 of the Revised Statutes of the United States, purposely avoided taking any active part in that day's proceedings, as any decent man in our position ought to have done, but notified the major of the town that, if his not have done, but notified the major of the town that, if his only we have a supposed and prove so, we would lend our aid. We also informed the Federal inspectors that if they had need we would deputize a marshal to aid them in the discharge of their duties; no call was made upon us by either party during the day and no necessity arose for such interference. "Vewere at the polling place as even o'clock in the morning of the 7th. We found adozen, or perhaps more, planks tacked up in front of a door where the inspectors of election were with the ballothey had voted passed out through a third pass-way provided for the purpose. This plan has been in operation at this precinct for eight years or more, nor could the head had been in operation at this precinct for eight years or more, nor could the head had been in operation at this precinct for eight years or more, nor could the poll-duty and the purpose.

election was wet, dreary, and dark, and late in the evening the impatient crowd got up the cry that the sun was down, but the poll-holders disregarded the false alarm, and the voting continued if anything more rapidly than ever until the sun was fully down, and all the crowd, Colonel Young included, was thoroughly satisfied with that fact.

Patient care and inquiry have failed to discover but three negroes who failed to vote, and these three were hanging about the polls all the day, and had the same chance that their four hundred and sixty-three sable friends had that did vote, which is an answer to the charge that twenty-seven did not vote because of democratic captiousness. Apply the mathematical test: we have from seven o'clock a. m. until sunset, which was fifty-eight minutes after four o'clock, say five o'clock; this gives ten hours in all, or six hundred minutes. There were 776 votes cast at this box, therefore one and one-third votes were cast every minute during the whole day, including meal-times, "rebel" challenges, wrangling, and intimidation, and all other outrages then and there committed. Never was an election held more quietly, fairly, and peacefully, since the foundation of this Government, save the gross fraud perpetrated by a majority of the poll-holders—inclusive of the registrar—as reported above in practically denying the right to challenge infant negres, aliens, and strangers in the township. Nothing save the hellish spirit supposed to be engendered in the fiery bosoms of flends in the infernal world, who gloat in accursed agony in their just, dark, and deep damnation, could ever have prompted Kilpatrick, or any other villain. to pen the foul, lying, slanderous charges contained in the last part of the letter of which we speak, against the character of a long-suffering, law-abiding, peaceable people.

We are sorry to have trespassed on your patience thus long, but truth ought be brought to light occasionally.

Respectfully,

GEORGE BADGER HARRIS.

We, the undersigned, poll-holders who conducted the election at Henderson, Granville County, North Carolina, on the 7th of November, 1876, are willing to testify to the truth of every material fact set forth in the foregoing letter of George Badger Harris, and we further desire to condemn in unmeasured terms the lying, slanderous charges contained in that portion of Kilpatrick's letter referring to the manner in which the election was conducted at Henderson. The foul aspersion sought to be east upon us as men and citizens, who were solemnly sworn to conduct the said election fairly and impartially, cannot pass unchallenged.

HARVIL HARRIS.

HARVIL HARRIS, C. A. NASH. E. G. BRODIE, M. A. BLACKWELL.

As one of the Federal supervisers present at the election held at Henderson, Granville County, on the 7th day of November, 1876, I certify that I was present from seven o'clock a. m. until the last ballot was cast and canvassed, and know that all the material facts set forth in the above letter are true.

Mr. SINGLETON. Mr. Speaker, in the brief period allowed me for the discussion of this question, I shall be able to do little more than state my objections to the bill and the reasons why I shall vote against it, without attempting to show the process by which I arrive at my conclusions.

There are occasions arising in the history of every man's life when There are occasions arising in the history of every man's life when he finds duty and inclination antagonizing each other, subjecting him to distressing embarrassment and requiring a determined head to control a faltering heart. Such is my condition to-day. I sympathize with my friends who favor this bill, and would gladly float down the stream with them if I found it consistent with my duty; consistent with the obligation which I took upon myself when I stood in the area in front of the Speaker's desk and with uplifted hand swore to support the Constitution of the United States as long as I should remain a member of this body. I cannot regard this solemn act as a mere idle ceremony. To me it brings the correlative duty of examining the Constitution at all times when questions touching its commands or interdictions shall arise, and of determining for myself whether, with this oath resting upon me, I can vote for a proposed

commands or interdictions shall arise, and of determining for myself whether, with this oath resting upon me, I can vote for a proposed measure or whether I am constrained to vote against it.

Mr. Speaker, our Federal Government is one based upon a Constitution of written and defined powers, the provisions of which, once fairly interpreted by a competent tribunal, become the supreme law of the land. In the absence of any such settled interpretation, binding in its effect upon a party called to discharge a duty or exercise a prerogative under the Constitution, such party must interpret it for himself. Among the duties imposed and the powers conferred in that himself. Among the duties imposed and the powers conferred in that instrument is that of counting the electoral vote for President and Vice-President of the United States. No judicial determination has been had as to the powers and duties of counting this vote. It follows, therefore, that every member of Congress swearing to support the Constitution, in the absence of such binding decision, must in-terpret it for himself. Acting upon this line of thought, my mind has been drawn to the irresistible conclusion that the responsibility of counting and determining this electoral vote devolves upon Congress alone; that in such count each House has a negative power upon the other, and, unless they concur in opinion, no vote objected to can be counted.

This leads me to reject the theory that the judges of the Supreme Court of the United States, or any number of them, or any other person outside of Congress can be called to arbitrate or settle difficulties growing out of this count, no matter how great the emergency.

Any attempt therefore to devolve the duties appertaining alone to

Congress upon any other tribunal is plainly in contravention of both the letter and spirit of the Constitution, of which we are made peculiarly the guardians.

To those who plead in behalf of this measure the emergency which is upon us, the popular clamor in certain sections in its favor, I have but one answer to make, which is: the Constitution possesses no elasticity by which it can be adapted to the passions and prejudices of men, but stands like a rock at sea to repel and break up the waves of popular faction.

From the principles above enunciated I drawthis corollary: that representative is most faithful who is most steady to the requirements of the Constitution.

Following my convictions then as to the constitutional view of this bill I have no choice left me; I must record my vote against it.

But aside from all constitutional difficulties I cannot but regard

But aside from all constitutional difficulties I cannot but regard this bill as both unjust and impolitic, if at all practicable. Unjust because it submits to chance the results of an election already fairly determined by the people at the ballot-box, and which may end in reversing their decision and defeating their expressed will. I have not met one single democrat, North or South, private citizen or public functionary, who has expressed a doubt as to the election of Mr. Tilden upon a fair count; while on the other hand a number of leading republicans concur in this view.

To enter upon this game of chance, then, with republicans, the stake being the presidential office, is about as unreasonable and unprofitable as the result of an illustration which I will give. A man meets me upon the highway, and, seeing that I have a watch upon my

profitable as the result of an illustration which I will give. A man meets me upon the highway, and, seeing that I have a watch upon my person, presents a pistol to my breast and demands my watch, claiming it as his own. I remonstrate with him, declaring that he is mistaken, that I bought and paid for the property and have worn it for twenty years. He pays no attention to my affirmation or remonstrances, but gravely tells me, "You see, sir, a terrible emergency has arisen, a fearful crisis is upon us, and now you are to surrender this watch or submit to an only alternative, which is, to play with me at cards a game for this stake. If you beat me, you can retain the watch; if, on the other hand, I win the game, the watch is mine." What would be the public judgment of a man who would stultify himself by becoming a party to such a transaction? Such a course would excite no feelings in the hearts of his best friends but those of mirth and ridicule. Better far allow the open robbery to be committed, with the chance of making the robber amenable to the law in after-

with the chance of making the robber amenable to the law in aftertimes than involve one's self in so disgraceful a transaction.

I need hardly stop to make an application of this illustration. Before the election came off the game of bullying commenced by sending troops to the Southern States to overawe and intimidate the democratic party. Failing in this, corrupt returning boards were manipulated; the votes of counties were suppressed or thrown out; judicial decisions were disregarded and overridden; rules heretofore observed for counting the electoral votes were declared abrogated; the power to count said votes was claimed for the President of the Senate, to the exclusion of Congress; and, to consummate the treasonable plot to count in as President a man never elected, troops have been amassed in this city, constructively in the Capitol building, to intimiamassed in this city, constructively in the Capitol building, to intimidate the people's representatives and force from them the recognition of what they call rights, but which are in fact but the baldest assumptions. All things being in readiness, their plans having fully matured, they confront us boldly, and declare that a great emergency has arisen, an awful crisis is upon us, and threaten that, unless this high joint commission is established, before which they can be allowed to play for the presidential stake, they will blow the country and Constitution to atoms by the forcible inauguration of their candidates. didates.

For myself I will have none of it. Though I should stand solitary and alone in opposition to this bill, I shall not thereby be deterred from following my convictions of duty. There is not now, there from following my convictions of duty. There is not now, there never has been any danger of an armed conflict growing out of this question. Nobody desired it, nobody intended it. All that was necessary from the beginning, to secure the fruits of a democratic victory honestly achieved, was to get clear of timid and temporizing leaders, and allow the honest, constitution-loving masses to speak out in primary meetings, in their own honest way. But they have been kept back, and only the money-changers have been allowed to come to the front. Wise men have seen for weeks past that all this cry about war and bloodshed was as empty and harmless as stage thunder. about war and bloodshed was as empty and harmless as stage thunder,

about war and bloodshed was as empty and harmless as stage thunder, vox, et praterea nihil. But it was a part of the play, and has served its purpose. No, Mr. Speaker, it was not the sword of Brennus that was to decide this issue, but the money-bags of capitalists.

I would not be understood as in the remotest degree charging those who are fortunate enough to have money using it improperly to secure the passage of this bill, much less would I charge any member of this body with corrupt motives in voting for it. But what I mean to say is that capital, always timid, shrinks from any disturbance of the channels of trade, any abnormal political condition likely to paralyze money-letting and money-getting and derange business relations. And hence the influence of that class, which is potential, has been brought to bear, through resolutions and petitions, in commercial circles and associations and boards of trade, to influence the passage of this bill. I greatly fear that in their anxiety for present peace, which I have never felt was likely to be disturbed, they have broken down the middle wall of partition which alone could separate them from agrarianism and secure to them the enjoyment of their honest earnings. A deep and wide-spread dissatisfaction pervades the public mind arising from the conviction that this Government for the last fifteen years has been run in the interest of capital as against labor. Such teen years has been run in the interest of capital as against labor. Such a state of feeling on the part of the masses is not to be trifled with or even disregarded. History teaches some instructive lessons upon this point which it might be well to heed before pressing matters

But, Mr. Speaker, I find that I have wandered from the point which

I intended to make, namely, that by relegating the power of Congress to count the electoral vote to the commission provided for in this bill, we submit the whole matter to chance.

I know this statement has been contradicted; but as practical men, who have a great duty to perform, brushing away the cobwebs of sophistry, dispensing with all verbal criticisms, paltering with facts in no double sense, let us examine this subject as it honestly and truthfully presents itself. The following is the section of the bill which provides for raising the joint commission:

During the session of each House on the Tuesday next preceding the first Thursday in February, 1877, each House shall, by viva voce vote, appoint five of its members, who, with the five associate justices of the Supreme Court of the United States, to be ascertained as hereinafter provided, shall constitute a commission for the decision of all questions upon or in respect of such double returns named in this section.

From the language of this section it will be seen that the House is to elect, viva voce, five of its members to act as a part of this commission. The House is largely democratic, and has the power to elect such members as will reflect its views faithfully and unalterably. No democrat will be called to serve upon it who has not fully and unchangeably committed himself to the view that Tilden and Hendricks were elected.

The Senate, being largely republican, will of course select its members with the same views and purposes as did the House, mutatis mutandis. Should the two Houses by common courtesy consent to place upon the list of referees two republicans in the House and two demoupon the list of referees two republicans in the House and two democrats in the Senate, the complexion of the commission will not be changed. The republicans in the House and democrats in the Senate will of course be allowed to designate the members from their respective parties, who are to be chosen. Here then, to begin with, you have five democrats and five republicans, all firmly fixed in their opinions, openly expressed, publicly avowed, and who dare not betray their trust lest the finger of scorn should follow them through life.

The bill then provides further that-

On the Tuesday next preceding the first Thursday in February, A. D. 1877, or as soon thereafter as may be, the associate justices of the Supreme Court of the United State now assigned to the first, third, eighth, and ninth circuits shall select, in such manner as a majority of them shall deem fit, another of the associate justices of said court, which five persons shall be members of said commission; and the person longest in commission of said five justices shall be the president of said commission.

From this section it will be seen that the judges from the first, third, eighth, and ninth circuits are specially designated as members of this commission. Why should they be specially named? Are they "learned commission. Why should they be specially named? Are they "learned above their fellows?" Why not take the circuits in their numerical order, one, two, three, four? Let not the country be hoodwinked as to the reasons for their selection. Good men all and able judges; but still the question remains unanswered, Why were they selected? This is the answer, and the only one given: Two of them are known to be democrats, in full fellowship with the party, and two are avowed republicans, in high favor with that party, and one of them at least—Judge Miller—has been interviewed by a reporter. He has published and has openly declared his opinion that Hayes was duly and legally elected and should be inaugurated.

why go to the Supreme Court for members of this commission, unless it be to give dignity to this compromise; unless it be to gild this bitter pill which is offered to the country? Is it to be expected that bitter pill which is offered to the country? Is it to be expected that there will be found anything more than men in these judges, with prejudices and predilections like other men? It has never been demonstrated in my own experience, nor have I read in history, that putting a clerical robe on a man and placing him in the pulpit, or putting a powdered wig and gown upon a judge and seating him on the bench would relieve him from all the dross of human nature that was born in him, and lift him to an eminence where he would be beyond the passions, frailties, and assailments common to humanity. passions, traities, and assailments common to humanity. He who looks for perfection in his fellow-man, it matters not how exalted his station, but deceives himself and wrongs his brother. I honor the men who fill these stations, but only as men. These judges, like the members of the Senate and House, were chosen because of their known political opinions and party affiliations. They would not have been chosen unless these had been known. Now you have fourteen members of this grand commission, seven on each side, standing like two provides in bettle array each prevailed in party and it has been all dead and all the array each prevailed in party and it has the standard and the series of the series and the series of the series and the series are series as a series of the series and the series are series as a series of the series and the series are series as a series of the series and the series are series as a series of the series are series as a series are series as a series of the series are series as a series a bers of this grand commission, seven on each side, standing like two armies in battle array, each panoplied in party mail, steel-clad and copper-bottomed. Will the tourney now begin? Shall we witness the shivering of lances, and see any or all of the combatants rolling in the dust? Not so fast, if you please. These Daniels come to judgment under this bill have a little side play of their own first to be attended to. They are to retire to some unknown place, at some unknown hour, and in some unknown way select some unknown man whose unknown opinions are to decide this great presidential contest and, it may be, pronounce indement setting aside the popular verses and it may be, pronounce indement setting aside the popular verses and. test and, it may be, pronounce judgment setting aside the popular verdict. Who can contemplate such an innovation upon the Constitution and every established precedent without sorrow of heart and terrible misgivings as to the future. To one man, for it comes to this at last, is delegated the powers and duties so clearly conferred and imposed by the Constitution upon the whole Congress. Listen to its solemn words:

The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person

have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

There is no uncertain sound coming up from this clause of the Constitution. Tell me, if you can, where there is any room under the provisions of this clause to form a partnership with the judges of the Supreme Court, however honest or dignified, or with any one else outside of the Congress, for counting and determining the electoral vote? The President of the Senate shall open the votes and the votes shall be counted in the presence of the Senate and House, or, as it has always been construed, by the Senate and House, the person having the highest number of votes, if a majority of all the electors appointed, shall be the President; if there be a failure to elect in this joint convention, the House of Representatives shall choose immediately, by ballot, the President.

Again I ask, how do we get these judges into this constitutional court, itself higher than the Supreme Court, established for determining a great political result ?

It is most clearly a gross interpolation upon that instrument to induct them into any such office. It is known to all readers of the debates and proceedings had in the convention which framed the Constitution what anxious care our fathers manifested to separate as far stitution what anxious care our fathers manifested to separate as far as possible the three departments of our Government, legislative, executive, and judicial, from each other. Could they have placed an impassable gulf between them, could they have stationed an angel with a flaming sword at the portals of each, to guard it against the approaches of the others, I doubt not they would have done so. The safety and perpetuity of the Government was often declared to depend upon the steady movement of each department in its own proper, prescribed orbit. It was then predicted, and has often been declared since by patriots and statesmen, that whenever one of these departments began to trench upon the rights and privileges of the others, or either of them, our Government would then have entered upon a down grade dangerous to its perpetuity and the rights of its citizens.

down grade dangerous to its perpetuity and the rights of its citizens.

In this bill there is a surrender of the powers and privileges of Congress to this extra-constitutional tribunal, the consequences of which

no man can foretell.

It may be said, and has been said, that Congress has reserved to itself the power of revising the decisions of this commission. There is only one contingency in which Congress can ever get control of the subject once it has been handed over to this commission, and that is "non objection made in writing by at location of the subject once it has been handed over to this commission, and that is subject once it has been handed over to this commission, and that is "upon objection made in writing, by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern." Let us treat this clause with fairness, and examine it in the light of past experience and present surroundings, and see if this pretended reservation of power is not far more apparant they real. The decisions of this commission as long as they are and see if this pretended reservation of power is not far more apparent than real. The decisions of this commission, as long as they settle no fact or principle adverse to either party, but indifferent in their bearing upon the result, will of course go unquestioned; but as soon as any point is decided giving advantage to either side, and a reversal of that decision is sought to be made, the party gaining the advantage will never consent to surrender it. To illustrate: Suppose a majority, or in the event of a tie vote, which is much more probable, the fifth judge shall decide that the commission cannot go behind the certificate of the returning board of Louisiana, does anybody suppose the republican Senate would consent to surrender this advantage and reverse the decision thus made? Suppose, on the other hand, it shall be decided that the vote of Florida must be counted for Tilden, does any man of sane mind imagine that the House will consent to reverse any man of sane mind imagine that the House will consent to reverse this decision? No, Mr. Speaker, this clause was only put into the bill to preserve a semblance of control on the part of Congress over a subject of which the Constitution gives it exclusive jurisdiction, and which jurisdiction cannot be transferred to other shoulders. This say-

which jurisdiction cannot be transferred to other shoulders. This saving clause is a delusion and a snare. Duty and obligation are the correlatives of power and privilege, and as the latter cannot be delegated or transferred, so the former cannot be shunned or avoided.

But I declare my belief also that the bill is impolitic. Impolitic, because it brings down from the lofty eminence given them by the Constitution judges upon whose impartiality in judicial decisions and fidelity to truth and honor depend the life, liberty, and property of the citizen, to mingle in party politics, soil the judicial crmine, and subject themselves and whatever decision they make in this case to merited or unmerited censure, and it may be to unstinted abuse, thereby cheapening them in public estimation. Had the committee reporting this bill proposed to eliminate all purely legal questions growing out of this controversy from the facts of the case and submit them to the United States Supreme Court for opinions, to be certified to Congress for its guidance, I suppose it would have met with mit them to the United States Supreme Court for opinions, to be certified to Congress for its guidance, I suppose it would have met with no objection. But when the whole case embracing facts as well as law is to be submitted to these judges as to a nisi prins jury, to be by them decided, I think it is detracting from their dignity, lessening their influence, and it may end in destroying their usefulness. Time and again has it been affirmed in their decisions that they could take no again and the conditions of the conditions that these belonged to another tri again has it been affirmed in their decisions that they could take no cognizance of political questions, that these belonged to another tribunal and must be determined in another forum. Yet Congress is seeking by this bill to force such an issue upon the judges of that court. I shall pursue this thought no farther.

But, Mr. Speaker, I beg leave to detain the House a few minutes longer upon another point. Much speculation and argument has been

indulged in as to the relative powers and duties of the President of

the Senate in the count of the electoral vote.

In order to the better understanding of this subject, it may be well to refer to the Constitution as to his general powers, and ascertain if they are so extraordinary as to favor the idea that he may assume others not granted expressly or impliedly in the Constitution, article 1, section 3: "The Vice-President of the United States shall be the President of the Senate, but shall have no vote, unless they be equally divided." This is the first mention made of him or his duties. Again he is mentioned in article 2, section 1, as follows:

In case of the removal of the President from office, or of his death-resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President.

From these general powers it will be seen that his functions are exceedingly limited. He is to preside over the Senate, simply enforcing the Senate's rules, with mouth as silent as a sepulcher, unless in cases of a tie vote, when the seal of silence is broken and he may cast the deciding vote. Here his powers end under this clause, and again the seal of silence is placed upon his lips. Under the latter clause he is to act as President in the contingency of the death, resignation, or is to act as President in the contingency of the death, resignation, or inability of the President to discharge the powers and duties of his office. How meager, then, are his powers. He cannot make a rule for the government of the Senate, he cannot raise a committee, he cannot appoint a page, or even the menial that sweeps the floor of the Senate Chamber, without the consent of that body. We see him there in the Senate as a sort of locum tenens, grave, dignified, proper; speaking only by the permission of the Senate through its rules, except in the contingency of a tie vote, as above stated, which rarely occurs. In the other case, as successor to the President, he occupies the position of heir expectant to the throne, a sort of contingent-remainder. In the other case, as successor to the President, he occupies the position of heir expectant to the throne, a sort of contingent-remainder man, who can do nothing more than draw his salary and wait for the President to die or be impeached. His absolute inherent powers are not equal to those of the bailiff, who waits on a justice's court. Yet it had been claimed by certain latter-day statesmen, because he is required "in the presence of the Senate and House of Representatives" to open all the certificates of the aleatent particular to the presentative of the country of t quired "in the presence of the Senate and House of Representatives" to open all the certificates of the electoral votes which are cast for President and Vice-President, that he is to determine their validity, and all other questions growing out of the count, without the advice, consent, or concurrence of either Senate or House of Representatives. A more complete non sequitur I have rarely known to follow from premises so badly taken and persistently held. The sole office of the President of the Senate in this joint convention is to break the scale of the envelopes containing the certificates of the electoral seals of the envelopes containing the certificates of the electoral votes, pass them to the tellers appointed by the Senate and House of Representatives, who are their functionaries and authorized by them to read these several certificates in their hearing, to be approved or disapproved by the said Senate and House, and when finally disposed of, to sum up the result, which the President of the Senate, pro forma, announces to the joint convention just as he announces the result of a vote taken in the Senate after it is passed up to him by the Secretary of that body.

By what stretch of imagination can it be asserted that this man of such limited general powers under the Constitution when he comes to meet this joint convention expands into such huge proportions as to draw to himself all the duties and prerogatives of the two Houses and leave them idle spectators of the grand pageant which he exhibits to their astonished view? One-man power has been the dread hibits to their astonished view? One-man power has been the dread and terror of our people for a hundred years. Men have spoken and written against it in language of animated rhetoric and vehement denunciation, but here it presents itself in all its deformity and wickedness. It is a deliberate attempt, unmitigated by decency, unsupported by precedent, to force a rejected candidate upon an unwilling people. To do this it was found necessary to abrogate the joint twenty-second rule of the two Houses, which had been enacted by the republican party while having an overwhelming majority in both Houses, and under which three republican Presidents had been installed. This rule recognized the power of the two Houses to count and determine the most of the second residents in the second residents.

Houses, and under which three republican Presidents had been installed. This rule recognized the power of the two Houses to count and determine the vote without the intervention in the slightest way of the President of the Senate. It further recognized the power of either House to object to the counting of any vote, and if that objection were persisted in the vote could not be counted, and so was lost. It is not claimed that the rule added anything to the Constitution or the powers of Congress acting under it, as it could certainly detract nothing from either. But it was looked upon at the time of its adoption as a fair exposition of the clause relating to the count of the electoral vote, and has been lived up to and practiced upon until the republican party found itself beaten in the late election and all hope out off of inangurating a candidate repudicated by a popular majority cut off of inaugurating a candidate repudiated by a popular majority

cut off of inaugurating a candidate repudiated by a popular majority of more than a quarter of a million of votes.

In conclusion, Mr. Speaker, I wish to say if there ever was any necessity for or propriety in passing this bill, that occasion passed away when the Senate, by a vote of 47 to 17, declared against the power of the President of the Senate to count the electoral vote, thereby affirming that this power rested in Congress. From that moment all chance of counting in a republican President vanished. Look at it in any view of the case and this declaration will be found to be true. Should it be claimed that the joint or concurrent action of the two Houses is necessary to count the electoral vote of a State, then two Houses is necessary to count the electoral vote of a State, then the Louisiana and Florida votes could not be counted for Hayes, as this House would never consent to it, and so he could not get the

requisite 185 votes. On the other hand, should it be determined requisite 185 votes. On the other hand, should it be determined according to former precedents and the twenty-second joint rule, that each House must judge for itself and holds the power to negative the actions of the other, then the votes of these States could not be counted for Hayes, for the reason that it is believed by a large majority of this House that the certificates were fraudulently obtained and bear upon their faces anything else than verity and the honest reflex of the popular sentiment of these States.

In neither event, therefore, could the republican candidate be declared elected. It may be said, and truthfully too, that the Senate will have the same power as the House in this joint convention, and may prevent the election of Governor Tilden as the House may the election of Governor Hayes. Admit this to be true, and still all the advantages are on the side of the House.

This disagreement could only result in a failure to declare either candidate elected by the count, in which event the duty devolves upon

the House to elect immediately, by ballot, a President, leaving the

Senate to elect a Vice-President.

I do not believe the supporters of this bill can escape the force of this reasoning by showing that it is fallacious or unsound. If this be the true aspect of the case, then why establish this commission with such plenary powers in one man, the fifth judge, and submit this whole matter to chance, when a way of escape from this labyrinth in which our unscrupulous enemies have involved us is open to us, clear, smooth, and free from constitutional objections? It can afford clear, smooth, and free from constitutional objections? It can afford no more easy and certain solution of the case; it may complicate it still further and end in disaster. A distinguished republican member of this House declared in my hearing that the vote in the Senate upon this bill virtually counted Governor Hayes out of the Presidency, as it settled the question against the right of the President of the Senate to count and determine the electoral vote, but if the bill should pass this House it greatly increased his chances. So I have thought and so I have argued. We lost our first chance for want of proper and timely action. Shall we lose our second by hasty and injudicious action? If so, our blunders will be far worse than crimes, and to an injured constituency we will be called to make our plea for mercy and forgiveness. and forgivene

Mr. LAPHAM. Mr. Speaker, in the brief time allowed under the rule adopted by the House, I shall only be able to advert to some of the leading points involved in the discussion of the bill now before us for leading points involved in the discussion of the bill now before us for consideration. I would very gladly fall in with what seems to be the current of public sentiment upon this question, with the view of satisfying the mind of an anxious and distracted public, by giving my support to this measure, if I could find any warrant for it in the Constitution of the country. All my feelings and impulses would lead me naturally in that direction, but, Mr. Speaker, I am opposed to the bill because, in the view I take of it, it proposes not only to set aside and disregard the clear injunction of the Constitution, and the usage under it for lifty years after its adoption, but to substitute a tribunal un-known to the Constitution, clothed with power to decide a presidential contest and to decide it upon other and different evidence and papers from those named in the Constitution as the basis of action in counting the electoral votes.

counting the electoral votes.

Now, sir, if it be true that this bill involves these consequences, no member of this House, whatever may be the great public necessity which seems to surround us, should be induced to give it his support. The Constitution, sir, after providing for the choice of electors in the several States of the Union, and that they shall, on a day to be designated by a law of Congress, cast their vote for President and Vice-President, and send a certified list of such votes under seal to the President of the Senate, at the seat of Government, then directs that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." then be counted."

As adopted by the convention which framed the Constitution, as shown by the record of its proceedings, this clause would have read

The President of the Senate shall in that House open all the certificates, and the votes shall be then and there counted, in the presence of the Senate and House of Representatives.

The transposition of certain words and the omission of others in the Constitution as finally completed and submitted to the States for their adoption was undoubtedly the work of a committee on revision, or, as it is sometimes called, a committee upon style, and was not intended to change in any degree the effect of the Constitution as it had

been adopted by the convention.

Here are apt words to describe the Senate and House of Representatives as witnesses of an act to be performed by someone else. Not that they are to be entirely disinterested spectators; no one will claim that. They are to be present at the count of the electoral vote by the presiding officer of the Senate, as the electors are or may be present at the original canvass of the votes, so as to see that the count is conducted in a legal and regular manner, that mistakes by inadvertence do not occur, but with no right to participate in, or in any manner control the action of the presiding officer of the Senate in making the count. The language of the Constitution will admit of no other interpretation.

There are many cases where solemn instruments, such as convey-ances of real estate and last wills and testaments, are required to be executed in the presence of at least two subscribing witnesses.

These witnesses are made such in order to be able to certify that the instrument was in fact executed as the law provides, but they are in no sense actors.

So in the case under consideration the act of opening the certificates and counting the votes are acts to be performed in the presence of the two Houses of Congress. The only person named as an actor is the presiding officer of the Senate. And those named as the specis the presiding officer of the Senate. And those named as the spectators or witnesses are the two Houses of Congress. How puerile and trifling a constitutional injunction to open the certificates would appear if all power in the presiding officer is to then cease. Such being the fair and only reasonable interpretation of the language, it is important to see how it was practically interpreted by the framers of the Constitution and their contemporaries.

The convention which framed the Constitution adopted two resolutions and the constitution adopted two resolutions.

tions on the 17th day of September, 1787, one of which I will read:

Resolved. That it is the opinion of this convention that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that after such publication, the electors should be appointed, and the Senators and Representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the Senators and Representatives should convene at the time and place assigned.

Now come the important words:

That the Senators should appoint a President of the Senate, for the sole purposs of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

These resolutions thus adopted by the convention were transmitted by it to the then Congress of the United States, certified by George Washington as president of the convention and by William Jackson

washington as president of the convention and by william Jackson as the secretary of the convention.

On the 28th of September, the same month, the Congress of the Confederation by a resolution re-adopted these resolutions, and directed that they with the Constitution should be sent to the States for ratification. Along with the Constitution they sent this resolution providing the practical mode in which proceedings under the Constitution should be commenced.

In the mean time the Congress of the Confederation adopted a resolution fixing the first Wednesday of January, 1789, as the day for the States to appoint their electors, the first Wednesday of February as the day for the electors to assemble in their respective States and cast their votes, and the first Wednesday in March as the day for commencing the proceedings under the Constitution. In this way the 4th day of March, 1789, was named as the commencement of the first presidential term. On that day Congress assembled, but no quorum being dential term. On that day Congress assembled, but no quorum being present in either House, adjournments were made from day to day until the 6th day of April, 1789, when, a quorum of both Houses having assembled, the Senate, in pursuance of said resolution, chose by ballot a President for the "sole purpose of opening and counting the votes for President of the United States," (so the record states,) and the choice fell upon John Langdon. No one can read the proceedings of that day without observing how scrupulously the instructions of the convention in the resolution it adopted, which was sanctioned by the Congress of the Confederation, were followed. It is true the Senate chose gress of the Confederation, were followed. It is true the Senate chose a teller and requested the House to choose one or more of its members to sit at the Clerk's table and make a list of the votes as they should Declared by whom? By the President of the Senate selected for that purpose.

When the two Houses assembled in the Senate Chamber, Mr. Laugdon, the President selected for that purpose, declared, so the record

The Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States—

Giving the list made by the tellerswhereby it appeared that George Washington was elected President, &c.

The House resolved to attend in the Senate Chamber for the purpose expressed in the message from the Senate, which was to the effect that the Senate had chosen a President for the sole purpose of openthat the Senate had chosen a President for the sole purpose of opening the certificates and counting the votes of the electors of the several States, had selected one of its members to sit at the Clerk's table to make a list of the votes as they should be declared, submitting it to the wisdom of the House to appoint one or more of its members for a like purpose. The record also states that two members of the House were selected to make such lists, and the persons so chosen, after the House returned to its Chamber, "delivered in at the Clerk's table a list of the votes of the electors of the several States, for President and Vice-President of the United States, as the same were declared by the President of the Senate, in the presence of the Senate and of this House," &c., which was entered on the Journal. The House then sent by James Madison a message to the Senate, that a notice of the election should be given in such manner as the Senate should direct; and the Senate adopted a certificate, which is recorded at length in the Journal of the Senate, and is in the following words:

Be it known that, the Senate and House of Representatives of the United States

Be it known that, the Senate and House of Representatives of the United States of America being convened in the city and State of New York the 5th day of April, A. D. 1789, the underwritten, appointed President of the Senate for the sole purpose

of receiving, opening, and counting the votes of the electors, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and for a Vice-President; by which it appears that George Washington, esq., was unanimously elected, agreeably to the Constitution, to the office of President of the United States of America.

In testimony whereof I have hereunto set my hand and seal.

JOHN LANGDON.

It has been claimed that this was only a temporary arrangement. I do not so regard it. True, the selection of the officer was temporary, until a Vice-President should be declared elected, but the duties he was to perform were of a nature as enduring as the Constitution, and a type of those which the incumbent of the same office should dis-

charge at each recurring presidential election.

I have thus, more in detail than may have been necessary, adverted to the proceedings in the first count of the electoral votes. They furnish to us the practical interpretation placed upon the Constitution by those who framed and adopted it.

Such interpretation is much more reliable than the commentaries of Story or Kent, even if they differed as they do not, or the action of the two Houses in adopting, in a most extraordinary emergency, the twenty-second joint rule. To my mind they furnish a most satisfactory test of the true construction to be given to the clause of the Constitution relative to the count of the electoral votes. Whether it has been followed on all occasions since is not important. That efforts have been made by the Congress from time to time to assert and obtain control over disputed questions growing out of the electoral vote is undeniable. So far such efforts have not been successful. It is fortunate perhaps for the country that they have failed. It is, if possible, more important to adhere to the constitutional mode when the majority in the electoral college is small, than when it is large or unanimous for one candidate as in 1789.

To my mind it is a monstrous proposition for the two Houses of Congress when there is a majority of only one in the electoral vote, as at present or for either House to assert the right to reverse that majority or declare a different result, or to decide or declare that there has been no election and take the choice of President and Vice-Presihas been no election and take the choice of President and Vice-President into their own hands. When we remember there is no warrant found in the Constitution for such action, it is not only monstrous but it is revolutionary. As early as the year 1800, Congress attempted to enact a law for settling disputed elections of President. The two Houses failed to agree. But, sir, this attempted legislation had no reference to the mode of counting the electoral vote or the power to count; nor did it contemplate going behind the electoral votes and inquiring as to their validity or accuracy. It expressly disclaimed that power. The article of the Constitution was amended in 1803, two years after this attempt, and yet the provision as to counting the elector. years after this attempt, and yet the provision as to counting the elect-oral vote was not changed. In 1805 the record recites, as it had uniformly done before-

That the Vice-President of the United States and President of the Senate did, in the presence of the Senate and House of Representatives, open all the certificates and count all the votes of the electors, &c.

Mr. Speaker, it is said that this tremendous power is too great to be reposed in one man, especially one who may be directly interested in the result. When, I ask, has it worked any dangerous result? In 1797 John Adams, as Vice-President and President of the Senate, per-1797 John Adams, as Vice-President and President of the Senate, performed the duty, declared himself elected to the office of President, Thomas Jefferson to the office of Vice-President, and added: "And may the Sovereign of the universe, the Ordainer of civil government on earth, for the preservation of liberty, justice, and peace among men, enable both to discharge the duties of these offices conformably to the Constitution of the United States, with conscientions diligence, punctuality, and perseverance;" and all the people said "Amen." This was at the close of a heated contest when there were thirteen candidates voted for and 139 electoral votes cast, of which Mr. Adams had only 71, or one more than a majority. Being a prominent candidate he not only opened the certificates and declared the vote, but requested the Clerk of the Senate to read the return also before the tellers made the list, and the result was then declared as I have stated. tellers made the list, and the result was then declared as I have stated.

Mr. Speaker, it is much more safe to trust to personal and individual esponsibility in such cases than to a divided responsibility, as would be the case if the two Houses or the proposed commissioners were to exercise the power. In my own State the prisons and canals under the management of boards of inspectors and commissioners have been the most fruitful sources of corruption in State administration. The people of that State at the last election, by a large majority, adopted a constitutional amendment placing the canals and prisons each under the management of a single superintendent. This has been deemed the most wise and safe mode of securing integrity in such administra-

Sir, I am not afraid to trust to individual responsibility whoever may be the President of the Senate. If at this time the Vice-President were a candidate for the Presidency, he would doubtless allow the President pro tempore to act in the count, and thus avoid the example of the elder Adams. The responsibility of the President of the Senate does not approximate to that of the President when elected. Yet the framers of the Constitution and the people in adopting it deemed it most safe to trust the discharge of the duties of the executive office to a single individual. This presidential contest affords lessons for our guidance. A former slave of one of the dominant families in South Carolina, one of whom is now seeking to grasp by force and fraud the political power of that State, has testified before a

committee of this House that he was offered the sum of \$50,000 to cast his vote as an elector for Tilden and Hendricks. Yet he refused the bribe, and on the personal responsibility resting upon him performed with fidelity the trust resposed in him by the people of that State. One of the republican electors in the State of Louisiana entered the electoral college in that State on the 6th of December last, stating he had been offered a hundred thousand dollars to cast his vote for the democratic candidates, which offer he had refused, and he then performed his duty. The only case in which the use of money seems to have accomplished the purpose for which it was furnished is in the case of the electoral vote of Oregon, where the concurrence and

the case of the electoral vote of Oregon, where the concurrence and co-operation of several persons was necessary to consummate the fraudulent and wicked design contemplated, and which would never have been attempted if the responsibility and odium of the act were to rest wholly upon the head of one man.

But, Mr. Speaker, if I am in error in respect to the province of the presiding officer of the Senate, then it is clear that the duty of counting the electoral vote devolves upon the Senate and House, either in joint convention or as separate bodies. This is a power which Congress has no right to delegate. That the proposed bill is a delegation of such power is too plain to admit of argument.

The two Houses are divided in sentiment. Hence the proposal of the joint committee to decide and the provision that the decision shall be final unless both Houses concur in its reversal. It is well known

be final unless both Houses concur in its reversal. It is well known that a decision in favor of the republican candidates would not be reversed by the Senate and equally certain that a decision in favor of the democratic candidate would not be reversed by the House. What the democratic candidate would not be reversed by the House. What a farce, then, is the pretended reservation of a power to reverse by the joint action of the two bodies. The law only applies to the count of the vote in the last election, and, as applied to that in the present temper of the two Houses, it is certain, whatever may be the decision, it will be final. If legislation be necessary and proper in regulating the count of the electoral vote, why is the bill thus made temporary and only applicable to a single election? Why not like the proposed act in 1800 and 1824; pass a general law applicable to all cases which may arise until repealed or superseded by an amendment of the Constitution? The reason is obvious. One party claims the right to go behind the electoral vote and to investigate the vote cast in the State. The other wholly denies that right. It is clear that no such power can be exercised until the Constitution shall have been amended so can be exercised until the Constitution shall have been amended so as to authorize it. It is equally certain that on the face of the certificates the election of Hayes and Wheeler is assured. To follow the Constitution leaves no hope. To adopt this bill in its stead, leaving the joint committee to consider such "petitions, depositions, and other papers, if any, as shall by the Constitution and now existing law be competent and pertinent," opens the door to democratic hope. Had this business been proceeded with without an "if," I should feel less alarmed at the proposed bill.

Again, Mr. Speaker, I object to the selection of judges of the Supreme Court to act in conjunction with and having only co-equal powers with the persons selected by the two Houses of Congress. The proposal to have the Chief-Justice act as one of the grand committee in the legislation attempted in 1800 was abandoned as soon as the objection was suggested. The members of that court should not be invited or required (if this act is a command they are bound to obey, which is doubtful) to take part in proceedings of a political character.

So, Mr. Speaker, the mode of selecting the judges is open to the most grave objections. Why was not the Supreme Court left to select its own members, as the two Houses select theirs? Or, if the judges were to be named in or selected by the bill, why were the five not named or selected? Why leave the selection of one to be made, we know can be exercised until the Constitution shall have been amended so

or selected? Why leave the selection of one to be made, we know or selected f Why leave the selection of one to be made, we know not how, to depend upon any contingency or chance f Somebody is to be disappointed as to the composition of the tribunal to decide. While I have no doubt of the earnestness and fidelity of the members of the joint committee reporting this bill, yet as it is to be voted on under the demand for the previous question, without any opportunity for amendment, there is no alternative left but to state these objections to the mode of selecting the committee, which, to my mind, are grave objections to the bill as a measure of practical legislation.

Mr. Speaker, I had intended to call attention to what has been so often said in the discussion upon the various measures of legislation proposed from time to time, against any attempt to influence or control the electoral count by a law of Congress. It has been generally conceded that there is no power to look behind State action, Mr. Pinckney very earnestly claimed in 1800 that such questions belonged to the respective States and to them alone. If any such power should be experised here it is a "case or misses" and on poly he supposed to the supposed should be exercised here it is a "casus omissus," and can only be supplied by an amendment of the Constitution. Suppose the vote of New York in 1868 had determined the result of the presidential contest, does any one doubt that Seymour and Blair would have been declared elected. Yet it is now known to the world, as it was then known to the republicans of New York, that by a false and fraudulent count, conducted in the name of Mr. Tilden, as the chairman of the State committee, the result was reached in that State, and that the chief title of the democratic candidate to the rôle of a reformer is the part he at a late hour acted in bringing to punishment the guilty perpetrators of so monstrous a crime against the integrity of the ballot.

Mr. Speaker, there is great danger that a mode of reaching the result of a presidential canvass in the way suggested by the bill in

question will take from the incumbent of that office the dignity with which it has hitherto been clothed.

Mr. Hamilton, speaking upon that subject in a number of the Federalist, after commenting upon the mode of election by electors in each State who could not combine to act corruptly as they might if they all assembled at one place, and that the only power given to the House is to select from the candidates voted for by the people the person to fill the executive office in case of a failure to choose by the electoral vote, says:

This process of election affords a moral certainty that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intripus and the little arts of popularity may alone suffice to elevate a man to the first honors in a single State; but it will require other talents and a different kind of merit to establish him in the esteem and confidence of the whole Union or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States.

Whether we are approaching the exalted phase of the question thus mirrored by the pen of Hamilton or its opposite is the problem still to be solved, and the result may force upon the minds of the people that this Republic has realized at last, in the person, character, and mode of selecting a President, that other picture found in the fervent and eccentric language of John Randolph in the discussion of the Missouri question in 1820. He said:

of the Missouri question in 1820. He said:

The President of the United States possesses great powers and highly responsible functions, and should be looked up to with veneration and deference because he is Chief Magistrate of a people, legally appointed by their suffrages. But a President of the United States appointed by the exclusion of the votes of those who are the same flesh and blood as ourselves is no more the Chief Magistrate of this country than that thing, that pageant, which the majorities in the two Houses proposed to set up just twenty years ago—a President made—by law, no, by the form and color of law, against the principles of the Constitution and in violation of the rights of the freemen of this country. Sir, I would not give a button for him. On his personal account and for his personal qualities I might treat him with respect as an individual, but as Chief Magistrate of this country he would be more odious to my judgment than one of the house of Stuart attempting to seat himself on the throne of England in deflance of the laws of succession and of the opinion of the people.

Mr. BLAND. Mr. Speaker, this is the first instance in the history Mr. Bland. Mr. Speaker, this is the first instance in the history of our Government that a dispute as to who is the rightfully-elected President of the United States has arisen. It is true that none dispute the fact that Mr. Tilden received nearly a quarter of a million majority of the popular vote, and if he is not declared the President it will also be the first instance in our history where a candidate who received such a majority of the popular vote was not elected. Those who undertake to explain or apologize for this anomaly pretend that it is owing to some mysterious defect in our constitutional provisions for the election of President; but such is not wholly the case. Why the country should now be in a state of political pertur-

case. Why the country should now be in a state of political perturbation and business paralysis is a question of easy solution. Last June the republican party met in convention at Cincinnati and announced its platform and nominated its candidates for President and Nounced its platform and nominated its candidates for President and Vice-President. A short time thereafter the democratic party met in convention at Saint Louis and announced its platform and nominated its candidates for President and Vice-President. Thus the two political parties went to the country with their respective candidates and declared policy and principles. It was reasonably supposed at that time that the verdict a majority of the people rendered upon the issues presented would be final and respected by all parties as con-

But, Mr. Speaker, when the October elections clearly foreshadowed the victory of the democratic candidates, the question was raised by distinguished republican Senators and politicians as to who should count and how should be counted the electoral vote. Republican orcount and how should be counted the electoral vote. Republican organs throughout the country gave it to be understood that in case the election of Tilden and Hendricks depended upon the electoral votes of South Carolina or Florida, and especially Louisiana, they would never be inaugurated. Just why the vote of these States, or any one of them, should not elect Tilden and Hendricks and yet should elect Hayes and Wheeler, is made clear only when we consider that after the October elections it was pretty certain that if Tilden and Hendricks carried any one of them they would be elected. The republicans had upheld governments in these States so long against the will of the people that they were considered the property of that party. These States had so long dragged at the car of the republican party, riveted there with Federal bayonets, that any attempt to relieve them from their bondage was regarded as treason. It is clear that this controversy was determined upon by republican leaders before the election took place. Whether you call it a conspiracy or what not, all know that this difficulty was foreshadowed by the republican leaders and boldly announced in their leading organs two weeks before the election. They had determined Tilden and Hendricks should not have the electoral votes of any of those States unscrupulous tools of their own for returning boards, and knew

States unscrupulous tools of their own for returning boards, and knew they could be used to count fraudulently—to count majorities into minorities. That they could and would, in plain words, be induced to count the votes of all those States for Hayes and Wheeler, no difference how the people might vote. Knowing these facts, the declaration was made before the election that Tilden and Hendricks should not be inaugurated, if their election depended upon the electoral vote of any of these States. The republican leaders have made good their of any of those States. The republican leaders have made good their threats; hence the fact confronts us that the two if not all three

of those States voted for Tilden and Hendricks, but have been counted for Hayes and Wheeler.

Mr. Speaker, it is not my purpose to enter into a discussion of the powers of this House or of Congress to remedy this outrage. I am ready to co-operate in any lawful way to right this wrong, and believing that the bill proposed by the joint committee is the best that can now be devised, I am disposed to give it my support. This bill, however, is intended for this occasion and is not designed as a permanent statute. It only meets an energency that now exists. however, is intended for this occasion and is not designed as a permanent statute. It only meets an emergency that now exists. No law can be devised that will be so perfect in all its scope and details as to be an absolute check upon rascality like this. We have all the laws upon the subject now that our fathers and fathers' fathers believed necessary. You will amend your Constitution, enact statutes, and adopt rules in vain if this sort of politics is to be tolerated in this Government. So long as a people shall sustain a party that thus defies law and decency, our country is liable at any moment to be plunged in a shoreless sea of civil discord and anarchy. No law can be enacted that dishonest and corrupt officials will not evade and falsify for political ends.

Fraud has clothed in legal forms the result of corrupt returning boards, and thus sent here in the garments of law villainous cheats in shape of electoral votes from Florida and Louisiana to be counted

in shape of electoral votes from Florida and Louisiana to be counted for Hayes and Wheeler. Force stands ready with Federal bayonets declaring that the man thus elected shall be inaugurated.

Mr. Speaker, as a Representative of the people, I am not inclined to accede to anything that in my judgment looks in any other direction than the ultimate triumph of the right. Yet I must admit that there is too much of the appearance of compromising with wrong in this measure not to call attention to the grave dangers in the future. That Tilden and Hendricks were elected fairly, and honestly elected, President and Vice-President of the United States in the late election I cannot believe any intelligent man doubts. Whether they are to I cannot believe any intelligent man doubts. Whether they are to be cheated out of this victory and the people of their choice depends upon the result of this commission. I dislike even to admit that there

be cheated out of this victory and the people of their choice depends upon the result of this commission. I dislike even to admit that there is a possibility of this conspiracy succeeding.

But, sir, there is much here for reflection. The people of this Government are yet to decide at the ballot-box whether a party that has brought so much fraud, corruption, and dishonor upon this country will in the future meet with their favor. If so, I cannot see that there is much hope for our republican institutions. We will soon be upon the level of Mexico, where the boldest political buccaneer by orce and fraud usurps power and oppresses the people till some other freebooters supplants him. Force breeds fraud, and fraud in turn results in force. Louisiana has been governed by force of Federal bayonets. Federal interference installed a bogus government in 1870 and 1872. Again in 1874. The same fraud and force are appealed to in 1877. Shall it succeed? I think not. It is to be hoped that prejudice and passion will die out; that the fearful crisis through which we are now passing will exhibit to the people of this country the terrible dangers that lie in our path as a nation should; we so far depart from the Government and principles of our fathers as to longer tolerate the usurpations of such men as Wells, Anderson, Packard, Kellogg, "et omne genus."

Mr. Speaker, I might compare this Confederacy to the Siamese Twins; each State possessing an independent entity and individuality, all are linked together, and thus constituting the Federal Union, bound together with ligaments of flesh and blood, so that no one of them can possibly suffer without affecting all. If poison be inserted in the veins of one, all become contaminated. Thus we see that the fraud and corruption injected into the body-politic of Louisiana by Federal bayonet States of South Carolina, Florida, and Louisiana, has at last infected the whole body-politic of this Government; and now, from the lakes to the Gulf, and from ocean to ocean, the words "fraud and c

removed from office as governor of Louisiana by General Sheridan, because of his alleged corruption and dishonesty. A republican committee of this House, two years ago, condemned the board for doing the very acts for which it is now upheld. Why is it that the doing the very acts for which it is now upheld. Why is it that the frauds condemned two years ago by a republican committee of this House, by the leading journals and statesmen of both parties, should now be apologized for by members on this floor? If it was dishonest to count out a democratic majority then, it is, if possible, more so now; for the majority is larger now than at that time, and the results of vastly greater moment. Our republican friends could afford to cendemn fraud when it affected only the result in Louisiana, but now that the election of Mr. Hayes depends upon upholding and apologizing for that fraud we find a different stand is taken. When it comes to this, that a political party of the numbers, power, and influence of the republican party is willing not only to accept, but to hazard a civil war to secure the supposed advantages of such frauds, then indeed may we despair of our country's perpetuity.

then indeed may we despair of our country's perpetuity.

As I said before, there is no rule or law, no constitution that can be framed so far-reaching in its provisions as to provide for all the possible tricks of evasion and rascally inventions of corrupt, designing men. If our Republic is to stand, it will be because the people will remorselessly frown down the wrong and determinedly uphold

Let it be known that corruption shall be visited with the the right. scorn and detestation of every honest man, come from what party or source it may. What can be expected of a man or party that secures scorn and detestation of every honest man, come from what party or source it may. What can be expected of a man or party that secures position in this Government by false and frandulent count of ballots? The ballot-box contains the voters' will. Who in all this country, or where on earth except in Louisiana, is to be found the man or set of men whose penetrating minds and disinterested, honest judgment can determine the desire of the voter who casts a ballot better than the voter himself as shown by his ballot?

There is no power on earth and none above itsave One, that deserves the title of "the Searcher of hearts," yet this returning board assumes that divine attribute, and our republican friends swear this board has correctly searched the hearts of over twelve thousand male adult citizens of Louisiana, and have determined from their penetrating, all-powerful examination that this twelve thousand men voted directly opposite to what each of them intended or desired. Mr. Speaker, what

powerful examination that this twelve thousand men voted directly opposite to what each of them intended or desired. Mr. Speaker, what greatness must be in the future for a State that has for its citizens four men who can fathom the hearts and minds of every voter in it and determine to a demonstration just how each voter desires to cast his ballot, and power to count accordingly. Why, sir, there is no use at all for an election there, because these four men know better than the voter how the voter should or would vote or intended to vote. All that is necessary is a census-table to ascertain the approximate number of voters, so that of that number each candidate may have his due proportion. Still I hardly see the necessity for census-tables if their intention is such as to know just how every voter intends to vote, the board ought to know how many voters there are, their names, personal and political predilections. The advantage of having such powerful men consists in the fact that, with their knowledge of the will of the people, they can declare that will at the proper time without the voters of the State taking the time or trouble to go to the polls. Thus each one of them will save to himself his day's work, instead of going to the election, and the State will be saved the costs attending elections. A happy State, Louisiana! O, for a returning board in all the States! Millions can be saved the people by this

happy invention.

But, Mr. Speaker, why the necessity of any forms of election at all in Louisiana or elsewhere? If these great men can so accurately judge the will of the people of Louisiana, why not of the whole nation? Their penetration of hearts cannot be confined to the dangers of that State alone. Being the searcher of all hearts and knowing the will and intent of people in this respect, why not say to these eminent men: Take control of this Government; you know the will of the people so perfectly that you will never make a mistake; you can always govern us according to our will without asking us any can always govern us according to our will without asking us any questions on that subject? May the splinters of this board never grow less, but multiply until it is shivered and splintered from Louisiana to Maine. But we had forgotten Florida. Money and troops seem to have been the means of enlightening the board there. There a Tilden majority was transferred into a Hayes majority. It is true that Governor Stearns said it would require money and troops to accomplish that feat of legerdemain. Chandler was equal to the emergency. So troops were ordered to Florida to see a fair count for Hayes and a fraudulent count for Tilden.

This Louisiana-returning board consisted of two white men and two

This Louisiana-returning board consisted of two white men and two negroes, all republicans, and, what is still worse, all rogues. The law made some pretense of fairness by requiring that both political parties should be represented in the board, but that small piece of justice was denied the democratic party. I stated before that this board had been condemned to infamy in the house of its friends. I shall now quote from the report of the select committee on the condition of the South in their report made to the Forty-third Congress. That Congress we all know was republican. This committee was a republican committee, Mr. Wheeler, late candidate of that party for the high office of Vice-President, being a member of the committee. This committee goes on to say: committee goes on to say:

The law provides that this board shall consist of five persons "from all political parties." It consisted at the opening of their last session of five republicans, upon the resignation of one of whom (General Longstreet) Mr. Arroyo, a conservative, was taken to fill the vacancy. After protesting against the action of the board in secret session he resigned about the conclusion of their labors, and his place was not filled; so that, as your committee think, the law as to the constitution of the board was not complied with.

Remember that the same members of the board acted at the last Remember that the same members of the board acted at the last election, and under this same law alluded to in this report. At the last election the democrats requested that the law be complied with by the appointment of a democrat upon the board. This request was persistently refused. We here have the testimony of a republican committee that the law in 1874 and 1876 was not complied with. This same committee further on uses the following language:

same committee further on uses the following language:

Your committee are therefore constrained to declare that the action of the returning board, in rejecting these returns in the parish of Rapides and giving the seats for that parish to the republican candidates, was arbitrary, unfair, and without warrant of law. If the committee were to go behind the papers before the board and consider the alleged charge of intimidation upon the proofs before the committee, their finding would necessarily be the same. It was asserted in Governor Wells's affidavit that the McEnery officials had usurped the offices of the parish, and thereby intimidated voters. Immediately after the 14th of September, when the Kellogg authorities in New Orleans were put out by the Penn authorities, certain changes took place in some of the parishes. When the news from New Orleans reached these parishes the McEnery officials demanded their places of the Kellogg officials, and they were at once given up. When the Federal Government intervened and unseated the McEnery authorities, the Kellogg officials demanded

and received back their places; but in Rapides some time seems to have elapsed before the Kellogg officials took their places back; indeed, the McEnery register of deeds was still acting as such when your committee were in New Orleans, the Kellogg register never having come to reclaim the place, which is said to be worth nothing.

If the returning board, in the language of this republican committee, acted arbitrarily, unfairly, and without warrant of law in 1874, in counting out members of the Legislature, what could we expect of them when the far greater prize of the Presidency was at stake? The past conduct of this board as here shown was guarantee sufficient to the republican managers here at Washington that Hayes would be counted in provided the troops and money were forthcoming. The troops and money were duly on hand as required. The result was that a clear democratic majority of over 8,000 was transferred into a republican majority of near 4,000, making a difference of 12,000 votes as counted by the returning board and as actually cast at the polls. Hence, Hayes is declared elected and Tilden defeated. Is this arbitrary, unfair, and without warrant of law? All honest men, it seems to me, would think it a little arbitrary, unfair, and without warrant of law. This report is full of sweeping condemnations of this board. I cannot do better than to read a little further from this same book. On page 4 is the following:

On page 4 is the following: The action of the returning board in the parish of Rapides alone changed the political complexion of the lower house, but their action in other parishes was equally objectionable. For instance, in Iberia Parish it was claimed before your committee that the vote of poll No. 1 in that parish had been rejected on account of intimidation, but the papers produced by the clerk of the board showed no such proof whatever. One of the counsel, Mr. Ray, produced some affidavits which he declared had been submitted to the board by another of the counsel, General Campbell. The conservative counsel insisted these papers had never been before the board. Opportunity was given to the republican counsel to show the papers had been submitted; but the testimony offered for that purpose by them so far, however, from establishing that fact, established the reverse.

On page 6, we find the great howl of intimidation disposed of as

Upon the general subject of the state of affairs in the South, and as to whether the alleged wrongs to colored citizeas for political offenses are real or were asserted without due foundation, your committee took such proof as the opportunity offered. Both parties agreed upon four parishes as samples of the condition of affairs in that respect in the State. Of these, owing to the impossibility of procuring witnesses from the locality in time, your committee were obliged to confine their especial examination to two parishes most accessible. As to these parishes they received all the testimony that was offered, and, in addition, they received all the testimony that was offered, and, in addition, they received all the testimony of affairs in other parts of the State.

As a whole, they are constrained to say that the intention charged is not borne out by the facts before us. No go iseral intimidation of republican voters was established; no colored man was produced who had been threatened or assaulted by any conservative because of political opinion, or discharged from employment or refused employment. Of all those who testified to intimidation there was hardly any one who of his own knowledge could specify a reliable instance of such acts, and of the white men who were produced to testify generally on such subjects, very nearly all, if not every single one, was the holder of an office. Throughout the rural districts of the State the number of white republicans are very few; it hardly extends beyond those holding office and those connected with them. No witness, we believe, succeeded in naming, in any parish, five republicans who supported the Kellogg government who were not themselves office-holders or related to office-holders or those having official employment.

It is clearly shown here that there was no intimidation as charged

It is clearly shown here that there was no intimidation as charged in 1874. Yet the democrats carried the State then, carried it without any intimidation. If they could carry the State in 1874 without intimidation, why not in 1876? If the returning board in 1874 falsely charged intimidation for the purpose of counting out a democratic majority, "arbitrarily, unfairly, and without warrant of law," why could they not falsely charge the same reason for an arbitrary, unfair, and illegal count in 1876?

Mr. Speaker, this is too plain for argument, it is too illegal.

Mr. Speaker, this is too plain for argument, it is too villianous to talk about. And yet we are asked to give full faith and credit to this false count. We are told that there is no power to go behind this action. I had always supposed that fraud made null and void everything it entered into.

But, sir, I shall go on with this very interesting report. On page 6 we find the following pertinent statement:

On the other hand, it was in evidence that blacks who sought to act with the conservative party were, on their part, sometimes exposed to enmity and abuse. In the interior one colored man was shot for making a conservative speech, and in New Orleans it appeared from the testimony that colored men who sought to co-operate with the conservatives were subject to so much abuse from the police and otherwise that an association of lawyers volunteered to protect them but without effect.

The radical ox is here gored. It is the republicans who do the work of intimidation, but I suppose the board counted all the intimida-

But, sir, I shall pass on to page 7 of this report, made by a republican committee, of which WILLIAM A. WHEELER was a member, and unanimously adopted:

unanimously adopted:

With this conviction is a general want of confidence in the integrity of the existing State and local officials, a want of confidence equally in their purposes and in their personnel, which is accompanied by the paralyzation of business and destruction of values. The most hopeful witness produced by the Kellogg party, while he declared that business was in a sounder condition than ever before, because there was less credit, has since declared that "there was no prosperity." The securities of the State have fallen in two years from 70 or 80 to 25; of the city of New Orleans, from 80 or 90 to 30 or 40, while the fall in bank shares, railway shares, city and other corporate companies have, in a degree corresponded. Throughout the rural districts of the State the negroes, reared in habits of reliance upon their masters for support, and in a community in which the members are always ready to divide the necessaries of life with each other, not regarding such action as very will, and having immunity from punishment from the nature of the local officials, had come to filehing and stealing fruit, vegetables, and poultry so generally—as

Bishop Wilmarth stated without contradiction from any source—that the raising of these articles had to be entirely abandoned, to the great distress of the white people, while within the parishes, as well as in New Orleans, the taxation had been carried almost literally to the extent of confiscation. In New Orleans the assessors are paid a commission for the amount assessed, and houses and stores are to be had there for the taxes. In Natchitoches, the taxation reached about 8 per cent. of the assessed value on the property. In many parishes all the white republicans and all the office-holders belong to a single family. There are five of the Greens in office in Lincoln; there are seven of the Boults in office in Natchitoches. As the people saw taxation increase and prosperity diminish, as they grew poor while officials grew rich, they became naturally sore. That they love their rulers cannot be pretended.

Here we have it. The reason for democratic majorities in Louisiana is the same as elsewhere, it is because of their miserable governand is the same as elsewhere, it is because of their miserable government under carpet-bag rule. As the people saw taxation increase and prosperity diminish, as they grew poor while officers grew rich, they became naturally sore, yes, they became discontented and tired of such government. There is too much of that government in Louisiana and many other places, where officers grow rich while tax-payers grow poor. The difference is, that elsewhere the tax-payer has his remedy by voting the democratic ticket or some other ticket, and they turn out of place these sleek officers who are growing rich, fattening off the hard earnings of the neonle; but in Louisiana troops tening off the hard earnings of the people; but in Louisiana troops and money attend the count. The ballot avails not as against the and money attend the count. The ballot avails not as against the rich office-holder. The beaks of corrupt official plunderers are plunged deep in the writhing flesh of the people. Troops and money have kept them down. Bayonets have glistened in their teeth as a warning to be quiet while they are being devoured. Great God! And all this in free America.

Mr. Speaker, I will read one of the last paragraphs of this report, for it is significant. It is as follows:

Indeed, in our judgment the substantial citizens of the State will submit to any fair determination of the question of the late elections, or to anything by which they can secure a firm and good government. What they seek is peace and an opportunity for prosperity; to that end they will support any form of government that will afford them just protection in their business and personal relations. In their distress they have got beyond any mere question of political party. They regard themselves as practically without government and without the power to form

Now, sir, here is a solemn admission by a republican committee, of which WILLIAM A. WHEELER was a member, that the people of Louisiwhich WILLIAM A. WHEELER was a member, that the people of Louisiana want peace. They want good government. I have shown from this report that they had not a good government, but, on the contrary, taxes increased while prosperity waned. The people grew poor while officers grew rich. The republican party failed to give them good government. Had they not the right, had they not the duty to perform of voting the ticket of that party they believed would give them good government? Was it not the duty of this returning board to count that ticket or ballot as it was actually cast? But troops and money, fraud and force, stood in the way. Hayes must have Louisiana. He could not be elected without it. This simple fact accounts for many of the supposed mysteries of the late election.

for many of the supposed mysteries of the late election.

Mr. Speaker, no one can now look to the 5th of March next with a vision clear and see who shall be then inaugurated. If Tilden and Hendricks succeed at last, if Tilden then takes the seat to which he

Hendricks succeed at last, if Tilden then takes the seat to which he is in all honesty and justice entitled, it will be such a triumph of right over wrong, of law and order over force and fraud, as will place this Republic on firmer foundations than ever before. As a people, we will enter the paths of political regeneration and business prosperity. On the other hand, if fraud, incased in legal forms and technical terms, thwarts at this time the known will of the people, I believe a sense of justice that always characterizes the American people will set its seal of condemnation upon the party forcing its candidates into office against the known merits of the case.

I shall vote for the bill providing for a mode of counting the electoral vote, because I hope it will secure substantial justice, and because, unless that bill passes there is no possibility of any agreement at all between the House and the Senate. Unless this bill shall settle the dispute the President of the Senate will declare Hayes and Wheeler elected and the House Tilden and Hendricks, thus setting up a dual Presidency and a conflict of authority that will result in all the horrors of civil conflict, the end of which no man can see but, I venture to say would be the downfall of our liberties and the end of the world's hope of constitutional Government resting upon the freeman's will as expressed at the ballot-box.

Mr. SOUTHARD. I do not rise to discuss the provisions of this little the grant and the canada and the c

Mr. SOUTHARD. I do not rise to discuss the provisions of this Mr. SOUTHARD. I do not rise to discuss the provisions of this bill, but simply to suggest the propriety of an amendment. The bill provides for referring to this commission disputed questions in those cases only where there are two sets of returns from a State. Now in one case there is a question as to whether there is a State or not; I refer to Colorado. That question, I think, is one of the highest importance, and it should be appropriately referred to this commission if the bill is to become a law. I therefore suggest as an amendment to section 1 the following: In line 27, after the word "State," insert the words "except as hereinafter provided;" and also to amend section 2 by inserting in line 1, after the word "that," these words:

If there is a question whether or not any State has been duly admitted into the

If there is a question whether or not any State has been duly admitted into the Union and was entitled to vote for presidential electors on the 7th day of November, 1876, or

At a proper time, if I can have an opportunity, I propose to submit these amendments to a vote of the House. Twice, in cases similar to this, has Congress refused to count the electoral votes except hypo-thetically. The one was in 1821, in the case of Missouri; the other thetically.

in 1837, in the case of Michigan. There is a higher question involved in this Colorado case than in determining simply which one of two sets of votes shall be counted in a State admitted to be a State within the Union. And it involves a constitutional question so grave that the House Judiciary Committee is divided in its opinion upon it. Hence the appropriateness of its reference to this commission proposed under this bill.

I yield the remainder of my time to my colleague [Mr. VANCE.] Mr. VANCE, of Ohio. Mr. Speaker, I am opposed to the bill under scussion. No one has been more anxious than I have been to see a discussion. No one has been more anxious than I have been to see a peaceable, fair solution of the presidential question; no one has sought more earnestly for reasons to support the bill. But the examination I have given strengthens my conviction that it should not pass. I do not indorse the argument advanced by many on the other side of this House and in the Senate, that the President of the Senate is the sole judge, and shall open and count the electoral vote. Such an argument is respectable only because it is andacious. I can add nothing to what has been said on this point.

I believe the measure is unconstitutional. The Government of the United States is one of delegated powers merely; whatever power Congress has, it obtains from the Constitution, through which all powers are granted. The two Houses of Congress have no power to legislate away their rights, no power to appoint (partly by chance,

Congress has, it obtains from the Constitution, through which all powers are granted. The two Houses of Congress have no power to legislate away their rights, no power to appoint (partly by chance, perhaps) a tribunal to determine a grave question that they may fear to meet squarely and decide fairly.

This bill provides only a remedy for the present election. I have great confidence in the patriotism and honesty of the Representatives and Senators who have signed the report accompanying the bill. They have devoted much labor and brought the experience of years of public service to bear upon the question in controversy. Yet, notwithstanding all this, the result is a bill providing for this occasion only a sort of temporary affair, a ponton bridge to carry the country over the point of danger, or supposed danger. It leaves the solution of this matter to the future. Believing as I do that the Constitution has given to the House of Representatives and the Senate the power and has made it their duty to count the electoral vote, as well as to decide questions pertaining thereto, any bill that looks toward throwing away this power and avoiding this duty should not pass. It is not in our power to avoid the great responsibilities of the occasion. The difficulties that beset the country, and perhaps threaten its future, should be met promptly, decided fairly, and to such effect as will hereafter render their recurrence impossible. This is no time to temporize; no time to divide the responsibility with a part of another branch of the Government. The Senate and House should determine this question in joint convention, as provided by the Constitution, under the facts and the law, in the light of their oaths, as their consciences honestly dictate, without fear of danger or hope of reward. When this is done, the country will be satisfied; and not until then.

While opposing the bill I have no reflections to make or fears to express regarding the commission proposed by it. If law or justice or equity pervails, the result cann

examined the more clearly is this seen.

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I believe, further, that a conspiracy was organized immediately after the election, having for its object the overthrow of the verdict of the people by means of false returns and partisan and pliable returning boards in certain States. I am unwilling to recognize the power of this conspiracy, even as far as to admit that there is a doubt as to the result of the election; and support of this bill does, in my judgment, permit such a doubt to obtain.

I have not the time to speak of these matters as they deserve. Debate is necessarily limited, and I only sought the floor to enter my protest against a measure I believe to be inexpedient and unconstitutional.

protest against a measure I believe to be inexpedient and unconstitutional.

Mr. HARRISON. Mr. Speaker, for several months prior to last November, the minds of the people of this country were wrought up to intensest excitement over the coming presidential election—an excitement, however, almost become normal, from its regular recurrence every four years. For three years the people had been groaning under the effects of the financial panic of 1873. Thousands and hundreds of thousands who had been rich, or thought themselves rich—enjoying all the comforts and luxuries which riches bring—had been reduced to the verge of poverty. Thousands had been reduced from competency to want. All of these looked to the 7th of November as the day when the darkness would be at last dispelled, and the gray dawn of prosperity would begin to climb up from the horizon. Thousands prayed that they might be able to stave off judgment or execution until that day. Thousands prayed that they might keep body and soul together until that day.

Nearly all classes believed that the sun of prosperity which had set on the 18th day of September, 1873, would arise again on the 7th day of November, 1876. Democrats so hoped, because they believed it would be the day when a beginning of the change in the management of national affairs would be made. Republicans so hoped, because they thought it would be the commencement of another four years of power, a term they would in the future wield for good. All shades of people, partisan and non-partisan, thought it would be an auspicious day, because thenceforth for four years we would have a settled

policy, and business men could safely freight their argosies for adventhat the soldier who ruled over this free Republic, would never permit a democratic President to be inaugurated. But their forebodings were regarded more as the creaking of funeral ravens, than the utter-

ances of even sagacious owls.

The people believed that the election would occur on the 7th of November, and they never dreamed that it would not be completed on that day. They knew that the votes would be counted—must be counted. But to them such count was as natural and normal an act

as the coming out of the stars, when the sun drops behind the curtain of the west on a clear and cloudless evening.

The 7th of November passed; the 8th came. A shout went up from nearly five millions of democratic throats that Tilden had been elected. nearly five millions of democratic throats that Tilden had been elected. Conservative republicans breathed freely and a large proportion of them were not displeased at the result. But all at once there appeared in the political arena a new factor in presidential elections. Messages flashed along the wiry net which spreads over this news-loving land, and one word was the burden of every message. A word already known to skilled political manipulators, but to the masses, yet uncoined. Their simple tongues were not yet sufficiently twisted for its proper pronunciation. A word to-day as ominous of horrid fancies, as that of cooling-board on which the ghastly cadaver is laid, ready for the dissecting-knife. Returning board! a board on which ballots are laid, and turned and turned until they take as varied shapes as do bits of colored glass in the barrel of a kaleidoscope. A board at which a J. Madison Wells can sit and conjure up more easily, dead men's souls to cast republican votes, than Hume or any other spiritualist can, on tables in darkened rooms, call up the spirits of dear Lady Marys to indite loving missives to our embassadorial Pierponts. Wells; euphonious name—so rich, so suggestive—from thy fathomless depths, what oceans of water may flow to wash out the name of Tilden from euphonious name—so rich, so suggestive—from thy fathomless depths, what oceans of water may flow to wash out the name of Tilden from 10,000 inky ballots! From thy deep hidden sources, what floods of mineral fluids, from which that great alchemist Zachariah can precipitate republican suffrages! Wells! I have seen thee, Wells! Thou satests here on this floor the other day, arraigned before the bar of the House, and more than two hundred republican eyes looked lovingly upon thy angelic face! What a halo surrounded thy beauteous lineaments in the eyes of thy party admirers! As, in Correggio's wonderful picture, the light falls not upon the virgin's child, but emanates from it, so to thy friends on the other side of this House, thy face beamed with an effulgent light, borrowed from no miserable orb set in the firmament to give light by day, but a holy light from within, joyous—made up of no old-fashioned prismatic rays, but with newer gleams not yet brought out by prism, or analyzed by spectrum; a light beauteous, heavenly, republican!

I watched my friends on the other side, when that incarnation of the Fury 'Hate' sat there, and I wondered and wondered; and I felt that party prejudice was indeed an inseparable element with the right of self-government. It was not born yesterday or the day before. William the Silent, who lifted the bottom of the briny deep, and transformed it into the home of three millions of freemen, was charged by thousands of his countrymen with being the minion of the Kirg of Erape. Olden Barrayaldt's patrictic heart was almost

charged by thousands of his countrymen with being the minion of the King of France. Olden-Barneveldt's patriotic heart was almost broken, because more than half of the free Netherlands believed him broken, because more than half of the free Netherlands believed him in the pay of Philip III. Our own Washington, whom we reverence and can scarcely credit with having been fashioned from common human clay, was charged with being corrupt by many of his contemporaries. We are all governed by prejudice, and he who thinks himself fairest, in fact is the most prejudiced of all. When a gentleman on that side (acknowledged pure and wise) left his seat to take by the hand that man, whom Louisiana corruption had thrown to the surface. I could not help contrasting his act with the proud words of the Douglas, when Marmion offered him his hand:

My castles are my king's alone, From turret to foundation stone; The hand of Douglas is his own, And never shall in friendly grasp, The hand of such as Marmion clasp.

From this side of the House we looked upon that man as the embodiment of all that is corrupt in politics. Had some modern Vulcan struck him on the head, we would scarcely have been surprised if the demon of fraud had sprung from under the hammer's blow, armed cap-a-pie with rottenness and perjury. We almost believed that his stooping form was bent under wagon-loads of perjured affidavits. Who are the prejudiced? They on the other side of the House or we on this? on this ?

on this? But, Mr. Speaker, five millions of American voters would have looked upon J. Madison Wells as we did. Five millions of men, free Americans, believe that that man has defrauded them out of their dearest right, the right of free ballot. These five million men believe that when they were so defrauded, free republican institutions received a staggering blow; and they demanded of the American Congress that it should redress their wrong. They see in it the only protection of the liberty won by our forefathers in an eight years' war with the proudest of earth's nations. They ask us to make the Union, which cost so lately 600,000 human lives and a treasure almost fabulous—to make that Union a blessing and not a curse. They ask if Mason and Dixon's line was blotted out only that fraud might the more easily stalk back and forth over it. Was this the reward of their perils and

all they got for over two thousand millions of debt? Sir, are these the mutterings of heated imaginations, of partisan prejudice? It may be so. But men die from imaginary diseases, and nations sometimes grow insane, and in their insanity they are fearful. All France was insane less than a hundred years ago. Human blood was its aliment and the fumes of blood its sweetest incense.

The people appealed to Congress after the 6th of December last for redress of evils. One-half of the American people so appealed; ay, more than half. They believed they had been defrauded. They asked Congress to see if it were true, and, if true, to correct the evil. But all at once they found the fraud could not be corrected, or they were told that it could not be corrected; they were told to assume a Christian spirit if they have it not, and to be patient, and in four years they could themselves get their rights; that no rights had been lost; at the very worst they were only in abeyance. Nearly five millons of voters have so appealed to us. Five millions of men of convictions, or of deep party prejudices—prejudices as binding upon themselves as the deepest convictions.

On the other hand nearly five millions of men have been taught to believe that by the fair and honest yets of the nearle Mr. Haves was

On the other hand nearly five millions of men have been taught to believe that by the fair and honest vote of the people Mr. Hayes was elected; that the people were intimidated at the polls; and that the returning boards but corrected existing evils. And these five millions of voters are men of convictions, or of party prejudices as binding upon themselves, as the deepest convictions. It would be worse than idle, it would be contemptible folly, for either side to assert that the five millions of men on the other side were but acting a part; that they do not believe what they say.

that they do not believe what they say.

I hold, Mr. Speaker, that the great masses of both parties—the great masses of the democratic party and the great masses of the republican party—honestly believe that their own candidate for the presidency was honestly elected. History is full of such honest difference of opinion. And I know too many men on the other side of this House; men in whose honor I would trust my dearest secrets, my most paramount interest; men who would die for principle's sake; these men are as earnest as I am, and as honest. I am not more certain that yesterday's sun rose, passed across our sky, and set at evening than that Mr. Tilden was honestly and fairly elected. My friends on this side of the House all believe this. Which side shall put itself upon the house-top and thank God for not being as other men are? Which side can claim to be free from party prejudices at this trying time? Which side can claim that its judgment is clearer and less clouded by prejudices than is the judgment of the other side? That side has come to the belief that J. Madison Wells is an honest citizen, a bold but pure patriot, while we over here believe him capable of any political crime. And it is to us, to the members of this House and to the members of the Senate, equally prejudiced as ourselves, divided as we are—to these two Houses two great armies, aggregating nearly ten millions of men—these two great armies of nearly five millions each, appeal to these two Houses for right and justice.

great armies of nearly five millions each, appeal to these two Houses for right and justice.

What is obligatory upon these two Houses? One of the most solemn duties ever falling to the lot of legislators, a duty to do equal rights to all, wrong to none. The duty to set in motion the machinery which shall declare who shall be the constitutional ruler of this land for the next four years. The duty to declare it, and to declare it in such manner that these two great armies aggregating ten millions of men shall be satisfied with the declaration; shall feel satisfied that ours is no experimental government to weather through a four years' voyage, but in danger each recurring four years of ship wreck; satisfied, that they may have an abiding faith that the free Government of their fathers shall be the free Government of their children's children to far distant ages.

of their children's children to far distant ages.

Mr. Speaker, what evidence has been given by the two Houses of Congress during the past two months that these two great armies shall be thus satisfied? None, sir; none. I, for my own part, have all the time felt an abiding faith that men of both Houses would, before it should be too late, rise above party. Sir, a peaceful and satisfactory solution to this question insures to me personally, comfort and competency in my journey down the nether slope of life; any other solution will bring to me and mine sure, absolute ruin. Yet, sir, with this knowledge I have been cheerful through these past two months—cheerful because hopeful. Not so the great mass of the people.

Sir, acts and deeds speak a people's will far more loudly than their words. Watch the path of trade for the past two months, what do you see? Stagnation in every branch. Poverty has become mendicancy. Stalwart muscle meets you on every street and in every city, and stretches out brawny arms asking for alms. A few months since muscle asked for leave to toil, but now it asks for bread for self, bread for wife, and bread for starving little ones. Sir, there are more beggars to be met with in a single day in America than could be met in a hundred days in any European land except Italy; and there it is the craft which begs—lame, halt, blind, decrepit men, women, and children, whose misfortunes are their fortunes, their stock in trade; there the staff of the beggar is his staff of life; able-bodied men rarely are met begging anywhere in the Old World. But here, how different! Sir, a few years ago, an American abroad constantly had cause for self-gratulation, when he compared the mendicancy of older lands with the almost total absence of it in his own favored land. To-day he can do no such thing. Here in Washington one will meet more healthy,

able-bodied men, women, and children asking alms in a single day, than he would meet in Northern Europe in a summer's tour. Mr. Speaker, there are to-day probably from a quarter to half a million of idle men in this land; men, idle not from choice, but because they cannot get work to do.

Sir, my remarks up to this time may seem to have no bearing upon the question before us. But in my opinion they have great bearing. Gnawing bellies do not conduce to cool heads. "Beware of yon lean Cassius" was not Cæsar's idle word. It sprang from his knowledge of human nature. Paris well fed and full of toil—rewarded toil—would never have given Robespierre to the world. Paris drank its fill of blood, because wine and oil were out of the people's reach. Paris had its carnival of horrors because Paris had no bread upon its board. A political crisis such as is now upon the country, would not be half so dangerous to the perpetuity of our institutions, it we were not also struggling under the weight of a financial crisis. Legislators should

A political crisis such as is now upon the country, would not be half so dangerous to the perpetuity of our institutions, if we were not also struggling under the weight of a financial crisis. Legislators should look at the atmosphere of a country when they make laws. On the open plains of my own State a thousand Krupp guis fired, full-charged at once, would cause but a harmless vibration in the clear atmosphere. Yet a pistol-shot might cause a thousand tons to tumble from one of the Jungfrau's glaciers. The traveler among Alpine snows is warned by his skillful guide to step lightly, to speak with bated breath, for a heavy footfall, a quick-spoken word, might cause an avalanche to sweep him and his comrades into hopeless destruction. A can of nitroglycerine lay buried for months in a laborer's back yard, yet a few days since the stroke of a pick upon the frozen ground, caused the concentrated monster to explode, and the owner's body, in tiny quivering bits, no piece weighing over five pounds, was gathered in a hamper-basket.

basket.

The people of this land are deeply moved. The mutterings of human passion are heard deep and hoarse. Let us tread lightly. Let us not go back upon our path of duty, but let us tread the onward path firmly but lightly. A few years ago a shot fired off the harbor of a southern city, set on fire a train which caused more destruction than ever before happened in any four years.

The gentleman from Ohio [Mr. GARFIELD] said lest night that he despised the threat of civil war. That was bold language, and I admire the courage of the speaker. I admired too the pluck of the bull when he confronted with his wrinkled brow the oncoming locomotive; but his ground-up careass was not a noble or cheering picture.

The gentleman from Ohio [Mr. GARFIELD] said lest night that he despised the threat of civil war. That was bold language, and I admire the courage of the speaker. I admired too the pluck of the bull when he confronted with his wrinkled brow the oncoming locomotive; but his ground-up carcass was not a noble or cheering picture. Sir, I am afraid of civil war. It's very name causes me to shudder. It may often times be a necessity, but one from which a free people should ever recoil. No free people ever came out of one without injury. Civil wars in despotisms are often the seeds, the very watering of liberty, but never in free lands. Civil war sent Tarquin to his doom and made Rome free. Civil war sent liberty to its tomb and gave Rome her Cæsar. Civil war broke forever the power of the tyrantin the Escurial and gave to watery Holland a free republic; but civil war gave to France her Napoleon. Civil war gave to America our own grand Republic—let us be on our guard lest civil war may change the name of President into Imperator.

the Escurial and gave to watery Holland a free republic; but civil war gave to France her Napoleon. Civil war gave to America our own grand Republic—let us be on our guard lest civil war may change the name of President into Imperator.

Mr. Speaker, after the meetings of the electors on the 6th of December last, a new and, as far as the masses of our people understood the question, a strange and novel difficulty arose. The people had thought that when the election was over on the night of the 7th of November the thing was finished. They thought that the count of the electoral vote was a simple problem; as simple as the counting by the bank-teller of their daily savings brought to the bank's counter. Who among our forty-five millions of people ever dreamed that a new demon of discord would spring upon the political arena? Not one in a thousand; nay, not one probably in ten thousand.

It is true this question was one of deep interest seventy-seven years

It is true this question was one of deep interest seventy-seven years ago. But it had passed from men's memory. In the year 1800 the Congress of the United States had attempted to solve the problem as to how the electoral votes should be counted. But the people had an idea that the counting of these votes was a simple matter of addition. And when the wires carried from Washington the news that the Senate and House of Representatives were disputing as to the method to be adopted, demands came pouring in upon us from cities and from towns—from hamlets and from farm-houses—demands that we should count the votes in accordance with time-honored custom, that we should count the votes as our fathers had counted them. Wires and mails carried back from Senators and from Members of this House, assurances to cities and to towns—to hamlets and to farm-houses, that we would count the votes as our fathers had counted them, that we would count the votes in accordance with time-honored custom. But how had our fathers counted the votes? What was the time-honored custom? Men of both branches of Congress mounted upon party platforms, and, chameleon-like, they took the color of the planks on which they were standing. Party and party prejudice again became the prominent factors in the solution of the great and absorbing question.

What was the time-honored custom? Men of both branches of Congress mounted upon party platforms, and, chameleon-like, they took the color of the planks on which they were standing. Party and party prejudice again became the prominent factors in the solution of the great and absorbing question.

Sir, I know I am a partisan. But I feel in my innermost heart that party and party prejudice are not clouding my judgment. You, Mr. Speaker, think the same of yourself. The gentlemen on the other side of this floor think the same. Opinion crystallizes itself, as do two metallic substances held in solution by a subtle fluid when the pole of a battery is inserted into it, or when some chemical is dropped in it; one metal goes to one side of the glass and takes its own peculiar shape, its angles are fixed and defined; the other metal recedes to the

opposite side of the glass and assumes its own peculiar forms, with angles fixed and defined. Each crystal is so exact that the practiced eye of the metallurgist, need look but once to know the name and properties of each separated metal.

Party prejudices precipitated the soluble into the insoluble, the undefined into certain and solid. One set of men said the President of the Senate has decided this question regularly since 1787; and it was believed such solution would insure the election of Governor Hayes. Sir, was the result wished, the cause of the solution adopted? It is not for me to decide. What right have I to dive into men's consciences and to assert that they are not as honest as I? Honi soit qui mal y pense!

Among those who so hold, some said the President of the Senate could only count the votes ministerially; others said he had the right to weigh, to scrutinize, to decide which certificates should be received, which refused; another set of men said Congress had the sole right, and it was its sole duty to count the votes, and that Congress had reg-

And these men again differed among themselves: one set said the act of counting was an affirmative act of both Houses acting as one body; another that it was an affirmative act of the two Houses actbody; another that it was an affirmative act of the two Houses acting as separate bodies; that it required the acquiescence of each House before a vote could be counted. Another that, acting as separate bodies, it required the joint act of the two bodies to reject a vote. One set said that the two Houses, whether acting as one body or as separate bodies, had no right to go behind the certificates coming from free and sovereign States. Another set said that the two Houses, either acting as one body or acting as separate bodies, had the right, and it was their duty, to go behind the certificates and examine and determine aliunde if the votes contained in the certificates were the true votes of the people of sovereign free States.

true votes of the people of sovereign free States.

One set held firmly that the whole decision of the vote as to the President belonged to the House of Representatives; and the whole decision as to the vote for Vice-President belonged to the Senate. This last position would insure the election of Governor Tilden, either by the electoral vote or would send it to the House, when he would certainly be elected. Was the result wished for, the reason of the assumption? Who on the other side of this House shall say such was the fact? What right have they to dive into other men's consciences and to assert that gentlemen on this side of the House are not as honger than the state of the House are not as honger th est as they? Honi soit qui mal y pense. The country at last found that men's opinions were thus divided and the people became fearfully alarmed. "What," they asked, "will be the result? Are we to have fraud count in a President; shall fraud prevent the counting in a President? If so, free government, the very foundation of which is a free ballot, will be lost. Even if no immediate evil result from the thing, the worm will have entered the root of the great tree, and rottenness and death will surely ensue."

"But worse than that the composition of the two Houses of Congres "But worse than that the composition of the two Houses of Congress is such that one House will adopt one view, the other House the other view of the question. The Senate through its President will declare Mr. Hayes President, and the present incumbent of the presidential chair will recognize the Senate's choice and will hand over to him the paraphernalia, all the insignia of office. The great heads of the Executive Departments of the Government will recognize him as the President. The Army through its generals will recognize him as the President. He will be thus a de facto President, and recognized by the Senate and by the republican party as the de jure President. The House of Representatives performing its sworn duty, its solemn sworn duty, will proceed to elect and declare Mr. Tilden the President of the United States. He will be by them and by the democratic party recognized as the de jure President, and then what?"

President of the United States. He will be by them and by the democratic party recognized as the de jure President, and then what?"

Mr. Speaker, I, too, ask, "then what?" Nor I, nor you can answer that question. No man lives who can answer that question. No man is so gifted with prescience or so cursed by foresight as to be able to answer that question. To be able to look into the abysm of woe which might be the result of this state of affairs would indeed be a curse. So long as the thing should remain uncertain there would be hope; but could the patriot see clearly the result, hope might depart forever.

forever.

This brings me to that stage of my remarks when it may be proper for me to say something of the legal aspects of the case as they present themselves to my mind. The Constitution says:

The President of the Senate shall, in the presence of the Senate and House of epresentatives, open all the certificates and the votes shall then be counted.

Mark the words—"all the certificates." This very language shows the framers of the Constitution did not intend that the President of the Senate should decide which were the true certificates; but he shall open them all, spurious as well as true. For otherwise they would have said open the certificates, using the definite article, making him the judge as to which were the certificates and which were not the certificates; or they would have said open the true certificates, or the proper certificates, or the certified certificates. But it says no such thing, but open all the certificates. He has received various papers purporting to be certificates. They have been in his hands for safe-keeping, he being an officer in continuous existence. He must keep them under seal until he finds himself in the presence of the two Houses, for the Constitution says he shall then open them, which means he shall not open them until in such presence. He therefore cannot know until he does so open them which are the true and

which are false certificates. He has received papers sealed up as ordered by the Constitution. He knows nothing of what those seals cover except that they were given him by men representing them-selves as messengers from electors of States, or that they were sent him by certain officers of the States, as the case may be. His duty is to open them. Of that there is no doubt. That he should open every sealed package purporting to be certificates there can, I think, be no doubt. Then what?

doubt. Then what?

The vote shall be counted—by whom? By the President of the Senate? Surely not. It is hard for me to believe that any one not carried away by partisanship should claim that he should count. I say it is hard to believe this, yet what right have I to dive into men's consciences? But let us examine the structure of the sentence, examine it as Saxon English—as plain English.

There is a general acknowledgment, Mr. Speaker, that the framers of the American Constitution wrote not only good English but exceedingly terse English. They discarded verbiage. They said as much as possible in the fewest words. Now, had they intended the President of the Senate should count the votes would they not have said so? See how simple the change in the construction of the sentence would be to devolve this high duty upon this officer: "shall, in tence would be to devolve this high duty upon this officer: "shall, in the presence of the Senate and House of Representatives open all the certificates and then count the votes." Four words would have made the thing certain, but they used six words—"the votes shall then be counted;" or they might have used the same phraseology and by adding two words would have made the thing certain—"the votes shall then be counted by him." But they did not so write. They changed the whole structure in the two members of the sentence. They command actively that he shall "open," and then say passively the votes shall be counted. The known rule of construction is expressio unius, exclusio alterius. The expression of one duty is the exclusion of any other duty. He shall open means he shall not count.

The learned gentleman from Massachusetts [Mr. Seelye] says it is monstrous to suppose that the framers of the Constitution should have placed this dangerous power to count the votes in the hands of a partisan House, instead of in the hands of one responsible man, the President of the Senate; that it is always safer to lodge such

a partisan House, instead of in the hands of one responsible man, the President of the Senate; that it is always safer to lodge such power in one man's hands than in the hands of many. Every now and then, some politician, in the course of our history, has declared some power of the Constitution monstrous, and yet time and the people have made pure and refined the frightful monstrosity.

Montesquieu says the absolute government of one good man is far more beneficient than the government of many. But when that absolute ruler happens to be not good, then the one man is a tyrant. All along the page of history is found the rain caused by the rule of one man, and that man, too, a responsible man; for it is upon that word the learned professor dwells. Cromwell was responsible; Napoleon I and Napoleon III were both responsible to the people. No, sir, safety lies ever among the multitude; wisdom not always. Wisdom may lie often with one, but when that one happens to be bad, all is lost. Wells was master of the returning board in Louisiana. He was responsible to his State. Were his acts pure?

But, Mr. Speaker, where does the power lie? My own belief is that the framers of the Constitution left the manner of counting to the law-making power. They wisely left it with it. In the shifting changes of events, a constitution without any elasticity would be an utter obstruction. One manner of counting may be wise at one time, at another ruinous. It was the duty of the law-makers of the land to enact a law to carry into operation that member of this sentence which is the great hone of countention. "The notes shall then he which is the great hone of countention." The notes shall then he

enact a law to carry into operation that member of this sentence which is the great bone of contention, "The votes shall then be counted." How? Why, as the Congress of the United States shall determine by law. Up till now Congress has made such law by joint resolution; resolution for the time being having the force of law. Up till now, the thing has worked so smoothly, that Congress has contented itself with temporary plans. Article 1, section 8, says Congress shall have power-

To make all laws which shall be necessary and proper for carrying into execution powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

Now, sir, all through the Constitution are powers and mandates, which do not, cannot in themselves, be put into execution, but which laws do put into execution.
Article 1, section 11, says:

The House of Representatives shall be composed of members chosen every second year by the people of the States.

And section 4 say:

The time, places and manner of holding elections for Senators and Representa-tives, shall be proscribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, &c.

Now, suppose the Legislatures of States fail to make such prescription and Congress fells to make any law on the subject, what will be the result? Does any one, will any one, claim that the people of a dis-trict shall meet and choose their Representatives without such law? Surely not; and yet Government cannot be run without the House of Representatives.

Article 1, section 3, says:

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, &c.

Suppose the Legislatures do not choose such Senators. Can they be chosen by the people of the States even if they should meet en masse on some grand plain? Surely not; and yet the States would be defrauded of their rights if they have not Senators. But gentle-

men tell us that the people must have not Senators. But gentlemen tell us that the people must have the President of their choice or they will be defrauded. True. But then the people should see that they do through their representatives make the needful laws.

The Constitution says "the electors shall meet in their respective States and vote by ballot," &c., for a President. But suppose the electors fail to meet in their respective States and vote, &c. 1 Does any one claim or can any one claim that the voice of the needle can be electors fail to meet in their respective States and vote, &c.? Does any one claim or can any one claim that the voice of the people can be heard or heeded except through their electors? Surely not; and yet if their electors fail so to meet and vote the people would be defrauded. Again, suppose the people of a State vote for certain electors with the expectation that such electors will vote for a certain man for President, and instead of voting for that man the electors should vote for some other man. Would not the people be defrauded? And yet the electors surely have the constitutional right to vote for whom they please, provided the man so voted for be not one of the prohibited persons. And if a majority of all the electors should conspire and vote for another than the one the people had in their minds when vote for another than the one the people had in their minds when they choose such electors, would not the man so elected be constitutionally elected? Yet the people would be defrauded.

But we are told that the Constitution is not an unmeaning instru-

ment, and when it said the votes shall be counted it carried within itself the means for such count; and, as the two Houses may fail to agree, therefore, some hold, that the President of the Senate must do the counting; otherwise the whole mandate falls to the ground. And others say the two Houses may not agree, and therefore one House must have within itself the power to put the Constitution into effect, otherwise the mandate "the votes shall be counted" falls to the

otherwise the mandate "the votes shall be counted" falls to the ground, and that could not be.

Now I do not assert positively, Mr. Speaker, but with the lights now before me I hold that the Constitution requires a law to put this clause into effect. And such law this bill is. If the whole thing rests with the two Houses without any law defining the mode, then I would rather conclude that the two Houses meet and vote per capita, and by analogy their vote should then be recorded as States, so as to carry out the idea of State autonomy. If there be no election for want of a majority of all the delegates appointed, then this House elects, voting by States. The electors are as many as the members of the two Houses, and if there be no law to fix the mode of counting, then the joint convention would carry out the spirit of the twelfth amendment by examining into the votes as a joint convention, and giving their votes as States. This I merely throw out. It has no bearing upon

the question.

Let us look a little further into the Constitution and see whether my theory be not true, that the framers of the Constitution intended that a law should be made to enable the electoral vote to be counted.

Of course, I reason by analogy. Article I, section 7, says "all bills for raising revenue shall originate in the House of Representatives." Now, suppose the House fail so to originate bills? Is not this an obligatory mandate. Yet if it be not done the wheels of Government would be stopped. The bill could not originate itself, any more than the vote could count itself, and the executive department could not collect revenue without such bills.

Article 3, section 1, says:

The judicial power of the United States shall be vested in one Supreme Court, and a such inferior courts as the Congress may from time to time ordain and establish. Now, if Congress fail to establish inferior courts, the people would be without justice. Yet the Supreme Court could not establish inferior courts of its own motion.

rior courts of its own motion.

Mr. Speaker, I think I have shown by analogy that the intention of the Constitution is that Congress shall determine by law how the electoral vote shall be counted. The bill now under consideration is such a law. It is not precisely the bill I would have framed or would approve if it were in my power to make and pass any other bill of a like nature. But the bill is before us. It is fair to all. It does not in itself do wrong to any. What may be the result of its working upon the aspirations of the two distinguished candidates for the Presidency I cannot tell. And that is, to my mind, its very best feature. It is in the interest of neither party. It constitutes a tribunal to weigh all the knotty questions surrounding and involved in bunal to weigh all the knotty questions surrounding and involved in the counting of the electoral votes.

The tribunal will be fair and honest. If I should think otherwise

I should say republicanism was a failure. If we cannot trust the five great jurists who will sit with the five members from this House and the five members from the Senate—men who will have the eyes of their fellow-citizens upon them, forty-five millions in number; men who will have the eyes of all the civilized world upon them; men who will have the eyes of untold millions yet unborn upon them; men whose acts will be weighed in historic scales, whose actions will go into the crucible of fiercest criticism-if we cannot trust these men, then let us be men ourselves, and let us, as men, bold and honest, declare that free republican government is an illusion, a snare, and a cheat. If we cannot trust these men so situated, acting under a solemn duty and under a sacred oath, let us say to America, "Wrap the drapery of thy mantle around thee and die as one who has had a glorious day, but whose day has come to an end."

Mr. FOSTER. Mr. Speaker, my purpose in addressing the House for the few moments alloted me is to state the influences controlling my vote on the measures now before us.

I shall not undertake an elaborate argument of any of the intricate propositions involved in this controversy.

We find ourselves for the first time in the history of the country in

that position in relation to the election of a President where the counting or not counting of a single vote determines the controversy one way or the other. Grave differences have arisen in the minds of our ablest statesmen, both in and out of Congress, as to what are the true votes of certain States. I am reminded by my party associates

that this bill is a "surrender of Governor Hayes's case."

What do we surrender ! Let us see. We claim that Governor Hayes is entitled to 185 of the electoral votes. We make this claim honestly. Our opponents dispute it. There are in the custody of the President of the Senate duplicate returns from persons claiming to be electors in four States, namely: South Carolina, Florida, Louisiana, and Oregon. I assume that there is now no dispute as to Governor Hayes's title to the vote of South Carolina, and that all parties will agree to the count of the vote of this State for Hayes. Florida presents a different case. We claim it for Hayes, first, because the returning board of the State gave it to him, secondly, because the basis accepted by the court as the true returns which gave the State to Mr. Drew, the democratic candidate for governor, also gives a majority of the votes of that State to Hayes.

Our opponents claim the vote of Florida for Tilden on the assump-

tion that a certain return from Baker County, in that State, is the true return, and if the order of the court had been fully obeyed this al-leged true return would have been counted, which, if counted, would have increased Drew's majority and given a majority for the Tilden electors. Both parties make charges and counter-charges of fraud. From all the evidence before me I believe the vote of the State of

Florida fairly belongs to Hayes.

We next come to Louisiana. We find here that on the face of the returns the Tilden electors have a majority of something over 7,000

The law of the State created a returning board possessed of judicial as well as ministerial powers. To this board the returns of the election are sent from all the polling-places in the State. This board tion are sent from all the polling-places in the State. This board is charged with the important duty of trying and determining the question of fraud, intimidation of voters, violence, &c., at any of the polling-places; and if they find such to have existed from a certain specified date up to the day of election, their duty under the law is to throw out and not count such poll. In the discharge of their duty this returning board threw out and did not count the votes returned to them in certain polling-places in a number of the parishes of the State. By this action the majority of more than 7,000 votes, as shown for the Tilden electors on the face of the returns, was wiped out, and a majority of more than 3,000 votes was returned as the true vote of the State. the State.

Our opponents allege that this latter result could only have been obtained by the fraudulent action of the board, and but for this fraud

the Tilden electors would have been found to be elected.

I have read with some care the testimony thus far taken and, while I do not believe the findings of the board are entitled to as much weight as a decision of the Supreme Court, as alleged by a committee of my party friends, I cannot escape the conclusion that intimidation of the most cruel and heartless character did exist at and prior to election day in November last, in at least six of the parishes. While I expect to find that in some cases outside of the six parishes polls were thrown out and not counted, on insufficient evidence, yet upon the whole I am prepared to believe that a fair adjudication of the returns justified the finding of the board. Our opponents honestly believe otherwise.

Then, lastly, we have the Oregon case. This State gave the Hayes electors a large majority. One of these electors, a Mr. Watts, being a postmaster, was ineligible under the Constitution to hold the office of elector. The governor of the State did what I believe he had no right to do when he declared that all the votes cast for Watts, the ineligible elector, were null and void, and by this mode of reasoning reached the conclusion that Cronin, the democratic elector who had the most votes, was elected. That fraud and corruption reaching up close to Mr. Tilden in connection with this Oregon swindle are clearly proven can hardly be disputed by any one who has taken the trouble to examine the testimony.

The governor issued his certificates of election to two republicans and to Cronin, the democrat, but took care to place all the certificates in the procession of Cronin.

in the possession of Cronin.

The law of Oregon, as well as most of the States, provides that, on the meeting of the electors, if it is found from any cause a vacancy or vacancies exist, the remaining electors fill such vacancy, and then proceed to cast their ballots for President and Vice-President. dent. The two republican electors met at the place by law designated, Mr. Cronin in the same room and having in his possession the two certificates of the republican electors and his own. He refused two certificates of the republican electors and his own. He refused to deliver up the certificates to the republicans. The two republicans then organized, filled the vacancy, and cast their vote for Hayes This vote was made out in triplicate and sent to their respective proper custodians, together with such evidence as they could command, establishing their right to cast the vote of the State of Oregon. Cronin at the same time, in the same room, organized himself into an electoral college, fills two vacancies, he and they together cast two votes for Hayes and one for Tilden. This vote was also made

out in triplicate and sent to their respective custodians, accompanied with the certificate of the governor, as required by law. On the face of the returns, without knowledge of the fraud here practiced, the Cronin vote (two for Hayes and one for Tilden) would have to be

Hayes is entitled to the three Oregon votes. We insist that the action of the governor was a fraud and tainted with corruption.

The governor and his friends claim that he acted in strict accord-

ance with the law and his act in certifying to Cronin's election is in exact accord with the decisions of the supreme court of the State.

I have briefly stated the ground of difference between the contending forces here in regard to the electoral count in the four disputed

I believe that Hayes has received 185 electoral votes and is elected. Gentlemen on the other side honestly believe that Hayes is not entitled to the votes of Florida and Louisiana. Their belief, I concede,

How is this difference of opinion to be determined? The mass of republicans take the ground that the President of the Senate has the right under the Constitution to count the votes, meaning by this that he, and he alone, shall determine which is the true vote in each of the contested States. The democrats and many republicans deny that this power resides in the President of the Senate. They claim that the Houses must decide what are the true votes of the contested

In examining the question I find it has never been held that the President of the Senate under any and all circumstances can alone President of the Senate under any and all circumstances can alone execute the Constitution in respect of counting the electoral vote. It has always heretofore been held that the Houses by concurrent order had the right to determine how the vote should be counted. I apprehend that even now no one will question the right of the Houses to agree as to the mode and manner of counting. I am reminded that the President of the Senate for the first fifty years did count the vote. I think this will be found to be a mistake. The first count is generally regarded as a precedent in favor of the right of the President of the Senate to count. Yet it will be found that the Senate elected of the Senate to count. Yet it will be found that the Senate elected Mr. Langdon President of the Senate to count the electoral vote. If the Senate at the time believed the power to count resided in the President of the Senate why was he not elected President of the Senate simply? Why add the words to count the vote?

From this first count on down to the adoption of the twenty-second joint rule the two Houses agreed upon the mode and manner of

joint rule the two Houses agreed upon the mode and manner of counting.

I do not propose to discuss this question any further than to say that to my mind the fact is established that no count has ever been made without the intervention and direction of one or both Houses. The President of the Senate has never even attempted to decide a contested question relating to the count. So far as the republican party is concerned, be its past action it is committed to the doctrine that the count can only be made by the Houses acting affirmatively on all questions of doubt. We passed the twenty-second joint rule; we have three times counted under its provisions. We have thrown out and refused to count the vote of States. Only a year ago a republican Senate passed a bill regulating the count and affirming the right of the Houses to count. the Houses to count.

Can we now as republicans ignore our past history, reverse all the precedents we have made, and claim the right of the President of the Senate to determine any and all questions relating to the validity of the votes placed in his custody and to determine and declare the re-

For myself, I confess to some doubt as to the real intent and mean opinion that the framers of the Constitution were adepts in the use of the English language, who gave to each clause of the Constitution words so clear as to leave no doubt as to its true meaning. Yet I may be pardoned for saying that in the case of this particular clause there is great obscurity. So much I confess as to excite in my mind grave doubts as to its true meaning. The votes must be counted; when opened, "they shall then be counted."

opened, "they shall then be counted."

I have no hesitation in saying that, in the absence of concurrent action by the Houses or of legislation, I believe the President of the Senate should take the responsibility, count the votes, and declare the result. While I say this, I hold that we are bound by the highest considerations of public policy to make an honest and determined effort to secure some constitutional method of counting that will give to the incoming President that best possible title that it is within our power to give

We have taken an oath to protect and defend the Constitution. We all believe we are not violating this oath, yet a portion of us believe the Constitution gives to the President of the Senate the right to count

Senate to count would be influenced if the Senate should to-day elect a strong democratic partisan in place of President Ferry. I fear my doubt as to the right of this officer to count would be increased, and that I should at once become greatly in favor of standing by the time-honored precedents made by my party. I perhaps would point to the bill passed by the Senate at its last session affirming the right of the Houses to supervise and control the count, for which nearly all my

party friends voted, including President FERRY.

My purpose thus far has been to show that the landmarks on this question are too obscure to furnish a reliable guide to reach any certain conclusion.

tain conclusion.

Men of the highest standing in both parties differ as to the true meaning and intent of the Constitution.

We, as republicans, freely recognizing this fact and thoroughly believing in the justice of our claim to the Presidency, sought for a measure of escape from the embarrassments surrounding the count of the electoral vote.

The first House resolution looking to the adjustment of these embarrassments was offered by a republican. It received the unanimous support of the republicans here. The same is true of the Separa

support of the republicans here. The same is true of the Senate. When the proposition came into the House and Senate proposing the appointment of the joint committee, it received the unanimous support of the republicans in both the House and Senate.

Now this joint committee, appointed by our unanimous assent, has, with one exception, presented unanimously a bill proposing the appointment of a joint commission of the two Houses and the Supreme Court, composed of equal numbers of each, to whom shall be referred all questions of law and of fact that may arise in the count of the electoral vote.

This bill is not such a one as I would suggest. I would much prefer the bill which I had the honor to present to this House, which proposed to submit to the Supreme Court the same questions of law and of fact that are submitted by this bill to the commission therein pro-

In matters of important legislation we never get just what each member believes to be the best proposition. All great measures are the result of the concession of individual views. In this case it is doubtless true that each individual member of the committee would have preferred a somewhat different result.

I accept and shall support the bill because I consider the mode of settling existing complications in relation to the electoral count a fair one. I will not by my voice or vote hesitate to declare my honest belief in the justice of my claim that Governor Hayes has been fairly

I believe it to be our duty to exhaust all fair and peaceful means to determine the questions about which so much honest difference of opinion exists.

opinion exists.

I am not influenced in my support of this measure because of democratic threats of violence. I take no stock in the ravings of my colleague, [Mr. Banning,] or the gentleman from Kentucky, [Mr. WatTerson,] or other gentlemen who have been indulging in war-talk here
and elsewhere. Barking dogs are not apt to fight. I can, however,
see what seems to me will be the result of a failure to determine this
countries. If we action is hed, the President of the Senate will count

see what seems to me will be the result of a failure to determine this question. If no action is had, the President of the Senate will count, as he is in duty bound to do. If he finds (as I think he ought) that Hayes has 185 votes and is elected, then I have no doubt that this House will declare that no person has been elected President and will proceed at once to the election of Mr. Tilden.

Certainly we must admit that such a complication as this is not pleasant to contemplate; nor can any man foresee the consequences. A blow struck, an attempt by force to establish Mr. Tilden's claim to the Presidency, may result in lighting the torch of civil war. A condition of things may result such as no patriot can contemplate without the deepest solicitude. The great business interests of the country are paralyzed. This paralysis is charged to the pending presidence. out the deepest solicitude. The great business interests of the contry are paralyzed. This paralysis is charged to the pending presidential complication. Its settlement is greatly desired by this great interest. For myself, I believe the business people of the country overestimate this as a cause of depression. Yet it must be admitted that it is the cause of more or less of the present stagnation in busi-

I know it is quite fashionable to charge that the business men are always ready to sell their principles for an opportunity to make

Gentlemen ought not to forget that to this great interest we are indebted for the proud position we now occupy as one of the nations of the earth. This interest builds your railroads, digs your canals, moves your mighty commerce, pays your revenues, and furnishes us with support. I repel in their name these insinuations. They will com-pare favorably in all that relates to genuine manhood or exalted pa-triotism with any other class of our fellow-citizens or even with us

the Constitution gives to the President of the Senate the right to count the electoral vote and a larger number deny this right, and strangely, too, we are dividing on the question mainly by party lines, who doubts, Mr. Speaker, that if you occupied President Ferrey's place that the opinion of many gentlemen, who now affirm the right of the President of the Senate to count, would be greatly modified. How many gentlemen now denying this right would change their views and demand that you should count Tilden in.

The President of the Senate holds his place at the pleasure of the Senate. I have sometimes thought I would like to know how my own judgment on this question of the President of the Senate holds his place at the pleasure of the Senate. I have sometimes thought I would like to know how my own judgment on this question of the President of t

One-half of the people of this country believe that Hayes is elected and the other half just as sincerely believe Tilden is elected; by any other method than the one before us, whoever holds the place of President is, in the opinion of one-half of our people, an usurper. I support this measure because I believe it to be the highest duty

I support this measure because I believe it to be the highest duty of this Congress to give to the occupant of the presidential chair the best possible title that we can. This duty rises above all parties.

The highest and the best interests of the people demand that we do give the best possible title we can to the incoming Chief Magistrate.

I regret exceedingly my inability to agree with my colleagues of my party faith on this floor, as well as what now seems to be the expressed feeling of my party friends of my State, and more particularly in the district which I have the honor to represent. Under ordinary circumstances I should district my own indement when it ordinary circumstances I should distrust my own judgment when it stands against such an array of patriotism and intelligence, but in this emergency my notions of duty are so plain, my convictions so decided as to leave me no alternative but to antagonize their wishes. However much I regret it—and I do deeply regret it—I would hate myself if any influence could induce me to cast a vote that my judg-

ment did not approve.

Mr. LANDERS, of Indiana. I do not rise for the purpose of making a speech on this question; but, sir, I have had forwarded to me a series of resolutions passed by democratic senators and representatives of the State of Indiana, and also a series of resolutions adopted by the Board of Trade of the city of Indianapolis. I send these resolutions to the Clerk, to be read, in order that this House may know the partition that the series of the city of Indianapolis. the position that the democracy and the business men of Indiana oc-

cupy on this question.
The Clerk read as follows:

Hon. Franklin Landers,

House of Representatives:

The following resolutions were offered by Hon. A. B. Carlton, and unanimously adopted by a joint convention of the democratic members of the senate and house in joint convention assembled:

"Resolved, That the democratic Representatives in Congress from the State of Indiana are hereby requested to support the bill which passed the Senate of the United States this morning, in relation to counting and determining the votes for President and Vice-President of the United States; and that the secretary of this meeting immediately after the passage of resolution communicate the same by telegraph to Hon. Franklin Landers, to be by him laid before Congress."

CHAS. O. LEHMAN,

Secretary.

Office of the Indianapolis Board of Trade, Indianapolis, January 23, 1877.

At a fully attended meeting of the board of trade held this day the following was presented and adopted:

"Whereas the Board of Trade of Indianapolis, exclusively commercial in its organization, numbering among its members many of our leading citizens and business men, have viewed with solicitude the recent political complications of the country and felt their disastrous effect on her commerce;

"And whereas we rejoice at the result of the deliberations of the joint committee of the Senate and House of Representatives, and believe the plan reported by them to be the best available one for the solution of our presidential complications: Therefore.

Therefore,
"Resolved, That we approve of the provisions of the bill reported to Congress by said joint committee, and urge upon our Senators and Members of the House of Representatives a hearty support of the same."

R. S. FOSTER, President.

R. S. FOSTER, President. W. W. WILSON, Secretary.

W. W. WILSON, Secretary.

Mr. LANDERS, of Indiana. Mr. Speaker, those resolutions express my sentiments on this question, and it is unnecessary for me to say anything further. It is well known that I am in favor of the bill now under consideration. I regret the circumstances which have forced us into the present position, but under these circumstances I shall heartily support the bill and hope to see it passed by a large majority. Mr. TOWNSEND, of New York. Mr. Speaker, on the 7th of November last the people of the United States elected Rutherford B. Hayes President of the United States. I, for one, am not disposed to do any act to put in jeopardy that election. What is the difficulty that has grown up? It is said there is a controversy in South Carolina; but is there a man in the United States who doubts that on the 7th of November there were in that State 30,000 more voters who desired the election of Hayes than there were who desired the election of Tilden? election of Hayes than there were who desired the election of Tilden? There is a difficulty in Florida; but does any man doubt that on the 7th of November there were 4,000 more voters there who desired the election of Hayes than there were who desired the election of Tilden? It is said that there is a difficulty in Louisiana; but on the 7th of November there were 20,000 more voters in the State of Louisiana who desired the election of Hayes than there were who desired the election of Tilden.

These are the three States in regard to which we have heard so much. Now, shall these people be deprived of their rights, shall their undoubted wishes be defeated and disregarded? has been the question not only in this House, but in the States themselves. It was for the purpose of defeating their wishes that the shot-gun organizations did their work. It was for this purpose that the massacre of Hamburgh began upon the 6th or 7th of July last. It is for this purpose that all three of those States have been the scene of murder, of scourgings, of outrage, and of intimidation. Not merely have intimidation and outrage prevailed there, but intimidation has been attempted in this House from the day of its meeting down to the present day. [Laughter.] Sir, gentlemen talk about our being in a position resembling that of the British Parliament; but we have occupied dur-

ing the last month and we now occupy the position of the French National Assembly of 1793. We have had our citizen Marat; and, France, he has gone down and harangued the sections, roused the Jacobins, and then come up to this House to see whether terror did not prevail and whether the Girondist minority dared to talk of right

not prevail and whether the Girondist minority dared to talk of right and duty in the presence of the patroits of our northeastern gallery. Our citizen Marat has threatened this assembly with the overawing power of a hundred thousand unarmed democrats. [Laughter.] What, in Heaven's, name, would be the value of a hundred thousand democrats at the Capitol unless they were armed either with shotguns or with that other democratic weapon that does more hurt to him who holds it than to anybody else? [Laughter.]

There is one point in which our citizen Marat has failed to imitate his French prototype. When he comes here he is comely and gentle as a lamb. The French Marat sat in the National Assembly with a wet towel on his head; and, sir, I have wondered greatly from day to day to see that our distinguished citizen, the editor of a Kentucky Ami du peuple, had failed to equip himself in habiliments belonging properly to the rôle he has been playing. [Laughter.] He roars you to-day "gently as any sucking dove: as 'twere a nightingale." Yet men on this side of the House have not all of them failed to be affected. I heard yesterday, standing here on this floor, upon the

Yet men on this side of the House have not all of them failed to be affected. I heard yesterday, standing here on this floor, upon the very spot I now occupy, a stalwart republican, weighing two hundred and thirty pounds, telling us that there was "great fear." I wish to say to the people of the country through you, sir, that there are a few republicans here on whom this "great fear" has not fallen.

But, sir, the question is not merely with reference to the three States which I have named. Some of our friends suppose that the presidential question is settled when we settle the condition of the vote of Louisiana, of South Carolina, and of Florida. Not a bit of it. This House, of whose acts I am bound to speak with respect, has found another great difficulty. Colorado is not a State. Every democratic press in the Union, including that managed by the gentleman from Kentucky, for weeks declared that Colorado had elected the democratic ticket, and thus secured three votes for the eminent citizen of Gramercy Parke [Laughter.] But by and by it turned out that the vote of Colorado was republican. All at once it was ascertained that Colorado had no vote; that Colorado was not a State, and when the Delegate from the Territory of Colorado retired to his own place at home this House refused to receive the Representative from the State of Colorado, and we have kept him here for two months, like State of Colorado, and we have kept him here for two months, like Mohammed's coffin, suspended between heaven and earth. [Laughter.] And I should like to know from the Judiciary Committee where in Heaven's name he is now. [Great laughter.]

But there is great light shed on this question, and on the high and patriotic motives which actuate the political majority of this House,

patriotic motives which actuate the political majority of this House, from the great luminary of the Pacific coast—from Cronin's nose. [Great laughter.] The "great democratic party," the "great constitutional party," the "great strict-constructionist party," have had Cronin here to enlighten the people, and they found out that this light was fed with oil, not naphtha, but with oil that came from New York, furnished by a young man by the name of Pelton, nephew and private secretary of the eminent citizen in Gramercy Park. [Laugh-

In view of all this must there not be fighting? Is it not time for unarmed democrats to come here. Mark me, I speak of unarmed democrats. We were to have the 100,000 democrats come unarmed. But let confiding republicans take notice that morning, noon, and night the political majority of this House have been trying to drive away the seven hundred troops watching the Government arsenals at Washington. And to what end, Mr. Speaker, to what end? There are Government arms enough here to arm the whole of 100,000 democrats should they come here and be able to carry other arms than such as every truly constitutional democrat always bears about him. [Laughter.] This is the "great terror" which has threatened us, and this is what has "bull-dozed" a large number of members on my side of the House. [Laughter.]

Sir, the gentleman from Kentucky to-day told us that this country had yet to see a peaceful laying down of office by one party and the reception of office by the opposite party. The young gentleman will be older if he lives [laughter] and does not need too many wet towels on his head. I have lived even back to the days of Thomas Jefferson and John Adams, and I saw in 1841 the democratic party of that day, a great many of whom God made, [laughter,] give up their office like good citizens and consent to let the whig party who had been elected

good citizens and consent to let the whig party who had been elected by the people take their places.

I, as a democrat, passed under the yoke, and we did not have any fighting then. In 1844 James K. Polk was elected. The whigs did not threaten to fight. Probably my young friend from Kentucky was but just born then. The democrats yielded gracefully in 1848 and the whigs went again into power. Did anybody hear of any fighting then? No! From 1848 to 1860 the democratic party had an unbroken lease of power, but in 1860 the people of this country said that they wanted a change; and, sir, at the risk of being charged with having said what was unkind, I say here, before the majority of this House, before God, and my country, that the democratic uprising in 1860 was simply because the democratic leaders were likely to lose the offices and the profits of the offices of the country, and for nothing else. for nothing else.

They failed, sir, as I hope every such an unholy uprising may fail. In 1877 we are brought face to face with a similar state of things. The republican party have elected Hayes. The democratic party want the offices. They are hungry. Their followers are hungry. This House, sir—I speak respectfully—was hungry on the 4th day of December, 1875, and they have only grown more and more hungry since. [Lauchter]

since. [Laughter.]
Sir, that is the origin of this great difficulty; that is what lies at the bottom of the great constitutional questions which are represented as formidable. That causes the trouble about who shall count

the votes.

Why, sir, they say: "Mr. Townsend, would you intrust the power of counting the vote of the people to one man?" What does this intrust that power to one man? You have a tribunal of counting the vote of the people to one man?" What does this bill do but intrust that power to one man? You have a tribunal built up of five Senators, five Representatives, of whom five are republicans and five democrats, and two republican judges and two democratic judges, and here is the one man—the Colossus of Rhodes—to span the chasm, to stem the currents of strife. [Laughter.] Mr. Speaker, it is still the one-man power, and that power not exercised by the man to whom the Constitution intrusted it.

Now, sir, the friends of this measure having brought the Supreme Court in here, I shall not hesitate to talk about it. The man fixed

Court in here, I shall not hesitate to talk about it. The man fixed Court in here, I shall not hesitate to talk about it. The man fixed upon, we have been told by our friends and told by our enemies, was Judge Davis, of Illinois. Our democratic friends wanted a fair count. They are the fairest set of men that God ever made or suffered to grow up, if God did not make them. [Laughter.] And they wanted to have not only a fair but an impartial count. But in order that the umpire might be perfectly fair and impartial, in order that every bias should be removed from the mind of the umpire, an order is forwarded from Gramercy Park to the democrats of Illinois that they should elect Judge Davis United States Senator. Not that there is any wrong in it; not the least in the world. It is done simply for the purpose of making Judge Davis unbiased. [Laughter.] And they want simple republicans to throw the power of the country into the hands of this judge that they have taken such pains to render unbiased.

Now, sir, I shall not vote for any such unbiased arrangement. But it turns out, after all, there is nothing in this bill about the question whether Colorado is a State, and I say to my friends on this side of the House through you, Mr. Speaker, that, if in God's providence this board of judges should decide everything that is to be submitted to them by this bill in your favor, the question of Colorado—and her three votes which were cast for Hayes and Wheeler are necessary to their election. their election-still remains undecided, and you have all the terrors of a struggle with our friends of the majority, the same as if this great compromise device had never been adopted. It reminds me of the story of the man who had very troublesome pigs. They were these great compromise device had never been adopted. It reminds me of the story of the man who had very troublesome pigs. They were these very long-nosed fellows which my friends from down South know about, that would root up the third row of potatoes growing on the opposite side of their pasture-fence. [Laughter.] He determined to have a fence built which would keep them safe in his own grounds; so he split rails from a tree so peculiarly crooked that when the pigs had crawled through the crooks of the rails they found themselves right back in the pasture again. [Laughter.] Now, I say to my friends who, in their anxiety to save the country, are ready to put themselves in the hands of their political enemies, that even if it should turn out that the dice was not loaded, that there was not some should turn out that the dice was not loaded, that there was not some-body on the other side that knew precisely what they were doing, you would still be left in the power of this House, that arrogates all

you would still be left in the power of this House, that arrogates all power to itself, just where you started.

Now I want to improve the few minutes that I possess through the kindness of my friend from Rhode Island [Mr. Ballou] to say another thing. The whole power of this Government is being arrogated by this House. I am well enough satisfied with the law and the Constitution as interpreted by Langdon, by Washington, by Jefferson, by Adams, by Madison, and by Mouroe, without a dissent during their day. If any man wants a better Constitution or a better interpretation God speed to him. I am satisfied with the old way and shall tion, God speed to him. I am satisfied with the old way, and shall vote to adhere to the Constitution of our fathers as they understood

vote to adhere to the Constitution of our fathers as they understood it, and as the men who made it understood it, as has just been shown by my friend from New York, [Mr. LAPHAM.]

I will say one word more before closing. Gentlemen are constantly quoting here telegrams from merchants and telegrams from bankers. These men I have the highest respect for. They are a most important portion of our citizens. The great Master of mankind through his long mission never said a word against merchants as such, never said a word against bankers as such; but he found them one day in God's house making merchandise there and changing money for profit; and he "made a scourge of small cords" and scourged them from the temple. That is what the Master did. His disciples might be grieved if they should hear the rebukes which my friend from New York [Mr. Chittenden] and my friend from Massachusetts administered to persons the other day who manifested a spirit here similar to that evinced by the Master two thousand years ago. But notwithstanding that, I shall adhere in that respect, if no other, to the teachings of the great Teacher of mankind. [Applause.]

to the teachings of the great Teacher of mankind. [Applause.]
Mr. LYNCH. Mr. Speaker, I desire to present briefly some of the
reasons why I shall vote in the negative on the pending proposition. It is an unfortunate fact that the Constitution, in many of its most essential provisions, is susceptible of different and conflicting inter-

pretations. This is due, in my judgment, to the fact that the Constitution itself, in many respects, is a compromise upon some of the most vital questions that were before the people when that instrumost vital questions that were before the people when that instrument was framed. It is a compromise between State sovereignty upon the one hand and what may be called federalism on the other. It is a compromise between pro-slavery upon the one hand and antislavery upon the other. Whatever is agreed upon as the result of a compromise it necessarily follows that the language employed is ambiguous and uncertain. The reason for this is plain. Whenever there is a conflict of ideas upon any subject and a compromise is agreed upon as the result of a consultation, the document is usually so worded as to justify both parties in contending that it is susceptible worded as to justify both parties in contending that it is susceptible of a construction that will be in harmony with their views.

I am satisfied that the strongest advocates of the complete sover-

eignty of the several States are, as a rule, just as honest and sincere in their interpretation of the Constitution as the most enthusiastic advocates of what may be called the Hamiltonian school of federalists. It is no doubt true that the ambiguous and uncertain language that is used in the Constitution in describing the powers and duties of the President of the Senate and of the Congress in counting the elect-oral votes was the result of a conflict of ideas with regard to the limitations of power upon the Federal Government and that of the several States. The clause as finally agreed upon was no doubt the result of a consultation which satisfied both parties that the language used could be so construed as to conform to their particular ideas. Under these circumstances, it seems to me that the safest rule of action that we can adopt is to ascertain as far as possible the intention of the framers of the Constitution and govern ourselves accordingly. Upon this point, however, I find that I am compelled to take issue with some gentlemen on this side of the House who have

presented their views with a great deal of force and eloquence.

It is contended by some, for instance, that when the two Houses meet in joint convention that they are there simply as spectators, with no power or authority over the subject, and that the President of the Senate is to open the certificates, count the votes, and declare the result, and that his action is final. To this I certainly cannot give my assent. It seems to me that this would be a centralization give my assent. It seems to me that this would be a centralization and concentration of power in the hands of one man that was never contemplated by the framers of the Constitution. The two Houses do not, in my judgment, meet simply as spectators, but they are there as representatives of the people to see that the will of the people as expressed in the manner prescribed by law is carried out. It is clear to my mind that the framers of the Constitution intended that the Congress should have some supervisory power in counting the electoral votes, and that this power can be exercised whenever the

electoral votes, and that this power can be exercised whenever the opportunity presents itself.

I shall endeavor to give as briefly as possible some of the grounds upon which this opinion is based. The honorable gentleman from Ohio, [Mr. GARFIELD,] in his very able and eloquent speech upon this subject a few days since, stated that there are five expressed or implied limitations upon the power of the States, and that if Congress has any authority whatever to interfere with the action of the States in the appointment of electors, that authority must be found in some one or more of the five limitations. And these limitations in brief are, first, that it must be a State that elects the electors; second, no State can have more electors than the number of Senators ond, no State can have more electors than the number of Senators and Representatives to which it is entitled in Congress; third, no one can be an elector who is ineligible under the Constitution; fourth, Congress can fix the day when the States shall vote for electors; fifth, Congress can fix the day when the electors shall give their votes. My friend from Ohio will pardon me for expressing it as my opinion that this is not a reasonable construction of the Constitution with regard to the limitations of power between the Enderal Covernment and that of the several States upon this subject Federal Government and that of the several States upon this subject. I agree with him that the constitutional power of Congress over this subject is not unlimited, and it may be that the framers of the Constitution intended that the Congress should be confined to the limitations referred to by him whenever the fundamental principles of republican government have not been violated by the action of a State. But to hold that the action of the State is final, subject only to the five limitations or exceptions referred to, would have the effect of depriving the Federal Government of all power to uphold, preserve, and maintain its national existence. The sovereignty of the Federal Union would become practically subordinate to the sovereignty of the several States.

The Constitution of the United States declares that the United States

shall guarantee to every State in this Union a republican form of gov-

ernment, &c.; and, further:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treatics made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

If it is made the duty of the United States to guarantee to every State in this Union a republican form of government, does it not necessarily follow that the United States is to be the judge as to what constitutes a republican form of government? And do not the five limitations of power referred to by the gentleman from Ohio have the effect of depriving the Federal Government of the power to pass upon such a question, even when our national existence as a people is involved? It seems clear to me that this is the logical deduction to be

drawn from the argument.

The fifteenth amendment to the Constitution declares that "the right of citizens of the United States to vote shall not be denied or abridged of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and that "the Congress shall have power to enforce this article by appropriate legislation." Let us sup-pose (and the supposition is by no means an unreasonable one) that a State Legislature, in providing for the appointment of electors, should declare that none but white citizens shall participate in such election. Would this action on the part of the Legislature be in violation of any one of the five conditions or limitations referred to by the gentleman from Ohio? I think not. I take it for granted that there would be no question as to the State being a State in the Federal Union. The number of electors chosen will not be in excess of the number of Senators and Representatives to which the State is entitled in the national congress. There will be no question as to the qualification of the electors. They will have been chosen on the day prescribed by law for that purpose, and they will cast their votes in the manner prescribed by law, and on the day appointed by law for that purpose. Will not the five conditions have been complied with and at the same time the last amendment to the Constitution ignored and completely disregarded?

It may be said that in that event the representation in Congress would be reduced in proportion to the whole number of citizens thus would be reduced in proportion to the whole number of citizens thus disfranchised. True, this may be done at the next succeeding apportionment of Representatives, but not before; for if the Federal Government has no power under the Constitution to enforce the provisions of the fifteenth amendment in the election of presidential electors, then it has no power to enforce the provisions of the fourteenth amendment relative to the reduction of representation in Congress and in the electoral college in consequence of such disfranchisement. It is clear to my mind that, when a State shall have violated the fundamental principles and conditions of republican government in choosing its electors, and the United States Government through its legislative department has ample power to inquire into the validity of such an election, and if necessary set it aside.

Let us now inquire as to the limitations of this power. No one, I presume, will contend that the powers and duties of Congress in this

presume, will contend that the powers and duties of Congress in this presume, will contend that the powers and duties of Congress in this respect are unlimited, for the several States have certain powers conferred upon them by the Constitution which are entirely independent of the General Government or any department thereof. It is claimed by some that the vote of no State can be counted unless both Houses of Congress will agree to the same. This position seems to me to be both unreasonable and unsound. To say that the vote of no State can be counted unless both Houses of Congress will so decide will have the effect of completely destroying the independent functions of the sevcral States. It would be a centralization of power, not in the Federal Government, not in the Congress of the United States, but in either House thereof. It would then be in the power of a party majority in either House of Congress to prevent an election of President by the people. It seems to me that no one who has the slighest conception of the proper constitutional limitations of power between the General Government and the several States can for a moment assert that the Constitution, as ambiguous and uncertain as it is in this respect, is susceptible of such a dangerous construction. Moreover, the rule is susceptible of such a dangerous construction. Moreover, the rule of evidence in that case would be at war with every principle upon that subject that is known to our English and American jurisprudence. For the presumption would be that every State, in casting its electoral votes, will have done so in violation of law. The burden of proof in such a case would rest with the party objected to, and not with the party making the objection. I certainly cannot give my assent to such a proposition.

What then are the rowers and duties that the framers of the

what the party hards to object. Tectatally called give my assent to such a proposition.

What then are the powers and duties that the framers of the Constitution intended to confer upon the Congress in this respect? It is clear to my mind that, when the electoral votes of a State shall have been cast according to the forms of law, they then present a prima facie case. They are presumed to be lawful, and must stand until they are set aside or rejected by competent authority. The certificates having been opened by the President of the Senate, my opinion is that it is competent for any member of either House to enter an objection to the counting of the electoral votes of any State. But, the votes having been cast according to the forms of law, they present a prima facie case, and the burden of proof therefore rests with the objecting party; and unless the objection is sustained by both Houses the votes must be counted. To make my position upon this point clearer I will make this illustration: Should I be permitted to do so, I, as a member of the present Congress, will be certain to enter my solemn protest against counting the electoral votes of the State of Mississippi, because the election was carried by fraud and State of Mississippi, because the election was carried by fraud and violence and therefore the result does not reflect the sentiments of a majority of the voters of that State. But the votes have been cast according to the forms of law, and they are presumed to be correct. Unless, therefore, the objection is sustained by both Houses of Congress, the votes must be counted. But the next and most important question involved is in cases where there are two or more sets of re-

turns from the same State.

It is true that the President of the Senate, in his ministerial capacity as custodian of the returns, has no power to inquire into the legality of the election or the qualification of electors. In fact he

has no power whatever conferred upon him, either in expressed terms or by necessary implication, to pass upon any question affecting the legality of the election or the qualification of electors. Still, it seems to me that some discretion was intended to be conferred upon the to me that some discretion was intended to be conferred upon the-President of the Senate as to what are the returns of a State, subject, of course, to the action of Congress. This interpretation of the Con-stitution with regard to the powers and duties of the President of the Senate is not only reasonable and necessary, but is absolutely essential to prevent inextricable confusion. It is made the duty of the Clerk of the House of Representatives to place upon the rolls of the House the name of every Congressman-elect who presents creden-tials signed by the governor or the person or persons authorized by the laws of the several States to certify to the election of officers. He, like the President of the Senate has no right to inquire into or pass the laws of the several States to certify to the election of officers. He, like the President of the Senate, has no right to inquire into or passupon the legality of the election or the qualification of electors. Hisduties in that respect are simply ministerial. But, when two or more persons present credentials, claiming to be the member-elect from the same district and the credentials signed by different persons, all claiming to be authorized by law to discharge that duty, the Clerk must exercise some discretion as to what names shall go upon the rolls, subject to the action of the House, and his decision stands and is legal and valid until the same shall be reversed by the House.

and valid until the same shall be reversed by the House.

The President of the Senate having presented to the joint convention what he considers to be the returns of the several States, they thus present the prima facie case and must be regarded as the lawful returns until his decision shall be reversed by the concurrent action

of both Houses.

To make my position upon this point clearer, I will suppose that the President of the Senate will, in February next, lay before the joint convention the certificates from the State of Louisiana, signed by John McEnery, claiming to be the governor of that State, as the certificates of that State. This action on his part would give the certificates thus presented the prima facie case and they would stand as the votes of that State unless objection be made thereto and the objection sustained by both Houses of Congress. This is great power, I admit, but it is not plenary; it is subject to revision and reversal. The rights and liberties of the people are, presumptively at least, protected by their immediate representatives.

I shall not enter into a detailed explanation of the pending bill, as

that has already been done by other gentlemen in a very elaborate manner. It is sufficient for me to say that I shall vote in the negative solely upon constitutional grounds. This is to my mind a politi-

manner. It is sufficient for me to say that I shall vote in the negative solely upon constitutional grounds. This is to my mind a political, and not a judicial, question.

Even if it should be conceded that Congress can by legislation confer upon a different tribunal than that prescribed by the Constitution for the settlement of this question the power which is contemplated being conferred upon this proposed tribunal, the composition of the tribunal opens it to serious constitutional objections.

The bill provides that this proposed tribunal shall be composed of a portion of two of the independent departments of the Federal Government. This, I believe, to be in violation of the spirit of the Constitution. The framers of the Constitution were particularly anxious to keep separate and distinct from each other the independent departments of the Federal Government.

I earnestly hope that the highest anticipations of those who advocate this bill may be fully realized and that the country may be saved from the consequences of a disagreement between the two Houses of Congress. It is to be hoped that the decision of this tribunal, if created, will give general satisfaction and that the people of all parties and sections will willingly acquiesce in the decision. I do not oppose the passage of the pending bill from a stand-point of equity. I am, as a republican, perfectly willing that the rights of the candidates of my choice should be submitted to the decision of a fair and impartial tribunal, and I would cheerfully give my vote for this bill if I could be induced to be believe that it is warranted by the Consti impartial tribunal, and I would cheerfully give my vote for this bill if I could be induced to believe that it is warranted by the Constitution. I am apprehensive that the passage of this bill will establish a precedent which will be more dangerous in the future and will be more injurious in its application than the temporary evils which it is

intended to remedy.

Mr. KNOTT. Mr. Speaker, I cannot flatter myself that anything I may say will alter the predetermination of any gentleman in relation to the pending measure, nor do I ask the indulgence of the House at this time with any such hope. I simply desire to state as briefly as I can some of the reasons why I cannot vote for the bill under consideration. I have indulged in no speculation, sir, as to what will be the probable result of the deliberations of the commission proposed to be organized, nor as to ultimate consequences of any action which that tribunal may see proper to take, should it be established. Should the bill pass, I take it for granted that every member of the commission, acting under the solemn sanction of an oath, will declare his mission, acting under the solemn sanction of an oath, will declare his honest judgment upon every question which may be submitted to him as such, according to the dictates of a conscience enlightened as far as possible by a calm and dispassionate examination of the law and the facts which such question may involve. If they should not, the day that dawns upon their organization will be a sad and memorable one in American history, especially to those who to-day give their assent to this measure.

Without anticipating any such questions at this time, however, I am one of those who entertain the opinion that there is nothing involved in the recent election of President and Vice-President which demands or even justifies anything like a compromise, even if this Congress were authorized to make it. The American people, on the 7th of November last, through the quiet and peaceful methods of the Constitution, expressed their choice for those high offices by a majority of over two hundred and sixty thousand, and the electors selected by their untrammeled suffrage met within their respective States on the day prescribed by law and cast their votes, leaving to us, sir, the simple duty of determining and declaring the result under the obligation of the oaths we have taken, regardless of whatever consequences may ensue; and while I have no possible criticism to make upon the conduct of any other gentleman, I repeat what I recently had eccasion to say on this floor, that if I should hesitate to discharge that duty as I have the capacity to understand it, I would regard mythat duty as I have the capacity to understand it, I would regard my-self as a traitor and a coward, deserving the execration, the obloquy, and contempt of the generous and confiding constituency who sent

me here.

But, sir, conceding for the sake of the argument that the exigency demanded a compromise, have we the constitutional authority to make it? That is the great question upon which I have most anxiously desired to be enlightened by the distinguished gentlemen who have so earnestly and eloquently advocated the passage of this bill. Have we the power under the Constitution to create any such tribunal as it contemplates for the purposes proposed? If we have not, there the discussion should end, no matter how fair or how expedient the proposition may apparently be. In questioning that power, sir, in opposition to the learning, the eloquence, and the pathos of distinguished gentlemen who have spoken upon this question here and in the Senate, I cannot appropriately express the diffidence with which I am embarrassed. I recognize their superior intellectual astuteness; I bow in humble deference to their more extended research, and I fully appreciate the insignificance of my own poor powers of reason-I bow in humble deference to their more extended research, and I fully appreciate the insignificance of my own poor powers of reasoning when compared with their profound and splendid abilities. Yet, sir, I cannot forget that while the eagle alone may soar above the clouds and gaze with undazzled vision upon the full-orbed splendor of the meridian sun, even the humble hedge-sparrow is able to appreciate something of its noontide effulgence. I trust, therefore, that, humble as I am it may not be considered pressurements in me to ask

preciate something of its noontide effulgence. I trust, therefore, that, humble as I am, it may not be considered presumptuous in me to ask that this bill may be examined in the broad light of the Constitution.

Now, sir, it will be admitted by every gentleman on this side of the House at least, as was the theory and practice of the republican party until the present exgiency arose, in which they see that power is gone from their grasp unless they shall be able to retain it either by the strong hand of force or through some new and strange method of executive the recent presidential destination that the recent presidential states in the them. cuting the recent presidential election, that the power to decide what are valid and what are invalid as electoral votes for President and Vice-President is vested by the Constitution of the United States in the Senate and House of Representatives. However much dispute or difference of opinion there may be as to the manner in which that power has every be every larger whether concurrently, whether in joint assembly, ference of opinion there may be as to the manner in which that power may be exercised, whether concurrently, whether in joint assembly, or by each House separately, and upon its own conscience enlightened as its own judgment may dictate, there is no controversy among us that the power is vested in the two Houses; and if the power is delegated to the Senate and House of Representatives, it carries with it the correlative duty of exercising it whenever occasion requires, and we cannot neglect or evade the performance of that duty without a violation of our constitutional oaths. If this principle is correct, sir, and I imagine but few will be found with sufficient temerity to question it, permit me to ask the learned constitutional lawyers around me, the latchets of whose shoes even I am unworthy to loose, where they find the authority to delegate that power, or transfer the discharge of that duty to any other tribunal whatever? Not one of them will deny that when a power is delegated to a particular person or body of men it can be delegated by them to no other person on the earth, unless the person to whom it is delegated have express authority to delegate its performance to some one else. No lawyer who thority to delegate its performance to some one else. No lawyer who pretends to the least familiarity with even the horn-books of the profession will question the correctness of this principle, even when applied to the most unimportant transactions between man and man; but, sir, it applies with ten thousand times more force to those great constitutional powers, coupled with the gravest trust that could be committed to a human agency, delegated by the people of a great family of republics to the Senate and House of Representatives in family of republics to the Senate and House of Representatives in the carefully guarded terms of a written Constitution. Where, then, I repeat, sir, is the power to delegate the authority to examine, verify, and pass upon the validity of an electoral vote to any other tribunal whatever expressly (or even impliedly—if such a thing were possible) conferred upon Congress by the Constitution? Sir, this question has not been, and never can be answered, because the authority to delegate their powers has never been conferred upon the Senate and House of Representatives, and could not be without a total subversion and an utter destruction of our system of government. Once concede that they may do so in any given instance, and they may if they choose transfer the whole of their powers to an organization of which the framers of the Constitution or the people never dreamed. never dreamed.

On the other hand, concede for a moment that the sole power of counting the votes, and consequently of determining what votes are to be counted, is vested by the Constitution in the President of the Senate, where has Congress the authority to strip him of that consti-tutional power, to hinder him in its exercise or excuse him from its

performance? Will some of the advocates of this, which is to my mind the most absurd of all hypotheses—and I say it with all possible respect for their intelligence—please answer me that?

It may be answered, sir, as several gentlemen have already asserted, that the authority to create the tribunal contemplated by this bill is found in the eighteenth clause of the eighth section of the first article of the Constitution, which provides that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers"—that is, of laying and collecting taxes, borrowing money, regulating commerce, coining money, &c.—"and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof." What, sir! is it possible that the authority to pass a law which will aid a department or officer of the Government in the execution of a vested power may be so construed as to take away the cution of a vested power may be so construed as to take away the power altogether and transfer it to another? Is that sound constitutional construction? Then Congress, under pretext of aiding the President in carrying into execution his powers as Commander-in-Chief President in carrying into execution his powers as Commander-in-Chief of the Army and Navy, may strip him of that command entirely and transfer it to a joint high commission of fifteen, composed of five members from each House and five "grave and reverend seigniors" from the Supreme Bench. Sir, I would not linger upon this singular assumption, even if I had the time, for I am persuaded that the learned gentlemen who have assumed that position did so inadvertently, or at any rate without properly considering to what remarkable absurdities it would inevitably lead them. But, sir, conceding, for the sake of the argument, that it is competent for the Congress to transfer any of its functions with regard to the electoral vote to another tribunal, and that it may constitutionally create a tribunal for that purpose, let us see whether the bill under consideration is in conformity to the Constitution in other respects. Constitution in other respects.

The second section provides that, if more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, all such returns or papers shall be opened by him in the presence of the Senate and House of Representatives and read by the tellers, and all such returns and papers shall thereupon be submitted to the *judgment* and *decision*, as to which is the true and lawful electoral vote of such State, of a "commission" constituted and lawful electoral vote of such State, of a "commission" constituted as follows: Each House shall by vira voce vote appoint five of its members, who, with five associate justices of the Supreme Court of the United States, to be ascertained as thereinafter provided, shall constitute a "commission" for the decision of all questions upon or in respect of such double returns; and that the members of such commission shall respectively take an oath therein prescribed; that it shall not be in the power of either House to dissolve the same or withdraw any of its members, and that when any question upon which the commission is authorized to act shall arise the same shall which the commission is authorized to act shall arise the same shall be forthwith submitted to the commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and by a majority vote decide whether any and what votes from such State are votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, as shall by the Constitution and now existing law be competent and pertinent in such consideration; while the seventh section provides that the commission shall make its own rules, keep a record of its proceedings, and shall have power to employ such persons as of its proceedings, and shall have power to employ such persons as may be necessary for the transaction of its business and the execution of its powers.

Now, sir, it will be observed that this proposed tribunal is not to be Now, sir, it will be observed that this proposed tribunal is not to be a committee of either House, nor a joint committee of both. It is not the mere organ of either the Senate or the House, nor the joint agent of both, subject to the supervision and withdrawal of either. On the contrary, it is carefully designated throughout the bill as a "commission," and it is expressly provided that when once organized its existence is irrevocable and its functions beyond the control of either House; and, moreover, that whatever its decision may be it cannot be overruled except by the concurrent voice of the two branches of Congress. In a word sir it cannot be decided with any pretext of deceney In a word, sir, it cannot be denied with any pretext of decency gress. In a word, sir, it cannot be defined with any pretext of decency that, so far as the discharge of its functions is concerned, it is a separate, distinct, independent organism, whose determination can only be annulled by a concurrent vote of both Houses of Congress, which, to be effectual, must have the approval of the President of the United States or be carried by a two-thirds majority in each; for, if gentlemen will turn to the third clause of the seventh section of the first article of the Constitution, they will find that—

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Hence if the President should concur in the decision of the comnence it the President should concer in the decision of the commission, it stands forever beyond the control or supervision of any power on earth save a two-thirds majority of each House, however erroneous or arbitrary or unjust such decision may be.

Now, sir, what is this commission, and what are these proposed commissioners to be? Mr. Webster defines the word "commission" as used in this bill to be "a number of persons joined in an office or

trust," and the same distinguished lexicographer defines an office to be "a particular duty, charge, or trust, conferred by public authority, and for a public purpose; an employment undertaken by commission or authority from the government or those who administer it." These definitions, sir, are not only according to the ordinary understanding, but are in strict conformity to judicial decisions, which have fixed the legal signification of those terms, as every intelligent lawyer will bear me out in asserting.

bear me out in asserting.

Again, sir, the same authority, with like conformity to common parlance and legal definition, defines an officer to be "a person commissioned or authorized to perform any public duty." Now, bearing in mind, sir, what I said a few moments ago, that this proposed tribunal is in no sense a committee of either House, nor a joint committee of both, but a distinct organism, with specified powers and duties created by law in which both the legislative and executive departments of the Government must concur, permit me to repeat the inquiry, What is this commission but an office, and what are these commissioners to be but officers? What lawyer with a decent regard for his legal reputation can contend that they are not to be officers, sir, to all intents and purposes? Then, if it be admitted that they are to be officers, which they must be, or the settled meaning of that word must be totally disregarded, let me ask gentlemen to turn to the second clause of the second section of the second article of the Constitution of the United States, and tell me where we get any more authority to appoint these officers than the Queen of England has. That clause provides that— That clause provides that-

The President-

shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appointembassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.

It is proposed to establish this office by law, and I would be glad to be informed where the Senate and House of Representatives get the authority to strip the President of the power of appointment in order that they may fill it themselves.

But this is not all, sir. The second clause of the fourth section of the first article of the Constitution provides that—

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office

Now, sir, in view of this provision, do you not think that this Honse will be somewhat puzzled to find five eligible candidates for this high and responsible office which it is now proposed to create? Let our Committee of Elections be set to work instantly, and if they can find five gentlemen who have not been elected to the seats they occupy on this floor, we may have five candidates for whom we can vote without violating this provision of the Constitution. But, sir, are you not somewhat apprehensive that the gentlemen themselves might have some hesitation about accepting the honor, inasmuch as it would work a forfeiture of their seats as Representatives, if the last sentence in the clause I have just read has any more meaning than a blank piece of paper? Let me repeat it, sir:

And no person holding any office under the United States shall be a member of either House during his continuance in office.

But, Mr. Speaker, there is one other objection to this bill, which, to my mind, is absolutely insuperable, and that is the provision in the first section that-

No electoral vote or votes from any State from which but one return has been made shall be rejected except by the affirmative vote of the two Houses.

In no possible sense can that provision be correct. If an electoral of both Houses combined to reject it even by an affirmitive vote. Such a proceeding would be not only unconstitutional, but absolutely revolutionary. On the contrary, if a thing purporting to be an electoral vote is really from any cause invalid as such, it would be equally subversive of the Constitution to count it, and the enormity of such a proceeding would be immeasurably enhanced if the House should thereby assume to control the conscience of the Senate in respect to thereby assume to control the conscience of the Senate in respect to the exercise of its ultimate power to elect a Vice-President, or the Senate should thus hinder or defeat the House in the exercise of its constitutional right to elect a President, or to judge for itself when

the contingency had arisen for the performance of that duty.

Finally, sir, the great question underlying this whole subject is whether an election of President and Vice-President which has been constitutionally made shall be constitutionally declared and enforced, constitutionally made shall be constitutionally declared and enforced, or whether after the people have peacefully and legally expressed their choice at the polls, the result must after all be left to the arbitrament of a tribunal utterly unknown to the Constitution, and which cannot be called into existence without a plain and palpable violation of many of the essential provisions of that instrument. Fears have been expressed of a dual Presidency and consequent civil war. How that might be I do not pretend to be able to predict, though I have, I confess, no apprehensions of anything of the kind. As for myself, I have taken an oath to support the Constitution of the United States, the very essence of which is that I shall faithfully and fearlessly do my

constitutional duty as I understand it, leaving the result to God and the people. With these views, sir, whatever may be the consequences, I feel impelled to vote against this bill, deeply as I regret being compelled to dissent from the opinions and as difficult as it is for me to resist the pathos of the distinguished gentlemen who support it.

Mr. CARR. Mr. Speaker, the subject presented by this bill for our consideration is fraught with an importance which has never been so vividly realized as now. Heretofore in the political history of our country the results of never leaving a leatings have been so decidedly and

country the results of popular elections have been so decidedly and decisively for one or the other of the opposing candidates, that the power of Congress in canvassing the result has been more a matter of form than a necessity, and being such only, the manner and extent of exercising it has been comparatively of minor importance, and therefore the destablished the results are such as the confidence of th fore the adaptability of the machinery provided by our fathers for this purpose has never been fully tested and its inadequacy discovered. At this time, when the votes of undisputed States leave the opposing candidates for the presidential office so nearly equal and each so close to an election, with a disputed and undisposed of voteyet to be counted sufficient to elect either—under circumstances, where a conflict of State authorities or local claims renders a Federal adjudication of the matter absolutely indispensable, and when that decision shall determine the supremacy, perhaps the future existence, of one of the two great political parties into which the people are divided, we come to examine the constitutional machinery in detail, it is found to be inadequate or imperfectly understood. This is not a new discovery, but one that has long been known. Even as early as 1793, the first year after the adoption of that instrument, it was thought the Constitution provided expressly no mode of examining the votes for President and Vice-President, and to provide for this deficiency the following resolution was adopted by the House:

Resolved. That a committee be appointed, to join such committee as may be appointed by the Senate, to ascertain and report a mode of examining votes for President and Vice-President, and of notifying the persons who shall be elected of their

In which resolution the Senate concurred and the committee was appointed. At each subsequent presidential election the same provision was made. Mr. Barbour at one time gave notice that he would at some future time propose a law providing a permanent mode of discharging this important function; but as at no subsequent period this deficiency assumed vital importance, he never carried his determination into successful action. In the year 1800 a bill was introduced and passed the Senate which aimed at the establishment of

riod this deficiency assumed vital importance, he never carried his determination into successful action. In the year 1800 a bill was introduced and passed the Senate which aimed at the establishment of a mode which should exist as a permanent law, but this effort failed in the House and never became a law. So, while the subject before us to-day is not a new one, and though this is not the first consideration which it has received in the halls of Congress, yet we are now called upon to consider it under new complications, which press upon us an immediate decisive action, which we cannot avoid if we would. Under the wise provision of our system of government, which returns to the people at stated periods all authority and the power to designate by the ballot their public servants and the policy which shall prevail in the administration of their governmental affairs, the people have met at the polls, discharged that highest and most sacred duty, and expressed their determination. But by a system of fraud this determination of the people is covered with clouds of uncertainties, by which it is hoped by the conspirators and feared by the honest masses that the people are to be robbed of their choice of chief executive and the line of policy which shall govern them in the future. They see in this attempt an attack upon the citadel of their liberties, in the success of which will be destroyed the sacredness of the ballot-box—the safety of our free institutions, the stability of our government. They feel, justly feel, that under such increasing schemes of professional tricksters every feature which has rendered this Republic the source of their protection and the object of their pride is rapidly drifting away, and nothing but the integrity of their Representatives or their own strong arms can snatch from the terrible vortex into which it is now plunging that enterprise of self-government begun in the prayers and established in the blood of our fathers. In this extremity they call upon us, and we are required to exercis

electoral vote?

HAS CONGRESS THE POWER ?

The present constitutional provision on this subject was adopted in 1804, and almost continuously since that time there have been

those of our citizens who have maintained the position that Congress did not possess such powers, and among these were some few whose learning, experience, and position entitle their opinions to more than arbitrary confutation. Of such were Randolph of Virginia and Pinckney of South Carolina. In 1821 Mr. Randolph took the ground Pinckney of South Carolina. In 1821 Mr. Randolph took the ground that the States respectively, and not Congress, had the power of determining how the vote should be cast for President and Vice-President; but this view was the result of that gentleman's extreme views upon the then growing doctrine of State rights; and he advanced the proposition as an abstract principle, which as such cannot be denied as correct; but Mr. Randolph never went so far as to say that, in case where there was a conflict of State authority and opposing votes had been returned, Congress had no judicial power to determine for itself the genuine from the false vote. So, when in 1865 Mr. Doolittle in the Senate took the ground that Congress had no power to reject the vote of certain States, it would not be a legitimate conclusion from his argument to say that he denied the right of Congress to determine between conflicting votes from the same State. Mr. Pincksion from his argument to say that he denied the right of Congress to determine between conflicting votes from the same State. Mr. Pinckney at no time expressed himself as denying the right of Congress to adjudicate between two apparent claims, and he simply avoided this question by asserting that such an emergency would never arise. His views were that Congress should have as little power as possible in determining the result of a presidential election; but it can nowhere be found where he or any other State-rights man has ever expressly denied Congress the power and right of so conducting the canvass of electoral votes as to give the true force and effect to the will of the people of each State as expressed at the ballot-box.

While the many debates and votes recorded of Congress have dis-

While the many debates and votes recorded of Congress have disclosed the names of but very few fathers who have questioned the exclosed the names of but very few fathers who have questioned the extent of the power of Congress over this subject, the names of those who have at all times maintained the right of Congress to exercise a supervisory power over the electoral vote are many and distinguished. Among them stand conspicuously Jefferson, Barbour, Macon, Clay, Archer of Maryland, Livermore, Webster, Grundy, Wright, Bigler, Trumbull, Washburn, Douglas, Cass, Crittenden, Lincoln, Edmunds, Sherman, B. F. Butler, Hoar, Morrox, and others.

Mr. Jefferson is not reported in the annals of Congress as having expressed himself upon this subject, but all his private correspondence plainly indicate that he so construed the Constitution as to give Congress this power; and in 1805, as President of the Senate, in counting

gress this power; and in 1805, as President of the Senate, in counting the vote, he said:

You will now proceed, gentlemen, to count the votes as the Constitution and ws direct.

Mr. Barbour, in 1821, plainly declared Congress to have the power of counting or rejecting the electoral vote of States, by reporting, as chairman of a joint committee, the following resolutions:

Resolved, That the two Houses shall meet in the House, at twelve m., on Wednesday next, and the President of the Senate shall preside; that one person shall be appointed teller on the part of the Senate to make a list of the votes; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote.

Resolved, If any objection be made to the vote of Missouri, and the counting or not counting of which shall not change the result of the election, in that case it shall be reported by the President of the Senate as follows: "If the vote of Missouri be counted the result would be, for A B — votes; if not counted, for A B — votes; but in either case A B is elected."

Mr. Macon recognized this right of Congress by accepting the position of teller to count the electoral vote on two different occasions, the last one being in the year 1817, when he not only acted as such but also reported the joint rule giving the power to Congress; and this, too, when Congress assumed the right of objecting to the counting of the State of Indiana.

Mr. Clay took part in the deliberations of Congress in disposing of the vote of Missouri in 1821, thereby recognizing this power to reside in that body; while in 1837 he was a member of the committee on the part of the Senate to report "a mode of examining the votes for President and Vice-President" and "to inquire into the expediency of ascertaining whether any votes were given at the recent election contrary to the prohibitions contained in the second section of the second article of the Constitution, and if any such votes were given, what article of the Constitution, and if any such votes were given, what ought to be done with them;" and which committee exercised the right to make such inquiry, and reported back to Congress that "this provision of the Constitution, it is believed, excludes and disqualifies deputy postmasters from the appointment of electors, and the disqualifications relates back to the time of the appointment, and that a resignation of the office of deputy postmaster after his appointment as such elector would not entitle him to vote as elector under the Constitution." Constitution."

In 1820, Mr. Clay said:

The Constitution required of the two Houses to assemble and perform the highest duty that could devolve on a public body: to ascertain who had been elected by the people to administer their national concerns. In case of votes coming forward which could not be counted the Constitution was silent, but fortunately the end in that case carried with it the means. The two Houses were called in to enmerate the votes for President and Vice-President. Of course they were called on to decide what are votes.

Mr. Archer, of Maryland, in 1821, said:

I am not a little surprised at the ground taken by some gentlemen, that the House of Representatives had no power to pass judgment on the returns. I am now and always have been of the same opinion, that, wherever was lodged a power to receive a power, there also was the power to pass a judgment on the validity of the returns.

In 1821, Mr. Livermore, of New Hampshire, objected to counting the vote of Missouri, on the ground that it was not a State of the Union; by which it is evident he held that power to be vested in

Daniel Webster, who justly earned and deserved the title of "the constitutional expounder," was a member of the joint committee to report a mode of counting the electoral vote in 1829, and the joint rule contained this significant expression:

If it shall appear that a choice has been made agreeably to the Constitution of the United States.

Mr. Grundy was several times a member of the joint committee

Mr. Grundy was several times a member of the joint committee between the two Houses to report a joint rule for counting the vote, and made the report in person in 1837, wherein the committee entered quite extensively into the eligibility of several electoral votes.

Silas Wright and Bigler always recognized this power in Congress, and repeatedly acted as tellers to do the counting, and upon joint committees to report a rule for that purpose; Mr. Bigler making a report as teller in 1857 omitting the votes of Wisconsin pursuant to

a resolution of the two Houses.

Our later-day statesmen have been no less explicit in their recognition of this power. Mr. Trumbull and E. B. Washburne were of the joint committee who reported the celebrated twenty-second joint rule in 1865, wherein this power of Congress was not only affirmed, but the manner in which it should be exercised was pointed out.

On the 10th day of February, of the same year, Mr. Lincoln sent a message to the two Houses of Congress in explanation of his signing a joint resolution excluding the vote of certain States for President

in which he says:

In his view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have ample power to exclude from counting all electoral votes deemed by them to be illegal.

Mr. Morron at the last session of Congress said, in the course of an argument upon this question:

You must have some tribunal to settle that difficulty, (the difficulty arising when two sets of electoral votes are presented,) and what tribunal is safer than the two Houses of Congress.

And again :

There can be under the Constitution no other tribunal to decide on that (the same question) or any other question arising in the course of counting the votes. The duty is imposed on the two Houses of Congress. They alone can perform it.

Mr. B. F. Butler, Representative HOAR of Massachusetts, and Senators Edmunds and Sherman, have all recognized and affirmed this right of Congress by having offered resolutions objecting to counting the votes of certain States in the year 1873.

The number of eminent statesmen thus hurrieally mentioned is suf-

The number of eminent statesmen thus hurriedly mentioned is sufficient to establish the fact that this power of Congress has been uninterruptedly recognized by our wisest and best men since the foundation of our Government, and here we might rest the proposition in safety; but still other incontestable proof crowds upon us. The fact exists beyond question that Congress has exercised this power ever since the ratification of the Constitution, and particularly since the adoption of the twelfth amendment.

In 1793 the following joint resolution was adopted by both Houses:

That the two Houses shall assemble in the Senate Chamber on Wednesday next, at twelve o'clock, that one person shall be appointed a teller on the part of the Senate to make a list of the votes as they shall be declared, that the result shall be delivered to the President of the Senate, who shall announce the state of the vote and the persons elected to the two Houses assembled as aforesaid; which shall be deemed a declaration of the persons elected President and Vice-President, and, together with a list of the votes, shall be entered on the Journals of the two Houses.

A precisely similar resolution was adopted in the year 1797, and a like one in 1801, but with the following additional clause:

And if it shall appear that a choice hath been made agreeably to the Constitution, such entry upon the Journal shall be deemed a sufficient declaration thereof.

This resolution was re-adopted quadrennially until the year 1865; but in 1821 an additional provision was made for the State of Missouri, as follows:

Resolved. That if any objections be made to the vote of Missouri, and the counting or omitting to count which shall not essentially change the result of the election, in that case it shall be reported by the President of the Senate in the following manner: Were the votes of Missouri to be counted the result would be for A B for President of the United States — votes. If not counted, for A B for President of the United States — votes. But in either event A B is elected President of the United States. And in the same manner for Vice-President.

In 1837 the same provision was made for counting the vote of the State of Michigan.

The first section of the twenty-second joint rule, adopted in 1865, was not unlike those of former years, but the second section pointed out and determined the precise manner in which objections to counting the vote of any State should be disposed of. This joint rule of 1865 was used in that and the years 1869 and 1873.

Thus the views of our best statesmen during all the preceding years of our history, and the uninterrupted precedents of Congress itself, set forever at rest all disputes upon the question, and clearly establish in Congress the right to count the electoral votes of the

The next branch of the question to be discussed is to what extent can that power be exercised? Here again both the expressed views of our statesmen and the precedents established by Congress bring us an answer neither equivocal nor doubtful. That it can inquire

into the legality of an electoral vote because of the ineligibility of the elector Henry Clay was clear in his convictions, and that it had a like power over every question which might be suggested as to the electoral vote is proven conclusively by the fact that in 1837, while the Senate was considering the joint rule for counting the electoral vote for that year, he moved and had inserted as an amendment thereto the following significant language:

Also, to inquire into the expediency of ascertaining whether any votes were given at the recent election contrary to the prohibition contained in the second section of the second article of the Constitution, and, if any such votes were given, what ought to be done with them.

In 1820 he said:

In the case of questionable votes coming forward the Constitution was silent as to their being counted, but fortunately the end in that case carried with it the means. The two Houses were called upon to enumerate the votes for President and Vice-President. Of course they were called on to decide what are votes.

Mr. Archer, of Maryland, at that time also said, in speaking of the

Wherever was ledged the power to receive a return there was also the power to pass judgment on the validity of that return.

Mr. Nicholas, in 1801, in a report to Congress upon that question,

The vacation of a ballot composed of sound and defective votes ought to be the result of uniform principles; it ought to take place on all occasions where a discrimination cannot be made or on none. Not to vacate such ballot, but to permit the election of a Chief Magistrate to be carried on any occasion by the aid of one or more defective votes, would be to heazard in most eminent degree the peace of the Union. It is of the last importance to the happiness of the people of the United States that a complete conviction should prevail at all times that the person who may be elected Chief Magistrate of the Union has been really elected by electors duly and really appointed of those having competent authority for that purpose. It were painful to anticipate the consequences which would too probably attend a disputed election to the Presidency. Those consequences might be more calamitous than can be foreseen.

At the time of the adoption of the twelfth amendment, Congress passed a law to carry it into effect, which contains the following significant provision:

But those certificates only of votes given for President and Vice-President of the United States shall be opened by the President of the Senate for the purpose of being counted which shall contain the list of votes given in conformity with the Constitution as in force on the day fixed by law for the meeting of the electors by whom the said votes shall have been given.

And it was in pursuance of this law and the Constitution that in the year 1857, while counting the electoral vote, Hon. John Crittenden in the House offered the following resolution, as indicative of

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the electoral vote of the State of Wisconsin in the late presidential election, being given on a day different from that prescribed by law, was therefore null, and ought not to have been admitted or included in the count of electoral votes given in the late presidential election.

In 1865, while discussing this question, Hon. John P. Haleremarked:

It is the dictate of the plainest common sense, independent of the constitutional provision, that there must of necessity be a power residing somewhere to preside over, rectify, and govern this whole transaction; and, although it would have been wise, in my humble judgment, for Congress to have passed this resolution preceding the presidential election, it by no means follows that it may not do it now. This law is not subject to the reproach of being a retrospective or retroactive act. Congress does not propose to say that any State shall not express its opinion. All that Congress proposes to say now is that, these States being in a condition where no valid, no constitutional election was held, their votes shall not be counted, and if we cannot do that it seems to me that we are powerless to do anything.

It may now be important to examine how this subject has been viewed by those statesmen who are still living and who are again called upon to determine this grave question. In examining the debates of Congress for the expression of those still on the theater of action we first fall upon the declarations of Mr. BOUTWELL, who, in 1865, said:

The counting of the votes unquestionably is to be "in the presence of the two

Have the two Houses power to do what by the Constitution is unavoidably made the duty of somebody to do, to see that the votes which are counted are real votes? By that I mean whether what is written upon the paper expresses the opinion which the people have given. Not only have the Senate and House of Representatives the power, but there is no other department of the Government that is clothed with that power.

Senator Conkling, in 1873, emphatically declared:

But I go further than to maintain the naked power of Congress to inquire. I insist that we can utilize the result of the inquiry, and employ the facts in our action upon counting or refusing to count electoral votes for President or Vice-President.

In the year 1873 Mr. BOUTWELL said:

I concur, therefore, most heartily in what the Senator from New York has said, that there ought to be a very careful investigation of this question, in order that, so far as we have the legislative power, if we have it at all—and I think we have—we may provide in the constitutional way for ascertaining what the will of the people of the various States may be from time to time, in respect of the election of a Chief Magistrate.

We might continue like quotations from distinguished statesmen who have maintained that this power is vested in Congress, for hours,

Thus our own construction of the Constitution, the construction which has universally been put upon it by the practice of Congress, the laws passed to carry it into execution, and the views expressed by our earlier and latest statesmen, impel us to the irresistible con-

clusion that Congress shall not only count the electoral vote, but that it possesses the undoubted judicial power to determine what are and what are not electoral votes; even to the extent of excluding illegal and unconstitutional ones.

HOW SHALL THE POWER BE EXERCISED.

The next question which presents itself in the consideration of this subject is: In what manner shall this power be exercised? The peculiar phraseology of that instrument is such as has given rise to many theories, and as many suggested plans. The only part of the Constitution touching directly upon this important question is as follows:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

Here three distinct powers are enumerated in connection with the act of counting. The President of the Senate, the Senate, and the House of Representatives, to each of which different minds ascribe the power; while, as the language does not especially fix the power upon either, it is contended by other minds that the expression "shall then be counted" leaves the power in Congress to determine by a law, "providing for the general welfare" or to "execute this Constitution," how and by whom they shall be counted.

Growing out of these various ideas, various plans have been from time to time suggested by different legislators. The various plans may be summarized as follows:

First. That the President of the Senate shall count the votes.

Second. That the two Houses of Congress shall count them in their

Second. That the fresident of the Senate shall count the votes.

Second. That the two Houses of Congress shall count them in their separate capacity; and this idea is subdivided as follows:

1. When the two Houses do not concur in counting the vote of a State, it shall be rejected.

2. That the vote of all States shall be counted unless both Houses

agree in rejecting it.

Third. That, in case of a disagreement between the two Houses as to how a vote shall be counted, the disputed question shall be submitted to an ulterior tribunal.

Fourth. That the vote shall be counted by the two Houses in joint assembly, the members of each voting indiscriminately, either per

capita or by States.

Former legislators have forborne settling this question by a fixed law, and that delicate and important duty is now devolved upon us. Heretofore the mode has been unimportant because the adoption of Heretoire the mode has been unimportant because the adoption of either one would have produced the same result as if either of the others had been selected; but at this time the very mode becomes vital, as the result would be different under the operation of one plan than under that of another. Yet we, as legislators, representing the people, and not parties, should discard all partisan feeling, overlook all partisan results, and settle this question only in the lights which are thrown upon it by the Constitution, the precedents of the past, and the patriotic utterances of statesmen, made when party feeling could not have actuated them. could not have actuated them.

With these axioms then, let us approach the great work which lies before us. We will examine these various plans, or modes, in the

order I have enumerated them.

#### SHALL THE VICE-PRESIDENT COUNT?

The Constitution invests this officer with certain enumerated powers in reference to the electoral vote. They are these: He shall be their custodian, and he shall open them in the presence of the Senate and House of Representatives. Here the enumeration ends. The universal law of constraing constitutions, statutes, and contracts is that, where certain powers are expressly enumerated, all others are, by implication, excluded. In the leading case of Field vs. The People, reported in 2d Scam., page 79, this principle is fully indorsed. Chief-Justice Story, in his work upon the Constitution, in section 448, says:

There can be no doubt that an affimative grant of power, in many cases, will imply an exclusion of all others; as, for instance, the Constitution declares that the powers of Congress shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretensions to a general legislative authority. And why? Because an affirmative grant of special powers would be absurd as well as useless if a general authority were intended.

In addition to this general principle, the fourth subdivision of section 3 of the first article of the Constitution prohibits him from exercising all or any powers except to decide a tie vote in the Senate.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The language of the Constitution is:

The President of the Senate shall, in the presence of the Senate and House of depresentatives, open all the certificates and the votes shall then be counted.

Representatives, open all the certificates and the votes shall then be counted.

An analysis of this expression, according to the laws of the English language, will not permit such a construction. Had the author intended to invest that officer with the power of counting the votes he would have said "open all the certificates and count the votes." But he does not say this. To the contrary, he says plainly enough that he shall open them, and they shall be counted by some other person or persons. The sudden turn of language, the change of mode and tense after the conjunction "and," plainly assures us that the mind of the author had passed from the President of the Senate to some other object. Had it again reverted to that officer there would have been added the words "by him," and it would then have read, "open all the certificates and the vote shall then be counted by him." The total ab-

sence of expressions tantamount to this leaves no doubt in the mind of the scholar as to the intention of the framers of that instrument.

The precedents of Congress are all against the doctrine of clothing the President of the Senate with such extraordinary powers. In every instance the two Houses have maintained a controlling power over the count, either by joint resolutions or by directions during the progress of the count; and this power has invariably been denied by the Presidents of the Senate themselves. In the year 1797, upon making the announcement that officer said:

In obedience to the Constitution and laws of the United States, and to the commands of both Houses of Congress, expressed in their resolutions passed in the present session, I now declare that John Adams is elected President, &c.

And such was the unbroken practice down to the year 1865, when Congress enacted the twenty-second joint rule, which put the power unquestionably in the hands of the two Houses, and under which the presidential vote was counted in the years 1865, 1869, and 1873.

Now let us examine the views of statesmen who have expressed

themselves upon this important branch of our subject.

In the year 1857 that great constitutional lawyer and patriot John J. Crittenden, of Kentucky, said:

I wish merely to say that the sense of duty, an honorable sense of duty I have no doubt, upon which the presiding officer has acted in assuming to declare the number of votes, involves the privilege of determining a presidential election and saying who shall be President. I protest against any such power.

During the same debate many others whose names are now famous among the patriots of that day denounced this assumption; but I will select only that of Humphrey Marshall because it is clear and emphatic. He said:

Still, I am sure that the duty of determining whether a vote shall be counted belongs to the Senate and House, and not to the President of the Senate; and it is a duty I insist we should perform before the vote shall be counted. The House and Senate do not play the parts of automata, nor are they mere lookers-on at a spectacle in which the President of the Senate is sole performer.

In the year 1869 this same question arose in Congress, and again this power was denied that officer by all who spoke on the question. From among these I only select that of a gentleman then upon this floor, but since promoted to a seat in the United States Senate, Mr. BOUTWELL, from Massachusetts. He declared that

The President is not clothed with the power by any possible construction of the Constitution; the Supreme Court is not clothed with the power; there is no governmental instrumentality that can be named that has this power except the Senate and the House of Representatives. We all agree that under some circumstances this power ought to be exercised. We all agree that the Constitution contemplates purity, justice, not fraud or wrong.

In the year 1873, while the Senate was maturing a plan for disposing of this vexed question, Mr. Trumbull, then a Senator from the State of Illinois, in reply to Mr. MORTON, of Indiana, dealt with this power as follows:

Dower as 1010Ws:

In the first place, I do not agree with the Senator from Indiana as to the power of the presiding officer of the Senate over the electoral vote. The Constitution of the United States directs that the President of the Senate shall open the votes in the presence of the two Houses, and then says "and the votes shall then be counted." That is not such language, it seems to me, as the framers of the Constitution would have used, who were so very precise and particular in every phrase in all the instrument, if they had intended that the President of the Senate should determine as to the validity of those votes. The language then would be, not that the President of the Senate shall open the votes in the presence of the two Houses.

Again, in the year 1875, the same question was before that body for deliberation, and the discussion was careful, thorough, and patriotic, free from partisan bias and party feeling. Then Mr. Conkling, the distinguished Senator from New York, said:

distinguished Senator from New York, said:

Returning for a moment to these words in the Constitution, we find that the President of the Senate is to do but one thing, which is to open, and of course manually to present and be the custodian of, the returns upon which the election is to depend, which are called in this provision of the Constitution "the certificates."

Then we find the language changes, and it ordains in most mandatory phrase that "the votes shall then be counted." There, I submit, is appropriate domain for legislative discretion, either by legislation or by a joint rule, if concurrent action between the two Houses rather than by legislative action be preferred.

Nor was he alone in the expression of these views, but was supported by the ablest men in that august body. Among others who thus expressed themselves was that venerable Senator from New Jersey, Mr. Frelinghuysen, than whom few are abler or more competent to read correctly the great charter of our liberties. He asks and answers this grave question:

Who is to decide this question? Is it the presiding officer of the Senate, who may be a mere member of this body temporarily presiding and who has not been elected by the people? Is he, because by the Constitution he is made the medium of communicating the vote to the Senate and to the House, to have the power to receive and count these votes, and is there no power to control him? His duty is ended, sir, so far as the Constitution imposes it, when, in the presence of the Senate and House of Representatives, he opens the certificates. That is all he is authorized to do by the twelfth amendment to the Constitution.

And, most important of all, Mr. Morton, of Indiana, then took strong ground against this power being vested in that officer, and clearly explained his functions under the Constitution. No argument, no elucidation could be clearer, could be more forcible. Hear

If, when the Senate comes to decide the question which is the correct return, if there is a tie vote in the Senate, and the Vice-President is presiding, not as President pro tempore, he can cast a vote in that case, deciding the question in the Senate; but there is no provision in our Constitution authorizing the Vice-President or any other officer of Government to come in and settle the question

where the two Houses disagree. If there is a tie vote in the Senate, the Vice-President can cast the deciding vote; but it is not in conformity with the spirit of our Constitution to provide for some officer who shall settle between the two Houses when they disagree. Therefore it seems to me that this provision is a matter of necessity. You have got to leave this disputed question somewhere, and is it not safer, is it not more democratic, more republican, to leave it to the two Houses than to any single officer?

We need not pursue this subject further, but close with this remark: To clothe the President of the Senate with such unlimited and dangerous power would be making him more potent than a king; it would enable him to override the wishes of the people, trample upon the ballot-box, destroy the efficacy of elections, and subvert the very principles of republican government. Surely no party, even as the last resort to maintain its existence, will dare inaugurate such a scheme.

THE SEPARATE ACTION OF THE TWO HOUSES.

This power then not residing in the President of the Senate it must rest either in the two Houses acting separately or jointly; and we proceed to consider the effect of the separate action upon the proposition that, when the two Houses do not both agree to the counting of a vote, it shall be rejected.

a vote, it shall be rejected.

This proposition carries with it as a natural consequence the power to refuse to count the vote of a State; in other words, the power to disfranchise a State, even though its vote may have been cast in full compliance with the Constitution, simply for political or partisan reasons. True, we should not presume that gentlemen acting under the serious restrictions of a solemn oath to obey the Constitution would exercise such a power without warrant, yet the danger of its being done exists and this forms a strong, though not conclusive, argument against the adoption of such a principle.

would exercise such a power without warrant, yet the danger of its being done exists and this forms a strong, though not conclusive, argument against the adoption of such a principle.

Yet this must be regarded as far preferable to that proposition which establishes the converse of the rule and enacts a law which counts every vote that shall be presented by the President of the Senate, unless both Houses agree that it shall not be counted. Such a proposition, if it stands at all, must stand upon the doctrine that its very existence—no matter by what illegal or unconstitutional means it attained that being, no matter how much it may violate every principle of law or the Constitution—gives it the power of a vote, and that it shall so remain unless both the separate judges shall be forced by the overwhelming power of its enormities to acknowledge its invalidity. In this particular the principle violates two other principles of law and reason.

The act of counting presupposes the right to exercise the judgment, reason, and discretion in determining what shall and shall not be included in the calculation. The plan under consideration undertakes to settle the question beforehand. Again, it is a well-settled principle of legal jurisprudence that where two judges are called upon to determine the admissibility or correctness of a matter coming before them, it cannot be admitted or affirmed unless both judges agree to admit or affirm it. This plan permits the vote to be affirmed or admitted unless both agree to its rejection. A rule so contrary to principles governing all other courts and tribunals must be received, if received at all, with forebodings of danger. Many of our best statesmen have put the brand of their disapproval upon this proposition and declared it inimical to our highest and best interests. Senator Frelinghuysen took ground against it in 1875, and, contrasting it with the first proposition I have discussed, said:

Even this rule would not remove entirely the temptation; for the House by not joining the

Even this rule would not remove entirely the temptation; for the House by not joining the Senate in rejecting improper votes might so affect the result that no one would have a majority of the whole number of electors appointed, and thus the election would go to the House.

Senator EDMUNDS, on the same occasion, forcibly put the wrong of this principle when he said:

Let me suppose another case. Suppose the paper that the Vice-President receives and opens to be counted according to the Constitution is not the vote of Vermont at all; that it has been sent as the vote of Vermont from the State of Indiana; nevertheless, on this rule, unless both Houses concur in saying that they will not have the State of Indiana vote for Vermont, she votes.

Again he says of this principle:

It is in effect to say that any spurious or revolutionary vote which may be brought forward from people pretending to be electors of a State shall be counted, unless both Houses agree that it shall not. It is not brought forward for decision, but it stands, because it comes as the authoritative voice of the people, until both Houses concur in saying it is not a vote.

But the error of both these rules is more readily seen in cases where two sets of returns are sent in from the same State; in which case the first vote opened would be counted, or both rejected; and this, too, notwithstanding the first vote may be the very one which is without law and wholly unconstitutional. Senator Thurman, of Ohio, states the case in its true light when he says:

The moment you have decided, either by the difference of the two Houses as to the counting of the returns or in any other manner, that that return shall be counted, the vote of that State is given and no other vote from it can be received. Can there be anything clearer than that? Suppose there be two returns from Louisiana, one of them is presented and an objection is made to its count. The Houses separate, and one of the Houses decides that it shall be counted. Would it not be counted then? No one will say no. Then suppose the other return is presented. What is the objection to that? "We have counted Louisiana once; we cannot count her again. We have given her all the votes to which she is entitled; we cannot receive any further returns from that State." But now, if by our act we make a difference of opinion between the two Houses equal to a judgment of both Houses in favor of the reception of a return, it is just as plain as that two and two make four that when you have counted one return the matter is res adjudicata, and you cannot count another.

But Senator Morton, in a recent speech in the Senate, disclosed the most dangerous feature of this rule by showing clearly that it is but a renewal of the claim for the power to rest in the hands of the President of the Senate. He said:

President of the Senate. He said:

I do not understand that this rule, in its present form or in the new form proposed to be given it, takes away what I believe to be the power of the Vice-President. The Constitution says that the votes of the electors shall be sealed up and sent to the President of the Senate, and he shall open them in the presence of both Houses, and there are two sets of returns; he brings forward one set and keeps the other; how will you get the other set out of his hands? What power have you? He is only required to produce the set that does represent the vote of the State; he is not required to produce both packages; he is only required to produce that package which does contain the electoral vote of the State. Therefore he may exercise his judgment upon that, and you have no power for objection. You cannot go behind him. That shows the necessity for an amendment of the Constitution. This rule cannot change that. It does not undertake to change it. It simply provides for objections on such papers as he does present and as are opened to be counted. That is all there is of that.

Thus being driven by the force of logic and by a fair construction of the Constitution from the position that the President of the Senate should count the vote, its advocates undertake to accomplish the same purpose by investing him with the power to judge which set of returns he shall open; and this, too, under the deceptive pretense that the two Houses are conceded to have the exclusive power to

Certainly no fair-minded gentleman in either Hall of Congress can have the audacity to insist upon the enforcement of a proposition so destructive in its force and effect.

#### SHALL THE POWER BE DELEGATED ?

Theorizers and speculators having thus devised three separate plans for disposing of the subject under consideration, and each of these having their disadvantages and unconstitutional features, other theorists have conceived the fourth plan, to which I have before alluded. And this last plan is virtually to take all power of counting from Congress and place it in the hands of a commission to be raised for that purpose. This plan first made its appearance in Congress in the year 1800, and no doubt was suggested by the fact that theretofore three tellers had been selected to do the clerical work in counting the electoral year.

It was first offered and pressed in that year by the federalists then having a majority in both the Senate and House of Representatives.

having a majority in both the Senate and House of Representatives. The democrats, under the leadership of Jefferson, earnestly opposed it; Mr. Gallatin championing the opposition in the House and Mr. Barbour in the Senate. It failed to become a law.

Again, in 1875, Senator Edmunds presented the same plan to the Senate, but it there shared the fate of being unceremoniously defeated. At the early part of the present session Mr. Hunter, of Indiana, introduced the measure into this House, where it was received without favor or even comment. Such is its legislative history, and such I have no doubt would have been its end had it not been for the such I have no doubt would have been its end had it not been for the circumstances surrounding us, which, calling for a committee of conference between the two Houses, placed Mr. EDMUNDS at its head, who, as all men will, urged his own favorite idea upon the committee; a committee which, beside him, was void of any plan of their own, or were gifted with less ability to urge it. That committee having reported this measure to the two Houses, and being thus backed and urged on under the cry of "compromise," now demands an attention which it otherwise would never have commanded.

The plan proposed by the committee submits the counting of all disputed votes to a commission composed in part of individuals out-

disputed votes to a commission composed in part of individuals outside of either House of Congress, and thus to a tribunal not enumerated in the Constitution. Without entering further into details, the question presses itself upon us, Is such a procedure constitutional?

In the outset it must be admitted that at no time in the hundred

year s of our national existence has this plan been adopted, and therefore we have no precedent to support its claims to constitutionality. The precedents are all against it. It is further admitted that nowhere within the lines of the Constitution is such a tribunal for such a purpose provided for. The point upon which its friends hold it to be pose provided for. The point upon which its friends hold it to be constitutional is that Congress has the power to provide any mode and manner or form of counting the electoral vote which may please them. They say that the expression in the twelfth amendment, "and the votes shall then be counted," is a casus omissus, and that the provision of the last subdivision of the eighth section of the first article of the Constitution enables them to make a law filling up this asserted omission. That provision, in enumerating the powers which Congress shall possess, says:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof.

But if the plan is unconstitutional, it is so for reasons not touched by this provision at all. It is unconstitutional, it is so for reasons not touched by this provision at all. It is unconstitutional because the power to count the electoral vote is expressly and therefore exclusively vested in Congress, and cannot be delegated by it to any body of men outside of its number. Every argument which ever has been or ever can be made in favor of the proposition that Congress has the power to count the electoral vote also establishes the principle that the power has been delegated to Congress. has been delegated to Congress. The one proposition follows the other as an irresistible consequence. If Congress has the power to count, that power has been delegated to her and she must count. If the people have delegated that power to her, they have delegated it to

no other tribunal, and they have nowhere empowed Congress to erect

any such other tribunal.

The Supreme Court has twice decided that the first section of the third article only empowered Congress to establish law and equity courts, as is plainly conveyed by the language of that clause:

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and estab-

Certainly no man will be so insane or presume so much upon the ignorance of others as to contend for a moment that the commission now proposed to be raised is a court, that it is a body for the hearing and trying of causes between litigants. Who are the plaintiffs and defendants, the relators and respondents? But if it were a court, Congress could not invest it with jurisdiction over a subject expressly delegated to itself. The language of the twelfth amendment, which I have already quoted, plainly intends that Congress shall, and shall then, count the vote; not after the certificates shall have been opened for days and passed out of its hands into the custody and hands of strangers, but then, at the time the certificates are opened. This plan permits days and weeks to pass before the votes shall be counted, and permits the counting to be done not in the presence of both

Certainly this is not merely an infraction, but it is also a fatal vio-lation of the Constitution. Nor do I stand alone in this declaration. Fortunately this subject has received the attention of our statesmen in calmer and better times than these, and they have given us their views upon it when there were no party ends to be gained or lost by its adoption or rejection. Their convictions under such favorable auspices should be of value to us now. In 1875, while discussing the Edmunds substitute proposing this plan, Mr. BOUTWELL in the Senate

I agree entirely with the suggestion made by the honorable chairman of the committee in regard to the power to count the votes and the duty to count the votes, that one was conferred upon Congress and the other enjoined upon Congress. The power and the duty are in Congress. Congress must exercise the power and perform the duty, and it is not possible under the Constitution to transfer it to anybody else.

Again, speaking upon the same subject, he remarked:

The President of the Senate is not clothed with the power by any possible construction of the Constitution; the Supreme Court is not clothed with the power; there is no governmental instrumentality which can be named that has the power except the Senate and House of Representatives.

Mr. Morton at that time asserted that this power could not even be delegated to the Supreme Court. These are his emphatic words: You cannot take it into court; that is certain.

And again he said more at length:

In the first place it is a plan that is unknown to any plan of legislation which we have. \* \* \* And it involves another danger perhaps equal to that in its character: it leaves the determination of this great question to eight men, or rather to a majority of eight men, which would be five. You substitute the judgment of eight men, or a majority of them, for the judgment of the two Houses.

Mr. Howe was no less decided in his convictions upon this question:

I will give my own opinion. My own opinion is that it cannot be delegated; and therefore, if I were driven to the conclusion that the decision of this grave question, this momentous question, this question upon which, under conditions entirely conceivable, may hang the issues of civil war—if I were driven to the conclusion that that is a legislative question, I should say that, when the question arises which one of these letters from Rhode Island shall be respected as the voice of Rhode Island, it must be settled either by the joint convention or by the several Houses acting separately; nor can it be left to arbitration, no matter who may be the arbitrators.

Mr. FRELINGHUYSEN, while discussing this plan in the Senate, also remarked:

I think the twelfth amendment to the Constitution settles who has jurisdiction over this question. It does not do so in express terms, but it does so by necessary implication. That by necessary implication, to my mind, gives the jurisdiction over this subject to the two Houses, and if the Constitution does give it to the two Houses we cannot by law give it to the judiciary of the country.

Mr. Dawes, of Massachusetts, also took strong ground against it.

Whether the President of the Senate could be trusted, or whether the gentlemen selected in the amendment of the distinguished Senator from New Jersey could be, or those high characters who constitute the Supreme Court of the United States, (which is, in my opinion, the best of all the amendments,) it is enough to my mind that they have no other authority to designate a President of the United States than that which they derive from this statute, and that, while the Constitution of the United States took what its framers thought was all necessary pains at that time to guard and secure the selection by the people of a President, it has been left to us here to discuss the question whether by a statute we cannot safely designate a man or men who will select for us a President of the United States. Sir, that is such a departure from the Constitution that I cannot vote for it.

He continues, without hesitancy, and, reaching the point where it appears evident the vote must ultimately be decided by the one man who shall constitute a majority of the commission to be selected, he declares:

If there were no objection, it is a power reposed in one man or in ten men, however high their character, that it would not be safe to confer. It is in violation of all the analogies and all the theories upon which the Government itself is based, and it would be the strangest anomaly, in what would otherwise be called a free Government of the people, that, although in all things else the nation and the Constitution had studied to give effect to the voice of the people, we had here deliberately, by a short section of three lines, selected a man and clothed him with the power of saying who shall be the President of the United States.

These opinions, it will be said, are from gentlemen composed of one political party only, and should therefore be received with caution.

But, sir, this was not a partisan view of it; there were gentlemen, distinguished gentlemen of both political parties, who took early oc casion to denounce the plan as unconstitutional and extremely dan-gerous. Let us now look to the views of the gentlemen on the other side of the Senate Chamber. First, Mr. BAYARD, of New Jersey, condemned it. He said:

There is no distinct provision as to that. They shall be simply counted in the presence of the two Houses; but I apprehend from the fact of their being counted and the result declared, that the members of each House are simply witnesses to the count and tally of that vote. That you could not delegate that power to another body I cannot doubt.

Mr. THURMAN, of Ohio, was no less decided in his views, as here

But there was one branch of the remarks of the Senator from Vermont [Mr. Edmunds] upon which I wish to say a word because, with great respect for his opinions, I am unable to concur with him, and that is in regard to the idea expressed by him that the election of a President of the United States may be made the subject of a contest in the courts of the United States. To this view I entirely dissent.

And afterward, pursuing the subject more in detail, he said:

I do not see, therefore, that you can confer this power upon the supreme judges as judges sitting as a supreme court to decide this question, because it is not a judicial question within the meaning of the Constitution, and to say that you could confer it upon them as mere individuals is to say that you can confer it upon any other nine individuals in the United States.

And, as if determined not to be misunderstood, or as if extremely anxious that the unconstitutionality of the plan should be deeply impressed upon the Senate, on the 16th of March last he repeated his

I do say that the spirit of the Constitution requires that this matter shall be settled, if it is possible to settle it, by the Senate and House of Representatives, either acting separately or in joint convention. Either one way or the other the Constitution requires that it shall be settled in that mode. \* \* \* And it seems to me that it never was contemplated that the determination of any question which should arise upon that count should be decided by some other tribunal or body of

Mr. Stevenson, of Kentucky, was no less pronounced in his conviction as to the unconstitutionality of the plan to delegate this power to any body, and in discussing the proposition to delegate to the President of the Senate the power of casting the deciding vote on all questions which the two Houses may differ in, he said:

I voted against the amendment of the Senator from New Jersey, [Mr. FreLing-Huysen,] not only because we, in my judgment, have no constitutional power to select an arbitrator to decide a presidential question, but also for reasons of obvious im-propriety if the power existed.

Senator Johnston, of Virginia, lays down the true doctrine in the following extract from his speech in the Senate on the 22d of March, 1876:

The members of this body and the members of the House of Representatives were elected by the people partly to perform this very function. They were chosen for the purpose, among others, of deciding who in a certain contingency should be President and Vice-President. When the people voted for them they delegated them to fulfill those duties; they elected them for that purpose as well as other purposes; and when we leave the question with the men thus elected by the people we leave it whene republican government ought to leave it, with the people or with the representatives of the people. But if we take it away from them and give it to nine other men never selected by the people, knowing little of the people, necessarily by the very nature of their functions and duties removed from the people and in no sense representing them, we get the decision of that great question away from a representative body of men to a body never elected by the people and having little connection with them. I can imagine no provision that would be further from the spirit of the Constitution and of our republican institutions, unless it would be to select six or eight of the ministers who represent foreign governments in this city and let them be constituted a court to decide upon this question.

Mr. MEREMON, the able Senator from North Carolina, assumed the

Mr. Merrimon, the able Senator from North Carolina, assumed the same position and on that day asserted that—

The exclusive jurisdiction is in Congress; and I think so for reasons which I will not now detain the Senate to express. Entertaining that view, we have no power to delegate to the President of the Senate or to the Supreme Court, or to commissioners, or to any tribunal whatsoever, the right to decide any controverted question arising upon the count of the vote.

I have thus selected an equal number of gentlemen from both political parties who have declared their convictions of its radical unconstitutionality; but I cannot close these quotations without citing the views of Senator Conkling, of New York, who is now distinguished as the leading friend of this measure in the Senate. On the 25th day of February, 1875, in a speech in the Senate on this same question, he

It may well be doubted whether we have power to do any such thing. Congress may do whatever is committed to it as a Congress. Either House or both Houses may do whatever is committed to them; but Congress cannot delegate to anybody else legislative power or any other power which is reposed in Congress and located there and nowhere else.

In examining the vote in the Senate on this proposition, given on the 25th instant, I discover that many of the gentlemen from whom I have quoted voted for the bill, and thus against their former convictions. I shall not attempt to account for this manifest inconsistency. I expect many gentlemen upon this floor to vote for the measure who are thoroughly convinced of its unconstitutionality. I wish it were otherwise. I should have stronger and brighter hopes of the future of my country could I be assured that its legislators would never consent to a violation of that sacred instrument, the Constitution, simply because the masses, alike ignorant and regardless of its provisions, demanded it. For me, sir, the cry of the rabble and the howls of the mob have no terrors. In their calmer moments the peo-

ple have selected me to adjudicate this question for myself and to execute that Constitution. This duty I shall do fearlessly, and it shall never be said of me that I knowingly committed a great wrong in violating the safe provisions of the people's bulwark in the vain hope of relieving them from an imagined inconvenience or even danger. I hold their highest safety lies in the safety of that instrument. This measure is urged upon us as a compromise. What is to be com-

This measure is urged upon us as a compromise. What is to be compromised? If I am to compromise any rights which this House—the House of the people—has under the Constitution, then I tell you I shall oppose it. If I am called upon to compromise any rights which belong to the majority of our people as expressed at the ballot-box, then, sir, I oppose it. If I am called upon to compromise any honest conviction I possess as to the result of the recent election by the people, then I oppose it. If I am required to compromise the unconsti-tutional claim that the President of the Senate has the power to count the electoral vote, then, sir, I shall oppose it, because I shall never trifle with so dangerous and destructive a doctrine. I demand that it shall be frowned down, voted down, and trampled down by the people. We were not sent here, gentlemen of the House of Representatives, to trade off, sell, or barter any of these high, important, and vital questions. Our duty is to meet the false assumptions of power which are set up by the enemies of popular government, and beat them back with mailed hands, if need be; not to cower and flinch before

No man can favor this bill simply because it is constitutional. He must do so, if he does at all, with the expectation of deriving some partizan advantage from it. The republican does so expecting it will result in the election of Mr. Hayes; the democrat does so expecting it to result in the election of Mr. Tilden. It is evident that somebody will be deceived, somebody will be cheated by the bill. It cannot but be a cheat and a fraud; it cannot but produce murmurs and dissatisfaction when its full results are made known. Like all other attempts to barter away great principles at the expense of the Conattempts to barter away great principles at the expense of the Constitution and the dictates of enlightened judgments, it will ultimately but awaken the indignation of an outraged people and the condemnation of an honest public. Such was the fate of the compromises of 1820 and 1852.

No gentleman should give this measure his support without understanding fully the effect of what he is doing. It will constitute a commission composed of fifteen individuals. Seven of these will consist of one political party and eight of the other party. The odd-numbered man must be selected from the four supreme judges not designated in the bill. Of these four, three are pronounced republicans, namely, Bradley, Hunt, and Swayne, and Mr. David Davis, who has little or no politics. Mr. Davis, having just been elected to the United States Senate, would not be offered a place in the commission and would not accept it if he were. The choice, then, must tall upon a republican. A republican then will decide every controverted question coming before the commission. Our democratic friends have bitterly opposed the the commission. Our democratic friends have bitterly opposed the idea of putting this power in the hands of Mr. Ferry, President of the Senate, simply because he is a republican, and yet they now propose to vest this same power in the hands of no less a partisan than he. What matters it whether Mr. FERRY or Mr. Bradley or Huntor Swayne count the vote? You are jeopardizing the expressed will of the people in the hands of the one as well as the other. I cannot and never shall consent to trust any one man with such tremendous power. I

would not even if he were of my own party.

I have listened, in and out of Congress, to daily denunciations of returning boards. My own people have denounced them in unmeasured terms. Gentlemen upon this floor have howled for hours in mad fury against them. Public sentiment everywhere and at all times stamps its seal of utter condemnation upon the odious, dangerous, and destructive system; and yet, sir, I am astonished to find demo-crats here and elsewhere engaged in extending this monster, and erecting here, at the very capital of the nation, a returning board with more unlimited and unbridled power than any which has disgraced Louisiana and robbed her people of their sovereignty. I too have denounced these hydra-headed monsters in the past, and I denounce them now.

nounce them now.

I am one of the many who sincerely believe Mr. Tilden to have been elected President of the United States, and I am solicitous that he should be given the chair of the Chief Executive to which he has been chosen by the people, but I do not want him to be so declared by any body of men selected through unconstitutional means. I do not wish his title to that high position justly attacked by those who opposed him upon any constitutional grounds. It would paralyze his arm, it would render him powerless to do that good to the country which our condition requires. For the democratic party to yze his arm, it would render him powerless to do that good to the country which our condition requires. For the democratic party to go into semi-power under such circumstances would insure our over-throw at the next biennial State elections. Rather than this should be, I would prefer Mr. Hayes be declared President by the usurped power of the Senate, backed by the Army and Navy; for then the wrong and the oppression would bring to our ranks, at the next succeeding presidential election, such overwhelming numbers that our title transpressed that any would not be specified. title to power could not and would not be questioned.

While I expect this bill to pass and become a law, I yet have a strong and abiding faith that our country will not be inflicted with the wrong. I have a faith that the judges of our Supreme Court will hold themselves aloof from the commission. I sincerely hope they will not permit their ermine to be drabbled with the muddy slime of politics,

and the confidence which their stations should inspire to be destroyed and the conndence which their stations should inspire to be destroyed by the anathemas that will go up from a disappointed populace all around them. Never again let our judiciary be condemned for its politics as was the case when the Dred Scott decision was rendered. For the sake of my country, for the sake of my constituents, whose safety lies in the integrity of our judiciary, never again let their actions be hawked upon the hustings and bar-rooms as in the years just prior to the late war. I say to these judges now, stand away! Touch it not! it not!

But we are further urged to support this bill by the argument that it is the only method by which the differences between the two Houses can be reconciled. This argument is as false as all others that are brought forward to support the measure. In the first place, it permits no differences to exist between the Houses, because it takes

all questions from them.

But there is a mode of procedure under which both Houses can act and settle all controverted questions. It is this: When the two Houses meet to count the vote for President they should meet in joint convention, and all questions which may arise during the progress of the count be settled by a vote of the Senators and Representatives aggregated, upon motion regularly disposed of under proper parlia-mentary rules. In this manner the voice of both branches of Congress will be heard and their influence felt in the disposal of every important question, thus modifying and to some extent neutralizing the party majority of either, and thereby render the mode less obnox-

ious to the charge of being a mere party machine.

There is another feature of this plan which will commend it to those who view our Constitution as a homogeneous system of well-devised government. In aggregating and counting the electoral vote it will bring into requisition the same forces and in precisely the same manner the identical powers which cast the vote at the capitals of the various States. To make this proposition plainer, we call attention to the organization of the electoral college. In electing the Chief Executive, by the wisdom of our fathers, the States in their organic form have a distinct representation and power which is felt in the two electors at large in each State, while the people, as individuals, have a power represented by the district electors. As the people and States are thus represented in the electoral college, so in the same proportion is each represented in the two branches of Congress; the Senate being the States, the House of Representatives the people. The Senate and House are counterparts of the electoral college, representing the same powers, reflecting the same sources. The electwho view our Constitution as a homogeneous system of well-devised resenting the same powers, reflecting the same sources. The electroral college, representing the same powers, reflecting the same sources. The electroral college, meeting in detached portions at different points to do the work assigned each integral part, its counterpart should bring its work together at the great center, correct all imperfections, and aggregate the total result.

This is not call a particital but a local college, representing the same sources.

This is not only a patriotic but a logical and legal deduction from our system of government, and in our judgment precisely what was intended by the framers of the Constitution as contained within the

expression of the twelfth amendment, wherein it says:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

Note the expression: not in the presence of the "two Houses" separately, but in the presence of both as one. And the votes shall not be counted after the two Houses shall have held hours of separate sessions, (as under the precedents of the past and under the twenty-second jointrule,) but then, at the time of being opened, they shall be

counted.

This plan is neither novel nor new, but it is one that has been contended for as the proper interpretation of the Constitution since the adoption of that instrument. In the year 1800 it was advocated by Thomas Jefferson, and supported by Macon, Barbour, Gallatin, and all other democrats in both Houses of Congress, at which time it was all other democrats in both Houses of Congress, at which time it was opposed and defeated by the old federalists, who were then in power. In the Senate Macon offered this plan as an amendment to a bill then pending, and it was defeated by a vote of 10 to 15—all the Jeffersonian democrats supporting it. In the House the amendment was offered by Mr. Gallatin, and was there defeated by a vote of 44 to 46; it there commanding the vote of four moderate federalists. Among the distinguished statesmen who have favored it in Congress from time to time I shall pause to mention a few only. Mr. Archer of Maryland, Cobb of Georgia, in 1857; Nourse, Pugh, and Orr in the same year; Cowan of Pennsylvania, in 1865; Butler and BOUTWELL, in 1869; MERRIMON in 1875, and RANDOLPH, CONKLING, JOHNSTON and EATON, in 1876.

I have already trespassed upon the time of the House too long to detain it with quotations from the unanswerable arguments of these gentlemen in favor of this proposition. The only argument that has ever been or can be made against it has grown and must grow out of a jealousy on the part of members of the Senate, who object on the ground that the importance of the Senate will be submerged in the ground that the importance of the Senate will be submerged in the superior numbers of the Lower House. We need not stop to confute this false position. It is tantamount to saying that they are fearful of the power of the people; as the House represents the people and the Senate represents the States. And this forms an impregnable argument against these pretensions of the Senate.

Viewed, then, in the light of law, in the face of the Constitution, and in the impulses of patriotism, the conclusion is inevitable that in counting the electoral vote the Senate and House of Representatives should sit as a joint body, governed by parliamentary law, discharg-

ing its important duties as statesmen, and accepting the result in the spirit of patriotism.

[Mr. DUNNELL addressed the House. His remarks will appear

in the Appendix.]
Mr. HARDENBERGH. Mr. Speaker, a crisis in our history approaches, in which our institutions are trembling in the balance. From this audience chamber must be spoken by the nation's representatives words which may lull to rest the surging passions of prejudice or fire the nation's heart to deeds of violence and of lust.

Here, from this tribunal, in which the nation is spectator, I propose to give expression to the sentiment of my constituents, as I hope to understand them aright upon the merits of the bill now under con-

sideration.

In no portion of our country are State pride and national honor more harmoniously blended than among the inhabitants of the district I have the honor to represent. Reverence for the Constitution, respect for the law, obedience to legitimate authority, acquiescence in the popular will rendered according to established forms, faith in the principle of democratic government, that the people are the true source of power and the sovereigns of the nation, these distinguish the diversified population who, on the margin of the Hudson, have pursued those industries and activities which illustrate the highest pursued those industries and activities which illustrate the highest form of our civilization and what capacity exists in our institutions to render a people prosperous and happy. Sir, they would not sur-render a right which they possess or a privilege which they enjoy as part of their inheritance of freedom; neither would they consent that by any act of theirs this inheritance should not be permitted to descend with all its blessings to their posterity. Absorbed and en-grossed as others may be in the acquisition of material good, in the accumulation of wealth, in the fierce struggle for success in all the various occupations and employments in which they are engaged, they are by no means insensible to those higher and nobler considerations which involve the welfare of the whole country, nor are they wanting in that patriotic pride which would yield individual preferment and cherished convictions if thereby a national disaster might be averted.

A people who would voluntarily relinquish rights secured to them A people who would voluntarily reiniquish rights seemed to them by the sacrifice and suffering of their progenitors are not the worthy custodians of freedom, nor are they fit to guard its battlements who, having made provision for their own security, bequeathed to their own posterity a structure dilapidated by the ravages of time and concealing beneath a fair exterior the moldering elements of ruin.

The principle which above all others must be preserved and handed down by the property and unfattered in that we know how to govern one.

down by us pure and unfettered is that we know how to govern our-selves; that when occasion demands we can rise superior to our own limited and narrow views, we can trample under foot our prejudices, we can defy the suggestions of interest, the allurements of false ambition, the vulgar clamor for personal recognition and material display; that we can even break the trammels of party, and not insist upon reserving for it what was meant for mankind.

No man can say he has discharged the whole duty of an American citizen who has proved only fidelity to his party, nor can he be a faithful party man who does not regard the cause of his country as the paramount object of his solicitude and his affections.

cannot be denied that a crisis has arrived in our history which will determine how far we have advanced in making these principles the rule of our conduct. Already it begins to be manifest that the vir-tue which in theory is necessary to the orderly maintenance of a free government is here to-day practically equal to the strain.

Sir, the report of the electoral committee practically refutes the criticism that there are no men in public life who represent the rectitude and probity which distinguished the earlier history of the Republic; and I confidently expect such powerful support will be given to the recommendations contained therein that we shall have no reason to bewail ourselves as a degenerate or a degraded race, unworthy recipients of the trust committed to our care.

Whatever others may think, Mr. Speaker, whatever others may feel, I, for one, in the interest of my people, will grapple with hooks of steel the hand which in this hour of doubt and of peril is stretched forth in good faith and with a firm purpose to save our country the distraction and tumult which are sure to ensue from divided councils and

from partisan zeal.

Hesitation, Mr. Speaker, is no part of my duty when I appreciate the manifold advantages to all the great interests which are threat-ened by a delay to settle and dispose of the delicate and complicated

questions now confronting the American people.

I do not ask that we shall barter away our rights, that for the sake

of expediency we shall abandon principle.

It is sufficient for me to know that millions of people, who are the depositaries of civil liberty, are struggling so to bear the sacred flame that its light will not be extinguished. It is by the utmost vigilance, such are the infirmities of our nature, we can so moderate the struggle for power amid contending factions that neither shall be permitted to secure an advantage to themselves which may threaten or endan-

ger the general welfare.

I need not enter upon any lengthened argument to show the conformity of this bill to the Constitution. It appears to me based upon the fact that the Constitution fails to make provision for the continuous gency which has happened, but has left it in the power of Congress so to legislate as to carry into effect the power already granted. It

is certain the people of this country will not consent that the President of the Senate shall count the electoral votes unless his right so to do shall be the deliberate opinion of a tribunal authorized by law to decide the question. The votes are to be counted by some compe-tent authority on the 14th day of February. If both Houses of Congress are to concur, and this concurrence is necessary to a choice, then, according to the political status of the House and the Senate, there can be no choice.

Shall it be possible that the wisdom, the prudence, the intellectual Shall it be possible that the wisdom, the prudence, the intellectual power of this great nation shall not be summoned to immediate activity to find judicial solution of the problem? Are we, the representatives of the people, sworn officers of the law, by our indifference, supineness, or neglect, to occupy our seats in this Chamber while a cloud, dark and portentous, is moving up the horizon, surcharged with all the electric elements of wee and death. Have we no duty to discharge of higher moment than the success of our party; no ambition of nobler aim than to advance its standard?

Sir when the Turk at the recent conference of the European pow-

Sir, when the Turk at the recent conference of the European powers was told that the only terms upon which a peaceful settlement of the controversy could be obtained was such as involved the surrender of his sovereignty over certain provinces, and that a failure on his part to accede to such terms would array all Europe against him, the indignant Moslem instantly rejected the proposition, exclaiming, "No! Death before dishonor." These words, carried by the lightning's flash through the civilized world, have absolutely awakened a sentiment of sympathy and of admiration, because even a Turk so loves his country that he would perish rather than submit to her degradation.

Sir, would it exalt our country in the esteem of mankind if we should so conduct the line of this great argument as to proclaim to the nation that we would rather die than acquiesce in the elevation to office of any man not of our political faith or in the investment of power with a party against whose principles we have been in irreconcilable antagonism? Do we derogate from the respect due to our Constitution when we labor to preserve it by the sacrifice of our par-

If we shall discover the ability to rise above all other considera-tions than those which affect the public good, if men of both parties shall declare that their country shall claim an undivided allegiance, then indeed may we hope to perpetuate those blessings to posterity Sir, we have a country, we have a Government worth preservation. Is not the picture which presents itself to-day, showing the disastrous effect of the uncertainty and doubt impending over us, calculated to urge us in our efforts to a speedy settlement? The tremendous billows which threaten to overwhelm us in a common catastrophe will subside into gentle undulations when it has been announced this bill has passed. I believe it. Do you not suppose the exhibition of disinterested patriotism given to the people by their representatives here will awaken a kindred sentiment throughout the land, and so infuse a spirit of loyal enthusiasm as to induce a generous submission to the arbitrament of the commission as a wise and just expression of the law in its dignity and purity ?

Trade has languished, commerce has been depressed, confidence

almost destroyed, fortunes have been wrecked, and the pillars of the social edifice so shaken that there was grave reason to apprehend the whole structure would fall in irremediable ruin.

In this emergency the people look to you for succor and relief. In the fortitude with which they have endured; in the calm, subdued, patient waiting for a change; in the composure and self-restraint in which they have rested until political questions should be settled by which they have rested until political questions should be settled by lawful authority, we may gather wisdom and profit by their example. It is a noble exhibition of popular forbearance; millions of people with resentments aroused by disappointments, exhausted by resistance to repeated disasters, looking forward to new men and new measures in the hope of restoration, and yet with so grand and all-pervading a sense of the majesty of law, of the selected agencies through which it would vindicate itself, that no voice of menace or defiance is raised, no tempest of reproach and indignation to disturb the judicial temper with which you are to conduct your deliberations.

When the people and their representatives thus mutually act and react upon each other for the consummation of the general good, for the perpetuity of civil liberty and the security of individual rights, then, no matter how complicated and divergent the interests to be consulted, the disorders to be controlled, or the tyrannous passions to be subdued, no confusion will be permitted to agitate the counteto be subdued, no confusion will be permitted to agitate the countenance of the sweet angel of peace or compel her to a refuge in some happier and more favored clime, if such may be found on this storm-tossed and tempest-riven globe. I take a historic glance at the earlier civilization of mankind. All through the ages the pathway of our race is lurid with the fires kindled by their own fierce struggles for supremacy and power. The standard of dominion has been upborne, all unmindful of the blood and agony of the surging masses whose ranks have been decimated that power might triumph. Shall we, with armor forged in the laboratories of experience and defenses erected out of the muniments of time, fail to withstand the enemies our own passions and pride have created? No; a thousand times no! We may be able to defy a world in arms, but can claim no right to perpetuity until we learn how to govern ourselves. Founded upon this rock, the storm may beat, the waves may dash; we shall be only

washed to purer whiteness by the deluge which overwhelms all other

political fabrics.

Mr. TOWNSEND. Mr. Speaker, we have now arrived at that period in our national history foretold by Chancellor Kent in his Commentaries, wherein he says that if ever the tranquillity of this nation is to be disturbed and its liberties endangered by a struggle for power, it will be upon the subject of the choice of a President.

We have found a weak link in the great political chain that binds us together as a nation, and it will depend upon the wisdom of Congress whether that link shall be strengthened or whether it shall be broken to the disturbance and perhaps destruction of our national

An ambiguous clause in the Constitution, which fails to declare by what authority the electoral votes shall be counted, has left us in the face of a great national difficulty; and to avoid that difficulty, and provide for and regulate the counting of the votes for President and Vice-President, is the object of the bill under consideration.

Its importance cannot be exaggerated, and it therefore becomes our duty carefully to examine the ambiguous clause in the Consti-

our duty carefully to examine the ambiguous clause in the Constitution and the remedy proposed in the present bill.

It is contended by many that the authority given to the President of the Senate to open all the certificates of the electoral votes, which shall then be counted, confers upon him the power to examine into and decide what votes shall be counted when two or more antagonistic sets of votes are forwarded from any State.

nistic sets of votes are forwarded from any State.

It is contended that such authority authorizes him to declare which are the votes that have been legally cast and should be counted, and which should be rejected as not warranted by the Constitution or by the laws of the State in which they were cast.

This construction would give to the President of the Senate the power in disputed cases of determining upon his own judgment who should be the President of the United States; a vast power which would involve directly or indirectly the whole policy of the Government and commit to a single man, in an emergency scarcely contemplated by involve directly or indirectly the whole policy of the Government and commit to a single man, in an emergency scarcely contemplated by the framers of the Constitution the destiny, happiness, and welfare of a whole people, in the presence of the Representatives of the people, more recently elected than he, more closely connected with them and more conversant with their wants, wishes, and necessities, and who would be allowed no voice of remonstrance against his action.

The question then occurs, did the framers of the Constitution intend to give such a vast, power to the President of the Senata?

tend to give such a vast power to the President of the Senate † To arrive at just conclusions we must consider the language and its interpretation by those who have acted under it from the formation of the Constitution to the present time.

The language in the original Constitution and the twelfth amend-

ment is the same.

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

The officer appointed to "open" the certificates is clearly defined, but by whom shall they be counted, or when opened who shall decide whether one of two antagonistic sets of votes from a State shall be counted to the exclusion of the other? On this point the Constitution is silent. It is obvious that the framers of the Constitution did not contemplate such a contingency as has now arisen and did not provide for it. provide for it.

If they had contemplated it, how easy it would have been to have pointed out the authority which should decide upon disputed elect-

oral votes.

If they intended that a controversy as to the electoral votes should be decided by the President of the Senate, how readily they might have so declared. A very few words would have conferred that power and made it clear. It certainly was not so considered by the framers of the Constitution; for in the earlier elections, when some of them were yet in Congress, it does not appear that such authority was ex-

The Congress of the Confederation, on the 28th of September, 1787, in transmitting the new Constitution to the Legislatures of the States, resolved, among other things, that when nine States should have ratified it, it should go into operation, and that when Congress convened at the appointed time "the Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President."

This was presessed because to Vice President had as not become

This was necessary because no Vice-President had as yet been de-clared elected; hence there was no President of the Senate, and it became necessary to have a President of the Senate pro tempore elected

for the single purpose designated.

At the first election John Langdon, President of the Senate pro tempore, declared that he, in the presence of the Senate and House of Representatives, had opened and counted the votes of the electors for President and Vice-President of the United States.

This action was not considered a precedent for the future, as subsequent proceedings very fully show.

At the second election the certificates were opened, read, and deliv-

ered by the Vice-President to the tellers appointed for that purpose, who having examined and ascertained the votes presented a list of them to the Vice-President, which list was read to the two Houses.

From that time to the eighth election inclusive the minutes state that the Vice-President opened the certificates and handed them to

the tellers, who examined and ascertained the votes, it not appearing

that the Vice-President even performed the clerical duty of reading the votes as the certificates were opened, although it may be presumed

After the ninth election, in 1821, the monotony of opening the seals and counting the votes was varied by an objection to the vote of Missouri, made by Mr. Livermore, of New Hampshire, on the ground that Missouri was not yet a State in the Union and that her vote should not be counted. Over this question the President of the Senate did not assume authority, but the two Houses decided in advance how the the vote should be counted and announced.

After the thirteenth election, in 1837, a question concerning the admission of the votes of Michigan was raised, which was decided by the two Houses without any intervention of authority on the part of

At the fourteenth election the President of the Senate opened, and the tellers read, counted, and registered the votes, a merely clerical performance.

Following the fifteenth election, in 1845, the programme was varied again, and the President of the Senate handed the scaled packets of the votes of Maine and the other States to the tellers, who opened them and counted the votes.

and counted the votes.

In counting the votes at the eighteenth election, 1857, it was found that Wisconsin had cast her votes one day after the time prescribed in the Constitution. Her vote was counted. The President of the Senate seemed at first to have assumed the right to decide upon its legality, but afterward disclaimed such right. In the debate his right to decide was strenuously denied, and it was insisted upon by most of the speakers in both cases that his duties were merely ministerial, and that the power did not lie with him but with the two Houses, and the votes not requiring a decision to be made, it was left undecided. Preceding the counting of the votes of the twentieth election, in 1865, the twenty-second joint rule was adopted, which provided that "no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses."

This was a denial, upon the part of Congress, of any right in the President of the Senate to decide upon an electoral vote, and acquiesced in by him without remonstrance or opposition when the votes came

in by him without remonstrance or opposition when the votes came to be counted.

Under that joint rule the vote of Louisiana, although objected to, was counted at the twenty-first election, and the votes of Georgia were counted with a qualified expression.

were counted with a qualified expression.

At the twenty-second election the votes of the States of Arkansas and Louisiana were excluded under the rule, the Houses thus declaring their power and excluding that of the President of the Senate over the determination of the contested votes of States.

From this statement it will be seen that from the origin of the present Union to this day the President of the Senate, when the admission of electoral votes was contested, never asserted a claim on his part to be the judge of the legality of such votes, but that in every instance Congress has asserted and maintained its right to decide upon the merits of the cases as they came before it.

It is an unbroken chain of action for ninety years in which the President of the Senate only acted as the presiding officer of the joint body and in a purely ministerial capacity in counting the votes, their legality being left to the Houses of Congress until the passage of the joint rule which gave an authority to either House to decide against the admission of votes which it believed to be illegal.

The early action of the revolutionary fathers was in consonance

The early action of the revolutionary fathers was in consonance with that doctrine.

The principle of law and equity and justice that a man shall not sit in judgment on his own case, when disputed, was as well known when the Constitution was framed as now.

the Constitution was framed as now.

When John Adams as Vice-President opened the certificates of votes that made him President, is it to be believed that if those votes had been contested that he was entitled to decide them in his favor? When Thomas Jefferson as Vice-President opened the certificates of votes which made him President, can it be argued that if there had been contested votes in certain States he could have thrown out those which were against him?

I cannot believe it, vet if we asked that the president of the certificates.

which were against him?

I cannot believe it; yet if we acknowledge that as President of the Senate they had a right to decide disputed questions of legality, they could not have been prevented from sitting in their own case, deciding in their own favor, and perhaps changing the whole policy of the Government against the wishes of the majority of the people, and against every principle of justice.

It would be to give a candidate for the highest office in the people's gift the right, in a close contest in certain cases, to declare himself elected.

The framers of the Constitution certainly did not intend to give to any man such a power in the presence of the representatives of the States and the people in joint convention assembled.

It is objected to this bill that it is a compromise and also uncon-

I do not so understand it. I am unable to see that it takes away from the electors, candidates, or from any department of the Govern-ment any of their rights, nor adds to Congress powers not granted by the Constitution.

Preceding the count of the electoral votes after every presidential election, the two Houses have adopted rules regulating that count, and provided for the admission or rejection of electoral votes.

That is all this bill does, except that it calls some of the wisest, best, and purest men in the country to aid Congress in the settlement of a disputed succession. Confronted with the great danger of embarrassment and confusion likely to result on a closely contested election and in the struggle for the possession of the powers and au-

thority of a great nation, it has endeavored to form a tribunal as free from party bias as possible.

For its power to do this the committee looked to the Constitution.

That great charter was not intended to be an inelastic instrument incapable of expansion or contraction as the necessities of the people might require; but was intended to be what its terms purport, a Constitution under whose provisions laws might be made or repealed to suit the varying emergencies of the times and the wants of the to suit the varying emergencies of the times and the wants of the citizens. It could not anticipate every emergency that would arise from the growth and development of the nation; and hence it was that it gave to Congress power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The extent of that power is happily defined by Chief-Justice Marshall in the case of McCulloch vs. Maryland, 4 Wheat., 413.

In that celebrated case it was decided that a discretionary power was ledged in Congress respecting the means which it might use to

In that celebrated case it was decided that a discretionary power was lodged in Congress respecting the means which it might use to carry its enumerated powers into execution. It was there said that if the ends were legitimate, and were within the scope of the Constitution, all means which were appropriate and plainly adapted to that end, which were not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

Under that decision the constitutionality of the Bank of the United

States was declared.

Under that principle we purchased Louisiana, Florida, and Alaska; and under it Congress can exempt the national securities from State or national taxation.

The power to electa President is vested in the people under certain forms and restrictions, and is one of the greatest devolving upon the people. If Congress should deem it necessary to enact certain laws

people. If Congress should deem it necessary to enact certain laws to elect that officer, and should think proper to prescribe certain rules to ascertain the people's will as expressed by their electoral votes, under that section, Congress certainly has the power to do it. So thought John Marshal, afterward the greatest Chief-Justice of the Supreme Court of the United States, when in 1800, in Congress, he made a report and voted for a bill having for its object, as its title declared, "a mode of deciding disputed elections of President and Vice-President of the United States."

From that hill many of the features of the present hill are hor-

from that bill many of the features of the present bill are borrowed, and if they were considered constitutional then, there is no reason why they should be deemed unconstitutional now.

If, however, there should be found no express authority in the Constitution for settling disputed presidential election cases, there must be a power somewhere to do it. It was not intended by the fathers that the nation should die of inanition.

By the tenth amendment "the powers not delegated to the United States by the Constitution nor prohibited by it to the States are re-

States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Senate and House of Representatives sitting in joint convention on the electoral vote represent the States and the people, and if the power to preserve the Union from the struggles over a disputed succession can be found nowhere else, it can be found in that amendment. I hold, however, it is clearly to be found within the eighth section of the first article of the Constitution.

It is objected, however, that we submit the settlement of the presi-It is objected, however, that we submit the settlement of the presidential election to the arbitrament of a single individual, the fifth member of the Supreme Court. It is said that we cannot find members of Congress sufficiently free from party bias; that the judges are more or less partisan, and that the votes of the Senators and members of the House will be balanced, and that the judges chosen by the bill are equally divided in politics and that the judge they may choose will decide the question.

Such objectors forget that they propose to leave the decision of this important and delicate question to a single individual, a partisan President of the Senate.

tisan President of the Senate.

They confess that there is no tribunal in the land sufficiently honest and free from party bias to do what to right, justice, law, and equity belong. It is to say that we are so imbued with party spirit that political opponents can obtain no rights, however clearly shown, against the will of an opposite party. It is a melancholy charge to make, and I do not believe it true.

If the Supreme Court of the United States is not above the bias of If the Supreme Court of the United States is not above the bias of party spirit, I know not where independence of thought and action can be found. The judges hold a life tenure of office. They owe allegiance to no man and no party. They can afford to be independent of all. They are the highest court in this land, and the peers of any judicial tribunal in the world. They have a pride in keeping the purity of the ermine unsullied, and no advantage can be gained by them or the party with which they affiliate that would compensate them for giving a judgment that would be unwarranted by the law and the facts as they should be laid before them.

Having unbounded confidence in their judgment and in their purity of character and freedom from bias, I would cheerfully bow to their decision if on them the decision should eventually fall.

But what do the opponents of the bill offer to rescue the country from the impending danger? Nothing, absolutely nothing. They propose no substitute, they offer no alternative if this bill should fail. They will let us drift on into a convention composed of two Houses independent of each other and composed of determined and excited politicians of the two great, antagonistic national parties, all insisting that their favorite candidate is elected and that the disputed electoral votes should be counted in his favor, with no common arbiter to decide between contending claims. Their policy would lead to angry strife and noise and tumult, and the arousing of the most intense passions of the human heart to a perilous extent, perhaps to an irrepressible violence. haps to an irrepressible violence.

It means the plunging of the Government into confusion; it means a political disturbance and excitement of the people from one end of the Union to the other, with a corresponding disturbance of all their business interests and an awakening of a strife that it is fearful to

eontemplate.

It is a drifting onward without chart, compass, or rudder into a great ocean of political uncertainty, whose angry waves may ingulf our republican institutions, the best hitherto framed for the progress and development of the civil and political rights of man.

On the other hand, the bill that is before us provides for a peaceable solution of the vexed question of the legality or illegality of the disputed electoral votes; it takes away unjustly from neither candidate for the Presidency his rights; it is constitutional in its terms and powers; and when it becomes a law the action under it will be acquiesced in by all the people of the nation and will cause the troubled waves of faction and political discontent to subside into the calmness of a summer sea. calmness of a summer sea

calmness of a summer sea.

Mr. PRATT. Mr. Speaker, I desire as well as I can in the few moments I have to state some of the reasons why I shall be constrained to vote against this bill. For about ninety years the people of the United States have every four years held a presidential election. Twenty-two times in the history of our Government under the present Constitution the people have elected presidential electors. Twenty-two times have the electors assembled and voted. Twenty-two times have the certificates been opened and the votes been counted and the President and Vice President elected in a preparate and the machinery. President and Vice-President elected, inaugurated, and the machinery of the Government kept in constant motion. At no time, Mr. Speaker, during this long period which comprises the whole period of our constitutional history has a resort in a single instance been had to such an extraordinary and remarkable mode of ascertaining the result of a presidential election as is proposed in this bill. Indeed there is no precedent, and there has been nothing done in Congress or in either branch of Congress since we had a Congress that can properly be construed as a resolut for this reasonnee. strued as a precedent for this measure.

Only once in the history of the Government was it proposed even to pass a bill at all similar to the one now under consideration. That was in the year 1800. You will remember that the bill that was introduced in the Senate on that occasion proposed a commission to be composed of six members of the Senate and six members of the House

composed of six members of the Senate and six members of the House with the Chief-Justice of the Supreme Court to act as president of the commission. But one of the very first things done in the Senate upon the consideration of that bill was to strike out the Chief-Justice; and the bill as it passed the Senate had no element of the Supreme Court in it. The Chief-Justice was left out. No associate judge was to be placed upon that commission; and the commission was to be composed entirely and wholly of Senators and members of the House of Representatives. The bill came to the House, where it was on the 26th day of April, 1800, committed to a select committee of which John Marshall, of Virginia, was chairman.

Sir, I have heard gentlemen here invoke the great name of John Marshall and his great authority as recommending principles similar to those embraced in this bill. Mr. Speaker, when the bill to which gentlemen refer came into the House there was no Chief-Justice or associate justices of the Supreme Court named in it, and Mr. Marshall never recommended, never voted for, and never did anything in reference to constituting a commission composed in part of the judciary of the country. Furthermore, Mr. Speaker, that bill as it passed the Senate made the decision of the commission final, as this bill practically does. Mr. Marshall questioned the propriety of this provision and recommended to the House that the bill ought to be modified in that respect, and so he reported the bill back to the House with that modification. He constituted a commission whose duty it should be that respect, and so he reported the bill back to the House with that modification. He constituted a commission whose duty it should be to take into consideration such questions as should be submitted to it and make a report thereon; and that report should contain only those memorials and petitions, depositions and testimony taken before the commission without even the opinion of the commission itself thereupon, and so that bill passed the House and so it was recommended by John Marshall. The commission so constituted was not allowed even to express an opinion upon the questions submitted to them. They were simply to take testimony and arrange and present to the House and the Senate the material upon which a decision might be made.

Now, I submit, that so far as anything can be learned from the ac-tion of that Congress upon that bill, that it condemns this measure. The Senate expressly refused to pass a bill that should drag the Supreme Court or Chief-Justice or any associate justice of the Supreme Court into the decision of a purely political question. And further, the House of Representatives, under the lead of John Mar-

shall, that great man and great jurist, whose name has become a synonym for law and equity and justice and wisdom—the House of Representatives refused to pass the bill in such shape as to make the decision of the commission, composed as it was wholly of Senators and members of the House, binding. Ay, sir, they went further, and refused even to allow that commission to express an opinion upon the questions submitted. And one thing further: In all the forms of that bill, both as it passed the House and as it passed the Senate, there was always this provision in it, that the commission should at no time and under no circumstances go back to inquire into the appointment of electors for President and Vice-President. The bill stopped then before they reached that point. This bill does nothing of that sort. On the other hand, this bill confers upon this commission unlimited powers, which they are to construe for themselves. As the gentleman from Illinois well said, it is simply a quitclaim made of all the authority that Congress has, be it much or little or none, and the commission is to construe for itself and decide for itself how for the commission is to construe for itself and decide for itself how far

Now, here is a power, if this commission shall choose to exercise it, shall choose so to construe it, to go to any extent it may see fit. The bill in fact allows this commission to organize itself into a grand returning board with full power and full authority to revise the returns from every State from every county from every parish to go into turning board with full power and full authority to revise the returns from every State, from every county, from every parish, to go into every polling-district and there examine and see whether the election was fairly and properly held or not. You may say the commission will not do this. I do not suppose the commission will, but under the bill they have the power to do it, they havethe right to do it; and the rule which Congress has given them for ascertaining their powers will allow them to go to that extent, and of that they themselves are to be the sole judges.

In short, Mr. Speaker, my great objection to this measure is that it creates a tribunal unknown to the Constitution, with unlimited powers, and with the power of judging of the extent of its own authority, and makes it supreme upon that question. We have no such authority to grant, and if we had it would be unwise to grant it.

I object to the possession by this strangely constituted and novel

I object to the possession by this strangely constituted and novel tribunal of these unlimited and revolutionary powers over questions involving the title to the executive chair of this nation.

involving the title to the executive chair of this nation.

This measure is a new departure in our political history. It is the assumption of a power not only not granted by the Constitution, but which is directly opposed to the theory and spirit of the Constitution; a power of threatening import and of revolutionary tendency, because it will have the effect to bring every step in the election of a President under the immediate control of Congress. The Constitution denies to Congress any control over or interference with the elections of a President by the people. The only directions which Congress can give the people on this subject is to fix the time when they shall vote for electors. The only directions Congress can give the electors is to fix the time when they shall vote for President and Vice-President.

But this bill contemplates inquiries beyond these limits of congress.

But this bill contemplates inquiries beyond these limits of congres ional control; it arms the commission of fifteen with authority over questions entirely within the jurisdiction of the States, and proposes to invade the domain of State action from which Federal authority has been carefully excluded.

There is no limitation to the powers of this commission. It is the do what it will, and is practically responsible to nobody. When once organized it cannot be dissolved or controlled.

Mr. Speaker, the creation of such a tribunal cannot but have a dan-

gerous and revolutionary tendency. For one I will not be responsi-ble for the consequences that may result from it. The only safety for this country is in a faithful observance of the constitutional limitations of power and a strict adherence to constitutional limitations of power and a strict adherence to constitutional forms and methods of procedure. To cut loose from these moorings of the Constitution is to embark upon the wild sea of party fury and violence, in the darkness of the tempest, and with chance at the helm.

[Here the hammer fell.]

Mr. O'BRIEN. I yield one minute to the gentleman from North Carolina, [Mr. VANCE.]

Mr. VANCE, of North Carolina. I have asked the gentleman from Maryland to yield to me to allow me to have read the telegram which I send to the Clerk's desk, and which I have just received from Raleigh: The Clerk read as follows:

RALEIGH, NORTH CAROLINA, January 26, 1877.

Gen. R. B. VANCE, House of Representatives:

Resolutions approving the joint committee's bill just passed both houses of our egislature; almost unanimously.

Mr. O'BRIEN. Mr. Speaker, a disputed presidential election has been predicted by eminent writers on the Constitution as the question which would most severely test that instrument and be the rock on which would most severely test that instrument and be the rock on which our form of government would probably be wrecked. The American people are at this time, on the threshold of the second century of our existence as a nation, confronted with the greatest danger to our institutions and the peace of the country by the disputed and varying interpretations of the provisions of the Constitution in regard to the counting or manner of counting and the authority to count or reject the electoral votes of the States for President and

While I hold decided views on this grave and all-important subject of dispute between the two great parties lately arrayed on the question of the choice of the highest executive officers of the Government tion of the choice of the highest executive officers of the Government and which parties are now in irreconcilable hostility as to the result of the election, I must admit that others, with equal opportunities to ascertain the issue of the late peaceable contest, are of an opinion directly opposed to the views which I and the great political party which receives my support entertain. This antagonism of opinion not only exists as to the result of the election, but also as to the constitutional authority to decide that result.

At no time in the history of the Republic has the public mind been equally excited and inflamed. A large majority of the people not confined to party lines is firmly convinced that the leaders of one of the political parties have determined to maintain their opinion and to in-

political parties have determined to maintain their opinion and to inaugurate as President their candidate without due submission to the

augurate as President their candidate without due submission to the authority which the other great party asserts has the constitutional right to determine who has been elected President, or whether a majority of the electoral votes have been cast for either candidate.

It is impossible to estimate the consequences which may result from this attempt, if it be unsuccessful. So revolutionary a proceeding, judged by the lights of history, would inevitably lead to the destruction of the constitutional liberties of the people, which would perish mid the flames of an internecine struggle of arms. Mr. Speaker, gentlemen may refuse to admit any apprehension of such a result, and delusively deride any such statements as threats and menaces of resistance to the Government, but the inquiry remains to be deterresistance to the Government, but the inquiry remains to be determined whether the success of such a movement would make its authors and supporters the administrators of the Government, or if the House of Representatives should have under its authority, and in obedience to the Constitution, elected another person President he would not be clothed with full authority to act as the Executive of the Republic.

Now, Mr. Speaker, who is so arrogant as to say that in the not improbable case I have stated no danger can occur, and that they who probable case I have stated no danger can occur, and that they who patriotically warn this House of the imminent peril of a dual executive speak in the spirit of bluster and deserve the swift scorn and indignation of the people, as oracularly asserted by the gentleman from Massachusetts, [Mr. Hoar.] No, sir; it is the consciousness of this peril, of these grave apprehensions of civil strife, that has moved the whole people to besiege Congress with petitions and prayers to ward off this danger by the passage of this bill now pending before

The voice of the people, speaking as it was never heard in any previous crisis of our country's history, is a command to their Representatives to yield their individual or party opinions, and to offer them as a sacrifice, an oblation on the altar of their country, for the peace

and welfare of the whole country.

Mr. Speaker, I respect the voice of the people; there is majesty and dignity in the patriotic and unselfish desire of the country for peace. can only be secured by a decision of the late presidential election It can only be secured by a decision of the late presidential election which will guarantee to the occupant of the presidential office that he is not regarded as a usurper by a majority of the people. In this view, Mr. Speaker, and without yielding in any sense any of my well-considered opinions as to the right of Congress to count the electoral vote and the authority and power of the House of Representatives to determine when the contingency arises when under the Constitution it shall elect the President, I shall vote for the bill now pending before the House, believing that in its provisions it contravenes in no respect the Constitution, and indulging the hope that right and justice will be maintained by the commission which is empowered to provisionally determine the graveisones of law and of fact confided to provisionally determine the grave issues of law and of fact confided to its inrisdiction.

its jurisdiction.

Mr. ATKINS. Mr. Speaker, the proposition which the joint committee, composed of wise and patriotic members of both Houses, and of the two great political parties, commend to Congress and the country as an olive branch of peace is not the offspring of partisan zeal or bias, but is the thoughtful and mature plan of escape from this dead-lock of conflicting authorities. In my judgment, it has been made to conform to the requirements of the Constitution and the laws in pursuance thereof and in strict deference to the equal rights of both contestants. It is true that some well-thinking persons, while anxious to avoid the terrible results to which this contest may lead, nevertheless express grave doubts as to the constitutionality of the

gress are often general, for it was impossible for the framers of the Constitution to prescribe special powers to meet every emergency in the progress of Government. Such foresight and prescience is not allowed to humanity. And there is no better established doctrine than that where the Constitution enjoins any of its agents to perform than that where the Constitution enjoins any of its agents to perform an act, it ipso facto confers the power to do so. It is the sole judge of the manner in which that power is exercised. Nothing is said in the Constitution of the manner or how the act is to be performed. It is only ordered that it be done, and Congress is at liberty to choose its own mode of doing so. It might call to its aid any other agencies if it desired to do so, as to that matter. It, however, has selected ten of its own members and five judges of the Supreme Bench, and they with power to select a fifth. Who more just or wise or patriotic? All acting as judges under oath to decide according to the Constitution and the laws this great dispute that now rocks the country to and fro like a drunken man. a drunken man.

a drunken man.

Why, sir! I venture to assert that the Senators and Representatives who will be chosen as members of this grand commission, feeling the weight of the immense responsibility with which they are clothed, that of arbitrating upon the rights and interests of forty-five millions of people—aye, of arbitrating upon the rights and interests of the unborn millions who are to come after us, will rise them the theories of politicians and the precipion of the properties of the control of the above the theories of politicians and the prejudices of the partisans, and, guided by their enlightened consciences, administer the Constitution and the laws fearlessly and sacredly. And to suppose for a moment that of the other part of the commission, those whose daily habit and profession are to hold evenly the scales of justice between their fellow-men, they would act otherwise, would be swayed a particle from the line of duty by the surging power of party passion, is itself an impeachment of their integrity, even by insinuation, which if true utterly disqualifies them for the honorable office they now hold

true utterly disqualities them for the honorable office they now hold with the admiration of the American people.

And if the judgment of this high commission does not meet the approval of Congress then it is rejected. If it meets its approval then it becomes its own act. Where, then, is there any abdication of its constitutional powers or privileges?

I believe that the bill of the committee is entirely free from constitutional objections and that this House has abdicated no right or power whatever in this great political drama. If it is contended that the House should have waited until the 14th of February, the time fixed for counting the vote, and, if both Houses did not concur in the fixed for counting the vote, and, if both Houses did not concur in the counting and reach a conclusion satisfactory to it, then that it should immediately proceed to choose from the three highest candidates, I may be allowed to answer that the way is not clear for the House so may be allowed to answer that the way is not clear for the House so to proceed, because the work of counting might not be complete and until it is complete no failure to elect is declared. Suppose the Senate ask for time to deliberate shall the House refuse it and declare for itself that a failure to elect by the electoral college has occurred. If the Senate be equal with the House in the power to count, is not its opinion and right to declare whether there is a failure to elect just as weighty and authoritative as that of the House? That being true what an obstacle is there in the path of the House? what an obstacle is there in the path of the House. In 1800 and in 1824, when the House of Representatives elected the President, it was done in each case by both Houses concurring that there was no election by the college. And should the House believe that an election has been made by the people and the college, then its power to elect at all is at an end, for it can elect only when there has been a failure

by the people.

The duty of the House to proceed to choose from between the three highest candidates, when no election by the people or by the electoral college has been effected, cannot be denied. The language of the Constitution will not admit of a doubt upon that point. And when that stage of the proceeding has been reached the House does not need to be told by the Senate to proceed to the exercise of that high constitutional prerogative. But the question is, when does the failure to elect occur? As it requires the assent of both Houses to announce an election, may it not require the assent of both Houses to announce an election, may it not require the assent of both Houses to declare a failure of an election? Suppose that in case that the Senate should conscientiously believe that an election had been made by the college and suppose the House did not believe it. Here is an affirmative and a negative proposition directly conflicting, and both emanating from an authority of equal weight, power, and dignity.

Now, without any adjustment of these conflicting views, without some agency erected by the separate yet concurrent action of both Houses, the two together retaining the right of a veto, which shall be

anxious to avoid the terrible results to which this contest may lead, nevertheless express grave doubts as to the constitutionality of the measure. They seem to think that it involves a delegation of the powers and duties of Congress.

The Constitution has enjoined upon Congress the duty to count the electoral votes for President and Vice-President. Congress consists of two Houses of equal powers. Each House has its own opinion, differing from the other. What do they by this bill? They agree separately to enact a law which shall bind them both to a certain mode of counting the vote; that is, they agree separately to act conjointly. In the separate action of each House no restraint or coercion or denial of constitutional power is forced upon that body. Its action is voluntary. It is within the power of Congress to adopt whatever mode it chooses to perform the duty of counting. Each House adopts the plan of this tripartite commission, and it becomes the month-piece of Congress. Congress, however, reserves the right to reject the result of its labors. The power is a general one. Indeed the powers of Con-

ous and tyrannical to assert that the Senate should authorize its presiding officer to count the votes and declare the result independent siding officer to count the votes and declare the result independent of the rights or the opinions of the House of Representatives. It is plain that the Constitution does not anticipate or provide for the independent action of either House contrary to the will of the other in the process of counting. I am not speaking of the right of each House to withdraw for deliberation. The Constitution has provided for the harmonious co-operation of both Houses of Congress, and any self-willed and defiant action upon the part of either House against the consent of the other would hardly escape being an act of revolution.

But in this case the Senate thinks one way and the House thinks another way, and, both with equal powers, the problem then becomes difficult and blinding. Under such circumstances, a part of the people would hold that for either House to attempt the declaration of the election of either candidate would be revolutionary, and anarchy

might ensue.

might ensue.

What is our duty? Shall each persist in its own course regardless of the opinions of the other until the country finds itself with a dual Presidency? In such a case who is to be obeyed? How long would two persons, one backed by the Senate and one of the great political parties, and the other backed by the House of Representatives and the other great party, both attempting to assume the authority and perform the functions of Chief Magistrate of this country—how long before they would each attempt to enforce his authority at the point of the bayonet? That would be war. Shall we have war if it can be honorably avoided? It is the last argument of nations and of neonles.

The two great parties, with their leaders, now stand face to face, like two huge giants, snarling at each other. Shall we who are intrusted with those sacred and mighty interests perform an act of patriotism, justice, and wisdom, and quiet these opposing forces by the adoption of this great measure of pacification, or shall we dogmatically stickle with special pleas over our own dogmas and thus widen the breach until the sword shall become the arbiter? God forbid such a conclusion! I turn my eyes from such a picture. There are but two things worse than civil war; they are slavery and national disgrace. Neither alternative is possible under the beneficent provisions of this bill.

The responsibility imposed by the Constitution in this grave crisis upon each Senator and Representative admits of no evasion, but The two great parties, with their leaders, now stand face to face,

The responsibility imposed by the Constitution in this grave crisis upon each Senator and Representative admits of no evasion, but must be bravely met. I have been an advocate of this proposition from the date of its adoption by the joint committee, not because I prefer it to the usual mode of procedure, which has been uniformly adopted in the matter of counting the electoral votes for President and Vice-President, but because of the failure of the two Houses to concur in a joint rule, the Senate having arbitrarily abrogated the twenty-second joint rule, and because I believe that under this plan the substantial ends of justice may be obtained. More than that; the sacred interests of the people of the United States demand at my hands my best efforts under the circumstances for their protection. The call of patriotism, the cry of humanity, the earnest appeal for peace which millions of hearts offer, unite in demanding of this Congress some measure of just settlement of this vexed issue. That this peace which millions of hearts offer, unite in demanding of this Congress some measure of just settlement of this vexed issue. That this in all its constituents meets the approval of any one of its advocates and supporters may be problematical, but who can present a better plan that can surely claim the sanction of Congress? For my part no question of doubtful expediency, but a positive constitutional inhibition could drive me to vote against this measure, so nearly does this country verge upon anarchy or something worse, if, indeed, there be a worse fate for a people once governed by law.

The vast and important stake which baffles the conceptions of the beldest imagination, and now belancing as upon a privet upon our

boldest imagination, and now balancing as upon a pivot upon our action upon this bill, appeals to our calm and thoughtful consideration, to the peace of our firesides, and to our loyalty to posterity. Our people everywhere have begun to speak. Their necessity is our opportunity. Their flat is that the voice of reason must rise above the people everywhere have begun to speak. Their necessity is our opportunity. Their fiat is that the voice of reason must rise above the din of passion and genuine patriotism must take the place of party. Political theories and platforms must give way when they endanger the existence of the country, and the Constitution must sway its scepter of justice and equality over all and for all, no matter who stands or falls.

Mr. PAYNE, (at four o'clock.) I withdraw the motion to recommit and call the previous question upon ordering the bill to a third reading.

ing.
Mr. HOPKINS. I ask the gentleman to yield to me that I may offer

an amendment.

Mr. PAYNE. I do not object to its being read.

The Clerk read as follows:

Section 1, line 13, insert the word "and" between the words "opened" and "pre sented," and strike out the words "and acted upon."

In line 33 strike out the words "a State" and insert "any of the States."

In line 78 of section 2, after the word "same," insert "together with all the testimony relative to the recent presidential election in said State, which has been taken under the authority of either House of Congress, so far as the same may by the said commission be considered competent and relevant."

In section 2, line 92, strike out all after the word "forthwith" to and including the word "govern" in line 96, and insert "provided such decision shall be concurred in by both Houses of Congress."

Section 2, line 16, strike out all after the word "who" to and including the word "provided" in line 18.

Strike out all in lines from 21 to 29, both inclusive.

Strike out, commencing in line 49, all after the word "commission" to and in-

cluding line 59.

Strike out the word "commission" wherever it occurs in the bill, and insert in lieu thereof the words "joint committee."

Mr. PAYNE. I decline to yield to allow that amendment to be offered. I renew the demand for the previous question.

Mr. SOUTHARD. I would like to offer an amendment.

[Cries of "O, no!" "Regular order!"]

The previous question was seconded and the main question ordered which was upon ordering the bill to be read a third time.

Mr. PAYNE moved to reconsider the vote by which the main question was ordered; and also moved that the motion to reconsider e laid on the table.

The latter motion was agreed to.

The SPEAKER. The gentleman from Ohio [Mr. PAYNE] is now entitled to an hour to close the debate.

entitled to an hour to close the debate.

Mr. PAYNE. I yield to the gentleman from Virginia, [Mr.WALKER.]

Mr. WALKER, of Virginia. Mr. Speaker, many of the leading business men among the patriotic constituency I have the honor to represent in this House met the other evening in Richmond and in a few well-chosen words (which I will append to my remarks) heartily indorsing the pending measure requested my active and cordial support of it. Did I not entirely agree with them in sentiment upon this measure, could I not cheerfully and conscientiously obey their behests, I should promptly resign my position and return to them the trust which they had generously and confidently committed to my keeping. But, sir, in this instance the Representative and his constituents are in a happy and earnest accord. They no more anxiously desire his support of this bill than he from profound conviction renders it. I am indebted to the generosity of him who I am proud to call my friend (Mr. PAYNE, of Ohio, chairman of the committee) for an opportunity to briefly state some of the reasons which have produced my convictions.

The consideration of this bill naturally suggests two queries: Is it

The consideration of this bill naturally suggests two queries: Is it

The consideration of this bill naturally suggests two queries: Is it lawful? Is it necessary? Unless each member of this House can respond affirmatively to both of these queries, duty to himself, his country, and his God demands that he should vote against it.

Three questions will be affirmatively established by the enactment of this measure into a law: First, that the power to count the electoral votes for President and Vice-President is vested by the Constitution in the two Houses of Congress; second, that no electoral vote can be rejected without the concurrent action of both Houses of Congress; and third that Congress has the power to delegate to a compress and third that Congress has the power to delegate to a comgress; and, third, that Congress has the power to delegate to a commission the ascertainment, subject to its revision, of the true constitutional electoral vote of a State when more than one and different electoral certificates have been deposited with the President of the Sen-

ate from such State.

Of the first question it would seem a sufficient answer to any cavil to the contrary that the uniform and unbroken line of precedents from the foundation of the Republic to the present time completely establishes it. But suppose it were an original question, unillumed by the judgment of patriots and statesmen for nearly an entire cenby the judgment of patriots and statesmen for nearly an entire century, and that we were called upon now for the first time to interpret the Constitution in this behalf, could a reasonable question be raised as to the meaning of it? "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted," is the language of the Constitution. Now, to plain and honest people who are in the habit of interpreting language according to its evident intent and without casuistry or special pleading the question naturally arises, if the framers of the Constitution intended that the President of the Senate should count the votes as well as once the certificates, why wholed cashistry or special pleading the question naturally arrises, if the framers of the Constitution intended that the President of the Senate should count the votes as well as open the certificates, why did they not say so? No instrument in the English language is so celebrated for the perspicuity and exactness of style as our Constitution. Not an ambiguous word or sentence can be found in it. Its fashioners did not use words like Tallyrand, to conceal ideas, but rather to express them. By the plain and obvious intent of the Constitution, the sole and only duty of the President of the Senate is to receive and safely keep the certificates of the electoral votes and then at the appointed day to open them in the presence of the two Houses of Congress for their consideration and action. When to this plain and natural construction of the language of the Constitution is added the history of its adoption, together with its uniform interpretation by every official body which has acted upon it, all of which I have carefully examined, it is matter of profound astonishment to me how any intelligent mind can entertain a contrary opinion. In my judgment, after the discussions upon this bill, no man will ever have the hardihood to urge an adverse doctrine. I shall treat it as finally and forever settled, no matter what may be the fate of this bill, and pass on to the consideration of the second proposition, namely, that no electoral vote can be rejected without the concurrent action of both Houses of Congress.

both Houses of Congress.

The chameleon character of the views of some gentlemen upon this question are amusing if not instructive. What, reject the votes of a sovereign State by Congress even if both Houses do concur! they or a sovereign state by Congress even it both houses do content they exclaim with much apparent warmth and indignation. The proposition is monstrous, say they, and is directly in conflict with the Constitution. How long is it since this revelation of constitutional light first dawned upon their enraptured visions? How long is it since they held and acted upon the doctrine that even one House could disfranchise a State? Who enacted the twenty-second joint rule, which placed the control of the electoral vote of any and every State of the

Union in a single branch of Congress?

The doctrine of State rights seems to have received a new baptism and entered upon a new career of grace and glory in the light of present contingencies and future possibilities. But, sir, this newborn zeal for the rights of the States in the breasts of their hereditary and inveterate foes finds no check or hinderance to its full bloom and and inveterate fees finds no check of ininderance to its full bloom and refreshing fragrance in this proposition. It simply provides that the vote of no State shall be rejected except upon the concurrent vote of both Houses. What infringement of the rights of the States is this? It is not to be presumed that the vote of any State will be rejected by both Houses, representing as they do in their respective capacities the sovereignty of both the people and the several States, except upon the sovereignty of both the people and the several States, except upon the ground that the vote rejected is not the constitutional vote of the State. This is at once the extent and limit of the power. In other words, Congress cannot disfranchise a State though a State may disfranchise itself. Electors of each State are to be appointed "in such manner as the Legislature thereof may direct;" but suppose that no provision be made by the Legislature for the appointment of electors, or that the certificate of appointment be false, fraudulent, or forged, will any one contend that nevertheless the vote of that State shall be counted? This bill does not even declare that such votes shall be be counted? This bill does not even declare that such votes shall be rejected. It simply says that they shall not be rejected except by the concurrent vote of the two Houses. Beyond ascertaining whether the Legislature has made provision for the appointment of electors and that the appointments have been made in accordance with such provision, and that the other provisions of the Constitution as to time of appointment, time of meeting, and character of electors, the power of Congress does not extend. But even the exercise of this power is not provided for by this bill. That the vote of a State will be rejected at all is a mere negative inference. It simply provides that even for these reasons no vote shall be rejected except by the con-current vote of both Houses. Does any one question that Congress possesses this power under the Constitution independent of and without any statutory provision?

out any statutory provision?

Is there no form, no instrumentality by which can be ascertained whether electors have been constitutionally appointed or not? Surely there is no such casus omissus as this in that great charter of our liberties which we have been taught to venerate from our childhood. Scarcely any provision of the Constitution is self-executing. It is a nicely though simply adjusted piece of mechanism, but it cannot move until life be breathed into it through the legislative power, and the exercise of this power is amply provided for in the last clause of the first article of the Constitution, which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

States, or in any department or officer thereof."

The legislative function, which is brought into play in the counting of the electoral votes, also in my judgment authorizes the employment of the means prescribed by this bill to aid Congress in ascertaining the constitutional vote of a State when the certificates of more than one set of electors are deposited with the President of the

Senate.

The finding of the tribunal must be satisfactory to Congress or else

Congress reserves the right to reverse it will not be allowed to stand. Congress reserves the right to reverse its action in all cases. In fact the commission is simply a means employed by Congress to enable it to properly discharge its functions in counting the vote. It is not an arbitration, nor yet is it a court of dernier ressort; it is simply an imposing advisory board, composed of eminent jurists and statesmen, charged by Congress with certain grave and responsible duties, but subject to its supervision and congrave and responsible duties, but subject to its supervision and control. And if Congress has the right to count the electoral votes and determine what are lawful and constitutional, then clearly it is clothed with undoubted power to employ the best and the safest means to enable it to discharge that duty. What better or more appropriate means could be devised than the commission provided for in this bill? Who doubts that it will be as fair and just a tribunal as frail human nature could under the circumstances devise? The man who, accepting a membership of this august body and swearing before high heaven to hear and decide the subjects submitted to him according to the to hear and decide the subjects submitted to him according to the Constitution and laws, should then allow his judgment to be warped by partisan zeal or unholy and selfish motives, would be damned to

Should its deliberations result in the inauguration of Governor Hayes as President, he will at least be conscious that he holds his lofty position in defiance of the popular will and in the face of the solemn protest of a majority of his countrymen, amounting to nearly solemn protest of a majority of his countrymen, amounting to hearly a quarter of a million of votes; yes, and of a majority of his own race amounting to fully 900,000 votes. But if, on the contrary, its findings should result in the inauguration of Governor Tilden as President, a consummation devoutly to be wished, then indeed would joy supreme reign throughout the land. Then would be inaugurated the era of "good feeling," the era of real peace and genuine prosperity. From many a stately mansion and humble hamlet will go up the cry:

Now is the winter of our discontent Made glorious summer by this sun of York; And all the clouds, that low'rd upon our house, In the deep bosom of the ocean buried.

But, sir, whatever the result may be the American people will bow before it in respectful obedience. Salus populi suprema lex. The safety of the people also demands submission to lawful decrees. I favor the measure in no partisan spirit. Every one of us should realize that this is no mare properties of expedience or selfest textice. this is no mere question of expediency or selfish tactics. No, sir, it rises high above all these and into the lofty plane of sublime and disinterested patriotism. The national life is imperiled, and in the presence of the momentous danger partisanship pales into loathsome insignificance.

Sir, the agitations by political parties, like those of the ocean, are ander our system of popular government essential to purity and healthfulness. They conduce by the agitation and discussion of important questions to correct and patriotic conclusions and action, while blind partisanship is the bane of free government. "It matters not

blind partisanship is the bane of free government. "It matters not how high may roll the waves of partisan fury, so long as parties keep aloof from faction. Let the altar on which the fire of their zeal is kindled be the altar of principle; let it be fed by the pure oil of patriotism, and let the vestal guardians, liberty and law, watch over their embers; they shall not die."

Sir, the scene which we are enacting is one of the grandest ever witnessed on the world's great stage, and by its light generations yet unborn will guide their action. Magna Charta set bounds to royal prerogative, the Petition of Right enforced the freedom of the subject, and the Bill of Rights superadded to and became the complement of and the Bill of Rights superadded to and became the complement of both. These three great bulwarks of English liberty were but the pre-cursors, the prototypes of our immortal Declaration of Independence. With what reverence do we bow before these great landmarks of Anglo-Saxon freedom! And yet none of them in their day and gen-Angio-Saxon freedom? And yet none or them in their day and generation were scarcely more important than the measure now under consideration. These in the main were but the declarations of the rights and liberties of the people, while this is a measure which has for its object the conservation of those rights and liberties. Its adoption will silence partisan clamor and selfish agitation. Peace will spread its benignant wings over our favored Republic; happiness, safety, and prosperity will again gladden the hearts of the American people. Poverty that now stalks your streets in search of work or bread people. Poverty, that now stalks your streets in search of work or bread, will be employed. Your silent work-shops and your stagnant commerce will be revived, health will supersede disease, and activity stagnation.

stagnation.

"Peace, be still!" was the sovereign mandate of the Saviour of mankind to the storm-tossed sea before Capernaum. Above the din and roar of the tempest the angry waters heard the voice of their God and sank into subdued silence. Calm succeeded turmoil and the Galilean fishermen moored their frail bark in a port of safety. So high above the tumultuous and angry waves of political excitement and partisan zeal shall be heard the potential and almost unanimous voice of this Congress uttered through this sovereign measure of good; they shall be hushed into silence; the ark of our covenant, wherein are centered our lives and fortunes, our highest hopes and loftiest aspirations, shall be rescued from impending danger and once more antions, shall be rescued from impending danger and once more anchored in the broad haven of universal peace and domestic concord. Then indeed may the poet of our times chant again that hymn sung

on another supreme occasion-

How many ages hence, Shall this our lofty scene be acted over, In states unborn, and accents yet unknown!

MEETING OF BUSINESS MEN OF RICHMOND JANUARY 22, 1877.

In response to a call published in the papers yesterday morning a large number of representative business men assembled at Association Hall yesterday evening at five o'clock to discuss the report of the joint committee on the counting of the electroral vote.

Mr. John Purcell said he had been delegated to nominate General Anderson as chairman of the meeting, and he accordingly did so. General Anderson was unanimously elected.

imously elected.

VICE-PRESIDENTS.

Mr. B. C. Gray nominated as vice-presidents Messrs. Robert Ould, Wellington Goddin, A. Y. Stokes, Judge B. R. Wellford, James Thomas, and James B. Pace. They were elected.

SECRETARIES.

Messrs. James A. Cowardin and John Hampden Chamberlayne were chosen sec-

A COMMITTEE OF TWENTY.

Mr. John Purcell moved that a committee of twenty be appointed to prepare suitable resolutions. Agreed to. The following were appointed: John Purcell. Isaac Davenport, Thomas Potts, Stephen Putney, Frank T. Glasgow, Andrew L. Ellett, Thomas W. McCanee, P. C. Warwick, Phil. Haxall, W. J. Yarbrough, C. H. Talcott, S. M. Rosenbaum, E. O. Nolting, Dr. J. P. Garnett, E. C. Barksdale, Robert S. Archer, John L. Bacon, James R. Crenshaw, Franklin Stearns.

Mr. Purcell, from the committee of twenty, submitted the following: THE RESOLUTIONS.

The citizens of Richmond, assembled in conformity with the call of a public meeting, deem it becoming that suitable expression shall be given to their opinion upon the bill lately reported by the joint committee of the Congress of the United States, by which a method is provided whereby Congress can ascertain and declare the result of the late presidential election.

In consequence of the long-continued and perilous uncertainty which has surrounded this question, trade and commerce have lessened and languished, the great manufacturing industries are in a state of suspended animation, labor pleads in vain for the rewards of honest toil, and agriculture, the "unursing mother" of every material interest and enterprise, shares the general discontent and provocation should lend additional acrimony to the contention which political controversy always engenders, and that the country stands now threatened either by a violent internecine strife, or by the danger of arousing that fierce and vindictive spirit

which may flow from a sense of injury inflicted by lawless power. In this trying emergency the wise and patriotic will hall with profound satisfaction any mode of adjustment which does not violate the fundamental principles upon which our Government rests; and therefore when a body composed of some of the ablest and truest and bravest from each political party in the Congress of the United States has reported a scheme of settlement such as the bill referred to contains, it is entitled to careful and respectful consideration, and should, unless there be cardinal and insuperable objections to it, be gladly welcomed as the harbinger of peace and prosperity. We do not believe it liable to such objection and hence we approve and commend it.

Therefore, confidently trusting to the adoption of the measure and believing it.

Therefore, confidently trusting to the adoption of the measure, and believing it will result in the restoration of harmony, the revival of business, and a development of the great resources of the country until peace and plenty shall overspread the whole land:

Be it resolved. That we respectfully request Hon. GILBERT C. WALKER, the Repsentative from this district, to give to the bill his active and cordial support. The report was adopted with only two dissenting voices.

Mr. PAYNE. I now yield to the gentleman from Ohio, [Mr. LAW-

Mr. PAYNE. I now yield to the gentleman from Ohio, [Mr. Law-RENCE,] for ten minutes.

Mr. LAWRENCE. Mr. Speaker, who shall count the electoral votes? What votes shall be counted? Shall they be counted on the record evidence of authenticity provided by the Constitution and laws in pursuance thereof, or shall the count be controlled by evidence and be affected by the opinions of a tribunal all unknown to and unprovided for by the Constitution? These are the questions which now claim the attention of Congress and engross the public mind. For the first time in our history, and within the last sixty days, the novel and startling proposition has been made that the votes are not to be counted on the record evidence of authenticity sanctioned by the Constitution, and sanctified by the approval of our entire history, but by the two Houses of Congress, and on such evidence as they and they "only" shall "prescribe." If they decide upon common rumor or newspaper statements that the vote of a State is for one set of electors when the legally authenticated record evidence affirms it is for another, this highest evidence known to the law may be rejected and the great seal of a State may be treated as a nullity, and as the and the great seal of a State may be treated as a nullity, and as the evidence of falsehood. If this doctrine had not received the support of distinguished names, and been followed up by committees of Congress gravely calling witnesses who have been permitted to offer as evidence matters which would be rejected on like inquiries by every judicial tribunal in the civilized world, it would not seem to deserve serious consideration.

But the occasion has become too grave for silence, and I shall en-deavor to show that this new doctrine has no sanction in the Constitution; that it is fraught with dangers to the Republic, with great evil and that continually; that those votes only can be counted which come with the record evidence of authenticity required by the Constitution and laws in pursuance thereof, and on this evidence alone; that the bill now pending to regulate the count, and which looks to inquiries outside of this record evidence, is unconstitutional and per-nicious; and that the Constitution has vested the power to count in the President of the Senate, and his authority cannot be divested by law or transferred to any other tribunal.

The material provisions of the Constitution which relate to these inquiries are the following:

### PROVISIONS OF CONSTITUTION.

inquiries are the following:

PROVISIONS OF CONSTITUTION.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.—Article 2, section 1.

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and of all persons voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shal

#### LAWS OF CONGRESS.

Congress has legislated upon the subject of electoral votes by repeated acts, and among other provisions has enacted that-

peated acts, and among other provisions has enacted that—

The electors of President and Vice-President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice-President.—March 1, 1792, ch. 8, § 1, vol. 1, p. 239; January 23, 1845, ch. 1, vol. 5, p. 721.

It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required to meet.—Act March 1, 1792, ch. 8, § 3, vol. 1, p. 240.

Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.—Act January 23, 1845.

The electors for each State shall meet and give their votes upon the first Wednesday in December in the year in which they are appointed, at such place, in each State, as the Legislature of such State shall direct.—Act March 1, 1792.

Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors, and the certificates, or so many of them as have been received, shall then be opened, the votes counted, and the persons to fill the offices of President and Vice-President ascertained and declared, agreeably to the Constitution.—Act March 1, 1792.

MATERIAL FACTS AS TO ELECTORAL VOTES.

#### MATERIAL FACTS AS TO ELECTORAL VOTES.

All the States have made provision for the appointment by vote of the qualified voters in each of the required electors of President and Vice-President. In every State of the Union the proper vote for electors was taken on the 7th day of November, 1876. In each of the States of Oregon, Louisiana, Florida, and South Carolina two sets of persons assuming to act as electors, on the first Wednesday, being the 6th day of December, 1876, cast votes, one set for Hayes and Wheeler, and one set for Tilden and Hendricks for President and Vice-President.

The persons assuming to vote as electors for Tilden and Hendricks in Louisiana, Florida, and South Carolina neither held any certificate of election from the proper governor nor were they declared elected by the proper board of officers authorized to ascertain and declare

who was duly appointed.

They held no evidence of title to the office of elector required either by the act of Congress or by State laws.

The electoral vote of each of these three States was cast for Hayes

and Wheeler by electors holding the proper certificates of election of the governor, and who, besides, were declared elected by the proper board of State canvass

If time permits, I will speak of the vote of Oregon hereafter. The lists of votes cast by the electors in all the States have been The lists of votes cast by the electors in all the States have been forwarded to the President of the Senate. As the law now stands, it is the duty of the Senate and House of Representatives to assemble together "on the second Wednesday (being the 14th) of February," in order that the certificates of the votes cast by the electors may be opened, the votes counted, and "the persons to fill the offices of President and Vice-President ascertained and declared agreeably to the Constitution." Constitution."

In and out of this Hall those who in the election of November supported Mr. Tilden for President universally concede that if the electoral vote of Oregon, Louisiana, Florida, and South Carolina is to be counted for General Hayes, he will have 185 votes, which is a majority of one, and so he will be elected President.

Since the recent investigation by a committee of this House as to the election in South Carolina, I do not understand there is any dis-

pute but that its vote is for Hayes.

If I may judge of the tone of the discussions in Congress, it would seem to be substantially conceded that there is no room for real controversy over the electoral vote of Florida or Oregon; these are for Hayes and Wheeler. If it were proper to inquire upon evidence, I entertain no doubt from all that has appeared in various forms that if there could have been in all the States a free and fair vote, at least three other States would have given their electoral vote for Hayes and Wheeler.

and wheeler.

But it is assumed that the electoral vote cast in Louisiana for Hayes and Wheeler in the form prescribed by law, by electors holding the evidence of election prescribed by law and returned to the President of the Senate in the forms prescribed by law, may, in the count of electoral votes required by the Constitution, be rejected upon evidence taken by committees of Congress, and that instead of these there may be counted votes east by persons assuming to be electors without any evidence of title to the office prescribed by law.

The gentleman from New York, [Mr. FIELD,] in an opinion which he has given to the public, referring to this question, says:

To learn what those electoral votes are, we are referred to a certificate, and told that we cannot go behind it. \* \* \*

Further on he proceeds to say:

I do not believe that such is the law. \* \* In the absence of express enactments to the contrary, any judge may inquire into any fact necessary to his judgment. The point to be adjudged and declared in the present case is, who has received a majority of the electoral votes; that is, of valid electoral votes; not who has received a majority of certificates. A President is to be elected, not by a preponderance of certification, but by a preponderance of voting. The certificate is not the fact to be proved, but evidence of the fact, and one kind of evidence may be overcome by other and stronger evidence, unless some positive law declares that the weaker shall prevail over the stronger, the false over the true.

Let him therefore who asserts that the certificate of a returning heard cannot be

Let him, therefore, who asserts that the certificate of a returning board cannot be assered by any number of living witnesses to the contrary, show that positive

law which makes it thus unanswerable. There is certainly nothing in the Consti-tution of the United States which makes it so, and there is no act of Congress to that effect.

If what has been said be founded in sound reason, the two Houses of Congress, when inquiring what votes are to be counted, have the right to go behind the certificate of any officers of a State to ascertain who have and who have not been appointed electors. The evidence which these Houses will record upon such inquiry it is for them, and them only, to prescribe.—Appleton's Book on Presidential Counts.

He proceeds again to say:

If there be danger in our present condition Congress can remove the danger. There are various ways of doing it. One is to provide for a judicial committee of the two Houses to sit in judgment as if they were judges and pronounce upon the result of the evidence.

The other gentleman from New York [Mr. WILLIS] said in his speech of January 20:

We have the power; it is our duty to go behind returns, to tear down all barriers which interpose between the people and their rightful choice.

#### THE ELECTORAL-VOTE BILL.

It is in view of the facts which I have stated and the doctrines thus proclaimed as law that a select committee of the House and a House and a similar committee of the House and a similar committee of the Senate, acting in concert, reported to the two Houses on the 19th of January a bill "(H. R. No. 4454) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877."

The committee in the report accommendation the bill series of the bill series and the bill series of the bill series and the bill series are the bill series and the bill series and the bill series are the bill series are the bill series and the bill series are the bill se

The committee in the report accompanying the bill say:

The substance of the bill embraces—

First. Provisions for the meeting of the two Houses, as required by the Constitution, and the general course of proceeding, and the declaration of the result.

Second. Provisions for the disposition of questions arising in respect of States from which only one set of certificates has been received; that each thouse shall consider the question and shall only decide against a vote by concurrent affirmative action.

Third, Provisions for so called double returns from a State Abstract.

ative action.

Third. Provisions for so-called double returns from a State; that such conflicting returns and papers shall be submitted to the consideration of a commission, composed of equal numbers of members of the Senate and of the House of Representatives and of the Supreme Court of the United States; that this commission shall be organized and sworn and have power to consider and decide, according to the Constitution and law, what is the constitutional vote of the State in question; and that such decision shall govern the disposition of the subject, unless both Houses shall determine otherwise.

Fourth. It is provided that the act shall not affect either way the question of the right of resort to the judicial courts of the United States by the persons concerned as claimants to the offices in question.

### The bill provides that-

The bill provides that—

All the certificates and papers purporting to be certificates of the electoral votes of each State shall be opened, in the alphabetical order of the States, as provided in section 1 of this act; and when there shall be more than one such certificate or paper, as the certificates and papers from such States shall so be opened, (excepting duplicates of the same return,) they shall be read by the tellers, and thereupon the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one member of the House of Representatives before the same shall be received. When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so objected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the same, with the same powers, if any, now possessed for that purpose by the two Houses acting separately or together, and, by a majority of votes, decidewhether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may therein take into view such petitions, depositions, and other papers, if any, asshall, by the Constitution and nove existing law, be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the ground thereof, and signed by the members of said commission agreeing therein; whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless upon objection made thereto in writing by at least five Senators and five members of said commission agr

Whatever may be the effect of this bill if it can become a law, it Whatever may be the effect of this bill if it can become a law, it must be apparent to all that the purpose at least of some of those who favor it is, if possible, to reject electoral votes cast in proper form by electors having the lawful evidence of authority, and transmitted to the President of the Senate in the mode and with all the forms required by the Constitution and laws. I do not believe the bill can properly be so construed. Its language will justify no such construction. Congress could not give to the commission a power to hear evidence which could not be heard without the bill; because the Constitution determines the evidence on which the count of electoral votes shall be made.

## CANNOT GO BEHIND THE RETURNS.

CANNOT GO BEHIND THE RETURNS.

I propose to state, as briefly as I can, some of the reasons why electoral votes having the legal evidence of validity cannot be rejected in the count required by the Constitution.

First of all, it would be a gross and palpable violation of the Constitution; this is manifest from its language. In examining this subject we must bear in mind that voters in the States do not vote directly for President or Vice-President. The voters in the States did, as the Constitution and laws authorized, vote for electors of President and Vice-President on the 7th of November. The officers in the States, charged by State law with the duty of ascertaining and declaring the charged by State law with the duty of ascertaining and declaring the result of that vote, performed their duty, and declared certain persons duly appointed electors by such votes. On the 6th day of December, the day fixed by law, the electors holding the legal credentials of

office voted for candidates for President and Vice-President and transoffice voted for candidates for President and Vice-President and transmitted their votes in due form as the Constitution requires to the President of the Senate. These votes are yet to be counted and the result declared. The Constitution makes no provision as to counting the votes cast by voters in November. On this subject it gives no power. In declaring what votes shall be counted, it by necessary implication excludes all power to count any other votes or look into any other election. Provision is made by act of Congress and by the Constitution as to counting the votes cast by the electors for President and Vice-President, but not for a recount of the normary vote. By and Vice-President, but not for a recount of the popular vote. By the act of Congress of March 1, 1792, it is made the duty of the two Houses of Congress to assemble together on the 14th of February, and the Constitution declares as to the electoral votes that—

The President of the Senate shall, in the presence of the Senate and House of the terresentatives, open all the certificates and the votes shall then be counted.

Here is the clause of the Constitution which imposes the duty of Here is the clause of the Constitution which imposes the duty of counting, defines what shall be counted, and makes a refusal a violation of the Constitution. There is a duty to count, not a power to reject. But what shall be counted? Clearly and beyond all doubt every vote which comes with the lawful evidence of authenticity. This is the plain declaration and purpose of the Constitution. The language is explicit and unmistakable: "The votes shall then be counted." Here is a duty which cannot be omitted or left unperformed. There is no discretion.

Here is a power to count the votes which come with the legal evidence of validity. But there is no authority beyond this. The Constitution might have declared that the President of the Senate, or either House of Congress, or both together, might, before counting the elect-oral votes, ascertain by evidence whether the State officers decided correctly in declaring the result of the vote for electors. But it has

given no such power.

It might have declared that when the President of the Senate had opened the votes of electors, some tribunal might, before counting, inquire and decide "whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such

But it has given no such power. It is not pretended such power is given in express terms; certainly none can be taken by inference. The inference is against it. The power which is given is to count votes regular in form. This is coupled with a duty to do so. This is the whole of the power. It necessarily excludes all other evidence or inquiry.

of the power. It necessarily excludes all other evidence or inquiry. The maxim may well apply, expressio unius, exclusio alterius. Words which give and at the same time limit a power are not to be so construed as to enlarge it beyond the limitation.

If a power could be inferred to go back of the elector's certificate of appointment it might defeat the duty to count so imperatively enjoined by the Constitution. There can be no inferred or incidental power which can be employed to defeat the duty enjoined.

The Constitution does not in express and precise terms say who shall count the votes, but it does make absolutely imperative and certain two things: first, that the President of the Senate, and no other authority, shall open the votes in the presence of the Senate and House, and, second, that the votes shall then be counted. No law requires any disclosure of what the votes are, and this is not necessarily and cannot be officially known until the votes are opened by the President of the be officially known until the votes are opened by the President of the

No provision is made for taking evidence as to the votes. The Constitution does not contemplate any evidence or inquiry in this count which can go beyond the votes and the lawful evidence which

The count cannot be made elsewhere than in the presence of the Senate and House of Representatives or upon other evidence.

It is incredible that the Constitution could intend that evidence may be taken as to electoral votes before they can be seen and before it can be known what they are. No provision is made for the surrender of the votes to any authority for this or any purpose beyond the count as they are. The two Houses have no custody or offi-

yond the count as they are. The two Houses have no custody or official knowledge of them in advance of the count, and so it would scarcely be possible to take evidence to affect the count.

When the votes are opened by the President of the Senate, the Constitution says they shall then be counted. This looks to no delay, no inquiry by any court or commission in advance of the count. The act of Congress of 1792 only requires Congress to be in session for a single day to witness the opening of the votes. Laws may be passed "necessary and proper for carrying into execution" this single duty of counting the proper votes by the authority which counts, and on the sole record evidence required by the Constitution.

But where is the authority which converts the Houses of Congress, or authorizes Congress now to convert them, into a great canvassing board, with the duplicate power to count the electoral votes and hear evidence and revise the canvass in the States for electors? Surely if

evidence and revise the canvass in the States for electors? it had been intended to give these great powers, some words appropriate for the purpose would have been used. The Constitution requires the electoral votes to be opened by the President of the Senate "in the presence of the Senate and House." It does not require them to be counted by or even in the presence of the Senate and

On these passive words, "in the presence," and on these alone, rests the whole claim for the powers of Congress. They are not words

which give any power to do any act. They do require a condition of

absolute passivity.

We have heard of the doctrine of a "strict construction" of the Constitution. In the name of that doctrine nearly every great infraction of the Constitution in our history has occurred, culminating in rebellion.

And now very many of those who profess to be "strict constructionists," and the defenders of "State rights" have discovered these immense powers in the passive words "in the presence of."

A more latitudinarian, forced, and extravagant construction of the Constitution never was suggested, and if it can now prevail it will be impossible to set bounds to the powers which Congress shall exercise hereafter. cise hereafter.

The Constitution gives to the President of the Senate the exclusive power to "open all the certificates." He is made the judge of what are certificates. These alone he is required to open. (Martin vs. Mott, 12 Wheaton, 31.) When the Constitution gave him this high power it is fair to infer that he is authorized to count the votes which he is

authorized to determine are duly certified.

The same result is reached by considering other provisions of the Constitution. These provide that:

The House of Representatives shall be composed of members chosen every second year by the people of the several States.

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Each House shall be the judge of the elections, returns, and qualifications of its own members.

Here is an express delegation of power to each branch of Congress to go behind the certificate of election furnished by State officers and to go behind the certificate of election furnished by State officers and to ascertain by proof who have in fact received a majority of lawful votes. This is a power which might well have been left to inference as one arising by general parliamentary law. But the framers of the Constitution in this, as in all other grants of power, were precise in the terms employed, and carefully avoided, as far as possible, all grounds for the exercise of powers inferred. This care is further shown by the tenth amendment, which declares that—

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

It is impossible to believe that the Constitution intended simply by inference to give to Congress the transcendent power to "be the judge of the elections, returns, and qualifications of "presidential electors" when it permits no such inferential power as to members of Congress. The provisions of the Constitution as to Senators and Representatives are similar to those as to electors; yet we are asked to hold that the framers of the Constitution in one case believed an express grant of power necessary to enable the Houses of Congress to judge of the elections, returns, and qualification of members, and in the other case that such power could be exercised as incidental or by inference. This would destroy the symmetry of the Constitution and require commentators to write across its face

—nil fuit unquam Sic impar sibi.

The very structure of our Government shows that there is no power in the count of electoral votes required by the Constitution to go

behind the duly-certified returns.

It is a Government of delegated powers. The powers of Congress are specific, enumerated, and limited. But a power to take evidence and go behind the returns is not one of them. The powers delegated to officers under the Constitution are specific and defined. But the President of the Senate is not, by virtue of any clause of the Constitution, or by any usage, empowered to take evidence, and so cannot go behind the returns.

The power to hear evidence and reject votes is judicial. This is conceded by every authority on the subject. It is the power exercised on quo warranto, and by courts clothed with the authority of hearing and deciding contested elections.

By the Constitution all indicial power is rested in the courts.

and deciding contested elections.

By the Constitution all judicial power is vested in the courts, except as each House is by express provision clothed with judicial power to "judge of the elections, returns, and qualifications of its members."

The power to count electoral votes in the first instance required by the Constitution is ministerial and executive in character. (McCrary's Law of Elections, section 81; State vs. Steers, 44 Mo., 223.)

Until the ministerial duty is performed and its result declared by the election of a President, no judicial question can properly arise affecting the title to the office, and then, if at all, only in the proper courts, duly authorized. The bill now pending in relation to counting the votes proposes to create a commission to hear evidence and return its findings of fact and conclusions to the two Houses of Congress. These are to be laid before the two Houses as evidence. On these it is proposed that the two Houses shall act judicially. It is an gress. These are to be laid before the two Houses as evidence. On these it is proposed that the two Houses shall act judicially. It is an attempt to require the performance of judicial duties by Congress as much so as though the two Houses were acting on a quo warranto or in the trial of a contested election.

Another provision of the Constitution requires some notice. It declares that "each State shall appoint, in such manner as the Legislature thereof may direct," the electors of President and Vice-President. The appointment of electors is by this clause intrusted exclusively to the States. It is a duty which cannot be defeated by any

other authority. The mode of canvassing the votes of citizens cast for appointing electors is left to be determined by the States. The powers of the State canvassers are determined by State laws. In some States, as Louisiana, the State canvassers have, by express statute, quasi-judicial power, and may on proof exclude from the canvass the statement of votes from any poll where "riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election." (Senate Executive Document No. 2, second session, Fortyfourth Congress, page 161.)

ences did materially interfere with the purity and freedom of the election." (Senate Executive Document No. 2, second session, Forty-fourth Congress, page 161.)

In the States generally the canvassers can exercise only ministerial power—the duty of aggregating and delaring the result as it appears on the face of the returns before them, with the incidental power of deciding what are returns. (McCrary's Law of Elections, section 82.) But each State has the undoubted right and power to decide by its laws what its condition may require as to the powers of canvassing officers. Neither Congress nor any officer can call in question this power or refuse to give it effect, without an encroachment on State rights. Whatever power may be exercised by courts, neither House of Congress nor both together, nor any officer of Congress or other authority, for any purpose of counting the electoral vote, is, or can be, authorized by any law to dispute the fairness or legality of the canvass or the evidence of the result which shall be furnished in pursuance of law. If this could be done, then each State would not, as the Constitution declares it shall, appoint its electors "in such manner as the legislature thereof may direct." The appointment would in such case be in fact and in effect by the officer or body assuming to "go behind the certificate of any officers of the State."

The framers of the Constitution did not intend that any such power should be exercised. Mr. Charles Pinckney, of South Carolina, in the Senate, on the 23d of January, 1800, is reported to have said:

He remembered very well that in the Federal convention great care was used to manner the election of the President of the United States independently of Convention for the lection of the President of the United States independently of Convention for the lection of the President of the United States independently of Convention for the lection of the President of the United States independently of Convention for the lection of the President of the United States

He remembered very well that in the Federal convention great care was used to provide for the election of the President of the United States independently of Congress. To take the business as far as possible out of their hands, the votes are to be given by electors appointed for that express purpose, the electors are to be appointed by each State, and the whole direction as to the manner of their appointment is given to the State Legislatures. Nothing was more clear to him than that Congress had no right to medide with it at all. As the whole was intrusted to the State Legislatures, they must make provision for all questions arising on the occasion.—House Miscellaneous Document No. 13, Forty-fourth Congress, second session, page 16.

The framers of the Constitution were fully aware of what De Tocqueville calls "the tendency which legislative assemblies have to get possession of the government," and they guarded against such encroachments with studied care. My colleague [Mr. GARFIELD] has shown that one-seventh part of all of their deliberations were devoted to this object. I will not go into the history which he has so voted to this object. I will not go into the history which he has so fully and ably presented in his masterly speech, one of the grandest efforts of this age. The men who made the Constitution did not intend to make the two Houses of Congress a great returning and canvassing board to revise the returns from the States. This is perfectly certain, from a history in part preceding and in part contemporaneous with the early history of our Constitution.

I will cite a memorable authority from the State of New York, one of the earliest authorities in our history, and it is valuable because it grew up in our early history. On the 20th of April, 1777, New York adopted her first constitution. By that constitution it was provided—

That the supreme executive power and authority of this State shall be vested in a governor; and that steadily once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this State shall be by ballot elected governor, by the freeholders of this State, qualified as before described to elect senators; which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said State shall be the governor thereof.

The constitution did not provide a mode of canvassing the votes

for governor.

On the 13th of February, 1787, the Legislature of that State passed an act for regulating elections. By the eleventh section of that act it was provided-

It was provided—

That a joint committee shall be appointed yearly and every year, to canvass and estimate the votes for governor, lieutenant-governor, and senators, or such of them as are then to be chosen; which committee shall consist of twelve members, that is to say, six to be appointed by the senate out of their body, and six to be appointed by the assembly out of their body; and such committee shall be annually appointed by resolutions of each body, respectively, and shall meet at the office of the sceretary of this State, on the last Tuesday of May; at which meeting the said joint committee, or a major part of them, or the survivors of them, or the major part of such survivors, shall, on the said day, and on so many days next succeeding thereto as shall be necessary for the purpose, proceed to open the said boxes, one after the other, and the inclosures therein contained, respectively, and canvass and estimate the votes therein contained.

Well, sir, in April, 1792, an election for governor took place in New York. The candidates were Governor Clinton and Chief-Justice Jay. The former was re-elected.

By the then existing laws of New York, which I have read, ballots that were taken in the several counties were, immediately after the election, transmitted to the office of the secretary of state and there kept till the second Tuesday in May, when the board of canvassers were to convene and canvass them.

The board of canvassers was a joint committee of eleven appointed by the senate and house of assembly of New York from themselves, and its duty was to canyass the votes cast for governor, lieutenant-

governor, and senators, and to announce the result. The board of canvassers consisted of David Gelston, Thomas Tillotson, Daniel Graham, Melancton Smith, David McCarty, P. V. Courtlandt, Jonathan N. Havens, Samuel Jones, Isaac Roosevelt, Leonard Gansevoort, and

Joshua Sands.

The joint committee threw out and destroyed the votes of Clinton, Otsego, and Tioga Counties, thereby electing Clinton governor.

The subject was fully discussed by many prominent men of both parties, among them Rufus King, Stephen Lush, Cornelius Bogart, Aaron Burr, Pierpont Edwards, John Lawrence, Jonathan D. Sergeant, Robert Troup, Edmund Randolph, Asher Miller, and Dudley Baldwin. The greatest interest was felt in the result throughout the United States, and an attempt was made to bring the matter before the New York house of assembly.

The greatest interest was felt in this matter, as I have said, and that body adopted the following preamble and resolution:

Whereas by the eleventh section of the act for regulating elections it is enacted

Whereas by the eleventh section of the act for regulating elections it is enacted that all questions which shall arise upon any carvass and estimate, or upon any of the proceedings therein, shall be determined according to the opinion of the major part of the said canvassing committee, and that their judgment and determination shall in all cases be binding and conclusive: Therefore,

\*Resolved\*, As the sense of this house, that the Legislature cannot annul or make void any of the determinations of the said committee.

Whether this committee acted in accordance with law I do not undertake to say; but the principle announced in this preamble and resolution has been followed in all the States and by all the courts.

It was affirmed by Alexander Hamilton, the greatest intellect of our early history, that the result as announced by the canvassers was absolutely conclusive, and that no power existed to go behind it. In his letter to Rufus King, of July 25, 1792, he said:

In his fetter to Kullis King, of July 25, 1132, he said:

To rejudge the decision of the canvassers by a convention has to me too much the appearance of reversing the sentence of a court by a legislative decree. The canvassers had a final authority in all the forms of the constitution and laws. A question arose in the execution of their office not absolutely free from difficulty, which they have decided, I am persuaded, wrongly, but within the power vested in them. I do not feel it right or expedient to attempt to reverse the decision by any means not known to the constitution or laws. The precedent may suit us to-day, but to-morrow we may rue its abuse.—Hamilton's History of the Republic, volume 5 nagra 29.

This is the opinion of the great statesman as it is found recorded by one who inherited his illustrious name and talents and who has given to the world the most elaborate, learned, accurate, and valuable polit-

ical history of the Republic ever produced.

It was Hamilton who, on the committee of revision in the convention which gave us the Constitution, put in final shape the clause which gives the power to count the electoral votes. He has given us the law as to the conclusive effect of the decision of State canvassers.

When, therefore, the Constitution gives authority to count the electoral votes, it treats them as final and there is no power to go behind them.

On this subject I commend to the able gentleman from Virginia,

[Mr. Tucker,] who has discussed this subject with so much ability, the words of John Randolph, of Roanoake.

On the 14th of February, 1821, in this House, he indignantly denied that there was any power to call in question the electoral vote of a State, and he declared it an invasion of its rights and its sovereignty in giving its vote. He said:

He could not recognize in this House or the other House, singly or conjointly, the power to decide on the votes of any State. He maintained that the electoral college was as independent of Congress as Congress of them, and we have no right to judge of their proceedings. He would rather see an interregnum, or see no votes counted at all, than to see a principle adopted which went to the very foundation on which the presidential office rested. Suppose a case in which some gentleman of one House or the other should choose to turn up his nose at the vote of some State, and say that if it be so and so such a person is elected; and if so and so what-you-call-'im is elected, did not everybody see the absurdity of such a proposition?

Yet Randolph's own Virginia is here to-day with her nose turned up at the vote of a State! Let Virginia now turn down her nose, or let her sacred soil give up the remains of her great statesman now sleeping

I commend to gentlemen from Virginia the opinion of their own great Madison. In his letter of March 15, 1800, to Jefferson, he denounced a bill which like that now before us sought to give to Congress control over the count of the electoral votes and he said:

Should the spirit of the bill be followed up it is impossible to say how far the choice of the Executive may be drawn out of the constitutional hands and subjected to the management of the Legislature.—Writings, volume 2, page 157.

EIGHT REASONS.

And now let us see some of the difficulties in the way of making inquiry back of the electoral votes lawful in form with a view to reject them in the count required by the Constitution.

I deny that there is any such authority, because:

1. The Constitution gives no express or substantive power to make any provides no means of doing so. Yet we are asked such inquiry and provides no means of doing so.

to make it without any such power.

2. The power is not incidental to the authority to count, because the Constitution and laws define specifically what shall be counted, without addition or subtraction. Yet we are asked, without authority, to add to and subtract from the electoral votes which the Constitution requires to be counted and which come with the constitutional syndence of entheoryticity.

evidence of authenticity.

3. The Constitution says the votes sent from the States with the lawful evidence of validity "shall be counted."

We are asked to say they or some of them shall not.

4. The Constitution says each State shall appoint electors in such manner as the Legislature may direct, who shall vote for President. This necessarily carries with it the power to furnish conclusive evidence of the appointment and the right of the State to have the evidence received and the votes counted. Yet we are asked to say that the appointment of electors by the States and by them duly certified shall be disregarded.

5. The Constitution forbids the exercise of powers not delegated.

5. The Constitution forbids the exercise of powers not delegated. Yet we are asked to exercise a power not delegated, but absolutely denied to Congress; denied by necessary inference and denied because vested in the President of the Senate.

cause vested in the President of the Senate.

6. The Constitution limits the power of counting electoral votes to the performance of a ministerial duty executive in its character. We are asked to disregard this, and require Congress, clothed only with legislative power, to perform executive duties.

7. The Constitution gives judicial power only to courts. We are asked to demand its exercise by Congress.

8. The settled doctrine of every court in the land is that the official acts of officers holding the proper certificate of election are valid, and cannot be called in question, as I will hereafter show. Yet we are asked to disregard and overturn all rules of law on this subject and disregard the official acts of elections holding the proper certificates of election. A more flagrant, palpable, monstrous, and dangerous of election. A more flagrant, palpable, monstrous, and dangerous disregard of the Constitution never was and never can be suggested, invented, or conceived than this of attempting, upon any pretext whatever, in the count required by the Constitution, to reject electoral votes which bear on their face the proper evidence of legal validity.

THE AUTHORITY OF THE COURTS ON THE QUESTION.

It would reverse the practice and authority of every court of this country from the landing at Plymouth Rock to this hour. The whole law upon this subject and the authorities which support it are stated in lucid terms in the able work on The American Law of Elections, by my learned friend, the distinguished gentleman from Iowa, [Mr. Mc-CRARY.] He says:

It is well settled that the duties of canvassing officers are purely ministerial, and extend only to the casting up of the votes and awarding the certificate to the person having the highest number; they have no judicial power. \* \* It does not follow from this doctrine that canvassing and return judges must receive and count whatever purports to be a return, whether it bears upon its face sufficient proof that it is such or not. The true rule is this: they must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose. (Section 81, 82.)

This is the rule, founded on statutes which give power to canvass or count votes and certify results. The power given by the Constitution is not so broad as the statutes generally. It gives a power to count only, the narrowest possible power. In four of our States—Texas, Alabama, Louisiana, and Florida—there are statutes which go beyond this and in express terms give authority to revise returns and reject votes. (McCrary, section 86; Senate Ex. Doc., No. 2, second session Forty-fourth Congress, page 160.) In Morgan vs. Quackenbush, 22 Barbour, 77, it is said of election canvassers, under a statute in the general form, that general form, that-

They are not at liberty to receive evidence of anything outside of the returns temselves; their duty consists in a simple matter of arithmetic.

The Supreme Court of the United States has said, in Martin vs. Mott, (12 Wheaton, 29-31,) that—

Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of these facts.

These rules of law govern the canvass by State boards in determining the choice of electors and the count of votes of electors transmitted to the President of the Senate. They are absolutely conclusive, for, whether the electoral votes are to be counted by the President of the Senate or the two Houses of Congress, for this purpose they are merely canvassing officers under the single power to count. Upon these authorities then, when the Constitution says-

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted—

those who count "are not at liberty to receive evidence outside of the returns themselves; their duty consists in a simple matter of arithmetic."

This is rendered still more certain by what the Constitution further says:

The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed.

The only duty in counting the electoral vote "consists in a simple matter of arithmetic"—in computing numbers. If the power to count carries with it the authority to "go back of the returns," then in every State of the Union, every State and local board of canvassers may, in their own discretion and on such evidence as they deem proper, under a similar power, set aside the will of the people and dictate the officers of their choice.

But this is not all. The courts have met directly the question whether the acts of officers can be declared invalid because not duly

elected, and it is now undisputed law that if a person comes into office by color of legal appointment or election, he is an officer de facto, his acts in that capacity are valid and effectual when they concern

the public and third persons, although it may appear he has no legal or constitutional right to the office. His official acts are as valid as

or constitutional right to the office. His official acts are as valid as those of an officer de jure, and they cannot be invalidated by any inquiry or evidence back of his certificate of election.

Public interests imperatively require this rule, and it has been adopted as undisputed law by this House. (Barnes vs. Adams, 2 Bartlett, 760; McCrary, section 79.)

This doctrine has been deemed so essential to the public interest, that persons declared ineligible by law have nevertheless been regarded as officers de facto and their official acts valid when done under color of legal appointment. (McGregor vs. Balch, 14 Vermont, 428.)

Many laws have been passed in Congress by the casting votes of members who were subsequently declared not legally elected. But the laws they made by their votes have always been held valid.

The same may be said of the laws in almost every State of the Union. Judgments have been rendered in the courts by judges who were subsequently ousted from office on quo warranto as not legally elected, but their judgments still stood as valid and unquestioned.

A large part of the land titles in many of the States depends on official acts of persons ousted from office as not legally elected, but

official acts of persons ousted from office as not legally elected, but the titles are not thereby disturbed. To overturn all this law is to destroy the foundations of society, the title to property, the obligations of the domestic relations, and convert the land into a pande-

Mand now to apply these principles.

The electors of President and Vice-President duly certified as appointed in Louisiana and other States performed the official act of casting their votes, and these have been duly certified to the President of the Senate. They are acts which affect the public. For all purposes of the count required by the Constitution, the authority and votes of these electors cannot be called in question.

This is the law as it is settled in this House and by all the courts.

To contravert it now is to disregard all law all authority all presidents.

To controvert it now is to disregard all law, all authority, all prec-

edent resting on reason and principle.

This is only an application of the principle well understood as to members in both branches of Congress.

When a Representative comes to this House with the proper cer-When a Representative comes to this House with the proper certificate of election from his State, it is by universal usage, as we all know, conclusive of his right to act as such until otherwise determined, under the express power to "judge of the elections, returns, and qualifications of members." The same principle applies in the Senate and in the legislative bodies in every State.

But as no such express power is given to judge as to electors, their votes in due form and having the legal evidence of authority must be counted. And if the power existed it could not invalidate acts done or electoral votes already given.

done or electoral votes already given.

But it is said that State canvassers may by mistake or fraud declare electors duly appointed when the honest votes of the people are the other way, and that this would be a grievous wrong to the people. In answer to this, I say the result of an election must be decided by some authority. If Congress may re-examine returns, the same or worse errors may occur and the same or worse and more grievous wrongs re-esult. The Constitution has given to the States the power to select canvassing officers, but it has not made Congress a State canvassing

But is there no remedy if State canvassers err? It may be said there should be a remedy. I might ask with equal propriety, is there any remedy if Congress should err in attempting to revise the decision of State canvassers? The record of contested elections in Congress does not attest the infallibility of congressional decisions. It is not to be assumed that State canvassers will be less honest or capable than the Houses of Congress. If there be any power to revise the results of the electoral votes, it is purely judicial. It may be that Congress may have power to create a dignified, impartial, able court to hear and decide a contested presidential election in which the candihear and decide a contested presidential election in which the candidates and the people can be judicially heard. (House Rep., No. 31, 3

sess. 40 Cong., page 83.)
Such a contest involves judicial power. The Constitution authorizes Congress to create courts for the exercise of all judicial power involving every question and every right that can arise under the Constitution. The right to the presidential office arises under the Constitution, and therefore may be made the subject of judicial incommunication and the constitution are constitution. quiry unless the Constitution has made the count required by it as final. (Ex parte H. E. Hayne, in House Mis. Doc. No. 31, 2 sess. 44

Congress, per Bond, judge.)

But the trial of such a contested election cannot precede the inauguration of the President. (Attorney-General, &c., rs. Barstow, 4 Wisconsin, 567.

The certificate of election to a candidate for Congress gives a right to a seat on this floor, and in all legislative bodies the contest comes afterward. And so it may be as to the office of President.

The Constitution is so made that there may be a remedy adequate for every wrong. And because this is so there never can be any exfor every wrong. And because this is so there never can be any excuse for resisting its commands. Any threat to disturb the public peace and to secure by violence what the Constitution does not authorize is premeditated treason. To yield to this is to invite its repetition and surrender the government of law to the anarchy of

The proposition to "go behind the returns" in making the count of electoral votes given at the proper time and in the mode and having

the authority of the evidence required by the Constitution is the most corrupting in its tendency, dangerous in its character, and revolutionary in its effect of any ever broached before the American people. It is revolution without disguise, and with its success "the Government of the people, by the people, and for the people" will be endangered through all time. The electors chosen by the States will no longer elect a President, but Congress will or may "go back of the returns" and reject such electors as may be necessary to keep or place in power a partisan choice. The President will or may be indefinitely made by Congress and not by the real electors of the States.

Give to Congress this power and it will become a central despotism

Give to Congress this power and it will become a central despotism, controlled by a party majority, trampling upon the will of the people, and subjecting all executive authority to its unrestrained and uncontrollable will. It will subject to its will all executive, all judicial,

all legislative powe

A President ambitious of a re-election will find excuses for bargain and intrigue to perpetuate his power. A partisan Congress may lend a willing ear to these, and, in the general and reckless scramble to perpetuate power, the rights of the States will be trampled in the dust, the will of the people be ignored, and the Republic of our fathers will perish forever.

Will I be told all this is necessary to preserve the public peace and compromise existing difficulties? This is a proposition to unsettle the foundations of the Government as laid by our fathers. It is a proposition to reject the safeguards they gave us against controversy.

proposition to reject the safeguards they gave us against controversy. It is a surrender to clamor which will invite still other and greater alarms and demands for concessions in the future. It is a surrender alarms and demands for concessions in the litture. It is a surface of principle and law to the uncertain and unsatisfactory results of revolutionary nurnoses and unconstitutional schemes. To yield to revolutionary purposes and unconstitutional schemes. To yield to these is but to invite new and intensified revolutions in the future.

Far better is it to stand by the landmarks of the Constitution and courageously meet, in every form which emergencies may require, all

who are its enemies.

COMPROMISE.

"Compromise," did I hear? We tried the Missouri compromise of 1820. The surrender then made encouraged in due time a fresh demand for compromise. This was to surrender the compromise itself, and it fell before the Kansas-Nebraska act of 1854. A surrender of a part led to a surrender of all.

part led to a surrender of all.

We tried the compromise of 1832 to appease the threat of South Carolina nullification. We were repaid by South Carolina secession in December, 1860. We tried the compromise measures of 1850. The surrender then made only encouraged the new demands for concession which followed. Those who were demanding compromises and concessions at last were encouraged to believe that the right of the people to elect a President of their choice in 1860 would be surrendered. In this they failed. It was compromise that led to Sumter. We were saved from this by Grant and Appomattox.

A new compromise now may at some time in the future lead to an-

other Sumter and this may fail to find another Grant and another

Appomattox.

I am for the Constitution; this cannot be compromised in its commands or the duties it enjoins without danger to the Republic. It was the compromise of 1821 in relation to the electoral vote of that State which brings the demand for compromise now. Compromise has

### Brought death into the world and all our wo

If we must call in the aid of chosen members of the Supreme Court, is it not better to demand the judgment of the entire court on every controverted question on this subject and abide by its impartial determination?

Let us stand by the Constitution as it is, accept the results which come in the forms of law and from those who execute its provisions, neither offer or threaten resistance, bury out of sight forever the memory of all past differences, and remember only that we are citizens of a common Republic, and resolve that henceforth we shall have neither crimination nor recrimination, and that we will learn war no more

With all this evidence before us of what the Constitution is and the danger of departing from its letter and spirit and purpose, I regard it as absolutely certain that, in the count of the electoral votes required by the Constitution, those votes which come with the usual and legal evidence of validity shall be counted, if the Constitution is to be obeyed.

OBJECTIONS TO THE ELECTORAL BILL.

I object, then, to the bill to regulate the counting of electoral votes,

1. In requiring evidence to be considered in the count, which goes back of the returns required by the Constitution and which may controvert the authority of electors who have the constitutional evidence of a right to act as such, it is unconstitutional and void.

2. It proposes to take from the President of the Senate the power vested in him by the Constitution to count the electoral votes.

3. It subjects the executive authority to the control of the legislalative power, in violation of the purpose of the Constitution to preserve independent co-ordinate departments and to give to the States the control of the presidential election.

4. It establishes a dangerous precedent, which may be destructive of the rights of the States to appoint electors "in such manner as the

Legislatures thereof may direct," and fatal to the existence of the Republic. It will invite other Oregons, other double votes, other Louisiana investigations.

5. It is impossible that the commission provided by this bill can reach a result which will command the confidence of the people. It cannot employ the time or the agencies requisite for the purpose

I pass by the question whether it creates officers appointed by Congress, ignoring the power of the President to appoint officers, and the other question whether a member of Congress can fill an office created during his term.

Neither the time nor the circumstances under which this bill comes to us nor the manner in which the proposed commission can exercise its powers can commend it to our favor. It is a contrivance, a veritable wooden horse, which in the guise of peace offers overtures in the name of friendship which may destroy the Republic that has withstood the assaults of all other enemies.

#### Timeo Danaos, et dona ferentes. OBEDIENCE TO THE DECISION.

If the bill shall pass and become a law we must all bow to its authority, and it must be carried out in good faith, in a spirit of candor, of fairness, and justice. The results which follow from it must be accepted in the interest of peace, of order, and of law.

#### HOW ABOUT OREGON?

Some days ago I was asked in this House if I would apply the principles for which I have contended to the electoral vote of Oregon. I answer emphatically I would. My ideas of law are not made for an emergency. They are such as I believe will "stand the test of human scrutiny, of talents, and of time."

Fortunately for the cause of truth, justice, and popular government, the stupendous fraud attempted in Oregon, like a vaulting whiting heavendoened itself and foiled of its purposes.

ambition, has overleaped itself and failed of its purpose.

# There's a divinity that shapes our ends, Rough-hew them as we may.

No difficulty can arise in counting the electoral vote of Oregon.

Let us see the facts as they are:

At the presidential election in November the republican candidates for electors were J. C. Cartwright, J. H. Odell, and J. W. Watts. They received a majority of all the votes, and their election was duly certified by the secretary of state of Oregon, under the great seal of

The democratic candidates for electors were Henry Klipper, W. B. Caswell, and E. A. Cronin, who received a minority of the popular

The governor of Oregon assumed to decide that J. W. Watts, one The governor of Oregon assumed to decide that J. W. Watts, one of the republican electors, was ineligible upon the ground that he was a postmaster on the day of the election. He accordingly issued a certificate of election to Cartright, Odell, and Cronin, two republicans having a majority of the popular vote and one democrat, who, as against Watts, had a minority vote. This commission, or certificate of election, was delivered in triplicate to Cronin, the democrat.

The Constitution of Oregon expressly provides that—

in all elections held by the people under this Constitution the person or persons who shall receive the highest number of votes shall be duly declared elected.

The Oregon statute is to the same effect. It is well-settled law that Cronin was not lawfully elected by reason of any ineligibility of Watts. (McCrary, chapter 5, section 231, &c.; Morton in Senate, December 7.) The Oregon statute (Laws of 1864, section 6) declares it to be the duty of the secretary of state "to make lists of the elect-ore elected" and affix the State scale to them and they are to be size. ors elected" and affix the State seal to them, and they are to be signed by the governor, and the secretary is required to deliver the certified lists "to the college of electors at the meeting" on the first Wednesday in November.

The Oregon statute further provides as follows:

And if there shall be any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed by viva voce and by plurality of votes to fill such vacancy in the electoral college.

The electors met at the proper time and place, Cronin holding the triplicate certificates of election. If he had acted with the two republican electors and if the college thus organized had cast two votes for Hayes and one for Tilden, and if all had been returned to the President of the Senate in due form, then, although covered all over with fraud and infamy, so far as the governor and Cronin and the Tilden vote is concerned, yet they would come, possibly with a force it might be difficult to dispute. But no such votes were cast or transmitted to the President of the Senate. On the contrary, Cronin declared there were two vacancies in the college of electors, and he proceeded to fill one by appointing J. N. L. Miller, and these two appointed John Parker. Assuming that this was a lawful college they gave two votes to Hayes and Wheeler and one to Tilden and Hendricks, and forwarded these, with the commission issued by the governor, to the President of the Senate. It will be seen from this that the President of the Senate is in possession of the governor's certificate or commission, showing that Cartwright and Odell, two republicans electors, with Cronin as a third, were duly appointed and commissioned. Here we have the proper evidence of the authority of two republican electors. It is therefore unnecessary to inquire if it is the duty of the President of the Senate to take judicial notice of the existence of these public

officers. The courts take judicial notice of public officers without

While Cronin was going through his sham performances the two republican electors received the resignation of Watts, declared the existence of a vacancy, then gave him an appointment in due form, and the three cast their votes for Hayes and Wheeler and transmitand the three cast their votes for Hayes and Wheeler and transmitted them to the President of the Senate. The two republican electors had the authority to act. They were, as the Oregon statute says and on common-law principles, the majority of electors entitled to decide all questions proper for their decision. They did ascertain and declare a vacancy. Cronin neglected to act with the majority of electors and thereby created a vacancy if it did not otherwise exist. The President of the Senate must believe, must take the decision of the majority of electors on this subject. Here then, on all the papers transmitted to the President of the Senate, the three republican votes from Oregon come with all the sanctions required by law.

from Oregon come with all the sanctions required by law.

It is well settled in all the books that where duties are intrusted to a board of officers and the time of their meeting is fixed a majority may proceed with the business of the board, in the absence or failure

may proceed with the business of the board, in the absence or failure of the minority to act with them.

It is equally well settled that one member of such board acting alone and not in conjunction with the majority can do no official act. (1 Dillon on Municipal Corporations, section 220, 221.)

And now, having presented my views as to the character of the electoral votes which the Constitution requires to be counted, those which on their face or on the whole record presented carry the legal evidence of authenticity, I proceed to state some reasons why in my judgment the power to count is vested by the Constitution in the President of the Senate.

REASONS IN FAVOR OF A COUNT BY THE PRESIDENT OF THE SENATE.

If the Constitution had merely declared that a President should be elected by electors appointed in each State "in such manner as the Legislature thereof may direct," and had stopped there, Congress undoubtedly could create a board of canvassers to count the votes and declare the result. This would be legislation "necessary and

and declare the result. This would be legislation "necessary and proper for carrying into execution the powers vested by the Constitution in the" President as an officer under the Constitution.

But if the Constitution has vested the power to count the votes in the President of the Senate, or in the Houses of Congress either acting separately or in convention, this power so vested cannot be taken away or delegated to any other officer, board, or tribunal. (Ex parte Garland, 4 Wallace, 380; Prigg vs. Pa., 16 Peters, 667.)

A power so vested can no more be divested or delegated than the legislative power vested in Congress. (Cooley Const. Limitations, 116; 16 Wis., 433; 4 Harr., Del., 492.)

So far as the counting of the votes of electors is concerned the Constitution is self-executing, the power is vested either in the President of the Senate or in the two Houses of Congress. It is now too late to doubt on this question.

doubt on this question.

The language of the Constitution determines this. It leaves to legislation "the time of choosing the electors and the day on which they shall give their votes." But in all else it is specific and self-executing. It directs the mode of voting, requires the electors to sign and certify their votes and transmit them to the President of the Senate, and then declares that he shall, in the presence of the Senate and House, "open all the certificates, and the votes shall then be counted."

The convention which made the Constitution, in resolving as its

opinion that when the first Congress met "the Senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President," treated the Constitution as self-executing. (House Miscellaneous Document No. 13, second session Forty-fourth Congress, page 4.)

If the Constitution had vested the power to count in the Houses

It the Constitution had vested the power to count in the Houses the convention could have made no such resolve as this, for it would be a resolve to violate the Constitution. The convention advised the appointment of a President pro tempore because there was yet no Vice-President, and a President pro tempore was necessary to exercise the power vested by the Constitution in the President of the Senate. And it was competent for both Houses to organize even before the inauguration of the first President.

The Congress of 1799 by its act of March 1 affirmed that the Congress of 1799 by its act of March 1 affirmed that

The Congress of 1792 by its act of March 1 affirmed that the Constitution is self-executing by providing that the certificates of electors "shall be opened, the votes counted, and the persons to fill the offices of President and Vice-President ascertained and declared agree-ably to the Constitution."

The original Constitution of 1787 declared that-

The President of the Senate shall, in the presence of the Senate and House of epresentatives, open all the certificates, and the votes shall then be counted.

The first count of electoral votes was on the 6th of April, 1789, when John Langdon certified that he as President of the Senate did "open all the certificates and count all the votes." (Miscellaneous Doen-

ment 13, page 8.)
Again, at the second count of electoral votes, on the 13th February, 1793, a message from the Senate informed the House—

That a President of the Senate is elected for the sole purpose of opening the certificates and counting the votes.—Miscellaneous Document 13, page 11.

Again at the third count on the 10th of February, 1797, the President of the Senate certified that he did "open all the certificates and count all the votes." (Miscellaneous Document 13, page 14.)

Again at the fourth count the Senate met the House "for the pur-Pose of being present at the opening and counting the votes."

And it was the Vice-President who "declared the result" and so of

necessity decided the votes to be counted. (Miscellaneous Document

necessity decided the votes to be counted. (Miscellaneous Document 13, page 30.)

The practice for many years after the ratification of the twelfth amendment conformed to this construction.

At the fifth count of the electoral vote, February 13, 1805, Thomas Jefferson was re-elected President and George Clinton elected Vice-President. Jefferson, being in Washington, was notified of his election by a committee of the two Houses; and under a resolution of the Senate a certificate was directed to be signed by the Vice-President and sent to Mr Clinton, which read:

the Senate a certificate was directed to be signed by the vice-Fresident and sent to Mr Clinton, which read:

Be it known that, the Senate and House of Representatives being convened in the city of Washington, \* \* \* the underwritten, Vice-President of the United States and President of the Senate, did, in the presence of the Senate and House of Representatives, open all the certificates and count all the votes. \* \* In witness whereof I have hereunto set my hand and seal, this 14th day of Febru ary, 1805.

AARON BURR.

AARON BURR.

The sixth count occurred on the 8th of February, 1809, when James Madison was elected President and George Clinton Vice-President.

The undersigned, President of the Senate pro tempore, did in the presence, &c., open all the certificates and count all the votes, &c. In witness whereof I have hereunto set my hand and caused the seal of the Senate to be fixed, this — day of February, 1809.

This was signed by John Milledge, of Georgia.

The seventh count, on the 10th day of February, 1813, resulted in the election of James Madison and Elbridge Gerry. And again, by direction of the Senate, "the underwritten, President of the Senate pro tempore," certified that he did "open all the certificates and count all the votes," and sent the same to Elbridge Gerry to notify him of his election.

On the eighth count, February 10, 1817, James Monroe and Daniel D. Tompkins were elected; and again the same form of certificate, reciting that the underwritten, President of the Senate pro tempore, did "open all the certificates and count all the votes," was directed to be made by a resolution of the Senate.

made by a resolution of the Senate.

On the tenth count, February 25, 1825, the election was again thrown into the House. John Quincy Adams was elected President by the House of Representatives and John C. Calhoun Vice-President by a majority of the electors. And again, by direction of the Senate, it was certified to John C. Calhoun that the President protempore of the Senate, had opened all the certificates and "counted all the votes." Signed

the certificates and "counted at the votes." Signed by John Galliard, of South Carolina.

These precedents, covering nearly forty years of our history, show the construction of the Constitution by the men who made it and were familiar with its purpose. They show that those who acted as tellers in these counts were mere clerks to register the votes first counted and delivered to them for that purpose by the President of the Senate. In all these counts neither the Senate or House ever assumed any authority over the count.

With this construction of the words of the Constitution affirming

With this construction of the words of the Constitution affirming that the opening and counting were both alike the duty of the President of the Senate, Congress submitted in 1803 to the States the twelfth amendment to the Constitution, which was adopted by the States and has ever since governed the mode of electing a President.

It copies from the original Constitution the clause which declares

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

In thus re-enacting this clause the construction put upon the same clause in the original Constitution, and which gave to the President of the Senate the sole power to open and count the votes, was ingrafted on and made a part of this article.

on and made a part of this article.

It is a rule of interpretation that when a constitution or statute has received a settled construction, its re-enactment in the same words adopts that construction as a part of the re-enactment. (Sedgwick on Statutes, 626; Pennock & Sellers vs. Dialogue, 2 Peters, 1-18.)

No inference can be drawn against the right of the President of the Senate to count by reason of the proceedings in Congress in relation to the vote of Missouri in February, 1821.

And this is equally true in relation to other States or organizations claiming to be such.

claiming to be such.

In all these cases the question was whether there were States in existence—not whether Congress could pass on the vote of an acknowledged and recognized State. (Miscellaneous Document No. 13, second session Forty-fourth Congress, pages 51, 230.)

In Luther vs. Borden, 7 Howard, 42, Chief-Justice Taney declared

It rests with Congress to decide what government is the established one in a State.

Congress might well decide that question, and it would be the duty of the President of the Senate in making the count of electoral votes only to count the votes of recognized States.

#### THE TWENTY-SECOND JOINT RULE.

The famous twenty-second joint rule of February, 1865, adopted without sufficient consideration during the rebellion, gives no countenance to the position that the Houses are to share in the count

of electoral votes. It was designed to apply to insurrectionary States excluded from the electoral college by the joint resolution of February 8, 1865. This joint rule was in effect a mere declaration that States already declared by law without lawful governments could not be restored to the full rights of States except by some concurrent action of Congress recognizing them as such. (Miscellaneous Document 13, second session Forty-fourth Congress, page 224.) This was the doctrine of the "reconstruction laws," based on the authority of Chief-Justice Taney in Luther 18. Borden. As applied to recognized States, it is clearly unconstitutional and has been so declared by its author, and is no longer in force. (Miscellaneous Document 13. by its author, and is no longer in force. (Miscellaneous Document 13, second session Forty-fourth Congress, page 274; House Report No. 100, second session Forty-fourth Congress, part 2, page 10.) But even under that rule it was left to the President of the Senate to "announce the state of the vote and the names of the persons elected."

He was in fact the judge of what the vote was.

And now it is high time we should return and adhere to the practice under the Constitution as construed by the founders of the Republic.

I cannot enter at large into the argument in support of the right

and duty of the President of the Senate to open and count the votes. I will, therefore, state in brief only some of the reasons which support this conclusion.

The President of the Senate is invested with the power to count

the electoral votes, because

1. It was so determined by the resolution of the convention which made the Constitution affirming the duty of the Senate to appoint a President "for the sole purpose of receiving, opening, and counting the votes" for the first President of the United States. The power the votes" for the first President of the United States. The power to count was not, in the opinion of the convention, vested by the Constitution in the Houses of Congress, or this resolve could not have been made.

been made.

2. The Constitution in this respect is self-executing. And having made it the duty of the President of the Senate alone to receive and open all the certificates, and having declared that the votes should "then be counted," the natural inference is that he alone should count. This is especially so since there are no words giving power to the Houses of Congress to count, and it is more reasonable to infer that this duty devolves on the President of the Senate, who is expressly charged with the custody and opening of the certificates, rather than on the two Houses, who are not given any right at any time to such custody, and who are charged with no duty in relation

3. The Congress of 1792, composed in part of the men who in convention framed the Constitution, adopted this construction by the act of March 1, in declaring that the certificates "shall be opened, the votes counted, and the persons to fill the offices of President and Vice-President ascertained and declared agreeably to the Constitution." (House Report No. 100, second session Forty-fourth Congress, (House Report No. 100, second session Forty-fourth Congress,

minority views, page 3.)

Here are three duties, (1) to open the certificates, (2) to count the votes, and (3) declare the result. The first duty is given in express terms to the President of the Senate, the last by undisputed and universal usage is his duty, and upon the maxim noscitur a sociis, the

duty to count is his.

4. The Congress of 1803 in submitting, and the people in ratifying, the twelfth amendment to the Constitution, adopted the construction that the President of the Senate shall count the votes. He had four times over counted the votes prior to 1803, under a clause of the Constitution in the precise words re-enacted in the twelfth amendment,

and this amendment was therefore intended to give him the power.

5. After the ratification of the twelfth amendment, the usage was long continued for the President of the Senate to make the count, and this is an authoritative contemporaneous construction, which

should be regarded as conclusive.

6. The President of the Senate, generally the Vice-President, and not a member of Congress, but an officer for all the people, and so representing fairly all the States, by reason of this and his high official position and the weight of his character, is presumed by the Constitution to have the impartiality, honesty, and ability to discharge the duty of counting, in a pre-eminent degree, as attested by the fact that he is made the custodian of the votes. He is charged with the duty of opening and counting the votes because these are executive acts and he is an executive officer. The two Houses of Congress are, in express terms, denied all executive power. The two Houses are incapable of being converted into a returning and canvassing board, exer-

7. It is almost practically impossible for so numerous a body as the Senate and House, acting with their separate and divided jurisdiction, to make a count of the votes. If the Constitution had so designed, provision would have been made to determine disputed questions which might arise, as these: If one House decide to reject a vote and the other to receive it, is the vote to be counted or rejected? On disputed questions shall the Houses act separately or as one convention? When a vote is presented, is it to be counted unless rejected by a majority of each House, or is a majority of each required to accept it? These and other questions calculated to provoke controversy and attended with dangers may arise if the Senate and House shall count. To say that the framers of the Constitution created such perils is to disparage their sagacity. This would make the Constitution not a "supreme law," but a supreme conundrum.

It is unreasonable to give a construction which shall involve so many perils. Public policy requires a construction which will avoid them

All these difficulties are avoided by conceding to the President of

the Senate the power to count.

As the Constitution requires the presence of the Senate and House at the opening of the certificates by the President of the Senate, which is conceded to be his sole act, it is reasonable to infer that the same presence, if required at all at the count, is only for the same purpose for which it is required at the opening of the certificates, to witness the count. But if such presence be required at the count, a sufficient reason therefor is found in the fact that when the President of the Senate has declared there is no choice it is expressly made the duty of the House to "choose immediately by ballot the President." Here is a sufficient reason, and the Constitution having given this, it is not

to be presumed there is any other.

The Houses of Congress can exercise only such powers as are deleated. No clause of the Constitution in terms gives to the Houses any such power. A passive presence at the count of votes is all that the Constitution requires of the Houses. No power to control the count can grow out of or be ingrafted on the single word "presence." Such power is not in the remotest degree incidental to any power that The Houses, therefore, cannot participate in the count.

10. The Constitution, by specifically enumerating all the powers of Congress and omitting any power to participate in the count, has necessarily excluded the possibility of any such power in the two

11. The Constitution, in giving to each House the express power "to judge of the elections, returns, and qualifications of its own members," and in omitting any declarations of a power in the Houses to judge of the elections and returns of electors, has by necessary implication excluded from them all such power. There is no such power exercised under the Constitution which hangs on so slender a thread, or has so little to support it as the claim of a power in the Houses to count electoral votes

12. The Constitution has made the President of the Senate the sole custodian of the electoral votes. Having vested in him this right as custodian, with no obligation or right to surrender the votes, it is im-

possible that the Houses could count.

And now, Mr. Speaker, this bill may go through all the forms of legislation; and if so, I shall hope the Constitution may survive the shock, and that the calmer deliberations of the future will devise the means of rescuing our imperiled institutions from the dangers that threaten them.

Mr. PAYNE. I now yield to the gentleman from Kentucky [Mr.

BLACKBURN] for ten minutes.

Mr. BLACKBURN. Mr. Speaker, in the few moments allowed me by the courtesy of the gentleman from Ohio, for which I tender my acknowledgments, I shall have no opportunity to discuss the issues involved in this measure, but must content myself with placing upon the record a few of the reasons which influence my vote upon the

passage of this bill.

I object to it, first, because there is not in my judgment a proper subject-matter here for arbitration. I object to it, secondly, because if that postulate be not true the tribunal that it is proposed to erect is extra and anti-constitutional in its structure. I deny that it is competent for Congress to delegate its great power to pass upon the validity of an electoral vote. I deny that it is proper, even if it were competent, for Congress in making such a delegation of its power competent, for Congress in making such a delegation of its power to merge two of the independent co-ordinate branches of this Government, to call in the aid of the judiciary to assist the legislative branch in the discharge of a function which by the Constitution has been imposed wholly upon the latter. The bulwarks that divide and separate co-ordinate branches of this Government this bill proposes to break down. If it is competent for you to call in the judiciary to aid the legislative branch in ascertaining this result, why is it not competent for you to ignore the judiciary and call in the other co-ordinate branch, the executive department? Why should you not make the President of the United States the umpire between the two Houses, and thus clothe him with a power to name his own successor? Houses, and thus clothe him with a power to name his own successor?

But, sir, I object to the measure upon another ground, more forcible

I object to it because if passed it robs this House of the constitutional percogative to protect a popular right. I hold that under the provisions of the Constitution (in common with a majority of the members of this House and in accordance with the expression of the Senate as illustrated in its vote upon this bill yesterday morning) the President of the Senate has no authority in the count to settle anything as regards the validity of any vote; that this power is lodged with the two Houses of Congress, and that nothing coming here as the vote of a State can be received if this House enters its protest against it. But, sir, if this bill should pass, and your joint commission should return a verdict in favor of counting the vote of Florida and Louisiana for Mr. Hayes and Mr. Wheeler, this House stands shorn of its power to object, unless the Senate shall concur in that objection. To agree to this is, in my judgment, an abandonment of the rights that the people have committed to our keeping. Not one atom of popular right in the matter of the selection of the people's rulers will I ever surrender, not one prerogative of this House that looks to the protection of that popular right will I ever consent of the members of this House and in accordance with the expression

to abandon. If this matter needs to be arbitrated, we require an-

other tribunal

But I deny that there is anything proper for such a tribunal to pass upon. The people at the polls have made an election; it becomes our duty to ascertain and promulgate the result. If in this I am in error, if no election has been had, then the Constitution unquestionably makes it the duty of this House to proceed to the election of a President. I say this with all deference to the gentlemen who with laborious effort have produced this compromise.

I say it without impugning their wisdom, their patriotism, or their purpose, but I say it and utter it as my deliberate conviction that it is but a temporary make-shift, for which the advocates themselves dare not plead as a precedent in the future; that it is but an abor-tion, born of a timidity which seeks to avoid the responsibilities of the

If this fraud is to be consummated, if the popular verdict is to be reversed, if the Constitution is to be disregarded, if the precedents and traditions of the country are to be outraged by the induction into the Presidency of a man who has been repudiated at the polls, I say let it be done by an open application of arbitrary power, let it be done by force, let it be done amid the throes of revolution, and not seek shelter under a law of questionable constitutionality.

Whatever else may be said, I do sincerely trust it can never be truthfully said of this Congress that it abandoned its prerogatives and sought to avoid responsibilities imposed by the Constitution

which it has sworn to support.

I trust it may never be truthfully charged that in this crisis timidity appeared where manliness should prevail and cowardice usurped the hour in which courage should rule. [Applause.]

Mr. PAYNE. I now yield to the gentleman from Kentucky, [Mr. Loves 2]

Mr. JONES, of Kentucky. Mr. Speaker, I should have been glad to have had an opportunity to express my views at large upon this most important measure. That being denied me, I accept the conressy of my friend who has just taken his seat, merely to indicate the reasons which impel me to vote against it. I do not hesitate so much upon the constitutionality as the policy of the measure and my sworn duty to accept or reject it. I am inclined to believe that whatever power the Congress has a right to exercise in its own proper person or presence it may delegate to a committee or commission, especially when subject in a degree to its own revision. But to yield a high preporative of the House of Representatives, required and imposed by rogative of the House of Representatives, required and imposed by the Constitution to be exercised in a certain contingency in vindicating the judgment of the people, I, as one of their long-trusted and honored representatives, cannot consent to do. I might willingly yield my own individual right, but that of the people I regard as a trust of

more sacred character.

I believe, sir, that Tilden and Hendricks have been fairly and legally elected President and Vice-President of the United States, and by a popular majority of nearly three hundred thousand freemen. by a popular majority of hearly times indirect thousand freemen. I believe the two Houses of Congress have the right to count the votes and determine whether there has been an election or no election by the electoral college, and in the latter event that the House of Representatives is bound to exercise its constitutional function, to

elect the President, and the Senate, under the same provision of the Constitution, to elect the Vice-President. I would enforce these high functions, and let consequences take care of themselves.

These are my convictions, and I must act up to them. If I should be wrong, I shall at least be acquitted in conscience, and that will be be wrong, I shan at least be additized in conscience, and that will be a consoling balm, whatever betides myself or my country. But, sir, this bill was prepared by able and patriotic men; it seems to be indorsed by many of the wisest and best men of both parties; and the people have already largely accepted it as the best solution of the embarrassing question. Upon them let the responsibility fall; I will not take it. I trust that, should this commission be appointed, as is most likely it will be, its deliberations will result in establishing the verdict of the great people we represent, and in any event I pray God that the Republic will still live in fact as well as name and always overshadow a free people.

Mr. PAYNE. I now yield to the gentleman from New York, [Mr.

FIELD.]
Mr. FIELD. Mr. Speaker, it was my intention to participate in exhausted, the members are imthis debate, but the argument is exhausted, the members are impatient to vote, and no words from me are needed. I have watched the progress of this bill with intense interest; for, while I thought it beyond question within the competence of Congress, I was sure that it was a just and honorable settlement and the best method of escape from an impending calamity.

And while I shall take no part in further discussion I cannot re-

And while I shall take no part in further discussion I cannot refrain from expressing my admiration of the fidelity, the courage, coupled with moderation, of the members of the joint committee from both parties and in both Houses of Congress.

When the bill was reported I looked with anxiety for the first expressions of opinion from the country and for the first debates in Congress. The opinions from the country have come to us with an approach to unanimity which no man can mistake. And on Wednesday night when the Senate sat to debate for the last time and to decide the question, I looked often to the flag floating over their Chamber to see if it was still flying. There it floated all through the

night-watches till the daylight came, and as the sun rose over the snow lighting up this Capitol from basement to dome the flag was knew that the day was won. [Applause.]

Mr. PAYNE. I now yield to the gentleman from Kentucky, [Mr.

BROWN.

Mr. BROWN, of Kentucky. Mr. Speaker, this is a supreme hour in the history of the Republic; never perhaps was there one so big with its fate. Within the brief time allowed me by the courtesy of the gentleman from Ohio [Mr. PAYNE] I cannot attempt an argument, but I wish to put on record a word of indorsement of this bill. I am for it. Before me, sir, I see the foot-prints of those whom I am not afraid to follow. I believe this measure constitutional and that it will prove a peaceful solution of our political difficulties. More than that, I have confidence in the integrity of the tribunal which we are to establish by this bill. More than that, too, I have undoubt-

we are to establish by this bill. More than that, too, I have indonoting faith in the cause of my party to be submitted to their decision, and, with these convictions, give it hearty support.

More than forty millions of people in the cities, hamlets, workshops, and fields of this broad land have their eyes turned toward us this day, and every patriot among them hopes for the preservation of the fabric of Government builded by our fathers. The merchant, banker, fabric of Government builded by our fathers. The merchant, banker, trader, farmer, lawyer, citizens of every vocation, are vitally interested in our work, for the prosperity of their business and their political rights depend upon the public peace and maintenance of law. If this bill involved the surrender of any constitutional right which honor and duty dictated should be jealously and inviolably held, I should scout it; but I feel sure that it does not. Defeat it, and we are afloat on the mad current of political passions, with agreement between rival parties rendered impossible, and drifting on to the breakers, where victory by either may be the death of the Constitu-

A month ago I almost despaired of the Republic. I thought I saw a gigantic conspiracy against liberty. The deliberate utterances of the leaders of the opposition made a year ago were repudiated by their authors; established joint rules of Congress made by the republicans themselves and acted under for years were declared no longer operative. We have heard and seen them deride laws of their own making and turn their backs upon the usages, precedents, and traditions of the Government. We heard the note of military preparations; the Legislatures of sovereign States were put under the supervision of corporals of the guard, and by a leading newspaper organ in this city the arrest of the representatives of the people in this Chamber, who should dare, in a certain contingency, to perform their constitu-tional duty, was defiantly advocated. I know of nobody who was intimidated. There was a calm, earnest resolution to meet the situation as oath and honor demanded. The other day we saw a singular spasm of devotien to State rights. Men here proclaimed that it would be a great outrage upon the Constitution if the House should require the members of the thrice-branded returning board of Louisiana to furnish for inspection to one of our committees the record of their proceedings in the count of the presidential vote. Yet these same gentlemen knew that on that very day—and it is the fact this day—the disputed chief-magistracy of that sovereign Commonwealth, indeed its precious autonomy, hung for its disposal upon the vacillating will and caprice of the President of the United States. The same is true also of South Carolina.

same is true also of South Carolina.

It is said that "history is philosophy teaching by example," and the last fifteen years are full of bad examples to be recorded by the remorseless pen of the coming Tacitus or Macaulay of our land.

There is not a man anywhere who will have the hardihood to deny that the vote in the late presidential election, as cast, showed a majority of a quarter of a million for Tilden. Deducting the votes of the negroes, a majority of a million of the white voters cast their ballots for Tilden. I believe he was elected—honestly, squarely. It is denied and fraud and intimidation charged. Without some fair and honorable settlement of the dispute, the industries of the country honorable settlement of the dispute, the industries of the country must remain paralyzed for weeks longer, as they have been for months past, with the public mind full of unrest and apprehension, and with the ultimate danger of civil war impending.

and with the ultimate danger of civil war impending.

I have thought, sir, at times that the bloody necessity would be forced upon the more than four millions of men who voted for the democratic candidate for the Presidency to attempt his inauguration, but I rejoice that there is a most substantial promise that patriotic statesmanship will triumph. We have seen men of both parties sacrifice upon the altar of public safety their partisan prejudices and nobly join together in a plan for the salvation of our country. Such moderation is a virtue fanaticism never forgives.

I hoper them for this, the country is grateful for it; their works are the country is grateful for it; their works are the country is grateful for it; their works are the country in the country is grateful for it; their works are the country in the country is grateful for it; their works are the country in the country is grateful for it; their works are the country in the country is grateful for it; their works are the country in the country in the country is grateful for it.

I honor them for this; the country is grateful for it; their work will be triumphant and historical, and they will have the gratitude

of coming generations of men.

The product of their labors is before us. It clears the horizon round us. We can see the shore and are nearing it, and are to escape the storm whose hoarse and angry mutterings we have heard.

As I have said, I believe the bill to be constitutional. If I did not,

no possible considerations could influence me to support it. I do not hesitate to follow the cautious pioneers who have shaped its provisions. They are men of wisdom, of great love of country, of integrity trusted, and worthy of trust. If I had a doubt of its constitutionality I should bend my judgment and resolve it upon the side of arbitration and peace for God has said "Blessed are the peace-makers."

The adoption of this compromise, if I may so call it, will be a new proof, I trust, of the stability of our institutions. Such excitement and commotion as we have had in this political contest would have resulted in civil war and in the downfall of almost any government on earth save this. Now we send forth to our countrymen assurances of hope and renewed confidence in the perpetuity of the Constitution of our fathers.

The section of country to which I belong—the South—standing as she does almost broken-hearted and in the weeds of mourning over her beloved dead, stricken with poverty, property wrecked, and her liberties outraged, but ever bearing herself with majestic dignity in her woes; brave, as all the wide world knows, yet moderate, patient, and forbearing when pushed almost into the depths of despair—I say, sir, if she can be assured that the day approaches when she shall be sir, if she can be assured that the day approaches when she shall be harried no longer, but have her rights and equality in the Government recognized and protected, her brow will be lifted up radiant with the glowing inspiration of her heart, born of joy for her liberation, with courageous faith in a high destiny, and that land will again be the garden that it was, and not the waste that it is.

I have said I have faith in the cause of my party. Let truth prevail, the right conquer; let fraud be hunted down and rebuked. I want no victory founded upon injustice and wrong. I believe Tilden has won, and nothing hardly short of omnipotence could make me believe otherwise; but such is my confidence in the integrity of the

believe otherwise; but such is my confidence in the integrity of the tribunal to be erected by this bill that I am willing to trust the whole case to their examination and arbitrament.

I believe this to be a great day's work for the people; and when the electric wires shall flash the glad news of what we have done to the anxious and listening millions behind us, I believe it will receive the indorsement of the calm judgment of good men from one end of the land to the other.

To save a republic, save it in honor, justice, and truth, from the calamity of lost liberty and dire horrors of internecine war; to give repose to its people, peace to its homes, confidence in business, and to command order and obedience to law throughout its limits—this is the grandest and holiest work that man can do for his fellow-man;

and, believing that this bill will secure all of these precious results for my countrymen, I rejoice that it is my good fortune to be an humble participant in this legislation.

I trust that my hopes are not too ardent; and should they prove well grounded, then the second century of our national life will open most auspiciously in their consummation. The gray mountains, the eternal sentinels of God, will shake their crowns to the valleys; the valleys will smile to the seas, and the seas will rush up to kiss the shores, and the very material elements will mingle with the gladness of a rescued people rejoicing in the fact that the Constitution and

shores, and the very material elements will mingle with the gladness of a rescued people, rejoicing in the fact that the Constitution and Union, are to live, and preserve for all men of every color and nativity the blessings of liberty regulated by law.

And shall it be said that to assist in accomplishing this for a great people will degrade the Supreme Court? Why, sir, it will decorate the judges of that court with robes brighter with honor than their own unsullied ermine to leave their august position and mingle as a part of this tribunal which is to decide, as was said by an eloquent Senator, "the greatest dispute that was ever had in the world." If they can but adjust these difficulties to the satisfaction of the people—and I believe the people will accept their judgment—it will alone —and I believe the people will accept their judgment—it will alone be worth more than they have ever done in the past or can ever do in the future, even if there were to be vouchsafed to them an existence as far reaching in its span as that of the patriarchs of old. [Ap-

plause.]
[Here the hammer fell.]
Mr. PAYNE. I yield to the gentleman from Louisiana, [Mr. Gib-

Mr. GIBSON. I send to the Clerk's desk to be read a telegram from citizens of New Orleans.

The Clerk read as follows:

NEW ORLEANS, LOUISIANA, January 26, 1877.

Hon. R. L. Gibson, House of Representatives, Washington, D. C.:

House of Representatives, Washington, D. C.:

The undersigned, members of the city government, and merchants and bankers of New Orleans, do fully approve the proposed adjustment of the presidential question, and appeal to the patriotism of the House of Representatives to sustain by vote the action of the Senate thereon.

Ed. Pilsbury, mayor; J. C. Dennis, J. G. Brown, J. McCaffery, Jas. D. Edwards, Robert E. Diamond, Charles Cavanae, J. E. Rengstorf, city administrators; Wm. C. Black, presdt. cotton exchange; Moore, Janney & Hyams; Sam'l H. Kennedy, presdt. State Nat. Bank; Alf. Moulton; Geo. Jonas, prest. Canal Bank; A. Baldwin, presdt. N. Orleans Nat. Bank; Thos. A. Adams, presdt. Crescent M. Ins. Co.; H. Gally, prest. Mechanics' and Traders' Bk; C. Kohn, prest. Union Natl. Bank; Jno. G. Gaines, prest. Citizens' Bank of La.; J. Tuyes, prest. N. Orleans Ins. Co.; H. Y. Prichard, prest. Hope Ins. Co.; Thos. H. Hunt; D. A. Given & Son; Alcus, Schenck & Antey; Pritchard, Beckham & Co.; Cyrus Bussey; John Phelps & Co.; J. W. Burbridge & Co.; T. L. Airey & Co.; John Chaffee's Sons; L. C. Jurey, Meyer, Weis & Co.; Theodore Hellman; Jules Cassard, V. P. Germania Natl. Bank; Jno. T. Pardie, prest. Muttail Nat. Bk.; P. Fourchy, prest. Merch'ts Mut. Ins. Co.; P. Maspero, prest. Merch'ts Mut. Ins. Co.; E. S. Keep; M. W. Smith; C. H. Lawrence & Co.; R. H. Yale; Lloyd R. Coleman, prest. Mechanics' & T. I. Co.; J. C. Vanwyckle; I. N. Marks, prest. Fireman's Ins. Co.; J. H. Oglesby, prest. of La. Nat. Bk.

Mr. GIBSON. No portion of the people of this country have wit-

Mr. GIBSON. No portion of the people of this country have witmr. GISSON. No portion of the people of this country have witnessed the proceedings of this Congress with more anxiety and with a deeper interest than the people of Louisiana. They have been taught, sir, by the vicissitudes of a harsh fortune that, I trust, the people of every other State of the Union may long be strangers to,

that there can be no liberty except that regulated by law, and no peace that shall bring prosperity except that sheltered by free institutions, and that the bayonet affords no remedy for grievances under our American system. And in viewing the settlement of this great ques-American system. And in viewing the settlement of this great question agitating the whole American people and occupying the best minds of Congress, they feel the assurance that they will find relief in the honesty, in the intelligence, in the wisdom of this high commission organized, as I think it is, in the exercise of the constitutional powers of the Congress of the United States. The paper which I have had the honor to submit speaks the sentiments of the people of Louisities and which is the people of Louisities and the people of Louisit ana, a people at once high spirited and chivalric, but conservative, law-abiding, and inspired by the most unselfish and exalted patriotism. I thank my friend from Ohio [Mr. PAYNE] for the courtesy he has extended to me in allowing me an opportunity to call the attention of the country to the views of the leading men of the metropolis of the South

Mr. PAYNE. Mr. Speaker, it is with inexpressible relief to me that I now approach the moment of the consummation of this great measure of statesmanship and public policy. From the hour when, under the direction of this House, the Speaker assigned six others with myself—to act with a similar committee of the Senate—to the important duty of considering whether there were some legislative or constitutional mode of adjusting the difficulties and the perils that oppress and environ the nation, I have known no moment of ease or rest. From the moment when I first met in that committee with those gentlemen, distinguished as they are for their position in this House and before the country, knowing that as public men and as partisans we have differed widely, but with conscientiousness and with firmness; when I saw that the hopes of the nation were centered upon this joint committee of Congress, and that upon their wisdom, their forbearance, their patriotism, their statesmanship, hung the stability of society and of business from one end of this country to the other, I have felt a weight upon my spirits, and have seen no relief until this hour of deliverance under the blessing of God has at last come.

Men talk frequently of the dangers of the situation. Gentlemen

scout at the idea of civil war, and valorously hurl their defiance at intimidation or attempt to menace them or control their actions as public men. A moment's consideration will satisfy every reflective and candid mind that there was not only danger before us of dissension and strife, but that that dissension and strife would culminate in a civil war—and a civil war with which none among the modern or the ancient republics can be brought into comparison.

I respect the conscientious scruples of every gentleman on this floor who has studied the Constitution and feels himself bound by his oath to support it. Upon one side it is said that the Constitution has given the President of the Senate the power to count the electoral vote; and, therefore, gentlemen entertaining that idea protest against this bill because it divests the President of the Senate of his constitutional rights; and they say that outside of legislation we can go on in the way we have progressed some twenty-two times before in counting the presidential vote and that they will be content with that. But after the demolition of this idea of the President of the Senate being vested with this power, which has received some right valiant blows both here and at the other end of the Capitol, he will be a bold man, however radical and however extreme his politics who, hereafter will stand up in this House or at the other end of the Capitol claiming that under the Constitution the President of the Senate has the right to count the presidential votes. That is exploded and forever ex-ploded by the highest legal authority in this country. But the gen-tlemen who entertain that idea with entire consistency oppose this

There is not a line in this bill, there is not a line in the report accompanying the bill, but what ignores and repudiates entirely and absolutely the idea that the President of the Senate has any power absolutely the idea that the President of the Senate has any power to count the vote. Who believes that the framers of the Constitution—who aimed to make this Vice-President a mere shadow, an officer of the least possible consequence in the Government, having no power, having no patronage, of no consequence except as a figure-head presiding over a respectable body of elderly gentlemen in the other wing of the Capitol—he has not the power to appoint a page in his body; he is a sort of corps de reserve in the contingency of the death or removal of the President, to step into his shoes, and beyond that of no earthly consequence—who, I say, in his sober reflection, believes that the framers of the Constitution ever intended that that man should count the vote for President? As was suggested yesterday by my friend in the course of his argument, these gentlemen day by my friend in the course of his argument, these gentlemen claiming so much for this officer would read the Constitution something in this way:

"The President of the Senate shall open the certificates in the presence of the Senate and House of Representatives, and shall count himself in as President of the United States."

That is the way they would read the Constitution. But I pass over that. This bill repudiates that idea, rejects it altogether. Those who vote for the bill certainly do not believe that the Constitution has given this power to the President of the Senate; for if it is given to the President of the Senate Congress cannot take it from him. So much for that side of the question.

To my friends here who would go on and count the vote in the old way by the same world. You were that the true House shell have

way, let me say a word. You propose that the two Houses shall have nothing to say about it, except to grace the proceeding with their

dignified presence; they have nothing to say about the count of the

As to the claim that the President of the Senate, against the protest of both Houses of Congress, can count the votes and declare the result, and that the successful candidate is to be inaugurated as President, it ought to be a sufficient answer to say that the great majority of the people of the United States would regard that as a bold and unjustifiable usurpation of power, and unless compelled by the strong arm of power the people of the United States would never acquiesce arm of power the people of the United States would never acquiesce in or recognize any such usurped power. This grand army of the republic, twenty-two hundred strong, I believe, or as many of them as can be excused from police duty throughout the Republic, would not stand very much in the way of the people carrying into execution their indignant rejection of such a claim.

Now let me come to the other side of the House, for I have a word to say to those democrats who say that the Constitution is sufficient in itself, that we do not need this legislation. You reject this claim set up on behalf of the President of the Senate, and you say that this

set up on behalf of the President of the Senate, and you say that this set up on benair of the Fresident of the Senate, and you say that this power is in the two Houses of Congress. I grant you that the two Houses of Congress possess this power, that their power in this regard is co-equal. I do not grant you that the power of the House is greater than that of the Senate, nor do I believe that claim can be maintained. But grant that it is equal to the Senate; will you tell me how you are to count the vote for President on the second Wednesday of February next under the present law? Why, sir, we have no law. The twenty-second joint rule has been repealed on the part of the Senate.

[Here the hammer fell.]
The SPEAKER. The time for debate has expired.
Mr. HENDERSON. I would like to ask the gentleman from Ohio

Mr. PAYNE] a question, if I may be allowed to do so.

The SPEAKER. The time for debate has expired.

Many Members. "Vote!" "Vote!"

The bill was then ordered to a third reading; and it was accordingly ad the third time.

The question was upon the passage of the bill.
Mr. PAGE, Mr. LUTTRELL, and many others called for the yeas and

The yeas and nays were ordered.

The question was taken; and there were—yeas 191, nays 86, not voting 14; as follows.

The question was taken; and there were—yeas 191, nays 86, not voting 14; as follows.

YEAS—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Atkins, Bagby, George A. Bagley, John H. Bagley, jr., Banning, Beebe, Bell, Bland, Bliss, Blount, Boone, Bradley, Bright, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Cabell, William P. Caldwell, Campbell, Candler, Caulfield, Chapin, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cook, Cowan, Cox, Crapo, Culberson, Cutler, Darrall, Davis, Davy, De Bolt, Dibrell, Douglas, Durand, Eden, Ellis, Faulkner, Felton, Field, Finley, Foster, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Hoar, Holman, Hooker, Hopkins, Hoskins, House, Humphreys, Hunter, Hunton, Jenks, Frank Jones, Kehr, Kelley, Lamar, Franklin Landers, George M. Landers, Lane, Leavenworth, Le Moyne, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, MacDougall, McCrary, McDill, McFarland, McMahon, Meade, Metcalfe, Miller, Money, Morgan, Morrison, Mutchler, Neal, New, Norton, O'Brien, Oliver, Payne, Phelps, John F. Philips, Pierce, Piper, Platt, Potter, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Sampson, Savage, Sayler, Scales, Schleicher, Seelye, Sheakley, Southard, Sparks, Springer, Stanton, Stenger, Strait, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Washington Townsend, Tucker, Turney, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, G. Wiley Wells, Whitehouse, Whitthorne, Wike, William, Eandford, William R. Brown, Horatio C. Burchard, Buttz, John H. Caldwell, Cannon, Carr, Caswell, Cate, Conger, Crounse, Danford, Denison, Dobbins

So the bill was passed.

During the roll-call, Mr. JOHN REILLY. My colleague, Mr. Collins, is absent by leave of the House.

Mr. HARRIS, of Georgia. I am requested by my colleague, Mr. STEPHENS, to make this announcement, that he is not able to be in his seat. While he does not approve of some of the provisions of the bill, if present he would vote "ay."

Mr. HEWITT, of New York. I desire to say that my colleague,

Mr. HEWIII, of New York. I desire to say that my coneague, Mr. SCHUMAKER, is absent in consequence of sickness in his family. He requests me to say that if present he would vote "ay."

Mr. LAPHAM. My colleague, Mr. LORD, is absent, attending the funeral of his brother; if present, he would vote "ay."

Mr. WALLACE, of South Carolina. On all political questions I am paired with the gentleman from California, Mr. WIGGINTON.

He and I both started out opposed to the bill. I do not know how he would vote if he were here; but this is not regarded as a political or partisan question, and therefore I have voted "no."

Mr. LANE. I am requested by the gentleman from California, Mr.

Mr. LANE. I am requested by the gentleman from California, Mr. Wigginton, to state, if present he should vote "no."

Mr. ROBINSON. My colleague, Mr. Cason, is absent, attending the funeral of his son; if present, he would vote "no."

The SPEAKER. The occupant of the chair proposes to exercise his right to vote secured to him by the Constitution in his capacity as a Representative from the State of Pennsylvania. The Clerk will call my name.

call my name.

The Clerk called the name of Samuel J. Randall, and the Speaker voted "ay" amidst great applause upon the floor and in the galler-

Mr. PAYNE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

### ENROLLED BILLS SIGNED.

Mr. HAMILTON, of Indiana, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled

A bill of the following title; when the Speaker signed the same:
A bill (H. R. No. 2461) for the relief of certain officers of the Third
United States Artillery who suffered by fire at Fort Hamilton, New
York, on the 3d March, 1875.

#### LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. Rob-BINS, of Pennsylvania, for Saturday and Monday, the 27th and 29th instant.

And then, on motion of Mr. COX, (at five o'clock and twenty-five minutes p. m.,) the House adjourned.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. AINSWORTH: The petition of F. S. Palmer and 22 other citizens of Clermont, Fayette County, Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of D. Greaves and 24 others of Delaware County, Iowa, for cheap telegraphy, to the Committee on the Post-Office and

Post-Roads.

By Mr. G. A. BAGLEY: The petition of William H. Watson and other citizens of New York, for the repeal of the act limiting the time for applications for pensions, to the Committee on Invalid Pen-

Also, the petition of David Pevird, of similar import, to the same committee

committee.

By Mr. BROWN, of Kansas: The petition of E. Hallowell and other citizens of Kansas, for cheap telegraphy, to the Committee on the Post-Office and Post-Poads.

Also, the petition of S. C. Harrington and 124 other citizens of Augusta, Kansas, of similar import, to the same committee.

Also, concurrent resolutions of the Legislature of Kansas, opposing the change in any manner of the act of Congress providing for the sale of the Osage ceded lands in Kansas to actual settlers, to the Committee on Public Lands.

Also, concurrent resolutions of the Legislature of Kansas, requesting Congress to appropriate moneys from the Indian civilization fund for payment of attorneys and expenses of settlers on Osage ceded lands in contesting title of same, to the same committee.

By Mr. BURCHARD, of Illinois: The petition of A. J. Mattson and

by Mr. Bouchard, of limites. The petition of A. S. Mattson and other citizens of Prophetstown, Illinois, for the repeal of the tax on banks, to the Committee of Ways and Means.

By Mr. CROUNSE: The petition of W. H. Comstock and other citizens of Nebraska, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of H. G. Smith and other citizens of Nebraska, for cheap telegraphy, to the same committee.

By Mr. CUTLER: The petition of citizens of Westwood, New Jer-

sey, that pensioners receive pensions from the date of their discharge, to the Committee on Invalid Pensions.

By Mr. FLYE: The petition of citizens of Lincoln County, Maine, for cheap telegraphy, to the Committee on the Post-Office and Post-

By Mr. FRYE: The petition of John Morris, J. B. Parker, and other citizens of Cambridge City, Indiana, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary. By Mr. HARRIS, of Virginia: The petition of George R. Calvert and other citizens of Shenandoah County, Virginia, of similar import,

to the same committee.

By Mr. HATHORN: The petition of W. W. Buckmaster and other citizens of Corinth, New York, that pensioners receive arrears of pension from the date of their discharge from the Army, to the Commitston from the date of their discharge real transfer to the on Invalid Pensions.

Also, the petition of D. T. Bostwick and other citizens of Stillwater,
New York, of similar import, to the same committee.

By Mr. HAYMOND: The petition of citizens of Port Royal, South

Carolina, and captains of vessels at said port, for the confirmation of the charter of the Port Royal Docks, Warehousing, Transportation and Banking Company, chartered by the Legislature of South Carolina, February 13, 1874, to the Committee on Commerce.

Also, the petition of business men of Port Royal, South Carolina,

Also, the petition of business men of Port Royal, South Carolina, and of the masters of vessels at that port, for a charter for a passenger and freight railway from Lake Michigan to the southeast Atlantic seaboard with a terminus at Port Royal, to the same committee. By Mr. HENKLE: The petition of A. Moffitt and other citizens of Washington City, District of Columbia, against the passage of the bill providing for counting the electoral vote, to the committee on counting the olectoral vote.

By Mr. HUBBELL: The petition of William Gill and other citizens, of Northport, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. JENKS: The petition of John Henry, that he he restored

By Mr. JENKS: The petition of John Henry, that he be restored to the pension-rolls, to the same committee.

Also, the petition of G. H. Ogden and other citizens of Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-

By Mr. KELLEY: Protest of the Philadelphia Board of Trade, against the passage of the bill introduced by Hon. J. H. SEELYE for the free importation of books, periodicals, &c., to the Committee of Ways and Means.

By Mr. LAWRENCE: The petition of J. N. Shaul and 36 other citizens of Mechanicsburgh, Ohio, for the repeal of the tax on banks, to

the same committee.

By Mr. LYNDE: The petition of David A. Price and 74 other citizens of Bay View, Wisconsin, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of M. Gayhart and other citizens of Wisconsin, of similar report, to the same committee.

By Mr. MORGAN: The petition of R. J. McElhaney, J. E. Tefft, D. C. Leach, Nathan Bray, and 120 business men of Springfield, Missouri, for the passage of the electoral count bill, to the committee on counting the electoral vectors.

ing the electoral vote.

By Mr. O'NEILL: The petition of Mrs. Priscilla Carpenter, that her name be placed on the pension-roll, to the Committee on Invalid

Also, memorial of members of the medical profession, that a catalogue be printed of the National Medical Library, to the Committee

on the Public Printing.

By Mr. PIERCE: The petition of Richardson, Hill & Co., and others, of Boston, Massachusetts, for the repeal of the laws taxing the deposits, circulation, and capital of banks, to the Committee of Ways and Means.

By Mr. JAMES B. REILLY: Two petitions of citizens of Schuylkill County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Schuylkill County, Pennsylvania, for the repeal of the law taxing deposits, circulation, and capital of banks, and to refer the matter to the States and Territories, to the

Committee on Banking and Currency.

By Mr. ROBBINS, of North Carolina: The petitions of citizens of
North Carolina, of similar import, to the same committee.

By Mr. STRAIT: Resolutions of the Chamber of Commerce of Saint

By Mr. STRAIT: Resolutions of the Chamber of Commerce of Saint Paul, Minnesota, in favor of the electoral count bill, to the committee counting the electoral vote.

By Mr. TARBOX: The petition of citizens of Ayer, Massachusetts, that pensioners be paid from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. THOMAS: The petition of Mrs. Cynthia Claxton, for the payment to her of the arrears of pension due Rodolphine Claxton, widow of Commodore Alexander Claxton, deceased, late of the United States Navy at the time of her death to the same committee.

States Navy, at the time of her death, to the same committee.

By Mr. THOMPSON: Memorial of Robert Bayley and other citizens of Newburyport, Massachusetts, urging the passage of the bill for counting the electoral vote, to the committee on counting the

By Mr. TOWNSEND, of New York: The petition of citizens of New York, for a modification of the laws taxing banks, to the Committee of Ways and Means.

Also, the petition of citizens of Troy, New York, for the passage of the bill reported by the joint committee on counting the electoral vote for President and Vice-President of the United States, to the vote for President and Vice-President of the United States, vote for President and Vice-President of the United States, sommittee on counting the electoral vote.

By Mr. VANCE, of Ohio: The petition of J. J. Morgan and 61 others of the eleventh district of Ohio, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. VANCE, of North Carolina: The petition of John Z. Falls other citizens of North Carolina, for cheap telegraphy, to the

and other citizens of North Carolina, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WADDELL: The petition of D. C. Newton and other citizens of Cerro Gordo, North Carolina, of similar import, to the same

committee. By Mr. WALDRON: The petition of L. Ormsby and 165 other citizens of Blissfield and Deerfield, Michigan, that pensioners be paid from the date of their discharge from the Army, to the Committee on

By Mr. WALKER, of New York: The petition of Zenas Bradley

and 38 other citizens of Allegany County, New York, that pensioners be paid from the date of their discharge from the Army, to the Committee on Invalid Pensions

mittee on Invalid Pensions.

Also, the petition of J. M. Davis and 16 other citizens of Allegany County, New York, of similar import, to the same committee.

By Mr. WATTERSON: Four petitions, signed by Andrew Graham, Edward Wilder, H. C. Pindell, Hugh Taggart & Co., and a large number of other citizens of Louisville, Kentucky, for the passage of the bill reported by the joint committee on counting the electoral vote,

to the committee on counting the electoral vote,
By Mr. WILLIAMS, of New York: Twenty-two petitions, signed
by L. S. Carter, R. Hargraves, M. E. Brown, H. B. Taylor, and 466
others, for the passage of the bill allowing pensioners to be paid from the date of their discharge from the Army and for the repeal of the limitation of time in which applications for pensions must be filed, to the same committee.

Also, the petition of A. Sherman, Martin Coffin, and others, of Glens Falls, New York, for the repeal of the tax on banks, to the Committee of Ways and Means.

By Mr. YOUNG: The petition of Mrs. Julia Elliott, of Memphis, Tennessee, for a rehearing of her claim for sugar, molasses, and other property taken by the United States Army, rejected by the southern claims commission, to the Committee on War Claims.

### IN SENATE.

### SATURDAY, January 27, 1877.

The Senate met at eleven o'clock a. m.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D. The Journal of yesterday's proceedings was read and approved.

DANIEL H. KELLY-VETO MESSAGE.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States: To the Senate of the United States:

I have the honor to return herewith, without my approval, Senate bill No. 685, entitled "An act to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry.

The reasons for withholding my signature to this bill may be found in the accompanying report received from the Secretary of War.

IL S. GRANT

U. S. GRANT.

EXECUTIVE MANSION, January 26, 1877.

WAR DEPARTMENT,

Washington City, January 24, 1877.

Sir: I have the honor to return herewith Senate bill 685, "to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry," with the report of the Adjutant-General, as follows:

The inclosed act directs the Secretary of War to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry, to date December 1, 1861.

There is no record of the enlistment, service, or death of this man on file in this office, and if this act becomes a law, as it now reads, it will be of no benefit to the heirs.

eirs.

I have the honor to be, sir, with great respect, your obedient servant,

J. D. CAMERON.

To the PRESIDENT.

Mr. WITHERS. There is no record of enlistment, the report states, I understand.

The PRESIDENT pro tempore. There is no record of enlistment.

Mr. COCKRELL. This bill was reported by a member of the Committee on Military Affairs, I believe, the Senator from Arkansas, [Mr. CLAYTON.

The PRESIDENT pro tempore. The message will be referred to the Committee on Military Affairs, and printed, if there be no objection.

PETITIONS AND MEMORIALS. Mr. DORSEY presented a joint resolution of the Legislature of Arkansas; which was read and referred to the Committee on Public

Lands, as follows:

Whereas a detachment of United States troops are stationed at the Hot Springs, in this State, with the purpose, it is supposed, of ejecting the settlers and occupants from the Government reservation at that place, which would entail much suffering and distress upon four thousand of our fellow-citizens: Therefore, Be it resolved by the senate and house of representatives of the General Assembly of the State of Arkansas, That our Senators and Representatives in Congress be earnestly requested to procure, as early as possible, some action by Congress which will avert this military necessity until some final disposition is made of the property by Congress.

D. L. KILLGORE, Speaker of the House of Representatives. J. K JONES, President of the Senate.

Approved January 17, 1877.

W. R. MILLER, Governor of the State of Arkansas.

Mr. CRAGIN presented a petition of citizens of Maine, members of the Legislature thereof, praying that Greenleaf Cilley, commander United States Navy, retired, be restored to the active list of the Navy; which was referred to the Committee on Naval Affairs.

Mr. CLAYTON presented a resolution of the Legislature of Arkansas, in favor of speedy legislation to prevent settlers on the Hot Springs

reservation from being ejected therefrom until some final disposition is made of said property by Congress; which was referred to the Com-

mittee on Public Lands.

Mr. HAMLIN presented a petition numerously signed by ship-owners and others, of Thomaston, Maine, praying the passage of House bill No. 2685, providing for the distribution of the Geneva award fund; which was referred to the Committee on the Judiciary.

#### REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Military Affairs, to whom was referred the bill (S. No. 912) for the relief of Thomas H. Halsey, paymaster United States Army, reported it with an amendment.

### BILLS INTRODUCED.

Mr. ALLISON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1192) to construe section 12 of an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the several amendments of said section, and to determine the relation of the main line and branches; which was read twice by its title, and referred to the Committee on

which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. COCKRELL (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1193) for the relief of John W. Schoemaker, James T. Porter, and Henry Finnegass; which was read twice by its title, and referred to the Committee on Claims.

Mr. CRAGIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1194) for the relief of Miriam L. Geyer; which was read twice by its title, and, with the accompanying memorial, referred to the Committee on Naval Affairs.

He also asked, and by unanimous consent obtained, leave to intro-

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1195) granting a pension to Nathaniel Johnson Coffin; which was read twice by its title, and referred to the Committee on Pensions.

#### WITHDRAWAL OF PAPERS.

#### On motion of Mr. INGALLS, it was

Ordered, That the papers accompanying the petition of Mrs. Mary Walsh, praying for a pension, be withdrawn from the files and returned to the petitioner.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed a bill (H. R. No. 4530) to amend sections 5185 and 5186 of the Revised Statutes; in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

#### ENROLLED BILL SIGNED.

The message further announced that the Speaker of the House had signed the enrolled bill (H. R. No. 2461) for the relief of certain officers of the Third United States Artillery who suffered by fire at Fort Hamilton, New York, on the 3d of March, 1875; and it was thereupon signed by the President pro tempore.

### SOUTHERN CLAIMS COMMISSION.

Mr. WRIGHT. It will be remembered that on Wednesday morning last I reported from the Committee on Claims a bill to extend for two years the act establishing the board of commissioners of claims and the acts relating thereto. Unless there be some objection, this morning, in view of the number of Senators present, I should like very much to ask the Senate to proceed to the consideration of that bill.

much to ask the Senate to proceed to the consideration of that bill.

Mr. INGALLS. What is the bill?

Mr. WRIGHT. It was reported on Wednesday morning. The bill is to extend the time of the southern claims commission to two years after the 10th of March next. If that bill is to be passed at this session, it is important to have action as soon as possible. I therefore move that the Senate proceed to the consideration of the bill.

The PRESIDENT pro tempore. The Chair will call the attention of Senators to the rule. One objection to a motion prevents the presiding officer from entertaining a motion to go to the Calendar within the morning hour. For that reason the Chair puts the question "Is there objection to the motion?" If the motion is put, it is then subject to the Senate. Is there objection to this motion? The Chair hears none. The question is, Will the Senate proceed to the consideration of the bill? sideration of the bill?

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1128) to extend for two years the act establishing the board of commissioners of claims and the acts relating thereto.

Mr. EDMUNDS. I should like to hear the sections of law read to

Mr. EDMUNDS. I should like to hear the sections of law read to which the bill refers.

Mr. WRIGHT. Those sections are the provisions of the appropriation bill of 1871, which created this commission.

Mr. EDMUNDS. What is the date?

Mr. WRIGHT. Eighteen hundred and seventy-one. The bill was passed on the 3d of March, 1871. That act created this commission and gave it life for two years, as I now remember. This is an exact copy of the subsequent law that we passed extending the time for four years. It is found, I may state, that there are a large number

of cases before this commission in which the testimony has been taken and the cases are awaiting adjudication by the commission, and if this commission is not extended all these cases must fall, and all the this commission is not extended all these cases must fall, and all the evidence that has been taken will avail nothing, evidence that has been taken on the part of the Government as well as upon the part of the claimants. It is believed that to extend the time of this commission for two years will enable them to dispose of the business before these. fore them

fore them.

Mr. THURMAN. Will the Senator allow me to inquire whether this bill contemplates the filing of new claims?

Mr. WRIGHT. Not at all. The time has long since expired for filing claims by the express provisions of law. This bill only keeps in life the commission to adjudicate the cases that are now before it.

Mr. SHERMAN. That ought to be made very clear. I suppose the committee have looked to that.

Mr. WRIGHT. Certainly. The law itself expressly provides that no claim shall be filed after a certain time. This bill merely continues in life the commission to adjudicate the claims they have reported. I may say to the Senator from Ohio that not a few applications have

I may say to the Senator from Ohio that not a few applications have been made to us to have a provision extending the time for filing new claims, but we have unanimously refused to make any such provision

Mr. SHERMAN. Would the Senator have any objection to inserting a proviso in his own words to the effect "that nothing herein contained shall be held in any way to authorize any new claims to be presented?"

Mr. WRIGHT. Certainly not. I have no objection to that.
Mr. SHERMAN. I should be quite willing if the Senator would
draw it himself, because he is more familiar with the law than I am.
Mr. WRIGHT. If the Senator thinks there is any doubt about it,
and that out of abundant caution such a proviso had better be in-

serted, I am quite willing to move it.

Mr. SHERMAN. That is the only reason why I called attention to it, because I supposed it extended the jurisdiction of the court so as

to receive new cases.

Mr. WRIGHT. Not at all.

Mr. SHERMAN. I would offer an amendment, but I prefer that the Senator should take time to draw it, as he is more familiar with the subject than I am. Such an amendment as I suggest would simply provide that "nothing herein contained should be construed to extend the jurisdiction of said court or permit any claims to be filed."

Mr. WRIGHT. I suggest to my friend whether this will answer the purpose:

the purpose:

Provided. That nothing herein contained shall be so construed as to extend the time for filing claims before said commission or to enlarge its jurisdiction.

Mr. SHERMAN. I do not know but that that will answer. Mr. EDMUNDS. "Or to authorize the filing of new claims," I sug-

The PRESIDENT pro tempore. The Secretary will report the

amendment proposed.

Mr. WRIGHT. I suggest this amendment out of abundant cau-

Provided. That nothing herein contained shall be so construed as to extend the time for filing claims before said commission, or to enlarge its jurisdiction, or to authorize the filing of new claims.

Mr. EDMUNDS. I guess that will do it.

Mr. EDMUNDS. I guess that will do it.

The amendment was agreed to.

Mr. THURMAN. A great deal was said during the last summer and fall about the country being plundered and the Treasury bankrupted by southern claims. A great deal was said without any sufficient warrant for it; but certainly what was said created no little apprehension in the minds of the people of this country that they were in danger of being plundered by claims that ought not to be allowed. Now, here is a commission that has been sitting for several years; I do not remember for how many; for three or four years has it not? do not remember for how many; for three or four years, has it not?

Mr. WRIGHT. Six years.
Mr. THURMAN. Six years. And before I vote to extend that commission I should like to be better informed than I now am, why they have not completed their work. I should like to know better

they have not completed their work. I should like to know better than I know now why three or four gentlemen, skillful and competent men, have not been able in six years to pass upon all the valid claims that could be presented to them.

Mr. WRIGHT. Mr. President, if my friend from Ohio had referred to the report of this commission he would have found that the whole number of claims that have been presented within the time allowed by law, that is, from the 3d of March, 1871, to the 3d of March, 1873, was 22,298, and before this report was made they had reported upon as allowed or disallowed 9,222, and they reported at that time 1,866. They had therefore reported within that time 11,088 claims, leaving the whole number still pending and undecided 11,210. The commissioners in their report further say that "of this number of 11,210 pending claims there are about 1,850 in which the claimants have taken their evidence and submitted them for decision; and of these about 1,500 are suspended for investigation by agents or for further evidence. In about one thousand cases the evidence has been taken in part, but the claimants desire to take further testimony. In the in part, but the claimants desire to take further testimony. In the remaining cases, being about 8,359, no evidence has been taken; and of these about 650 are for amounts larger than \$10,000;" and in that class of cases the witnesses have to be brought before the commission

and examined in person at this place. In all claims under \$10,000 they can have testimony taken by agents in the field. Therefore it appears that of the claims in which all the evidence has been taken, and which are submitted for decision, there are about 1,851, according to

which are submitted for decision, there are about 1,851, according to this report; and claims in which part of the evidence has been taken, but which are not yet ready to be submitted, there are about one thousand; and claims in which no evidence has been taken, 8,359.

Now, the commissioners are of the opinion, as I understand, that within the two years they can dispose of the remaining cases upon their calendar. I believe no one pretends but that this commission have calendar. I believe no one pretends but that this commission have been very diligent, very industrious, and very careful in the examination of claims. It appears that of the whole number of claims submitted to them since their last report, prior to the report that is now before Congress, they disallowed \$3,790,245.29, and that they allowed but \$474,632, and this is about in the proportion in which they have allowed and disallowed claims from the time the commission started. It will be seen that in a very large proportion of the claims that are now before them no evidence has been taken whatever, and the chances are that no evidence will be taken; and taking all the cases that are now before them in which evidence has been taken, and which they are now considering, and in which evidence has been taken in part, it is believed that they can complete their labors within the next two years.

next two years.

Mr. THURMAN. I think that in any judicial court in this country if the parties had taken no steps to prove their case within the three years or nearly four years that these persons have had to produce evidence, the court would strike the cases from the docket. I do not evidence, the court would strike the cases from the docket. I do not see for myself upon this statement why these eight thousand cases toward the preparation of which, toward the proof of which, not a single step has been taken, should not have been stricken from the docket of this commission before this time. However, I do not propose to enter into a discussion of this bill at all. The Senator from Iowa, who I know is a careful man and always watchful of the public interests and the public Treasury, thinks the bill ought to pass. I can only say that I am not satisfied that it ought to pass with my present lights, and I shall therefore vote against it.

Mr. EDMUNDS. I understand the amendment of the Senator from Iowa has been agreed to.

Iowa has been agreed to.

The PRESIDENT pro tempore. It has been agreed to.
Mr. SHERMAN. It had better be read again.
The Chief Clerk read the amendment, as follows:

Provided. That nothing herein contained shall be so construed as to extend the time for filing claims before said commission, or to enlarge its jurisdiction, or to authorize the filing of new claims.

Mr. JOHNSTON. If an amendment is in order, I move to insert after the amendment just adopted the following:

Nor shall any new evidence be received, and all cases in which no evidence has been filed shall be stricken from the docket.

Mr. EDMUNDS. I wish to suggest to the honorable Senator from Virginia that if the first part of his amendment were adopted it would prevent the United States, in resisting a claim which is already supported by affirmative evidence on file, from taking any evidence to contradict it. I hardly think he can mean to do that.

Mr. JOHNSTOM. I simply mean to refer to the evidence on the part of the claimants, and I will modify my amendment by inserting after "evidence" the words "on the part of the claimant."

Mr. WRIGHT. I should like to have the amendment reported.

The CHIEF CLERK. It is proposed to add to the amendment just adopted the following:

adopted the following: Nor shall any new evidence on the part of the claimant be received, and all cases in which no evidence has been filed shall be stricken from the docket.

In which no evidence has been filed shall be stricken from the docket.

Mr. WRIGHT. I wish to suggest to my friend from Virginia that it seems to me the amendment as he proposes it might operate unjustly and very harshly upon claimants. It would exclude additional evidence in any case on the part of claimants. They may have been ever so diligent in the preparation of their cases, and the case may have been held up by reason of inquiries being made by the agents of the Government; and, without any fault upon the part of the claimants at all, the full evidence may not have been presented. It seems to me that this matter ought to be left fairly and justly to the commission. I have no fear that this commission will do otherwise than what is right upon this matter of evidence; and to say that they shall not receive evidence from claimants in any case whatever, I they shall not receive evidence from claimants in any case what ever, I think would be wrong; for I can well conceive that there may be many very meritorious cases where the evidence, without any fault upon the part of the claimant, had not been perfected, and, if you pass this amendment, they are concluded absolutely from receiving such evi-

dence.

Mr. JOHNSTON. I think when a commission has been in existence for five years as this has been, and parties have had that length of time to file their evidence and have failed to do so, they ought to be excluded from any further permission to do it. Certainly a man who has a case in court who cannot get it ready and will not try to get it ready in five years must be guilty of great neglect. I do not think that the public courts ought to be kept open for the benefit of suitors and claimants who have been guilty of laches in the preparation of their cases. I am not very much inclined for one to vote for this bill, anyhow; but if I shall do so, certainly I desire it to be as much guarded as possible and to confine the duties of the court to the de-

cision of those cases in which the evidence is already in. Where the parties have been diligent and where they have failed simply for want of time on the part of the court, the case is different; but I am not disposed for one to allow parties who have had their cases filed for

years now after this lapse of time to bring in the testimony.

Mr. EDMUNDS. Mr. President, if we are to direct these commissioners to dismiss from the docket the claims which are already filed, but which have not been prosecuted by evidence, the first question that arises in my mind is what then becomes the legal or legislative that arises in my mind is what then becomes the legal or legislative status of those claimants. All these claimants are now prevented from appealing to the two Houses of Congress for general relief according to the pressure they can bring to bear upon Members and Senators and so on, by force of the law which obliges them to go to this commission. Now, if we direct this commission, without giving them a trial on the merits or without condemning their claim in the due course of their own regulations for want of prosecution, but by an absolute act of legislative will which commands them, to dismiss every claim that has not been prosecuted do we not immediately recovery absolute act of legislative will which commands them, to dismiss every claim that has not been prosecuted, do we not immediately re-open the doors of the Legislature for the flood of all these claims? The question is whether it will be conducive to public interest to have this mass of slow claims made the subject of constant appeals to Congress, as they of course will be if we take this step. It does not appear to me that it would be wise. These people could say with a good deal of show of reason, "You have not given us an opportunity to try our claims in this court; you have sent us there and have authorized the court itself to make its own rules and regulations; we have not fallen under the condemnation of those rules and regulations. have not fallen under the condemnation of those rules and regulations, because if we had we should have been disposed of already for want of prosecution; but now by an arbitrary act of legislative will you withdraw the consideration of these claims from this commission without a hearing on their merits, and we therefore have a right to appeal to your sense of justice to hear these claims yourselves." And the longer the time goes with such a claim unheard and disposed of the larger it grows and the more doubtful and perhaps the more untrue is the evidence that is brought to support it. I should much prefer, therefore, in extending this commission, to leave the commission with the same power it has now to definitively decide a case against a party for want of prosecution, which would be a bar to it just as much as a decision on the merits would be. But our will cannot justly make a bar to their claims by saying that they shall be dismissed from the docket, as it seems to me. So that if I were a claim agent in this town or elsewhere, and wished my clients to have the best chance of getting the most money, I should be very glad indeed to have this provision striking these claims that are so difficult of proof that the parties have not commenced to take testimony right out of that Calhave not fallen under the condemnation of those rules and regulations, parties have not commenced to take testimony right out of that Calendar, in order that they might be the subject of co-operative pressure in the two Houses of Congress. I hope, therefore, that this amendment will not be agreed to.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Virginia.

The amendment was rejected. The bill was reported to the Senate as amended, and the amendment

was concurred in.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

### MILITARY ACADEMY APPROPRIATION BILL.

Mr. ALLISON. I move to take up House bill No. 4306, being the

Mr. ALLISON. I move to take up House bill No. 4306, being the Military Academy appropriation bill.

The motion was agreed to; and the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes, was considered as in Committee of the Whole.

Mr. ALLISON. Unless there be objection, I ask that the amendments reported by the Committee on Appropriations may be considered as we go along.

The PRESIDENT pro tempore. Is there objection to considering the amendments as they are reached in the reading of the bill? The Chair hears none, and that course will be pursued.

The first amendment reported by the Committee on Appropriations was after line 12 to insert:

was after line 12 to insert:

For additional pay of professors for length of service, \$6,700.
For pay of one instructor of practical military engineering, in addition to pay as first lieutenant, \$900.
For pay of one instructor of ordnance and science of gunnery, in addition to pay as first lieutenant, \$900.
For pay of eight assistant professors, in addition to pay as first lieutenants, \$4,000.

\$4,000.

For pay of three instructors of cavalry, artillery, and infantry tactics, in addition to pay as first lieutenants, \$1,500.

For pay of four assistant instructors of tactics, commanding companies, in addition to pay as second lieutenants, \$2,400.

For pay of adjutant, in addition to pay as first lieutenant, \$300.

The amendment was agreed to.

The next amendment was in line 38 to increase the appropriation for "pay of the Military Academy band" from \$6,336 to \$11,000.

The amendment was agreed to.

The next amendment was to strike out from line 42 to line 43, in the following residue of the strike out from line 42 to line 43, in

the following words:

The pay herein allowed and given shall be in full of all pay, allowance, forage, and commutation, except for quarters, fuel, and light; and the pay for other professors, instructors, and assistants, being officers of the Army, when detailed and

assigned to service at the Military Academy, shall be only their Army pay and allowances; and all acts and parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed.

The amendment was agreed to.

The amendment was agreed to.

The next amendment was in line 58, to increase the appropriation from \$12,000 to \$15,000 "for repairs and improvements, timber, plank, boards, joists, wall-strips, laths, shingles, slate, tin, sheet-lead, nails, screws, locks, butts, hinges, glass, paint, turpentine, oils, bricks, varnish, stone, lime, cement, plaster, hair, sewer and drain pipe, blasting-powder, fuse, iron, steel, tools, mantels, and other similar materials, and for pay of citizen mechanics and labor employed upon repairs that cannot be done by enlisted men."

The amendment was agreed to.

The next amendment was in line 71 to increase the appropriation "for the transportation of materials, discharged cadets, and ferriages," from "\$1,800" to "\$2,000."

The amendment was agreed to.

The next amendment was after line 77 to insert:

For clerk to adjutant, \$1,200. For clerk to treasurer, \$1,200.

The amendment was agreed to.

The next amendment was at the end of line 113 to insert:

Dynamo-magneto-electric machine, and setting up the same, \$2,800.

The amendment was agreed to.

The next amendment was after line 134 to insert:

For models of machines employed in the manufacture of gunpowder and cannon,

The amendment was agreed to.

The next amendment was in line 143 to increase the appropriation for the department of drawing from \$100 to \$400.

The amendment was agreed to.

The next amendment was in line 146, after the words "provided that," to insert—

The expenses allowed by section 1329 of the Revised Statutes shall be paid as follows.

The amendment was agreed to.

The next amendment was in line 151, after the word "received," to strike out the words "not exceeding;" in line 152, after the word "for," to insert the words "expenses during;" and after the words "West Point," in line 153, to strike out—

And this shall be in full of all compensation for services and expenses as a member of said board; and that section 1329 of the Revised Statutes be, and the same is hereby, repealed.

So as to make the clause read:

For expenses of the board of visitors, including mileage, \$3,000: Provided, That the expenses allowed by section 1329 of the Revised Statutes shall be paid as follows: each member of the board of visitors shall receive not exceeding eight cents per mile for each mile traveled by the most direct route from his residence to West Point and return, and shall in addition receive \$5 per day for expenses during each day of his service at West Point.

The amendment was agreed to.

The next amendment was in line 162 to increase the appropriation for water-pipes, plumbing, and repairs from \$1,500 to \$2,000.

The amendment was agreed to.

The next amendment was in line 175 to increase the appropriation for the expense of the library, books, magazines, periodicals, and completing printing and binding catalogues, from \$1,000 to \$2,000.

The amendment was agreed to.

The next amendment was after line 178 to insert:

For repairing and improving sea-coast battery, taking up, repairing foundation, and relaying platform for fifteen-inch gun, \$4:0.

For new stone front-pintle platform for fifteen-inch gun, \$1,900.

The amendment was agreed to.

The next amendment was to strike out section 2, in the following

SEC. 2. That the Military Academy band shall consist of one teacher of music, who shall be leader of the band, and may be a civilian, and of twenty-four enlisted musicians of the band.

The amendment was agreed to.

The next amendment was to strike out section 3, in the following

WOTGS:

SEC. 3. That the teacher of music shall receive \$90 per month, one ration, and the allowance of fuel of a second lieutenant of the Army; and that of the enlisted musicians of the band six shall each be paid \$20 per month; and the remaining twelve shall each be paid \$17 per month; and that the enlisted musicians of the band shall have the benefits as to pay arising from reenlistments and length of service applicable to other enlisted men of the Army; and that sections 9 and 10 of the act of March 3, 1875, entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal years ending June 30, 1875, and prior years, and for other purposes," be, and the same are hereby, repealed.

The amendment was acreed to

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

#### PERSONAL EXPLANATION.

Mr. SARGENT. Mr. President, yesterday I was absent from the Senate on business of the Senate. During my absence I understand the Senator from Florida [Mr. JONES] made a speech, taking for a

text some few remarks that I had made the morning before. I learned during the course of his speech that he was so speaking, but I was so busily engaged that I could not attend in the Senate in order to hear what he might say. I find the speech is not yet published in the RECORD.

I wish to give notice that at some proper time, if there seems to be occasion, I shall take some further notice of the remarks he made.

EXECUTORS OF WILLIAM LLOYD.

Mr. BURNSIDE. I move that the Senate proceed to the consideration of Senate bill No. 824.

tion of Senate bill No. 824.

The motion was agreed to; and the bill (S. No. 824) for the relief of Hannah L. Lloyd, as executrix, and George W. King, executor of William Lloyd, deceased, was read the second time and considered as in Committee of the Whole. It provides for the payment to Hannah L. Lloyd, executrix, and George W. King, executor, of William Lloyd, deceased, of \$582.55, being the balance paid into the Treasury, after costs and expenses, arising from the sale of one-fourth interest in the brig Fanny, to which it appears they are entitled.

Mr. BURNSIDE. There is a report which may be read.

The Chief Clerk read the following report submitted by Mr. Caperton, from the Committee on Claims, on the 15th of May, 1876:

ton, from the Committee on Claims, on the 15th of May, 1876:

The Chief Clerk read the following reports submitted by Mr. Caperton, from the Committee on Claims, on the 15th of May, 1876:

The Committee on Claims, to whom was referred the petition of Hannah L. Lloydaking for remnneration for property seized and sold by the United States, having considered the same, submit the following report:

The petitioner prays compensation for one-fourth interest in the brig Fanny, seized by the United States marshal at New York City in 1862, and sold under decree of the district court of the United States for the southern district of New York, in December, 1862, in conformity with sixth section of the act of the Congress of the United States, approved July 13, 1801, entitled "An act further to provide for the collection of duties on imports, and for other purposes." The petition states that the brig Fanny. Captain Wicks, left Charleston, South Carolina, on the 16th day of October, 1860, bound for Boston, from which port she left for New Orleans; and, after remaining at New Orleans "a few weeks," sailed for England, arriving at Liverpool on the 27th day of November, 1861. Captain Wicks presented his papers to the United States consul, who, inding the Fanny was a Charleston boat, declined to return his papers, and forwarded them to Washington, where Captain Wicks followed, and obtained permission of the United States Government to bring the brig to New York. Arriving at New York, the United States marshal seized the Fanny as the property of the estate of William E. Lloyd and George W. King, of Charleston, South Carolina, and the brig, in December, 1862, was sold by decree of United States district court for the southern district of New York.

The petitioner claims remuneration, as the widow of William Lloyd, deceased, for one fourth interest of said Lloyd, deceased, in said brig Fanny thus condemmed and sold. Certified opies of the record of the United States district court for the southern district of New York for November term, 1862, filed with petition, shows the libeling of one ha

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

FORTIFICATION APPROPRIATION BILL.

Mr. WINDOM. I move that the Senate proceed to the considera-tion of House bill No. 4188, known as the fortification appropriation

The motion was agreed to; and the bill (H. R. No. 4188) making

The motion was agreed to; and the bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, was considered as in Committee of the Whole.

The amendments reported by the Committee on Appropriations were in line 12 to strike out "Gatling" and insert "machine," and in line 15 to strike out "\$100,000" and insert "\$200,000;" so as to make the clause read. the clause read:

For the armament of sea-coast fortifications, including heavy guns, machine guns, and howitzers for flank defense, carriages, projectiles, fuses, powder, and implements, their trial and proof, and all necessary expenses incident thereto, \$200,000.

The amendments were agreed to.
The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read the third time.

The bill was read the third time, and passed.

ORDER OF BUSINESS.

the unfinished business is Senate bill No. 984, in relation to the Pacific Railroad acts

Mr. THURMAN. I have been requested by the Senator from Iowa [Mr. ALLISON] to let this bill be laid aside informally that he may call up a bill which he says is of pressing importance in regard to the Black Hills country; and I am willing to consent that that bill be taken up subject at any moment that I see fit to call for the regular

The PRESIDENT pro tempore. Is there objection to this under-

standing?
Mr. THURMAN. If the Black Hills bill takes up too much time I

Mr. THURMAN. It the black films bill takes up too inten time I shall call up the regular order.

Mr. ALLISON. I think it will only take a few moments.

Mr. THURMAN. I yield with that understanding.

The PRESIDENT pro tempore. Is there objection to the understanding? The Chair hears none.

#### ENROLLED BILL SIGNED.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the Speaker of the House had signed the enrolled bill (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877; and it was thereupon signed by the President pro tempore.

### AGREEMENT WITH SIOUX INDIANS.

Mr. ALLISON. I move to take up Senate bill No. 1185.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1185) to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the

northern Arapaho and Cheyenne Indians.

Mr. ALLISON. Unless some Senator desires the reading of the agreement, I think it might be waived. The agreement has been long since printed in a document sent here by the President. It is recited

in the bill at length.

The PRESIDENT pro tempore. No Senator insisting, the reading of that part of the bill will be waived.

Mr. INGALLS. The bill under consideration provides for the ratification and confirmation of this agreement with the exception of article 4, which is in the following words:

ticle 4, which is in the following words:

ARTICLE 4. The Government of the United States and the said Indians, being mutually desirous that the latter shall be located in a country where they may eventually become self-supporting and acquire the arts of civilized life, it is therefore agreed that the said Indians shall select a delegation of five or more chiefs and principal men from each band, who shall, without delay, visit the Indian Territory under the guidance and protection of suitable persons, to be appointed for that purpose by the Department of the Interior, with a view to selecting therein a permanent home for the said Indians. If such delegation shall make a selection which shall be satisfactory to themselves, the people whom they represent, and to the United States, then the said Indians agree that they will remove to the country so selected within one year from this date. And the said Indians do further agree in all things to submit themselves to such beneficent plans as the Government may provide for them in the selection of a country suitable for a permanent home, where they may live like white men.

The letter postion of a winde 6 contains in lines 192, 193, 194, and

The latter portion of article 6 contains in lines 122, 123, 124, and 125 of the printed bill the following words:

And if said Indians shall remove to said Indian Territory as hereinbefore provided, the Government shall erect for each of the principal chiefs a good and comfortable dwelling house.

The fourth article having been specially excepted from ratification by the terms of the bill, it is necessary that that portion of article 6 should also be excepted. I therefore move to amend by adding after the word "four," in line nine, "and also the following portion of article 6," including the words I have already read.

The PRESIDENT pro tempore. The Secretary will report the amendment as proposed.

ment as proposed.

The CHIEF CLERK. After the word "four," in line nine of the bill, it is proposed to insert:

And also excepting the following portion of article 6: "And if said Indians shall remove to said Indian Territory as hereinbefore provided, the Government shall erect for each of the principal chiefs a good and comfortable dwelling-house."

Mr. ALLISON. I trust the Senator from Kansas will not insist upon this amendment. It is not at all material to the object he has in view. The fourth article of this treaty is the only article which provides for the transfer of these Indians to the Indian Territory. The fourth article is excepted by the terms of the bill, because these tribes themselves have not agreed to it, and it can have no binding force unless they all do agree to it under the treaty of 1868 which is

Mr. DORSEY. If the Indians should agree to that, would the Government then be forced to transfer them to the Indian Territory?

Mr. ALLISON. Not at all. Of course these Indians cannot be transferred to the Indian Territory except in pursuance of legislation hereafter to be made, even if the whole of this treaty should be ratified and confirmed by the Senate and House and agreed to by the Indians. But by the terms of this bill, and by the terms of the agreement itself these Indians cannot be removed to the Indian Territory. ment itself, these Indians cannot be removed to the Indian Territory without a further agreement and without further legislation. Therefore I see no object in the Senator from Kansas insisting upon the modification of article 6; and especially do I think it ought not to be done, because it interferes with the agreement as made by the In-The PRESIDENT pro tempore. The morning hour has expired, and | dians, and they might probably say if article 6 is to be interfered

with, which has already been agreed to by all these bands, they are not bound by the agreement thus modified without their assent; but as the bill now stands it is in precise accord with the agreement that the commissioners made with the Sioux Indians; but it in no respect has the effect which the Senator from Kansas seems to think it would have-to tacitly, at least, admit their right to go to the Indian Terri-

Mr. INGALLS. I have listened with pleasure, as I always do, but not with as much instruction as I frequently do, to the Senator from Iowa. I hope, if he has any reasons that are satisfactory or convincing to offer why my amendment should not prevail, that before he concludes he will present them to the Senate for consideration. He admits that the only provision of this agreement which can give the latter portion of article 6 any binding effect whatever is specially excepted from the operation of this act by the terms of the bill itself. He intimates that my desire is to prevent any tacit understanding or implication that may arise from this language by which there shall be assumed to be any consent expressed for the removal of the Sioux to the Indian country; but if article 4 is stricken out, never having been assented to by the Indians, then I ask him for what purpose he been assented to by the Indians, then I ask him for what purpose he desires to have the latter portion of article 6 retained in this bill. It certainly implies in unmistakable terms that there is in contemplation a removal of these Indians to the Indian Territory, and declares that, if they do so remove, the Government shall erect for each of the principal chiefs a good and comfortable dwelling-house. As the language now stands in the bill with article 4 stricken out or omitted, these words are either superflower or they are distant on a the Conference of the conf

guage now stands in the bill with article 4 stricken out or omitted, these words are either superfluous or they are sinister, or, as the Senator from Missouri [Mr. Bogy] suggests, they are nonsensical, and I am willing to accept that as an amendment.

Mr. ALLISON. Mr. President, it is certainly no fault of mine that I have not been able to convince my friend from Kansas that this provision ought not to be stricken out. This agreement is of no force and is not binding upon either party until it is ratified by Congress and by the Executive. Article 4 was only agreed to by two bands of these Judians and therefore article 4 has not been agreed to by the these Indians, and, therefore, article 4 has not been agreed to by two bands of Indians, but article 6 has been agreed to by all of them, and, therefore, it is a binding agreement on the part of the Indians now. If we change its terms they may say "We will not assent to such change," and the whole agreement would fall, or at least it might be doubtful whether they would be bound by the agreement if we undertake to change its provisions. It is now binding on them.

Mr. INGALLS. But not binding until ratified by Congress and the President.

Mr. ALLISON. Of course not; they have agreed to this sixth article. If Congress agrees to it and the President agrees to it, then it is binding on the part of the United States, and consequently binding on the part of this Sioux Nation; but if we refuse to ratify a portion of this agreement, the Indians can very well say "You did not agree to the agreement made with these commissioners and, therefore, we ourselves will not be bound by it."

Mr. DORSEY. I should like to inquire of the Senator from Iowa

if article 4 has been stricken out?

Mr. ALLISON. It is excepted from ratification by the bill.
Mr. DORSEY. Then I should like to know what reference lines
123, 124 and 125, in article 6 have, if article 4 has been stricken out. These lines are:

And if said Indians shall remove to said Indian Territory, as hereinbefore provided, the Government shall erect for each of the principal chiefs a good and comfortable dwelling house.

The "hereinbefore" referred-to provision in these lines is article 4, which has been stricken out. If there is no intention by this bill to remove these Indians to the Indian Territory, I cannot see the neces-

sity of these four lines.

Mr. ALLISON. The Senator from Arkansas has exactly comprehended the situation; that is to say, these four lines have no effect whatever in law, and yet the Senator from Kansas insists that they must go out. I suppose he thinks they ought to go out, because, if they do not go out, under this bill these Indians can be removed to the Indian Territory. I do not so understand it, and therefore I can see no force in the objection made by the Senator from Kansas.

Mr. DORSEY. Ido not know what the motives of the Senator from Kansas are for asking that these lines be stricken out. I desire them Kansas are for asking that these lines be stricken out. I desire that stricken out because I want nothing whatever in this bill, by implication or otherwise, which would show that at this time Congress these Indians to the Indian Territory. That

is my notion about it.

Mr. BOGY. If the fourth article of this agreement is stricken out. Mr. BOGY. If the fourth article of this agreement is stricken out, as a matter of course the amendment indicated by the Senator from Kansas should be adopted, because it is a part of the same subject, although not in the same section. It ought to be in the same section; but it is the same subject, and the Indians cannot object. As was said by the Senator from Iowa, all these different bands of Indians did not agree to the fourth article. A few of them did. The Ogallalla Sioux and the Brûlé Sioux agreed to this fourth article. The others did not. The fourth article provides that if the bands which I have just mentioned desire to go to the Indian Territory west of Arkansas and south of Kansas, and adjoining my State, they may do so, and in that eventhouses shall be built for the principal chiefs whenever they desire them. If the right to go there be taken away, certainly there ought to be no provision to build houses for them; but,

as I said awhile ago, it really would be nonsensical to retain this provision if the main subject is taken away.

I agreed to this compact with a good deal of hesitation. Never-

theless, if this fourth article be stricken out, which I repeat provides for and confers on the Indians the right to remove to the Indian Territory, I am willing to vote for the agreement; but I do insist that as a matter of propriety the amendment of the Senator from Kansas should also be adopted, and I cannot see that the Indians could object to it at all, because if the two bands with whom this agreement was made to remove to the Indian Territory agree that that right be taken from them to remove there, they certainly would not object to this amendment of the Senator from Kansas. The other Indians to whom this provision was not intended to apply can make no objection, because this provision will not apply to those Indians who have no connection whatever with any right secured by the fourth article of the agreement. I do not think the objection of the Senator from Iowa is at all well taken. It is a part of the same subject, and if the fourth article is stricken out, as it ought to be, and with which I will not oppose the agreement, the amendment of the Senator from Kansas, as a matter of course, ought to be adopted. There ought to be nothing, as the Senator from Arkansas said, left in this bill which indicates by implication in the remotest way that at any time these wild tribes may have the right to go down to the Indian Territory. I therefore hope the amendment of the Senator from Kansas will be adopted. It seems to me that there can be no objective. tion to it

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Kansas.

of the Senator from Kansas.

Mr. CLAYTON. The only objection I have to striking out this provision is that if we interfere with this agreement it may be necessary to have the Indians again ratify it. It seems to me that the provision which the Senator from Kansas proposes to strike out, while not in harmony with the other provisions of the bill, at the same time is harmless, because if you strike out the fourth article which authorizes the Indians to go to the Indian Territory, so that there is no authority for them to go there then of source this posture. there is no authority for them to go there, then of course this authority for the erection of buildings for them is of no force whatever.

If this was an original proposition, an ordinary bill which did not require ratification and agreement, I should say strike it out, so as to make the phraseology harmonious, but as the phraseology of this sixth article which is proposed to be stricken out is entirely harmless and can lead to no result whatever, I should rather, with the views I have on the subject, see it remain, because I should like this bill to go into force without any further ratification on the part of the

Indians

Mr. BOGY. The Senator does not understand my position. I contend that all these different bands of Indians excepting two have nothing to do with the portion of the agreement proposed to be stricken out by the Senator from Kansas; because it was not provided that houses should be built for any of these Indians except the two bands who have agreed to the fourth article. They cannot go now; and, therefore, as this is virtually a part of the fourth article, with the same idea, the same compact, the same agreement, though awkwardly put in another section, it should be stricken out. It cannot affect the other Indians, because it does not apply to them.

Mr. CLAYTON. I should like to ask the Senator from Missouri a

question. Does the Senator think, after striking out the fourth article, the effect of which is to prohibit any of these Indians from going to the Indian Territory, the Government can under the other provision erect buildings for those who go to the Indian Territory? Does not the striking out of the fourth article render this other por-

tion entirely nugatory?

Mr. BOGY. Of course it does.

Mr. CLAYTON. Then what is the necessity for the amendment?

Mr. BOGY. Of course it does; and that is the reason why it should be stricken out. There is an implication left there that these Indians may hereafter at some time by possibility go down there. I, for one, am opposed to allowing the wild Indians of the prairies to go at any time to the Indian Territory; and I will oppose here and at all times any tendency in that way. It can do no harm to strike this out, and it does not require the assent of the Indians. I am very well satisfied that it does not, because this is not part of the compact made with them. There are nine tribes of these Indians. The other seven tribes fied that it does not, because this is not part of the compact made with them. There are nine tribes of these Indians. The other seven tribes did not make any compact in regard to going to this Indian Territory, and therefore it does not apply to them. The two tribes, or more correctly the two bands, that have agreed to the fourth article will have to agree to this modification made by Congress anyhow.

Mr. CLAYTON. But if the Senator will allow me, all the bands agreed to article 6. Now he proposes to amend article 6. If you amend it in any particular, will it not require their ratification?

Mr. BOGY. It is true they have all agreed to article 6; but when article 6 was written out it was intended that the Indians should agree to remove to the Indian Territory. Out of a number of different

ment with all the different tribes of the Sioux Indians by which they were to relinquish their reservation lying on the two forks from Cheyenne River with the right to remove to the Indian Territory west of Arkansas. That was the intention on the part of the commissioners when this compact was first drawn. The Indians would not go down there, but two of the bands did agree to go, but the wording remains there, but two of the bands did agree to go, but the wording remains as if applicable to all. Now if you strike out the fourth article you ought to strike out these words which are part and parcel of the same subject, the same idea; that is, if the Indians should go down there it should be the duty of the Government to build houses for them. Now if you say the Indians shall not go, there ought to be no obligation on the part of the Government to build houses. It is correct to say that if they cannot go no houses will be built; but why keep that in the agreement? It may be mischievous hereafter, and there can be no harm in striking it out, the fourth article having been striken out.

been stricken out.

Mr. THURMAN. I wish to make a suggestion. It is said those words should go out because article 4 goes out, and article 4 refers to the Indian Territory and the removal to that Territory. That is not exactly a conclusive argument in favor of striking these words out, because if article 4 be stricken out and these words be retained they would remain as an offer to the Indians on the part of the Government that if they should remove to the Indian Territory the Government would do for them what is provided for in the words that are sought to be stricken out. Whether there is any necessity for keeping that standing offer on the part of the Government, I do not know.

standing offer on the part of the Government, I do not know.

Mr. INGALLS. That is what we want to avoid.

Mr. THURMAN. If it is not advisable to keep that a standing offer on the part of the Government, then I should suppose that if article 4 goes out these words should go out; but if it is advisable to keep that as a standing offer on the part of the Government, then these words ought to be retained, changing the word "said" before "Indians" in line 122 into the word "the," because the Indian Territory has not been mentioned before except in article 4, which is stricken out.

I feel very indifferent about this matter because I do not know

I feel very indifferent about this matter because I do not know enough of the subject to be able to give any advice upon it; and I rose more to ask the Senator from Iowa who has the bill in charge whether this treaty comes to us with a recommendation by the Ex-ecutive and the Indian Department that it be adopted?

Mr. ALLISON. The President of the United States has sent a message transmitting it to us.

Mr. THURMAN. Recommending its ratification?

Mr. ALLISON. Recommending it.

Mr. THURMAN, Then I suppose I am to understand of course that it comes from the Committee on Indian Affairs with its recommendation?

Mr. ALLISON. Yes, sir, it was looked at very thoroughly in the committee, by my honorable friend from Kentucky who is not here.

Mr. MAXEY. Mr. President, I desire to enter my earnest protest against the removal of any of the wild Indians into what is known as the Indian Territory. There is perhaps not within the limits of as the Indian Territory. There is perhaps not within the limits of the United States any soil, any country for agricultural and pastoral purposes superior to what is known as the Indian Territory. It is oc-cupied by tribes which for more than half a century have been civil-ized and progressing in wealth and intelligence, having their own schools, their own churches, their own forms of government assimilschools, their own churches, their own forms of government assimilating as near as their nature will admit to those of their white brethren. They are placing themselves rapidly in a condition to become, if they desire to become, a State of the American Union. Every element such as that which is designed by this bill to be injected among the inhabitants of that Territory injures those people in their efforts to elevate themselves in wealth and in a condition to become in the progress of time citizens of the American Republic.

to elevate themselves in wealth and in a condition to become in the progress of time citizens of the American Republic.

Now, sir, this Territory is immediately south of the State of Kansas, directly interested in this question, and which is opposed, I take it from the position assumed by her able Senator on this floor, [Mr. Ingalls,] to such a course. It is west of the State of Arkansas; those people are directly interested in this question; and it is north of the State of Texas. There are three great States directly interested in this question; and this Indian Territory is now crossed by a railway leading directly through that Territory from the north connecting with the Northern States by the way of the Missouri, Kansas and Texas road with the Gulf of Mexico on the south. In the very nature of things, if those people who now occupy that Territory are not loaded with this fearful fog of ignorance and savagery, they will increase in wealth, intelligence, and prosperity. The people of these three States now get along on terms of friendship with the Indians who occupy that country; and if you turn these wild tribes loose into that country, no man can tell what will be the consequences.

For this reason I oppose the entire policy, and the people whom I represent oppose the policy of placing any of these wild tribes, under any circumstances, within that Territory, because it is not only injurious to those who now occupy that Territory and who are neighbors of ours, but it is injurious to our own people in every sense of the word. I oppose the whole policy.

Mr. INGALLS. Mr. President I have long been aware of a fixed.

word. I oppose the whole policy.

Mr. INGALLS. Mr. President, I have long been aware of a fixed, resolute, and immovable determination on the part of the Indian Bureau and some other branches of this Government to remove the wild tribes of the Northwest into the Indian Territory. I was a little surprised at the readiness with which the Senator from Iowa and

those who agree with him in the Indian policy of this Administration assented to the exception of article 4 from the provisions of this bill. I had not observed the terms of the latter portion of article 6. An I had not observed the terms of the latter portion of article 6. An examination of that fully discloses the reason why they were so very willing that article 4 should be excepted because, as the Senator from Ohio has well said, if that is retained it is a standing invitation to those Indians to go to the Indian Territory, and a statement, by implication at least, that if they do go the United States Government will offer them a home and provide for their permanent location.

Now, sir, the Senator from Texas has expressed what I believe to be the sentiment of the people of that State in regard to the location of these Indians in that country. I can speak with equal certainty as to what the sentiment of the people of Kansas is. I believe that as to what the sentiment of the people of Kansas is. I believe that the people of Arkansas and Missouri are equally opposed to this movement, and I can say to the Senator from Iowa that any movement that looks even by implication or that favors even by the remotest inference any policy that has for its object the removal and location of the Sioux into the Indian Territory will meet I believe practically with the unanimous opposition of the people and the representatives

of those States.

The Senator from Ohio well says that if it is the desire of the Senate to extend a standing invitation to these Indians to go to the Indian Territory, then the latter portion of article 6 should be retained; if that is not the purpose, then it should be omitted from the ratification. The Senator from Iowa has the option before him ratification. The Senator from Iowa has the option before him either by adhering to the retention of that portion of the article to extend that invitation to these Indians, or by allowing it to be stricken out to show that he was sincere in his consent to the omission of article 4. I believe that he was entirely sincere, but at the same time, as I said when I commenced, I am aware of the fact that there is a deliberate purpose on the part of the Indian Bureau to remove these Indians down there, and I have no hesitation in saying that if this language is retained after the declarations that have been made here upon the floor the Department will consider that they are authorized to continue their negotiatious for this purpose. I therefore

hope the Senate will agree to my amendment.

Mr. MAXEY. I would call the attention of the Senator from Kansas to the fact that the fourth article is stricken out, and if this arof the family makes a solection of a homestead in the reservation, and then it goes on to say that he may make a selection in the Indian Territory. If it is the honest purpose to strike out the Indian Territory, then this should go with it; and, if it is not the honest purpose to strike out the Indian Territory, or, in other words, not to permit them to go there, then this is a piece of deception. Under any state

of the case it should go out.

Mr. ALLISON. I think it is a little singular that my friend from Mr. ALLISON. I think it is a little singular that my friend from Kansas should suppose that I had some secret purpose in assenting so readily to the obliteration of article 4. I beg leave to assure him that I had no secret purpose. I, like himself, did not observe at the moment this provision in article 6, and therefore that provision was not discussed at all. Now, for myself, I desire in good faith to preserve the understanding we had in the committee or in our informal conferences, if I may use that term, that inasmuch as there were serious differences with reference to the removal of these Indians to the Indian Territory, we would not raise that question in this bill were serious differences with reference to the removal of these Indians to the Indian Territory, we would not raise that question in this bill, it not being a practicable question, inasmuch as the Indians themselves do not assent to removal. It is an imperative necessity that so much of this agreement as provides for the relinquishment of that vast area of territory which lies west of this boundary should be at once placed in the possession and under the control of the Government of the United States, and that can only be done by giving the force and effect of our sanction to this bill.

I am willing, as I have no doubt the Senator from Kansas is willing, that the question of the removal of these wild tribes may be post-poned until some future action of this Congress or of a future Congress, it may be. Therefore, I desire, in good faith, to carry out the understanding of the committee, and now, I suggest to the Senator from Kansas that we modify still further the amendment proposed by him, and that the amendment as modified be then agreed to. There is a portion of this article 4 that ought to be saved in this bill, and

the Indians only refused to ratify that portion of the article 4 which relates to the removal to the Indian Territory.

Mr. PADDOCK. Do I understand the chairman of the committee to express the opinion of the committee in reference to this surrender of the fourth article and the sixth article together? Do I understand him that he presents now the view of the committee in reference to that surrender? because I consider it an absolute surrender of any that surrender? because I consider it an absolute surrender of any possible chance, any option that may be given in either of those articles for removal ultimately to the Indian Territory. So far as I am concerned, I consider article 4 one of the most important and needful sections of the whole bill, and if the chairman surrenders that, I am willing to surrender the whole treaty so far as I am concerned. I think these Indians ought to go to the Indian Territory. I think that is where they belong. I think they ought to be placed under the civilizing influence of Indians further advanced in civilization than they are. There is a vast scope of country of sufficient extent there for all the Indians of the country. There is no looky to be in there for all the Indians of the country. There is nobody to be injured or damaged in the least degree by their removal there; the objections interjected here are altogether imaginary, and not real.

Mr. ALLISON. I thought I made myself understood with refer-Mr. ALLISON. I thought I made myself understood with reference to this fourth article. The Indians themselves have not agreed to go to the Indian Territory, and we made a solemn treaty with them in 1868 that no treaty which looked to the relinquishment of any portion of their reservation should be binding upon those Indians until they themselves agreed to its surrender. Now only two bands of these Indians have agreed in any event to go to the Indian Territory. The remainder of these bands, comprising two-thirds of these Indians, in this agreement which we are ratifying, especially excepted the provisions of the fourth article so far as they related to the Indian Territory. Are we to violate our faith with this Sioux Nation still further by compelling them to surrender these valuable lands, made valuable by the discovery of mineral products there; are we still to force them against their will and judgment into the Indian Territory by the power of the United States without preparation on their part?

For one, sir, I regard this as no surrender. I represent no interest with reference to this subject other than what I believe to be the true interests of the Government and the Indians. The committee agreed unanimously that under this treaty we had no power to force these people into the Indian Territory against their consent. They have not consented; and are we now to force them by a legislative provision to consent to this thing because at this very moment we desire a large portion of their possessions? No, sir, I desire to carry out in good faith the provisions of the treaty of 1868 and the provisions in good faith the provisions of the freaty of 1898 and the provisions of the agreement made here by eminent men and by men who have the real interests of these Indians at heart, not by those who wish to compel these Indians to go to a Territory where they do not desire to go, until such time, at least, as they and the Government can agree upon a policy. I will be glad to see the time come when they will go there voluntarily and be in such position with reference to civilization as will enable them to affiliate with the more civilized tribes now

Mr. PADDOCK. Why, Mr. President, I understand the Chairman to have said several times that there was really nothing in the articles compelling the Indians to go at all. It was merely a matter of a mutual option to the Indians and to the Government whereby this result might be accomplished at some future time, if it should be found to be desirable and satisfactory to all interests involved and to all the parties interested. So that my friend, I think, has wasted a great deal of breath and power here in stating a proposition which he had himself before admitted not to be as he has described it to be

Mr. MERRIMON. I beg to ask the chairman of the committee a question in connection with the bill generally, whether it is proposed by this bill to send these wild, uncivilized Indians into the Indian Territory without consulting the civilized Indians upon the subject at all, and whether, in good faith, if the United States have the power

Mr. ALLISON. In answer to the inquiry of the Senator from North Carolina, I will say that the bill does not propose in any event to send them there; and therefore we did not consider the question whether we ever ought to agree to send them there without the consent of the

Mr. THURMAN. I understood the Senator from Iowa to say first

this morning that the fourth article was to come out entirely.

Mr. ALLISON. The committee so reported, but I am willing to modify that by excepting "such portion of article 4 as relates to the removal of said Indians to the Indian Territory," to insert that in

Mr. THURMAN. The whole of article 4 relates to the removal of

the Indians to the Indian Territory.

Mr. ALLISON. The Senator will pardon me. I think not the whole

Mr. THURMAN. What part does not?
Mr. ALLISON. The last part.
Mr. THURMAN. I think not. I think article 4 entirely relates to the same subject. I have no idea that the last clause of article 4 can be taken as an independent substantive proposition. If that were so, then the Indians have put themselves absolutely in the power of the Government to send them wheresoever the Government shall

please. That surely never was intended.

Mr. ALLISON. If the Government choose to send them to some other Territory than the Indian Territory, could not the Government

do so under the last clause of article 4?

Mr. THURMAN. I think not. I think to make that a distinct substantive provision would allow the Government to provide in its own discretion a country suitable for a permanent home for these Indians and would be an assent on the part of the Indians beforehand to go to that country and submit themselves to such plan as the Government might see fit to adopt, whereas the true meaning of this section is that if the Indians elect to go to the Indian Territory, then they will take such place in that Indian Territory as the Government may provide for them, and being there, will submit themselves to such beneficent plans as the Government may provide. That is the meaning of it. You cannot take part of article 4 and leave the rest. You must reject it all or save it all; and that being the case, it seems to me there is no necessity for further discussion. Article 4 goes out, and lines 122 to 125 in article 6, which the Senator from Kansas, I understand, moves to strike out, having relation to article 4 and to nothing else heing a part of it, and in foot a part that ought to have nothing else, being a part of it, and in fact a part that ought to have

been in article 4 if the agreement had been a little more artistically drawn, ought also to come out.

I hope we shall come to a vote. I do not wish to call for the reg-

I hope we shall come to a vote. The not wish to can for the regular order; but I hope we shall come to a vote.

Mr. ALLISON. Let us vote on the amendment.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Kansas.

Mr. PADDOCK. The Senator from North Carolina, I think, interposed an objection that the civilized Indians, Indians now living in the Indian Territory, might hereafter object to the coming among them of these Sioux Indians, these wild tribes, as they are denomthem of these Sioux Indians, these wild tribes, as they are denominated. There are two or three tribes of Indians in my own State, one of which has already partially moved, on the invitation of those Indians, to that Territory. A delegation from another tribe has gone there and they have received a similar invitation to go among them and locate there, and, as I understand it, there is no objection, no disinclination on the part of the Indians of the Indian Territory who are so far advanced in civilization to have these Indians come among them. They feel a deep interest in these Indians; they want to help to better their condition if it is possible to do so; and they are willing to lend themselves to that effort I understand. It seems to willing to lend themselves to that effort I understand. It seems to me that of all the sections of this bill, this section 4 and section 6 are most advisable. I sincerely hope that the amendment may not prevai.

Mr. CLAYTON. Mr. President, upon further reflection, and after having heard the remarks of the Senator from Ohio, I am of the opinion that to leave in this provision of article 6 would be to leave the question open as to whather these Indians should go to the Iddians.

the question open as to whether these Indians should go to the Indian Territory. I do not think it advisable now to raise that question. I believe the committee were unanimous in that idea, that the question as to whether these Indians should be removed to the Indian Terri-tory ought not to be raised in this bill, for the reason that the great majority of the tribes declined to go in this agreement; and therefore it is not the right time now to raise that question. For that rea-

son I shall vote to strike out the provision.

The PRESIDENT pro tempore. The question is on the amendment The PRESIDENT pro tempore. of the Senator from Kansas.

Mr. ALLISON. I am so anxious that this matter shall be disposed of to-day that I would rather assent to the amendment proposed by the Senator from Kansas than to have the matter go over.

Mr. MERRIMON. Why is it necessary to strike out articles 4 and 6?
Mr. THURMAN. Because they are not to be ratified.
Mr. PADDOCK. It is necessary, because these gentlemen who live in that section of the country are determined that the door ought to be closed absolutely and entirely against the removal of these In-

dians to the Indian Territory. That is all the necessity there is, Mr. BOGY. Not at all; only it does not open it, that is all. The PRESIDENT pro tempore. The question is on the amendment of the Senator from Kansas.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### PACIFIC RAILROAD ACTS.

I call for the regular order. Mr. EDMUNDS.

The PRESIDENT pro tempore. The regular order is Senate bill No.

The Senate, as in Committee of the Whole, proceeded to the consideration of the bill (S. No. 934) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line

"An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. THURMAN. Mr. President, I do not propose to make an argument on this bill to-day, but I hope the Senate will indulge me in doing all that I can to speed the bill without doing injustice to any other Senators will listen to its reading, for the recitals in the preamble to the bill are of great importance to the understanding of the bill ble to the bill are of great importance to the understanding of the bill and the bill itself ought to be understood by every Senator before he comes to vote upon it. After the reading of the bill I shall then ask that the report of the committee accompanying the bill, which is not very long, may be read so as to show briefly the grounds upon which the committee recommend the bill to the favorable consideration of the committee recommend the bill to the ravorable consideration of Congress. That being done, I understand that the chairman of the Railroad Committee will move the bill last reported by that committee as a substitute for the bill now under consideration, and that will bring to the attention of the Senate the points of difference between your two committees, both committees recommending measures tween your two committees, both committees recommending measures for the creation of a sinking fund which shall protect the Government from loss and the creditors of these corporations from loss, but differing in the details. The whole point of difference will be before the Senate by the motion to substitute the Railroad Committee bill for that of the Judiciary Committee. That motion being made, then I hope the Senator from Oregon, [Mr. MITCHELL,] who is opposed to the bill of the Judiciary Committee, will give us the benefit of his views, so that we may know and be prepared to answer them when the bill shall come up again. After he shall have concluded his remarks-and I invoke the attention of the Senate to all that is to be done on this very important subject—this day after he shall have concluded his remarks I shall be willing that we adjourn so that it may be the unfinished business on Monday. I now ask that the bill may be read.

Mr. WEST. The Senator from Ohio has very accurately stated the two different phases in which this subject will be presented for the consideration of the Senate, one in the report of the Judiciary Committee, accompanied by a bill, and another in a bill and report coming from the Committee on Railroads, one committee differing from the other upon a fundamental principle; but I shall reserve to my-self discretion and judgment as to when I will offer the motion for

Mr. THURMAN. Certainly.

Mr. WEST. But after the bill is read that the Senator has referred to and the report of the Judiciary Committee, I shall then claim the attention of the Senate to the bill reported by the Committee on Railroads and to their report, so that the whole subject can be before

the Senate at the same time.

Mr. THURMAN. I have no objection in the world to that course. All I desire is that both bills may be read, so that the attention of the Senate may be brought to the points of difference between your committees, and that then the Senator from Oregon shall be heard in his objections to the power that the Judiciary Committee assert to amend

Mr. MITCHELL. I will state to the Senator from Ohio that I am willing to go on to-day after the reading of both these reports, but would prefer to speak on Monday, if it is all the same to the Senator from Ohio; and the only reason for this preference on my part arises from the fact that I am chairman of a subcommittee engaged in taking testimony and we are very much crowded for time. Still if the Senator insists, as we had some talk on the matter, I shall go on

Mr. THURMAN. I would most willingly do anything to oblige the Senator from Oregon, as he well knows, but this session is nearly at an end. If the electoral bill shall receive the approval of the President, the execution of it will begin next Tuesday in part by the selection of the committees on the part of the Senate and House, and the full and complete execution of it will commence on Thursday. We know under these circumstances how difficult it will be to perfect any measure so important as this, and we ought not to lose any time upon it. A bill passed the House of Representatives at the last

The Judiciary Committee reported their bill, which is in its substantial features the same as the House bill, and in the opinion of the Judiciary Committee an improvement upon the House bill, as long as the 12th of July last. I tried to get that bill up at the end of the last session, and I tried it several times; but in the closing days of that session, after we had been sitting here seven months and everybody was fatigued and many were sick, when there was that multibody was ratifued and many were sick, when there was that intitude of business that is always pressing upon Congress at the close of a session, I found it impossible to get the measure up. This session I tried to get it up three weeks ago, but owing to the absorption of the attention of the Senate by the electoral question I have never been able to get it up. I do not want to lose this day, and I trust that my friend from Oregon will consent to go on to-day, so that I may ask a vote of the Senate on this bill on Monday next, or at farthest on Theeder. thest on Tuesday

Mr. MITCHELL. I will endeavor to accommodate the views of

the Senator

The PRESIDENT pro tempore. The bill will now be read. The Secretary read the bill.

The Secretary read the bill.

A message was received from the President of the United States by Mr. U.S. Grant, jr., his Secretary.

Mr. THURMAN. Mr. President, I am satisfied that further reading to-day, the Senate being so completely worn out and fatigued from the labors of the last few days, would be a waste of time. I shall not therefore ask for any further reading on this subject now, but as this is a subject of great importance, a question whether or not the Government shall lose more than \$100,000,000, or at least it may be such a question, I hope that Senators will give their attention to it. I hope that they will get copies of Senate bill No. 984, reported from the Judiciary Committee, and of Senate bill No. 1134, reported from the Railroad Committee; and that they will get the reports made by those two committees.

those two committees.

Mr. WEST. Report No. 341, of the last session.

Mr. THURMAN. Yes, it was reported at the last session; and there was also a most elaborate and instructive report made in the House was also a most elaborate and instructive report made in the House of Representatives by Mr. Lawrence from the Committee on the Judiciary there, and a minority report of that committee made by Mr. Hurd. These reports will explain the general features of the case and most of the details, so that whoever shall make himself familiar with them and will read the two bills will then see the only points of difference between your two committees. Believing that it would be useless to protract the reading any longer, after the Senator from Oregon has taken the floor so as to give him the right to the floor on Monday, I shall move that the Senate adjourn.

The PRESIDING OFFICER, (Mr. MERRIMON in the chair.) The Chair will state that the bill just read is now before the Senate as in Committee of the Whole, and open to amendments.

Committee of the Whole, and open to amendments.

Mr. THURMAN. Before adjourning, however, if the message of the President is to the open Senate and not an executive message, I should like to have it read.

The PRESIDING OFFICER. It is an executive message.

Mr. MITCHELL. Mr. President—
The PRESIDING OFFICER. The Senator from Oregon.
Mr. MITCHELL. I will now give way to a motion to adjourn.

HOUSE BILL REFERRED.

The bill (H. R. No. 4530) to amend sections 5185 and 5186 of the Revised Statutes was read twice by its title, and referred to the Committee on Finance.

EXECUTIVE SESSION.

Mr. THURMAN. I move that the Senate proceed to the consideration of executive business, so as to have the message from the President read.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

After eight minutes spent in executive session the doors were re-opened, and (at one o'clock and thirty-four minutes p. m.) the Senate adjourned.

## HOUSE OF REPRESENTATIVES.

SATURDAY, January 27, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journals of Thursday and Friday were read and approved.

DESTITUTE POOR OF THE DISTRICT OF COLUMBIA.

Mr. STEVENSON. I ask unanimous consent to report back from the Committee for the District of Columbia the bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia. It is a bill which I am satisfied no gentleman will object to when I state its contents. It appropriates the sum of \$20,000 for the relief of the destitute poor in the District of Columbia.

The SPEAKER. Is there objection?

Mr. HOLMAN. Before consent is given, as the House is very thin, I trust the bill will be reported at the Clerk's desk so that it may be understood.

Inderstood.

The bill was read.

Mr. STEVENSON. I ask also that the petition which I hold in my hand may be printed in the RECORD.

The SPEAKER. Is there objection to the consideration of the bill?

Mr. HOLMAN. I do not propose to object, although I wish to reserve the right to do so for a moment. This appropriation is out of the regular order of appropriations of money, and there is scarcely a graphy of the House present.

the regular order of appropriations of money, and there is scarcely a quorum of the House present.

Mr. STEVENSON. Let me say to the gentleman that there is an imperative necessity for the passage of the bill, for there is absolute starvation in this city.

Mr. HOLMAN. Many gentlemen are detained from the House this morning by engagements which will expire in a few moments, and I think that a bill that appropriates money in this form should be brought up when there should be an opportunity for all gentlemen to be present, and concur or not, as they desire. The SPEAKER. The Chair will recognize the gentleman from Illinois [Mr. STEVENSON] at a later hour in the day.

#### ENROLLED BILL SIGNED.

Mr. HAMILTON, of Indiana, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled

a bill of the following title; when the Speaker signed the same:

An act (S. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

### ORDER OF BUSINESS.

Mr. HOLMAN. I desire to make a motion that the House resolve itself into the Committee of the Whole to resume the consideration of the Indian appropriation bill. While submitting that motion, I wish to call the attention of the House to the fact that it is of the first importance to the Government that a bill should be reported and acted on to-day in regard to the appropriation of half a million of dollars for the payment to Captain James B. Eads of the amount due him for the completion (so far as the first provision of the act requires the completion) of what is known as the improvement at the mouth the completion (so far as the first provision of the act requires the completion) of what is known as the improvement at the mouth of the Mississippi River. But I am exceedingly anxious that the subject should be well understood by the House, and hence I do not wish to bring it forward until the House is full. Therefore I make the motion for the present that the House resolve itself into Committee of the Whole to proceed with the consideration of the Indian approximate it. priation bill.

SPECIAL TAXES ON NATIONAL BANKS.

Mr. WOOD, of New York. I ask unanimous consent to present (the gentleman from Indiana yields to me for that purpose) a memorial of the Chamber of Commerce of the city of New York, and 1,500 bankers and merchants, in favor of the repeal of all special taxes on national banks. I ask that this memorial be referred to the Committee of Ways and Means and ordered to be printed in the RECORD without the signatures.

There being no objection it was ordered accordingly. The petition

is as follows:

is as follows:

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

The petition of the undersigned respectfully showeth: That war taxes, both heavy and unequal in their burden, are imposed on the national banks, State banks, savings-banks, and private bankers of this country, which taxes have been, for several years, productive of great commercial injury; that in no other country are such taxes incurred by the business of banking, and the exigency having passed away the war taxes can be taken off without any sacrifice to the Treasury at all commensurate with the benefits which will result to the agricultural, financial, commercial, and industrial pursuits of the country.

That the continuance of this onerous and discriminating taxation on banking capital is rapidly withdrawing it from that business, leaving the commerce and industries of the country illy prepared to meet a long-hoped-for returning tide of prosperity.

That the present time is a proper one for Congress to interfere for the relief of these interests; that the taxes now levied by the General Government on the deposits and capital of all banks should be immediately repealed, and the subject of bank taxation be remitted to the several States and Territories, as before the war.

And your petitioners will ever pray, &c.

#### ORDER OF BUSINESS.

Mr. LYNDE. I hope the gentleman from Indiana [Mr. Holman] will withdraw his motion until certain witnesses who are in the cus-

will withdraw his motion until certain witnesses who are in the custody of the Sergeant-at-Arms can be brought before the bar of the House to answer for contempt.

Mr. HOLMAN. That is, of course, a matter which takes precedence; but I am reminded, and would remind the gentleman from Wisconsin, [Mr. LYNDE,] that a great many members who would desire to be present when the matter is called up are now absent.

Mr. GOODIN. I hope that the gentleman from Indiana will not insist upon going into Committee of the Whole until we have had the morning hour.

morning hour.

Mr. HOLMAN. I think the House ought to consent to finish the Indian appropriation bill before taking up any other business.

### REPRESENTATIVE FROM COLORADO.

I ask consent to make a privileged report. The Committee on the Judiciary have directed me to report back the follow ing resolution with reference to the credentials of James B. Belford as Representative from Colorado:

Resolved, That Colorado is a State of this Union, and that James B. Belford, Representative-elect from said State, be sworn and admitted to his seat as such.

I give notice that immediately after the reading of the Journal next Tuesday I will call up this report for consideration, and after three hours' debate will move the previous question.

Mr. HOLMAN. I trust that the gentleman from Kentucky will not ask three hours' debate on that subject. I suggest two hours.

The SPEAKER. That is all within the control of the House.

#### THOMAS KEARNEY.

Mr. BRIGHT, by unanimous consent, reported back from the Committee of Claims the bill (H. R. No. 1747) for the relief of Thomas Kearney, collector of customs for the district of Corpus Christi; and moved that the committee be discharged from the further consideration of the same, and that it be referred to the Committee of Ways and Means.

The motion was agreed to.

### SIMON WOLF.

Mr. BRIGHT. I ask unanimous consent to report back from the Committee of Claims, for reference to the Committee on Appropriations, a communication from the Secretary of the Interior, transmitting the claim of Simon Wolf, recorder of deeds for the District of Columbia, to be re-imbursed the amount expended by him for recordbooks for his office for the years 1873, 1874, 1875, 1876.

Mr. HOLMAN. The gentleman should not refer that to the Committee of Communication of the Committee of Communication of the Committee of Communication of C

mittee on Appropriations. I must object.

The SPEAKER. If the gentleman from Indiana objects, the report cannot be made at this time.

### GEORGE R. WELSH.

Mr. BRIGHT. I ask unanimous consent to have the Committee of Claims discharged from the further consideration of the bill (H. R. No. 4402) for the relief of George R. Welsh, of Beaver Falls, Pennsyl-vania, that it may be referred to the Committee on War Claims. Mr. HURLBUT. I must object to any further references now.

### INDIAN APPROPRIATION BILL.

Mr. HOLMAN. I now insist on my motion that the House resolve itself into the Committee of the Whole on the Indian appropriation

The motion was agreed to; and accordingly the House resolved itself into Committee of the Whole (Mr. HATCHER in the chair) and resumed the consideration of the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes.

Mr. MILLS. When this bill was up before a portion of it with ref-

erence to the Sioux Indians was passed over to enable me to offer an amendment

Mr. HOLMAN. We will go back to that. Let us first finish the remainder of the bill.

The Clerk read as follows:

CIVILIZATION AND SUBSISTENCE OF INDIANS ON THE MALHEUR RESERVATION.

For this amount, or so much thereof as may be necessary in the purchase of goods, subsistence, stores, &c., for the Indians collected on the Malheur reservation, Oregon, in instructing them in agricultural and mechanical pursuits, providing employés, educating children, procuring medicines and medical attendance, care for and support of the aged, sick, and infirm, for the helpless orphans of said Indians, or in any other respect to promote their civilization, comfort, and improvement, \$25,000.

Mr. LANE. I should like to know whether this is in accordance with the recommendation from the Indian Bureau. In my judgment it is entirely too large an appropriation for this purpose. I think \$20,000 would be an adequate sum, and therefore I move, in line 1240, to strike out "twenty-five" and insert "twenty;" so it will read "\$20,000."

Mr. HOLMAN. I hope there will be no objection to that amend-

Mr. WELLS, of Missouri. If the gentleman deems that a sufficient sum, of course I will propose no objection.

The amendment was agreed to.

The Clerk read as follows:

#### MODOCS.

For this amount, or so much thereof as may be necessary to provide, under the direction of the Secretary having jurisdiction of Indian affairs, settlements, clothing, food, agricultural implements, and seeds for the Modoc Indians that have been removed to, and are now residing within, the Indian Territory, \$7.000.

That the sum of \$2.000 be, and the same is hereby, appropriated for the benefit of the Tonkawa Indians now at the military post of Fort Griffin, Texas; that the money herein appropriated shall be expended for the benefit of said Indians by the commanding officer at Fort Griffin, under such directions as may be prescribed by the Commissioner of Indian Affairs: Provided, That no part of such find shall be applied to the removal of said Indians from the vicinity of such military post to any Indian reservation: And provided further. That such appropriation shall be applied pro rata to such Lipan Indians as may have heretofore been incorporated into the Tonkawa tribe, and which still reside with such tribe.

Mr. THROCKMORTON. Let me ask of the gentleman from Mis-

Mr. THROCKMORTON. Let me ask of the gentleman from Missouri, [Mr. Wells,] who is in charge of this bill, what is the number of these Modocs?

Mr. WELLS, of Missouri. I am informed they number from one

Mr. WELLS, of Missouri. I am informed they number from one hundred and fifty to two hundred.

Mr. THROCKMORTON. The reason for my inquiry is this: Seven thousand dollars is appropriated in this bill for these Modocs, while only \$2,000 is appropriated for the Tonkawas. Now, there are about one hundred and thirty of these Tonkawas, and if the committee would consent I should like to increase this appropriation for these Indians \$500. I think it is absolutely necessary it should be increased to their property. to that amount.

Mr. WELLS, of Missouri. Two thousand dollars was the amount appropriated in the last appropriation bill for these Indians and the committee believed that is a sufficient sum. The gentleman from Texas, however, is of course more familiar with the wants of these

Indians.

Mr. HANCOCK. The appropriation for last year was only for a part of the year and these Indians did not get it until it was late, while, on the contrary, the appropriation here provided for is for the whole year. I think the appropriation should be increased \$500.

Mr. WELLS, of Missouri. I do not object to the increase of the appropriation \$500, if the gentlemen who are more familiar with the wants of these Indians deem it necessary.

Mr. THROCKMORTON. I will state, Mr. Chairman, that when I was at Fort Griffin, and this money has to be expended under the direction of the commanding officer. I was informed that the sum of

was at Fort Griffin, and this money has to be expended under the direction of the commanding officer, I was informed that the sum of \$2,000 was not sufficient. I only ask to increase the amount \$500. I believe the gentleman from Missouri does not object.

Mr. WELLS, of Missouri. I do not see any objection to that.

Mr. THROCKMORTON. Then I move to strike out "\$2,000" and insert "\$2,500" for the benefit of the Tonkawa Indians now at the military post at Fort Griffin, Texas.

The appendment was extreed to

The amendment was agreed to.

The Clerk read as follows:

#### TRANSPORTATION.

For the necessary expenses of transportation of such goods, provisions, and other articles for the various tribes of Indians provided for by this act, \$200,000. Mr. WELLS, of Missouri. I have an amendment, Mr. Chairman, to offer at that point which I ask the Clerk to read.

The Clerk read as follows:
Add the following:

And whenever practicable, wagen transportation may be performed by Indian labor; and wheneveritis so performed, the Commissioner of Indian Affairs is hereby authorized to hire a storehouse at any railroad whenever necessary, and to employ a storekeeper therefor; and to furnish in advance the Indians who will do the transportation with wagens and harness, all the expenses incurred under this provision to be paid out of this appropriation: Provided, That hereafter contracts involving an expenditure of more than \$2,000 shall be advertised and let to the lowest responsible bidder.

Mr. HOLMAN. That is to be paid out of the foregoing appropri-

Mr. WELLS, of Missouri. It is part of that paragraph and cannot be paid out of any other fund. The amendment was agreed to.

The Clerk read as follows:

To complete the survey of the lands of the Cherokee Indians of North Carolina, the Secretary of the Interior, as directed by the act of Congress approved 22d day of June, 1874, is hereby authorized to expend the sum of \$4,000, to be paid out of the moneys placed to the credit of the eastern band of Cherokee Indians upon the books of the Treasury Department under act of August 15, 1876, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1877, and for other purposes."

Mr. VANCE, of North Carolina. I move to strike out the following words in line 16 after the word "dollars:"

To be paid out of the moneys placed to the credit of the eastern band of Cherokee Indians upon the books of the Treasury Department under act of August 15, 1876, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tibes, for the year ending June 30, 1877, and for other purposes."

Mr. HOLMAN. That amendment is equivalent to striking out the

whole of the paragraph.

Mr. VANCE, of North Carolina. I propose only to strike out that part which taxes these Indians with the amount required to make this survey.

Mr. HOLMAN. I reserve the point of order, but I suggest to the gentleman from North Carolina that if he strikes out those words it will leave this paragraph without any appropriation of money to carry

Mr. WELLS, of Missouri. Without the words which the gentleman proposes to strike out, there will be no appropriation to complete the surveys of the lands of the Cherokee Indians of North Carlina as proposed.

Mr. HOLMAN. The gentleman might as well move to strike out

Mr. HOLMAN. The gentleman inight as the whole paragraph.

Mr. VANCE, of North Carolina. The gentleman is mistaken, because the Secretary of the Interior in this paragraph is authorized to expend the sum of \$4,000 to complete the survey of the lands of the Cherokee Indians of North Carolina.

Mr. HOLMAN. But this is an appropriation of money to be paid

Mr. HOLMAN. But this is an appropriation of money to be paint out of the Indian funds. Mr. VANCE, of North Carolina. In the Forty-third Congress an appropriation was made for surveying the Indian lands, and the Indians were not charged with the amount. I see no good reason why the eastern band of Cherokee Indians should be charged with this amount. castern band of Cherokee Indians should be charged with this amount. There are many reasons why they should not be so charged. These lands were acquired in consequence of a judgment purchased by the Indian Department from William H. Thomas, of North Carolina. It was made contrary to the wishes of the Indians and the understanding was, and it was announced at the time, that the eastern band of Cherokee Indians were not to be taxed with the amount necessary to make this survey. I think it is well to finish up the survey; but the amount ought not to be charged to the Indian fund held in trust by

the Secretary of the Interior.

Mr. HOLMAN. But my friend will see that to strike out the words

Mr. HOLMAN. But my friend will see that to strike out the words proposed to be stricken out simply strikes out the appropriation. He might as well strike out the whole paragraph as this part of it. If he prefers to strike out the whole paragraph, I have no objection, and I presume the gentleman having charge of the bill has none.

But I wish to say to the gentleman from North Carolina that this provision is put into the bill at the instance of the Commissioner of Indian Affairs, who thinks it is right. These lands, some seventy thousand acres, belong to these Indians. They have also funds held by the Federal Government in trust for them; and it is entirely proper and in harmony with our system of making surveys. funds held by the Federal Government in trust for them; and it is entirely proper and in harmony with our system of making surveys at the expense of the persons interested, that this survey should be made at their expense. It is very clear that it ought not to be made at the expense of the Federal Treasury.

Mr. VANCE, of North Carolina. I will ask the gentleman from Indiana why then was it that an appropriation was made in the Forty-third Congress to survey the 70,000 acres he alludes to, the Indians not being taxed at all for the purpose?

Mr. HOLMAN. I will answer that question to the entire satisfaction of the gentleman from North Carolina.

tion of the gentleman from North Carolina.

tion of the gentleman from North Carolina.

By an inadvertence, rather than by an intentional act, these private surveys were made during the Forty-third Congress by a provision of law incorporated into the sundry-civil bill, in the first session of that Congress, if I remember correctly, out of the public Treasury. But in the first session of this Congress we restored the old practice providing that the persons interested in these surveys should incur the expense; and this survey of the Indian lands is placed on the same footing with the survey of other private land claims. And my friend must bear in mind that it is entirely safe to take the views of the Commissioner of Indian Affairs upon a question like this.

like this.

Mr. VANCE, of North Carolina. Mr. Chairman, I will withdraw the amendment I have offered and offer, instead of it, what I send to

The Clerk read as follows:

Amend by adding at line 1313, after the words "North Carolina," the words "recently acquired from W. H. Thomas by purchase;" and by striking out at line 1316 "\$4,000" and inserting in lieu thereof "\$1,500."

Mr. HOLMAN. I have no objection to that.
Mr. DIBRELL. I move further to amend by inserting after the words "North Carolina," in line 1313, the words "Tennessee and

Georgia." The lands in those States adjoin those of the Cherokee

Georgia." The lands in those States adjoin those of the Cherokee Indians of North Carolina, and I desire that the provision for their survey may be included in the same paragraph.

Mr. VANCE, of North Carolina. The Indians in Tennessee and Georgia do not own any lands that are proposed to be surveyed now. Consequently the gentleman's amendment is unnecessary.

Mr. HOLMAN. Let me say to the gentleman from Tennessee that this paragraph is for a survey of the lands of these Indians in North Carolina at their own expense.

Carolina at their own expense.

Mr. DIBRELL. I withdraw my amendment.

The question being taken on the amendment of Mr. VANCE of North Carolina, it was agreed to.

Mr. VANCE, of North Carolina. I also offer the amendment which send to the desk.

The Clerk read as follows:

After line 1324 insert the following:
"Of this amount to pay Marcus Erwin, of Asheville, North Carolina, for services as attorney in examining the papers in the purchase of a judgment on W.H. Thomas of Pennsylvania, of the North Carolina Cherokees, \$300."

Mr. WELLS, of Missouri. I raise the point of order on that amend-

Mr. VANCE, of North Carolina. What point of order?
Mr. WELLS, of Missouri. That it is new legislation.
The CHAIRMAN. The Chair sustains the point of order.

Mr. VANCE, of North Carolina. I hope the gentleman from Missouri will waive the point of order. I propose to have it paid out of their own money. I will add to the amendment these words:

To be paid out of the moneys placed to the credit of the eastern band of Chero-ees upon the books of the Treasury Department, August 18, 1876.

Mr. WELLS, of Missouri. Has the gentleman any communication from the Indian Department recommending this?

Mr. VANCE, of North Carolina. I have. I send to the desk to be

read a letter from the Commissioner of Indian Affairs.

The Clerk read as follows:

Department of the Interior, Office of Indian Affairs, Washington, January 22, 1877.

Washington, January 22, 1877.

Sin: Acknowledging the receipt by your reference of House bill No. 4195 for the relief of Marcus Erwin, of North Carolina, I have to state that United States Agent W. C. McCarthy, July 3, 1875, was authorized to engage the legal services of Mr. Erwin in the examination of titles to certain lands taken in satisfaction of judgment in favor of William Johnston against William H. Thomas, and designated in act of Congress approved August 14, 1876, and to expend from funds in his hands the necessary amount for such service. As, however, by Department decision the funds in the agent's hands could not be applied to such service, Mr. Erwin was not paid, and as the labor has been performed and the amount charged therefor appears reasonable and just, the bill is herewith returned and respectfully recommended to favorable consideration.

Very respectfully, your obedient servant,

J. Q. SMITH,

J. Q. SMITH, Commissioner.

Hon. R. B. VANCE, House of Representatives.

Mr. WELLS, of Missouri. As this money is to be paid out of the fund of these Indians, I have no objection to the amendment.

fund of these Indians, I have no objection to the amendment.

The amendment was agreed to.

Mr. DUNNELL. I ask unanimous consent to go back to the preceding paragraph that I may offer an amendment. I was called out of the Hall, and the paragraph was passed in my absence. I hope there will be no objection to going back for that purpose.

Mr. WELLS, of Missouri. After the statement the gentleman has made, I shall not object to going back to the paragraph.

The Clark read the following paragraph:

The Clerk read the following paragraph:

For continuing the collection of statistics and historical data respecting the Indians of the United States, under the direction of the Secretary of the Interior, \$2,500.

Mr. DUNNELL. I offer the following amendment: In line 1310 strike out "\$2,500" and insert in lieu thereof "\$3,500."

The amount recommended by the Indian Department is \$3,500. That is \$1,500 less than the gentleman asked for who is in charge of this very important and interesting work, and the sum that is provided in this bill is wholly inadequate. I trust there will be no objection to the increase of this amount by adding \$1,000.

Mr. WELLS, of Missouri. The estimate for this purpose was \$3,500, but the Committee on Appropriations thought that that sum was too large and have recommended an appropriation of \$2,500.

Mr. DUNNELL. I would say that within the past year this work has been in advancing stages and a larger sum is required, and that \$3,500 will be inadequate for the purpose and \$2,500 is wholly insufficient to carry out the work which now begins to show itself in its results. The amount recommended by the Indian Department is \$3,500. That

Mr. WELLS, of Missouri. The Committee on Appropriations have Mr. WELLS, of Missouri. The Committee on Appropriations have been obliged to say in this case, as in many others where increase is asked, that they could not give it. In this case they believe that \$2,500 is sufficient, and if the gentleman is not satisfied with that salary he can resign and there will be no difficulty in finding some one to take his place.

The question was taken on Mr. Dunnell's amendment; and on a division there were—ayes 23, noes 35.

Mr. DUNNELL. No quorum has voted and I ask for tellers.

Tellers were ordered; and Mr. Dunnell, and Mr. Wells of Missouri were appointed.

The committee divided; and the tellers reported ayes 2, noes not

So the amendment was not agreed to.

Mr. DIBRELL. I offer the following amendment to come in at the end of line 1324:

The Commissioner of Indian Affairs may, at his discretion, use a portion of the money appropriated in the Indian appropriation bill of the 15th August, 1876, for the support of schools among the eastern band of Cherokee Indians in aid of schools among said Cherokees residing in Tennessee and Georgia.

The amendment does not propose any new appropriation. It only authorizes the Commissioner of Indian Affairs to use a portion of the sum appropriated last session, for the benefit of the Cherokees, in

Tennessee and Georgia.

Mr. VANCE, of North Carolina. I would ask the gentleman if these Cherokees are upon the roll of the last census?

Mr. DIBRELL. In reply to the gentleman from North Carolina I desire to say that I do not know that there has been any census taken of the Cherokee Indians of Tennessee and Georgia. I do know, however, that there are in those States a portion of the eastern band of Cherokee Indians, and it seems to me that they ought to have an

of Cherokee Indians, and it seems to me that they ought to have an appropriation made for school purposes.

Mr. HOLMAN. The gentleman from Missouri [Mr. Wells] has an amendment to offer which I think will accomplish the purpose, covering the whole ground, not only of this amendment, but conferring general power upon the Commissioner of Indian Affairs to use the money appropriated for the present year for other purposes than those specifically named in the bill. I suggest to the gentleman from Tenpassee that if after that amendment is reached, it is not satisfactory. nessee that if, after that amendment is reached, it is not satisfactory

to him he can then offer his amendment.

Mr. DIBRELL. With that understanding I withdraw my amend-

Mr. VANCE, of North Carolina. I offer the following amendment: For this amount to pay James M. Roane balance for supplies furnished Indian agent in California, as per letter of Commissioner of Indian Affairs, \$39.34.

Mr. WELLS, of Missouri. If we are going to insert these claims

Mr. WELLS, of Missouri. If we are going to insert these claims in the bill we might as well abandon it.

Mr. HOLMAN. It is simply a claim against the Government.

Mr. WELLS, of Missouri. It is simply a claim, and I trust the gentleman from North Carolina will withdraw his amendment.

Mr. VANCE, of North Carolina. I am sorry that I have not been able to hear anything that the gentleman in charge of the bill has

Mr. WELLS, of Missouri. How many more such claims have you? Mr. VANCE, of North Carolina. This is the last; and I know the gentleman will feel thankful for that statement.

Mr. HOLMAN. I make the point of order that this is not in order on an appropriation bill; that it is a claim against the Government and should go to the Committee of Claims. It is not a matter of appropriation, but a claim simply. Of course such matters do not go before the Committee on Appropriations or belong to an appropriation bill

Mr. VANCE, of North Carolina. This money has been due to Mr. Roane for more than fourteen years. There is a : nall balance due him of thirty-nine dollars and some odd cents, and the Commissioner on Indian Affairs says that there is no appropriation to pay it. It is a very small matter and I hope the gentleman from Indiana will withdraw his point of order and let it be adopted.

Mr. HOLMAN. I should withdraw the point of order readily but for this reason: There are a great number of claims of this kind, but this claim should go either to the Committee on Indian Affairs or to the Committee of Claims. We do not appropriate money for these claims in an appropriation bill. This bill is a bill appropriating money to carry on the Indian Department under the existing laws, and the amendment is clearly out of order.

Mr. LUTTRELL. I desire to say that I have quite a number of inst such claims and if this claim prevails I shall offer them as amend-

just such claims, and if this claim prevails I shall offer them as amend-

ments to this bill.

The CHAIRMAN. The Chair thinks the point of order is well taken, and that the amendment of the gentleman from North Caro-

The Clerk resumed the reading of the bill, and read the following:

For this amount, or so much thereof as may be necessary to pay the expenses of the commission of citizens serving without compensation, appointed by the President under the provisions of the fourth section of the act of April 10, 1869, \$15,000.

Mr. THROCKMORTON. I move to strike out the paragraph just read. I would ask any member of the Committee on Appropriations to state what are the duties of this commission. I see they are to serve without pay, and yet there is \$15,000 appropriated for expenses. I would ask what are the duties of this commission?

Mr. WELLS, of Missouri. This commission is authorized, under a

Mr. WELLS, of Missouri. This commission is authorized, under a law passed in 1869, and the appropriation is to be used simply to pay the necessary expenses of the commission. They are men who stand high in the community, who serve the Government without compensation, their expenses only being paid, and they visit the various points where the bids are received for supplies and where supplies are furnished, and visit different portions of the Indian Territory.

Mr. THROCKMORTON. It strikes me that this commission has been appointed for the purpose of watching the officers of the Government. I suppose it is claimed that the members of the commission has

sion inspect contracts for supplies for the Indians and investigate matters of that character. It seems to me that it is entirely superfluous. There can be no necessity for the expenditure of the public money in this way if the officers of the Government are honest. If we have to appoint a commission to take charge of and watch the officers of the Government, then we had better dispense with the officers. I think the paragraph should be stricken out, that it should no longer be the duty of this Government to appoint a traveling comno longer be the duty of this Government to appoint a traveling commission to go about inspecting contracts and goods and supplies and
visiting the Indians in different parts of the country. We make
large appropriations for Indian agents and superintendents, and it is
their duty to see that the Indians are protected, and not swindled.

The question was taken on the motion to strike out; and upon a
division there were—ayes 24, noes 10.

Mr. FOSTER. No quorum has voted, and I call for tellers.

Tellers were ordered; and Mr. Wells, of Missouri, and Mr. ThrockMORTON were appointed.

MORTON were appointed.

The committee again divided; and the tellers reported that there ere—ayes 38, noes 47.

No further count being called for, the motion to strike out was not agreed to.

The Clerk read the following:

For the support of schools not otherwise provided for, for the support of industrial schools, and for other educational purposes for the Indian tribes, \$25,000.

Mr. SEELYE. I now offer the amendment which I suggested a momentago, to come in after the paragraph just read.

The Clerk read as follows:

For expenses incurred in the erection of a school-house for the Pottawatomies in the year 1875, the same being a re-appropriation of money made for this purpose and not used in 1874, \$2,500.

and not used in 1874, \$2,500.

Mr. SEELYE. There can be no objection to this amendment. The money was appropriated in 1874, but the school-house was not built in that year.

Mr. HOLMAN. I reserve the point of order until the gentleman from Massachusetts [Mr. SEELYE] can be heard.

Mr. SEELYE. The school-house was not built during the year for which the appropriation was made, and at the end of the year the money was covered into the Treasury. The agent at the Pottawatomic agency, not understanding this, and supposing that he could draw upon the appropriation, proceeded to the building of the school-house and it was completed. It was then found that there was no fund to pay for it. This amendment simply provides that the appropriation for this purpose shall be remade. I understand there is no objection on the part of the Committee on Appropriations.

The amendment was agreed to.

The amendment was agreed to.

Mr. THROCKMORTON. I move to amend by inserting after the amendment just adopted that which I send to the Clerk's desk.

The Clerk read as follows:

That the sum of \$2,915 be retained in the Treasury out of the appropriation made for the benefit of the Kiowa Indians, and that the same be paid to Susannah Marble, formerly Susannah Lee, Miller Francis, and John Abiel Lee, of Shackleford County, Texas, surviving children of Abiel Lee, the same being found by the Commissioner of Indian Affairs to be the value of property destroyed by said Kiowa Indians at the time said Indians murdered said Lee, his wife, and one daughter, and carrieed the three children above mentioned into captivity.

Mr. FOSTER. I make the point of order upon that amendment. Mr. HOLMAN. The amendment certainly does not belong to this bill, although it may be entirely appropriate from the Committee of

Mr. THROCKMORTON. I have all the papers here to show that these children were carried into captivity by these Indians and the Commissioner of Indian Affairs has recommended that this sum be paid for the property actually destroyed by the Indians when the father and mother were killed and the children carried into captiv-

ity. I hope no point of order will be made.

Mr. HOLMAN. It may be entirely proper in some bill, but it certainly does not belong to an appropriation bill.

Mr. THROCKMORTON. There was a similar amendment offered to the Indian appropriation bill at the last session of Congress, and I hope the gentleman from Ohio [Mr. FOSTER] will not insist upon his point of order.

Mr. FOSTER. I must insist upon the point of order.
The CHAIRMAN. The Chair sustains the point of order.
The Clerk resumed the reading of the bill, and read the following:

For incidental expenses of the Indian service in the following States and Territories, namely: In Arizona Territory, \$20,000; California, \$30,000; Colorado, \$4,000; Dakota Territory, \$10,000: Idaho Territory, \$3,000; Montana Territory, \$6,000; Washington Territory, \$10,000; Wyoming Territory, \$1,000; Nevada, \$10,000; Territory of New Mexico, \$15,000; Oregon, \$10,000; Utah Territory, \$10,000; Central superintendency, \$4,000; in all, \$132,000: Provided, That the same shall be used for annuity goods, subsistence, agricultural implements, for educational purposes, for repairs of flour-mills, saw-mills, agency-buildings, incidental transportation, and for paying employés.

Mr. LUTTRELL. I move to amend the paragraph just read by striking out in line 1362 the word "30" and inserting in lieu thereof "20;" so as to make the appropriation for incidental expenses of the Indian service in California \$20,000.

Mr. HOLMAN. There is no objection to that.
The question being put, the amendment was declared adopted.
Mr. FOSTER. I call for a division.
Mr. HOLMAN. The amendment is all right.

Mr. LUTTRELL. For the information of the gentleman from Ohio [Mr. FOSTER] I will call his attention to pages 15, 16, and 226 of the Report of the Commissioner of Indian Affairs for the year 1875. Now, sir, there is no necessity for appropriating \$30,000 for the Indian service in California. I find that on one reservation alone the product last year amounted, as shown by the agent's report, to nearly \$25,000. They have 207,360 acres of land, one hundred and eighteen

\$25,000. They have 207,360 acres of land, one hundred and eighteen work-horses, two mules, and several hundred head of cattle. They cut about six thousand dollars' worth of lumber. They raise four thousand dollars' worth of wheat, two thousand dollars' worth of corn, fifteen hundred dollars' worth of oats and barley, fifteen hundred dollars' worth of vegetables, and seven or eight thousand dollars' worth of hay. Now a large number of the most respectable citizens in my district have offered to take charge of that reservation, to feed and clothe the Indians, to educate them, to furnish teachers, ministers, and physicians, if it be agreed that they shall have in return the use of the grazing-lands on that reservation. The reports show that there are three hundred and fifty-four able-bodied men on the reservation well analified as farmers millers and stock-growers. They can obtain empalified as farmers millers and stock-growers. qualified as farmers, millers, and stock-growers. They can obtain employment anywhere in that locality at from \$1 to \$1.50 per day and ployment anywhere in that locality at from \$1 to \$1.50 per day and their board. There is no necessity for our making this large appropriation to take care of these men when they are just as well able to work as you and I. I hope the amendment will prevail, for every dollar appropriated in excess of \$20,000 is just as good as stolen from the Treasury of the United States.

Mr. FOSTER. I understand that this is the only appropriation made for the Indian service in the State of California; and I learn from those who I think are best informed on the question—the officers in charge—that the sum named in the bill is as small an amount.

cers in charge—that the sum named in the bill is as small an amount as they can get along with. I fear that my friend from California [Mr. LUTTRELL] has some personal grievance in this matter which occasions his opposition to the appropriation of \$30,000. The Indian Department is strongly of the opinion that \$30,000 is needed, and has so convinced our committee. I think that the House had better stand by the committee.

Mr. LUTTRELL. Now, Mr. Speaker, in reply to the gentleman's intimation that I may have some personal grievance, I believe that in offering this amendment I am simply discharging my duty under my oath. I cannot sit here and see money appropriated where there is no necessity for it. I hold in my hand a letter from a gentleman who stands high in the party to which my friend belongs, and the writer assures me there is no necessity for the appropriation of a dol-

lar for this locality.

Mr. FOSTER. Allow me to ask the gentleman how many agencies there are in California. I believe he refers to one particular agency.

Mr. LUTTRELL. Yes, sir.

Mr. FOSTER. I understand there are three agencies.

Mr. LUTTRELL. There are three; one has been abolished during

Mr. FOSTER. Abolished, as I understand, because the department

had not the money to maintain it.

Mr. LUTTRELL. The report of the Indian agent states that the Indians left the reservation. They are dissatisfied. They can obtain employment anywhere.

employment anywhere.

Mr. FOSTER. My information is that there was no money to maintain the agency and for that reason it was abolished.

Mr. LUTTRELL. If the gentleman will read the reports, he will find that this amendment rests on perfectly sufficient grounds. This agency is located near where I reside. I am thoroughly acquainted with the facts of the case; and the gentleman cannot find a republican or democrat of any respectability in that locality who will not tell him that there is no necessity for the appropriation of a dollar.

Mr. HOLMAN. I trust that my friend from Ohio will not press this to a vote by tellers.

Mr. FOSTER. I propose to stand by the Committee on Appropriations, while the chairman [Mr. HOLMAN] wants to go back on the

tions, while the chairman [Mr. HOLMAN] wants to go back on the committee

Mr. HOLMAN. On the statement of the gentleman from California

the ameudment appears entirely proper.

Mr. FOSTER. The gentleman from California says one thing and the Commissioner of Indian Affairs another. The Committee on Appropriations agrees with the Commissioner of Indian Affairs. Now if the chairman of the Committee on Appropriations wants to go back on the committee, all right.

Mr. HOLMAN. Upon the facts submitted it would seem that

\$20,000 is an ample appropriation.

Tellers were ordered; and Mr. Foster and Mr. Luttrell were

appointed,
Mr. HOLMAN. In order to facilitate business, I suggest that a vote be allowed on this amendment in the House.

Mr. LUTTRELL. That will be satisfactory.
Mr. FOSTER. No, sir; I do not agree to that.
The committee divided; and the tellers reported ages 62, noes not

So the amendment was agreed to.

The CHAIRMAN. If there be no objection, the aggregate amount in this paragraph will be changed so as to conform to the amendment just adopted.

There was no objection.

Mr. LYNDE. I move that the committee now rise.

Mr. HOLMAN. We can finish this bill in less than half an hour. Mr FOSTER. I do not know how long it will take to finish it if the chairman of the Committee on Appropriations goes back on the com-

mittee all the time.

Mr. HOLMAN. When we are shown that we can reduce an appro-Mr. HOLMAN. When we are shown that we can reduce an priation to the extent of \$10,000, of course I must assent to it.

priation to the extent of \$10,000, of course I must assent to it.

Several MEMBERS. Let us finish the bill.

The motion of Mr. Lynde was not agreed to.

Mr. MAGINNIS. I want to suggest to the committee an amendment which, from my knowledge of the Indians in question, is, I am certain, correct; and in offering it I think I shall be sustained by the Delegate from the Territory of Idaho, [Mr. Fenn.] I find in lines 1349 to 1354 the following:

For this amount, to be expended by the direction of the President, in assisting the roving bands of Indians in Southeastern Idaho to move and locate on the Fort Hall reservation in Idaho Territory, and to assist them in educational and agricultural pursuits on said reservation, \$20,000.

This appropriation has been repeated in these Indian bills for years; yet having occasion to travel through that country four or five times a year, I can testify that I do not know of any particular efforts that have been made to put those Indians on that reservation; so I have no doubt the money is otherwise expended, probably meritoriously. But I move to amend by reducing the appropriation to \$15,000, and But I move to amend by reducing the appropriation to \$15,000, and adding the \$5,000 in line 620, so as to appropriate \$20,000 for the benefit of the mixed Shoshones, Bannacks, and Sheepeaters. These Indians are congregated on a reservation in the Lemhi Valley under the charge of a frugal agent, and are making good progress in civilization and the arts. They are building little homes there; they have schools among them; they are peaceful and every way meritorious Indians. Heretofore they have had \$20,000 a year for their appropriation. This bill reduces that \$5,000, and I am informed that \$15,000 a year will be too little for this meritorious band of Indians. As it will make no change in the amount of the bill. I trust the com-As it will make no change in the amount of the bill, I trust the committee will agree to my amendment, and therefore I move the trans. fer be made.

Mr. WELLS, of Missouri. There is no objection to the amendment of the gentleman from Montana, as it is a mere transfer from one part of the bill to another.

Mr. FENN. Now, Mr. Chairman, in regard to the amendment I wish to say I do not know that I have any special objection to make to it. I reside in the Territory of Idaho, and from information which comes to me it appears these Indians are advancing in the arts of civilization; that they are quiet and peaceful, and that the white people are perfectly satisfied with them.

But I wish to add so for as the expression for the Fort Hall res

But I wish to add, so far as the appropriation for the Fort Hall reservation is concerned, \$20,000 would not be a sufficient sum if the law were faithfully carried out. There is no advance in civilization on the part of the Snake, Bannack, and Sheepeater bands of Indians, who ought to go upon that reservation, are wandering vagabonds, while the bands of the same tribes at Fort Lembi reservation are peaceful and quiet, advancing in civilization, and, as I have said, the white people are perfectly satisfied with them. The Indians who ought to be removed and kept upon the Fort Hall reservation are wandering all over the country, notwithstanding from year to year this appropriation is made for the purpose of removing them to that reservation. If this appropriation of \$20,000 be made for this purpose it will only be squandered as heretofore, and not at all expended for the removal of these Indians. Therefore I am willing that \$5,000, in accordance with the suggestion of the gentleman from Montana, shall be transferred where it will do some good, and be a benefit to the Bannacks, Snakes, and Sheepeaters.

Mr. FORT. I move to strike out the whole paragraph. By the remarks of both gentlemen representing that section of country, it seems clear the entire appropriation should be stricken out. I should seems clear the entire appropriation should be stricken out. I should like to know why the gentleman from Montana did not make that motion instead of proposing to transfer part of this sum to another place? It seems this money has been expended year after year, and yet nothing has been done. The gentleman who has just taken his seat, the Delegate from Idaho, Mr. [FENN,] says if we make the appropriation it will be squandered and no good come of it. For my part, I wish to be economical and not to have any money of the Government equandered. Therefore I would not be her between the motion of the government equandered. part, I wish to be economical and not to have any money of the Government squandered. Therefore I wonder why the whole paragraph has not been stricken out before. I make that motion, and should like to be informed from the committee why this appropriation has been inserted. We have heard, as I have said, from the two gentlemen representing that particular district of country that this appropriation even if made will not be used for the purpose specified.

Mr. McGINNIS, I stated so far as collecting these Indiana manner.

Mr. MAGINNIS. I stated, so far as collecting these Indians upon the Fort Hill reservation is concerned, no progress has been made in

the Fort Hill reservation is concerned, no progress has been made in that direction.

Mr. FORT. Then what is this for?

Mr. WELLS, of Missouri. I am informed by the Commissioner this money is expended for subsistence for these Indians.

Mr. FRANKLIN. Why make any transfer of this \$5,000 if it is not needed for the purpose specified? Why not strike it out entirely?

Mr. MAGINNIS. It is used for a purpose, as we are informed by the Commissioner, which is meritorious and proper.

Mr. FRANKLIN. The Committee on Appropriations have said by their report the appropriation to which this \$5,000 additional is to be transferred is sufficient; and, if that be so, I do not see why we should

appropriate any portion of this sum, when it appears from what gen-tlemen representing the country where these Indians are located have

tlemen representing the country where these Indians are located have said it has never yet been expended for the purpose specified.

Mr. MAGINNIS. I say that the sum of \$15,000 is not enough for Lemhi. They had \$20,000 heretofore, and ought to have it now.

Mr. FENN. I will say now, as I have said before, that the appropriation of \$20,000 to remove the fugitive, wandering Indians about Boisé City and Fort Boisé, wandering over one-third of the Territory of Idaho, is not sufficient. The Fort Lemhi reservation has been properly conducted, and the Indians congregated there have remained there. They are advancing in the arts of civilization. I believe the agent at Fort Hall reservation is responsible for the neglect in reference to that reservation. I know the Weiser and other Indians are wandering over a large part of Idaho, and not only have not been removed but no effort has been made to remove them to this reservation. I was at Fort Hall reservation last fall. I saw there had been some improvement made there. On making inquiry I learned that about one-fourth of the number of the Indians who ought to be upon that reservation continuously only made it their headquarters; while that reservation continuously only made it their headquarters; while that reservation continuously only made it their headquarters; while three-fourths of those who should be there, and for whose removal these appropriations have been made from year to year, never have been there. I am willing this change should be made, and \$5,000 of the amount proposed should be transferred and added to the appropriation for the Fort Lemhi reservation, where it is likely to do good. It will be taken from where under the maladministration of the agent at Fort Hell we good has been or will be done.

at Fort Hall no good has been or will be done.

Mr. WELLS, of Missouri. I am informed by the Commissioner of Indian Affairs this appropriation is needed for these Indians to feed

and clothe them.

The CHAIRMAN. Does the gentleman from Illinois insist on his motion to strike out?

Mr. FORT. I do not if the gentleman having this bill in charge states that this money is needed for another purpose. If that be so, I hope he will state it. The bill specifies it is for the purpose of colonizing these Indians, and yet both gentlemen representing that section of country have asserted it is not needed, as heretofore it has

never been used for that purpose.

Mr. WELLS, of Missouri. The transfer proposed by the gentleman from Montana is only carrying out what was the original intention of

the amendment.

Mr. FORT. I withdraw my objection. Mr. Maginnis's amendment was agreed to. Mr. WELLS, of Missouri. I offer the following amendment:

Add at the end of section 3 the following:
And all sums appropriated by this act for pay of employés under treaty stipulations, or otherwise, may if necessary be used in paying employés other than those specifically named herein.

The amendment was agreed to.
Mr. WELLS, of Missouri. I desire to go back to section 2. I move to amend that section by adding the following proviso:

Provided, however, That no purchase of supplies exceeding in the aggregate \$500 in value at any one time shall be made without advertisement except in cases of exigency, when purchases may be made in open market in amount not exceeding \$2,000.

The amendment was agreed to.

Mr. LUTTRELL. I offer an amendment to section 3 which I ask the Clerk to read.

The Clerk read as follows:

Add at the end of section 3, after the amendment already adopted, the following: Provided, That no sum of money appropriated by this bill for the support of any Indian tribe shall be paid to any tribe while said tribe, or any band thereof, are engaged in hostilities against the white people.

Mr. LUTTRELL. An amendment was offered last year while the Indian appropriation bill was under consideration similar to the one I now offer. It was adopted then, I believe, unanimously by the House. At all events no objection was made to it. I hope the amendment, if satisfactory to the gentleman who has charge of the bill, will

Mr. WELLS, of Missouri. I think the amendment is not necessary. The result would be that as long as Sitting Bull was at war with the Government so long the Indians of his tribe, whether hostile or not, would not receive one dollar in the way of supplies. It would prove

would not receive one dollar in the way of supplies. It would prove a great hardship to many peaceful Indians.

Mr. LUTTRELL. The amendment might be modified so as to provide that no hostile Indians shall draw any supplies.

Mr. WELLS, of Missouri. We have just provided in this bill that the Indians themselves must come to the agencies to get their supplies. They are to be given out, not to the heads of tribes or bands, but to the heads of families, and for not more than one week in advance.

Mr. LUTTRELL. If the gentleman from Missouri thinks that that will cover the case I will not press the amendment. My only desire is to provide that the whites shall be protected. I withdraw the amendment.

The Clerk read the fourth and last section of the bill, as follows:

SEC. 4. That whenever, in the judgment of the Commissioner of Indian Affairs, the funds herein or hereafter appropriated for any tribes or bands of Indians can be more advantageously used for any other tribe or band of Indians, he is hereby authorized to so use such funds: Provided, That nothing herein contained shall be so construed to extend to appropriations made in fulfillment of treaty provisions, and that the permission herein given is extended to the unexpended balances of appropriations made by the act of March 3, 1875, and August 15, 1876.

Mr. WELLS, of Missouri. I offer the following amendment as an additional section:

SEC. 5. That so much of the appropriation herein made as may be required to pay for goods and supplies, and for transportation and distribution of the same to Indians on reservations which are necessarily supplied by way of the Missouri River, for the year ending June 30, 1878, shall be immediately available.

The amendment was agreed to.

Mr. DIBRELL. I now ask a vote on my amendment to come in at line 1324, as suggested by the gentleman from Indiana, [Mr. Holman.] The amendments of the gentleman from Missouri [Mr. Wells] do not touch the case. I ask the Clerk to read my amendment. The Clerk read as follows:

At the end of line 1324 add the following:
The Commissioner of Indian Affairs may at his discretion use a portion of the
money appropriated in the Indian appropriation bill of August 15, 1876, for the support of schools among the eastern band of Cherokee Indians, in aid of schools
among such Cherokees residing in Tennessee and Georgia.

The amendment was agreed to.

Mr. WELLS, of Missouri. I move that the committee rise and report the bill and amendments to the House.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. HATCHER reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, and had directed him to report the same with sundry amendments.

The SPEAKER. Is a separate vote desired upon any of the amend-

ments?

Mr. WILSHIRE. I ask that the amendments may be read. The amendments were read and were severally concurred in.
Mr. MILLS. With the consent of the committee, I offer an amendent. I think there will be no objection to it.

The Clerk read as follows:

At the end of line 1040 add the following:
And the President of the United States is hereby directed to prohibit the removal
of any portion of said Sioux Indians to the Indian Territory, unless the same shall
be hereafter anthorized by act of Congress.

The amendment was agreed to.

Mr. WILSHIRE. I ask unanimous consent to offer the amendment which I send to the desk.

The Clerk read as follows:

At line 732 insert the following:

That the proper accounting and executive officers of the United States are hereby authorized and directed to carry into effect the resolution passed and approved on the 26th day of June, 1873, by the national council of the Osage Indians and approved by the Commissioner of Indian Affairs on the 8th day of July, 1874, for the payment out of the proceeds of the sales of the Osage lands in Kansas, now in the custody of the United States, of so much as remains unpaid of the debt of said Indians as fixed and acknowledged by said resolution.

Mr. FORT. I desire to have read the resolution referred to in the amendment

Mr. HOLMAN. That subject has not been considered by the Com-

Mr. HOLLAN. I also solve has not been considered by the Committee on Appropriations. I object.

Mr. WELLS, of Missouri. I call the previous question on the engrossment and third reading of the bill as amended.

The previous question was seconded and the main question ordered;

and under the operation thereof the bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was ac-

cordingly read the third time.

Mr. FORT. If the resolution is to be read, I withdraw my objection to the amendment offered by the gentleman from Arkansas, [Mr.

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] objected.

Mr. HOLMAN. We should have to ascertain what that resolution

We do not know what it is.

The bill was passed.

Mr. WELLS, of Missouri, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, announced that the Senate had passed bills of the following titles; in which he was directed to ask the concurrence of the House:

A bill (S. No. 824) for the relief of Hannah L. Floyd, as executrix, and George W. King, as executor, of William Floyd, deceased; and A bill (S. No. 1128) to extend for two years the act establishing the board of commissioners of claims, and the acts relating thereto.

The message further announced that the Senate had passed bills of

The message further announced that the Senate had passed bills of the House of the following titles, with amendments; in which they asked the concurrence of the House:

A bill (H. R. No. 4188) making appropriations for fortifications and other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes; and

A bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes.

for other purposes.

RECUSANT WITNESSES-LOUISIANA RETURNING BOARD.

Mr. LYNDE. I rise to a question of privilege. I am informed that the four witnesses constituting the returning board of the State of Louisiana, who were ordered to be brought to the bar of the House for contempt and breach of the privileges of the House, are now in the custody of the Sergeant-at-Arms and ready to be presented at the bar of the House, and I ask that they be presented at this time.

The SPEAKER. The Sergeant-at-Arms will bring to the bar of

the House the witnesses.

After a pause-

JAMES B. EADS.

Mr. HOLMAN. While preparations are being made for the business to which the gentleman from Wisconsin has referred, I ask permission to report from the Committee on Appropriations a bill to provide for the payment of James B. Eads for the construction of jetties and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States. The bill (H. R. No. 4540) was received and read a first and second time. It directs the Secretary of the Treasury to pay \$500,000 to James B. Eads, of Saint Louis, or his assigns or legal representatives, the Secretary of War having determined that that amount is due to said Eads by the terms of a certain written contract entered into by said Eads with the United States to construct such permanent and sufficient jetties and such auxiliary works as may be necessary to create a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico, to be paid under and in pursuance of the provisions of the act approved mission to report from the Committee on Appropriations a bill to propaid under and in pursuance of the provisions of the act approved March 3, 1875, making appropriations for the repair, preservation, and completion of public works on rivers and harbors, and for other

The SPEAKER. Is there objection to the present consideration of

the bill?

Mr. WILSHIRE. I object.
Mr. HOLMAN. The bill under the rule would have to go into Committee of the Whole, but if I had a moment I could avoid the necessity of going into committee. I wish to state to the Chair, if the Chair pleases, that unless this bill is passed at once, it is probable that Mr. Eads will be entitled to receive 5 per cent. bonds instead of the money, and it is important therefore that it should be acted on at

I do not wish the House to act upon this matter without a perfect understanding of the subject in all its bearings, for it involves a large sum of money, but I ask unanimous consent that the bill be con-

understanding of the subject in all its bearings, for it involves a large sum of money, but I ask unanimous consent that the bill be considered in the House as in Committee of the Whole, under the five-minute rule, at this time.

Mr. LYNDE. I object.

Mr. HOLMAN. The point of order, then, will carry the bill into the Committee of the Whole on the state of the Union, and I now move, as it is a matter of high public importance that the bill shall pass to-day, that the House now resolve itself into Committee of the Whole on the state of the Union.

The SPEAKER. The Chair will state that the first bill on the Calendar of the Committee of the Whole on the state of the Union is the legislative, &c., appropriation bill.

Mr. WILSON, of Iowa. The House can get over that by laying aside all the preceding bills.

Mr. LYNDE. I withdraw my objection.

The SPEAKER. The objection being withdrawn the bill is before the House, and by consent it will be considered as in Committee of the Whole on the state of the Union under the five-minute ule.

Whole on the state of the Union under the five-minute ule.

Mr. BUCKNER. I desire to offer an amendment, to strike out all after the enacting clause of the bill and to insert that which I send to the Clerk's desk.

Mr. LYNDE. I am informed that the Sergeant-at-Arms is ready to produce at the bar of the House the witnesses who were ordered to be brought here for a violation of the privileges of this House. I ask that that business may now be proceeded with.

Mr. HOLMAN. I suppose this other business will occupy but a

few minutes

The SPEAKER. The Chair is unable to say.

Mr. HOLMAN. With the understanding that the consideration of this bill will be resumed when the other business has been disposed

of, I will have no objection.

The SPEAKER. It will of course come up as unfinished business.

RECUSANT WITNESSES-RETURNING BOARD OF LOUISIANA.

The SERGEANT-AT-ARMS then appeared at the bar of the House, and said:

Mr. Speaker, in obedience to the order of the House, I have now at its bar the witnesses, J. Madison Wells, Thomas C. Anderson, G. Casanave, and Louis M. Kenner.

The SPEAKER. The Chair would inquire of the gentleman from Wisconsin [Mr. LYNDE] whether he desires the usual question to be

wisconsin [Mr. LYNDE] whether he desires the usual question to be put to these witnesses separately?

Mr. LYNDE. I would suggest that they be questioned separately. The SPEAKER. Mr. Wells, it is the duty of the Chair to again ask you what excuse you have to offer for your failure to appear before a committee of this House, sitting in the city of New Orleans, Louisiana, on the 12th day of December, 1876, and to produce before

the said committee certain books and papers called for in the sub-

pæna duces tecum duly served upon you.

Mr. Wells, (the witness.) Mr. Speaker, the remaining members of Mr. Wells, (the witness.) Mr. Speaker, the remaining members of the board having just arrived in this city, we have had no opportunity to confer together upon the subject and to frame our answer. We would therefore ask the indulgence of the House to give us an opportunity for conference, and that we may make our answer to the House on Monday or Tuesday, or any other day of next week that the Honse may see proper to indicate.

The SPEAKER. Mr. Anderson, it is the duty of the Chair to again ask you what excuse you have to offer for your failure to appear before a committee of this House, sitting in the city of New Orleans, Lonisiana, on the 12th day of December, 1876, and to produce before

Louisiana, on the 12th day of December, 1876, and to produce before the said committee certain books and papers called for in the sub-

the said committee certain books and papers called for in the sub-pana duces tecum duly served upon you.

Mr. Anderson, (the witness.) Mr. Speaker, when we were before you the first time we asked to be allowed further time, that is until Mr. Kenner and Mr. Casanave should arrive from New Orleans. They arrived on yesterday, but we have had no opportunity to confer with them, and met them only about twelve o'clock to-day. We now ask the House to grant us until Monday or Tuesday next at one o'clock to make our answer.

to make our answer.

The SPEAKER. Mr. Casanave, it is the duty of the Chair to ask you what excuse you have to offer for your failure to appear before a committee of this House, sitting in the city of New Orleans, Louisiana, on the 12th day of December, 1876, and to produce before the said committee certain books and papers called for in the subpæna duces

committee certain books and papers called for in the sarpean dates teeum duly served upon you.

Mr. CASANAVE, (the witness.) My answer, Mr. Speaker, will be the same as that given by Mr. Anderson and Mr. Wells.

The SPEAKER. Mr. Kenner, it is the duty of the Chair to ask you what excuse you have to offer for your failure to appear before a committee of this House, sitting in the city of New Orleans, Louisiana, on the 12th day of December, 1876, and to produce before the said committee certain books and papers called for in the subpana duces teem duly served upon you?

tecum duly served upon you?

Mr. Kenner, (the witness.) Having just arrived in this city, and having been unable to see the president of the board and General Anderson until about noon to-day, I have to ask the indulgence of the House until we shall have had time to consult.

Mr. LYNDE. I offer the resolutions which I send up to the Clerk's desk to be read.

The Clerk read as follows:

The Clerk read as follows:

Resolved, That J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M. Kenner be, and are hereby, adjudged to be in contempt for a violation of the privileges of this House.

Resolved, That J. Madison Wells, Thomas C. Anderson, G. Casanave, and Lewis M. Kenner be, and are hereby, ordered to appear before the special committee appointed to investigate the recent election in Louisiana, of which Hon. WILLIAM R. MORRISON is chairman, and produce all consolidated returns of supervisors of election, all statements of votes and tally-sheets for each polling-place in the late election for electors of President and Vice-President, together with all affidavits, depositions, protests, and other written proofs in their possession or under their control on the 11th day of December, 1876, touching the said election in the parishes of East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberia, Jefferson, (right and left banks,) La Fayette, La Fourche, Lincoln, Livingstone, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, and Winn, and that said witnesses be remanded to the custody of the Sergeant-at-Arms and be by him closely kept until the further order of this House.

Mr. KASSON. Does the gentleman from Wisconsin I Mr. Lyndel

Mr. KASSON. Does the gentleman from Wisconsin [Mr. LYNDE]

propose to ask the previous question on the first resolution?

Mr. LYNDE. I ask the previous question on both resolutions.

Mr. KASSON. The first resolution, adjudging these witnesses in contempt, I submit to the gentleman, ought to be open to considera-

tion and discussion.

Mr. LYNDE. Mr. Speaker, before the question is put, I wish to state that this subpœna was served upon these witnesses six weeks ago, about the 12th of December; that Mr. Wells and Mr. Anderson were arraigned at the bar of this House more than a week ago, when they asked to be allowed to delay the presentation of their answer until the other witnesses should be produced at the bar. I think they have had ample time to prepare any answer they might choose to present

Mr. HOAR. Will my friend allow me to ask him a question?
Mr. LYNDE. Certainly.
Mr. HOAR. I ask the gentleman whether it is true that the other member of the returning board not now present has been locked up in close custody since his arrival in the city and that no opportunity has been furnished for his associates to confer with him, although the House adjourned the hearing that such conference might be had!

Mr. LYNDE. I know of no member of the returning board who is

not present at this time.

Mr. HOAR. Are they all present?

Mr. LYNDE. They are. [Laughter.] If we are to get at these papers, we have no time to lose; and I therefore insist that the previous question be called and that the resolutions be acted upon at once.

Mr. KASSON, Mr. HOAR, and others addressed the Chair. [Cries of "Regular order."]

The SPEAKER. The regular order is to keep order.

Mr. GARFIELD. I understand that the recently arrived members of the board have not been allowed to consult with their associates

according to the understanding of the House; that they have been kept under duress and separate, without authority of law.
Mr. COX. We have no chance to answer that statement.

Mr. HARRIS, of Virginia. I desire to offer an amendment which I think the gentleman from Wisconsin would be willing to accept after he hears it. I desire to make the commitment in this case correspond with what the gentleman will recollect was the commitment in the Erwin case. I desire to insert these words: "And while so in the custody of the Sergeant-at-Arms they shall be confined in the common jail of the District of Columbia."

Mr. LYNDE. I do not accept that amendment.

Mr. PAGE. Had we not better take them out and hang them right

Mr. HOAR. I wish to ask my friend from Wisconsin whether the two members of the returning board first produced at the bar of the House have had the opportunity of conference with their associates, the House having postponed their case to enable them to have such conference

Mr. LYNDE. I understand that they have been together since half past eleven o'clock this morning.

Mr. KASSON. O, that is no time.

Mr. Anderson (one of the witnesses) rose and proceeded to make a statement

The SPEAKER. The witness will be seated. He has not the right to speak without the consent of the House.

Mr. PAGE. I move that the witness have the right to speak through

somebody else

Mr. CLYMER. I rise to a question of order, which is that the genthe adoption of the resolutions, debate is out of order.

Mr. GARFIELD. I desire to say that there can be no vote on the previous question unless a hearing be allowed.

Mr. CLYMER. You have been heard quite enough. We propose

The SPEAKER. The Chair was desirous that the gentleman from Massachusetts [Mr. Hoar] should have an opportunity to ask a question, and understood that the gentleman from Wisconsin was willing to hear the question. The latter gentleman now demands the previous question upon the adoption of the resolutions.

Mr. KASSON. Unless the gentleman will allow us an opportunity to exchange conversation for the purpose of eliciting information, I

move that the House now adjourn. I think that the first resolution

is vitally defective in one particular.

Mr. THORNBURGH. I call for the yeas and nays on the motion to adjourn

Mr. GARFIELD. The House has not heard the answer of these

Mr. GARTIELD. The House has not heard the answer of these witnesses. Their answers are in their hands and not heard.
Mr. LYNDE. I ask whether the gentleman from Iowa [Mr. Kasson] can get the floor for the purpose of making his motion?
The SPEAKER. The Chair thinks he can.
Mr. COX. This is an attempt to defeat the will of the people and the will of the State of Louisiana.
Mr. PAGE. I move that when the House adjourns to-day it ad-

journ to meet on Tuesday next, and on that motion I call for the yeas

and nays.

The SPEAKER. The first question will be upon the motion just made by the gentleman from California.

Mr. HOLMAN. I rise to a parliamentary inquiry, and that is whether I may be permitted to ask what gentlemen on the other side

Mr. HOAR. If I can be permitted to answer, as I understand—Mr. COX. I rise to a point of order, that the motion to adjourn is not debatable. [Cries of "Regular order!"]

The SPEAKER. The Chair sustains the point of order. Neither the motion to fix a day to which the House will adjourn nor the motion to adjourn is debatable.

Mr. HOAR. I shall be very glad to answer my friend's question.
Mr. HOLMAN. I hope there will be no objection to that.
The SPEAKER. Is there objection to the gentleman from Massachusetts answering a question propounded by the gentleman from Indiana?

Mr. O'BRIEN. I object for the reason that the gentleman from

Wisconsin has charge of this matter-

Several Members. No debate!

The SPEAKER. The question is on the motion of the gentleman from California [Mr. Page] that when the House adjourns to-day it adjourn to meet on Tuesday next; on which the yeas and nays have

The yeas and nays were ordered.

The question was taken; and there were-yeas 40, nays 200, not voting 50; as follows:

YEAS—Messrs. Ballou, Banks, Horatio C. Burchard, Carr, Caswell, Darrall, Dunnell, Eames, Evans, Flye, Foster, Hendee, Hoar, Hoge, Hoskins, Hubbell, Hurlbut, Lapham, Lawrence, Magoon, McDill, Monroe, Nash, Oliver, Page, Robinson, Rusk, Sampson, Smalls, Stowell, Tufts, Wait, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, Alan Wood, jr., and Woodburn—40.

NAYS—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Backer, William H. Baker, Ranging, Blackburn, Blair

burn—40.
NAYS—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., John H. Baker, William H. Baker, Banning, Blackburn, Blair, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, Cate, Caulfield, Chittenden, John B. Clarke of Kentucky, John

B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Conger, Cook, Cowan, Cox, Crapo, Culberson, Cutler, Danford, Davis, Davy, De Bolt, Denison, Dibrell, Dobbins, Douglas, Durand, Durham, Eden, Ellis, Fanlkner, Felton, Field, Forney, Fort, Franklin, Freeman, Frye, Fuller, Gause, Glover, Goode, Gunter, Andrew H. Hanilton, Rancock, Hardenbergh, Benjamin W. Harris, Henry B. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Henderson, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunter, Hunton, Hurd, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, Kehr, Kimball, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Leavenworth, Le Moyne, Levy, Lewis, Lynch, Mackey, Maish, MacDougall, McCrary, McFarland, McMabon, Meade, Metcalfe, Miller, Millisken, Mills, Morgan, Neal, Norton, O'Brien, Packer, Payne, Phelps, John F. Philips, Pierce, Piper, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Rainey, Rea, Reagan, John Reilly, Rice, Riddle, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Schleicher, Seelye, Sheakley, Sinnickson, Slemons, A. Herr Smith, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Strait, Swann, Tarbox, Terry, Thomas, Thompson, Thornburgh, Throckmorton, Washington Townsend, Tucker, Turney, Van Vorhes, John L. Vance, Robert B. Vance, Waldron, Gilbert C. Walker, Alexander S. Wallace, Walsh, Ward, Warner, Warren, Watterson, Erastas Wells, Whitehouse, Whithorne, Williams, Juliams, James Williams, Jere N. Williams & Williams B. Williams, James Williams, Fernando Wood, Woodworth, and Yeates—200.

iam B. Williams, Willis, Benjamin Wilson, James Wilson, Fernando Wood, Woodworth, and Yeates—200.

NOT VOTING—Messrs. George A. Bagley, Bass, Beebe, Bell, Pliss, William R. Brown, Buttz, Campbell. Cason. Chapin. Crounse. Egbert, Finley, Garfield, Gibson, Goodin, Hale, Haralson, Hays, Henkle, Kellev, King, Lord, Luttrell, Lynde, Money, Morrison, Mutchler, New, Odell, O'Neill, William A. Phillips, Purman, James B. Reilly, John Robbins, Sobieski Ross, Sayler, Schumaker, Singleton, Stephens, Teese, Martin I. Townsend, Waddell, Charles C. B. Walker, Walling, Wheeler, Wigginton, Wike, Wilshire, and Young—50.

So the House refused to adjourn over.

During the roll-call, Mr. HANCOCK moved to dispense with the reading of the names. Mr. BAKER, of Indiana, objected.

The vote was then announced, as above recorded.

The question next recurred on Mr. Kasson's motion that the House do now adjourn.

Mr. GARFIELD rose.

Mr. HANCOCK. I ask the gentleman from Iowa to withdraw his motion to adjourn.

Mr. KASSON. I will withdraw it for the purpose of hearing what

the gentleman from Texas has to say.

The SPEAKER. If the gentleman from Iowa withdraws his motion to adjourn then the question recurs on the demand of the gen-tleman from Wisconsin [Mr. LYNDE] for the previous question, and that cuts off all debate.

Mr. RUSK. Let us have the regular order.
Mr. KASSON. If the gentleman from Wisconsin does not object I will withdraw the motion to adjourn for the purpose of hearing what

the gentleman from Texas desires to propose.

Mr. HANCOCK. I ask the gentleman from Wisconsin to withdraw the demand for the previous question, and then, that being done, I propose to move the witnesses have one hour within which to prepare their answer.

Mr. LYNDE. I am willing to consent that further action on these resolutions shall be postponed for one hour, to give these witnesses time to prepare and present their answer to the House.

Mr. KASSON. That will be satisfactory to me, without waiving any right to ask for brief debate on the case as then presented.

Mr. LYNDE. I will modify my motion of postponement, and say half on hour. half an hour

Mr. GARFIELD. I understand the witnesses say half an hour is

sufficient. I agree to that. Let it go at half an hour.
The subject was then postponed for half an hour.

# JAMES B. EADS.

The SPEAKER. The House now resumes the consideration of the bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties, and other auxiliary works to make wide and deep the channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States, re-ported from the Committee on Appropriations by the gentleman from

Indiana, [Mr. HOLMAN.]

Mr. BUCKNER. I move the following substitute, striking out all after the enacting clause and inserting what I send up to the Clerk's

The Clerk read as follows:

That the Secretary of the Treasury be, and he is hereby, directed to deliver to said James B. Eads, or his assigns or legal representatives, the sum of \$500,000 in bonds of the United States, as provided for by an act entitled an "Act making provision for the repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes," approved March 3, 1875; the Secretary of War having determined that said sum is due to said Eads by the terms of a certain written contract entered into by said Eads with the United States under and by the provisions of said act of March 3, 1875.

Mr. BUCKNER. Mr. Speaker, the object of this amendment is to comply with the express terms of the contract with Captain Eads to clean out the mouth of the Mississippi River. I propose to read that section and show that the Secretary of the Treasury has put an improper construction upon this act, necessarily imposing the necessity upon Captain Eads to come before Congress whenever he complies with the terms of his contract and beg for an appropriation. I undertake to say that that is not the fair construction of the law. It is perfectly apparent I am right about it.
Section —— provides—

- provides-

That the option of discharging the obligations herein assumed by the United

That is, to pay \$500,000 whenever twenty feet deep shall have been maintained for a certain length of time according to the determina-tion of the Secretary of War—and there is no question about that, that the Secretary of War has decided that the first payment is due

Sec. — That the option of discharging the obligations herein assumed by the United States, either in money or bonds, is expressly reserved; and the Secretary of the Treasury is hereby directed to issue the bonds of the United States, bearing 5 per cent, interest, of the character and description set out in the act entitled "An act to authorize the refunding of the public debt," approved July 14, 1870, to said Eads or his legal representatives, in payment at par of the aforesaid warrants of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

Mr. SMITH, of Pennsylvania. There is so much confusion in the Hall that I did not distinctly hear what the gentleman from Missouri

Hall that I did not distinctly hear what the gentleman from Missouri read. I ask him to read that section again.

Mr. BUCKNER, (having again read the section.) Now, Congress has made no appropriation, and this is an attempt to appropriate money after the Secretary of War has decided that Eads is entitled to this \$500,000, and, as I think, under the terms of the law to \$500,000 in bonds, if he prefers it. This bill is the first appropriation that Congress has made. The Secretary of War has decided that Eads is entitled to the \$500,000 and has given him a warrant to that effect, and the Secretary of the Treasury decides he will pay only in money and will not pay till an appropriation is made. That, I understand, is the only point in dispute.

Mr. PHILIPS, of Missouri. Does not the law as it exists direct the

Mr. Fillitre, of all states and the manner of this payment?

Mr. BUCKNER. I think beyond all question it does. If these bonds were less than par Eads would have to take them. But they happen to be a little in advance of par, and therefore the Secretary of the Treasury refuses to pay in that way.

[Here the hammer fell.]
Mr. HURLBUT. I wish to call the attention of the House to the object and purpose of the amendment offered by the gentleman from Missouri, which I heartily support. Under the act approved March 3, 1875, the work of opening the South Pass was given to James B. Eads and his associates on certain terms. It was expressly provided that the Secretary of War should be the agent, not of Eads, but of the United States, to determine whether or not he had complied with his contract as to depth of water and width of channel. The law imperatively demands that when the certificate of the Secretary of War is made out and his requisition made, the Secretary of the Treasury shall issue a certain prescribed character of bonds of the United States, unless the Congress of the United States shall have previously provided

for the payment of the same by the necessary appropriation of money.

At the commencement of this session the Secretary of War, in an official communication, notified this House that this sum of money would be needed during the session of Congress, on or before the 1st of February. The House made no provision. The requisite depth of water was obtained. The certificate of the engineer to that effect was filed with the Secretary of War. The Secretary of War referred certain questions to the Attorney-General and received a favorable report, and then filed his requisition upon the Treasury to pay this amount. Now, sir, it is simply a breach of the public faith, after the rights of Mr. Eads and his associates have accrued by the performance of the work in strict accordance with the terms of the contract by the determination of his entitlement to this money by the Secretary of War, to say that the money shall be paid otherwise than as the law provides. The status of the parties is fixed by the law, upon that certificate of the Secretary of War, and the right of Mr. Eads in any court of justice is unquestionable and could not be hesitated over at all. But the Secretary of the Treasury has thought proper not to carry out that strict letter of the law, but to submit to the House, through the Committee on Appropriations, a proposition that the House now, after the fact, after the rights of the parties are settled, after Mr. Eads's right to the bonds is beyond any question in any court, to force him to accept now, to his own loss, the money appropriation sought to be made by this bill.

I do not know, sir, that I could make this matter any clearer if I were to talk about it for any length of time the House might permit. There is no lawyer in this House who will not say that if a mandamus were sued out by Mr. Eads in any court having jurisdiction, the Secretary of the Treasury would be ordered to issue these bonds. Now, sir, the effect of the action brought here to-day is simply this; and the action of the House in adopting this amendment simply affirms the construction which the House puts upon the rights of these par-ties, and is a notice to the Secretary of the Treasury which he is bound

Mr. HOLMAN. Mr. Speaker, the question presented here is of such moment that I am exceedingly anxious that the House shall understand well all the questions involved before either appropriating this

stand well all the questions involved before either appropriating this money or providing, if the House shall so determine, that the bonds shall issue, and the public debt be increased by the payment in bonds.

I send to the Clerk's desk and ask to have read papers received from the War Department and from the Treasury Department, documents which will make this matter, I think, very clear. It involves the payment either in money or in bonds of the amount due to Mr. Eads, making a difference, according to the way in which we pay it, as the Secretary of the Treasury says, of \$60,000. These 5 per cent. gold-bear-

ing bonds are said to be at 12 per cent. premium, and the difference

between paying in these bonds or in the lawful money of the United States as the contract provided would be \$60,000.

Mr. HURLBUT. How can you make that difference unless the Government would otherwise sell those bonds?

Mr. HOLMAN. The Government can sell those bonds at 12 per cent. premium. I ask that the communication which I send to the Clerk's desk, from the Secretary of the Treasury to the Speaker of the House, may be read. It bears date the 24th day of the present month. The Clerk read as follows:

January 24, 1877.

SIR: Referring to my interview of this morning with a subcommittee of your committee, and to their verbal request, I have the honor to say that the Secretary of War, on the 20th instant, made requisition on this Department for \$500,000, in payment of that amount claimed to be due and payable to Mr. Eads under the act of March 3, 1875.

of War, on the 20th instant, toach of March 3, 1875.

Mr. Eads, on the 22d instant, applied at this Department for payment, supposing himself to be entitled to that amount on the requisition of the Secretary of War, or on failure thereof, to an issue of United States bonds to that amount, in the contingency provided for by the above act.

The Secretary of War had, in his annual report in December last, advised Congress that \$500,000 would probably be required on or about the 1st of February next to make the first payment to Mr. Eads should the Attorney-General be of his opinion as to a proposition involved in the prosecution of the work, which he had submitted to this Department. On the 22d instant the Secretary of War made a further special communication to Congress, to the effect that Eads was by him considered entitled to the payment, and asking an appropriation of the amount above stated. As no appropriation had been made by Congress for this specific purpose, the requisition of the Secretary of War could not be complied with by this Department.

the requisition of the Secretary of War could not be complied with by this Department.

It is apparent, upon a fair construction of the act, that payments are to be made upon the requisition of the Secretary of War upon the Secretary of the Treasury, (and not according to its terms "on his warrant on the Treasure,") either in money or United States bonds, but the Secretary of War can only make this requisition after he has become satisfied that the conditions of the contract have been complied with, and, as Congress is to be advised by him of the probable time when payments will become due, doubtless to the end that proper appropriations may be made, and as, in this instance, the information of the necessity for the appropriation at this time is so recent, it may not be questioned that Congress may properly exercise the option to make the payment in money, contemplated in the act. It is submitted that to issue the bonds provided for in the act would be unwise, as it would, without actual public necessity of lack of public revenue, increase the public debt, and in this instance operate a direct loss as a financial operation to the Government of some \$60,000, these bonds being at this date at a premium of 123 per cent.

To prevent unnecessary delay and inconvenience to parties in future, it is suggested that the Secretary of the Treasury be authorized to make payments out of any money in the Treasury not otherwise appropriated, as they shall fall due and become payable under the terms of the act, upon the requisition of the Secretary of War. This method, while it would relieve the Secretary from the necessity of an issue of bonds, would not change the terms and limitations upon which payments can alone be made.

Very respectfully,

LOT M. MORRILL,

Hon. WILLIAM S. HOLMAN,
Chairman Committee on Appropriations,
House of Representatives.

P. S.—In accordance with the suggestion of the subcommittee, I herewith submit draught of an act for the purpose above stated, and commend it to your especial attention, as it has of necessity been somewhat hastily prepared.

Mr. HOLMAN. I submit now the letter of the Secretary of War, and upon which the letter of the Secretary of the Treasury is based:

Mr. HOLMAN. I submit now the letter of the Secretary of War, and upon which the letter of the Secretary of the Treasury is based:

WAR DEPARTMENT.

Washington City, January 19, 1877.

SIB: I have the honor to report for the information of Congress that under the provisions of paragraphs 2 and 10 of the fourth section of the river and harbor act, of March 3, 1875. I have made requisition upon the Secretary of the Treasury for a settlement of \$500,000 in favor of James B. Eads, and to transmit herewith the documents on which this action is based.

In my annual report, dated November 20, 1876, I stated as follows:

"As required by the act of March 3, 1875. The progress on the works for the improvement of the South Pass of the Mississippi River, under James B. Eads and his associates, has been inspected and reported upon from time to time by Major C. B. Comstock, the officer detailed for that purpose under the provisions of the law, and his report has been published by Congress. His last report, showing the condition of the works on the 17th of August, is transmitted herewith. It shows that the maximum draught of water which could be taken through the channel between the jetties on that date was 19.8 feet; but that there was a shoal at the head of the pass through which only 13½ feet could be taken. Another survey is in progress at the present time, and Major Comstock telegraphs, under date of November 18, that a draught of 20.3 feet can now be carried through between the jetties, but that for over 2,000 feet of its length this channel is not 200 feet in width, as required by law; and that at the head of the pass there is a channel from 30 to 90 feet wide, through which 18½ feet can be taken.

"The full report of this survey will be presented to Congress as soon as received. (Subsequently published in House of Representatives Ex. Doc. No. 12, Forty-fourth Congress, second session.)

"The question has been raised whether, under the provisions of the law, the first payment should be made after obtaining a depth of tw

in accordance with the law. Should this view be sustained by the Attorney-General, it is my duty to notify Congress that \$500,000 will probably be required to make first payment to Eads and his associates on or before February, 1877, and the sum of \$1.000,000 may possibly be required for further payments during the next

sum of \$1,000,000 may possibly be required for further payments during the next fiscal year."

The opinion of the Attorney-General, which is transmitted herewith, sustains the views of the commission of engineers above referred to in these words: "Accordingly, the answer I make to your question is that the first installment of \$500,000 can be made when the channel at the mouth of the pass is twenty feet deep and two hundred feet wide, although the same depth be not obtained through the shoal at the head of the pass, if no forfeiture shall have arisen by action of Congress or without action of Congress, as provided in the condition mentioned."

The forfeitures referred to have not arisen.

The accompanying map and report by Major C. B. Comstock, the officer of engineers detailed under the act to make inspections, &c., show the condition of the channel of the mouth of the pass, as determined by the most recent survey, and contain the certificate that on December 27, 1876, James B. Eads and his associates had obtained a channel twenty feet in depth and not less than two hundred feet in width.

The conditions of the law seem therefore to have been entirely complied with, and I have made requisition for the first payment, as previously stated.

Very respectfully, your obedient servant,

J. D. CAMERON.

J. D. CAMERON Secretary of

Hon. SPEAKER of the House of Representatives.

[Here the hammer fell.]

Mr. CLYMER obtained the floor and yielded his time to Mr. Hol-

Mr. HOLMAN. I now ask to have read to the House a communica-tion from the Secretary of the Treasury, dated the 24th day of the present month, the question having arisen as to the right of the Govmenteither to pay in lawful money or in 5 per cent. gold-bearing bonds.

The Clerk read as follows:

TREASURY DEPARTMENT, January 22, 1877.

SIR: I would respectfully invite the attention of Congress to the terms of section—of the act approved March 3, 1875, (18 Statutes, part 3,) under which the Secretary of the Treasury is directed to issue bonds of the United States, bearing 5 per cent. interest, to James B. Eads, of Saint Louis, Missouri, or his legal representatives, in payment at par of the "warrants" of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriation of money in favor of said Eads, on account of the construction of jetties, &c., to maintain the channel between the South Pass of the Mississippi River and the Gulf of Mexico, and to the fact that I am now in receipt of a requisition from the honorable Secretary of War calling for the payment of \$500,000 to said Eads.

Congress having reserved the option of discharging the obligations assumed by the United States in this matter either in money or bonds, I have to recommend that an appropriation of \$500,000 be at once made to enable the Government to make payment to Mr. Eads, it not being wise, in my judgment, to increase the interest-bearing debt of the United States for the purpose of paying obligations of such a purpose.

such a purpose.

Very respectfully,

LOT M. MORRILL, Secretary.

Hon. Samuel J. Randall, Speaker of the House of Representatives.

Mr. BLOUNT obtained the floor and yielded his time to Mr. Hol-

Mr. HOLMAN. But, Mr. Speaker, there are some facts to which I desire to call the attention of the House. The first is, the Secretary of War in his last annual report informed Congress that probably an appropriation of money would be required for the purpose of paying this \$500,000 which the Government had a right to pay in lieu of issuing bonds to that amount. On the 19th day of the present month

issuing bonds to that amount. On the 19th day of the present month he informed the House of Representatives that by the terms of contract with Mr. Eads he is now entitled to receive (I quote the substance of his statement) \$500,000 in money or bonds, as contemplated by the act by which this improvement is being made.

On the 22d of January the Secretary of the Treasury called the attention of the House to the fact of the propriety of that appropriation. And on the 24th day of the present month he sent to the House the letter last read, in which he calls the attention of Congress to the fact that there is money in the Treasury which may be used to pay fact that there is money in the Treasury which may be used to pay this amount; that it is not wise to increase the interest-bearing debt; that it is not necessary in this instance that, in his judgment, justice will be done by paying Captain Eads in money instead of issuing bonds. It is a financial transaction and paying in bonds would in-

volve the Government in a loss of \$60,000.

Now let me state one other fact and then I shall have stated all I desire to say. I shall ask the Clerk to read that portion of the letter of the Secretary of War written on the 19th of the present month which shows the basis upon which the Secretary of the Treasury has sent to the House the communication from the Treasury Department sent to the House the communication from the Treasury Department which has already been read; for I wish to say that it is not simply a question of payment, either in bonds or in money, that the House will consider, but the House ought to consider as squarely before it at this time whether or not Captain Eads has so far complied with the terms of his contract as to be entitled to the payment.

Mr. BUCKNER. There can be no question about that.

the terms of his contract as to be entitled to the payment.

Mr. BUCKNER. There can be no question about that.

Mr. HOLMAN. The Committee on Appropriations, for themselves, so far as they have been able to investigate the matter, have been compelled to rely upon the opinions expressed by the engineers of the Army, of the Secretary of War, and of the Attorney-General, as to the meaning of the contract. The House has now before it the data upon which the Committee on Appropriations have acted, and the propriety of appropriating this money is a matter for the House to consider. The Committee on Appropriations, in conformity to the views of the Secretary of the Treasury, recommend an appropriation of money to be made, if it appears to the Secretary of War that the contract has

been so far complied with by Captain Eads as to entitle him to the first payment under the contract.

Mr. ATKINS. I now yield to the gentleman from Georgia, [Mr.

BLOUNT.]
Mr. CAULFIELD. If the gentleman from Georgia will yield, I would like to ask a question of the gentleman from Indiana, [Mr. Hol-

Mr. BLOUNT. The gentleman can ask the question some other

time; I have but five minutes.

time; I have but five minutes.

This matter, it seems to me, is very clear, so far as the duty of this House in the premises is concerned. By the last provision of the bill authorizing this work, the right is expressly reserved to the Government topay Captain Eads either in bonds or in money. My friend from Missouri [Mr. BUCKNER] complains that if these bonds were now below par Captain Eads would be obliged to take them. That is the law itself, that the Government shall elect which it will pay to him, bonds or money: therefore he has no right to complain.

bonds or money; therefore he has no right to complain.

Mr. FOSTER. When is the Government to make the election?

Mr. BLOUNT. If the gentleman will not interrupt me, I will get to that in good time. There are certain facts which, if this Committee of the Whole will comprehend them, will show that not the slightest

injustice is done to Captain Eads in the course proposed by the Com-

mittee on Appropriations, nothing but justice to all parties concerned. So far as information came to the War Department from the engineers in charge, there was no probability of the work being completed in time to make any call upon the Government for any payment prior to the meeting of Congress. In his report in November, the Secretary of War, acting upon information from the engineers, informed Congress that, probably by the 1st day of February, there would be needed an appropriation of \$500,000 to make the first payment to Cap-

tain Eads.

The question arose as to the construction of the contract involving improvements higher up the river than those for which claim is now set up for payment. A commission of engineers was directed to inquire, and the Secretary of War representing the Government certainly had the right and was bound in duty to inquire, in reference to that question. The commission of engineers made a report more favorable to Captain Eads than he had expected. Opinions were given by the Attorney-General, and in a report made January 9, 1877, Major C. B. Comstock, of the engineers, reports that by reason of that construction Captain Eads was enabled to withdraw some of his force from the work higher up and to take it to the point where he made the improvements for which he is now seeking payment. The very circumstances precipitated the work, and by reason of this fact the work was completed at an earlier period than was anticipated by Captain Eads, by the War Department, or by anybody else. There was no one here pressing for payment.

Mr. BUCKNER. Will the gentleman allow me to ask him a question?

Mr. BLOUNT. Not now; I have not time.

[Here the hammer fell.] The SPEAKER. The time of the gentleman has expired. Mr. LANDERS, of Indiana. I am astonished that there should be any difference of opinion upon this question. Here is a plain contract, under which the Government of the United States owes Mr. Eads \$500,000, payable either in bonds or money at the option of the Government, for work done by him, and the Secretary of the Treasury informs us that he has the money in the Treasury to pay for it. If we had not the money we would be compelled to issue bonds, which is not payment but an equivalent for delaying payment. For gentlemen now to insist that bonds bearing interest should be given to him when we have the money to pay with, is a strange business proposition. I must say that I never arranged debts in that way, and while I am a Representative of the people upon this floor I propose to attend to their business in the same way that I attend to my own. If I owe a debt and have money lying in bank, I certainly would not give my note bearing interest in lieu of payment. We are informed that the Government has money ready to pay Mr. Eads, and yet gentlemen here propose to increase the interest-bearing debt of the Govtlemen here propose to increase the interest-bearing debt of the Government, with money lying idle in the Treasury. It is said that if the bonds were below par Mr. Eads would have to take the bonds. If the policy advocated, of issuing more bonds, bearing interest, with money lying idle in the Treasury, is adopted, we may expect to see our bonds before long below par. Even if the bonds of the Government were below par, I hold that it would be equally bad policy to issue bonds to him when we have the money with which to pay him. Certainly there can be no force in the argument that we should issue these bonds; for we would save the interest to the Government, whether the bonds were above or below par, by making payment, as

Mr. BUCKNER. Will the gentleman allow me to ask him a ques-

Mr. LANDERS, of Indiana. Certainly.
Mr. BUCKNER. Suppose that Mr. Eads, immediately after the adjournment of Congress, should be entitled to \$500,000 and the Secretary of War should so certify. Mr. Eads comes here for his money and it is found that no appropriation has been made to pay him; under the contract would not the Government be obliged to issue bonds to him?

Mr. LANDERS, of Indiana. Congress has notice now for the first

time that this amount is due to Captain Eads, and if we make the appropriation the first opportunity we have had to make it, certainly no objection can be made on the part of Mr. Eads. I want Mr. Eads paid according to the contract, but I do not want the interest-bearing debt of this Government increased as long as we have money in the Treasury to meet such claims. It would be much better for the countries of the contract of t try if gentlemen would show more anxiety to pay off our debt and less anxiety to increase it. I hope to see the day when this mania for adding to the bonded indebtedness of the country whenever an opportunity offers will end.

[Here the hammer fell.]

Mr. CAULFIELD. There is no difference between a contract entered into by the Government with an individual and a contract entered into by two individuals. If a contract had been made between two individuals, and it had provided, as this contract provides, tween two individuals, and it had provided, as this contract provides, that upon the completion of a certain portion of this work Mr. Eads should be entitled to \$500,000 in bonds, (that is the provision of this contract,) unless money has been previously appropriated for the purpose, what construction should be placed upon the contract? To what bond does this word "previously" apply? It applies to the time of the completion of that portion of the contract which entitles him to the money. That contract was completed upon a certain day of this month; and it was the duty of this Government, if it intended to make use of the ontion which the law gave it either to pay in bonds.

make use of the option which the law gave it either to pay in bonds or pay in money, to have the money ready when Mr. Eads applied for it. Mr. Eads has applied for his money. The gentlemen on the other side of this question admit that he is entitled to it.

Now, to what time does the word "previously" apply? To the time when he is entitled to the money. That was the time when he had completed the contract; and the law says—

That the option of discharging the obligations herein assumed by the United States, either in money or bonds, is expressly reserved; and the Secretary of the Treasury is hereby directed to issue the bonds of the United States, bearing 5 per cent. interest, of the character and description set out in the act entitled "An act to authorize the refunding of the public debt," approved July 14, 1870, to said Eads or his legal representatives, in payment at par of the aforesaid warrants of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money. money

Has Congress "previously" provided for the payment of the sum by the necessary appropriation of money? Not at all; for this committee is now before the House asking for an appropriation. Mr. Eads is therefore entitled to his bonds because Congress has not "previously" appropriated the money. The committee are now here proposing to make the appropriation.

The gentleman from Indiana [Mr. Landers] says that if he has money in bank he has the right to pay that money upon the completion of the contract. Yes, the Government has the money in bank; but it cannot pay it unless Congress has "previously" complied with

but it cannot pay it unless Congress has "previously" complied with the law in appropriating it.

Mr. Eads being entitled to the bonds at the time when this work was so far completed as to secure twenty feet depth of water, it is unjust to him for us now to make him take the money, simply because he will make a little more by receiving the bonds. This is no way to encourage a great work like this. One of the greatest works this world has ever seen is about to be completed at the mouth of the Mississippi River.

RECUSANT WITNESSES-LOUISIANA RETURNING BOARD.

The SPEAKER. The witnesses are again at the bar, in pursuance of the postponement made by the House.

Mr. HOLMAN. It will not require more than fifteen minutes to

finish this bill.

The SPEAKER. The Chair knows nothing about how long it may require for that purpose. The House postponed the hearing of the cases of these witnesses thirty minutes, and the witnesses are now

at the bar to answer.

Mr. LYNDE. I am informed that the witnesses have an answer which they wish to present to the House. If that is the case I will ask that the answer may be read by the Clerk.

The SPEAKER. Before the answer of the witnesses is read the Chair desires to have read a part of Rule 65, which relates to a great

The Clerk read as follows:

While the Speaker is putting any question or addressing the House none shall walk out of or across the House; nor in such case or when a member is speaking shall entertain private discourse.

The SPEAKER. The Chair desires to say that when he assumed the duties of Speaker he agreed to keep order and prevent violation of the rules. The rule just read provides that when a gentleman is speaking members shall not converse. The Chair asks that in the future gentlemen will recollect this rule. The Clerk will read the answer of the witnesses. answer of the witnesse

The Clerk read as follows:

To the House of Representatives :

The undersigned "returning officers for all elections in the State of Louisiana," in obedience to the order of the resolution of the House of Representatives of the 17th day of January, A. D. 1877, directing such officers to answer for a contempt of the authority of said House and breach of its privilege in refusing to produce to the special committee of which Hon. William R. Morrison is chairman, sitting in New Orleans, certain papers in obedience to a subporna duces tecum, now beg to submit the following answer:

The undersigned desire, in the outset, to state most explicitly that in every act

of theirs in the premises stated in said resolution of the House they, and each of them, acted under and with the most sincere respect and deference for the dignity and authority of the House, and of its committee, and under the desire and purpose, in all good faith, to submit to and obey every just authority and lawful requirement of such House and committee in the premises; and if any act of the undersigned or of either of them, in all the premises aforesaid was a breach of the just privileges of such House, then it was not intended as such, but was done without any purposes of fraud, of disobedience to lawful authority, or of other wrong, and solely in the honest purpose faithfully to discharge official duty as sworn of the said State of Louisiana.

But the undersigned respectfully submit that they have not, in law or fact, violated any privilege of the House of Representatives nor rendered themselves in any wise justly amenable to be treated as in contempt of its authority; and in support of this most respectfully submit to the House the following as an imperfect statement of the grounds upon which the undersigned relied, and now rely, in justification of their conduct in refusing to surrender the papers named in the subpone of the House.

1. The undersigned, at and before the date of the service of said subpana duces the respective the substant of the substant of

and any privilege of the House of Representatives nor rendered themselves in any wise justly amenable to be treated as in contempt of its authority; and in support of this most respectfully submit to the House the following as an imperfect inflation of their conduct in refusing to autrender the papers named in the subpans of the House.

1. The undersigned, at and before the date of the service of said subparend duced inflation of their conduct in refusing to autrender the papers named in the subpans of the House.

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deposit had no manner of power or control over any papers named in said sub-

deposit had no manner of power or control over any papers named in said subposition.

7. The following are some of the provisions of law and elements of the duties of said canvassing board which required their constant and uninterrupted possession and use of said papers demanded by said subposita. The said returns and other documents were not received by said board from the entire State until the 29th of November, and the canvass, investigations, and returns were required to be completed by undersigned and the results officially certified as to the Federal electors before the 6th day of December, 1876, which required the utmost diligence and incessant labor by the said board to be devoted to such electors up to the 6th day of December, 1876, when the canvass as to them was complete. The said board is compelled to canvass and determine upon the election of every officer elected by the people in the State, from the constables to the governor, members of Congress, Federal electors, and members of both houses of the Legislature; and such houses are organized upon the certificates furnished by said board, and such organization must take place upon the first Monday in January, and the executive officers of such State are inaugurated upon the second Monday in January, of which officers the undersigned were required to canvass and determine upon the election of those already above named.

such State are inaugurated upon the second Monday in January, of which officers the undersigned were required to canvass and determine upon the election of those already above named.

Said board is moreover compelled to complete their said labors before they shall adjourn. There were affidavits showing intimidation, violence, &c., from a majori y of the parishes of said State, resulting in imposing upon said board very great labor, involving protracted investigations, in order to the right discharge of the duties above indicated, and which are peremptorily imposed by law on the undersigned, duties which could not be either omitted or delayed without involving both a disregard of the most important and delicate sworn duty, and endangering the existence of the government of Louisiana.

S. It was under this state of fact and of law, and when the undersigned had just completed the returns for presidential electors, (which were disposed of first because of the earlier time at which their duties must be discharged,) and when the returns for all of the Representatives in Congress, members of the Legislature, and officers of the State government were not canvassed or determined, and when the undersigned were in the diligent discharge of their said duties so requiring the constant and indispensable examinations and use of the said papers, that said committee, by said subpoma, demanded the surrender to the committee of every official paper in possession of undersigned, and which was indispensable to any progress in the duties of the said board, and this surrender to of course continue at the pleasure of the House or it maders in the surrender to the pleasure of the House or said soord, and this surrender to of course continue at the pleasure of the House or said town mittee.

The statement of facts and law now made we have striven to reake as condensed.

isid asubpena, demanded the surrender to the committee of every official paper, tallylist, consolidated return, affidavit, and every other paper in possession of undersigned, and which was indispensable to any progress in the duties of the said board,
and this surrender to of course continue at the pleasure of the House or its committee.

The statement of facts and law now made we have striven to make as condensed
as is possible consistently with the complex character of the election laws of Louisia
and in the history of its state trials may be perpetually recorded the prounds upon
which the undersigned are arraigned as violators of the law, deserving imprisonment and other severe punishment.

Having stated these elements of this case we feel that it is neither needful nor
produce the several propers of the committee of the transition of the facts and law which we have given.

Proliminary to this we deem it proper to state that while the undersigned fully
adhere to the view which is quoted in the report of the committee from a commuication by the undersigned to the committee, that these demanded papers are "a
part of the records of the returning officers of elections for the State of Louisian
arily quasi-judicial; that their action, under the law of their creation, is final to
the extent provided by the law, and is not subject to review by any State or national
ribunal; "yet it is not at all necessary to a complete vindication of the refusal to
surrender said papers, under the demand of said subpoena, that the undersigned
should call in question the right of the House to cenumie into the caracter of said
about all in question the right of the House to cenumie into the caracter of said
about all in question the right of the House to cenumie into the caracter of said
about all in question the right of the House to cenumie into the caracter of said
continuously any greater control over this business than is special struct, and that such that such as the
proper of the such as the such as a subject to revi

a government is of course competent to command and carry anywhere its own records, yet, as between the United States and each State, neither the Congress nor much less either House thereof hath any power not expressly granted or necessary to some grant; and the seizure or aspertation of the public journals of a Legislature, or of the records of a State court, or of the returns of the elections of entire State governments, was never before, since the formation of the Constitution, claimed as part of the Federal power over States. As to the character of the evidence which the committee may demand the States or their officials shall surrender to the committee, the committee is bound by the law of the land as much as are the courts.

Even when the tribunal demanding the paper has the unquestioned power to command its production "it is in every instance," to adopt the language of Lord Ellenbrough, (9 East, 485). "a question for the consideration of the judge at niss prius whether upon the principles of reason and equity such production should be required of him." Did the committee possess the power to take these records from the State, still to take them at such a time and under conditions which would imperil the government of a State, and yet not secure even the inspection of a single paper, of which both inspection and copies were not tendered to the committee, would, we submit, not be either reasonable or equitable. But to so seize these papers when the committee has no more jurisdiction or powers to do so than has a committee power to seize and carry off. the journals of the Legislature, or all the archives of a State, seems to the undersigned an act of usurpation that neither the committee nor House will carry out after mature deliberation.

The attempt which is made to bring this demand for the surrender of the most vital records of one of the States to the exclusive custody of a committee of one of the States to the exclusive custody of a committee of one of the States to the exclusive custody of a committee

this custody is the more likely to commit a forgery as to these records, then that presumption is not against that custodian with whom alone the law has intrusted them.

Next this attempt is unjust because, as we have seen, the law in section 43 has carefully deposited with the clerk of the district court of every parish in the State these same returns or tally-lists, showing every vote of the State; and being exact copies of the material and vital paper attempted to be wrested by this subpena from the said board; so that not only could the committee get the returns from every polling-place in the State without arresting the proceeding of such board and endangering the government of the State, but the resort to such forgery and alteration was thereby rendered useless and its detection inevitable unless the forgery were in the said duplicate also. This because the inspection of the duplicate in the clerk's office would both detect and correct the fraud.

If the forgery were in the duplicate also, then its inspection would expose the fraud, and the seizure to those with the board was needless.

Next this allegation of necessity for wresting from the board these documents in order to see if any were forged is most unjust for another reason, namely, that not only did the board tender and furnish copies of every paper demanded, but also to the said committee of the House and also to the eminent representatives of that party which is in the majority in this House, said board did tender full, complete, and ample inspection of the originals of every paper and return relating to such election as soon as the same were opened by the board, and of that opportunity to inspect said original documents, such representatives availed themselves to the full lest extent. The undersigned answer by saying to the House that their omission to surrender said papers was in no degree from any disrespect for the authority of this House or of said committee, was in no degree owing to any purpose to either committor occased any wrong, fraud

of said board, every original paper, the surrender of which was demanded by said subpena.

We conclude this answer by making this appeal to the House, and say that, conceding, for the sake of the argument, that the committee is entitled in this its investigation to ascertain by lawful means the result of the presidential election in Louisiana, it seems impossible that the undersigned should be mistaken when they deemed it their duty to decline to submit to the seizure of the archives of the State; Archives absolutely and completely indispensable to the continued peaceful existence for even a month thereafter; archives attempted to be carried off at the very moment of their being canvassed for the vital purpose of ascertaining who should compose the new government and of securing the inauguration thereof. If such things may be done by a committee of Congress, in the absence of the semblance of a grant of the power thus to lay its hands upon the States, then the undersigned,

with great respect to the House, would inquire where, in all the history and processes of government, will you find more cruel mockery or unalleviated folly than is contained in such utterances as these, which we now repeat, from the highest

is contained in such utterances as these, which we now repeat, from the highest sources of our law:

"The United States can claim no powers which are not granted to it by the Constitution, none but such as are expressly given by necessary implication. " \* "The States, within the limits of their powers not granted to the United States, are as independent of the General Government as that Government within its sphere is independent of the States. \* "The means and instrumentalities employed by the States, for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution should be left free and unimpaired, and should not be liable to be crippled, much less defeated by acts of the General Government." (See Nelson in 11 Wallace, 124, 125.)

stitution should be left free and unimpaired, and should not be liable to be crippled, much less defeated by acts of the General Government." (See Nelson in 11 Wallace, 124, 125).

In exercising their power to make inquest as well as in every other parliamentary function, neither House nor any committee thereof can declare or make their own privileges, but are subject to the law of the land, and the proposition that either House, by a resolution declaring its privileges, "can alter the law or place anyone beyond its control, is wholly untenable and abhorrent to the first principles of the Constitution." (Lord Denman, C. J., 9 Adolphus and Ellis, 1.)

The undersigned did not, and now do not, seek to avail themselves of any doubtful legal claims in resistance of the demand of the committee; but finding, as they do, that, even when there was no attempt to cross the boundary between the jurisdiction of the General Government and that of the States or to invade the powers of the one by the process of the other, Chief-Justice Marshall accorded to the officers of the executive department the discretion to decide for reasons of state what public papers the courts might demand from the public offices, and declared even as to private papers that the Executive "may have sufficient motives for declining to produce a particular paper, and those motives may be such as to restrain the court from enforcing its production," (Burr's trial;) when Jefferson, in the same trial, declared that the law "reserved the necessary right of the President of the United States to decide independently of all other authority what papers coming to him as President, the public interest permits to be communicated and to whom," (I Burr's Trial, 210:) when, by the unanimous judgment of the highest courts of the States, it is solemnly declared that "papers submitted to the executive council for the purpose of enabling it to perform its functions and filed among its archives ought not to be withdrawn" by subpeane duces tecum, "without its order, (2 Vi

gery.

The undersigned have now concluded their answer. They thank the House for this opportunity to make it, and submit their rights as officers and their liberty as citizens to the protection of the laws of the land.

J. MADISON WELLS,

J. MADISON WELLS, THOS. C. ANDERSON, G. CASANAVE, LOUIS M. KENNER.

Mr. LYNDE. I ask whether this answer is sworn to.

The SPEAKER, (after the Clerk had made an examination.) There seems to be no indication that it is.

Mr. LYNDE. I suppose that the answer should properly be sworn to before it is received by the House.

Mr. HALE. That is not necessary.

Mr. LYNDE. Of course the House can waive the requirement that

the answer should be noder oath, but usually it is required.

Mr. HALE. Why, Mr. Speaker, there has been no order for an answer under oath.

Mr. LYNDE. It requires no special order. Parliamentary law requires that the answer should be under oath.

Mr. KASSON. No; not in a case of this kind.

The SPEAKER. The practice on this question has varied. Under

recent Speakers it has tended in the direction of requiring answers to be sworn. Mr. HALE.

Mr. HALE. But such rulings have only been in a suggestive way. The SPEAKER. Of course there is no express rule governing such

Mr. KASSON. An order of the House is required, instead of an

order of the Speaker.

Mr. LYNDE. I waive that point. I now call the previous question.

Mr. KASSON. Will the gentleman allow me to call his attention to one point in the first resolution?

The SPEAKER. The Chair will suggest to the gentleman from Wisconsin that the witness can be sworn now.

Mr. LYNDE. I do not care about their being sworn.
Mr. KASSON. I will say to the gentleman that there is no purpose to take dilatory action in this matter; but I wish to call his attention for a moment to one point in the first resolution.

Mr. LYNDE. I move the first resolution be acted on at this time

under the previous question. If gentlemen prefer to have a separate vote on this resolution, I will not raise objection.

Mr. KASSON. I wish particularly to call attention to what the gentleman himself will see to be the effect of the first resolution, upon his own theory of action.

Mr. LYNDE. I will hear the gentleman's suggestion.
Mr. KASSON. It is this: the first resolution does not say for what
less witnesses are in contempt.

Mr. LYNDE. It is not necessary. The House is already advised.

Mr. KASSON. Allow me as to that to say this: The recital is of a disobedience to a subpœna that required them to appear and testify and to produce certain papers. They did appear and testify. They did not produce the certain papers. The contempt should be recited to be in the non-production of papers, because there was no contempt in respect to the first demand upon them.

Mr. LYNDE. It is not necessary for this House or any other par-liamentary body to set forth in the order of arrest the ground of con-tempt. It is sufficient if by order of the House the witness is claimed

to be in contempt.

If I were declared to be in contempt without stat-Mr. KASSON. Mr. KASSON. It I were declared to be in contempt without stating what for, would the gentleman justify that on principle? Can a man, consistently with American law, be sent to prison and deprived of his liberty without the record showing what it was for? Is it enough to show he has been guilty of crime?

Mr. LYNDE. It is perfectly plain from the records and proceedings in this case what the cause is. The reason has been shown already why these witnesses are in contempt. It is not necessary in

very order to be acted on by this House the cause shall be repeated.

Mr. KASSON. It is the first time the House has been asked to give

a judgment of contempt. This, now, is adjudication.

a judgment of contempt. This, now, is adjudication.
Mr. LYNDE. Yes, sir.
Mr. KASSON. And being adjudication it should state what for, or there is left no protection for anybody.
Mr. LYNDE. I demand the previous question.
Mr. REAGAN. If the only ground stated be for failure to produce papers that would not cover the case, because the subpœna required them to appear, produce papers, and answer questions.
Mr. KASSON. They did answer questions.
Mr. LYNDE. I demand the previous question on both resolutions.
Mr. KASSON. How can they purge themselves of this contempt?
Mr. LYNDE. By appearing before the committee and producing these papers; and then the committee will report to the House that these papers; and then the committee will report to the House that they have purged themselves by producing the papers called for.

Mr. KASSON. Then why not say so in the resolution?

Mr. LYNDE. Because it is not necessary.

Mr. KASSON. These men ought to be willing to go to jail upon

the principle shown in their answer.

Mr. LYNDE. I demand the previous question.

Mr. KASSON. I wish it to be understood that I ask for a separate

vote on the first resolution.

The SPEAKER. After the previous question has been seconded it is within the province of the gentleman from Iowa to ask for a separate vote on either resolution.

The previous question was seconded and the main question ordered.

Mr. KASSON. I demand the yeas and nays on the first resolution,
which punishes for contempt in not robbing the archives of a State. The yeas and nays were ordered.

The SPEAKER. The first resolution on which the vote is now to

be taken will be read. The Clerk read as follows:

Resolved, That J. Madison Wells, Thomas C. Anderson, G. Casanave, and Louis M. Kenner be, and are hereby, adjudged to be in contempt for a violation of the privileges of this House.

The question was taken; and decided in the affirmative-yeas 145, nays 87, not voting 58; as follows:

The question was taken; and decided in the affirmative—yeas 145, nays 87, not voting 58; as follows:

YEAS—Messrs Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Blackburn, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bout, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McFanlan, McMahon, Meade, Metcalfe, Milliken, Morgan, Neal, O'Brien, Phelps, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, William M. Robbins, Miles Ross, Savage, Sayler, Scales, Schleicher, Sheakley, Slemons, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Swam, Tarbox, Teese, Terry, Thomas, Thompson, Tucker, Turney, John L. Vance, Robert B. Vance, Gilbert C. Walker, Walsh, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Jenes N. Williams, Jenes Williams, Jenes N. Williams, Jenes Williams, Jenes, Evans, Flye, Fort, Foster, Freeman, Frye, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoar, Hoge, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Monroe, Nash, Norton, Oliver, Packer, Page, Plaisted, Platt, Pratt, Rainey, Robinson, Rusk, Sampson, Sinnickson, Smalls, A. Herr Smith, Stow

So the resolution was adopted.

During the roll-call, Mr. HOAR said: My colleague from Massachusetts, Mr. Seelye, is unwell and is confined to his room. If he were present, he would vote "no."

The result of the vote was then announced as above recorded.

Mr. LYNDE moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table

The latter motion was agreed to.

The SPEAKER. The question is now on the second resolution.

Mr. PAGE. Let it be reported.

The second resolution was read, as follows:

The second resolution was read, as follows:

Resolved, That J. Madison Wells, Thomas C. Anderson. G. Casanave, and Louis M. Kenner be, and are hereby, ordered to appear before the special committee appointed to investigate the recent election in Louisiana, of which the Hon. WILLIAM R. MORRISON is chairman, and produce all consolidated statements of supervisors of election, all statements of votes and tally-sheets for each polling-place in the late election for electors of President and Vice-President, together with all affidavits, depositions, protests, and other written proofs in their possession or under their control on the 11th day of December, A. D. 1876, touching the said election in the parishes of East Baton Rouge, West Baton Rouge, Bossier, Calcasieu, Caldwell, Carroll, Catahoula, Claiborne, Concordia, De Soto, East Feliciana, West Feliciana, Franklin, Grant, Iberia, Jefferson, (right and left banks). La Fayette, La Fourche, Lincoln, Livingstone, Madison, Morehouse, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint Martin, Tangipahoa, Vermillion, Vernon, Washington, Webster, and Winn, and that said witnesses be remanded to the castody of the Sergeant-at-Arms and be by him closely kept until the further order of the House.

Mr. LAWRENCE and other members called for the yeas and nays

on the question of agreeing to the second resolution.

The yeas and nays were ordered.

The question was taken; and there were—yeas 137, nays 77, not voting 76; as follows:

The question was taken; and there were—yeas 137, nays 77, not voting 76; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, Jr., Banning, Blackburn, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Ellis, Felton, Field, Finley, Forney, Franklin, Fuller, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lee Moyne, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McMabion, Metcalfe, Morgan, Mutchler, Neal, O'Brien, Phelps, John F. Philips, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, William E. Smith, Sparks, Speinger, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Walsh, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Yeates—137.

NAYS—Messrs. John H. Baker, William H. Baker, Ballon, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Caswell, Chittenden, Conger, Crapo, Crounse, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoar, Hosk, Hunter, Hurlbut, Hyman, Kimball, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, MoDill, Monroe, Nash, Norton, Oliver, Packer, Pagé, Plaisted Pratt, Rainey, Robinson, Rusk, Sampson, Sinnickson, A. Herr Smith, Stowell, Strait, T

So the resolution was adopted.

During the roll-call,
Mr. WILLIS said: My colleague from New York, Mr. Bliss, is absent, having been called home on important business. If present, he would vote "ay."
Mr. LYNDE moved to reconsider the vote by which the resolution was adopted: and also moved that the motion to reconsider be laid on the table.

on the table.

The latter motion was agreed to.

Mr. BAKER, of Indiana. I move that the House do now adjourn.

Mr. CLYMER. I trust not.

Mr. HOLMAN. I wish to suggest that in ten minutes the pending

bill can be disposed of.

Mr. CLYMER. And if we do not consider it now, it will cost the Government \$60,000.

Mr. RUSK. I think we should adjourn, that we may have time to examine the bill thoroughly.

The question being taken on the motion to adjourn, it was not

agreed to-ayes 48, noes 90.

## PAYMENT OF JAMES B. EADS.

The House resumed the consideration of the bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States.

Mr. BLOUNT. Mr. Speaker, on the 9th day of January, 1877, C. B.

Comstock, major of engineers, in a communication to the War Department, said:

Little work has been done since my last report. Soon after the decision of the commission that the paragraphs in the jetty law, authorizing payments to James B. Eads, do not require a channel through the shoal at the head of the pass prior to such payments, work there was stopped and the dredges were set at work at places of narrow-channel width at the mouth of the pass. Aided by three new wing-dams, they have the twenty-foot channel there to two hundred feet.

Now it was in consequence of this construction that the completion of this work was precipitated upon the War Department and upon the House and prevented the proper appropriation being made. When this bill was passed there were first given eight months to commence the work and thirty months were given to complete it up to the first payment. The War Department has been active and attentive and has exercised all reasonable care in obtaining information and com-municating it to the House on this subject.

This House has been reasonably careful of the matter and all the committee asks is that under this state of facts the Government will

have the right to elect whether they shall pay in money or in bonds.

It was only on January 19 that the opinion of the Attorney-General was had upon this matter. There is no injury to Captain Eads. It would be an outrage upon the Government should he be paid in bonds. Gentlemen upon the other side insist that, if the money is appropriated now instead of bonds, next year whenever this payment shall become due, then further delay will be brought about to the injury of Captain Eads. I desire to say to the House that there is nothing in this objection. The committee, with a view of hurrying this appropriation, in conformity with the urgent request of the Secretary of the Treasury, in order to save to the Government \$60,000, have thought it fit to disencumber this payment from any other payment, so that it can come as a simple question to the House without delay, and we may be enabled to comply with the contract of the Government. The committee propose to act in good faith with Captain Eads, and before concluding this session we shall make an appropriation to

Mr. CLYMER. This question, to my mind, is one so simple that its mere statement should be conclusive upon the minds of members. Under an act of Congress of 1875, the Government made a contract with Captain Eads to open the South Pass of the Mississippi River. He was to be paid \$500,000 on the completion of a certain portion of that work. If there was no appropriation made for the payment of the \$500,000, the Secretary of the Treasury was, on the warrant of the Secretary of War, to issue to him \$500,000 in United States bonds

bearing 5 per cent. interest.

bearing 5 per cent. interest.

This work, sir, is alluded to in the report of the Secretary of War to Congress made on the 30th November, in which the Secretary of War stated that on the completion of the work, as far as now advanced, \$500,000 would be needed on or before the 1st day of February. On the 17th day of January of this year the Secretary of War was informed that enough work had been done to warrant the paywas informed that enough work had been done to warrant the payment of \$500,000. On the 22d of this month the Attorney-General had given his opinion that the money should be paid now. Here we have an opinion of the Secretary of War and of the Secretary of the Treasury. Both are clear that we have a right at any time before the 1st of February to pay the \$500,000 in the lawful money of the United States. The Secretary of the Treasury wanted to pay in this mode. Captain Eads wanted it paid in bonds worth 12 per cent. premium; he wants the \$500,000 paid in bonds worth \$560,000. I ask the House if they are prepared to do that. Now, mark you, if this bill does not pass the House to-night and the Senate on Monday or Tuesday and receive the President's signature before the first of February, then the Government will have to pay in bonds worth \$560,000 a debt of \$500,000. We have now cash in the Treasury to pay, it and we are ready to pay it. The Secretary of the Treasury says we ought to pay it in eash, it. The Secretary of the Treasury says we ought to pay it in cash, and it can only be by the default of the House to make the appropriation that we shall lose this opportunity. I beg gentlemen to consider whether they are prepared to do that.

Mr. HOLMAN. I rise to call the previous question on the amend-

Mr. FOSTER. I would like to make a statement.
Mr. HOLMAN. If my friend will call the previous question when he concludes, I will yield to him for five minutes.
Mr. FOSTER. I will do so.
Mr. HOLMAN. After the gentleman from Ohio has occupied five minutes which I yield to him, I will call the previous question, but he fore calling the previous question. I find that there is something in

minutes which I yield to him, I will call the previous question, but before calling the previous question I find that there is something in the phraseology of the bill which requires correction.

Mr. FOSTER. It is true that Captain Eads was to have \$500,000 upon the completion of a certain portion of his work. He was to have it according to the law, which has been read here, in United States bonds, unless the Congress of the United States had previously appropriated the money to pay him. Now, the Secretary of War has called the attention of the House to the fact that on or before the 1st day of February this money would be needed.

of War has called the attention of the House to the fact that on or before the 1st day of February this money would be needed.

Mr. CAULFIELD. When was that?

Mr. FOSTER. On the 1st day of December. On that day the Secretary called the attention of the House to the fact that the money would be needed on or before the 1st day of February. I am a member of the Committee on Appropriations, and I regret that I did not pay that attention to my duties that I should have done in regard to

this matter. I should have known that this demand would be made upon the Treasury before the 1st day of February, but we paid no at-

Mr. BLOUNT. Mr. FOSTER. How could we have known it? We did know it.

Mr. BLOUNT. The Secretary of War called our attention to it on

Mr. Floorer. The Secretary of war cancer our accention to the 19th of January.

Mr. FOSTER. I am willing to say that I did not know it; if I did it escaped my attention. Now, sir, the law requires that Captain Eads shall be paid in 5 per cent. bonds unless we previously appropriate the money to pay him.

Mr. HOLMAN. Previous to what?

Mr. FOSTER. Previous to the completion of the work.

Mr. HOLMAN. O, no.

Mr. FOSTER. O, yes.

Mr. HOLMAN. Previous to paying the bonds.
Mr. FOSTER. I am as willing to save what there is of premium upon the bonds to the Government of the United States as any one upon the bonds to the Government of the United States as any one can be; but I do say that if it had been a transaction between me and a private individual, and he had taken the position which gentlemen on the other side take upon this question, I would consider it an attempt to swindle me out of my rights. Public faith demands that we should live up to the letter and the spirit of the contract which requires us to deliver these bonds, because we have neglected to make the appropriation of money for the purpose. I am willing to take some share of the responsibility upon myself. It is true the chairman of the Committee on Appropriations should have known better; but he did not provide for this, and Captain Eads is entitled to his bonds. to his bonds.

If the the hammer fell.]

Mr. HOLMAN. I now call the previous question.

Mr. CONGER. I ask the gentleman to withdraw that demand in order that I may be heard a moment upon this question.

Mr. HOLMAN. I cannot yield. I desire to say—

Mr. CONGER. I object to the gentleman saying anything until I have had an opportunity to speak, for he has already spoken more then tries were this prevention.

than twice upon this proposition.

Mr. HOLMAN. How much time does the gentleman ask?

The SPEAKER. Under the order of the House he could have but

Mr. HOLMAN. With the understanding that at the expiration of the gentleman's five minutes I can be recognized to call the previ-ous question, I will withdraw it for the present.

Mr. CONGER. A short time ago Congress, after trying many ways Mr. CONGER. A short time ago Congress, after trying many ways to open the Mississippi to the ocean with its great commerce, received a proposition from one man to himself spend millions of dollars of his own money and of the money of his associates, in an effort to do what few men thought could be accomplished. Congress through its committee bound him by a law, strict, accurate, technical, searching, preventing him from ever receiving from the Government of the United States one dollar, however much he might expend, unless he did open that great channel to the sea with twenty feet depth of water and two hundred feet width of channel with that denth: water and two hundred feet width of channel with that depth; a depth of water that since the oldest man in this House was born has never been afforded for the commerce of the Mississippi Valley.

To-day that channel is open, and our vessels drawing twenty feet of water can rush in, without a pilot, without a guide, between those jetties and reach a harbor of safety, as has been done within the last ten days. That proves that this work has been done. The Engineer Department declares that it has been done. The world knows it has been done, for thousands of eyes have been looking to see whether

that work could be done and when it was done.

I was on the committee that prepared the bill under which this contract was made. I was doubtful of the success of this undertaking, and I endeavored to bind the contract as in a vise, so as to preing, and I endeavored to bind the contract as in a vise, so as to prevent Captain Eads or any of his associates from drawing one dollar from the Treasury of the United States until this grand work in favor of commerce was absolutely and actually accomplished. That committee put into the bill a clause, harsh and severe as it may seem, that not one dollar should ever be paid from the Treasury for this work until the result had been absolutely accomplished. Then was the time, when it was accomplished, for this nation not only to return thanks to Mr. Eads, but to pay this benefactor of the Mississippi Valley, of the United States, and of the world. We said that he should have the bonds of the United States, the 5 per cent. bonds, and that when the Secretary of War declared that the work was done and drew his warrant for the pay, unless Congress had previously appropriated money for the purpose, Captain Eads should have the bonds of the United States. Shall this nation, after the accomplishment of such a work, keep this man out of what is due to him, a man who has been paying 100, 150, 200 per cent. for the money with which he had done the work, and is still paying it; shall we haggle for days and weeks over a technicality, ay, even without a technicality? and weeks over a technicality, ay, even without a technicality? Why not give this man, the benefactor of his country, the bonds to which he is entitled?

Gentlemen say it is paying him \$60,000 more than to pay him in money. These bonds are to be paid in thirty years; and who knows what they will be worth in money at that time? They pay but 5 per cent. interest. If it is an advantage to Captain Eads, who has made his negotiations since this money was due, since he had no rea-

son to doubt that the bonds would be forthcoming, and has made his arrangements upon the bonds, if it would be an advantage to him to receive the bonds why not pay them to him? A great injury will re-

receive the bonds why not pay them to him? A great injury will result to him if he does not receive them.

[Here the hammer fell.]

The SPEAKER. The time of the gentleman has expired.

Mr. HOLMAN. I desire to substitute for the bill—

Mr. FOSTER. I thought the previous question was to be called.

The SPEAKER. The gentleman from Indiana desires to modify the bill.

Mr. HOLMAN. The bill as read by the Clerk needs a verbal cor-Mr. HOLMAN. The bill as read by the Clerk needs a verbal correction. The language of the bill as prepared by the Attorney-General and sent to us by the Secretary of the Treasury contains the words, "whenever the Secretary of War shall have determined that that amount is due." I desire to substitute the bill sent to us containing those words for the one reported. I now call the previous question upon the bill and substitute.

The previous question was seconded and the main question ordered; which was upon the amendment offered by Mr. Buckner.

The question being taken: there were averages as need 63: no question.

The question being taken; there were-ayes 38, noes 68; no quorum

Tellers were ordered; and Mr. Conger and Mr. Holman were ap-

pointed.

The House divided; and the tellers reported-ayes 53, noes 73; no quorum voting.

Mr. HURLBUT. I move that the House now adjourn.

The motion was agreed to; and accordingly (at five o'clock and ferty-five minutes p. m.) the House adjourned.

## PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Resolutions of the Kansas City Board of Trade,

approving the electoral bill, to the committee on counting the electoral vote.

Also, resolutions of the Peoria Board of Trade, communicated by

telegraph, of similar import, to the same committee.

Also, the petition of Isaac Jones Clark, asking adverse action on the bill (H. R. No. 3192) for the relief of W. W. Hubbell, to the Committee on Patents.

Also, the petition of H. B. Waterman and 27 other citizens of Greene, Rhode Island, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. BAKER, of Indiana: The petition of business men and bankers of Lima, Indiana, for the repeal of the tax on the deposits and capital of banks, to the Committee of Ways and Means.

By Mr. COCHRANE: The petition of citizens of New Texas, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads

By Mr. CUTLER: Protest of H. H. Voorhis and other citizens of Spring Valley, New Jersey, against the assumption by the President of the Senate of the power of counting the electoral vote, to the committee on counting the electoral vote.

By Mr. DUNNELL: The petition of Thomas J. Meighen and 21 other

Post-Office and Post-Roads.

By Mr. ELKINS: The petition of citizens of New Mexico, that the telegraph be incorporated into and made a part of the postal system throughout the United States, to the same committee.

By Mr. HALE: The petition of G. L. Baker and others, of similar import, to the same committee.

By Mr. HAYMOND: The petition of citizens of Indiana, of similar

import, to the same committee.

By Mr. JOYCE: The petition of Milo A. Everett, for arrears of pension, to the Committee on Invalid Pensions.

Also, the petition of J. B. Vaughan and others, of Saranac, New

York, that pensioners be granted arrears of pension, to the same com-

Also, the petition of L. F. Garfield and others, of Schroon Lake, New York, of similar import, to the same committee. By Mr. KASSON: The petition of W. H. Styles and others, citizens

of Guthrie County, Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of D. J. McCoy and other citizens of Iowa, of

Also, the petition of D. J. McCoy and other citizens of Iowa, of similar import, to the same committee.

By Mr. LAPHAM: The petition of citizens of New York, of similar import, to the same committee.

By Mr. MACKEY: The petition of citizens of Glen Union, Clinton county, Pennsylvania, of similar import, to the same committee.

By Mr. NORTON: The petition of citizens of Chautauqua County, New York, of similar import, to the same committee.

By Mr. PIPER: The petition of John R. Robinson and others, stock-bolders for the appointment of a joint committee.

holders, for the appointment of a joint committee to investigate the affairs of the Central Pacific Railroad and the Central and Finance Company, to the Committee on the Judiciary.

By Mr. STEVENSON: The petition of Smith Fuller and 100 other citizens of De Witt County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. STRAIT: The petition of Hugh Thompson and 31 others,

of Minnesota, of similar import, to the same committee.

By Mr. TOWNSEND, of Pennsylvania: The petition of Joseph R. Smith, William S. Hamill, James M. Smith, and others, of similar import, to the same committee.

Also, the petition of M. Whitmore, Thomas J. Parker, W. Creese, and 160 other citizens of Allegheny, Pennsylvania, for the repeal of the check-stamp tax, to the Committee of Ways and Means.

By Mr. WILLIAMS, of Delaware: The petition of citizens of Sussex County, Delaware, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

## IN SENATE.

# MONDAY, January 29, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D. The Journal of the proceedings of Saturday last was read and approved.

SWEARING IN OF A SENATOR.

Mr. COOPER. The Senator-elect from Tennessee, Hon. James E. Bailey, whose credentials have heretofore been presented, is now present, and I ask that the oath of office be administered to him.

The PRESIDENT pro tempore. The Senator-elect from Tennessee will please present himself at the desk and be sworn.

Mr. Bailey advanced to the Vice-President's chair, escorted by

Mr. COOPER, and the oaths prescribed by law having been administered to him, he took his seat in the Senate.

## PETITIONS AND MEMORIALS.

Mr. CONKLING presented the petition of Charles A. Thompson, a sufferer from loss by the confederate cruiser Shenandoah, praying to be allowed to participate in the money awarded by the Geneva tribunal; which was referred to the Committee on the Judiciar;

He also presented the petition of Sophie Vincent, widow of Martin Vincent, late of Company E, Fourteenth United States Infantry, praying an amendment of the pension laws so as to allow arrears of pensions; which was ordered to lie on the table.

Mr. CONKLING. I present a petition of citizens of Westport New Mr. CONKLING. I present a petition of citizens of Westport New York, and a similar petition of citizens of Keeseville, Essex County, New York, praying the passage of a bill granting arrears of pensions. Do these petitions go to the Committee on Pensions?

Mr. INGALLS. A bill is pending on the subject.

The PRESIDENT pro tempore. The bill on that subject is now pending and the petitions will lie on the table.

Mr. WINDOM presented a joint resolution of the Legislature of Minnesota, in reference to the remonetization of silver; which was read and referred to the Committee on Finance, as follows:

read and referred to the Committee on Finance, as follows:

A joint resolution in reference to the remonetization of silver.

A joint resolution in reference to the remonetization of silver.

Whereas the House of Representatives of the Congress of the United States has recently by a large majority passed a bill to restore to silver coin the legal-tender character for all amounts, which it possessed from the foundation of our Government down to the year 1872, and the said bill is now pending before the United States Senate: Therefore

Be it resolved by the Legislature of the State of Minnesota: First. That our Senators in the Congress of the United States are hereby requested to use all proper efforts to secure the passage of said bill at as early a date as practicable.

Second. That they are also requested to secure such legislation as will enable all parties owning silver bullion to have the same coined at the mints of the United States, and without regard to the amount of silver coin in circulation.

Third. That it shall be the duty of the secretary of state to forward copies of this preamble and resolution to our Senators in Congress.

J. B. WAKEFIELD,

President of the Senate.

President of the Senate.

J. L. GIBBS,
Speaker of the House of Representatives.

Approved January 23, 1877.

STATE OF MINNESOTA, OFFICE OF SECRETARY OF STATE, Saint Paul, January 25, A. D. 1877.

I, J. S. Irgens, secretary of state of the State of Minnesota, hereby certify that the foregoing has been compared with the original on file in this office, and is a

True copy.

Witness my hand and the great seal of the State the day and year above written.

J. S. IRGENS,

[SEAL.]

Secretary of State.

Mr. McMILLAN presented a joint resolution of the Legislature of Minnesota, in favor of the passage of the bill (S. No. 547) for the relief of settlers upon certain lands in the State of Minnesota; which was referred to the Committee on Public Lands, and is as follows:

A joint resolution requesting the House of Representatives of our National Congress to pass Senate file No. 547, a bill for the relief of certain settlers on odd-numbered sections.

numbered sections.

Whereas an act of Congress approved June 22, 1874, granting rights to settlers on odd-numbered sections within the limits of the Saint Paul and Pacific Railroad, Brainerd and Saint Vincent extension or branches, has been held to be inoperative by the Secretary of the Interior;

And whereas a large number of worthy and needy settlers are thus rendered virtually homeless who are citizens of Minnesota;

And whereas the Senate of the United States, on the 30th day of June, 1876, pa-sed Senate file No. 547, a bill for the relief of all settlers along said extension, which is now pending before the House of Representatives: Therefore, Be it resolved by the house of representatives of the State of Minnesota, That the passage of said Senate file No. 547, for the protection of actual settlers opposite the said branch lines of road, is hereby urgently requested.

Resolved, further, That the secretary of state shall immediately forward copies of these resolutions to Senators and Representatives in Congress, and one copy to the Speaker of the House of Representatives.

J. L. GIBBS. Speaker of the House of Representatives.

J. B. WAKEFIELD,

Approved January 19, A. D. 1877.

STATE OF MINNESOTA, OFFICE OF THE SECRETARY OF STATE, Saint Paul, January 19, A. D., 1877.

I, J. S. Irgens, secretary of state of the State of Minnesota, hereby certify that the foregoing has been compared with the original on file in this office and is a true

copy.

Witness my hand and the great seal of the State the day and year above written.

J. S. IRGENS,

Secretary of State.

Mr. CHRISTIANCY presented the petition of Professor S. Fleming and 11 other citizens of Burr Oak, Michigan, praying for the imperative adoption of the metric system in all kinds of measurement required under the authority of the Federal Government; which was referred to the Committee on Finance.

Mr. ROBERTSON presented a resolution adopted at a meeting of citizens of Spartanburgh County, South Carolina; which was read, and referred to the Committee on Privileges and Elections, as fol-

At a meeting of the citizens of the eastern portion of Spartanburgh County, held at Gaffney City on 20th January, 1877, the following preamble and resolutions were unanimously adopted, the meeting being composed of citizens of both races and both political parties:

whereas D. H. Chamberlain, esq., in opposition to the will of the people as shown at the ballot-box the 7th November, 1876, and in open violation of the laws and constitution of the State of South Carolina, is now usurping the governorship of said State; and whereas General Wade Hampton did, on the aforesaid 7th November, 1876, receive a majority of all the votes cast for governor, as has been fully shown and set forth by a certificate signed by the secretary of state, with the great seal of the same attached thereto; and whereas Colonel W. D. Simpson and certain other persons running on the democratic State ticket did receive a majority of the votes cast for their respective offices: Therefore,

\*Resolved\*, 1. That we recognize General Wade Hampton as the duly elected governor of the State, and we hereby promise to give him and the government he represents all the material and moral aid in our power. We hereby pledge ourselves to respond cheerfully to his request for an installment of the taxes now due.

2. That we approve and commend his course thus far, and we have all confidence in him as our chosen standard-bearer.

3. That we do hereby earnestly and solemnly protest against all acts, orders, and proclamations pretending to be official, and coming from the aforesaid D. H. Chamberlain, esq. or from the unlawful body known as the "Mackey house," and we refuse to yield any allegiance or support to the so-called government of D. H. Chamberlain, esq.

4. That we earnestly desire a peaceable settlement of the existing difficulties and greater harmony between the races so long kept in antagonism by Federal and State misrule; and in order to bring about these results we pledge ourselves that in making our resistance to tyranny and usurpation we will avail ourselves of only those rights and privileges accorded to free citizens by the laws and constitution of our State and the United States.

5. That a copy of this preamble and resolutions be forwarded to Hon. T. J. Robertson, United States Senator, to be laid befor Preamble.

Mr. WITHERS presented the petition of Samuel P. Moore, M. D., of Richmond, Virginia, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. SPENCER presented the petition of Albert Cingrid, a citizen of Washington, District of Columbia, praying that an order be made directing the collector of taxes not to issue any deeds to the District or any other person of any of his property nor try to enforce the collection of taxes thereon by advertising or otherwise until his claims shall have been settled, and then to deduct the amount of such of said taxes as may then be due from the amount adjudged to him out of his said claims, &c.; which was referred to the Committee on the District of Columbia.

Mr. SARGENT. I have received resolutions of the Chamber of Com-merce of San Francisco with the request that they be presented to the Senate. They resolve that in the opinion of the chamber the inthe senate. They resolve that in the opinion of the chamber the interests of commerce and the prosperity of the country will be subserved by maintaining gold coin as the sole standard of values in all transactions above the sum of \$5; that the almost daily variation in the relative value of gold and silver is a strong and conclusive illustration of the maxim, taught alike by philosophy and experience, that no legislative enactment can maintain a fixed and permanent relation between gold and silver or any other two products of human industry. I believe there is a special committee to whom this subject has been referred, and the Committee on Finance also have charge of the matter. I move that these resolutions be referred to the Committee on Finance.

The motion was agreed to.

Mr. BOGY presented a petition of a number of citizens of Saint

Mr. BOGY. Presented a petition of a number of citizens of Saint Louis, Missouri, praying an amendment of the pension laws so as to allow arrearages of pensions; which was ordered to lie on the table.

Mr. BOGY. In this connection I wish to make an inquiry of the Senator from Kansas, [Mr. INGALLS,] who is chairman of the Committee on Pensions, as to what has become of the bill which passed the House some time ago securing to soldiers who served in the Mexican war a pension. I believe the bill is before his committee.

Mr. INGALLS. It is still before the Committee on Pensions.

Mr. BOGY. I have received many letters upon that subject from a

Mr. BOGY. I have received many letters upon that subject from a number of my constituents urging the passage of that bill. Therefore I make the inquiry in the hope that it will be acted upon by the

Senate at an early day.

Mr. INGALLS. The bill to which the Senator from Missouri refers is still before the committee, but I take this occasion to say that I gave notice last week that on this morning I would call up for consideration the bill granting additional pension to the soldiers of the war of 1812 and also arrears of pension to those now upon the roll. I observe by the Calendar that the Pacific Railroad bill is the unfinished business for this morning, and I wish now to renew the notice I gave last week that, upon the expiration of the consideration of the bill now before the Senate, I shall ask the Senate to proceed to the consideration of the pension bill.

Mr. ALCORN. I present the memorial of E. H. Crump, of Missis Mr. ALCORN. I present the memorial of E. H. Crump, of Mississippi, praying the enactment of a law providing for the payment of United States Treasury warrants Nos. 4926 and 4669, and I move that it be referred to the Committee on Claims; and I will state to the committee that duplicates of the warrants are filed with the memorial, and that the petitioner will present the originals before the com-

The motion was agreed to.

Mr. WRIGHT. I present a petition of Russel Gilbert and many others, of Wyoming, Jones County, Iowa, reciting that the war taxes, both heavy and unequal in their burden, are imposed on the national banks, State banks, savings-banks, and private bankers of this country, which taxes have been for several years productive of great commercial injury, and praying that these war taxes may be entirely removed. I move the reference of the petition to the Committee on Finance.

The motion was agreed to.

Mr. PADDOCK presented a petition of citizens of Nebraska, praying the repeal of the law imposing a tax on the deposits, circulation, and capital of all banks; which was referred to the Committee on

Mr. CAMERON, of Wisconsin. I present the petition of L. A. Hardacker and others, of Ellington, Outagamie County, Wisconsin, praying the passage of the bill allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pensions from the date of discharge of the soldier. A bill has been reported upon this subject, and I move that this petition lie on the table.

The motion was agreed to.

Mr. HOWE presented the petition of Frederick Hinkel, a naturalized citizen, praying the passage of an act of Congress absolving him from his allegiance to the Government of the United States; which was referred to the Committee on Foreign Relations.

He also presented the petition of Angeline Raish, praying to be al-

lowed arrears of pension; which was ordered to lie on the table.

He also presented a resolution of the Milwaukee Clearing-House Association, favoring the repeal of the laws imposing a tax on the deposits, circulation, and capital of all banks; which was referred to the Committee on Finance.

He also presented a petition of citizens of Wisconsin, praying an amendment of the pension laws so as to allow arrearages of pension; which was ordered to lie on the table.

Mr. DAVIS. I present a memorial signed by a number of citizens of West Virginia in favor of the electoral bill, or the "compromise bill" as it is known. The memorial is signed by a large number of the business men of West Virginia irrespective of party, and deserves the respect of Congress and the nation. As that bill has passed the Senate, I move that the memorial lie upon the table.

The motion was agreed to.

Mr. WRIGHT. I present the protest of Hon. Samuel Merrill and many other citizens of Des Moines, Iowa, against the Edmunds bill for counting the electoral vote, and requesting the Iowa delegation

in Congress to use their influence against it.

In sending this protest to the desk of the Secretary that it may there lie upon the table, the supposed obnoxious bill having passed, I ask the indulgence of the Senate while I say one word.

This protest is signed by near one hundred of the best citizens, including one lady, of my State and of the city where I reside. I believe they are all republicans, and among them I find an ex-governor, neve they are all republicans, and among them I and an ex-governor, ex-lieutenant-governor, State officers, those holding and well filling places of the highest official trust, and citizens of the very highest respectability. They are my immediate neighbors and my warmest friends, personal and political. Than these protestants I know but few if any, in the State or elsewhere, whose opinions are entitled to more respectful consideration, whose judgments would more command my respect. I know they are intelligent, thoughtful, and most worthy and law-abiding sitizens.

and law-abiding citizens.

If, as they assume, the bill to which they refer "ignored the decision of the electors and permitted a third party and possibly one judge of the Supreme Court to elect a President"—I say if I granted judge of the Supreme Court to elect a President "—I say if I granted this I should be ready to concur most heartily in their conclusion as to "the unconstitutionality of said bill and that it tended most clearly to subvert the rights of the States." The protest itself, however, shows beyond any fair doubt that these my good friends misapprehend the entire scope and purpose of the legislation which they condemn, and that their objections are hence quite consistent and reasonable enough. Indeed upon their assumption it would command my

approval, and I doubt not that of my colleague and of every member of

approval, and I doubt not that of my colleague and of every member of our delegation.

I voted for the bill, voted for it with, as I trust, a full understanding of its provisions and with the belief, too, that under it a result would be reached which, as nearly as possible, would command the respect and acquiescence of the people of this great nation. I entertained no doubts, nor do I now, of its constitutionality, nor any of its expediency. And let me say that no shadow of fear, no dread of consequences, no apprehension of possible resistance to any other plan or method of counting the vote even for a moment crossed my mind.

method of counting the vote, even for a moment crossed my mind.

I knew quite well then, as I do now, that the earnest, ever-faithful, true radical people of Iowa of my party would at first be almost unanimously opposed to it. They believe, as I do, that but one result can be the true and honest one, and are hence inclined to look with suspicion upon anything which tends to complicate or in their opinion render the final result in the least doubtful. But I know their intelligence, their readiness to hear all sides and decide as justice and the behests of the law shall lead them. To the saving common sense of this reasonable and intelligent people I shall commit the final judgment. If we cannot rely upon this good sense of all the people in this country, we cannot upon anything. Than the prac-tical wisdom of the whole body of our citizens, there is nothing upon which we can so surely rely for a satisfactory solution of the great problems before us, upon nothing else so safely depend to sustain the future of the great Republic. Thus feeling and thus believing, with a confidence that admits of no shadow of doubt, I submit my action upon this as upon all measures, knowing that if I err, as I do often, the relative to the re the sober judgment of the people is ever, in the end, to be trusted. That this will be so upon the measure which my good friends now condemn, I do not and will not entertain a doubt.

Let the protest go to the table, as the bill has already passed. The PRESIDENT pro tempore. The memorial will lie on the table.

#### COUNTING OF THE ELECTORAL VOTES.

Mr. CONOVER. I am authorized to announce that the President of the United States has signed the bill (8. No. 1153) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, and will send a special message to-day announcing the fact and his reasons therefor.

## BILLS INTRODUCED.

Mr. HOWE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1196) to absolve Frederick Hinkel from his allegiance as a citizen of the United States of America; which was read twice by its title, and referred to the Committee on Foreign Re-

Mr. SARGENT asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1197) for the relief of Eli Teegarden; which was read twice by its title, and referred to the Committee on Public

Mr. ANTHONY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1198) authorizing the printing and binding of a catalogue of the National Medical Library, under the direction of the Surgeon-General United States Army; which was read twice by its title, and referred to the Committee on Printing.

Mr. CAMERON, of Wisconsin, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1199) to establish a post route in Wisconsin; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Royals.

to the Committee on Post-Offices and Post-Roads.

Mr. BURNSIDE asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1200) to grant a pension to Margaret Hunter Hardie, widow of James A. Hardie, inspector-general United States Army; which was read twice by its title, and referred to the Committee on Pensions.

Mr. ALCORN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1201) to authorize the United States Treasurer to take up, cancel, and pay certain United States warrants therein described; which was read twice by its title, and referred to the Committee on Claims.

## PAPERS WITHDRAWN.

On motion of Mr. CLAYTON, it was

Ordered, That Patrick Sullivan have leave to withdraw his petition and papers rom the files on leaving copies of the same with the Secretary.

## AMENDMENT OF RULES.

Mr. INGALLS. A few days since I offered a resolution to amend

Rule 43. I ask the present consideration of the resolution.

The PRESIDENT pro tempore. If there be no further morning business, the Senator from Kansas moves that the Senate proceed to the consideration of the resolution which he has indicated

The motion was agreed to; and the Senate proceeded to consider the following resolution, submitted by Mr. INGALLS on the 26th in-

Resolved. That Rule 43 be so amended as to read, after the word "arranged," in line 13, as follows:

Motions to adjourn, to take a recess, to proceed to executive business, and to lay on the table, shall be decided without debate.

Mr. CONKLING. Not having been able thus far to read our new rules, I beg to make an inquiry of the Chair. Has the rule been so

changed that a motion is no longer in order that when the Senate

adjourn it be to meet at a certain fixed time?

The PRESIDENT pro tempore. The rule is in force to allow a motion that when the Senate adjourn it be to meet at a certain time. Mr. CONKLING. And that is a motion separate from the motion

to adjourn?

The PRESIDENT pro tempore. It is.

Mr. CONKLING. If the amendment prevails, where will that motion come in, in its order of precedence, if it has any?

Mr INGALLS. With the permission of the Chair—
The PRESIDENT pro tempore. The Secretary will read the resolution submitted by the Senator from Kansas.
The Chief Clerk read the resolution.

The PRESIDENT pro tempore. The Secretary will read the rule as it now stands.

The Chief Clerk read as follows:

43. When a question is pending no motion shall be received but—

43. When a question is pending no motion shall be received but—
To adjourn,
To adjourn to a day certain, or that when the Senate adjourn, it shall be to a day
certain,
To take a recess,
To proceed to the consideration of executive business,
To lay on the table,
To postpone indefinitely,
To postpone to a day certain,
To commit,
To amend.

To amend :

To amend; which several motions shall have precedence in the order in which they stand arranged; and the motion relating to adjournment, to take a recess, to proceed to executive business, and to lay on the table, shall be decided without debate.

Mr. CONKLING. Will the Secretary read again now the three lines enumerating in the rule as it stands the motion to adjourn ?

The Chief Clerk read as follows:

The motions relating to adjournment, to take a recess, to proceed to executive usiness, and to lay on the table shall be decided without debate.

Mr. CONKLING. But before that the enumeration of the motions where the words occur, "to a day certain." The Chief Clerk read as follows:

To adjourn ; To adjourn to a day certain, or that when the Senate adjourn, it shall be to a day

certain;
To take a recess;
To proceed to the consideration of executive business;
To lay on the table;
To postpone indefinitely;
To postpone to a day certain;
To commit;
To amend;
which several motions shall have precedence in the order in which they stand arranged.

Mr. CONKLING. As I understand, then, the first motion, the monaked motion to adjourn.

The PRESIDENT pro tempore. The Senator is correct.

Mr. CONKLING. Next, the motion to adjourn to a day certain; and next, that, when the Senate adjourn, it be to a day certain.

next, that, when the Senate adjourn, it be to a day certain.

The PRESIDENT pro tempore. They stand alike in one paragraph:
"to adjourn to a day certain, or that, when the Senate adjourn, it shall be to a day certain." That has the second rank in priority. The first, to adjourn absolutely, a simple adjournment, has priority. This is second; to take a recess is third; to proceed to the consideration of executive business is fourth.

Mr. CONKLING. Now if I do not trouble the Chair too much, may I inquire, suppose a Senator rises and moves that the Senate adjourn until the day after to-morrow; another Senator says, "I wish to move that when the Senate adjourn. it be until the day after to-

to move that when the Senate adjourn, it be until the day after to-morrow," his purpose being that the Senate continue to sit to-day, but that when the adjournment occurs, it be till the day after to-morrow—as between those motions which has priority by the rule?

The PRESIDENT pro tempore. The one made first. As the Senator will see, the object is that, in case the Senate should find itself without a quorum, a simple adjournment, on a prior resolution of that kind to adjourn it to a day fixed by the resolution, would operate to adjourn it to the time fixed. This also gives a Senator the opportunity of moving at a late hour in the day, at the time the Senate wishes to adjourn, to adjourn to a day certain, which has not been the case under the former rule.

Mr. MERRIMON. I suggest to the broadel.

Mr. MERRIMON. I suggest to the honorable Senator from Kansas that he allow this proposed amendment to go to the Committee on Rules. I think they will act upon it very promptly, and they will have opportunities to see exactly its bearings on all the various rules

as they now exist.

Mr. INGALLS. I have no objection to the course being taken which is suggested by the Senator from North Carolina; but the Senator from New York evidently misapprehends the purpose of the amendment. The question arose on some day last week whether a amendment. The question arose on some day last week whether a motion to adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain, was a debatable motion, or whether it came in the same category with simple motions to adjourn, which have been held not to be debatable. The language of the new rule is "and the motions relating to adjournment \* \* \* shall be decided without debate," and the Senator then temporarily occupying the chair held that that language was sufficiently comprehensive to include, not only the motion to adjourn, but the motion that when the Senate adjourn it adjourn to a day certain, or that it adjourn to a

certain day. As I understood from one member of the Committee on Rules, it was not the intention of the committee in adopting the new rules to preclude debate upon the motion to adjourn to a day certain or that when the Senate adjourn it be to a day certain, but merely to limit debate on the simple question of adjournment. But, as the Senator from North Carolina desires to have the amendment go to the Committee on Rules, I certainly have no objection.

The PRESIDENT pro tempore. The Senator from North Carolina moves that the resolution be referred to the Committee on Rules.

The motion was agreed to.

## MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed a bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, in which it requested the concurrence of the Senate.

#### ANN LYNCH.

Mr. INGALLS. If there is no further morning business, I ask for the present consideration of Senate bill No. 1143. It is merely a private pension bill that I omitted the other day.

There being no objection, the bill (S. No. 1143) for the relief of the legal heirs of Ann Lynch was gead the second time and considered as in Committee of the Whole. It directs the Secretary of the Interior to restore to the pension-roll the name of Ann Lynch, deceased, widow of James Lynch, private Company A, Sixty-seventh Regiment New York Volunteers, and to pay to her legal heirs the pension, at the rate of \$8 per month, with \$2 for each minor child until it becomes sixteen years of age, subject to the provisions and limitations of the sixteen years of age, subject to the provisions and limitations of the pension laws.

The bill was reported to the Senate, ordered to be engrossed for a

third reading, read the third time, and passed.

## GOVERNMENT OF SOUTH CAROLINA.

Mr. ROBERTSON. I move that the Senate proceed to the consideration of the resolution offered by the Senator from Georgia [Mr. Gordon] recognizing Wade Hampton as governor of South Carolina, for the purpose of allowing me to make some remarks thereon.

The PRESIDENT pro tempore. The resolution will be read.

The Chief Clerk read the following resolution, submitted by Mr. Conney on the 20th December 1876:

GORDON on the 29th December, 1876:

Resolved by the Senate, That the State government now existing in the State of South Carolina, and represented by Wade Hampton as governor, is the lawful government of said State; that it is republican in form; and that every assistance necessary to sustain its proper and lawful authority in said State should be given by the United States, when properly called upon for that purpose, to the end that the laws may be faithfully and promptly executed, life and property protected and defended, and all violators of law, State or national, brought to speedy punishment for their crimes.

Mr. INGALLS. Is it proposed to ask for a vote on that resolution this morning? Mr. ROBERTSON. No, sir.

The PRESIDENT pro tempore. The question is on proceeding to the consideration of the resolution, on which the Senator from South

Carolina holds the floor.

Mr. ROBERTSON. Mr. President, I desire to make some remarks upon the resolution introduced by the Senator from Georgia recogniz-

ing Wade Hampton as governor of South Carolina.

The night previous to the 25th of November last, the day of the meeting of the newly elected Legislature, the State-house was garrisoned by United States troops. On the 25th no white person was admitted unless he had a pass from one Jones, clerk of the former house, or from John B. Dennis, ex-superintendent of the penitentiary, both republicans, the latter the special representative of Governor Chamber-

At a quarter before twelve m. the democratic members-elect, numbering sixty-four, appeared at the door of the State-house, which was guarded by United States troops, acting under the direction of Dennis. Upon their demand of admission they were informed by Dennis that they could not enter unless they had certificates from the secretary of state. Thereupon the democrats proceeded to read a protest. Captain Keller of the United States Army, after a conference, said that all persons with certificates either from the secretary of state or the supreme court could enter. The armed guard of United States sol-

supreme court could enter. The armed guard of United States soldiers then examined the certificates one by one, and the democrats passed into the lobby of the house.

The democratic members, having thus passed the guard at the outer door and entered the lobby, proceeded in a body to the door of the hall of the house of representatives, on the second story of the building, and demanded admittance, presenting their certificates of election from the supreme court. A squad of United States soldiers guarded the door. A person assuming to act as doorkeeper refused them admission, declaring the supreme court certificates to be insufficient. admission, declaring the supreme court certificates to be insufficient.

admission, declaring the supreme court certificates to be instinctent. The democrats read a protest at the door of the house and retired. The protest, among other things, stated:

We have presented ourselves with the judgment of the highest court of South Carolina, certified by its clerk, with the great seal of the court attached, as to our right to participate in the organization of the house. We are refused, by the orders of said Dennis, admission to the hall, except upon his pass, the pass of Jones, or the certificate of Hayne, secretary of state, who is now under the condemnation of the supreme court for refusal to issue certificates in accordance with its judgment and wenders. ment and mandate.

We protest against the legality of the proceeding, and especially against the Army of the United States being placed for the purpose of this exclusion under the command of one John B. Dennis, a partisan of Governor Chamberlain.

In the mean time the republican members of the house, fifty-nine in number, had without any obstruction taken possession of the hall of the house of representatives and proceeded to organize by electing a speaker and clerk. The republican house, as organized, contained only five white members.

The democrats, accompanied by one republican, being sixty-five in all, assembled in another hall and organized by electing a speaker and other officers. It is proper to remark that the house of representatives consists of one hundred and twenty-four members, of which

consequently sixty-three is a majority and quorum.

The constitution of South Carolina provides as follows, article 11,

section 4:

The house of representatives shall consist of one hundred and twenty-four mem-

And in section 14:

Each house shall judge of the election returns and qualifications of its own members; and a majority of each house shall constitute a quorum to do business.

From the facts already stated it appears that while the United States guard held the door of the State-house, and so prevented the democrats from entering, the republicans, a minority of the house, under protection of the military, organized as the house of represent-

It is to be observed that in the case before the supreme court of the State, heard before November 28, the court had determined that the persons who had received the highest number of votes on the face of the returns from the counties of Edgefield and Laurens were entitled to seats, at least so far as to participate in organizing the house. It was not denied that these persons were democrats. Yet these persons were refused admission to the hall of the house and were denied all participation in the organization of the house by a so-called door-keeper acting under the illegal authority of a minority of the members-elect, which illegal action was enforced by the bayonets of United States soldiers. It is to be observed that in the case before the supreme court of the

States soldiers.
On the 29th of November, the Mackey house, by which term I designate the republican house, unseated the five democratic members from Barnwell County, whose election had been conceded by the board of county and State canvassers, and who held the certificate of the secretary of state, and admitted the five defeated republicans. This was done on mere exparte proceedings, without the democrats who held the certificates of the republican secretary of state being notified or heard in their own defense. This was accomplished by a vote of 45 yeas to 14 nays, and in spite of the protest of several of the members. It is worthy of observation that one of the active participants in this proceeding was one D. A. Straker, a colored member from the British island of Antigua, and who came to the United States since the late civil war ended, and to South Carolina about one year ago.

the late civil war ended, and to South Carolina about one year ago.

It is proper here to note, as a part of the history of these events, that in the midst of these troubles Judge Bond, of the circuit court of the United States, appeared in Columbia, at least some ten days in advance of the regular session of his circuit court, and, on a petition for the writ of habeas corpus, released the members of the board of State canvassers from the imprisonment they were enduring by reason of contempt on their part as State officials in refusing obedience to the mandate of the supreme court of the State.

On the 30th of November the democrats, who had organized a separate house of representatives, took their seats in a body in the hall of the house of representatives where the Mackey house was sitting. The curious spectacle of two speakers and two distinct organizations

was thus presented. About three o'clock of this day, November 30, General Ruger, in command of the United States forces, sent one of his staff-officers to the speaker's stand and notified Mr. Wallace, who had been chosen speaker by the democrats, that at twelve o'clock the next day the demo-cratic members from Edgefield and Laurens Counties would be re-quired to leave the hall of representatives. This threat was, however, not carried out by General Ruger.

On the 4th of December a curious incident occurred. It was stated by a member on the floor in the house of representatives, and not denied, that Silas Cave, colored, who had been seated as a member of the Mackey house, had been fraudulently personated by another negro, who had taken his seat and passed off as Silas Cave, Cave being still at home in Barnwell.

On the same day Hamilton and Myers, two member of the Mackey

house, withdrew and joined the democratic house.

On this day also Mackey, chosen speaker of the republican house, notified Wallace, speaker of the democratic house, that he intended to eject the Edgefield and Laurens members from the House by means of the State constabulary. To avoid this threatened violence the democratic house withdrew from the State-house. December 6 two of their members, Westberry and Bridges, and a few days after two members from Fairfield County, all of whom had qualified in the Mackey house, joined the democratic or Wallace house. This gave the Wallace house sixty-three members who had certificates from the secretary of state. Including the eight members from Edgefield and Laurens this house now had seventy-one members. Sixty-three holding certificates from the secretary of state was the number which President Grant held necessary to constitute a lawful house.

In the supreme court of the State on that same day judgment was rendered in the mandamus case of Speaker Wallace vs. Hayne, secretary of state, and Mackey, claiming to be speaker, the court adjudging that Wallace was the legal speaker of the legally constituted house of representatives, and that Mackey was not the speaker.

December 8, in an interview with a committee of the democratic

house, General Ruger said:

Treops, as they are now placed, are to preserve peace and to prevent interference with the house which Chamberlain recognizes as legal.

General Ruger further said:

The orders [to the troops] come through Chamberlain, recognized by the Presi-

It is to be noted that the laws of South Carolina make no provision for the organization of the house by the clerk. The persons who had received the highest number of votes were the persons to take part in the organization of the house. The late clerk had no more authority than any other private person to determine who were members. Governor Chamberlain, in making his defense for using the troops to exclude the democrats from the house, says:

It was evidently my duty to enforce the authority of the clerk, if I had the

But the clerk had no authority. No mode of organizing the house is provided by law in South Carolina. The clerk, whose term of office had expired, had no right to interfere in any way. The house could only be organized legally by those persons who from the returns appeared to have the highest number of votes, and this was so held by the supreme court. It was objected that the persons receiving the highest number of votes in the counties of Edgefield and Laurens were not lawfully elected. This was a matter which under the provisions of the constitution of South Carolina could only be determined by the house itself after being organized. The returns from the county commissioners of election, the majority of whom were republicans, showed that democrats were elected from Edgefield and Laurens. The house itself was the only judge of their election. The nouse itself was the only judge of their election. The supreme court decided that these persons had a prima facie right to their seats. This decision being the law of the State, the action of the late clerk, Jones, and Governor Chamberlain, in excluding these members from the hall of the house by the use of Federal bayonets, was as absolutely illegal as anything we can conceive of.

In order to the better comprehension of the situation in South Carelina, it must be kept in mind that the election law provides for the appointment of managers of election at each poll, county canvassers of elections, and a State board of commissioners of elections. These were all appointed by republican authority. The majority of the or elections, and a State board of commissioners of elections. These ware all appointed by republican authority. The majority of the county commissioners and managers of elections were republicans. The board of State canvassers, certain State officials, were all republicans, and nearly all of them candidates for re-election.

The returns of the boards of county canvassers show the following result for governor: Hampton, 92,261; Chamberlain, 91,127.

The same returns show the election of the Hayes and Wheeler elect-

The following statement of the decision of the supreme court of the State, heretofore referred to, is submitted as containing useful in:

the State, heretofore referred to, is submitted as containing useful information:

1. Constitutional powers of the court.—Article 4, section 4, of the Constitution, contains the grant of power to the supreme court. After the words giving it appellate jurisdiction, it is provided as follows: "The said court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other original and remedial writs as may be necessary to give it a general an pervisory control over all other courts in this State."

2. Interpretation of its powers by the court.—This proviso has been thus interpreted by the supreme court in the case of Ex parte Carson (5 So. Ca. Rep., 118.) the Cunningham. Wagener protest case. The section referred to invests the court in the exercise of original powers with anthority to issue writs of injunction, mandamus, quo varranto, and habeas corpus. These are expressly named. They are not confined in any way to the subject matter upon which they may act, either in regard to any particular persons or bodies who are to be affected by their enforcement. The grant of power in relation to them is without restriction, and whatever result may be accomplished through their action by any court having the undoubted right to issue them may be attained in their issue by order of this court.

3. What the court has now done.—The court has so far only issued a writ of mandamus to the board of State canvassers, compelling them to issue certificates of election to all members of the Legislature who appeared, from the returns of the county canvassers, to have received the highest number of votes. It is plain, therefore, that if any court would have the power to issue a mandamus to the board to do this act, the supreme court, under the decision in Carson's case, has such power.

4. The statutory powers of the board.—Chapter 8, section 26, of the general statutes, defines the jurisdiction of the board as follows: "Upon such statements [those of the county canvassers] they shall proceed

Mr. Presisent, the returns of the county canvassers, made to the board of State canvassers, showed the election of Hampton as governor, and the election of other State officers, the election of a minority of the State senate, and a majority of the members of the house of representatives by the democrats. The board of State canvassers, the majority of whom were candidates for offices, in violation of the mandate of the supreme court, refused certificates of election to eight of the democrats elected members of the house of representatives and two democrats elected to the senate.

democrats elected to the senate.

The United States troops, on the day of the assembling of the Legislature, excluded from the hall of the house all members-elect who did not hold the certificates ordered by the board of State canvassers, which certificates were signed by the secretary of state.

A minority of the lawfully elected members, being republicans, in violation of the law declared themselves a quorum and elected a speaker, Mackey. This minority thereupon admitted as members defeated candidates from counties where, according to the declaration of the heard of State canvassers, the democratic candidates were elected. board of State canvassers, the democratic candidates were elected.

It is proper to call attention also to the following facts:
First. There was a large number of deputy marshals appointed by
the United States marshal to preserve order at the polls and prevent intimidation. The number so appointed I have heard estimated as high as twenty-five hundred.

Secondly. The United States troops were stationed at numerous places to prevent intimidation. These troops were stationed at the points indicated by Governor Chamberlain.

When we consider that the majority of the managers of election at every precinct and the majority of the county canvassers were republicans, that the official patronage of the State was controlled by the republican governor, that the influence of the United States officials is on the side of the republicans, it would seem that the republicans d certainly some great advantages in the election. The democrats had certainly some great advantages in the election. The democrats had to struggle against the power of the State and Federal adminis-

As to intimidation, I do not think there was intimidation, so far as

As to intimidation, I do not think there was intimidation, so far as I was able to learn of the blacks, by the whites on the day of election. I think the officers of the Army who were present will so state.

In the first stage of the canvass, in some localities, there may have been, and I think were, efforts made to intimidate, but this policy was, as I have been informed, condemned by General Hampton, and abandoned some time before the election. Hampton, as I understand, justified on winning the blacks by nerrousing and appeals to their ininsisted on winning the blacks by persuasion and appeals to their in-terests, and repudiated the idea of intimidating them. Truth compels me to add that during the canvass in Charleston and Beaufort Counties the colored republicans were violent and aggressive.

As to intimidation, my opinion is very decided that the intimidation by the blacks of the blacks was far more persistent, universal,

and effectual than intimidation of blacks by the whites. The vio-lent threats of the blacks against those of their own color who were disposed to vote the democratic ticket did, I am confident, deter many blacks from voting the democratic ticket. This coercion was al-most everywhere, and was something fearful. There was a strong feelmost everywhere, and was something fearful. There was a strong feeling among the majority of blacks that if the democrats succeeded their rights were in danger; many believed they would be reduced to slavery. This apprehension was very much enforced by repub-lican tactics, and the republican blacks were taught to look upon democratic blacks as traitors

In confirmation of what I have said, I desire to have incorporated in my remarks the official report of Colonel Henry I. Hunt, Fifth Artillery, United States Army:

Artillery, United States Army:

WASHINGTON, D. C., November 27, 1876.

Assistant Adjutant-General, Department of the South, Atlanta, Georgia.

COLONEL: I have the honor to report, for the information of the colonel commanding the department, the operations of my command from the time it left Summerville, South Carolina, to aid the United States marshal in his duties connected with the election of Tuesday, November 7.

Under specific instructions, I sent Captain Randolph, Fifth Artillery, and twenty men to Beaufort; Lieutenant Baldwin, Fifth Artillery, and ten men, to John's Island; Lieutenant Edgerton, Second Artillery, and eight men, to Adams Run; Lieutenant Jefferson, Fifth Artillery, with ten men, to Strawberry Ferry, and Lieutenant The Artillery, with ten men, to James Island, to be guided by the general provisions of General Orders No. 36, from the headquarters of the Army. All these detachments and the two foot batteries of my command, consisting of Frank's Battery, First Artillery, and Kinsie's, Fifth Artillery, we put in motion so as to reach their respective destinations on the 6th instant, the day before the election. These detachments, except Sherman's, were taken from Randolph's Battery C, Fifth Artillery. They all returned, as directed, on the 9th to Charleston. From the reports of these officers it appears that no actual violence occurred at the polls requiring their interposition. But their presence in the vicinity was doubtless of service.

Captain Randolph states that he found neither marshal nor denuty at Beanfort.

the polls requiring their interposition. But their presence in the vicinity was doubtless of service.

Captain Randolph states that he found neither marshal nor deputy at Beaufort, and that it was reported to him that the United States supervisor was stopped on his way to the polling-place, and, upon showing his papers to the negroes who stopped him, had them taken from him and destroyed, and was obliged to fly for his lite.

Lieutenant Adams reports that at Strawberry Ferry a company of colored men, about forty in number, were marched to the polls with arms, under a leader, said to be one John Lowry, colored, though no riot or disturbance occurred.

Lieutenant Baldwin states that no disturbance connected with the election occurred on John's Island; that leading citizens informed him, and he believed, that this was due to the presence of troops.

Lieutenant Edgerton reports that no disturbance occurred at Adams Run, and that he has every reason to believe that the presence of troops prevented a serious one taking place at the polls.

Lieutenant Jefferson, immediately on his arrival at Walterborough on the evening of the 6th in a conference with the United States marshal. Commissioner Glover,

the intendant of the town, and the leaders of both political parties, learned that while they had no apprehensions of disorder at Walterborough they believed that there would be trouble at Blue House polls. Acting on this he marched early next morning to that place, and says he has no doubt that their arrival prevented serious

morning to that place, and says he has no doubt that their arrival prevented serious trouble.

In the last three cases these officers report that the danger arose from the disposition of the republican negroes to interfere with those of their own color who desired to vote the democratic ticket. Lieutenant Sherman found a feverish and excited state of feeling existing at James Island, but the presence of his command excited state of feeling existing at James Island, but the presence of his command restored confidence and no disturbance occurred.

Frank's and Kinsie's Batteries reached Charleston on the afternoon of the 6th, and were stationed at the Citadel under the immediate command of Captain Frank. On the morning of the 7th a detachment under Lieutenant Clark, First Artillery, was stationed at Carolina Hall, in the lower part of the town, and another under Lieutenant Adams at the arsenal, (Charleston barracks.) From these two points aid could be readily sent to the deputy marshals if required. Frequent calls were made because of threatened disturbances, but on the arrival of troops quiet was found to prevail, and order was soon restored. The troops were not actually used, I believe, in any case. The election on the whole in the State was remarkably quiet. I visited the voting-place where trouble was most expected, and found good order prevailing until toward evening, when one or two noisy and riotous bands of colored men were gathered at the polls, and these proceeded to parade the streets in a disorderly manner; but, as a whole, the city was quiet, and during the night peaceful.

olored men were gathered at the polls, and these proceeded to parade the streets in a disorderly manner; but, as a whole, the city was quiet, and during the night peaceful.

On the morning of the 8th nothing material occurred. Everything appeared on the surface to be as usual in the town, and I gave directions for the troops to return by the 3 10 p. m. train to their camp at Summerville, unloss I sent different orders. About one p. m., I called on the United States marshal, (Wallace,) who stated that everything was quiet, except a report from Monnt Pleasant that apprehensions existed there from the presence of a company of armed negroes, who had arrived as guard for the poll-boxes. This report the marshal considered exaggerated, stated that the duties of the troops with regard to the elections were over, that I could safely go to Summerville, and that if disturbances did occur he would so telegraph. I then proceeded to the mayor's room at the guard-house, or main police station. He was not there, and, on inquiring of the officers in charge and others of the police, I was told the city was perfectly quiet. Opposite the police station is the court-house, corner of Broad and Meeting, on both fronts of which, and at the city hall, opposite to it on Meeting street, there were large numbers of negroes assembled, and there were gatherings of the same class along the north side of Broad street, extending toward the post-office. They were quite numerous opposite the News and Courier office, where the bulletin-board was exposed. I crossed Broad street from the station-house to the court house, walked among the crowd there, and nothing was done or said to which I could attach any importance in itself, yet the excitement and appearance of these men were such that I apprehended that mischief was brewing. I, therefore, followed down the street toward the post-office, observing the crowd closely, and returning to the city hall in the same way, and was thoroughly convinced that there would be trouble, although there was nothin

peacetable. Taking into Broad street, as approximate the statement with meant he informed me that there was a fight going on near the Charleston Hotel. I hurried up to that point and found that the affair was over and the police taking off one or two prisoners.

After sending off a dispatch from the hotel I was returning toward Broad street when I perceived a commotion there, and, upon inquiry, learned from a man running up Meeting street that there was a sections fight going on in Broad street, and that the negroes were firing into the News and Courier office. I sent for the troops at the citadel to hurry down, for I could now hear firing, and saw it was extending westwardly along Broad street. So soon as I reached the court-house I found the firing was heavy near King street, and started toward it, when a policeman ran out of the station-house and asked me to come in there. Immediately three or four negroes on the north side came off the sidewalk and told me to keep on if I desired, that "I would be safe anywhere." I, however, at the request of the policeman, went to the station-house, where the officer in charge was getting out his men, and he appealed to me for assistance in such terms as led me to be lieve that he felt himself too weak to control the riot.

By this time a number of gentlemen, young and old, had arrived and offered their services to me. I informed the police officer that the troops were on their way, but that if he desired the services of those citizens they were at his disposal. Its said he would be glad to have them. They fell in with his force, and as I was giving some directions he interposed, saying in substance that the matter was in his hands. He then started off when I almost immediately heard complaints that the policemen were firing on and bayoneting quiet white people. The troops soon after arrived at the station-house, and additional armed white citizens also responded. Some one of the civil authorities, as I supposed, I do not remember who, then told me that it was essential th the station he all dispersed.

After the conflict had ceased General James Conner proposed to the mayor that they should go through the streets together and direct all persons, white and black, to go to their homes. This proposal was accepted by the mayor and proved effective. In the nean time information was received that at the commencement of the riot boats were started off to James Island for re-inforcements of negroes, and the mayor and General Conner took steps to prevent their landing.

When all this had been done, I proposed sending patrols of soldiers through the streets at intervals during the night to prevent further assemblages, to insure the peace, to which the mayor objected decidedly, saying he wished no patrols of soldiers in the streets. I then ordered the troops back to the citadel, took a carriare, and drove through the city to satisfy myself that all was quiet. There was no disturbance during the night.

Early on the morning of the 9th, Major Berlin, of Charleston, who was acting as my aid, reported that on going to his office on the wharf, near the post-office, he found several hundred longshoremen assembled; they were being harangued by several persons and appeared excited and "ugly." He, therefore, went to the station-house, reported that had the same and asked that means should be taken to prevent evil consequences. He was answered that it was the usual hour for their assembling for work, and that they could not the foot of Broad street. Although it was the hour at which the streets are full of drays and carts hauling cotton and stores from the depots, but one or two were to be seen, and the streets seemed to be descried. On my arrival near the post-office crowds of negroes clongshoremen) were pouring into Broad street shouting "No work to-day." Several stevedores then reported to me that they could get no hands, and work on the whares was stopped. I referred them to the mayor. It was reported to me at the same time that some of the negroes called out as they passed along the streets, "Now is the time to go for them,

difficulty by those present in the room; that they ought to be sent away at once, for any fool or knave might at any moment start a riot, which it would be impossible to control. To this last proposition an emphatic assent was given by many in the room.

The mayor then stated that the colored people were afraid to separate; that they were afraid of the whites. I replied that I did not think there would be any danger, but that if that was the fear I would take such measures that I would guarantee their being able to disperse in safety. He replied that I dould not so guarantee their being able to disperse in safety. He replied that I could not so guarantee their being able to disperse in safety. It is a proposed that I could not so guarantee them; but as the question was asked me, and with the evident concurrence of the leaders present, I amswered, because I had no control over the colored people, nor could I appeal to their reason and intelligence under the circumstances; while their leaders there present could, without trouble, send them to their homes. On his again intimating that I should be able to guarantee the whites against the colored people, if I could guarantee the colored people against the whites, I told him the cases were different; that for months these negroes had been taught and firmly believed that if General Hampton was elected governor they would at once be remanded to slavery; that the dispatches now coming in, announcing majorities for Hampton, were to their apprehensions actual sentences into slavery; that their excited fears, however unfounded in truth, were beyond any control, and I would not give any guarantee that I did not feel able to fulfil, especially in so grave a matter as this, in which life and the safety of the city were a stake. The mayor then turned to a person evidently waiting for the purpose, and directed him to telegraph to Governor Chamberlain that the rife clubs were a stake. The mayor then turned to a person evidently waiting for the purpose, and directed him to telegr

Both parties being now armed and fearful of each other, I have held troops in readiness from an early hour. Have ordered Randolph's battery, on its return from Beaufort to-night, to stop here. A conference of the mayor and leading citizens has had no satisfactory results. I will do all I can to suppress riots and save life and property, but I cannot be responsible for results unless I have entire control?

izens has had no satisfactory results. I will do all I can to suppress riots and save life and property, but I cannot be responsible for results unless I have entire control."

Soon after sending this dispatch I received the following from General Ruger: "Information has been sent by the mayor of Charleston to the governor that there is danger of a riot. The governor applies to me. Do whatever is necessary to preserve the peace."

And soon after the following:

"Have ordered Lorain's battery from Blackville to report to you in Charleston. I will send more if you need them."

With these instructions I was on my way to the mayor's office when I met a messenger from him requesting my presence. I found him again in consultation with the same gentlemen with whom he had a conference during the day. After finishing his conversation with them he asked if I had received any orders from General Ruger. I replied in the affirmative and read to him, in the presence of the other gentlemen, the one stating that the governor had applied to General Ruger and directing me to do what was necessary to preserve the peace, was responsible for its preservation, and assumed the duty; that I did not propose to interfere with the functions of the municipal authorities in the discharge of their ordinary duties for the protection of person or property; that I would allow no assemblages on the sidewalks that would obstruct them, or that might cause disturbances whether of whites or blacks; that I would send pairols of troops through the streets night and day, to see that these orders were obeyed; that if any such assemblages refused to obey the police or were too large for them to control, to report the fact to the first patrol that came along, or send word to the citadel, and they would be dispersed by the troops. I added that I would expect all needful information that I should obtain and that would be useful to bim. To all this the mayor immediately and repatedly and emphatically expressed his acquiescence in the measures I proposed to

"CHARLESTON, 7.45 P. M., November 9.

trol for the time being in order I received while was repeated in an order I received while was repeated in an order I received while writing my report to him, as follows:

"Charleston, 7.45 p. M., November 9.

"Telegrams received. I had already seen the mayor and assumed control of the peace of the city. The mayor and myself in perfect accord. The city is all quiet, and the people of all classes dispersing to their homes. I feel confident of maintaining security and quiet, as my measures are approved by all parties. Your telegram, 7.35, just received. It changes nothing of the above. Randolph's battery arrived. I expected Lorain's in the morning. Should I require more will telegraph. I do not think I will require more. Confidence alone was wanting."

From this time until I left Charleston the city remained perfectly quiet. On the morning of the 10th I received orders to proceed to Columbia immediately on the arrival of Colonel Best in Charleston, which order was countermanded the same afternoon. On the 11th, (Saturday,) I received a dispatch from General Hancock, informing me that I was considered as in temporary command of South Carolina during the absence of General Ruger, who had been ordered to Florida, directing me to stop the concentration of such troops at Columbia and Charleston as had not yet commenced the movement, in case their local commanders thought their presence as excessed the movement, in case their local commanding officer at Columbia, as to their distribution; to inform Colonel Black, commanding officer at Columbia, as to their distribution; to inform Colonel Black, commanding officer at Columbia, of this, and communicate it to General Ruger. I took the necessary steps to carry out these instructions.

On this evening, Saturday, 11th, two hours after receiving General Hancock's dispatches, I was informed that reports were being actively circulated among the negroes that I was the real head of the white colus, and that General Huncock's dispatches, I was informed that reports were being acti

report to the Secretary of War. I therefore turned over the whole matter to Colonel Best at Charleston, who notified Colonel Black, the next officer in rank in South Carolina, and left the same evening in obedience to my instructions. In the work of these few days I received the active, intelligent assistance of Major Carl Berlin, a citizen of Charleston, formerly on the staff of the artillery of the Army of the Potomac, as my aid. His services in behalf of peace and the security of the citizens were very valuable.

Respectfully submitted.

HENRY I. HUNT, Colonel Fifth Artillery.

Mr. President, as to fraudulent votes, repeating, &c., there was as usual in elections some of this, but not more, in my opinion, by the democrats than by the republicans. If the democrats voted strong in Edgefield the Republicans were not behind them in Beaufort.

Edgefield the Republicans were not behind them in Beaufort.

Here I would call attention to the speech of Mr. Thomas Hamilton, a colored man, a republican, and a member of the house of representatives. This Hamilton is a man of mark. He is a native of South Carolina; was emancipated at the end of the war, and of course poor. He is now a large and successful rice planter, employing a constderable force of laborers. Indeed, it was his colored employes who were so severely whipped by the colored men of the neighboring rice plantations, who struck last spring for higher wages and maltreated the colored laborers who weuld not join them. This was known as the Combahee riots. Hamilton, addressing the house, said:

I am a republican, and there nominated Daniel H. Chamberlain for governor. If Mr. Chamberlain did not get the requisite number of votes it was the fault of those leaders who complained to the colored people that he was a traitor and a democrat. In my opinion, the verdict of the people has been in favored home rule, and against a stranger holding the reins of government in South Carolina any longer. If you talk about fraud you come too near home. If you don't look sharp the democrats will show that there were in the neighborhood of three thousand bogus votes cast in Beaufort County.

Mr. President, I shall also ask to have incorporated in my remarks a letter which I have just received from a prominent colored man in my State. It is proper for me to say that I am personally acquainted with him and know him to be a man of good character and that he enjoys the confidence of the entire community in which he lives, irrespective of party or race. And I have no doubt in my mind that he speaks the sentiments of a large portion of his race in the

Newberry Court-House, South Carolina January 22,

Six: Permit me to occupy a small portion of your valuable time with some suggestions on the state of affairs, past and present, in the State of South Carolina.

You know me to be a colored man, a republican, and, as a member of the house of representatives of the Legislature of this State for four terms, an ardent supporter of republican principles and institutions in all political contests in the State. It is therefore as a colored man and as a republican that I make this appeal to you to make use of your personal and official prominence to set before the leading men of the nation the present unhappy situation of the colored race, and to suggest to them the course which appears to me to promise the solution, and the only solution, of our difficulties.

The two governments which profess to exist in this State negative each other.

of the nation the present unhappy situation of the colored race, and to suggest to them the course which appears to me to promise the solution, and the only solution, of our difficulties.

The two governments which profess to exist in this State negative each other, and leave us without any certain government at all. The wealth and intelligence of the State recognize that of Hampton, as indeed does the majority of the whole people, just as undoubtedly as that majority voted for it. The great uproar made about the acts of fraud and intimidation alleged to have been perpetrated by General Hampton and his followers is without foundation, as far as my knowledge extends. Not being a candidate for office at the recent election, I watched both parties with the closest scrutiny, in order to be able to elect for myself what course to pursue then and thereafter, and in order to assist my own race in that contest and in its consequences. But I saw no fraud, no intimidation practiced by the party of Hampton. On the contrary, the previous majority of the republican party of upward of 1,700 in this county was reduced to one of 565 by the honest, liberal, and fair arguments of democratic speakers and by the kind and frank dealing of the native white citizens. They appealed, not to our fears, but to our intelligence and our consciences. No colored man was threatened or cheated as far as I know, and I know that a fair discussion, a fair vote, and a fair count were the cardinal doctrines of Hampton's campaign. My former political associations made me somewhat slow to appreciate that state of affairs, but, as I did not close my eyes to the event's occurring before me, I could not help seeing it. A change in the republican vote in all the counties of the State equal to that just mentioned as having taken place in this county, would alone kave secured Hampton's election. And that there was an equal change in the other counties, on an average, there is scarcely room to doubt, for this county was a republican and a Champerlain strong

Chamberlain government were to be set up over us as the government of this State, they would refuse to hazard any outlay of money, supplies, or credit; and they could not be blamed for their refusal. But the whites cannot supply us, if they would, out of their own stores. They must have credit in the towns, and the merchant must have credit with dealers out of the State. This credit is not to be had while the deadly upas of the Chamberlain government blights the land with its ruinous taxation, its wasteful expenditures, its dissention-sowing among the people, its utter inability to legislate as our necessities demand, and its contemptible impotence to enforce the laws even so far as to protect the lives of the people. Soldiers may gnard that executive in his office, they may hold the State-house for his self-styled Legislature, they may terrify and silence the public voice, but all the armies of America cannot give hope to a robbed and wretched population or secure it that credit, at home or abroad, which is necessary for subsistence and the conduct or life's business. And this all of us feel. And, on the other hand, we feel that the fair, firm, equal, and humane administration of Hampton would secure every man his rights, would secure the enforcement of the laws as they now stand, would harmonize men of all classes, at least as far as required for the affairs of business, would save great sums of money to the people, would inspire hope and energy at home, would vastly strengthen our credit abroad, and, in fine, would set in active and harmonious operation all the now clogged and grating machinery of this Commonwealth. This, I say, is the sentiment of the colored man as well as of the white man, and, if it could be put to the vote, would be the expression of nine-tenths of our whole people.

I beg that you will exert yourself to present these things properly before our friends at the North. I know that there are incendiaries and office-seekers, who, having no real cencern about us, will scoff at the appeal; but

Hon. T. J. ROBERTSON, United States Senator.

Mr. President, I have always read with great satisfaction the sound constitutional sentiments expressed by General Grant in his special message of January 13, 1875, when he uses the following language:

Any interference by the officers or troops of the United States with the organization of a State Legislature or any of its proceedings, or with any civil department of the Government, is repugnant to our ideas of government.

It is greatly to be regretted that these noble sentiments were disrearded by General Ruger, or those who acted under his authority at the organization of the South Carolina Legislature.

From this disregard we have the sad spectacle of two governors and two houses of representatives in South Carolina, and the official chaos

two houses of representatives in South Carolina, and the official chaos which this condition of things necessarily implies.

I consider that General Hampton was fairly elected governor, and I believe that his acknowledgment as such would be for the best interests of the State. He is pledged to protect the colored people in all their rights. This I am satisfied he can and will do. He is a man worthy of entire confidence, prudent, patriotic, and wise. There is something in ancestry. His grandfather was a gallant officer in the war of the Revolution. His father was an aid of General Jackson at the battle of New Orleans. General Hampton himself was a conservative man before the late war. When that broke out, yielding as he understood it to duty, he fought with the greatest courage on numerous battle-fields, and bears upon his person the scars of honorable wounds.

After the war he was one of the first in our State to admit the newly acquired rights of the colored citizens, and urged political co-operation by the whites with them. His counsels were then in advance of public opinion. If he had been listened to then as he is now, the State would I believe have escaped great evils. Now I think he can do more good as the executive of the State than any other man. The democrats have elected their governor and a majority of the house of representatives, and they have accomplished this by adopting as their platform in regard to the colored race the principle of the legal equalplatform in regard to the colored race the principle of the legal equality of the races as promulgated by the republican party. The administration of local affairs has been so bad in South Carolina under republican rule that the transfer of the house and the governorship to the hands of the democrats cannot but be beneficial. The senate to the hands of the democrats cannot but be beneficial. The senate still remains with the republicans, giving them what we may call a veto power.

No one has expressed himself more forcibly on the subject of the republican misgovernment in South Carolina than Governor Chamberlain, who was then struggling nobly but in vain for reform within his own party. So impressed was he with the horrors of misrule which surrounded him, that on December 22, 1875, he said in a publication over his own name:

The civilization of the Puritan and the Cavalier, of the Roundhead and the Huguenot is in peril. Courage, determination, union, victory, must be our watchwords.

I regard Governor Chamberlain as a man of ability and culture. did what was in my power to advance his political interests, and I only separated myself from him when he called in United States troops to sustain the illegal action of the State returning board.

I am satisfied if the matter of the contested governorship is left to the decision of the supreme court of the State, the members of which are republicans and were elected by republicans, the settlement will be peaceful and for the best interests of the State.

The judges of this court have certainly borne themselves in determining the questions brought before them, in a period of great party excitement, with a fairness and impartiality that reflects the highest honor upon them.

Mr. President. I have the resolution may be adopted.

Mr. President, I hope the resolution may be adopted.

# PRESIDENTIAL APPROVALS.

During the speech of Mr. Robertson a message was received from During the speech of Mr. ROBERTSON a message was received from the President of the United States, by Mr. U. S. Grant, jr., his Secre-tary, who also announced that the President of the United States had this day approved and signed the joint resolution (S. R. No. 4) authorizing Captain Temple and Lieutenant-Commander Whiting, of the Navy, to accept a decoration from the King of the Hawaiian Islands.

Mr. CONKLING. Mr. President, I believe there is on the table a message from the President of the United States. If there is, I ask

The PRESIDENT pro tempore. The Chair will announce the unfinished business, as is his duty, which is Senate bill No. 984.

Mr. THURMAN. I have no objection to the President's message being read now. We all want to hear it, that bill not losing its

The PRESIDENT pro tempore. It will be the general understanding that the bill is temporarily laid aside for the purpose of having the President's message read. The Chair submits the message.

The Secretary read as follows:

To the Senate of the United States:

I follow the example heretofore occasionally permitted of communicating in this mode my approval of the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, because of my appreciation of the imminent peril to the institutions of the country from which, in my judgment, the act affords a wise and constitutional means of escape.

For the first time in the history of our country, under the Constitution as it now is, a dispute exists with regard to the result of the election of the Chief Magistrate of the mation.

It is sudgested that were the disposition of disputes touching the electoral votes.

For the first time in the history of our country, under the Constitution as it now is, a dispute exists with regard to the result of the election of the Chief Magistrate of the nation.

It is understood that upon the disposition of disputes touching the electoral votes cast at the late election by one or more of the States depends the question whether one or the other of the candidates for the Presidency is to be the lawful Chief Magistrate. The importance of having clearly ascertained by a procedure regulated by law which of the two citizens has been elected and of having the right to this high office recognized and cheerfully agreed in by all the people of the Republic cannot be overestimated, and leads me to express to Congress and to the nation my great satisfaction at the adoption of a measure that affords an orderly means of decision of a gravely exciting question.

While the history of our country in its earlier periods shows that the President of the Senate has counted the votes and declared their standing, our whole history shows that inno instance of doubt or dispute has he exercised the power of deciding, and that the two Houses of Congress have disposed of all such doubts and disputes, although in no instance hitherto have they been such that their decision could essentially have affected the result.

For the first time then Government of the United States is now brought to meet the question as one vital to the result, and this under conditions not the best calculated to produce an agreement or to induce calm feeling in the several branches of the Government or among the people of the country. In a case where as now the result is involved, it is the highest duty of the law-making power to provide in advance a constitutional, orderly, and just method of executing the Constitution in this most interesting and critical of its provisions. The doing so, far from being a compromise of right, is an enforcement of right and an execution of powers conferred by the Constitution on Congress.

I think that this

to meet cases which have not been contemplated in the Constitution or laws or the country.

The bill may not be perfect, and its provisions may not be such as would be best applicable to all future occasions; but it is calculated to meet the present condition of the question and of the country.

The country is agitated. It needs and it desires peace and quiet and harmony between all parties and all sections; its industries are arrested, labor unemployed, capital idle, and enterprise paralyzed by reason of the doubt and anxiety attending the uncertainty of a double claim to the Chief Magistracy of the nation. It wants to be assured that the result of the election will be accepted without resistance from the supporters of the disappointed candidate, and that its highest officer shall not hold his place with a questioned title of right. Believing that the bill will secure these ends, I give it my signature.

U. S. GRANT.

EXECUTIVE MANSION, January 29, 1877.

Mr. CONKLING. Mr. President, I move that this important and wise message be printed and lie on the table.

The motion was agreed to.

## RE-ORGANIZATION OF THE ARMY.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States; which was read: To the Senate and House of Representatives:

I have the honor to transmit herewith the proceedings of the commission appointed to examine the whole subject of reform and re-organization of the Army of the United States under the provisions of the act of Congress approved July 24, 1876. The commission report that so fully has their time been occupied by other important duties that they are not at this time prepared to submit a plan or make proper recommendations.

U. S. GRANT.

Mr. WEST. I move that the communication from the President be printed and lie on the table.

The motion was agreed to.

## ELECTIVE FRANCHISE IN FLORIDA.

Mr. SARGENT, from the Committee on Privileges and Elections, who were instructed by a resolution of the Senate of the 5th of Dewho were instructed by a resolution of the Senate of the 5th of December last to inquire into and report upon the extent of alleged denial or abridgment of rights of citizens in certain Southern States to vote for electors of President and Vice-President, members of Congress, and State officers, submitted a report thereon as to the State of Florida; which was ordered to be printed.

Mr. THURMAN. I call for the regular order.

Mr. SARGENT. I had forgotten to say what in courtesy is due to my colleague on the subcommittee, [Mr. COOPER.] and which it was in my mind to do that he will prepare if he desires a minority.

was in my mind to do, that he will prepare, if he desires, a minority report and submit it to the Senate hereafter.

#### HOUSE BILL REFERRED.

The bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

## PACIFIC RAILROAD ACTS.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved

July 2, 1864, in amendment of said first-named act.

Mr. MITCHELL Mr. President, the bill under consideration having been reported favorably by so able a committee as the Judiciary Committee of the Senate is conceded by all to be-although we are not apmittee of the Senate is conceded by all to be—although we are not apprised as to whether it has the sanction of more than a bare majority of Senators comprising that committee—it would seem perhaps "boldness even to temerity" on my part to venture the opinion that to pass this measure would be to transcend the plain, well-defined limit of our constitutional power. Yet with the views I entertain as to the nature of the contract made between the Government of the United States and these railroad companies, by virtue of the act of Congress of July 1, 1862, and of July 2, 1864, amendatory thereof, and in view of the total absence of all constitutional power upon the part of Congress to alter, amend, or repeal any existing law so as to affect the of the total absence of all constitutional power upon the part of Congress to alter, amend, or repeal any existing law so as to affect the obligations of a contract or destroy vested rights, I am constrained to dissent in the strongest possible manner, both by my vote and such arguments as I may be able to command, against the passage of this bill. In what I shall say, however, I shall neither attempt to defend nor condemn the action of any of the corporations whose interests are involved in the proposed legislation in reference to the management of their respective roads; nor shall I discuss the question as to whether these corporations or the individual members thereof have or have not amassed princely fortunes in the construction and management of their roads, but shall endeavor to confine myself exclusively to the naked legal question as to our constitutional power to enact this bill into law. And upon a question so grave as this neither a desire to pander to the wishes of vast corporate power upon the one hand nor any morbid unreasoning sentiment of opposition to soulless corporations upon the other must be permitted to have any weight whatever; for in the determination at all times of a grave question of constitutional power neither passion nor prejudice nor favoritism nor ill-will nor political policy should weigh even so much as the dust in the balance. as the dust in the balance.

The nature of a contract made between the Government and a great corporation, and the question of the power of the Government to change that contract in material respects without the consent of

fo change that contract in material respects without the consent of such corporation, are propositions that must be determined, as all will concede, by precisely the same rules and upon the same principles as though the party holding such contract were weak and insignificant and powerless.

What then, Mr. President, is the nature of the contract made between the Government and these railroad companies? What were the terms of that contract? By certain acts of Congress passed in order to aid in the construction of a great national highway across the continent, important powers and privileges were conferred upon cercontinent, important powers and privileges were conferred upon cercontinent, important powers and privileges were conterred upon certain railroad companies. These powers involved, among other things, the right of eminent domain; and these privileges included certain valuable grants of public lands and the loan of the Government credit in the way of interest-bearing bonds. This legislation is to be found mainly in the acts of 1862 and 1864, known as the Pacific Railroad acts; and the terms of the contract thus created between the Government and these companies by the accentance mean the part of the ernment and these companies, by the acceptance upon the part of the companies of the terms proposed in the two acts, must be determined principally by a reference to the provisions of the acts themselves.

By these acts taken together it was provided among other things—
First. That after said railroad was completed and until the bonds issued in aid of its construction together with the interest on the same were paid, at least 5 per cent. of the net carnings should be annually applied to their payment; and

EXECUTIVE MANSION, January 29, 1877.

Second. That one-half of the compensation for services rendered the Government by such companies should be retained by the Government and applied to the payment of the bonds issued by the government in aid of the construction of said road. These bonds running thirty years, and the interest thereon, is, according to the decision of the Supreme Court of the United States, in the case of the United States rs. The Union Pacific Railroad Company, decided at the October term, 1875, not required to be refunded by the companies until the maturity of the principal of the bonds. Here, then, we have the plain terms of the contract, full, explicit, and, since the decision of the Supreme Court as to the time when the interest matures as to the companies, free, as it seems to me, from all ambiguity. The Government, whether wisely or otherwise it is immaterial to inquire, made its grant of lands, issued its bonds, stipulated for the payment of the annual interest, and conferred upon these companies franchises and powers which, when accepted and acted upon by the companies respectively, became in them vested rights, which no legislation can disturb. Upon the faith of these grants, and in pursuance of these contracts, stock was subscribed, private capital invested, debts with third parties contracted, mortgages executed, and obligations were thus created which cannot be rightfully impaired by any act of legislation under any reserved

power to alter, amend, or repeal.

Under this contract thus voluntarily made by the Government with these companies, the only security stipulated for upon the part of the Government, in so far as annual provision for the payment of principal and interest on these bonds was concerned, was the sum of at least 5 per cent. annually of the net earnings after the road was completed, and one-half of the compensation for services rendered the Government. A more liberal provision in the interest of the Government might have been provided for when these contracts were authorized, but in the wisdom of the Congress that enacted these laws this was deemed sufficient. No sinking fund was provided for beyond this, while the licn of the Government as a security for final repayment of principal and interest of bonds was virtually abandoned the Government for what at the time was deemed a sufficient consideration, and subordinated to the prior liens of the individual bonds

of these companies.

Such, then, being in brief the contract made between the Government and these roads, we next inquire what are the main provisions of the bill reported by the Judiciary Committee, and to what extent, if at all, do they affect this contract, or how far are they authorized by the reserved power to alter, amend, and repeal contained in the original acts? Before proceeding, however, to examine the provisions of this bill. I desire to call vessel attention to the classes in original acts? Before proceeding, however, to examine the provisions of this bill, I desire to call special attention to the clauses in these acts reserving to the Government the right to alter, amend, and repeal, and under which I presume this bill is sought to be justified. The latter clause of section 18 of the act of July 1, 1862, pro-

And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

Here it will be observed that even if the reservation in the body of an act of the right to alter, amend, or repeal the same can either add to or diminish the power of Congress in this respect, (and this I deny and will advert to that hereafter,) still, in this instance, the power to alter, amend, and repeal was, by the express terms of the reservato alter, amend, and repeal was, by the express terms of the reserva-tion itself, restricted in such a manner as to authorize its exercise only for the purpose of effectuating certain purposes, namely, "to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times the use and benefits of the same for postal, military, and other purposes." And furthermore, that even in altering, amending, or repealing for such purposes Con-gress should have "due regard for the rights of said companies."

Again the twenty-second section of the act of July 2, 1864, pro-

Again, the twenty-second section of the act of July 2, 1864, provides as follows:

That Congress may at any time alter, amend, or repeal this act.

The bill reported by the Judiciary Committee proposes to change in a most material manner the liabilities of these companies as fixed by the original acts and in these respects. It proposes first to de-termine what shall be considered "net earnings," and, as I contend, upon the highest judicial authority in the land, to thus make these terms mean something different from what the law declared them to mean when the contract was originally made, and hence to increase the amount to be paid annually by the companies to the Government in the shape of 5 per cent. on the "net earnings." Again, this bill provides that the whole of the compensation for services rendered the Government shall be retained by the Government instead of entitling the companies to one-half of this amount annually, as provided in the original contract. And, third, this bill compels these companies, contrary to the terms of the original contract, to pay annually into the Treasury of the United States, as a sinking fund for the redemption at maturity of the principal and interest of the bonds issued by the Government in aid of such roads, a sum which, together with the 5 per cent. on the net earnings and the amount of compensation for services rendered by the Government, shall amount to 25 per cent. annually of the whole net earnings of such roads.

That this bill therefore proposes to make a new contract for these That this bill therefore proposes to make a new contract for these parties essentially radically different from the existing one and coupled with liabilities as to these railroad companies of a grave and onerous character, in addition to those imposed by the terms of the original acts, nobody, I presume, will deny. There can be no room for controversy, it seems to me, so far as this question is concerned. It impairs the obligations of the original contract in divers and important respects. It increases the annual payments to a sinking fund. It fixes the time of the payment of interest at the end of each year, instead of at the maturity of the books twenty-old years become of at the maturity of the bonds, twenty-odd years hence, as provided by the terms of the contract as construed by the Supreme Court of the United States in the very case under consideration. It invades the rights of individual stockholders who have invested their money on the faith of the original contract. It dwarfs the security of the first bondholders by diminishing the value of the security to which they must look for final payment. It jeopardizes the rights and interferes with the obligations of innumerable persons, both at home and beyond the seas, who have contracted with these companies in divers ways upon the faith of their rights, their credit, their liabilities, and, if you please, their responsibility financially, as fixed by the terms of the original acts. In a word, it impairs the obligations of a contract, the original acts. In a word, it impairs the obligations of a contract, it destroys vested rights; but, what is infinitely worse and even more to be deprecated than all this, it tramples upon the plighted faith of the Government, voluntarily tendered, sacredly pledged, under the solemn sanction of legislative enactment. The simple question, therefore, is fairly and squarely presented: Can Congress do this without the consent of these companies and at the same time not invade the limits of its constitutional power? I submit, with all deference, that it cannot

And, in the first place, I contend that the reservation in an act of And, in the first place, I contend that the reservation in an act of Congress of a power to alter, amend, or repeal the same neither adds to nor diminishes either the right or power of Congress in this respect. In other words, the right of a subsequent Congress to alter, amend, or repeal any act passed by a preceding Congress is unlimited and unrestricted within the limits I shall name and whether it contains an express reservation upon that subject or not. The power of one Congress to bind its successors for all time, by omitting to insert in its legislation a reservation of power to alter, amend, or repeal, is a proposition so grassly preposterous that no one I imagine will conproposition so grossly preposterous that no one, I imagine, will contend for it. The power to repeal within certain limits never dies. No law, except it be a naked legislative grant or one creating a contract only, is irrepealable, saving as to its effect on rights vested or oblionly, is irrepealable, saving as to its effect on rights vested or obligations created under it, nor is any law passed by any legislative body any less liable to be repealed because of the absence in the act itself of an express reservation of power in this respect than is one containing this express reservation. The power of repeal therefore being an inherent, absolute right in Congress, subject only to certain restrictions that I will name in reference to the effect of such alteration, amendment, or repeal, I contend that, even though the reservations in the Pacific Railroad acts were unqualified, (and they are not,) still Congress would have no greater power in the premises than it still, Congress would have no greater power in the premises than it would have were no such reservation in existence. The power, therefore, to alter, amend, or repeal being absolute within the limits I have suggested let us inquire what this power is. Is it a power that enables Congress to sweep from the statute-books of the country any or every law in existence, and with it or them to destroy every vested right and impair every existing obligation that may have legitimately accrued or been contracted in virtue of or in pursuance of such legisaccrued or been contracted in virtue of or in pursuance of such legislation? Most certainly not. Upon the contrary, it is a power that enables one Congress to alter, amend, or repeal any law passed by a preceding Congress, provided always that in such alteration, amendment, or repeal vested rights are not destroyed or the obligations of contracts impaired. In other words, you may alter, amend, or repeal the law under which rights have been vested or contracts have been rested a provided that in deign as you do not destroy vested rights. the law under which rights have been vested or contracts have been created, provided that in doing so you do not destroy vested rights or impair the obligations of these contracts. Any other construction would imply the right to divest a corporation of property legitimately acquired under a law authorizing it to acquire it while such law was in full force and unrepealed. The law may be repealed, altered, or amended; but rights vested, obligations created, are beyond the reach of the law so far as the power of the Legislature is concerned. In this respect the law stands upon precisely the same footing as a power of attorney. Every power of attorney not coupled with an interest may be revoked at the pleasure of the party executing it; but no lawyer will contend that the revocation of a power of attorney could in any manner whatever interfere with property or attorney could in any manner whatever interfere with property or disturb contracts acquired or made in virtue of such power before the revocation.

revocation.

To hold that it is an incident to every law under which a contract is made, or by which one is made, that it may be changed or repealed may with plausibility be maintained; but to hold that every contract made under a law that is repealable is a condition entering into the contract, and therefore also repealable, would be to contend for a doctrine that would destroy all corporate contracts and affect all corporate property. The law is one thing, the contract made under the law is another. In this case the Pacific Railroad acts might have remained a dead letter upon the statute-books for years had not the terms tendered been accepted and acted upon by the rehad not the terms tendered been accepted and acted upon by the respective companies. Until this was done the law would have been as much in force, as much a law, as it is to-day; but still no contract

would have been created, no rights would have vested, no obligations incurred. But when the terms were accepted by the companies a contract from such date only, and not from the date of the act, was created. The contract when made is no part of the law, but an execution of the powers contained in the law. You may repeal the law, but you cannot disturb the contract; nor can you add new or increased liabilities by changing the law in such manner as to change the terms of the contract.

In the Dartmouth College case it was expressly held that the power to alter, amend, or repeal the charter did not carry with it the power to divest rights acquired under the charter. The court held that the charter conferred by this law was a contract between the Legislature and the corporation, and it was only the law under which such contract was made that could be repealed or changed and not the

contract itself.

Congress passes a law tendering upon certain conditions to certain Congress passes a law tendering upon certain conditions to certain corporations important privileges, powers, and franchises. These corporations accept the offer, comply with the terms and conditions. Here, then, is a contract with full consideration on both sides. On the one part the Government grants valuable franchises and privileges; on the other, the corporations build a railroad across the continent. The contract is an entirety. It is perfect in all its parts. But it is said the law may be repealed. Grant that it may. Suppose, however, before it is repealed the contract is made by a full acceptance and compliance with its terms, by which property rights have vested and obligations been incurred; will it be contended that there can be such a repeal or modification of the law without the consent of the companies as to destroy the contract or affect property rights under it? Most certainly not.

But we are not-left to grope in the dark upon this subject. The

But we are not left to grope in the dark upon this subject. The But we are not-left to grope in the dark upon this subject. The highest courts in the land have given judicial construction to the power of legislative bodies to alter, amend, or repeal existing laws. And the judicial definition of the power is that legislative bodies may alter, amend, or repeal; provided, however, that in doing so private rights are not divested nor the obligations of contracts impaired; and to some of these decisions I desire to attract attention.

The Supreme Court of the United States in the case of Curran vs.

Arkansas, 15 Howard, 510, say:

We do not consider, therefore, that the power of the State to repeal this charter enables the State to pass a law impairing the obligation of its contracts.

In Holyoke vs. Lyman, 15 Wallace, 519, the Supreme Court say: Vested rights, it is conceded, cannot be destroyed or impaired under such a re-

Again, in Muller vs. The State, 15 Wallace, 498—and by the way this very case is quoted by the committee to sustain their report—the doctrine is laid down in these words:

Power to legislate upon such a reservation in a charter to a private corpora-tion is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such charter and which by a legitimate use of the powers granted have become vested in the corpora-

It was held in the highest court of Kentucky in a case reported in 15 Munroe's Law and Equity Reports, 357, as follows:

A reservation by the Legislature in a charter to alter, amend, or repeal does not imply the power to alter or change the vested rights acquired by the corporators under the charter, and to add new parties and managers without the consent of the corporators.

In the case of Mumma vs. Potomac Company, 8 Peters, 286, the court held, in substance and effect, that under the reserved power to "alter, amend, or repeal," Congress, while it may exercise control over the franchise it has granted, cannot divest vested rights, impair the obligation of contracts, or take from the corporators their property without due process of law or without making just compensation. tion.

Chief-Justice Shaw, of Massachusetts, in the case of The Commonwealth vs. Essex Company, 13 Gray, 253, in speaking of the reserved power under the laws of that State, which provided that all acts of incorporated companies were subject to amendment, alteration, or repeal at the pleasure of the Legislature, uses this language:

repeal at the pleasure of the Legislature, uses this language:

It seems to us that this power must have some limit, though it is difficult to define it. Suppose an anthority has been given by law to a railroad corporation to purchase a lot of land for purposes connected with its business, and they purchase such lot from a third party, could the Legislature prohibit the company from holding it! If so, in whom should it vest, or could the Legislature direct it to revest in the grantor or escheat to the public, or how otherwise? Suppose a manufacturing company is authorized to erect a dam and flow a tract of meadow, and the owners claim gross damages, which are assessed and paid, can the Legislature afterward alter the act of incorporation so as to give to such meadow-owners future annual damages? Perhaps from these extreme cases—for extreme cases are allowable to test a legal principle—the rule to be extracted is this: that where, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted.

It is recalled to a contact further anytherities as those already eited.

It is needless to quote further authorities, as those already cited settle beyond controversy the doctrine of the law that Congress, un-der a reserved power to alter, amend, or repeal acts of incorporation, der a reserved power to alter, amend, or repeal acts of incorporation, has no power to divest the corporation of its property or impair the obligation of its contracts. And even should it be conceded that the contract itself between the Government and the railroad companies could be repealed under the reserved power to alter, amend, or repeal, inasmuch as this could not be done without depriving these companies of their property, another provision of the Constitution is encoun-

tered and the terms of which must enter into the proceeding and be complied with, namely, that "no person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

It has been held repeatedly by the highest judicial authority that a legislative grant is not revocable.

In the case of Rice vs. Railroad Company, 1 Black, 359, the Supreme Court of the United States used this language:

If Congress pass an act granting public lands to a Territory to aid in making a railroad, and if by the true construction of the act the Territory acquired any beneficial interest in the lands, as contradistinguished from a mere naked trust or power to dispose of them for certain specified uses and purposes, the act is irrepealable, and a subsequent act attempting to repeal it is void.

In the case of Terrett vs. Taylor, 9 Cranch, page 50, it was held a legislative grant was irrevocable.

In the opinion of court delivered in that case by Justice Story, this

language occurs:

If the Legislature possessed the authority to make such a grant and confirmation it is very clear to our minds that it vested an indefeasible and irrevocable title. We have no knowledge of any authority or principle which could support the doctring that a legislative grant is revocable in its nature and held only drants bene placits. Such a doctrine would uproot the very foundations of almost all the land titles in Virginia, and is utterly inconsistent with a great and fundamental principle of a republican government: the right of the citizens to the free enjoyment of their property legally acquired.

Again, in the case of McGee vs. Mathias, 4 Wallace, 155, the Suoreme Court of the United States, in giving construction to the Arkansas swamp-land act of 1850, said:

It is not doubted that the grant by the United States to the State upon conditions and the acceptance of the grant by the State constituted a contract. All the elements of a contract met in the transaction: competent parties, proper subject-matter, sufficient consideration, and consent of minds. This contract was binding upon the State, and could not be violated by its legislation without infringement of the Constitution.

But it is said that while the Constitution of the United States pro-But it is said that while the Constitution of the United States provides that no State shall pass any law impairing the obligation of contracts, there is nothing in the Constitution that prohibits Congress from passing such a law. And it has been argued that because the States are prohibited in express terms, therefore by implication Congress has the power. The Constitution, however, it must be borne in mind, creates a government of limited and enumerated powers. What he its corress terms or he preserved implication are not delegated. mind, creates a government of limited and enumerated powers. What by its express terms or by necessary implication are not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively or to the people. It possesses, therefore, no power which is not expressly conferred or which is not necessary to the execution of one expressly conferred. And I insist there is nothing in the Constitution, either express or implied, that can, by any rule of construction, be tortured into a grant of power to Construction in the objection of construction and construction. gress to impair the obligation of contracts or to destroy vested rights, save and except in one particular instance or class of cases; and the very fact that an express grant of power to legislate in such manner as may interfere with vested rights in one particular class of cases by necessary implication excludes the power in every other class of cases. The Constitution, in section 8, article 1, in enumerating the powers of Congress, says:

The Congress shall have power to establish uniform laws on the subject of bank-ruptcies throughout the United States.

Here, then, is an express grant empowering Congress in this particular class of cases to pass a law that will affect the obligation of contracts, that will divest vested rights. If, therefore, this great power, so in conflict with the first principles of private and individual right, is in one class of cases expressly given to Congress, is not the inference irresistible and logical that no such power can be exercised in any other case whatever, the more especially when no implied power exists to do such thing in carrying into execution any of the other express powers conferred upon Congress?

Where, then, does Congress obtain the power to pass this bill? In what section or line of the Constitution does it exist? Is it to be found in the general grant to Congress of legislative powers? Most certainly not. The Constitution provides, it is true, that "all legislative powers herein granted shall be vested in a Congress," &c.; but when we come to examine the legislative powers that are therein

when we come to examine the legislative powers that are therein granted we fail to find anything that would authorize interference with the obligations of a contract or that would justify the invasion of vested rights, save in the particular instance or class of cases to

or vested rights, save in the particular instance or class of cases to which I have attracted attention.

But suppose the grant of legislative power had been unlimited, unrestricted, absolute, if you please, in so far as any restriction contained in the Constitution itself is concerned, and the clause had read in this wise: "All legislative powers shall be vested in Congress," instead of "All legislative powers herein granted shall be vested in Congress;" still I contend that under this sweeping grant of unlimited Congress; "still I contend that under this sweeping grant of unlimited power Congress could not invade the domain of private right by impairing the obligation of contracts or divesting individuals of rights already vested. And why not? I answer, for the sufficient reason that to do so would be to transcend the legitimate powers of legislalation. It would be to step beyond the outer limit of unrestricted legislative power. It would be to depart from the province of legislation and to enter the domain of the judiciary. The passage of a law, therefore, having this effect, even though there were no restrictions in the Constitution on the legislative power vested in Congress by that instrument, would not for the reasons stated be a legitimate exercise of legislative power. A law deciding a controversy between individuals in a case pending in a court of justice wherein a matter of private property was involved would be no greater usurpation of legislative power than the former. The proper, well-defined boundary of the unlimited powers of legislation, if I may so speak, would be transcended in either case. The limitations to legislative power in all legislative bodies are not merely those prescribed by the fundamental law, for, in the language of the Supreme Court of the United States in the case of The Loan Association vs. Topeka, 20 Wallace, 662:

There are limitations on such power which grow out of the essential nature of all free governments; implied reservations of individual rights, without which she social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife, should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should no longer be his but should henceforth be the property of B.

Again, in the same case, the court uses this language:

Again, in the same case, the court uses this language:

It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute despotism and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism.

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The theory of our governments, State and national, is opposed to the deposit of unlimited power anywhere.

Chief-Justice Marshall, in Fletcher vs. Peck, 6 Cranch, 103, lays down the law upon this important subject in these words:

Where, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights, and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community. It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power, and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation? To the Legislature all legislative power is granted—

And here it will be perceived the court is speaking of the Legislature of the State of Georgia, wherein there was no restriction upon the legislative power—

but the question whether the act of transferring the property of an individual to the public be in the nature of a legislative power, is well worthy of serious reflection. It is the peculiar province of the Legislature to prescribe general rules for the government of society; the application of these rules to individuals in society would seem to be the duty of other departments. How far the power of giving the law may involve every other power in cases where the Constitution is silent, never has been and perhaps never can be defaultely stated. The validity of this rescinding act, then, might well be doubted, were Georgia a single, sovereign State.

The supreme court of Vermont, in the case of Briggs vs. Hubbard, said:

Every law that takes away or impairs rights vested agreeably to existing laws is retrospective. To say the least of such laws, they are generally unjust and neither accord with sound legislation nor the fundamental principles of the social compact.

Chancellor Kent, in Gardner vs. Village of Newburgh, 2 Johnson, 161, said:

My conclusion is that, upon principle as well as upon authority, a legislative act, whether it be a positive enactment or a repealing statute, which takes away the vested rights of property of individuals for any purpose (except where property is taken for public use and upon a just compensation) is to be adjudged invalid, as being above the power and beyond the scope of legislative authority.

But not only has the doctrine that Congress has no power to pass a law impairing the obligation of contracts or divesting vested rights been asserted by commentators on the Constitution, but by numerous judicial decisions. Duer on Constitutional Jurisprudence, page 357, uses this language:

A similar restriction with regard to the bills of attainder and ex post facto laws is imposed by the Constitution on Congress as well as upon the State Legislatures, but not with regard to laws impairing the obligation of contracts, which are also retrospective in their operations and equally incensistent with sound legislation and the fundamental principles of the social compact. \* \* \* The power possessed by a State Legislature, to which everything not expressly reserved is granted, and the temptation to abuse that power, render express restrictions, if not absolutely necessary, at least prodent and useful, but the National Legislature has no power to interfere with contracts except when it is expressly given to it. \* \* \* But Congress is expressly invested with this power in regard to bankruptcy as an enumerated and not as an implied power, and in no other form can it impair the obligation of a contract.

Cooley on Constitutional Limitations asserts the same doctrine, while the courts in the following and many other cases have held the same thing. In Kentucky, in the case of Norris vs. Donivan, 4 Metcalf, 355; in Connecticut, in Hubbard vs. Brainerd, 35 Conn., 563; and in Indiana, in Griffln vs. Wilcox, 21 Indiana, 370, where it was held that to deprive a person of a right of action against another by an act of Congress for false imprisonment was unconstitutional, upon the ground that a right of action was property which legislation could not deprive him of.

I contend, therefore, that under no clause of the Constitution can the bill in question be justified, nor yet by any reserved power or stipulation in the acts themselves.

But it is said that because the Pacific Railroad act says that at least 5 per cent. of the net earnings shall be paid annually to the Government, therefore Congress has the right not only to construe the contract as to what is the meaning of the term "net earnings," but also to compel the companies to pay to the Government annually any amount it may deem proper over 5 per cent. of the net earnings

as thus defined by one party to the contract. That Congress has the power to do either the one or the other, I deny. And, first, as to its right to declare the meaning of the term "net earnings."

When the Government contracts with one or more of its citizens it,

When the Government contracts with one or more of its citizens it, in so far as relates to the construction and interpretation of the terms and conditions of the contract, is divested of its sovereignty, and stands precisely in the same position as a private individual, with no greater and no less powers in this respect. It stands on a perfect equality with the person with whom it is contracting, and has no more power to construe or interpret the contract for itself, if this construction or interpretation be doubtful, than has the other party to the contract to construe or interpret it for itself. If the term "net earnings" as applied to railroads had, at the time this contract was made, a definitive meaning in law, then neither the Government nor the corporation has the right to change that meaning without the consent of the other. If, upon the other hand, the meaning of the term was uncertain and indeterminate in law and in fact at the time the contract was made, then neither party to the contract can determine such meaning to be one thing or the other in the absence of assent or acquiescence from the other, but in that event the judicial tribunals are the only common arbiter.

But, again, is it not a fact that the meaning of the term "net earnings" did have a definitive meaning in law at the time this contract was entered into between the Government and these corporations? And is it not, furthermore, a fact that the bill reported by the Judiciary Committee changes that meaning to the detriment of these companies and without their consent, and thus impairs the obligation of their contract and interferes with their vested rights?

The first section of the bill, say the committee in their report in its favor, "defines what shall be considered net earnings of said railroad companies respectively," thus assuming that the term had no well-understood meaning when used in the original contract, and then assuming, furthermore, that the Government alone has the right to adjudicate upon the subject and give to these words construction and definition. And then in the clause in the pending bill determining in the language of the committee "what shall be considered net earnings," all sums owing or paid by said companies as interest on any portion of their indebtedness are excluded from consideration; which is in direct conflict with the only case of which I have any knowledge wherein this precise question upon a similar provision was decided by the highest court in the land. In the case of St. John vs. Eric Railway Company, 22 Wall., 137, which was a case wherein St. John, who was a holder of preferred stock in the Eric Railway Company and as such entitled to a dividend from the net earnings of the road, sought to compel the company to pay him his dividend out of the net earnings, exclusive of the payment by the company of interest upon its indebtednes or rents of leased roads, the court said:

We are of the opinion that the rents for that year, accruing under leases taken by the company after the issuing of the preferred stock, and the interest upon the sterling bonds for that year were properly paid, and that there were no net earnings earned in that year which could be properly applied in payment of preferred dividends. These views are fatal to the complainant's case.

Can Congress, therefore, in the face of this decision defining the meaning of the term "net earnings" of a railroad company to be only such earnings as remain after deducting from the gross earnings not only all operating and other necessary expenses but also the interest which has been paid by the company during the year in maintaining its corporate existence and carrying forward its business, find warrant for legislating that said term shall be "construed" to be something else? It seems to me not. The companies have paid and are paying annually from the earnings of the road, as it is alleged, interest on the first-mortgage bonds. To the extent of 5 per cent. annually upon this amount of interest this bill proposes the company shall pay to the Government, when the contract under the rule laid down by the Supreme Court of the United States in the case just quoted only called for 5 per cent. on the net earnings excluding this interest. To this extent, therefore, this bill proposes to wrest from these companies, without due process of law, without making any compensation, much less just compensation, as the Constitution requires, their money and their property.

But what was the purpose in the act of 1862 of the two little words "at least" inserted immediately preceding the words "5 per cent."—
"at least 5 per cent. of the net earnings?" Was the object of these words to reserve to the Government the unlimited power at any time, without the consent of such corporations, to increase this amount to 10, 20, 30, or 50 per cent. per aunum? Or was it not rather a provision inserted for the benefit of the debtor; a discretionary power granted to the corporations to pay annually toward the liquidation of their indebtedness as much more over and above the 5 per cent. as their ability or desire might dictate or prompt? It seems to me the latter is the only reasonable and fair construction that can be applied. The language of the contract in effect is this: You must pay at least 5 per cent. annually on your net earnings; you may pay as much more as you see proper. Suppose I borrow \$5,000 from Senator Thurman for five years, with the understanding and agreement that I shall pay it back to him in installments of at least \$1,000 per annum, and I execute my note accordingly. Could it be successfully contended that the party holding the note could, at his pleasure and without my consent, compel me to pay \$2,000 per annum or any other sum over and above \$1,000 per annum? Most

clearly not. The words "at least" are for my benefit and not for the benefit of my creditor. I must pay the \$1,000 per annum, I may pay more at my option. And so here in this Pacific Railroad act; the words cannot enable the Government to compel the payment of more words cannot enable the Government to compel the payment of more than the 5 per cent. per annum without the consent of the debtor party. Such a construction would be foreign to all reason, in conflict with all judicial decisions, and wholly destructive of private rights. And upon this point I call the attention of the Senate to the case of the Common wealth rs. Proprietors New Bedford Bridge in Massachusetts, 2 Gray, 339. In that case the Legislature of Massachusetts incorporated the defendants for the purpose of building a bridge over a certain river in that State. The act provided that the bridge should have two suitable draws which should be at least thirty feet wide. Subsequently the Legislature amended the law, requiring the draw to be not less than sixty feet wide. The corporation resisted this as an invasion of their rights under the original contract, and rested their case upon the unconstitutionality of the act changing the width of the draw. The court sustained the position taken by the corporation, and the opinion of the court, in part, is as follows:

the draw. The court sustained the position taken by the corporation, and the opinion of the court, in part, is as follows:

The Commonwealth and the defendants are but parties to a contract. Each has equal rights and privileges under it, and neither can interpret its terms authoritatively, so as to control and bind the rights of the other. The Commonwealth has no more power or authority to construe the charter than the corporation. By becoming a party to a contract with its citizens, the government divests itself of its sovereignty in respect of the terms and conditions of the contract and its construction and interpretation, and stands in the same position as a private individual. If it were otherwise, the rights of parties contracting with the Government would be held at the caprice of the sovereign, and exposed to all the risks arising from the corrupt or ill-judged use of misguided power. The interpretation and construction of contracts, when drawn in question between the parties, belongs exclusively to the judicial department of the government. The Legislature has no more power to construct heir own contracts with their citizens than those which individuals make with each other. They can do neither without exercising judicial powers, which would be contrary to the elementary principles of our government. \* \* If the Legislature have the power to decide upon the true meaning of the terms of the contract, and to determine what shall be deemed suitable in the construction of the bridge and draws, there can be no limit placed on the exercise of this power.

And furthermore in the same case the court proceeding say:

## And furthermore in the same case the court proceeding say:

If they have the right to prescribe a draw of sixty feet in width, they may hereafter require the defendants to extend it to one hundred feet or to build it across entire space between the shore and the adjacent island.

That Congress would have the power to declare a forfeiture of said That Congress would have the power to declare a foresture of said railroads or legislate for the purpose of keeping the same "in repair and use," and in such latter event to direct the income of such com-panies to be devoted to the use of the United States to repay all such expenditures caused by the default and neglect of such companies, or any of them, whenever there has been a failure to comply with the any of them, whenever there has been a failure to comply with the terms of the charter, no one will pretend to deny. But the theory of the bill presented by the Judiciary Committee does not proceed upon the assumption that there has been any such failure upon the part of these corporations or any of them. It is not pretended that the road was not completed within the time fixed by law, nor could it be, for, as a matter of history, that speaks volumes for American enterprise and which most assuredly is not to the discredit of these companies; this great continental highway was in running order before one-half the time had expired within which the act of Congress required it to be done. July 1, 1876, was the limit prescribed whereas the road was July 1, 1876, was the limit prescribed, whereas the road was be done. July I, 1876, was the limit prescribed, whereas the road was in running order, if not permanently completed and accepted, according to the terms of the charter, in April, 1869. Nor is it pretended that there has been any failure to keep said road "in repair and use," or that they have permitted it to remain "out of repair and unfit for use," which, under the express terms of section 17 of the act of 1862, would authorize legislation of a character different from that now authorized; nor can it be said that the contingency provided for in section 18 of the original act has happened, wherein Congress is authorized to "add to, alter, amend, or repeal the act" in certain respects and for certain purposes. But in what respects and for what nurposes? I answer in the plain language of the act itself: purposes? I answer in the plain language of the act itself :

To promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes.

Can it, I ask, be successfully maintained as a legal proposition that so long as these companies keep this road in good working order, so so long as these companies keep this road in good working order, so long as it remains as is it is now, one of the very best conditioned and most carefully operated roads on the continent, so long as the Government in peace as well as in war has the use and benefits of the same for postal, military, and other purposes secured to it by the terms of its own charter—can it, I repeat, so long as these things continue to exist, be successfully maintained as a legal proposition that under or in virtue of the provisions of section 18 of the act of 1862 Congress canally be converged. Congress could, by any mere assumption upon its part that the "pecuniary condition" of these roads is not such as it might or should be, entertain jurisdiction to pass this bill on the ground that the be, entertain jurisdiction to pass this bill on the ground that the contingency had happened that authorizes Congress to "add to, alter, amend, or repeal the act" for the purpose of promoting the public interest, keeping the same in working order, and securing to the Government the use and benefits of the same for postal, military, and other purposes? To give to this section such a construction, it seems to me, would be to do violence to language and every recognized rule of legal interpretation. But yet the Senator from Ohio [Mr. Thurman] who presents the report in this case asserts the startling proposition that the "pecuniary condition" of these companies, unajudi-

cated and undetermined by any competent tribunal, assumed, if you please, by the legislative mind to be in a certain state, upon such evidence only as appears from the official reports of the companies themselves, and such state of pecuniary condition to be only the legitthemselves, and such state of pecuniary condition to be only the legitimate and inevitable result, in so far as relates to the present condition of the accounts between the Government and these companies, of the voluntary preferences given these companies by the Government when it subordinated its right to a first lien as security for the payment of its own bonds to that of the bondholders of the companies; and when instead of providing for the payment by the companies of annual interest it stipulated that such interest should not be paid until the maturity of the bonds.

At this point, without concluding, the Senator yielded to Mr. Wadleigh, on whose motion the Senate proceeded to the consideration of executive business. After fourteen minutes spent in executive session the doors were re-opened, and (at three o'clock and fifteen minutes p. m.) the Senate adjourned.

# HOUSE OF REPRESENTATIVES.

MONDAY, January 29, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Saturday last was read and approved.

ORDER OF BUSINESS.

The SPEAKER. The morning hour commences at thirteen minutes The SPEAKER. The morning hour commences at thirteen minutes past twelve o'clock, and this being Monday, the first business in order is the call of States and Territories, beginning with the State of Virginia, for the introduction of bills and joint resolutions for reference to their appropriate committees, not to be brought back on motions to reconsider. Under this call memorials and resolutions of State and territorial Legislatures may be presented for reference and printing.

IMPROVEMENT OF HARBOR OF BRUNSWICK, GEORGIA

Mr. HARTRIDGE introduced a bill (H. R. No. 4541) making an appropriation for the improvement of the harbor at Brunswick, Georgia; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

LEGAL REPRESENTATIVES OF FRENCH GRAHAM.

Mr. BLOUNT introduced a bill (H. R. No. 4542) for the relief of the legal representatives of French Graham; which was read a first and second time, referred to the Committee on War Claims, and or-dered to be printed.

WILLIAM HARBOR.

Mr. NASH introduced a bill (H. R. No. 4543) to afford relief to William Harbor, a resident of Pointe Coupée, in the State of Louisiana, for damages sustained by him during the rebellion, all in October, A. D. 1863; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

AMENDMENT OF REVISED STATUTES.

Mr. BANNING introduced a bill (H. R. No. 4544) to amend section 1105 of the Revised Statutes of the United States, and to repeal an act of August 15, 1876; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed. MEETING OF CONGRESS.

Mr. BANNING also introduced a bill (H. R. No. 4545) to fix the times for regular meetings of Congress; which was read a first and second time, (one reading being in full upon the call of Mr. DURHAM,) referred to the Committee on the Judiciary, and ordered to be printed. MARTHA A. JONES.

Mr. HOLMAN introduced a bill (H. R. No. 4546) granting a pension to Martha A. Jones, of Wayne County, Indiana; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

BENJAMIN F. ROGERS.

Mr. STEVENSON introduced a bill (H. R. No. 4547) granting a pension to Benjamin F. Rogers, late a private in Company F, Nineteenth Regiment Illinois Infantry Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

RENT OF POST-OFFICES.

Mr. CLARK, of Missouri, introduced a bill (H. R. No. 4548) to authorize the Postmaster-General to pay rent as it may fall due under lease by the Government of certain premises for post-offices now held and occupied by the postmasters of the United States; which was read a first and second time, (one reading being in full upon the call of Mr. Townsend, of New York,) referred to the Committee on the Post-Office and Post-Roads, and ordered to be printed.

IMPROVEMENT OF THE SAINT FRANCOIS RIVER, MISSOURI.

Mr. HATCHER introduced a bill (H. R. No. 4549) for the improvement of Saint Francois River, in the State of Missouri; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

## HOT SPRINGS RESERVATION, ARKANSAS.

Mr. SLEMONS presented a joint resolution of the General Assembly of the State of Arkansas, in relation to the Hot Springs reservation; which was referred to the Committee on Public Lands, and or-

dered to be printed.

Mr. GAUSE presented a joint resolution of the General Assembly of the State of Arkansas, in relation to the Hot Springs reservation; which was referred to the Committee on Public Lands, and ordered to be printed.

## FORFEITING OF LAND GRANT IN MICHIGAN.

Mr. W. B. WILLIAMS introduced a bill (H. R. No. 4550) to declare forfeited to the United States certain lands granted to the State of Michigan for railroad purposes, and to provide for their sale to actual settlers; which was read a first and second time, (one reading being in full,) referred to the Committee on Public Lands, and ordered to be printed.

# RAILROAD FROM THE ATLANTIC TO THE MISSOURI RIVER.

Mr. HUBBELL introduced a bill (H. R. No. 4551) chartering a double-track freight railway company from tide-water on the Atlantic to the Missouri River, and to limit the rates of freight thereon; which was read a first and second time, (one reading being in full upon the call of Mr. Hubbell,) referred to the Committee on Railways and Canals, and ordered to be printed.

## JAMES AUSTIN M'CREIGHT.

Mr. FINLEY introduced a bill (H. R. No. 4552) to remove the legal and political disabilities of James Austin McCreight, of Alachua County, Florida; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

## NATIONAL METROPOLITAN LIFE-INSURANCE COMPANY.

Mr. HANCOCK, (by request) introduced a bill (H. R. No. 4553) to incorporate the National Metropolitan Life-Insurance Company of the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to

#### ORDER OF BUSINESS.

Has the morning hour expired?

The SPEAKER. It has.

Mr. DUNNELL. I hope, Mr. Speaker, that the States that have not been called will be called for the introduction of bills and joint resolutions for reference.

The SPEAKER. Is there objection to calling the States that have not yet been called for the introduction of bills and resolutions?

Mr. KASSON. Is this the day for the District of Columbia busi-

ness at two o'clock?

The SPEAKER. It is.
Mr. KASSON. If they will not call for their time I am perfectly willing to agree to the proposition of the gentleman from Minnesota.
The SPEAKER. The Chair has no power to make any such condi-

Mr. KASSON. The chairman of the District of Columbia Committee is here and he can say. If that committee shall demand their time at two o'clock I wish to say there are some motions which should be acted on this morning. I therefore object to the proposition of the gentleman from Minnesota.

## REPRESENTATIVE FROM COLORADO.

The SPEAKER. The regular order of business being demanded, the House resumes the consideration of the motion to suspend the rules coming over from last Monday made by the gentleman from Iowa [Mr. Kasson] and pass the resolution reported from the Committee on the Judiciary, seating Mr. Belford as a member-elect from the State of Colorado.

Mr. KASSON. I may be able to withdraw my motion without objection. I understand the chairman of the Committee on the Judi-

ciary [Mr. Knorr] said on Saturday that the subject-matter of my resolution would be called up to-morrow. Am I correct?

The SPEAKER. The gentleman from Kentucky, [Mr. Knorr,] chairman of the committee on the Judiciary, gave notice on Saturday be would call up the resolution reported from his committee on that subject to-morrow

Mr. KASSON. In that case then I withdraw the motion to suspend the rules made by me and which comes over from Monday last.

## JAMES B. EADS.

Mr. HOLMAN. I ask, by unanimous consent, the House resume and Mr. HOLMAN. I ask, by unanimous consent, the House resume and complete the consideration of the bill pending at the adjournment on Saturday, making appropriation to pay Captain Eads certain moneys under his contract to open the mouth of the Mississippi River.

There was no objection, and it was ordered accordingly.

There was no objection, and it was ordered accordingly.

Mr. JONES, of Kentucky. I desire to offer a resolution for reference, calling on the Secretary of War for information.

Several members demanded the regular order of business.

The SPEAKER. The House now resumes the consideration of the bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties, and other auxiliary works, to make wide and deep the channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States, reported from the Committee on Appropriations by the gentleman from Indiana, [Mr. Holman.] The pending question is on the substitute

moved by the gentleman from Missouri, [Mr. BUCKNER,] striking out all after the enacting clause and inserting in lieu thereof what the Clerk will read.

The Clerk read as follows:

That the Secretary of the Treasury be, and he is hereby, directed to deliver to said James B. Eads, or his assigns or legal representatives, the sum of \$500,000 in bonds of the United States, as provided for by an act entitled "An act making provision for the repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes." approved March 3, 1875, the Secretary of War having determined that said sum is due to said Eads by the terms of a certain written contract entered into by said Eals with the United States under and by the provisions of said act of March 3, 1875.

Mr. STONE. Is this before the House by unanimous consent?

The SPEAKER. It is.
Mr. STONE. Then I object.
Mr. CLYMER. The gentlem

Mr. CLYMER. The gentleman's objection comes too late.

The SPEAKER. The Chair asked for objection, and none was made at the time, and, the consideration of the subject having been proceeded with, objection now comes too late.

Mr. HOLMAN. I ask that the bill be read as reported from the

committee

committee.

The bill, which was read, directs the Secretary of the Treasury to pay \$500,000 to James B. Eads, of Saint Louis, or his assigns or legal representatives, the Secretary of War having determined that that amount is due to said Eads by the terms of a certain written contract entered into by said Eads with the United States to construct such permanent and sufficient jetties and such auxiliary works as may be necessary to create a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico, to be naid under and in pursuance of the provisions of the act approved paid under and in pursuance of the provisions of the act approved March 3, 1875, making appropriations for the repair, preservation, and completion of public works on rivers and harbors, and for other

The SPEAKER. At the adjournment on Saturday the House divided by tellers on the substitute and no quorum appeared. The gentleman from Indiana [Mr. HOLMAN] and the gentleman from Mich-

igan [Mr. CONGER] will resume their places.

The House again divided; and the tellers reported—ayes 54, noes 93.

Mr. BUCKNER demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and decided in the negative-yeas 58, nays 162, not voting 70; as follows:

The question was taken; and decided in the negative—yeas 58, nays 162, not voting 70; as follows:

YEAS—Messrs Bagby, John H. Bagley, jr., Ballou, Blackburn, Blair, Buckner, Candler, Cannon, Caulfield, John B. Clark, jr., of Missouri, Conger, Cook, Crapo, Dunnell, Eames, Ellis, Foster, Franklin, Benjamin W. Harris, Hartridge, Hatcher, Henkle, Hurd, Kehr, Kelley, Knott, Lamar, Leavenworth, Levy, Maish, Money, Morgan, O'Brien, O'Neill, John F. Philips, Pierce, Powell, John Reilly, William M. Robbins, Singleton, Stemons, William E. Smith, Stenger, Stone, Swann, Tarbox, Thomas, Throckmorton, Waddell, Waldron, Alexander S. Wallace, John W. Wallace, Walsh, Watterson, G. Wiley Wells, White, Willard, and Alan Wood, jr.—58. NAYS—Messrs, Abbott, Adams, Ainsworth, Anderson, Ashe, Atkins, George A. Bagley, John H. Baker, William H. Baker, Banning, Bland, Blount, Boone, Bradford, Bradley, John Young Brown, William R. Brown, Samnel D. Burchard, Burl, igh, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Carr, Cason, Caswell, Cate, Chittenden, John B. Clarke of Kentucky, Clymer, Cowan, Cox, Crounse, Culberson, Cutler, Danford, Darrall, Davis, Davy, Denison, Dibrell, Dobbins, Durand, Durham, Eden, Egbert, Evans, Faulkner, Felton, Finley, Flye, Forney, Gause, Glover, Goodin, Gunter, Hale, Andrew H. Hamilton, Robert Hamilton, Haralson, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartzell, Haymond, Hendee, Henderson, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hoge, Holman, Hopkins, Hoskins, House, Hubbell, Humphreys, Hunter, Hunton, Hyman, Frank Jones, Thomas L. Jones, Joyee, Kasson, Kimball, Franklin Landers, George M. Landers, Laue, Lapham, Lawrence, Le Moye, Lewis, Luttrell, Lynch, Lynde, Mackey, McFarland, McMahon, Miller, Milliken, Monroe, Nash, Neal, Norton, Odell, Oliver, Packer, Page, Payne, Phelps, Piper, Plaisted, Platt, Poppleton, Potter, Purman, Rainey, Rea, Reagan, Riddle, Roberts, Robinson, Sampson, Savage, Scales, Schleicher, Schumaker, Sheakley, Smalls, A. Herr Smith, Southard, Sparks, Syring

So the substitute was not adopted.

During the call of the roll,
Mr. ASHE said: My colleague from North Carolina, Mr. Yeates, is
confined to his room by sickness.

The result of the vote was then announced as above recorded.
The SPEAKER. The question is now on the engrossment and third reading of the original bill.
Mr. O'BRIEN. Let it be read.

The bill was again read.

Mr. CONGER. I desire to offer an amendment to the bill.

The SPEAKER. That would not be in order, the previous question having been ordered on the substitute and engrossed bill.

Mr. CONGER. I move to reconsider the motion by which the main

question was ordered.

The SPEAKER. The previous question having been only partially executed the gentleman is not in order in making that motion.

Mr. O'BRIEN. I would suggest to the gentleman from Michigan that he wait until the engrossment and third reading of the bill.

Mr. CONGER. Very well.

The bill was ordered to be engrossed and read a third time.

The bill was ordered to be engrossed and read a third time.

The SPEAKER. The question is on the passage of the bill.

Mr. CONGER. I move to reconsider the vote by which the bill was ordered to be engrossed and read a third time.

Mr. HOLMAN. I call for the previous question on the passage of the bill if the operation of the previous question is exhausted.

The SPEAKER. The gentleman from Michigan, being recognized, has the right to make a motion to reconsider the vote by which the

has the right to make a motion to reconsider the vote by which the bill was ordered to be engrossed and read a third time.

Mr. CONGER. I desire to state that my object in making that motion is that I may ask the House to adopt an amendment to the bill.

## ADMISSIONS ON THE FLOOR.

Mr. DURHAM. I ask that Rule 134 may be read and enforced. We cannot pass this morning outside the seats without running against four or five lobbyists.

The SPEAKER. The gentleman from Kentucky demands the read-

ing of the one hundred and thirty-fourth rule.
Mr. O'BRIEN. I hope it will be enforced.
The SPEAKER. The Chair will enforce it.

The Clerk read as follows:

The Clerk read as 1010ws:

134. No person except members of the Senate, their Secretary, heads of Departments, the President's Private Secretary, foreign ministers, the governor for the time being of any State, Senators and Representatives elect, judges of the Supreme Court of the United States and of the Court of Claims, and such persons as have by name received the thanks of Congress—March 15, 1867—shall be admitted within the Hall of the House of Representatives—March 19, 1860—or any of the rooms upon the same floor or leading into the same—March 2, 1865; provided that ex-members of Congress who are not interested in any claim pending before Congress, and shall so register themselves may also be admitted within the Hall of the House; and no persons except those herein specified shall at any time be admitted to the floor of the House.—March 15, 1867.

The SPEAKER. The Chair directs that the officers of the House enforce the rule as read.

Mr. DURHAM. I desire to make the point of order that no persons other than those named in the rule can be introduced to the floor of the House, even under the direction of the Speaker, except by a suspension of the rules.

The SPEAKER. The Chair feels that he has been trying his very best to enforce the rule; and he asks now that members, without exception, will co-operate with him in doing so in the future.

#### PAYMENT OF JAMES B. EADS.

I move to lay the motion to reconsider on the table. The SPEAKER. The gentleman from Michigan [Mr. CONGER] moves to reconsider the vote by which the bill was ordered to be engrossed and read a third time. That motion is not debatable. The gentleman from Indiana moves to lay the motion to reconsider on the

Mr. CONGER. Does the Chair decide that the motion to reconsider

is not debatable?

The SPEAKER. Yes, sir.

Mr. HOLMAN. Of course it is not debatable—the previous ques-

tion still operating.

Mr. CONGER. The operation of the previous question is exhausted.

The SPEAKER. The Chair will read from the Digest:

A motion to reconsider is not debatable if the question proposed to be reco-sidered is not debatable.

Mr. CONGER. But in this case the question was evidently debat-

The SPEAKER. The previous question was operating on the motion for the engrossment and third reading of the bill.

Mr. CONGER. But it had exhausted itself in the third reading. The previous question was exhausted when the bill was ordered to a third reading

The SPEAKER. The Chair will read the statement in the Digest:

A motion to reconsider is not debatable if the question proposed to be reconsidered was not debatable.—Journals, 2, 27, page 331; 2, 30, pages 135, 136. But the fact of a question kaving been decided under the operation of the previous question does not prevent debate on the motion to reconsider, if the original question was otherwise debatable.—Journal, 1, 33, page 127.

Mr. CONGER. That is what I supposed.
Mr. BANKS. The motion to order the bill to a third reading was debatable, and of course the motion to reconsider the vote ordering

it to a third reading is also debatable.

Mr. SAMPSON. I remember very distinctly that this question was up during the last session; and the Speaker pro tempore who occupied the chair at that time decided in the first instance that this motion the chair at that time decided in the first instance that this motion was not debatable; but after a long discussion upon the floor of the House it was decided to be debatable; that the previous question was exhausted; that the main question being on ordering the bill to be engrossed and read a third time, and the previous question being ordered on that, when that vote was taken the operation of the previous question was exhausted. I remember that the discussion on that occasion occupied about half an hour.

vious question was exhausted. I remember that the discussion on the point of order on that occasion occupied about half an hour.

Mr. WILSON, of Iowa. There are certain questions which under the rules of the House are not debatable, and motions to reconsider them are not debatable. A bill or resolution is debatable on engrossment, and a motion to reconsider that question is debatable; a motion to adjourn and a motion for the previous question are not debatable, and motions to reconsider them are not debatable. I think

the Chair will see that this is the only stage where a bill is properly debatable. Although our rules permit bills on their passage to be debated, yet I think a motion to reconsider at this stage of a bill be debated, yet I think a motion to reconsider at this stage of a bill in order to bring it back for amendment should be supported by debate. If there should be debate at any stage of a bill there is reason why it should be debated at this stage. I think if the Chair will reflect he will see that this question is properly debatable, and therefore a motion to reconsider after the previous question is exhausted is debatable. If the gentleman in charge had asked the previous question on the passage the motion to reconsider would not have been debatable, but he did not insist upon his right to move the previous question. It is customary for a member in charge of a bill to move to reconsider and table at each stage, which shuts out those opposing the bill from getting the floor if the House supports the member in charge. In this case this was not done, and the privilege I think good to reconsider now.

I think good to reconsider now.

Mr. KASSON. I did not hear my colleague distinctly and do not know if he referred to the statement in the Digest on page 199. The construction put upon the rule will be found there; and with the permission of the Chair I will read it:

Where a vote taken under the operation of the previous question is reconsidered, the question is then divested of the previous question, and is open to debate and amendment.—Journals, 1, 27, page 129; 1, 33, page 127.

Then comes this note in brackets:

These decisions apply only to cases where the previous question was fully exhausted by votes taken on all the questions covered by it before the motion to reconsider was made. In any other case, the pendency of the previous question would preclude debate.

Therefore, as I construe the ruling, this bill has been fully divested of the operation of the previous question, and my recollection of the decisions of the Chair heretofore has been that the motion to recon sider could only be avoided by the person in charge of the bill immediately calling the previous question on the passage of the bill.

## ORDER OF BUSINESS.

The SPEAKER. The hour of two o'clock having arrived, the Chair recognizes the chairman of the Committee for the District of Columbia, [Mr. Buckner,] to-day being devoted to the business of that committee.

Mr. CONGER. Will the Chair recognize me when this question

comes up again?

The SPEAKER. The Chair will do so, and in the mean time the Chair will examine this question more fully.

WASHINGTON CITY AND ATLANTIC COAST RAILROAD COMPANY.

Mr. BUCKNER. When the House had last under consideration the business of the District of Columbia there was pending a bill as unfinished business which my colleague on the committee, Mr. HENKLE, has charge of.

The House resumed the consideration of the bill (H. R. No. 1860) to incorporate the Washington City and Atlantic Coast Railroad Com-

The bill was read, as follows:

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That C. C. Cox, A. A. Gangewer, M. Meigs, Allan Rutherford, J. A. Lynch, W. F. Sliney, C. D. Sloan, G. W. C. Waite, together with such persons as may become associated with them for that purpose, together with their successors, are hereby created and effected into a body corporate and politic, in deed and in law, by the name and title of the Washington City and Atlantic Coast Railroad Company, and by that name have perpetual succession, and may sue and be sued, plead and be impleaded, and be defended, in the courts of law and equity within the District of Columbia, and may use a common seal, and adopt by-laws for the regulation of its government.

SEC, 2. That the said corporation is hereby fully authorized and empowered to survey, locate, lay out, construct, collect tolls upon, maintain, and enjoy a railroad line, with the appurtenances and machinery necessary for one or more tracks within the District of Columbia, commencing on the southern bank of the Eastern Branch of the Potomac River, at or near the village of Uniontown, and from thence to the line dividing the District of Columbia from Prince George's County, in the State of Maryland, and from said line to Upper Marlborough in said county or adjacent thereto, and from thence to the Chesapeake Bay in Anne Arundel County, in said State of Maryland, and there, as also at its terminus on the Eastern Branch aforesaid, to construct one or more depots and a wharf or wharves for the purpose of landing and transferring goods and passengers, and to own and hire steamboats for that purpose.

SEC, 3. That the capital stock of said railroad company shall consist of 25,000

landing and transferring goods and passengers, that purpose.

SEC. 3. That the capital stock of said railroad company shall consist of 25,000 shares of \$50 each; which stock shall in all respects be deemed personal property, and shall be transferable in such manner as by the by-laws of said company shall be provided.

SEC. 4. That it shall be lawful for the said railroad company to borrow from time to time sums of money not exceeding in the entire \$500,000, and to issue bonds therefore the said railroad company to borrow from time to time sums of money not exceeding in the entire \$500,000, and to issue bonds therefore the said railroad company to borrow from time to time sums of money not exceeding in the entire \$500,000, and to issue bonds therefore the said railroad company shall consist of 25,000 shares of \$50 each; which stock shall be transferable said railroad company shall consist of 25,000 shares of \$50 each; which stock shall in all respects be deemed personal property, and shall be transferable said railroad company shall be transferable said railroad company shall be transferable said railroad company shall be said railroad company to borrow from time said railroad company to

and shall be transferable in such manner as by the by-laws of said company shall be provided.

SEC. 4. That it shall be lawful for the said railroad company to borrow from time to time sums of money not exceeding in the entire \$500,000, and to issue bonds therefor bearing interest not exceeding 7 per cent, payable semi-annually, and to mortagge as security therefor all the corporate rights, franchises, property, real and personal, of what kind soever, belonging to said company.

SEC. 5. That the persons herein named as corporators, or a majority of them, shall, within ninety days after the passage and approval of this act, meet in the city of Washington for the purpose of prescribing regulations for opening books of subscription to said capital stock, at such times and places as they may designate by public notice of at least ten days in two daily papers in the city of Washington; and said books shall be kept open until \$100,000 of said stock shall be subscribed; and 5 per cent on all subscriptions shall be paid in lawful money at the time of subscribing to the person or persons anthorized by the corporators to receive the same; and whenever that amount shall have been subscribed, and 20 per cent. of the same paid as above subscribed, it shall be the duty of the above-named corporators (a majority of whom shall constitute a quorum for the transaction of business) to call a meeting of the stockholders, at the city of Washington, for the purpose of electing directors of the said corporation; and each share of said stock on which the said 20 per cent. has been paid as hereinbefore provided shall entitle the owner to one vote. The corporators herein named shall designate a majority of their number to act as inspectors of elections, which majority of inspectors so des-

ganted shall certify under their mannes the directors thus day elected, and shall sould a feed their alceids and the sites and place of the final meeting of the shall board of directors. At such meeting the above corporators shall deliver to the shall directors the books of subscription to the said Washington City and Atlantic Coast Enlivend Company, together with the amount pain thereon, with a full receivable of the shall directors, with their ancessors or assigns, shall constitute the said body politic control of the shall directors, with their ancessors or assigns, shall constitute the said body politic control of the shall directors with their ancessors or assigns, shall constitute the said directors shall, at their places. A majority of said directors shall constitute a quorum for the transaction of business.

SEG. 6. That the said directors shall, at their first meeting, elect from their own states of the shall developed the

Mr. HENKLE. At the time this bill was last under consideration an amendment was offered by the gentleman from Iowa [Mr. Wilson]

which was not accepted by the committee because it was not thoroughly understood. Upon a more thorough understanding of the import of the amendment the friends of the bill were willing to consent that it should become a part of the bill, and I will now yield to the gentleman from Iowa [Mr. OLIVER] to offer that amendment.

Mr. OLIVER. I offer the following amendment to come in as an additional section:

That the company receiving the benefits of this grant shall not charge for transporting persons or merchandise more for a less than for a greater distance, nor discriminate against shippers from the same point on their line to any other point on their line or to points on other lines of railroad.

Mr. HENKLE. I have no objection to the amendment.

The amendment was agreed to.

Mr. HENKLE. I now move the previous question on the bill as amended.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and it was accordingly read the third time,

Mr. HENKLE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, annonneed that the Senate had passed a resolution, in which he was directed to ask the concurrence of the House, to print extra copies of the report of the board of health of the District of Columbia for the year 1876.

The message further announced that the Senate had passed bills of the following titles; in which they asked the concurrence of the

A bill (S. No. 1185) to ratify an agreement with certain bands of the Sioux Nation of Indians; also with the Northern Arapahoe and Cheyenne Indians; and

A bill (S. No. 1143) for the relief of the legal heirs of Ann Lynch. MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. Grant, his Private Secretary.

DESTITUTE POOR OF THE DISTRICT OF COLUMBIA.

Mr. STEVENSON, from the Committee for the District of Columbia, reported back, with a recommendation that it do pass, the bill (H. R. No. 4473) for the relief of the destitute poor of the District of Co-

The bill was read, as follows:

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of \$20,000, for the relief of the destitute poor in the District of Columbia, be, and the same is hereby, appropriated, out of any money in the Treasury of the United States not otherwise appropriated; the same to be drawn by warrants of the commissioners of the District of Columbia on the Treasurer of the United States, in such weekly installments as shall be necessary to relieve the distress of those in absolute want.

SEC. 2. That for the purpose of ascertaining the amount thus necessary to be drawn for each weekly installment, the commissioners of the District of Columbia shall require the relief commissioners of the District to furnish them the list of such families, and the number of persons in each, who are eligible and require relief from this fund. The said list shall constitute the voucher of the commissioners for the amount to be drawn by their warrant on the Treasurer of the United States.

SEC. 3. That all persons or relief associations claiming assistance from the fund shall make their application to the relief commissioners of the District, who shall keep an alphabetical list of all such applications, and shall determine upon the eligibility of the applicants, and shall submit the same to the commissioners of the District of Columbia as vouchers for their warrant upon the Treasurer of the United States, in accordance with sections 1 and 2 of this act.

SEC. 4. That no part of this appropriation shall be used for any other purpose, nor paid out in any other manner, than for the purpose and in the manner prescribed by the provisions of this act.

SEC. 5. That the parties hereinbefore named, to whom the distribution of he said fund is intrusted, shall make a report to Congress on the first Monday in December next of their action in relation to the expenditure of the fund hereby appropriated.

Mr. STEVENSON. This bill appropriates the sum of \$20,

Mr. STEVENSON. This bill appropriates the sum of \$20,000 out of the Treasury of the United States for the purpose of relieving the wants of the poor and distressed in this District. This amount is to be drawn by warrants of the commissioners of the District of Columbia on the treasurer in weekly installments in such amounts as shall be necessary to relieve those who are actually in want.

I think this bill is sufficiently guarded in its provisions to secure

this amount of money being appropriated to those who absolutely need it, and I can say to gentlemen of the House that from representations made to members of the Committee for the District of sentations made to members of the Committee for the District of Columbia there is in this city actual want, and that it is absolutely necessary that we should pass this bill. I think the amount appropriated is perhaps large enough, at least to meet the present necessities of this time. I yield now for a moment to the gentleman from Mississippi [Mr. SINGLETON] who introduced the bill.

Mr. SINGLETON. As the introducer of this bill I wish to make a remark or two in reference to it. I am satisfied from my own observation, and from information derived from various quarters, that there is a vast amount of suffering in this District, absolute human suf-

is a vast amount of suffering in this District, absolute human suffering. I have had indigent persons come to my room at twelve o'clock at night and ask for a pittance to buy coal to keep themselves and children from freezing to death, and although I am not one of

those who believe in bringing together in this city a large mass of people to live upon the Government—indeed I have always been opposed to it—yet these people are here, they are our fellow-beings and are in suffering circumstances, and there is no time now to inquire whether they be worthy of this pittance of charity which we propose to give them. I hope that not one single member of Congress will vote against the bill. Let us show that while we spend vast amounts of public money in other quarters, we are willing to provide for those persons in this District who are in want and suffering.

I ask the Clerk now to read a portion of a letter which I have received from the committee appointed by the commissioners of this

ceived from the committee appointed by the commissioners of this District to look after the poor, that part of it which I have marked, and then I shall trouble the House no further.

The Clerk read as follows:

The Clerk read as follows:

We are now in daily receipt of from three hundred to five hundred applications. The five visitors are at work from daylight till dark and yet are considerably behind. We have but one clerk, but will soon be obliged to have another as he is not able to fill all the orders, keep up his index, and hear the stories of suffering that the poor creatures are too ready to pour into his ears.

We discourage personal applications, but we have a hundred or more every day. Our funds are entirely exhausted and the commission is working upon the faith that Congress will come to the relief. Volumes could be filled with the tales of destitution and distress that constantly greet our ears.

No member of the commission receives any compensation. We pay our clerk \$40 per month. He works from ten to fourteen hours a day. We pay our visitors \$1 per day.

Our orders are about five dollars' worth to each individual, in coal, wood, flour, corn-meal, rice, sugar, tea, &c., as the case requires.

Very hastily, but most respectfully, submitted.

WILLIAM STICKNEY,

President and Treasurer Citizens' Relief Commission,
District of Columbia.

Mr. STEVENSON. I ask to have printed in the RECORD a commu-

Mr. STEVENSON. I ask to have printed in the RECORD a communication which I sent up to the Clerk's desk on Saturday last, from citizens of the first ward of the city of Washington upon this sub-

There was no objection.

The communication is as follows:

To the honorable the Senate and House of Representatives:

The communication is as follows:

To the honorable the Senate and House of Representatives:

This memorial humbly sheweth—

1. That at a meeting of citizens of the first ward in the city of Washington, held, in pursuance of a call published in the daily papers, at Wilson's Hall on the 2 id day of February, A. D. 1877, to consider the condition of the poor of the first ward, after action had to enlist the citizens of said ward in immediate measures of relief, the undersigned were appointed a committee to memorialize your honorable body in favor of the speedy passage of an appropriation bill for the relief of the poor of the District of Columbia.

2. That your memorialists respectfully represent to your honorable body that from their own knowledge as pastors of churches in the said ward, and from common report, they can testify that there has not been a winter for many years past when there has been so much suffering and misery, not only among the laboring classes, but among people who have never known pennry until now.

3. That this state of things has arisen out of the general depression of business, the cessation of public works, and the recent numerous discharges of clerks and other employes from the Departments, and that all these causes have been aggravated by the unusual severity of the winter.

4. That there is the most urgent necessity that whatever is to be done in the premises shall be done quickly, because of the fact that the treasuries of the various charitable societies of the first ward, and throughout the city, and also the public funds applicable to the relief of the poor, are exhausted, while there yet remain at least two months of hard weather and scanty employment.

5. That the vast majority of the sufferers at this time is made up of the colored people, who have been drawn to this District as to their Mecca; of citizens of the States and Territories, who have come hither upon real or imaginary business with the Government, who claim residence elsewhere but cannot get away to their homes. You

norable body to make specifically columbia.

And your memorialists will ever pray, &c.,

Pastor First Presbyterian Church, Chairman.

JOHN VAUGHAN LEWIS,

Rector Saint John's Parish. Rector Saint John's Parish.

JAS. A. HARROLD,
Rector Holy Oross Church.

AUGUSTUS JACKSON,
Rector Saint Paul's Charch.

R. H. BALL,
GEO. V. LEECH,
Union Methodist Episcopal Church.

WASHINGTON, D. C., January, 24, 1877.

WASHINGTON, D.C., January, 21, 1877.

Mr. CALDWELL, of Alabama. I dislike to appear ungracious by opposing even for a moment this bill reported from the Committee for the District of Columbia. But the gentleman from Mississippi [Mr. Singleton] has invoked the unanimous support of this House for the bill under consideration. A cursory examination of the bill has satisfied me that it is wrong in principle and is inexpedient. As embodying the reasons why this bill should not pass I will ask to have read in the hearing of the House a portion of the report of the commissioners of the District of Columbia, an extract from the report of the assistant attorney of the District. port of the assistant attorney of the District.

I would ask when it came to pass that the American Government became an eleemosynary institution? I would like to have the Com-mittee for the District of Columbia tell me what more pressing reason there is for an appropriation of \$20,000 in the interest of the poor of this District than of the poor of any State or of any other community in the Union.

in the Union.

We have had enough of this sort of charity. It has not been more than twelve months since Congress made large appropriations for the indigent poor or the sufferers of certain overflowed districts of this country. The large amounts thus appropriated were used, not for charity, but for political purposes. I do not apprehend that this appropriation will be used for political purposes, but it will result in an absolute injury to the District of Columbia. It will invite a pauper population to come within the limits of the city of Washington. Wherever an appropriation is made for purposes of charity you will find that those who are not disposed to work, the lazy, the improvident, will flock to that point in order to become the beneficiaries of the appropriation. I regard this bill as a premium upon vagrancy. I apprehend that you now have here a population sufficiently large to tax to the utmost the benevolence and the charities of the good people of this District.

I now ask the Clerk to read the portions I have marked in the re-We have had enough of this sort of charity. It has not been more

I now ask the Clerk to read the portions I have marked in the report of the commissioners of the District of Columbia.

The Clerk read as follows:

The Clerk read as follows:

Among the most embarrassing questions referred to the assistant attorney have been those growing out of applications to the commissioners for charity. It has been supposed by some that your honorable board had the power to pension worthy applicants out of the public funds; by others, that you could make large donations from the revenues to charitable societies: and, by others, that you could, without law, enter upon a general system of out-door relief, appointing committees of citizens for that purpose.

The whole subject will doubtless receive from Congress the attention it merits; and the relief of the helpless indigent will be lifted by legislation out of the domain of the doubtful doctrine of the inherent powers of a municipal corporation.

Several causes have contributed to the large increase of the numbers of the poor at the national capital. The large annual sums distributed by Congress in alms; the abundant benefactions of churches and relief societies; the liberal contributions of theatrical managers and concert-givers; the extraordinary number and liberality of our charitable institutions; the large number of laborers attracted by the extensive improvements formerly prosecuted by the board of public works, and now left without work; the natural tendency of the newly-emancipated to seek shelter and protection at the seat of Government; the impoverishment of many who visit the capital in some desperate chance of office or lobby success; and the selfish thrusting upon us by counties in neighboring States of their superannated, helpless, and insane indigent, all these causes have swelled the pauper class in the District to a number too large for adequate relief out of the slender treasury of the District. It may well be doubted whether the policy that masses this class of population at the nation's capital is a wise one.

Mr. CALDWELL, of Alabama. Now, if the district attorney be

Mr. CALDWELL, of Alabama. Now, if the district attorney be right when he declares that the active benevolence of the good people of this District has invited large numbers of paupers outside to come within the pales of the city, will not that number be greatly increased by the munificence of this Government? Every dollar appropriated by the Government for the pauper inhabitants of this District is but an invitation which will soon spread far and wide, inducing paupers, vagabonds, and every one else who desires a support without work to come to the seat of Government to receive this much-coveted assistance.

without work to come to the seat of Government to receive this much-coveted assistance.

Another reason why this appropriation should not be passed, if it be true that this invitation will induce vagrants to flock to the capital city, is that the result will be an increase of a thriftless population and a corresponding increase of crime. I would call the attention of the House to the fact that at this time, with this very population invited here by the active benevolence of the citizens of this District, there are more cases reported before the police court of the District than in any other court of like kind in the land. I find on page 505 of the report of the attorney that the number of municipal cases disposed of in the police court, with the fines and forfeitures for the respective years ending November 15, 1875, and November 15, 1876, are as follows: number of cases in 1876, 5,088; number of convictions, 4,584. These cases and these convictions largely come from the very character of population invited by this bill. I find further on in the same report that the municipal cases, supplemented by the cases from the United States court for misdemeanor, amount to 8,581. I hazard nothing in saying that the police records in no city in the world will present such a spectacle as you have here from the very population that you propose to benefit by this bill. If I were satisfied that it would reach worthy objects, and worthy objects alone, I should unhesitatingly cease all opposition to the passage of the bill, notwithstanding my conviction that it is wrong on principle.

But, sir, what guarantee have we, what provision in this bill insures that there will be a proper distribution of this fund? Reports

But, sir, what guarantee have we, what provision in this bill insures that there will be a proper distribution of this fund? Reports are to be made by certain parties to the commissioners of the District; are to be made by certain parties to the commissioners of the District; warrants are to be drawn by them, but what officer under bond for the faithful discharge of any duty is to issue one dollar of this money to the poor? Does it go into the hands of charitable institutions? The officers of those institutions are unbonded, and they will disburse the funds at their own pleasure. Hence, if this bill is to pass, I beg the gentlemen having it in charge to allow it to be so amended that the money shall be disbursed by the commissioners of the District of Columbia or some other officers who are under bond.

Mr. STEVENSON. Mr. Speaker, I wish to say to my friend from

Mr. STEVENSON. Mr. Speaker, I wish to say to my friend from Alabama [Mr. Caldwell] that he need have no apprehension that any portion of this money will be used as was money appropriated for the suffering poor in his own State, for political purposes. This money is to be appropriated for the relief of those who are in absolute want. As has been shown beyond all question by statements made to members of the committee and to many other gentlemen on this floor, there in this city hundreds of cases of actual starvation.

Upon the question raised by the gentleman from Alabama, as to how

this money will be used, I think the bill is sufficiently guarded in that respect. It provides that this money shall be drawn from the Treasury of the United States upon warrants of the commissioners of the District of Columbia, who are officers under bond and under oath. Alphabetical lists are to be kept of the families who are in want and who need this relief in order to sustain life; and the board of commissioners, when satisfied that there is necessity, draw their warrants upon the Treasury of the United States, and this money is then distrib-

The gentleman from Alabama [Mr. Caldwell] has suggested that an appropriation of this amount will be a premium upon crime. I am at a loss to know how it can increase crime to feed the starving; whether they are criminals or whatever may be their position or condition in life. It seems to me that if the doctrine of the gentleman is carried out and these men are required either to starve or to steal, they will in reality become criminals; whereas if the Government of the United States should appropriate this small pittance for the purpose of relieving their distresses, of tiding them over the winter, they may possibly be preserved from crime as well as from starvation.

In recommending this bill, Mr. Speaker, the committee have not stopped to consider the character or previous condition in life of those who will be benefited by it. Many of them may be bad people; many of them, no doubt, are indolent; some of them, doubtless, are criminals or persons of bad character. Possibly such is the fact. Many of them are unfortunate people of color, who in large numbers have congregated in this city. I base this appropriation, Mr. Speaker, solely upon the ground that those whom it is intended to benefit are in actual want, that they are starving, and their condition appeals to our common humanity.

The gentleman from Alabama should bear in mind the fact that in

The gentleman from Alabama should bear in mind the fact that in his own city, in perhaps every city or municipality in these United States, appropriations are made for the relief of the poor—to prevent starvation, to prevent suffering. The city of Washington has no government. The District of Columbia has no city government. Here there is neither district nor municipal government. It is completely and exclusively in the hands of Congress; and unless this appropriation of the control of the contro ation or one of similar kind be made by Congress, these poor unfortunate people will be compelled to depend upon private charity or starve.

Mr. BLOUNT. I desire to ask the gentleman a question.
Mr. STEVENSON. I yield for the question.

Mr. BLOUNT. The gentleman has stated, very properly, that Congress is the government of this District. I concur with him in reference to the apparent necessity of this measure; I do not question that; but as I understand the provisions of the bill the property of this District is not at all chargeable with this expense. In the police of the District, in the care of its health, in all municipal matters, it is supposed and rightly supposed that the District should pay its pro rata portion of such expenditure. Now in this matter of charity (which may be but the beginning, which may be a precedent for other appropriations of the same kind) I ask the gentleman whether it will not exercise a wholesome influence to provide that a portion of this tax shall rest upon the property-holders of this District, so that, instead of having a unanimous disposition to besiege Congress for these appropriations, we shall have the conservative influence of the property-holders exerted here to prevent improper taxation. I ask the gentleman whether it would not be proper to amend this bill so as to require the property-holders of this District to pay their

Mr. STEVENSON. The objection to that is this: there is a press-

ing and immediate necessity for the expenditure of this money for the relief of the suffering poor. The District has no money.

Mr. BLOUNT. I will ask the gentleman whether it could not be provided that the District should hereafter refund out of its treasury whatever may be its just proportion of this sum and whether the bill with a provision of that kind could not go through as well as in

its present form?

Mr. STEVENSON. I yield for a moment to my colleague on the committee, [Mr. BUCKNER.]

Mr. BUCKNER. I want to say only a word in reply to the suggestion of the gentleman from Georgia, [Mr. Blount.] Perhaps he is not aware that this District, with a real estate valuation not exceeding the valuation probably in his district, or certainly in my own, is now bound to pay \$1,100,000 in interest upon its debt; and when you propose a scheme for compelling this District to pay a portion of this money, you are only shifting the burden. In other words, the Congress of the United States has to come to the relief of the people of this District, who never will be able of themselves to pay the in-

of this District, who never will be able of themselves to pay the interest on the \$22,000,000 of debt, or the principal either.

Mr. BLOUNT. Therefore it is that we should like to know how much more, in addition to this \$20,000, we will have to give to the people of this District.

Mr. BUCKNER. There is a bill pending on that subject before the

Mr. STEVENSON. "Sufficient unto the day is the evil thereof."
Mr. BLOUNT. I know that.
Mr. BUCKNER. It is not for this House to pass the bill upon any such idea as that advanced by the gentleman from Georgia.
Mr. SINGLETON. Mr. Speaker, I have been somewhat surprised that my kind-hearted and amiable friend from Alabama should have upde the convertion has been to this bill. I do not think he is made the opposition he has done to this bill. I do not think he is

wanting in the kindly feeling belonging to the best hearts. All efforts to give a political turn to this matter I depreciate. There is no political significance in this bill. Any effort on the part of the gentleman to show that because certain appropriations were made to assist the poor and the destitute in other localities, which, perhaps, were not as proper in their character as they should have been, and that therefore we should turn a deaf ear to the suffering poor people of

therefore we should turn a deaf ear to the suffering poor people of this District, is to my mind no response to the appeal.

Mr. CALDWELL, of Alabama. Let me ask the gentleman how long this \$20,000 will last, and how far it will go in feeding the great body of the hungry people of this country?

Mr. SINGLETON. In answer to that I have this to say. I have conversed with intelligent ladies and gentlemen in this city and they have assured me that while the sum may not be enough to answer all the wants of the poor of this city, yet it will go a great way toward relieving their present distress. ward relieving their present distress.

Mr. Speaker, they are not all criminals who are applying for as-Mr. Speaker, they are not all criminals who are applying for assistance. I repudiate such an idea altogether. The class of people who commit crimes and are brought up before the judicial tribunals to answer for them are not the only ones asking for our charity. There are men and women, and more especially females in this city, who have been turned out of employment and are to-day without a penny in their pockets, and perhaps no place to lay their heads for the night, were it not for the charity of some kind citizens of Washington.

Mr. CALDWELL, of Alabama. We have thousands of that sort

everywhere in the country.

Mr. SINGLETON. I know we have thousands of them, but it is our duty as stewards of the grace of God, when we find suffering humanity, to extend a helping hand to them. I will commend to the gentleman that portion of the Bible where the man who journeying from Jerusalem to Jericho fell among thieves and was left wounded by the way-side, and while the Levite passed by on one side and the priest on the other, the poor Samaritan came along and extended to him a helping hand and received the blessing of Heaven for it. It is easy for gentlemen who sit here and draw \$5,000 a year and expend it as they please to talk about the criminals of the city of Washpend it as they please to talk about the criminals of the city of Washington and throw odium upon this bill upon the ground that they alone will be benefited by it. Why, sir, some of the very best people I know have been impoverished by recent events and to-day are under the necessity of asking charity at the hands of their friends. Now, shall we refuse to grant this pittance to them? Why, sir, I would rather to-day vote to give \$20,000 and save human life than to witness to-morrow the cortége of some poor woman who had starved the night before for the want of bread as she is borne off to her silent resting ralese or to visit some home of squalid wretchedness where the night before for the want of bread as she is borne off to her silent resting-place, or to visit some home of squalid wretchedness where some little inoffensive child had frozen to death for want of covering to keep it warm. I shall vote, Mr. Speaker, to give this assistance. I do not believe we will regret it, but that on the contrary we will be blessed in this act of giving, as it is declared "It is more blessed to give than to receive."

Mr. Speaker, every member of the Hovee will vote

Mr. BANKS. Mr. Speaker, every member of the House will vote for or against this bill with some degree of reluctance. It is a necessity presented to us which we would be glad to avoid if we could. There is difference as to the question of the propriety of voting away money from the Treasury in measures of this kind; and also as to the

use to be made of it.

The question raised by the gentleman from Indiana, and also supported by the gentleman from Georgia, as to the best means of re-lieving poverty, is one which has been debated in all nations and in all ages, and has not yet been settled. We cannot defer action on this question because of any doubt in regard to it. There is necessity for this action here. It is greater than can be reported to us by any commission or any committee or than we will find in any report.

I rose, sir, to refer to an incident which both astonished and shocked

me a few months ago. I had known a gentleman in this city for something like ten or fifteen years; a man of reputation, of excellent, exemplary character, of education, of refinement, entitled to admission to the best circles of society here. He was a member of the bar of the Supreme Court, a member of the clubs in this city; he had been in former times a member of the clubs of New York, and a man who had borne an excellent reputation, both personal and professional, in one of the great States of the Union. Some months ago, when I came to this city, I read in the morning newspaper that this man, being deprived of the means of support and too proud to make known his wants to any of his friends or acquaintauces, had shut himself up in his room and absolutely starved himself to death. himself up in his room and absolutely starved himself to death. Now I know of course that an appropriation of this kind would perhaps not benefit a person of that sort. But there are many thousand young and old men and women, children and grown persons, who are suffering absolute want, who are upon the verge of starvation, and who would be relieved by an appropriation of this kind.

Now, sir, the Government of the United States cannot evade some decree of responsibility for this condition of things. The processity

degree of responsibility for this condition of things. The necessity which is resting upon the business people, and more particularly upon the industrial classes of this country, for the relief of adversity and suffering, is one which they share with the people of other nations. We do not know to what cause we can attribute it. But certainly there is something due to these people and some responsibility on the part of the Government which we ought to consider, and which we ought to recognize on the one side and on the other.

There is not a single municipality in this country, not a city, not a town that will not feel itself compelled to aid the suffering poor in this inclement weather, who, through depression of business and deprivation of employment are without the means of comfortable housing and even of food. And our situation is just exactly like each one of these municipalities throughout the length and breadth of the land. of these municipalities throughout the length and breadth of the land. This Congress is now acting as a municipal legislature. It is acting for a municipality. It is not acting as a Congress. It is not at work for the nation. It is discharging its duties to the suffering people of this municipality just exactly as every city, and every town is taking the same action in regard to the suffering poor of its own locality. We have increased in a large degree this suffering on the part of individuals and of families, because of that indispensable necessity for the reduction of the expenses which has thrown many hundreds of needle suddenly and without any preparation for the future out of the reduction of the expenses which has thrown many hundreds of people suddenly and without any preparation for the future out of employment. They cannot go away from the city. They cannot support themselves here. They have been brought here by the Government. Their families are here; their wives and their children are here in many instances by the action of the Government; and we must relieve them if we have any consideration for the calls of humanity or any proper regard to the sense of public duty. I hope, sir, that this bill will be passed.

Mr. STEVENSON. I yield two minutes to the gentleman from Alabama, [Mr. CALDWELL.]

Mr. CALDWELL.]

Mr. CALDWELL, of Alabama. I take the floor merely to return my sincere thanks to the gentleman from Mississippi [Mr. SINGLETON] for the kind words uttered in compliment to myself, and to say

TON] for the kind words uttered in compliment to myself, and to say in reply to his allusion to his friend who traveled down to Dumas-

Mr. SINGLETON. I said Jericho.
Mr. CALDWELL, of Alabama. Well, Jericho; be it so. [Laughter.]
I am as favorably inclined to the suffering poor as any man upon the floor of the House can be. But I beg leave to say to the gentleman from Mississippi that my opposition to this bill arises from the conviction that we have no right to take the money of the whole people to support a very small portion of the poverty-stricken people of the country.

Mr. SINGLETON. Will the gentlement allow me one question?

Mr. SINGLETON. Will the gentleman allow me one question?

Mr. SINGLETON. Will the gentleman allow me one question?
Mr. CALDWELL, of Alabama. Yes, sir.
Mr. SINGLETON. Is it not a fact that we have taken out, of the hands of the citizens of the District of Columbia the power to legislate for themselves and to make proper legislative provision for the poor?
Mr. CALDWELL, of Alabama. That is true.
Mr. SINGLETON. Other cities have that power which we have taken from these people. We have to do all the legislation regulating these matters and have become to some extent, therefore, responsible for the care of the poor.

ing these matters and have become to some extent, therefore, responsible for the care of the poor.

Mr. CALDWELL, of Alabama. I concede, Mr. Speaker, that it is our duty to legislate for this District; but, sir, when I call for the reading of the report of the attorney, he tells us that the appropriations made here have brought into the capital city a population that are paupers and vagrants, and I insist, sir, that every appropriation we make will but increase that population in the District. I would be glad, sir, to see relief brought to the worthy suffering of the country, but I would rather see it brought as the good people of the city are now endeavoring to bring it, by private charity, by active efforts on their part to relieve want. And I would commend to the gentleman from Mississippi the suggestion that it would be better for him and better for me, drawing our \$5,000 as Congressmen, rather than put our hands into the public treasury and take \$20,000 of the people's money to appropriate to those who will not work—that it would be better for us to take an example from the Frenchman who, being appealed to by his friend to aid a suffering woman, said, "I am would be better for us to take an example from the renchman who, being appealed to by his friend to aid a suffering woman, said, "I am sorry ten dollars' worth; how much are yon sorry?"

Mr. SINGLETON. If ten dollars would relieve me of my responsibility in this matter I would be very thankful to give ten dollars,

or ten times ten dollars.

[Here the hammer fell.]
Mr. STEVENSON. I yield to the gentleman from New York, [Mr.

Cox.7

Mr. SINGLETON. If we had power to send relief across the Atlantic Ocean to the starving poor of Ireland, can we not provide for

the wants of our own poor?

Mr. CALDWELL, of Alabama. With the permission of the gentlemen from New York, I would offer an amendment which I send to

the Clerk's desk.

Mr. COX. If the gentleman will pay his ten dollars I have no ob-

The Clerk read the amendment proposed by Mr. Caldwell, of Alabama, as follows:

Provided, That \$25 of the amount paid shall be paid from the pay due each member of the Senate and House of Representatives and charged to them on their accounts by the Sergeant-at-Arms.

Mr. COX. I will not detain the House except by one reference. Two distinguished gentlemen from the South, both advocates, I think, of strict construction, differ on this point, and I think I can reconcile them. Let them both make their su scription and I will assure them, in behalf of the benevolent ladies of this District as well as of the commission, that their contributions as well as what appropriation we make will be well appropriated.

This is not a new appropriation. I find that it has been the custom This is not a new appropriation. I find that it has been the custom for years to vote these appropriations to the poor of this District. I find that in the Forty-second Congress an appropriation was made of \$12,000, and again in 1875 there was an appropriation of \$20,000. It seems to me therefore that it a little too late now in this emergency to raise any fine constitutional point in this matter of benevolence. As the gentleman from Massachusetts [Mr. Banks] has well said, we are acting here as a merciful Legislature, and I know from a letter which I hold in my hand, and written by a benevolent lady who has charge of one of the soup-houses or bread-houses on Capitol Hill, that there is here an emergency to day for some help beyond that of prithere is here an emergency to-day for some help beyond that of private benevolence. I do not overstate it, nor do I pretend to any extravagant rhetoric when I say that in the very sight of this Capitol, upon this hill, men and women, old and young, have been crying for bread and have been unable to get it; men have been seeking to bar-ter their muscles and sinews for work and bread and have been unter their muscles and sinews for work and bread and have been unable to make the exchange. Following these kindly precedents to which I have referred, I will not now stick in the bark on any constitutional question. But I would like to see this money wisely and fairly distributed over the entire city. I do not know in full the details of these benevolent provisions which have been made here for the poor, but from a letter which I have here from a friend, a lady friend, written yesterday to my wife, and from the personal observa-tion of that lady who visits around among the poor, I know that these are not cases of sham benevolence. These destitute poor are not tramps who have been drawn into this District for the purpose of not tramps who have been drawn into this District for the purpose of living upon the public Treasury or upon the public kindness; but men, women, and children in utter nakedness, in fever, in sickness, in death, are now starving within sight of this Capitol, and the appeal comes here to us with strong emphasis to help them. I hope that all technicalities will be forgotten and that we shall make a generous appropriation for this purpose.

Mr. STEVENSON. I desire to say to the gentleman from New York that the bill provides that this money shall be distributed in all portions of the city, no one portion of the city or locality having an advantage over another.

vantage over another.

Mr. COX. I was about to offer an amendment to come in at the end of the second section, a proviso that in the distribution of this appropriation due regard shall be had to the various societies, associations, and sections of the District. I would like to put some stress upon that and make it specific.

Mr. BUCKNER. I would say to the gentleman from New York that there are organized committees of relief under the commission-

ers of the District scattered all over the District.

Mr. COX. I know that Mr. Stickney's organization has some men working on salaries, but the ladies for whom I speak are giving their time to this work with no reward except that which comes to their hearts, and I have a surmise that the distribution from the commissioners might be a little more equal. I have been requested to offer an amendment to make this matter a little more specific than the bill makes it, but I cannot do it in view of what the gentleman from Illi-

makes it, but I cannot do it in view of what the gentleman from Innois [Mr. STEVENSON] has said.

Mr. STEVENSON. I now yield five minutes to the gentleman from Pennsylvania, [Mr. Kelley.]

Mr. Kelley. I have several times voted and sometimes spoken in favor of such a bill as this. It is no novelty, and I want to say to gentlemen who have constitutional scruples that in the anti-war times when the strictest construction of the Constitution prevailed it was found legal and constitutional to send food in a Government vessel to the starving people of Ireland. If in those days that was constitutional, it certainly cannot be unconstitutional for us to feed our own constituents who are suffering from want—want of food, want of fuel, want of adequate clothing—under the shadow of the Capitol, who are brought here from every part of the Union either to Capitol, who are brought here from every part of the Union either to accept employment under the Government or hoping to find it. They are not citizens of this District and it would be injustice on our part to saddle their support upon the people of the District if they were able to bear it. They are not exclusively colored persons who have come here to labor. That class is among them, but I have heard stories of suffering from ladies of culture, ladies who brought to the service of the Government the accomplishments taught in the best schools but who had been removed from amployment by the changes schools, but who had been removed from employment by the change of our system of fractional currency and our giving away the contracts of bank-note printing to other cities. One thousand were removed at one time and four hundred at another who had not the means to get away from the city and who have lingered here in the hope of finding employment. I knows of cases where two or three such ladies are living together in a little room who are being clothed and fed by charity, the charity of their former fellow-workwomen whose condition is scarcely better than their own.

I implore gentlemen to enable the people of the District to take care or our constituents, male and female, who are here pining, in want, freezing and starving, rather than we on constitutional scruples shall prove ourselves wiser than all our predecessors and that our hearts are so indurated that no measure of suffering can kindle symmetric in the measure of suffering can kind

pathy in them.

Mr. STEVENSON. I now call the previous question upon the bill. Mr. CALDWELL, of Alabama. Does the gentleman decline to allow my amendment to be voted upon f
Mr. STEVENSON. I must insist upon the previous question.

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The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be engressed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. STEVENSON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on

The latter motion was agreed to.

## TAX BILL FOR THE DISTRICT.

Mr. NEAL, from the Committee for the District of Columbia, reported as a substitute for House bill No. 4293 a bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes; which was read a first and second time.

Mr. NEAL. I ask unanimous consent that the reading of this

entire bill be dispensed with; I can explain its provisions in a few

words.
Mr. HOLMAN. Let the bill be read.

The bill was read, as follows:

cutive bill be dispensed with; I can explain its provisions in a few words.

Mr. HOLMAN. Let the bill be rend.

The bill was rend, as follows:

Be it enacted, de., That for the support of the government of the District of Columbia for the facal year ending June 30, 1573, there shall be levied upon all lands representations of \$1 on cach \$100 of the assessed value thereof, and upon all other real and personal property in said District, except only the real and personal property of the United States and that hereinafter stated, a tax of \$1.50 on each \$100 of the assessed value thereof.

The proposes a tax of \$1.50 on each \$100 of the assessed value thereof, and upon all other real and personal property of the United States and that hereinafter stated, a tax of \$1.50 on each \$100 of the assessed value thereof.

The tributed for the purposes required under the various acts in force in the District of Columbia, upon a just and fair apportionment, to be made by the commissioners of the District of Columbia; and said published apportionment thall stand as the law for the distribution of the funds herein mentioned: Provided Instruction as the law for the distribution of the funds herein mentioned: Provided Instruction as the law for the distribution of the funds herein mentioned: Provided Instruction as the law for the distribution of the funds herein mentioned: Provided Instruction and the said funds as apportioned, but, unless a surplus exists, the reach of the said particle of the said funds and published apportionment while stand as the law for the distribution of the funds herein and the said of the said particle of the said funds as apportioned, but and the said funds as apportioned, but and the said funds as apportioned, but as a said published to here of the said funds as apportioned, but as a said as a surplus exists, the reach and the said funds as a surplus exists, the reach and the said funds as a surplus exists, the reach and the said funds as a surplus exists, the reach and the said funds and the said fun

gate of said taxes, penalties, costs, and interest. Any surplus received from said sale over said aggregate and the costs of the court, including the commission of the trustee, shall be paid to the person in equity entitled to receive it; and, on confirmation of the sale, the court shall cause to be issued to the purchaser a deed which shall have the effect to convey to said purchaser all the right, title, and estate of all persons whomsoever claiming an interest to said proporty, except as hereinafter provided: And provided also. That minors or other persons under legal disability, to redeem the property so sold, or of which the title has, as aforesaid, become vested in the District of Columbia, from the purchaser or purchasers, his, her, or their beirs or assigns, or from the District of Columbia, from the purchaser or purchasers, his, her, or their beirs or assigns, or from the District of Columbia, from the purchaser or purchasers, his, her, or their beirs or assigns, or from the District of Columbia, from the purchaser or purchasers, his, her, or their beirs or assigns, or from the District of Columbia, from paid thereon by the purchaser, or his assigns, between the day of sale and the period of such redemption, 10 per cent, per annum interest thereon as aforesaid, and all taxes and assessments and also the value of improvements which may have been made or erected on such property by the purchaser or by the District of Columbia while the same was in his, her, or their, or its possession.

SEC. 6. That the collector of taxes, immediately after he shall have made sale of any property as a foresaid, shall fle with the comptroller a written report, in which he shall give a statement of the property advertised and the property sold, to the District. Any surplus remaining, after collection of taxes, prunities, and costs, on any real estate, shall be deposited by the collector of taxes to the credit of sale, the cost thereof, and the surplus, if why and the deposited of the surplus from the purchaser of the surpl

him to the accounting officers of the District and audited by them. Any surplus resulting from such sale shall be paid into the treasury of the District, and, upon being claimed by the owner or owners of the goods and chattels, shall be paid to him.

SEC. 8. That the property exempt from taxation under this act shall be the following and no other, namely: First, the Corcoran Art Building, free public library buildings, churches, the Soldiers' Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, buildings belonging to institutions of purely public charity, conducted without charge to inmates, profit, or income; cemeteries dedicated and used solely for burial purposes and without private income or profit; but if any portion of any such building, house, grounds, or cemetery so in terms excepted is larger than is absolutely required and actually used for its leptimate purpose and none other, or is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal invalue to such portion, shall be taxed against the owner of said building or grounds; thirdly, such property as is now exempt from taxation by laws of the United States other than those for the government of the District of Columbia; fourthly, personal property not in said District and taxed elsewhere, but owned by persons domiciled in said District; fifthly, personal property not held for sale and not over the value of \$500.

SEC. 9. That from the assessed value of the cre\*its only of any person there shall be deducted the amount of any valid and bona fale debt or debts which any such person shall individually and absolutely owe, in respect of which he has no remedy over against any other person, upon the same being established by the affidavit of such person claiming deduction as hereinafter provided.

SEC. 10. That the commissioners of said District or their successors in office shall be appended an affidavit in blank, setting forth that the foregoing p

section provided for, any one of said assessors shall, without delay from the best information he can procure make an assessment against such person, firm, or corporation, to which he shall add 50 per cent. thereof: Provided further, That if a majority of said assessors be not satisfied as to the correctness of the return of personal property made by any person, corporation, firm, executor, administrator, guardian, or trustee, any one of said assessors may, from the best information he can procure, or by making such an examination of the personal property as may be practicable, assess the same in such amount as to him may seem just; and notice of the rejection of the sworn return shall be given to the party interested at the address given by him on the schedule, if he shall have given one; and he shall in all cases have the right of appeal to the board of assessors within the time hereinafter limited: And provided further, That if any person shall make a false affidavit touching the matters herein provided for, he shall be deemed guilty of perjury, and, upon conviction thereof, shall be subject to the penalties for that offense now provided for by section 5392 of the Revised Statutes of the United States.

SEC. 11. That the capital stock of all corporations in said District not herein exempted shall be appraised in bulk by the assessors, and the corporation issuing the same shall not be assessed against the individual owners thereof; but from the appraised value of the stock shall be first deducted the value of any real estate of said corporation.

Sec. 12. That the assessment of real property made under the provisions of the Mr. HOLMAN. Since the gentleman from Missouri [Mr. BUCKNER] showed me the amendment which he intended to offer, I have been engaged in conversation with gentlemen who are informed upon this subject, and they think that the amount which would be raised under his amendment would hardly be sufficient to meet the requirements of the common-school system of this city. I think it would be much safer to put it at forty cents instead of thirty cents on the hundred dollars. Even then the city of Washington would pay a less school tax than is paid in many of the cities of this Union. The State of Indiana, with an invested school fund of eight or nine millions of dollars, pays a school tax exceeding forty cents on the hundred dollars.

the same shall not be assessed against the individual owners thereof; jout from the appraised value of the stock shall be first deducted the value of any real estate of said corporation in said District, which shall be separately taxed against said corporation.

SEC, 12. That the assessment of real property made under the provisions of the act of Congress entitled "An act for the support of the government of the District of Columbia for the fiscal year ending June 30, 1876, and for other puposes, "rapproved March 3, 1875, and amendments thereto, is hereby ratified and approved as the assessment, except as hereinafter modified, for the fiscal year ending June 30, 1878, and the commissioners of the District, or their successors in office, shall appoint three competent persons to be assessors, and to hold office for the term of five years, unless sooner removed, the salary of each of said assessors to be \$1,250 per annum. Said assessors shall, before the 1st day of October, 1877, under the direction of the superintendent of assessments and taxes of said District, assess the value of all the real property not embraced in the assessment for the fiscal year ending June 30, 1877, inclusive of all buildings erected, or roofed, improved, or enlarged, and not herectofore taxed, and all personal property in said District liable to taxation, and shall state the same separately, in books to be kept in a systematic manner; and such value for taxation shall be the true value in the lawful money of the United States of the property so assessed. The assessed value shall have reference to the date of the 1st day of July, 1877, except in regard of buildings erected, roofed, improved, or enlarged subsequent to that date, or, in the case of stock in trade, shall be the average value of the stock or merchandise or other articles kept on hand during the year ending June 31, 1877. Where a person coming into the District subsequent to June 30, 1878, during which he conducts said trade, and the assessment in said case shall have referen

District and issued under the direction of the commissioners of the District or their successors in office.

Sec. 14. That the twenty-third section of the act of the Legislative Assembly of the District of Columbia entitled "An act imposing a license on trades, business, and professions practiced or carried on in the District of Columbia," approved August 23, 1871, clause 20 of the twenty-first section of said act, and all other laws and acts, or parts thereof, inconsistent herewith be, and the same are hereby, repealed.

Sec. 15. That the corporation of the District of Columbia is continued for all the purposes of this act and other acts for the collection of taxes, for suing and being sued, for causes arising prior to June 20, 1874, and for acquiring and holding real estate for school and municipal purposes.

Sec. 16. That hereafter no two lots or subdivisions of original or other lots in any square of ground in the District of Columbia shall be designated by the same number or by the same letter of the alphabet, and the commissioners of the District of Columbia, or their successors in office, shall cause the numbers and letters designating lots in all the squares of ground in said District to be revised and changed to conform to this requirement; and they shall make such further changes in the existing numbers or letters designating lots in any of the squares in the cities and villages in said District as may, in their opinion, facilitate and simplify the labor of assessing real estate therein.

Sec. 17. That this act shall remain in force as the tax law of the District of Columbia for each subsequent year after Juno 30, 1878, until repealed.

Mr. NEAL. It will be observed from the reading of this bill that

Mr. NEAL. It will be observed from the reading of this bill that it imposes a tax of \$1 on each \$100 upon all lands outside of the two cities of Georgetown and Washington which are held and used solely and exclusively for agricultural purposes, and a tax of \$1.50 upon each \$100 upon all other real and personal property in this District. The bill is substantially the same as the one which passed the two Houses of Congress during the last session. There is no essential difference between the two bills except in the machinery for carrying into effect their provisions. ing into effect their provisions.

Mr. BUCKNER. I move to amend the first section of the bill by

adding to it the following:

And thirty cents on every one hundred dollars' valuation of real and personal property as a special tax for the support of schools.

Mr. NEAL. I am willing to allow that amendment.

Mr. BUCKNER. That would depend on the number of children. Mr. HOLMAN. It depends of course finally on that, but I think there are few communities in the Northwest, very few counties or States where the tax is not at least as high as forty cents on the hundred dollars for school purposes. This is the case in the State of Indiana, which has the largest invested school fund of any State in the Union, between eight and nine millions of dollars, and our people

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have never murmured at that tax.

Union, between eight and nine millions of dollars, and our people have never murmured at that tax.

I would say further to the gentleman from Missouri [Mr. Buckner] that, as I understand, it the amount set apart for school purposes in this District for the present year fiscal is about \$370,000. It is found that that amount will support the schools for only eight months in the year, and we are now asked to make an appropriation out of the public Treasury for the education of the children of this District of \$75,000, and even then with the two sums it would be possible to support the school only during a period of ten months after the Government has built the school-houses. My friend from Missouri must see that this tax should be raised to at least forty cents on the hundred dollars, and then it would realize but \$360,000 on the basis of the assessed valuation of property in this District.

Mr. BUCKNER. According to the last assessment the valuation of the real estate of this District is about \$93,000,000, and the total valuation of taxable property \$110,000,000.

Mr. HOLMAN. Then a tax of forty cents on \$100 willrealize \$440,-000, which is just about the sum required to carry on the commonschool system of the District for a period of ten months. Inasmuch as this District bears less taxation than any other city perhaps in the country, taking into account all the elements of taxation, I think it can well afford to bear a tax amply sufficient for the support of the school system. Even with the school tax at forty cents, the whole amount of taxation will be but \$1.90 on \$100, while \$2.50 on \$100 is about the minimum taxation borne by the people in other parts of the Luion, even the most favored sections.

about the minimum taxation borne by the people in other parts of

The Union, even the most favored sections.

I do not insist upon any excessive taxation; but the fact is now apparent that we must support all the charities of this District. We are called upon annually to appropriate large sums for educational purposes, and I do think that the rate of taxation should approach purposes, and I do think that the rate of taxation should approach somewhat the rate borne by other communities throughout the country. However desirable it may be for Congress to encourage and promote the prosperity of this city, I do not think the rate of taxation should be placed lower than that borne by the people of other sections so as to throw an unreasonable burden upon tax-payers throughout the country, compelling them to contribute largely to the support of public institutions in this District. I hope, therefore, that this change from thirty cents to forty cents will be made so as to insure a sufficient fund to support the common schools of the District.

sufficient fund to support the common schools of the District.

Mr. BUCKNER. It occurs to me that if the gentleman from Indiana [Mr. Holman] would take into consideration the immense burden that has been imposed upon the people of this District, he would agree that it would probably be much better for them to be satisfied agree that it would probably be much better for them to be satisfied with public-school instruction for only eight months in the year than to incur any additional taxation for school purposes. My friend must forget that 20 per cent. of the entire real estate of this District (if my memory is correct) has been forfeited for the non-payment of taxes. That real estate is now held by the District of Columbia. In the shape of special-improvement taxes, the burden borne by the people of this District during the last few years has exceeded that imposed upon any other people whom I know anything about.

The tax which I propose will realize about \$300,000, with which sum I believe the people can maintain their schools; and certainly this amount of extra taxation is as much as ought to be imposed upon them in these hard times and during the present general de-

upon them in these hard times and during the present general de-pression of business. Though this may not make their taxation quite equal to that existing in the gentleman's district or my own, yet he should consider that in this District, in consequence of the vast expense for speical improvements and their mismanagement in many cases, there is an extreme degree of tenderness in this District upon the subject of taxation, which gentlemen not thoroughly acquainted with the condition of the District may not well understand.

Mr. HOLMAN. But my friend must see that we have accommodated the rate of taxation to the burden upon the District. As to the enormous debt resting upon the District, the Federal Treasury bears the great burden of that. It is a fact patent to all that the tax now proposed, \$1.80 on \$100, is below the minimum taxation borne by other communities. We are not asking that the people of this District shall bear an excessive taxation; but it appears to me only proper that they should pay a taxation at least equal to the minimum taxation paid by citizens elsewhere.

Mr. BUCKNER. The valuation of the real estate of this District as given by me is no doubt very high; I doubt whether it will reach the figures I have given.

Mr. HOLMAN. I do not make a motion to amend; but I wish to admonish my friend that if this school tax remains at thirty cents the people of this District, who I think would cheerfully bear a proper tax for the support of their common-school system, will have to come to Congress and ask money out of the public Treasury to support their schools. schools

Mr. BUCKNER. I do not know but that Congress is in duty bound to pay for the education of the children of their public servants in this

District.

Mr. HOLMAN. I think the enlightened citizens of this District would prefer to educate their children by paying their own proper share of taxation rather than tax the people of other sections for this

Mr. NEAL. I demand the previous question upon the bill and

pending amendments.

The previous question was seconded and the main question ordered; and under the operation thereof the amendment of Mr. Buckner to the substitute of Mr. Neal was agreed to; and the substitute, as amended, was adopted.

The bill, as amended, was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. BUCKNER moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

## COUNTING THE ELECTORAL VOTE.

Mr. BUCKNER. I yield a moment to my friend from Ohio, [Mr.

PAYNE.

Mr. PAYNE. I understand that there is at the Clerk's desk a message from the Senate announcing the approval by the President of the bill to provide for counting the electoral vote. I ask that the message be read.

message be read.

A message from the Senate was read announcing that the President had returned to the Senate with his approval the bill (S. No. 1153) to provide for and regulate the counting of the electoral votes for President and Vice-President, and the decision of questions that may arise thereon, for the term commencing March 4, A. D. 1877.

Mr. PAYNE. I wish to give notice that on to-morrow, the 30th instant, at one o'clock p. m., I will move that the House proceed to appoint five members of the commission, as provided in section 2 of an act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877."

# APPROPRIATIONS FOR THE DISTRICT.

Mr. HOLMAN. The gentleman from Missouri [Mr. Buckner] yields to me a moment that I may make a statement. I am told by the gentleman from Missouri [Mr. Wells] that according to his recollection the amount set apart for this District for the present fiscal year was something over \$290,000, instead of \$370,000. It is very likely the gentleman from Missouri is correct. I think it proper to make this statement, as I might readily be mistaken in reference to make the statement won the since. a matter occurring some months since.

Mr. BUCKNER. I now yield to my colleague on the committee from Vermont [Mr. HENDEE] to submit reports from the Committee

for the District of Columbia.

Mr. O'NELL. I move the House do now adjourn.
The SPEAKER pro tempore. Pending that, by unanimous consent, the Chair will present some requests.

## JOHN KELLY.

On motion of Mr. HARRIS, of Virginia, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the claim of John Kelly.

## JOHN PLUNKET.

On motion of Mr. WADDELL, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the case of John Plunket.

# LEAVE OF ABSENCE.

Mr. Goode, by unanimous consent, was granted leave of absence for three days from Monday next on account of important business.

Mr. O'NEILL. I ask now for a vote on my motion.

The House divided; and there were—ayes 86, noes 47.

Mr. STEVENSON demanded tellers.

The House divided; and there were average and the second of the second of

The House divided; and there were—ayes 15, noes not counted.
Mr. STEVENSON. Count the other side.
Mr. SAVAGE. I make the point that there is not a sufficient number to order tellers, as it requires one-fifth of a quorum, and that number has not voted.

The SPEAKER pro tempore. The Chair sustains the point of order that it requires one-fifth of a quorum to order tellers; and one-fifth not having voted in favor thereof, tellers are not ordered.

So the motion was agreed to; and accordingly (at five o'clock and five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Memorial of the Legislature of Dakota Territory, for the ratification of the agreement with the Sioux Indians for the cession of the Black Hills, to the Committee on Indian Affairs.

Also, memorial of the American Medical Association, for the publication of the statement of the National Medical Indian Affairs.

lication of the subject catalogue of the National Medical Library, to the Committee on Printing.

By Mr. ANDERSON: The petition of 37citizens of Hamilton County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads

By Mr. COCHRANE: The petition of H. B. Smithson, assignee, for compensation for quartermaster stores furnished the United States Army, to the Committee on War Claims.

By Mr. CROUNSE: The petition of E. S. Williams and others, of

By Mr. CROUNSE: The petition of E. S. Williams and others, or Esteina, Nebraska, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of L. T. Hill and others, of Nebraska, of similar import, to the same committee.

By Mr. DUNNELL: The petition of D. F. Crane and 26 other citizens of Minnesota, of similar import, to the same committee.

By Mr. FOSTER: The petition of citizens of Ohio, of similar import, the committee of the committee of the committee.

port, to the same committee.

Also, the petition of citizens of Ohio, that pensioners receive pensions from the date of their discharge from the Army, to the Committee on Invalid Pensions.

By Mr. HARDENBERGH: The petition of citizens of New York, for the passage of the electoral bill, to the committee on counting the electoral votes.

Also, the petition of citizens of New Jersey, of similar import, to the same committee.

By Mr. HARRIS, of Virginia: The petition of William Lally and others, of Virginia, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HENDEE: The petition of John H. Fay and others, of Wil-

By Mr. HENDEE: The petition of John H. Fay and others, of Williston, Vermont, of similar report, to the same committee. Also, the petition of Cerini Holcomb, for a change in the pension law approved March 3, 1873, to the Committee on Invalid Pensions. By Mr. HUNTON: The petition of M. L. Gager, for compensation for lumber seized at the Memphis navy-yard by United States authorities in 1863, to the Committee on Naval Affairs.

Also, the petition of O. F. Bresee, to be re-imbursed the amount realized from the sale by the United States authorities of the vessels Sally McGhee and Amy Warwick and their cargoes, seized and sold in 1861 as prizes, to the Committee on the Judiciary.

By Mr. KASSON: The petition of citizens of Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LEAVENWORTH: The petition of E. H. Underhill and others, of New York, for the passage of the electoral bill, to the com-

ers, of New York, for the passage of the electoral bill, to the committee on counting the electoral vote.

By Mr. McFARLAND: The petition of John G. Easby and 28 other

By Mr. McFARLAND: The petition of John G. Easby and 28 other citizens of Grainger County, Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. NEAL: The petition of John Shelton and 73 other citizens of Adams County, Ohio, that pensioners be paid arrears of pension from the date of their discharge, to the Committee on Invalid Pensions. By Mr. OLIVER: Five petitions, signed by F. J. Gay and others R. Heffelfinger and others, G. M. Wells and others, C. E. Robinson and others, and Richard Plumbe and others, citizens of Iowa, for, cheap telegraphy, to the Committee on the Post-Office and Post-Roads. By Mr. POTTER: The petition of W. S. Chamberlain and 58 other citizens of Michigan, of similar import, to the same committee.

Also, the petition of M. H. Nye and 50 other citizens of Michigan, for a repeal of unjust limitations in regard to pensions, to the Committee on Invalid Pensions.

for a repeal of unjust limitations in regard to pensions, to the Committee on Invalid Pensions.

By Mr. RUSK: The petition of citizens of Pierce County, Wisconsin, of similar import, to the same committee.

By Mr. SPRINGER: Two petitions, signed by H. H. Sharp and other citizens of Sharpsburgh, Illinois, and A. E. Boyd and other citizens of Christian County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. STANTON: The petition of 39 citizens of Tompkinsville, Pennsylvania, of similar import, to the same committee.

Pennsylvania, of similar import, to the same committee.

By Mr. STENGER: The petition of the board of regents and executive committee of the American University for the Blind and American Printing House for the Blind, that Congress grant aid in the establishment of said institutions, to the Committee on Education and

By Mr. TERRY: A paper relating to the establishment of a post-route from Pattonsville to Brick Store, Virginia, to the Committee on the Post-Office and Post-Roads.

on the Post-Office and Post-Roads.

By Mr. WALLACE, of South Carolina: The petition of B. F. Turner and others, for cheap telegraphy, to the same committee.

By Mr. W.B. WILLIAMS: The petition of A. C. Barclay and 18 others, of Paris, Michigan, for cheap telegraphy, to the same committee.

By Mr. WILSON, of West Virginia: The petition of J. W. Bolton and 133 others, that arrearages of pensions be granted pensioners of the late war, to the Committee on Invalid Pensions.

## IN SENATE.

# TUESDAY, January 30, 1877.

Prayer by the Chaplain, Rev. Byron Sunderland, D. D. The Journal of yesterday's proceedings was read and approved.

#### CREDENTIALS.

The PRESIDENT pro tempore presented the credentials of George F. Hoar, elected by the Legislature of the State of Massachusetts a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

Mr. BAYARD presented the credentials of ELI SAULSBURY, elected by the Legislature of the State of Delaware a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

## EXECUTIVE COMMUNICATION.

The PRESIDENT pro tempore laid before the Senate a letter from the Secretary of the Navy, transmitting, in compliance with a resolution of January 26, 1877, the report of Chief Engineer J. W. King, United States Navy, on European ships of war; which was referred the Committee on Naval Affairs, and ordered to be printed.

#### PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore. The Chair presents a memorial of the Legislative Assembly of Dakota, in favor of the ratification of the treaty with the Sioux Indians for the cession of the Black Hills; which will be referred to the Committee on Indian Affairs, if there be

Mr. ALLISON. That subject has been disposed of by the committee and the memorial should lie on the table.

The PRESIDENT pro tempore. The memorial will lie on the table. The PRESIDENT pro tempore presented the petition of Charles Miller and others, of Detroit, Michigan, praying the passage by Congress of a bill allowing pensioners to receive in all cases pensions from the date of their discharge as soldiers; which was ordered to lie on the table.

Mr. WRIGHT. I present the petition of Mrs. J. C. McKinney, Etta R. Holmes, Mrs. E. H. Henderson, and others—164 men and 194 women—358 citizens of the State of Iowa, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States

from disfranchising United States citizens on account of sex.

I may state in this connection that I have before me a letter which advises me that 10,000 names have been sent forward in the last ten days, and that others are upon the way. These good petitioners request that this petition shall not be sent to the waste-basket, but shall receive the respectful and earnest and early attention of the Committee on Privileges and Elections. I second their request, and move that the petition be referred to that committee.

The motion was agreed to.

The motion was agreed to.

Mr. EDMUNDS presented the petition of Luke P. Poland and a large number of other citizens of the State of Vermont, urging upon Congress the passage of the act allowing pensioners the amount of arrears to which they would be entitled by the removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and providing that they shall be entitled in all cases to pension from the date of discharge; which was ordered to like the table. to lie on the table.

He also presented the petition of Lydia Putnam, M. H. Rand, and others—2 men and 5 women—citizens of the State of Vermont, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on

Privileges and Elections.

Mr. ANTHONY presented the petition of J. Q. Hotchkiss, Rufus H. Clark, and other citizens of Hampton, New York, praying for the prohibition of the manufacture and sale of alcoholic liquors in the District of Columbia and the Territories; which was referred to the

Committee on Finance.

Mr. DAVIS. I present the petition of a large number of persons of Parkersburgh, West Virginia, who believe they are entitled to arrears of pensions. I ask the Clerk to read their petition. It is very short, and then the paper can be referred to the Committee on Pensions.

The Chief Clerk read as follows:

To the Forty-fourth Congress:

We, the undersigned, do most earnestly urge upon Congress the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pension from date of discharge of the soluier; that a limitation act of the kind in force is unjust, and that the representatives of the people had no right to take advantage of the accidents and incidents which have occurred in many ways to prevent those who have made the most extreme sacrifice for the country, from receiving the full measure of justice to which they are equitably entitled.

Mr. DAVIS. I will simply say that I am in sympathy with these petitioners, and I trust the committee will give their prayer such at-

petitioners, and I trust the committee will give their player such attention as they believe it deserves.

The PRESIDENT pro tempore. That question having been reported upon, the petition will lie upon the table.

Mr. BAYARD presented the petition of Robert M. Sylvester and

29 others, citizens of Kenton, Delaware, praying for the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pensions from the date of the discharge of the soldier; which was ordered to lie on the table. the table.

He also presented the petition of E. L. Gaskill, of Port Henry, New York, praying an amendment to the act to revise and consolidate and

York, praying an amendment to the act to revise and consolidate and amend the laws relating to pensions, approved March 3, 1873, extending the time of limitation for obtaining arrears of pensions until the 4th day of July, 1876; which was ordered to lie on the table.

Mr. DAWES presented the petition of Ann B. Earle, Annie B. Rogers, ers, Martha G. Ripley, and others—45 men and 57 women—102 citizens of the State of Massachusetts, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

referred to the Committee on Privileges and Elections.

Mr. MITCHELL presented the petition of E. R. Rook, Belle W. Cook, and others—125 men and 184 women—309 citizens of the State of Oregon, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising

United States prombiting the several states from distranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. CHRISTIANCY. I present the petition of C. H. Du Bois, Mrs. C. H. Du Bois, Mrs. Israel Hall, George Stickney, Mrs. Emma J. Ashley, and others—217 men and 207 women—424 citizens of the State of Michigan, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex.

I wish to say one word in reference to the character of these peti-

I wish to say one word in reference to the character of these petitioners. I am informed that there is not among them a single drunk-ard or gambler, or person of vicious life, and I believe the statement. ard or gambler, or person of victors life, and I believe the statement. Though personally unknown to me, my observation in the State of Michigan, where over forty thousand votes were given in favor of female suffrage, satisfies me that these people are among the most intelligent, most thoughtful, and benevolent people we have among us. They may be mistaken as to the value of the measure which they advocate, but there can be no doubt of the sincerity and strength of their convictions. Their petition therefore I insist outlet to reof their convictions. Their petition, therefore, I insist ought to receive a careful consideration; and we cannot afford to treat it with contempt or disrespect. I therefore commend this petition to the careful consideration of the Committee on Privileges and Elections, to which committee I move that it be referred.

The motion was agreed to.

Mr. SAULSBURY presented the petition of A. C. Gray and other citizens of Delaware, praying for the repeal of the law imposing a tax on the deposits, circulation, and capital of all banks; which was referred to the Committee on Finance.

Mr. DENNIS presented the petition of Alexander M. Templeton, a citizen of Havre de Grace, Maryland, praying compensation for services rendered while engaged in the secret service of the United States; which was referred to the Committee on Claims.

Mr. BURNSIDE presented the petition of Sarah Weir, B. P. Hunt,

and others-28 men and 28 women-56 citizens of the State of Connecticut, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. OGLESBY. I present a petition of Mary Brigham, Mrs. Jacob Martin, and others—11 men and 13 women—citizens of Illinois, praying for the adoption of measures for so amending the Constitution as to prohibit the several States from disfranchising United States citizens on account of sex. The petition being signed by 13 ladies and 11 men, there is a distinctive mark drawn between them so that they may be separated and not confused in the minds of the commit-tee as to the question of sex. I move that the petition be referred to the Committee on Privileges and Elections, and hope that it will receive prompt and careful consideration consistent with the dignity of the petitioners.

of the petitioners.

The motion was agreed to.

Mr. WALLACE presented the petition of Theresa Lewis, Annie E.

McDowell, Mary J. Scarlett Dixon, Adriana Pugh, Caroline H. Spear, and others—196 men and 159 women—355 citizens of the State of Pennsylvania, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. COCKPELI presented the petition of Virginia I. Miner. John

the Committee on Privileges and Elections.

Mr. COCKRELL presented the petition of Virginia L. Minor, John M. Krum, and others, being 78 women and 94 men, citizens of the State of Missonri, praying that such measures may be adopted by amending the Constitution as to prohibit the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. WINDOM presented the petition of Anna B. Underwood, Hattie M. White, P. A. Jewell, and others—39 men and 55 women—94 citizens of the State of Minnesota, praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on Privileges and Elections.

Mr. SHERMAN presented the petition of a large number of citizens of Ohio, praying the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pension from the date of the discharge of the solution which was presented to live which we have the live whether the solutions are the solutions.

dier; which was ordered to lie on the table.

Mr. WADLEIGH presented the petition of Mary A. Powers Filley and others, 1 man and 4 women, citizens of the State of New Hampshire praying for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the

Committee on Privileges and Elections.

Mr. CAMERON, of Pennsylvania, presented the petition of Mrs. Mary G. Harris, widow of Colonel John Harris, late commandant of the United States Marine Corps, praying an increase of pension; which was referred to the Committee on Pensions.

He also presented two petitions of citizens of Pennsylvania, praying the repeal of the law imposing a tax on the deposits, circulation, and capital of all banks; which was referred to the Committee on Finance.

He also presented the petition of ship-owners, mariners, and others, praying the repeal of the act of June 7, 1872, authorizing the appointment of shipping commissioners by the several circuit courts; which was referred to the Committee on Commerce.

#### REPORTS OF COMMITTEES.

Mr. STEVENSON, from the Committee on the Judiciary, to whom was referred the petition of M. L. Bonham, of South Carolina, praying that his political disabilities may be removed, reported a bill (S. No. 1203) to remove the political disabilities of M. L. Bonham, of

South Carolina; which was read twice by its title.

Mr. SHERMAN, from the Committee on Finance, to whom was referred the bill (S. No. 1147) for the punishment of persons making or having in possession dies, molds, &c., for manufacturing counter-

feit coin, reported it without amendment.

He also, from the same committee, to whom was referred the bill (S. No. 1109) relating to public accounts and claims, reported it with

amendments

Mr. SPENCER, from the Committee on Military Affairs, to whom was referred the petition of Major John A. Darling, late captain Second Artillery, praying restoration to the Army, submitted a report thereon accompanied by a bill (S. No. 1202) for the relief of John A.

The bill was read twice by its title, and the report was ordered to

be printed.

Mr. SPENCER also, from the same committee, to whom was referred the petition of William D. Dorris, praying compensation for services rendered in the Army during the late war, submitted an adverse report thereon; which was ordered to be printed; and he asked to be discharged from its further consideration; which was agreed to.

He also, from the same committee, to whom was referred the peti-

tion of Edmund F. Prentiss, late first lieutenant Second Regiment Rhode Island Volunteers, praying to be allowed a bounty, submitted a report thereon; which was ordered to be printed; and he asked to be discharged from its further consideration; which was agreed to.

from the same committee, to whom was referred the peti-

He also, from the same committee, to whom was referred the petition of William Kelly, praying to be granted an additional bounty in land under the act of March 3, 1855, for services rendered as a soldier in the Seminole war of 1840 and 1841, submitted an adverse report thereon; which was ordered to be printed; and asked to be discharged from its further consideration; which was agreed to.

Mr. CAMERON, of Pennsylvania, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1187) authorizing the Secretary of War to allow the interment, in the National Cemetery at New Berne in the State of North Carolina, of the remains of the late R. F. Lehman, lately a commissioner of the United States circuit court in the eastern district of North Carolina, reported it without amendment. amendment.

Mr. CLAYTON, from the Committee on Military Affairs, to whom was referred the bill (S. No. 615) for the relief of Eli Long, United States Army, reported adversely thereon; and the bill was postponed

He also, from the same committee, to whom was referred the petition of Benjamin F. Brockett, late of Company I, Eighty-seventh Regiment Illinois Volunteers, praying to be allowed the difference of pay between that of first sergeant and that of second lieutenant from April 30, 1863, to the 27th day of July, 1863, submitted an adverse report thereon; which was ordered to be printed; and he asked to be discharged from its further consideration; which was agreed to.

He also, from the same committee, to whom was referred the bill (H. R. No. 2696) for the relief of L. M. Blackman, late regimental quartermaster Fourth Tennessee Cavalry, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. BURNSIDE, from the Committee on Military Affairs, to whom was recommitted the bill (S. No. 189) placing the name of C. G. Freudenberg upon the retired list of the United States Army, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the joint resolution (H. R. No. 173) granting permission to the officers and enlisted men of the Army and Navy to wear the medal badge adopted by the National Association of Veterans of the Mexican War on occasions of ceremony, reported it without amendment.

Mr. COCKRELL, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1092) for the relief of Jerome Kunkel, submitted an adverse result there are which was referred.

submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 3509) for the relief of the legal representatives of R. H. Murrell, deceased, late commissary of the Tenth Tennessee Cavalry, submitted an adverse report thereon, which was referred to be printed. submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 4248) for the relief of Emanuel Klauser, late corporal of Company H, Fifty-fourth Regiment Illinois Volunteers, reported it without amendment, and submitted a report thereon; which was or-

dered to be printed.

dered to be printed.

Mr. COCKRELL. I am directed by the Committee on Military
Affairs, to whom was recommitted the bill (S. No. 1001) to provide
for the disposition of Fort Dalles military reservation, with the
amendment thereto suggested by the Senator from Oregon, [Mr.
KELLY,] to report a new draught in the nature of a substitute. These
drafts were referred to the Commissioner of the General Land Office,
has an ordered favorably mean them, and the committee pay direct me he reported favorably upon them, and the committee now direct me to report a substitute for the bill, accompanied by a written report, including the amendment suggested.

The report was ordered to be printed.

Mr. OGLESBY, from the Committee on Public Lands, to whom was referred the bill (H. R. No. 2352) granting the right of way to the Hot Springs Railroad Company over the Hot Springs reservation in the State of Arkansas, reported it with amendments.

Mr. WRIGHT. I am instructed by the Committee on the Judiciary, to whom was referred the bill (H. R. No. 3743) to provide for the redements of real products of the state of th

demption of real estate sold under judgments and decrees in the courts of the United States, to report it with certain amendments. I may state that this bill has been before the committee since June last, and, by reason of circumstances that I need not refer to, has been delayed during the days of this session. I shall not ask for its consideration this morning, but shall esteem it to be my duty to ask the attention of the Senate to it at as early a day as may be practicable, as it is vitally important to have early action if it is to be passed at this ses-

## DISTRICT COURT OF NEBRASKA.

Mr. WRIGHT. I am directed by the Committee on the Judiciary, to whom was referred the bill (8. No. 1139) to change the time of holding the October term of the United States district court for the holding the October term of the United States district court for the district of Nebraska, to report it without amendment. At the suggestion of the Senator from Nebraska at my right. [Mr. PADDOCK,] and as it is merely a local bill proposing to change the time of holding the district court in Nebraska so as to make it correspond with the time of holding the circuit court there, and thus avoid expense and trouble, I should like to have the Senate consider the bill at this time. It merely proposes to change the time of holding the district court at Omaha from a time in October to a time in November, to correspond with the time of holding the circuit court.

Mr. PADDOCK. I will state in addition that the bill itself was drawn by the United States district judge of that State and for-

drawn by the United States district judge of that State and forwarded to me. I hope the Senate will consider it now.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

## BILLS INTRODUCED.

Mr. HOWE (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1204) to amend the statutes in relation to damages for infringement of patents, and for other purposes; which was read twice by its title and referred to the Committee on the Judiciar

the Judiciary.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1205) to authorize the board of trustees of the city of Cheyenne, Wyoming Territory, to enter and purchase for the use of said city certain public lands; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Public Lands.

Mr. CAMERON, of Pennsylvania, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1206) for the relief of Eugenia R. Hutton; which was read twice by its title, and referred to the Committee on Military Affairs

Committee on Military Affairs.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1207) to provide for the settlement and payment of certain claims against the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia

Mr. HOWE asked, and by unanimous consent obtained, leave to introduce a joint resolution (S. R. No. 31) to promote the utility of the Library of Congress; which was read twice by its title, and referred to the Committee on the Library.

#### CHANGE OF REFERENCE OF A BILL.

Mr. HAMLIN. On the 18th instant I submitted a bill to the Senate changing the compensation paid to postmasters of the fourth class. I then moved distinctly that it should be referred to the Committee on Post-Offices and Post-Roads, but it escaped my atten-tion in the reading of the Journal that it was inadvertently referred tion in the reading of the Journal that it was inadvertently referred to the Committee on Appropriations. I have conferred with the chairman of that committee, and with his approval I move that the Committee on Appropriations be discharged from the further consideration of the bill (8. No. 1155) to amend section 8 of an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876, and for other purposes, and that it be referred to the Committee on Post-Offices and Post-Roads.

The motion was agreed to

The motion was agreed to.

#### AMENDMENT TO APPROPRIATION BILL.

Mr. INGALLS. I offer an amendment to the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes. The amendment is in relation to the Miami Indians of Kansas. Accompanying the amendment is a communication from the Commissioner of Indian Affairs relating to the same subject. I move that the amendment and communication be referred to the Committee on Indian Affairs, and that both be printed.

The motion was agreed to.

#### ADMISSION TO THE CAPITOL DURING COUNT.

 $Mr.\ HAMLIN.\ At the suggestion of certain Senators I submit the following resolution :$ 

Resolved. That the Committee on Rules be directed to inquire what, if any, rules should be adopted for admissions to the Capitol during the canvassing of the votes for President and Vice-President of the United States, and that said committee be directed to confer with the Committee on Rules of the House of Representatives.

The resolution was considered by unanimous consent, and agreed to.

#### PROCEEDINGS OF ELECTORAL COMMISSION.

#### Mr. ALLISON. I offer the following resolution:

Resolved by the Senate, (the House of Representatives concurring.) That the proceedings before the commission provided for by an act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, approved January 29, 1877, be published in the CONGRESSIONAL RECORD from day to day.

Mr. DAVIS. I see that there are several members of the committee to devise a mode for counting the electoral vote absent, and I think the resolution had better lie over for the present.

The PRESIDENT pro tempore. The resolution will go over.

### ELECTORAL COMMISSION.

## Mr. WRIGHT. I offer the following resolution:

Resolved, That the Senate now proceed, in accordance with the act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877, to appoint by viva voce vote five Senators to be members of the commission in said act provided for.

I do not ask the consideration of the resolution at this moment. propose that it shall go to the table for the present, but I shall call it up, say at three o'clock. I give notice that I shall call it up at three or half past three o'clock, so that Senators may all be present.

Mr. BLAINE. Will the Senator name the hour now?

Mr. WRIGHT. I propose to call it up at half past three o'clock

this afternoon.

Mr. DAVIS. I should like to have the resolution reported again. A number of Senators here did not hear it read.

The Chief Clerk read the resolution.

Mr. STEVENSON. Did I understand the Senator from Iowa to fix the hour when he will call it up?

The PRESIDENT pro tempore. The Senator from Iowa has fixed half past three o'clock this afternoon. There being no objection, the resolution will lie on the table until called up.

#### HICKEY'S CONSTITUTION.

Mr. CAMERON, of Pennsylvania. I am requested to offer a resolution with the view of having it referred to the Committee on Print-

The PRESIDENT pro tempore. The resolution will be reported.

The Chief Clerk read as follows:

Resolved. That the Secretary of the Senate is hereby authorized and directed to procure from the proprietors one hundred copies of Hickey's Constitution of the United States for the use of Senators: Provided, The same can be obtained at the rate of \$1.50 per copy.

The resolution was referred to the Committee on Printing.

## TELLERS AT THE COUNT OF ELECTORAL VOTES.

Mr. EDMUNDS submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved. That the President of the Senate be, and he is hereby, authorized and directed to appoint two tellers on the part of the Senate to perform the duties required by the act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877.

#### REVISION OF THE STATUTES.

# Mr. BOUTWELL presented the following report:

Mr. BOUTWELL presented the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to amendments numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, and 21, and agree to the same.

That the Senate recede from its amendments numbered 4, 15, and 17.

GEO. S. BOUTWELL,

I. P. CHRISTIANCY,

WM. A. WALLACE,

Managers on the part of the Senate.

M. J. DURHAM,

S. N. BELL,

D. C. DENISON,

Managers on the part of the House.

The report was concurred in.

#### WARREN MITCHELL.

Mr. STEVENSON. I desire to give notice that on the day after to-morrow, in the morning hour, I shall call up the bill (S. No. 1145) for the relief of Warren Mitchell, of Kentucky.

#### REMAINS OF R. F. LEHMAN.

Mr. MERRIMON. I ask for the consideration of Senate bill No. 1187, which was reported from the Committee on Military Affairs this

There being no objection, the bill (S. No. 1187) authorizing the Secretary of War to allow the interment, in the National Cemetery at New Berne, in the State of North Carolina, of the remains of the late R. F. Lehman, lately a commissioner of the United States circuit court in the eastern district of North Carolina, was considered as in Committee of the Whole.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

## PRESIDENT'S MESSAGE ON ELECTORAL BILL.

Mr. WRIGHT. There accompanied the bill relating to the counting of the electoral vote, with notice of its approval by the President, yesterday, a message of the President which I think is important and yesterday, a message of the President which I think is important and valuable. I think, as a matter of just respect to the President and the importance of the question, and especially its importance to the people of this country and the interest they take in the general question, and also in the matters stated in the message, it would be but right and proper that extra copies of that message be printed. I therefore, if the Secretary will be good enough to regard the resolution as in form, move that 10,000 copies of the message accompanying the bill be printed for the use of the Senate.

The PRESIDENT pro tempore. The motion will be referred to the Committee on Printing.

Committee on Printing.

#### ALFRED ROULAND.

Mr. CLAYTON. I move that the Senate proceed to the considera-

Mr. CLAYTON. I move that the Senate proceed to the consideration of House bill No. 3367.

There being no objection, the bill (H. R. No. 3367) to remove the charge of desertion from the military record of Alfred Rouland was considered as in Committee of the Whole.

Mr. EDMUNDS. Let us hear the report.

The Chief Clerk read the following report, submitted by Mr. CLAYTON, from the Committee on Military Affairs, on the 16th instant:

The Committee on Military Affairs, to whom was referred the bill (H. R. No. 3367) to remove the charge of desertion from the military record of Alfred Rouland, have considered the same, and submit the following report:

The testimony in this case fully supports the report of the House Committee on Military Affairs, and justifies the action proposed by the bill.

Your committee, therefore, recommend the passage of the same.

Mr. HAMILTON. That is no report at all. I ask that the House report be read.

The PRESIDENT pro tempore. The report of the House committee

will be read.

The Chief Clerk read the following report, submitted by Mr. ALPHEUS S. WILLIAMS, from the Committee on Military Affairs of the

House of Representatives, May 4, 1876:

House of Representatives, May 4, 1876:

The Committee on Military Affairs, to whom was referred the petition of Alfred Rouland, late of the Twenty-third and Twenty-eighth Regiments, Michigan Volunteer Infantry, having had the case under consideration, respectfully submit the following report:

That from the testimony in this case it appears that the said Alfred Rouland was enrolled and mustered into the Twenty-third Michigan Infantry on the 18th day of January, 1864, "for three years or during the war." He was at the time of his muster a mere youth of less than seventeen years of age. It is in evidence that he served with marked fidelity during Sherman's campaign from Chattanooga to Atlanta and in Thomas's campaign in Tennessee, including the battles of Franklin and Nashville, and afterward in the capture of Fort Anderson and Wilmington, North Carolina.

The captain of his company, John Hamilton, (now a minister of the Methodist Episcopal Church,) testifies "that during said Rouland's connection with said company, before his transfer to the Twenty-eighth Michigan Infantry, he was always a brave, faithful, and efficient soldier, and never for a moment flinched in any duty; that he was one of the best soldiers of said company, though being then a mere stripling of seventeen or eighteen years; and that it is his confident belief that said Rouland would have been one of the last men in the Army to have intentionally deserted, and that he is entitled to an honorable discharge on account of his faithful service."

In June, 1865, the Twenty-third Regiment was mustered out of service, and young Rouland was transferred to the Twenty-eighth Michigan Infantry, and made a corporal in Company F of that regiment. The testimony of Lieutenant C. II DeClute, commanding the company in this regiment, says: "During the

time he (Rouland) was with me, which was till after the conclusion of hostilities, he was a brave, faithful, and efficient soldier. When he left the company he was sick, and I am of opinion that he was in great danger of dying. There was, I am convinced, no intention on his part to desert, but his action was a desperate attempt to save his life. Before he could rejoin his regiment it was mustered out." The petitioner left the hospital at Wilmington on the 16th of April. 1866, nearly one year after hostilities had ceased. His regiment returned to Michigan, and was mustered out soon afterward. It is in testimony that he had suffered sometime previously from fever and ague and intermittent fevers and was much emaciated and reduced in strength and spirits, so much so that after reaching the home of his brother in Michigan his life for sometime was considered in great danger, and he did not wholly recover for months afterward.

In view of the premises, and especially considering the long and faithful service of this young soldier, extending to a period of nearly a year beyond the fair construction of his contract of service with the Government, and the despondent condition of his mind resulting from the peculiar and severe character of the petitioner's illness, your committee are of the opinion that the stigma of deserious should be removed from his military record, and that he is justly entitled to an honorable discharge.

Your committee, therefore, recommend the passage of the accompanying bill.

Your committee, therefore, recommend the passage of the accompanying bill.

Mr. HAMILTON. I submit that there is no denial of the desertion; none at all. There is an apology, on the ground of his sickness, that he possibly went home in order to save his life; but it is not denied that the man deserted the service. If cases of that sort

not denied that the man deserted the service. If cases of that sort are to be relieved, you had better abolish all your laws in regard to service in the Army and Navy. All meritorious cases can be relieved by the Secretary of War; and where the Secretary of War cannot do it and will not do it, I do not think Congress ought to undertake to do it, especially when you have not the facts here.

It is stated that the boy, if he was a boy, left the service without permission, and remained out of the service until the regiment was disbanded and broken up, and he was marked a deserter. Possibly he did not intend to desert; possibly he did not know that he was doing it; but every soldier is bound in duty to know whether he deserts the service or not. I think it is a grave matter to pass a special act of Congress overruling the action of the Secretary of War in cases of that sort. You leave the Secretary of War without any inducement to execute the law and discharge his duty. I hope the bill ducement to execute the law and discharge his duty. I hope the bill

will not pass.

Mr. CLAYTON. This is not a case of overruling the Secretary of War at all. It was a military court-martial that convicted the man of this charge of desertion, as I understand. This is a case of this kind: The man entered the service near the close of the war. The regiment that he entered the service in was disbanded after the war was over. He was then transferred to another regiment. He served in that a considerable length of time. He was taken sick and sent to a hospital. He was in hospital for a long time and his life was in a critical condition. The man went home in that sickly condition from the hospital. There is evidence here to prove that while he was home he said to his friends and relatives that he must go back as soon as he got well, and he intended to go back. He never intended to desert the service of the United States at all. He remained in the service over a year after the end of the war. He entered the service for three over a year after the end of the war. He entered the service for three years or during the war. He remained in the service for over a year after the war. That does not amount to anything, however; but the whole point is that the man never intended to desert. He simply left the hospital after lying there a long while, and went to his home to remain there until he got well and then go back to his regiment again, which was no doubt a thing which he thought he had a right to do. It seems to me that it is a very small matter to deny this poor private soldier the relief he asks for under the circumstances.

Mr. HAMILTON. If it is the object of the Senate to give the man a gratuity, to help him if his necessities require help, that is one thing; and to alter the rolls on file in the War Department is another thing. It makes the rolls state what is not true, and I for one will never agree that the rolls may be taken up in the War Department and mutilated and all the marks of desertion and everything of that kind swept off. You might as well do it by wholesale in the case of every man, because I guarantee that you will never find any man who will not say it was not his intention to desert. They all deny any such intention. But when they are marked deserters and stand

in that way until the regiment is disbanded, I do not think there ought to be any remedy for them.

The bill was reported to the Senate, ordered to be engrossed for a third reading, and was read the third time.

Mr. CLAYTON. I will say that in this case the report of the com-

mittee is unanimous.

The PRESIDENT pro tempore. The question is on the passage of the bill.

The bill was passed.

#### PACIFIC RAILROAD ACTS.

The PRESIDENT pro tempore. The morning hour has expired and the unfinished business of yesterday is before the Senate as in Committee of the Whole, being the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named

act.

Mr. THURMAN. Mr. President, before the Senator from Oregon, who has the floor, proceeds, I wish to say that I shall ask the Senate to dispose of this bill to-day. If any measure is to pass, there is no

time to be lost in its passage, if it is to become a law at this session of Congress. If no measure can pass, then the sooner we know that fact and cease to waste time upon it the better it will be for the busifact and cease to waste time upon it the better it will be for the business of the country. I therefore hope that it will be the pleasure of the Senate to come to some conclusion on this subject to-day. For reasons that are known to the Senate, I shall probably not be able to be in the Senate for several days after to-day; and as this bill has been particularly in my charge, put there by the Judiciary Committee, I want this day devoted to it; and I want to see it disposed of if such be the pleasure of the Senate such be the pleasure of the Senate.

Mr. WEST. As the Senator from Ohio has not asked for any de-

cision at the moment on this question, I will say that I hardly think the Senate will be prepared to come to any conclusion to-day on the subject, because I know a number of Senators that are anxious not only to study the question but to address the Senate on the subject. If the Senator will give notice that on some day, to-morrow, for instance, he will ask for a vote, so as to afford gentlemen an opportunity to prepare themselves to address the Senate, I think that might be agreed upon; but a notice served to-day, or any day that a vote will be called on that day, without more notice than this, I doubt

will be called on that day, without more notice than this, I doubt whether the Senate will assent to.

Mr. THURMAN. Mr. President, one word, with the indulgence of my friend from Oregon. There are few subjects of more importance before Congress than this bill; yet I noticed that during the very able speech of the Senator from Oregon yesterday oftentimes there were not more than a dozen Senators in their seats. If I said that I should ask for a vote on this bill to-morrow, and if I were to name five o'clock to-morrow, I very much fear there would not be half a dozen Senators in their seats this whole day. I do not want that. I want all Senators to hear what this measure is and to understand it, so that they may vote understandingly upon it; and if Senators are so that they may vote understandingly upon it; and if Senators are prepared to address the Senate they can do it to-day. I cannot, therefore, accede to the idea that I shall ask the Senate to dispose of the bill to-morrow. If at the end of this day the Senate is not prepared to vote upon it, then it can go over until to-morrow; but I do not foreclose the expression of my wish that we may dispose of it to-

The PRESIDENT pro tempore. The Senator from Oregon is en-

titled to the floor.

Mr EATON. My friend will allow me a moment. I desire to be heard on this bill. Physically I am unable to speak to-day, therefore I wish to ask that the bill go over until to-morrow. Under any cir-

cumstances, I do not propose that a vote be taken to-day.

Mr. MITCHELL. I agree fully with all that the Senator from Ohio has said in reference to the importance of some speedy, proper legislation upon this subject, but as stated by the chairman of the Committee on Railroads, I hardly think it would be proper to attempt to force a decision upon this question to-day on so short a notice. If notice were given that a vote would be insisted upon, say to-morrow or on Monday next, it would enable all who desire to be heard and who desire to be here at the final vote an opportunity to be present at that time.

At the adjournment of the Senate yesterday, Mr. President, I was speaking of the effect of the eighteenth section of the act of July 1, speaking of the effect of the eighteenth section of the act of July 1, 1862, in which is contained a reservation of power on the part of Congress to alter, amend, or repeal that act, and I had referred to a statement made by the Committee on the Judiciary in their report as presented to the Senate by the Senator from Ohio, in which that committee refers to this section and gives it construction. I desire to read what the committee say on this subject. It is found on page 4 of their report and is as follows: port, and is as follows:

port, and is as follows:

By the eighteenth section of said act of July I, 1862, it is declared that "the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."

It has been said that this is a very limited power to alter or amend the act, and that the act only authorizes the alteration or amendment in order to promote the construction of the railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (and particularly in time of war) the use and benefits of the same for postal, military, and other purposes. Were this limited interpretation placed on the reservation, it would not, in the opinion of your committee, defeat the bill they report; for, although said roads and telegraph lines have been constructed, yet it is manifest, having reference to their pecuniary condition, that some such measure as that now recommended is necessary in order to keep them in working order and to secure to the Government at all times the use and benefits of the same. It needs no argument to prove that nsolvent railroad corporations, or corporations in danger of insolvency, cannot be relied upon to furnish the Government the benefits contemplated by said act. In view of the liberal aid afforded by the Government to said companies, the objects to be attained by the construction of said railroad and telegraph lines, and the general principles of interpretation of corporate grants of power, your committee are of the opinion that the reservation of a right to add to, alter, or amend said act ought to be liberally construed for the public benefit.

Conceding, therefore, for the sake of the argument, that the reser-Conceding, therefore, for the sake of the argument, that the reservation of a right to add to, alter, or amend enlarges the scope of legislative power, and admitting furthermore that such reservation should be construed liberally for the public benefit, still is it not a most unwarrantable conclusion to hold in the case under consideration that the fact even of insolvency, were such fact admitted or proven—much less a mere legislative assumption or a mere apprehension of insolvency or unhealthy "pecuniary condition," to use the language of the committee—would give Congress jurisdiction to declare forfeitures, to interfere with vested rights, to destroy obligations, and all upon the theory that there had been such a failure upon the part of these companies as is specified in section 18 of the act of 1862, and upon which failure alone this section confers upon Con-

the part of these companies as is specified in section 18 of the act of 1862, and upon which failure alone this section confers upon Congress the right to exercise enlarged and unusual legislative powers?

But it is said the reservation of the power to alter, amend, or repeal contained in section 22 of the act of 1864 is, to use the language of the report of the Judiciary Committee, "as broad as words can make it," and that, therefore, the right to change this contract by legislation is complete. But the answer to this is, aside from other reasons already given by me, twofold. The first answer is to be found in another position assumed by the Judiciary Committee in their report, and one, too, which I believe is correct, and that is that the two acts of 1862 and 1864 should be construed in pari materia, as constituting for purposes of interpretation but one act. If this be true, then, it seems to me, it is clear that the limitation upon the reservation of the power to alter, amend, or repeal contained in the eighteenth section of the act of 1862 must be held and construed as attaching to and limiting the reservation contained in the twenty-second section of the act of 1862. But were this not so, then, inasmuch as the act of 1864 confers no franchises, but simply changes in some respects with consent of both parties some of the terms of the contract already made, it seems to me no power exists under this reservation to now change

sent or both parties some or the terms of the contract already made, it seems to me no power exists under this reservation to now change these terms in material respects without the consent of all parties.

Admit, for the argument, that the "pecuniary condition" of the companies operating this great continental highway is an embarrassing one, as intimated in the report of the committee, does it follow legitimately by any logical process of reasoning or fair legal deduction that the road itself will not be kept in working order or that the use and benefits of the same for postal, military, and other purposes will not at all times be secured to the Government † Most certainly not. Why, not only insolvency, but utter ruin and financial death might overtake and overwhelm these corporations in one common, inextricable financial wreck, and still this great national highway, a inextricable financial wreek, and still this great national highway, a nation's pride and a nation's power, would remain, and, if not by these companies, by their successors it would doubtless be kept in working order, and its use and benefits would remain secured to the Government at all times for the purposes specified. And if this at any time hereafter should not be so then it will be time enoughto declare that the failure contemplated in section 18 has happened.

It may be true, then, that the "pecuniary condition" of these companies is not such as the Government might desire it to be. It may be true, as charged that there has been fraud in the construction of

panies is not such as the Government might desire it to be. It may be true, as charged, that there has been fraud in the construction of the road. It may be admitted that there have been departures from the right in its management. We may concede that the Union Pacific has never, as has been alleged, paid in the amount of stock which its contract with the Government called for. Yes, more; we may not attempt to deny, defend, or palliate the inexcussble practices that found their existence in, and which has stamped with infamy the famous, or I might perhaps better say the infamous, Credit Mobilier. But still, conceding all these things to be true, I confidently contend that they would not and cannot confer upon Congress any power whatever to destroy vested rights or disturb the obligations of contracts, that it would not have, had these things not occurred. There may be, and unquestionably are, remedies for all these evils, both in Congress and in the courts, but one of these is not, in my judgment, the passage of a law that either destroys rights already vested under the terms of the contract, that cancels obligations created in pursuance of it, or which takes private property for public use without ance of it, or which takes private property for public use without

But the bill of the Judiciary Committee not only does this, not only says to these corporations, "Although your contract with the Government provides that you shall not be called upon for the interest until the bonds mature, we will compel you to pay into the Treasury annually a certain sum as a sinking fund for this purpose; although your contract with the Government stipulates that only one-half of the compensation for services rendered the Government shall be retained, we will authorize and compel the retention of the whole amount; although your contract under the law, plainly and without ambiguity defines what shall constitute 'net earnings,' still we will, by legislation, give another and a different definition to these terms, and one tion, give another and a different definition to these terms, and one which increases the pecuniary obligations of one of the contracting parties without its consent; although under your contract you are obligated to pay into the Treasury of the United States annually the sum of 5 per cent. on your 'net earnings,' as those terms were defined and understood at the time your contract was made, leaving to you the option of paying as much more annually as you may wish, still we will now compel you by legislation; without your consent, to pay a sum into the Treasury annually, largely in excess of 5 per cent. on your net earnings, under the new definition of these terms." This bill not only does all this and more, but, as if to cap the climax of what, if this bill were not the creation of so able a committee, I would say seems to me a most unwarrantable assumption of legislative power; it is provided in section 11: That in the event of any of said railroad companies failing to perform all and singular these new requirements, and all and singular the requirements of the acts of 1862 or 1864, or of any other act relating to such company, to be by it performed, of any other act relating to such company, to be by it performed, for the period of six months next after such performance may be due, that then such failure shall operate as a forfeiture of all the

rights, privileges, grants, and franchises derived or obtained by it from the Government of the United States; and enjoining upon the Attorney-General in such event the duty of causing such forfeiture to be judicially declared.

This section reads as follows as reported by that committee:

SEC. 11. That if any of said several railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

Here, then, it will be observed a forfeiture is declared not only for a failure to comply with the new and onerous terms sought to be ingrafted upon the contract by the provisions of this bill, but a forfeiture is also declared in the event of a failure upon the part of these companies to perform all and singular the requirements of the acts of 1862 and 1864, and of any other act relating to such companies, to be by them performed, and the failure to perform many of which did not, under the terms and conditions of the acts of 1862 and 1864, operate as a forfeiture. For instance, section 15 of the act of July 2, 1864, prescribes a duty to be performed by these companies and fixes the penalty; that penalty is a forfeiture to the person injured for each offense the sum of \$100, and such other damage as he may have suffered, but the bill under discussion would, in the broad and comprehensive language of section 11, declare a new and different penalty for a failure to perform the duty prescribed in section 15 of the act of 1364; it would declare on such failure a forfeiture of all the rights, privileges, grants, and franchises of such company derived or obtained Here, then, it will be observed a forfeiture is declared not only for privileges, grants, and franchises of such company derived or obtained by it from the United States. Again, various other duties are imposed on these companies which they are in the most imperative terms re-quired to perform, but in reference to which no forfeiture is declared in the original acts in the event of a failure to perform them. For instance, in section 20 of the act of July 1, 1862, certain requirements are imposed on these companies in imperative terms, and yet no penalty of forfeiture or otherwise, so far as I am able to see, is prescribed. That section of the act of 1862 reads as follows:

Sec. 20. And be it further enacted. That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the Secretary of the Treasury an annual report, wherein shall be set forth—

"Shall make." Now here is a duty imposed on these companies by this section; they shall do this thingmake to the Secretary of the Treasury an annual report, wherein shall be set forth-

First. The names of the stockholders and their places of residence, so far as the une can be ascertained;
Second. The names and residences of the directors, and all other officers of the

company;
Third. The amount of stock subscribed, and the amount thereof actually paid in;
Fourth. A description of the lines of road surveyed, of the lines thereof fixed
upon for the construction of the road, and the cost of such surveys;
Fifth. The amount received from passengers on the road;
Sixth. The amount received for freight thereon;
Seventh. A statement of the expense of said road and its fixtures;
Eighth. A statement of the indebtedness of said company, setting forth the
various kinds thereof. Which report shall be sworn to by the president of the
said company, and shall be presented to the Secretary of the Treasury on or before
the 1st day of July in each year.

the 1st dây of July in each year.

If there has been any clause in any act passed since that time, repealing that provision, it has escaped my attention. I know of none. I think it is to-day a part of the law of the land, a part of the act of 1862, and here as I have read are certain imperative duties imposed on these corporations, required of them if you please, to use the language of the Senator who made the report in support of the bill of the Judiciary Committee; and yet there is no penalty at all, much less a penalty of forfeiture of all rights and franchises of the companies, in the event of a failure of the companies to comply with the requirements of section 20. Yet we find that this section 11 provides that, if these companies or any of them "shall fail to perform all and singular the requirements of "—What?" of this act." That is all right, but what next? "and of the acts hereinbefore mentioned," namely, the act of July 1, 1862, and the act of July 2, 1864; and then, as though that were not broad enough, the committee say, "and of any other act relating to said company, to be by it performed for a any other act relating to said company, to be by it performed for a period of six months next after such performance may be due, such failure shall operate as a "-What?" "shall operate as a forfeiture

of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced."

That is the character of the bill reported by the Judiciary Committee; and if there is anything to be said in defense of this section 11 of that bill, I for one should like to hear it from the honorable member of that committee from Ohio who makes this report, when he comes to speak on this subject. I am now not talking on the question of the importance of having a settlement of this controversy between the Government and these railroad companies; I am directing my attention purely to the question of constitutional power on the part of Congress to pass the bill reported by the Judiciary Committee.

The bill, then, not only prescribes new and onerous conditions and imposes obligations that are entire strangers to the original contract, but declares wholesale forfeitures for a simple failure on the

part of the companies to perform requirements contained in the original contract, and against a failure to perform which no forfeiture was imposed in the original acts.

In any and every possible view, therefore, of this question I am forced to the conclusion that the bill reported by the Judiciary Committee should not receive the sanction of the Senate. I have been mittee should not receive the sanction of the Senate. I have been led to these statements of my objections to this bill from the fact that the Committee on Railroads, of which I am a member, had at the last session and also at the present this whole question under long and careful consideration; and the final action of that committee, in which I fully concurred, being in such direct conflict upon the law of the case with the views embodied in the bill proposed by the Judiciary Committee, I have felt it my duty to give some of my reasons why I cannot support the pending measure.

The result of the investigations of this important subject by the Committee on Railroads is embodied in the bill reported from that committee by its chairman on the 19th of the present month—being Senate bill No. 1134—and which is offered as a substitute for the bill reported from the Judiciary Committee. That bill shall receive my hearty support. It proceeds upon the theory, not of force or arbi-

reported from the Judiciary Committee. That bill shall receive my hearty support. It proceeds upon the theory, not of force or arbitrary interference with vested rights, but of amicable adjustment of the accounts between the Government and these railroad companies upon a basis that will in the end secure to the Government full indemnity against loss, and at the same time not violate its own faith nor disturb the vested rights of the companies. It provides in brief: first, that the Secretary of the Treasury shall carry to the credit of a sinking fund for the Central Pacific and Union Pacific Railroad Companies the amount due or which may be due to the said companies repanies the amount due or which may be due to the said companies respectively for the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores for the Government up to and including the 31st day of December, 1876. And if this does not amount at that date to the sum of \$1,000,000 each, then the companies shall make up the deficiency; if it exceeds such sum then the excess over \$1,000,000 is to be paid to the companies. It provides in the second place that each of these two principal companies, the Central Pacific and the Union Pacific, shall each pay into the Treasury of the United States the sum of \$750,000 per annum in equal semi-annual incific and the Union Pacific, shall each pay into the Treasury of the United States the sum of \$750,000 per annum in equal semi-annual installments, on the 1st day of April and October, in each year, commencing on the 1st day of next October, either in lawful money or in any bonds or securities of the United States at par, until such sums shall, with interest thereon added thereto semi-annually at the rate of 6 per cent. per annum, be sufficient, when added to the other sums to the credit of such sinking funds, to pay off and extinguish the Government bonds advanced to these companies under the act of July 1, 1852, and the acts a mending the same or supplemental thereto. July 1, 1862, and the acts amending the same or supplemental thereto, together with 6 per cent. interest thereon from the respective dates of such bonds up to the date when they are so paid and extinguished. of such bonds up to the date when they are so plat and extinguished. It is provided further, however, that in the event that such payments shall not prove sufficient to extinguish the Government bonds and interest thereon as I have stated by the 1st day of October, in the year 1912—thirty-five years hence—that then the semi-annual payments upon the part of these companies shall be increased to such a sum as will be sufficient for that purpose. It is also provided that such payments shall be in lieu of all other payments or requirements from such companies, but, until the claims of the Government for said bonds and interest are fully paid, such companies shall not in any manner be released from their present liabilities. It is furthermore provided that each of such companies shall have the option at any time to anticipate any or all of the semi-annual payments by the pay-ment to the Government of the then present value of such semi-an-

ment to the Government of the then present value of such semi-annual payments discounted at the rate of 6 per cent. per annum, but the sum so paid shall not be less than \$1,000,000 at any one time.

It is also a provision of the bill that the Government mortgage, created by the fifth section of the act of July 1,1862, amended by the act of July 2, 1864, shall not in any way be impaired or released by the operations of this bill, should it become a law, until the obligations of said companies respectively to the Government are fully performed; that such mortgage until such time shall remain in full force and virtue, and upon the failure of such companies to perform the obligations imposed upon them by this bill such mortgage shall be enforced as though this bill had not passed, each company, however, to be credited by the Government upon said mortgage with all payments which may have been made in part execution of the provisions of this bill; and, finally, it is provided in the sixth section of the bill that if its provisions shall be accepted by the said railroad companies within four months from the date of its passage, by votes of the directors its provisions shall be accepted by the said railroad companies within four months from the date of its passage, by votes of the directors and stockholders at regular meetings duly called, the same shall be deemed and construed to be a final settlement between the Government and the company or companies so accepting the same such acceptance to be filed with the Secretary of the Treasury.

These are the main features of the bill reported by the Committee or Pailwards.

on Railroads.

Assuming then that the theory of that committee in reference to the power of Congress in the premises is correct, is the settlement proposed in this bill one that is, under all the facts and circumstances, reasonable and just both to the Government and the railroad companies? And furthermore, is it not a settlement infinitely more advantageous to the Government than would be the condition of the Government under existing state of facts?

What is the amount of the debt, principal and interest, that these

companies will be owing the Government at its maturity and what is the present security held by the Government for its ultimate payment? A comparison of these for a moment with the compromise proposed in the bill of the Railroad Committee will show at a glance that the interests of the Government will be much more largely pro-

that the interests of the Government will be much more largely protected under the latter than the former.

The whole amount of Government bonds issued to the Central Pacific and the Western Pacific, now a part of the Central Pacific, was \$27,855,680. These bonds mature on an average in 1898. The interest on this amount at that date will be \$50,140,224; principal and interest,

7,995,904.

The whole amount of Government bonds issued to the Union Pacific is \$27,236,512. The interest on this sum, at the maturing in 1898, will be \$49,025,721, making principal and interest \$76,262,233.

The sum-total, therefore, of principal and interest that will be due the Government of the United States in 1898 or 1900—twenty-one years hence—will reach the enormous sum of \$154,257,137. And as a security for the ultimate payment of this amount the Government has what? First, the one-half of all compensation for services rendered or to be rendered by these companies for the Government; second, 5 per cent. annually of the net earnings of the road, together with the annual accumulations of interest on these amounts; and, third, a second mortgage upon the road itself and rolling-stock, fixtures, and other property, together with any portion of the land grant that may then remain in the ownership of the companies. This mortgage is a second lien subordinate to a first mortgage of I believe \$30,000 per mile on each mile of the road, bearing annual interest. What can mile on each mile of the road, bearing annual interest. What can the Government expect annually from the one-half compensation for services rendered ?

The Union Pacific Railroad Company has charged the United States for services rendered in the way of transportation for the nine years ending December 31, 1875, \$7,290,252.89, or an average annual charge of \$810,028.10; the one-half of which is \$405,014.05, to which the Government is entitled.

In the four years ending June 30, 1874, the amount charged for services rendered the Government by the Central Pacific Company and the four years ending June 30, 1674, the amount charged for services rendered the Government by the Central Pacific Company was \$1,406,092.48, or an average yearly amount of \$351,523.12; the one-half of which the Government is entitled to retain is \$175,761.56 annually, making the sum-total, taking these years as an average, from these two companies as half compensation for services rendered of \$580,715.61. To this amount we add 5 per cent. in the case of the Union Pacific of the amount which that company concedes, as I am advised, is net earnings, which is arrived at by declaring a dividend of 8 per cent. upon their capital stock of \$36,475,000, which would make their net earnings, as per their statement, \$2,918,000, 5 per cent. of which is \$145,900, and in the case of the Central Pacific 5 per cent. upon the amount which I understand that company admits are net earnings, which is arrived at by declaring a dividend of 8 per cent. upon their capital stock of \$54,275,500, and which amounts to \$4,342,040,5 per cent. of which is \$144,734.65, making a total annual payment from these two companies, taking this as an average, arising from the 5 per cent. on net earnings of the road, of \$290,634.65, or a sum-total annually from the two companies by reason of services performed and the 5 per cent. on net earnings of \$870,510.70. This I do not concede is by any means the full amount that these companies should of right pay annually from these two sources under the existing contract, but this I understand is the admit payment and the contract. of right pay annually from these two sources under the existing contract; but this I understand is the claim made by the companies as to their rights under existing contracts. Taking into consideration, therefore, all the adverse circumstances in which the Government is placed, the prior mortgage of the holders of the companies' bonds, the controversy now pending in the courts as to the date of the completion of the road so as to fix the time for the commencement of the annual payment of the 5 per cent. on the net earnings, the more than probability of the Government being compelled either to pay off the enormous debt held by the prior bondholders in cash pay on the enormous dept held by the prior bondholders in cash prior to the year 1900, or else to surrender all security under its own subsequent mortgage at that time, is it not wisdom on the part of Congress, if the consent of these companies can be had to the propositions contained in the bill reported by the railroad committee, to give it the sanction of legislative action? Under this bill the Government, in addition to \$2,000,000 in hand for services performed, will receive annually in semi-annual payments the sum of one million and a half of dollars. And, if necessary, these annual payments are to be increased, so that the sinking fund thus provided will, in thirty-five years from date, re-imburse the Government the whole amount of onds it has issued, together with 6 per cent. per annum thereon from

Mr. THURMAN. Mr. President, in opening this bill—for I am opening it now, having consented for the convenience of the Senator from Oregon that he should precede me—I shall not take up as much time as perhaps the importance of the subject demands; because, if Senators are disposed to understand this question (and I know that if they realize its importance they will be disposed to understand it) the panted reports from the various committees of the House and the Senate by whom the subject has been considered will give to any one who will read them all the information he can want. My only excuse for speaking at all is that it may be for the convenience of Senators who have not had time to look at these reports to have a comparatively brief statement of the case.

As is well known, the first act on the subject of the Pacific Rail-

roads was the act of 1862. Nothing was done under that act by the companies except to perfect an organization and perhaps to acquire a very small amount of stock, barely sufficient to qualify the persons chosen for directors to hold those places. By that act Congress made great grants to a company to aid in the construction of the road—a company which has since been known as the Union Pacific Railroad Company Company-commencing at the one hundredth meridian and running westward, and to a company chartered by the State of California known as the Central Pacific, and which was authorized by the act of Congress to unite with the Union Pacific Railroad at a point in Utah; and with further provisions authorizing branches of these rail-roads, and especially of the Union Pacific, to be constructed, and pro-viding that that branch which first was constructed from the Missouri River to the one hundredth meridian should become a part of the main line. Accordingly that branch which was constructed from Omaha in Nebraska to the one hundredth meridian, being first completed, became part of the main stem of the Union Pacific Railroad. Then there were various other branches; that branch which has since become known as the Kansas Pacific; another the Central Branch; another the Sioux City; and perhaps some others. By the first act of 1862, as I said, the Government promised an immense land grant to aid in the construction of the road, but not a land grant simply; it provided a loan of Government credit, varying from \$16,000 to \$32,000 a mile, in bonds of the United States having thirty years to run. The fifth section of that act provided:

run. The fifth section of that act provided:

And to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States.

They was the required states.

That was the provision in the original charter, and the Senate will ee that it gave to the Government the first lien upon the road, upon all its fixtures, upon all its running stock; in a word, upon all its property, and provided in the most ample manner for enforcing that lieu and thus securing the Government. Nothing was done, as I have said, under that act of 1862 but to organize the companies. In 1864, they came to Congress and prevailed on Congress to pass an amendthey came to Congress and prevailed on Congress to pass an amendatory act by which these companies were authorized to create a first mortgage on their roads, to secure the payment of company bonds to be issued by the companies respectively; and that act released the lien of the United States, which up to its passage was the first lien, as I have just read, and made the mortgage of the companies the first lien, thus subordinating the claim of the Government to that of the holders of the bonds that should be issued by the companies themselves and secured by their mortgages.

Such a surrender of a security for so large a sum of money, which was payable thirty years afterward, leaving the Government practically with scarcely any security or perhaps no security at all, has no parallel in the legislation of this or any other country.

But that was not all the advantage that the companies derived from this security at all the advantage that the companies derived from

this act of 1864. They derived many and most important advantages beside this surrender of the first lien of the Government upon their

roads and upon their property; but it would be useless for me to take up the time of the Senate in detailing them.

Now, sir, what took place? The companies went on and built these roads, and now I affirm that if anything is capable of proof, this is capable of proof and has been proved before one committee of the Senate, proved before two committees of the House of Representatives, that the Government subsidy in land and the proceeds of the Government bonds were all-sufficient to build every mile of these roads that was built; that in point of fact not one mile of these roads was built by the expenditure of the money of individual stockholders. And now, sir, when the Government has thus in effect furnished the means to build these roads, we are told that the Government has no security in the world for the repayment of its loan, and is comno security in the world for the repayment of its loan, and is completely at the mercy of these companies whether it shall ever get one dollar of it or not. That is what we are told; for although in consideration of these great grants that were made by the act of 1864 the companies agreed that the Government should have an absolute right, not a conditional, not a limited, not a constrained, but an absolute right, to alter, to amend, or to repeal the charters, we are now told that that amounts to nothing at all, and that we can make no amendment, no alteration of these charters without the assent of the companies themselves.

amendment, no alteration of these charters without the assent of the companies themselves.

Why, Mr. President, if that is the law, then I pray gentlemen to tell me what is the use of those words in this statute at all. If you cannot add to, if you cannot alter, if you cannot amend these charters, pray what significance have those words at all? If the assent of the companies is necessary, why are the words here? Strike them out, and you might make any amendment you pleased with the assent of the companies; and if the construction is true if the law is so, that the assent of the companies is yet required as if the words were not in the act, then I say they perform no office at all.

And that brings me to notice the objection that has been made against

the legality of the bill reported by the Committee on the Judiciary. Before doing so, however, allow me once more to impress on Senators the great importance of this legislation. The amount of the bonds issued to these companies is principal, \$64,623,512. They are thirty-year bonds. The Supreme Court of the United States has decided, the Court of Claims has decided, both Houses of Congress have decided, that the companies are not bound to refund to the Government the interest which the Government semi-annually pays, as it is paid by the Government, except in the mode and to the extent that is provided in these charters until the maturity of the obligation. Now, what will be the amount of the debt at the end of thirty years? If the Government should receive nothing upon these bonds toward keeping down the interest, the amount would be in round numbers \$181,000,000; for the interest alone, without compounding it, would be one hundred and sixteen million three hundred and twenty-two thousand and odd dollars, which, added to the \$64,623,512, would make over \$181,000,000.

over \$181,000,000.

Mr. MITCHELL. I think the Senator's figures are wrong. Instead of strengthening his argument, he only weakens it.

Mr. THURMAN. Wrong in what?

Mr. MITCHELL. Wrong in the amount.

Mr. THURMAN. I do not think so. I take it from the calculation that I find in Mr. Lawrence's report, who, I know, is an extremely accurate and painstaking man, and I think his calculation is right.

Mr. MITCHELL. It does not affect the argument specially.

Mr. THURMAN. It is big enough any way you can put it.

Mr. THURMAN. But there is another view, let me say to the Senator, of this subject. The Supreme Court has decided that these railroad companies are not bound to refund to the Government until the

road companies are not bound to refund to the Government until the maturity of these bonds; but there is one question that they never have decided, they never have decided that when the time for refunding arrives the companies will not be bound to pay interest upon the installments of interest as the Government paid them. That is a question they never have decided at all; and, I think, when that question shall come it will be found very difficult indeed to gainsay the right of the Government to interest upon the installments of interest as it paid them; subject, of course, to any credit to which the companies may have been entitled, for the 5 per cent., the half earnings, and whatever else they may have paid. That is not compounding interest, because the interest upon each installment of interest paid by the Government would run continually without rest until the maturity of the bonds; but it will be found to add immensely to the sum which will then be due the Government and carry it far beyond \$200,000,000.

Without stopping to argue that question, for it is not at all material to argue it upon the language of the fifth section of the original charter, and to which I invite the attention of the Senate, I say now, as a matter worthy of consideration, that my first impression is that when the time comes for the payment, when the thirty years shall have expired, these companies will be bound to pay not merely the principal and simple interest for thirty years on that principal but principal and simple interest for thirty years on that principal, but they will be bound to pay the principal and interest paid by the Gov-crnment and simple interest without rest upon each installment up to the time that the companies repay the allowance; and that will to the time that the companies repay the allowance; and that will add immensely, many millions, to the amount which these companies are to pay. Even allowing that the roads continue in the possession of the companies and continue to perform transportation service for the Government, and continue to pay 5 per cent. of the net earnings to the Government to keep down the Government rate, here is a claim of the Government that even under the most advantageous circumstances cannot be less at the end of thirty years than one hundred and forty-odd million dollars; and if my interpretation of this charter is right it may amount to nearly two hundred and thirty or charter is right, it may amount to nearly two hundred and thirty or two hundred and forty million dollars, and for this immense claim we are told that the Government is to have no security at all except such security as these companies ex volentia may see fit to grant. dissent utterly. It is said that that must be so because there is no right under this reserved power to alter, amend, or repeal these charters, to require anything more of these companies than is required by the acts of 1862 and 1864. In support of this it is said, and said truly, that the Government of the United States has no power to impair the obligation of a contract any more than a State would have the right to impair it. I do not deny that. A State government cannot impair the obligation of a contract. Why? For two reasons. First, I know the obligation of a contract. Why? For two reasons. First, I know of no constitution of a State that confers any such power upon a Legislature, and in regard to State Legislatures as in regard to Congress, they have only such powers as are delegated by the Constitution; but in the second place, every State is expressly prohibited by the Constitution of the United States from passing any law that will impair the obligation of a contract. Therefore no State Legislature has any such power. Congress has no such power for the simple reason that it has never been delegated to it. The Constitution has not delegated any such power; and therefore if this bill reported by the Judiciary Committee would impair the obligation of a contract, it would be a bill which we should have no authority in the world to pass, for no such power is delegated to us. But is it any such bill as that?

It has been said, further, that we have no right to destroy vested rights, and decisions have been read of courts in these very words, or

words of similar import, where a reservation of right to amend, alter, words of similar import, where a reservation of right to amend, after, or repeal a charter is involved, and the courts have said there is some limitation to this power. What limitation have they put upon it? That in the exercise of the power you must not destroy vested rights that have been created under the charter, nor impair the obligation of contracts that have been created under the charter, nor impair the obligation of contracts that have been created under it. When the courts said you are not to destroy vested rights created under the charter, or impair an obligation of contracts created under it, did they mean that you are not to touch the contract between the Government and the corporation itself, its charter? No, sir, nothing of the kind; there was no such idea as that.

Mr. MITCHELL. And I did not contend for that. Mr. THURMAN. Then the Senator yields all that I ask.

Mr. THURMAN. Then the Senator yields all that I ask.
Mr. MITCHELL. Not at all.
Mr. THURMAN. They never intended it. But take the illustration of the Senator himself. If the Union Pacific Railroad Company has bought ground for a depot, it is vested in that corporation. Congress cannot amend the charter so that that land, which now belongs legally and equitably to that corporation, shall hereafter belong to Mr. MITCHELL or Mr. THURMAN. It cannot do such a thing as that any more than you can pass a law to take my dwelling-house from me without compensation and give it to my friend who sits before me. The right of property is vested in that corporation in that ground that it has acquired under and in pursuance of its charter, and Contact that the sequired under and in pursuance of its charter, and Contact the sequired under and in pursuance of its charter, and Contact the sequired under and in pursuance of its charter, and Contact the sequired under and in pursuance of its charter, and Contact the sequired under and in pursuance of its charter, and Contact the sequired under and in pursuance of its charter. The right of property is vested in that corporation in that ground that it has acquired under and in pursuance of its charter, and Congress has no right to confiscate it or take it unless it is taken for public use, and upon making due compensation therefor. So, too, if that corporation has created obligations, as it has by the millions, as it has by issuing its bonds by making a first mortgage on its road, all in pursuance of the law, we cannot, under the power, alter or impair the obligation of its contract and thus defraud its creditors. So, too, if persons have become indebted to the corporation, if they have made contracts with the corporation under which the corporation has rights, we cannot by our alteration or amendment or repeal of its charter. we cannot, by our alteration or amendment or repeal of its charter, destroy the obligation of those contracts and thus confiscate the property of the company. Nobody pretends for any such thing as that; but when it comes to the question of the contract between the Government and the company, to wit, the charter, there are but two parties to that, the Government on the one side and the corporation upon the other side. If the corporation has assented beforehand that the Government may alter that contract, its assent given beforehand is

just as good as if given after an alteration.

Mr. MITCHELL. May I ask the Senator a question right there?

Mr. THURMAN. I would rather the Senator would not interrupt

Mr. MITCHELL. If the Senator will allow me to ask him one question right on this point, I will not interrupt him again Mr. THURMAN. Go ahead.

The PRESIDING OFFICER, (Mr. BOOTH in the chair.) Does the Senator from Ohio yield to the Senator from Oregon?

Mr. THURMAN. Yes, I will do so, although I would rather not

yield.

Mr. MITCHELL. I will not interrupt the Senator again, but should like to ask one question now following up the proposition laid down by him. It being the case that there are but two parties to this contract, and one of these parties gave to the other at the time the contract was made the right to alter, amend, or repeal, has the Congress of the United States to-day, upon its own motion, for any reason, the right to pass a law taking the congressional land grant from these

companies? Mr. THURMAN. What is the use of asking a question of that Mr. THURMAN. What is the use of asking a question of that kind? Where property is vested in the corporation, where its title has become perfect, is there a pretense that we can presume to divest it? The title to the land that we have thus granted has passed from the Government and vested in the corporation. That question settles nothing. I go on, therefore, with what I was saying. When a charter is passed and contains this reserved right to alter, amend, or repeal, and the company accepts the charter with that reservation in it, it is an assent beforehand on the part of the company that the Government may exercise that right although in so

pany that the Government may exercise that right, although in so pany that the Government may exercise that right, although in so doing it does alter the charter or does modify it, so long at least as the general objects of the charter are observed. Certainly they have given to Congress the right to do this. Now, what say the court about it? The true principle is laid down in the case of Tomlinson vs. Jessup by the Supreme Court. The case will be found in 15 Wallace. I read from page 458:

The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revoca-

And here I may say to the Senate the power reserved in that case was not one particle broader than the power that is reserved to Congress in this case.

The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power, and of the possibility of its exercise at any time in the discretion of the Legislature.

Now further:

The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference.

Let me read that again:

The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators.

That is what it is. It is to prevent the contract from being irreealable. It is to prevent the contract from being taken out of and from under the control of the Legislature. On the other hand, it makes it completely subject to the control of the Legislature in its discretion, so that in the exercise of its discretion it does not violate the rights that are vested under it, does not violate rights of property or impair the obligation of contracts; but as to this contract itself, this particular contract, the charter, this contract between the Government and between the corporation, the object of the provision is to leave this contract subject to the legislative will. I read again:

It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable, and protected from any measures affecting its obligation.

Without that it could not be affected by any measures affecting its obligation, but with this reservation its obligation may be affected. That is the meaning of what is here said by the Supreme Court of the United States. Your committee, in commenting on this case, say :

United States. Your committee, in commenting on this case, say:

This decision places the reservation upon its true ground. It gives to the Legislature the right to interfere when the public interests require interference. It preserves to the State control over its contract with the corporators, and the latter, by accepting the charter, agree in advance that such control shall exist. No one will deny that if the bill now reported should become a law and be assented to by said railroad corporations, it would thenceforth be binding upon them. But their acceptance of their charter, containing the reservations aforesaid, is an assent beforehand to the bill now proposed, or to any similar measure that Congress in its discretion shall deem necessary for the protection of the Government or the creditors of said corporations.

Citing Pennsylvania College cases, 13 Wallace, pages 213 and 214.

Citing Pennsylvania College cases, 13 Wallace, pages 213 and 214: In this latter case the court spoke of the reserved right to alter or amend a char-

I use the very language of the court-

reservation to the State to make any alterations in the charter which the Legislature in its wisdom may deem fit, just, and expedient to enact.

No language could be broader than that as to our power. First, I ought to refer to the case of Sherman vs. Smith, I Black, 593. That was a case that came from the State of New York. That was a case in which the Legislature of New York imposed very heavy obligations upon the stockholders in a corporation, greater than those that existed at the time the charter was granted; and yet the highest court in New York and the Supreme Court of the United States, I believe by a unanimous vote of both courts, sustained that act as constitutional and within the competency of the Legislature, the power of repeal, alteration, and amendment having been reserved to the Legislature of that State.

But I want to speak still further of the scope of our power under this reserved provision. In Miller vs. The State, 15 Wallace, 498, the Supreme Court said:

Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such char-

That is, the rights conferred on a corporation by the charter and rights that have been acquired under and by virtue of the charter, as I have already illustrated—

If have already intestated—and which by a legitimate use of the powers granted have become vested in the corporation, but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets.

Now, sir, I want nothing more than that to sustain this bill. Now, sir, I want nothing more than that to sustain this bill. The Supreme Court say that this power may be exercised to almost any extent to secure the due administration of its affairs, "that is, the affairs of the corporation." That is one object of the bill of the Judiciary Committee. Again, "or to protect the rights of its stockholders and of creditors." That is another object of this bill. Again, the contract is "for the proper disposition of its assets;" and that is the third object of this bill. The bill does not go one hair's breadth beyond the accomplishment of these objects, which your Supreme Court said in the most emphatic words it is competent for us to provide for. Again, in Holyoke vs. Lyman (15 Wallace, 500) the court held that—

The provision of the Revised Statutes of Massachusetts, chapter 44, section 23, and General Statutes, chapter 63, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal at the pleasure of the Legislature, reserves to the Legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the Legislature may deem necessary to secure either that object or other public or private rights.

What more can we want than that to justify this legislation? The whole argument against it and the cases which have been cited in support of that argument go upon a total misconception of what the courts mean. When they speak of vested rights they do not speak of the franchises granted by the charter; they speak of property acquired by the corporation, contracts made by third persons with the corporation. They do not speak of that contract between the Government and the corporation which is called its charter. It is enough

to say in reference to that, that we may go to almost any extent to secure the due administration of the affairs of the corporation, to protect its creditors, and to provide for the disposition of its assets, and that it is an assent given beforehand by the corporation when it accepted the charter that that discretion shall rest with the Legislature, and that it shall continue and maintain its control over the contract, and the contract shall not therefore be considered irrepealable

or not subject to modification.

It is said that the power to alter, amend, or repeal in the act of 1862 is a limited power and can only be exercised really for the benefit of the company. But then it is admitted that the reserved power in the act of 1864 is as broad and unlimited as words can make it. Then it is said that these statutes being in pari materia, as I admit for most purposes, they ought to be so considered, because absolutely nothing was done until after the act of 1864 was passed in the execution of this work. It is said that the first provisions in regard to repeal must limit this second. In other words, the very singular statement is made that the first expression of the legislative intent is to govern its last expression of intention. Sir, that is not the way that I read statutes. I read statutes, that the last expression of the legislative intent, if it is inconsistent with the previous expression, overrules that previous expression. When I come to look at the facts connected with this legislation; when I come to see the immense benefits conwith this legislation; when I come to see the immense benefits conferred upon these corporations by this act of 1864; when I come to reflect upon the immense surrender of the rights of the Government by the act of 1864; when I see that it gave up so much and conferred so much, I can well see that after paying such a consideration as that Congress should reserve to itself the power to amend, to alter, or to repeal these acts. Why, Mr. President, just think for one moment that under the act of 1862 the Government had a first lien on these roads, and all their property, and it might be then that with such a first lien, a limited power to alter, amend, or repeal would suffice for the protection of the Government; but when the Government gave up that first lien, when it agreed to be a subordinate lien-holder, when it agreed that many millions, nay, many tens of millions, nay, a hunit agreed that many millions, nay, many tens of millions, nay, a hundred millions of securities might be issued by these companies and made a paramount lien on the roads, and the Government was thus left in effect without any security at all except the watchfulness of Congress, was there not good reason why then the Government should reserve to itself an unlimited power to alter, to amend, or to repeal these charters?

Sir, undoubtedly these were the considerations that moved Congress to insist upon this unlimited power of alteration, amendment, or repeal; and the companies consented to it and were glad to consent to it, for they were getting the greatest bargain that ever corporations

obtained from any government on the face of this earth.

So much, sir, for the legal question involved, and now I proceed to compare these two bills. The Judiciary Committee has reported a bill which I will briefly explain.

The first section of that bill defines what shall be considered net earnings of these companies. Was there any necessity for that definition? The Railroad Committee seem to think not, for they make no definition in their bill. It is admitted that the Government and the companies disagree most materially as to what constitute net earnings, and yet the Railroad Committee report no definition whatsoever of what shall constitute net earnings.

Mr. WEST. Will the Senator allow me just to say there that the reason it did not report upon that was because the Senator's own constitute that on the indicious properties that a star indicious report and and had executed into a law.

committee, that on the judiciary, reported and had enacted into a law in 1874 that the definition of the 5 per cent. should be left to the adjudication of the courts of the United States, where it now rests.

Mr. THURMAN. Well, sir, when we are providing a measure that shall protect this Government, and which we have the right to do under the power to alter or amend this law, I for one am not willing to wait for the tedious process of litigation. It would be no objection to me to the first section of this bill if the Supreme Court were to decide to-day that the company's interpretation of "net earnings" is the true interpretation. All I should have to say to that would be then there is so much the more necessity for this legislation to secure the Government. That would be all I should have to say in reply to

But, sir, the importance of this is perfectly manifest. What is it these companies do? They claim that the net earnings of the roads are only what remains after paying the running expenses and paying the interest upon the bonded debt, and the Senator from Oregon yesterday spoke of some courts as deciding that that was the true rule. But what was his case? It was the case of a preferred stockholder, a holder of preferred stock, in a company; and does not the Senator know very well that it is a fixed rule of law that stockholders of a company can receive no dividends until its debts are paid, and that the decision which was perfectly correct in that case has not the least application in the world to this? There the holder of preferred stock undertook to make money which belonged to the creditors of the company; and the only wonder is that he had the audacity to make such a claim in the face of the known law of corporations, which is, "pay your debts first before you distribute profits among yourselves." That has no application in a case like this. The language of this statute is too plain, I submit, to admit of controversy, that the net earnings mean the gross earnings less the operating expenses excluding from consideration the interest upon the debt; and

not only that, this definition is necessary for another purpose, to prevent that fraud so often perpetrated by railroad corporations of putting into the account of their operating expenses charges and expenses that really belong to the construction account of the road. That is a thing which has been done time and again, and which your Judiciary a thing which has been done time and again, and which your Judiciary Committee intended these companies should not do; that we should take the net earnings, as the words fairly import, and not allow them to swallow up all their earnings and deprive the Government of the 5 per cent. to which it is entitled, by saying, "We have expended this money of which you ought to have 5 per cent. in the purchase of other roads, in the leasing of other roads, in the building of more wiles of road and there is nothing left from which the Government. miles of road, and there is nothing left from which the Government can get its 5 per cent."

I do not think it necessary that I should say anything more on that

subject. I invite the closest scrutiny to the first section of the bill that defines "net earnings," and if any one can point out anything that is erroneous in it, I shall be one of the very first to thank him

for doing so. Then the second section provides:

That the whole amount of compensation which may from time to time be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half theroof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided, for the uses therein mentioned.

The only alteration that this section makes in existing law is that it requires one-half of this transportation account, as we call it for brevity and convenience, to be turned into a sinking fund. The other half is applicable under existing law precisely as it is under this section of the bill. Of course there is an alteration in this char-ter, but it is an alteration in the contract between each of these companies and the Government, which we under this reserved power have a right to make. It does not defeat or even tend to defeat the general purposes of the charter; it does not impair the ability of the company to carry on its work and to pay its debts.

Mr. MORTON. What is done with the money earned by the companies in transportation for the Government?

Mr. THURMAN. I have already said that under the existing law was helf of the transportation account as we call it—that is the account as we call it—that is the account.

one-half of the transportation account, as we call it-that is, the account of the companies against the Government for transporting troops and supplies and munitions and things of that kind-is reserved by the Government and applied to keep down the interest on the bonds which the Government has loaned.

Mr. MITCHELL. The other half is paid absolutely to the com-

Mr. THURMAN. The other half is paid to the company as the law provides. This bill leaves the half which is to be paid to keep down interest precisely as the law now stands; but it requires the other half to go into the sinking fund. It does not deprive the company of the remaining half; it does not confiscate it; it does not take it away from them. It only requires that it shall be put into a sinking fund for the payment of the debts of the company in the order of their priority when the time shall come; and thus it simply authorizes us to do what in the language of the Supreme Court of the United States we may do under this reserved power, to wit: that we may amend this charter "to secure the due administration of its affairs so as it protect the rights of its stockholders and of creditors and for the proper disposition of its assets." It is an exercise of that power which the highest court in this land has said we fully and completely pos-

Then, sir, we come to the third and fourth sections. In respect to this fourth section I beg the particular attention of Senators, because I find that owing to the peculiar wording of the section it has been greatly misunderstood.

Mr. MITCHELL. Before the Senator passes to that, will be allow

me to ask a question about another matter?

Mr. THURMAN. I should rather that the Senator would let me go on. The third section only provides in general terms that there shall be a sinking fund established in the Treasury. Then comes the operative section, the fourth.

Mr. WEST. Before the Senator passes from that, as no doubt the Senate wants information, and I am sure I do, will he be good enough to explain what is intended by that third section, whether it is intended to be a compounding-interest fund or not?

Mr. THURMAN. A compounding-interest tund or not?

Mr. THURMAN. A compounding-interest sum?

Mr. WEST. Yes.

Mr. THURMAN. If this section does not explain itself it is because the Senator from Vermont, [Mr. EDMUNDS,] who is usually supposed to have one of the clearest heads in the Senate, cannot draw a section. He drew it and I think it is plain enough.

Mr. WEST. If it is so easily explained will the Senator be kind enough to explain it?

Mr. THURMAN. I will. It is—

That there shall be established in the Treasury of the United States a sinking fund which shall be invested in bonds of the United States.

Is there any ambiguity about that?

and the semi-annual income thereof shall be in like manner from time to time invested.

Is there any obscurity about that? When these companies have put \$3,000,000, we will suppose in the Treasury of the United States

to the credit of this sinking fund, the Secretary of the Treasury is required to invest these three millions in bonds of the United States. The interest on those bonds will be payable semi-annually, and when a semi-annual installment of interest accrues then he is required to take that semi-annual interest and invest it in bonds again, and so on from time to time.

Mr. WEST. And whom does that secondary investment go to the

credit off
Mr. THURMAN. It goes to the credit of the sinking fund.
Mr. WEST. That is what we wanted to know.
Mr. THURMAN. Certainly it does.
Mr. EDMUNDS. "In like manner" is the language.

Mr. THURMAN-

And the same shall accumulate and be disposed of-

Now I beg the attention of the Senator from Louisiana-

And be disposed of as hereinafter mentioned.

When the Senator comes to find what is "hereinafter mentioned," he will find that that sinking fund is to be distributed to the creditors of the companies, precisely as a chancellor would have to marshal the assets and distribute them, giving no priority to the United States; not violating the right of any creditor who has any lien superior to that of the United States, as the Senator from Oregon, if I understood him correctly, intimated yesterday; but, on the contrary, religiously preserving the priority of lien, so that those who have liens that are paramount to the United States shall be first paid out of the sinking fund if they are not otherwise to be paid. And here I might remark, in passing, that it is one of the vices of the Railroad Committee's bill that it does flagrant wrong to the mortgage-bond-holders of these in passing, that it is one of the vices of the Railroad Committee's bill that it does flagrant wrong to the mortgage-bond-holders of these roads; for it creates a sinking fund for the benefit of the United States alone, and thus takes the assets of the companies upon which the mortgage-bond-holders have the first lien and confiscates them to the use of the Government. That is exactly what the Railroad Committee's bill does. Our bill does no such thing; for it provides that these exacts shall be warphaled and distributed in precisely the mode than assets shall be marshaled and distributed in precisely the mode they would be by a court of equity; distributing them according to the respective priorities of the parties.

But section 4 has been misunderstood. Let me state in brief what it is. It requires that these companies shall pay in to the credit of this sinking fund 25 per cent. of their net earnings; that in computing what are their net earnings, you are to take into the account the 5 per cent. which they are now bound to pay of those net earnings. That is the first factor in the calculation. Next, you are to take the entire transportation account of the Government. That is the second factor. Then to those two sums is to be added a sum which will That is the first factor in the calculation. Next, you are to take the entire transportation account of the Government. That is the second factor. Then to those two sums is to be added a sum which will make 25 per cent. of the net carnings of the companies for the preceding year. But if that 25 per cent, should exceed in respect to the Central Pacific Railroad the sum of \$1,500,000, the company shall not be compelled to pay the whole 25 per cent, to the credit of the sinking fund, but shall pay only the \$1,500,000. If the 25 per cent, thus computed is less than a million and a half, the company pays only the lesser amount, and does not pay the million and a half. I wish Senators to understand this, because owing to the peculiar structure of its phraseology it has been misunderstood. The sums named here, a million and a half for the Central Pacific, a million and a half for the Union Pacific, and the like, are simply mentioned as maximum sums, the maximum which these companies shall be compelled to pay to the credit of the sinking fund. This is not a requirement that they shall pay that much, but that they shall not be compelled to pay more than that. That is what it means. If the 25 per cent, of profits of each does not amount to the sum named for it, then it does not have to pay such amount; and that includes the 5 per cent, and that includes the whole transportation account. I say again, if the 25 per cent, exceeds the sum named, they are not obliged to pay the that includes the whole transportation account. I say again, if the 25 per cent. exceeds the sum named, they are not obliged to pay the 25 per cent., but only the named sum. If the 25 per cent., computed as I have stated, is less than the sum named, then they are only obliged to pay what it amounts to, though it is less than the sum named, and are not compelled to pay the sum named.

Then follows the next section. There is a provision that, if it shalt be made to appear by any one of these companies to the Secretary of the Treasury that it has been compelled to use more than 75 per cent. of its net earnings in the nayment of its interest, so that it is not

the Treasury that it has been compelled to use more than 75 per cent. of its net earnings in the payment of its interest, so that it is not able to pay this 25 per cent., he may for that year make an abatement according to the amount taken of the 25 per cent. actually necessary to the discharge of its interest, thus securing the creditors of the company against any possibility that this bill can take from them moneys to which under the existing law they are entitled, and thus securing the companies against any default in the payment of their interest which might result in a foreclosure of their mortgages and a sale of their roads. Nothing could be fairer.

Mr. SHERMAN. Let me suggest to my colleague that there is, I think, some ambiguity in the language here. I will give my colleague the actual sum submitted to us, to see if it does not create some trouble. The net earnings of the Central Pacific road, according to its report, are \$8,021,498, and 25 per cent. of that, as a matter of course, is over \$2,000,000. If I understand this bill, the 25 per cent. need not be paid unless it is less than the amount of \$1,500,000, and with certain other sums added.

Mr. THURMAN. It must be paid up to that amount.

Mr. THURMAN. It must be paid up to that amount.
Mr. SHERMAN. Let me read, because I am very much in favor of

the object of this bill, and I want to see that it is made so clear that in its practical operation there will be no difficulty or confusion:

That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest.

How much is that, I would ask my colleague? I think it is about two hundred thousand dollars a year.

Mr. THURMAN. That is one of the just complaints against these companies about which I am going to speak. The Secretary of the Treasury reported to the committee of the Honse that, owing to the failure of these companies to do what their charter requires, to give their net earnings, he had found it impossible to state. If you take the reports of the directors of the companies, those to their stockholders, you will find this stated for the year 1875: Union Pacific net earnings, \$6,148,365; 5 per cent. of which would be in round numbers, \$307,000; Central Pacific net earnings, eight million and odd dollars, 5 per cent. of which would be \$401,000.

Mr. SHERMAN. My colleague does not understand me. What is "the one-half of the compensation?"

Mr. THURMAN. The transportation account.

Mr. SHERMAN. How much is that ordinarily?

Mr. THURMAN. That is a variable quantity.

Mr. WEST. I think the Senator will find it correctly compiled on pages 4 and 5 of the report of the Committee on Railroads.

Mr. THURMAN. The annual amount is estimated by the Committee on Railroads at \$320,000.

Mr. SHERMAN. Now I will come to the point I am at. This provides—

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That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest—

That I understand is \$325,000.

Mr. THURMAN. Three hundred and twenty thousand dollars, I think; perhaps more than that.

Mr. SHERMAN. Very well.

And in addition thereto the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of \$1,500,000—

That is the total, the \$320,000 and the \$1,500,000; and now there is a deduction-

or so much thereof as shall be necessary to make the 5 per cent. of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum carned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 per cent. of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding.

As I understand this, there are two sums to be paid into the sink-As I understand this, there are two sums to be paid into the sinking fund; one is the one-half of the amount due for services rendered the Government, that is, \$320,000, and then there is an additional sum of one and a half million dollars, subject, however, to the deduction named in the closing paragraph of the section.

Mr. THURMAN. Will my colleague allow me to explain that?

Mr. SHERMAN. I want it explained. I wish to comprehend it.

Mr. THURMAN. Perhaps this language would have been a little more perspicuous if it had given the elements which go to make the 25 per cent., and then provided that where the 25 per cent. should exceed the million and a half for the Central Pacific, it should not be required to have in any one year more than a million and a half.

required to have in any one year more than a million and a half. That is exactly what the section means.

Mr. SHERMAN. That is what I understand, but I say there is ambiguity. I agree with my colleague that to strike out all that and allow them to pay into the sinking fund the \$320,000, the one-half of the sum due for services, which is a variable sum but which will be fixed every year, and this million and a half besides, would provide a fixed sum of \$1,800,000 for the sinking fund. That is about

Mr. THURMAN. No, we do not intend to have them pay more than a million and a half for any year, but I must leave to the Senator from Vermont, who drew this bill, to defend his own language.

Now let me put it in figures, I will take the Central Pacific. The gross transportation account, the whole of it, was \$320,000.

gross transportation account, the whole of it, was \$320,000.

Mr. WEST. The Senator is mistaken there.

Mr. THURMAN. How much?

Mr. WEST. Three hundred and fifty-one thousand five hundred and twenty-three dollars and twelve cents.

Mr. THURMAN. Very well, \$351,000. That is one factor. Then 5 per cent. of the net earnings, that is \$401,000, according to the report of the company itself. You have there \$752,000. Now suppose 25 per cent. of the net earnings of the company amount to more than a million and a half, instead of taking the whole 25 per cent. of net earnings, you add to the \$752,000 such a sum as will make a million and a half of dollars, so that you do not require them in any year to pay more than the million and a half. But suppose that the net earnings of the company are such that, when you have taken these two sums together, they would not have to pay, in order to make 25 per cent. of their net earnings, \$1,500,000; then they do not have to pay \$1,500,000, but only such sum as will make 25 per cent. of their net earnings, computed as I have stated.

It is all perfectly plain. But take this 5 per cent. of their net earnings. That would be one factor. That is a part of their net earnings; and it is, therefore, proper to consider in considering what is 25 per cent. of their net earnings. Then take the transportation account. Is not that part of the net earnings if out of their usual earnings they have paid their expenses to move it? So that is properly a factor in fixing this 25 per cent. of the net earnings. Then, taking these two elements together, you add such a sum to them as will make 25 per cent. of their net earnings, provided that sum does not exceed in the case of the Central Pacific and the Union Pacific a million and a half dollars each. dollars each.

Mr. SHERMAN. If my colleague will allow me, I agree with him Mr. SHERMAN. If my colleague will allow me, I agree with him entirely in his general idea; but is it not much more simple, so that everybody can understand it, to say that these railroad companies should pay 25 per cent. of their net earnings, as defined by him, provided, however, that the amount they shall be required to pay in any one year shall not exceed a million and a half of dollars? That is a simple proposition that everybody will understand. Now 25 per cent. of the net earnings of the Central Pacific is \$2,000,000. They ought not to pay that much to the Government, because that is more than the interest we pay for the company. the interest we pay for the company.

Mr. BOGY. The 25 per cent. includes the 5 per cent. and the trans-

Mr. BOGY. The 25 per cent. includes the 5 per cent. and the transportation.

Mr. SHERMAN. I mean that they shall not in any case be required to pay more than 25 per cent. The 25 per cent. may amount to more than a million and a half, but they shall not be required to pay in any year more than the interest the Government pays. I suppose that is the meaning really.

Mr. THURMAN. We do not require them to pay as much as the interest, because we thought we had better err a little on the side of mercy than to require them to pay the full amount of the interest and trust to better times hereafter and an increased business of the roads to enable them to fulfill their obligations. But. Mr. President. and trust to better times hereafter and an increased business of the roads to enable them to fulfill their obligations. But, Mr. President, it may be that the form, the phraseology, suggested by my colleague would be clearer than that in the bill; but I must leave him to suggest that to the Senator from Vermont who drew the bill, and who is so great a master of clear and precise language, as we know that he is; and he, no doubt, if he gets his mind upon it, will be able to give the reason which made him prefer this form of phraseology. I am not speaking about words; I only go for the substance.

Now, Mr. President, are these sums reasonable sums—a million and a half for the Central Pacific—that is the outside, and 25 per cent. of their net earnings, I will say, always exceed that sum, so that they will not have to pay the 25 per cent.; and the same as to the Union Pacific; and the same in respect to the other roads which pay the smaller sums? It will be found that the amount of interest which the Government pays annually for these companies exceeds the amount

Government pays annually for these companies exceeds the amount which we require of them. You will find on page 2 of the report of the Judiciary Committee the following statement:

Your committee has fixed upon these maximum sums with reference to the amount of interest which the Government annually pays, or may be liable to pay, upon the bonds issued by it for the benefit of said companies, respectively. These annual payments of interest by the Government are about as follows:

On bonds issued for the benefit of said Central and Western Pacific Railroad Companies, \$1,671,340.80—

Which is \$171,340 more than we require that company to pay annually into the sinking fund—

on bonds issued for the benefit of said Union Pacific Railroad Company, \$1,634,

Which is \$134,190 more than we require that company to payon bonds issued for the benefit of said Central Branch Union Pacific Railroad Company, \$96,000—

Which is considerably more than the amount that corporation has to pay into the sinking fund—

on bonds issued for the benefit of said Sioux City and Pacific Railroad Company, \$97,699.23—

We require that company to pay \$100,000-

on bonds issued for the benefit of the said Kansas Pacific Railroad Company, \$378,180.

We require it to pay \$350,000. So that in every instance except that of the Sioux City and Pacific Railroad Company, the amount which we require to be paid is less than the annual interest-charge paid by the Government; and in the case of the Central Branch Union Pacific the amounts are substantially the same.

Now, Mr. President, I pass from the fourth section of the bill. I have already explained the fifth section, which provides that when it is made to appear to the Secretary of the Treasury that the companies, without default in their interest on the obligations which are a first lien on the roads, cannot pay the sum required, he is authorized for the time being to make an abatement.

Then the sixth section provides—

That no dividend shall be voted, made, or paid for or to any stockholder or stock-

That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said companies respectively at any time when the said company shall be in default in respect of the payment either of the sums required as aforesaid to be paid into said sinking fund, or in respect of the payment of the said 5 per cent. of the net earnings, or in respect of interest upon any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States.

And makes it a penalty in the directors to pay, or the stockholders to receive, any dividend in violation of the act. Certainly no one

can dispute the propriety of that; certainly no one is here to say that these shareholders shall divide up the earnings of those roads among themselves, leaving their creditors unpaid. This bill does nothing more than a court of equity would do. Any court of equity would enjoin any such dividend, if any company should attempt to make one, leaving its debts unpaid. There is no new principle in that, but it is a most necessary and salutary provision to enforce the provisions of the act; and the omission of any such provision in the bill of the Railroad Committee is, in my judgment, a most serious defect in that bill.

Then comes the seventh section:

That the said sinking fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not re-imbursed, subject to the provisions of the next section.

Then comes section 8. These two sections, 7 and 8, are to be read

That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to their respective lawful priorities, as well as for the United States, according to their respective lawful priorities, as well as for the united States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively; nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States.

The transmission of the Admitship of the funds is respectively.

That provision for the distribution of that fund is precisely what any court of equity would make if the distribution were in its hands.

Mr. BOGY. I ask if under this section the fund accumulated in the

any court of equity would make if the distribution were in its hands.

Mr. BOGY. I ask if under this section the fund accumulated in the sinking fund could be used to pay the liens on the road prior to the Government's lien?

Mr. THURMAN. Certainly, and must be so applied. The whole of this bill, from first to last, most scrupulously guards the rights of the creditors of these corporations and gives priority, according to priority of lien, in the distribution of these funds; so that this bill, if it passes, instead of being being injurious to the bondholders of these companies, will have a most material effect really in helping to secure their bonds and the prompt payment thereof. It is a thing that, instead of doing any harm to any creditor of the companies, provides a means for his payment and gives him a right to payment exactly according to his legal and technical priority.

Mr. MITCHELL. Suppose 75 per cent. of the net earnings is not sufficient to meet the interest on these bonds, what then?

Mr. THURMAN. I have already told the Senator again and again that, if it is not, section 5 provides for that very case. Section 5, when that is made to appear to the Secretary of the Treasury, allows him to make an abatement of the sum to be paid into the sinking fund so as to credit each company with the amount that it has been compelled to apply toward the payment of its interest, so as to prevent any default of the company in the payment of its interest and any possibility of giving rise to a case for the foreclosure of its mortagage.

The tenth section simply makes it the duty of the Attorney-General to enforce this act. Then comes the eleventh section, to which the

Senator from Oregon takes great exception:

That if any of said several railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

I confess I was a little surprised to hear this section spoken of as onerous and oppressive upon the railroad companies. The truth of it is it is directly the reverse. Here are cases of forfeiture of this charter that might be enforced instantaneously after the cause of forfeiture occurred. Proceedings might be instituted the moment the cause of forfeiture occurred as the law now stands.

Mr. MITCHELL. The trouble is that it provides new cases of forfeiture.

feiture.

feiture. Mr. THURMAN. I know it provides new cases of forfeiture. The new cases of forfeiture that it provides are the cases mentioned in this act. If they do not live up to and perform the requirements of this act, that is made cause of forfeiture. I will speak about the case that is illustrated by the last section of the act of 1862 presently; and I say to the Senator that a failure by the companies to make the returns therein provided for is cause of forfeiture, and ought to be. It is now and ought to be forever as long as these corporations have an existence and owe obligations to the Government, or any have an existence and owe obligations to the Government, or any part of them under which the companies are now liable. What is this twentieth section of the act of 1862, which the Senator read and commented upon, and which he says might be broken by these companies, and they incur a forfeiture on account of doing it?

SEC. 20. And be it further enacted, That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the Secretary of the Treasury an annual report, wherein shall be set forth—

First. The names of the stockholders and their places of residence, so far as the same can be ascertained;

Second. The names and residences of the directors and all other officers of the

company;
Third. The amount of stock subscribed, and the amount thereof actually paid

Third. The amount of stock subscribed, and the amount thereof actually paid in;

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys;

Fifth. The amount received from passengers on the road;

Sixth. The amount received for freight thereon;

Seventh. A statement of the expense of said road and its fixtures;

Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof. Which report shall be sworn to by the president of the said company, and shall be presented to the Secretary of the Treasury on or before the 1st day of July in each year.

Are those immaterial matters? I will not stop to discuss the importance of each and every of them, although there is not one single requirement there that is not important, as I could easily show. But take the last three, which are intended to require each company to make a sworn statement to the Government, so that the Government may know that it gets its 5 per cent. of the net earnings of the road; and now what is the fact? Here are these companies under this obligation—these companies who have received such immense subsidies from the Government in lands and in bonds, who never to this day have complied with that section of the law; and the Government cannot

tell you to-day what are the net earnings of these railroad companies. I hold the proof in my hand.

Mr. MITCHELL. The Senator from Ohio will not understand me as having contended that they should not incur forfeiture there. The question I was trying to argue was this: that inasmuch as there is no forfeiture in the original act—I do not understand that there is; the Senator says he thinks there is—then the question arises, have we now power to declare a forfeiture for a failure to perform a duty required of these parties by the original act, against which no for-

feiture was declared?

Mr. THURMAN. My friend cannot have read the corporation law lately, although I can hardly say that of him because he reads so much law and reads it so diligently. Does not the Senator know that it does not require that you should put in an act of incorporation the penalty of forfeiture in order to enforce forfeiture? The only question that has ever arisen is this: If you have put in some other penalty have you not thereby negatived the idea of forfeiting the characteristics. alty have you not thereby negatived the idea of forfeiting the charter? Take, for instance, the national-bank act. You put in a provision there that if a bank takes more than lawful interest it shall forfeit the interest. If that were not there, and it took more than lawful interest, it would forfeit the charter. But the question arises, having provided a specific punishment for that particular offense, can the greater punishment of forfeiture of the charter be imposed? I take it to be the universal law of corporations, that if a corporation violates its charter the Government has a right to have it declared forfeited by indical process, and it is not for the corporation to say that feited by judicial process, and it is not for the corporation to say that letted by judicial process, and it is not for the corporation to say that any one of the requirements of the charter is insignificant or of no moment, is frivolous or the like. It is very true there might be some from which it would not be inferred that the Government intended to enforce a forfeiture. It might be so, but it is not for the corporation to say, "I have a right to violate this provision of the charter because I think it is immaterial or frivolous," but certainly it must be admitted that wherever a corporation violates or fails to keep a material provision of its charter that moment it forfeits its charter, and the Government may cause the fact of forfeiture to be indicially material provision of its charter that moment it forfeits its charter, and the Government may cause the fact of forfeiture to be judicially ascertained, and the judgment of ouster pronounced against it.

Mr. MITCHELL. What does the Senator say about section 16 of the act of 1864, where a penalty is fixed? I understand the Senator to say that where the penalty had been fixed then it was a doubtful question whether forfeiture could be imposed.

Mr. THURMAN. Beyond all doubt it is. Where a penalty is fixed then it is always a question whether the Legislature intended to impose any greater negative in the particular case or whether it has

then it is always a question whether the Legislature intended to impose any greater penalty in that particular case, or whether it has exhausted all its power of punishment in that particular case. I have only to say this about that matter, that if there is such a case in this original act, or in the act of 1864, then this act goes further, as we have a perfect right to do, and says there shall be a higher punishment inflicted upon you than that which is provided for, to wit, a forfeiture of the charter if the Government sees fit to enforce it. That we have a right to say, and it is time for us to say it, in my judgment,

in respect to these corporations.

Mr. President, I believe I have now gone through with all the provisions of this bill: and although I am speaking much longer than I expected to and much longer than I wanted to, I wish to notice the bill introduced by my honorable friend from Georgia, [Mr. GORDON,] and last reported by the Railroad Committee. I want to point out to the Senate the differences between that bill and the Judiciary Com-

In the first place the bill of the Judiciary Committee defines what shall be net earnings; the Railroad Committee bill contains no such definition. I have already remarked on that; I have shown the necessity for the definition; and therefore I submit that the Judiciary Committee bill, which contains that definition and which I submit is

applies the whole amount up to December 31, 1876, to the sinking fund, and thus deprives the Government of the present payment to which it is confessedly entitled by the charter. If the bill of the Railroad Committee should pass, then instead of this half of the transportation account being applied to keep down the interest, being applied by the Government immediately to the payment of the interest, it goes into the sinking fund account to be applied for twenty-odd years to come. One of the great grievances really that exist in respect to this legislation is that the Government is not repaid the semi-annual installments of interest as it pays them. That you know has been a subject of great debate in this Chamber, and in the other House, and it finally went to the Supreme Court of the United States for decision. That court was compelled, under the language of these charcision. That court was compelled, under the language of these charters, to say that the companies were not bound to re-imburse the Government from time to time as it paid interest. The consequence is the Government loses interest upon the interest which it pays, and the interest which it thus loses upon the interest which it pays, and the interest which it thus loses upon the interest which it pays, unless my interpretation of the act that I cited sometime ago is incorrect, will amount to as much as the whole principal of these bonds, as much as the whole \$64,000,000. Is this evil to be aggravated and even this little

amount to as much as the whole principal of these bonds, as much as the whole \$64,000,000. Is this evil to be aggravated and even this little pittance, this half of the transportation account, these half earnings of the company in its work for the Government, which it is now sought to re-imburse the Government for, as it pays the interest, also to be kept for the benefit of the companies, invested for them with semi-annual interest at 6 per cent. a year, and they given from twenty to thirty years before that money is thus applied which the Government has a right to apply at this moment to the liquidation of the interest which it has paid for them?

But, sir, the worst feature of all in the Railroad Committee bill is to be found in its section 3. After providing that these companies shall pay—for it only applies to two, the Central Pacific and the Union Pacific—each of them the sum of \$750,000 per annum, in semi-annual installments, toward a sinking fund, (a sum which I will show, if I have the strength to do it, before I am done, is less than they are bound to pay now, or less than they will be bound to pay the moment there is any revival of business in the country under the laws that now exist,) it allows, upon its paying this sum of three-quarters of a million a year—a company like the Central Pacific, that has paid 8 per cent. dividends to its stockholders and that is making eight million dollars of net profits every year, and a company like the Union Pacific that it is making eight million dollars of net profits every year, and a company like the Union ion dollars of net profits every year, and a company like the Union Pacific, that is making from six to seven million dollars net profits every year, and which after allowing all these immense profits has paid three-quarters of a million of dollars to the Government each year, -then what says this bill of the Railroad Committee ? I read sec-

That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act, and the amendments thereto, in relation to the re-imbursement to the Government of the bonds so issued to said corporations.

What is in that meal-tub? They are bound now to repay the Government at the end of the thirty years—that is to say, in 1898—and this section gives them as much time to repay as it will take at the this section gives them as much time to repay as it will take at the rate of three-quarters of a million for each company per annum. I undertake to say that, if my construction of the amount which these companies are bound to pay is the correct one, there is no child now born who will live long enough to see that debt paid under this bill of the Railroad Committee. Take the amount of \$64,000,000 with simple interest upon it alone. The interest amounts, as we see, to three million dollars and upward a year. The interest to be paid simple interest upon it alone. The interest amounts, as we see, to three million dollars and upward a year. The interest to be paid for these companies amounts to upward of \$3,000,000 a year; and these companies are to pay \$1,500,000 a year, not half the interest; and that is to go on until the whole debt is paid. Why, sir, it goes on to eternity. I said there was no child born that would see it paid. No, sir; there never will be, though he should be born six million years from now. In the very nature of things it cannot be. How, in God's name, can a payment of \$1,500,000 a year ever pay this debt when the annual interest on it is \$3,000,000? Yet that is this bill. It just wipes out the obligation of the company to pay at the end of thirty years and says, "Pay half the interest that accrues on these bonds, and just so long as you pay half the interest that accrues on these bonds the Government will not give you the least trouble in the world." I cannot think that that provision in this bill was ever comprehended by my learned friends. I know their ability; I know their disposition to see that justice is done to the Government; but I know another thing, that this subject is one that requires long and careful study, and that he who undertakes to frame a bill upon it without long and careful study, and without familiarity with all its details, will necessarily fall into some error like this. If there be nothing else that ought to kill this bill, this provision alone would be sufficient to kill it. It is an extension of this debt to all time, for nothing can be clearer. I need not repeat that, if they are to pay a million and a half a year when the interest is \$3,000,000, they never will pay the debt and never can.

Again, the Judiciary Committee bill provides for a sinking fund to be created out of the net earnings of the company. The Railroad

Again, the Judiciary Committee bill provides for a sinking fund to Committee bill, which contains that definition and which I stomit is a perfectly correct one, is superior to a bill that omits the definition. In the second place, section 2 of the Judiciary Committee bill applies one-half the transportation account, as it is now applied—that is as it is earned—to the liquidation of the interest paid by the United States and the other half goes to the sinking fund. Now I beg the attention of my friend. Section 1 of the Railroad Committee bill. Let us see how that is. The half transportation account for

1875—and I will take that as an average—was \$533,542.62 of the companies embraced in the Judiciary Committee bill. The 5 per cent of the net earnings for the same year was \$772,137, making \$1,305,679.87. That is the amount in 1875. If at a time of such depression as that the half transportation account and the 5 per cent. of net earnings which, under the existing law, these companies are bound to pay to the Government amounted to over \$1,305,000, what may we expect to be the product of those sums when business is revived, as we trust it will in a very few years? It is perfectly clear to my mind that in a very short time the half transportation account and the 5 per cent. of the net earnings would amount to two million and a half dollars at the very least. That is what I believe will come with the revival of business; but what does this Railroad Committee bill propose? That they shall pay one million and a half. If you let the law stand precisely as it is, it will be worth perhaps a million dollars more to the Government every year than the bill which they propose to pass, without extending the time of payment at all, as they do to all eternity. Here is this proviso to section 3 in the Railroad Committee bill that struck me as astonishing: the half transportation account and the 5 per cent. of net earnbill that struck me as astonishing:

bill that struck me as astonishing:

Provided, however, That until the claims of the Government for said bonds and interest are fully paid, said companies shall not in any manner be released from their present liabilities to keep the said railroads and telegraph lines, constructed under the acts of Congress aforesaid, in repair and use, and to transmit dispatches over said telegraph lines, and transport mails, troops, munitions of war, supplies, and public stores upon said railroads for the Government, whenever required to do so by any department thereof, at fair and reasonable rates for compensation, (said rates not to exceed the amounts paid by private parties for the same kind of service,) the whole amount of which shall, upon the compliance by the companies with the provisions hereof, be paid by the Government to said companies on the adjustment of the accounts therefor; and that the Government shall at all times have the preference in the use of said railroads and telegraph lines for all the purposes aforesaid: And provided also, That all Government freight and transportation west bound, destined for points between the Missouri River and the Pacific coast, and on the Pacific coast, and from said coast or any point east thereof, east bound, shall be sent by the said railroads until the aforesaid claims of the Government on account of bonds advanced to the companies are fully paid and satisfied, whenever such freight can be so transported to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

This proviso is pregnant with this negative, that whenever the Gov-

This proviso is pregnant with this negative, that whenever the Government shall be re-imbursed the sum which it pays to these companies then they shall be no longer bound to maintain their roads at all. The great object of the Government in making such immense and. The great object of the Government in making such immense subsidies was to have the roads constructed and that they should be maintained, not for thirty years, the time these bonds had to run, but just as long as there should be a necessity for a railroad in the land. Now, this bill proposes to discharge them from all their obligations to maintain their roads immediately upon the repayment to

One word more, Mr. President, and I will give way, although there are several other points that ought to be considered. I was not aware that the Senator from Iowa [Mr. WRIGHT] had given notice that he would ask the Senate to proceed to the election of commissioners at would ask the Senate to proceed to the election of commissioners at a given hour, and I do not want to interfere with that business at all. I have but one word to say further. The Senator from Oregon says the Government has no security now for its debts, and he thinks the bill of the Railroad Committee is much better on that account. I did not want to interrupt him; but I pray that he will tell us sometime during this debate where there is the least security in the world provided in the Railroad Committee bill that any one of its provisions

provided in the Railroad Committee bill that any one of its provisions ever will be enforced.

Mr. MITCHELL. I will state to the Senator just now that there is no release of any present security.

Mr. THURMAN. I want the Senator to point out to the Senate where there is one particle of security given to the Government that one dollar ever will be paid. I do not say that it may not be done; but it has entirely escaped my observation. There are some other things that I could say on this bill, but I do not wish to delay the execution of the order which the Senator from Iowa desires. Possibly I may speak about it hereafter, although I do not know. I have done my duty in respect to this bill, I believe. It is a measure that requires important attention, and its importance can scarcely be magnified. I hope, therefore, that the Senate will act upon it.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M Adams, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 1860) to incorporate the Washington City and Atlantic Coast Railroad Company;

A bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia.

A bill (H. R. No. 443) for the reflect of the destitute poor of the District of Columbia;

A bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico under contract with the United States;

A bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for

other purposes; and
A bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi.

to proceed to the consideration of the resolution that I submitted

this morning, which is on the table.

The PRESIDENT pro tempore. The Senator from Iowa moves that the pending order be temporarily laid aside for the purpose of considering the resolution in regard to the election of commissioners.

The motion was agreed to; and the Senate proceeded to consider the resolution, as follows:

Resolved, That the Senate now proceed, in accordance with the act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877, to appoint by viva voce vote five Senators to be members of the commission in said act provided for.

The resolution was agreed to.

Mr. CRAGIN. In voting for the five Senators who are to compose this commission so far as the Senate is concerned, I move that each Senator be called and rise in his place and vote for the five names at one and the same time.

The PRESIDENT pro tempore. The Senator from New Hampshire moves that the election take place in the manner which he has stated, that as the respective names of Senators are called each Senator shall rise in his place and name the five Senators of his choice to compose a part of the commission.

Mr. CONKLING. Mr. President, whatever observes the law and is the least cumbrous and inconvenient is the best way of observing it, I think. Can it be that this statute is not executed if some Senator will offer a resolution naming the five Senators and the will is called

I think. Can it be that this statute is not executed if some Senator will offer a resolution naming the five Senators and the roll is called and the members of the Senate vote "yea" to that resolution? If so, I submit that it is hardly worth while to name every Senator and have him rise and repeat over for himself separately, so that we shall hear seventy-five times the contents of such a resolution. Therefore if some Senator, if the Senator who proposed this resolution will allow, will offer an order or a resolution, something on which we can vote, naming the five Senators and let the roll be called and every man viva voce vote in that way, it will save a great deal of time and a great deal of trouble. Otherwise, as I say, we are to hear repeated seventy-five times over, if there are seventy-five Senators here, the contents and substance of such a resolution, which can be read once for all and voted for upon the call of the roll.

Mr. WRIGHT. I wish to say that several plans of making this selection have been suggested among Senators, and that the question was raised as to whether under the provision of the law it would be competent to do so in the manner suggested by the Senator from New

competent to do so in the manner suggested by the Senator from New

Mr. CONKLING. That it should be viva voce?

Mr. WRIGHT. That it should be viva voce, and for the actual members of the commission.

bers of the commission.

Mr. CONKLING. Would not that be viva voce?

Mr. WRIGHT. After consultation with several Senators, I concluded that it would be more acceptable than any other way that the names of Senators should be called and each Senator respond.

Mr. CONKLING. May I ask the Senator from Iowa a question?

Does he doubt as a lawyer that our commissioners will be elected viva voce if the names of five Senators are proposed, the roll is called, and every Senator in response votes for the five Senators so named? Is not that a viva voce vote? not that a viva voce vote ?

every Senator in response votes for the five Senators so named?

Mr. STEVENSON. May I ask the Senator from New York suppose a gentleman did not want to vote for the five named?

Mr. CONKLING. Well, that is wholly another question. Each Senator would be compelled to vote "yea" or "nay." If he voted "yea" he would vote for the five; if he voted "nay" he would refuse to vote for the five, and for each of them. That, however, my honorable friend will see is suggesting a wholly different reason. I was with the Senator from Iowa merely on the point of the legal competency of executing the law, and on that point I submit to the Senate and even to the lawyers of the Senate that there can be no doubt the law would be complied with by proposing viva voce five names and then having the viva voce vote of every Senator upon those five names without compelling every Senator to rise, and as I have once or twice said, repeat over these names and the substance of such a resolution.

Mr. WRIGHT. I entertain very grave doubts whether it would be a compliance with the statute to thus elect this commission. I put to the Senator from New York this case: By law, provision is made for the method of electing United States Senators, that they shall be elected by a viva voce vote in the two houses of the State Legislature. Now, I do not think it would be a compliance with that law to introduce a resolution that Mr. A B be Senator and have the names called for or against that resolution. I think that the law as it stands now contemplates a viva voce vote upon the persons that we propose to select. There is another reason for it. You name five persons in the resolution. It may be that I would be in favor of some two or three of them and be opposed to others. I must either vote for the resolution as a whole or against it as a whole. I think, therefore, that the statute is best complied with by having the names of Senators called, and they respond for whom they vote.

Mr. LOGAN. Will the Senator allow me to put a question? Sup-

A bill (H. R. No. 4554) for the support of the government of the listrict of Columbia for the fiscal year ending June 30, 1878, and for ther purposes; and
A bill (H. R. No. 4556) to remove the political disabilities of Reuben days, of Mississippi.

ELECTORAL COMMISSION.

Mr. WRIGHT. I ask that the Senate give unanimous consent now

Statute is best complied with by having the names of Senators called, and they respond for whom they vote.

Mr. LOGAN. Will the Senator allow me to put a question? Suppose some Senator desired to vote for five names which are not presented in the resolution, then his vote would be "yea" or "nay" on the resolution and he would be precluded from voting at all for the persons who are selected. It demonstrates itself that we cannot do it that way.

Mr. WRIGHT. I think it would be a better way and a more certain compliance with the law to adopt the proposition presented by the Senator from New Hampshire.

Mr. CONKLING. Let the resolution of the Senator from New

The PRESIDENT pro tempore. The Chair understood that the Sen-

ator stated it orally.

Mr. CRAGIN. I simply made the motion that in voting to appoint the five Senators to form a part of this commission, each Senator as his name was called should rise in his seat and vote separately at one

and the same time for five members of the Senate, naming them.

The PRESIDENT pro tempors. The question is on agreeing to the resolution submitted by the Senator from New Hampshire.

The resolution was agreed to.

Mr. CRAGIN. I rise for the purpose of nominating three Senators who will be voted for or against to compose this commission, and I suggest the names of George F. Edmunds, Oliver P. Morton, and FREDERICK T. FRELINGHUYSEN, expecting that my friend from Kentucky [Mr. Stevenson] will name two other Senators. I hope that the Senators whose names I have suggested and the two others who will be suggested by my friend from Kentucky will be unanimously

Mr. STEVENSON. Mr. President, I rise to add to the list named by the Senator from New Hampshire the two names of ALLEN G. THURMAN, of Ohio, and THOMAS F. BAYARD, of Delaware. I concur n the sentiment expressed by the Senator from New Hampshire, and I hope these five gentlemen will receive the unanimous vote of the

The PRESIDENT pro tempore. The roll of Senators will now be called, and as each Senator's name is called he will rise in his place and announce his choice.

and announce his choice.

Mr. COCKRELL. I understand these names have been selected by the caucuses of their respective parties, and as such I shall cheerfully vote for them, thinking that each party has the right to name the men to represent it. The three named by the republican and the two by the democratic caucus constitute our five of the commission; and with that understanding I shall cheerfully vote for all of them. The PRESIDENT pro tempore. The roll-call will proceed.

The SECRETARY. Mr. ALCORN.

Mr. ALCORN. I ask the Clerk to preface the Christian names. I vote for Senator Edmunds of Vermont, Senator Frelinghuysen of New Jersey, Senator Morton of Indiana, Senator Thurman of Ohio, and Senator Bayard of Delaware.

The SECRETARY. Mr. ALLISON.

The Secretary. Mr. Allison.
Mr. Allison. Mr. President, I vote for Mr. Edmunds of Vermont, Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

Mr. THURMAN of Ohio, and Mr. BAYARD of Delaware.
The Secretary. Mr. Anthony.
Mr. ANTHONY. Mr. EDMUNDS, Mr. MORTON, Mr. FRELINGHUYSEN, Mr. THURMAN, Mr. BAYARD.
The SECRETARY. Mr. BAILEY.
Mr. BAILEY. I cast my vote for Mr. EDMUNDS of Vermont, Mr.
MORTON of INDIANA, Mr. FRELINGHUYSEN of New Jersey, Mr. THURMAN of Ohio, and Mr. BAYARD of Delaware.
The SECRETARY Mr. BAYARD.

The Secretary. Mr. Barnum.
Mr. BARNUM. I vote for Mr. Edmunds, Mr. Morton, Mr. Fre-Linghuysen, Mr. Thurman, and Mr. Bayard.

Mr. BARNUM. I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.

The Secretary. Mr. Bayard.

Mr. Bayard. I vote for four members of this commission: Mr. Edmunds of Vermont, Mr. Frelinghuysen of New Jersey, Mr. Morton of Indiana, and Mr. Thurman of Ohio.

The Secretary. Mr. Blaine.

Mr. Blaine. I vote for Mr. Edmunds of Vermont Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

The Secretary. Mr. Bogy.

Mr. Bogy. Mr. President, I vote for Mr. Edmunds of Vermont, Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

The Secretary. Mr. Booth.

Mr. Booth. I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.

The Secretary. Mr. Boutwell.

Mr. Boutwell. Mr. President, I vote for Mr. Edmunds of Vermont, Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

The Secretary. Mr. Bruce.

Mr. Bruce. Mr. President, I vote for Mr. Edmunds of Vermont, Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

The Secretary. Mr. Bruce.

Mr. Bruce. Mr. President, I vote for Mr. Edmunds of Vermont, Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

The Secretary. Mr. Burnside.

Mr. Burnside. Mr. President, I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.

The Secretary. Mr. Cameron, of Pennsylvania.

TON, Mr. FRELINGHUYSEN, Mr. THURMAN, and Mr. BAYARD.
The SECRETARY. Mr. CAMERON, of Pennsylvania.
Mr. CAMERON, of Pennsylvania. Mr. President, I vote for Mr. EDMUNDS, Mr. MORTON, Mr. FRELINGHUYSEN, Mr. THURMAN, and Mr.

The Secretary. Mr. Cameron, of Wisconsin.
Mr. CAMERON, of Wisconsin. I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.

The Secretary. Mr. Chaffee.
Mr. Chaffee. Mr. President, I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Christiancy.
Mr. CHRISTIANCY. I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Clayton.
Mr. Clayton. I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Cockeell.

LINGHUYSEN, Mr. THURMAN, and Mr. BAYARD.

The SECRETARY. Mr. COCKRELL.

Mr. COCKRELL. Mr. President, I vote for Senators EDMUNDS,
MORTON, FRELINGHUYSEN, THURMAN, and BAYARD.

The SECRETARY. Mr. CONKLING.

Mr. CONKLING. I vote, Mr. President, for the same five Senators
who were named by the Senator from Missouri.

The SECRETARY. Mr. CONOVER.

Mr. CONOVER. Mr. President, I vote for Mr. EDMUNDS, Mr. MORTON, Mr. FRELINGHUYSEN, Mr. THURMAN, and Mr. BAYARD.

The SECRETARY. Mr. COOPER.

Mr. COOPER. Mr. President, I vote for the Senators already
named.

named.

The Secretary. Mr. Cragin.
Mr. CRAGIN. Mr. President, I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Davis.
Mr. Davis. Mr. President, I vote for Mr. Edmunds, Mr. Morton,

Mr. DAVIS. Mr. President, I vote for Mr. EDMUNDS, Mr. MORTON, Mr. FRELINGHUYSEN, Mr. THURMAN, and Mr. BAYARD.

The SECRETARY. Mr. DAWES.
Mr. DAWES. Mr. President, I vote for Senators EDMUNDS, MORTON, FRELINGHUYSEN, THURMAN, and BAYARD.

The SECRETARY. Mr. DENNIS.
Mr. DENNIS. Mr. President, I vote for Senators EDMUNDS, FRELINGHUYSEN, MORTON, THURMAN, and BAYARD.

The SECRETARY. Mr. DORSEY.
Mr. DORSEY. Mr. President, I vote for Senators EDMUNDS, MORTON, FRELINGHUYSEN THURMAN, and RAYARD.

TON, FRELINGHUYSEN, THURMAN, and BAYARD. The SECRETARY. Mr. EATON.

No response.
The SECRETARY. Mr. EDMUNDS.
Mr. EDMUNDS. Mr. President, I vote for Senators Morton, Fre-LINGHUYSEN, THURMAN, and BAYARD. The other name proposed I

do not vote for.

The SECRETARY. Mr. FERRY.
Mr. FERRY. I vote for Senators Edmunds, Morton, Freling-

The Secretary. Mr. Frelinghuysen.
The Secretary. Mr. Frelinghuysen.
Mr. FRELINGHUYSEN. Mr. President, I vote for Mr. Edmunds,
Mr. Morton, Mr. Thurman, and Mr. Bayard.

Mr. Morton, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Goldthwaite.
Mr. GOLDTHWAITE. I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Gordon.
Mr. GORDON. Mr. President, I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Hamilton.

No response.

The Secretary. Mr. Hamlin.
Mr. HAMLIN. I vote for Senators Edmunds, Morton, Freling-Huysen, Thurman, and Bayard.
The Secretary. Mr. Harvey.

No response.

The SECRETARY. Mr. HITCHCOCK.
Mr. HITCHCOCK. I vote for Mr. EDMUNDS, Mr. MORTON, Mr. FRE-LINGHUYSEN, Mr. THURMAN, and Mr. BAYARD.

The SECRETARY. Mr. Howe.

No response.

No response.
The Secretary. Mr. Ingalls.
Mr. Ingalls. Mr. President, I vote for Mr. Morton, Mr. FreLinghuysen, Mr. Edmunds, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Johnston.
Mr. JOHNSTON. Mr. President, I vote for Senators Edmunds,
Frelinghuysen, Morton, Thurman, and Bayard.
The Secretary. Mr. Jones, of Florida.
Mr. JONES, of Florida. Mr. President, I vote for Senators EdMunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Jones, of Nevada.
Mr. JONES, of Nevada. I vote for Mr. Edmunds, Mr. Morton,
Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Kelly.
Mr. Kelly. I vote for Senators Edmunds, Morton, FrelingHuysen, Thurman, and Bayard.

Mr. KELLY. I vote for Senators Edmunds, Morton, Freling-Huysen, Thurman, and Bayard.

The Secretary. Mr. Kernan.
Mr. Kernan. Mr. President, I vote for Senators Edmunds, Mor-ton, Frelinghuysen, Thurman, and Bayard.

The Secretary. Mr. Logan.
Mr. Logan. Mr. President, I vote for Messrs. Edmunds, Mor-ton, Frelinghuysen, Thurman, and Bayard.

The Secretary. Mr. McCreery.
Mr. McCreery. I vote for Senators Edmunds, Morton, Fre-

LINGHUYSEN, THURMAN, and BAYARD.

The Secretary. Mr. McDonald.
Mr. McDonald. Mr. President, I vote for Messis. Thurman,
Bayard, Edmunds, Morton, and Frelinghuysen.
The Secretary. Mr. McMillan.
Mr. McMillan. I vote for Mr. Edmunds, Mr. Morton, Mr. Fre-

The Secretary. Mr. McMillan.
Mr. McMillan. I vote for Mr. Edmunds, Mr. Morton, Mr. FreLinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Maxey.
Mr. Maxey. Mr. President, I vote for Senators Edmunds, MorTon, Frelinghusen, Thurman, and Bayard.
The Secretary. Mr. Merrimon.
Mr. Merrimon. Mr. President, I vote for Messis. Edmunds, MorTon, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Mitchell.
Mr. Mitchell. Mr. President, I vote for Senators Edmunds,
Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Morrill.
Mr. MORRILL. I vote for Mr. Edmunds, Mr. Morton, Mr. FreLinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Morton.
Mr. MORTON. Mr. President, I vote for Senators Edmunds,
Mr. Morton. Mr. President, I vote for Senators Edmunds,
The Secretary. Mr. Morton.
Mr. MORTON. Mr. President, I vote for Senators Edmunds, FreLinghuysen, Thurman, and Bayard.
The Secretary. Mr. Norwood.
No response.

No response.

The Secretary. Mr. Oglesby.
Mr. Oglesby. Senators Edmunds, Morton, Frelinghuysen,
Thurman, and Bayard.
The Secretary. Mr. Paddock.
Mr. Paddock. I vote for Senators Edmunds, Morton, Freling-

Mr. PADDOCK. I vote for Senators Edmunds, Morton, FrelingHuysen, Thurman, and Bayard.
The Secretary. Mr. Patterson.
Mr. Patterson. Mr. President, I vote for Senators Edmunds,
Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Randolph.
Mr. Randolph. Mr. President, I vote for Messis. Edmunds,
Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Ransom.
Mr. Ransom. Mr. Ransom.
Mr. Ransom. Mr. President, I vote for Senators Edmunds, FreLinghuysen, Morton, Thurman, and Bayard.
The Secretary. Mr. Robertson.
Mr. Robertson. I vote for Senators Edmunds, Frelinghuysen, Morton, Thurman, and Bayard.
The Secretary. Mr. Robertson.
Mr. Robertson. I vote for Senators Edmunds, Frelinghuysen, Morton, Thurman, and Bayard.

Mr. ROBERTSON. I vote for Senators Edmunds, Frelinghuysen, Morton, Thurman, and Bayard.
The Secretary. Mr. Sargent.
Mr. Sargent. I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Saulsbury.
Mr. Saulsbury.
Mr. Saulsbury. Mr. President, I vote for Senators Thurman, Bayard, Edmunds, Frelinghuysen, and Morton.
The Secretary. Mr. Sharon.
Mr. Sharon. Mr. President, I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Sherman.
Mr. Sherman. Mr. President, I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Spencer.

MORTON, FRELINGHUYSEN, THURMAN, and BAYARD.

The SECRETARY. Mr. SPENCER.
Mr. SPENCER. Mr. President, I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.

The SECRETARY. Mr. STEVENSON.
Mr. STEVENSON. Mr. President, I vote for Mr. Edmunds of Vermont, Mr. Morton of Indiana, Mr. Frelinghuysen of New Jersey, Mr. Thurman of Ohio, and Mr. Bayard of Delaware.

The SECRETARY. Mr. Teller.
Mr. TELLER. I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The SECRETARY. Mr. THURMAN.
Mr. THURMAN. I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, and Mr. Bayard.

The SECRETARY. Mr. Wadleigh.

The Secretary. Mr. Wadleigh.
Mr. WADLEIGH. I vote for Senators Edmunds, Morton, Fre-

LINGHUYSEN, THURMAN, and BAYARD.
The SECRETARY. Mr. WALLACE.
Mr. WALLACE. Mr. President, I vote for Senators EDMUNDS,

The Secretary. Mr. West.
Mr. West.
Mr. West.
Mr. West.
Mr. West.
Mr. West.
Mr. Dresident, I vote for Senators Edmunds, Morton,
Frelinghuysen, Thurman, and Bayard.

Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Whyte.
Mr. Whyte. Mr. President, I vote for Mr. Edmunds, Mr. Morton, Mr. Frelinghuysen, Mr. Thurman, and Mr. Bayard.
The Secretary. Mr. Windom.
Mr. WINDOM. I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Withers.
Mr. WITHERS. Mr. President, I vote for Senators Edmunds, Morton, Frelinghuysen, Thurman, and Bayard.
The Secretary. Mr. Wright.

The Secretary. Mr. WRIGHT.

Mr. WRIGHT.

Mr. WRIGHT. Wr. Horizont, I vote for the Senator from Vermont, Mr. EDMUNDS; the Senator from Indiana, Mr. MORTON; the Senator from New Jersey, Mr. FRELINGHUYSEN; the Senator from Ohio, Mr. THURMAN; and the Senator from Delaware, Mr. BAYARD.

The votes having been counted.

The votes having been counted,

The PRESIDENT pro tempore declared: There have been 68 votes

The PRESIDENT pro tempore declared: There have been 68 votes cast, of which 35 is a majority. Senators Edmunds, Frelinghuysen, Morton, Thurman, and Bayard have received the unanimous vote of the Senate and are therefore chosen by the Senate as members of the electoral commission on the part of the Senate.

Mr. WRIGHT. I move that the Secretary be instructed to advise the House of the result of the action of the Senate in the selection of the commission. I make that motion that the Secretary be directed to advise the House of Representatives of the action of the Senate in the appointment of the members of the commission on its part.

part.
The motion was agreed to.

ADDITIONAL TEMPORARY POLICE.

Mr. HAMLIN. Mr. President, I submitted this morning a resolution directing the Committee on Rules of Order to inquire into the tion directing the Committee on Rules of Order to inquire into the expediency of making further provision by rule in relation to the admission of persons to the Capitol and requesting the committee to confer with the House Committee on Rules. The Senate committee have met the House committee and I have been directed by said committees unanimously to report for consideration a concurrent resolution, and if the resolution shall meet the approbation of the Senate I think it may pass now. I ask that it may be read.

The PRESIDENT pro tempore. The resolution will be read. The Chief Clerk read as follows:

Resolved by the Senate, (the House of Representatives concurring.) That the Sergeants-at-Arms of the Senate and House of Representatives respectively be, and they are hereby, authorized each to appoint fifty men to serve as a special police at the Capitol during the canvassing of the votes for President and Vice-President, or for such portion of said time as they shall be necessary, said special police to be paid equally from the contingent fund of the Senate and of the House of Representatives.

Mr. HAMLIN. That is but a partial report of the committee. If it be wise to appoint the additional special police it should be done now that the two officers may have the time within which to make their selections. It is known I believe to all that the police force of this city is at the present time in a very bad condition—demoralized, a friend suggests. Indeed, I believe there is no police force here; and the object of this resolution is perhaps more to look to "the light-fingered gentry" who may be here and will be here on such an occasion than any other, although if needed for other purposes they will be here. The resolution met the united approval of both the House and Senate committees. and Senate committees

and senate committees.

Mr. THURMAN. There is a great deal of curiosity, and will be a great deal of curiosity, to visit this Capitol, as there always has been when there is any matter of great interest to the public. With a general understanding that we have entered on an era of peace and goodwill, unless there is some serious reason for it, I do not see why there should be an additional police force, or any other force that deals either in muscle or in arms. I may be entirely wrong about it, but I suggest that the resolution had better lie over before we begin to put more nearly in uniform around the Capital.

gest that the resolution had better lie over before we begin to put more people in uniform around the Capitol.

Mr. HAMLIN. I have stated to the Senate what I will repeat, though the Senator from Ohio may have heard it. There is virtually no police force within this city on which any reliance can be had.

Mr. THURMAN. I did not hear that.

Mr. HAMLIN. It is utterly demoralized. This police force is for no other purpose, I think I may say, than to protect such citizens as shall come here from a class of desperate men who are pilfering always upon such occasions, and they are known to be here now—some of them, I am told—and others are on their way. That is the object of the police force, and it is called for from the necessity arising from the fact that there is no police here of any account.

Mr. THURMAN. If I had heard that explanation, which I did not, I should not have said one word.

The PRESIDENT pro tempore. The question is on agreeing to the

The PRESIDENT pro tempore. The question is on agreeing to the resolution reported by the Senator from Maine.

Mr. DAVIS. I believe it is a concurrent resolution?

Mr. HAMLIN. Yes, sir.

The resolution was agreed to.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles, and referred to the Committee on Appropriations:

A bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for

A bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River with the Gulf of Mexico under contract with the United States

The bill (H. R. No. 1860) to incorporate the Washington City and Atlantic Coast Railroad Company was read twice by its title, and referred to the Committee on the District of Columbia.

The bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi, was read twice by its title, and referred to the Committee on the Judiciary.

DESTITUTE POOR OF THE DISTRICT OF COLUMBIA.

The bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia was read twice by its title.

Mr. SPENCER. I hope the Senate will act on that bill now.
Mr. WINDOM. I rose to appeal to the Senate for the same purpose.
Mr. DAVIS. Does the bill come from a committee?

Mr. WINDOM. I rose to appeal to the Senate for the same purpose.
Mr. DAVIS. Does the bill come from a committee ?
The PRESIDENT pro tempore. From the House of Representatives.
Mr. DAVIS. Is there any impending necessity?
Mr. SPENCER. Let the bill be read for information, and then we can explain it to the Senate.
The PRESIDENT pro tempore. The bill will be read.
The Chief Clerk read the bill. It appropriates \$20,000 for the relief of the destitute poor in the District of Columbia to be drawn by warrants of the commissioners of the District on the Treasurer of the United States in such weekly installments as shall be presessed to United States in such weekly installments as shall be necessary to relieve the distress of those in absolute want. For the purpose of ascertaining the amount that is necessary to be drawn for each weekly installment, the commissioners of the District of Columbia shall require the relief commissioners of the District to furnish them the list of such families and the number of persons in each who are eligible

of such families and the number of persons in each who are eligible and require relief from this fund.

Mr. DAVIS. I am inclined to think the bill had better go to a committee before it comes before the Senate for action. I do not know that I am opposed to it; I hardly think I am. My impression is now that I shall favor it; but there is no pressing necessity for its passing to-day, and even if there were bills ought to take their regular course and be considered by a committee before action by the Senate. So I object to its present consideration.

Mr. SPENCER. If there is any necessity for that bill ever passing the necessity is certainly pressing. I hope the bill will not be referred to a committee. I would say to the Senator from West Virginia that if it be referred to the Committee on the District of Columbia it will be reported back favorably, because a large majority of the committee are in favor of it. They have all been consulted. I hope the bill will be acted on now.

Mr. WINDOM. I rise to appeal to the Senator from West Virginia to withdraw his objection to the consideration of this bill now. If there is any necessity for it at any time, it is certainly very pressing now, and on information I have on the subject—and I have carefully read the debates elsewhere and the proofs that were presented—I think there is a very pressing necessity for it. I think it is no more than we ought to do, and that we ought to do it at once. There is great destitution; there is present suffering; and I am sure the Senator from West Virginia is the last man who would nost once relief the proof of the senator from West Virginia is the last man who would nost once relief the senator from West Virginia is the last man who would nost once relief the senator from West Virginia is the last man who would nost once relief the senator from West Virginia is the last man who would nost once the senator from West Virginia is the last man who would nost once the senator from West Virginia is the last man who would nost once the senator great destitution; there is present suffering; and I am sure the Senator from West Virginia is the last man who would postpone relief

one day.

Mr. DAVIS. The bill itself as well as the Senator appeals to what would probably be charity or what would be my sense of right; but on principle I am opposed to bills coming from the House or elsewhere being immediately put on their passage. The bill now in question but for some one speaking would have passed without probably ten Senators here knowing exactly what it was. I would suggest to my amiable friend from Minnesota, than whom no man has greater influence over me, that he is chairman of the Appropriation Committee, and the Senator from Alabama is chairman of the Committee on the District of Columbia and if they think proper to examine the the District of Columbia, and if they think proper to examine the bill and report it back to-morrow morning, it will be strictly in order, and I should much prefer that it should take that course. Let it go to a committee

Mr. WINDOM. I think there is no objection really in the Senate except the objection on principle that the Senator urges to passing it to-day; but I am sure when people are starving and freezing we can make an exception to that principle.

Mr. SPENCER. The Senator from West Virginia is mistaken. The reading of the bill was called for and the bill would have been read so that everybody in the Senate would have understood it. I can say that the Committee on the District of Columbia have acted on the bill informally this afternoon, and a majority of the committee have consented to its passage. tee have consented to its passage.

Mr. DAVIS. If the Senator says his committee has acted upon the bill, if he makes that statement to the Senate, he withdraws the

objection that I urged against it.

Mr. SPENCER. A majority of the Committee on the District of

Am. SPENCER. A majority of the Committee on the District of Columbia have agreed to report the bill this evening—five out of the seven members of the committee.

Mr. MORTON. I am told that there is great present suffering and that speedy action on this bill is demanded by every dictate of humanity. I hope it will be acted upon now.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. COCKPELL Lies to enter my chiestien on 2 the will be acted.

Mr. COCKRELL. I rise to enter my objection, and it will be use less to appeal to me, because I cannot withdraw the objection. I move that the bill be referred to the committee.

Mr. SPENCER. Does one objection send it to a committee?

The PRESIDENT pro tempore. It does, the bill having been received to-day. It will be referred to the Committee on Appropria-

COMMISSION TO TEST IRON AND STEEL.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States; which was referred to the Committee on Appropriations, and ordered to be printed:

To the Senate and House of Representatives:

I desire to call the attention of Congress to the importance of providing for the continuance of the board for testing iron, steel, and other metals, which by the

sundry civil appropriation act of last year, was ordered to be discontinued at the end of the present fiscal year. This board, consisting of engineers and other scientific experts from the Army, the Navy, and from civil life, (all of whom, except the secretary, give their time and labors to this object without compensation.) was organized by authority of Congress in the spring of 1875, and immediately drafted a comprehensive plan for its investigations, and contracted for a testing machine of four hundred tons capacity, which would enable it to properly conduct the experiments. Meanwhile the subcommittees of the board have devoted their time to such experiments as could be made with the smaller testing machines already available. This large machine is just now completed and ready for erection at the Watertown arsenal, and the real labors of the board are therefore just about to be commenced. If the board is to be discontinued at the end of the present fiscal year, the money already appropriated and the services of the gentlemen who have given so much time to the subject will be unproductive of any results.

The importance of these experiments can hardly be overestimated when we consider the almost endless variety of purposes for which iron and steel are employed in this country, and the many thousands of lives which daily depend on the soundness of iron structures. I need hardly refer to the recent disaster at the Ashtabula bridge in Ohio, and the conflicting theories of experts as to the cause of it, as an instance of what might have been averted by a more thorough knowledge of the property be conducted by private firms, not only on account of the expense, but because the results must rest upon the authority of disinterested persons. They must, therefore, be undertaken under the sanction of the Government. Compared with their great value to the industrial interests of the country, the expense is very slight.

The board recommend an appropriation of \$40,000 for the next fiscal year, and I

very slight.

The board recommend an appropriation of \$40,000 for the next fiscal year, and I earnestly commend their request to the favorable consideration of Congress. I also recommend that the board be required to conduct their investigations under the direction of the Secretary of War and to make full report of their progress to that officer in time to be incorporated in his annual report.

U.S. GRANT.

U. S. GRANT.

EXECUTIVE MANSION, January 30, 1877.

#### PACIFIC RAILROAD ACTS.

Mr. THURMAN. I call for the regular order.

The PRESIDENT pro tempore. The bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railamend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, is before the Senate as in Committee of the

Mr. SHERMAN. I desire to offer an amendment to the bill now pending, which I wish to have printed by to-morrow. The Chief Clerk read the proposed amendment, as follows:

That there shall be paid to the credit of the said sinking fund by the Central Pacific Railroad company 25 per cent. of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided for, for the year ending 31st day of December next preceding; but the amount in any one year shall not exceed the sum of \$1,500,000; and the amount thus paid into the sinking fund shall be in lieu of the 5 per cent. net earnings and one-half of the compensation for services as hereinbefore defined.

Mr. SHERMAN. I move the amendment be printed for informa-

The motion was agreed to.

Mr. ROBERTSON. I move that the Senate do now adjourn.

Mr. WEST. I ask the Senator to withdraw that motion until I can
be recognized on the pending bill.

Mr. THURMAN. I hope the motion will be withdrawn for a mo-

amendments. With the understanding that the Senator from Louisiana [Mr. West] has obtained the floor on the bill, I move that the

Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session, the doors were re-opened, and (at four o'clock and thirty minutes p. m.) the Senate adjourned.

### HOUSE OF REPRESENTATIVES.

## TUESDAY, January 30, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

#### JAMES B. EADS.

Mr. JENKS. I demand the regular order of business.

The SPEAKER. The regular order is the consideration of the bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties, and other auxiliary works, to make wide and deep the channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States. The pending question is on the motion to reconsider the vote by which the bill was ordered to be engrossed and read a third time.

Mr. HOLMAN. And I move to lay that motion to reconsider upon the table.

The SPEAKER. The Chair yesterday decided that the motion to reconsider made by the gentleman from Michigan Mr. [CONGER] was

not debatable. He adheres to that decision and now desires to give the House the reasons therefor by reference to the rulings as found

Where a vote taken under the operation of the previous question is reconsidered, the question is then divested of the previous question and is open to debate and amendment.

A mere motion to reconsider is not debatable, but if it is carried the subject is then divested of the previous question and is fully open to debate.

A motion to reconsider is not debatable if the question proposed to be reconsidered is not debatable.

It is in order, pending a demand for the previous question on the passage of a bill, to move a reconsideration of the vote on its engrossment; but such motion is not debatable under the practice which has prevailed for many years.

These rulings will be found in the Manual, pages 196-198.

These rulings will be found in the Manual, pages 190-195.

The Chair is therefore compelled to recognize the gentleman from Indiana [Mr. Holman] to move to lay upon the table the motion to reconsider the vote by which the bill was ordered to be engrossed and read a third time.

Mr. CONGER. The Chair has given such attention to this question—he has examined it so closely, that while I think perhaps it is the correct decision, yet it is different from my supposition of what the practice was under the rules. It was my desire the motion to reconsider should prevail for the purpose of offering an amendment which I sak by unanimous consent may be read.

which I ask by unanimous consent may be read.

Mr. HOLMAN. I cannot consent to any amendment being introduced at this time, and therefore must insist on my motion to lay

upon the table.

Mr. CONGER. I only desire to have the amendment read for information, so the House may know why it is I make the motion to re-

Mr. HOLMAN. I have no objection to that.

The SPEAKER. There being no objection the amendment will

The Clerk read as follows:

Add at the end of the bill the following:

Provided, That nothing in this act contained shall be construed so as to prevent any future payment to be made in bonds, if an appropriation therefor in money has not been made by Congress prior to the determination by the Secretary of War of the rights of said Eads and his associate to such payments.

Mr. HOLMAN. I trust that will not be done.

Mr. CONGER. I insist on my motion to reconsider, and hope it
will prevail so I may have an opportunity to move this amendment.

Mr. HOLMAN. The necessary appropriation will be made for the

future.

The House divided; and there were—ayes 84, noes 34.

So the motion to reconsider was laid on the table. Mr. HOLMAN. I now demand the previous question on the passage of the bill.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was passed.

Mr. HOLMAN moved to reconsider the vote by which the bill was assed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

#### NAVAL POLICY OF THE UNITED STATES.

Mr. WHITTHORNE. By order of the House, this day has been set apart for the consideration of the bill (H. R. No. 4389) to authorize the formation of a mixed commission to inquire and report as to the future naval policy of the Government of the United States, reported from the Naval Committee.

The SPEAKER. The Chair desires to state that no motion is necessary in reference to that bill. The Chair supposes the gentleman rises to ask that it be considered now?

Mr. WHITTHORNE. Yes, sir.
The SPEAKER. So far as the record shows, that bill has been set apart for consideration for to-day, and every day thereafter until disposed of; and it will therefore come up in order, and if not reached to-day will still hold its place in due course.

Mr. WHITTHORNE. I only wish to have that understood.

#### ISAAC J. M'KINLEY.

Mr. WAITE, by unanimous consent, introduced a bill (H. R. No. 4555) for the relief of Isaac J. MacKinley, late a third lieutenant in the United States Revenue Marine Service; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

REUBEN DAVIS.

Mr. SINGLETON, by unanimous consent, introduced a bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi; which was read a first and second time.

Mr. SINGLETON. I ask that the bill may now be put upon its pas-

sage. It passed both Houses last year.

Mr. HALE. Is there a petition accompanying the bill?

The SPEAKER. There is.

The bill was read. It removes from Reuben Davis, a citizen of Mississippi, all political disabilities imposed by the fourteenth amendment of the Constitution of the United States by reason of participation in the rebellion.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

#### ALLEGED TAMPERING WITH MAILS.

Mr. COX. I call up the motion to reconsider the vote by which the report of the select committee charged with the investigation of alleged tampering with the mails in the New York post-office was recommitted. I ask to have the last clause of the report read, and move that the committee be discharged from the further consideration of the subject. tion of the subject.

Mr. WILSON, of Iowa. Does this come up by unanimous consent?

The SPEAKER. It does.
The Clerk read the last paragraph of the report, as follows:

The committee, therefore, after the most rigid examination, can find nothing to fix the slightest reproach on his (Mr. James's) conduct or that of his subordinates, and in conclusion they report that, in so far as the New York post-office is concerned, any suspicion of tampering with the mails is utterly baseless.

Mr. COX. I move that the committee be discharged from the further consideration of the subject.

The motion was agreed to.

#### GEORGE F. WILSON.

Mr. GLOVER, by unanimous consent, submitted a resolution for the relief of George F. Wilson, a former employé of the House; which was referred to the Committee of Accounts.

### REPORT OF DISTRICT BOARD OF HEALTH.

Mr. VANCE, of Ohio, from the Committee on Printing, reported back the following concurrent resolution; which was read, considered, and adopted:

Resolved by the House of Representatives, (the Senate concurring,) That 1,000 extra copies of the report of the board of health for the year 1876 be printed for use and distribution by said board.

#### HARBOR OF REFUGE ON OHIO RIVER.

Mr. JONES, of Kentucky. I ask unanimous consent to submit the following resolution for present consideration:

Resolved. That the Secretary of War be requested to report upon the expediency and utility of constructing a harbor of refuge upon the Ohio River, in what is known as Mill Bottom, above the city of Newport, on the Kentucky shore, and opposite to the city of Cincinnati.

Mr. CONGER. I would suggest to the gentleman that he modify his resolution by inserting after the words "harbor of refuge" the words "from ice-floods."

Mr. JONES, of Kentucky. I have no objection to that. That is the object of the resolution.

The resolution as modified was adopted

The resolution, as modified, was adopted.

#### SELECT COMMITTEE ON DISTRICT POLICE BOARD.

Mr. LE MOYNE. I ask unanimous consent to offer the following resolution for present consideration:

Resolved, That the testimony taken by the select committee of the House investigating the affairs of the board of police of the District of Columbia be printed and recommitted, and that said committee have leave to report at any time.

Mr. PAGE. I object. Mr. WHITE. I demand the regular order.

## VETO MESSAGE-DISTRICT POLICE BOARD.

The SPEAKER. The Chair desires to lay before the House the following veto message from the President of the United States.

The Clerk read as follows:

To the House of Representatives:

To the House of Representatives:

I return herewith House bill No. 4350, to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia, without my approval.

It is my judgment that the police commissioners, while appointed by the Executive, should report to and receive instructions from the District commissioners. Under other circumstances than those existing at present I would have no objection to the entire abolition of the board and seeing the duties devolved directly upon the District commissioners. The latter should, in my opinion, have supervision and control over the acts of the police commissioners under any circumstances. But, as recent events have shown that gross violations of law have existed in this District for years directly under the eyes of the police, it is highly desirable that the board of police commissioners should be continued, in some form, until the evil complained of is eradicated and until the police force is put on a footing to prevent, if possible, a recurrence of the evil. The board of police commissioners have recently been charged with the direct object of accomplishing this end.

U. S. GRANT.

EXECUTIVE MANSION, January 23, 1877.

Mr. BUCKNER. Ido not rise for the purpose of discussing the veto message. But for the circumstances surrounding us it might be very appropriate for this House to give some expression to its opinions and views upon the propriety of the Executive thus interfering directly with the legislative power of Congress. There is no pretense that there is any violation of the Constitution or any attempt to trench upon the prerogatives of the Executive. This is simply an act of legislation unanimously passed by both Houses of Congress which the President refuses to sign

legislation unanimously passed by both Houses of Congress which the President refuses to sign I may say, sir, that before that bill was introduced by myself in this House I had assurances from one of the commissioners that the President approved of the bill; and it was asked that we should pass the bill because the President desired it or that he would not interfere with its passage. And therefore it seems to me very extraordinary that the President should send in his veto merely for the purpose of retaining these commissioners in power at this peculiar junct-

ure. But, as I said, sir, I do not wish to discuss the question, and I therefore move that the bill be reconsidered, and upon that I demand

the previous question.

Mr. KASSON. Allow me to make a suggestion on a point of parliamentary law. That is not the mode in which the question is put.

The SPEAKER. The question is put in this form: Will the House,

mentary law. That is not the mode in which the question is put.

The SPEAKER. The question is put in this form: Will the House, on reconsideration, agree to pass the bill?

Mr. KASSON. The question comes right before the House, and I beg the gentleman from Missouri to allow me to say a single word.

The SPEAKER. The Chair will state the question as it now stands before the House before the vote is taken.

Mr. KASSON. I beg the gentleman from Missouri to allow me a single word as to the action which has been suggested by the President and considered prior to that suggestion by some members on this side of the House. Some censure was implied on the President in the remarks of the gentleman from Missouri, which seems to me to imply a forgetfulness on his part that the President is a part of the law-making power of this Government and any statement of his opinion in advance is unauthorized by any of the facts which have been before the House. But certainly he has the same right in making laws as we have. In this particular case I sustained the bill as it passed the two Houses of Congress. I was of the opinion until I learned from citizens of this District that this action was right, and my opinion and that of others I know upon this side of the House is that this board should not be continued permanently, but that they should be enabled to complete the work upon which they have been engaged for a month or two. I think we may very wisely leave the continuation of this investigation to the present board instead of committing it to the board of commissioners of the District of Columbia. If the gentleman would introduce a bill providing for the abolition of this board after the 4th of March next it would be passed without objection by the House and with the same unanimity with which this bill was passed. At present, in view of the condition of without objection by the House and with the same unanimity with which this bill was passed. At present, in view of the condition of affairs as represented to us, we do not think that the bill should be passed pending the investigation of the action of these police commissioners. If the gentleman does this I presume the bill will pass with the same unanimity as it did formerly. I venture to make this suggestion, that he may consider it. suggestion, that he may consider it.

Mr. BUCKNER. Cannot the commissioners of the District of Co-

Mr. BUCKNER. Cannot the commissioners of the District of Columbia carry on the investigation themselves?

Mr. KASSON. I have reason to suppose that the commissioners of the District of Columbia could not pick up the investigation where it is now left by the present board, not being familiar with the facts, and moreover it would interfere with their duties.

Mr. BUCKNER. The board of commissioners of the District of Columbia have had no part in this investigation.

The previous question was seconded and the main question ordered.

Mr. BUCKNER. I suppose the yeas and nays are required to be taken upon this question?

The SPEAKER. Certainly, under the Constitution.

The SPEAKER. Certainly, under the Constitution.

The question is, Will the House on reconsideration pass the bill, the objection of the President to the contrary notwithstanding?

The question was taken; and there were—yeas 158, nays 79, not voting 53; as follows:

The question was taken; and there were—yeas 158, nays 79, not voting 53; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, Cate, Caulfield, Chapin, John B. Clarks of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, De Bolt, Dibrell, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Foster, Franklin, Fuller, Gause, Glover, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hopkins, House, Humphreys, Hunton, Hard, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Frankin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Luttrell, Lynde, McFarland, Metcalfe, Milliken, Money, Morgan, Mutchler, Neal, New, O'Brien, Odell, Oliver, Payne, Phelps, John F. Philips, Pierce, Piper, Poppleton, Potter, Powell, Rea, Reagan, Rice, Riddle, John Robbins, William M. Robbins, Savage, Sayler, Scales, Schleicher, Schumaker, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Waldron, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Watterson, Erastus Wells, Whitehouse, Whitthorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Young—158.

NAYS—Messre. George A. Bagley, John H. Baker, William H. Baker, Banks, Blair, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Carr, Caswell, Chittenden, Conger, Crounse, Darrall, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Hender

So the bill was passed, two-thirds voting in favor thereof.

During the roll-call,
Mr. PLAISTED said: My colleague, Mr. FRYE, is absent from the
House on account of sickness; if present he would vote "no."

After the roll-call,
Mr. COX. I ask unanimous consent that the reading of the names
be dispensed with.
Mr. WILSON, of Iowa. I object. This is an important vote, and I
think it ought to be verified.

The roll-call was then read and the result announced as above recorded.

VETO MESSAGE-RESOLUTIONS RELATING TO CONGRATULATIONS.

The SPEAKER laid before the House the following message from the President of the United States:

To the House of Representatives:

the President of the United States:

To the House of Representatives:

I return to the House of Representatives, in which they originated, two joint resolutions, the one entitled "Joint resolution relating to congratulations from the Argentine Republic," the other entitled "Joint resolution in reference to congratulations from the republic of Pretoria, South Africa."

The former of these resolutions purports to direct the Secretary of State to acknowledge a dispatch of congratulation from the Argentine Republic and the high appreciation of Congress of the compliment thus conveyed, the other directs the Secretary of State to communicate to the republic of Pretoria the high appreciation of Congress of the complimentary terms in which said republic has referred to the first centennial of our National Independence.

Sympathizing as I do in the spirit of courtesy and friendly recognition which has prompted the passage of these resolutions, I cannot escape the conviction that their adoption has inadvertently involved the exercise of a power which infringes upon the constitutional rights of the Executive.

The usage of governments generally confines their correspondence and interchange of opinion and of sentiments of congratulation as well as of discussion to one certain established agency. To allow correspondence or interchange between states to be conducted by or with more than one such agency would necessarily lead to confusion, and possibly to contradictory presentation of views and to international complications.

The Constitution of the United States, following the established usage of nations, has indicated the President as the agent to represent the national sovereignty in its intercourse with foreign powers, and to receive all official communications from them. It gives him the power, by and with the advice and consent of the Senate, to make treaties and to appoint embassadors and other public ministers, it intrusts to mix solely "to receive embassadors and other public ministers," thus vesting in him the ori

wicked designs.

If Congress can direct the correspondence of the Secretary of State with foreign governments, a case very different from that now under consideration might arise, when that officer might be directed to present to the same foreign government entirely different and antagonistic views or statements.

By the act of Congress establishing what is now the Department of State, then known as the Department of Foreign Affairs, the Secretary is to "perform and execute such duties as shall from time to time be enjoined or intrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondence, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to said Department; and furthermore, that the said principal officer (the Secretary of State) shall conduct the business of the said Department in such manner as the President of the United States shall from time to time order or instruct."

partment in such manner as the President of the United States shall from time to time order or instruct."

This law, which remains substantially unchanged, confirms the view that the whole correspondence of the Government with and from foreign states is intrusted to the President; that the Secretary of State conducts such correspondence exclusively under the orders and instructions of the President; and that no communication or correspondence from foreigners or from a foreign state can properly be addressed to any branch or Department of the Government except that to which such correspondence has been com mitted by the Constitution and the laws.

I therefore feel it my duty to return the joint resolutions without my approval to the House of Representatives, in which they originated.

In addition to the reasons already stated for withholding my constitutional approval from these resolutions is the fact that no information is furnished as to the terms or purport of the communications to which acknowledgments are desired, no copy of the communications accompanies the resolutions, nor is the name even of the officer or of the body to whom an acknowledgment could be addressed given; it is not known whether these congratulatory addresses proceed from the head of the state or from legislative bodies; and as regards the resolution relating to the republic of Pretoria, I cannot learn that any state or government of that name exists.

WASHINGTON, January 26, 1877.

Mr. SWANN. I move that the message just read be referred to the Committee on Foreign Affairs, and ordered to be printed. The motion was agreed to.

#### RE-ORGANIZATION OF THE ARMY.

The SPEAKER also laid before the House the following message from the President of the United States:

To the Senate and House of Representatives:

I have the honor to transmit herewith the proceedings of the commission appointed to examine "the whole subject of reform and reorganization of the Army of the United States," under the provisions of the act of Congress approved July 24, 1876.

The commission report that so fully has their time been occupied by other important duties that they are not at this time prepared to submit a plan or make proper recommendations.

IL S. GRANT.

U. S. GRANT.

EXECUTIVE MANSION, January 29, 1877.

Mr. BANNING. I move that the message be referred to the Committee on Military Affairs, and ordered to be printed. The motion was agreed to.

Mr. KASSON moved to reconsider the vote by which the message was referred to the Committee on Military Affairs; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### TROOPS IN TEXAS.

The SPEAKER also laid before the House the following message from the President of the United States:

To the House of Representatives :

In answer to the resolution of the House of Representatives of the 8th of December last, inquiring whether any increase in the cavalry force of the Army on the Mexican frontier of Texas has been made as authorized by the act of July 24, 1876, and whether any troops have been removed from the frontier of Texas and from the post of Fort Sill on the Kiowa and Comanche reservation, and whether, if so, their places have been supplied by other forces, I have the honor to transmit a report received from the Secretary of War.

EXECUTIVE MANSION, January 22, 1877.

Mr. BANNING. I move that this message be referred to the Com-

The SPEAKER. The Chair would suggest that the message would more properly go to the Select Committee on the Texas Frontier Troubles.

Mr. MILLS. I think it has nothing to do with that subject; it refers to the northern frontier of Texas, and would properly go to the Committee on Military Affairs.

The motion of Mr. Banning was agreed to.

Mr. KASSON moved to reconsider the vote by which the message was referred to the Committee on Military Affairs; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### MEXICAN OUTRAGES ON AMERICAN CITIZENS.

The SPEAKER also laid before the House the following message from the President of the United States:

To the House of Representatives:

I have the honor to transmit herewith reports and accompanying papers received from the Secretaries of State and War, in answer to the resolution of the House of Representatives of the 19th instant relative to the imprisonment and detention by the Mexican authorities at Matamoras of John Jay Smith, an American citizen, and also to the wounding and robbing by Mexican soldiers at New Lavedo of Dr. Samuel Huggins, an American citizen.

EXECUTIVE MANSION, January 29, 1877.

Mr. SWANN. I move the reference of this message, with the ac-

Mr. SWANN. I move the reference of this message, with the accompanying papers, to the Committee on Foreign Affairs.

Mr. SCHLEICHER. I had proposed to move the reference to the Select Committee on Texas Border Troubles.

Mr. SPRINGER. I suggest to the gentleman from Maryland [Mr. SWANN] to withdraw his motion, and let the papers go to the committee named by the gentleman from Texas, [Mr. SCHLEICHER.]

Mr. SWANN. I have no objection.

The message, with accompanying papers, was accordingly referred to the Select Committee on Texas Border Troubles, and ordered to be printed.

be printed.

Mr. CONGER moved to reconsider the vote by which the documents were referred; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. PAYNE rose.

COMPILATION RELATIVE TO COUNTING ELECTORAL VOTES.

Mr. SPRINGER. The gentleman from Ohio [Mr. PAYNE] yields to me a moment that I may call up for action by the House the amendment of the Senate to the joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserve and stitched copies of the House compilation entitled Counting the Electoral Vote. I ask unanimous consent that the resolution, with the Senate amendments, be now taken from the Speaker's table for consideration.

There was no objection, and the amendments of the Senate were read as follows:

read, as follows:

In line 3 of the resolution strike out the words "and reserve." Amend the title by striking out the words "reserve and."

The amendments of the Senate were concurred in.

Mr. SPRINGER moved to reconsider the vote by which the amendments were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

COMMISSIONERS ON COUNTING ELECTORAL VOTE.

Mr. PAYNE. In pursuance of the notice given yesterday, I offer the following:

Resolved, That the House do now proceed by viva voce vote to appoint five members of the commission provided for in the act approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

The resolution was adopted.

Mr. LAMAR. I nominate as the five members of this commission on the part of the House of Representatives the following: Hon, Henry B. Payne of Ohio, Hon. Eppa Hunton of Virginia, Hon. Josiah G. Abbott of Massachusetts, Hon. James A. Garfield of Ohio, and Hon. George F. Hoar of Massachusetts. In order to save time

I move that the appointment of all these gentlemen be made viva voce by a single vote, so as to avoid the calling of the roll five times.

The SPEAKER. In the absence of objection that order will be

Mr. BUCKNER. I object. I insist upon a vote on each nominee separately

The SPEAKER. It is for the House to determine what method of

proceeding shall be adopted.

Mr. LAMAR. I trust the arrangement I have suggested will be

The SPEAKER. The gentleman from Mississippi [Mr. Lamar] moves that in electing these commissioners members shall be allowed to vote for five persons at the same time.

The motion was agreed to; there being—ayes 210, noes 20. Mr. LAMAR moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.
The SPEAKER. The Clerk will now call the roll, and members as their names are called -

their names are called —

Mr. HALE. Mr. Speaker, what is to be the form of voting?

The SPEAKER. Each member as his name is called will have the right to vote for five persons.

Mr. HALE. Announcing their names in voting?

The SPEAKER. Announcing their names when his name is called.

Mr. KASSON. I wish to ask a parliamentary question, whether by common understanding, in order to save time, we may not vote for "the five nominees," instead of repeating all the names. There have been only five members nominated.

The SPEAKER. The Chair thinks that arrangement would require

manimous consent.

Mr. COCHRANE. I object.

Mr. KASSON. I ask that the request for which unanimous consent is asked be stated to the House.

is asked be stated to the House.

The SPEAKER. The gentleman from Iowa [Mr. Kasson] asks that each member as his name is called, instead of repeating five names, may be allowed to say that he votes for the five nominees.

Mr. COCHRANE. I object.

Mr. DURHAM. I wish to propound an inquiry, whether or not we can vote for one, two, three, or four?

The SPEAKER. That is entirely within the province of each member. No member, however, can vote for more than five.

Mr. DURHAM. I understand that.

The SPEAKER. Gentlemen in the rear of the seats will be seated, and during this roll-call no conversation will be allowed among members or other persons. If the Chair cannot secure order during this

bers or other persons. If the Chair cannot secure order during this roll-call, he will resort to the enforcement of Rule 134, excluding all persons not entitled to the floor. This is a ceremony requiring the utmost decorum and order.

The vote was then taken viva voce with the following re-

THE FORE WAS BUILDED CHEMOIT STORE COCK WITHIN SHIP TOTAL	wing result.	
	Vot	es.
Mr. Hoar received	9	264
Mr. Payne received		263
Mr. Hunton received	9	263
Mr. Abbott received	9	263
Mr. Garfield received	9	240
Mr. Foster received		5
Mr. McCrary received		9
Mr. Willard received		0
Mr. Wood, of New York, received	***************************************	~
Mr. Tymda pagainad		1
Mr. Lynde received	***************************************	1
Mr. Terry received	*******	1
Mr. Townsend, of New York, received		1
Mr. Mills received		1
Mr. Singleton received		1
Mr. Blackburn received		1

Mr. Singleton received.

Mr. Blackburn received.

1

For Mr. Hoar—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Atkins, Bagby, George A. Bagley, John H. Bagley jr., John H. Baker, William H. Baker, Ballou, Banks, Banning, Beebe, Bell, Blackburn, Blair, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, William R. Brown, Buckner, Horatio C. Burchard, Burleigh, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, Cason, Caswell, Cate, Caulfield, Chapin, Chittenden, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Conger, Cook, Cowan, Cox, Crapo, Crounse, Cutler, Danford, Darrall, Davis, Davy, De Bolt, Denison, Dibrell, Dobbins, Dunnell, Durand, Durham, Eames, Eden, Egbert, Ellis, Evans, Faulkner, Felton, Finley, Flye, Forney, Fort, Foster, Franklin, Fuller, Garfield, Gause, Gibson, Glover, Goodin, Gunter, Hale, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Hendee, Henderson, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Hoge, Holman, Hooker, Hopkins, Hoskins, Honse, Hubbell, Humphreys, Hunter, Hunton, Hurd, Hurlbut, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, Kehr, Kelley, Kimball, Lamar, Franklin Landers, George M. Landers, Lane, Lapham, Lawrence, Leavenworth, Le Moyne, Levy, Lewis, Luttrell, Lynch, Lynde, Mackey, Magoon, MacDougall, McCrary, McDill, McFarland, McMahon, Meade, Metcaife, Miller, Milliken, Mills, Money, Monroe, Morgan, Morrison, Mutchler, Nash, Neal, New, Norton, O'Brien, Odell, Oliver, O'Neill, Packer, Page, Payne, Phelps, John F. Philips, Pierce, Piper, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Purman, Rainey, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Robinson, Miles Ross, Rusk, Sampson, Savage, Sayler, Scales, Schleicher, Schumaker, Seelye, Sheakley, Singleton, Sinnickson, Smalls, A. Herr Smith, William E. Smith, Southard, Sparks, Spri

For Mr. Payne—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Atkins, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banks, Banning, Beebe, Bell, Blackburn, Blair, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, William R. Brown, Buckner, Horatio C. Burchard, Burleigh, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, Cason, Caswell, Cate, Caulfield, Chapin, Chittenden, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Conger, Cook, Cowan, Cox, Crapo, Crounse, Cutler, Danford, Darrall, Davis, Davy, De Bolt, Denison, Dibrell, Dobbius, Dunnell, Durand, Durham, Eames, Eden, Egbert, Ellis, Evans, Faulkner, Felton, Finley, Flye, Forney, Fort, Foster, Franklin, Fuller, Garfield, Gause, Gibson, Glover, Goodin, Gunter, Hale, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Hendee, Henderson, Henkle, Hæreford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Hoar, Holman, Hooker, Hopkins, Hoskins, House, Hubbell, Humphreys, Hunter, Hunton, Hurd, Hurlbutt, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, Kehr, Kelley, Kimball, Lamar, Franklin Landers, George M. Landers, Lane, Lapham, Lawrence, Leavenworth, Le Moyne, Levy, Lewis, Luttrell, Lynch, Lynde, Mackey, Magoon, MacDougall, McCrary, McDill, McFarland, McMahon, Meade, Metcalfe, Miller, Milliken, Mills, Money, Monroe, Morgan, Morrison, Mutchler, Nash, Neal, New, Norton, O'Brien, O'dell, Oliver, O'Neill, Packer, Page, Phelps, John F. Philips, Pierce, Piper, Plaisted, Platt, Poppleton, Potter, Powell, Pratt, Purman, Rainey, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Robinson, Miles Ross, Rusk, Sampson, Savage, Sayler, Scales, Schleicher, Schumaker, Seelye, Sheakley, Singleton, Sinnickson, Smalls, A. Herr

W. Walson, W. Walleams, Alpheua S. Wiltiams, Whithorne, W. Wiginton, Wike, Williams, Jores M. Williams, Gran, Almar voor, L. Williams, Charles G. Williams, James Williams, Ja

son, Alan Wood, Jr., Fernando Wood, Woodworta, and Young—200.

For Mr. Garfield.—Messrs. Abbott, Adams, Ainsworth, Anderson, Ashe, Atklins, Bagby, George A. Bagley, John H. Bagley, Jr., John H. Baker, William H. Baker, Ballou, Banks, Banning, Beebe, Bell, Blair, Bland, Blount, Boone, Bradford, Bradley, Bright, John Young Brown, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Cannon, Caswell, Caulfield, Chittenden, John B. Clarke of Kentucky, John B. Clark, Jr., of Missouri, Clymer, Collins, Conges, Cowan, Cox, Crapo, Crounse, Cutler, Danford, Darrall,

Davy, De Bolt, Denison, Dibrell, Dobbins, Dunnell, Durand, Durham, Eames, Eden, Egbert, Evans, Faulkner, Felton, Finley, Flye, Forney, Fort, Foster, Franklin, Fuller, Gause, Gibson, Glover, Goodin, Gunter, Hale, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartzell, Hatcher, Hathorn, Haymond Hendee, Henderson, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Hoar, Hoge, Holman, Hooker, Hoskins, House, Hubbell, Humphreys, Hunton, Hunter, Hurlbut, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, Kehr, Kelley, Kimball, Lamar, Franklin Landers, George M. Landers, Lapham, Lawrence, Leavenworth, Le Moyne, Levy, Lewis, Luttrell, Lynch, Lynde, Mackey, Magoon, MacDougall, McCrary, McDill, MoFarland, McMahon, Meade, Metcalfe, Miller, Milliken, Mills, Money, Monroe, Morgan, Morrison, Mutchler, Nash, Neal, New, Norton, O'Brien, Odell, Oliver, O'Neill, Packer, Page, Payne, Phelps, John F. Philis, Pierce, Piper, Plaisted, Platt, Potter, Powell, Pratt, Purman, Rainey, Rea, Reagan, Riddle, John Robbins, William M. Robbins, Robinson, Rusk, Sampson, Savage, Sayler, Scales, Schleicher, Schumaker, Seelye, Sheakley, Singleton, Sinnickson, Smalls, A. Herr Smith, Sparks, Springer, Stanton, Stevenson, Stowell, Strait, Swann, Tarbox, Teese, Thomas, Thompson, Thornburgh, Throckmorton, Martin I. Townsend, Washington Townsend, Tucker, Turits, Turney, Van Vorhes, Robert B. Vance, Waddell, Wait, Waldron, Charles C. B. Walker, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, G. Wiley Wells, White, Whitehouse, Whiting, Whitthorne, Wigginton, Wike, Williams, James Williams, Jere N. Williams, William B. Williams, Kharles G. Williams, James Williams, James Williams, Alan Wood, jr., Fernando Wood, Woodworth, and Young—240.

oung—240.

For Mr. Foster—Messrs. Cook, Hartridge, Hereford, Hopkins, and Roberts—5.

For Mr. McCrary—Messrs. Buckner, Candler, and William E. Smith—3.

For Mr. Willard—Mr. Henkle and Mr. John Reilly—2.

For Mr. Lynde—Mr. Magoon—1.

For Mr. Fernando Wood—Mr. G. Wiley Wells—1.

For Mr. Fernando Wood—Mr. G. Wiley Wells—1.

For Mr. Terry—Mr. Martin I. Townsend—1.

For Mr. Mills—Mr. Hoge—1.

For Mr. Singleton—Mr. Hoge—1.

For Mr. Blackburn—Mr. Hoge—1.

During the call of the roll the following announcements were

made:
Mr. HARTZELL. My colleague from Illinois, Mr. CAMPBELL, is confined to his room on account of sickness. If present I think he

would vote the straight ticket.

Mr. BURLEIGH. My colleague from Maine, Mr. FRYE, is sick and confined to his room by order of his physician.

Mr. WALLACE, of Pennsylvania. My colleague, Mr. Ross, is con-

fined to his room by sickness. If he were present he would vote for

Mr. WILLIS. My colleague from New York, Mr. Bliss, is absent on important business. If present he would vote for the regular nominee

Mr. SCALES. My colleague from North Carolina, Mr. Yeates, is

confined to his room by sickness.

On motion of Mr. SOUTHARD, by unanimous consent, the reading of the names was dispensed with.

The SPEAKER announced that Mr. HOAR, Mr. PAYNE, Mr. HUN-TON, Mr. ABBOTT, and Mr. GARFIELD were appointed the commissioners on the part of the House.

## APPOINTMENT OF TELLERS.

Mr. PAYNE. I move that the Speaker be authorized to appoint tellers on the part of the House under the provisions of section 1 of the bill (S. No. 1153) in relation to counting the electoral vote.

The motion was agreed to.

Mr. PAYNE moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. Sniffen, one of his secretaries, who also announced that the President had approved a bill and a joint resolution of the following titles:

An act (H. R. No. 2461) for the relief of certain officers of the Third

United States Artillery who suffered by fire at Fort Hamilton, New York Harbor, on the 3d of March, 1875; and A joint resolution (H. R. No. 169) authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia. The message also announced that the following bills were received by the President on the 17th of January, and not having been returned by him to the House within the ten days prescribed by the Constitution, had become laws without his signature.

An act (H. R. No. 2300) granting a pension to Margaret C. Bell;

An act (H. R. No. 2835) for the relief of R. J. Henderson, of Newton County, Missouri.

#### INFRINGEMENTS OF PATENTS.

Mr. LYNDE. I rise to a privileged motion. I call up the motion to reconsider the vote by which the House ordered the bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes, to be engrossed and read a third

Mr. SAMPSON. Mr. Speaker, I entered this motion to reconsider, and the understanding I have always had with the gentleman from Wisconsin, [Mr. Lynder,] during at least half of the last session and also during the present session, was that when the motion was called up I should have the privilege of presenting an argument.

The SPEAKER. The practice is that any gentleman entering a

motion to reconsider has the power to call it up at any time within two days of entering the motion. After that it is within the power of any member of the House to call it up; and if any gentleman should then raise the question of consideration, that is his privilege.

Mr. SAMPSON. I simply want to ask the gentleman from Wiscon sin [Mr. LYNDE] if he desires to call up the motion now.

Mr. LYNDE. I do.

Mr. SAMPSON. For the purpose of consideration, or with a view of moving to lay the motion to reconsider on the table?

Mr. LYNDE. I desire to move to lay the motion to reconsider on the table. And for this reason: that this matter has remained so long without being brought before the House that it is too late now

long without being brought before the House that it is too late now to have it fully considered.

Mr. SAMPSON. I desire to say just one word as to that. If the gentleman from Wisconsin had intimated a desire to call up the mofair understanding that I should be permitted to make a statement.

Mr. LYNDE. I have been very desirous to have this disposed of during the present session, and have waited I think to as late a pe-

riod as there is any prospect of having that done.

Mr. SAMPSON. I now ask the gentleman that I may be permitted to say something in relation to this motion. It is a very important

Mr. LYNDE. I move that the motion to reconsider be laid on the

Mr. CONGER. I raise the question of consideration at this time. I think this should be debated by the House, briefly at least, before it is disposed of in a summary way. It is a very important bill. The SPEAKER. The question is, Will the House now consider the motion to reconsider?

Mr. COV. Level.

Mr. COX. I understand that the gentleman from Wisconsin [Mr.

LYNDE] moves to lay the motion to reconsider on the table.

The SPEAKER. Yes; but the gentleman from Michigan raises the question of consideration.

Mr. COX. I would like to have the question stated in the form in

which it stood when last before the House.

The SPEAKER. The gentleman from Wisconsin calls up the motion to reconsider the vote by which the bill (H. R. No. 3370) to amend the statutes in relation to damages for infringements of patents, and for other purposes, was ordered to be engrossed and read a ents, and for other purposes, was ordered to be engrossed and read a third time; and the gentleman from Michigan [Mr. Conger] raises the question of consideration.

Mr. OLIVER. I desire to make the point of order that we have not had the morning hour yet. I demand the regular order.

Mr. COX. I suggest that it is too late to raise that point.

Mr. OLIVER. I do not understand that this takes precedence of

the morning hour.

The SPEAKER. This motion is privileged and may come up before or after the morning hour.

Mr. OLIVER. In the morning hour?

The SPEAKER. Not in the morning hour; the Chair did not so state, but before or after, not during the morning hour.

Mr. OLIVER. It excludes the morning hour, then?

The SPEAKER. It delays it, not excludes it.

Mr. SAYLER. I raise the point of order that the point is raised too

The SPEAKER. It is too late anyway.

The vote was then taken on the question of consideration; and on

The vote was then taken on the question of consideration; and on a division there were—ayes 96, noes 45.

So the House decided to consider the bill.

Mr. CONGER. I submit that no quorum voted.

The SPEAKER. The Chair then will order tellers.

Mr. CONGER. I desire the yeas and nays upon this question.

The SPEAKER. It is the gentleman's right to call for them.

Mr. CONGER. I call for them because this bill is connected with patents and I wish to see how members will vote upon it.

The yeas and nays were ordered. 29 members voting in favor thereof

The yeas and nays were ordered, 29 members will vote thou it.

Mr. KELLEY. If in order I would like to have the bill read, that we may understand what it is.

The SPEAKER. The bill has not been read to-day, and the Clerk

will now read it.

The Clerk read the bill as follows:

The Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, the plaintiff in any action at law or proceeding in equity, if found entitled in such proceeding or action to recover damages for infringement of any patent, shall recover only for such damages for infringement as shall have occurred for and during the term of one year immediately preceding the notice of infringement, and after such notice shall be given and until the date of the judgment: Provided, That where no other notice of infringement shall be given, the commencement of a suit for such infringement shall be construed as notice.

SEC. 2. That the measure of the plaintiff's damages shall be the same in law and in equity; and the rule in all cases shall be to give to the plaintiff, as far as possible, a reasonable recompense for his time, labor, ingenuity, and expense. Where a reasonable recompense for his time, labor, ingenuity, and expense. Where a reasonable recompense for his time, labor, ingenuity, and expense. Where a reasonable recompense to form of a license fee has been established, that shall be taken as the measure of damages; and where no such license fee has been established, the court or jury may determine, from the evidence, what would be a reasonable license fee, according to the circumstances of the case. And whenever the court shall be of opinion that the damages ought to be increased, the court may increase the same, not exceeding, however, three times the amount of the license fee, as shown, together with the costs. And the court shall have power, when necessary to prevent injustice, to diminish the damages in like manner. And no other recovery for damages or profits shall be allowed except as provided in this section.

SEC. 3. That every patent, or any interest therein, shall be assignable in law by

an instrument in writing; and the patentee, or his assigns or legal representatives, may, in like manner, grant and convey an exclusive right under the patent for the whole or any specified part of the United States, or may grant licenses under said patent, exclusive or otherwise, as the parties may agree. And when there are two or more joint owners or owners in common, of any patent, a license from any one or said owners shall be good and valid in law, and shall vest in the licensee full right to the said invention, according to the terms of said license, unless the conveyance or other instrument creating gueb, joint ownership, or ownership in common, shall provide that no license shall be valid unless executed by all of such owners, or unless an agreement to that effect shall be made by said owners, and filed for record before the execution of said license.

SEC. 4. That all stuck grants, licenses, and conveyances, and all powers of attorney and agreements, made under any letters-patent, shall be acknowledged before an officer competent to take acknowledgments of deeds in the place where executed, and shall take effect from the time of filing the same for record in the Patent Office as to any subsequent purchaser, licensee, or mortgagee, for valuable consideration, without notice, and shall be void as to all such purchasers, licensees, and mortgagees, without notice, until filed for record as aforesaid.

SEC. 5. That any person who may wish to perpetuate testimony showing, or tending to show, that any applicant or patentee was not the first and original inventor of the thing patented by him, or of any substantial and material part thereof, claimed as new, may do so, subject to the following rules and conditions: He may file a bill or petition in the circuit court of any district in which the parties having the right to sue for infringement of said patent, or any of them, reside or may be found, setting forth the date and subject of the patent and the name of the patents. The patents of the patents having the

Mr. LYNDE. Mr. Speaker, I have moved to lay the motion to re-

consider on the table.

The SPEAKER. The yeas and nays have been ordered upon the question of consideration, and the question now before the House is, Will the House consider the motion of the gentleman from Wisconsin [Mr. LYNDE] at this time, and on that motion the yeas and nays have

been ordered.

Mr. CONGER. Those who wish to consider the bill now will vote "aye," and those who wish to postpone it until we can discuss it will vote "no?"

The SPEAKER. Debate is not in order, and that is in the nature of debate.

Mr. CONGER. Very little debate.

The question was taken upon consideration; and there were-yeas 141, nays 77, not voting 72; as follows

The question was taken upon consideration; and there were—yeas 141, nays 77, not voting 72; as follows

YEAS—Messrs. Abbott. Ashe, Atkins, Bagby, George A. Bagley. Bell, Bland, Blount, Boone, Bradford, Bradley, John Young Brown, Buckner, Buttz. Cabell, William P. Caldwell, Candler, Carr. Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Cox, Davis, De Bolt, Denison, Dibrell, Dunnell, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Forney, Fort, Franklin, Fuller, Gause, Glover, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henderson, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Frank Jones, Thomas L. Jones, Kehr, Knott, Franklin Landers, Lane, Lawrence, Le Moyne, Levy, Lewis, Lynde, Maish, McFarland, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal. O'Brien, Odell, Payne, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, Rice, Riddle, John Robbins, Roberts, Miles Ross, Rusk, Savage, Sayler, Scales, Schleicher, Schumaker, Sheakley, Singleton, Sparks, Springer, Stenger, Stone, Strait, Swaun, Tarbox, Teese, Tetry, Thomas, Thompson, Throckmorton, Turney, John L. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Watterson, Ernstus Wells, Whitehouse, Whitthorne, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Benjamin Wilson, and Young—141.

NAYS—Messrs. Adams, Ainsworth, John H. Bagley, Jr., John H. Baker, Ballou, Banks, Blair, William R. Brown, Burleigh, Cannon, Cason, Conger, Cutler, Danford, Darrall, Davy, Eames, Finley, Hale, Haralson, Benjamin W. Harris, Hathorn, Hendee, Hoge, Hoskins, Hubbell, Hunter, Joyce, Kelley, Kimball, George M. Landers, Lapham, Leavenworth, Lynch, Mackey, Magoon, MacDougall, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Phelps, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, William M. Robbins, Ro

So the House decided to proceed to the consideration of the subject, the pending question being on the motion of Mr. Lynde to lay on the table the motion to reconsider the vote by which the bill was ordered to be engrossed and read a third time

The question was taken on the motion of Mr. Lynde, and it was

agreed to.

The question then recurred on the passage of the bill.

Mr. LYNDE. Upon that I call the previous question.
Mr. OLIVER. I desire to raise the question of consideration. I desire the regular order, which is the morning hour.
The SPEAKER. The House has just determined by a yea and nay vote that they would consider this subject at this time.
Mr. OLIVER. I understand that the House determined to proceed to the consideration of the motion to reconsider.

to the consideration of the motion to reconsider. The SPEAKER. The Chair thinks that would include the consid-

eration of the bill.

Mr. OLIVER. I supposed the motion to reconsider would have to be taken up and disposed of.

The SPEAKER. That has been laid upon the table, which brought the bill before the House.

Mr. EAMES. I desire to offer an amendment.

The SPEAKER. No amendment is now in order, the previous question having been called.

The previous question was seconded and the main question ordered.

The SPEAKER. The question is now upon the passage of the bill. Mr. CONGER. The bill, I think, has never been read the third

The SPEAKER. The Chair thinks the bill was read the third time before the motion to reconsider the vote ordering the bill to be engrossed and read a third time was entered. The bill was also again

read this morning.

Mr. CONGER. The reading of this morning was not the third read-Mr. CONGER. The reading of this morning was not the third reading of the bill, but was only for information. I would ask for the record of the third reading, whether there has been a third reading of

the engrossed bill.
The SPEAKER. The SPEAKER. The bill was ordered to be engrossed and read a third time, and the impression of the Chair is that the bill was read

the third time, and then the motion to reconsider was made.

Mr. SAMPSON. The bill was ordered to be engrossed and read a third time, and then my colleague [Mr. OLIVER] called for the reading of the engrossed copy of the bill, and then the motion to reconsider was entered.

Mr. COX. The bill was ordered to be read the third time, but was not actually read the third time when so ordered. It was read again this morning for information, and the Chair might well consider whether that is the third reading.

The SPEAKER. It is usual to read a bill the third time by its title.

This bill has been twice read and to-day it was again read by unani-

Mr. CONGER. The reason that I ask is that I desire the reading

Mr. CONGER. The reason that I ask is that I desire the reading of the engrossed copy.

The SPEAKER. The Clerk will read it.
Mr. CONGER. Has the bill been engrossed?

The SPEAKER. It has been.
Mr. CONGER. Then I fail in my object.
The SPEAKER. The Chair is very sorry the gentleman has failed in courthing. It mentions.

in anything. [Laughter.]

Mr. CONGER. I appreciate the sorrow of the Chair. [Continued laughter.] I will not call for the reading of the engrossed copy of

The bill was then read the third time by its title.

The question was taken upon the passage of the bill; and upon a division there were—ayes 99, noes 44.

Mr. WHITE. I raise the point of order that no quorum has voted. The SPEAKER. No quorum having voted, the Chair will appoint

Mr. CONGER. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. CONGER. My point of order is that the motion to reconsider has not yet been disposed of.

Mr. SPRINGER. That was laid on the table.

Mr. CONGER. I do not understand that the question has been put to the House were leving the motion to reconsider on the table.

to the House upon laying the motion to reconsider on the table.

The SPEAKER. Long ago.

Mr. CONGER. The question was whether the House would con-

sider now the motion to reconsider.

The SPEAKER. That was the way that the House refused to take a backward step as to this bill. Having laid on the table a motion to reconsider, that was a forward step toward the passage of the

Mr. WHITE. I move that the House do now adjourn.

The motion to adjourn was not agreed to.

The SPEAKER. The question recurs upon the passage of the bill, upon which no quorum voted; and the Chair will appoint the gentleman from Wisconsin, Mr. Lynde, and the gentleman from Michigan, Mr. CONGER, to act as tellers.

Mr. CONGER. I made no objection to the lack of a quorum. I do not know why I should be called on to strand on a teller.

Mr. CONGER, to act as teners.

Mr. CONGER. I made no objection to the lack of a quorum. I do not know why I should be called on to stand as a teller.

The SPEAKER. The Chair always likes to call upon the gentleman from Michigan whenever he can do so. If the gentleman declines,

however, the Chair will appoint the gentleman from Kentucky, Mr. WHITE

Mr. WHITE. I will withdraw my point of order.

No further count being called for, the bill was declared to be passed.

Mr. LYNDE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

Mr. SAMPSON. I ask consent to have printed in the RECORD some remarks which I have prepared upon the subject of the bill just passed.

No objection was made, and leave was accordingly granted.

The remarks of Mr. Sampson are as follows:

The remarks of Mr. Sampson are as follows:

The question to which I desire to ask the attention of the House for a few moments is the reconsideration of the vote by which House bill No. 3370, in relation to damages in actions for the infringement of patents, was ordered to be engressed. The bill proposes very radical changes in the rule of damages in this class of cases. The first section of the bill evidently is for the purpose of very materially reducing the damages, and it does not reserve from its operations actions pending nor causes of action already accrued. It reads:

SEC. 1. That from and after the passage of this act, the plaintiff in any action at law or proceeding in equity, if found entitled in such proceeding or action to recover damages for infringement of any patent, shall recover only for such damages for infringement as shall have occurred for and during the term of one year immediately preceding the notice of infringement, and after such notice shall be given and until the date of judgment: Provided, That where no other notice of infringement shall be given, the commencement of a suit for such infringement shall be construed as notice.

Now let us see what will be the effect of this:

Under the law as it now stands, and as it has stood since the inauguration of our patent system in 1790, where an infringement has
extended over a period of several years, damages may be recovered
for the whole time; the only limitation is, action must be brought
within six years from the expiration of the term of the patent. Under
this bill, as I have just read, damages will be limited to one year prior
to service of notice. to service of notice.

Take a case like this for illustration: Say a party commenced the infringement of a patent eleven years ago, continued it for ten years, made a net profit by wrongfully appropriating another's property of \$1,000 a year. That profit would be the measure of damages if the patentee had granted no licenses, and he would have a valid claim against the infringer of \$10,000. Pass this bill and that ten-thousandagainst the infringer of \$10,000. Pass this bill and that ten-thousand-dollar claim, the infringement having ceased one year ago, would not be worth a single cent. It would be legislated out of existence. But that claim for damages is property. It is created by act of Congress recognizing property in inventions. It is damages for the wrongful and unlawful use of the property of another—a right of action—and as much property within the meaning of the Constitution as money, goods, or lands, and is as much under the protection of the provision of the Constitution which says "no person shall be deprived of property without due process of law" as any other property. The best authorities say "the true interpretation of this constitutional provision is that where rights are acquired by the citizen under existing law there is no power in any branch of the Government to take them away."

It is usual in all enactments changing rights of action to save suits sending or causes of action already accrued, but for some cause this

bill does not contain such a provision.

Another point to which I desire to call the attention of the House is this: It makes the right to recover depend mainly upon the fact of the owner's giving actual notice to the infringer that he is infring-ing. Now, should notice be required when the infringer may already ing. Now, should notice be required when the infringer may already have a guilty knowledge that he is infringing, or where the facilities and opportunities for knowing what is patented and what would constitute an infringement possessed by the public are far greater than the opportunities for the patentee to know what infringement may be going on against him and of when in fact he has not the knowledge?

edge?
I can conceive of cases where the infringing party may be entirely innocent; take a case where through want of knowledge or carelessness of examiners in the Patent Office two patents are granted by the Government for the same invention, and the second patentse, armed with his letters-patent, goes out into the country and puts his invention upon the market; parties buy and use the second patent in the utmost good faith, and perhaps years of litigation elapse, the question being a close one, before it is finally decided that the second patent was an infringement of the first.

patent was an infringement of the first.

Again, where there are many patented parts to one machine or structure, or improvement after improvement has been patented on the same thing, and there have been issues and re-issues, extensions, decrees, and judgments of courts declaring some valid and others invalid, I would protect the infringers against heavy damages on the principle that where two innocent parties must suffer on account of the uncertainty of rights and conflict of interests in this kind of property the final burden should not all rest on one. And in cases of this kind if the patentee did not speak out when he knew the infringer thought he had a right to use the property and warn him that it was his, his recovery should be very small.

his, his recovery should be very small.

But while there are cases of the kind I have mentioned and a very strict limitation of damages would be just in such cases, yet

let us see if it is not probable that a majority of the cases of infringement are with a guilty knowledge on the part of the infringer. Great efforts are made under the law to keep the public generally informed

A record is kept of every patent; a model, if susceptible of one, is on exhibition; drawings and specifications may always be had for a trifling fee; the Official Patent-Office Gazette, showing all new pattrifling fee; the Official Patent-Office Gazette, showing all new patents issued, is placed on file in the capitol of every State and Territory and in the clerk's office of every district court of the United States, a sufficient number distributed gratis to enable almost every organized county in the United States where there is a public library to possess a copy, and any public library may procure a copy by paying simply cost of binding and transportation. Now with all these facilities to impart information of what is patented, we must conclude that a great many of the infringements are with a guilty knowledge of the wrong. And further, it is impossible in many instances, throughout such a vast extent of territory and amidst so many millions of people, for the patentee to have personal knowledge of the infringement, so as to be able to give the notice required by this bill. Again, it seems to me the rule sought to be established in the second section of this bill is not so definite, practicable, and just as the

ond section of this bill is not so definite, practicable, and just as the one we now have. The rule of damages now is the actual loss which plaintiff sustains by the wrongful acts of defendant. The law gives plaintiff sustains by the wrongful acts of defendant. The law gives to the inventor the exclusive right, on his procuring a patent, to make, use, and sell his invention for the term of seventeen years. If he has not parted with any of this exclusive right by granting licenses to others, and the defendant has made and sold at a profit, after deducting all expenses, what was plaintiff's exclusive right to sell, then those profits he has derived from the use of plaintiff's property he must surrender to plaintiff. This is the rule of damages. If plaintiff has licensed any one to manufacture, then the defendant must pay a license fee the same as others and that license fee is the massure of license fee the same as others, and that license fee is the measure damages. This rule is comparatively simple and can be practically applied, and is based upon the sound doctrine that what a party has wrongfully taken away that he must restore. But the bill substitutes for this rule the following:

SEC. 2. That the measure of the plaintiff's damages shall be the same in law and in equity; and the rule in all cases shall be to give to the plaintiff, as far as possible, a reasonable recompense for his time, labor, ingenuity, and expense. Where a reasonable recompense in form of a license fee has been established, that shall be taken as the measure of damages; and where no such license fee has been established, the court or jury may determine, from the evidence, what would be a reasonable license fee, according to the curcumstances of the case.

Now this is not what we should attempt to give him in any one case, but what he should have received when the term of his patent expires. Counting all his profits from manufactures, sales of ma-chines, licenses, sale of territory, and all royalties of every descrip-tion, and to try to enforce this law literally would be to compel defendant, although he may not have damaged the plaintiff one dol-lar, to pay all the patent was worth or had cost. If it means that on lar, to pay all the patent was worth or had cost. If it means that on this principle the jury are to fix a license fee in all cases and take that as the damages, then it involves in each case, where license fee has not been fixed by plaintiff, the uncertain, speculative, interminable inquiry of how long did plaintiff labor to bring forth his invention; what should be allowed him for that; what was his expense; what degree of ingenuity did he display; what should be awarded him for that; what have been his profits and losses on the invention for the years that are past, and what will they probably be in the future with this or the other license? All this in place of the plain, simple sale. How many of the patented machines did defendant sell without right, and what were his net receipts thereon over and above all expenses? all expenses

Again, in determining what the license fee should be, if that is the object of the provision, the most important element of all, and that which must always govern the inventor himself when he fixes the fee, is omitted, and that is, what is the invention worth to the pub-But it will be seen that under this new rule the patentee is to be paid a reasonable recompense for his time, labor, ingenuity, and expense whether his patent is of any real value or not. A man may have spent half a lifetime, a liberal fortune, and displayed great ingenuity in getting up an invention, and a reasonable recompense for this might reach \$10,000 or \$50,000, and yet the invention itself may be entirely worthless, and the party who was foolish enough to infringe it may have lost money in the operation and his infringement been no damage whatever to plaintiff, and yet he would be

liable for this large amount.

I am thoroughly impressed with the opinion, from these and other considerations, that the present rule of damages in this kind of cases is much more just, definite, certain, and equitable than the one proposed in this bill. I do not say the law may not be improved, but this is certainly not an improvement. I therefore hope the motion to reconsider will prevail, and the gentleman in charge of the bill will consent that it may be recommitted to the Committee on the Judiciary, in order that it may be there again considered and modified to avoid these many objectionable features. fied to avoid these many objectionable features

Mr. EAMES asked leave to have printed in the RECORD some re-

marks on the bill as just passed.

Leave was granted.

The remarks of Mr. Eames are as follows:
Mr. Speaker, it is not my purpose to discuss the motion of the gentleman from Iowa [Mr. Sampson] at any length, but I am desirous that

it should prevail, so that the bill reported may be open to some amendment, without which the bill ought not to receive the approval of this

The bill relates to the subject of patents, and the Committee on Patents would seem to be the appropriate committee for the consideration of the provisions of the bill. It was referred, however, to the Committee on the Judiciary, and by that committee reported, and under the operation of the previous question was ordered to be en-grossed and was read a third time without any opportunity for amendment or debate.

The bill is one of great importance as effecting a radical change in the patent law, and as injuriously affecting the inventor, and the great amount of capital invested upon the faith of the exclusive right of an inventor for a limited time to his invention or discovery.

Under the Constitution Congress has power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and dis-

Under this provision of the Constitution Congress passed a law at Under this provision of the Constitution Congress passed a law at the second session of the First Congress entitled "An act to promote the useful arts," securing to the inventor the sole and exclusive right to his invention for a period not exceeding fourteen years, and provided the mode of securing this exclusive right in the courts of the United States by action at law, and subsequently by action at law and by bill in equity. These provisions, substantially as embraced in sections 4919 and 4921 of the Revised Statutes, have been in force since Luk 4 1826. This relief has resulted in the great in ventions. since July 4, 1836. This policy has resulted in the great inventions of the age, the cotton-gin, the steam-engine, the printing-press, the electric telegraph, and a very large number of inventions in machinery and agricultural implements.

A large amount of capital has been invested and a great number of employés engaged in the manufacture of articles protected under the

existing law.

The benefit which the public under this policy has derived in every branch of industry can hardly be overestimated.

With but a few exceptions the inventor has been very inadequately compensated for the benefits which his invention has conferred upon the public. This remuneration has only been secured by the protection of the inventor under the provisions of the existing laws. Every invention requires time, labor, skill, expense, and capital. The essential requisite of capital cannot be secured unless the inventor is secured. cured in the exclusive use of his invention; and when so secured the result in all useful inventions has been a better article at a less price.

If this right to the exclusive use is taken from the inventor the in-

centive to improvement is at the same time taken away and would defeat the purpose of the provision of the Constitution, alike to the injury of all. But even this right to the exclusive use, which is the only incentive to invention and improvement, would be of no avail unless protected by the courts, and this bill will deprive the inventor of this protection. It provides in the first section that after the passage of the act the inventor shall recover only for such damages for infringement as shall have occurred for and during the term of one year immediately preceding notice of infringement, and after such notice shall be given and until the date of judgment.

This bill does not propose to change the period of seventeen years as the period within which an inventor shall have under the Constitution the exclusive right to use his invention, but limits the period to one year from notice of infringement for which he may recover to one year from notice of infringement for which he may recover any damages for the infringement. Under the law as it now exists the patent secures the exclusive use for seventeen years. Under this bill it is proposed to limit the right to recover for damages to a period of one year before, without any knowledge by the inventor of the infringement, notice has been given to the infringer. No such limitation has been applied in any other case of protection to rights of property. Indeed the bill does not even save the rights of inventors under existing law in suits now pending for the infringement of patents, nor does it allow any time within which suits may be brought to recover under the existing law for infringements upon patents to recover under the existing law for infringements upon patents committed before the passage of this bill; nor make any distinction between patents granted before and those granted after the passage of this act. Heretofore when any change has been made in the patent law Congress has been very careful to protect pending suits, and patents which had been issued as well as rights existing at the time any such change was made.

In all the changes which have been made in the law the provision, in substance, has been made that such change should not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, or take away any right under

This bill makes no provision for infringements for which no suit has been commenced, nor does it prescribe any time within which such suit may be commenced. It makes no provision for pending suits, nor does it make any distinction between patents which have

suits, nor does it make any distinction between patents which have heretofore been granted and such as may be granted after its passage. In these respects the bill is in conflict with rights vested by the Constitution, which secures the exclusive right to the inventor for a limited time. The provision of the Constitution in this respect is clear and explicit. It is the exclusive use for a limited time. Congress may decline to exercise the power, but if exercised it must be in the manner prescribed, and when exercised it vests in the inventor

a right to the exclusive use for the time named, which has been recognized in every change which has been made in the law and which ought to be now provided for if this bill is to become a law. It should protect all rights under the existing law; leave pending suits to be determined as if the bill had not passed; and should apply only to patents which may hereafter be granted; and, in my judgment, even with these provisions ought not to receive the approval of the House.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one its clerks, announced that the Senate had passed bills of the following titles; in which he was directed to askthe concurrence of the House:

A bill (S. No. 1139) to change the time of holding the October term

of the United States district court for the district of Nebraska;

and

A bill (S. No. 1187) authorizing the Secretary of War to allow the interment in the national cemetery at New Berne, in the State of North Carolina, of the remains of R. F. Lehman, late a commissioner of the United States circuit court in the eastern district of North

The message further announced that the Senate had passed, with amendments, a bill of the following title:

A bill (H. R. No. 3367) to remove the charge of desertion off the

The message further announced that the Senate had agreed to the report of the committee of conference upon the disagreeing votes of the two Houses upon the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

#### SIXTEENTH AMENDMENT-WOMAN SUFFRAGE.

Mr. BANKS, by unanimous consent, presented the petition of Ann B. Earle, Annie B. Rodgers, Martha G. Ripley, and others—45 men and 57 women—102 citizens of the State of Massachusetts, asking for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex; which was referred to the Committee on the Ju-

Similar petitions were presented and referred to the same commit-

tee, as follows

By Mr. LANE: The petition of E. H. Roork, Belle W. Cook, and others—125 men and 184 women—309 citizens of the State of Oregon.

By Mr. WALDRON: The petition of C. H. Du Bois, Mrs. C. H. Du Bois, Mrs. Israel Hill, George Stickney, Mrs. Emma J. Ashley, and others—217 women and 207 men—424 citizens of the State of Oregon.

By Mr. HENDEE: The petition of L. Wilson, Parkey and others.

By Mr. HENDEE: The petition of Lydia Putnam and others, 2 men and 5 women, citizens of Vermont.

By Mr. SPRINGER: The petition of Mary Brigham, Mrs. Jacob Martin, and others—11 men and 13 women—24 citizens of the State of Illinois.

By Mr. BLAIR: The petition of Mary A. Powers Filley and others-1 man and 4 women—5 citizens of New Hampshire.

Mr. BLAIR also presented the petition of Marilla B. Ricker, for relief from political disabilities.

By Mr. O'NEILL: The petition of Theresa Lewis, Annie E. McDowell, Mary J. Scarlett Dixon, Adriana Pugh, Caroline H. Spear, and others—196 men and 159 women—355 citizens of the State of Penn-

By Mr. WARNER: The petition of Sarah Wier, B. F. Hunt, and others—28 men and 28 women—56 citizens of the State of Connecticut.

By Mr. BLAND: The petition of Virginia L. Minor, John M. Krun, and others—94 men and 78 women—172 citizens of the State of Missouri.

Mr. BLAND. I will say that there are, I believe, a hundred thousand more on the way. [Laughter.]

#### DISPUTED ELECTORAL VOTES.

Mr. COX, by unanimons consent, submitted the following resolution; which was referred to the Committee on the Judiciary:

Resolved. That the Judiciary Committee be directed to take into consideration the propriety of reporting a bill or an amendment to the Constitution, if necessary, providing for the decision of any questions which may arise as to the regularity and authenticity of the returns of the electoral votes for President and Vice-President of the United States, or the right of persons who gave the votes, or the manner in which they ought to be counted, and that such law or amendment provide for the jurisdiction as well as the course of proceeding in all cases of real controversy.

Mr. CONGER moved to reconsider the vote by which the resolution was referred; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### TEXAS AND PACIFIC RAILWAY.

Mr. LEVY, by unanimous consent, presented a memorial of the presidents of cotton exchange, chamber of commerce, banks, and insurance companies of New Orleans, praying for the passage of the bill granting aid to the Texas and Pacific Railway Company, and to make the New Orleans Pacific Railway a branch thereof; which was referred to the Committee on the Pacific Railroad, and ordered to be winted in the Paccopp. as follows: printed in the RECORD, as follows:

To the honorable Senate and House of Representatives of the United States in Congress assembled:

The New Orleans Cotton Exchange, and Chamber of Commerce, commercial bodies presenting large interest in Gulf States, respectfully pray your honorable bodies

to adopt the New Orleans Pacific Railroad, now being constructed from Alexandria to Shreveport and Marshall, as the branch to connect the Texas and Pacific Railroad with the city of New Orleans, and to grant to it such aid as will insure its completion. The New Orleans Pacific is the only road in this State on which work is being prosecuted. The road is under the direction of prominent citizens of New Orleans who have the confidence of the people. The rapid construction of this road would give employment to many laborers now destitute, and contribute to restore to the people the blessings of prosperity.

WM C. BLACK

WM. C. BLACK,
President New Orleans Cotton Exchange. CYRUS BUSSEY,
President New Orleans Chamber of Commerce.

We, the undersigned, fully indorse the sentiments set forth in the foregoing temorial.

E. PILSBURY,
Mayor of New Orleans.
SAM'L H. KENNEDY,
President State National Bank.
GEO. JONAS,
President Canal Bank.

A. W. BASWORTH, Vice-President Mutual National Bank. P. FOURCHY, President Merchants' Mutual Insurance Company.

JULES CASSARD, Vice-President Germania National Bank.

JNO. G. GAINES, President Citizens' Bank of Louisiana.

A. BOUDINER,
President New Orleans National Bank.
F. E. TUYET,
President Broadway Insurance Company.

JAMES I. DAY,
President Sun Mutual Insurance Company.

DAVID URQUHART,
President New Orleans Savings Institution.
THOS. A. ADAMS,
President Board of Underwriters.

THOS. SEFTON, Vice-President Home Insurance Company.

J. N. MARKS, President Firemen's Insurance Company. JOHN HENDERSON, jr., Vice-President Hibernia Insurance Company. F. RIEKERT, Vice-President Teutonia Insurance Company.

ED. A. PALFREY,
President Factors and Traders' Insurance Company.

JOHN A. DARLING.

Mr. HALE, by unanimous consent, introduced a bill (H. R. No. 4557) for the relief of John A. Darling; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

### PACIFIC RAILROAD.

Mr. McCRARY. I ask unanimous consent to report from the Committee on the Judiciary, for printing and recommitment a substitute for House bill No. 4075, to amend an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 1, 1862," approved July 2, 1864.

Mr. HURD. I object.

### COUNTING ELECTORAL VOTES.

Mr. HOAR. I ask unanimous consent that the House order the Clerk to notify the Senate of the action of the House in appointing members of the commission on counting the electoral votes. There being no objection, it was ordered accordingly.

# MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Gorham, its Secretary, announced that the Senate had proceeded to appoint by a viva voce vote five Senators to be members of the commission provided for in the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon for the term commencing March 4, A. D. 1877, and had chosen Mr. EDMUNDS, Mr. FRELINGHUYSEN, Mr. MORTON, Mr. THURMAN, and Mr. BAYARD.

The message further announced that the Senate had adopted the

following resolution in which the concurrence of the House was re-

quested:

Resolved by the Senate, (the House of Representatives concurring.) That the Sergeants-at-Arms of the Senate and House of Representatives respectively be, and they are hereby, anthorized each to appoint fifty men to serve as a special police at the Capitol during the canvassing of the votes for President and Vice-President, or for such portion of said time as they shall deem necessary, said special police to be paid equally from the contingent fund of the Senate and House of Representatives.

#### ORDER OF BUSINESS.

Mr. HOLMAN. I call for the regular order.
The SPEAKER. The Chair recognizes the gentleman from Ken-

Mr. Knorr.]
Mr. HOLMAN. With the permission of the gentleman from Kentucky I wish to state that immediately after the reading of the Journal to-morrow morning, I will move that the House proceed to consider in Committee of the Whole the legislative, executive, and judicial appropriation bill.

The SPEAKER. The Chair will recognize the gentleman at any time for that motion.

Mr. HOLMAN. It has been understood that the Colorado question was specially set for to-day and for that reason no motion has been

made to go into Committee of the Whole.

The SPEAKER. The unfinished business before the House, which the Chair supposed the gentleman from Kentucky desired to move to postpone, is the report of the select committee on the powers and privileges of the House in counting the electoral votes.

#### REPRESENTATIVE FROM COLORADO.

Mr. KNOTT. I rose to a question of privilege—to call up the resolution reported from the Committee on the Judiciary in regard to the Representative from Colorado.

The SPEAKER. That is a question of higher privilege, because it affects the right of a member to his seat on this floor.

Mr. KNOTT. I ask for the reading of the report.

The Clerk read as follows:

The SPEAKER. That is a question of higher privilege, because it affects the right of a member to his seat on this floor.

Mr. KNOTI. I ask for the reading of the report.

The Clerk read as follows:

The Committee on the Jadiciary, to whom were referred the credentials of James The Committee on the Jadiciary, to whom were referred the credentials of James as member of Congress from the State of Colorado, would respectfully report:

That the Congress of the United States, by an act entitled "An action challe the people of Colorado to form a constitution and State government, and for the admission of said State into the Union on an equal focing with the original States, included in certain boundaries therein designated, to form for themselves a State of government, with the name of the State of Colorado, and declared that such State when formed should be admitted into the Union upon an equal footing with the original States in all respectes whatsoever, as therein the provided.

and the third section declares who shall be entitled to vote for and eligible as delegates to a convention to frame a constitution, provides for the apportionment of representatives, the time and manner and by whom the election should be ordered.

The fourth section provides for the time and designates the place at which the members elected to the convention should meet, and that after organization they should declare, on behalf of the people of said Territory, that they adopted the Constitution of the United States, and that thereupon they should be anthorized the constitution should be republican in form, and make no distinction in elvil or political rights on account of race or color, except Indians not taxed, and not repugnant to the Constitution should be republican in form, and make no distinction in elvil or political rights on account of race or color, except Indians not taxed, and not repugnant to the Constitution of the United States and they principles of the Declaration of Independence: And provided further, That said convention

his delegated authority to another, especially when it rests in confidence partaking of the nature of a trust, and requiring for its proper discharge integrity and understanding—a principle peculiarly applicable to the Government of the United States as one of purely delegated and carefully limited powers. They maintain that Colorado is a State in the Union by force and virtue of the will of Congress, as expressed in the act of March 3, 1875, or not at all.

It is provided in section 3 of article 4 of the Constitution, that "new States may be admitted by the Congress into this Union," but no precise formula in which this power is to be exercised is anywhere prescribed, nor is there anything in the Constitution conferring, or authorizing Congress to confer, such authority upon any other department of the Government whatever, further than the provision in the seventh section of the second article, which requires the assent of the President to every order, resolution, or vote of either House which requires the concurrence of the other, or a vote of two-thirds of each House to give it validity in the event of his disapproval. It is manifest, therefore, that while Congress and Congress alone has the power to admit a State into the Union, it may do so in any manner consistent with the spiritof the Constitution it may deem proper, the one essential fact being that the compact between the United States, acting through its constitutional agency, on the one part, and the newly admitted State on the other, has been mutually agreed to, and is binding on each.

Such appears to have been the accepted theory from the organization of the Government, and an examination of the proceedings had upon the admission of the various States which have been admitted into the Union since the adoption of the Federal Constitution will show that there has been no uniform mode of procedure in such cases at all, while in some instances the method pursued was far more loose and careless than can be pretended in the one under consideration. Inde

be admitted into the Union as a State. A bill to that effect at once passed both Houses, and was approved February 18, and on the 25th of the same month another law was approved allowing the newly admitted State two Representatives in Congress.

On the 8th of April, 1796, President Washington communicated to Congress that among the advantages and privileges secured to the inhabitants of the territory south of the Ohio by act of May 28, 1790, appeared to be the right of forming a permanent constitution and State government, and of admission as a State into the Union, and that he had received proofs of the several requisites to entitle the territory south of the Ohio to such admission, which, together with the constitution upon which they had agreed, be laid before Congress. This message was referred in the Senate to a committee, who reported against the immediate admission of the State so formed, on the ground that Congress must have previously enacted that the whole of the territory ceded by North Carolina should be laid out for one State before the inhabitants could claim to be admitted as a new State Into the Union, even admitting them to amount to 60,000 free persons. A bill was accordingly introduced and passed in the Senate on the 26th of May, 1796, providing for laying out the territory ceded by North Carolina to the United States as one State, and for an enumeration of the inhabitants thereof. The bill was amended in the House so as to read "that the whole of the territory ceded to the United States by North Carolina shall be one State, and the same is hereby declared to be one of the United States of America on an equal footing with the original States in all respects whatever." The Senate agreed to the amendment, and the act was approved June 1, 1796, and thus Tennesses was admitted into the Union without any antecedent enabling act, and upon a constitution adopted without any previous assent of Congress.

On the 7th of February, 1802, a petition was received in the House of Representatives, from the i

government in the following terms: "That the inhabitants of the Territory of Indiana be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States in all respects whatever;" which became a law by the approval of the President, April 19, 1816.

Under the authority thus conferred, the people of Indiana proceeded to frame their constitution and organize a State government. They elected their Representative and Senators in Congress, and appointed their electors in the presidential election, which took place in the fall of that year, who cast their votes and sent them up to the seat of Government. On the assembling of Congress, Mr. Hendricks, the Representative from Indiana, was admitted to his seat, and voted without question upon all subjects which came before that body. A committee was, however, appointed in the Senate on the 2d of December, 1816, to inquire whether any further proceedings were necessary to admit Indiana into the Union, who reported the following resolution, which passed the Senate on the 6th, the House on the 9th, and was approved by the President on the 11th of December, 1816.

"Resolved, That the State of Indiana shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

That Indiana was regarded by both Houses of Congress as a State in the Union before the adoption of this resolution, and that it was passed more as a matter of form, and out of an abundance of caution, than as being actually necessary to consummate her admission, is obvious, not only because her Representative was admitted to his seat at the opening of the session, and because her Senators, who had been elected before the assembling of Congress, were sworn in without question and House, after the validity of sai

Ontion.

The State of Massachusetts having, by act of June 19, 1819, given its consent that the people of that portion of the State theretofore known as the District of Maine should form themselves into an independent State, the people of that district proceeded to erect a State government and frame a State constitution agreeably to the provisions of that act, and Congress, by act March 3, 1820, admitted the State of Maine into the Union upon an equal footing with the other States in all respects whatever.

Maine into the Union upon an equal footing with the other states in an expect whatever.

Next occurred the memorable case of Missouri. It is not deemed necessary to encumber this paper with a detailed recital or labored review of the proceedings which were had in Congress, either upon the proposition for an enabling act or the subsequent bill for the formal admission of the State into the Union, notwithstanding they constituted one of the most interesting episodes in the legislative history of the country; but suffice it to say the people of Missouri having, by authority of the act of March 20, 1820, framed a constitution, the same was referred to a select committee in the House of Representatives, from which Mr. Lowndes, of South Carolina, on the 23d of November, 1820, reported a resolution in the form which had been adopted in several other instances "That the State of Missouri shall be, and is hereby, declared to be one of the United States in all respects whatever."

into the Union on an equal footing with the original States in all respects whatever."

Exception was, however, taken to a clause in the constitution which required the Legislature to pass laws prohibiting the immigration of free people of color into the State. This led to a resistance of the passage of the resolution, and opened up a discussion which finally ended in the adoption of the following proposition, sub mitted by Mr. Clay, of Kentucky, known as the second Missouri compromise, which was approved March 2, 1821: "Missouri shall be admitted into this Union upon an equal footing with the original States in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the constitution, submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States of this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen shall be entitled under the Constitution of the United States: Provided, That the Legislature of said State shall, by solemn act, declare the assent of said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act, upon receipt of which the President, by proclamation, shall announce the fact; whereupon, and without any further proceedings on the part of Congress, the admission of the said State into this Union shall be considered as complete." This condition was subsequently complied with, and the President's proclamation issued August 10, 1821; since which time the fact that Missouri was a State in the Union has never been questioned.

Since the admission of Missouri the practice, in a majority of instances, has been to declare the State admitted into the Union by a formal enactment, taking effect from the date of its

place to call attention.

For instance, by act of June 15, 1836, entitled "An act to establish the northern boundary of Ohio, and to provide for the admission of Michigan into the Union upon the terms therein expressed," the constitution which the people of Michigan had previously framed for themselves, was ratified, and it was provided that when the boundaries set forth in the act should receive the assent of a convention of delegates of said State she should be admitted into the Union on an equal footing with the other States without any further action on the part of Congress. Two conventions were held: one elected in pursuance of an act of the Legislature, which, on the 26th of December, rejected the fundamental condition which had been prescribed by Congress, and the other, a convention of delegates elected from all counties except two, in pursuance of resolutions adopted by meetings of the people themselves in their primary capacity, which, on the 14th of December, 1836, assented to the condition.

in their primary capacity, which, on the 14th of December, tool, assessed to the condition.

President Jackson, who was required by the act to issue his proclamation recognizing Michigan as a State in the Union upon a compliance with the condition therein prescribed, said that had this condition of things arisen during the vacation of Congress he would have recognized the action of the convention originating

with the people themselves, but as Congress was in session he deemed it proper to lay the matter before it for decision. The subject was accordingly referred to the Judiciary Committee in the Senate, which reported a bill which became a law, by the approval of the President, on the 26th of January, 1837, declaring "that the State of Michigan shall be and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

On the next day Mr. Crary, member of Congress elect from the State of Michigan, presented himself to be sworn in, when Mr. Robertson objected on the ground that Michigan was not a State when Mr. Crary was elected, but the House decided by a vote of 150 yeas to 32 nays that he should be qualified as a member of the House, which was accordingly done and he took his seat as such. On the same day, January, 27, 1837, the Senators from Michigan were sworn in and seated without objection.

on the next day Mr. Crary, member of Congress elect from the State of Michigan presented himself to be sworn in, when Mr. Robertson objected on the ground that Michigan was not a State when Mr. Crary was elected, but the House decided thouse, which was accordingly done and he took his seat as such. On the same day, January, 37, 1837, the Senators from Michigan were sworn in and seated without objection. The provision of Virginia known as West Virginia had, by a convention assembled at Wheeling, on the 39th of November, 1981, framed a constitution with a view of becoming a separate and independent State; that at an election held in various approved and alopted by the qualified voiers of said proposed State, on the 3d of May, 1992; that the Legislature of Virginia, on the 30th of May, 1992, gave its consent to the formation of a new State within the jurisdiction of the State of Virginia, some of the promation of a new State within the jurisdiction of the State of Virginia of the said State of West Virginia be, and is increby declared to be, one of the United States for America, and admitted into the United States of America, and admitted into the United States of America, and admitted into the Provided, alseage, That this act shall not take effect until after the proclamation of the President of the United States bereinafter provided for."

The second section of the act shall not take effect until after the proclamation of the President of the United States breeinafter provided for."

The second section of the act shall not take effect until the three provision in their constitution, and proceeds to declare that "when the people of New Stripting shall, through said convention, and by a vole to be taken at a election to be held within the limits of the said State, at such time as the convention of the United States to issue his proclamation stating the fact, and therepon this said shall the verification of the American and the provision of the Federal Union, have been copied literally, certainly substantially, in

United States,) and that within a certain time after the happening of a particular event it shall be a member of the Union, as was the case with Missouri and some others.

United States.) and that within a certain time after the happening of a particular event it shall be a member of the Union, as was the case with Missouri and some others.

It may not be improper to observe, in passing, that on the very day on which the act for the admission of Nevada into the Union was approved an act, in precisely similar terms, entitled "An act to enable the people of Colorado to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," was also approved; but that, not-withstanding that enactment, the people of the Territory continued to occupy their former relations to the United States, simply because they failed to avail themselves of the proffered privilege of becoming an independent political community—in other words a State—on the terms and in the manner proposed, and of thus rendering themselves competent as a body-politic to assent to the compact necessarily implied in the very terms "admitted into the Union," which of themselves import the concurrence of two separate and independent wills, one proposing to enter the Union and the other consenting thereto, or one proposing to the other to enter upon terms consistent with the Constitution, and the other accepting the proposition by a compliance with the terms prescribed.

It may be objected to this view, however, that Congress should first be satisfied as to whether the constitution of the new State is republican in form; whether the proper boundaries have been determined upon; whether the population is sufficient; whether the proper qualifications of the elective franchise have been fixed; whether the character of the population for virtue and intelligence is such as to make it desirable that they should be admitted into the Union upon an equality with the other States, &c., but it will be observed that these are all mere questions of policy; and while it would certainly be prudent in Congress to be fully satisfied upon all such points before admitting a

pursuance thereof become the supreme law of the newly admitted State, anything in its constitution in was to the contrary nowithstanding. Consequently any provision in its constitution inconsistent with the Federal Constitution is abrogated and annulled by the very fact of its entering the Union on an equality with the other States.

In view of the firth already stated, that it would certainly be more prudent for Concrete other and the state of the contract of the contract of the state of the contract of the contract of the contract of the state of the contract of the admission of a new State a has been contract of the admission of a new State a has been contract of the admission of a new State a has been deep or the contract of the contrac

Assuming that the people of Colorado had in point of fact performed in good faith every condition prescribed in the act in strict conformity with its provisions, the present Congress would be bound in good morals to recognize them as a State and admit them to representation in the Senate and House, even if the President had willfully refused to issue the proclamation provided for, and the only possible pretext for a failure upon the part of Congress to discharge its solemn obligation in that regard would be found in the quibble that the people of Colorado had agreed that their admission should depend finally upon the issual of a proclamation willfully withheld without any fault upon their part, and after they had religiously observed and performed every obligation resting upon them.

Believing that they have discharged those obligations, and that every condition upon which Colorado was to be admitted into the Union has been complied with, your committee would respectfully recommend the adoption of the accompanying resolution.

J. PROCTOR KNOTT. Chairman.

J. PROCTOR KNOTT, Chairman.

Resolved, That Colorado is a State in this Union, and that James B. Belford, Repesentative-elect from said State, be sworn and admitted to his seat as such.

Mr. KNOTT. I now yield to my colleague on the committee, the gentleman from Ohio, [Mr. HURD.]
Mr. MILLS. I ask the gentleman from Ohio to yield for a motion

to adjourn

Mr. HURD.

Mr. HURD. I will do so.
Mr. HOLMAN. I trust the House will not adjourn.
The SPEAKER. Does the gentleman from Ohio yield for a motion Mr. HURD. I do.

LEAVE OF ABSENCE.

Pending the question on the motion to adjourn, By unanimous consent, leave of absence was granted to Mr. Roberts, for one day on account of sickness.

#### WITHDRAWAL OF PAPERS.

On motion of Mr. HARDENBERGH, by unarimous consent, leave

was granted to withdraw from the files of the House the papers in the case of Mary H. Noonan.

On motion of Mr. MacDOUGALL, by unanimous consent, leave was granted to withdraw from the files of the House the papers in the case of John Ammahie.

The question being taken on the motion of Mr. Mills, it was agreed -ayes 95, noes 32.

And accordingly (at four o'clock and thirty-five minutes p. m.) the House adjourned.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Memorial of the Kansas City Board of Trade, asking for the repeal of the tax on banks, to the Committee on Banking and Currency.

By Mr. ATKINS: the petition of J. M. Hart and other citizens of Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. BAKER, of Indiana: The petition of George W. Mummert and 54 other citizens of Wewaka, Indiana, of similar import, to the

By Mr. BOONE: The petition of W. H. Hale and others, of Ken-

tucky, of similar import, to the same committee.

By Mr. CANNON, of Utah: The petition of citizens of Kansas City, Summit County, Utah Territory, of similar import, to the same com-

By Mr. CANNON, of Illinois: The petition of L. J. Neinstein and

others, of similar import, to the same committee.

Also, the petition of Mr. Glick, for the establishment of a veterinary bureau in connection with the Agricultural Department, to the Com-

bureau in connection with the Agricultural Department, to the Committee on Agriculture.

By Mr. COX: The petition of Morris Pinchauver, against the passage of the Southern Pacific Railroad bill protesting against Tom Scott using his influence in favor of said bill, and urging the passage of the bill concerning the Lake Tapoe and Colorado Canal and Granger Railroad, to the Committee on the Pacific Railroad.

Also, the petition of Caroline A. Soule, Sophia C. Hoffman, M. Louisa Thomas, and other citizens of New York, for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex.

States from disfranchising United States citizens on account of sex, to the Committee on the Judiciary.

By Mr. GAUSE: The petition of citizens of Cherry Valley, Arkansas, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HALE: The petition of Mary A. Mitchell, of Unity, Maine,

by Mr. HAMILTON, of Indiana: Two petitions, signed respectively by 22 citizens of Indiana and 29 citizens of Indiana, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Allen County, Indiana, for the removal of limitations in the pension laws and that pensioners receive arrears of pensions back to the date of their discharge, to the Com-

mittee on Invalid Pensions.

By Mr. JENKS: The petition of 120 citizens of Pennsylvania, of

similar import, to the same committee.

Also, two petitions of citizens of Clarion County, Pennsylvania, of similar import, to the same committee.

By Mr. MAGOON: Resolutions and memorial of Milwaukee Clear-

ing-House Association, favoring the repeal of the tax on deposits and capital of banks, to the Committee of Ways and Means.

By Mr. McCRARY: The petition of Mrs. J. C. McKinney, Etta R. Holmes, Mrs. E. S. Henderson, and others—164 men and 194 women of Iowa-for a sixteenth amendment to the Constitution of the United

States prohibiting the several States from disfranchising United States citizens on account of sex, to the Committee on the Judiciary. By Mr. NEW: The petition of citizens of Indiana for the removal of the limitations of the pension laws, to the Committee on Invalid Pensions.

By Mr. O'NEILL: Memorial of representatives of historical societies of the several States, for the passage of the resolution providing for the purchase of the papers of the General Count de Rochambeau, to

the Joint Committee on the Library.

Also, the petition of Theresa Lewis and 354 others, of Pennsylvania, for a sixteenth amendment to the Constitution of the United States

relating to woman's suffrage, to the Committee on the Judiciary.

By Mr. ROBBINS, of Pennsylvania: The petition of Albert Cingria,
of the District of Columbia, for compensation for damages done to
his property by order of the board of public works, to the Committee for the District of Columbia.

By Mr. SEELYE: The petition of citizens of Amherst, Massachusetts, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SHEAKLEY: The petition of citizens of Mercer County, Pennsylvania, for the removal of all limitations in the pension laws,

to the Committee on Invalid Pensions.

By Mr. THORNBURGH: The petition of Henry Clear and other citizens of Anderson County, Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WADDELL: The petition of citizens of North Carolina, of

similar import, to the same committee.

By Mr. WALLING: The petition of James M. Morris, Amos Baker, and others, of Pickaway and Fairfield Counties, Ohio, for a repeal of the limitations in the pension laws, to the Committee on Invalid Pen-

By Mr. WATTERSON: The petition of citizens of Lonisville, Kentucky, for the repeal of the tax on banks, to the Committee on Banking and Currency.

### IN SENATE.

## WEDNESDAY, January 31, 1877.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D. The Journal of yesterday's proceedings was read and approved.

#### HOUR OF MEETING.

Mr. MORTON. Mr. President, in order that some reports may be made to the Senate to-morrow, before the main business of the day begins, I move that when the Senate adjourn to-day it adjourn to meet at eleven o'clock to-morrow.

The motion was agreed to.

# CREDENTIALS.

The PRESIDENT pro tempore presented the credentials of John R. McPherson, elected by the Legislature of the State of New Jersey a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

#### SENATOR SWORN IN.

Mr. COOPER. Mr. President, in the absence of the Senator from West Virginia [Mr. DAVIS] I present the credentials of Frank Hereford, elected by the Legislature of the State of West Virginia a Senator from that State to fill the vacancy caused by the death of Allen T. Caperton. I ask that the credentials be read and the oath of office administered to Mr. Hereford.

The credentials were read; and the oaths prescribed by law having been administered to Mr. HEREFORD, he took his seat in the Senate.

### EXECUTIVE COMMUNICATION.

The PRESIDENT pro tempore laid before the Senate a letter of the Acting Commissioner of Patents, transmitting the annual report of the operations and condition of the Patent Office for the year 1876 as required by section 494 of the Revised Statutes; which was referred to the Committee on Patents, and ordered to be printed.

## THE ELECTORAL COMMISSION.

The PRESIDENT pro tempore. The Chair will lay before the Senate a communication from certain associate justices of the Supreme Court, which will be read by the Secretary.
The Secretary read as follows:

To the President pro tempore of the Senate of the United States:

Pursuant to the provisions of the secand of the Cruca States:

"An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4. A. D. 1877," approved January 29, 1877, the undersigned associate justices of the Supreme Court of the United States assigned to the first, third, eighth, and ninth circuits respectively, have this day selected Hon. Joseph P. Bradley, the

associate justice of the Supreme Court assigned to the fifth circuit, to be a member of the commission constituted by said act.

Respectfully submitted.

NATHAN CLIFFORD,
SAM. F. MILLER,
STEPHEN J. FIELD,
W. STRONG,
Associate Justices of the Supreme Court of the United States
assigned respectively to the First, Third, Eighth, and Ninth Circuits.
WASHINGTON, January 30, 1877.

The PRESIDENT pro tempore. The communication will be placed on the files of the Senate.

#### PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial of the Board of Trade of Kansas City, Missouri, praying for the repeal of the law levying taxes on capital and deposits of banks; which was referred to the Committee on Finance.

the Committee on Finance.

Mr. DAWES. I have had placed in my hands the memorial of a large number of business men of the city of Washington and the District of Columbia, praying for the passage of the bill placing the police under the commissioners of the District. I do not know that the Senate has had official notice of the action of the House upon that bill. I think it would be better to lay this memorial on the table and perhaps have it read if the bill comes up for the consideration of the Senate.

The PRESIDENT protesmore. The recognical will be a first the consideration of the Senate.

The PRESIDENT pro tempore. The memorial will lie on the table. Mr. LOGAN presented a petition of soldiers of Illinois, praying the passage of a law for the equalization of bounties; which was ordered to lie on the table.

He also presented a petition of citizens of New York, praying for the passage of the bill (H. R. No. 58) to equalize the bounties of sol-diers who served in the late war for the Union; which was ordered to lie on the table.

He also presented two petitions of citizens of Illinois, praying for the passage of an act allowing pensioners arrears of pensions and

the passage of an act allowing pensioners arrears of pensions and that they receive in all cases pensions from the date of discharge; which were ordered to lie on the table.

Mr. MAXEY presented a petition of citizens of Elmo, Kaufman County, Texas, praying the passage of a law to enforce the act of July 24, 1866, to aid in the construction of telegraph lines, and for other purposes, and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CHAFFEE presented a petition of citizens of Colorado, praying that pensions may commence from the date of the soldier's discontinuation.

Mr. CHAFFEE presented a petition of citizens of Colorado, praying that pensions may commence from the date of the soldier's discharge; which was ordered to lie on the table.

He also presented a resolution of the Legislature of the State of Colorado, praying Congress to graduate the price of public lands in that State not susceptible of irrigation; which was referred to the Committee on Public Lands.

Mr. SHARON presented a resolution of the Legislature of the State of Nevada, in favor of a law granting pensions to the surviving soldiers and sailors of the Mexican war; which was ordered to lie on the table.

the table.

Mr. MERRIMON presented the petition of J. A. Reagan, of Buncombe County, North Carolina, praying for an amicable adjustment of the questions arising out of the late presidential election; which was ordered to lie on the table.

He also presented the petition of R. G. Dyrenforth, examiner in the United States Patent Office, praying to be re-imbursed for money's expended for his defense against charges brought by George Olney, of Brooklyn, Long Island, in the matter of the interference of Olney vs.

Martin in certain patent cases before the Commissioner of Patents; which was referred to the Committee on Patents.

He also presented the petition of Joseph W. Reford, praying that his letters-patent for an improvement in the apparatus and process

his letters-patent for an improvement in the apparatus and process of rectifying and oxygenating liquors may be antedated so as to take effect July 18, 1866; which was referred to the Committee on Patents.

Mr. WITHERS presented the petition of D. B. Conrad, of Virginia, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. WHYTE presented the memorial of Charles J. Holloway, of Maryland, protesting against the passage of the bill (H. R. No. 431) for the relief of the heirs of William A. Graham; which was referred to the Committee on Patents.

He also presented a memorial of citizens of Maryland in favor of the passage of the bill to equalize bounties, relating to pensions to

the passage of the bill to equalize bounties, relating to pensions to soldiers of the Mexican, Florida, and Black Hawk wars, and in regard to arrearages of pensions; which was ordered to lie on the

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. ADAMS, its Clerk, announced that the House had passed a bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes; in which it requested the

oncurrence of the Senate.

The message also announced that, the President of the United States having returned to the House of Representatives, in which it originated, with his objections thereto in writing, the bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia, and to transfer its duties to the commissioners of the District of Columbia, the House of Representa-tives proceeded, in pursuance of the Constitution, to reconsider the and had passed it by a two-thirds vote, notwithstanding the same.

The message further announced that the House had passed a resolution for the printing of 1,000 extra copies of the report of the board of health of the District of Columbia, for the year 1876, for use and

distribution by said board.

The message also announced that the House had appointed Mr. HENRY B. PAYNE of Ohio, Mr. EPPA HUNTON of Virginia, Mr. Josiah G. Abbott of Massachusetts, Mr. George F. Hoar of Mr. Hoar of M chusetts, and Mr. JAMES A. GARFIELD of Ohio commissioners on the part of the House authorized by section 2 of the act of Congress enti-tled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877.

The message further announced that the House had agreed to the amendments of the Senate to the joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserved and stitched copies of the House compilation entitled Counting the

Electoral Vote.

#### ADMISSION TO THE CAPITOL DURING COUNT.

Mr. MERRIMON. The Committee on Rules, who were directed by a resolution of the Senate to inquire whether it be necessary to adopt any measures with reference to admissions to the Capitol during the counting of the electoral votes, have had the same under considera-tion. Yesterday that committee made a partial report. They have further considered the resolution in conjunction with the Committee on Rules of the House of Representatives, and have instructed me to report the resolution agreed to by the committee of the House of Representatives and the committee on the part of the Senate, and

to ask that it be considered.

The PRESIDENT pro tempore. The Senator from North Carolina, from the Committee on Rules, reports a resolution, which will be

The Chief Clerk read as follows:

Resolved. That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to that portion of the Capitol set apart for the use of the House and its officers except upon tickets to be issued by the President of the Senate and the Speaker of the House, and that the tickets to be issued under this resolution shall be distributed under the direction of the Committees on Rules of the two Houses.

Mr. HAMLIN. I move to amend the resolution by striking out, after the word "distributed," the words "under the direction of the Com-mittees on Rules of the two Houses" and insert "equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives."

I only wish to say that by the resolution you may call upon the Committee on Rules on the part of the Senate to perform ministerial service, clerical service, or whatever you may choose to call it. I think it a more appropriate way, after the Houses issue these tickets, to put them in the hands of the Sergeant-at-Arms of each branch and let him deliver them to members instead of compelling the committee to do it. It disposes of the tickets precisely in the same way that they are now disposed of, only in another channel. I hope the Senate will excuse the committee from doing that service; if not, I shall regret it

Mr. MERRIMON. The committee came to the conclusion that only about a certain number could be accommodated in the gallery of the

House.

Mr. INGALLS. How many?

Mr. MERRIMON. About twelve hundred. That would allow each member about three tickets, allowing a larger number to certain offimember about three tickets, allowing a larger number to certain officers whom it would be necessary should have some extra tickets, and it was thought better to have this matter under the direction of the two Committees on Rules. If it should be found that more persons could get into the galleries they might direct a larger number to be issued; if it should be found that they were too much crowded they would regulate that duly. A copy of this resolution was to be referred to the House of Representatives and I do not know whether they have sent their action to this body or not. Those are the considerations which move the committee to take this course.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Maine.

Mr. HAMLIN. The Senate will note that I do not propose in any way or manner to change the final result arrived at; I only ask that it shall be done through another channel, that the Senate will not impose upon a committee of this body the ministerial duty of distributing these tickets, but let our Sergeant-at-Arms do that for the Senate instead of compelling the committee to do it.

Mr. MORRILL. As has always been done heretofore.
Mr. HAMLIN. Then say so. My friend from Vermont says that
has always been the way; then let us say that it shall be the way

Mr. CLAYTON. Let the resolution be reported as proposed to be amended.

The PRESIDENT pro tempore. - The resolution as amended will be

The Chief Clerk read the resolution as proposed to be amended, as

Resolved, That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to that portion of the Capitol set apart for the use of the House and its officers, except upon tickets to be issued by the President of the Senate and the Speaker of the House, and that the tickets to be issued under this resolution shall be distributed equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives.

Mr. MERRIMON. The resolution as reported was agreed to by a majority of the committees. It does not impose the duty upon the Committee on Rules of distributing these tickets. They are to be distributed under their direction, and the truth is that there will be very little embarrassment or trouble to anybody. The tickets will be prepared, the Senate's share of them, sent to the President of the Senate, the chairman of the Committee on Rules, and he will direct the Senate, Arms or some proper officer to distribute them through the Sergeant-at-Arms or some proper officer to distribute them through the mail so that there will be no trouble or embarrassment under it to anybody. It was thought wise to keep the matter under the direction of the Committee on Rules, because we may want to increase the number if we find there shall be room for additional persons or we may want to decrease the number if we find the galleries too much

crowded.

Mr. HAMLIN. Before the Senator sits down I want to put a question to him, and before doing that I wish to state to the Senate that I was unavoidably absent from the meeting of this committee this I was unavoidably absent from the meeting of this committee this morning, being compelled to attend the meeting of another committee. I want to know from the Senator whether this includes the gallery? It does not say so.

Mr. MERRIMON. O, yes; this includes the gallery. It embraces all that portion of the Capitol that is within the exclusive jurisdiction of the House of Representatives.

Mr. BLAINE. It does not say so.

Mr. MERRIMON. Let the resolution be read again.

The Chief Clark again read the resolution

The Chief Clerk again read the resolution.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Maine.

Mr. SAULSBURY. I should like to inquire of the Senator from North Carolina what part of the Capitol is under the exclusive control of the House of Representatives, for I confess I do not know. This proposition seems to exclude persons not only from the floor of the House and from the gallery, but from every part of the Capitol that is under the exclusive control of the House of Representatives.

Mr. MERRIMON. The Chamber of the House of Representatives, and galleries, and the cloak-rooms, and the rooms adjoining that Chamber, and perhaps it might also be construed to embrace the committee-rooms under the direction of the House of Representatives.

Mr. HAMLIN. If the Senator will allow me, I think the usual understanding has been that all south of the Rotunda is under the control of the House, and that all north of it is under the control of the Senate; I suppose the Rotunda is a sort of neutral ground where we both meet on equal terms.

Mr. SAULSBURY. I am not prepared to vote for exactly that resolution. There will be a great many persons, doubtless, here from various parts of the country, many of whom have never yet seen the capital of their country. Under the operation of this resolution, during the session of the two Houses in joint convention, they could not see a portion of this Capitol when it would not be the least inconvenient to the members of the Senate and House of Representatives for them to do so.

Now I am in favor of a resolution which, if not so broad in its terms Now I am in favor of a resolution which, it not so broad in its terms as to enable the people to look down from the galleries upon the two Houses in Congress assembled, ought to give them the privilege of going to every other part of the Capitol outside, provided it is not inconvenient to the two Houses. In fact, this is a question which interests the whole country. We are to ascertain who is to be the Chief Executive of this country for the next four years, and it is a question in which the people of every portion of the country feel some interest. Let every man have a chance to go into the galleries. At least I am democratic enough to be in favor of letting every man go into the gallery who can get admission.

go into the gallery who can get admission.

Mr. MERRIMON. That matter was considered, and the committee upon consideration determined that it would be wise to exclude everybody from the Capitol during the counting of the electoral vote. Every American citizen will have the right to come into the Capitol as he has to-day; but it was deemed perfectly right and proper that Congress should regulate how persons should come into the presence of the two Houses sitting in joint assemblage for the purpose of counting the votes. It would not be wise to have disorder there or to put things in such condition as that disorder could prevail there. True it is that everybody has the right to know what is going on in Congress while this vote is being counted; but everybody cannot be there; everybody cannot exercise his right to look upon the count. It is therefore deemed wise to allow the representatives of the people to have each a certain number of tickets to use as he pleases, inviting such of his constituents as he sees proper into the galleries to see the vote counted, so that the whole American people, through their representatives, shall see what is done there and have the advantage of being present. Only a number can be present anyhow, and we could not devise any means that was more just than to allow the representabody from the Capitol during the counting of the electoral vote.

tives of the people to decide who of the people should be present. Three tickets will be issued to each member of the House and each

Senator, and each will invite whom he pleases to be present.

Mr. SHERMAN. There does not seem to be any difference of opinion about what ought to be done, but that portion of the resolution which speaks of the part of the Capitol under the exclusive jurisdiction of the House of Representatives is not clearly defined. I think it ought to be "the south wing" of the Capitol extension. If my friend will allow that amendment to be made, I think there will be no objection to it

Mr. MERRIMON. What does the Senator suggest?
Mr. SHERMAN. I propose to insert instead of the words "that portion of the Capitol set apart for the use of the House and its officers" the words "the south wing of the Capitol extension." We

know exactly what that means.

Mr. MERRIMON. I understood—and that was the understanding of the committee—that those portions of the Capitol that the House had control of were well ascertained, well defined, and that there will be no doubt about that. I will mention, furthermore, that it was not deemed wise to put into this resolution all the details the committee had an understanding about, how the tickets should be issued or what should be put upon them, or that a certain ticket should be provided. A portion was set apart for the diplomatic gallery, a por-

tion was set apart for the President, but to the rest of the gallery everybody is to be admitted who shall have a ticket.

Mr. SHERMAN. My friend does not catch my idea. The Senator from Maine says that all south of the Rotunda is under the guardianship of the House of Representatives. That includes the old Hall of the House, the place where the statuary is to be found, and might exclude visiting citizens from seeing the ordinary sights in the Capitol. I do not think there is any intention to do that, and if the resolution is intended simply to protect the place where this ceremony is to go on it should be confined to the wing of the House and not to other

portions of the Capitol, which ought to be open to the public.

Mr. MERRIMON. The wing of the House embraces I suppose the corridors around it, and the lobbies.

Mr. SHERMAN. Yes, it embraces those.

Mr. MERRIMON. I will mention to the Senator that the police force has been increased by a hundred additional police, who have been ordered for the purpose of keeping order through the Capitol and enabling everybody to see what may be seen outside of the Hall of Representatives and its galleries. Gentlemen who seem to be very familiar with the House of Representatives and its appendages thought the language of the resolution was the proper language to accomplish that purpose

Mr. SARGENT. I should like to ask the Senator a question. I wish to understand if the words "Members of the House" are under-

wish to understand it the words "Members of the House" are understood as including the Delegates?

Mr. MERRIMON. Yes, sir.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Maine, [Mr. HAMLIN.] Does the Senator from Ohio [Mr. SHERMAN] suggest an amendment?

Mr. SHERMAN. I will withdraw it for the present.

The amendment of Mr. HAMLIN was agreed to.
Mr. SHERMAN. I will now submit the amendment I suggested. I do it simply to define the part embraced. If the Senator objects to it I do not care anything about it.

Mr. MERRIMON. The purpose of the committee, I say again, was simply to take immediate control and exclusive control of the Hall of

whole of that wing to the carrying out of that arrangement. I move to strike out the words "that portion of the Capitol set apart for the use of the House and its officers" and insert "the south wing of the Capitol extension;" so as to read:

That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to the south wing of the Capitol extension, except upon tickets to be issued by the President of the Senate and the Speaker of the House, and that the tickets to be issued under this resolution shall be distributed equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives.

Mr. MERRIMON. I suggest to the Senator from Ohio that that excludes persons from the corridors, from the restaurant-rooms, and from many places not connected with the Hall of the House of Rep-

Mr. SHERMAN. The great trouble is that the words proposed by the Senator from North Carolina are indefinite and uncertain. According to the Senator from Maine they would cover all that part of the Capitol building lying south of the Rotunda, and would exclude the people of the United States who come here to see the Capitol from the Old Hall of the House and the restaurant and all those places. As I propose to amend the resolution I think it confines the operation of the rule simply to the Hall in which these proceedings are held. I do not want to interfere with a matter of this kind. If the Senator desires let him say "the Hall of the House of Representatives and the galleries," but make it as liberal as possible and let the people roam through this building as much as possible.

Mr. MERRIMON. I concur in that very heartily, but we thought we had accomplished that purpose exactly.

Mr. HAMLIN. And accomplished more. Mr. MERRIMON. I wish to say that if this resolution is amended

we shall have to change the form of it and make it a concurrent resolution so that our action may go to the House for concurrence.

Mr. SHERMAN. That would be better.

Mr. HAMLIN. Is not this a concurrent resolution?

Mr. SHERMAN. It does not purport to be.

Mr. HAMLIN. It ought to be. It is hardly proper that a resolution of this body should say what should be the action at the other end of

Mr. MERRIMON. If I may state the fact, a resolution like this will be reported to the House for the concurrence of that body.

Mr. HAMLIN. This resolution should be changed to a concurrent

resolution.

Mr. MERRIMON. I have no objection to that. Mr. HAMLIN. It should read, "Resolved by the Senate, the House concurring

Mr. MERRIMON. I submit in that case it would require the aproval of the President.

Mr. HAMLIN. No; it is a concurrent resolution, not a statute. is simply a concurrent resolution, precisely like the resolution which we passed yesterday in reference to the increase temporarily of the police force

Mr. MERRIMON. I take it that a concurrent resolution, technically speaking, is a joint resolution, and a joint resolution has the

force and effect of a statute and must be approved by the President.

Mr. HAMLIN. This is a concurrent resolution which is in the nature of a rule. The President does not want to sign it to give it effect any more than he would have anything to do with the planetary system.

Mr. SHERMAN.

Mr. SHERMAN. It falls within the nature of a rule.
Mr. MERRIMON. So it does; but the Constitution provides that
every resolution which requires the concurrence of both Houses shall every resolution which requires the concurrence of both Houses shall have the approval of the President. I have no objection myself personally to any course that the Senate see proper to take. I presented the result of the deliberation of the two committees and I was instructed to report this result. I have done so and explained the ground upon which they acted, and I am content now to take such course as the Senate may see fit.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Ohio, to strike out the words "that portion of the Capitol set apart for the use of the House and its officers" and insert "the south wing of the Capitol extension."

The amendment was agreed to.

The amendment was agreed to.

Mr. HAMLIN. I move to amend by prefixing the concurrent form to the resolution, so as to read:

Resolved by the Senate, (the House of Representatives concurring.)

The amendment was agreed to.

The resolution, as amended, was agreed to.

Mr. MERRIMON subsequently said: On scrutinizing the resolution which has just passed the Senate regulating the manner of issuing tickets on the counting of the electoral votes, I find it does not execute the purpose contemplated at all. On consultation with the Senator from Maine, [Mr. HAMLIN,] who had given the matter considerable consideration, he is content if the Senate shall consent to an amendment that I desire to offer. I move to reconsider the vote by which the resolution was adopted.

The motion to reconsider was agreed to.

Mr. MERRIMON. I move to amend the resolution as amended by striking out all after the words "Speaker of the House" where they occur last in the resolution, and inserting what I send to the Clerk's

The PRESIDING OFFICER, (Mr. CLAYTON in the chair.) The

amendment will be reported.

The CHIEF CLERK. It is proposed to amend the resolution by striking out the following words:

And that the tickets to be issued under this resolution shall be distributed equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives.

And insert in lieu of those words the following:

And the tickets, as assigned by the Committees on Rules of the Senate and House of Representatives to be issued to Senators and Representatives and others, shall be distributed by the Sergeants-at-Arms of the Senate and House of Representatives.

So as to read, if amended:

Resolved by the Senate, (the House of Representatives concurring,) That during the counting of the votes for President and Vice-President no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to the south wing of the Capitol extension, except upon tickets to be issued by the President of the Senate and Speaker of the House; and the tickets as assigned by the Committees on Rules of the Senate and House of Representatives to be issued to Senators and Representatives and others shall be distributed by the Sergeants-at-Arms of the Senate and House of Representatives.

Mr. MERRIMON. I will just make one remark. If the resolution stands as it was first adopted it would exclude the judges of the Supreme Court, the President, the General of the Army, and many other persons who ought to have tickets, from having tickets at all. The object of this amendment is to obviate that difficulty.

Mr. ALLISON. Under this resolution how are the tickets distributed, equally to the Senate and the House?

Mr. MERRIMON. Yes, sir; and to certain other persons who are embraced as well, the judges of the Supreme Court, Cabinet officers, and generals of the Army.

Mr. WINDOM. Are not those officials entitled to the floor now?

Mr. MERRIMON. They are entitled to the floor; but their families would not be entitled to the benefit of the gallery unless this amendment should be adopted.

Mr. WINDOM. I did not understand the argument of the Sena-

Mr. DAWES. Is it the understanding of the Senator from North Carolina that the tickets distributed among Senators and Representatives are to be distributed equally?

Mr. MERRIMON. Yes, sir.
Mr. DAWES. I did not hear that in the amendment.
Mr. ALLISON. I ask that the proposition as it will stand as amend-The PRESIDING OFFICER. It will be reported.

The Chief Clerk read the resolution as proposed to be amended.

The amendment was agreed to.

The resolution, as amended, was agreed to.

#### REPORTS OF COMMITTEES.

Mr. WINDOM. I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia, to report it back and recommend its passage. I ask unanimous consent for its present consideration

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. COCKRELL. I object, and ask that it be placed on the Cal-

The PRESIDENT pro tempore. Objection being made, the bill will go over

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was

referred the bill (S. No. 987) for the transfer of Paymaster Robert Burton Rodney from the retired list to the active list of the Navy, reported adversely thereon; and the bill was postponed indefinitely. He also, from the same committee, to whom was referred the bill (S. No. 981) for the better protection of life and property at sea,

reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill

(S. No. 1028) for the relief of William Talbert, of Washington, District of Columbia, reported adversely thereon; and the bill was

postponed indefinitely.

postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 1574) to provide for the repeal of all laws authorizing the appointment of civil engineers in the Navy, &c., reported adversely thereon; and the bill was postponed indefinitely.

Mr. JOHNSTON, from the Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Harriet de la Palm Baker, praying compensation for certain services rendered by their ancestor in the revolutionary war, submitted an adverse report thereon; which was ordered to be printed; and he asked to be discharged from its further consideration; which was agreed to.

Mr. COCKRELL, from the Committee on Claims, to whom was referred the bill (H. R. No. 3489) for the relief of Captain Samuel Adams, reported adversely thereon; and the bill was postponed indefinitely.

Adams, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill
(S. No. 1127) for the relief of J. B. McCullough, Mrs. L. S. Fountain,
(administratrix of James Fountain) and John Howzo, surviving partner of the firm of Howzo & Hendricks, reported it with amendments,
and submitted a report thereon; which was ordered to be printed.

Mr. COCKRELL. I am also directed by the same committee, to
whom was referred the petition of Obadiah B. Latham and Oliver
S. Latham praying payment of balance alleged to be due them as

S. Latham, praying payment of balance alleged to be due them as contractors for the construction of the United States custom-houses at Buffalo and Oswego, New York, in compliance with the request of the claimants, to report back the papers to the Senate, and ask that the committee be discharged from the further consideration of the case without any prejudice to the claimants. The case was not considered at all; there was no time to act upon it at this session, and

sidered at all; there was no time to act upon it at this session, and we simply report it back in order that the committee may be relieved from its further consideration.

The PRESIDENT pro tempore. The committee will be discharged and the petition will lie on the table, if there be no objection.

Mr. CLAYTON, from the Committee on Indian Affairs, to whom was recommitted the bill (S. No. 1142) to authorize and empower the Secretary of the Interior to adjust and settle the account of the Kaskaskia, Peoria, Piankeshaw, and Wea Indians, reported it with amendments.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (H. R. No. 492) for the relief of William G. Ford, of Tennessee, administrator of John G. Robinson, deceased, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

PRESIDENT'S MESSAGE ON ELECTORAL BILL.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution to print 10,000 additional copies of the President's mes-

sage, announcing his approval of the act to provide for counting the electoral vote, have instructed me to report it with an amendment. The amendment restricts the number to 2,500. I ask the

The PRESIDENT pro tempore. The resolution will be reported.

The CHIEF CLERK. The resolution as referred to the committee is in the following words:

Resolved, That 10,000 additional copies of the message of the President of the United States announcing his approval of the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, be printed for the use of the Senate.

The committee report to strike out "10,000" and insert "2,500." Mr. THURMAN. Instead of 10,000 copies? Mr. ANTHONY. Yes, sir. Mr. THURMAN. I hope the amendment will not be agreed to. Mr. SHERMAN. My colleague will remember that that message

Mr. SHERMAN. My colleague will remember that that message has been published in every newspaper in the United States; it has been published in every newspaper in Ohio.

Mr. MERRIMON. What is that?

Mr. SHERMAN. The President's short message approving the electoral bill. I have no doubt a million copies by this time have been printed, and it is merely a waste of the public money to print it at all in this form. I do not see any use in printing it; everybody has read it. It is short and will not occupy more than a page of the CONGRESSIONAL RECORD; yet you cannot send it out without paying a cent postage on it; and, as it has been printed in every newspaper in the United States, I think the printing of 2,500 copies is a useless expenditure, but it will not cost much.

The amendment was agreed to. The resolution, as amended, was agreed to; there being on a divi-

sion-ayes 27, noes 14.

#### ADVANCEMENT IN THE NAVY.

Mr. ANTHONY. I am directed by the Committee on Naval Affairs, to whom was referred the bill (S. No. 1068) to repeal certain portions of the Revised Statutes of the United States relative to advancement in the Navy, to report it without amendment; and I ask for its present consideration.

By unanimous consent, the Senate, as in Committee of the Whole, proceded to consider the bill.

Mr. WRIGHT. I should like to have the Senator from Rhode

Island explain the bill.

Mr. ANTHONY. The present provision of law authorizes the President to nominate to the Senate for advancement in his grade any officer of the Navy thirty numbers for extraordinary heroism in the late war. The time has come when all the officers who manifested extraordinary heroism have been rewarded, and some who did not; and the opinion of the committee is that such applications should

Mr. BOUTWELL. What is the section?
Mr. ANTHONY. Section 1506.
Mr. BOGY. I should like to know what is section 1506. I could not hear the Senator from Rhode Island.

Mr. SARGENT. As the Senator from Rhode Island has said, after the close of the war and with a desire to reward persons who had been exceptionally gallant in battle, Congress made a provision that naval officers might be advanced not to exceed thirty numbers provided they had shown such exceptional heroism. A good many years have elapsed since that time. Quite a number of persons, by the regulation of boards and otherwise and on the recommendation of the executive officers, have been advanced. Perhaps some cases have happened where persons not strictly coming within this definition have had the benefit of this statute. The committee have had cases of that kind before them for quite a long while and have almost uniformly reported against them. Occasionally cases still come up, very doubtful in propriety. Persons take advantage of the statute to urge their claims and to bring influences to bear upon the committees and the executive department, which ought not to be favorably considered. To avoid annoyance to the executive department in such cases and going before the committee, as there is very little more that ought to be done, and perhaps nothing more ought to be done in this direction, it is proposed that the law be repealed. It was intended for temporary operation, and it has perhaps performed all the beneficial results. Mr. SARGENT. As the Senator from Rhode Island has said, after

or temporary operation, and it has perhaps performed all the beneficial results ever anticipated from it.

Mr. BOGY. Does this bill come from a committee?

Mr. SARGENT. It comes from the Committee on Naval Affairs.

Mr. BOUTWELL. In reading this section of the statute it does not appear to have had special reference to the late war. It says:

Any officer of the Navy may, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism.

It seems to me that is a section of law that ought to stand. I submit it is no reason for the repeal of the law to say that the Secretary of the Navy or the President or the Senate may be importuned for advancement by those who are not entitled to advancement or by advancement by those who are not entitled to advancement or by the friends of such persons. It does seem to me that if we are to have a Navy there should be an opportunity for rewarding the per-sons by making them conspicuous among their associates and before the country for unusual courage in battle or extraordinary heroism under other circumstances that might occur in time of peace, as disaster to a vessel or crews or individual men in danger who might be rescued by the extraordinary heroism of officers of the Navy. I shall feel compelled for one to vote against its repeal.

Mr. LOGAN. What is the proposition, to repeal that section?

Mr. BOUTWELL. The proposition is to repeal the section which

reads thus:

Any officer of the Navymay, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism.

It does not relate to the late war.

Mr. LOGAN. The repeal of this section then leaves it in the hands of the Secretary of the Navy to make this advancement without the consent of the Senate?

Mr. ANTHONY. No.

Mr. LOGAN. What is it then?

Mr. SARGENT. It simply takes away the power. This act was passed April 21, 1864. It was passed in view of the war in which we were then engaged, and because some persons had shown exceptional gallantry. There was no other occasion to display exceptional gallantry except in that war; and if we allow the statute to remain in time of peace the effect will be to cause all the naval officers who of peace the effect will be to cause all the naval officers who might consider that they had rendered something a little out of the line of ordinary duty to try to get above each other, to emulate the example of persons at English fairs climbing a greased pole, where each is trying to pull down the other and climb over him, and it tends

each is trying to pull down the other and climb over him, and it tends to demoralize the service very much more than it would to repeal a law which gives exceptional advancement for such conduct.

It is not the policy of the Navy or of the country in time of peace that such a statute should exist. It was passed for the exceptional purpose of rewarding persons who during the late war had shown nnexampled gallantry or rendered unequaled service to the country. The date of the statute and the time at which it was passed show that that was its whole object. It has worked all the results that it was intended to work, and now it is applied, or attempted to be applied to eases which would not commend themselves. I think to the plied, to cases which would not commend themselves I think to the favor of the Senate.

It is not a mere question of avoiding annoyance to the executive officers or to Congress, but such things do slip through and there are some persons who avail themselves of opportunities of getting undue influence. It has been my observation that some persons not entitled to advancement are placed in advance of those entitled to rank which others have succeeded in getting over their heads, and thus getting far advanced on the lists to the prejudice of others who should not have been disturbed. It simply encourages lobbying on the part of naval officers in Washington in order to get this exceptional advantage. We not only advance by the act of advancement, but sometage. We not only advance by the act of advancement, but some-body else must be degraded, and to have a shifting naval list like that is injurious to the interests of the service. It creates jealousy among the officers; it creates a sense of injustice among those over whose heads men are advanced. The result of the law in my judgment has been disastrous so far as the operations of the last two or three years are concerned, and I think we ought to terminate a condition of things not calculated to benefit the Navy and strive to increase the self-respect and the sense of justice among the officers.

Mr. THURMAN. I call for the regular order.

Mr. SARGENT. I hope the vote will be allowed to be taken on this bill.

this bill.

The PRESIDENT pro tempore. The Chair will lay before the Senate the unfinished business.

## BILL INTRODUCED.

Mr. THURMAN. I will yield to further morning business.

Mr. PATTERSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1208) for the relief of William Talbert, of Washington, District of Columbia; which was read twice by its title, and referred to the Committee on Naval Affairs.

#### THE OSAGE INDIANS.

Mr. BOGY. I desire to offer an amendment to the bill (H. R. No. 452) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes. This amendment was handed to me by the delegation of the Osage Indians, and I think is a most important amendment. Attaching great importance to it, I shall read it to the Senate:

Strike out all after and including the words "of which amount," in line 726, page 0, down to and including the words "per capita," in line 727, page 30, and insert the following:

And that no expenditure of any of the foregoing sums appropriated for the Osage Indians shall be expended except for such objects and in such amounts as the Osage national council shall, with the approval of the Secretary of the Interior, direct, and the proper officers are hereby authorized and directed to execute the resolution passed on the 26th of June, 1873, by the Osage national council and approved by the Commissioner of Indian Affairs on the 8th of July, 1874, for the payment of the balance of the debt as fixed and limited by said resolution out of the proceeds of the sales of the Osage lands now in the custody of the United States: Provided, The authorized authorities of the Osage Nation request the payment of the same: And provided further, That the agent of the Osage Indians shall not retain or appoint any person as an employé of his agency other than persons belonging to the Osage Nation except for sufficient reason, to be first certified to the Commissioner of Indian Affairs and approved by him.

The object of the amendment I will state. The Osage Indians have made some progress in civilization. A large proportion of their money which has heretofore been appropriated has been wasted. Within which has heretofore been appropriated has been wasted. Within the last few years perhaps more than a million of dollars have been appropriated, and there is nothing to show for that large amount. While they desire hereafter that these expenditures shall be made by the Secretary of the Interior, they also wish to be consulted. I think it a most important step in the way of progress toward their elevation, and will give to them great protection from the rapacity and robbery to which they have heretofore been subjected.

I will state that the delegation now in the city, at whose head is the chief (governor) of the tribe, are intelligent men. The chief himself is an educated man, speaks good English, and is civilized and of very fine intelligence, and known to be a man of character and standing at home. I look upon this matter as very important. It is an object

at home. I look upon this matter as very important. It is an object which I have been trying to accomplish for some years as the only way to secure some protection from misapplication of the money which is annually appropriated by Government for their benefit, and which has always been shamefully wasted.

There is another object. There is a claim pending against those Indians in favor of two persons named Vann and Adair. It has been pending against the Indians for a long time. They admit the claim to be legitimate, but they wish to be consulted as to the amount. They are fearful that it may be allowed without being consulted. They are fearful that it may be allowed without being consulted. They therefore pray that the Secretary of the Interior shall be authorized to pass upon this claim subject to their approval, and I think this should be done. They are anxious that the claim should be paid. should be done. They are anxious that the claim should be paid. They admit that they are indebted to these persons, who rendered very great service at a most critical time, and by which a very large sum of money was saved to them. Therefore, while they are willing that the Secretary of the Interior should pass upon this claim and make an allowance, they desire to be consulted as to the amount which may be allowed. As the matter stands now, it is competent for the Secretary to allow it at any time and pay it out of the Indian fund. I move that this amendment be printed and referred to the Committee on Appropriations. tee on Appropriations.

The motion was agreed to.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had concurred in the resolution of the Senate providing for the appointment of special police at the Capitol to serve during the canvassing of the votes for President and Vice-President; and also in the resolution of the Senate relative to admissions to the south wing of the Capitol extension during the counting of the votes for President and Vice-President.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H. R. No. 1558) to remove the political disabilities of Robert Ransom, of Virginia; and the bill (H. R. No. 2736) to remove the political disabilities of N. H. Van Zandt,

# CHANGE OF REFERENCE.

Mr. WINDOM. I wish to make a change of reference of a bill referred by mistake. House bill No. 4554 for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes, was referred by order of the Senate last evening to the Committee on Appropriations. I think it was intended to have gone to the Committee on the District of Columbia. I move that the Committee on Appropriations be discharged from its further consideration and that it be referred to the Committee on the District of Columbia.

The motion was agreed to.

#### PACIFIC RAILROAD ACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from

act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. WEST. Mr. President, the argument of the Senator from Ohio [Mr. Thurman] yesterday was interrupted somewhat toward its conclusion by proceedings of which the Senate is cognizant. I understand from him that he scarcely had the opportunity to make an explanation in regard to one of the sections of the bill of the Committee on the Judiciary such as he desired and I viold to him now to give tee on the Judiciary such as he desired, and I yield to him now to give him that opportunity, but shall claim the floor at the conclusion of

his remarks

Mr. THURMAN. Mr. President, I do not want to trespass upon the politeness of the Senator from Louisiana too much, and therefore I politeness of the Schator from Louisiana too much, and therefore I shall speak very briefly. I beg the attention of Schators to what I shall say, and I shall take very little time about it. I am induced to speak because I find by conversation with some Schators that the statement made by me yesterday was misunderstood, and it is important that that misunderstanding should be removed. I was understood as saying that the Judiciary Committee bill takes 25 per cent. of the netearnings of these railroad companies and puts that 25 per cent. in a sinking fund. I did not intend to make any such statement as that. The bill does not take 25 per cent. of the net earnings of the roads. that. The bill does not take 25 per cent. of the net earnings of the roads

for a sinking fund but a much less per cent. than 25 per cent. To understand this, it is necessary to advert to the provision of the existing law. Under the law as it now stands each company is to pay to the Government annually 5 per cent. upon its net earnings and that money thus paid, to wit, 5 per cent., is applied by the Government immediately toward re-imbursing the Government for the interest which the Government paid for these companies on the bonds it has loaned them, and thereby saves the Government from the loss of in-terest upon so much of the money which it has paid for these compa-nics. In the same way as the law now stands it authorizes the Gov-ernment to retain one-half of the transportation account, as it is called, that is, the account which these companies have from year to year against the Government for services rendered to it in the transportation of soldiers and munitions of war and property of all kinds, and one-half of the transportation account is also presently applicable to the re-imbursement of the Government for the interest which it pays annually for the companies

annually for the companies.

The bill now under consideration does not alter those provisions of law in the slightest degree. To take that 5 per cent. and the one-half of the transportation account, which under existing law is immediately applicable to re-imburse the Government for the interest it pays for these companies, would be to make the Government lose interest upon the amount of those two sums from now until the maturity of the bonds in 1898, a period of twenty-one years. So this bill does no such thing as that, but it preserves those two provisions of the existing law, and then requires that in addition to those payments such further payments shall be made to be credited to a sinking fund such further payments shall be made to be credited to a sinking fund as with those payments now provided for by existing law will make 25 per cent. of the net earnings of the companies, with a proviso in effect that with respect to the Union Pacific they shall not in any year be required to pay more than \$1,500,000, counting the money which is immediately applicable to refund the Government, its payment of interest, and also the amount which has to go into the sinking fund. I can make this very clear to everybody's comprehension, who will listen to me, in one moment. Let us take the Central Pacific Company and suppose its earnings to be in round numbers what they have been for some years, \$8,000,000, 25 per cent. of that would be \$2,000,000. \$2,000,000.

Mr. WEST. If I do not interrupt the Senator, he certainly includes in that amount the total earnings of the entire length of the Central Pacific Railroad, only two-thirds of which has ever been subsidized

Pacific Railroad, only two-thirds of which law to be the Government.

Mr. THURMAN. It will answer for my illustration.

Mr. WEST. I only want to take exception to that statement.

Mr. THURMAN. I am not going into the mooted question whether or not it is 5 per cent. of the entire earnings of the company or 5 per cent. only of the earnings of that portion of the road which is bonded and subsidized.

bonded and subsidized.

Mr. WEST. This is for illustration, I understand?

Mr. THURMAN. For illustration, and it will answer just as well upon either interpretation of the charter, suppose the net earnings of the Central Pacific to be \$8,000,000, 25 per cent. of that would be \$2,000,000. Now we do not require the company to pay \$2,000,000 into the Treasury; we require it in a case like that only to pay one million and a half of dollars. How are those one million and a half of dollars to be paid? What elements compose it? In the first place there would be \$400,000 in 5 per cent. on its net earnings, which \$400,000 would be applied under our bill just as it is under the present law, to the immediate re-imbursement of the Government of so ent law, to the immediate re-imbursement of the Government of so much interest paid by it for the Government. Then there would be another half of the transportation account which, under the existing another half of the transportation account which, under the existing law, is also immediately applicable to the payment of the interest. That is \$240,000. I only take that for convenience, because that will make just exactly 3 per cent. Then you would have 8 per cent. of its net earnings which that company, under existing law, is required to pay and which is immediately applicable by the Government to re-imburse itself the interest it has paid for the company. That would take 8 per cent. of its earnings. Now we require the company to pay 17 per cent. more for a sinking fund, making 25 per cent, which would be in the case supposed \$860,000 which the company would have to pay. In this \$860,000 is included half the transportation account for the Government which under the existing law is to be paid over to the Government. It may all be called as part of its net earnings. It is no use to distinguish them at all. So you see that the bill of the Judiciary Committee leaves the law to stand, so far as that law requires payment, which would go to the re-imbursement of the Government for interest paid by it, and it saves the Government from loss of interest upon just that money for the twenty-one years or the loss of interest upon just that money for the twenty-one years or the twenty-two years that these bonds have yet to run, and that the amount of their net earnings which we take from them out of which to create a sinking fund would not in all probability in respect of any one of those companies amount to more than 17 per cent. of their net earnings. I hope that that explanation makes the provisions of the bill perfectly clear and corrects the misapprehension that I created yesterday in the haste of speaking by perhaps an unguarded expres-

Now, Mr. President, one word more before the Senator from Louisiana proceeds. My colleague [Mr. Sherman] suggested an amendment which I think on reflection he will hardly press, because the effect of it would be to deprive the Government of the right to apply

the 5 per cent. which it is now entitled to receive and immediately apply, and the half-transportation account which it is now entitled to retain and immediately apply to re-imburse itself. His amendment would transfer that 5 per cent. and that half-transportation account to the sinking fund, and would thereby deprive the Government of interest upon just the amount of those two sums for twenty-one years. Of course my colleague did not intend that, and I do not think he will press the amendment.

One word upon the funding scheme of the Railroad Committee's bill. I said yesterday that that postponed the payment of this debt indefinitely. A Senator said to me, "You are mistaken, because it provides for a sinking fund by an accumulation of interest, interest provides for a sinking rund by an accumulation of interest, interest compounded, and it would take but a small sum of compounded interest to pay off the national debt in a very short period of time, especially if you are to add the principal of that sum every year, as the Railroad Committee bill proposes." But, Mr. President, of all the curious devices that ever I have seen for paying a debt, with great respect to that committee, their plan is the most curious. There is an old play that has anywed many of us in reading and classic. is an old play that has amused many of us in reading and also in seeing it acted, called "A New Way to Pay Old Debts," but the author of that play never in his fertile imagination conceived so fine a way to pay old debts as I humbly submit is this plan of a sinking fund, according to the bill of the Railroad Committee. How is it? I shall speak pay old debts as I humbly submit is this plan of a sinking fund, according to the bill of the Railroad Committee. How is it I shall speak but a few minutes longer in order to show you. We pay for these railroad companies in interest over \$3,000,000 every year, and we get no interest upon the amount which we thus pay; and, unless my interpretation of the law should be incorrect, when the final settlement comes at the maturity of the bonds, then we shall be entitled to that interest upon these installments of interest paid by us for the time they were paid respectively; but that is a mooted question. I am free to say it is not a question perfectly free from doubt; but at all events, whether I am right or whether I am wrong in that, for twenty-one years we get no interest upon these \$3,000,000 which we each year pay. The Railroad Committee bill says to the Government, "You pay for us \$3,000,000 in this year of grace 1877, and we will pay you no interest upon the \$3,000,000 which you thus pay, but we will make a partial payment of that sum; we will pay one million and a half of dollars, and you shall put that to our credit in the Treasury and allow us compound interest upon it every six months, and thus by that kind of computation we will have paid off our debt by the time the twenty-one years have expired." I think very likely you would, but of all the ways of paying a debt that ever I saw in my life, the idea that you shall take the principal of a debt and compute no interest on it, and take each partial payment and put compound interest on that—I say of all the modes of paying debts that ever I have seen that is the most novel and to me the most frightful. I have said all that I desired to say.

Mr. WEST. Mr. President, I approach the consideration of this subject with both embarrassment and anxiety: anxiety that legislation involving so large an amount shall be wise and judicious, maintaining the interests of the Government, and, in the language of one of the statutes itself, "having due regard for the rights o

tion involving so large an amount shall be wise and judicious, maintaining the interests of the Government, and, in the language of one of the statutes itself, "having due regard for the rights of the companies" affected; embarrassment that within my-experience this is the first occasion where two committees of this body have been intrusted with the consideration of a similar and indeed the same subject, and reported diametrically diverse propositions on a fundamental principle, as I shall proceed to show. The real features of this bill, the real results to be attained by the adoption of either one or the other projects, differ but little; and as much money will accrue to the credit of these companies for the liquidation of their indebtedness to the Government of the United States by one bill almost as by the other. I am also somewhat diffident of being assigned by virtue the other, I am also somewhat diffident of being assigned by virtue of my position on this committee the laboring oar in maintaining a cause both of law and fact against that committee which stands pre-eminent in the existence of this body for its legal acumen and opin-ion. In what I shall say I shall ask the consideration of the Senate more to the authorities I shall offer than to any original ideas I may myself advance. If I controvert the attitude and position taken by the Indicious Committee of to day I shall find myself sustained by the Judiciary Committee of to-day, I shall find myself sustained by a preceding opinion of that same committee diametrically opposite to what they now recommend. If I centrovert the position assumed by the Law Committee of this body, I shall be sustained by the opinion of the highest tribunal in the land, that tribunal to which this nation now appeals for security in its hour of distress and tribulation: the Supreme Court of the United States. Not to me will I ask Senators to listen, but I ask them to listen to the edicts and mandates of the highest court in the land, which I contend has virtually decided this

No remark that fell from the Senator from Ohio perhaps had as much weight with all of us as when he said we should approach the consideration of this subject with extreme care; that if we ventured upon either its consideration or to vote upon it without due reflection, ample time to think and to examine, we might commit a very grave error. What were his words? Speaking of the disposition and action of the Committee on Railroads, he says:

I know their ability; I know their disposition to see that justice is done to the Government; but I know another thing, that this subject is one that requires long and careful study, and that he who undertakes to frame a bill upon it without long and careful study, and without familiarity with all its details, will necessarily fall into some error like this.

To that opinion, Mr. President, there can be no dissent, and although in the agitation of the moment the Senate is little disposed to give its attention to the remarks that may be submitted to it by to give its attention to the remarks that may be submitted to it by either one Senator or the other, yet before we vote upon this question we should consider with ourselves how far we are rightfully protecting the interests of the Government of the United States, and whether we are not, by the very action that is recommended by the Committee on the Judiciary, actually imperiling the whole of this debt, absolutely putting it beyond the power of the Government of the United States ever to be refunded one single dollar of this \$150,000,000 that will be owing to us by these companies.

It was the conclusion at which the Committee on Railroads arrived that the legislation which they recommended was the only legislation

It was the conclusion at which the Committee on Kallroads arrived that the legislation which they recommended was the only legislation that would enable the Government to recover this money; that if the bill of the Committee on the Judiciary was passed the companies must be compelled to resist its being put into effect, and if the decision was adverse to the Government—which we had reason to believe it would be from the pregnant outgivings of the Supreme Court—that this money would be irrecoverably lost by improvident legislation.

The two bills, the one of the Judiciary Committee and the other of the Committee on Railroads, differ in these respects: The first provides a measure of forcing the commanies against their will to create

vides a measure of forcing the companies against their will to create a sinking fund for the payment of indebtedness not yet due; the second proceeds on the principle of procuring the companies voluntarily to agree to provide such sinking fund. That is the fundamental difference between the bills of the two committees, although in absolute and actual fact the amounts to be paid by the different processes differ, as I shall show, very little. Now, there are some principles of law that cover this matter which I desire to refer to somewhat

There is a vast difference between a franchise granted by a State or by the United States to a corporation simply for corporate purposes, to enable it to act as a corporate body, or a simple grant of a right of way and right to build and use a railroad or other work of internal improvement, where the only benefit to the granting power is the general benefit to the public, and the case of such grants to a corporation created or assisted for the express purpose of benefiting the granting power. In the first case the grants are for the sole benefit of the corporation, and, under all the decisions, the acts containing the grant are to be construed strictly against the grantee. But in the second case two elements enter: one, that of the franchise to act as a corporation or to use a right of way or other substantial act as a corporation or to use a right of way or other substantial right granted, and the other a contract in which, in consideration of the franchises and rights conferred upon the grantee, it agrees to do certain acts and perform certain services for the benefit of the grantor. In granting the franchises the Congress of the United States or the State Legislature acts as a sovereign power. In so far as the acts are contracts, the sovereign power is relinquished and the sovereign becomes a contractor, puts itself on a par with its subject, becomes a party to the agreement, and is bound by the same rules of law and is subject to the same duties and obligations as the other party to the contract. other party to the contract.

There is something pertinent to that proposition, Mr. President, in an opinion that I hold in my hand delivered by Mr. Justice Grier, the predecessor of Justice Strong on the Supreme Bench, in a case in New Jersey. The justice, in alluding to the sovereignty of the United States and its exercise in like premises, uses this language:

The Government of the United States, though limited in its powers, is supreme in its sphere of action. But its rights as a sovereign and its prerogatives as such are co-extensive with the functions of government committed to them, and extend no further. Its position as to prerogative is anomalous, owing to our peculiar in

In the mere exercise of a corporate right the Government of the United States cannot claim the prerogatives or immunities of a sovereign. She cannot compel a mortgagee to the hopeless remedy of a petition to Congress to redeem.

That is what this bill does most assuredly. It compels the first mortgagees, holding the first lien upon the property of these companies, to depend upon such subsequent action of Congress as it may seem wise and judicious to adopt to re-imburse them their money.

The justice continues to say-

when the Government of the United States becomes a partner in a trading cor-

I shall contend, Mr. President, that the Government of the United States did enter into partnership with these railroad companies to build the railroad for the benefit and interest of the Government of the United States, and the Government thereby became a partner under limitations in a trading corporation "such as the United States Bank, it divested itself so far as concerned the transactions of that company of its sovereign character, and took that of a citizen."

The cases that have been cited by the Judiciary Committee in support of their view of the law in this case have no analogy whatever to the circumstances attending the organization and the existence of these companies. There never has been an instance, either in State or national legislation within my knowledge, where the Government became a partner in a railroad company until this one, and every case that they either it is a case outside of the interests of the Government. that they cite is a case outside of the interests of the Government and where the Government has intervened to adjudicate between two conflicting interests, in which the sovereign power had no concern.

There is not one of the cases that is cited by the Committee on the Judiciary that has such elements in the organization of the companies as those I have mentioned.

Now, Mr. President, I desire to show the gain and advantage derived from the construction of this road. I desire to show that it is admitted by the courts that have adjudicated this question that such was the fact, and to maintain the proposition that I have laid down that the Government became a copartner in these roads and so has abandoned its rights of sovereignty.

But these acts of 1862 and 1864-

Says the Court of Claims in its decision of what is known as the Union Pacific Railroad case

contain something more than provisions to create a corporation and confer upon it franchises and grants. The statutes really embody both a charter and a compact. As to those provisions which create the corporation, which limit its rights and franchises, which prescribe its obligations to the public, and confer grants and benefits upon it, the statutes are nothing more than a charter; but as to those provisions which bind the Government to do something, which cast distinct obligations upon it, which carry it into the region of mercantile transactions, and make it take a financial part in the enterprise, the statutes belong to that class of legislation which is to be so construed as to carry out the liberal and just intent of the Legislature.

I shall now read somewhat at length from the opinion of the Supreme Court in this case, rendered in the October term, 1875, which has presented to the consideration of Congress the relations with these companies in an entirely different phase from what had hitherto been contemplated. The opinion of that court alone read from this place, and given proper attention to by the Senate, is an ample refutal itself of the propositions contained in the bill of the Committee on the Judiciary. It is scarcely compiled with that system that enables the reader to condense its opinion upon any one particular question; and as I read it to the Senate I shall not confine myself to the text consecutively, but I shall take such portions of it as bear upon the view that I desire to maintain. I know the Senate would much rather hear what the opinion of the Supreme Court is upon this question than they would hear mine.

Many of the provisions in the original act of 1862 are outside of the usual course I shall now read somewhat at length from the opinion of the

upon this question than they would hear mine.

Many of the provisions in the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which surrounded Congress when the act was passed. The war of the rebellion was in progress, and the country had become alarmed for the safety of the Pacific States, owing to complications with England. In case these complications resulted in an open rupture, the loss of our Pacific possessions was feared, but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes its citizens. It is true that threatened danger was happily averted, but wisdom pointed out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country, and furnish a cheap and expeditious mode for the transportation of troops and supplies. And if it did nothing more than afford the required protection to the Pacific States, it was felt that the Government, in the execution of a plain duty, could not justly withhold the aid necessary to build it. And so strong and pervading was this opinion that it is by no means certain the people would not have sanctioned the action of Congress, if it had departed from the traditional policy of the country regarding works of internal improvements, and charged the Government itself with the direct execution of the enterprise.

This enterprise was viewed as a national undertaking for national purposes, and the public mind was directed to the end to be accomplished rather than the ratio.

This enterprise was viewed as a national undertaking for national purposes, and the public mind was directed to the end to be accomplished rather than the particular means employed for the purpose. Although this road was a military necessity—

The assumption on the part of the Judiciary Committee is, that this road was built for the railroad companies. This road was built for the Government of the United States to meet its necessities—

for the Government of the United States to meet its necessities—
Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion besides the protection of an exposed frontier. There was a vast unpeopled territory lying between the Missouri and Sacramento Rivers which was practically worthless without the facilities afforded by a railroad for the transportation of person and property. With its construction the agricultural and mineral resources of this territory could be developed; settlements made where settlements were possible, and thereby the wealth and power of the United States essentially increased. And there was also the pressing want, in times of peace even, of an improved and cheaper method for the transportation of the mails and supplies for the Army and the Indians.

It was in the presence of these facts that Congress undertook to deal with the subject of this railroad. The difficulties in the way of building it were great, and by many intelligent persons considered insurmountable.

Although a free people, when resolved upon a course of action, can accomplish great results, the scheme for building a railroad two thousand miles in length, over deserts, across mountains, and through a country inhabited by Indians jealous of intrusion upon their rights, was universally esteemed at the time to be a bold and hazardous undertaking. It is nothing to the purpose that the difficulties in the way of the undertaking, after trial, in a great measure disappeared, and that the road was constructed at less cost of time and money than was considered possible. No argument can be drawn from the wisdom that comes after the fact. Congress acted with reference to a state of things supposed to exist at the time, and no aid can be derived, in the interpretation of its legislation, from the consideration that the theory on which it proceeded turned out not to be correct. The project of building the road was not conceived for private ends, and the prevalent

The United States, desiring the construction of the road and Congress being of opinion that it could not constitutionally enter upon this work, made a contract with the railroad company, and availed itself of its corporate existence to construct that road for the benefit and use of the people of the United States, and not for the benefit of a railroad company:

Even if this were not so, reasons of economy suggested that it were better to enlist private capital and individual enterprise in the project. This Congress undertook to do, and the inducements held out were such as it was believed would pro-

cure the requisite capital and enterprise. But the purpose in presenting these inducements was to promote the construction and operation of a work deemed essential to the security of great public interests.

It is true the scheme contemplated profit to individuals, for, without reasonable expectation of this, capital could not be obtained, nor the requisite skill and enterprise; but this consideration does not in itself change the relation of the parties to this suit. This might have been so if the Government had incorporated a company to advance private interests, and agreed to aid it on account of supposed incidental advantages which would accrue to the public from the completion of the enterprise. But the Government proceeded on a wholly different theory. It promoted the enterprise to advance its own interests, and endeavored to enlist private capital and individual enterprise as a means to an end, the securing a road which could be used for governmental purposes.

Indeed, the whole act contains unmistakable evidence that, if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care that there should be no misunderstanding about the objects to be accomplished or the motives which influenced its course of

Of necessity there were risks to be taken in aiding with money or bonds an enterprise unparalleled in the history of any free people, which, if completed at all, would require, as was supposed, twelve years in which to do it. But these risks were common to both parties.

I particularly ask attention to that phrase that "these risks were common to both parties." Who ever heard of a government or a sovereign state risking anything in conferring a franchise upon a railroad company? It is evident that the Supreme Court takes an entirely different view of this case:

And Congress was obliged to assume its share and advance the bonds or abandon the enterprise, for obviously the grant of lands, however valuable after the road was built, could not be available as a resource with which to build it.

We have the same reasons in reports made to the Senate, besides the We have the same reasons in reports made to the Senate, besides the general opinion given by the Supreme Court that these roads were necessary to maintain the unity of the Government. We have some financial and monetary reasons, some reasons in the direction of frugality and of economy that instigated the Government to this action when it passed those bills and created those companies and subsidized them with lands and with bonds.

In a report of the Senate, No. 374, Forty-first Congress, third session, after going into detail at large of the expenses of maintaining communication with the Pacific coast, in discussing the charge that was entailed mount the Government by the transportation of its mails

was entailed upon the Government by the transportation of its mails, its munitions of war, its troops, and in maintaining surveillance over the Indian tribes, the report shows that the absolute expenditure for transportation alone was \$8,000,000 a year. Then in order to relieve the Government of such an excessive and onerous charge in that dithe Government of such an excessive and onerous charge in that direction, the Government aided these roads, became a partner in the transaction of their business, with limitations, and to-day the expense is only 10 per cent. of that amount. The Government has received the benefit of a reduction from \$8,000,000 annual expenditure to \$800,000 now for the same objects. Did not the Government, in the language of Mr. Justice Grier, become "a partner in a trading corporation;" and in the language of the Supreme Court, "for its own interest, for its own objects, and for its own benefit?"

The Senate Judiciary Committee in the same volume, and indeed

interest, for its own objects, and for its own benefit?"

The Senate Judiciary Committee in the same volume, and indeed in the next report, No. 375, admit—the honorable Senator from Ohio who last addressed the Senate on this subject [Mr. Thurman] was then a member of this committee, and he admitted then that this was a work of national importance by the language of this report, and certainly that proposition cannot be controverted by him now.

Now, Mr. President, the question was asked very dogmatically yesterday, what did Congress intend by reserving to itself the power to alter, amend, or repeal; and the Senator from Ohio said that if this power to alter, amend, and repeal did not extend to these particular provisions which are now at issue, what did it extend to? The act incorporating these companies and the second amendatory act, which contains the direct power without qualification to alter, amend, or repeal printed in this pamphlet, fills twenty pages, a bill of twenty-three sections, and the questions at issue now before the Senate only occupy twenty-three lines of those twenty pages and twenty-three sections. Consequently there must have been some other provisions in this bill that Congress intended to apply the repealing power to, sections. Consequently there must have been some other provisions in this bill that Congress intended to apply the repealing power to, and that it did so intend, that it had other means and objects in reserving to itself that power, is evidenced by the fact that in subsequent legislation, to the extent of ten acts, it has altered and amended and repealed the act of 1864, two of those amendatory acts only referring to the subject now at issue and the other eight acts being in regard to the general management of the road. Surely there is scope and power enough there, there is field and exercise enough for that

power to answer the question as to what Congress intended and which has shown what it did intend by acting upon this power.

But it is contended, Mr. President, that Congress by that reservation reserved to itself the option to make the bonds granted to these companies payable before maturity. On that subject I desire the Senate to listen to what the Senator from Ohio said in 1871 in a report presented from the Judiciary Committee of this body, in answer to a resolution asking them "to inquire and report whether the railway companies which have received aid in bonds of the United States are lawfully bound to re-imburse the United States for interest paid on such bonds before the maturity of the principal thereof, and, if so, what legislation, if any, is necessary to compel such re-imbursement."

Can any language be more positive, more direct, more unequivocal

than that in which this statement is presented for consideration by the Senate? The committee say:

It is evident, from the statutes themselves, that the company is not bound to make any payment in money on account of these bonds, except the 5 per cent. of net proceeds, until the maturity of said bonds, thirty years from their date. And it is equally evident, from the debates in both Houses of Congress when these acts were passed, that it was the intention of Congress so to frame them as to accomplish such result.

That Congress in framing this act was so particular as to put it beyond the power of the Government to ever precipitate the payment of these bonds before maturity. There is the opinion of the committee in 1871, and now they are here with a proposition to compel payment of the bonds at once.

Further the committee say:

The debates in the House are equally instructive; and it is apparent that the com-any was not expected to pay the interest as it should become due.

Not only did the letter of the law require that they should not be paid, but it was the intention as evidenced by the debates that Congress should throw such safeguards around its legislation that it would never after have the power to require a precipitate payment of these bonds before their maturity.

Further what do the committee say:

Further what do the committee say:

It is questionable, however, whether, in a case like this, where the Government, by its legislation, has encouraged the investment of capital in a work of national importance, it would be quite honest, or becoming the dignity of the Government, to shelter itself behind this technical rule of judicial construction. The stockholders of this company might well say that they understood these acts as they were understood by the two Houses of Congress at the time of their passage. It would be rather harsh treatment to twist out of these acts, by refinement of criticism, a construction unfavorable to the company, and directly opposed to what everybody in Congress and out of it understood to be their meaning at the time they were passed and the money invested. But, however this may be, there is ambiguity enough surrounding this act to take it out of the judicial rule before mentioned, and to place it in that class of cases as to which even the judicial courts seek the aid of extraneous circumstances.

Now Mr. President the law proposed by the Judicial Committee.

Now, Mr. President, the law proposed by the Judiciary Committee of this body may be the legislation that we should like to see put into of this body may be the legislation that we should like to see put into effect as against these companies; but, after all, although we are the law-making power, the law-adjudicating power controls, and controls the result of our acts. From the forum of legislation I appeal to the tribunal of adjudication and determination, and the edict of that tritribunal of adjudication and determination, and the edict of that tri-bunal must be respected by everybody in this land. If Senators will take this decision, as I before remarked, and read it, it alone is a com-plete refutation, an unanswerable refutation, of all the propositions that have been discussed by the committee. Let me say that this commit-tee, except in one instance, in all attempts at legislation against these companies have invariably been overruled by the courts of the land. And now here is one more effort to precipitate us into legislation, in-volving time, that may result if adversely determined by the courts against the Government of the United States in the absolute loss of all this property; and to that point I will have eccasion to refer in all this property; and to that point I will have occasion to refer in the course of my remarks. The Supreme Court say:

the course of my remarks. The Supreme Court say:

The words "to pay said bonds at maturity" do not bear the sense which is sought to be attributed to them. They imply, obviously, an obligation to pay both principal and interest when the time fixed for the payment of the principal has passed; but they do not imply an obligation to pay the interest as it accrues and the principal when due. It is one thing to be required to pay principal and interest when the bonds have reached maturity, and a wholly different thing to be required to pay the interest every six months and the principal at the end of thirty years. The obligations are so different that they cannot both grow out of the direct words employed, and it is necessary to superadd other words in order to extend the condition so as to include the payment of semi-annual interest as it falls due. Neither on principle or authority is such a plain departure from the express letter of the statute warranted. And especially is this so when the construction leads to so great an extension of a condition to defeat a grant.

Now, Mr. President, here again is the opinion of the Supreme Court of what was the intention of Congress with reference to the re-imbursement that should be made by these companies of the advances made to them by the Government.

made to them by the Government.

In addition to all that has been said, there is enough in the scheme of the act, and the purposes contemplated by it, to show that Congress never intended to impose on the corporation the obligation to pay current interest. The act was passed in the midst of war, as has been stated, when the means for national defense were deemed inadequate to the wants of the country, and the public mind was alive to the necessity of uniting by iron bands the destiny of the Pacific States with those of the Atlantic. Confessedly the undertaking was outside of the ability of private capital to accomplish, and only by the helping hand of Congress could the problem, difficult of solution under the most favorable circumstances, be worked out. Local business, as a source of profit, could not be expected while the road was in course of construction, on account of the character of the country it traversed; and whether, when completed, as an investment it would prove valuable, was a question for time to determine. But vast as the work was, limited as were the private resources to build it, the growing wants of the country, as well as the existing and future military necessities of the Government, demanded that it be completed. Under the stimulus of these considerations Congress acted. It did not act for the benefit of private persons, nor in their interest, but for an object deemed essential to the security of the country, as well as to the prosperity of the country.

Confirming again the sentiment expressed by Justice Grier, which I quoted here, that Congress became a partner in a trading corporation to protect and provide for its own interests. I shall read further from the opinion of the Supreme Court as to whether Congress parted with its power to provide this sinking fund or not. The language of the Supreme Court is significant of the fact that Congress had in its power once the opportunity to provide for a sinking fund, but it did not choose to do it. In language as plain as can be spoken the court say:

But, if the words "to pay said bonds at maturity" do not give notice that this saction was intended, neither do the other provisions of the sixth section. They

created no obligation to keep down the interest, nor were they so intended. The proposition to retain the amount due the company for services rendered, and apply it toward the general indebtedness of the company to the Government, cannot be construed into a requirement that the company shall pay the interest from time to time and the principal when due. It was in the discretion of Congress to make this requirement, and then, as collateral to it, provide a special fund or funds out of which the principal obligation could be discharged.

In other words, saying that it was in the discretion of Congress, had it seen proper to exercise it, to provide for the creation of a sinking fund; but it failed to do it by its legislation, because the court say:

This Congress did not choose to do-

Congress did not choose to provide for the creation of a sinking

but rested satisfied with the entire property of the company as security for the ul-timate payment of the principal and interest of the bonds delivered to it.

It did not rest satisfied with the power to alter, amend, and repeal that is contended for by the Judiciary Committee. If such a power that is contended for by the Judiciary Committee. If such a power had remained in Congress after the passage of the act of 1864, would the Supreme Court have used this language? No; but they say Congress did not choose to do it, but by its legislation it forever debarred itself of the opportunity to require these companies to make a sink-

ing fund otherwise than what was provided by the law itself.

Mr. CHRISTIANCY. I would inquire of the Senator from Louisiana whether he insists that that decision which he has quoted decides

anything of that kind? Mr. WEST. By infer By inference and implication it does. It is pregnant with the opinion of the Supreme Court, to my mind, whatever weight

it may have with other Senators.

Mr. CHRISTIANCY. If I may interrupt the Senator, I will ask him whether it is possible the court could have decided any case of that kind when it did not have it before it?

Mr. WEST. The case was before them; and we can judge by the language what was in their minds when they rendered their opinion. language what was in their minds when they rendered their opinion. I do not say the court did decide it; but I say with such an intimation from the Supreme Court shall we venture upon legislation which if decided adversely to the interests of the United States places those interests absolutely at the mercy of these companies?

When this question was up before, in 1871, the Senator from Ohio in sustaining this report said the law was not as he would like to have it, but the question must be determined according to the letter of the law, however adverse it might be to the interests of the Government, and the Senator from Vermont who usually sits at my right

ernment, and the Senator from Vermont who usually sits at my right [Mr. EDMUNDS] used this language:

I should be very glad indeed to have the Supreme Court of the United States determine what the law is on this question. If it determines it in favor of the companies, there is an end of the question; if it determines it in favor of the United

And with his usual sarcasm he says-

as we cannot suppose it will after the report of our learned brethern on the Judiciary Committee—

He dissented from that report-

then of course there will be an end of the question, and all parties will be satisfied.

But it seems, although the question whether these companies should be called upon to pay anything before the maturity of the bonds has been decided adversely to the United States, some other method must be brought up and considered for the purpose of flanking the decision of the Supreme Court of the United States.

Mr. President, a good deal has been said about the act of 1864, that while it conferred additional benefits upon the companies it also imposed limitations and restrictions upon them that more than counter-

balanced the advantages which were received by them; and the Senator from Ohio took occasion to say that in 1864 the companies came to Congress and prevailed upon Congress to legislate further in their behalf. I find no record of the companies appealing by petition or otherwise to Congress for this remission in their behalf; but it became evident that the great interests of the Government connected with the vast Pacific coast were paralyzed for want of a connection, and the Government stepped forward itself and said to these companies, "If you will carry out this work of national design and importance and consequence, we will grant you additional facilities; we will grant you further aid, and will make our terms and restrictions upon you less onerous than they were by the original act." The Judiciary Committee in 1871 said:

mittee in 1871 said:

Two years after the passage of this act the company came again to Congress, and represented its inability to build this road without yet more favorable provisions at the hands of Congress; and the debates in both Houses, while the act of 1864 was under consideration, clearly show that Congress understood the effect of the act of 1862 to be that before stated. And in the fifth section of the act of 1864, for the purpose of making more favorable terms to the company, it was, among other things, provided as follows:

"Only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads."

It is a well-settled rule of construction that statutes in pari materia are to be constructed together, and the provisions of one may be referred to for the explanation of provisions in the other. Bearing in mind that Congress by the former act designed to encourage investment of capital in this work, and that the act of 1864, as appears from all its provisions, was intended to be yet more favorable to the company, the provision above quoted can be understood in no other sense than that Congress intended to relieve the company from applying more than half of the compensation for services to the payment of bonds, and that the other half should be paid to the company. What possible benefit would this have been to the company if the company was bound to pay that, and a much larger sum, immediately back to the Government to satisfy accruing interest on the bonds?

Now I ask the question what possible benefit could it have been to these companies to enable them to issue a first-mortgage bond having precedence over the mortgage in favor of the Government, if naving precedence over the mortgage in favor of the Government, if in that very same act the Government had in direct terms reserved to itself the privilege of making its mortgage the first? That is the construction put upon it by the Judiciary Committee, that notwith-standing these companies obtained from the governor a waiver of its rights to the extent of a first mortgage, the Government in the same act that conferred that benefit and advantage upon them reserved to itself the power, as it now proposes to do, to make its mortgage take precedence of that granted in the first instance. On this subject the Supreme Court say, in their decision: Supreme Court say, in their decision:

Supreme Court say, in their decision:

Notwithstanding the favorable terms proposed by Congress the road languished, and the effect of this was the amendatory act of 1864. By this the grant of lands was doubled, a second in lieu of a first mortgage accepted by the Government, and a provision inserted that "only one-half of the compensation for services rendered for the Government by said companies (meaning this and the auxiliary companies incorporated at the same time) shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said road."

This amendment was, without doubt, intended merely to modify the provision in the original act so as to allow the Government to retain only one-half of the compensation for services rendered instead of all. Although the requirement in this provision is that the compensation shall be applied to "the payment of the bonds," and in the former "to pay the bonds and interest," yet it cannot be supposed Congress intended to relinquish the right secured in the former act to make the application in the first place to the interest and then to the principal. The purpose of Congress could have been nothing more than to surrender on behalf of the Government the right to retain the whole of the company's earnings and to accept in lieu of it the right to retain the half, leaving unaffected by this change any right touching this subject secured in the former act. The change was a very material one, and intended, doubtless, as a substantial favor to the companies.

Can you grant a substantial privilege to anyloody and take it back

Can you grant a substantial privilege to anybody and take it back again in the same terms? How much substantial favor could be conceded by this legislation to these companies if in the very same act you reserved the power to retake into your own hands that substantial favor ? But, says the Supreme Court :

But on the principle contended for it would prove, instead of this, to be of no value. Of what possible advantage could it be to these companies to receive payment for one-half their earnings, if they were subject to a suit to recover it back as soon as it was paid? And this is the effect of the provision on the theory that the companies are debtors to the Government on every semi-annual payment of interest. They could not, in the nature of things, have accepted the stipulation with an understanding that any such effect would be given it. If the Government consents to the diminution of its security, so that only half of the prices due for services are to be applied to the payment of the interest or principal, what is to become of the other half? Surely there is no implication that the Government shall retain it, and, if not, who is to get it? Manifestly the companies who have earned the money.

I ask again, what possible benefit could it be to the railroad companies that the Government should in one act make its lien for credit

panies that the Government should in one act make its hen for credit loaned a secondary one and in the same act reserve by implication the right to make its lien take priority?

Having detained the Senate now, Mr. President, with the authorities in this matter by references to the reports of a committee of this body and to the decisions of the Court of Claims and the Supreme Court, I will say a few words in regard to the provisions of the bill that has been offered by the Judiciary Committee, and offer incidentally, also, a few remarks in connection with the bill that has been presented by the Committee on Railroads.

In his remarks this morning the Senator from Ohio was somewhat

In his remarks this morning the Senator from Ohio was somewhat In his remarks this morning the Senator from Ohio was somewhat facetious, or disposed to be, over the ingenious method that the Committee on Railroads had discovered to pay old debts, using the phrase so well known in comedy, "a new way to pay old debts;" but it was evident that it is impossible for him to dismiss from his mind the idea that has been stamped out of existence by the Supreme Court, that these companies owe anything to the Government of the United States these companies owe anything to the Government of the United States until the maturity of the bonds. When you propose to liquidate a debt that is not due until 1898, and you begin to pay on account of that debt to-day, whoever does pay on account of such a debt is entitled to the accumulating advantages of that payment. If I owe the Senator from Ohio \$10,000 due in 1898 and he cannot call upon me for either principal or interest until its maturity, and I consent to pay and he consents to receive some payment on account during the current years pending its maturity, I am entitled to the advantages of the interest on those payments and he concedes it when he accents it from me

pending its maturity, I am entitled to the advantages of the interest on those payments and he concedes it when he accepts it from me. He may be sound on his law, but the Supreme Court has decided for him and for us; but he is scarcely sound in his finance.

We have a debt sufficiently onerous in all conscience hanging over this country, some \$2,000,000,000. The annual interest upon that debt is \$100,000,000; and yet the scheme of the Finance Committee of this body, enacted into a law by Congress, that we can liquidate that debt by an annual sinking fund of 1 per cent. for thirty years and a total payment of \$500,000,000 in that term, is conclusive. So if you can liquidate a debt of \$2,000,000,000 in thirty years by daying 1 per cent. annually when the debt is not due until a certain maturity of the obligation can you not liquidate another debt by a deposit in of the obligation, can you not liquidate another debt by a deposit in the Treasury of the United States of 1 per cent. annually, the inter-

the Treasury of the United States of I per cent. annually, the interest in both cases compounding upon the amount so deposited?

As I here take up the report of the Committee on Railroads and refer to it, I remark that the reason the committee has not pretended to provide for the administration of the affairs of the other companies named in the original Pacific Railroad acts, is because all those companies, except the two named, are in difficulties and cannot pay the interest on their first-mortgage bonds. Here is a proposition to-day from the Judiciary Committee to compel the

companies to pay 25 per cent. of their net earnings into the Treasury of the United States when those companies are not competent from their accruing revenues even to pay the interest on their first-mortgage bonds. So we deal with but two companies. There will be due from the two companies, the Union Pacific and the Central Pacific Railroads, principal and interest, in the year 1898, or about that average, at the maturity of the bonds, the sum of \$157,268,137. It is proposed by the bill reported by the Committee on Railroads that there shall be annually deposited in the Treasury of the United States prior to and up to the maturity of that debt, 1 per cent. of the amount which, with accruing interest, will, at a certain period of time, liquidate both principal and interest disbursed by the Government of the United States.

You will observe, Mr. President, that in no event by the bill of the Judiciary Committee can more than 25 per cent. of the net earnings of these two companies be required to be paid into the Treasury of the United States. Now, from all the data we have before us, that is just what the other bill provides. The Senator from Ohio and other Senators, and the Judiciary Committee and the Committee of the House in the report laid upon our tables, have seen proper always to consider the net earnings of the entire road incorporated under one title as the earnings of the roads that were aided by the Government of the United States. So far as our information extends, the Central Pacific Railroad Company of California was aided by the Government only to the extent of two-thirds of its length, and the one-third of the road that was not aided by the Government is asserted to be the most profitable portion of it. But the Committee on Railroads have looked into the earnings of these companies, and on pages 4 and 5 of their report you will find them compiled with this result: The average annual net earnings of the Union Pacific Railroad, independent of some casual dividends that they have made one year or some other year, are \$2,918,000. The average annual earnings of that portion of the Central Pacific Railroad of California that was aided by the Government are \$2,894,693. Now 25 per cent. of either of these amounts is less than the amount that the Railroad Committee propose that they shall pay into the Treasury of the United States. Therefore I said at the outset that the same design was undertaken by both committees, to pay into the Treasury of the United States an amount that would liquidate their debt. The Committee on the Judiciary say 25 per cent. We do not say any particular per cent., because there is no telling whether the earnings of these railroads will increase or diminish, but we do say a specified sum, and we show by a reference to the reports of these companies that that specified sum is 25 per cent. of their pr

what more? After there has been pant in \$1,000,000 by each company many immediately and the \$750,000 annually in semi-annual payments, there will have accumulated to the credit of those companies, at the maturity of the bonds, the sum of \$58,000,000. That amount will be in the Treasury any way without dispute. A former Secretary of the Treasury, in submitting this matter to Congress in Executive Document No. 25, of last session, takes occasion to express his opinion that it is well to make some arrangement for a specific payment by the companies annually "with their consent." Why should he use that language? Why should he, as the highest financial officer of the Government, a man renowned for his crudite learning as a lawyer, take occasion to say to Congress that it would be well to make an arrangement with the consent of the companies? Because he saw, as others who studied this subject, that in the contingency of adverse decision by the Supreme Court of the United States in no possible event could the Government recover the amount that it has loaned these companies. The bill of the Judiciary Committee invites that issue; necessarily these companies must contest it; because if they once concede that you can encroach upon their receipts and divert them to any purpose, the Government can determine what it pleases. If you take 25 per cent. you can take 50; if you can take 50 you can take all; and I ask any Senator what is your recourse if you put such a matter on the hazard of a die? If you submit that to the decision of the Supreme Court with the intimation that its decision and language have already given you, what assurance have you that you can ever recover one dollar from those companies? Mr. President, I do not mean to say that they will be dishonest; but they will be independent of us if we should be met by an adverse decision of the Supreme Court. Their stock is upon the market in Wall street. The moment such a decision is rendered, it will be taken up eagerly, and it will go into the hands of speculators

The Senator from Ohio made a comparison between one of the provisions of the bill that he was supporting and the action to be had under it with the course pursued by a chancellor in marshaling the assets of an estate: that they should be so marshaled and distributed as interest might appear on the part of the several creditors of the estate. But did he ever hear of a case where the chancellor himself was a sovereign? Did he ever hear of a case where the chancellor himself was the largest creditor of that estate? Did

he ever hear of a case where the assets, once marshaled, were marshaled into the strong-box of that chancellor himself, to be held and distributed as he might in his wisdom, independent of law, determine; for no law can control the Congress of the United States, except the law of its own action under the Constitution. Look at the provision of this bill in sections 7 and 8. I will read from section 8:

That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies, respectively, lawfully paramount to the rights of the United States.

United States.

This bill is advocated upon the pretext that it protects the interests of the first-mortgage bondholders, whereas the Railroad Committee's bill proposes to protect the interests of the Government, but it says that the money accumulating in this sinking fund shall be put into the Treasury of the United States subject to such liens and claims as shall be declared lawfully paramount to those of the United States; and the Senator who advocates that proposition in the same address states that he believes that, when that money shall have accumulated there, there will be a further charge against it of the interest upon the interest that has been paid out by the United States, so that this money accumulating in the Treasury of the United States is to be held by that sovereign power until it shall determine who is rightfully entitled to it; until it shall at its pleasure act and direct its distribution. Is there any appeal here for the holders of first-mortgage bonds for such an action as that? Do you suppose that they will consider that their interests are subserved by locking up in the Treasury of the United States the money that belongs to them, subject to such legislation as Congress in its sovereign power may subsequently enact?

Mr. Justice Grier, in the decision I have before referred to, says:

In the mere exercise of a corporate right the Government of the United States cannot claim the prerogative or immunities of a sovereign. She cannot compel a mortgagee to the hopeless remedy of a petition to Congress to redeem.

After you have marshaled these assets into the Treasury of the United States, how are they to be gotten out of the Treasury of the United States? In compliance with the law? By suit at law? No, sir; but those bondholders will be compelled to meet a Congress twenty years from now that will put its own construction upon the proper use and legally rightful disposition of that money. You do by this very act do that very thing that Justice Grier says you cannot do; you compel the mortgagees to the hopeless remedy of a petition to Congress for re-imbursement.

After the Judiciary Committee, of which the honorable Senator from Ohio is such a distinguished member, has recommended to and obtained the passage of an act by Congress requiring that the question of the 5 per cent. upon the net earnings shall be submitted to the adjudication of the court, he proposes now to make that definition by law outside of the court. He says:

It would be no objection to me to the first section of this bill if the Supreme Court were to decide to-day that the company's interpretation of "net earnings" is the true interpretation.

In other words, if the Supreme Court decided that the first section of the bill was wrong, in his opinion there would be no objection to it. I scarcely think that proposition can be sustained. There is a reference in some part of the Senator's remarks as to the cost of this road. I quote from the Senator from Ohio:

The companies went on and built these roads, and now I affirm that if anything is capable of proof, this is capable of proof and has been proved before one committee of the Senate, proved before two committees of the House of Representatives, that the Government subsidy in land and the proceeds of the Government bonds were all-sufficient to build every mile of these roads that was built; that in point of fact not one mile of these roads was built by the expenditure of the money of individual stockholders.

There is a fund of information in regard to the cost of these roads which is somewhat variant, and the Senator scarcely stated the whole of the presentation of the case. The cost of the Union Pacific as reported by that company in its last report to the Secretary of the Interior—the law requires that these companies shall make a report; it says an annual report of the cost of their road—the language is somewhat ambiguous and it is differently construed by the officer at the head of the Interior Department and by the companies, but at all events in one of the reports they made they say the road cost \$112,506,252. Then a commission was appointed by the Secretary of the Interior who rendered a report in October, 1874, and they say that the road cost \$115,214,757.79. An official commission appointed by the Secretary of the Interior on behalf of the Government of the United States report to him that that road cost \$115,000,000, and the subsidy granted by the Government of the United States was in bonds \$27,000,000.

The two statements disagree very widely. There is other testi-

The two statements disagree very widely. There is other testimony in regard to that. In report No. 78 of the House of Representatives, Forty-second Congress, third session, the Committee on the Credit Mobilier say that the road cost in round numbers \$50,000,000. There is a committee of Congress reporting that the road cost \$50,000,000, and the aid of the Government was only \$27,000,000. Then in the Credit Mobilier testimony on pages 636 and 637 Benjamin F. Ham, assistant secretary and treasurer of the Credit Mobilier, states that the cost of the Union Pacific Railroad to the company, including the profits of the Credit Mobilier, which the committee found were about forty-

three millions, amounted to \$114,000,000, and the same gentleman gave the actual cost of the road at \$71,000,000, nearly 200 per cent. advance upon the amount that the Government aided the company with. And

yet we are told that the amount the companies got from the Government would be sufficient to build the whole road.

I scarcely think, Mr. President, that the Senator from Ohio did himself justice when he called the attention of the Senate to the sad calamity that might occur to the interests of this country when these railroad companies had succeeded in paying off their entire indebtedness to the Government. There is a provision in the bill recommended by the Committee on Railroads that when these companies have fully discharged all their obligations, pecuniary and otherwise, to the Government, then they shall be released from further requirement. What is that further requirement? The Senator says it is to maintain the road in good order and condition. We are left to infer thereby that the Committee on Railroads have made a provision that thereby that the Committee on Railroads have made a provision that just so soon as these companies have gotten out of debt and have re-imbursed to the Government of the United States every dollar that ever was advanced to them, then they intend to resign business and let their vast and valuable property go to wreck out of sheer negligence; and so it would be a great calamity to the Government of the United States if these companies should succeed in paying their indebtedness to the Government. Such an idea, I am sure, could never enter the brain of anybody. The Senator did not think so, I scarcely suppose when he said it

In the course of this discussion and the action which will be had by the Senate it will be requisite to discuss more in detail the provisions of the bill that has been recommended by the Committee on Railroads, and which will be offered as a substitute for the bill now unroads, and which will be offered as a substitute for the bill now under consideration. I shall take occasion to explain more at length its features and provisions; but I say in a summary way that it will yield to the Government of the United States by consent of the companies quite as much per annum as the bill that is recommended by the Judiciary Committee. The Senator from Ohio says that in no event shall more than 25 per cent. of the earnings of these companies be put into the Treasury of the United States for the creation of a sinking fund. Am I correct about that?

Mr. THURMAN Twanty-five per cent of the pet earnings. Yes

Mr. THURMAN. Twenty-five per cent. of the net earnings. Yes,

that is correct.

Mr. WEST. He figures the net earnings from some untenable proposition. I contend that their net earnings will yield only \$750,000. He thinks they will yield \$1,500,000. So it is a question of figures; it is a question of amounts. Both committees desire the same thing, but the Senator figures the earnings of these companies upon a basis that I scarcely think we shall be able to maintain; and I again ask, suppose we do not, will any Senator tell me what recourse the Government of the United States will have against this property before the maturity of the bonds if the bill of the Senator from Ohio is submitted to the Supreme Court of the United States and an adverse decision is rendered thereon?

Mr. THURMAN. I cannot suppose such a thing. that is correct. Mr. WEST.

Mr. THURMAN. I cannot suppose such a thing.

Mr. THURMAN. I cannot suppose such a thing.

Mr. WEST. I very well remember, and I quoted to-day where
Senators have stood upon this floor and said that they could not suppose the Supreme Court would ever be guilty of such an absurdity
as to say that no interest or principal was due upon these bonds
until their maturity. That absurdity has been nailed to the counter
by the unanimous decision of the Supreme Court of the United
States. Look over the debates on that question. Senators have
risen in their places over and over again and said such a decision by
the Supreme Court of the United States was out of the question; it
was an absurdity. But we are met here to-day face to face by the was an absurdity. But we are met here to-day face to face by the naked positive fact that that decision has been rendered, and rendered unanimously by that court. Startling as it may seem we are brought face to face with the proposition that we have no recourse except to comply with the contract and agree to the letter of the Now, sir, shall we once more rush into that litigation that we have been recommended to over and over again by this very Judiciary Committee? Shall we once more lock horns again with Judiciary Committee? Shall we once more lock horns again with these powerful and potent companies and be defied once more by the decision of the Supreme Court? Shall we put all on that issue? No. Never mind, if the Senator's law is better than that of the Supreme Court the Supreme Court's law is more potent than his. Put it all on that issue and where are your \$150,000,000? Gone, gone like smoke before the breeze; and that is the thing that the Committee on Railroads desire to guard against. They have followed, and this Senate has followed the lead of the Judiciary Committee over and over again. On this railroad question we have been led and this Senate has followed the lead of the Judiciary Committee over and over again. On this railroad question we have been led over and over again to defeat. Now shall we stake all once more upon their adjudication? I say not.

Mr. THURMAN. Did I understand the Senator to say that the Senate has been led by the Judiciary Committee over and over again? Do I correctly apprehend the Senator? I should like to have

again? Do Portected apprehend the Schator? I should like to have an instance, just one instance.

Mr. WEST. The interest.

Mr. THURMAN. The interest! Why, the Judiciary Committee made a report which received the approbation of the Court of Claims and then of all the judges of the Supreme Court. I should like to know, then, how the Judiciary Committee has led the Senate into

by legislation to submit that question to the Supreme Court, and the

Supreme Court decided against us.

Mr. THURMAN. Is it any fault of the Judiciary Committee that they submitted that question to the supreme judicial tribunal of the

ountry?

Mr. WEST. No, but it will be their fault if it goes there this time again and we get another adverse decision.

So, Mr. President, it is a question, as the Senator said at the outset of his remarks a few days ago, whether Congress shall wisely and judiciously legislate for the preservation of one hundred millions of property; it is a question whether we shall in good faith make an agreement with these companies that will attain the same result, or whether we shall undertake to compel them to do so, and therefore force them into an attitude of resistance that must necessarily follow the provisions of such a bill. In defense of their own rights, for self-preservation absolutely, as soon as the signature of the President of the United States is dry upon such legislation, they must arm themselves for the contest. Years will pass by; money will be kept out of the Treasury that is now ready to be paid into it, subject to a decision that we cannot afford to risk when we have an alternative that

Mr. President, I know, notwithstanding the great weight and importance of this subject, how dry and uninteresting it is, and in closing I only repeat the admonition that was made by the Senator from Ohio in his opening remark, that if we cannot frame a bill on this subject without grave consideration, certainly we ought not to pass any bill without an equal gravity of consideration. Senators scarcely seem, and have not throughout this debate, to attach the proper importance and interest to it; but we are playing to-day in this bill for a stake of \$100,000,000 on behalf of the Government of the United States, and

of \$100,000,000 on behalf of the Government of the United States, and we must be careful that we do not, by inconsiderate and injudicious legislation, jeopardize its safety.

Mr. BOGY. Mr. President, it is not my intention to dwell at length on the merits of the bills pending before the Senate. I wish principally to call the attention of the Senate to the great difference which exists between the acts of 1862 and 1864. By the act of the 1st of July, 1862, a subsidy was voted in lands and bonds to a certain company to build a railroad from the valley of the Mississippi to the Pacific Ocean. The amount of bonds provided for in that law was \$16,000 a mile. These bonds were secured on the road and all its appurtenances by a first mortgage. By the act of 1864 this first mortgage was converted into a second mortgage. The amount of bond subsidy remained the same for the extent of country lying east of the base of the Rocky Mountains and from the west base of the same base of the Rocky Mountains and from the west base of the same mountains to the Pacific Ocean, increasing the subsidy across the mountains for a distance of three hundred miles (by the law not to exceed three hundred miles) from \$16,000 to \$48,000 a mile and authorexceed three hundred miles) from \$16,000 to \$48,000 a mile and authorizing the company to put upon the road and secure by a first mortgage an equal amount of bonds. By the first law the amount of bonds which would have been furnished by the United States for building the road from the waters of the Missouri River to the Pacific Ocean would have been about \$32,000,000. That is, \$16,000 a mile, the distance being about two thousand miles, would be just \$32,000,000; yet the amount of bonds which has been issued for the building of this road and branches is just double this amount. It is \$64,000,000. In my estimation the speculation, or, if you please, peculation, made by the corporators or the owners of the corporation took place in this increased subsidy across the mountains. Taking the distance to be three hundred miles, it is a plain matter of figures that, at \$48,000 a mile, the amount would be \$14,400,000 of bonds for this distance. In addition to this an equal amount of first-mortgage bonds of the comaddition to this an equal amount of first-mortgage bonds of the company was authorized to be issued and to be secured on the road. It made, therefore, an amount of \$96,000 a mile for building those three hundred miles of road. I do not know as a matter of perfect accuracy, but I think I am justified in saying that for this distance of three hundred miles of road. dred miles the road was built perhaps for not to exceed \$48,000 a mile. The consequence was that the amount of \$14,400,000 of United States bonds furnished as a subsidy for building this portion of the road was a clear profit to the persons who were the owners of this corporation.

We have heard much in modern times of what was called the Credit Mobilier. I never was able to find out where the Government lost anything by the so-called Credit Mobilier. I do not wish, however, to be understood as vindicating this famous or infamous Credit Motall on that issue and where are your \$150,000,000? Gone, gone like smoke before the breeze; and that is the thing that the Comittee on Railroads desire to guard against. They have followed, and this Senate has followed the lead of the Judiciary Committee over and over again. On this railroad question we have been led over and over again to defeat. Now shall we stake all once more upon their adjudication? I say not.

Mr. THURMAN. Did I understand the Senator to say that the Senate has been led by the Judiciary Committee over and over and over again? Do I correctly apprehend the Senator? I should like to have in instance, just one instance.

Mr. WEST. The interest! Why, the Judiciary Committee hade a report which received the approbation of the Court of Claims and then of all the judges of the Supreme Court. I should like to made a report which received the approbation of the Court of Claims and then of all the judges of the Supreme Court. I should like to make the first law. Therefore, by the condition of the court of Claims and then of all the judges of the Supreme Court. I should like to make a report which received the approbation of the Court of Claims and then of all the judges of the Supreme Court. I should like to make the subsidy in lands to double the amount, but yet provided that only one-half of the receipts from transportation should be retained by the Government toward repaying the interest on the bonds in lieu of the whole, as provided in the first law. Therefore, by the court of 1864, which increased the subsidy in lands to double the amount; and, in addition to this, for the distance of three hundred miles the subsidy in bonds was increased from \$16,000 to \$48,000 a mile, and secured only by a second mortgage. The owners of the road beyond all reasonable doubt realized as a clear profit for those three hundred miles all the bonds paid by the Government of the United States, being \$14,400,000, and here was the peculation, here was the loss to the Government. It grew out of the act of 1864, not by any subsequent transactions, because the subsequent doings, no matter what they might have been, bad and corrupt as they were, did not increase the subsidy furnished by the Government in any way, shape, or form. That remained the same. It was on that portion of the road crossing the mountains for a distance of about three hundred miles that the Government lost by way of subsidy some \$14,400,000.

I look upon the building of the road from the waters of the Missouri River to the Pacific Ocean, at the time particularly in which it was built, during the war, as perhaps the greatest achievement of the human race on the face of the earth. I am old enough to remember when the scheme of a railroad from the waters of the Missouri to the Pacific Ocean was looked upon as a wild dream, as a thing nearly imposized as a clear profit for those three hundred miles all the bonds paid

when the scheme of a railroad from the waters of the Missouri to the Pacific Ocean was looked upon as a wild dream, as a thing nearly impossible if not entirely impossible of accomplishment. Yet it was accomplished, and in truth and in fact it was accomplished at comparatively small cost to the Government. The lands donated to the road were not worth a cent without the railroad. The Government had an empire lying west between the waters of the Missouri and the Pacific Ocean; an empire which has sprung into great States and Territories from that day; a country which has become of great advantage and which would have been utterly valueless without the railroad. It has also bound to this portion of the confederacy the Pacific coast with bands of iron, and no one can tell what might have been the destiny of that section during the war if it had not been for this railroad.

while all these things are true, and no one is disposed more than myself to legislate in the most liberal manner to protect those roads, and not to cripple them, at the same time I can very well see that with these large subsidies, not so much in lands, because they were of no value—of very little even at this day—but with the large subsidies in bonds, there has been an immense amount of money made by the companies. I give to the men who originated and carried through this great enterprise all possible credit for doing a great thing at a very critical moment in a very short space of time; nevertheless I can very well see that the amount of money which they have realized under the legislation of Congress has been enormous. On the portion of the road from the east base of the Rocky Mountains to the west base of the same mountains, the Government having only a second mort of the same mountains, the Government having only a second mortgage and the company having a first mortgage of \$45,000 a mile, I hold that the Government has at this day no security at all of any value. The second mortgage on that portion of the road is not worth value. The second mortgage on that portion of the road is not worth a cent, because the first mortgage is too large. Hence, I am in favor, if we can do it constitutionally and legally, of the passage of any bill which will compel these parties to do substantial justice. I believe the bill proposed by the Committee on the Judiciary to be a constitutional bill. I believe that these persons can very well afford to comply with this bill with the large profits which they are now making; I speak of net profits because there are no other profits than net profits. They are able to pay 25 per cent. of those net profits into a sinking fund without serious injury. I see no objection constitutionally against their being compelled to do so. Hence I will support the bill offered by the Committee on the Judiciary, because I think it reasonable and because I believe it does not in any way cripple those companies. I because I believe it does not in any way cripple those companies. I would vote for no measure tending to cripple them, because I believe that it is of the greatest public importance that a connection should

would vote for no measure tending to crippie them, because I believe that it is of the greatest public importance that a connection should be kept up between the waters of the Missouri River and the Pacific Ocean. I look upon this road as of great public importance; but, while I believe it of public importance and would do nothing to cripple or to weaken the companies in any way, yet I can see no reason why they should not be compelled to pay an amount of money equal to 25 per cent. of their net profits, provided, as is provided in the bill, that this does not deprive them of the ability to pay the interest upon their first-mortgage bonds.

The Senator from Louisiana argued at great length that by taking 25 per cent. from them you thereby prevented them from paying the interest on their first-mortgage bonds. The bill is plain on this subject. If by taking 25 per cent. the profits are not sufficient to pay the interest on the first-mortgage bonds, then a deduction is to be made from the 25 per cent. In other words, the interest on the first-mortgage bonds must be paid first; not that the interest should be deducted from the amount of the net profits, but making a calculation of net profits, say they amount to \$2,000,000, shall pay that amount and the balance goes into the Treasury and then on condition that this shall not exceed \$1,500,000 a year. We know from reports made that the profits of the Union Pacific Railroad last year were about \$8,000,000,000 net, and the profits of the Central Pacific were about \$8,000, \$6,000,000 net, and the profits of the Central Pacific were about \$8,000,-\$6,000,000 net, and the profits of the Central Pacific were about \$8,000,000 net, exclusive of course of the interest on their first-mortgage bonds. That being so, and no man can deny those facts, it is not unreasonable, and there is nothing wrong in requiring these men to pay an amount equal to 25 per cent. of their net profits, provided that this 25 per cent. does not in any case exceed \$1,500,000 a year. At this time 25 per cent. of the net profits of both these roads exceeds that amount. When it is apparent that these men have realized on the bonds of the United States millions of dollars—and this is beyond all controversy—it is but just that something should be done to protect the Government for its large advance of bonds, carrying very near four millions a year of interest.

It was supposed at the time the act of 1864 was passed, and more so when the act of 1862 was passed, that a road from the Missouri River to the Pacific Ocean over the supposed insurmountable Rocky Mountains was a work of great engineering difficulty if not impossible. These mountains were known in our geographies as the Rocky Mountains, full of deep cuts and immense and steep elevations with deep valleys to be spanned, when in point of fact for hundreds of miles from the Missouri River to the base of the Rocky Mountains the country is as level nearly as any portion of Illinois. The ascent is so gentle that you do not perceive it when traveling in the cars. In the Rocky Mountains themselves, although in some portions the ascent is steep, the work was not expensive, not as expensive as making a road from the city of Baltimore to the Ohio River. Hence when these road from the city of Baltimore to the Ohio River. Hence when these persons were authorized to place a mortgage of \$48,000 a mile on that portion of the road across the mountains, they were enabled to build that road with this \$48,000, and the \$45,000 of Government subsidy was a clear profit to them under the provisions of that law of 1864. There can be no doubt about that. Therefore, sir, I think it but justice to the Government to protect itself and take care of itself and to reto the Government to protect itself and take care of itself and to require that these persons shall pay a proportion of their great profits, provided they are thereby not crippled in such a way as not to be able to pay the interest on their first-mortgage bonds. The object of this bill is to accumulate a fund for a wise purpose; not for the profit of the Government, but to accumulate a fund, bearing regular interest, subject to the payment of the obligations of the corporation on the maturity of the bonds, not only the obligations due to the Government but their first-mortgage bonds. If they are unable to pay their first-mortgage bonds, these assets accumulated in the sinking fund are to be marshaled, to use a law phrase so as to be divided no rate between be marshaled, to use a law phrase, so as to be divided pro rata between the debt due to the first-mortgage bondholders as well as the debt due to the Government for the bonds voted to the road by way of subsidy.

There can be nothing fairer. The only question—and that question I do not pretend to be able to decide—is one of legal ability.

The Senator from Oregon argued the other day, and I admit argued with ability, the constitutional point, the right of this Government to impair what he calls the obligation of a contract. If the case came within that he was a substantial that he was a substantial that he calls the obligation of a contract. within that boundary called a contract, that you could not impair of course, and his argument would be conclusive; but I think my friend from Ohio explained that perfectly well. Under the power retained to amend and to alter you cannot divest the individuals who may claim property under the corporation or the stockholders who have interests in the stock; you cannot divest them of any vested right; yet you can control to a certain extent the assets of the company so as to protect the Government for the bonds advanced under I believe this to be constitutional, and I am very certain it is perfectly just. You cannot confiscate those assets; you cannot say "We shall take those and put them in the Treasury for our benefit." That would be impairing the obligation of the contract, and would be spoliation. But in view of the fact that a large and enormous grant was voted to these roads, in view of the known fact that these men realized millions of profit under the act of 1864, I can see no objection to compelling them to accumulate a fund, it being theirs all the time, not belonging to the Government—it is their own and kept for their purposes, to pay their debts, and when these debts are fully paid, if there be a remainder left in the sinking fund, it will belong to them—I can see no objection to that. I do not regard it as impairing the obligation of the contract. After having heard all the argu-

ing the obligation of the contract. After having heard all the arguments, nevertheless I cannot see any constitutional objection to the bill proposed by the Committee on the Judiciary.

I had an object in speaking to-day. It was to draw the attention of the Senate and of the public to the fact which, it seems to me, has always been overlooked, that the speculation in the Pacific Railroad really had its origin in the act of 1864, and was confined pretty much to the three bundered miles over the mountains. to the three hundred miles across the mountains. Here was the great profit of that enterprise. I believe that the amount of bonds author-ized to be issued by the company, and which were made a first mort-gage by law, was ample to build the three hundred miles of road over gage by law, was ample to build the three hundred miles of road over the mountains. Hence the amount of bonds voted to the company by way of subsidy was a clear profit to them. By the act of 1862 they were entitled to receive \$16,000 a mile on the completion of forty miles of the road, and by the act of 1864 it was on the completion of twenty miles of the road; and the evidence of completion was to be a report made by commissioners appointed by the Government. These commissioners were not required to state the cost of the road; they were only required to state the simple fact that twenty miles of the road, from such a place to such a place, were finished; and although it might have been true, as was often the case, that the road had not cost more than the amount of bonds authorized to be issued by the corporation and secured by a first mortgage, nevertheless upon that cost more than the amount of bonds authorized to be issued by the corporation and secured by a first mortgage, nevertheless upon that certificate being received by the Secretary of the Interior they were entitled to receive \$16,000 per mile for that portion of the country lying on this side of the mountains and for the portion lying on the other side of the mountains, and \$48,000 a mile for that portion over the Rocky Mountains, regardless of the cost of the road. If the law had been that they could only receive an amount of money equal to the amount expended for building the road, many millions of dollars could have been saved; but that was not the law; they were to get could have been saved; but that was not the law; they were to get an amount of money regardless of the cost of the road, which amount over the mountains was entirely too large when you consider that they were authorized themselves to issue first-mortgage bonds.

I hope, therefore, Mr. President, that the bill reported by the Com-There may be mittee on the Judiciary will be passed by the Senate. There may be some doubt about it. The Senator from Louisiana this morning said with some force, and the Senator from Oregon has suggested that it may lead to a lawsuit, this company may resist this thing; but I think it is better that the effort should be made and let the Supreme Court pass upon the question again. So it is that something has got to be done, if it be possible, to secure the Government against this immense indebtedness, which is augmenting every day from the fact that these corporations do not pay their interest. We know that one-half the Government transportation is too small to meet the amount of interest which has to be paid on the Government bonds semi-annually by the Government. It must not be overlooked also that they have entirely failed to pay the 5 per cent. on their net profits. It is a question between the Government and these large corporations; and I am not willing to yield to them without at least making an effort to protect the public interest.

The PRESIDING OFFICER, (Mr. CLAYTON in the chair.) The Senator from Ohio [Mr. SHERMAN] yesterday proposed an amendment. with some force, and the Senator from Oregon has suggested that it

Mr. SHERMAN. I drew that amendment hastily, and I do not think it exactly carries out the purpose I had in view. Therefore I shall withdraw it in its present form. Perhaps the language of the committee in section 4 of the bill carries out the general object that I also wish to advance.

Perhaps I might as well now, briefly, for it will take but a few moments, state my own view in regard to this important bill. I look upon it more in the financial aspect of it, as an effort to relieve the Government of the United States without crippling these railroads. rather than undertake a discussion of the legal principle involved as

rather than undertake a discussion of the legal principle involved as to the right of Congress to change and alter the laws creating these corporations. I shall only refer to the money aspect of the bill.

If I understand my colleague, this bill intends to require all these railroad companies to pay one-half of the cost of the Government transportation into the Treasury of the United States and also 5 per cent. of the net earnings of these roads into the Treasury of the United States to aid it in carrying on the ordinary operations of the Government, to aid it also in meeting the interest on these railroad bonds, so that so far as this bill is concerned it makes no burden whatever muon the railroads that is not admitted by them to be imwhatever upon the railroads that is not admitted by them to be im-

posed by the laws of their creation.

I have thought, although my opinion is worth nothing against the opinion of the Supreme Court, that the Supreme Court put an erroneous construction upon this law. But they have decided that the railroad companies are not bound to refund to the Government of the railroad companies are not bound to refund to the Government of the United States the money advanced by the United States as interest on its bonds until the expiration of thirty years. That was not my understanding of the law when it was passed, and I think the debate shows that clearly enough. But there is no doubt whatever that by the law as it stands the railroad company are compelled to apply and pay to the Government one-half of the cost of Government transpor-That is admitted on all hands. It is also admitted on all hands that these companies are bound to pay 5 per cent. of the net earnings, which they never have yet done. I ask my friend if I am not correct about that; if these railroad companies have ever paid to the Government of the United States one single cent from the net

earnings of their roads, either of them?

Mr. WEST. I do not know that they have; but the Government has retained the whole of the transportation as an offset against their 5 per cent., subject to the adjudication of the courts. There is now an accumulation to the credit of each of these two larger companies

of the sum of \$1,000,000 subject to that issue.

Mr. SHERMAN. I understand it. The railroad compenies have never, to the extent of one dollar, paid to the United States what it is clearly and palpably their duty to pay by the terms of both laws;

that is, 5 per cent. of the net earnings.

Mr. WEST. The Senator ought to take off the unfavorable edge of that proposition by admitting that the Government has retained the amount, and therefore there was no necessity for the companies to

amount, and therefore there was no necessity for the companies to pay it.

Mr. SHERMAN. I will come to that. I again repeat, and it is a fact that I want to make prominent, that although it is the clear mandate of the law as plainly written as the authority which incorporated these companies, they never have paid to the Government of the United States one dollar of the 5 per cent. fund which they are required to pay on the net earnings of their roads; and if they were dealing with any other creditor but the United States of America they would have found that a pretty serious allegation. While the Government of the United States is paying \$3,600,000 a year for the benefit of these corporations, now growing wealthy, they never have complied in the slightest degree with any stipulation made in favor of the Government of the United States.

Mr. MERRIMON. May I ask the Senator whether in the mean time

Mr. MERRIMON. May I ask the Senator whether in the mean time

they have declared dividends †
Mr. SHERMAN. I believe th
Mr. THURMAN. The Centra I believe they have; the Central Pacific has. The Central Pacific 8 per cent. and the Union Pa

cific, if my memory is correct, 6 per cent.

Mr. CONKLING. Six per cent. on what?

league, that the Judiciary Committee bill, if it become a law, will leave sufficient means to these two great companies to pay from 3 to 4 per cent. dividends on the market value of their stock at a time when not twenty railroads in the whole United States pay any dividends at all.

Mr. SHERMAN. Now I will go on. I want to get the simple ele-

Mr. SHERMAN. Now I will go on. I want to get the simple elements of this case first.

Mr. PADDOCK. May I be allowed one word?

Mr. SHERMAN. Certainly.

Mr. PADDOCK. It is due to these companies to say that there has been a question as to the date upon which these roads were considered legally to have been completed.

Mr. SHERMAN. I was coming to that.

Mr. PADDOCK. And there has been a controversy between the Government and the roads in respect to that question, and because of the pendency of that controversy and because there has not been an arrival at a conclusion satisfactory on both sides in reference to

an arrival at a conclusion satisfactory on both sides in reference to that date, the question of the 5 per cent. has not been settled.

Mr. SHERMAN. I intended to come to that, because I mean to show the mode in which these railroad companies have looked on their obligations to the Government of the United States. The Supreme Court have declared, and the law is plain without the declaration of any court, that these railroads were bound to apply one-half of the receipts for Government work to the payment of this interest. It is also clear that they were bound to pay 5 per cent. on their net earnings from the completion of the roads; and here come the claims earnings from the completion of the roads; and here come the claims made by the companies. I want to present them as they appear to me. This is the only obligation imposed by the law, according to the decision of the Supreme Court, upon these railroads, and not one of them has complied with it in the slightest degree except as they have been compelled in the mode I will mention. That is rather remarkable. We have already given them bonds to the amount of \$64,000,000, and we have paid in money from the Treasury of the United States some eight or ten years' interest, how much precisely I do not know. Does my colleague remember the amount of interest? do not know. Does my colleague remember the amount of interest?

Mr. MITCHELL. I should like to ask the Senator from Ohio a

question right there.

Mr. SHERMAN. I do not want to be drawn into an argument;

Mr. SHERMAN. I do not want to be drawn into an argument; but I will yield.

Mr. MITCHELL. Suppose it is all true as stated by the Senator from Ohio that these railroad companies have not paid any part of the 5 per cent. on their net earnings since the completion of the roads, I do not pretend to question the statement now; but the reason, I suppose, is as stated by the Senator from Nebraska, that there has been a controversy as to the time when the roads were completed, and that controversy is now pending in the courts. But suppose it is all true does that after the power or change the power of Congress. is all true, does that alter the power or change the power of Congress in reference to this matter one way or the other?

Mr. SHERMAN. I must argue one question at a time. First I want to know whether it is true, and then I will talk about the materiality of it. I have here the simple statement, and I want again to impress it on the Senate, to show that they are dealing with a question of vast magnitude; that not only have we issued bonds to the sum of \$64,000,000 to these railroads, but that the Government of the United States has paid besides, as interest on these bonds, at the time the document before me was made up, a year or two ago, \$30,141,513, money collected in the form of taxes from the people of the United

Mr. BOUTWELL. A portion of it must have been re-imbursed, I

Mr. SHERMAN. Some of it by the application of one-half of the Government transportation, and I intended to allude to that. But we have paid out of the Treasury of the United States, according to this document, which is a year old—it is Judge Lawrences's report made April 25, 1876, \$30,141,513. The railroad companies have paid to the Government of the United States not one dollar; but in pursuance of law the Government has retained one-half the cost of transporting Government supplies over their roads, the amount of which precisely I do not know.

transporting Government supplies over their roads, the amount of which precisely I do not know.

Mr. PADDOCK. I should like to inquire of the Senator from Ohio if it is not true that the Government has practically retained all?

Mr. SHERMAN. I will come to that, but my friend would hurry me. I want to know now how much has been the whole amount of the share of transportation the Government has retained. I am not so familiar with these books as I ought to be, but at any rate I should like to give credit for the precise amount.

Mr. PADDOCK. I dislike to interrupt the Senator from Ohio, but I think if we make these figures correct as we go along, we shall have a better knowledge of the subject.

Mr. SHERMAN. The public debt shows it. These railroads have never paid one dollar, but have done service for the United States to the amount of \$6,851,349.77; so that the Government of the United

to the amount of \$6,851,349.77; so that the Government of the United States, besides issuing its bonds to these railroads, has paid in money over and above all services rendered by these railroads nearly twentyfour million dollars in cash.

Mr. WEST. Are those figures on the debt statement?

Mr. SHERMAN. Yes, sir; on the debt statement. I have it here.

So far as the application of one-half of service for the Government Mr. THURMAN. Six per cent. dividends on the stock.
Mr. SHERMAN. I did not know that.
Mr. THURMAN. And I will say now, if I do not interrupt my colernment has paid in interest, actual outlay, thirty-odd million dollars. Besides that, there is a stipulation in the law which has been read by both the Senators that the Government of the United States is to receive from the completion of the road 5 per cent. of the net earnings. Here there were two elements. When was this road completed? Never, and it never will be—

Mr. PADDOCK. I think it is hardly fair to make that statement. The PRESIDING OFFICER. Does the Senator from Ohio yield

to the Senator from Nebraska?

Mr. SHERMAN. Yes, but I am interrupted just in the midst of a sentence.

Mr. PADDOCK. I beg pardon.
Mr. SHERMAN. I said never, and never will be according to the Mr. SHERMAN. I said never, and never will be according to the construction which may be given as to any railroad. No railroad is ever completed in one sense; but a railroad is completed in the ordinary plain sense of common men when its track is completed through and it connects and runs as a completed line between the terminal points; and that is the plain meaning of the law. Therefore, the very moment this road as a continuous line commenced earning money and had net earnings, that moment it was completed, and by honor as well as by the plain language of the law the companies were bound to pay that 5 per cent, small though it might be; yet they never have done it. They said the road was not completed. When was the road completed It has been decided.

Mr. PADDOCK. I am not able to give the Senator the information exactly; but this is true, that the Government appointed a commission of eminent citizens who went and examined the road to ascertain if it was completed, and they reported that it was not, and upon that report it was required of the Union Pacific Company alone that it should expend some million and a half of dollars, which it did thereafter, and the Central Pacific as I remember a corresponding

amount.

Mr. SHERMAN. I understand all that.

Mr. PADDOCK. So that if there were any proceeds before that time it was necessary undoubtedly that they should go to help up the million and a half of dollars which was required to complete the road when that report was made; and thereupon the sum required was exwhen that report was made; and thereupon the sum required was expended and the road was put in that condition which afterward was determined by a commission to be a completed road. Then, as I understand, the company was ready from that date, from that report, to pay 5 per cent.; and that is the controversy between the Government and the company.

Mr. SHERMAN. When was that date?

Mr. PADDOCK. I am not able to tell you the date exactly. There was probably a year and a half's difference.

Mr. WEST. As the Senator from Ohio wishes to know something definite——

definite

Mr. SHERMAN. I just want to know the date.
Mr. WEST. I will then give it from an official document, from the
report of a commission on behalf of the United States appointed by the Secretary of the Interior.

Mr. SHERMAN. Just give me the date.

Mr. WEST. I will give it to you. Here are the words:

This commission has therefore decided that the road was completed as required by law by the report of the former commission and to comply with the instructions of the Interior Department, October 1, 1874, at a total cost of \$115,214,000.

Mr. SHERMAN. What is the date?

Mr. SHERMAN. What is the date?

Mr. WEST. October 1, 1874.

Mr. SHERMAN. Very well. Now I have got it. The construction which the railroad companies put on this is, that as long as they could put off complying with their part of the contract the road was not done; as long as there was a single bridge that was not built according to the language of the law or a single tie that was not laid sufficiently along the language of the law or a single tie that was not laid sufficiently along the law of the law or a single tie that was not laid sufficiently along the law of t ciently close to the next tie; as long as a single portion of any item of their work remained incomplete, the road was not done; and as a matter of course it was their interest to make that time as remote as possible. But the road was reported as completed in October, 1874 possible. But the road was reported as completed in October, 16/4; and yet we all know that people went over that road, that it had earnings five years before that; and yet upon that kind of construction they have postponed paying to the Government one single dollar of what are called "net earnings."

Mr. President, this shows that in dealing with these corporations we must make the language so plain and precise, and must make the duty of the officers so clear that there can be no doubt about the

interpretation. There is just the condition in which we are placed.

But that is not all on the point of the completion of the road. Mr.

President, they completed the road by sections of twenty miles; when
one section of twenty miles was completed and certified to by Government inspectors they drew their bonds, and when the last section was completed they drew their bonds upon a completed road because they were only entitled to draw bonds as the road was completed. When the road was completed and the last bonds were drawn, then not only the equity of the law but the plain meaning of the law required them

to pay 5 per cent. of the net earnings. That is not all. What are net earnings? That is a somewhat indefinite term; but most people know what "net earnings" are. Most people know that when a man has an income of a thousand dollars a year and spends \$999 he is happy, because he has one dollar to his credit over and above his expenses. If it is the other way, he is very unfortunate. These railroads soon made net earnings in one sense;

but they claimed to deduct from their net earnings all the interest -not only on bonds that were prior in their right to the bonds on bonds of the United States but those subsequent to the bonds of the United States; in other words, if they manufactured and issued what are called water-bonds they deducted that and claimed that until the last interest on the last of these bonds should be paid there could be no net earnings. By that rule there are no net earnings in more than thirty or forty railroads of the United States, because the great body of the railroads in the United States have made no net earnings in that view; and yet according to their reports there are plenty of net earnings, a large mass of net earnings. Why? Because by the common language of plain railroad men net earnings mean that balance mon language of plain railroad men net earnings mean that balance which is left after taking from the gross earnings the cost of running the road; not the cost of constructing new bridges, not the cost of paying interest on debts, not the money that is paid to stockholders either in the form of interest or in the form of dividends, but the mere running expenses of the road. Therefore, if a road earns \$8,000,000 and pays out \$4,000,000 for the running expenses, the other \$4,000,000 are net profits, although every dollar may go to the bondholders to pay the interest on the bonds. That is the plain meaning of "net earnings"

of "net earnings."

Mr. WEST. I merely rise to ask the Senator whether there has ever been a judicial decision on the question as to what constitute net earnings of the road, and whether that very question in this case has not been remitted by act of Congress to the United States courts,

has not been remitted by act of Congress to the United States courts, because we were all at loss about this sum?

Mr. SHERMAN. Let me state frankly that in my judgment the men who own these railroads, now enormously valuable, ought to be prompt and eager to do their duty by the Government of the United States. They ought not to await the long delays of a lawsuit, or the interminable delays of a final judgment in the Supreme Court of the United States to tell them what "net earnings" mean. The intelligible gent gentlemen, among the ablest and best in our land, some of them the shrewdest men in our land, who are stockholders and managers of these roads know mighty well what "net earnings" are when they come to divide dividends and profits and collect interest. When they are dealing with a government which has been so liberal to them in the management and building up of a great property, they ought not to wait for a final decision of the Supreme Court of the United States to know what "net earnings" are, or to learn when their road was completed. The worst thing that has ever been said about these railroad companies is the fact that although the Government has been railroad companies is the fact that although the Government has been bounteous to them, not only in bonds but in money, they seem to hang on to the last leg and to the most harsh construction of the law against the very Government whose credit alone enabled them to build their roads. That is what I complain of. The court has already decided in their favor on one point; and although I think the court did not catch the meaning of the law, probably it was because we were faulty in passing the law; yet even the law as it stands has not been complied with in that spirit in which a generous government ought to have been dealt with, when it gave, I may say, large bounties, large aids to these railroad corporations. aids to these railroad corporations.

Mr. HITCHCOCK. Will the Senator allow me to ask him a ques-

tion?

Mr. SHERMAN. Yes, but I am prolonging my remarks longer than

I intended.

Mr. HITCHCOCK. I desire to ask the Senator whether he consid-Mr. HITCHCOCK. I desire to ask the Senator whether he considers the delinquency of the companies, the failure to pay the 5 per cent. required by the law, any more to be condemned than the delinquency of the Government in the failure to pay the half compensation required by law?

Mr. SHERMAN. I think the Government not only was justified, but it was its bounden duty to hold on to this money to compel them to pay what was due. That is all there is of it. Here is my friend from Massachusetts who was the Secretary of the Treasury at the time—

Mr. BOUTWELL. I am responsible for it.

Mr. SHERMAN. He says he is responsible. He never denied that the United States owed these roads one-half the Government transportation account; but he turned around like any other debtor would and said "these people owe me twice as much under another plain provision of the law, and I will not pay what is due to them until they pay what is due to me."

Mr. WEST. What did the Supreme Court say to that?

Mr. SHERMAN. I do not care what the Supreme Court say about that. I think that is simply plain honesty; and on that question'I think the Senator from Massachusetts was exactly right in dealing for the Government. Certainly I would have done it if I had been in his position. It must be remembered, therefore, that all that this bill reported from the Judiciary Committee, in rather vague language I his position. It must be remembered, therefore, that all that this bill reported from the Judiciary Committee, in rather vague language I admit—for I cannot yet get into my head the fourth section—does is to require that these railroads shall still pay to the Government of the United States one-half of the cost of transportation and also 5 per cent. of the net earnings; that is, all that goes to the benefit of the United States, every dollar under the bill reported from the Judiciary Committee. My friend from Louisiana shakes his head. Let me see what they are. This sinking fund is not for the benefit of the Government. This sinking fund pays the debt of the railroads: but there what they are. This sinking fund is not for the benefit of the Government. This sinking fund pays the debt of the railroads; but there is a kind of idea that what these companies are to pay a million and a half of dollars into the sinking fund, we are making them pay it to

the United States! Not at all. That sinking fund is the property of the companies. It goes to pay their debts, to diminish their liabilities, but not one dollar of it goes to the Treasury of the United States. I say now that as in the law of 1862 and 1864 there was no provision made for a sinking fund, it is the plain and manifest duty of Congress to provide for a sinking fund not only to pay off gradually the bonds issued by the United States but also to pay off the first-mortgage bonds. Every State government that is well managed, all the Northern States have in their railroad laws provision for a sinkthe Northern States, have in their railroad laws provision for a sinking fund. I know in the laws of Ohio—I do not know how it is in regard to other States—there is some provision for the payment of the debts of a railroad company always inserted in the railroad law. There must be a sinking fund. Wherever a debt is made a provision of a suitable character ought to be made to pay the debt. That must be the case in New York and in Massachusetts. I think that in all the States whenever a railroad is chartered and bonds are authorized to be issued, there is a provision in the law for a sinking fund. Congress is the law-making power here. Whether the right to change or alter this law was reserved in the act or not, Congress as part of the law-making power might provide for a sinking fund as to either of these companies.

Mr. MITCHELL. I should like to ask the Senator if there is any

imit to the extent of that power?

Mr. SHERMAN. No. Legislative power may be greatly abused, but the provision for a sinking fund is not a power likely to be abused. A sinking fund is merely to secure the payment of the debts of a cor-But there is no question about it here, because the right to alter, amend, or repeal clearly gives the power.

Mr. PADDOCK. Is it not true that there is no controversy be-

tween any of us in respect to the sinking fund; only as to the amount

ween any or us in respect to the sinking fund; only as to the amount of it; one party maintaining and insisting that Congress should provide for it and another insisting that the provision should be only such a one as the company may deem proper?

Mr. SHERMAN. I am very glad my friend has come to that, because that saves me the necessity of going further. It is admitted, therefore, that a provision for a sinking fund is a proper provision in a law. One is provided in either of these bills. The next question is how much. There are two elements only to consider. In the tion is how much. There are two elements only to consider. In the next place the sinking fund must be sufficient to secure the payment of debts when they mature. That is the first principle of a sinking fund. The next principle is that it must not affect the rights of creditors. Therefore it would not be right to provide a sinking fund for a second-mortgage creditor that would impair the vested rights of a first-mortgage creditor. If this bill affects the rights of a first-mort-gage creditor in providing a fund for the second-mortgage creditor, I would say it was in violation of a contract and ought not to be I would say it was in violation of a contract and ought not to be done. The Judiciary Committee seem to have had this general principle in view, because, after stating how much shall be provided for a sinking fund, they have stated that in no event shall this provision affect in any way the right of using sufficient money even out of the sinking fund to pay the interest on the first-mortgage bonds. Is not that the proposition?

Mr. THURMAN. Yes, sir.

Mr. SHERMAN. Very well; that is right. Then when you go beyond that the next lien is the lien of the Government. The lien of the stockholders and all the subordinate bondholders is nothing. The

stockholders and all the subordinate bondholders is nothing. The lien of the Government is the next lien, is admitted to be on all hands. Now what is a reasonable sinking fund for the lien of the Government? It seems to me that if anything the committee have fallen short of what is requisite, because they have not required this sinking fund to be sufficient to pay the interest as it matured, so that there is plainly, notwithstanding the passage of this bill, an increasing debt due by these companies to the United States of America. The mode provided for of a million and a half does not pay all the interest that the Government is to pay. Consequently the debt of the Pacific Railroads to the Government is constantly increasing. Under the bill of

roads to the Government is constantly increasing. Under the bill of the Judiciary Committee, as I take it, with the exception of two principal roads, the other roads are not able to pay. I suppose the Kan sas Pacific is not able to pay.

Mr. WEST. That is in the hands of a receiver.

Mr. SHERMAN. It is in the hands of a receiver; therefore it is not able to pay, and hence that provision as to it is practically nugatory. But take the two great corporations that pay. The provision for the sinking fund is of a less sum than the annual addition to the debt of the United States, the interest being, I believe, something like three millions two hundred and odd thousand dollars, and the sinking fund provided is only \$3,000,000.

millions two hundred and odd thousand dollars, and the sinking fund provided is only \$3,000,000.

Mr. WEST. Your sinking fund for the national debt is \$20,000,000 and your interest is \$100,000,000.

Mr. SHERMAN. That may be, but there is a very great difference. Here this debt has got to be paid in thirty years. A large amount of interest has accumulated, so that, even if these two principals. cipal companies pay the full amount provided by this bill, their debt to the United States will be increasing year by year, so that it is not unreasonable, unless they are not able to pay. As to their ability to pay I know nothing except what I see in all these documents. I see that the net earnings of the Central Pacific are \$8,031,498. My friend from Louisiana said that that was too much, or that there ought to be deductions from that. I did not understand him exactly.

Mr. WEST. In those estimates of the running of that road they

include the total line of the road of the Central Pacific, twelve hundred and nineteen miles, whereas only eight hundred and sixty-six miles of that road have been aided by the Government of the United and the one-third that was not aided is, I am told, the most profitable part of the road. Therefore it is manifestly unjust to take the earnings of the whole road to make a calculation of earnings that are due to the Government.

mr. THURMAN. Will my friend allow me to interrupt him?
Mr. SHERMAN. Certainly.
Mr. THURMAN. Does the Senator from Louisiana include in that
the Western Pacific, which is a bonded and land-subsidy road?

Mr. WEST. O, no; the Western Pacific is in the twelve hundred and nineteen miles, but the Oregon and California Pacific is a very different thing, and there are lateral branches in all directions. In other words, the actual report of the proceeds and operations of the Central Pacific Railroad included four hundred and odd miles that

are not aided by the Government of the United States.

Mr. SHERMAN. I take these figures from the reports. There has been probably some delay in making these reports. I have often heard the matter a subject of conversation. It was very difficult to find out the exact earnings of the Pacific Railroad. That has been a matter of talk among business men, but these are the figures they give. How much ought to be deducted I do not know, nor is it material to my argument. I would as lief take the figures of the Senator from Louisiana. If he would tell us how much the subsidized railroad earns I would take his figures and work out the problem. I take the earns I would take his figures and work out the problem. I take the figures I have given from their report of the net earnings of the Central Pacific. There is, first, the interest on first-mortgage bonds. That is\$1,671,340. That is given precisely. The next is this sinking fund, because the railroads are practically released from paying the interest to the Government by the operation of this sinking fund. They do not have to pay anything to the Government at all. That is fixed by this bill at \$1,500,000, so that the total amount to be paid on the first and second mortgage bonds, including the sinking fund, is \$3,171,340, leaving \$4,860,158 surplus to pay the interest on both classes of bonds, nearly \$5,000,000 of profits to be divided to the stockholders who paid nothing \$5,000,000 of profits to be divided to the stockholders who paid nothing for their stock or bonds that were issued, all subsidiary liens to the liens of the United States. It seems to me that if the committee have erred they have erred in not making the amount greater. It seems to me out of this surplus and net earnings they ought to acquire a pretty large sum as a sinking fund for the later bonds. If we were legislating for these railroads, to advance their interests, to place them higher in the market, to raise their stocks and bonds, we ought in addition to a sinking fund for the first-mortgage bonds to provide a sinking fund for the second-mortgage bonds, so that the debt may be gradually diminished, leaving the property of the stockholders advancing day by day and year by year. That is the course which is pursued in regard to other railroads. It is the course that ought to be pursued. It is to their interest to pursue it, and it is a mistake to leave to the future to settle all these vast sums of money which are increasing year by year. The earnings ought to be applied to the interest on the first-mortgage bonds, second, to the interest on the second-mort-

gage bonds, and third, to a sinking fund for both mortgages.

Mr. WEST. If the Senator will permit me, both companies have provided a sinking fund for the first-mortgage bonds, and it is ac-

cumulating now

Mr. SHERMAN. Where is it provided?

Mr. WEST. Provided by their own action, by the board of direct-

Mr. SHERMAN. That shows that what I have said is correct. The law is faulty in not requiring them to have a sinking fund. My friend says that the wise men who manage this branch are already doing what the law ought to have required them to do. Therefore, it would be no hardship for us to step in and say that they should have a sinking fund to diminish the first-mortgage bonds, so as to provide for the second-mortgage bonds and preserve the property of the stockholders when thirty years roll around. It seems to me a very plain proposition; and when you apply these same figures to the Union Pacific it is full of the same kind of meaning. It is admitted Union Pacific it is full of the same kind of meaning. It is admitted on all hands, I believe—I have heard no controversy about it—that the net earnings of the Union Pacific are \$6,148,365. The first-mortgage interest is \$1,634,190. The sinking fund provided in that case is a million and a half, making the amount of interest and sinking fund \$3,134,190. This, deducted from the net earnings of the road, leaves a balance of net earnings of \$3,014,175. In my judgment, it is for the interest of these corporations, for the interest of the stockholders as well as others, and it would be wise to take a million out of those \$3,000,000 and apply it for the sinking fund for the first-mort. of those \$3,000,000 and apply it for the sinking fund for the first-mort-gage bonds. My friend says that they have done something of that kind, but how much I do not know. There is no evidence about it that I know of; I have never seen it in the papers.

Mr. WEST. If I do not interrupt the Senator, I should like to ask

Mr. WEST. If I do not interrupt the Schator, I should like to ask him a question.

Mr. SHERMAN. Certainly.

Mr. WEST. If he were the holder of a first mortgage on a railroad would he allow the creditors who owned the second mortgage to control independently of law the sinking fund of the first mortgage?

Mr. SHERMAN. We are not exactly in the light of creditors, the United States it is true is a creditor, but the United States is the United States and the Corporation of the law realistics.

United States of America, and the Congress is the law-making power,

not only for the States and people of the United States, but for these

orporations as well.

Mr. WEST. It never pays anything without an act of Congress.

Mr. SHERMAN. The railroad company will not pay without an act of Congress. There is the trouble, and we are trying to make a law. There is no difficulty about it. My friend from Louisiana says these railroad companies are already establishing sinking funds, and that shows the widow of the measurement of the property of them. that shows the wisdom of the managers of them. So with all these great corporations. They do it as a matter of course. I know of great railroads in this country now that are very profitable indeed, whose debts are gradually being eliminated by the operation of sinking funds wisely and carefully conducted; and soon these great corporations will be entirely free from debt and will be the property of their stockholders alone without bonds whatever, and that process with the Pacific Pailroad.

their stockholders alone without bonds whatever, and that process ought to go on with the Pacific Railroad.

I say, therefore, that this bill stops short, so far as the sinking fund is concerned, of what would really be for the interest of the stockholders of these roads. Not only should the sinking fund provided for be sufficient for the first, but for the second mortgage bonds. Then this railroad, growing gradually with the strength of the country, gradually increasing the stock, would be gradually advancing in value. I think, then, you might as well dismiss from this problem the idea that this million and a half goes to the United States. It does not do it at all. It is for the benefit of the road, and every dollar of it is applied to buy up the bonds of the road or to be invested

does not do it at all. It is for the benefit of the road, and every dollar of it is applied to buy up the bonds of the road or to be invested in United States bonds as a sinking fund, and these United States bonds or Pacific Railroad bonds, whatever they are, are the property of the road in the form of a sinking fund to be used for their benefit. It does seem to me that section 4 of the bill is open to some criticism for ambiguity; I yet cannot get it through my head; but the general purpose of the bill is right, that is, that these railroads should now from this time forward commence paying the 5 per cent. on net earnings, and also give to the Government one-half of the transportation account, and do so in the form of taxes, and pay this interest, and then they should provide a sinking fund, I think, sufficient to pay the interest. I would rather increase it. I believe it would be better for the railroads, so that this debt would not be increasing, and I would be perfectly willing to vote for a proposition that would go a little further and gradually pay the first-mortgage bonds, and thus protect this property in the hands of the stockholders. The interest of the people of the United States and of all parts of it is largely concerned in the wise management and prudent care with which these great corthis property if the states and of all parts of it is largely concerned in the wise management and prudent care with which these great corporations are conducted; but it is not wise or prudent for them or for their stockholders to divide large sums of surplus earnings when they have enormous debts to pay. It is far better for them that a portion of this surplus should be applied to the gradual liquidation of those debts. As I believe this bill will do it, I shall vote for it for want of a better measure.

I do not care about criticising the other bill which has been introduced and is now presented, because, perhaps, my views are sufficiently shown by what I said on this bill. I regard this other bill, Senate bill No. 1134, as a practical surrender of the right of the United States under its second mortgage. The accumulations of a sinking fund of \$1,000,000 for the benefit of the road is simply a surrender of the right \$1,000,000 for the beneat of the road is simply a surrender of the right of the United States to the road. According to that bill I do not see any provision where the United States gets anything. If my friend will show any section here by which the Treasury of the United States gets any money out of the road, I should like to know where it is. As I understand the bill, all the money now agreed to be paid to the United States goes into the sinking fund for the benefit of the railroad company, and we might better at once end the matter by giving un our right.

Mr. THURMAN. Mr. President, I am compelled to go to another Mr. Thukman. Mr. President, I am compened to go to another room in the Capitol. The hour has passed at which I ought to have been there. I shall, therefore, only make two observations in regard to what has been said, and then submit to the Senate whether we shall come to a vote on this bill to-day or not. First, in regard to the fact that these companies have never paid the 5 per cent. on all net earnings which it is admitted they are bound to pay. The excuse is that the Government and the companies differ as to what is 5 per cent. that the Government and the companies differ as to what is 5 per cent. of the net earnings. That is no excuse for the companies not paying into the Treasury what they admit to be 5 per cent. of the net earnings. They were bound to pay at least into the Treasury what they admit they owe, and if the Government claims more than that, all that they could say is, "We will resist what you claim over and above what we admit we owe."

One word more. The Senator from Louisiana has said that there is only a certain portion of the Central Pacific Railroad upon which the carnings are to be calculated and 5 per cent paid into the Treasury.

to wit, about eight hundred miles out of twelve hundred miles. I do not so read the charter at all. If I am not mistaken, there is not one mile of the Central Pacific Railroad from San Francisco to its union with the Union Pacific Railroad that is not a land-subsidy and bonded

road.

Mr. WEST. I do not believe anybody disputes that.
Mr. THURMAN. Very well.
Mr. WEST. The other four hundred miles run to other parts of

the country, to Oregon.

Mr. THURMAN. If it is the four hundred miles which run to Oregon, if the Senator does not know it, I think he can find out by the

least inquiry that it has made no net earnings at all, and of the net earnings the whole eight millions have been made by that part of the road which is confessedly bound to respond to the Government by 5 per cent. of its net earnings. I think the Senator will find, if he will make inquiry, that so far from this four hundred miles having produced net earnings to that company they have been a load to the company, and therefore the whole amount of these eight million and odd dollars of net earnings of that company have been by the operation of that part of its road which the Government contributed to build by its land subsidy and by its bonds. Therefore there is no reason whatever for deducting from those \$8,000,000 any portion whatever in ascertaining

what are the net earnings of that road.

We made in the Judiciary Committee the most careful estimate whether this bill would be so oppressive to the roads that they could not live under it, and so far from that being the case, on the best not live under it, and so far from that being the case, on the best estimate that we could make, if this bill becomes a law, even in the present depressed state of business, the two principal ones, the Central Pacific and the Union Pacific, can pay from 3 to 4 per cent. annual dividends to their stockholders upon the market value of their stock at a time when not twenty roads in all the United States are paying any dividends at all. Take the great State of Ohio. I know of but one single road in Ohio that is paying dividends to its stockholders. There is a larger number in the New England States, but I certainly am correct in saying that in the years 1874 and 1875 not forty railroads in the United States paid dividends to their stockholders, and I think I would be in fact correct if I were to say that not twenty did it.

Our bill does not require of these railroad companies as much as the Government annually pays interest on its loan to them, and that leaves them so much of their net earnings that they can distribute from 3 to 4 per cent. dividend on the market value of their stock, and yet it is talked about as a bill that is oppressive to these companies, to companies that have been in default from the very moment that their obligations accrued to the Government! No, sir, that will not

their obligations accrued to the Government! No, sir, that will not do. This bill is simply to determine whether these companies shall continue to set the Government at defiance, it is simply to determine whether the Government is to lose more than \$200,000,000, or whether

whether the Government is to lose more than \$200,000,000, or whether by making these companies comply with the obligations which they solemnly assumed that sum shall be saved to the Government.

Mr. President, I would be very glad indeed, as I must be out of the Senate for several days, and as this bill was put in my charge by the Judiciary Committee, if we could take a vote upon it to-night. If the bill is to pass, as I said before, it cannot pass too soon; if it is to be defeated it cannot be defeated too soon; so that the time of Congress may not be wasted further upon it. The appropriation bills will be here in a day or two. If this bill is to pass over, they will take precedence of it, and it is gone for this session. I therefore hope that the Senate is prepared to vote upon it now. At least I hope that that question will be decided. I hope that some Senator will make a motion that will test the question whether the Senate will vote on this bill this day. It can be done by a motion to go into executive session, or to adjourn, or any other motion. I hope that that motion will be made so that we may know whether we are to go on and finish this bill to-day or not.

Mr. WITHERS. I move that the Senate proceed to the considerations of the summer of the consideration of the summer of the consideration of the summer of the consideration between the summer of the consideration of the consideration between the consideration of the consideration between the consideration of the consideration between the consideration of the con

Mr. WITHERS. I move that the Senate proceed to the considera-Mr. WITHERS. I move that the Senate proceed to the considera-tion of executive business. The Senator from Georgia [Mr. Gordon] I know is exceedingly anxious to be heard on this bill. He is con-fined to his room by severe indisposition, and he is particularly anx-ious that the vote shall not be had to-night, so that he may be afforded an opportunity of being heard upon the bill now under consideration. In order to afford him that opportunity and to test the sense of the Senate I move that the Senate go into executive session.

Senate, I move that the Senate go into executive session.

The PRESIDING OFFICER. The Senator from Virginia moves that the Senate proceed to the consideration of executive business. The motion was agreed to; there being on a division—ayes 35, noes 9.

The Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were re-opened, and (at four o'clock and twenty-five minutes p. m.) the Senate ad-

# HOUSE OF REPRESENTATIVES.

## WEDNESDAY, January 31, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

## CORRECTION OF RECORD.

Mr. BUTTZ. I observe that in the Congressional Record I am recorded as having voted yesterday for only four of the commissioners appointed by the House. I am not recorded as having voted for Mr. Abbott. I voted for Mr. Abbott as well as for the other four commissioners

The SPEAKER. The RECORD will be corrected.

ELECTORAL VOTE COMMISSION.

The SPEAKER. - The Chair lays before the House the following communication.

The Clerk read as follows:

The Clerk read as follows:

To the Speaker of the House of Representatives of the United States:

Pursuant to the provisions of the second section of the act of Congress entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877, the undersigned, associate justices of the Supreme Court of the United States assigned to the first, third, eighth, and minth circuits, respectively, have this day selected Hon. Joseph P. Bradley, the associate justice assigned to the fifth circuit, to be a member of the commission constituted by said act.

Respectfully submitted.

NATHAN CLIFFORD.

NATHAN CLIFFORD,
SAM. J. MILLER,
STEPHEN J. FIELDS,
W. STRONG,
Associate Justices of the Supreme Court of the United States
assigned respectively to the First, Third, Eighth, and Ninth Circuits.
TON. January 20, 1877. WASHINGTON, January 30, 1877.

ADDITIONAL TEMPORARY POLICE.

Mr. WILSON, of Iowa. I desire to call up for action at this time the concurrent resolution of the Senate now on the Speaker's table in regard to the appointment of one hundred men to serve as a special police at the Capitol during the counting of the electoral vote. I have been instructed by the Committee on Rules of the House to offer a similar resolution. I believe this is a question of privilege.

Mr. GARFIELD. I hope the gentleman from Iowa will yield for a

few moments to allow some requests for unanimous consent

Mr. KASSON. I presume there will be no objection to the resolution called up by the gentleman from Iowa.

The SPEAKER. The Chair thinks there should not be any.
Mr. BANKS. This is a privileged question. It concerns one of the highest privileges of the House.

The SPEAKER. The Chair so rules. The Clerk will read the concurrent resolution:

current resolution:

The Clerk read as follows:

Resolved by the Senate, (the House of Representatives concurring.) That the Sergeantsat-Arms of the Senate and House of Representatives respectively be, and they are
hereby, authorized each to appoint fifty men to serve as a special police at the Capitol during the canvassing of the votes for President and Vice-President, or for such
portion of said time as they shall deem necessary, said special police to be paid equally
from the contingent fund of the Senate and of the House of Representatives.

Mr. WILSON, of Iowa. I move that the House concur in the Senate resolution with an amendment substituting the word "counting"

ate resolution with an amendment substituting the word "counting" for the word "canvassing," and I shall call the previous question on the concurrent resolution with that amendment.

Mr. HOLMAN. This is subject to the point of order.

Mr. WILSON, of Iowa. I think not.

Mr. HOLMAN. I reserve the point of order.

Mr. BANKS. Make your point of order.

Mr. HOLMAN. I desire to make some inquiries in regard to this; and if I find that the resolution is in accordance with the precedents I shall not insist that it shall be considered in Committee of the Whole. I do not remember that it has been found necessary heretofore to I do not remember that it has been found necessary heretofore to create so large a police force in connection with the inauguration of

the President.

The SPEAKER. The Chair would state to the gentleman from Indiana [Mr. Holman] that this money is to be paid out of the contingent funds of the two Houses already appropriated.

Mr. HOLMAN. Certainly; but the rule covers moneys to be taken out of an appropriation already made or which shall be made. But I do not wish to make the point of order.

The SPEAKER. The gentleman from Indiana does not make the

Mr. HOLMAN. I do not wish to make the point of order; but I wish to reserve it. If this appointment is conformable with the practice hitherto, I shall not insist on the point of order. The gentleman from Massachusetts [Mr. Banks] perhaps can tell us when it has been customary to place the Capitol to this extent under surveillance or not. I do not wish to see a new rule established at this time increasing a quasi-military force about the Capitol unless there is some precessity for it.

time increasing a quasi-military force about the Capitol unless there is some necessity for it.

Mr. WILSON, of Iowa. The Committee on Rules have considered this question and have instructed me to report a resolution similar to that received from the Senate. We know very well that the American people generally on occasions like this behave themselves. They had excellent order during the centennial exhibition—but with eight hundred police. We do not anticipate any difficulty, but we thought it wise that the officers of the two Houses should have power to keep a way clear between the Senate and the House, so that the Senate on retiring to consult may have the opportunity of passing to their Chamber without difficulty. It is possible also that there may be a class of men known as pickpockets here, and we desire to protect those who come to witness the proceedings. I ask the previous question on the resolution.

tion on the resolution.

Mr. HOLMAN. I thought that this report was made by the gentleman from Massachusetts, [Mr. Banks,] but I observe now that it was made by the gentleman from Iowa, [Mr. WILSON,] and I should like to know from him whether it has been found necessary heretofore to create this quasi-military force about the Capitol on the occasion of

counting the electoral vote, and whether it has been done heretofore.

Mr. WILSON, of Iowa. I understand that it has.

Mr. HOLMAN. If this is in conformity with what has been found prudent and necessary heretofore I shall not object.

Mr. WILSON, of Iowa. The gentleman will remember that the colice force about the Capitol has been very largely reduced and that the police of the city are, at present, in a state of demoralization.

Mr. BANKS. There never has been an occasion where the votes for

Mr. BANKS. There never has been an occasion where the votes for President and Vice-President have been counted when the force of the Capitol was so small as it is now. It was suggested to the Committee on Rules in such a manner that they could not overlook it, but while it was not absolutely necessary it would be very wise to take this precaution, and the committee could not do otherwise than make this report to the House. The police force of the Capitol is not now so large as it has been on occasions of this character. I do not limit it to the accounting of the vote but to any occasion of great interest. so large as it has been on occasions of this character. I do not limit it to the counting of the vote, but to any occasion of great interest when the two Houses have been called together. Now every one knows that this is a time of great interest in regard to counting the vote, and it is a small matter for the two Houses to provide for additional force to preserve order in the Capitol.

Mr. WILSON, of Iowa. I have been informed by members of the House that our dordespers on vestorday for example, were almost

Mr. WILSON, of Iowa. I have been informed by members of the House that our doorkeepers, on yesterday, for example, were almost overpowered by disreputable citizens, or men perhaps not worthy the name of citizens. They have made complaint that they are scarcely able to maintain order in the galleries, and we consider the passage of this resolution as imperatively necessary.

Mr. HOLMAN. The American people in managing their affairs generally conduct themselves in good order, and the gentleman from Massachusetts [Mr. Banks] will remember that in 1861 there was not so large a police force about the Capitol as there is now. Since then I admit that the Capitol police has been largely increased, but it is now diminished, and diminished as it is, it is larger than it was in 1861 or prior to that time. I have never heard of the necessity for increasing the force on the counting of votes for President and Vice-President, and I have witnessed quite a number of such counts.

President, and I have witnessed quite a number of such counts.

Mr. WILSON, of Iowa. The officers of the House complain now of disorder and they are almost overpowered.

Mr. BANKS. The situation is very different to-day and will be tomorrow from what it has been ever before.

Mr. WILSON, of Iowa. I call the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution of the Senate was concurred in concurred in.

Mr. WILSON, of Iowa, moved to reconsider the vote by which the resolution of the Senate was concurred in; and also moved that the motion to reconsider be laid on the table.

#### ADMISSIONS TO THE HOUSE.

I rise to a privileged question. I submit from the Committee on Rules the following resolution:

Resolved. That during the counting of the votes for President and Vice-President no person besides those who now have the privilege of the floor of the House of Representatives shall be admitted to that portion of the Capitol set apart for the use of the House and its officers, except upon tickets to be issued by the President of the Senate and the Speaker of the House of Representatives, and that the tickets to be issued under this resolution shall be distributed under the direction of the Committee on Rules of the two Houses.

Our rules designate the persons who shall have the privilege of the floor. The rule is as follows:

134. No person except members of the Senate, their Secretary, heads of Departments, the President's private secretary, foreign ministers, the governor for the time being of any State, Senators and Representatives elect, judges of the Supreme Court of the United States and of the Court of Claims, and such persons as have by name received the thanks of Congress, shall be admitted within the Hall of the House of Representatives or any of the rooms upon the same floor or leading into the same; provided that ex-members of Congress who are not interested in any claim pending before Congress, and shall so register themselves, may also be admitted within the Hall of the House; and no persons except those herein specified shall at any time be admitted to the floor of the House.

A MEMBER. That mile has not been always at the second.

A MEMBER. That rule has not been observed.

A MEMBER. That rule has not been observed, but it is the right of every member to call for its observance. Owing to the throng of people who will be in this Hall to-morrow, the Committee on Rules thought it advisable to provide that the persons eligible to admission to the Hall of the House, which includes the list I have read, shall be included in the resolution. The resolution cuts off all the clerks of committees, both of the Senate and the House, for our rules do not allow the clerks of committees to be on the floor, but the rules of the Senate allow the clerks of committees of that body to be upon the floor; so that we adopt language referring to the privileges of the House alone. The committee also propose under their own regulation, as they are providing for the order of the day to-morrow, that tickets shall be issued, three to each of a certain class of officers and three to each of the Members and Senators, and three only. These are shall be issued, three to each of a certain class of officers and three to each of the Members and Senators, and three only. These are tickets for the galleries, and we understand authoritatively that these galleries can only seat eight hundred persons. There have been twelve hundred persons packed into these galleries, and we propose the twelve hundred tickets shall be issued, and only twelve hundred. We can make no other provision to provide for proper decorum in the proceedings to moreover.

make no other provision to provide for proper decorum in the proceedings to-morrow.

Mr. KASSON. I would like to ask the gentleman from New York [Mr. Cox] whether, in view of this being a joint session in which both the Senate and House will participate, there ought not to be some joint provision made by the two Houses, or the Senate may provide a rule of admission different from ours?

Mr. COX. I would say to my friend from Iowa [Mr. Kasson] that the Committee on Rules of the Senate met to-day with the Commit-

tee on Rules of the House and a similar resolution will be offered in

Mr. KASSON. I only wanted to avoid any question of privilege on the part of the Committee on Rules of the Senate. Mr. SINGLETON. Does this resolution apply to any but the gal-

leries for the families of members?

Mr. COX. To all the galleries except the diplomatic gallery, which is controlled by a special rule of the House.

Mr. THORNBURGH. I desire to ask a question. Is it the intention of the committee to issue tickets for each day, or to issue tickets

for the entire number of days that the count may progress?

Mr. COX. Each day a new ticket will be issued; every day the count goes on each member will receive three tickets. We do not know how these galleries may be packed, and we have therefore limited the number for the first day to three tickets to each member. If we find that we can issue more tickets we will do so. I hope the House will leave that to the discretion of the committee.

Mr. HALE. How do the members get these tickets?

Mr. COX. They will be sent to each member and reach him by his

mail to-morrow morning; they are being printed now.

Mr. O'NEILL. They should be sent to members before to-morrow

We are doing our best to forward the matter.

Mr. O'BRIEN. How many persons will each ticket admit?
Mr. COX. One only. I now call the previous question.
The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. COX moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### COMMISSION ON ELECTORAL COUNT.

Mr. HUNTON. I offer the resolution which I send to the Clerk's

desk, upon which I call the previous question.

Mr. HOLMAN. I give notice that, after this resolution has been disposed of, I will call for the regular order.

The Clerk read the resolution, as follows:

Resolved. That the members of the commission on the part of the House of Representatives appointed under provisions of the bill entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," have permission to sit as members of said commission during the sessions of this House.

Mr. KASSON. Is that necessary, in view of the provisions of the act itself? The act imposes the duty. Of course there is no objection to the resolution if it is deemed necessary.

The SPEAKER. The gentleman offering it is a member of the commission, and the Chair supposes it is necessary.

The previous question was seconded and the main question was

ordered; and under the operation thereof the resolution was adopted.

Mr. HUNTON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# DISTRICT POLICE INVESTIGATION.

Mr. MILLIKEN, by unanimous consent, submitted the following resolution; which was read, considered, and adopted:

Resolved, That the testimony taken by the select committee of the House investigating the affairs of the board of police of the District of Columbia be printed and recommitted.

Mr. KASSON. Not to be brought back by a motion to reconsider. The SPEAKER. That is the understanding.

## ORDER OF BUSINESS.

Mr. HOLMAN. Quite a number of gentlemen have propositions which they wish to bring before the House, and which will not give rise to debate, and I will not for the present insist upon my call for the regular order.

## REMOVAL OF POLITICAL DISABILITIES.

Mr. HUNTON. I ask consent to report from the Committee on the Judiciary certain bills for the removal of political disabilities.

The SPEAKER. The bills will be read, after which the Chair will

Are the Speaker. The blis will be read, after which the Chair will ask for objection.

Mr. HALE. Are they personal bills?

Mr. HUNTON. They are.

Mr. GARFIELD. Individual bills, not personal bills?

Mr. HUNTON. Individual bills.

The first bill was House bill No. 1558, with Senate amendments, to remove the legal and political disabilities of Robert Ransom, of Virginia.

The amendments of the Senate were to strike out the words "legal and" in line 2 of the bill, and in lines 3 and 4 strike out the words "act of July 2, 1862, and the" before the words "fourteenth amendment to the Constitution of the United States;" so that the bill would

That all the political disabilities imposed by the fourteenth amendment of the onstitution of the United States upon Robert Ransom, &c.

The amendments of the Senate were concurred in.

The title was amended so as to read:

An act to remove the political disabilities of Robert Ransom, of Virginia.

The next bill reported from the committee was House bill No. 2736, with a Senate amendment, to remove the political disabilities of N. H. Van Zandt.

The amendment of the Senate was to strike out the words "act of

July 2, 1862, and the."

The amendment of the Senate was concurred in.

Mr. HUNTON. I ask consent to report for consideration at this time, from the Committee on the Judiciary, a bill to remove the political disabilities of Thomas Conner, of South Carolina.

Mr. HURLBUT. Let the petition be read.

The Clerk read as follows:

To the honorable House of Representatives of the United States:

The petition of Thomas Conner, a citizen of the State of South Carolina, respectfully shows that he was United States attorney for the district of South Carolina in the year 1860, and prays to have any disabilities which attached to him by reason of holding said office removed.

JAMES CONNER.

Mr. CONGER. I cannot see that any political disabilities attached to the person by the reason of holding such an office. If that is the character of the petition it does not meet what is required.

Mr. HURLBUT. That certainly is not a proper petition.

The SPEAKER. There being objection, the bill is not before the

#### THOMAS KEARNEY.

Mr. HANCOCK, from the Committee of Ways and Means, submitted a report in writing upon the bill (H. R. No. 1747) for the relief of Robert Kearney; which was ordered to be printed and recommit-ted, not to be brought back on a motion to reconsider.

#### INVESTIGATION OF RAILROAD ACCIDENTS.

Mr. GARFIELD. I ask unanimous consent to introduce and have referred to the Committee on Railways and Canals a bill to provide for the more thorough investigation of accidents on railroads. No member of the House needs to be reminded of the dreadful railway disaster that occurred at Ashtabula, in my district, a few weeks since, surpassing in its accumulation of horrors any that has ever occurred in the history of railroads. The bill provides for means to inquire generally into the causes of such accidents, and to obtain such information on the subject as may enable the engineers of the country to devise new safeguards for the traveling public. I understand the committee has the general subject under consideration. The bill was drafted at my request by Charles Francis Adams, jr., of Massachusetts, who is perhaps more thoroughly acquainted with the great questions connected with railways than any other American. I submit with the bill a letter from Mr. Adams, which I think will be of value to the committee and to the House.

It has been suggested that a special bureau should be created by Congress to procure statistics upon the subject. But I do not think that is necessary. It has been a fault in our legislation in recent years that we have multiplied bureaus too much. The bill I offer assumes no authority over railroads and creates no new national office. It requires a board of officers of Army engineers to examine and report upon such accidents especially as result from constructions of engineers. I should be equally well pleased if the duty were enjoined upon the commission recently created for the purpose of testing iron and steel. Up to the present moment, the cause of the Ashtabulla disaster does not appear to have been ascertained. The questions of practical engineering science involved in that accident are of the highest importance, and I hope Congress will aid in making such inquiries as may solve it. I ask that the bill and letter may be published, and I move that the Committee on Railways and

Canals may have leave to report on the subject at any time.

There being no objection, the bill (H. R. No. 4558) to provide for the more thorough investigation of accidents on railroads was read a first and second time, ordered to be printed, referred to the Committee on Railways and Canals, with authority to report at any time, and ordered to be printed in the RECORD with the accompanying letter. The bill and letter are as follows:

A bill to provide for the more thorough investigation of accidents upon railroads.

A bill to provide for the more thorough investigation of accidents upon railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the President of the United States is hereby authorized and requested to appoint a board of three commissioners, who shall be officers of engineers of the Army, to inquire into the number, causes, and means of prevention of accidents on railroads in the United States, the number of persons killed or injured thereby, and the most approved means of preventing the occurrence of the same. And it shall be the duty of said commissioners to hereafter investigate such accidents on railroads as may in their judgment be accompanied by circumstances of an unusual or unexplained character, and specially report upon the same.

SEC. 2. That the commissioners appointed under this act shall, in addition to their pay as officers of engineers of the Army, receive compensation for actual travel and other necessary expenses incurred in the duties herein designated.

SEC. 3. That, in addition to all special reports from time to time made, the commissioners herein provided for shall at the close of each year forward to the Secretary of the Treasury a general report upon the subject of accidents upon railroads in the United States during that year, which report, together with any special reports which the commissioners may have made during such year, shall be submitted to Congress.

Congress

COMMONWEALTH OF MASSACHUSETTS

BOARD OF MASSACHUSETTS,
BOARD OF RAILROAD COMMISSIONERS,
Boston, January 27, 1877.

Dear Sir: In compliance with the suggestions contained in your favor of the
20th instant, I herewith send you a draught for an act establishing a national commission to inquire into accidents upon railroads; a national railroad accident commission, in fact.

You will notice that the draught is very simple, and my object has been to carefully avoid all disputed points. I have taken the inspectors of the British board of trade as the model and appointed Army officers, so avoiding the creation of any new offices.

fully avoid all disputed points. I have taken the inspectors of the British board of trade as the model and appointed Army officers, so avoiding the creation of any new offices.

The commissioners have no executive powers whatever. They can only investigate and report. That is all the British inspectors can do, and all that the Massachusetts commissioners can do, and experience shows that that is enough. They are able to locate responsibility and give publicity.

They cannot summon witnesses, take evidence under oath, or institute any legal proceedings. The commissioners in Massachusetts cannot either, but they have never found these powers necessary.

They cannot call on railroad corporations for reports of accidents or for returns; they must rely for information on State officials, on the newspapers, on the voluntary co-operation of railroad officials. This is a practical defect in the act. It would not, however, be overcome without raising the dangerous question of jurisdiction and State rights. This I thought best to avoid. No one questions the right of the General Government to investigate anything and everything; and where not only citizens of other States, but the United States mails, are continually destroyed through accidents on railroads, the propriety of the United States instituting investigations into the causes of such accidents ought not to be questioned.

Finally my object has been to carefully avoid trying to draw up a complete and comprehensive measure. That can only develop itself in its own way. This is simply a seed. If anything comes of it, it can easily be developed in any way which practical experience shall show to be needed. United States commissioners can be authorized to conduct investigations, summons, witnesses, &c. All this and many other things which will at once suggest themselves could readily be put in the bill; but I think it is much better without them; they will come as they are needed.

As it stands the act will meet the case, and I do not see how any one can object to it.

CHARLES F. ADAMS, JR.

Hon. James A. Garfield, Washington.

REPRESENTATIVE FROM COLORADO.

Several members called for the regular order. Mr. HOLMAN. I believe that the first business in order is the unfinished business coming over from last evening. If not, I wish to move that the House resolve itself into Committee of the Whole to

consider the legislative appropriation bill.

The SPEAKER. The business unfinished at the adjournment of the House yesterday was a matter of the highest privilege. The Clerk will read the resolution reported from the Committee on the Judiciary and now pending. The Clerk read as follows:

Resolved, That Colorado is a State in the Union, and that James B. Belford, Representative-elect from said State, be sworn and admitted to a seat as such.

The SPEAKER. In addition to this being unfinished business, the Chair considers it a question of the highest privilege. The gentleman from Ohio [Mr. HURD] is entitled to the floor.

Mr. HOLMAN. I would like to inquire how much time this debate

is expected to consume.

The SPEAKER. Four hours, so far as the Chair is informed. Is that the understanding  $\hat{f}$ 

Mr. HOLMAN. Three hours, as I understood the other day.
The SPEAKER. Three hours of debate, to be followed by the calling of the previous question, which would allow another hour for de-

Mr. HOLMAN. Yesterday I believe one hour or more was occupied

Mr. HOLMAN. Yesterday I believe one hour or more was occupied in reading the report. Time is now of great value on account of the present condition of the appropriation bills. I trust it will be understood that the time occupied last evening in reading the report is to be regarded as a portion of the four hours.

The SPEAKER. The Chair understood the gentleman from Kentucky [Mr. KNOTT] to give notice that there were to be three hours of debate, and that then the previous question would be called, giving a fourth hour.

Mr. HOLMAN. But the gentleman occupied at least on hour

Mr. HOLMAN. But the gentleman occupied at least an hour yes-

The SPEAKER. The Chair is not aware that it has been usual to regard the reading of a report as coming out of the time alotted for debate; but if the point should be raised and insisted upon, the Chair would be obliged to rule that the reading of the report was in the nature of debate.

Mr. HOLMAN. I understood the gentleman from Kentucky to say

Mr. HOLMAN. I understood the gentleman from Kentucky to say yesterday (though it was not said while he was on the floor) that the reading of the report was in lieu of his speech.

The SPEAKER. The Chair thinks that the reading of the report is in the nature of debate. The gentleman from Ohio [Mr. HURD] is

Mr. HURD. I desire in the first place to have read by the Clerk the first, third, fourth, and fifth sections of an act approved March 3, 1875, entitled "An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States."

The Clerk read as follows

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the Territory of Colorado included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said Territory, a State government, with the name of the State of Colorado; which State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever, as hereinafter provided.

SEC. 3. That all persons qualified by law to vote for representatives to the Gene-

ral Assembly of said Territory, at the date of the passage of this act, shall be qualified to be elected, and they are hereby authorized to vote for and choose representatives to form a convention under such rules and regulations as the governor of said Territory, the chief-justice, and the United States attorney thereof may prescribe; and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention shall be apportioned among the several counties in said Territory in proportion to the vote polled in each of said counties at the last general election as near as may be; and said apportionement shall be made for said Territory by the governor, United States district-attorney, and chief-justice thereof, or any two of them; and the governor of said Territory and chief-justice thereof, or any two of them; and the governor of said Territory and the proventive of them; and the governor of said Territory as shall, by preclamation, order an election of the representatives aforesaid to be held throughout the Territory at such time as shall be fixed by the governor, chief-justice, and United S ates attorney, or any two of them, which proclamation shall be issued within ninety days next after the last day of September, 1875, and at least thirty days prior to the time of said election; and such election shall be conducted in the same manner as is prescribed by the laws of said Territory regulating elections therein for members of the honse of representatives; and the number of members to said convention shall be the same as now constitutes both branches of the Legislature of the aforesaid Territory. Sec. 4. That the members of the convention thus elected shall meet at the capital of said Territory, not more than sixty days subsequent to the day of election, which time of meeting shall be contained in the aforesaid proclamation mentioned in the hird States attorney, not more than sixty days subsequent to the day of election, which t

Mr. HURD. Mr. Speaker, on the last day of the Forty-third Congress the act containing the foregoing provisions was passed by the House of Representatives. It was passed without discussion under the operation of the previous question and in the midst of the excitement usually attendant upon the closing hours of a session. As will be observed, one of its sections provided that the people of Colorado health and the province of the province of the contract of the province of th should call a convention for the purpose of forming a State constitu-tion, and after its adoption that an election should be held at which a Representative for Colorado should be chosen to a seat in the Con-gress of the United States. The convention was held as provided by law; the election was held as authorized by the constitutional con-

gress of the United States. The convention was held as provided by law; the election was held as authorized by the constitutional convention; and Mr. Belford at that election received a majority of the votes cast for Representative in Congress, and presents to this House a certificate signed by officers assuming to act as officers of the State of Colorado. It is not disputed, Mr. Speaker, that the election was regularly held, nor that the certificates are in proper form; but it is insisted that Colorado is not a State in the Union, and that therefore Mr. Belford is not entitled to a seat upon this floor.

There is no one who will dispute the proposition that unless Colorado be admitted into the Union Mr. Belford is not entitled to his seat. The question thus presented upon the credentials that have been referred to the Judiciary Committee is, has Colorado been admitted as a State into the Federal Union? First, Mr. Speaker, what is admission into the Union? It is the permission of an organized body-politic to enter into the political association created by the Constitution of the United States. On the part of the people of the State seeking admission it involves the organization of a State government and the establishment of a form of institutions which will permit the State when in the Union to stand in it on an equal footing with the other States. On the part of the United States it involves the ascertainment of the facts necessary to constitute admission and the declaration of the result in the methods fixed by the Constitution. The people of the new State obtain from the people of the United States the right to enjoy the privileges and exercise the powers sion and the declaration of the result in the methods fixed by the Constitution. The people of the new State obtain from the people of the United States the right to enjoy the privileges and exercise the powers which the latter possess under the Constitution. This change in political condition can only be effected by the consent of both the United States Government and the people of the State, and that consent is to be expressed by admission of the State into the Union.

How then, Mr. Speaker, is a State to be admitted into the Union? The language of the Constitution is clear and distinct on this point, "The Congress of the United States may admit new States into the Union." The Legislature of the United States, created by the Con-

stitution, admits States. They must be admitted by the forms of legislation, in the methods of legislative proceedings prescribed by the Constitution itself. From the very phrase of the Constitution it is apparent that in the discharge of this duty Congress must exercise the same discretion which it is bound to use as to every other measure of legislation. There are three particulars as to which this discretion is required: First, the Congress of the United States must decide that the government which has been created by the new State is republican in form, because the language of the Constitution is that is republican in form, because the language of the Constitution is that Congress may admit new States into this Union; and as this Union is a union of republics, the State which seeks for admission into the Union must be a republic, and therefore must have a republican form of government. Secondly, Congress must see to it that the new State shall stand in the Union on an equal footing with the other States, for that cannot be called a union in which there is inequality in the rights enjoyed by its members. In the third place, it must be ascertained that a State government has been formed, with proper officers to administer it, for the language is, "new States may be admitted into the Union." Therefore the State must be complete in its governmental form, in its ability to exercise its governmental functions, and with officers to perform them.

It will follow from these propositions that if Congress must exercise discretion as to these three matters, the State government must be first formed and the constitution first adopted before that discre-

tion can be exercised.

It seems to me the very statement of the proposition must carry conviction to every mind; for if the judgment of this House be invited as to the question whether a State government has been formed in Colorado, must not the House know whether a government has been formed there or not? If this House is called upon to determine whether the constitution and government of Colorado are republican in form, must not the constitution and government have been framed in the first instance before Congress acts, in order that Congress may intelligently determine the questions so submitted for decision? This, Mr. Speaker, will be more clear from the very words used in the Constitution, "Congress may admit new States into the Union." It is not "new States may enter into the Union;" it is not that by the mere formation of a constitution, as is claimed by the majority in their formation of a constitution, as is claimed by the majority in their report, a State ipso facto becomes a member of the confederation of the States; but it is that there shall be an act of admission on the part of the Congress of the United States. If I extend an invitation to a gentleman to my house, to be admitted at the door upon presentation of a card which he is to offer to the servant standing there who has the right by my authority to permit him to enter, he who stands at the door must inquire whether the condition which I have imposed has been complied with. If an individual is to be admitted into an organization upon certain conditions, he has no right to enter until the organization has determined that the conditions have been performed. And as the Constitution in this case has devolved upon Congress the power and duty of admitting into the Union upon the conditions contained in the Constitution, Congress must examine the constitution of the State and the form of government to determine whether the conditions have been complied with or not.

Mr. Speaker, this right involves the submission to Congress of the

constitution and government of a new State, and I had supposed, since the great Missouri case, there would be no dispute on this subject on the floor of this House. In that case the State of Missouri adopted a constitution under the terms of her enabling act. It was submitted to the Congress of the United States, and for months one of the most brilliant discussions which ever occurred in the Congress of the United States continued, in which many of the ablest men of the

country participated.

It was insisted upon the one side that by the very adoption of the constitution of Missouri it became a State in the Union. On the other constitution of Missouri it became a Congress to examine the conit was insisted that it was the duty of Congress to examine the constitution and government, and that Missouri could not be regarded as in the Union until Congress had passed a law admitting it. All the precedents which had occurred before that time were carefully and thoroughly examined; and the conclusion arrived at after all that discussion by a decided vote was that Missouri was not admitted into the Union by reason of the adoption of the State constitution, and that its form of government must be accepted by the Congress of the United States. A law was then passed approving the constitution of Missouri and imposing a further condition upon the State, and from that day to this, excepting, in the case of Nevada in 1864, no State has been admitted into the Union until after its constitution and government have been submitted to the Congress of the United States and a law been passed by the legislative power declaring it to be a State in the Union.

This doctrine is well fortified by authority. Cooley, in his work on Constitutional Limitations, page 30, says:

There are always in these cases questions of policy as well as of constitutional law to be determined by the Congress before admission becomes matter of right: whether the constitution is republican in form; whether the proper State boundaries have been fixed upon; whether the population is sufficient; whether the proper qualifications for the exercise of the elective franchise have been agreed to; whether any material evil exists in the Territory which is now subject to control, but which might be permitted under a State government. These and the like questions, in which the whole country is interested, cannot be solved by the people of the Territory for themselves, but the final decision must rest with Congress, and the judgment must be favorable before admission can be claimed or granted.

In Wisconsin this exact question arose, and it was decided (in 2 Pinney's Wis. Reports) in these words:

The State constitution was adopted in March, 1848, but the Territory was not admitted by act of Congress as a State until May 20, 1848. *Held*, that the adoption of the constitution by the people of the Territory did not create it a State, and that such political change could be effected only by the action of Congress admitting it.

Now, Mr. Speaker, if these propositions be correct, this is the condition of the argument: Congress must exercise a discretion to determine whether a republican form of government has been established in Colorado and whether its constitution complies with the conditions which are imposed by the Constitution of the United States and by the enabling act. Congress can only do this upon the submission to it of the constitution and of the frame of government which the records of Colorado here adverted.

submission to it of the constitution and of the frame of government which the people of Colorado have adopted.

I come now to the question, Has Congress passed upon the constitution and government of the State of Colorado? What action has it taken upon this subject? It is not claimed that the Forty-fourth Congress has acted upon this subject at all; but it is insisted that the provisions of the act which were just read by the Clerk have admitted Colorado into the Union before the constitution was adopted and before the government was framed by the Porty-third Congress. The first section authorized the people to form a constitution and government; the third section imposed certain conditions; that the people of Colorado should adopt a constitution and government republican

ment; the third section imposed certain conditions; that the people of Colorado should adopt a constitution and government republican in form and not inconsistent with the provisions of the Declaration of Independence, a constitution which should guarantee perfect religious toleration to every person within the limits of the State, and which should provide that the people outside of the State, and citizens of the United States, should not be taxed at a higher rate than the people who lived within the State. The last section provided—and to this I desire to call the attention of the House particularly—that on the convention assembling it should approve the Constitution of the the convention assembling it should approve the Constitution of the United States or accept it, and should then form a constitution and United States or accept it, and should then form a constitution and government, and, upon that constitution being adopted and being in accordance with the Constitution of the United States and with the conditions of the enabling act, that it should proceed to submit the same to the people, and that, when that instrument had been submitted to the people, the result of the vote should be ascertained by the governor of the State, who should send the result, if favorable to its adoption, to the President of the United States with a copy of the constitution, and that then the President of the United States should issue his preclamation dealaring the State admitted into the United issue his proclamation declaring the State admitted into the Union, and that thereupon Colorado should be ipso facto a State in the Union without any further action on the part of Congress whatever.

Mr. Speaker, on this act I observe as follows: First, that it does ant. speaker, on this act I observe as follows: First, that it does not itself undertake to admit the State of Colorado at once. It simply provides for the formation of a constitution and government and declares that upon the fulfillment of certain conditions it shall be admitted into the Union. It arranges for its future admission. In the next place it does not seem to contemplate any further action on the part of Congress. Indeed the very language of the law is that on the proclamation of the President being issued the State shall be admitted without further action of Congress.

Now, I submit in passing that the Forty-third Congress had not the power by this action to prevent any subsequent Congress from doing its duty in this regard. If without this provise in the law of the Forty-third Congress the Forty-fourth Congress would have had the right or power to decide whether the constitution of Colorado was republican in form, nothing done by the Forty-third Congress can deprive this body of that right, and the act in that regard is wholly null and void. Thirdly, Mr. Speaker, this act authorizes either the President of the United States or the convention which is held in the State of Colorado to decide whether the conditions imposed by the enabling act have been complied with. The language is that the President shall issue his proclamation and thereupon the State shall be admitted. The further expression in the fifth section is that, upon the convention adopting the constitution which shall comply with the conditions of the act, the question as to the adoption of the constitu-tion shall be submitted to a vote of the people. No other power is called upon to decide whether those conditions have been complied with except the convention of the people of Colorado in the first in-stance and in the next the President of the United States.

From the consideration of this act it appears then, first, that the Forty-third Congress did not admit Colorado directly; next, Colorado has not been admitted by the Forty-fourth Congress, because the action of the Forty-third Congress made it unnecessary that the constitution of Colorado should be submitted to it; and thirdly, that upon the proclamation of the President, and upon that alone, this State was to be admitted into the Union. That proclamation, it is conceded, has been issued. I desire to call the attention of the House especially to the last clause contained in it:

And therefore, I, Ulysses S. Grant, President of the United States, do declare and proclaim the fact that the fundamental conditions imposed by Congress upon the State of Colorado have been ratified and accepted and that the admission of the said State into the Union is now complete.

Here the President has undertaken to perform the duty which I have shown can be performed only by Congress. He has decided that the government of Colorado is republican in form. He has determined that the constitution of Colorado is not inconsistent with

the Declaration of Independence and that it guarantees within its territorial limits equal religious liberty. He has adjudged that the other provisions contained in the enabling act have been complied with. These grave constitutional questions, involving the exercise of the highest legislative functions, Congress has not even considered, and their decision has been transferred from the authority estaband their decision has been transferred from the authority established by the Constitution to determine them to the chief executive officer of the United States. The proposition thus presented is, had Congress the right to delegate to him the power to decide the questions which in themselves involve all there is of the admission of a State? This brings me to the question whether Congress can delegate to others legislative authority.

Upon the general proposition that legislative power cannot be delegated, I think there will be no dispute.

In Coolev's Constitutional Limitations, page 116, it is said:

In Cooley's Constitutional Limitations, page 116, it is said:

One of the settled maxims in constitutional law is that the powers conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain, and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism these high prerogatives have been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

That expresses the general rule on the subject; and when the Congress of the United States has a duty devolved upon it by the Constitution in express language to admit a State, it must perform that duty itself; it cannot delegate the authority to any other tribunal or

to any individual.

By the act under consideration, Congress declared that Colorado should be admitted on the happening of a certain event to be de-clared by the President. Both the event on which the admission was contingent, and the declaration of the President, required the action by others, which it was the duty of Congress to take. While admit-ting the general proposition as to the delegation of power, the major-ity of the committee insist that Congress has power to pass laws to take effect upon the happening of some future or contingent event, and that it was, therefore, competent for Congress to pass such an act as this. Now I do not dispute the proposition that Congress has the power to pass conditional laws; but it has not the power to pass laws to take effect upon every contingency. On this question I quote the language used in the case of Rice vs. Foster, 4 Haw., (Del.,) 88, as follows

Doubtless the Legislature may pass many conditional laws, but there are many conditions which would make the law inoperative.

And consequently the question, in a given case, is not whether Congress can pass a conditional statute, but whether the conditions are such as are permitted by the rules of the law. I shall undertake to show that the conditions in the case are such as to render the law in-

And right at this point I desire to call attention of the House to a few thoughts upon this subject expressed in a speech recently de-livered in the Senate by one of the most gifted orators of the age, who discussed this question incidentally in his masterly argument upon the bill creating the electoral commission. He said that—

The President had made that proclamation evidential of that contingency, and the act of Congress speaking afresh when the condition is complied with, Colorado is as complete in her rights as a member of the Union as is the proudest or most ancient State in all the sisterhood. \* \* \* That court—

The Supreme Court of the United States

long ago held in the embargo case that such legislation in advance incomplete, in-conclusive, and inoperative until the happening of an external contingency, is com-petent and becomes effectual when the contingency occurs.

I refer to these remarks to call attention to the decision made in the embargo cases to which the distinguished Senator alludes. I do not propose to discuss those cases, but to refer to a commentary made upon one of them by the supreme court of Pennsylvania. In Parker vs. Com., 6 Barr, 531, it was said:

In the case of The Aurora vs. The United States, 7 Cranch, 382, the right of Congress to enact this law was called in question, but the Supreme Court of the United States held that Congress might extend and revive the act of 1809 conditionally, upon the occurrence of subsequent events, to be ascertained by the President's proclamation. It is plain the revival or continued suspension of the act of 1809 was not made to depend upon the proclamation, but upon independent facts, of which the proclamation was evidence, after which the statute operated proprior viance.

It will be seen that the embargo cases are not precedents for the act admitting Colorado, unless the condition on which Colorado is admitted consists of a fact independent of the law-making power, of which the proclamation merely furnishes the evidence, and unless the act when passed, containing the condition, was complete as an expression of the legislative will. That the law under discussion does not fall within these distinctions, and that unless it does it must be held inoperative, a further consideration of the authorities will more fully show.

In Barto vs. Himrod, 4 Selden, 490, it was said:

But such a statute when it comes from the hand of the Legislature must be law in præsenti to take effect in futuro. If the observations already made are correct, the act of 1845 was not such a statute. But if by the terms of the act it had been declared to be law from the time of its passage, to take effect in case it should receive a majority of votes in its favor, it would nevertheless have been invalid, be-

cause the result of the popular vote upon the expediency of the law is not such a future event as the statute can be made to take effect upon, according to the meaning and intent of the Constitution.

The event or change of circumstances on which a law may be made to take effect must be such as in the judgment of the Legislature affects the question of the expediency of the law—an event on which the expediency of the law depends. On this question of expediency the Legislature must exercise its own judgment definitely and finally. When a law is made to take effect upon the happening of such an event, the Legislature in effect declares the law inexpedient if the event should not happen, but expedient if it should happen. They appeal to no other man or men to judge for them in relation to its present or future expediency. They exercise that power themselves, and then perform the duty which the constitution imposes upon them. But in the present case no such event or change of circumstances affecting the expediency of the law was expected to happen. \* \* \* The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the constitution makes it the duty of the Legislature to decide. The Legislature has no power to make a statute dependent on such a contingency, because it would be confiding to others that legislative discretion which they cannot delegate or commit to any other man or men to be exercised.

In the same case, page 490, Willard, J., said:

In the same case, page 490, Willard, J., said:

The future event gives no additional efficacy to the law, but furnishes the occasion for the exercise of its power.

In Rice vs. Foster, 4 Harr., (Del.,) 492, it is said:

A law, when passed by the Legislature, is a complete, positive, and absolute law in itself, deriving its authority from the Legislature, and not dependent for the enactment of its provisions upon any other tribunal, body, or person. It may be limited to expire at a certain period, or not to go into operation until a future time, or the happening of some future event, or until some conditions be performed. \* \* \* All such laws are complete and positive in themselves when they pass from the hands of the Legislature, and are not to become law by the creative power of other persons. But the legislators are invested with no other power to pass an act which is not a law in itself when passed, and has no force or authority as such, and is not to become or be a law until it shall have been created and established by the will or act of some other person or body.

In the same case, Harrington justice, said:

In the same case, Harrington, justice, said:

It is conceded by all that legislative power cannot be delegated. That case assumes that the Legislature may pass a conditional law. Both of these propositions are true. The error in the argument is in supposing them to be alternative or inconsistent. Doubtless the Legislature may pass many conditional laws, but there are many conditions which would make the law inoperative. \* \* \* But a law declaring an offense, or prescribing a punishment, or repealing an existing law, on condition that the governor or any other individual shall assent to it, is as plainly unconstitutional. It substitutes for, or rather adds to, the legislative will another will, which it makes necessary to the existence of the law. This is unconstitutional

In Parker vs. Com., 6 Barr, 526, it is said:

In Parker vs. Com., 6 Barr, 526, it is said:

These remarks are applicable to our own act of assembly, and to them may be added an instance of another and vital distinction between it and the legislation of Congress. In the latter instance, the power which created the law was exerted by the Federal Legislature, looking to no external aid, but the production of our senate and house of representatives came forth maimed, impotent, functionless, until inspired by the popular breath. In the one case the decree is, this statute shall take effect in action or its operation be suspended upon the occurrence of a particular event. In the other, this act shall be inoperative unless otherwise willed by the people. In the first case the law remains quiescent until the happening of the appropriate event stirs it into activity; in the last the so-called law was altogether without the power of motion of itself when it left the hands of the law-makers. And this is the distinction between a conditional law, properly so denominated, and an act of the law-making power seeking to transfer its functions to another; the one leaves nothing to be done to perfect the rule of action; the other but molds the clay into shape, leaving to third persons the task of breathing into its frame the energy of life.

In Sapto vs. Lowa. 2 Lowa.

In Santo vs. Iowa, 2 Iowa, 203:

In Santo vs. Iowa, 2 Iowa, 203:

The General Assembly cannot legally submit to the people the proposition whether an act should become a law or not; and the people have no power in their primary or individual capacity to make laws. \* \* \* There is no doubt of the authority of the Legislature to pass an act to take effect upon a contingency. But what is a contingency in this sense and connection? It is some event independent of the will of the law-making power as exercised in making the law, or some event over which the Legislature has not control. \* \* \* The will of the law-maker is not a contingency in relation to himself. It may be made in relation to another and external power, but to call it so in relation to himself is an abuse of langnage. Now, if the people are to say whether or not an act shall become a law, they become or are put in the place of the law-maker. And here is the constitutional objection. Their will is not a contingency upon which certain things are or are not to be done under the law, but it becomes the determining power whether such be the law or not. This makes them the legislative authority, which, by the constitution, is vested in the senate and house of representatives, and not the people.

Now, without wearying the patience of the House by reading other Now, without wearying the patience of the House by reading other authorities, I submit that the following conclusions may be derived from them as to the nature of the condition which it is proper to incorporate into a law: 1. The contingency or condition upon which a law is to take effect must be some event independent of the will of the law-making power as exercised in making the law, and over which the Legislature has no control. 2. The condition must be one which operates in the execution or suspension of the provisions of the law, but not in the creation of such provisions. 3. The contingency cannot be one which involves the exercise by any other power of that cannot be one which involves the exercise by any other power of that discretion which the Legislature itself must exercise. 4. The law must come complete and positive from the Legislature; and the contingency upon which the act is to take effect, whether it happens or not, must be such as, relating only to the future execution of the law, leaves it in all respects as it was enacted: a complete expression of

the legislative will.

By applying these propositions to the present case, I maintain that the condition is not one upon the happening of which a law may take effect. It must be recollected that the legislative act to be performed is the admission of Colorado, the condition upon which the act is to take effect is the adoption by the people of a constitution and government of a certain character, and the proclamation by the President of the fact, declaring the State to be admitted into the Union.

In the first place, I say that this is not a condition independent of the

legislative will, but entirely dependent upon it and over which the Congress has complete control. Would the proclamation of the President have admitted the State of Colorado into this Union or would the action of the convention of the Territory of Colorado have done so if Congress had not enacted a law declaring to that effect? Could not the Congress in an hour after it had passed the law have repealed it, taking from the President the power to issue the proclamation and from the convention which framed the constitution the power of de-

from the convention which framed the constitution the power of determining whether the conditions of the enabling act had been complied with? It is a condition created by legislative authority, by Congress, and not independent of it in any sense whatever. It is substantially making the will of the law-maker, expressed by extra constitutional methods, a contingency in reference to itself.

Secondly. It is not a condition which operates in execution of a law previously passed, but it is a condition which operates to create the provisions of the law. The issuing of the proclamation of the President does not carry out any provision of a law which has previously admitted Colorado; but it completes the law, for Colorado is only admitted when the President so declares. The proclamation could not have been issued in the execution of an act of Congress admitting the State, for there was no such law to be executed until after the the State, for there was no such law to be executed until after the

proclamation had been published.

proclamation had been published.

Thirdly. The condition is one which involves on the part of the President of the United States the very same discretion which Congress is required to exercise. Congress, not the President, is to determine whether the conditions have been complied with; Congress, not the President, is to determine whether the constitution of the State is republican in form and whether a State government has been established. This act delegates to the President the very power, the very authority which Congress itself must exercise; and this is plainly prohibited, as I have shown, in the great case from New York. The legislative authority has no power to make a statute dependent upon an event which involves the decision of the identical question which the constitution makes it the duty of the Legislature to decide. the constitution makes it the duty of the Legislature to decide.

the constitution makes it the duty of the Legislature to decide.

Fourthly. Did this law come complete and perfect from the hands of the law-making power, as is required by the fourth limitation to which I have referred? No, sir; it was imperfect, inchoate. The State was not in the Union; it possessed no rights, no powers, no privileges as a member of the Union until after the proclamation of the President had been issued.

Suppose, Mr. Speaker, that the President of the United States had refused to issue this proclamation, either Colorado would not be in the Union or it would be. If it be not in the Union when he fails to issue the proclamation, then the proclamation becomes necessary to its entering the Union, and the legislative power has invited an extraneous authority to aid in the discharge of the legislative obligation. If it be in the Union when the President fails to issue the proclamation, then it is in the Union in violation of a law of Congress and not If it be in the Union when the President fails to issue the proclama-tion, then it is in the Union in violation of a law of Congress and not in accordance with the law of Congress, for that power has provided that it shall not be in the Union until the President has issued his proclamation. Whether, therefore, you say that the proclamation is not necessary or is necessary, the law, in the latter case, is incomplete and inchoate, because it required the act of another to consummate it; and in the former case the law is a nullity, for no act of legislation can become effective as a law in violation of the method fixed by its own provision. own provision.

I maintain, Mr. Speaker, upon this review of the authorities and as-certainment of the limitations upon the doctrine of conditional legisla-tion, that the condition imposed in this law falls within the prohib-

certainment of the limitations upon the doctrine of conditional legislation, that the condition imposed in this law falls within the prohibited ones, and that it was not competent for the Congress of the United States to pass such a conditional law; that it amounted clearly to a delegation of legislative authority, which is prohibited in all civilized and constitutional governments.

If these propositions be correct, Colorado has not been admitted into the Union. It is not possible that it could have been admitted into the Union under the provisions of the act passed by the Fortythird Congress. I call attention to the fact with which every member of the House is familiar, that at the last session Colorado was a Territory, and was then represented here by a Delegate. If it has ceased to be a Territory it must be because of some act which has been performed by the Forty-fourth Congress, and yet it is known that this Congress has not acted upon the subject at all. Can it be possible that the action of any other Congress prior to this can admit a State into the Union at a time when the Forty-fourth Congress is in full power, with full capacity and ability to determine every question relating to the nature of the government which the people of Colorado may form? I say not. To do that is by conditional legislation of this sort, by transfers of legislative authority, by delegations of legislative power, to enable one Congress to tie the hands of subsequent Congresses for all time.

Mr. Speaker, it is claimed that there are precedents for the admission of States into the Union in the manner in which Colorado is supposed to have been admitted, and the acts of admission of Michigan, Missouri, Nebraska, and Nevada are cited. Now, in order that a case should be a precedent, it must involve two things: first, that the

case of Michigan there is no analogy whatever between its facts and those in the present case. There, after the constitution had been adopted, and it had been approved by Congress, a further condition was imposed relative to its boundaries. After the condition had been adopted a second act of admission was passed, reciting the fact that the condition imposed had been complied with. Congress examined and approved the constitution, and after having imposed further conditions, decided by an act of legislation that they had been complied with when the people of Michigan reported their action on the subject. The case of Missouri is also cited. Why, Mr. Speaker, it is a case directly in point in establishing the proposition which is here maintained. The Congress of the United States, as I have before stated, engaged for months in the discussion of the questions as to its powers under the Constitution in admitting States, and particuits powers under the Constitution in admitting States, and particularly whether it was required to pass upon the constitution of the new State. The decision reached was that it was the duty of Congress to approve the form of government submitted. In that case, disapproving it, Congress imposed a new condition, requiring the Legislature to give a certain interpretation to a clause of the State constitution, and providing that upon the passage of the law giving such interpretation the governor of the State should certify the fact to the President, who should issue his proclamation declaring it, and that thereupon Missouri should be a State in this Union.

It is manifest that the case of Missouri affords no precedent for the

method of admission adopted for Colorado. (1) The constitution and government formed were examined and approved by Congress in the one case, and not in the other. (2) The Missouri act admitted the State to the Union, and only delayed the taking effect of the law until a certain condition had been performed. In the Colorado case there was no legislative act admitting the State, except through the President in the Colorado case there was no legislative act admitting the State, except through the President in the Colorado. dent's proclamation. (3) The proclamation of the President in the Missouri case was issued to announce the fact that he had received a copy of a certain act of the Missouri Legislature within a certain The proclamation in the Colorado case was issued not to announce merely that a copy of a constitution had been received, but to declare Colorado admitted into the Union. In the first case the act was purely a ministerial one to announce a fact, in the second case it was a legislative one to decide as to the form of the constitution and government which the people had adopted, and to admit a

What has been said in relation to Missouri applies with equal force to the admission of Nebraska. After the people in that case had formed their constitution and government, they were submitted to Congress, whereupon an act was passed accepting, ratifying, and confirming said constitution and government, and declaring that the said State of Nebraska was thereby admitted into the Union. Another section of the act declared that it should not take effect until the Legislature should determine in favor of equal suffrage, and that when a copy of an act of the Legislature should be received by the President, he should issue a proclamation announcing the fact. Here the condition was, as in the case of Missouri, one which related only to the taking effect of a law which, when it had been passed by Congress, was complete and perfect as an expression of the legislative will upon the subject-matter.

I admit, Mr. Speaker, that the State of Nevada is a precedent against the view I have maintained, but Nevada was admitted in 1864 in the midst of war. There was little discussion on this constitutional question which is now presented. I believe there were only four demo-cratic Senators at that time in the Senate of the United States. In cratic Senators at that time in the Senate of the United States. In that discussion one distinguished gentleman, Senator Garret Davis, of Kentucky, opposed the bill upon the ground that it amounted to a delegation of legislative power, and said that it was useless for him then in that excitement to make any objection to the bill, but nevertheless that he desired to be put upon the record against it.

I submit, Mr. Speaker, this precedent born in the midst of civil war, in the excitement attendant upon it, with the heats and passions then caused and developed without our world on the part of many

war, in the excitement attenuant upon it, with the nears and passions then aroused and developed, without any regard on the part of many of the people of the country for the obligations of the Constitution, shall not outweigh all the other precedents of the Government from the beginning as to the duty of Congress in admitting States, and as to the manner in which it shall be discharged.

It is objected to this bill that in the Senate the Senators from Colorede have been admitted to their seats, and that therefore this

It is objected to this bill that in the Senate the Senators from Colorado have been admitted to their seats, and that therefore this House is bound to admit Mr. Belford. Mr. Speaker, the action of the Senate well considered would be regarded, I have no doubt, as of high authority by this House; but when, as here, there was no discussion on the particular question involved in the reports now under consideration, when the action was taken hastily at the opening of the session, I submit what has been done is not entitled to the weight of a precedent.

Besides this is not a new take the

Mr. Speaker, it is claimed that there are precedents for the admission of States into the Union in the manner in which Colorado is supposed to have been admitted, and the acts of admission of Michigan, Missouri, Nebraska, and Nevada are cited. Now, in order that a case should be a precedent, it must involve two things: first, that the examination and approval of a State constitution by Congress after it has been adopted are unnecessary; and secondly, that the power to determine as to the form of the constitution and government may be delegated to some other authority or tribunal. Now I deny that any precedent which can be cited covers these propositions. In the

the House and in three days after that it passed that body, so for more than a week at that period this situation continued: Indiana represented in one branch of the Government and not in the other; and the only way by which in the other branch representation was given to the State was by the very method reported to this House by the minority of the committee, by passing a law declaring that the State was in the Union.

It may be said the people of Colorado will be without government

It may be said the people of Colorado will be without government if the minority report is to prevail. Not so. It has a government; and whether you call it a territorial government or State government, it is a de facto government, which gives to its people the same rights and privileges and protection which a government de jure would.

It has been insisted, Mr. Speaker, that this objection to the admission of Colorado is an after-thought, and that it is made only for the purpose of affecting the count of the electoral vote. I regret very much that this consideration has entered at all into this discussion. It is a question Mr. Speaker, of the gravest constitutional nature and one much that this consideration has entered at all into this discussion. It is a question, Mr. Speaker, of the gravest constitutional nature, and one which should be decided without any appeal to partisan prejudice, and without any reference to partisan considerations. It relates to more than one hundred thousand people living within the limitsof Colorado. It affects the interests of forty millions of people who dwell within the Union to which Colorado desires to be admitted. It is a question which concerns the sovereignty of a community, which affects its power as an independent political organization, and which will determine whether it shall be sovereign within the Union, or whether it shall remain in a condition of territorial dependence. It is a question, as suggested by the distinguished gentleman to whom I have already referred, that has lighted the flames of civil war, drenched lands with blood, overturned the oldest dynasties, and broken as though they blood, overturned the oldest dynasties, and broken as though they were pipe-stems the pillars of the strongest governments. It is a question, therefore, which should be decided in the light of the Constitution, and precedents, and the law. When we walk in the paths our fathers have marked out for us on this subject we walk in safety.

fathers have marked out for us on this subject we walk in safety. Away from them, at every point and on every hand is danger.

I firmly and conscientiously believe, Mr. Speaker, if the general principle involved in this bill as to the delegation of legislative power, and to some extent involved in another important bill which has passed at this session, shall prevail, that disorder and confusion will overwhelm our whole system; that distinctions between the legislative, executive, and judicial departments will be entirely abrogated; that the symmetry of the federal plan will be destroyed, and that sooner or later an empire will lift itself out of the rains of the Republic. Legislative responsibility becomes a myth, for when a trustee can delegate his power the trustee ceases to have responsibility.

Accountability of a man in legislative position to the people and his constituency perishes from the Republic if he can escape account-ability by showing that an objectionable act has been performed by another to whom he has delegated the power which the Constitution

has conferred upon him.

Mr. Speaker, as soon as this theory is adopted thoroughly in legislation the obscuration of the light of representative government begins only to be ended in its total eclipse. I desire to read the warning words of one of the ablest jurists of New York in discussing this very question. In Barto vs. Himrod and Lovett, (4 Seldon's Reports,) Judge Willard said:

If this mode of legislation is permitted and becomes general it will soon bring to a close the whole system of representative government which has been so justly our pride. The Legislature will become an irresponsible cabal, too timid to assume the responsibility of law-givers and with just wisdom enough to devise subtle schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away and the character of the Constitution will be radically changed.

Mr. Speaker, the minority of the committee reports to this House a bill admitting the State of Colorado. The constitution of the State and what was done under it in the formation of a State government have been reported to the Judiciary Committee, and the minority of the committee are satisfied that the conditions of the enabling act have been complied with. We, therefore, report as was done in the Indiana case, a bill which admits the State seeking admission into the Union. I ask that the bill reported by the minority may be read.

The Clerk read as follows:

An act for the admission of the State of Colorado into the Union.

An act for the admission of the State of Colorado into the Union.

Whereas, on the 3d day of March, 1875, Congress passed an act to enable the people of Colorado to form a constitution and State government, and offered to admit said State when so formed into the Union upon certain conditions therein specified;
And whereas it appears that the said people have adopted a constitution which, upon due examination, is found to conform to the provisions and comply with the conditions of said act and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution and government which the people of Colorado have formed for themselves be, and the same archereby, accepted, ratified, and confirmed, and that the said State of Colorado shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States in all respects whatsoever.

Mr. McCRARY obtained the floor.
Mr. SPRINGER. The gentleman from Ohio [Mr. HURD] I believe has fifteen minutes of his time remaining.
The SPEAKER pro tempore, (Mr. HATCHER.) The time of the gentleman from Ohio had expired.

Mr. BUCKNER. With the consent of my friend from Iowa, [Mr.

MCCRARY,] I ask to have read for information an amendment which I desire to offer to the bill reported by the minority of the committee. The Clerk read as follows:

Insert at the end of the bill reported by the minority the following:

"And the people of Colorado having elected a Representative to this Congress in pursuance of authority conferred upon them by the act of Congress aforesaid, the election of said Representative is hereby ratified and confirmed and said Representative is hereby ratified and confirmed and said Representative is hereby admitted to a seat in the House of Representatives."

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, informed the House that the Senate had passed a concurrent resolution in reference to the issuing of tickets of admission to the Capitol during the count of the electoral vote; in which the concurrence of the House was requested.

#### REPRESENTATIVE FROM COLORADO.

Mr. McCRARY. The speech of the gentleman from Ohio, [Mr. Hurd,] like everything he says upon this floor, is exceedingly able and ingenious; but at the same time I am sure that it will appear to gentlemen who will carefully look at the question that it is altogether fallacious. The legal proposition upon which he bases his argument is not open to dispute. No gentleman will claim that the legislative power which is conferred upon Congress by the Constitution can be delegated to the President or anybody else. But the fallacy of the gentleman's argument is in the misapplication of the legal principle which he enunciates.

On the 3d of March, 1875, Congress passed an act which both Houses and the entire country understood to be an act admitting the State of Colorado into the Union upon certain terms and conditions. In pursuance of that act, and in strict accordance with it, the government of Colorado was formed, the constitution of that State was adopted, proper certificates were transmitted to the seat of Government, the proclamation of the President of the United States was issued, the territorial government was disbanded and a State government was organized and set in motion. After all this it is said that the act of Congress did not admit the State of Colorado into the Union. After all this it is said that the State of Colorado is not a

Union. After all this it is said that the State of Colorado is not a State in the Union and not entitled to representation on this floor. Now, sir, let us look at the act of Congress. I would have no quibbling with my friend from Ohio upon the legal proposition that he announces. I take issue with him upon the meaning of the act of Congress providing for the admission of Colorado into the Union. I deny that it was an attempt to delegate to the President of the United States the power of admitting that State into the Union. Let us look at the act itself. Every gentleman understands that one of the modes whereby we interpret an act is by reference to the title. Look, then, at the title of this act and see what its purpose is:

An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States.

The purpose of the act itself was the admission of this State into the Look at the very first section of the act, which declared-

That the inhabitants of the Territory of Colorado included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said Territory, a State government, with the name of the State of Colorado; which State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever, as hereinafter provided.

Mr. SPRINGER. Now read the proviso.

Mr. McCRARY. The State when formed in accordance with the provisions of this act shall be admitted into the Union, not by a proclamation of the President, not by future action of Congress, but

by virtue of this act itself.

Mr. SPRINGER. Will the honorable gentleman read the proviso in connection with that portion of the act?

Mr. McCRARY. I have read the entire section.

Mr. SPRINGER. The proviso to that section is on the first page of the report of the majority of the committee.

Mr. McCRARY. I have read the entire section. There is no province in it.

Mr. SPRINGER. The proviso to which I refer is in the fourth section. It provides that the constitution shall be republican in form. Mr. McCRARY. It will come to that point by and by.

Mr. SPRINGER. I refer to the provision concerning race, color,

Mr. McCRARY. What I am now attempting to show is the intent and purpose of Congress in passing theact, and to do it I show its title wherein it declares that it is an act for the admission of the State of Colorado into the Union, and I show that in the first section of the act it is declared that upon the forming of a constitution and government in accordance with this act, the State of Colorado shall be admitted into the Union.

Now I agree, sir, that there are certain things which by this act are to be done, which are to be evidenced by the proclamation of the President of the United States announcing that they have been done. I agree, too, that there are certain provisions in this statute concernlagree, too, that there are certain provisions in this statute concerning the character of the constitution which should be adopted. It is stated by the bill offered by the minority that all those provisions have been complied with. But, sir, suppose that were not so. Does anybody claim that after the proclamation was issued, after a State government was set in motion, after the territorial government had been destroyed, after a State judiciary has come into existence, after a State Legislature has been formed, and after the governor and State officers had been elected and installed, that after all these the question could be raised whether the constitution was in accordance

tion could be raised whether the constitution was in accordance with the enabling act? I think not, sir. I think the power is with Congress to remedy any defects of that kind.

Sir, if the Constitution is not republican in form or violates any of the fundamental principles of the enabling act, we have the power to remedy the defect. Why, sir, suppose the oldest State in the Union should to-day amend her constitution by inserting in it a provision not republican in form, does any gentleman say that that would put the State out of the Union? Not at all, sir. It would only bring into exercise the power which, by the Constitution, is conferred on Congress to guarantee to every State a republican form of government. That a State has adopted a provision in her constitution ment. That a State has adopted a provision in her constitution which is in violation of the Federal Constitution does not put it out of the Union, nor does it cease to be a State because it has done such a thing, but the power to remedy it is in the Congress of the United States under the Constitution.

Now, sir, look again at this act. Section 5 contains this provision:

And if a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

Now, Mr. Speaker, how can any gentleman claim, in view of that language, that it was not the purpose of Congress in the passage of this act by the act itself to admit the State of Colorado into the

Mr. SPRINGER. Will the gentleman allow me to ask him a question, although I do not desire to interrupt him? Did not the admission of Colorado into the Union depend upon the affirmative vote of the people in the ratification or rejection of the constitution of the proposed State?

Mr. McCRARY. It depended undoubtedly upon the adoption of

the constitution by the vote of the people.

Mr. SPRINGER. If the people then had voted against the constitution the State would not have been a State in the Union by virtue

Mr. McCRARY. Undoubtedly the President would not have issued his proclamation declaring it a State if the people had not voted in favor of the constitution.

Mr. SPRINGER. Then the question of the decision whether it was a State or not depended upon whether the people of Colorado voted one way or another on this question.

Mr. McCRARY. The admission of Colorado into the Union, Mr. Speaker, like the admission of many other States of the Union, depended upon the happening of certain events or certain facts, and the happening of these facts was to be evidenced by the proclamation of the President of the United States. If the gentleman will excuse me, I will refer to some illustrations on that point in a moment. Now, again reading further from this act and keeping in view all the time the question whether it was the intention of this act to admit the State of Colorado into the Union by its own force, I call the atten-tion of the House to section 6 of the act, which is as follows:

SEC. 6. That until the next general census said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and State and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until said State officers are elected and qualified under the provisions of the constitution, the territorial officers shall continue to discharge the duties of their respective offices.

Now, sir, there is a provision for the election of a Representative to Congress on a day to be fixed by the constitutional convention without any further legislation on the part of Congress, without waiting for any further legislation. Assuming unquestionably, as the act does, that the State was to be admitted into the Union under this act, it proceeds to provide for the election by the people of the State, as soon as its admission is complete under this act, of a Representative in Congress. In pursuance of that law the people of Colorado have elected their Representative, and he is now here asking to be admitted to his seat.

Now, sir, it is no new thing in the history of this country that a State should be admitted into this Union by an act similar to this. State should be admitted into this Union by an act similar to this. There are several States in the Union to-day which came in under legislation almost identical with the bill admitting the State of Colorado, particularly the State of Nevada, in which the language of the act upon this point is verbatim with the language of the act for the admission of Colorado. And there are some others to which I wish to call the attention of the House.

Take the case of the State of Indiana to which the gentleman from

Ohio [Mr. Hurd] has referred. I hold that it is a strong case in our favor. The act to enable the people of the Territory of Indiana to form a State constitution and government contained this provision:

That the inhabitants of the Territory of Indiana be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States in all re-

Under the authority thus conferred the people of Indiana proceeded to frame their constitution and to organize a State government, and elected their Representatives and Senators in Congress and appointed

their electors in the presidential election of 1816. On the assembling of Congress, after the formation of the State government of Indiana, and before any action of Congress whatever had been taken upon the character of the constitution, or upon admitting the State of Indiana by any formal act, Mr. Hendricks appeared as the Representative and was admitted to his seat by the House of Representatives. He came here under precisely the same circumstances as those under which the gentleman from Colorado comes to-day, and he was admitted. ted. It is true that in the Senate some question was made, and upon deliberation it was thought to be proper, merely as a measure of caution, to pass a resolution declaring Indiana to be one of the States of the Union. But in the House of Representatives no such resolution was adopted, and the Representative was admitted without question. In that case no proclamation announcing the admission of Indiana into the Union had been provided for, and therefore the present case is in that respect a better one for the claimant of a seat than the Indiana case was

The case of Missouri is a very strong precedent in favor of the position which I take here to-day. That State was admitted, after a long debate, by a bill which provided that it should come into the Union upon an equality with all the other States upon condition that the Legislature of the State of Missouri should do certain things. Upon

those things being done it was provided as follows:

Whereupon, and without any further proceedings on the part of Congress, the admission of said State into this Union shall be considered as complete.

The Legislature of the State of Missouri was to enact certain laws, was to enter into certain stipulations with the National Government. When she had done so the fact was to be certified to the President of when she had done so the fact was to be certified to the President of the United States, and upon the fact being certified the President was to issue his proclamation, and thereupon, without any further proceedings on the part of Congress, Missouri was to be considered a State in the Union. This condition was subsequently complied with; the President's proclamation was issued August 10, 1821, and from that day to this no man has ever raised the question as to whether Missouri was a State in the Union.

And I say here without fear of contradiction that every principle and I say here without lear of contradiction that every principle involved in the bill admitting Colorado was involved in the legislation which admitted Missouri. If it was a delegation of power to the President of the United States to admit Colorado, it was a delegation of power to him to admit Missouri. It matters not what the character of the condition may have been in the one case or in the other. If an event or a series of events was to take place, and the fact that it had taken place was to be attested by the proclamation of the President of the United States, and if this applies in both cases, then Missouri is a precedent for Colorado.

Then take the case of Michigan. On the 15th of June, 1836, there was passed an act to establish the northern boundary of Ohio, and to provide for the admission of Michigan into the Union upon the terms therein expressed, the constitution which the people of Michigan had previously framed for themselves was ratified, and it was proright had previously framed for themselves was fathed, and it was provided that when the boundaries set forth in the act should receive the assent of a convention of delegates of said State she should be admitted into the Union on an equal footing with the other States without any further action on the part of Congress."

When the fact was certified to President Jackson that the people of

Michigan had complied with these conditions, it happened that Congress was in session, and he sent his message to Congress saying that if Congress had not been in session he would have recognized the evidence that came before him and considered the State of Michigan as

regularly admitted into the Union; but as Congress was in session he thought proper to lay the matter before Congress.

The State of Nebraska was admitted into the Union by an act which contained several fundamental provisions which were to be complied with by that State before it was to be considered as admitted into the Union. And as I have already said, the State of Nevada came into the Union under an act precisely similar to the Colorado

came into the Union under an act precisely similar to the Colorado act. And so I might say with regard to the State of West Virginia, which came into the Union in the same way.

I will not detain the House by reading from these several organic acts. I will say that from the beginning it has been a common practice to admit States into the Union upon conditions, with provisos that before they should be considered as admitted or before the acts admitting them should be considered as having taken effect, certain things must transpire and certain acts must be done, and those things should be attested by the proclamation of the President of the United States.

Now what will be the consequence of declaring that Colorado is Now what will be the consequence of declaring that Colorado is not now a State in this Union? What would be the condition of the people of Colorado if Congress should now declare that Colorado is not a State of this Union? By our own law we declared that if the people of that Territory should do certain things it should be a State in the Union without any further action whatever on the part of Congress. In pursuance of our own legislation they have disbanded their territorial government, they have formed their State government, they have organized their judiciary, and they are living to-day ment, they have organized their judiciary, and they are tring or any under a State government, with a governor, a Legislature, and all the departments of a State government.

A judge, appointed by the President of the United States to hold the district and circuit court within the State of Colorado, is holding

those courts in that State to-day. If the people there have no State

government, they have no government at all. Every sheriff who attempts to serve process is guilty of trespass or assault; every sheriff who attempts to execute a prisoner is guilty of murder; every authority in that State is set aside and there is no government there who tree if Colombia in the State is set as ideand there is no government there whatever, if Colorado is not a State.

Mr. SPRINGER. I would like to ask the gentleman a question. Is not the government in Colorado at this time a de facto government, and to all intents and purposes as good with regard to the people of

Colorado as a de jure government?

Mr. McCRARY. Mr. Speaker, if there is no State there, if there is no State organization, if there is no State constitution, if there is no State Legislature, there can be no State laws; the laws and the officers of the law have not even the color of authority. In order to be even a de facto government it must be a government that is not a usurpation, a government that is based upon a constitution and laws. The territorial government is clearly abrogated; if the State government is set in motion without authority of law, it is null and void. Besides, it is a dangerous thing to leave the people of any part of our

Union without a government de jure.

Sir, it would be bad faith toward the people of Colorado to refuse now to admit their Representative. It would be treating those people as we have never treated the people of any State or Territory in

ple as we have never treated the people of any State or Territory in this Union. I cannot suppose that this House will refuse to admit the Representative from that State.

Mr. HILL. I wish to ask the gentleman whether in all previous cases of this kind, except Nevada, it is not true in point of fact that the State constitution was laid before Congress and pronounced by Congress republican in form before the proclamation of the President

issued ?

Mr. McCRARY. I am very glad the gentleman from Georgia [Mr. Hill] has called my attention to that point, for I intended to mention it. I think it is not true that in all cases the constitution was submitted to Congress. I am sure that in at least a number of the earlier cases where States were admitted into the Union the constitution was never submitted to Congress at all. For instance, the constitution of Kentneky was never submitted to Congress. I repeat what I said a moment ago, that the remedy for a defect in a State constitution is not in keeping the State out of the Union nor attempting to put it out after it gets in; but the power to remedy a defect of that sort is given to Congress under the constitutional provision that Congress "shall guarantee to every State a republican form of government." I now yield fifteen minutes to the gentleman from Maine, [Mr. Hale.]

Mr. HALE. Mr. Speaker, I have read with great care the very elaborate and able report of the minority in this case, drawn by the gentleman from Ohio [Mr. HURD] who spoke this morning. I have also listened to his speech, which was as full of ingenuity and of strong logical thought upon the matters which make the basis of his report as a speech could well be; thought upon the nature of the conditions on which an act of Congress may be made to take effect. But neither in the report nor the speech do I find anything which to my mind makes strongly against this broad proposition, that Congress in this case has passed an act which by its title and express terms authorizes the people of Colorado to do certain things in setting up a State government and provides for the admission of that State when the government is so set up. So far as the action of Congress goes, it has by the enabling act done everything that Congress needs to do to authorize the setting up of this State; and as if to exclude any doubt, it declares in terms that no further action shall be needed to be taken by Congress. Now we have here, if the people of Colorado follow out the directions given to them, a State that is to present herself here by her elected member.

But it is said that Congress should now intervene and by an act such as the gentleman from Ohio has appended to his report declare that the State has conformed to the provisions of the enabling act. But I find, as has just been explained by the gentleman from Iowa, [Mr. McCrary,] that in the early history of the Government, more than once, after the people of a State, formerly a Territory, had enacted a constitution in accordance with the Constitution of the United States, had elected State officers had set up a State government. acted a constitution in accordance with the Constitution of the United States, had elected State officers, had set up a State government, and had sent members to the House of Representatives and Senators to the other branch, they were admitted at once, no question being raised such as is raised here. Ifor one am willing to stand upon that proposition and those precedents. That this view of the case and these precedents have force, was shown two months ago, when this matter came up at the other end of the Capitol; for on turning to the first day's proceedings in the Senate of the United States, as given in the RECORD of the 5th of last December, I find that-

The President pro tempore presented the credentials of Jerome B. Chaffee, elected by the Legislature of the State of Colorado a Senator from that State; which were read.

He also presented the credentials of Henry M. Teller, elected by the State of Colorado a Senator from that State; which were read.

The President pro tempore then announced that "the Senators-cleet, who are present, will please advance to the desk and take the constitutional oath;" whereupon Mr. Chaffee and Mr. Teller, to-gether with a gentleman who had been lately elected to fill out an unexpired term from the State of Maine, advanced and took the oath of office as Senators.

present in the Senate such good constitutional lawyers, such sticklers for the observance of forms and laws and constitutions as the Senator from Vermont, [Mr. EDMUNDS,] both Senators from New York, [Mr. CONKLING and Mr. KERNAN,] the Senator from New Jersey, [Mr. FRELINGHUYSEN,] the Senator from Ohio, [Mr. THURMAN,] and the Senator from Delaware, [Mr. BAYARD;] and I do not find that any voice was raised in the Senate of the United States against swearing in either of the two Senators who had been, as declared by the President of the Senate, elected by the "State of Colorado." So much upon the question of the law and the precedents.

There is another consideration of a practical nature, which has be-fore been touched upon, the good faith that we owe to these people. Colorado has been struggling for admission for twelve years, seeking to become a State in the Union; has once failed, though a bill for that purpose passed both Houses; has come here again; has received the sanction of Congress; has complied with every detail of legal provision required from her people by the enabling act passed by Congress. It is not claimed by those advocating the minority report that in any regard Colorado has failed; and so far as the "taking effect" is concerned, the President by his proclamation has declared what everybody admits, that she has complied. A State government has been set up and all the paraphernalia of organization has been put on in the once Territory and now State of Colorado. The United put on in the once Territory and now State of Colorado. The United States Government, aside from this House, has recognized it in every branch, the Senate by admitting its Senators and the law department of the Government by sending United States judges to act as judges in the State or new district created of Colorado. To-day, under an act passed since the enabling act by both Houses without objection, as I believe, there is a United States court now in session in the capital of Colorado exercising all the powers there as a State of the Union that any other United State court exercises in any State of the Union that any other United State court exercises in any State of the Union, no matter how long back the date of its admission into the Union. And both parties, in a political sense, are committed to the admission of the State without further question. It is bad enough—
Mr. SOUTHARD. I should like to ask the gentleman from Maine

a question, and that is, whether that does not provide these courts shall be established when this State is admitted into the Union? That

is the very thing to be determined.

Mr. HALE. I did not believe there was any doubt until to-day on the presentation of these reports as to the State of Colorado being recognized. It is recognized by the Government under the act. What I was saying when interrupted was this, that we are all committed to the proposition that Colorado to day is full-clad in the garments of a State. It is not, as shown by the discussion and report, in any degree a party question. Gentlemen will remember when the subject is recalled how eagerly both parties six months ago were claiming each that it had carried the State of Colorado. There was no question then of the territorial organization remaining or that the State was not completely within the Union, with a right to elect a governor and Leg-islature and member of Congress to sit upon this floor. I remember the picturesque illustrations in the newspapers, with columns set up by each side and Colorado in each as a State in the Union. Yet, notwithstanding that, notwithstanding the action of the Senate, notwithstanding the action of the Executive, notwithstanding the action of the legal department of the Government, for two months her member has been shut from our doors. The important business of a new Commonwealth has drifted without direction on this floor. If a member or citizen of that State is required to call the attention of Congress to its needs, he has been forced to do it through some other member, making him his mouth-piece.

I appeal to gentlemen whether it is a good thing for us here in this House alone, either because of fine argumentation on a narrow point of law, or any fancied advantage which may be gained in any political way to longer hold out and keep the Representative of this State from his place on this floor where the rest of us sit. The State is today populatively entitled to be admitted. It is to-day, from the magnitude of its interests and industries, entitled to a place on this floor, all the forms having been complied with. It cast in the last election a vote as large as five of the States. It cast a larger vote than two of the older States, so it is not a rotten-borough system

which has brought it here

In the early stages of the controversy arising in reference to the admission of that Territory I was not in favor of its admission to this floor, for the reason that I did not believe that it had come up to the standard in growth we should require. But all that is past and gone. It has good fundamental reasons for admission, if we were considering the original question of an enabling act why it should be admitted as a sister State. It has gone on as other States have gone, and it presents itself here having conformed with everything required by Congress, precisely as the last State admitted into the Union, which

was admitted with little or no question. Congress should stand ready to admit its member and not keep him out further.

Mr. McCRARY. I yield the balance of my time to the gentleman from Massachusetts, [Mr. Banks.]

Mr. BANKS. Mr. Speaker, the chairman of the Committee on the Judiciary [Mr. Knorr] has reported a resolution to admit the member from Colorado to his seat as a member of the House. Having first called the attention of the House to the glain of the waysher. first called the attention of the House to the claim of the member-These proceedings were on the first day of the session; and I find elect for the State of Colorado, I may perhaps be justified in express-that a few minutes before, upon the roll-call, there were found to be ing, very briefly, my views of the merits of this resolution. I listened

attentively to the elaborate and critical and very able argument of the gentleman from Ohio, [Mr. Hurd.] It surprised me that he could put so much into it that does not belong to the question, and leave so much out which, in my view, does belong to it. From my point of view it is a very simple proposition, which admits of no doubt whatever. I will state it as briefly as it is in my power to do.

The Constitution declares (article 2, section 3) that "New States may be admitted by the Congress into this Union." It is virtually an assent and consent that Congress is authorized to give to the admission of new States, and the word "consent" is used in the same paragraph when the formation of new States carved out of territory because

graph when the formation of new States carved out of territory belonging to existing States is spoken of, in connection with their admission to the Union. It is in fact a declaration that Congress may give its consent to the formation of new States, and admit them to the Union under such conditions as it may think just and proper.

New States, Mr. Speaker, cannot be formed without the consent of the people belonging to the territory to be included in the State. So here are two propositions of fact: One is that Congress may consent to the admission of new States formed out of new territory or out of the territory of pre-existing States, and the other is that the people the territory of pre-existing States, and the other is that the people of the territory proposed to be admitted as a State either desire or consent to the admission. That is substantially the question we now have before us, nothing but that, and upon that ultimately the House will pass its judgment. I know that every Congress that admits new States admits them upon certain specified conditions. One is that the government of the State shall be republican in form; that it shall make no distinction in civil or political rights on account of race or color, and not be repugnant to the Constitution or the principles of the Declaration of Independence. Other conditions were embraced in the act of the Forty-third Congress for the organization of the State of Colorado. It was to secure by irrevocable ordinance perfect toleration in religious oninions. No person should be disturbed in toleration in religious opinions. No person should be disturbed in person or property on account of the mode of religious worship. The people of the State were to disclaim forever all right and title to unappropriated lands within its limits and agree and declare that they appropriated lands within its limits and agree and declare that they should belong to the United States; that equality of taxation of lands should be secured to resident and non-resident owners, and that no tax should be imposed on lands or property of the United States. These are all the conditions specified, which are inseparably connected with the territory out of which the new State is created. But, Mr. Speaker, every member of the House must have noticed that these conditions are irrevocable and perpetual. They are enduring, and to endure forever; and the conditions upon which Colorado is admitted into this Union by the act of 1875, unless modified by the consent of parties will endure as long as the State of Colorado en consent of parties, will endure as long as the State of Colorado endures, as long, we hope, as the continent itself shall endure. How unjust then it is to assume that this or some other Congress must enact a statute declaring that these irrevocable and perpetual condi-tions imposed upon Colorado have been complied with and that each and every conditional obligation has been literally and exactly per-formed before it can be recognized as a State or admitted to representation in this House.

We have a far more enduring security than any such statute can confer. It exists in the fact that the rights of the people of the State of Colorado are held subject to the exact and perpetual performance of the conditions specified in the act authorizing them to form a State government. No statute can strengthen this enduring title of the United States. Colorado herself is incapable of giving us a more complete acknowledgment of our rights than is embraced in the enabling act by which and through which she became a State, be-cause the security it claims it has taken for all time, a statute recognition of the fact that she has performed every condition imposed upon her people by Congress, would rather weaken than strengthen it, because it might hereafter be assumed by her successors that all the claims and demands of the United States had been satisfied and acknowledged by its government and the State relieved thereby from any further duty on the part of its people or their successors. This is, in my judgment, the relation of the State to the Union of which it has become a member, whether or not a statute of satisfaction and recognition by Congress be passed now or passed hereafter. It will be an open question hereafter to be submitted to the action of Congress whenever any, even the slightest, departure from these fundamental conditions is made by the State, what remedy exists and in what manner it is to be administered by the Government of the United States. I do not assume that there is any impropriety in such an act as that now proposed as an amendment to the resolution of the committee for the admission of the member-elect from Colorado, but that it should not be allowed to deprive the State of its right of

representation or impair the just legal effect of the President's proclamation declaring Colorado one of the States of the Union.

Now, sir, the gentleman from Ohio has stated what may sometimes be admitted to be a correct principle of law and what may not be be admitted to be a correct principle of law and what may not be admitted to be a correct principle of law, that a Legislature cannot under any circumstances delegate its authority. I will not dispute that question with him or with the House, but I call the attention of the House to the particular act which Congress has performed in regard to the State of Colorado. What act has it required of its people that could be completely and finally executed and performed in the year 1875 or in the year 1876? What condition has it required of them? Only one, just one-no more and no less-and that was that

the people of the Territory of Colorado should form a State constitution subject to the conditions of the enabling act, and at a public election called in pursuance of the provisions of law give their as to its admission to the Union of the States upon the conditions thus specified. That is all. And when this election was held and the return made to the President required by the act of 1875, then in point of fact, so far as its people were concerned, the State of Colorado was admitted to the Union. When the election was held, when the people had declared that they would become a member of the Union according to the conditions prescribed, and had reported their action to the President, as prescribed by the act authorizing them to form a constitution, and had organized a State government, nothing more remained for them to do.

Congress delegated this power and authorized this political action and organization by the act of 1875 to the people of Colorado. Will the honorable gentleman from Ohio or any other member of the House the honorable gentleman from One or any other member of the House say that this is a delegation of legislative authority? No, sir. There is no legislation in the act of the people of Colorado assenting to the proposition to become, upon the terms prescribed, a member of the Union of States. That is not legislation. An election is not a legislative act. It is an act of administration, not of legislation. And that is the only act we have here on the part of the people of the State. Congress has not thus far despoiled itself of its legislative authority or power. In what manner has it, then, abdicated its legislative duty?

There is one other proposition which can be considered by any possibility as interfering with the functions of the two Houses of Congress, only one other—and that is the duty imposed by the act of 1875 upon the President of the United States. That act declares that, by an ordinance of the constitutional convention, the constitution formed by the people of the Territory of Colorado should be submitted to the people of the said Territory in the month of July, 1876, for ratification or rejection, and the returns of said election should be made to the acting governor of the Territory, who with the chief-justice and United States attorney of said Territory should canvass the same, and if a majority of legal votes should be cast for said constitution and if a majority of regar votes should be east for said constitution in said proposed State, the said acting governor should certify the same to the President of the United States, with a copy of said constitution, "whereupon, it should be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without

any further action whatever on the part of Congress."

Now, what was done by Congress in this act? It authorized the people of the Territory of Colorado to say whether they would or would not become a State of the Union. It authorized the acting govwould not become a State of the Union. It authorized the acting governor of the Territory, who is instructed with the chief-justice and United States attorney of the Territory to canvass the votes, to make a return of the fact whether the people of the Territory have agreed to it or not to the President of the United States, and upon that fact alone the President is to issue his proclamation—not that the conditions have been complied with, for the President cannot perform that duty in pursuance of any power that is given to him by the terms of the act, but being notified that the people of the Territory of Colorado have agreed to become a member of the Union according to the rado have agreed to become a member of the Union according to the conditions prescribed, he makes, as he is instructed and required to do, a proclamation of that fact, and thus the State of Colorado is a State of the Union upon an equal footing with the original States. That is all there is of it.

Is there any delegation of legislative power to the President by Congress in the act? Is it a legislative act when the President receives the certificate of the election, issues his proclamation thereupon that Colorado is a State of the Union? Who says that it is legislation? No, sir, it is an executive act performed in obedience to the explicit instructions of the legislative department of the Government; an act necessary to the execution of the law for the admission of Colorado to the Union, in pursuance of the action of Congress and the people of the Territory. It has not the spirit nor the semblance of legislative power.

In the action of the Government for the admission of States to the

Union in the first half of this century, the case which most nearly resembles this is that of Indiana, which was admitted to the Union in 1817. As I understand the history of that State, the ground upon which the admission of Indiana to the Union was disputed was that there had been no proclamation either of Congress or of the President of the United States that she was a State of the Union. That was the only alleged defect. Everything else was regular and complete. But the Senate did not so regard it; the House of Representatives did not regard even the proclamation as indispensable to her admission to the Union. Indiana was a State. She had virtually, so far as she could, complied with the conditions of her admission, and therefore they not only received the Senators elected from that State, but they received the electoral vote of that State. The only fact but they received the electoral vote of that State. The only fact wanting, so far as I remember the case of Indiana, was that the President had not issued a proclamation declaring the State into the Union. There is no such lapse here; everything is complete; everything necessary on the part of Congress has been completed. The people of the State have had a proper election authorized by Congress, have declared by a vote of the people that they desire to become a State of the Union. The governor and the canvassing officers of the new State, in obedience to the law of Congress, made known

to the President of the United States that an election has been held, and that the people had decided in favor of the adoption of the constitution and of her admission into the Union. All the conditions prescribed by the law have been complied with, and the President, in obedience to the law of Congress, has issued his proclamation that Colorado is now a State of the Union.

Now I want to ask the gentleman from Ohio if there is in this action of the people, or the executive department of the Government, any possible derogation of the legislative authority or power? There is none whatever. That, it appears to me, is substantially the spirit and substance, the bone and marrow of this question. These fundamental conditions which were embodied in the act authorizing Colorado to form a State government are perpetual conditions; that is, it is wholly immaterial whether or not Congress shall now decide that the State has or has not complied with them. The conditions are as enduring as the State itself, and it can never avoid, evade, or escape them. The truth is that in regard to this matter there was no delegation of authority—none whatever. The President has performed the simplest executive ministerial act possible for him to perform. It was an act necessary to make known to the country that Colorado had complied with the law of Congress as far as necessary, and that she had consented to come into the Union as one of the States of the Union.

Now there are innumerable instances of this kind of legislation on record and of executive acts of this description. Let us take for example the case of a treaty made by the treaty-making power with a foreign government. It cannot go into effect until certain legislative acts have been passed by the appropriate legislative power. Those acts are legislative in their character but they are indispensable for the execution of the treaty, they are therefore executive not legislative acts, so far as the treaty powers are concerned. The action of the Legislature in performing its duty is merely that of executing the law or treaty, the treaty having been agreed upon between the nations. The negotiation of the treaty is no part of the duty of the Legislature, but the execution of the treaty by legislation is an indispensable duty. In the several States it is a common occurrence, that legislatures anthonize for instance a country site to be established but pensable duty. In the several States it is a common occurrence, that Legislatures authorize for instance a county site to be established, but do not indicate the spot where it shall be established; that matter is left to the people of the county, they must put into execution the law by selecting the site. So in this instance, the President was required to issue his proclamation so as to inform the people that the State of Colorado had agreed to enter the Union, and there is no power given to Congress to go behind that proclamation.

Mr. SOUTHARD addressed the House, and after proceeding some time was interpreted by:

time was interrupted by

Mr. HOLMAN, who said: I rise to a question of order, not with any view of interfering with the gentleman from Ohio. The point of order I make is that only three hours were devoted to the discussion of this question, and that that time has expired. The reading of the report occupied one hour yesterday, and that was to be included in

Mr. SOUTHARD. The time allowed for debate has not elapsed.
Mr. HOLMAN. I have no objection to the gentleman from Ohio having his time, but the agreement was that three hours only should be devoted to the discussion of this bill, and I make the point of or-

be devoted to the discussion of this bill, and I make the point of order that the three hours have expired including the time occupied by the reading of the report yesterday.

The SPEAKER. The gentleman from Indiana makes the point of order that the portion of the time allowed for debate was consumed yesterday by the reading of the report. The Chair will be glad if the House will come to some understanding as to the length to which the debate is to be extended. the debate is to be extended.

Mr. SOUTHARD. I understand that the reading of the report took

The SPEAKER. The reading of the report occupied nearly an hour and the question now is, what time shall be fixed for debate?

Mr. KNOTT. The question is whether the reading of the report

shall be considered as a part of the debate.

Mr. HOLMAN. The gentleman from Kentucky [Mr. Knott] had a right either to submit a speech or a report, and he submitted a re-

port The SPEAKER. The gentleman from Kentucky rose and was recognized, and yielded to the gentleman from Ohio, [Mr. Hurd.] The report was then read, and it seems to the Chair that the reading of the report was a part of the debate.

Mr. KNOTT. If that is the rule of the House, I have nothing to

The SPEAKER. The gentleman rose to debate this question and demanded the reading of the report, and it seems to the Chair that that reading was a part of the debate.

Mr. KNOTT. The Chair will remember that I rose and called up the question and called for the reading of the report; and after the reading of the report I yielded to the gentleman from Ohio, [Mr.

reading of the report 1 yielded to the gentleman from Onio, [air. HURD.]

The SPEAKER. Does the gentleman say that he yielded to the gentleman from Onio after the reading of the report?

Mr. SOUTHARD. That is certainly the fact.

The SPEAKER. The gentleman from Onio [Mr. SOUTHARD] will proceed. The Chair does not think that he should hold to a practice. which would cut off debate upon this question; it would be better to err in favor of debate than otherwise.

Mr. HOLMAN. Then we can only endeavor to be a little more cau-

Mr. HOLMAN. Then we can only endeavor to be a little more cautious in future in agreeing to allowing time for debate. Of course I supposed that only three hours would be consumed before the previous question was called; and the gentleman from Kentucky [Mr. KNOTT] used up an hour of the time when having his report read.

Mr. SOUTHARD resumed, and concluded his remarks, as follows:
Mr. SOUTHARD. Mr. Speaker, the question before us relates to the right of Mr. Belford to a seat on this floor as a Representative in Congress from the State of Colorado. There is no objection made to the manner of conducting or certifying his election, and the only inquiry is whether Colorado has been duly admitted as a State into the Union.

Under the articles of confederation "no other class" the Constitution of the content of

Under the articles of confederation "no other colony" than Canada could be admitted into the Union without the consent of nine States. could be admitted into the Union without the consent of nine States. But a vast extent of unoccupied territory then existed which did not properly fall under the designation of "colony," about which no provision had been made, and which was eventually to become the seat of great wealth and population. At the close of the war for independence, this territory was claimed by the States, but at length its cession by the States to the Union was agreed upon, and it thus became the common property of the people of all the States. The cession of a large part of this territory was made before the adoption of the Constitution, and the convention which framed that instrument foresaw the necessity of providing some method by which new and independent the necessity of providing some method by which new and independent States should be organized and admitted into the Union. The provision adopted is found in the fourth article, third section, of the Constitution, as follows:

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or part of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

Whether this provision is the wisest and best that could have been devised is no part of our inquiry, although it is difficult to see where else so important a prerogative could have been more safely lodged. But however this may be, it is that which has been transmitted to us, and we are concerned alone in its proper administration.

It will be observed that there are two distinct branches of this pro-The first relates to the formation of new States from territory wholly without the limits of any State, and the second to the formation or erection of new States from territory included within formation or erection of new States from territory included within the limits of one or more existing States. In the first, Congress alone is to be consulted, and in the second the consent of the States concerned is required as well as that of Congress.

The manner of the exercise of this power of Congress is through a legislative act. And while there is no particular formula prescribed, it is clear that the act must be in conformity with those principles which are recognized by legal and judicial interpretation to be necessary to a valid legislative act.

If the act entitled "An act to enable the people of Colorado to form

If the act entitled "An act to enable the people of Colorado to form a constitution and State government and for the admission of the said State into the Union on an equal footing with the original States," approved March 3, 1875, is such an act, then Colorado is a State in this Union and Mr. Belford is entitled to his seat. If, however, the act is not of this character, but requires the further action of Congress to make it complete, then Colorado is not yet a State in the Union and Mr. Belford cannot be entitled to his seat until such time as Congress has taken this further and final action.

But I submit that the act is not a valid legislative act, for the rea-But I submit that the act is not a valid legislative act, for the reason that it undertakes to delegate legislative authority, an exercise of power clearly prohibited by the Constitution. It declares that several very important conditions shall be complied with in the formation of the constitution and State government precedent to its right to admission into the Union, and delegates to the President of the United States the right to judge whether these conditions have

been fulfilled.

The fourth section of the act provides among other things that the constitution shall be republican in form; that it shall make no distinction in civil or political rights on account of race or color; that it shall not be repugnant to the Constitution of the United States or to the principles of the Declaration of Independence.

The same section further declares that the constitutional conven-

The same section further declares that the constitutional convention shall provide by ordinance, irrevocable without the consent of the United States and the people of said State, that perfect toleration of religious sentiment shall be secured; that the people of said Territory forever disclaim all right and title to the unappropriated public lands lying within said Territory; that the same shall be and remain at the sole and entire disposition of the United States; that the lands of non-residents of said State shall never be taxed higher than the lands of the residents thereof; and that no taxes shall be imposed by the State on lands or property therein now owned or hereafter to be ac-State on lands or property therein now owned or hereafter to be acquired by the United States.

All these conditions and others not necessary to enumerate, relating to the rights of property and to the personal rights and liberties of the people, are required by the terms of the enabling act to be embodied into the constitution and ordinances as express conditions, upon which alone the State shall be entitled to admission into the Union. The judgment necessary to determine these questions belongs

exclusively to Congress.

Judge Cooley, in his able treatise on Constitutional Limitations,

page 30, says:

There are always in these cases questions of policy as well as of constitutional

law to be determined by the Congress before admission becomes a matter of right—whether the constitution formed is republican; whether the proper State boundaries have been fixed upon; whether the population is sufficient; whether the proper qualifications for the exercise of the elective franchise have been agreed to; whether any inveterate evil exists in the Territory which is now subject to control, but which might be perpetuated under a State government—these and the like questions in which the whole-country is interested cannot be finally solved by the people of the Territory for themselves, but the final decision must rest with Congress, and the judgment must be favorable before admission can be claimed or expected.

The Constitution of the United States, article 4, section 4, requires that

The United States shall guarantee to every State in this Union a republican form of government.

There is a necessity, therefore, that Congress shall demand as a prerequisite to the admission of a new State that it shall have a government republican in form. Mr. Madison, in the Federalist, has

But the authority extends no further than a guarantee of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed.

And the reasons for this provision he sums up in the following apt language:

language:

In a confederacy founded on republican principles and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other, and the greater right to insist that the forms of government under which the compact was entered into should be substantially maintained. \* \* Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort than those of a kindred nature, "as the confederate republic of Germany," says Montesquieu, "consists of free cities and petty states, subject to different princes, experience shows us that it is more imperfect than that of Holland or Switzerland." "Greece was undone," he adds, "as soon as the king of Macedon obtained a seat among the Amphictyons." In the latter case, no doubt, the disproportionate force as well as the monarchical form of the new confederate had its share of influence on the events.

What a manifest abuse of authority it would be in Congress to ad-

What a manifest abuse of authority it would be in Congress to admit a State to membership in the Federal Union with a constitution not republican in form, which it would be required under the Constition to proceed to change immediately thereafter! And if the Senators and Representatives are first to be admitted, their voice and intors and Representatives are first to be admitted, their voice and influence would be added to the power that might oppose the needful change. It can scarcely be expected that Congress would do so unreasonable a thing. But this is only one of the many conditions expressed in the enabling act, all of which are highly important. If Congress cannot now pass upon the constitution of Colorado, as it has been formed and ratified, but must be bound by the result whether it accords or not with the terms and conditions prescribed in the enabling act, then it is perfectly clear that it has divested itself of the authority conferred upon it by the Constitution, and rendered itself powerless to enforce a compliance with those conditions which it has declared to be necessary. But this is precisely what this act undertakes to do. takes to do.

The fifth section of the enabling act provides-

That in case the constitution and State government shall be formed for the people of Colorado in compliance with the provisions of this act, said convention forming the same shall provide by ordinance for submitting said constitution to the people of said State.

It further provides that in case the people, by a majority vote, ratify the said constitution—

The acting governor shall certify the same to the President of the United States, to ether with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

If it is important to prescribe these conditions, it is certainly of equal importance to have them complied with, and the authority, judgment, and discretion requisite to determine these questions is a part of the duty devolved upon Congress by the Constitution which it cannot confer upon any other person or body.

In Cooley's Constitutional Limitations, page 116, we find this doc-

trine laid down:

One of the settled maxims in constitutional law is, that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confer this sovereign trust.

In Railroad Company vs. Commissioners of Clinton County, 1 Ohio State, 87, Justice Ranney said:

That the General Assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person or body, is a proposition too clear for argument.

In Rice vs. Foster, 4 Harr., 489, the court say:

It is a plain proposition of law that a power or authority vested in one or more persons to act for others, involving in its exercise judgment and discretion, is a trust and confidence reposed in the party, which cannot be transferred or delegated.

From this doctrine there has been no dissent in any of the courts, State or Federal, so far as I have been able to examine, and whatever diversity of judicial decision there has been has arisen from the application of the principle to the particular cases, and not from any dis-

agreement about the principle itself. The decisions affirming this position are so universal that it is not necessary that further references be made to them. Whenever, therefore, the Legislature attempts to delegate the authority reposed in it, it transcends its powers and its action becomes void. What, then, is and what is not a delegation of such authority? This I can best illustrate, perhaps, by reference to some authorities.

It is not denied that conditional statutes, and those made to take effect upon the happening of some future event; may be enacted. But these do not infringe upon this maxim. Nor do those statutes creating corporations, which leave it to the corporators to say whether they will accept of the franchise. Judge Cooley says:

In these cases the legislative act is regarded as complete when it has passed through the constitutional formalities necessary to perfected legislation, notwithstanding its actually going into operation as law may depend upon its subsequent acceptance.

It is claimed that this enabling act is what may be termed a conditional act—one made to take effect upon the happening of an event—the event being the compliance with the conditions therein

The answer to this is, that the event is not such a one as the act can be made to depend upon. In this view I call attention to the references which I shall now make.

In Ex parte Wall, 48 California, 279, the court say:

A statute to take effect upon a subsequent event, when it comes from the hands of the Legislature, must be a law in present to take effect in future. On the question of the expediency of the law, the Legislature must exercise its own judgment definitively and finally. If it can be made to take effect on the occurrence of an event, the Legislature must declare the law expedient if the event shall happen, but inexpedient if it shall not happen. They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity; they must exercise that power themselves, and thus perform the duty imposed upon them by the Constitution.

The law in question was one authorizing a license for the sale of intoxicating liquors in any township of the State, in the event that the people of the township, by a majority vote, should so decide; and the court held the law void on the ground that the expediency of the law must rest with the Legislature and not with the people

In the case of Barto vs. Himrod, 8 New York, (4 Selden,) 490, the ourt say:

It is not denied that a valid statute may be passed, to take effect upon the hap-pening of some future event, certain or uncertain. But such a statute when it comes from the hands of the Legislature must be law in present to take effect in

The event here referred to was a majority vote of the people of the State in favor of a free-school act. And the court further say:

The wisdom or expediency of the free-school act, abstractly considered, did not depend on the vote of the people. If it was unwise or inexpedient before that vote was taken, it was equally so afterward. The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the constitution makes it the duty of the Legislature itself to decide. The Legislature has no power to make a statute dependent on such a contingency, because it would be confiding to others that legislative discretion which they are bound to exercise themselves, and which they cannot commit to any other man or men to be exercised.

Justice Ranney, in the case before referred to, (1 O. St., 87,) while asserting so unequivocally that legislative authority could not be delegated, still maintained that it was within the constitutional powers of the Legislature to enact a law contingent upon the happening of an event or subject to the intervening assent of other persons, and as a test of what was permissible, laid down this rule:

The true distinction, therefore, is between the delegation of power to make law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latterno valid objection can be made.

In Santo vs. Iowa, 2 Iowa, 203, it is said:

\* \* There is no doubt of the authority of the Legislature to pass an act to take effect upon a contingency. But what is a contingency in this sense and connection? It is some event independent of the will of the law-making power as exercised in making the law, or some event over which the Legislature has exercised in making the law, or some event over which the Legislature has not control.

\* \* The will of the law-maker is not a contingency in relation to himself. It may be made in relation to another and external power, but to call it so in relation to himself is an abuse of language. Now, if the people are to say whether or not an act shall become a law, they become or are put in the place of the law-maker. And here is the constitutional objection. Their will is not a contingency upon which certain things are or are not to be done under the law, but it becomes the determining power whether such be the law or not. This makes them the legislative authority, which, by the constitution, is vested in the senate and house of representatives, and not the people.

The contingency referred to was the approval of the people of the State, by vote, of an act for the suppression of intemperance.

And in Bradley vs. Baxter (15 Barb., 123) we find the like doctrine:

And in Bradley vs. Baxter (15 Barb., 125) we find the like doctrine:

It is insisted, and was strenuously urged upon the argument, that the Legislature has power to enact conditional laws, laws to take effect upon the happening of some future and contingent event. Nobody will contest this proposition. \* \*

But in none of these cases was the act of the Legislature made to take effect upon any decision of this foreign or extraneous power upon the expediency of the act itself. These laws were to take effect upon the happening of certain events which would, in the opinion of the legislative or law-making power, render such a law expedient and proper for such a state of things. The circumstances, to meet which such laws were enacted, were contingent and uncertain; but the laws themselves expressed the deliberate will of the law-making power, provided the circumstances should happen to which the laws were intended to apply.

The court say, in Ex parte Wall, 48 California Reports, 314:

It is true a statute may be conditional; its taking effect may sometimes be made to depend upon a subsequent event. The last proposition is illustrated by The Brig

Aurora vs. The United States, 7 Cranch, 382, in which the validity of a provision of the "non-intercourse law" was upheld. The provision was to the effect that in case Great Britain or France should revoke or modify its edicts previously issued, so that they should cease to violate the neutral commerce of the United States, the trade suspended by the law should be renewed. It will be observed that in this instance the members of Congress exercised their own judgment, and simply determined that trade should be suspended while the orders in council or edict should continue.

From the authorities the following formulas are adduced: (1.) That From the authorities the following formulas are addited: (1.) That legislative power or authority cannot be delegated; (2) that while conditional statutes may be enacted, so as to go into effect upon the happening of some future event, it is not every event upon which the statute may be made to depend; (3) that the event or condition must be such as is independent of the law-making power, sutside of and beyond the legislative will and discretion; (4) that it must operate upon the execution or suspension of the law, and not upon its execution. its creation.

Applying these tests to the enabling act under consideration, we find that it falls within the prohibitions laid down. The elements of the event are the elements of the very law that Congress is empowered to pass, and operate upon its creation, and not upon its execu-

To ascertain the qualifications necessary for admission is the very duty which Congress is called upon to perform. The act in question cannot be held to be one which is complete and perfect in itself as it left the hands of the Legislature and only requiring the happening of an event to put it into operation; nor one in which the Legislature has rightfully declared the law expedient if the event shall happen, and inexpedient if it shall not happen. To make such a statute valid the authorities all agree that the event must be one independent of the legislative power, otherwise the condition fails and the law is void. In the present case the event depends directly upon the legislative power. The one cannot be separated from the other. The determination of the very existence of the event itself brings into operation those legislative faculties and functions which are involved in ascertaining the qualifications of the new State for admission. To ascertain the qualifications necessary for admission is the very

ation those legislative faculties and functions which are involved in ascertaining the qualifications of the new State for admission.

The thing to be done is to admit the State; to admit the State, in the solemn judgment of Congress, certain conditions should be first complied with as a necessary qualification; to determine whether these conditions have been complied with, or, what is the same thing, whether the event has happened, is nothing more nor less than to determine whether the new State is entitled to admission—a conclusion which rests exclusively with Congress

The act, therefore, does not admit the State, and cannot do more than project a plan for its admission. Thus far it is very appropriate, but no farther.

The projection of a plan may be very well in the first instance, but the important thing to know, and decide finally, is whether the plan

has been adopted.

In Permoli vs. First Municipality, 3 Howard, 609, the court say in relation to the enabling act, and the act of admission of the State of

That act of February 20, 1811, authorized the people of the Territory of Orleans to form aconstitution and State government. By section 3 certain restrictions were imposed in the form of instructions to the convention that might form the constitution; such as that it should be republican in form; consistent with the Constitution of the United States; that it should secure the right of trial by jury in criminal cases, and the writ of habeas corpus; that the laws of the State should be published and legislative and judicial proceedings be written and recorded in the language of the Constitution of the United States. \* \*

By the act of April 8, 1812, Louisiana was admitted according to the mode prescribed by the act of 1811. Congress declared that it should be on the conditions and terms contained in the third section of that act, which should be considered, deemed, and taken as fundamental conditions and terms upon which the State was incorporated in the Union.

All Congress intended was to declare in advance to the people of the Territory the fundamental principles their constitution should contain. This was every way proper under the circumstances. The instrument having been duly formed and presented, it was for the National Legislature to judge whether it contained the proper principles, and to accept it if it did, or reject it if it did not. Having accepted the constitution and admitted the State "on an equal footing with the original States in all respects whatever," in express terms, by the act of 1812, Congress as concluded from assuming that the instructions contained in the act of 1811 lad not been complied with.

But the Louisiana enabling act was as complete and perfect in every

But the Louisiana enabling act was as complete and perfect in every respect as the Colorado enabling act, with the single exception of that part which, in case of a majority vote of the people in favor of the constitution, requires the acting governor to "certify the same to the President of the United States, together with a copy of said constitution and ordinances," and makes it "the duty of the President to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress." tion whatever on the part of Congress."

If we are to construe this act in accordance with its terms, then until the President has seen fit to issue his proclamation the State of Colorado must be deemed and held not to be admitted into the Union. If this be a correct interpretation of the act, it is clear that the Pres-It has be a correct interpretation of the act, it is clear that the President of the United States, and not Congress, admits the State into the Union; for he is made the judge of the sufficiency of the Constitution and ordinances. Suppose he withholds his proclamation? In that event the State either is not admitted, or, if admitted, it must be by force of other provisions of the law, and the proclamation must be treated as a work of supercrogation. And this seems to be the position taken by the committee in their report. They say:

Assuming that the people of Colorado had in point of fact performed in good faith every condition prescribed in the act in strict conformity with its provisions, the present Congress would be bound in good morals to recognize them as a State and admit them to representation in the Senate and House, even if the President had willfully refused to issue the proclamation provided for, and the only possible pretext for a failure upon the part of Congress to discharge its solemn obligation in that regard would be found in the quibble that the people of Colorado had agreed that their admission should depend finally upon the issual of a proclamation willfully withheld without any fault upon their part, and after they had religiously observed and performed every obligation resting upon them.

In the estimation, therefore, of the committee, the proclamation of the President is not held to be necessary to perfect the admission of the State into the Union. But this conclusion does not relieve the question of its difficulty. It is just as objectionable, and just as much in conflict with the authorities upon the subject, to delegate the power to the people of the Territory as to delegate it to the President of the United States. It follows as a matter of course from this view that if the President's proclamation is unnecessary, that that portion of the enabling act which relates to certifying the vote, together with the constitution and ordinances to the President, and for the issuing of his proclamation, is to be treated as a dead letter, and the act would be the same in effect if it were stricken out. But strike out that portion, and we have left an enabling act, pure and simple, such as it has been the practice of Congress to adopt for more than half a century. And in none of the cases of this character has Congress accepted the doctrine that the State was actually admitted Congress accepted the doctrine that the State was actually admitted into the Union at the time the people of the Territory had adopted a constitution in accordance with the terms of the enabling act. But Congress, on the contrary, has dissented from this position in every instance in which the question has been made. It was rejected by Congress after the fullest consideration upon the admission of Missouri and later upon the admission of Michigan, and the question may be regarded as settled so far as the force of legislative precedent can settled.

But the assumption of the committee in their report, as a condition upon which the Territory is entitled to admission as a State, that "the people of Colorado had in point of fact performed in good faith every condition prescribed" in the enabling act, is an implied admission that, if they had not so performed, Congress would not be "bound in good morals" or otherwise to recognize them as a State. What more cogent reason could there be of the necessity of an examination into the constitution to ascertain whether, in point of fact, it had been framed in accordance with the conditions imposed? If it is only upon this assumption that the State is to be recognized, then it follows from the force of irresistible logic that this examination becomes

an imperative necessity.

And the question recurs, Who is to make this examination? Manifestly Congress, and not the President or the people of the Territory. But the committee say, in such case

Congress would be bound in good morals to recognize them as a State and admit them to representation, &c.

"Bound in good morals" is a very different thing from being bound under the Constitution and laws. Furthermore, "bound in good morals" to do a certain act upon the assumption or ascertainment of certain facts, is a very different thing from doing that act without the ascertainment of these facts. I may admit, for the sake of the argument, that, if upon examination of the Constitution as formed, it is found to be in accordance with the terms of the enabling act, Congress would be "bound in good morals" as well as in public faith and justice to the people of Colorado to ratify the work thus performed; but this admission does not require of me that I must therefore maintain that Colorado has been admitted by what has already transpired, or that the State, as a matter of constitutional and legal right, became a member of the Federal Union either at the date of the adoption of the constitution by the people or at the time of the issuing of the President's proclamation.

Our judgment of the constitutional and legal effect of what has already been done in no just sense can be likened to what our action ought now or hereafter to be in consequence of what has transpired. We may, indeed, with entire consistency, have an honest conviction that the State is not now admitted, and an equally honest conviction that it ought "in good morals" to be hereafter admitted by the further legislative sanction of Congress.

And if I understand the minority of the committee, this is precisely what they propose to do. Believing upon full examination of the constitution and ordinances of Colorado as they have been formed and ratified that they are in substantial compliance with the terms of the enabling act, and such in their character as should entitle the State to admission, they propose by the bill, which they present to Congress for its a doption, to admit the State "on an equal footing with the original States." And while I was originally opposed to the admission of the State, now that the people have formed for themselves a State government on the faith of the enabling act, and in

harmony with the Constitution of the United States, I feel like giving the work my sanction and voting for the bill presented.

The view which I have taken is in substantial harmony with the long line of precedents, with the single exception of that of Nevada, which was in the midst of civil war, when constitutional restraints were very much weakened. And if this precedent is now to be followed it will verify the exclamation of Calhoun: "Let it be remembered that myder our system had accordant him." bered that under our system bad precedents live forever; good ones

In this connection I would commend to attention the warning words of the court in the case of Parker vs. Commonwealth, 6 Barr.,

A bad precedent suffered to pass sub silentic cannot be set up to justify the continuance of an abuse in which it originated. This is especially true where the question is of the constitutional exertion of a delegated power. A different rule would expose the fundamental laws of the State to continual danger of subversion from a succession of encroachments which in the beginning did not attract the public attention or invite its investigation; a consequence too momentous to be hazarded by unreasonable deference to tolerated mistakes.

Now what are the precedents?

Now what are the precedents? The first case is that of Vermont, which State it is claimed was admitted into the Union without any enabling act and without Congress having examined and approved her constitution. This distinction must be observed: the question was not the formation of a new State, but the admission of a State that was in esse, a State that had had a State government for years. The only question in the case of Vermont was whether the State government that then existed should adopt the Constitution of the United States, and thus qualify itself for admission into the Union.

There was a dispute between the State of New York and Vermont

There was a dispute between the State of New York and Vermont over the western boundary of Vermont, which under the Constitu-tion required the action of the Legislature of New York to give its assent to the proposed admission of the State of Vermont if the claim

of New York were valid.

I have said that at the time of the admission of Vermont she was a State in existence. I find in Thompson's History of Vermont this statement in relation to the royal decision in 1764, by which it was attempted to place her under the jurisdiction of New York:

Regarding herself as placed by that decision in a state of nature, her citizens had formed themselves into a body politic, into a little independent republic for their nutual benefit and defense, and by the boldness, the wisdom, and the prudence of her statesmen she had succeeded in organizing an efficient government for the regulation of her internal affairs, and had adopted a system of jurisprudence fully adequate to the necessities of the people.

At the time Vermont became a member of the Confederacy, her own government had become systematic and stable by the practical experience of thirteen years, and that of the United States had been placed upon the foundation of its present Constitution.

Before the act for the admission of Vermont was adopted the President of the United States laid before Congress the legislative act of dent of the United States laid before Congress the legislative act of New York granting her consent to the admission of Vermont and the legislative act of the State of Vermont giving the assent of her people to the terms and conditions prescribed on the part of the State of New York, adopting the Constitution of the United States and praying admission of Congress. The thing that was done on the part of the State of Vermont was to adopt the Constitution of the United States and agree to terms impossed by New York. Here is the United States and agree to terms imposed by New York. Here is the closing section of the act of her Legislature:

It is hereby further enacted by the authority aforesaid. That the persons so elected to serve in the State convention as aforesaid do assemble and meet together on the first Thursday of January next, at Bennington, in the county of Bennington, then and there to deliberate upon the aforesaid Constitution of the United States, and, if approved of by them, finally to assent to and ratify the same, in behalf and on the part of the people of this State, and make report thereof to the governor of this State, for the time being, to be by him communicated to the President of the United States and the Legislature of this State.

So Vermont at that time was a State, and her Legislature gave the consent of that State to her admission into the Union and ratified the Constitution of the United States, and it was not a question of the formation of a State constitution. They had their State govern-ment, and it was not for years after that they formed a State consti-

ment, and it was not for years after that they formed a State constitution. Vermont was admitted into the Union by act of Congress February 18, 1791, and her Senators and Members of Congress were not admitted to their seats until October 13, 1791.

The next case is that of Kentucky. It is said that Kentucky was admitted in a manner similar to this. Kentucky was erected out of the territory of the State of Virginia. The State of Virginia had the right and the authority to creet a State out of her territory, and only required the assent of Congress that the State so creeted might become a State in the Union. The terms and conditions were prescribed by an act of the Virginia Legislature, and those terms and conditions were ratified by the people of Kentucky in convention assembled. All the proceedings were laid before Congress by the President of the United States before the act of assent was given by Congress.

But more than that, the day fixed for admission was June 2, 1792. Before that time had arrived the people had formed their constitution, which had been laid before Congress, as is shown by House Journal, volume 1, page 614; and before the member was admitted to this floor the constitution had been placed in the possession of Congress. So that Congress actually had made the examination of the constitution that was necessary to determine whether Kentucky was a State, in full compliance with such terms and conditions as ought to entitle a State to admission into the Union.

In reference to this question, I beg leave to read from 8 Wheaton,

Now, it is perfectly clear that, although Congress might have refused their consent to the proposed separation, yet they had no authority to declare Kentucky a separate and independent State without the assent of Virginia or upon terms variant from those which Virginia had prescribed. But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed by a solemn act the consent of that body to the separation.

The terms and conditions therefore were prescribed by the State of Virginia, and Congress assented with full information, with full knowledge of what had been done, and in strict accordance with the provision of the Constitution relating to erection of new States out of territory within an existing State. In the case of Colorado the constitution has never been laid before either branch of Congress. The President's proclamation does not pretend to transmit here the constitution or ordinances of the State of Colorado.

The next ease sited as a precedent against the doctrine of the mineral constitution of the mine

The next case cited as a precedent against the doctrine of the minority report in this case is that of Ohio. But, sir, before any Member or Senator was admitted to his seat the constitution was laid before Congress. It was|duly referred to a committee; it was reported by them to be in compliance with the terms and conditions of the enabling act; and not until the next year thereafter was the member sworn in here or Senators in the other branch, as appears from House Journal, volume 4, page 403. On the 17th of December, 1803, the member from that State took his seat; on a later day the Senators were seated; but the constitution as formed was laid before Congress, and due action was had upon it; Congress passed upon the sufficiency of its provisions. So that the case is directly in point in favor of this minority report in principle, although no further act of ratification was placed upon

The next case is that of Louisiana, which formed its constitution in strict compliance with the enabling act, and a subsequent act of ratification was deemed necessary and adopted. From that day down to the present there has been no single instance except that of Nevada in which a State has been admitted into the Union until the constitution had first been laid before Congress and its provisions passed upon. In all these cases, except Nevada, the mode has either been by an enabling act and a subsequent act of ratification, or by

been by an enabling act and a subsequent act of ratification, or by the submission of the constitution and ordinances previously formed by the voluntary action of the people.

Indiana also is cited as a case in point against the position I have taken. But I beg the attention of the House for a moment to this case. A constitution was formed for the State of Indiana, and on the 6th day of November, 1817, the Representative presented himself and was sworn in; but the Senators who also presented themselves were not sworn, because objection was taken and the point made that the State was not duly admitted. The case was therefore similar to that State was not duly admitted. The case was, therefore, similar to that presented to-day with regard to Colorado, the Senators having been sworn in but the admission of the Representative being objected to. Subsequently the Senate, after mature deliberation, passed an act ratifying the work of the convention of Indiana; ratifying the conratifying the work of the convention of Indiana; ratifying the constitution as it had been formed and transmitted to Congress; and so consistent did the Honse deem this proceeding with what was necessary to be done to perfect the admission of the State, that it, notwithstanding it had seated the member, concurred in that act, and on the 11th of December it was approved by the President. Thus, notwithstanding the member had been sworn in, the House saw fit to pass a subsequent act ratifying the work which had been done. When it came to counting the electoral vote from Indiana the House objected, and the two Houses separated. After some discussion in the House is and the two Houses separated. After some discussion in the House it was resolved to postpone the question, not to decide it; and there-upon the two Houses met and the vote was counted. But subse-quently, in the case of Missouri, in 1821, the vote was not counted; and in the case of Michigan, in 1837, the vote was not counted, except hypothetically; and that was a practical rejection of the vote to all intents and purposes.

I want to call attention now to another feature in the case of Missouri. It is said that Congress, after examining the constitution and ordinances, required a further condition, which was submitted to the Legislature for ratification; that this fact was certified to the President, and upon his proclamation admission became complete. A distinction and upon his proclamation admission became complete. A distriction is here to be observed. The condition which Congress prescribed was set out in have verba, and all that the Legislature was required to do was simply to sanction the specific condition by solemn act and to confirm that work of Congress. The State was not called upon to enact any provision, but simply to accept one specifically set forth by Congress; and the confirmation of that fact to the President was simply the confident ice of an event which was legitimate and proper but Congress; and the certification of that fact to the President was simply the certification of an event, which was legitimate and proper, but by no means a parallel with the present case. It would be parallel with this case only upon the supposition that Congress had actually formed the constitution and ordinances of Colorado complete and perfect in all their provisions, submitted them to the people for their ratification by solemn act of convention, such ratification to be certified to the President, and that fact to be by him made known by proclamation. That would be a parallel, but nothing less than that would be a parallel.

The case of Missouri, therefore, shows that Congress assumed the right to exercise its independ upon the work done by the convention

right to exercise its judgment upon the work done by the convention in forming the constitution of Missouri. The same may be said of Nebraska. After the enabling act Congress examined the constitution as formed, and required a further condition should be complied with, and Congress set out the condition specifically, not in general terms, but specifically what the Legislature of Nebraska was required to do, and that ratification was to be transmitted to the President and he on certification of the ratification of the condition fixed by Congress was to issue his proclamation. In the exercise of the legislative discretion on the part of Congress it was required to determine whether a constitution had been adopted republican in form, whether it had

been adopted in accordance with the principles of the Declaration of Independence, whether it had been adopted in accordance with the terms and conditions set out in the enabling act. All these had been previously passed upon by Congress in the admission of Nebraska, and the fact to be certified was similar to that in the case of Missouri.

The same may be said in reference to West Virginia, but I need not

pursue this feature any further.

Mr. Speaker, in no single instance has Congress ever admitted a State except it has passed upon the work of the constitutional convention, unless it has passed upon the constitution framed for the State government, since 1812, when Louisiana was admitted, save and except Nevada alone. In every other instance the work has been required to be laid before Congress and its approval had been obtained before the State was held to be actually admitted into the Union and entitled to the privilege of Senators upon the floor of the Senate or to a Representative upon the floor of this House. Congress has seen fit to prescribe that legal mode, and it is one consistent with reason and the precedents and practice of the country since 1812 down to

and the precedents and practice of the country since 1812 down to the present hour.

Now, if we are to admit a State in the way proposed in the case of Colorado, Congress cannot be the judge of its conditions and qualifications. Suppose, for instance, Colorado in her constitution had provided that no man should be eligible to be governor unless he had an income of \$50,000 a year, and did not have to come to Congress for ratification of that constitution. Not a member in the House would have voted for its ratification and admission, not a member but would have voted for its ratification and admission, not a member but would have voted to reject it, and yet it is republican in member but would have voted to reject it, and yet it is republican in form. Publicists and political writers would say it is republican in form. But if the State is actually admitted the remedy is lost, and the evil might continue to exist. What is to be done is to determine the work after it is complete, that Congress may rationally, intelligently, constitutionally pass upon it, thereby preserving the harmony of the Federal Union and the equality of the States.

ADMISSION TO THE FLOOR TO-MORROW.

Mr. COX. Mr. Speaker, I move, by unanimous consent, to take from the Speaker's table a concurrent resolution of the Senate for action at this time.

The SPEAKER. The Chair hears no objection. The concurrent resolution was read, as follows:

was read, as 10110wo.
In the Senate of the United States,

January 31, 1877.

Resolved by the Senate, (the House of Representatives concurring.) That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to the south wing of the Capitol extension, except upon tickets to be is sued by the President of the Senate and the Speaker of the House of Representatatives; to be issued to Senators and Representatives and others, and shall be distributed by the Sergeants-at-Arms of the Senate and House of Representatives. GEO. C. GORHAM.

Mr. COX. I move concurrence in that resolution. The resolution was concurred in.

Mr. COX moved to reconsider the vote by which the resolution as concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. COX. I wish to state to members of the House, by way of notification, that the tickets of admission are now being printed and will be at the Sergeant-at-Arms' office as soon as they can be brought here; but if they do not come here in time to be handed to members before the adjournment they will be sent in the mail of members this evening.

COLORADO.

Mr. KNOTT. I now yield to the gentleman from Illinois, [Mr.

Mr. CAULFIELD. Mr. Speaker, the position assumed by the minority in this case is that Colorado has never been admitted into this Union as one of the States thereof. The reason assigned is that by the Constitution Congress alone can admit new States into the Union, and Congress has never admitted Colorado; therefore she is not one of the States of the Union. I admit that Congress alone can admit new States; but if it be true that Congress has never admitted Colorado, then Colorado is not one of the States of this Union.

rado, then Colorado is not one of the States of this Union.

The ground taken by the minority for their position is that although Congress by the act of March 3, 1875, agreed to admit Colorado as a State upon the performance by her of certain prescribed conditions, yet she was not admitted because Congress delegated the power of admitting her to the President of the United States and to the people of Colorado themselves; and that although the President exercised that power and the people exercised that power, still the act was null and void, and she still remains in a territorial condition. No member of this House can go farther than I do in maintaining that Congress cannot delegate the power of admitting States into the Union, and that to Congress alone belongs the power of admission: but I do not of this House can go farther than I do in maintaining that Congress cannot delegate the power of admitting States into the Union, and that to Congress alone belongs the power of admission; but I do not concede that the clause of the enabling act, which the minority of the committee maintain attempts to give the power of admission to the President of the United States, confers any such power upon him. I maintain that Congress by that provision has neither delegated nor attempted to delegate any power whatever to the President. The act provides, after the people of Colorado have complied with all its requirements, it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the States of the admission as a State. When the

Union upon an equal footing with the original States. This is the clause which it is claimed is a delegation of power to the President to admit Colorado into the Union. I hope to be able to show in a

to admit Colorado into the Union. I hope to be able to show in a few brief words that no such construction can be placed upon this sentence, and that Congress has simply made use of the President as the means of making known the fact that Colorado had been raised to the dignity of one of the States of this Union.

The gentleman from Ohio [Mr. Hurd] maintains that there is a delegation of power to the President and delegation of power to the people, but both of these propositions I deny.

No power whatever has been delegated to the President, but the duty of announcing a fact has been imposed upon him. No power has been delegated to the people of the Territory, because that people themselves possess the inherent power of acting upon the question of admission. When the Constitution says that Congress shall have the power to admit new States into this Union it necessarily implies that the new State itself has something to say upon that subject. The power to admit new States into this Union it necessarily implies that the new State itself has something to say upon that subject. The new State has a power to say whether she shall be admitted or not. The new State under the Constitution possesses this power. No one can say that the power to admit does not imply that the person to be admitted has not something to say about it. So that the Constitution itself preserves in the people of the Territory the power either to reject or to accept the proposition which Congress has made to it. Otherwise it can be said that the people of a Territory or of a State, when formed, can be forced into this Union under the Constitution. When formed, can be forced into this Union under the Constitution. No such power exists in the Constitution. But the power exists in the Constitution and by the Constitution that Congress shall admit and may admit new States into the Union, provided the new States are willing to be admitted. So that the proposition of the gentleman

are willing to be admitted. So that the proposition of the gentleman from Ohio is entirely illogical.

Again, he contends that the enabling act authorized the President to admit. This I shall show, as I have said, to be a fallacy. I maintain that the act of Congress provides that after the people of Colorado have complied with all requirements of the act it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into this Union.

Congress has adopted many and various modes of admitting new

declaring the State admitted into this Union.

Congress has adopted many and various modes of admitting new States, and confines the process to no fixed and permanent rules. It may be done on the motion of the Territory desiring admission in the first instance, or by Congress first taking the initiatory steps. The Territory may without the previous knowledge or consent of Congress frame its constitution and present itself at the doors of Congress asking for admission and be admitted; also Congress may by enabling act present the question of admission to the Territory for its decision and point out what conditions precedent must be complied with to act present the question of admission to the Territory for its decision and point out what conditions precedent must be complied with to entitle her to be admitted; or, a Territory, without any previous steps being taken by Congress, may adopt a constitution and elect her Senators and Congressmen and send them here, and their admission by the two Houses of Congress would be an admission of her as a State in the Union, without any previous legislation thereon. The admission is complete whenever the mind of Congress and the mind of the Territory meet and agree upon the question of admission. Congress may then indicate any model it thinks fit of making the consumers. of the Territory meet and agree upon the question of admission. Congress may then indicate any mode it thinks fit of making the consumation of that agreement known to the other States of the Union and to the world. Congress may prescribe the means by which the Territory and itself shalf ascertain whether or not they agree upon the terms of admission, and in case such agreement is reached, it may prescribe some method by which the fact that such agreement has been reached shall be made public. It may make it the duty of the President of the United States upon the fact of such agreement heing made known to him to rublish information of the duty of the President of the United States upon the fact of such agreement being made known to him to publish information of the same in the public journals of the country. Can it be said that imposing such a duty would be a delegation of power to the President to admit the State into the Union? Is it any more than a duty devolved upon him to announce, declare, or proclaim that, by an agreement between Congress and the Territory, the Territory has been admitted as a State into the Union?

ment between Congress and the Territory, the Territory has been admitted as a State into the Union?

Supposing that Congress should pass an enabling act for the admission of Utah into the Union and in such act require that before she should be admitted she must by a vote of her people abolish polygamy within her limits; that the result of such vote should be made known to the President of the United States; that if the vote should be for the abolishment of polygamy the President should, "without any further act on the part of Congress," issue a proclamation announcing that the State was admitted into the Union; and if the vote were against its abolition he should issue his proclamation that the people had refused to abolish polygamy, and therefore the State was not admitted into the Union. Then suppose the vote when taken should be opposed to the abolition of polygamy and the President, as required, should announce by proclamation accordingly that the State was not admitted, will any member on this floor contend that Congress thereby vested the President with the power to keep Utah out of the Union, and

President of the Senate by direction of both Houses, when they had met to count the votes for President and Vice-President, arose and declared that Andrew Jackson was elected President of the United States, did he by that declaration make or elect him to be President?
Did he not declare an already existing fact that Andrew Jackson had been elected President by the people of the United States? And when the President of the Senate, after having been so instructed by the House and Senate in joint session, shall arise in the presence of both these bodies and announce that by virtue of the authority vested in him by the two Houses he declares Samuel J. Tilden or R. B. Hayes the President of the United States from the 4th of March next, will the President of the Senate make the President, or will be declare

who has already been made President by the votes of the people?

So when President Grant by the direction of Congress declared Colorado admitted into the Union he did not admit her into the Union, but by such announcement he declared an existing fact that she was admitted into the Union.

But supposition for the sake of argument that Congress in the

But supposing for the sake of argument that Congress in the case of Colorado, as it is charged, did intend to make a delegation of power to the President by which he was authorized to admit Colorado as a State into the Union by proclamation, she having first complied with all the terms of the enabling act, and that accordingly Colorado did comply with all the terms thus prescribed exactly and to the letter; now at this point arises the question, is the proclamation of the President necessary to admit her after she has complied with all the conditions-precedent required by Congress? The proclamation admitting her could not be required, because, Congress having no authority to make a grant of power, the grant was void, and any proclamation issued in pursuance thereof would be a nullity in law; its issuance therefore could have no binding effect in law, would be mere surplusage, and would have no further or greater force than simply to give notice to the world that the people of Colorado had done all that was necessary to make them a State in the Union. The rule is that was necessary to make them a state in the Union. The rule is that when two constructions can be given to a law, one sustaining the validity of the law and the other destroying it, that construction must be given which will sustain its validity in full force and effect, "ut magis valeat, quam periat." Nor will the law presume that the law-maker intended to enact a nullity, either ignorantly or designedly. If therefore the words of the enabling act in this instance—"whereupon it shall be the duty of the President of the United States where the president of the United States where the president of the United States where the states where the states are the states and the states are the states and the states are the States to issue his proclamation declaring the State admitted into the Union"—are susceptible of two constructions, one of which would involve an illegal delegation of power to the President and make the words void and the other would simply devolve upon him the duty of publishing the fact to the world that Colorado was already a State in the Union, the latter construction must be adopted because it gives effect to the words of the law and does not destroy them. Therefore we are of necessity obliged to conclude that such was the intention of the law-makers; that is to say, that the compliance on the part of the people of Colorado with the terms prescribed by the enabling act should admit her into the Union without any further act on the part of Congress, and that the President should announce the fact of her admission by his proclamation.

But it is argued that Congress vested in the President the power of But it is argued that Congress vested in the President the power of deciding whether or not the constitution of Colorado was republican in form. This is an error. Let us see what Co gress did provide. It first authorized the inhabitants of the Territory of Colorado to form for themselves a State government by the name of the "State of Colorado," and declared that such State when formed should be admitted into the Union. It provided further that delegates shall be elected to a convention to frame a constitution; then, when and where the delegates should meet; that they should first declare that they adopted the Constitution of the United States; that they should then form a constitution and State government, provided the constitution where the delegates should meet; that they should first declare that they adopted the Constitution of the United States; that they should then form a constitution and State government, provided the constitution should be republican in form, and when framed should be submitted to a vote of the people for ratification or rejection; that the returns of the votes should be made to the acting governor, who, with the chief-justice and United States attorney, should canvass the same; and, if a majority of the votes were for said constitution, the governor should certify the same to the President, together with a copy of said constitution. "Whereupon it shall be the duty of the President of the United States to issue his proclamation," not admitting, but "declaring the State admitted into the Union;" and this he should do "without any further action on the part of Congress." Here it will be seen the "copy of the constitution" is not sent to him for revision or for the exercise of any judgment regarding it, but the result of the vote and the "copy of the constitution" are required to be sent to him only to notify him of the fact of its adoption, and that he might know that the time fixed by Congress had arrived for him to make his announcement, not that Colorado is hereby admitted into the Union, but declaring an already existing fact, that Colorado is admitted into the Union by having complied with the terms prescribed by Congress. No discretion, no duty to examine and decide upon the constitution is not set the President but the cases. No discretion, no duty to examine and decide upon the constitution is prescribed to the President, but the act says:

Upon the receipt of the result of the vote and a copy of the constitution it shall be his duty to issue his proclamation declaring the State admitted into the Union, &c.

Supposing, after Colorado had done all that the enabling act resupposing, after Colorado had done all that the enabling act required of her to do, the President had not issued his proclamation, and her Senators and Member of Congress coming to Washington were admitted and sworn in as members, can any one say that Colorado would not thereby be admitted as a State into the Union, simply

because the President had failed to perform his duty by not issuing his proclamation?

But it is further argued that one of the conditions-precedent required by the enabling act for the admission of Colorado was that she should frame and adopt a constitution republican in form, and that, therefore, Congress had to see that constitution and judge whether or not it was republican in form, before the State could be admitted. This might be a very wise precaution, but Congress has not in this case, as she has not in many others, seen fit to adopt it. The presumptions are all in favor of the republican form of her constitution. Congress presumed it would be republican. But should there be anything in her constitution inconsistent with a republican form of government, it would be a nullity, and would be of no more force and effect than if it were not in the constitution at all. That part of the constitution which would be republican in form would be the constitution of Colorado, and that portion of the document which would not be republican in form would be null and void and consequently no part of her constitution.

The judicial tribunals of her own creation and of the United States

would be compelled so to decide. But the fact is her constitution is republican in form, and Colorado has therefore complied with the enabling act in this as in all other requirements made of her by Congress. No one charges that Colorado has not complied with all the terms of the enabling act required to be done by her before her admission into the Union. On the contrary, all that is admitted. If, then, the act required to be performed by the President was nugatory, as claimed by the minority, it had no effect, and the State was admitted without it.

I therefore maintain, in construing the clause making it the duty of the President to issue his proclamation declaring Colorado admitted into this Union, that this House cannot decide it to be unconstitutional. If any construction can be given to it which will make it constitutional, that construction must be given. In considering the question the following legal propositions must be kept in view: First, this Congress cannot presume that the last Congress in enacting said law intended to adopt an unconstitutional act. Second, we cannot presume that the last Congress ignorantly and unintentionally adopted an unconstitutional act. Third, the clause in question must be construed "ut magis valeat quam periat;" that it shall stand, and not fall by reason of its unconstitutionality.

In order that it shall not fall the simple, reasonable, and only con-

struction which can be given to the clause is that it was intended simply to make it the duty of the President to issue a proclamation which should declare and announce the fact that Colorado, by reason of having complied with the terms of the enabling act, was by force of such compliance a State in the Union. Any other construction would make the clause unconstitutional; and such construction can-not by the rules of law be given to it, if the simple and reasonable construction for which I contend can be maintained. This is the only construction which can be given to it consistent with its constitu-tionality, and must therefore be given to it by this House.

When Mr. Patterson, the former Delegate from the Territory of Colorado, was here a short time ago he said (and he himself a democrat) that it was an error to raise the question of the admission of Mr. Belford, the Representative elected from Colorado; that the State had complied with the act under which it was to be admitted, and that Mr. Belford should be admitted to the present Congress. I state this in justice to Mr. Patterson, as the opposition press of his State has represented him as using his influence against the recognition of

the State and the admission of his successor.

Mr. SPRINGER. Will the gentleman allow me to make a statement in reference to the action of the people of Colorado?

Mr. CAULFIELD. Not at present, as my time is fast going.
Mr. SPRINGER. Allow me to have printed in the RECORD, then,
a resolution of a public meeting of the people of the Territory of
Colorado upon that subject.

Mr. CAULFIELD. I have no objection to that.

There being no objection, leave was granted accordingly. [For pre-

amble and resolution referred to, see end of speech.]

Mr. CAULFIELD. But, Mr. Speaker, this Congress is barred by its own act against making any question as to Colorado now being a State in this Union. The President's proclamation was issued on the 1st day of August, 1876; and fifteen days afterward Congress passed the act, which will be found on page 158 of the statutes passed at the first session of this Congress, appropriating money as follows:

For salaries of governor, chief-justice, and two associate judges, at \$3,000 each, and secretary at \$2,000-\$14,000: Provided. That said officers shall only receive their compensation on the basis of the salary aforesaid up to the time of the admission of said Territory as a State into the Union.

This act is an admission and recognition of the fact that Colorado had already been admitted as a State. This, Mr. Speaker, we are bound by, and we cannot now go behind it. In good faith no question should be made about Colorado's status in the Union. Congress certainly intended to admit her upon compliance with the terms of the enabling act, and Colorado intended to be admitted, and for that purpose complied with those terms. Believing she was admitted, (as I believe she was,) she has participated in the presidential election and chosen three presidential electors who have east their votes for President of the United States. If there is any force whatever in the question as to Colorado's admission, it is entirely too technical for serious consideration under existing circumstances. The refusal to admit the state of the Colorado and involve consideration under existing circumstances. mit the member from Colorado would involve consequences bearing

upon her electoral vote, which no partisan consideration can excuse apon her electoral vote, which no partisan consideration can excuse or palliate. A resolution passed now admitting Colorado as a State in the Union, her admission dating from this time, can have no retroactive effect or validity upon her electoral vote already cast, and would give rise to questions productive of no good, but probably of much harm to the country.

Kentucky was admitted without any inquiry by Congress as to the harmeter of her constitution. Vermont was admitted in the same

character of her constitution. Vermont was admitted in the same way, and the same is true as to the admission of Tennessee.

The simple declaration that her member is entitled to a seat on this floor is but justice to Colorado, to the member himself, and to the country; and I shall therefore vote for such a resolution and against the resolution of the minority report.

The following are the preamble and resolution referred to above by

Mr. SPRINGER:

Mr. SPRINGER:

Whereas a portion of the democratic central committee, at a meeting held at Denver on the 8th instant, did, without consulting the democracy of the Territory of Colorado, proceed to pass certain resolutions condemning the action of the House of Representatives of the United States in not recognizing Colorado as a State and admitting the Representative;

And whereas all of the resolutions passed at that meeting, except the eighth and ninth, are heartily indorsed by the democracy of Pueblo County: Therefore, Resolved, That the democrats of Pueblo County, in convention assembled, do hereby repudiate and condemn the action of said committee, believing the constitution was carried by means of outrageous frauds in the northern portions of the Territory, as exemplified by the unprecedented vote polled in Denver, Georgetown, and other northern points; that we cordially indorse the sentiments expressed in the letter of Hon. W. M. SPRINGER, of Illinois, of December 23, 1876, to Hon. T. M. Patterson, and would call upon Congress to thoroughly investigate the law in the case previous to taking any action in the premises.

Mr. KNOTT. While I think that I could demonstrate that Colo-

Mr. KNOTT. While I think that I could demonstrate that Colorado is as much a State in this Union as the Commonwealth which I rado is as much a State in this Union as the Commonwealth which I have the honor in part to represent on this floor, I cannot fail to recognize the fact that the House is already wearied, and that no remarks that I might submit would have the effect of changing a solitary vote upon the pending question. I therefore forego the privilege of addressing the House upon the pending resolution, and in deference to what I know is the desire of a large majority of the members I now call for a vote. call for a vote.

The SPEAKER pro tempore, (Mr. Cox.) The first question is upon the preamble and bill proposed by the minority of the committee as a substitute for the resolution reported by the majority of the Committee of Elections.

The substitute was read, as follows:

Whereas, on the 3d day of March, 1875, Congress passed an act to enable the people of Colorado to form a constitution and State government, and offered to admit said State when so formed into the Union upon certain conditions therein speci-

ple of Colorado to form a constitution and processal State when so formed into the Union upon certain conditions therein specified;

And whereas it appears that the said people have adopted a constitution, which, upon due examination, is found to conform to the provisions and comply with the conditions of said act and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution and government which the people of Colorado have formed for themselves be, and the same are hereby, accepted, ratified, and confirmed, and that the said State of Colorado shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States in all respects whatsoever.

Mr. SOUTHARD. I call for the yeas and nays. The yeas and nays were not ordered; there being—ayes 20, noes 107. So the substitute submitted by the minority of the committee was not adopted.

The question then recurred on agreeing to the following resolution reported by the majority of the committee:

Resolved, That Colorado is a State in this Union, and that James B. Belford, Representative-elect from said State, be sworn and admitted to his seat as such.

The resolution was adopted.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. KASSON. I ask that the Representative from Colorado be now

The SPEAKER pro tempore. That is a question of the highest

privilege.

Mr. James B. Belford presented himself and was duly qualified by taking the oath prescribed in section 1756 of the Revised Statutes. REVISION OF THE STATUTES.

Mr. DURHAM submitted a report; which was read, as follows:

Mr. DURHAM submitted a report; which was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to amendments numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, and 21, and agree to the same.

That the Senate recede from its amendments numbered 4, 15, and 17.

M. J. DURHAM,

S. N. BELL,

D. C. DENISON,

Managers on the part of the House.

GEORGE S. BOUTWELL,

I. P. CHRISTIANCY,

WILLIAM A. WALLACE,

Managers on the part of the Senate.

three others, the effect of adopting this report will be that the House will substantially stand by its original action in the passage of the bill. I call for the previous question on agreeing to the report.

The previous question was seconded and the main question ordered; and under the operation thereof the report was adopted.

Mr. DURHAM moved to reconsider the vote by which the report

was adopted; and also moved that the motion to reconsider be laid on the table

The latter motion was agreed to.

DISCHARGE OF THE WITNESS E. W. BARNES.

Mr. KNOTT reported, from the Committee on the Judiciary, the following resolution; which was read, considered, and agreed to:

Whereas E. W. Barnes has delivered to the select committee, of which Hon. W. R. Morrison is chairman, the telegrams in his possession, in pursuance of the order of this House:

Resolved, That said Barnes be, and he is hereby, discharged from custody.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RESIGNATION OF HON. FRANK HEREFORD.

The SPEAKER pro tempore laid before the House the following; which was laid on the table:

House of Representatives, District of Columbia, January 31, 1877.

Sir: I hereby tender my resignation as a Representative in the Forty-fourth Congress from the third congressional district of West Virginia.

Very respectfully,

FRANK HEREFORD.

Hon. Samuel J. Randall, Speaker House of Representatives.

DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON, from the Committee on Appropriations, reported a bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes; which was read a first and second

Mr. WALDRON. I move that this bill be ordered to be printed, referred to the Committee of the Whole on the state of the Union, and be made a special order for Friday next.

Mr. BRIGHT. I object to fixing Friday, which is private-bill day. Mr. HOLMAN. Say Thursday. Mr. WALDRON. I modify my motion so as to fix Saturday after

The morning hour.

The motion of Mr. Waldron, as modified, was adopted.

Mr. WILSON, of Iowa, and Mr. KASSON reserved all points of order on the bill.

SURVEY OF PUBLIC LANDS-INDIAN AFFAIRS.

Mr. WALDRON reported, from the Committee on Appropriations, the following resolution; which was considered and adopted.

Resolved. That the Committee on Appropriations be discharged from further consideration of so much of the letter of the Secretary of the Treasury, transmitting estimates of appropriations required by the various Departments for the fiscal year ending June 30, 1877, and prior years, as relates to the surveying of the public lands and to Indian affairs, and that the same be referred to the Committee of Claims.

Mr. WALDRON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MILITARY ACADEMY APPROPRIATION BILL.

On motion of Mr. CLYMER, by unanimous consent, the amendments of the Senate to the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes, were taken from the Speaker's table and referred to the Committee on Appropriations.

ORDER OF BUSINESS.

Mr. HOLMAN. I move that the House take a recess until half past

Mr. HOLMAN. I move that the House take a recess until hair past seven o'clock this evening.

Mr. SPRINGER. Allow me to introduce two bills for reference.

Mr. HOLMAN. Several gentlemen have desired me to yield. I think I must insist on my motion. [Cries of "Régular order!"]

Mr. PAGE. Pending the motion for a recess, I move that the House

mow adjourn.

Mr. HOLMAN. I hope we shall not adjourn.

The House divided; and there were—ayes 52, noes 142.

So the House refused to adjourn.

Mr. Holman's motion was agreed to; and the House accordingly (at four o'clock and forty minutes p. m.) took a recess until half past seven o'clock this evening.

# EVENING SESSION.

At half past seven o'clock the House resumed its session, the Speaker in the chair.

POWERS AND PRIVILEGES OF THE HOUSE.

Mr. DURHAM. The Senate amendments to which we have agreed are all of a verbal character. The Senate having receded from the

endar.

of the powers, privileges, and duties of the House of Representa-tives in connection with counting the electoral votes for President

and Vice-President.

Mr. HOLMAN. I move that subject be postponed.

The SPEAKER. Until when †

Mr. HOLMAN. I will name next Monday.

Mr. BURCHARD, of Illinois. Let it be until after the electoral

Mr. FOSTER. Indefinitely. [Laughter.]
Mr. CONGER. May I inquire what is the next business?
The SPEAKER. The next business will be the morning hour.
Mr. HOLMAN. I move that the consideration of the unfinished business be postponed until Monday next.

The motion was agreed to.

#### T. E. MALEY.

Mr. A. S. WILLIAMS, by unanimous consent, moved to take from the Speaker's table a letter from the Secretary of War in reference to the case of T. E. Maley, and to refer it to the Committee on Military Affairs; which motion was agreed to.

The SPEAKER. It is so referred by unanimous consent, with the

understanding that it is not to come back on a motion to reconsider.

## INTERNAL IMPROVEMENTS.

Mr. HAYMOND, by unanimous consent, obtained leave to print in the RECORD as part of the debates some remarks which he had pre-pared on the subject of internal improvements.

#### CORRECTION OF VOTE.

Mr. WILSON, of Iowa. In the RECORD, on passing the bill abolishing the police board in this District over the veto of the President, I am recorded as voting in the affirmative. I voted in the negative, and wish to be so recorded.

The SPEAKER. The correction will be made.

Mr. GOODIN, by unanimous consent, moved the Committee of the Whole on the state of the Union be discharged from the further consideration of a bill (S. No. 619) to carry out in part the provisions of the act entitled "An act to abolish the tribal relations of the Miami Indians, and for other purposes," approved March 3, 1873, and the same be referred to the Committee on Indian Affairs; which motion was agreed to.

### OMAHA BRIDGE.

Mr. HOLMAN. I demand the regular order of business.

The SPEAKER. The morning hour for reports of committees begins at twenty-four minutes to eight o'clock, and the call rests with

gins at twenty-four minutes to eight o'clock, and the call rests with the Committee on the Pacific Railroad.

Mr. THROCKMORTON. I ask unanimous consent that the bill (H. R. No. 1547) limiting rates for the transportation of freight and passengers over the bridge constructed by the Union Pacific Railroad Company across the Missouri River at Omaha, Nebraska, be made the special order in the Committee of the Whole on the state of the Union for Tuesday next. The gentleman from Missouri, [Mr. Philips,] who desires to submit the views of the minority, is not now present, and I hope there will be no objection to my motion.

The SPEAKER. That can only be done by unanimous consent.

Mr. HOLMAN. Not to interfere with appropriation bills.

The SPEAKER. Is there objection?

Mr. HOLMAN. Is that measure confined to one subject-matter?

Mr. THROCKMORTON. It is.

Mr. HOLMAN. Is that measure confined to one subject-matter?
Mr. THROCKMORTON. It is.
Mr. O'BRIEN. I suggest that it come in after the morning hour

Mr. THROCKMORTON. Yes, sir; and not to interfere with appropriation bills.

There was no objection, and it was ordered accordingly.
Mr. THROCKMORTON moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table. The latter motion was agreed to.

## OREGON CENTRAL RAILROAD.

Mr. THOMAS, from the Committee on the Pacific Railroad, reported back a bill (S. No. 146) extending the time for the completion of the Oregon Central Railroad and Telegraph Line from Portland to Astoria and McMinnville, in the State of Oregon, with amendments, and moved its reference to the Committee of the Whole on the state of the Union, and that the bill and amendments be printed.

Mr. LANE. Is it in order to move to put the bill on its passage at

Mr. HOLMAN. I reserve all points of order.
Mr. CONGER. I demand the reading of the bill.
Mr. HOLMAN. The gentleman from Maryland only wants it referred to the Committee of the Whole on the state of the Union. If

The bill and amendments were read.

The SPEAKER. The gentleman from Indiana [Mr. Holman] makes a point of order against the bill. The gentleman will indicate

what is his point of order.

Mr. HOLMAN. The point of order is that the extension of time made by the bill is a grant of property within the rule of the House.

Mr. LANE. I ask the ruling of the Chair. I understand the Chair

has ruled upon that point before.

Mr. HOLMAN. It is the extension of an old grant upon new conditions

Mr. LANE. And those new conditions are in favor of the settlers and against the railroad.

The SPEAKER. The Chair sustains the point of order, and the bill goes to the Committee of the Whole House on the Public Cal-

CLAIMS FOR SURVEY OF PUBLIC LANDS, ETC.

Mr. PHILIPS, of Missouri, from the Committee of Claims, reported back the resolution of the House of April 27, 1876, referring certain claims for surveying public lands and for Indian service to the Com-mittee of Claims; and moved that the committee be discharged from the further consideration of the same, and that it be referred to the

Committee on Appropriations.

Mr. CONGER. I would like to hear read the paper which the gentleman from Missouri has sent to the Clerk.

The Clerk read as follows:

A letter from the Secretary of the Treasury, transmitting estimates of appropriations required by the various Departments for the fiscal year ending June 30, 1875, and prior years.

Mr. PHILIPS, of Missouri. That is the whole letter from the Secand the Treasury making estimates for deficiencies in the various Departments for the fiscal year ending June 30, 1876. It is not necessary to read the whole document. It includes innumerable claims, whereas the claims reported back by the Committee of Claims occupy only a small portion of the document. The letter which the gentleman from Michigan asks to have read is not pertinent to the matter before the House except in one portion of it which I can designate.

The SPEAKER. Does the gentleman from Michigan [Mr. CONGER]

insist upon the reading of the paper.

Mr. CONGER. I think it had better be read. I am not familiar with the contents of the paper.
The SPEAKER. It will be read.

The Clerk proceeded to read the letter from the Secretary of the

Mr. O'BRIEN. Mr. Speaker, I move that what we have already heard be taken as equivalent to the reading of the whole document. It will take two hours to read all.

It will take two hours to read all.

The SPEAKER. It cannot be read beyond the morning hour. The reading will cease with the expiration of the morning hour.

Mr. O'BRIEN. I do not suppose the gentleman from Michigan wishes to occupy the whole morning hour with the reading of something to which he does not himself pay attention.

Mr. PHILIPS, of Missouri. If the gentleman from Michigan will permit me to say a word, I wish to explain that the matter now being read as I have already stated is not pertinent at all to the report made by the Committee of Claims. What is reported back by the Committee of Claims is simply a resolution referring to that committee two items in a deficiency bill. On behalf of the committee I report back the resolution with the request that it should go to the Committee on Appropriations. Nothing therefore ought to be read under this application except the resolution itself, which the Clerk will find among the papers.

mr. HURD. I insist on the reading of the document.
Mr. O'BRIEN. Mr. Speaker, is the motion which I made in order?
The SPEAKER. It is not.

The Clerk resumed the reading of the letter of the Secretary of the

Treasury.

Mr. CONGER, (interrupting the reading.) I do not call for the further reading of the paper.

The SPEAKER. The gentleman from Ohio [Mr. HURD] has de-

manded the reading.

The Clerk resumed the reading of the paper.

Mr. JONES, of Kentucky, (interrupting.) Mr. Speaker, would it be in order to move to dispense with the further reading of that paper?

Nobody is listening to it.

The SPEAKER. The Chair thinks that the reading of the paper having been entered upon cannot now be interrupted by a motion of

The Clerk resumed and continued the reading of the paper until the expiration of the morning hour.

## ORDER OF BUSINESS.

Mr. COX. Has the morning hour expired?

The SPEAKER. It has.

Mr. COX. I move that the House proceed to the consideration of business on the Speaker's table. I believe that motion is now in

Mr. FOSTER. When it was proposed this afternoon that the House should take a recess, I said to gentlemen around me not to oppose it because I supposed from the fact that it was the gentleman from Indiana [Mr. HOLMAN] who was making the motion, that the evening session would be devoted to the consideration of the legislative appropriation bill.

Mr. COX. There was no understanding about that.

Mr. FOSTER. I have learned since that there was no such understanding. But I said to the gentlemen around me at the time that I supposed the legislative bill would be the business at the evening sion, and I feel under obligations to them to resist the motion of the

gentleman from New York. I am perfectly willing that we should go on with the consideration of the legislative appropriation bill, but I am not willing that any other business should be transacted to-night.

Mr. HOLMAN. I stated in the afternoon that the object of having a session to-night was to proceed with general legislative business, and from that I suppose the gentleman from Ohio [Mr. FOSTER] naturally took up the impression that the legislative bill was to be considered.

Mr. COX. Mr. Speaker, is my motion in order that we proceed to dispose of business on the Speaker's table?

Mr. HOLMAN. I think there can be no objection to the House now proceeding to dispose of business on the Speaker's table.

Mr. FOSTER. There is objection.

Mr. COX. The Speaker's table is encumbered with business.
Mr. FOSTER. There is objection, and we will insist on it.
Mr. CAULFIELD. And we will persist.
The SPEAKER. The motion of the gentleman from New York is in order.

Mr. FOSTER. I do not deny the propriety of making the motion; but if the motion is insisted on, I move that the House do now ad-

journ.

The SPEAKER. The gentleman from New York [Mr. Cox] moves that the House proceed to the consideration of business on the Speaker's table, and pending that motion the gentleman from Ohio [Mr. FOSTER] moves that the House do now adjourn.

Mr. CONGER. Pending that motion, I move that the House take

a recess until nine o'clock to-morrow morning.

The SPEAKER. That motion is not in order.

Mr. HOLMAN. I trust this business will not be entered upon until

Mr. HOLMAN. I trust this business will not be entered upon until gentlemen on the other side are aware that there is business on the Speaker's table to which they object.

Mr. FOSTER. The business of this House can be carried along best by proceeding at once to the consideration of the appropriation bills. They are very far behind, and we can take up the legislative bills. They are very far behind, and we can take up the legislative bill. But I warn gentlemen opposite that this motion will be resisted on this side of the House by every parliamentary motion known to the rules of the House.

Mr. HOLMAN. I hope the gentleman from Ohio does not charge me with bad faith in this matter?

Mr. FOSTER. Not at all; but I wish to say another word in reference to this subject.

Mr. COX. I object to debate.

Mr. HUBBELL. I move that when the House adjourns it adjourn to meet to-morrow at nine o'clock.

The SPEAKER. That motion is not in order; it is a change of the

rules of the House.

Mr. PAGE. I move that when the House adjourns it adjourn to meet on Saturday morning.

Mr. RICE. I call for the regular order.
Mr. JOYCE. I move to amend the motion of the gentleman from California by substituting Friday for Saturday.
The SPEAKER. That motion to adjourn until Friday is in order, but the motion of the gentleman from California is not in order, because it causes an adjournment over for more than three days.

Mr. HANCOCK. I think the law of Congress requires us to meet

Mr. HANCOCK. I think the law of Congress requires us to meet to-morrow, and therefore that we cannot adjourn over.

Mr. PAGE. Do I understand the Chair to say that an adjournment until Saturday would be beyond the constitutional limit?

Mr. SPRINGER. The laws require the House to be in session to-morrow; no motion to adjourn over can be in order.

Mr. COX. I understood the gentleman from California to move that when the House adjourns it adjourn to meet on Saturday. I make the point of order that to-morrow is fixed for business connected with the clearer leadings and the counting of the votes for President and the electoral college and the counting of the votes for President and Vice-President, and therefore we cannot adjourn over until Saturday.

Vice-President, and therefore we cannot adjourn over until Saturday.

Mr. FOSTER. The meeting to-morrow is in joint convention.

Mr. HEWITT, of New York. The law says that the House shall be in session on the 1st of February.

The SPEAKER. The Chair desires to say upon the point of order that the law reads that "the Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock p. m. on the first Thursday in February, A. D. 1877;" and that this law was passed in obedience to and for the execution of a provision of the Constitution of the United States. The Chair thereprovision of the Constitution of the United States. The Chair therefore sustains the point of order that a motion to adjourn which would vacate the session of to-morrow is not in order.

Mr. PAGE. I appeal from the decision of the Chair.

Mr. COX. I move to lay the appeal upon the table.

The yeas and nays were ordered.
The Clerk proceeded to call the roll, and called the name of JOSIAH G. ABBOTT.

G. ABBOTT.

Mr. WILSON, of Iowa. I move to reconsider the vote by which the yeas and nays were ordered.

Mr. COX. I rise to a parliamentary inquiry. How many motions to adjourn can be made? How many dilatory motions are in order? Mr. CONGER. That point does not arise here.

The SPEAKER. That point is not yet reached.

Mr. COX. Still it would be pleasant information to the gentleman from Michigan Thr. Coxygn. 1

from Michigan, [Mr. CONGER.]
Mr. SPRINGER. I rise to a parliamentary inquiry.

The SPEAKER. The gentleman from Iowa has moved to reconsider the vote by which the yeas and nays were ordered upon the motion to lay upon the table the appeal from the decision of the Chair. Mr. WILSON, of Iowa. I ask for the yeas and nays upon that

question.

s and nays were ordered.

The yeas and nays were ordered.

Mr. SPRINGER. I rise to a parliamentary inquiry. What is the question upon which the yeas and nays are now about to be called? The SPEAKER. The gentleman from Iowa now moves to reconsider the vote by which the yeas and nays were ordered.

Mr. SPRINGER. I make the point of order that it is not in order to call the yeas and nays on the question of ordering the yeas and

Mr. BURCHARD, of Illinois. It is too late to make that point, even if it were well taken, as the roll-call has already been commenced.

The SPEAKER. The Chair will read from the Manual on the

subject:

An order for the yeas and nays or refusal of the yeas and nays may be reconsidered.

The Chair therefore entertains the motion.

Mr. CANNON, of Illinois. I appeal from that decision of the Chair. [Laughter.] Mr. HOLMAN.

There can be but one appeal pending at a time.

Mr. CANNON, of Illinois. I withdraw the appeal.
Mr. SPRINGER. This is a subsidiary question, and it is not in order to pile one subsidiary motion on another; if that can be done no business can ever be reached or disposed of.

Mr. FOSTER. I object to the Chair being bull-dozed after he has

made his decision. [Laughter.]

Mr. SPRINGER. You are bull-dozing the Chair.

Mr. BURCHARD, of Illinois. I call the gentleman to order, and demand that his words be taken down. [Laughter.]

The SPEAKER. The Clerk will call the roll.

The question was then taken; and there were—yeas 25, nays 188,

not voting 77; as follows:

The question was then taken; and there were—yeas 25, nays 188, not voting 77; as follows:

YEAS—Messrs Ainsworth, John H. Bagley, jr., Ballou, Blair, Horatio C. Burchard, Buttz, Cate, Crounse, Culberson, Dunnell, Field, Foster, Abram S. Hewitt, Franklin Landers, McDill, Miller, Monroe, Mutchler, O'Brien, Oliver, Riddle, Tufts, John W. Wallace, G. Wiley Wells, and Andrew Williams—25.

NAYS—Messrs. Abbott, Adams, Ashe, Atkins, Bagby, George A. Bagley, John H. Baker, Banning, Beebe, Belford, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bradley, John Young Brown, Buckner, Samnel D. Burchard, Burcleigh, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, Caswell, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Conger, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Dobins, Douglas, Durham, Eames, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Flye, Forney, Fort, Franklin, Fuller, Gause, Glover, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Harbrin, Haymond, Henderson, Henkle, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Hubbell, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Kimball, Knott, Lamar, George M. Landers, Lapham, Lawrence, Lewis, Lord, Luttrell, Lynch, Lvnde, Mackey, Maish, MacDougall, McCrary, McFarland, McMahon, Metcalfe, Milliken, Mills, Money, Morgan, Nash, Neal, New, O'Neill, Packer, Page, John F. Philips, Pierce, Poppleton, Potter, Pratt, Rainey, Rea, Reagan, John Reilly, Rice, John Robbins, William M. Robbins, Robinson, Miles Ross, Sampson, Savage, Scales, Schleicher, Sheakley, Singleton, Smalls, A. Herr Smith, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Thornburgh, Martin I. Townsend, Washington Townsend, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Wait, Waldron, Charles

So the motion to reconsider was not agreed to.

During the call of the roll, Mr. SCALES said: My colleague, Mr. YEATES, is confined to his room by sickness.

The question recurred upon laying upon the table the appeal from the decision, upon which the yeas and nays had been ordered.

The SPEAKER. The Chair desires to state to the House that a portion of the members must be under a misapprehension; there is no occasion whatever for alarm in reference to the business on the Speaker's table. The Chair presumes, however, that the gentlemen who make these dilatory motions are apprehensive in relation to two papers which the Chair now holds in his hand. He therefore would ask unanimous consent that he may present them at this time.

Mr. PAGE. What are they?

The SPEAKER. The titles will be read, and then the Chair will listen to objections. The Chair thinks that gentlemen had better withdraw their motions.

Mr. FOSTER. And after that what?

Mr. PAGE. What does the Chair propose to do with the papers?

The SPEAKER. Whatever the House may determine.

Mr. PAGE. Does it require unanimous consent to present them? The SPEAKER. The Chair asks unanimous consent to present

these papers. Let the titles be read, after which objections can be made. The Chair desires to state to gentleman that it will be found that exact duplicates of these papers have been placed in possession of the Presiding Officer of the Senate.

Mr. HUBBELL. I demand the regular order of business.

Mr. COX. I withdraw the motion to go to business on the Speaker's table; I had no idea that it would make all this trouble.

Mr. CONGER. I make the point of order that the gentleman from New York [Mr. Cox] has no right to withdraw that motion at this time.

Mr. FOSTER. We know very well what the papers are.

The SPEAKER. The gentleman has been asked by the Chair to

mr. PAGE. What do the papers purport to be?
The SPEAKER. The Chair will have the titles read.
Mr. BURCHARD, of Illinois. I object.
The SPEAKER. Does the gentleman object to having the titles read? The Chair simply asks unanimous consent to present these papers, and desires that the titles be read, after which the Chair will ask for objection.

Mr. BURCHARD, of Illinois. The Chair does not then lay them

before the House for action?

Mr. WILSON, of Iowa. It is simply to ascertain whether the Chair can obtain unanimous consent to present them at this time.

The SPEAKER. That is all.
The Clerk read the titles of the papers, as follows:

An authenticated copy of an act to declare and establish the ap-pointment by the State of Florida of electors of President and Vice-

A record of proceedings on an information in the nature of a quo warranto, in the circuit court of the second district of Florida, The State of Florida ex rel. Wilkinson Call et al. against Charles H. Pearce

Mr. PAGE. What does the Chair propose to have done with those

papers?
The SPEAKER. To let the House say what shall be done with them.

Mr. CONGER. I object to the presenting of the papers.

The SPEAKER. The Chair will then avail himself of his right as a member of this House to place these papers in the petition-box.

Mr. COX. I withdraw the motion to go to business on the Speak-

er's table.

### ELECTION IN FLORIDA.

Mr. THOMPSON. I rise to make a privileged report. I submit from the select committee on the election in Florida a report in writing, with the accompanying testimony, and I ask that the report be

Mr. CONGER. Is there not a motion to adjourn pending and undisposed of ?

Mr. PAGE. An appeal from the decision of the Chair, as well as a

motion to adjourn, is pending.

The SPEAKER. The gentleman from New York [Mr. Cox] withdrew his motion to go to business on the Speaker's table, and of course all the other motions fall with it.

Mr. PAGE. The motion to adjourn fell with the withdrawal of the motion to go to business on the Speaker's table?

The SPEAKER. The gentleman from New York [Mr. Cox] with-

drew the motion.

Mr. CONGER. I objected to his withdrawing his motion.

The SPEAKER. The rule provides that "a motion may be withdrawn at any time before a decision or amendment, " " and all and all incidental questions fall with such withdrawal."

Mr. PAGE. That does not affect the motion to adjourn.
Mr. LAWRENCE. I desire to make an inquiry of the Chair.
The SPEAKER. The Chair will listen when order is restored.
[After a prolonged pause for the restoration of order.] Does the gentleman from Massachusetts [Mr. Thompson] yield for a motion to adjourn?

Mr. THOMPSON. No, sir; I decline to yield.

Mr. PAGE. There was a motion to adjourn pending before the gentleman from Massachusetts was recognized at all; and the yeas and

nays had been ordered upon that motion.

The SPEAKER. The gentleman from New York withdrew his motion to go to the Speaker's table, and the Manual is very clear in the statement that all incidental motions made in connection with that

motion must fall with it.

Mr. PAGE. But I ask the ruling of the Chair as to whether a motion to adjourn is not an independent motion.

The SPEAKER. The Chair ruled that the gentleman from New York withdrew his motion to go to the Speaker's table, and with that withdrawal all incidental motions fell. The Chair then recognized the gentleman from Massachusetts, who had a right to be recognized, as he rose to make a report from a committee authorized to report at any time.

Mr. CONGER. I appeal from that decision of the Chair.
Mr. COX. I rise to a point of order.
Mr. WILSON, of Iowa. I think there was a misunderstanding perhaps. I understand the proceedings to have been something like this: the gentleman from New York moved to go to the Speaker's table; pending that a motion to adjourn was made. Now pending the

action of the House on the motion to adjourn the gentleman from New York could no doubt rise to withdraw the motion to go to the Speaker's table, although I do not very well see how he could be recognized to do it. But that did not interfere at all with the motion to adjourn—a motion of the highest privilege known to the rules of the House. Unless that motions was withdrawn the sense of the House must be taken on it.

House must be taken on it.

The SPEAKER. All incidental and dilatory motions fell of course with the withdrawal of the motion to go to the Speaker's table.

Mr. PAGE. The Chair has no right to decide that the motion to adjourn was a dilatory motion.

Mr. COX. I make the point of order that nothing is in order except the reading of the report of the gentleman from Massachusetts.

Mr. LAWRENCE. I thought I had the floor at one time, and I have never yielded it.

The SPEAKER. The gentlemen from Ohio [Mr. LAWRENCE] never had it. The gentleman from Iowa [Mr. WILSON] is on the floor on a point of order.

point of order point of order.

Mr. WILSON, of Iowa. A motion to adjourn over and a motion to adjourn cannot very well be decided to be dilatory motions; and even if that were not true, the right of the minority to make dilatory motions is known to none better than to the gentleman who now occupies the Chair, for I recollect that he kept me here once forty-six and one-half hours by motions of that class.

Now the motion to adjourn is a highly privileged motion, the ver highest known to the House except a motion to fix the time to which the House shall adjourn. Pending the action of the House on the motion to adjourn the gentleman from New York could not get the floor, could not be recognized to withdraw his motion. The House gave the Chair unanimous consent to make a statement, but it was to ascertain whether we would give him leave to do certain things. Objection was made. Then the gentleman from New York withdrew the motion to go to the Speaker's table. But the motion to adjourn,

the motion to go to the Speaker's table. But the motion to adjourn, if insisted on, must be disposed of.

The SPEAKER. Does the gentleman from Iowa say that a gentleman having the floor can be taken off the floor within the period of one hour by another member making a motion to adjourn?

Mr. WILSON, of Iowa. But my point of order is that the gentleman from New York did not get the floor and could not get it until we had determined what we would do with the motion to adjourn.

The SPEAKER. That motion fell, as the Chair has heretofore stated with the withdrawed of the motion to go to the Speaker's

stated, with the withdrawal of the motion to go to the Speaker's

table.

Mr. WILSON, of Iowa. That is the very point I raise—that it cannot fall. The motion to adjourn is of too high dignity to fall. There is no such thing as that motion falling.

Mr. COX. I object to debate.

The SPEAKER. The gentleman from Iowa is speaking to a point of order.

Mr. COX. I make another point of order.

The SPEAKER. Two questions of order cannot be made at once.

Mr. WILSON, of Iowa. I say in the presence of the gentleman Mr. WILSON, of Iowa. I say in the presence of the gentleman from New York and every other gentleman here that I would not knowingly make a representation to the Chair that I did not believe to be absolutely correct. I do not want you, Mr. Speaker, or any other gentleman occupying that high position, to make a bad ruling. I believe that the rules under which we act are a structure of greater beauty than the Capitol in which we sit. I would rather see a man go to the top of this Capitol and toss down the stones one after auother, even if every stone killed a citizen, than see the rules of the House wrongly administered; for a wrong decision, like the archangel spoken of by Milton, strikes squadrons at once. I submit that the motion to adjourn must be acted on. Of course if the Chair de-

ides otherwise I have nothing to say.

Mr. COX. I beg to say one word. I submit that no point of order can be made in a frivolous and dilatory way that would take the gentleman from Massachusetts off the floor when he is presenting a questional statement of the same of

tion of the highest privilege, in which we are all interested for tomorrow's work. So the Chair has decided.

Mr. PAGE. I do not understand the Chair has decided that point.
Mr. COX. The gentleman from Massachusetts has the floor and is proceeding to make his report.

Mr. BURCHARD, of Illinois. That is the question.

Mr. COX. And you have no right by raising points of order to break him down in his patriotic endeavor to bring these facts before

the House on a question of high privilege.

MEMBERS of the republican side. Ah!

Mr. CONGER. I appeal to the Chair whether he decides that the motion to adjourn fell with the withdrawal of the motion to go to the

business upon the Speaker's table?

The SPEAKER. The Chair desires to state that the gentleman from New York withdrew his motion to go to the business upon the Speaker's table. Then some time elapsed and no effort was made on the part of anybody on the point of order as to the motion to adjourn until the gentleman from Massachusetts [Mr. Thompson] was actually on his feet and had stated that he rose to submit a report from a committee which had the right to report at any time, and was recognized by the Chair to make that privileged report. The Chair now submits to the gentleman from Iowa, [Mr. WILSON,] or to anybody else, whether under such a state of facts he could be allowed or would be in any way warranted in entertaining a motion to adjourn while

the gentleman from Massachusetts was upon the floor and in the very act of presenting his report to the House, the Clerk at the desk having proceeded with the reading of the written report?

Mr. COX. Nor would the Chair under the circumstances be justified in entertaining an appeal from the decision of the Chair.

Mr. CONGER. The point is that there is now pending a motion to adjoin.

adjourn.
The SPEAKER. Not pending.
Mr. CONGER. Yes, sir; a motion pending that the House adjourn.
The SPEAKER. The Chair has decided that motion to adjourn fell with the withdrawal of the motion to go to the business upon the

Speaker's table.

Mr. CONGER. Then from that decision of the Speaker I appeal.

Mr. O'BRIEN. The motion was withdrawn at the request of the Speaker.

Mr. CONGER. The yeas and navs were ordered on the motion to

adjourn.

Mr. O'BRIEN. The motion to go to the business upon the Speaker's table was withdrawn by unanimous consent.

Mr. BAKER, of Indiana. The motion to adjourn was never with-

Mr. CROUNSE. Has the motion to adjourn been withdrawn by

any one?

The SPEAKER. Hardly any one listening at the time but will agree the motion of the gentleman from New York to go to the business upon the Speaker's table was withdrawn. In reply to a parliamentary inquiry the Chair replied that with the withdrawal of that motion all incidental motions fell, the motion to adjourn included. The tion all incidental motions fell, the motion to adjourn included. The House then proceeded without objection to the consideration of other business, and the Chair recognized the gentleman from Massachusetts, [Mr. Thompson,] who, under the authority of this House, had leave to report at any time. He was recognized to make such privileged report, and he did make such privileged report, and the House proceeded to its consideration. The Chair thinks it is not competent according to the rules under such a state of facts, the House having proceeded to the consideration of other business, to entertain a motion to adjourn which would have the effect to take the gentleman from Massachusetts off the floor. Nor can the motion to adjourn adjourn man from Massachusetts off the floor. Nor can the motion to adjourn be entertained until the hour to which the gentleman from Massa-

be entertained until the hour to which the gentleman from Massachusetts is entitled expires.

Mr. CONGER. If the Chair pleases—
Mr. WADDELL. I demand the regular order of business.
Mr. CONGER. I appeal from the decision of the Chair.
The SPEAKER. The Chair does not recognize any gentleman to take an appeal, because the gentleman from Massachusetts is on the floor and refuses to yield it.

Mr. CROUNSE. The point of order is raised as to his right to hold the floor

the floor.

The SPEAKER. That right cannot be disputed, as the right was given by the House originally that he might report at any time.

Mr. CROUNSE. What is the right of a member of this House if the Chair can arbitrarily—

The SPEAKER. The Chair has arbitrarily done nothing.

Mr. CROUNSE. Let me submit, with all respect to the Chair, that he has decided the gentleman from Massachusetts has the floor.

[Cries of "Order!"] That right is challenged by members here, and an appeal is taken from the decision of the Chair.

The SPEAKER. That right cannot be challenged. The gentleman from Massachusetts rose up in the sight of everybody upon this

man from Massachusetts rose up in the sight of everybody upon this floor and in the galleries and presented his report. He stated what his report was and sent it to the Clerk's desk and asked to have it

ad. The Clerk has proceeded to read the report.

Mr. COX. I object to further debate.

The SPEAKER. The Clerk will proceed with the reading of the

The Clerk proceeded to read the report.

The Clerk proceeded to read the report.

Mr. BURCHARD, of Illinois. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. BURCHARD, of Illinois. I propose to raise the question of consideration.
Mr. COX. It is too late.

The SPEAKER. It is too late to raise the question of considera-

Mr. LUTTRELL. I raise the point of order that we must have order.

Mr. DUNNELL. I ask that the minority of this committee have leave to print their views.

Mr. THOMPSON. I do not yield the floor at this time for any pur-

Mr. DUNNELL. I ask leave to submit the views of the minority. The SPEAKER. That can be done at the expiration of the gentle

man's hour.

Mr. BURCHARD, of Illinois. I raise the question of consideration.
The SPEAKER. The Chair will rule upon that. The Chair rules that the question of consideration comes too late.

Mr. BURCHARD, of Illinois. I rose at the time the paper was presented at the Clerk's desk for the purpose of raising the question of consideration. I respectfully appeal from the decision of the Chair.
Mr. COX. I object to debate. Gentlemen on the other side will never learn that they are in the minority.

The Clerk resumed the reading of the report.

Mr. BURCHARD, of Illinois. Mr. Speaker, I have raised the question of consideration.

Mr. COX. I hope the Speaker will send for the Sergeant-at-Arms to put the member down, as he is violating the rules of the House. The SPEAKER. The Chair has decided that the gentleman from Illinois is too late in raising the question of consideration.

Mr. FOSTER. I appeal from the decision of the Chair.

The SPEAKER. The Chair decides that an appeal cannot be entertained.

tertained.

Mr. FOSTER. Does the Chair decide that the question of consideration cannot be raised and that we cannot take an appeal from

The SPEAKER. Not while the gentleman from Massachusetts [Mr.

THOMPSON] is on the floor.

Mr. FOSTER. He is not on the floor.

The SPEAKER. The gentleman from Massachusetts is on the floor. and has the right to retain it for one hour.

The Clerk continued the reading of the report.

Mr. PAGE, (interrupting.) I rise to a point of order. It is, that if

the gentleman from Massachusetts is on the floor he must read his

own report.

The SPEAKER. If the point is insisted on, the gentleman from Massachusetts will come to the Clerk's desk and read the report.

Mr. THOMPSON. All right; I will come and read it. [Applause.]

Mr. THOMPSON proceeded to the Clerk's desk and commenced to read the report.

Cries of "Louder! Louder!"

The SPEAKER. The Sergeant-at-Arms will see that members keep

Mr. THOMPSON resumed the reading of the report.

Mr. BAKER, of Indiana, (interrupting.) I rise to a point of order. The SPEAKER. The gentleman from Indiana is not in order.

Mr. BAKER, of Indiana. I rise to a point of order.

The SPEAKER. The gentleman from Indiana is not in order in rising at this time to a point of order.

Mr. BAKER, of Indiana. I have a right to be heard.

The SPEAKER. Gentlemen will take their seats and the House will come to order.

Mr. THOMPSON resumed the reading of the report.
Mr. CANNON, of Illinois, (interrupting.) I rise to a point of order.
The SPEAKER. The gentleman is not recognized for a point of

Mr. CANNON, of Illinois. I insist on my right to be heard. The SPEAKER. The gentleman is not recognized to interfere with the public busines

Mr. THOMPSON resumed the reading of the report.

Mr. DUNNELL, (interrupting.) I wish to suggest that the Clerk be allowed to read. I think the chairman of the committee should not be required to read the report.

There being no objection, the Clerk proceeded to read the remain-

der of the report.

Mr. DUNNELL, (interrupting.) I suggest that the further reading be dispensed with, and that the report be printed in full in the Congressional Record.

The SPEAKER. The Chair understands that the gentleman from

Minnesota [Mr. Dunnell] desires to offer a minority report.

Mr. DUNNELL. I do.

The SPEAKER. And the chairman of the committee apprises the Chair that he desires that the gentleman from Minnesota should have

that privilege.

Mr. LAWRENCE. Let both be printed together.

Mr. DUNNELL. The report of the minority is not yet quite ready to be presented. SPEAKER. It is understood that whenever the gentleman

from Minnesota is ready he shall have that privilege.

Mr. THOMPSON. Certainly; that was the understanding of the

committee.

om Minnesota † [After a pause.] The Chair hears none.

Mr. FORT. I object to the printing of the report in the RECORD.

Mr. DUNNELL. I hope there will be no objection to that. from Minnesota?

Mr. FORT. I object.

The SPEAKER. The Clerk will continue the reading of the report.

The Clerk resumed the reading of the report.

Mr. PAGE, (interrupting.) I ask unanimous consent that the further reading of the report be dispensed with, and that it be printed in the RECORD, and that the minority have the same privilege.

The SPEAKER. Is there objection to the request of the gentleman from California? [After a pause.] The Chair hears none. Both reports will be printed in the RECORD and the usual number of copies will be printed for the use of the House. They will be printed together, the chairman of the committee suggests, if the views of the gether, the chairman of the committee suggests, if the views of the minority are presented in time. The Chair, therefore, would suggest to the gentleman making the minerity report that the sooner he makes it the better in order that the two reports may be printed together.

Mr. CONGER. In the mean time the minority report will be printed

in the RECORD.

The SPEAKER. Whenever it is ready.

Mr. DUNNELL. It is not quite ready yet. I think it will be ready within twenty-four hours. The SPEAKER. The majority report will be printed in the RECORD, the minority report will go into the RECORD when ready, and the two reports will be printed together in the usual pamphlet form. The report of the committee is as follows:

The report of the committee is as follows:

The House of Representatives on the 4th day of December, 1876, passed the following resolution:

"Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-atarns; and said committees shall have leave to report at any time, by bill or other wise."

raphers, clerks, and messengers, and be attended each by a deputy sergeant-arms; and said committees shall have leave to report at any time, by bill or other wise."

Your committee appointed under the foregoing resolution proceeded at once to Florida and made the examination called for by said resolution. They found that the board of State canvassers, consisting of the secretary of state, the attorney-general, and the comptroller, had pretended to canvass the county returns of the vote of November 7, 1876, according to law, and that by said canvass they returned a majority of votes not only for the republican candidates for governor and lieutenant-governor, but also for the republican presidential electors.

The canvass made by that board is shown to be false by the minutes made by the board itself upon the county returns. The board had no power but simply to canvass the county returns, or in the words of the statute to "determine and declare who shall have been elected to any such office, or as such member, as shown in such returns." They had no power to determine as to specific votes, but simply the power and duty, in case any "such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify and shall not include such return in their determination and declaration."

This is the whole power conferred by the laws of Florida upon that board. Still in direct violation of the law they did go behind the county returns and inquired into and determined judicially upon the validity of the elections at several precincts, and in some cases to reject whole precincts, and in others to reject specific votes. They also rejected the vote of an entire county without any legal anthority for so doing. Your committee decided not to examine into the evidence presented before the board of State canvassers, as their action was wholly illegal, and the evidence upon which the board acted could not wholly

Counties.	Tilden	Hayes
Alachua	1, 267	1, 984
Baker	238	143
Brevard	111	58
Bradford	703	202
Calhoun	215	63
Columbia	903	718
Clay	287	122
Escambia	1, 437 1, 426	2, 367
Franklin	167	1,602
Gadsden	835	1, 300
Hamilton	617	330
Hernando	579	144
Hillsborough	790	186
Holmes	300	16
Jackson	1, 397	1, 299
Jefferson	737	2,660
La Fayette	309	62
Leon	1,003	3, 035
Levy	488	207
Liberty	147	83
Madison	1, 078	1, 594 26
Marion	958	1, 552
Monroe.	1.047	980
Nassau	667	802
Orange	908	208
Putnam.	605	586
Polk	456	6
Santa Rosa	768	409
Saint John's	501	338
Sumter	506	173
Suwannee	626	458
Taylor	242	73
Volusia	460	186
Wakulla	361	182
Walton	626	46
Washington Dade	407	119
A/MU	- 3	9
Total	24, 439	24, 349

Tilden's electors' majority 90. To this should be added the return of the vote of the eighth precinct, pond 11, in Clay County, which gave a majority of 23 votes for the Tilden electors, which are fairly canvassed for them, although not included in the enumeration, making their majority 113.

(There are but 3 votes' difference between the highest and lowest vote on the democratic ticket, and not more than 10 difference between the highest and lowest on the republican ticket.)

This is the result upon the face of the returns, counting the full and correct returns (and not the partial and fraudulent returns) from

#### BAKER COUNTY.

and which beyond all reasonable question should be counted. It is provided by act of the State of Florida of August 6, 1868, section 24, as follows:

"On the sixth day after any election, or sooner if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of said clerk and take to their assistance a justice of the peace of the county, (and in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place.) and shall publicly proceed to canvass the votes given for the several officers and persons, as shown by the returns on file in the office of such clerk or judge, and shall then make and sign duplicate certificates containing, in words and figures, written at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given for each office, the names of the persons for whom such votes were given for each office, the names of the persons for whom such votes were given for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the secretary of state and the other to the governor of the State."

were given for each office, the names of the persons for whom such votes were obligen for each office, the names of the persons for whom such votes were be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the secretary of state and the other to the governor of the State."

This is appears that the county judge and the clerk of the circuit court are coefficient of the control of the county of the state of the county of the state of

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lle precinct.
The sheriff further testified as follows in answer to questions propounded to him:
Question. Which did you throw away first?
Answer. Johnsville precinct.
Q. And then you threw away the Darbyville precinct?

- Yes, sir.
  Did you have any witnesses at all before you?
  None at all.
  Did you have anything before you except the returns?
- Q. Did you have anything before you except the returns?
  A. No, sir.
  Q. Why did you throw away Johnsville precinct?
  A. We believed that there was some intimidation there—that there was one party prevented from voting.
  Q. Did you have any evidence before you to that effect?
  A. No, sir; there was only his statement.
  Q. Did you not have a particle of evidence before you?
  A. No, sir.
  Q. You believed that one party had been intimidated and prevented from voting?
  A. Yes, sir.
  Q. And therefore you threw out the Johnsville precinct?
  A. Yes, sir.

- Yes, sir. Was there any reason for throwing it out!

- No, sir.
  No other reason suggested but that, was there?

- No other reason suggested but that, was there?
  No, sir.
  You next threw out Darbyville precinct?
  Yes, sir.
  For what reason did you do so?
  We believed that there were some filegal votes cast there.
  Did you have any evidence before you at all?
  No, sir.
  No, sir.
  No, sir.
  But you had an impression that some illegal votes were cast there?
  Yes, sir.

- A. Yes, sir.
  Q. You had an impression that some illegal votes were cast there †
  A. Yes, sir.
  Q. You had no proof of it at all †
  A. No, sir.
  Q. How many illegal votes did you have an impression were cast there †
  A. About seven, I think, as well as I can recollect.
  Q. Therefore you threw out the precinct without any evidence at all †
  A. Yes, sir.
  Q. Then you made up your returns †
  A. Yes, sir.
  Q. Who wrote those returns †
  A. I did.
  Q. You wrote them yourself †
  A. Yes, sir.
  Q. And the judge signed them †
  A. Yes, sir.
  Q. Mr. Green signed them †
  A. Yes, sir.
  Q. Then you made return to the secretary of state that you had canvassed the ote †
  A. Yes, sir. wgned them?

  Q. Then you made return to the secretary of state that you had canvassed the vote?

  A. Yes, sir.
  Q. And also sent one to the governor that you had canvassed the vote?
  A. Yes, sir.
  Q. The returns, so far as you knew, appeared to be regular from the different precincts, did they?
  A. Yes, sir.
  Q. Who was chairman of the board of canvassers?
  A. The judge.
  Q. Who made the suggestion to throw out Johnsville?
  A. He did himself.
  Q. Who made the suggestion to throw.
  A. He did.
  Q. Did anybody compared.
  A. No, sir.

Q. Who made the suggestion to throw out Johnsville?
A. He did himself.
Q. Who made the suggestion to throw out the Darbyville precincts?
A. He did.
Q. Did anybody come in while you were there?
A. No, sir.
Q. You knew that afternoon that the clerk had made a canvass?
A. Yes, sir.
It is difficult to conceive of a more wicked attempt to defraud the people of their votes and impose upon the State and county officers not the choice of the people, than is here presented. Your committee endeavored to obtain Judge Dreiggers as a witness but did not succeed in finding him, and are clearly of the opinion that he intentionally avoided the officer who endeavored to find and summon him as a witness. The testimony of the clerk, Coxe, and Justice Dorman is clear that they were at the clerk's office on Monday, the 13th, in answer to the notice of Judge Dreiggers, that the judge saw them and declined to can vass with the clerk, and that the clerk offered to assist the judge in making the canvass. It also appears from the evidence of both the clerk and the sheriff that on Monday, November 13, when the judge refused to join the clerk in making a board of county canvassers, the clerk requested the sheriff to act with him, and the sheriff also refused; so that the presumption of law and fact that the sheriff had no right to act with the judge under the circumstances is in perfect accordance with the proven facts in the case. Everything upon the face of the returns signed by Coxe and Dorman on the 13th of November, with the papers accompanying the same, show that their canvass was correct and legal, (the absence of both judge and sheriff being accounted for,) and that the return made by them is clearly the return which the State board of canvassers were in law and justice bound to canvass.

The canvass by the clerk (Coxe) and the justice of the peace (Dorman) on the 10th day of November was made to protect the actual vote of the county and as a means to preserve the evidence of that vote. The clerk received notice that a fraud with

## CLAY COUNTY.

The return of Clay County is regular upon its face, and there is nothing to impeach it in the slightest degree. The vote for the Hayes electors as aggregated by the county canvassers was 122, and the vote for the Tilden electors 286. The said county canvassers certify on their return that at precinct No. 8 (pond No. 11) the Tilden electors received 29 votes and the Hayes electors 6 votes, which were not included by them in the enumeration made because it did not appear that the inspectors at said poll were sworn. The vote at this precinct being added, as it certainly should be, would make the entire vote of the county, as appears on the face of the return, 315 for the Tilden electors and 128 for the Hayes electors. This precinct is fairly canvassed. The statement that there was no evidence of the inspectors being sworn is not a material part of the return and does not show a sufficient reason for rejecting the vote there cast.

The vote of this precinct is fairly canvassed and the result stated with clearness and certainty. The statement attached to the returns taken from Green Cove

Springs precinct No. 1, that Samuel J. Tilden received 74 votes and Thomas A. Hendricks 74 votes, was clearly made by the inspectors taking the names on the heading of the democratic ticket, and they are in no sense votes and were not to be taken and were not taken into the count by the board of county canvassers a part of the electoral vote. This appears upon the face of the returns of the board of county canvassers; so that it cannot be said with any truth that there is anything in relation to the returns from Clay County which is either false or fraudulent or uncertain. In fact this return bears upon its face the evidence of a careful desire to faithfully perform their duty on the part of the board of county canvassers, and the certificate of returns is entitled to as much weight as any return from any county in the State.

In point of fact the inspectors at this precinct were sworn as appears by the testimony. But we are willing to rest this point upon the face of the return.

#### DUVAL COUNTY.

incentificate of returns is entitled to as much weight as any return from any county in the State.

The veturns from this county give 2.867 votes for the Haves electors and 1,427 votes for this limit at the county of the count

cast and were void. The issue being solely one as to the validity of the returns, as was clearly shown upon the pleadings, the decision of the court that the returns are legal and they must be counted is conclusive and binding upon all parties claiming under said returns. The validity and effect of those certificates of returns is res adjudicata and cannot be tried again in any case where the right to an office by a person whose vote is set forth therein is thereafter called in question, an inspection of the returns being the only thing necessary to be done in order to ascertain who has been elected. It follows that the fact having been judicially ascertained that the persons named upon the face of the returns as having received the highest number of votes were elected, your committee submit that in order to ascertain who were chosen presidential electors this House has only to look upon the face of the record and read the words and figures which determine that result. These certificates having been made a matter of record, it is only necessary in order to determine the result that the record be read.

Your committee, therefore, are of opinion that the fact having been judicially determined that the Hayes electors did not receive a majority of the votes cast at the election, that that determination has involved in it as a necessary incident the denial of their right to cast their votes as presidential electors, and no determination other than that which has been made by the supreme court of the State of Florida is required to show that the act of those electors in casting their votes for President and Vice-President is illegal and void. This conclusion appears the more just when we consider that the real parties to the suit are not so much George F. Drew and the State board of canvassers as the democratic voters and the republican voters of the State, and the decision of the supreme court is a substantial determination as to which party's candidates were duly elected. It will not be claimed that the court is bo

An act to procure a legal canvass of the electoral vote of the State of Florida as cast at the election held on the 7th day of November, A. D. 1876.

The people of the State of Florida, represented in senate and assembly, do enact as follows:

cast at the election held on the 7th day of November, A. D. 1876.

The people of the State of Florida, represented in senate and assembly, do enact as follows:

Section 1. The secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet forthwith at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of the election of electors of President and Vice-President, held on the 7th day of November, A. D. 1876, and determine and declare who were elected and appointed electors at said election, as shown by such returns on file in the office of the secretary of state.

Sec. 2. The said board of State canvassers shall canvass the said returns according to the fourth section of the statute approved February 27, 1872, entitled "An act to amend an act to provide for the registration of electors and the holding of elections," approved August 6, 1868, according the construction declared, and the rules defining the powers and duties of the board of State canvassers under said law, prescribed in and by the supreme court of this State in the case of The State of Florida on the relation of Bloxham vs. Jonathan C. Gibbs, secretary of state, et al., decided in January, A. D. 1871, and in the case of The State of Florida on the relation of George F. Drew vs. Samuel B. McLin, secretary of state, William Archer Cocke, attorney-general, and Clayton A. Cowgill, comptroller of public account of the State of Florida, decided December 23, A. D. 1876.

Sec. 3. The said board shall make and sign a certificate, containing in words written full length, the whole number of votes given at said election for each office of elector, the number of votes given for each person for such office, and therein declare the result, which certificate shall be recorded in the office of the secretary of state shall cause a

W. D. BLOXHAM, Secretary of State.

The result of this canvass is set forth in detail in the evidence.

The returns from the several boards of county canvassers clearly show the election of the Tilden electors by a majority of at least 90 votes. No legal canvass of the returns as they appear in the office of the secretary of state of Florida can show a different result. It is as certain as testimony can make it that under the laws of Florida the Tilden electors should have had from the board of State canvassers certificates showing their election. In other words, the evidence which the laws of Florida provide for showing the result of an election shows beyond all fair controversy that the Tilden electors did receive a majority of at least 90 votes, and were consequently elected.

It should be borne in mind, in considering the certificates of the boards of county canvassers, that a majority on nearly, if not all, of those boards are republicans, and that a majority on nearly all of the precinct canvassing boards rererepublicans, and therefore the result as stated in the declaration of these precinct and county canvassing boards cannot be presumed to be any more favorable to the candidates of the democratic party than the facts will fully warrant. This being the situation of the vote of Florida as it appears from the returns which the law provides shall be the evidence of the result, the question is whether there is anything in the manner of the conducting of the election on the part of the supporters of the Tilden electors in the State of Florida to vitiate and reverse that result. This is certainly an important question, and in considering the testimony bearing upon it one fact should be kept constantly in view, which must have a great influence upon all who consider the question. It is this, the governor of Florida was a republican candidate for re-election and had the appointment of all the officers of the State except constables. This put the whole machinery of the government in the hands of the republican party, under circumstances which woul

make them most vigilant to see that no possible advantage should be taken of it or its candidates for office, and there was at least the usual temptation on the part of those having the agencies of the government in their control to use those agencies to the utmost verge of a most liberal construction of their powers in that direction which might be most favorable to the success of their candidates, and thereby continue themselves in office.

The county commissioners had the appointment of all the voting-places and election officers, except clerks, (the clerks being appointed by the inspectors appointed by the county commissioners) and they had also the power of revising the registration-list. A majority of the election officers were republicans at nearly every voting-precinct. This gave them every facility to commit fraud if so inclined and to prevent its commission if attempted by others. There is, therefore, nothing in the situation going to make it probable that the supporters of the Tilden electors, rather than the supporters of the Hayes electors, were guilty of any frauds in the election.

rather than the supporters of the Hayes electors, were guilty of any frauds in the election.

Without discussing the general questions as to the powers of either House of Congress or both combined to go into the question of the details of an election in a State for presidential electors, your committee say that although they are not specifically charged with the duty of examining into the matter of intimidation, they feel justified in declaring that they did not hear any one seriously claim that there was any intimidation of the colored voters by the white people of Florida, and that there is not any evidence going to show that the people of Florida were not as quiet and free from all disturbing influences at the late presidential election calculated to wrongfully affect an election as the people of any other State in the Union. The election was regularly conducted in accordance with the forms of law prescribed by the State, and there is nothing in the mode of conducting it which ought to vitiate it or throw distrust upon it except in a few instances to which we specially refer. There were irregularities in conducting the elections at some of the precincts, as there must always of necessity be from accident, inattention to the provisions of law, and the presiding at elections of unskillful persons, where there is an honest intent and no disposition to commit a fraud. There were some cases of most clear, direct, and flagrant fraud.

#### LEON COUNTY.

where there is an honest intent and no disposition to commit a fraud.

LEON COUNTY.

At the very commencement of their examination at Tallahassee, in Leon County, your committee found that one Joseph Bowes, a leading republican positician and a prominent office-holder, and one Wiley Jones, a republican, went from Tallahassee to Richardson's school-house, a voting place about ten miles distant from Tallahassee, known as Richardson's school-house precinct, No. 13, for the purpose of acting as election officers, and that said Bowes did act as an inspector of election and the said Jones did act as clerk. It was also proved that Lawrence Booth, a republican and a Federal office-holder, living at Saint Mark's, in the adjoining county of Wakulla, thirty miles distant, acted as one of the inspectors. It appeared that said Bowes had in his possession a quantity of small ballots with the names of the republican candidates thereon, the ballots being about an inch and a half square. It also appeared that 73 of those ballots were found in the ballot-box was during the whole day at said precinct, that although he watched all day the putting of votes into the ballot-box, he did not see one of those small ballots put into the box, and that he was satisfied that none of them was voted at that precinct. Leon T. Roberts, a United States supervisor of election, also testified that he was all day sitting by the ballot-box and watching the ballots as they were deposited in the ballot-box, and did not see one of the small votes deposited in said ballot-box.

The poll-list at this precinct was suspicious in its character, there being three pages of names, amounting to seventy-two names in all, which had the appearance of being written all at one time and in the same handwriting, and not like the rest of the poll-list, which was written by different persons. Neither the names on said poll-list not he pages of said list were numbered, differing in that respect from all the other poll-lists in Leon County, which were sixteen in number.

Tilden electors, making a difference of 72 votes in favor of the Tilden electors. This is the most liberal construction that can possibly be given to the vote for the Hayes electors.

In considering and ascertaining the true result of an election, very little attention should ordinarily be paid to mere irregularities which do not affect the real merits of the case. It is impossible to define exactly the degree of irregularity and illegality in the conduct of an election which will render it void. Each case must depend, to a very great extent, upon its own merits, upon the circumstances as developed by the evidence. The principle is, that irregularities which do not tend to affect the result are not to defeat the will of the people; the will of the majority is to be respected even when irregularly expressed. (Jaker vs. Commonwealth, 20 Penn. St. R., 493.) In Carpenter's case, 2 Parsons, 540, the contrasy, "that although the election officers may be liable to punishment for a violation of the directory provisions of the statute, yet the people should not be punished for the detaults of their agents. That a mere irregularity or mistake on the part of the election officers, or their omission to observe some merely directory provision of the law, will not vitiate the poll or render void the election is a principle sustained by the whole current of authorities." The same general principle is recognized and supported by the following authorities: Piatt vs. People, 29 Ill., 72; Hardenburgh vs. Farmers' and Merchants' Bank, 2 Green, (N. F.,) 62; Day vs. Kent, 1 Oregon, 123; Taylor vs. Taylor, 20 Minn., 107; People vs. Bates, 11 Mich., 362; McKinney vs. O'Connor, 36 Texas, 5; Jones vs. State, 1 Kansas, 279; Gorham vs. Campbell, 2 Cal., 135; Sprage vs. Norway, 31 Cal., 173; Keller vs. Chapman, 34 Cal., 635; Brightley's Election Cases, 448, 449, 450.

The power to reject an entire poll is a dangerous one and should be exercised only in a case where it is impossible to ascertain the true vote. It must appear that the conduc

in 1 Brewster, 157, the court say: "And we also re-affirm the opinion announced in Mann es. Cassidy, that when the entire proceedings connected with the conduct of an election are so tarnished by the fraudulent and negligent acts of the officers charged with the performance of the most solemn and responsible duties, so that the returns are not intelligible, or the election, because of such fraudulent conduct, is rendered unreliable in such a case, it may become obligatory on the court to throw out from the general return the entire return of such election division."

In Chadwick es. Melvin, Brightley's Digest, 250, Chief-Justice Thompson says and the such as the control of the court of

In this county the election was conducted in a very loose manner. Many of the plain provisions of the statute were ignored, and others violated. The registration-list was not corrected as required by the act approved February 24, 1875, (see session acts, 1875, Florida Legislature,) and in consequence thereof it was largely in excess of the male inhabitants over the age of twenty-one years, as shown by the census taken under the provisions of said act a few months previous to the election. Prior to the election the intelligent and influential men of both political parties, for the purpose of insuring peace, good order, and fairness, entered into a written agreement that two challengers to be selected from each party should be stationed in the room near the ballot-box, whose duty it should be to challenge those persons offering to vote who were not qualified. This proposition was violated by the republican inspectors, and the challengers excluded from the room except at one poll. The county commissioners first appointed all inspectors from the republican party, but were subsequently prevailed upon to change their order and appoint one democratic inspector at each poll. The whole election machinery of the county was in the handsfof the republican party. Four out of the five county commissioners, who appoint the inspectors, the clerk of the circuit court, who is the registering officer, together with the county judge, are all members of that party. One of these last named officers on the day of election acted as clerk, the other as an inspector, and each assisted in making up the return of their respective polls. They were both exofficio members of the board of county canvassers and as such passed upon and canvassed the result of their own work, an act which, while it may not be absolutely illegal, is certainly improper and highly reprehensible, and should be condemned by all fair minded men.

The law of Florida provides that no person shall vote at any election unless he shall have been duly registered six days pr

The official return from this pell gave 570 votes for the republican and 5 votes for the democratic electors. The testimony of the voters themselves show that there were ten persons at least who voted for the democratic electors at this precinct. The canvass was not public as the law directs. There was no other evidence of fraud or irregularity at this pell, except the rapid manner in which the ballots were received and the want of care with which they were canvassed. The time occupied in counting was less than two hours. The names were not read at length, but two of the inspectors each unfolded and counted packages of twenty-five, put them together, passed them to the third, who placed them in the box, and

the clerk tallied one for each package of fifty. The law of Florida makes no provision for the preservation of the ballots after the same are canvassed, but fortunately in this instance they were preserved and on a recount the next day 10 democratic ballots were found in the box. Evidently this discrepancy between the return and the proof is the result of mistake on the part of the officers, occurring from the rapidity with which the canvassing was performed. Justice demands not the rejection of the poll, but that the 5 votes proven be deducted from the republican electors and added to the democratic electors, making the poll as corrected stand 565 republican and 10 democratic votes.

In support of the rule adopted and bearing on the point, see Washburn vs. Vorhees, 2 Bartlett, 54. Reid vs. Julian, ibid, 822.

#### POLL EIGHT.

hees, 2 Bartlett, 54. Reid vs. Julian, ibid, 822

POLL EIGHT.

The ballot-box at this poll was concealed from the view of the voter at the time of voting, the window through which the ballots were received being 6 feet 3 inches from the ground. On counting the votes and comparing the same with the number of names on the clerk's list, it was ascertained that there were 504 ballots and 2 cotton receipts in the box, and 514 names on the clerk's list. It was subsequently ascertained that there were two double tickets, or tickets folded together, which under the law should have been destroyed, but were all canvassed, thereby increasing the number of ballots to 506. On making up the certificate, James C. Smythe, one of the inspectors, added 6 in number to the republican votes, making the return show 493 republican and 19 democratic votes, instead of 487, the actual number of republican votes found in the box. The clerk's list, the check or registration list used at this poll, the affidavits of the clerk and inspectors, have all been lost or destroyed. The officers swear they returned them with the box to the clerk of the court, the clerk swears that he never saw either of them after the election; that examination was made and they could not be found. The return shows 19 democratic ballots, when twenty-three witnesses festified that they voted the democratic ticket at this precinct. James H. Sanders swears that he placed a corresponding mark on two democratic ballots, voted one and retained the other, which he exhibited at the examination; that he was present at the canvassing and closely scrutinized each ballot as it came out of the box, and failed to find or see the marked one voted by himself. The conduct of Smythe in making the addition of 6 votes can be viewed in no other light than a deliberate purpose to falsify the return, or force the number of ballots to correspond with the number of names on the clerk's list.

But the number added by Smythe is definitely stated, and must, with the double tickets and the 4 e

#### JACKSON COUNTY, FRIENDSHIP CHURCH PRECINCT.

be deducted from the aggregate republican vote as returned by the board of county canvassers.

Jackson county, priending the view of the voter at the time of passing his ballot to the inspector, but could be seen by the bystanders from several other windows in the room. The votes were not first counted and compared with the number of names on the clerk's list. John R. Mozley, a United States supervisor, received a number of ballots and passed them to the inspector. Immediately upon the close of the polls the inspectors proceeded to make their canvass, and did canvass 4 ballots, then took a recess and removed the box two miles to the house of John R. Mozley, where the canvass was resumed and a few additional ballots canvassed. Again they discontinued for supper and left the box in the room where the canvass was made, the windows nailed down, all persons being excluded therefrom; the box and the door of the room was locked and the keys kept by Henry Long, the republican supervisor. They returned after supper, found the box as they had left it, and completed the canvass. Prior to removing the box the same was locked by Jacob H. Stephens, the democratic supervisor, and the key given to Henry Long, the republican supervisor; they then placed it in a buggy with said Stephens and Edmond Hays, the republican inspector, and by them was conveyed to the house of Mr. Mozley. On arriving there the box was carried into the house by Mr. Stephens, accompanied by Henry Long, Edmond Hays, and the other officers, together with the crowd that followed, when Long unlocked the same and the canvass was resumed. The canvass was public. After it was understood that the box should be removed, and before starting, the announcement of the intention was made to the andience, five or six of whom followed and witnessed the canvassing, or passed in and out of the room at pleasure during the progress of the same. The reasons given by the witnesses for the removal of the box was that the church was unfinished, the windows open, the day cold and

were unwilling to disclose it, either of which would rully account for the discrepancy.

But the question is, what shall be done with this poll? Shall it be rejected or can the errors, if any, be corrected? If the true vote can, with reasonable certainty be ascertained, it is our duty to apply the rule by which it can be found. The proof is conclusive that the whole number of votes cast was 189. On this point there is no conflict in the testimony; and, accepting the statements of those persons to be correct, we can arrive at the result by adding the extra 19 votes preven to the 44 republican votes returned and then deducting the 63 from the total number of votes cast, making the vote of the precinct as corrected stand for republican electors, 63; for democratic electors, 126.

If, upon any principle, this poll should be excluded from the count, the same principle applied to other precincts would exclude polls Nos. 1 and 8 in Jefferson County, poll No. 13, Richardson school-house, Leon County, and Archer Precinct, No. 2, in Alachua County. The net result of the exclusion of these entire polls would be to deduct from the total vote for the Hayes electors 1,682 votes and from

1163

the Tilden electors 314, being a net gain in favor of the Tilden electors of 1,368

CAMPBELLTON PRECINCT.

the Tilden electors 314, being a net gain in favor of the Tilden electors of 1,368 votes.

CAMPBELITON PRECINCT.

Your committee examined into the manner of conducting the election at this precinct and find everything fair. Its fairness was so apparent that the republican member of the subcommittee making the examination waived all objections to its being counted as returned.

That in the counties of Jefferson and Jackson the committee was wholly unable to discover the violence or intimidation in any manner affecting the election or that a single vote was changed thereby; on the contrary, they find that the elective franchise was exercised freely and undisturbed by all; that the only threats or attempt at intimidation or violence was made by colored persons against those of their own color who manifested a disposition to vote the democratic ticket, and even in those cases the evidence fails to establish that any person was influenced to vote against his will. The same can be said with equal truth of all the counties in the State except as already stated. There was not a syllable of evidence tending in the slightest degree to create even a suspicion that any intimidation or coercion had been practiced.

The committee found, in the course of their investigations, that many persons woted the republican ticket who were disqualitied under the constitution and laws of the State by conviction before the courts of certain offenses. Many of these convictions were for larceny, and it was urged by some members of the committee that there is no disqualitication unless the larceny amounts to a felony.

The distinction as to the grade of offenses under the statutes is between felonies and misdemeanors; the former including all crimes punishable by death or imprisonment in the State penitentiary, the latter every other offense. (Acts of 1868, page 104, section 1.) Under the statutes there is a grade of larceny where the money or goods do not exceed in value \$200. (Acts of 1868, page 72, section 21,) which is punishable by dea

## ALACHUA COUNTY.

There has been no judicial decision upon this point by the courts of Florida.

ALACHUA COUNTY.

In this county your committee found a gross fraud committed by some of the officers of an election precinct, and a clear attempt to sustain by willful and corrupt perjury the fraud and to retain the advantages of it for the republicant ticket. This was at Archer precinct No. 2. The officers of election at the precinct were Richard H. Black, Green R. Moore, and Floyd Dukes, inspectors, and Thomas H. Vance, clerk. Black, Moore, and Vance were republicans, and Floyd Dukes, who had the misfortune not to be able to read or write, was a democrat. It is customary for the county commissioners to appoint one democrat on the board of inspectors, but your committee found in several cases the democrat put upon the board was not one who had the capacity to be very skillful in detecting fraud. The precinct is about thirteen miles from Gainesville. Vance, the clerk, lived in Gainesville, and is an active politician. The evidence shows, beyond all controversy, that not more than three hundred and sixteen votes were polled at this precinct, yet the returns showed that 535 votes were cast, so that two hundred and nincteen names were fraudulently put upon the poll-list by Vance, the clerk, of persons who did not vote at this precinct and the votes for the Hayes electror made to appear two hundred and nincteen greater than they in fact received.

There cannot be the least ground of mistake as to the existence of this fraud. The evidence showed that one Samuel T. Fleming, a merchant and a man of intelligence and probity, who was most thoroughly acquainted with the voters at Archer and vicinity, did at the request of various persons remain all day at the polls to take the name of every person who world from the one of the proof of the room in which the ballot-box was placed, and it was proven that the officers only voted from the inside of the room, 308 votes. His evidence is the only reliable evidence as to the number of votes, or that c

as to who made the entry, or when it was made, or the object for which it was made, but stated he did know it was on the paper. It is clearly proven that the announcement of this vote was 180 for Stearns and 136 for Drew.

The poll-list at this precinct was stolen from the clerk's office, so that your committee did not have the opportunity of examining it. Mr. Fleming made out a list of over one hundred and sixty names which were not duplicated on the registration of persons on the poll-list at this precinct, and testified that he was sure that no one of said persons voted, and that he knew personally nearly every persons who did vote at this precinct. An attempt was made to show that there was a Pompey Godfrey in the vicinity of Archer, he being one of the men that Flening testified did not vote there and that he did not know any such man. One Allen M. Jones testified that he knew Pompey Godfrey and that he lived within two miles of Archer, whereupon your committee sent at once an officer to summon him, and had Jones go with the officer to point him out, with directions to the officer to summon the man pointed out by Jones as Pompey Godfrey. This being done Pompey Lawrence was pointed out by Jones as Pompey Godfrey. This being done Pompey Lawrence known by any other name than Pompey Lawrence. No further attempt was made to impeach this name as they had attended the same church, and he had never been known by any other name than Pompey Lawrence. No further attempt was made to impeach this name as they had attended the same church, and he had never been known by any other name than Pompey Lawrence.

It is as clear as testimory can establish a fact than not more than three hundred and sixteen persons voted at this precinct. Several persons were called who were on the poll-list as having voted at Archer No. 2, who testified that they were not at this precinct during election day, and that they voted at other precincts in this county many miles from Archer, and were not anywhere in the vicinity of Archer during ele

the leaf for the returns of presidential electors to all the blanks sent out. An examination of these certificates showed that on each blank the leaf for the vote of presidential electors was attached by mucilage after the names of the inspectors were subscribed to it, as it covered in each a part of the scroll made in signing one of the names on each.

The ballot-box and all of the papers relating to this precinct were in the hands of Vance and Black, and they had full opportunity to commit the fraud and dig as clearly appears from the evidence commit it jointly, as part of the false and forget returns were in the handwriting of each of them. It is certain that Floyd Dukes could not have had any participation in this frand; he was a democrat, and certainly would not have added in committing a fraud upon the candidates of his party. It may be fairly claimed that it is certain that 136 democratic votes were cast at this precinct. It cannot be that these republican officials would commit a fraud and then attempt to sustain it by perjury and forgery to aid the party they were laboring to defeat. The ballot-box at this precinct when opened by the board of county canvassers was found to contain but 277 votes, 215 being republican votes and 62 being democratic votes. There were 35 republican votes that had not been strung, and the evidence is that all of the ballots were strung at the time they were canvassed on the night of the election, therefore it is certain that the ballot-box was stuffed with 35 republican votes. It will not be pretended, or conjectured even, that the party that would put in republican votes would take out any of the republican votes already in the box, but it is fair to presume that the man who is base and partisan enough to stuff a ballot-box with republican votes would not hesitate to steal democratic votes, and thus your committee are clearly activation of the party that would not hesitate to steal democratic votes, and thus your committee are clearly activationally and the republican votes

electors and 180 for the Hayes electors, making the majority for the Hayes electors 219 less than the returns upon their face show it to be, which is the most favorable position that can possibly be claimed for the republican electors.

#### HAMILTON COUNTY.

electors and 180 for the Hayes electors, making the majority for the Hayes electors 219 less than the returns upon their face show it to be, which is the most favorable position that can possibly be claimed for the republican electors.

Some question has been raised as to two for the precincts in this county, involvable, the control of the precinct of the precinct

canvasa.

The entire current of legal decisions establishes the principle "that irregularities which do not tend to affect results are not to defeat the will of the majority. (Faker vs. Commonwealth, 20 Pennsylvania Reports, 493.) The attainment of office against the clearly expressed will of the people is unworthy the ambition of any lover of a republican government, and to disfranchise an entire community because of the negligence or carelessness of those who handle their ballots is a crime against popular suffrage.

MANATER COUNTY.

MANATRE COUNTY.

The returns from the county canvassing board of this county are regular, and the

supreme court of Florida ordered the State canvassing board to canvass them, and your committee find nothing to impeach those returns, while on the other hand they find the most conclusive evidence to confirm their correctness. This county was known to be a strongly democratic county, and it is clear that the then governor of Florida, who was a candidate for re-election, determined if possible to defraud the people of that county of their votes. In pursuance of this determination, about the 25th day of September preceding the late election, he accepted unconditionally the resignation of the clerk of the circuit court of this county, and did not appoint another clerk until a short time before the November election, and then did not appoint a clerk who would qualify before said election, in order, as your committee believe, to have, if possible, left undone all the preliminary acts which the clerk is required to perform. By the laws of Florida it is provided in section 10, act of August 6, 1868, as follows:

A complete copy of the list of the names of all persons duly registered as electors shall be furnished to the inspectors of election at each poll or place of voting in the county, before the hour appointed for opening the election.

There and certify such copies, and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause one of such lists to be delivered to one of such inspectors before the time of opening the election.

in the county, before the hour appointed for opening the election. The clerk shall prepare and certify such copies, and trunish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause one of such lists to be delivered to one of such impectors before the time of opening the election. There not being a clerk to perform this duty and no evidence that it was performed by any person, over committee find that it was not done, but this in their opinion does not in the least degree affect the validity of the election in this county. The people of this county, being satisfied of the altempt made to deprive them of their votes, did all in their power to preserve the same, and did cast their votes on the day of election at the polling-places appointed by the county commissioners, and did in every particular conform to the law of the State where they were not prevented from doing so by the want of a clerk of the circuit court: one being to check the name of the voter on the registration lists he voted, and theother the depositing of a duplicate certificates of the precinct returns with and the other the depositing of a duplicate certificate of the precinct returns with a duplicate the depositing of a duplicate certificates of the precinct returns with under the depositing of a duplicate certificates delivered to the county judge. The law also provides that the canvass of the board of county canvassers may be made either from the certificates delivered to the circuit court or the county judge, so that in the matter of the precinct returns shall be made and one forwarded to the clerk of the circuit court and the other delivered to the county judge is a provision made to make it certain that the returns shall be made and one forwarded to the clerk of the circuit court and the other delivered to the county judge is a provision made to make it certain that the returns shall be where they will be furnished to the board of county canvassers. The evidence being that the county

## MONROE COUNTY.

MONROE COUNTY.

The only question in this county is relative to the validity of the return from precinct No. 2. Key West. The undisputed facts are that both political parties were represented on the election board; that the election was fairly and peaceably conducted; that after the polls were closed the votes were properly and correctly counted; that the result was then announced; that 460 votes were cast; that of these the Tilden electors received 401 votes and the Hayes electors received 59 votes; that when the result was declared it was after midnight, and some or all of the officers were worn out by long fasting and confinement, and by unanimous consent they adjourned to meet at nine o clock a. m. at Kemp's place. The ballots, poll-list, and tally-sheets having been first deposited in the ballot-box, the boxed locked, and the apertures secured, the key taken by one inspector and the box by another; that at or soon after nine o'clock a. m. all of the officers of the election assembled at Kemp's store or sponge-house, about three hundred yards from the polling-place, a public place much frequented; that, all of the officers being present, the ballot-box was opened, and the officers then and there proceeded to, and did, make out the returns of the said election from the tally-sheets made before the adjournment; that the certificates of the result were in due form, were signed by all of the election officers, and were properly filed. (See pages 81 to 96, inclusive.)

The sole ground upon which these returns are attacked, and the attempt is made to disfranchise 460 legal voters, is because there was an adjournment by the election officers after the votes were counted and before the certificates were made out. The argument in favor of throwing out the vote of this precinct rests upon section 21 of the election law of Florida, which reads as follows: "As soon as the polls of an election shall be finally closed the inspectors shall proceed to canvass the

an adjournment until completed." It is claimed that the making out of the cates is a part of the canvass, and that, inasmuch as there was an adjournment the completion of the count and before the making of the certificates, the law violated, and the poll should be excluded from the count.  But it is respectfully submitted that this construction of the statute is unfits severity and is not in accordance with the law. This will clearly appear an examination of section 23 of the same statute, which provides that, "theca	after w was air in upon nvass
being completed, duplicate certificates of the result shall be drawn up by t spector or clerk," &c. The certificates are to be drawn after the canvass sh completed, and hence the drawing of the certificates is no part of the can But even if making the certificates were a part of the canvass, your committed clearly of the opinion that the officers of the election were guilty of nothing than a mere irregularity, and that, in the absence of any fraud or the allegat fraud, the disregard of a provision which is purely directory will never justification of the returns of an election.	ee are more ion of fy the
Upon this statement of the facts and the law, he must be a bold man, as we a bitter partisan, who will claim that this precinct should be excluded from count.  The following tabulated statements will show the vote upon the different ories suggested:	m the
Jefferson County as returned by the board of county canvassers:  Official return for republican electors	2, 660 737
Majority	1, 923
Official return for republican electors.         5           Deduct discrepancy at poll No. 1         5           Deduct discrepancy at poll No. 8         4           Votes added by Smyth at poll No. 8         6           Deduct double votes at poll No. 8         4           Disqualified votes of Jefferson County         149	2, 660
The same of the sa	2, 492
Official return for democratic electors         737           Add discrepancy at poll No. 1.         5           Add discrepancy at poll No. 8.         4	746
	1,746
Jackson County as returned by board of county canvassers:	=
Official return for democratic electors	1, 397 1, 299
Majority	98
Jackson County as corrected: Official return for democratic electors Deduct discrepancy proved at Friendship church	1, 397
	1, 378
Official return for republican electors	1, 318
Majority	60
Alachua County as returned by county canvassers :  Official return for republican electors	1, 984 1, 267
Majority	717
Alachua County as corrected:  Official return for republican electors	
Official return for democratic electors.	1,765 1,267
Majority	498
Leon County as returned by the county canvassers :  Official return for the republican electors	3, 035
Official return for the democratic electors	1,003
	2, 032
Leon County as corrected:         3,035           Official return for republican electors         3,035           Deduct fraudulent votes proven at Poll 13         72	
Official return for democratic electors.	2, 963 1, 003
Majority	1, 960
Independent of the 29 votes in Clay County the official vote of the State as a on the face of the returns is:  For the Tilden electors.	shown 24, 439
For the Hayes electors.	24, 349
	90
As corrected the vote will stand.  Official returns for the Tilden electors. Add votes at polls 8, pond 11, Clay County Add discrepancy at poll 1, Jefferson County.  Add discrepancy at poll 8, Jefferson County.	24, 439 29 5 4
Deduct discrepancy at Friendship church, Jackson County	24, 477
Total	

votes cust at such election; and the canvass shall be public, and continued without an adjournment until completed." It is claimed that the making out of the certifi-

Add votes proven at Friendship church. 19 Add votes at pon 8, polld 11, Clay County 6  Deduct poll 1, Jefferson County 570 Deduct poll 8, Jefferson County 493 Deduct Archer No. 2, Alachua County 399 Deduct, Poll 13, Leon County 176 Deduct disqualified votes in Jefferson County 149  1, 787			
Deduct disqualitient votes, polit 3, Leon County   13   13   14   15   15   16   17   18   18   18   18   18   18   18	Deduct discrepancy at poll 1, Jefferson County.  Deduct discrepancy at poll 8, Jefferson County.  Deduct vote added by Smyth at poll 8, Jefferson County.  Deduct double tickets at poll 8, Jefferson County.	6	24, 349
Add discrepancy proven at Friendship church, Jackson County 94 Add votes at poll 8, pond 11, Clay County 6  Total 23, 800  Majority for Tilden electors 543  By excluding the entire vote for frauds or irregularities at precincts Friendship church, Jackson County, No. 1 and 8, Jefferson County, No. 13, Richardson school-house, Leon County, and Archer No. 2, Alachua County, the result would be as follows, namely:  Total vote for the Hayes electors as per returns 94, 355 Deduct:  At Friendship church. 44 At poll No. 1, Jefferson County 570 At poll No. 8, Jefferson County 493 At Archer, No. 2. 319 Leaving the true vote for the Hayes electors 22, 673  Total vote for the Tilden electors as per returns 94, 468 Deduct:  At Friendship church. 145 At Poll No. 1, Jefferson County 155 At poll No. 1, Jefferson County 165 At Archer, No. 2. 399 Leaving the true vote for the Hayes electors 22, 673  Total vote for the Tilden electors as per returns 94, 468 Deduct:  At Friendship church. 145 At poll No. 1, Jefferson County 52 At poll No. 1, Jefferson County 94 At Archer, No. 2. 136  24, 458  Upon this theory the vote would stand as follows, namely:  Total vote for the Tilden electors 94 At poll No. 13, Leon County 94 At Archer, No. 2. 136  146  157  Total vote for the Tilden electors 94 At poll No. 13, Leon County 94 At Archer, No. 2. 146  158  169  170  171  171  172  174  175  174  175  176  176  176  176  176  177  176  176  176  176  177  176  176  176  176  177  176  176  176  176  177  176  176  176  176  177  176  176  176  176  177  176  176  176  176  176  176  176  176  177  176  176  176  176  176  176  176  176  176  176  176  176  176  176  177  176  176  176  176  176  176  176  176  176  176  176  176  176  176  176  176  177  176  176  176  176  176  176  176  176  176  177  176  176  176  176  176  176  176  176  176  176  177  176  176  176  176  176  176  177  176  176  176  176  176  176  176  176  177  176  176  176  176  176  177  176  176  176  176  176  177  176  176  176  176  176  176  176  176  176  176	Deduct fraudulent votes in Jenerson County  Deduct fraudulent votes, poll 13, Leon County	149 72	
Add discrepancy proven at Friendship church, Jackson County 6  Total	Deduct fraudulent votes, Archer No. 2, Alachua County		459
Add votes at poll 8, pond 11, Clay County 6  Total 23, 915  Majority for Tilden electors. 543  By excluding the entire vote for frauds or irregularities at precincts Friendship church, Jackson County; No. 13, Richardson school-house, Leon County, and Archer No. 2, Alachua County, the result would be as follows, namely:  Total vote for the Hayes electors as per returns 24, 335  Deduct:  At Friendship church 444  At poll No. 1, Jefferson County 570  At poll No. 13, Leon County 176  At Archer, No. 2 196  Leaving the true vote for the Hayes electors 22, 673  Total vote for the Tilden electors as per returns 24, 468  Deduct: 45 Friendship church 145  At Friendship church 145  At poll No. 1, Jefferson County 56  At Friendship church 145  At poll No. 1, Jefferson County 57  At poll No. 8, Jefferson County 57  At poll No. 13, Leon County 57  At poll No. 13, Leon County 57  Total vote for the Tilden electors 58  Tilden's majority 198  If Friendship church, Jackson County; polls 1 and 8, Jefferson County; polls 1, Jefferson County; Archer No. 2, Alachua County, polls 1, Jefferson County; Archer No. 2, Alachua County; polls 1, Jefferson County; Archer No. 2, Alachua County; polls 1, Jefferson County; Archer No. 2, Alachua County; polls 1, Jefferson County; Archer No. 2, Alachua County; polls 1, Jefferson County; Archer No. 2, Alachua County; polls 1, Jefferson	1313 I Bright Line Toller Courts		
Majority for Tilden electors	Add votes at poll 8, pond 11, Clay County		6
By excluding the entire vote for frauds or irregularities at precincts Friendship church, Jackson County; Nos. I and 8, Jefferson County; No. I3, Richardson school-house, Leon County, and Archer No. 2, Alachua County; the result would be as follows, namely:  Total vote for the Hayes electors as per returns. 24, 355  Deduct: 44  At poll No. I, Jefferson County 570  At Priendship church. 483  At poll No. 1, Jefferson County 493  At poll No. 13, Leon County 176  At Archer, No. 2 399  Leaving the true vote for the Hayes electors 22, 673  Total vote for the Tilden electors as per returns 24, 468  Deduct: 45 Friendship church. 145  At poll No. 1, Jefferson County 55  At poll No. 13, Leon County 55  At poll No. 13, Leon County 55  At poll No. 13, Leon County 57  At poll No. 14, 156  At poll No. 14, 156  At poll No. 15, 156  At poll No. 156  At poll No. 15, 156  At poll No. 156  At poll	Total	=	23, 915
church, Jackson County; Nos. 1 and 8, Jefferson County; the result would be as follows, namely:  Total vote for the Hayes electors as per returns. 24, 355  Deduct:  At Friendship church. 44  At poll No. 1, Jefferson County 570  At poll No. 1, Jefferson County 939  At poll No. 1, Jefferson County 939  At poll No. 1, Jefferson County 939  Leaving the true vote for the Hayes electors 92, 673  Total vote for the Tilden electors as per returns 94, 468  Deduct: 45  At Friendship church 145  At poll No. 1, Jefferson County 150  At Friendship church 145  At poll No. 1, Jefferson County 150  At poll No. 1, Jefferson County 150  At poll No. 1, Jefferson County 150  At poll No. 8, Jefferson County 150  At poll No. 1, Jefferson County 150  At poll No. 8, Jefferson County 150  At poll No. 8, Jefferson County 150  At poll No. 8, Jefferson County 150  At poll No. 13, Leon County 150  Total vote for the Tilden electors 150  Tilden's majority 116  If Friendship church, Jackson County; polls 1 and 8, Jefferson County; poll 13, Richardson school-house, Leon County; polls 1 and 8, Jefferson County; be rejected for fraud or irregularities, the vote of the State will stand as follows: 0fficial return for the Tilden electors 24, 439  Add votes at poll 8, pond 11, Clay County 24  Add discrepancy at poll 1, Jefferson County 24  Deduct vote of Friendship church 145  Deduct vote of Friendship church 150  Deduct vote of Archer No. 2 136  Deduct vote of Friendship church 150  Deduct vote of Friendship church 150  Deduct poll 1, Jefferson County 150  Deduct poll 1, Jef	Majority for Tilden electors		543
Deduct	church, Jackson County; Nos. 1 and 8, Jefferson County; No. 13, Richa house, Leon County, and Archer No. 2, Alachua County, the result	s Frie rdson would	endship school- d be as
At poll No. 8, Jefferson County	Total vote for the Hayes electors as per returns  Deduct:		24, 355
Leaving the true vote for the Hayes electors   22, 673	At poll No. 1, Jefferson County At poll No. 8, Jefferson County At poll No. 13. Leon County	570 493 176	
Total vote for the Tilden electors as per returns   24, 468   Deduct;	At Alculo, 40.		1, 682
Deduct	Leaving the true vote for the Hayes electors		22, 673
At Friendship church			24, 468
At poll No. 13, Leon County.       19         At Archer, No 2.       136         24, 154         Upon this theory the vote would stand as follows, namely:         Total vote for the Tilden electors.       24, 154         Total vote for the Hayes electors.       22, 673         Tilden's majority.       1, 481         If Friendship church, Jackson County; polls 1 and 8, Jefferson County; poll 13, Richardson school-house, Leon County; Archer No. 2, Alachna County, be rejected for fraud or irregularities, the vote of the State will stand as follows:         Official return for the Tilden electors       24, 439         Add votes at poll 8, pond 11, Clay County       29         Add discrepancy at poll 1, Jefferson County       5         Add discrepancy at poll 8, Jefferson County       4         Deduct vote of Friendship church       145         Deduct vote of Archer No. 2       136         Deduct vote of poll 13, Leon County       9         Total       24, 349         Add votes proven at Friendship church       19         Add votes at pon 8, polld 11, Clay County       570         Deduct Archer No. 2, Alachna County       570         Deduct Archer No. 2, Alachna County       493         Deduct Archer No. 2, Alachna County       493         Deduct Archer No. 2, Alachna	At Friendship church		
At Archer, No 2	At poll No. 8, Jefferson County	19	
Total vote for the Tilden electors	At poll No. 13, Leon County		
Upon this theory the vote would stand as follows, namely:   Total vote for the Tilden electors	The state of the s		314
Total vote for the Tilden electors			24, 154
If Friendship church, Jackson County; polls 1 and 8, Jefferson County; poll 13, Richardson school-house, Leon County; Archer No. 2, Alachua County, be rejected for fraud or irregularities, the vote of the State will stand as follows:  Official return for the Tilden electors	Total vote for the Tilden electors		
Official return for the Tilden electors.         24, 439           Add votes at poll 8, pond 11, Clay County         29           Add discrepancy at poll 1, Jefferson County         5           Add discrepancy at poll 8, Jefferson County         24, 477           Deduct vote of Friendship church         136           Deduct vote of Archer No. 2         136           Deduct vote of poll 13, Leon County         9           Total         24, 187           Official returns for Hayes electors         24, 349           Add votes proven at Friendship church         19           Add votes at pon 8, polld 11, Clay County         6           Deduct poll 1, Jefferson County         570           Deduct Archer No. 2, Alachua County         399           Deduct Archer No. 2, Alachua County         176           Deduct disqualified votes in Jefferson County         149           Total         22, 587           Leaving a clear majority for the Tilden electors of         1,600	Tilden's majority		1, 481
Add votes at poll 8, pond 11, Clay County   29			
Deduct vote of Friendship church	Official return for the Tilden electors.  Add votes at poll 8, pond 11, Clay County  Add discrepancy at poll 1, Jefferson County  Add discrepancy at poll 8, Jefferson County		29 5
290   Total			24, 477
Total   24, 187	Deduct vote of Friendsnip church.  Deduct vote of Archer No. 2.  Deduct vote of poll 13, Leon County	136 9	
Official returns for Hayes electors			290
Add votes at pon 8, polld 11, Clay County   6   24, 374	Total		24, 187
Deduct poll 1, Jefferson County	Official returns for Hayes electors		24, 349 19 6
Deduct poll 1, Jefferson County   570		100000	
Total	Deduct poll 8, Jefferson County Deduct Archer No. 2, Alachua County Deduct poll 13, Leon County	493 399 176	21,011
Leaving a clear majority for the Tilden electors of		140	1,787
Toleran Development and Market Chairman Control Control	Total		22, 587
Toleran Development and Market Chairman Control Control	Leaving a clear majority for the Tilden electors of		1,600
party of Florida for presidential electors, was appointed on the 3d of December.	It appears that Frederick C. Humphries, one of the candidates of th		

It appears that Frederick C. Humphries, one of the candidates of the republican party of Florida for presidential electors, was appointed on the 3d of December, 1872, a shipping commissioner of the United States at the port of Pensacola, and that he qualified as such office on the 9th day of December, 1872. This appears by the certificate of the clerk of the circuit court for the northern district of Florida, which is Exhibit 54. It also appears that he entered upon the duties of that office. The said certificate shows that there is no record in said court of his having resigned said office. The office of shipping commissioner is an office of trust and profit under the United States.

Your committee deem it but just to state that their examinations were conducted openly, and as far as practicable in the vicinity in which any fraud or irregularity was alleged to have been committed, in order that if the testimony given was untrue the fact could be easily shown and the truth readily ascertained. They gave the fullest opportunity to all parties desiring to present allegations of fraud or irregularity, and did examine into all charges which were made. Your committee are fully couvinced that had not their examination been open to all and the evidence taken by them known to the public, and an opportunity given to all parties to show wherein the evidences were untrue, if in fact it were not true, their testimony could not be of any great service in determining the real facts in relation to the elections. There was not the slightest proof that the colored people of that State were in any manner restricted in the enjoyment of their political rights, but your committee were impressed with the very apparent disposition manifested on the part of the white people of Florida to treat the colored people and their rights with due consideration, and your committee believe that not only was special care taken by the supporters of the Tilden electors that no act should be done by them which could be construct to their disadvantag

partisans of the opposition should have no cause for even a doubt of the honesty of their motives. This fact, your committee believe, is entitled to great weight in the consideration of this election.

Your committee are of the opinion, from the examination made by them, that were the several precincts of the State purged of all illegal votes the majority for the Tilden electors would be largely increased. In closing, your committee declare that the evidence is perfectly conclusive that the State of Florida on the 7th day of November last cast her vote for the Tilden electors. There is no more doubt that the State of Florida cast her vote for the Hayes electors, although not by so large a majority, but still by a majority clear and certain. The extent of the majority is not a fact affecting in the least the rights of those persons to the office to which they were fairly elected, the only material question being, did they have a majority. It appearing that F. C. Humphries, Charles H. Pearce, William H. Holden, and T. W. Long were not elected as presidential electors for the State of Florida, any act done by them in the matter of voting for President and Vice-President of the United States is illegal and void, and no vote cast by them can be counted.

And it appearing by the certificate of Wilkinson Call, James E. Yonge, Robert Bullock, and Robert B. Hilton, 'the duly elected presidential electors for the State of Florida, that said electors did meet on the first Wednesday of December, A. D. 1876, (being the 6th day of December,) in the capitol at Tallahassee, and give their votes for President and Vice-President of the United States; and did then and there, as such electors, give and cast their votes by ballot for Vice-President of the United States, and did then and there, as such electors, give and cast their votes by ballot for Vice-President of the United States, and four other votes for Thomas A. Hendricks, of Indiana, for Vice-President of the United States, fire votes for Thomas A. Hendricks, of Indiana,

States and must be counted.

Your committee recommend the passage of the following resolution:

Resolved, That at the election held on November 7, A. D. 1876, in the State of Florida, Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock were fairly and duly chosen as presidential electors, and that this is shown by the face of the returns and fully substantiated by the evidence of the actual votes cast; and that the said electors having, on the first Wednesday of December, A. D. 1876, cast their votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, they are the legal votes of the State of Florida and must be counted as such.

CHARLES P. THOMPSON. REZIN A. DE BOLT. A. T. WALLING. JAMES H. HOPKINS.

#### EXHIBITS.

Exhibits are hereto annexed of the record and opinion of the supreme court of Florida in the case of The State of Florida ex rel. George F. Drew, and returns from the counties of Baker, Clay, and Duval, and the certificates upon and accompanying the same.

nying the same.

Record and opinion of the supreme court of Florida in the case of the State of Florida ex rel. George F. Drew.

Pleas in the supreme court of the State of Florida, at a special term of said court, held at the capitol, in the city of Tallahassee, in the month of December, A. D. 1876, in a certain cause therein pending, wherein the State of Florida, upon the relation of George F. Drew, was plaintiff, and Samuel B. McLin, secretary of state of the State of Florida, Clayton A. Cowgill, comptroller of public accounts of the State of Florida, and William Archer Cocke, attorney-general of the State of Florida, were defendants.

were defendants.

Be it remembered that on the 13th day of December, A. D. 1876, the relator in the case aforesaid, by Richard L. Campbell, R. B. Hilton, and George P. Raney, his attorneys, filed in open court his petition for a mandamus.

Wherenpon, after reading and considering said petition, an alternative writ of mandamus was awarded, returnable on the 14th day of December, A. D. 1876, which said alternative writ was in the words and figures following, to wit:

Whereupon, after reading and considering said petition, an alternative writ of mandamus was awarded, returnable on the 14th day of December, A. D. 1876, which said alternative writ was in the words and figures following, to wit:

The State of Florida to Samuel B. McLin. secretary of state, William A. Cocke, attorney-general, and Clayton A. Cowgill, comptroller, members of the board of canvassers of Florida, and to every of them greeting:

Whereas it has been suggested to us by the petition of one George F. Drew that a general election was held ou the 7th day of November, A. D. 1876, in the several counties of this State, for the election of governor of the State and lieutenant-governor thereof, and for members of the assembly for all the counties of the State, and for senators from the several odd-numbered senatorial districts of the State, and for senators from the several odd-numbered senatorial districts of the State, said election being held in pursuance of law and of proclamation duly made by the secretary of state. At said election, petitioner, George F. Drew, who was and is eligible and qualified to hold the office of governor of said State, was a candidate to be voted for by the voters of said State to fill said office, and that besides himself one Marcellus L. Stearns was a candidate or candidates oved for to fill the same. That by the returns of the said election received at the office of the secretary of state, and now on file in said office, the whole number of votes cast at said election for said George F. Drew were 24,613 votes, and the whole number of public accounts, constituting board of State canvassers of elections, assembled, convened, and organized as such board at the office of the secretary of state on the 27th day of November, A. D. 1876, to canvass the votes of said State given at the said election for electors of President and Vice-President of the United States, and for governor and licentenant-governor of Florida, and for members of the Congress of the United States and members of th

In the papers received by the secretary of state and purporting to be election returns of said election, and after ascertaining that they appear to be gentine, to declare the result of said election as abown by said returns.

That the said board of State canvassers, or a majority of them, pretend that they have already concluded, completed, and performed the canvass of the said votes cast at the said election for governor and leutenant governor and members of the said votes cast at the said election for governor and leutenant governor and members of the said state of the said state of the said election for the counties of Jackson, Mantaee, Hamilton, and Monroe; that their said pretended canvass of the returns from said counties, if any such has been made, which he does not admit, is a multiply; as is their state, cast at said election for said efficients.

That by reason of the failure and refused of the several counties of the State cast at said election for said efficients.

That by reason of the failure and refused of the said secretary of state, and mon the completion of the said canvass and count and enumerate all the votes of all the counties of the State cast at said election for said early and the said secretary of state, and mon the completion of the said canvass and count and enumerate the votes of the said counties of Jackson, Hamilton, Manatee, and Monroe, as shown by the returns of said election on the in said office of the secretary of the said secretary of state, and Monroe, as shown by the returns of said election on the in said office of the secretary of the said secretary of the said secretary of said election on the said secretary of the said office, that the said Draw was and has been elected to said office, and the said returns of the votes cast in said counties of the State, it would manifestly thave appeared, and would manifestly appear, that the said Draw was and has been elected to said office. The said office of the said election, and there would manifestly have appeared, and would man

premises, unless it be afforded by the interposition of this court through writ of mandamus.

Wherefore your petitioner, the said George F. Drew, prays that the writ of mandamus may be issued by this court and directed to the said Samuel B. McLin, secretary of state, the said William Archer Cocke, attorney-general, and the said Clayton A. Cowgill, comptroller of public accounts, commanding them forthwith to meet, and convene, and re-assemble, as a board of State canvassers, in the office of the secretary of state, to canvass and count all the election returns on file in said office of said secretary of state of the election for the office of governor held on the 7th day of November, 1876; and that as such board of State canvassers they do canvass and count the election returns for the said office from each and every of the counties of this State wherein an election was held for said office; and, especially, that they do canvass and count the said election returns from the said conties of Jackson, Hamilton, Manatee, and Monroe; and that they do determine from a canvass, and count, and enumeration of all the votes cast for the said office of governor at said election in all the counties of the State, as shown by the election returns; of said election as received at the office of the secretary of state, who has been elected by the highest number of votes to the said office of governor as shown by said returns; and that they do as such board make and sign a certificate, as required by law, containing in words written at full length the whole number of votes given at said election as shown by said returns for the said office of governor of said State; and that they do as such board make and sign a certificate, as required by law, containing in words written at full length the whole number of votes given at said election as shown by said returns for the said office of governor of said State; and that such other order may be had in the premises as justice may require.

Now, therefore, we, being willing that full and s

of State canvassers, in the office of the secretary of state, to canvass and count all the election returns on file in the said office of the secretary of state of the said election for the office of governor, held on the 7th day of November, A. D. 1876, and that as such board of State canvassers you canvass and count the election returns for the said office from each and every of the counties of this State wherein an election was held for said office; and, especially, that you do canvass and count the election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe, and that you do determine from a canvass and count and enumeration, and tabulation of all the votes cast for the said office of governor at said election received at the office of the State, as shown by the election returns of said election received at the office of the secretary of state, who has been elected by the highest number of votes to the said office of governor as shown by said returns; and that you do as such board make and sign a certificate, as required by law, containing, in words and figures written at full length, the whole number of votes given at said effection, as shown by the said returns, for the said office of governor of the State of Florida, and the number of votes given for each person voted for for said office, and in said certificate declare the result of the said election for governor of said State, so that you show cause why you have not done so before our supreme court, at the capitol in Tallahassee, at eleven o'clock a. m. on the 14th day of December, A. D. 1876; and have you then there this writ.

Witness the Hon E. M. Randall, chief-justice of the supreme court of Florida, at Tallahassee, this 13th day of December, A. D. 1876, and the seal of said court.

FRED. T. MYERS,

Clerk of the Supreme Oout of Florida.

And thereafter, to wit, on the 14th day of December, A. D. 1876, the said alternative writ having been returned, duly served upon the said defendants, it was ordered by the court that the issues in this cause be made up by Saturday morning next, the 16th day of December.

Upon which said day the said defendants, McLin and Cowgill, by their attorney, J. P. C. Emmons, and the said defendant, William Archer Cocke, in person, filed their answers to the said writ in the words and figures following, to wit:

In the supreme court of the State of Florida.—Special term, December, 1876.

In the supreme court of the State of Florida.—Special term, December, 1876.

In the matter of the petition of George F. Drew for and the alternate writ of mandamus commanding Samuel B. McLin, secretary of state; William A. Cocke, attorney-general, and Clayton A. Cowgill, comptroller, members of the board of canvassers of Florida, to re-assemble as a board of State canvassers and count all the election returns on file in said office in said secretary of state of election for the office of governor, held on the 7th day of November, 1876; and that as such board of State canvassers they do canvass and count the election returns for said office from each and every of the counties of this State wherein an election was held for said office, and especially that they do canvass and count the said election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe; and that they do determine, from the canvass, and count, and enumeration of all the votes cast for the said office of governer at said election in all the counties of the State, as shown by the election returns of said election as recorded at the office of the secretary of state, who has been elected by the highest number of votes to the office of governor as shown by said returns; and that they do as such board make and sign a certificate as required by law:

To the honorable the supreme court of the State of Florida:

The said Samuel B. McLin and Clayton A. Cowgill ask leave to say that they

The said Samuel B. McLin and Clayton A. Cowgill ask leave to say that they protest and aver now and at all times that this honorable court has no jurisdiction in the premises as set forth in the alternate writ issued in this matter, and cannot grant what the petitioner therein prays for and which said alternate writ commands to be done, unless good reasons are shown why they should not be called upon to act as commanded.

But for a progret there are a commanded to the processory to answer the same and the processory to answer the same are the processory to answer the same and the processory to answer the processory to an actual processory to be processory to an actual processory to a processory to a processory to a processory to be processory to a processory to a processory to a processory to be processory to be processory to an actual processory to be processory to a processory to be proce

upon to act as commanded.

But for answer thereunto, or to so much thereof as is necessary to answer unto, the said Samuel B. McLin and Clayton A. Cowgill, two of the respondents in said matter, for themselves jointly and severally, pray leave to say:

That they admit that there was an election held on the 7th day of November, 1876, as set forth in said alternate writ, and that the persons to be voted for at said election were as therein set forth. And they further admit that the said George F. Drew was eligible as alleged, and that there were no other candidates for the office of governor except the said George F. Drew and Marcelius L. Stearns as alleged; but that, according to the best recollection of these respondents, there were 2 or 3 scattering votes cast at said election for persons other than those hereinbefore named as candidates for the office of governor.

But they deny that, as appears by the returns of the said election received at and on file in the office of the secretary of state, that the true vote cast at said election for George F. Drew was 24,613, and that the true vote cast for said Marcellus L. Stearns was 24,116.

And these respondents, further answering, say that they, with the said William

Stearns was 24,116.

And these respondents, further answering, say that they, with the said William Archer Cocke, did convene and organize as a board of State canvassers at the office of the secretary of state on the said 27th day of November, 1876, and did proceed to canvass the returns from all the counties in which an election had been held, and continued said canvass until the said board had canvassed and passed upon returns from all the counties in said State, and did ascertain from such canvass of the returns from all the counties in said State the true vote cast at said election for each and every of the persons voted for at said election, and did declare the result thereof and certify the same as required by the law providing for the holding and conduct of said election, as required by the law of said State as enacted in 1868 and as finally amended in 1872, which said law was in force at the time of and during the holding and conduct of said election, and is still in force now and at the time of the filing of the petition and the issuance of the writ herein now being answered unto.

the filing of the petition and the issuance or the write herein less than 1000.

And that said canvass of the said several returns was fully completed and ended on the early morning, to wit, at the hour of about half past one o'clock of the 6th day of December, 1876, and the said board by its unanimous vote so declared; and that nothing remained to be done thereafter to complete the entire labors of said board but the preparation of the proper certificate of the result thereof as had been ascertained, and the preparation of which certificate the board unanimously directed its clerk to prepare, which was thereafter done and signed by these respondents, and duly filed in the office of the secretary of state, these respondents constituting a majority of said board. That board then adjourned without day.

And these respondents, further answering, say that they deny that in the canvass aforesaid, in the ascertainment of the result of said election, in making up and certifying to the same as required by said law of 1868, they were guilty of any usurpation whatever.

certifying to the same as required by said law of 1868, they were guilty of any usurpation whatever.

And these respondents, further answering, say that in relation to the said county of Manatee it appeared from the return of said county, and from evidence received by said board, that the said return was so irregular, and false, and fraudulent that said board was mable to determine the true vote for any officer or member voted for at said election, and said board so certified; and they did not include such return in their determination and declaration in the said certificate of the result of said election hereinbefore referred to.

And these respondents, further answering, say that, as to the counties of Jackson, Hamilton, and Monroe, it was shown by evidence that the returns therefrom were severally false and fraudulent, and that the board determined from the evidence, with reference to each of said counties, what the true vote therein was for each officer and member voted for at such election; and the result of such determination was acted upon in declaring the result of said election and certifying thereto as aforesaid.

And these respondants, further answering, say that in the action that was had by said board, as aforesaid, as to the counties of Hamilton and Monroe, the vote of said board was unanimous; and in the action in relation to Jackson County the action was by a majority of said board.

And, further, that as to the said counties—Manatee, Jackson, Hamilton, and Monroe—showing was made and evidence received from both parties and unanimously acted upon by said board.

And these respondents, further answering, say that as to that part of the suggestion as contained in said writ that said Drew is entirely without remedy except through the intervention of this honorable court by its writ of mandamus, they respectfully submit that each and every of the officers and members voted for at such election have full, perfect, and ample remedy, the former through the courts of law by relation in the nature of quo warranto, and the latter by and through the respective branches of the Legislature to which they may claim to have been duly and legally elected; and that any action which might be ordered by this honorable court through the writ prayed for would have no legal effect upon either forum who might, in the pursuit of the proper remedy, be called upon to act.

And these respondents further respectfully submit to this honorable court that said board having canvassed all the returns from all the counties in said State in which an election was held on the said 7th day of November, and determined and declared who had been elected to any office or member by the true vote cast at said election, and made and signed the certificate required by law in such case made and provided, and adjourned without day, that its powers as a board cease.

SAMUEL B. McLIN,

Secretary of State.

C. A. COWGILL, Comptroller.

Sworn to and subscribed before me this 16th day of December, A. D. 1876.
FRED. T. MYERS,
Clerk of the Supreme Court of Florida.

J. P. C. EMMONS, Of Counsel for Respondents.

In the supreme court of the State of Florida.

THE STATE OF FLORIDA EX REL. GEORGE F. DREW

Samuel B. McLin, Secretary of State, C. A. Cowgill, comptroller of public accounts, and Wm. Archer Cocke, attorney-general for the State of Florida.

Cooke, attorney-general for the State of Florida.

The separate answer of Wm. Archer Cooke to an application before the supreme court of the State of Florida for a writ of mandamus against the said S. B. McLin, C. A. Cowgill, and your respondent, the said William Archer Cooke, filed by George F. Drew and others.

The said respondent answers and says that he neither denies nor assents to the statements of law set forth in the said paper asking the intervention of the writ of mandamus against the members of said canvassing board. Your respondent further states that the charge of rejecting the votes of Manatee, Hamilton, Monroe, and Jackson Counties is not applicable to him in conducting the canvass for the election of State officers which occurred in this State on the 7th of November 11time.

the election of State omeers which occurred in the votes in the counties aforesaid should have been counted, and he so indicated by his vote as a member of the State canvassing board.

This respondent, further answering, disclaims that he has usurped power as a member of said board, or advised others so to do. But, in relation to the allegations in the petition for a mandamus to the contrary notwithstanding, he avers that he has followed the law in all respects, and submits the questions of law involved in this case to the honorable court.

WM. ARCHER COCKE,

WM. ARCHER COCKE, Attorney-General and ex oficio member of the State Canvassing Board of Florida.

Whereupon the said relator, by his attorneys, moved to strike out the answer of the said defendants, McLin and Cowgill, "because the same is evasive, argumentative, and uncertain and insufficient, and does not state facts so that a judgment of the court can be founded thereon."

Whereupon, after a hearing of the parties, the following order was made by the court.

court:

The motion to strike from the files the answer of the respondents, Cowgill and McLin, having been argued and submitted, it is considered by the court that as to the rejection by the respondents, as State canvassers, of the election returns or the papers purporting to be returns from any county, the answer be amended, so as to set forth and show the specific causes and grounds for such rejection, and the defects existing in such returns; and also, that, as to the rejection by the said respondents, as such convassers, of any portion of the votes included in any return from any county, the answer be amended so as to set forth the specific causes and grounds of such rejection in each and every of the instances of such rejection; and that the amendments be made and filed by Monday, the 18th instant, at twelve o'clock at noon.

And thereafter, to wit, on the day and year last aforesaid, the said respondents, Cowgill and McLin, by their attorney, filed an amended return herein, which is in the words and figures following, to wit:

In supreme court, special term, December, 1876.

GEORGE F. DREW vs.

Samuel B. McLin et al.

SAMUEL B. MCLIN ET AL.

And these respondents, the said McLin and Cowgill, in compliance with the order of this honorable court, make these amendments to the return filed to the alternate writ of mandamus issued herein.

And say that said board did not include the return from said county of Manatee in its determination and declaration of the vote cast at said election, upon the ground of irregularity and fraud in the conduct of the election on the said 7th day of November, 1876.

And these respondents further say that in the county of Clay 29 votes were added to the vote cast for George F. Drew and 6 votes were added to the vote cast for Marcellus L. Stearns, upon the ground that said votes had been improperly rejected by the county canvassers of the vote of said county at said election.

And further, in relation to said county of Clay, that 4 votes cast for George F. Drew at said election were deducted, and 2 cast for Marcellus L. Stearns were deducted, upon the ground that said votes were cast by non-residents of the county. And these respondents further say that in relation to the county of Hamilton, the vote of precinct No. 2 was deducted from the vote cast in said county as appeared from the returns, upon the ground of gross violation of the election law and fraud in the conduct of the election.

These respondents further say that 5 votes were deducted from the vote cast in Hernando County as appeared from the returns therefrom, upon the ground that said votes were illegally cast.

And these respondents further say that 557 votes were deducted from the vote cast in the county of Jackson as appeared from the face of the return, upon the ground of irregularity and gross fraud in the conduct of said election.

These respondents further say that 2 votes were deducted from the vote cast in the county of Jackson as appeared from the face of the return, upon the ground of irregularity and gross fraud in the conduct of said election.

Leon County as apparent upon the face of the return, upon the ground that said votes were illegal.

And these respondents further say that the board deducted from the vote cast in the county of Jefferson, as appeared from the return, 61 votes, upon the ground that said 61 votes were fraudulently cast.

And these respondents further say that 7 votes were deducted from the vote cast in the county of Orange, upon the ground that said votes were illegally cast.

And these respondents further say that the vote of one precinct in the county of Monroe was deducted from the vote, as appeared from the return from said county, upon the ground of irregularity in the conduct of the election and fraud in the conduct of the inspectors of said election in said precinct.

SAMUEL B. McLIN.

SAMUEL B. McLIN. C. A. COWGILL.

Sworn to and subscribed before me this 18th day of December, A. D. 1876.
W. M. McINTOSH,
Notary Public for Leon County.

J. P. C. EMMONS of Counsel for Respondents.

And these respondents, further answering, say, as to the said county of Manatee, that said board did not include the vote cast in said county as it appeared on the face of the return, upon the ground that it appeared in evidence that there was such irregularity and fraud in the conduct of the election in said county in receiving votes of persons not registered, and there being no registration-list furnished inspectors, and no designation of voting-places, and no notice of election, that said board could not ascertain the true vote.

J. P. C. EMMONS, Counsel for Respondents.

And upon the same day came the relator, by his attorneys, and filed his demurrer to the answer of the respondents, in the words and figures following, to wit:

Supreme court of Florida, December special term, A. D. 1876.

STATE OF FLORIDA EX REL. GEORGE F. DREW PS.
SAMUEL B. McLin et als. SAMUEL B. McLIN ET ALS,

The relator, George F. Drew, demurs to the answer of the respondents, McLin and Cowgill, as amended, on the ground that the same is insufficient in law.

Points of demurrer.

First. The board of State canvassers could not lawfully exclude or reject the county returns or votes from the county of Manatee, or the precinct returns or votes from the other counties stated in the answer to have been excluded or rejected, upon the grounds stated in said return or answer, nor could they legally make any addition of votes to any returns, as stated in said answer.

Second. The said answer shows that said board illegally excluded the return from the county of Manatee, and made the additions to and deductions from the votes as they appear by the returns from the other counties mentioned in their said answer.

Third. The adjournment of the board before having made a legal canvass of the votes of the several counties, as shown by the returns therefrom, is no reason in law why they should not re-assemble and canvass the votes of the several counties as they appear upon the face of the returns,

Fourth. The allegation in the said answer that each of the officers and members voted for at said election has his remedy, as therein stated, is no sufficient reason in law why the relator should not have his remedy in the premises by mandamus.

R. L. CAMPBELL, R. B. HILTON, GEO. P. RANEY,

For Relator.

We certify that the above demurrer is, in our opinion, well founded in law, and we further say it is not interposed for delay.

R. L. CAMPBELL. R. B. HILTON. G. P. RANEY.

DECEMBER 18, 1876.

Respondents join in demurrer.

J. P. C. EMMONS, Counsel for Respondents

And after hearing of the parties by their attorneys, and argument of the said demurrer, and upon the 22d day of December, A. D. 1876, the court read its opinion herein, which said opinion is in the words and figures following, to wit:

Supreme court of Florida, special term, December, A. D. 1876.

THE STATE OF FLORIDA ON THE RELATION OF GEORGE F DREW

Samuel B. McLin, Secretary of State, Clayton A. Cowgill, comptroller, and William Archer Cocke, attorney-general of the State of Florida. Mandamus.

WESTCOTT, J., delivered the opinion of the court.

Westcott, J., delivered the opinion of the court.

The view that the board of State canvassers is a tribunal having power strictly judicial, such as is involved in the determination of the legality of a particular vote or election, cannot be sustained. The constitution of this State (article 3, and section 1 of article 6) provides that "the powers of the government of the State of Florida shall be divided into three departments: legislative, executive, and judicial; and no person properly belonging to one of the departments shall exercise any functions appertaining to either of the others except on those cases expressly provided for by this constitution.

"The judicial power of the State shall be vested in a supreme court, circuit court, county courts, and justices of the peace."

All of the acts which this board can do under the statute must be based upon the returns; and while in some cases the officers composing the board may, like all ministerial officers of similar character, exclude what purports to be a return for irregularity, still everything they are authorized to do is limited to what is sanctioned by authentic and true returns before them. Their final act and determination must be such as appears from and is shown by the returns from the several counties to be correct. They have no general power to issue subpeans, to summon parties, to compel the attendance of witnesses, to grant a trial by jury, or to do any act but determine and declare who has been elected as shown by the returns. They are authorized to enter no judgment, and their power is limited by the express words of the statute which gives them being to the signing of a certificate containing the vhole number of votes given for each person for each office, and therein declaring the result as shown by the returns. This certificate thus signed is not a judicial judgment, and the determination of a right after notice, according to the general law of the land as to the rights of parties, but it is a declaration of a conclusion limited and restr

the exception of the courts in Louisiana, and perhaps another State, no judicial sanction can be found for the view that these officers are judicial in their character or that they have any discretion, either executive, legislative, or judicial, which is not bound and fixed by the returns before them.

The duty to count these returns has been enfored by mandamus so repeatedly in the courts of the several States of the Union that the power of the courts in this respect has long since ceased to be an open question. Mr. Justice Smith, in the very celebrated case of The Attorney-General ex ret. Bashford vs. Barstow, (4 Wis., Sl3.) when speaking of the powers of the board of State canvassers, after reciting their power to "determine" the result of an election from the returns, says: "These are not judicial but purely ministerial acts." We must, therefore, decide that the general nature of the power given by the statute is ministerial, and that to the extent that any strictly and purely judicial power is granted, such power cannot exist.

This brings us to the consideration of the only remaining general question as to the powers of the board under the statute.

While the general powers of the board are thus limited to and by the returns, still as to these returns the statute provides that, "if any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any officer or member, they shall so certify and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers." The words true vote here indicate the vote actually cast, as distinct from the legal vote. This follows, first, from the clear general duty of the canvassers, which is to ascertain and certify the "votes given" for each person for each office, and, second, because to dete

and, second, because to determine whether a vote cast is a legal vote is beyond the power of this board. As to the words "irregular, false, and fraudulent" in this connection, their definition is not required by the questions raised by the pleadings in this case.

The properties have not alleged that they have before them any return "so irregular, false, or fraudulent" that they are mable to determine the actual vote cast in any county, as shown by the returns; and nothing can be clearer than that the counting of returns audiciently regular to ascertain the whole number of votes given and signing a certificate are merely ministerial acts. Under these pleadings the genuineness and regularity of the particular returns in question here are considered and signing a certificate are merely ministerial acts. Under these pleadings the genuineness and regularity of the particular returns in question here are is that a return of the character named shall not be included in the determination and declaration of the board; and that it has power to determine the boars flat character of the returns deadors in the state of the returns deadors and the state of the returns deadors and the state of the returns deadors and the return of the votes embraced in a return and to count others embry and the state of the returns deadors and the returns the returns the state of the returns deadors and the return deadors are the returns and the count of the returns that it is not respect to the returns deadors and the return and the count of the returns that the powers here conferred are ministerial powers. It is true that it is not respect to the return and the count of the return and the count of the return and the count of the return and the return and the count of the return and the count of the return and the count of the return and the return are powers which necessarily appertain to the discharge of every ministerial powers. It is true that the powers have the return and the return are included in the country of the return and the re

As to the county of Jackson:

As to the county of Jackson:

The answer sets up that 557 votes were deducted from the votes cast in the county of Jackson, as appeared from the face of the return, upon the ground of irregularity and gross fraud in the conduct of the election.

Upon the face of this answer, and in view of the express allegations of the alternative writ as to the genuineness, intelligibility, and bona fide character of the returns of the votes cast in this county, and in view of the express admission by the pleadings that such return was a genuine return of votes cast, the only question raised here is whether, under this statute, the canvassers can reject a return of votes cast, or any of the votes cast, for irregularity or fraud in the conduct of the election.

election. Whether irregularities or fraud in an election will authorize the rejection of a vote cast, counted, and returned in a genuine bona fide return, is a question of law, not within the power of this board to determine. If the return was regular, genuine, and bona fide, as it was admitted to be by the pleadings, it was the duty of the ine, and bona fide board to count it.

As to the county of Hamilton:

The answer alleges that there was a deduction made from the votes cast at one precinct, as appeared from the face of the return, upon the ground of gross violation of the election law and fraud in the conduct of the election. What has been said as to Jackson County covers this case, and there is no necessity for repetition

As to the county of Monroe:

As to the county of Monroe:

The answer alleges that the vote at one precinct was deducted from the vote as appeared from the return from said county, upon the ground of irregularity in the conduct of the election and fraud in the conduct of the inspectors of said election at said precinct. What has been said covers the matter of irregularity in the election. As to fraud in the conduct of inspectors at a precinct, it is not a ground upon which the canvassers can reject a return from the county which is genuine and bona fide. What is fraud in such an inspector is a question of law, so also the question whether such fraud by inspectors can vitiate an election is a question of law. Both are judicial questions, beyond the power of the board to determine.

As to the county of Manates:

As to the county of Manatee:

As to the county of Manatee:

The answer sets up that said board did not include the return from said county of Manatee in its determination and declaration of the vote cast at said election, upon the ground of irregularity and frand in the conduct of the election on said rady of November, 1876. The matter of irregularity and frand here alleged has already been considered in the case of other counties.

The answer alleges further as to this county, that the board did not include the vote cast therein, as it appeared on the face of the return, because it appeared in evidence that there was such irregularity and fraud in the conduct of the election in said county in receiving votes of persons not registered, and there being no registration-list furnished inspectors, and no designation of voting-places, and no notice of election, that said board could not ascertain the true vote.

A return of votes cast in a county at a general election, of which notice is given throughout the State by the proper executive authority, no notice of election by local officers (county) having been given, is not a return either irregular, false, or fraudulent, within the meaning of the statute regulating and defining the powers and duties of the State canvassers.

Like the question of the legality of a vote, this is a question of law to be determined by a court—a judicial question beyond the power and jurisdiction of a ministerial officer under the law, constitutional and statutory. A return of votes cast in a county at such general election, duly signed by acknowledged county officers, and regular in form, of which election no notice by county officers as to polling places is given, (the time of election being according to the general notice) is a return which the State canvassers must count, as it is neither irregular, false, nor fraudulent within the meaning of the statute. Whether such vote is effective to vest the office is a question judicial in its character, which this court upon mandamus should no more determine the har hould

As to the counties of Hernando, Orange, and Leon:

The answer states that a number of votes were deducted from the returns of votes cast in said counties because they were illegally cast, and that a vote was deducted from the return of Jefferson County because it was fraudulently cast. These, as we have before said, are questions which the law does not authorize the board to determine. They must count these returns as they admit them by the pleadings to be returns within the meaning of the statute. They nowhere allege the returns to be so "irregular, false, or fraudulent" that they cannot determine the vote cast from them.

As to the county of Clay:

As to the county of Clay:

The answer states that 35 votes were added upon the ground that said votes had been improperly rejected by the county canvassers of the vote of said county at said election, and that 6 votes cast were deducted upon the ground that said votes were cast by non-residents of the county. It follows from the view we have taken of the law applicable to the powers and duties of the State canvassers, that any statement of votes by precinct inspectors, which were not included in the canvass made by the county canvassing board, cannot be counted by the State board, the powers of the latter being confined by law to counting only such votes as are duly returned by the county board. Such votes cannot be legally included in the estimates of the State canvassing board.

The question of jurisdiction raised in the pleadings, as well as the other questions of practice and power, are all adjudicated in the case of the State on the relation of Bloxam vs. The Board of State Canvassers, 13 Fla., 74, 5-6, and it is unnecessary to repeat here what is there said.

Under the pleadings, and the constitution and the statute as applied to them, our judgment is that the demurrer must be sustained and the peremptory writ must be awarded.

our judgment is that the demurrer must be sustained and the peremptory with must be awarded.

Whereupon the said respondents, Cowgill and McLin, by their attorney, made and entered a motion herein in the words and figures following, to wit:

And the said respondents, McLin and Cowgill, come and move the court to file an amended return to the alternative writ issued in this case, setting forth among other things the character of the returns mentioned therein, as the same appear upon the face therof.

And afterward, to wit, on the 23d day of December, A. D. 1876, the said motion having been withdrawn, the judgment of the court herein was entered in the words and figures following:

STATE OF FLORIDA ON THE RELATION OF GEORGE F. DREW, plaintiff,

SAMUEL B. MCLIN, SECRETARY OF STATE, WILLIAM ARCHER Cocke, attorney-general, and Clayton A. Cowgill, comptroller of the State of Florida, respondents.

This day came the parties, by their attorneys, and thereupon the matters of law arising upon the relator's demurrer to the answers, original and amended of the respondents, being argued, it seems to the court that he said answers and the matter therein contained are not a sufficient answer in law to the alternative writ issued

herein, and that said return is insufficient. Therefore it is considered that a peremptory writ be awarded, directed to the said Samuel B. McLin, secretary of state. William Archer Cocke, attorney-general, and Clavton A. Cowgill, comptroller, board of canvassers of election of the State of Florida, commanding them that they forthwith meet and convens and re-assemble as a board of State canvassers in the office of the secretary of state, to canvass and count all election returns on file in the said office of the secretary of state of the said election for the office of governor, held on the 7th day of November, A. D. 1876, and that as such board of State canvassers they "canvass and count the returns for said office from each and every of the counties of this State, wherein an election was held for said office, and especially, that they do canvass and count the said election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe, and that they determine from a canvass and count and examination and tabulation of all the votes cast for said office of governor at said election received at the office of the State, as shown by the election returns of said election received at the office of the secretary of state, who has been elected by the highest number of votes to the said office of governor, as shown by the said returns, and that they do, as such board, make and sign a certificate, as required by law, containing in words and figures, written at Ill length, the whole number of votes given at said election as shown by said returns for the said office of governor of the State of Florida, and the number of votes given for each person voted for for said office, and in said certificate declare the result of the said election for governor of the said State.

And that they do perfectly execute this writ on or before the 27th day of December, A. D. 1876, and how they shall have executed it make return to our supreme cont on that day by four o'clock p. m. in writing, to be filed in the clerk's office of s

ber, A. D. 1876, and how they shall have executed it make return to our supreme court on that day by four o'clock p. m. in writing, to be filed in the clerk's office of said court.

The section of the statute defining the powers and duties of the board of canvassers which the court construed in this case is as follows:

SEC. 4. On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. If any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shalls occurrify, and shall not include such return in their determination and declaration; and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers. The said board shall make and sign a certificate, containing, in words written at full length, the whole number of votes given for each office, the number of votes given for each person for each office, and for member of the Legislature, and therein declare the result, which certificate shall be recorded in the office of the secretary of state in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be pub

FRED. T. MYERS, Clerk Supreme Court of Florida.

In the supreme court of Florida.-Special term, 1876-'7.

THE STATE OF FLORIDA ON THE RELATION OF GEORGE F. Drew

Samuel B. McLin, secretary of State, Clayton A. Cowgill, comptroller, and William Archer Cocke, attorney-general of the State of Florida.

WESTCOTT, J., delivered the opinion of the court:

Westcorr, J., delivered the opinion of the court:

The court propose not only to dispose of the motion in this case made and submitted this morning, but also to announce our views in reference to the whole subject-matter of what is called a return to the peremptory writ in this cause.

The first and only general question involved in this whole matter is, What is in form and substance the legal and proper paper to be filed by a respondent in response to a peremptory writ of mandamus?

The second question is, Have the respondents complied with the law in this re-

sponse to a peremptory writ of mandamus?

The second question is, Have the respondents complied with the law in this respect?

The third question is, In case they have or have not complied with the law, what is the proper order to be made by the court in this behalf?

To the first question, What is the legal and proper paper to be filed by a respondent in response to a peremptory writ of mandamus? Upon this question there is no conflict in the authorities. "There is strictly no return to a peremptory writ. It is to be obeyed, and a certificate is made of what has been done." This is the language of Mr. Justice Woodward in delivering the opinion of the supreme court of Iowa, (9 Iowa, 335.) and such is the view announced by all the courts. English and American, so far as the cases decided by them upon the subject have been examined by us. (Tapp. on Man. 61, 389, 445, and 456.) The granting "a peremptory writ implies that the party has been fully heard, and therefore he can allege no reason why he has not obeyed it." Such is the language of Chief-Justice Ruffin, of the supreme court of North Carolina, in the case of The State vs. Robert Jones et al. (I Ired., 414.) If such be the necessary inference, and in this case such inference corresponds with the fact, for the parties have been fully heard, then the pleadings, so far as the propriety of granting the writ is concerned, and as to matters of defense to the action proper, are closed, and the necessary result is that no such matter can be considered or be made the subject-matter of any response to this peremptory writ.

We have to apply these plain, simple principles of law to what here purports to be a response to the peremptory writ. The first paper which we have on file connected with what purports to be a "return" to the writ is the certificate which constitutes the evidence and statement of a canvass made by the board of State canvassers of votes cast at a general election held in this State on the 7th of November, A. D. 1876. The statute regulating this sub

law imposes upon him, and it should be on the files of his office as evidence of the fact that the certificate recorded and published by him is a correct capy of the original, and that his duty in this respect has been properly discharged. As to this paper, therefor, it is improperly and illegally on the files of this court to send it as it is the manifest duty of this office to receive and tile it. Therefore it is the order of the court that the clerk of this correct with paper, therefore it is the order of the court that the clerk of this correct with paper received to transmit to said officer at the same time a certified copy of so much of this opinion as refers to the proper place of deposit of this certificate.

The second paper on file connected with what purports to be a "return" is what is called a "protest" of the respondents Cowgill and McLin. This court is mot, and should not be, offended at the filling of any respectful and proper protest for the protest of the protest of the protest will always, when so filed, receive that anthorize such action. Such protest will always, when so filed, receive that the hands of this court. In this case, the matter of jurisdiction which this "protest" proposes again to raise was made the subject of defense by the respondents Cowgill and McLin. We have heard them fully. We have determined that we have jurisdiction. It is our duty to enforce it. It is the duty of the respondents to of defense as to which these parties have been already heard, it is not properly here. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as to this matter. We cannot hear further argument as a so which the major and the supple duty of the respondents is to o

At a supreme court for the State of Florida, continued and held at the capitol, in the city of Tallahassee, pursuant to adjournment, on Tuesday, the second day of January, in the year of our Lord one thousand eight hundred and seventy-seven. Present, Hon. Edwin M. Randall, chief.justice; Hon. James D. Westcott jr., Hon. R. B. Van Valkenburgh, associate justices.

THE STATE OF FLORIDA, ON THE RELATION of George F. Drew,

Samuel B. McLin, Secretary of State, Clayton A. Cowgill, comptroller, and Will-iam Archer Cocke, attorney-general of the State of Florida.

the State of Florida.

And now, on reading and filing the certificate of the respondents, under date of January 1, 1877, and the additional certificate of the respondents, filed this day, and the relator not objecting, it is considered by the court that the said respondents have substantially complied with the mandate of this court in this behalf. But because the respondents have incorporated in their said certificate a detailed statement of votes cast in the several counties at the late election, which said detailed statement was not required by the order of this court, and with which this court in this proceeding has no concern; and in the making and incorporating such statement in their said certificate, the said respondents have unnecessarily encumbered the record of this court with matter not pertinent or material; it is therefore ordered by this court, of its own motion, that all such detailed statements be, and the same is, hereby quashed and struck out, leaving and saving the rest and residue of said response to stand as a substantial compliance with the requirements of the law as to the matter before this court. It is further considered and adjudged that the respondents Samuel B. McLin and Clayton A. Cowgill pay the costs of this proceeding.

I, Fred. T. Myers, clerk supreme court of Florida, do hereby certify that the above is a true extract from the minutes of said court, and a correct copy of the final order in the case of George F. Drew vs. The Board of State Canvassers for Florida.

Witness my hand and the seal of said court, at Tallahassee, Florida, this 10th day January, A. D. 1877.

[SEAL.]

FRED. T. MYERS. FRED. T. MYERS, Olerk Supreme Court of Florida.

### EXHIBIT A.

Presidential electors—Frederick C. Humphries, Charles H. Pearce, William H. Holden, Thomas W. Long.

For governor—Marcellus L. Stearns.
For lieutenant-governor—David Montgomery.
For Congress, first district—William J. Purman.
For the assembly, Leon County—Denard Quarterman, William F. Thompson, William H. Ford, Edmund C. Weeks.

#### EXHIBIT C.

Certificate of the result of election, to be signed by inspectors and clerk of election.—(See section 23 of the general election law.)

State of Florida, Leon County:

We, the undersigned, inspectors and clerk of an election held at Richardson's S. H., in the county of Leon, and State aforesaid, on the 7th day of November. in the year of our Lord, 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872, do hereby certify that the result of the said election was as follows, namely:

That the whole number of votes cast for electors of President and Vice-President was 186, of which Frederick C. Humphries received 177 votes; Charles H. Pearce received 177 votes; James E. Yonge received 177 votes; Thomas W. Long received 177 votes; James E. Yonge received 9 votes; Wilkinson Call received 9 votes; Robert B. Hilton received 9 votes is Robert Bullock received 9 votes.

For governor of the State of Florida, Marcellus L. Stearns received 177 votes; George F. Drew received 9 votes.

For lieutenant-governor of said State, David Montgomery received 177 votes; Noble A. Hull received 9 votes.

For Representatives in Congress, William J. Purman received 177 votes; Robert H. M. Davidson received 17 votes; William H. Ford received 177 votes; William F. Thompson received 177 votes; William H. Ford received 9 votes.

For constables, Madison G. Gardiner received 105 votes; Bradley Robinson, 105 votes; Taylor Sherman, 105 votes; Sidney A. Trent, 105 votes; Robert S. Cox, 105 votes; Taylor Sherman, 105 votes; Senjamin Scott, 105 votes; Benjamin Rollins, 105 votes; Richard Pooser received 105 votes; Christopher Gray, 105 votes; Ballen Twine, 105 votes; Richard 9 votes; Jerly Bentley, 9 votes; Samuel Lockman, 9 votes; Jacob Willey, 105 votes; Benjamin Scott, 105 votes; Samuel Lockman, 9 votes; Charles Newburn, 9 votes; Joseph Perkins, 9 votes.

Witness our hands, at Richardson's, in the county aforesaid, this 7th day of November, A. D. 1876.

JOSEPH BOWES, Inspector of Election. ISAAC DENT, Inspector of Election. LAWRENCE R. BOOTH, Inspector of Election. WILEY JONES, Olerk of Election.

STATE OF FLORIDA, Leon County:

I, Charles H. Edwards, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the original return of election held at Richardson school-house precinct No. 13, in said county, on the 7th day of November, 1876, on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 5th day of December, A. D. 1876.

[SEAL]

(Indorsed:) No. 13. Exhibit C. E. L. P. December 13, 1876. Filed November 9, 1876. E. L. Edwards. EXHIBIT 1.

I, Samuel B. McLin, secretary of state, do hereby certify that the within is a correct transcript of the original return now on file in the office of secretary of state.

ate.

Witness my hand and the great seal of the State this December 13th, A. D. 1876.

SAM'L B. MCLIN,

Secretary of State.

Certificate of the county-canvassers. (See section 24, act of August 26, 1868.)

Certificate of the county canvassers. (See section 24, act of August 26, 1868.)

STATE OF FLORIDA,
Alachus County:

We, the undersigned, Louis A. Barnes, sheriff county stated, and Irving E. Webster, clerk of the circuit court of the county aforesaid, and William H. Belton, a justice of the peace of the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid on the eleventh day of November, the same being four days after the general election held in the county of Alachua, and State aforesaid, on Tuesday, the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six, the under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections." approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor was 3,237, as follows, viz: Marcellus L. Stearns received 1,971; George F. Drew received 1,260.

That the whole number of votes cast for lieutenant-governor was 3,237, as follows: David Montgomery received 1,971; Noble A. Hull received 1,984; William H. Holden received 1,944; Thomas W. Long received 1,984; William H. Holden received 1,267;
Robert Bullock received 1,267.

That the whole number of votes cast for Representatives in Congress was 3,242, as follows, viz: Horatio Bisbee, jr., received 1,972; Jesse J. Finley received 1,255, J. Willis Menard received 15.

That the whole number of votes cast for State senator was 2,218, as follows, namely: Josiah T. Walls received 1,974; Thomas F. King received 1,243; J. Willis, Menard received 1.

That the whole number of votes cast for member of the assembly was 6,444, as follows, namely: Leonard G. Dennis received 1,963; William K. Cessna received 1,961; J. M. Sparkman received 1,244; P. B. H. Dudley received 1,244; T. C. Gass received 16; George J. E. B. Washington received 16.

Witness our hands and seals of office at Gainesville, in the county aforesaid, this thirteenth day of November, A. D. 1876.

November, A. D. 1876.

L. A. BARNES,
Sheriff County Court of — County.
IRVING E. WEBSTER,
Clerk of the Circuit and County Courts of Alachua County.

Justice of the Peace of Alachua County.

Deduct on account of illegal votes at Waldo, 13 votes from the Tilden electors and 4 votes from the Hayes electors.

Canvassed. (Indorsed:) Exhibit 1. E. L. P. Dec. 14, 1876. Alachua.

#### EXHIBIT 2 A.

Certificate of the county canvassers. (See section 24, act of August 6, 1868.)

STATE OF FLORIDA,

Baker County:

Baker County:

We, the undersigned,
stated, and M. J. Coxe, clerk of the circuit court of the county aforesaid, and John
Durman, a justice of the peace of the county above ment-oned, constituting the
board of county canvassers in and for the county stated, do hereby certify that we
met at the office of the clerk of the circuit court of the county aforesaid, on the 10th
day of November, the same being three days after the general election held in the
county of Baker, and State aforesaid, on Tuesday, the 7th day of November A. D.
1876. under and by virtue of an act entitled "An act to provide for the registration
of electors and the holding of elections," approved August 6, 1868. and an act amendatory thereto, approved Febrnary 27, 1872. We do hereby certify from the returns
on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor of Florida was 378, as follows,
namely: George F. Drew received 236 votes; Marcellus L. Stearns received 142
votes.

That the whole number of votes cast for lieutenant-governor was 380, as follows, namely: Noble A. Hull received 238 votes; David Montgomery received 142 votes. That the whole number of votes cast for presidential electors was 381, as follows, namely: Wilkinson Call received 238 votes; James E. Yonge received 238 votes; Robert B. Hilton received 238 votes; Robert Bullock received 238 votes; Frederick C. Humphries received 143 votes; William H. Holden received 143 votes; Charles H. Pearce received 143 votes; Thomas W. Long received 143 votes; Charles That the whole number of votes cast for Representative in Congress was 381, as follows, viz: Jesse J. Finley received 238 votes; Horatio Bisbee, jr., received 143 votes.

votes.

That the whole number of votes cast for member of Assembly was 370, as follows, viz: Bryant H. Gurganus received 222 votes; George P. Canova received 148 votes.

Witness our hands and seal of office, at Sanderson, in the county aforesaid, this 10th day of November, A. D. 1876.

Judge of the County Court of Baker County. M. J. COXE, Clerk of the Circuit Court and County Courts of Baker County JOHN DORMAN,
Justice of the Peace of Baker County.

I, Samuel B. McLin, secretary of state, do certify that the within is a correct transcript of the original returns now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876.

[SEAL.]

SAML. B. McLIN,

## Ехнівіт 2 В.

I, Samuel B. McLinn, secretary of state, do certify that the within is a correct transcript of the original return now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876.

[SKAL.] SAML B. McLIN.

Sec. State.

Certificate of the county canvassers. (See section 24, act of August 6,1868.)

STATE OF FLORIDA,
Baker County

We, the undersigned, — —, county judge of the above stated county, and M. J. Coxe, clerk of the circuit court of the said county, and John Dimin, a justice of the peace of the said county, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit count of the county aforesaid, on the 13th day of November, the same being sixth day after the general election held in the county of Baker, and State aforesaid, on Tuesday, the 7th day of November, A. D. 1876, under and by true of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor was 378 votes, as follows, viz: Rollows, viz: Noble A. Hull received 238 votes; David Montgomery received 142 votes.

That the whole number of votes cast for precidential electors was 381 votes.

That the whole number of votes cast for precidential electors was 381 votes.

That the whole number of votes cast for precidential electors was 381 votes.

That the whole number of votes cast for presidential electors was 381 votes, as follows, viz: Wilkinson Call received 238 votes; James E. Yonge received 238 votes: Robert B. Hilton received 238 votes; Robert Bullock received 238 votes; F. C. Humphries received 143 votes; C. H. Pearce received 143 votes; W. H. Holden received 143 votes; T. W. Long received 143 votes.

That the whole number of votes cast for Representatives in Congress was 381 votes, as follows, namely: Jesse J. Finley received 238; Horatio Bisbee, jr., received 143.

That the whole number of votes cast for member of the assembly was 370 votes, as follows, namely: B. H. Gurganes received 222; G. P. Canova received 148.

Witness our hands, at Sanderson, in the county aforesaid, this 13th day of November, in the year of our Lord 1876.

Judge of the County Court of -M. J. COXE, Olerk of the Circuit and County Courts of Baker County. JOHN DIMIN, Justice of the Peace of Baker County,

#### EXHIBIT 2 C.

I, Sam'l B. McLin, secretary of state, do certify that the within is a correct transcript of the original return now on file in the office of the secretary of state.

Witness my hand and the great seal of the State this December 13, 1876.

[SEAL]

SAM'L B. MCLIN,

Certificate of the county canvassers. (See section 24, act of August 6, 1868.) STATE OF FLORIDA,

Baker County:

We, the undersigned, Elisha W. Driggers, judge of the county court of the county stated, and Andrew A. Allen, sheriff of the circuit court of the county aforesaid, and William Green, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 13th day of November, the same being six days after the general election held in the county of Baker, and State aforesaid, on Thesday, the 7th day of November, in the year of our Lord 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor was 219 votes, as follows, namely: Marcellus L. Stearns received 130 votes; George F. Drew received 69 votes.

That the whole number of votes cast for lieutenant-governor was 219 votes as follows, namely: David Montgomery received 130 votes; Noble A. Hull received 89 votes.

So votes; Namely: David Hongomery received 130 votes; Note A. Hill received 89 votes.

That the whole number of votes cast for presidential electors was 219 votes, as follows, namely. Frederick Humpbries received 130 votes; Wilkiam H. Holden received 130 votes; Thomas W. Long received 130 votes; Wilkiams Call received 89 votes; Abbert B. Hilton received 89 votes; Robert Bullock received 89 votes; Charles H. Pearce received 130 votes.

That the whole number of votes cast for Representatives in Congress was 219 votes, as follows, namely: Horatio Bisbee, jr., received 130 votes; Esses S. Finley received 89 votes.

That the whole number of votes cast for member of assembly was 215 votes, as follows, namely: George P. Canova received 131 votes; Bryant W. Gurganus received 84 votes.

Witness our hands and seals of office, at Sanderson, in the county aforesaid, this 13th day of November, A. D. 1876.

Judge of the County Court of Baker County. ANDREW A. ALLEN.
Sheriff of the Circuit and County Courts of Baker County. WILLIAM GREEN, Justice of the Peace of Baker County.

Canvassed:
Amended by canvassing all the precinct returns.
SAML. B. McLIN, Chairman.

143 Hayes electors. 238 Tilden electors.

I, Samuel B. McLin, secretary of state, do certify that the within transcript is a true copy of the original return now on file in the office of the secretary of state.

Witness my hand and great seal of the State, this December 13, 1876. Constable vote not included.

[SEAL.]

SAML. B. MCLIN

### EXHIBIT No. 53.

STATE OF FLORIDA, Baker County:

Baker County:

Be it known that, on the 10th day of November, A. D. 1876, that the following notice commanding respectively M. F. Coxe, clerk of the circuit court in and for Baker County, and John Dorman, a justice of the peace in and for said county, to be and appear at the village of Sanderson for the purpose of canvassing the votes polled at an election held on the 7th day of November, A. D. 1876, in said county, when a President, Vice-President of the United States, and a governor and lieutenant-governor of the State of Florida, and a member of the Forty-fifth Congress of the United States, and a member of the General Assembly of the State of Florida, and constables in and for Baker County were voted for; that said notices were in words and figures as follows:

Sanderson Florida.

SANDERSON, FLORIDA, November 10, 1876.

M. J. COXE, Clerk of the Court:

Meet me at Sanderson on Monday, November 13, 1876, to canvass the vote of Baker E. W. DRIGGERS

County Judge. Sanderson, Fla, November 14, 1876.

JOHN DORMAN, Justice of the Peace, Baker County:

OHN DORMAN.

Justice of the Peace, Baker County:

Meet me at Sanderson November 13, 1876, to canvass the vote of Baker County.

E. W. DRIGGERS,

Judge Probate.

That on Monday, 13th November, A. D. 1876, M. J. Coxe, clerk as aforesaid, and John Dorman, justice of the peace as aforesaid, did respond to said notice in their own proper person, and were willing, prepared, and desirous of canvassing the said votes polled at the election aforesaid; that immediately upon the arrival of the said Coxe and the said Dorman, that E. W. Driggers, judge of probate of said county of Baker, and author of the notices above written, and A. A. Allen, sheriff of said-county of Baker, did at once absent themselves from said village of Sanderson, and by such absence did prevent the organization of the board of canvassers of said county; that every effort was made to secure their presence, but without avail; that the said Coxe and the said Dorman remained in the village of Sanderson the entire day, hoping for the return of one or both of such officers, that the convass might proceed according to law; that said Driggers and said Allen were absent for some hours, and did not return until three or four o'clock, p. m.; that immediately upon their return the said clerk did, in the presence of said Dorman, request the judge of probate to aid them in the organization of the board of canvassers and to proceed to make the canvass of said vote polled as aforesaid, and that the said Driggers, judge of probate as aforesaid, positively refused to participate in the canvass; that upon his refusal the said Allen, sheriff as aforesaid, was requested to act and positively refused to act as one of the board of canvassers; that after both officers whose duty under the law it was to have aided in said canvass had positively declined to do so,

and six days, within the law, requires the canvass to be made having nearly expired, that the said Coxe and the said Dorman did make an earnest effort to procure another justice of the peace to aid them in making the canvass, but were unable to do so, that having failed to procure the aid of an additional justice of the peace, that they, the said Coxe and the said Dorman, proceeded to canvass the said votes.

M. J. COXE, [L. s.]

Clerk Circuit Court, Baker County.

I do certify that I did request E. W. Driggers, judge of probate in and for the county of Baker, to assist in the organization of the board of canvassers to canvass the vote of Baker County polled at the election above mentioned, and that he positively refused to do so. And I certify that on his refusal that I did make the same request of A. A. Allen, sheriff of said county of Baker, to participate in the organization of said board of canvassers and to aid in canvassing the votes polled at the election above mentioned, and that he refused so to do; and the said M. J. Coxe made the same request of them, was likewise refused; and I further certify that the facts set forth above as true.

JOHN DORMAN, [L. S.]
Justice of the Peace in and for the County of Baker.

I, W. D. Bloxham, secretary of state of Florida, do hereby certify that the above is a true and correct copy of the certificate on file in my office relating to the can vass of the votes of Baker County, in said State, at the late election held for President and Vice-President.

In testimony whereof I hereunto set my hand and cause the great seal of the State to be affixed. Done at Tallahassee, the capital, this the 19th day of January, A. D. 1877.

W. D. BLOXHAM

I, Samuel B. McLin, secretary of state, do certify that the within is a correct transcript of the original returns now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876. (Constables not included.)

[SEAL]

SAM'I. B. McLIN

SAM'L B. McLIN, Secretary of State. Certificate of the county canvassers. (See section 24 of the general election law.)

STATE OF FLORIDA, Clay County:

Olay County:

We, the undersigned, Ozias Buddington, county judge of the above-stated county, and O. A. Buddington, clerk of the circuit court of the said county, and Sammel Jackson, a justice of the peace of the said county, constituting the board of county can vassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid on the 9th day of November, in the year of our Lord 1876, the same being two days after the general election held in the county of Clay, and State aforesaid, on Tuesday, the 7th day of November, in the year of our Lord 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—There was returned at Green Cove Springs precinct No. 1, by the inspectors at the election, the following votes, to wit:

For Samuel J. Tilden, for President, 74 votes.

For Thomas A. Hendricks, Vice President, 74 votes.

For Thomas A. Hendricks, Vice President, 74 votes, as follows, viz: George F. Drew received 287 votes; and Marcellus L. Stearns received 120 votes.

For Vice-President, Thomas Hendricks, 74 votes.

That the whole number of votes cast for lieutenant-governor was 406 votes, as follows, viz: Noble A. Hull received 287 votes; David Montgomery received 119 votes:

That the whole number of votes cast for presidential electors was 409 votes, as follows, viz: Noble A. Hull received 287 votes; David Montgomery received 119 votes:

That the whole number of votes cast for presidential electors was 409 votes, as follows, viz: Noble A. Hull received 287 votes; David Montgomery received 119 votes:

follows, viz: Noble A. Hull received 257 votes; David Montgomery received 119 votes:

That the whole number of votes cast for presidential electors was 409 votes, as follows, namely: Wilkinson Call received 256 votes; James E. Yonge received 257 votes; Robert B. Hilton received 257 votes; Robert B. Hilton received 122 votes; F. C. Humphries received 122 votes; C. H. Pearce received 121 votes; W. H. Holden received 122 votes; T. W. Long received 122 votes; W. H. Holden received 122 votes; T. W. Long received 122 votes; M. H. Holden received 125 votes; W. H. Holden revelved 125 votes; W. H. Holden revelved 125 votes; M. Sellows, which we did not count in our returns:

George F. Drew, for governor, received 29 votes; Marcellus L. Stearns, for governor, received 6 votes.

Noble A. Hall, for lieutenant-governor, received 29 votes; David Montgomery, for lieutenant-governor, received 29 votes; David Montgomery, for lieutenant-governor, received 3 votes; David Montgomery, Sames E. Yonge received 29 votes; Robert B. Hilton received 6 votes.

Representatives in Congress: Jesse J. Finley received 29 votes; C. H. Pierce received 6 votes.

State senator: John C. Richard received 28 votes; Benjamin E. Tucker received 6 votes.

Ever member of the assembly: Mathew A. Knight received 29 votes; George N. Ever member of the assembly: Mathew A. Knight received 29 votes; George N.

6 votes.

For member of the assembly: Mathew A. Knight received 23 votes; George N. Borden received 11 votes.

For constable, M. R. Minton received 21 votes.

That the whole number of votes cast for Representative in Congress was 406 votes, as follows, namely; Jesse J. Finley received 256 votes; Horatio Bisby, jr., received 120 votes.

That the whole number of votes cast for State senator was 402 votes, as follows, namely; John C. Richard received 276 votes; B. E. Tucker received 126 votes, as follows, namely: John M. A. Knight received 251 votes; G. N. Bordin received 138 votes, as follows, namely: M. A. Knight received 251 votes; G. N. Bordin received 138 votes.

Witness our hands at Green Cove Springs, in the county aforesaid, this 9th day of November, A. D. 1876.

OZIAS BUDDINGTON,
County Judge of Clay County.
O. A. BUDDINGTON,
Clerk of the Circuit Court of Clay County.
SAMUEL JACKSON,
Justice of the Peace of Clay County.

Canvassed: 29 given to Tilden, No. 8 precinct; 4 illegal votes from Tilden; 6 votes given to Hayes electors; 2 from Hayes electors pro rata.

SAML. B. McLIN, Chairman.

EXHIBIT No. 8.

I, Samuel B, McLin, secretary of state, do certify that the within is a correct transcript of the original return now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876. (Constables not included.)

[SEAL.]

SAML. B. McLIN, Secretary of State.

Certificate of the county canvassers. (See section 24, act of August 6, 1863.) STATE OF FLORIDA, Duval County:

STATE OF FLORIDA,

Deval County:

We, the undersigned, William A. McLean, judge of the county court of the county stated, and Edwin Higgins, clerk of the circuit court of the county aforesaid, and John L. Edwards, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 10th day of November, the same being three days after the general election held in the county of Duval, and State aforesaid, on Tuesday, the 7th day of November, 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 8, 1868, and an act amendatory thereto approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—That the whole number of votes cast for governor of Florida was 3,800, as follows, viz: Marcellus L. Stearns received 2,288; George F. Drew received 1,502. That the whole number of votes cast for lieutenant-governor was 3,774, as follows, to wit: David Montgomery received 2,226; Noble A. Hull received 1,498.

That the whole number of votes cast for presidential electors was 3,804, of which Frederick C. Humphreys received 2,336; Tilliam H. Holden received 2,367; Charles H. Pearce received 2,336; Thomas W. Long received 2,366; Jamese E. Yonge received 1,437; Robert B. Hilton received 1,437; Robert Bullock received 1,437; Wilkinson Call received 4,436; Marcellus L. Stearns received 1.

That the whole number of votes cast for Representatives in Congress was 3,803, as follows, viz: Horatio Bisbee, jr., received 2,331; Jesse J. Finley received 1,463; J. Willis Menard received 4.

That the whole number of votes cast for member of the Assembly was 3,804, as follows, viz: Horatio Bisbee, jr., received 2,290; Joseph E. Lee received 2,296; Columbus Drew received 1,514; Joshua L. Burch received 1,507; Horatio Bisbee, jr., received

Judge of the County Court of \_\_\_\_ County.

EDWIN HIGGINS,
Clerk of the Circuit and County Courts of Duval County.

JNO. L. EDWARDS,
Justice of the Peace of Duval County.

We, Edwin Higgins, clerk of the circuit and county courts of Duval County, Florida, and John L. Edwards, justice of the peace of said county, and members of the canvassing board, do hereby further certify that William A. McLean, judge of the county court in and for said county, was present during the entire canvass of the returns of election, the result of which is contained in the foregoing certificate, and that he refused to sign the said certificate. We also certify that the said William A. McLean has made no objection to the correctness of said certificate.

Witness our hands and seals at Jacksonville, in said county, this 11th day of November, 1876.

EDWIN HIGGINS,
Clerk of the Circuit and County Courts of Duval County, Florida.
JNO. L. EDWARDS,
Justice of the Peace for Duval County, Florida.

State of the Peace for Duvat County, Florida.

State of Florida.

County of Duval, ss:

Be it remembered that on this 13th day of November, A. D. 1876, at ten o'clock a. m., I, clerk of the circuit court in and for said county, have duly recorded the foregoing certificate of county canvassers in the public records of said county, in the book required by law to be kept for that purpose, pages 16, 17, 18, 19, 20, 21, and 22.

In witness whereof I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL]

EDWIN HIGGINS, Olerk.

Canvassed the return after comparing it with the certified precinct returns.

SAM'L B. McLIN, Obsirman.

# MINORITY REPORT.

The following are the views of the minority of the committee as subsequently presented:

subsequently presented:

On the 4th day of December last the House of Representatives passed the following resolution:

"Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise."

On the following day the Speaker of the House appointed Messra. Thompson of

stenographers, clerks, and messengers, and be attended each by a deputy sergent at arms; and said committees shall have leave to report at any time, by ill or otherwise."

On the following day the Speaker of the House appointed Messrs. Thompson of Massachusetts, De Bolt of Missouri, Walling of Ohio, Hopkins of Pennsylvania, Woodburn of Nevada, and Dunnell of Minnesota the committee to proceed to Florida to investigate the recent election held therein and report the action of the canvassing board of said State.

The committee left the city of Washington on the morning of the 8th of December, and commenced their duties in Tallahassee on Wednesday, the 13th of the month. Hon. S. B. McLin, secretary of the State of Florida, was the first witness. He was examined in regard to the original tabulated statement that was make up on the night of the 5th and morning of the 6th of December by the clerks of the board of State canvasers. This statement is Exhibit 41 in the printed testinony taken by the committee.

To the end that a construction might be given to the resolution under which the committee were appointed and were then beginning to act, Mr. Woodburn offered the following resolution:

"Resolved, That it is the sense of this committee that under the resolution of the House of Representatives of the United States creating it and defining its duties it is anthorized only to investigate the manner of the election of the electors for President and Vice-President in the State of Florida at the late election, and the action of the returning or canvassing board of said State in reference thereto, and to report to the said House of Representatives all the facts essential to an honest return of the votes received by the said electors of the said State of Florida."

Mr. HOPKINS presented the following resolution as a substitute for the foregoing: "Resolved, That the resolution under which this committee acts is sufficiently ex-

plicit as to the powers and duties of the committee, and cannot be limited or restricted by any action of ours."

Adopted.

YEAS—Messrs. De Bolt, Walling, and Hopkins—3.

NAYS—Messrs. Woodburn and Dunnell—2.

The following resolution was then offered by Mr. DUNNELL:

"Resolved, That the secretary of state of the State of Florida be requested to furnish to this committee certified copies of all documents, affidavits, and other papers furnished him or the canvassing board of the State, and upon which said board acted in determining and declaring who were chosen electors for President and Vice-President of the United States for the said State of Florida at the election held November 7, 1876, and that said copies be made a part of our report to the House of Representatives."

The motion was lost.

YEAS—Messrs. Woodburn and Dunnell—2.

NAYS—Messrs. Woodburn and Dunnell—2.

NAYS—Messrs. De Bolt, Walling, and Hopkins—3.

This action of the majority was to the minority a matter of very great surprise. The committee had been sent to Florida to investigate the recent election in that State, and to report the action of the returning board therein. The character of this action would unmistakably depend upon the evidence which the board had before it when the canvass was made. Frands were charged in this and that county, democratic as well as republican. Irregularities more or less fatal to a fair expression of the will of the people had also been charged. These alleged frauds and irregularities had been accompanied with affidavits and other proofs. The canvassing board had acted upon them, and would have made the canvass in violation of law if it had not done so. The minority desired to know precisely the grounds upon which the board had made its important finding and then judge, whether it acted honestly or otherwise, and whether or not its findings could be sustained by the laws of the State.

This request of the minority for these papers and documents on file in the office of the secretary of state was twice refused by

We submit that the investigation made in Florida was not complete; that the committee do not and cannot report "all the facts" essential to a fair understanding by the people.

When twenty or more precincts are attacked before the State canvassing board and the board acts upon the frauds or irregularities alleged to have been committed therein, being governed by affidavits laid before it and by oral testimony, no one can reasonably contend that an investigation which shall deserve a just consideration can be made by ignoring every particle of evidence upon which the board acted, when but ten of these precincts are inquired into and the other ten shunned as if from fear that disclosures there might overturn the findings in the other ten, who will claim that such an investigation deserves the honor of the name? The want of these documents thus withheld was felt at every step of our investigation, and rendered us unable, in many instances, to make that defense of the canvassing board which it justly deserved. We believed then, as we do now, that the board acted with singular fidelity and the utmost fairness. The majority of that board, in many of the most important and sharply contested cases, relied upon the democratic attorney-general and acted under his advice and with him.

Attorney-General Cocke has been lauded in the democratic press of the country for his great learning and distinguished personal integrity.

We needed and sought the evidence which was deemed sufficient by him and the balance of the board. The majority had the assistance of the chairman of the democratic state committee of Florida and of a democratic lawyer from New York, who were well supplied with copies of papers and ample data touching the different precincts which underwent investigation.

Unable to obtain the affidavits and other papers for our guidance an attempt was made to obtain the minutes of the board made during its final session. We here copy from page 70 of the printed testimony:

WILLIAM LEE APTHORPE sworn and examined.

By Mr. DUNNELL:

Question. What is your name?

Answer. William Lee Apthorpe.
Q. Where do you reside?

A. In Tallahassee, Florida.
Q. State whether or not you were the clerk of the canvassing board of the State of Florida during this late canvass of the electoral and State votes. A. I was.
Q. State whether or not you kept the minutes of the canvassing board.
A. I did.
Q. Have you those minutes in your possession ?

Q. Have you those minutes in your possession?

A. I have.
Q. Will you please read those minutes?
A. The whole of the minutes are pretty voluminous. I have brought the minutes of the first and the last day. The first day's proceedings simply show the organization of the canvassing board and the last day's proceedings the finding of the board.

Mr. Dunnell. Will you now read to the committee the minutes of the final action of the canvassing board? I mean their action upon the contested-election cases passed upon by the board at that final meeting, and upon whose final action the result of the election held November? was proclaimed in the State

The CHAIRMAN. I will simply say that that sufficiently appears from the tabulated statement of the canvassing board and the returns made by the canvassing board on the certificates of the county returns, already in evidence. The reading of the minutes is, therefore, not allowed.

Q. (To the witness.) Do you say that the other minutes are the minutes of testimony?

Q. Affidavits and oral testimony on either side.
Q. Affidavits and oral testimony?
A. Yes, sir.
Q. And the organization of the board?
A. Yes, sir.

It is not true that the indorsements on the county returns give the reasons therefor? The grounds upon which the action was taken were our great need. These minutes were of comparatively little value to us in our investigations yet they do give the history of the canvass and the vote of the different members of the board. We here give place to these minutes. They show the action of the canvassing board in each case:

Certified copy of minutes of proceedings of State board of canvassers at their final session, December 5 and 6, 1876.

TUESDAY, December 5-10. a. m.

Board met in private session. It was ordered that those counties which were not contested be first taken up and canvassed.

The following counties were then canvassed according to the face of the returns, namely: Brevard, Bradford, Calhoun, Dade, Escambin, Frankliu, Gadsden, Marion, Putnam, Polk, Santa Rosa, Sumter, Saint Johns, Suwannee, Taylor, Volusia, Wakulas, Walton, and Washington—twenty-four counties.

At two o'clock p. m. the board took a recess until four p. m., at which hour it reassembled and proceeded with the canvass.

BAKER COUNTY

was taken up and canvassed according to the precinct returns by unanimous vote of the board.

CLAY COUNTY.

Twenty-nine votes were added to and 4 illegal votes taken from the democratic electoral and State vote, and 8 votes were added to and 2 illegal votes taken from the republican vote; and with these amendments of the returns the county was canvassed by unanimous vote.

HERNANDO COUNTY.

Five illegal votes were deducted from the democratic electoral vote; and with this deduction the county was canvassed by unanimous vote.

NASSAU COUNTY.

Canvassed according to face of return by unanimous vote.

ORANGE COUNTY.

Seven illegal votes were deducted from the democratic electoral and State vote, and with this deduction the county was canvassed by unanimous vote.

JEFFERSON COUNTY.

Sixty illegal votes were deducted from the republican vote, and with this deduction the county was canvassed by unanimous vote.

LEON COUNTY.

Two illegal votes were deducted from the republican vote, and with this deduction the county was canvassed by unanimous vote.

MANATER COUNTY.

This entire county was thrown out of the canvass on account of the entire absence of any and all legal steps in preparation for the election and in holding the same. The vote stood as follows: The secretary of state and the comptroller for its rejection, and the attorney-general for retaining it.

DUVAL COUNTY.

This county was canvassed by comparing the county return with the several precinct returns, on account of the former not bearing the signature of the county judge. The vote stood: Secretary of state and comptroller for canvassing the county, attorney-general for rejecting it.

county, attorney-general for rejecting it.

HAMILTON COUNTY.

Eighty-three democratic votes and 58 republican which had been illegally added to the electoral vote, on the face of the return, were thrown out. Jasper precinct No. 2, giving 321 votes for George F. Drew and 183 votes for M. L. Stearns, for governor; 322 votes for N. A. Hull and 181 votes for D. Montgomery, for lieutenant-governor; 323 votes for the democratic electors and 185 votes for the republican electors; 320 votes for Jesse J. Finley and 184 votes for H. Bisbee, jr., for Congress; 235 votes for N. J. Patterson and 257 votes for J. Bell, for State senator; 167 votes for J. N. Reid, 255 votes for W. J. J. Duncan, and 29 votes for J. W. Grey, for member of the assembly, was thrown out of the canvass on account of gross violation of the election law by the inspectors in not completing the canvass without adjournment; in allowing unauthorized persons to handle the ballots and assist in the count; in adjourning over night and going to unother place, and in signing returns next day which they had not themselves made or verified and the contents of which they did not know. With these deductions the county was canvassed by unanimous vote.

MONROE COUNTY.

MONROE COUNTY.

Precinct No. 3, Key West, giving 401 votes to the democratic electoral and State tickets and 59 votes to the republican, was thrown out of the canvass on account of gross violation of the election laws by the inspectors in adjourning before the completion of the canvass and completing it the next day in a different place and without public notice. The vote on its rejection was unanimous, the attorney-general deciding in reply to a question put to him as to the legal effect of these violations of the law that it must be thrown out. With this deduction the county was canvassed.

ALACHUA COUNTY.

Seventeen illegal electoral votes (4 republican and 13 democratic) at Waldo precinct were thrown out unanimously. A vote was taken on retaining or throwing out Archer precinct No. 2, and the secretary of state and comptroller voting to retain it and the attorney-general voting to throw it out, it was retained and the county canvassed with the before-mentioned deductions.

# JACKSON COUNTY.

Campbellton precinct, giving for the republican electoral and State tickets 77 votes and for the democratic electoral and State tickets 291 votes, were thrown out of the canvass on account of violation of the election laws by the inspectors in removing the ballot-box from the election-room at the adjournment for dinner into an adjoining store and having it there unsealed and concealed from the public during said adjournment; in not counting the ballots at the close of the polls and comparing them with the number of names on the poll-list, and because only 76 republican ballots were counted out of the ballot-box, whereas one hunfired and thirty-three persons swear that they voted the full republican ticket at that poll. The vote of the board was as follows: Secretary of state and comptroller for rejecting it, attorney-general for retaining it.

Friendship Church precinct, giving for the republican electoral and State tickets 44 votes and for the democratic electoral and State tickets 145 votes, was thrown out of the canvass on account of violation of the election laws by the inspectors in placing the ballot-box in such a position as to be out of sight of the voter and of the public; in placing a supervisor at the window to receive the ballots instead of an inspector; in not making and completing the canvass at the polling-place and without adjournment and in view of the public, but in a bed-room two miles away, and in not counting the ballots and comparing them with the number of names on the poll-list. As to this precinct the vote of the board was as follows: The secretary of state and comptroller for rejecting it and the attorney-general for retaining it. With these deductions the county was canvassed.

The list of counties having now been gone through, at a little after twelve o'clock Tuesday night, the board, by unanimous vote, declared the State canvass concluded, and directed the clerk to prepare a certificate of the result. On suggestion of the

figures and verify the footings. He introduced Mr. Pasco, who examined and found said footings correct.

The certificate of the electoral vote having been prepared and verified, it was signed by two members of the board, the secretary of state and the comptroller, the attorney-general declining to sign it, saying that he would prepare a protest setting forth his reasons. The board then (at three o'clock on the morning of the 6th) adjourned to allow time for the clerical labor of preparing the certificate of the result of the canvass at large.

This, having been completed and verified, was signed on the 8th December as of date of the 6th, the day when the canvass was completed

WM. LEE APTHORPE,

Clerk of Board of Canvassers.

SAML. B. McLin, Secretary of State and Chairman of Board of Canvassers.

I do hereby certify that the above is a true copy of the minutes of the final session of the State board of canvassers State of Florida, held on the 5th and 6th days of December, A. D. 1876.

WM. LEE APTHORPE, Clerk of Board of Canvassers.

TALLAHASSEE, FLORIDA, December 12, 1876.

Saml. B. McLin, Secretary of State and Chairman Board of State Canvassers.

It has been claimed that the canvassing beard of Florida, in their canvass made in December last, acted in disregard of their former practice as well as against law. We here allude to Senate Report No. 611, of this session of Congress, to the testimony of Hon. William Archer Cocke, a member of the late canvassing board, a member of the democratic party, and recently appointed to a judgeship in Florida by the new democratic governor of that State. See page 5.

Testimony of William Archer Cocke.

Question. As such attorney general, are you a member of the State canvassing board!

Question. As such attorney-general, are you a member of the State canvassing board?

Answer. I am.
Q. And you served in that capacity at the recent election?
A. I served in that capacity in relation to the late election.
Q. And also at any former election of 1574.
Q. Did the board of 1874, in canvassing the returns, go behind the returns in any sense to ascertain the true yote?
A. I believe they did, sir; but I am not absolutely certain. I think there was a contest in reference to the returns from Jefferson and Leon Counties, and the returns from each county came before the circuit court; and the difficulty was that it was thought that the county canvassers had not sent up true returns from some precincts; the circuit court directed the county canvassers from some precincts; in Jefferson, and in this county, to send up full copies of the returns; those copies came up, and the board acted upon those copies which it had gotten through the intervention of the court, the board not appearing by counsel or in any any, but by parties outside. My impression now is that the board in 1874 acted from these returns which had been sent to the board through the action of the circuit court of this circuit. turns which had been sent to the board through the action of the circuit court of this circuit.

Q. Did you at that time give an opinion as to the power of the board in the canvassing of the returns?

A. I did, sir.

Q. Did the board receive this opinion in 1874 and act upon it?

A. They acted upon it.

Q. Did the board this year proceed upon the same theory—upon your opinion?

A. Yes, sir; I think they did.

Q. Did the board receive this opinion in 1874 and act upon 187
A. They acted upon it.
Q. Did the board this year proceed upon the same theory—upon your opinion?
A. Yes, sir; I think they did.

We now call attention to section 4 of an act of the Legislature of Florida approved Angust 6, 1886, entitled "An act to amend an act to provide for the registration of electors and the holding of elections."

"SEC, 4. On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties where in elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, of the secretary of state, attorney-general, and the secretary of state, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. If any such returns shall be choven or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers. The said board shall make and sign a certificate, containing in words written at full length the whole number of votes given for each folice, the number of votes given for each folice, the number of votes given for each folice, the number of votes given for each folice and the secretary of state in a book to be kept for that purpose, and the secretar

IRREVERSIBLE DECISION OF THE CANVASSING BOARD.

This irreversible decision of the legal canvassing board of the State of Florida, which was required by the statute to find out and declare the result of the election, is to be found in authentic and conclusive form in its certificate of the result of the canvass made by a majority of the board in pursuance of the statute and duly recorded as required by the law in the office of the secretary of state.

A duly authenticated copy of this certificate, accompanying the certificate of the Hayes electors, was duly forwarded to and is now in the possession of the President of the Senate. That certificate is as follows:

Office of Secretary of State, Tallahassee, Florida, December 6, 1876.

Tallahassee, Florida, December 6, 1876.

We, the undersigned, Samuel B. McLin, secretary of state; Clayton A. Cowgill, comptroller, and William Archer Cocke, attorney-general of said State constituting a board of State canvassers in and for said State of Florida, do hereby certify that we met at the office of the secretary of state, at the capitol, in the city of Tallahassee, on the 27th day of November, A. D. 1876, and proceeded to canvass the returns of a general election held in the State aforesaid on the 7th day of November, A. D. 1876, for electors of President and Vice-President of the United States.

We do certify, from the returns on file in the office of the secretary of state aforesaid, that the whole number of votes cast at said election for electors as aforesaid, was forty-four thousand six hundred and twenty-seven, (44,627,) of which—
Frederick C. Humphries received twenty-three thousand eight hundred and forty-four (23,849) votes.

Charles H. Pearce received twenty-three thousand eight hundred and forty-four (23,844) votes.

(23,844) vote

William H. Holden received twenty-three thousand eight hundred and forty-eight

Within II. Indian received twenty-three thousand eight hundred and forty-legat (23.848) votes.

Thomas W. Long received twenty-three thousand eight hundred and forty-three (23.843) votes.

James E. Yonge received twenty-two thousand nine hundred and twenty-three

(92,923) votes.
Wilkinson Call received twenty-two thousand nine hundred and nineteen (22,919)

Robert B. Hilton received twenty-two thousand nine hundred and twenty-one

(22,921) votes.
Robert Bullock received twenty-two thousand nine hundred and nineteen (21,919)

otes.
Witness our hands and seals this 6th day of December, A. D. 1876.
SAML. B McLin,
Secretary of State and ex officio Chairman of the Board State Canvassers.

C. A. COWGILL, Comptroller and ex officio member of Board of State Canvass

It is this decision of the board embodied in and evidenced by the foregoing certificate which the majority of the committee declare to be so "wholly illegal" and "absolutely void" that they would not even examine the evidence upon which the board acted, preferring undoubtedly that a committee of this House should itself can was and declare the result of the presidential election in Florida. Unfortunately for the majority, a committee of either House of Congress is not provided by the Florida statute as the method to be adopted for canvassing and declaring the result of a presidential vote of that State.

#### MISRBPRESENTATION AS TO THE SUPREME COURT'S DECISION.

MISRBPRESENTATION AS TO THE SUPREME COURT'S DECISION.

The attempt to impair the decision of the canvassing board by reference to the late decision of the supreme court in the case of George F. Drew vs. Governor Steams can have no effect, because founded upon a misrepresentation of the decision of the court. It is claimed by the majority that the court held that the board had no judicial powers whatever, and that having exercised such powers, its canvass was a "bald usurpation," to be utterly disregarded. This is an erroneous claim. The supreme court did not undertake to destroy or impair in the slightest degree the right of the board of canvassers given by the statute to receive evidence showing that a county return was so irregular, false, or fraudulent that the true vote could not be ascertained therefrom. But they did decide that when it was shown to the board that the return was so irregular, false, or fraudulent, the board must throw out the whole county return, and did not in the opinion of the court have judicial powers to purge the vote, rejecting that which was irregular, false, or fraudulent, but preserving so much of the return as certified the true vote and include the same in its determination and declaration.

This is the whole sum and substance of the decision of the court. It is true that on account of the condition of the pleadings and proofs at the time of the decision the court, for the purposes of the contest for governor, held that the returns from all the counties brought to their attention must be considered true and bonz fide returns; wherefore, according to their opinion, they must be counted. They did not determine, but expressly admitted the contrary, that if, as a matter of fact, upon the evidence shown the board, it should be their opinion that any returns were so irregular, false, or fraudulent that the true vote could not be ascertained, they might be rejected entirely, although they could not purge, and reject in part, and count in part.

Upon the misrepresentation of this decis

ness and doubt, that a tribinal, revising, the express order of the court in the case chosen.

2. The canvassing board, acting under the express order of the court in the case of Drew against Stearns, made upon the pleadings in that case and canvassing according to the face of the returns but rejecting totally any return which they found to be so irregular, false, or fraudulent that the true vote could not be ascertained, reported in their return to the court upon the recanvass as follows:

"They return the following as the determination and declaration of the result of such recanvass, to wit: Of the candidates for governor, George F. Drew received 24,179 votes; Marcellus L. Stearns received 23,984 votes. And the undersigned make further return to the court, and say that though not ordered so to do by the court, for various reasons, they deemed best to make, while re-assembled as a board as aforesaid, a recanvass of the said returns of the said election on file in the office of the secretary of state, of and concerning the election of other officers voted for at said election, which will be found in the certificate of the result of such recanvass hereto appended as part of this return. And the undersigned further inform the court that we regard our former canvass of the returns of the election for electors of President and Vice-President of the United States, on file in the office of the secretary of state, as conclusive. Yet, in view of the decision of the supreme court, we have re-examined the said returns and find that a recanvass of them according to the said decision would show that of the candidates for said electors Frederick C. Humphreys received 24,215 votes, Charles H. Pearce received 24,211 votes, Thomas W. Long received 24,004 votes, Wilkinson Call received 24,001 votes, Robert B. Hilton received 24,001 votes, Robert B. Hilton received 24,001 votes, Robert Bullock received 24,001 votes, Robert B. Hilton received 24,001 votes, Robert Bullock received 24,001 votes.

"(Signed)—Samuel B. McLin, secretary of state and chairman board of State canvassers; C. A. Cowgill, comptroller of public accounts."

The foregoing return utterly annihilates the pretense of the majority, that this decision of the supreme court of Florida had, if even in any event any decision of that court could have, any effect whatever upon the electoral vote; and, as before stated, the supreme court, in accepting the final return of the canvassing board, giving the same results as above as to the governor, expressly limit their opinion to the case and the pleadings and proof before them, and the court have never touched the electoral vote nor expressed any opinion as to what would be the effect of a recanvass of that vote upon the principles laid down by them.

### THE SUPREME COURT'S OPINION ERRONEOUS.

THE SUPREME COURT'S OPINION ERRONEOUS.

Whatever justification there may have been for the decision of the court arising from the precise condition of the pleadings before them, it is respectfully submitted by the minority that, as a general proposition under the statute, the rule laid down by the court is erroneous and ought not to be regarded as correct law. Neither the court nor the majority of the committee can ignore the following plain language of the statute:

"I. If any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration.

"II. The secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers."

This statute of Florida, first passed in 1872, was a new statute, expressly enacted to prevent the embodiment in a declaration by a canvassing board of irregularity, falschood, or fraud at the polls. It is a wise and beneficial statute, intended to prevent candidates apparently elected through fraud or falschood from holding their offices even for a single moment under a prima facie certificate of election; it is therefore to be construed liberally, and in such a way as to most effectually and promptly carry out the objects for which it was enacted. The minority do not need to cite the numerous authorities on this point.

That a liberal construction of the statute allows the board to receive evidence of fraud and allows it to be shown to them, that falsehood existed in the election seems too plain for argument, and it has already been shown that such was the practice deliberately adopted at the instance of the democratic party, advised to be correct by the legal opinion of the democratic party, advised to be correct by the legal opinion of the democratic party, advised to be c

# THE NEW DEMOCRATIC LEGISLATURE OF FLORIDA CANNOT BY STATUTE CHANGE THE RESULT OF A PRESIDENTIAL ELECTION.

Having shown that it cannot be claimed that the supreme court of Florida either intended to or did change the electoral result, the minority call brief attention to the attempt made to impair the declared result of the presidential election by the present democratic Legislature. That Legislature was canvassed into office by the same board which canvassed and declared the presidential result. The board at the same time declared a recanvass of the vote for governor, and the board, in obedience to the mandate, declared the election of Drew for governor by about two hundred majority, but stated on the same principle (there being four hundred difference between the State and electoral tickets) that the Hayes electors by the same rule would have at least two hundred and eleven majority.

Governor Drew and the Legislature commenced their functions January 2, and immediately went to work by legislation to endeavor to change the presidential election. The Legislature passed an act requiring the new board of canvassers which had just been appointed by the governor to go to work and recanvass the presidential vote. The new board reported that they thought the Tilden electors were chosen, and the Legislature declared by another act that they thought so too; and that they had voted for Tilden. This whole proceeding, after the State of Florida had appointed its electors in accordance with its statute law, and those electors had voted and certified the result to the President of the Senate, is a mere farce, utterly unworthy of notice either by this committee or by Congress. It has been repeated the field that after the Legislature of a State has chosen a United States Senator the functions of the State are exhausted, and therefore the State could no more reverse or change its action than it can alter the Constitution of the United States.

# THE QUO WARRANTO PROCEEDINGS BEFORE JUDGE WHITE ARE A NULLITY

THE QUO WARRANTO PROCEEDINGS BEFORE JUDGE WHITE ARE A NULLITY.

In further pursuance of the democratic policy, of overthrowing, either by chicanery or violence, the legally accomplished result of the presidential election, a proceeding upon information, in the nature of a quo varranto, was commenced by the four democratic candidates for electors before Judge White, of the local circuit court, having jurisdiction of certain subjects in Leon County, where Tallahassee is situated; and this judge has within the last few days assumed to render an adjudication that the republican electors were not chosen, and that the democratic electors were chosen; and the transcript of this decision, after an appeal to the supreme court of the State, is relied upon to upturn and reverse the recorded State action of Florida, which ended and ceased to be reviewable within the State on the 6th day of December, 1876.

It is not the purpose of the minority now to anticipate Congress in any discussion of the absurdity of this attempt, by the decision of a petty local judge, to change the result of a presidential election; and they content themselves with simply stating their belief that the fullest discussion will result in establishing the principle that when a State has exercised the political function of choosing presidential electors in such manner as the Legislature of the State has appointed, and the electors so chosen and declared elected by the proper tribunal, established by the election laws of the State for that purpose, have met upon the day fixed by Congress and duly cast their votes and certified the same to the President of the Senate, the power of the State over the subject is at an end. Neither by a recanvass, by a legislative statute, nor by a decision of its courts can this political State action, once deliberately and lawfully taken, be subsequently reversed.

# LOCAL INVESTIGATIONS.

We now call attention to our views in regard to the investigations made by the committee in the different counties visited and inquired into. Manatee was not visited by the committee. One witness was examined in regard to the election in that county. He and the witnesses in regard to Monroe County were examined at Tallahassee. Baker and Clay Counties were inquired into in Duval County. Ala-

chua, Duval, Hamilton, Jackson, Jefferson, and Leon Counties were visited by

the committee.

The undersigned have conscientiously reviewed the testimony taken in all the calities named, and respectfully ask the attention of the House to our views

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ALGERIA COUNT.

Arother Precinct No. 2, in this county, underwent an examination conducted by a subcommittee consisting of Thourse's, Horkins, and Denyaliz.

The regular-review of the property of the prop

and more votes than Fleming's list contained, showing the comparative unreliability of that list. A considerable number of others, who were working at distant points, and were alleged to have voted, could have been obtained if the committee had remained to await their attendance.

"An analysis of the names of persons who swore before us that they voted the republican ticket at this poll shows, further, that 217 of these voters only are on Fleming's list; that 104 of the republican voters escaped his notice entirely; and the names he further confesses to have voted there cover the republican voters that the committee did not have time to call before them, readily making up their vote to the full claim of 399, and leaving no room for a claim of 130 democratic votes. That the poll-list had been badly tampered with is evident from the fact that 58 of those whom Fleming says voted are not on the poll-list, and 43 of those who swore they voted are on the poll-list but not on Fleming's list. Taking the tes imony together, in connection with Fleming's admissions, it appears that the republican majority was 280, even out of the 316 votes allowed to have been cast by the democrate. Where, then, did the democratic 136 votes come from? I tis apparent from all the circumstances that they were not cast—they were mostly fraudulent. In 1873 the democratic vote in Archer (where there was then but one poll) was 44 and in 1874 it was only 25. At the late election there was then but one poll was 44 and in 1874 it was only 25. At the late election there were two polls, and nearly all the whites voted at poll No. 1, where the democratic vote was returned as 98 and the republican as 54. This would show an increase of 399 democratic votes in the precinct in the last two years, which was impossible, as we shall show. The republican majority in 1874 in the whole precinct was 268; at the late election it was only 239. Their whole vote in 1874 was 233; at the late election at how. The republican proper in the shown of the precinct was sho

IRVING E. WEBSTER recalled and examined.

By Mr. DUNNELL:

By Mr. Dunnell:
Question. While the poll-list of precinct No. 2 was in your possession, was it taken by you before the grand jury of this county?
Answer. It was.
Q. For what purpose?
A. For examination.
Q. Was or was not the election on the 7th of November, at Archer precinct, made the subject of investigation by the grand jury of this county?

A. It was.
Q. Did the grand jury make any presentment on that matter?
A. They did.
Q. Have you, as clerk of that county, a record of their presentment?
A. Yes, sir.
Q. Please produce and read it.
Mr. DUNNELL. I ask that the records be read giving the findings of the grand

jury.

The Chairman. I object to that. If there is any indictment found, I am ready that should appear. If there was no indictment found, I am also willing that that should appear, but any statement made by the grand jury, independent of not finding a bill, I certainly do not want to cumber the record with.

Mr. Dunnell. I don't want any statement. I want the presentment of the grand

jury.

The Chairman. If there was any bill found I am ready to let it go in, but any other presentment I object to.

By Mr. DUNNELL:

- Q. Was the finding of the grand jury in the form of an indictment or a presentment?
  - A. A presentment.
    Q. I now ask that you read from the records that presentment.
    The CHARMAN. I object to that.
    The question was ruled out.

BAKER COUNTY.

There are three returns from Baker County, one of which is signed by the county judge, sheriff, and justice of the peace. Each of the others is signed by the county elerk and a justice of the peace.

The return signed by the judge, sheriff, and justice of the peace shows 189 votes for the democratic electors and 130 for the republican electors. The other two returns show for the democratic electors 381 votes and for the republican electors

The question arises which of these three returns is the legal one under the laws of the State of Florida governing the canvass of the precinct returns from the dif-

ferent counties.

ferent counties.

Section 24 of the act entitled "An act to provide for the registration of electors and the holding of elections" reads as follows: "On the sixth day after any election, or sconer, if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of said clerk and take to their assistance a justice of the peace of the county, (and, in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place,) and shall publicly proceed to canvass the votes given for the several officers and persons as shown by the returns on file in the office of such clerk or judge."

judge."

Though it is doubtless the law that the majority of the board of county canvass

ers may make a valid return, still it is clear from the provisions of the statute that no legal canvass of the precinct returns can be made unless there are three persons present, namely, the county judge, the clerk of the circuit court, and a justice of the peace, the sheriff acting instead of either of the two former in case of absence, sickness, or other disability.

It therefore follows that, if a canvass of the precinct returns be made by a less number of persons than is required by law, it cannot in any sense be a legal canvass, and the return based thereon is as worthless as the paper upon which it is written.

written.

The evidence of Martin L Cox, the clerk, and John Dorman, a justice of the peace, both democrats, shows that the county judge, on the 10th day of November, gave them notice in writing to meet him on the 13th of November at the clerk's office, at the county seat of Baker County, to canvass the returns from the different precincts. About one hour after the service of said notice, the clerk and justice of the peace convened at the clerk's office and canvassed the returns. Neither of them claims that the county judge was absent or in any way disabled from participating in the canvass on that day. They did ask, it is true, the sheriff to assist in the canvassing of the returns, who properly replied that he did not feel justified in so doing without conferring with the county judge, who would be in town that evening.

canvassing of the returns, who properly replied that he did not feel justified in so doing without conferring with the county judge, who would be in town that evening.

The county judge, being apprised of the premature and illegal action of the clerk and justice of the peace and construing such action as a refusal to convene with him to canvass the precinct returns of the county, met with the sheriff and a justice of the peace on the day stated in the written notice hereinbefore mentioned at the clerk's office and canvassed the said returns.

The return made out and signed by these three officers, being in all respects regular on its face, was adopted and declared by the State canvassing board when canvassing the election returns from the various counties of the State of Florida to be the only legal return from Baker County, as the minutes of the said board will show. But the members of that board, believing they had the legal right to exercise quasi-judicial powers as well as ministerial, a right which was never before questioned by the courts or citizens of that State, went behind this return and determined the vote of Baker County by counting the precinct returns. In so doing they counted the returns from two precincts which had been rejected by the county canvassing board composed of the judge, sheriff, and a justice of the peace, because of reliable information communicated to them of frauds and illegalities in the conduct of the election at the said precincts.

By virtue of the recent and extraordinary decision of the supreme court of the State of Florida, compelling by writ of mandamus the State canvassing board to recount the votes cast at the last election for the candidates for governor of that State as shown by the regular county returns, the said board had no other alternative than to count the vote of Baker County as shown by the returns signed by the judge, sheriff, and justice of the peace, it being the only legal return from that county.

The majority of the committee commenting in their report

native than to count the vote of Baker County as shown by the returns signed by the judge, sheriff, and justice of the peace, it being the only legal return from that county.

The majority of the committee commenting in their report upon the validity of the certificate or return from Duval County, lay down the rule that no legal canvass can be made by less than three of the officers designated by law. Apply this rule to Baker County, and it is manifest that no legal canvass of the precinct returns was ever made by the clerk and the justice of the peace, Dorman, and, therefore, no legal return could be based thereon.

It is claimed by the majority, in support of the return signed by the clerk and justice of the peace, that their action was legal, because it is alleged in a paper accompanying their return, dated on Monday the 13th day of November, that the county judge and sheriff positively refused to participate with them in the canvass and that, in view of the fact that the time within which the said canvass should be made according to law would expire on the said Monday, they proceeded to canvass the vote. The evidence clearly shows that instead of making a canvass of the votes on the 13th, as shown by the precinct returns, they merely made a duplicate of the certificate or return they signed in such hot haste three days before. If it be claimed by the majority that the paper above referred to strengthens in the slightest degree the pretended return signed by the clerk and justice of the peace, the minority deem it proper to state that they never knew of the existence of the said paper until a few days ago. It was not introduced in evidence before the committee while in Florida, and had it been on file in the secretary of state's office it was the duty of that officer, in obedience to the subpona duces tecuns served upon him by order of the committee, to produce it with the return. When it was made or signed by Martin J. Coxe, the clerk and John Dorman, justice of the yearded in the office of the secretary of

MANATEE COUNTY.

The return from this county gives the democratic electors 262 votes and the republican electors 26 votes. The only witness from this county examined by the committee was Edgar H. Graham, a democrat, and county judge of Manatee. His testimony shows that the conduct of the election was characterized by a gross disregard of every essential requirement of law governing the holding of elections. The laws of Florida provide that a complete copy of the list of names of all persons duly registered as electors shall be furnished to the inspectors of election at each poll or place of voting in the county before the hour appointed for opening the election. According to the testimony of Graham, there were nine polling-places but there was no copy of the list of registered voters furnished to the election officers of any precinct. It is the duty of the county commissioners to appoint the inspectors of election for each poll, to designate the places for voting, and cause to be posted in conspicuous places in the vicinity of each polling-place three notices of such designation. The evidence shows there were no inspectors appointed in the manner required by law, but in the language of the witness were self-appointed. The county commissioners, regardless of their sworn duty, failed to designate any places for voting and to give any notice whatever of the time and place of holding elections go to the substance of the election and are to be construed as mandatory. Judge Cooley in his work on Constitutional Limitations says the general rule upon this subject is: "Where by the express provision of the statute the election is to be held after proclamation or notice announcing the time or place, or both, and where no such proclamation has been made or notice given, the election is void." The only notice of the time and place of holding election was given at democratic mass-meetings in two precincts of the county. Graham says he notified some of the leading men of the county but does not pretend that a single republic MANATEE COUNTY.

The evidence further shows that at least two hundred electors staid away from the election for the reason, as Graham states, that there was no clerk, and nearly as many more could not get an opportunity to register.

By virtue of the decision of the supreme court of Florida the return from this county was counted for Drew for governor by the State canvassing board. It was rejected by the board, in canvassing the votes for presidential electors, upon strong proof that more than 50 per cent of the voters regarded the election as a mere farce. It is recklessly charged in the majority report that the then governor of Florida, who was a candidate for re-election, determined to defraud the people of that county of their votes by accepting the resignation of the clerk of the circuit court and failing to appoint his successor until a short time before the election. Is this true? To show that it is not we call attention to the testimony of Graham, introduced as a witness by themselves, a member of the democratic party and the judge of the county, on page 102 of the record, wherein he states that Mr. Green was appointed to fill the vacancy in the clerk's office on the 1st day of October, at least five weeks before the election; that he saw his bond and administered to him the oath of office. Where, then, is the evidence showing in the language of the report "a clear attempt to put obstacles in the way of the exercise of he right of suffrage by the voters of a whole county by the governor of a State in the interest of his party?" We assert that no such evidence was ever given before the committee and we respectfully challenge contradiction.

If the return from this county be valid it seems to us that legislative enactments made to secure the purity of elections and to give a just expression to the will of the people through the ballot-box should be regarded as wholly meaningless.

#### LEON COUNTY.

made to secure the purity or elections and to give a just expression to the will of the people through the ballot-box should be regarded as wholly meaningless.

LEON COUNTY.

Voting-precinct No. 13 in Leon County was the first to be examined by the committee. The evidence shows that there were appointed for this precinct by the county commissioners three inspectors, two republicans and one democrat. When the polls were opened, at precisely eight o'clock in the morning Amos Rouse, the democratic inspector, was not present. Joseph Bowes, one of the republican inspectors, testified before the committee (page 12) as follows:

"Question. What was done by yourself and others in the absence of Mr. Rouse for "Answer. When the time arrived for opening the polls I made proclamation that the time had arrived for opening the polls, and that as one of the inspectors appointed by the county commissioners had not appeared, it was the privilege of the electors present to elect another inspector. I asked them who they would choose. Archy Crowell nominated Isaac Dent, and Isaac Dent was unanimously chosen inspector."

Much unsuccessful effort was made by the majority of your committee to show that the polls were opened before eight o'clock. The evidence clearly establishes the fact that the election in this precinet was conducted in perfect compliance with the laws of the State and the regulations issued by the secretary of state. So fairly was the election managed that Amos Rouse, the democratic inspector who was soured in the morning because Isaac Dent was elected inspector foll line place, testified that he told Mr. Bowes just before the polls were closed that he had seen nothing wrong. (Page 43.)

Mr. Bowes also testified (page 13) as follows:

"Mr. Rouse said to me, in the presence of Mr. Richardson, that in the morning he felt a little dissatisfied; but since he had seen how things had gone he felt perfectly satisfied there was no attempt at fraud whatever, he never saw fairer election. He said so in the presence of Mr. Ri

committee that they were used fraudulently, and hence the objection of the chairman.

Inasmuch as the majority of the committee objected to the above question, we deem ourselves justified in stating the notoriously declared purpose of the executive committee in issuing so small ballots. It was that the republican ticket could be known from its size by the colored voters of the county as so many of them could not read. Just before election the democratic committee surreptitiously got hold of one of these ballots for the purpose of sending out democratic tickets of the same size, hoping thereby to deceive the ignorant colored voters. When this was found out the republicans had a larger ballot printed with a red line across it. This was not done till some of the small tickets had been given out. Not all of them which had been given out for use in precinct No. 13 were recalled or supplanted by the larger ballots, and thus some of them were used by the voters in that precinct.

Amos Rouse testified that none of these small ballots were passed in by voters during the day, and in his examination by a "nod of assent" swore that he was watching all day though it appears in the testimony of Bowes that they were cast and that Rouse was not within sight of the ballot-box all day. Rouse also swore that he never heard of any surprise on the part of any one but himself when the small ballots were counted out; that he did not tell anybody about it till "after the returning beard canvassed the votes" or "about that time."

One Samuel J. Flemming swore in regard to voters in precinct No. 13 whom he knew and whom he did not know, and for the purpose of showing that there were too many votes thrown in that precinct, and on cross-examination swore, as will be seen on page 66, in regard to matters about which he knew nothing. It will also appear that he made his discovery about the time Amos Rouse made his, and that was when the canvassing board was in session.

He made an affidavit before Robert Gamble, who was secretary of the dem

Question. What was it about? Answer. It was about that precinct election. Q. What was said in the afildavit about it?

A. About just what I have been talking to-night; more votes being polled there than there were men. That is the principal thing in it.

Q. Did it say anything about the opening of the polls?

A. Yes, sir; that was the principal thing. The opening of the polls; that is what I didn't like; for him to open the polls before they ought.

Q. Are you certain that in this adidavit you said anything about the number of votes being an excessive number?

A. I don't recollect.

Q. When was the first time you heard anything about an extra number of votes in that precinct?

A. It was some of the times coming to Tallahassee; I don't remember when.

Q. You did not hear about it in the region there?

A. No, sir.

Q. You heard about it first in Tallahassee?

A. Yes, sir.

Q. Were you down here during the time of the excitement of the canvassing of the polls and votes in this State?

A. I don't know what time you call the excitement.

Q. The excitement preceding the promulgation of the vote. I mean after the election.

A. I don't know what time you call the excitement.
Q. The excitement preceding the promulgation of the vote. I mean after the election.
A. I came down to town frequently.
Q. You say that no one asked you to make an affidavit?
A. No; not that I remember particularly.
Q. You will not say but that you were asked to do it, will you?
A. It might have been. Some one might have proposed for me to make an affidavit to certain facts as far as I knew. That proposition might have been made to

A. It might have been. Some one might have proposed for me to make an affidavit to certain facts as far as I knew. That proposition might have been made to me.

Q. How did you know personally about the opening of the polls in the Richardson school-house precinct?

A. By talking to Mr. Rouse and Mr. Roberts.

Q. Then what you knew was hearsay, was it?

A. Yes, sir.

Q. Then what you made affidavit to matter that was merely hearsay with you. as to the opening of the polls?

A. No, I did not. I made the affidavit now, and I recollect what it was. It was about the time I met Mr. Rouse on the road, and how far he had to go, and how far I had to go, and what it was that passed between us.

Q. You knew nothing about the opening of the polls except by hearsay, did you?

A. No, sir; but I said when I saw Colonel Beard and the men who were to be challengers come back that something was wrong up there. I suspected something was wrong, and I went to inquire about it.

Q. Did you make an affidavit of that fact?

A. I think I did.

Q. Of your suspicion that something was wrong?

A. Yes, sir. It was my opinion that Rouse had plenty of time to be there to open the polls. I think I did say that.

Q. Where did the owners of these plantations which you have mentioned within the precinct vote, if you know?

A. No, sir; I don's know exactly. Some of them voted at No. 5, where I was, and some voted at Richardson's school-house; very few.

Q. It is very frequent that men pass from what is called one voting precinct into another to vote, is it not?

A. O. yes.

Q. What is popularly called the Richardson school-house people come out of one

another to vote, is it not?

A. O, yes.
Q. What is popularly called the Richardson school-house people come out of one into another one to vote?

A. Yes; I did myself.
Q. And voters go into the Richardson district who do not live there?

A. Yes.

A. O. Any person has a right to vote in any precinct where he pleases?
A. O. yes.

A. 0, yes.

Such a witness is not just the one to upset the presidential election in a State.

We would further report in regard to this precinct that while the poll-list and registration-list agreed in the number of names on the one and checked upon the other, and that while the ballots in the box agreed with the votes reported, yet the evidence taken by the committee seemingly shows that a certain number of persons, who ap parently voted at No. 13, did in fact vote elsewhere in the country, and that some of these persons did not vote at No. 13. Some forty-five names were on the poll-list of No. 13, which were also found on other poll-lists in the county. But the examination was far from satisfactory. The examination which formed the basis of the conclusion that there had been fraudulent votes was conducted as follows, page 28:

the basis of the conclusion that there had been fraudulent votes was conducted as follows, page 28:

Question. Look at the poll-list and registration-list of precinct No. 13, and state whether you find the name of James Spears thereon.

Answer. The name of James Spears appears on the poll-list of No. 13, and a check is made between the names of James and Soloman Spears on the registration-list. As there is no Soloman Spears on the poll-list, I should say that that check was meant for James Spears.

Q. Look at the poll-list and registration-list of precinct No. 4, and state whether you find thereon the name of James Spears.

Q. Is there any Jas. Spears on the poll-list of precinct No. 4, and is also checked on the registration-list as James Spears.

Q. Is there any Jas. Spears on the registration-list?

A. No, sir.

Q. Look at the poll-list and registration-list of precinct No. 13, and state whether you find thereon the name of Will Rambo.

A. His name appears upon the poll-list of No. 13, and is also checked on the registration-list.

Q. Look at the poll-list and registration-list of No. 4, and state whether you find his name thereon.

A. His name appears on the poll-list, and it is also checked on the registration-list.

Q. Look at the poll-list and registration-list of precinct No. 13, and state whether you find thereon the name of John Gibson.

A. His name appears on the poll-list of precinct No. 13, and is also checked on the registration-list. There are two John Gibsons, but only one of them is checked in that precinct.

O. Look at the poll-list and registration-list of precinct No. 2, and state whether

registration-list. There are two John Gibsons, but only one of them is checked in that precinct.
Q. Look at the poll-list and registration-list of precinct No. 2, and state whether you find his name thereon.
A. John Gibson appears on the poll-list of No. 2, and is also checked on the registration-list.
Q. Look at the poll-list and registration-list of precinct No. 9, and state whether his name appears thereon.
A. John Gibson appears on the poll-list of No. 9, and is also checked on the registration-list. There are two John Gibsons on the registration-list.
Q. Look at the poll-list and registration-list of precinct No. 13, and state whether you find thereon the name of George Smith.
A. George Smith appears on the poll-list of precinct No. 13, and one of the George Smiths is checked on the registration-list.
Q. Look at the poll-list of No. 1, and state whether you find his name thereon.
A. George Smith appears on the poll-list of precinct No. 1, and one George Smith is checked on the registration-list.

Q. Look at the poll-list and registration-list of precinct No. 2, and state whether you find his name thereon.

A. George Smith appears on the poll-list of precinct No. 2, and one George Smith is also checked on the registration-list.

Q. Look at the poll-list and registration-list of precinct No. 4, and state whether you find his name thereon.

A. George Smith appears twice on the poll-list of No. 4, and is also checked twice on the registration-list.

Q. How many George Smiths are there on the registration-list?

A. Four.

When forty-five names had been secured in the manner above indicated from all the poll-lists of the country.

Å. Four.

When forty-five names had been secured in the manner above indicated from all the poll-lists of the county, where more than four thousand votes were east, the county was scoured to find the persons answering to these names.

Twenty-five of these persons were found. The names of twenty of them appear on pages 74, 75, 76, 77, 78, and 79. The others are on preceding pages. We will here show the manner in which these twenty-five men were examined by the examination of three of these voters, as found on page 77.

Jackson Jones sworn and examined.

By the CHAIRMAN:

By the Charman:
Question. What is your name?
Answer. Jackson Jones.
Q. What is your age?
A. About twenty-five years.
Q. Where do you live?
A. I live at Tuskawilla.
Q. Did you vote on the 7th of November last?
A. Yes, sir.
Q. Where did you vote?
A. At Tuskawilla.
Q. Do you know what precinct that is?
A. No, sir. I don't know the number of it.
Q. How far from here is Tuskawilla?
A. Thirteen miles.
Q. Which way?
A. East.

Do you know where Richardson school-house is, precinct 13 † Yes, sir. Did you vote there on the 7th of November † No, sir.

A. No, sir.
Q. Did you vote more than once on that day?
A. No, sir.
Q. Where were you during the day?
A. Right there present.
Q. All day?
A. Yes, sir.
MARK BOND sworn and examined.

By the CHAIRMAN:

By the CHAIRMAN:
Question. What is your name?
Answer. Mark Bond.
Q. Where do you live?
A. I live at Centreville precinct No. 9.
Q. How long have you lived in this county?
A. I was born in Centreville precinct.
Q. Where did you vote?
A. In Centreville precinct.
Q. Do you know where the Richardson school-house is, precinct 13?
A. No. sir.
Q. Did you vote more than once on election day?
A. No, sir.
Q. Do you know anybody else of your name?
A. No, sir.
Q. Do you know anybody of the name of Bond Marks?
A. No, sir.
Q. What ticket did you vote?
A. I voted for Drew.

JAMES RUSH SWORD and examined.

JAMES RUSH sworn and examined.

By the CHAIRMAN:

By the CHAIRMAN:

Question. What is your name !

Answer. James Rush.

Q. Where do you live!

A. Centreville precinct.
Q. How long have you lived there !

A. I was born and raised up there.
Q. Did you vote at the last election !

A. Yes, sir.
Q. Where did you vote !

A. At the Centreville precinct.
Q. What is the number of that precinct, if you know !

A. I don't know.
Q. Do you know where the Richardson school-house is !

A. No, sir.
Q. Did you vote more than once at this election !

A. No, sir.
Q. Which way did you vote !

A. I voted the Stearns ticket.
Q. Is there any one else of your name in the county that you know of !

A. Not that I know of.

The other twenty-two persons were examined in a manner very similar. A. Not that I know of.

The other twenty-two persons were examined in a manner very similar. Twenty-five men were brought before the committee who swore that they did not vote at No. I3, but voted elsewhere, although there may be twenty-five men in the county whose names are not on the county registration-list, and who bearing the names of these twenty-five men rightfully voted in No. 13; and although the committee did not attempt to identify these men, yet the majority of the committee came to the solemn conclusion from such an examination going only to these twenty-five men that the seventy-four small ballots were fraudulently cast. When we remember that the colored people are almost annually in very many instances changing their names, and when we consider, among other things, that these twenty-five men were all colored, we cannot come to any conclusion against the election in No. 13. We certainly cannot come to the conclusion that 75 fraudulent votes were cast, and norule of law would allow us to assume that a single fraudulent vote was cast beyond the 25 even if the evidence in regard to them shall be deemed reasonably conclusive. The vote in Leon County was not a large one, at least no more so than in the other counties of the State. There were 4,396 names on the county registration-list when sent out, and 150 names added on election day, making a total of 4,546. The number of votes cast was 4,038. For a presidential election, and in a State where the gubernatorial contest was especially exciting, and where there is so large a colored vote, we insist that the aggregate vote furnishes no evidence of fraudulent voting. We close our report on Leon County, denying that the evidence establishes the frands claimed by the majority. We deny that it conclusively shows any fraud. shows any fraud.

#### HAMILTON COUNTY

The subcommittee, consisting of Messrs, Thompson, Hopkins, and Dunnell, commenced the investigation of Jasper and White Springs precincts in Hamilton County, at Live Oak, on the 21st of December. These two precincts had been thrown on the ythe State board of canvassers and for the following reasons:

"Eighty-three democratic and 58 republican votes which had been illegally added to the electoral vote on the face of the return were thrown out. Jasper precinct No. 2, giving 321 votes for George F. Drew and 183 votes for M. L. Stearns for governor, 323 votes for the democratic electoral ticket and 185 for the republican electoral ticket, 330 votes for the democratic electoral ticket and 185 for the republican electoral ticket, 330 votes for Sess J. Finley and 184 votes for H. Bisbee, i., for Congress, 235 votes for N. J. Patterson and 257 votes for T. N. Bell for State senator, 167 votes for J. N. Greid, 295 votes for W. J. Duncan, and 29 votes for J. W. Gray for member of the assembly, was thrown out of the canvass on account of gross violation of the election law by the inspectors in not completing the canvass without adjournment, in allowing unauthorized persons to handle the ballots and assist in the count, in adjourning over night and going to another place, and in signing returns next day which they had not themselves made or verified, and the contents of which shey did not know. With these deductions the county was canvassed by unanimous vote."

E. Thomas Smith was the clerk in Jasper precinct, John E. Tuten, David Fryar, and George Smithson were the inspectors. The three officers first named were democratis and the last a republican. The evidence abundantly sustains the charges made before the canvassing board.

The adjournment before completing the canvass was not denied by any of the witnesses. The polls were closed at sundown, and they did not finish the countill four oclock in the morning, the hour of first adjournment. The clerk testified that they adjourned at four oclock in the morning till nine in

candidate. The door was unlocked which separated the bed-room from the counter. The box remained there in the morning unguarded; many men coming in and going out.

The tally-sheet till the returns are made out is of absolute importance. It was left behind in the sheriff's office where the election was held—one witness says on the table, with no evidence that the door was locked; by another witness, that it was put into a trunk which he thinks was unlocked. The returns were made out during the forenoon of the 8th of November. There was the same outside interference. William H. Reynolds, the democratic lawyer, who had acted the night before contrary to law, in counting ballotsor reading off the names, and in keeping the tally-sheet, was present making out the returns. He filled out a part of the blanks in the returns. At this stage Henry J. Stewart, another democratic lawyer, enters to finish up the work. Stewart says he made out one return and he made it from "a copy, probably. It may have been made by Mr. Reynolds or somebody else." He could not say that the inspectors were present.

We cannot fail to report our full conviction that the State board acted in complete compliance with the law in throwing out this precinct.

The ballots, the sally-sheets, and the returns were almost entirely in the hands of outside party men. Every provision of the law regulating an election was disregarded. The letter, as well as the spirit of the law, was violated. We must call attention to one further fact: Mr. Stewart, who made out the returns, could not swear that the returns were read over to Fryar and Smithson when signed. It appears from the testimony of Smithson that he was told when he went home at four o'clock in the morning that he need not come back. He was so told by Fryar, one of the democratic inspectors. He was questioned about his conduct in the morning in connection with the returns, as follows:

Question. In the morning, who had the ballot-box?

Question. In the morning, who had the ballot-box? Answer. It was in a chair in Mr. Fryar's bar-room. Q. Mr. Fryar was there? A. Yes, sir; he was there when I got there; I didn't get there until about nine

Octock.

Q. Then you went down to the room where you had had the vote the night before?

A. Yes, sir.

Q. When you got there what did you do?

A. I didn't do anything until they called me in the room to sign the return; I didn't do anything at all in the room.

Q. Where were you?

A. I was out there in the court-house yard.

Q. Who wrote the return?

A. I don't know that. Mr. Fryar and I were both out in the court-house yard for awhile, and he went in first, and came out there and told me that we had better go in. that they were ready for us; so we went in. He signed it, and then I did.

Q. Did you read the return yourself?

A. No, sir.

Q. Why didn't you read it to see whether or not it was right?

A. Well, nobody told me, and I didn't know anything about it. Nobody else read it. There were older ones than I was there.

In Jasper precinct we found a complete triumph of irregular proceedings. We

In Jasper precinct we found a complete triumph of irregular proceedings. We had there the reading of the names on the ballots, the counting of the votes, and the keeping of the tally-sheets almost wholly committed to active partisans. We had the abandonment of the tally-sheet, and before the returns are made out, to the open table of the sheriff's office. We had the wicked and inexcusable surrender of the ballot-box to the surroundings of a bar-room, within the reach of two men who were personally interested in the result of the election; and finally we had

the returns made out by men unsworn, political intermeddlers, doing their work in the absence of the only republican officer of the election board. These returns were not read to Smithson, as he testifies. Ancram swears that when Blackwell read off the ballots he folded them and then handed them to Smithson, who put them into the box without reading them. The evidence shows clearly that Smithson was culpably negligent of his duties. He was no obstruction to the perpetration of fraud at a poll substantially taken possession of by men not sworn and wholly unauthorized to take any part in the business of the election. If the election at Jasper was a legal one, then a mob could run an election as well as a body of honest and duly qualified men. Reports of election cases in the House of Representatives could be adduced almost without number where polls have been thrown out with far less of intermeddling than in the case under consideration. At White Springs precinct the clerk and inspector of election omitted to insert in the return the votes cast for the democratic and republican presidential electors. On the 13th of November, six days after the election, when the board of county canvassers met to canvass the precinct returns, the omission was for the first time discovered. The clerk and inspectors being apprised of the mistake, made out and signed a new return, or what is termed in the evidence, a supplemental return of the votes cast for the electors. When this second return was made, there was no board of election officers for White Springs precinct in existence. When they completed the canvass of the votes and signed the return on the night of the election and transmitted the said return and other papers to the proper officers, the board was dissolved; their functions as officers of the election ceased, and therefore their subsequent acts in that character were null and void. If this view of the law be correct, as we certainly claim it to be, 83 votes must be deducted from the vote of the Tilden electors and 58

#### JEFFERSON COUNTY.

icon their subsequent acts in that character were null and void. If this view of the law be correct, as we certainly claim it to be, 83 votes must be deduced from the vote of the Tilden electors and 38 votes from the vote of the Hayes electors.

It is claimed by the majority that in precinct No. 1 of this county five votes must be declated from the vote cast for the Hayes electors and given to the Tilden electors, for the reason that on the day following the election the ballot-box was opened without authority and ten democratic ballots found therein; the return from that precinct showing that there were cast only five democratic tickets. Under no view of the evidence or the law applicable theretois this claim tenable. The testimony of the two republicant of the properties of the votes, after the close of the polls, they were present and saw every ballot counted and there were but five democratic the Sates super-visor, who testified that the election at this precinct was honestly and fairly conducted; that during the canvass of the votes, after the close of the polls, they were present and saw every ballot counted and there were but five democratic the votes. The tilectok were replaced in the box, which was returned, as required by law, to the clerk's office. The clerk's office mained exposed, even during the clerk's fire frequent absence. The morning after the election a new light dawned on the democratic supervisor. He suddenly came to the conclusion that a fraud had been prepertated upon the democratis who voted at this precinct, and demanded of the clerk a recount of the ballots. The clerk compiled ence, and found instead of five ten democratic tickets. To make the proof of fraud stronger, ten witnesses testified before the committee, in direct examination, that they voted the democratic ticket. The of them, a colored man in the employment of a democrata, admitted in cross-examination that he told his friends after the election of the contract of the place of voting and saw him hand it to the inspectors sai

his name Botts either designedly or by mistake checked the name of Hernandez for Fernandez. If the list of Botts contained the name of a voter who did not give his middle name but which appeared on the registration-roll, it was contended they were different persons. The testimony of this witness in reference to illegal voting will compare favorably with all the others who were examined on the same subject and in relation to repeaters and non-residents. Were it true that this number of illegal votes was cast there is no competent evidence that they voted the republican ticket. Besides, it is clearly shown that the clerk of the circuit court, who is exostic registry agent, deputized one Beazly to register voters in the vicinity in which he lived. He qualified and entered upon the performance of his duties and registered not less than from fifty to sixty persons, four of whom testified before the committee that they were registered by Beazly and did vote. The evidence of the clerk shows that these names did not appear on what is known as 'the official registration-list which it was his duty to prepare. His excuse is that the Beazly list reached the printer at Jacksonville too late to be appended to the list already printed. Beazly's list was on file in Tallahassee and was inspected by Judge Cole, a respected citizen of Monticello, and others, who all agree as to the number of names thereon. If the persons registered by Beazley voted, as they could of right have done, and it is more than probable they did, there being a presidential and gubernatorial contest, this number must be deducted from the votes claimed to be illegal because of non-compliance with the registration laws, which disposes of the claim of the majority. The clerk, in failing to have the Beazly list printed, and to furnish a certified copy to the inspectors at each poll, committed a grave irregularity, but which in law does not vitiate or invalidate the certificate of the election.

The majority of the committee further demand that the votes of six

they voted.

As to the repeaters, we admit that it is shown that twenty-nine persons appear as having voted twice, the same names appearing but once on the registration-list. There is no proof of identification of the illegal voter as the law requires, and it is not necessary the elector's name should appear on the registration-list neutral into vote. If he makes oath, on being challenged, that his name was once on the registration-list but has been improperly stricken therefrom, his vote must be received. There is no proof that there were no other persons of the same name in the county, nor as to what ticket they voted, and therefore no deduction should be made.

#### JACKSON COUNTY.

ceived. There is no proof that there were no other persons of the same name in the county, nor ast owhat ticket they voted, and therefore no deduction should be made.

JACKSON COUNTY.

The returns from Campbellton precinet in this county show there were 291 votes cast for the Tilden electors and 77 for the Hayes electors. The evidence shows that when the polls opened at eight o'clock in the morning of the election day there was assembled such a great number of white and colored voters that it was deemed expedient, and agreed to by the leading men of both political parties for the purpose of facilitating voting and preserving order, that the whites should vote during the first hour and the colored men the succeeding hour, and thus alternate until the closing of the polls. The colored men by the adoption of this plan occupied two hours of the forenoon in voting. The evidence of James Gaston shows that seventy six colored men and only about twelve or fifteen white men voted in the afternoon. It is clear that the whole white vote, with the exception of the number mentioned by Gaston, was polled before the adjournment a noon. The evidence of John McKinne, a lawyer and a native of Jackson County, who was a successful candidate on the democratic ticket for the Legislature, shows that he was familiar with the political complexion of the colored men living in the vicinity of Campbell-ton. He took an active part in furthering the success of his party on the day of election. He distributed democratic tickets among the colored men, yet he could not testify that more than fifteen of them voted the democratic ticket on the day of election, what became of all the votes of colored republicans cast during the two hours of the forenoon, the return showing only 77 republican votes, just one more than the number of colored votes polled in the afternoon They must have gone where the "woodbline twineth."

It is further shown that, during the adjournment of the board of inspectors at noon, the ballot-box was removed from the place of

occupied by the officers of election by Stephens, who exhibited at the same time a large navy revolver. As soon as the polls closed the inspectors proceeded to canvass the votes, without first counting them to ascertain if the number of ballots corresponded with the number of names on the clerk's list. But four votes were counted, which Stephens put in his vest pocket, when in plain violation of law they adjourned and carried the ballot-box to the house of Mozely, two miles distant from the place of voting. They counted about forty votes in a private apartment, the door of which was closed against outsiders, when they again adjourned for about half an hour and went to supper in a different part of the house, leaving the ballot-box unguarded and unsealed, though a brother of Mozely and two other men were in a room but a short distance from that which contained the ballot-box. After supper they again met in the bed-room and counted the voters remaining in the box. Returns were made out and signed by the inspectors and clerk, and the ballot-box.

Sixty-three colored men, qualified voters, appeared before the committee and testined that they each voted the straight republican ticket at Friendship Church on the day of election. There was no attempt made to contradictor impeach the testimony of any of them. No democrat claimed that more than two colored men voted the democratic ticket at this precinct, one of whom, named Warren Law, made afficiant before a notarry public, prior to the arrival of the concressional committee, that he cast a republican ticket, which said affidavit is on file in the office of the secretary of state. The majority of the committee attempted to show that many of these colored witnesses might be mistaken as to the character of the ballot they swore they had voted, for the reason they could not read or write and were liable to be deceived by a bogus ticket having a flag above the name of Ratherford II. Hayes, as did the regular republican ticket, the democratic ticket having a nodevice, which

#### MONROE COUNTY.

MONROE COUNTY.

Messrs. Thompson, Hopkins, and Dunnell on the 18th of December commenced an investigation into the conduct of the election officers of precinct No. 3. at Key West, Monroe County. The conduct of these officers and the action of the State canvassing board will be found stated in the following extract from the minutes of the board, made on the 5th of December:

"Monroe County, precinct No. 3. Key West, giving 401 votes to the democratic electoral and State tickets and 59 to the republican, was thrown out of the canvass on account of gross violation of the election laws by the inspectors, in adjourning before the completion of the canvass, and completing it the next day in a different place and without public notice. The vote on its rejection was unanimous, the attorney-general deciding, in reply to a question put to him as to the legal effect of these violations of the law, that it must be thrown out. With this deduction the county was canvassed." county was canvassed

these violations of the law, that it must be thrown out. With this deduction the county was canvassed."

Before we analyze the testimony taken in this case we respectfully call attention to section 21 of the election laws of Florida:

"SEC.21. As soon as the polls of an election shall be finally closed the inspectors shall proceed to canvass the votes cast at such election, and the canvass shall be public and continued without an adjournment until completed. The votes shall be first counted, and if the number of ballots shall exceed the number of persons who shall have voted, as may appear by the clerk's list, the ballots shall be replaced in the box and one of the inspectors shall publicly draw out and destroy unopened so many of such ballots as shall be equal to such excess."

The provisions of this section so far as they relate to a completion of the canvass before adjournment have always been regarded as mandatory by every State canvassing board since the passage of the act in 1868. The democratic attorney-general, Hon. Wm. Archer Cocke, voted with the secretary of state and comptroller of accounts to throw out this precinct, and for the reasons above given. The following memorandum was furnished us by the clerk of the canvassing board:

"The following is a joint memorandum handed me as clerk of the State canvassing board by Hon. C. A. Cowgill and Hon. Wm. Archer Cocke, members of said board, on the 8th of December, 1876:

[In the handwriting of Dr. Cowgill.]

# [In the handwriting of Dr. Cowgill.]

[In the handwriting of Dr. Cowgill.]

"Points in Monroe County case, upon which the opinion of the attorney-general was asked by one member of the canvassing board with a view to acting according to that opinion.

"Do sections 21, 22, and 23, of chapter 1625, laws of Florida, imperatively demand that the canvass of votes cast at the election shall be made without adjournment, including the making of the certificate!

"When the evidence is contradictory as to the mere count of the vote before adjournment, and it is undisputed that the board adjourned and met next day in a different place, and, according to one inspector, counted all the votes over again, and, by testimony of Mr. Clark, arrived at a different result from that of the night before, and, according to another inspector, only made out the certificate, in view of this statement of facts, is this a legal canvass!"

"The attorney-general said it should be thrown out, and not counted:

"In the handwriting of Judge Cocke.]

# [In the handwriting of Judge Cocke.]

[In the handwriting of Judge Cocke.]

"The board took a recess to afford time to the clerk to make up a tabulated statement of the votes to be afterward compared with the returns. Before the certificate had been made out or the attorney-general was informed that the statement was made out, the attorney-general claimed the right to change his vete on the Monroe County State election, having voted in favor of throwing out precinct No. 3, in the electoral vote, the board not having adjourned, I claimed the right to change my vote in relation to precinct No. 3."

"The following is the indorsement:

"Memorandum handed the clerk by Dr. Cowgill and Judge Cocke.
(Signed)

"Ulerk."

"Olerk.

" December 8, 1876."

The protest of the honorable attorney general against throwing out this precinct followed only by a few hours his vote to throw it out. This change of position was a culmination with him of the democralizing influence of the democratic visit ors there in Tallahassee from the city and State of New York. The testimory taken in this case clearly shows that an adjournment took place before the canvass was completed; that the place at which the officers agreed to meet the second day was in another precinet, one witness calling at a public place and another a private place; that the votes were counted over three or four times the second day; that errors were found the second day; that the returns were made out from a corrected tally-sheet made the second day; that none of the voters of precinct No. 3 was present on the second day to witness the action of the officers, and that there is a disagreement as to the partial announcement of the vote the first day and before adjournment. The ballot-box, poll-list, and registration list were taken away from the view of the voters before the officers had completed their duties. The purity of the election which this section of the law was intended to secure was not preserved. This section does not permit an adjournment. The testimony of Dr. Harris may well be disregarded, for his own election to the State Legislature depended upon the vote of this precinct, and for the further reason that his testimony is in conflict with an affidavit which he made before the State canvassing board. Witness Kemp does not fully sustain the two Bartlums; Reyes emphalically contradicts them. The democratic officers took possession of the ballot-box, and Reyes, the only republican edicer, was wholly ignored. We therefore are compelled to sustain the action of the canvassing board in rejecting this precinct. The action of the board had the approval of the attorney-general, and is fully in keeping with the action of every State canvassing board in rejecting this precinct.

### CLAY COUNTY.

CLAY COUNTY.

The majority say that the Clay County return was not irregular or false on its face, and therefore should not have been rejected by the canvassing board in its recanvass of the governor vote under the order of the court to throw out the whole return if so irregular or false that the true vote could not be ascertained.

In reply, we simply ask the majority to tell us the true vote of the county from the following accurate summary statement relating to the fraudulent vote from the face of the Clay County return:

Green Cove Springs: For Samuel J. Tilden for President Tilden, 74 votes; for Thomas A. Hendricks for Vice-President, 74 votes, for President Tilden, 74 votes; for Vice-President, 74 votes; for Presidential electors: republican electors, (naming them.) 122 votes; democratic electors, (naming them.) 287 votes; democratic electors, (naming them.) 6 votes;

#### DUVAL COUNTY.

DUVAL COUNTY.

The validity of the return from this county, to the surprise of the minority, is questioned by the majority for the alleged reason that the board of county canvassers was composed of two instead of three persons. How they came to such a conclusion is a matter of the wildest conjecture, considering the testimony discloses no proof of the fact and every presumption of law is in favor of the legality of the acts of officers of election boards. Probably this conclusion is the offspring of extreme anxiety to find an offset to the Baker County return, based upon an illegal canvass made by two persons, as is clearly shown by the testimony. The return from this county, it is true, is only signed by the clerk and a justice of the peace, and accompanying it is a certificate showing the refusal of the judge to sign it. If there were no such certificate, the law is plain that a majority of a canvassing board may sign a return, the return being no part of the canvass and affording no presumption that the legal number of persons did not participate in the canvass.

The majority of the committee have seen fit to animadvertin bitter terms upon the conduct of republican officials because sixteen men confined in a jail voted in this county, some of whom were awaiting trial, three being convicted of felonies but not sentened. There is no pretense made that they were not qualified voters, but an intimation is unjustlymade that they voted the republican itcketunder duress, without a scintilla of evidence to support it. We do not deem it our duty, under the resolution creating and defining the duties of the committee, to cast reflections on the conduct of democratic officials without clear proof, but we feel constrained to say that the reports of investigating committees should be regarded by the contrive as a solution of the conduct of the contribute of the conduct of t

# Alleged disability of Elector Humphries.

January 31, 1877, the majority took the testimony of James E. Yonge, who had been candidate for elector, to the effect that Frederick C. Humphries, one of the electors, had been a United States commissioner, and they also had annexed to their report a copy of Mr. Humphries's appointment. But Mr. Humphries resigned the office before November 7, 1876, and his resignation was duly accepted, and he was not such commissioner either November 7, 1876, when he was elected, or December 6, 1876, when he voted as elector, as appears by his sworn testimony before the State canvassing board of Florida, as follows:

Extract from testimony before the Florida State canvassing board, Monday, December 4, 1876.

FREDERICK C. HUMPHRIES sworn for the republicans.

Examined by the CHAIRMAN:

Examined by the CHARMAN:

Question. Are you shipping commissioner for the port of Pensacola?

Answer. I am not.

Q. Were you at one time?

A. I was.

Q. At what time?

A. Previous to the 7th of November.

Q. What time did you resign?

A. The acceptance of my resignation was received by me from Judge Woods about a week or ten days before the day of election, which I have on file in my office. I did not think of its being questioned, or I would have had is here. He stated in his letter to me that the collector of customs would perform the duties of the office, and the collector of customs since done so.

# SUMMARY OF METHODS OF ESTIMATING FLORIDA'S VOTE

As a summary of the various ways of estimating the vote of the State of Florida on the 7th of November, the minority submit the following:

I. If the vote be reckoned by the face of the returns which were opened by the board on the 28th of November, and unanimously declared, (Attorney-General Cocke concurring), under the rule of the board, to be the regular returns, having all the legal formalities complied with, the majority for the Hayes electors is 43.

II. If the vote be reckoned by the official statutory declaration of the canvassing board exercising its jurisdiction under the State statute, in accordance with the practice adopted without objection, and by the advice of the democratic attorney-general, Cocke, and never disputed until the result of this canvass was about to be determined, which declaration in the belief of the minority is final and irreversible, the majority for the Hayes electors is 925.

III. If the vote be reckoned upon the principles laid down by the supreme court in their order to recanvass in the case of Drew vs. Governor Stearns, of not purging the polls of illegal votes and retaining the true vote, but of rejecting the whole county return when appearing or shown to be so irregular, false, or fraudulent that the true vote could not be ascertained, the result would be, according to the declaration of the board, a majority for the Hayes electors of 21t.

IV. If the board had thoroughly reconsidered, according to the decision of the supreme court, the various county returns for the purpose of throwing out in tote all

that could be shown to be irregular, false, or fraudulent, instead of purging the re-turns of their illegalities and retaining the true vote, there should be thrown out the returns from the following counties—

Counties.	Tilden electors.	Hayes electors.
Baker Clay Hamilton Jackson Manatee	238 287 617 1, 397 262	143 122 330 1, 299 26
Total	2, 801	1, 920

leaving a majority for the Hayes electors of 791.

V. If the vote of the State were to be estimated according to the honest and true vote of the people at the polls, without regard to precinct, county, or State canvassers, the result would be, according to the judgment of the minority, a larger majority for the Hayes electors than the declared majority of 925.

#### CONCLUSION.

rassers, the result would be, according to the judgment of the minority, a larger majority for the Hayes electors than the declared majority of 925.

CONCLUSION.

The minority, in conclusion, deem it but just to state that they entered upon the performance of their daties deeply impressed with the importance of the task enjoined upon them by the resolution of the House of Representatives creating the committee. We endeavored, as far as the infirmities of human nature would permit, to divest ourselves of all partisan prejudice and report truly the facts from the evidence, regardless of political consequences. We entertained the hope that the report of the committee would be unanimous, believing that the selemn judgment of all its members, composed as it was of men of both political parties, might tend to calm the public mind and aid in the solution of the vexed presidential problem. But the many proofless and extravagant claims made by the majority defeated the consummation of our wishes.

Feeling that we have been animated by the spirit of truth and justice in reaching our conclusions, we court an impartial but rigid examination of the evidence which influenced the judgment of the State canvassing board in rejecting the returns from certain preclinets when canvassing the votes east for presidential electors, our report, as well as that of the majority, must be necessarily imperfect. Significance should be attached to the failure of the committee to inquire into the conduct of the election in many counties wherein gross irregularities and frands were alleged to have been committed.

We now call attention to the following extract from one of the closing paragraphs of the majority report, which is as well substantiated by the evidence as almost every other conclusion reached by the majority:

"There was not the slightest proof that the colored people of that State were in any manner restricted in the enjoyment of their political rights, but your committee were impressed with the very apparent disposition manifeste

"1. That we pledge ourselves, each to the other, by our sacred honor, to give the first preference in all things to those men who vote for Reform; and that we give the second preference in all things to those who do not vote at all.

"2. That we affirm the principle that they who vote for high taxes should pay them, and that in employing, or hiring, or renting land to any such persons as vote for high taxes, that in all such cases a distinction of 25 per cent, or one-fourth, be made against such persons. That merchants, lawyers, and doctors, in extending credit to such persons, make the same distinction.

"3. That in all such cases we extend as little credit or use of our means as possible, leaving them to their chosen friends.

"4. That in the ensuing year we positively refuse to re-employ one out of every three who may then be upon our places and who voted against Reform and low taxes; and that a list of all such persons be published in the Constitution, in order that we may know our friends from our enemies.

"5. That we will consider it dishonorable and unneighborly for any farmer, planter, merchant, lawyer, doctor, or other person to violate any of the foregoing resolutions."

resolutions."

The evidence shows that these resolutions were extensively circulated and were posted in conspicuous places at each poll, for the inspection and information of the colored voters.

The next paragraph opens with the emphatic declaration that "there is no more doubt that the State of Florida cast her vote for the Tilden electors than there is that Massachusetts cast her vote for the Hayes electors." If this allegation is no better supported than that contained in the preceding paragraph, we are quite certain that bald assertions will have but little influence on the public mind.

For the reasons hereinbefore set forth, and from the evidence before the committee touching the action of the State canvassing board in counting and declaring the vote for presidential electors and the conduct of the election in the State of Florida, the minority of the committee recommend the passage of the following resolution:

Resolved. That at the election held on November 7, A. D. 1876, in the State of Florida, F. C. Humphries, Charles H. Pearce, William H. Holden, and T. W. Long were fairly and legally chosen as presidential electors by the legal voters thereof, and were duly declared elected; and that the said electors having on the first Wednesday of December, A. D. 1876, cast their votes for Rutherford B. Hayes for President and for William A. Wheeler for Vice-President, they are the legal votes of the State of Florida, and must be counted as such.

WILLIAM WOODBURN.

MARK H. DUNNELL.

The SPEAKER. The chairman of the committee suggests that the resolution of the majority be read.

Mr. CONGER. Not if that brings it before the House.

The SPEAKER. In presenting that suggestion to the House the Chair will see that no possible advantage is taken of the rights of any

Mr. PAGE. I move that the House do now adjourn.
Mr. THOMPSON: I do not yield the floor.
The SPEAKER. The chairman of the committee simply asks that the resolution attached to the report of the majority of the committee shall be read for the information of the House.

Mr. CONGER. It will be in the RECORD to-morrow, and I would rather see it there than hear it read now when we are all tired.

Mr. PAGE. I move that the House do now adjourn.

Mr. PAGE. I move that the House do now adjourn.

The SPEAKER. The Chair thinks that the receiving and reading of the report was made under the condition stated by the gentleman from Michigan, [Mr. CONGER.] The Chair is apprised by the clerks that it will take full an hour to read the remainder of the report. The Chair thinks the gentleman from Massachusetts has in fact occupied his hour, and the Chair therefore recognizes the gentleman from California [Mr. PAGE] to make a motion to adjourn.

Mr. HOLMAN. Will not the report come up as unfinished business to morrow?

to-morrow?

The SPEAKER. Certainly.

The question was taken on the motion to adjourn; and on a divis-

The question was taken on the motion to adjourn; and on a division there were—ayes 71, noes 109.

Mr. PAGE. I call for tellers.

Mr. HOLMAN. I suppose there would be no trouble about this matter if it was understood that the resolution appended to the majority report would come up to-morrow as unfinished business. If that agreement be made there is no reason why the session of to-night should be prolonged.

The SPEAKER. The Chair must allow the House to judge whether it will adjourn or not.

it will adjourn or not.

Mr. SPRINGER. Is not this the unfinished business after the reading of the Journal to-morrow? I ask that as a parliamentary question.

The SPEAKER. Certainly it will be the unfinished business.

Tellers were ordered; and Mr. PAGE and Mr. SPRINGER were ap-

The House divided; and the tellers reported—ayes 50, noes 109.

Mr. TOWNSEND, of New York. I call for the yeas and nays.

The yeas and nays were ordered, forty members voting therefor. The question was taken; and there were—yeas 47, nays 144, not voting 98; as follows:

The question was taken; and there were—yeas 47, nays 144, not voting 98; as follows:

YEAS—Messrs. Adams, Bagby, George A. Bagley, John H. Baker, Ballou, Beebe, Bradley, Horatio C. Burchard, Cannon, Conger, Crounse, Dobbins, Dunnell, Flye, Fort, Foster, Haralson, Benjamin W. Harris, Hatborn, Hubbell, Kimball, Lapham, Lawrence, Lynch, MacDougall, McCrary, Miller, Monroe, Oliver, O'Neill, Page, Pierce, Pratt. Kobinson, Sampson, Smalls, A. Herr Smith, Martin I. Townsend, Washington Townsend, Tutts, Waldron, John W. Wallace, G. Wiley Wells, Andrew Williams, William B. Williams, James Wilson, and Alan Wood, jr.—47.

NAYS—Messrs. Abbott, Ainsworth, Ashe, Atkins, John II. Bagley, jr., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, Dibredl, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Glover, Goodin, Gunter, Andrew H. Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Kehr, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lord, Lynde, Mackey, Maish, McFarland, McMahon, Mctcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, New, O'Brien, John F. Philips, Poppleton, Potter, Powell, Rea, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Miles Ross, Savage, Salve, Scales, Schleicher, Sheakley, William E. Smith, Southard, Sparks, Springer, Stanton, Steneger, Stevenson, Stone, Swann, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Erastus Wells, Whitehouse, Whitthorne, Alpheus

So the House refused to adjourn.

During the roll-call, Mr. RÖBBINS said: My colleague, Mr. Yeates, is detained from his seat by sickness.

Mr. CONGER. I move that the House take a recess until half past

eleven o'clock to-morrow.

The SPEAKER. That motion is in order.

Mr. PAGE. I move to amend the motion of my friend from Michigan by substituting half past ten for half past eleven.

The question was taken on the amendment; and on a division there were—ayes 105, no 1.

Mr. CONGER. No quorum voted.

The SPEAKER. No quorum has voted and no motion is now in order except a motion to adjourn or a motion for a call of the House.

Mr. HOLMAN. I suppose there is no reason why the House should remain in session at this hour in the evening. I understood the

gentleman from New York [Mr. HEWITT] wanted to ask the unanimous consent of the House to submit some proposition; but, if not, should be myself in favor of the motion to adjourn, and would make that motion.

Mr. CROUNSE. I move that the House adjourn.

The motion was agreed to; and thereupon (at eleven o'clock and thirty-five minutes p. m.) the House adjourned.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: A copy of the proceedings in information in nature of quo warranto in the case of The State of Florida exrel Wilkinson Call et als. vs. Charles H. Pearce et al., to the committee on the recent election in Florida.

Also, an authenticated copy of an act passed by the Legislature of Florida, entitled "An act to declare and establish the appointment by the State of Florida of electors of President and Vice-President,"

to the same committee.

By Mr. GEORGE A. BAGLEY: The petition of citizens of Herkimer County, New York, for the repeal of the statute limiting the time for applications for pensions, to the Committee on Invalid Pensions.

By Mr. BAKER, of Indiana: The petition of Elmore Wyatt and others of De Kalb County, Indiana, that pensioners receive pensions from the date of their discharge from the Army, to the same com-

By Mr. BRADLEY: The petition of T. W. Nevins and 60 other citi-

zens of Michigan, of similar import, to the same committee.

By Mr. CROUNSE: The petition of citizens of Nebraska for a postroute from Plum Creek to New Helena, Nebraska, to the Committee

on the Post-Office and Post-Roads.

Also, the petition of A. D. Williams and others, for a post-route from Kenesaw to Riverton, Nebraska, to the same committee.

By Mr. DE BOLT: The petition of R. G. Whetmore and 44 other persons of Hamilton, Caldwell County, Missouri, for cheap telegraphy, to the same committee.

to the same committee.

By Mr. FORT: The petition of O. A. Corwin and 300 other citizens of Ford County, Illinois, for cheap telegraphy, to the same committee. By Mr. GAUSE: The petition of the trustees and superintendent of the Institute for the Blind at Little Rock, Arkansas, that an appropriation be made in aid of the printing-house for the blind at Louisville, Kentucky, to the Committee on Education and Labor.

By Mr. HARTZELL: The petition of William H. Conner and 29 other citizens of Randolph County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HOUSE: Memorial of the Historical Society of Tennessee, that Congress purchase the papers of the General Count de Rochambeau, to the Joint Committee on the Library.

By Mr. HUNTER: The petition of citizens of Indiana, that Con-

By Mr. HUNTER: The petition of citizens of Indiana, that Congress fix a uniform rate of interest upon money throughout the United States not exceeding 6 per cent. per annum, to the Committee on

States not exceeding 6 per cent. per annum, to the Committee on Banking and Currency.

By Mr. KIMBALL: The petition of James H. Marsh and 15 others, that the statute limiting the time for applications for pensions and preventing the payment of arrears of pension be removed, to the Committee on Invalid Pensions.

By Mr. LORD: Two petitions, signed by Henry W. Renell and others and A. A. Smith and others, of New York, of similar import, to

the same committee.

Also, two petitions of James C. Knox, A. B. Green, Daniel Eaton, J. W. Bates, and others, and Silas L. Snyder, George W. Brown, Alexander H. Campbell, O. S. Kenyon, and others, of New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads. By Mr. MORGAN: The petition of M. A. Gill, J. M. Gill, and 20 other citizens of Sarcoxie, Jasper County, Missouri, of similar import to the carry convents.

port, to the same committee.

By Mr. NEW: The petition of citizens of Indiana, of similar import, to the same committee.

Ry Mr. O'NEILL: The petition of citizens of Philadelphia, for the repeal of the law limiting the time for applications for pensions and preventing the payment of arrears of pension, to the Committee on

By Mr. PAGE: Memorial of Ed. F. Tyler, of Sacramento, California, that soldiers be granted additional bounty-land warrants, to the Committee on Public Lands.

Committee on Public Lands.

By Mr. ROBBINS, of North Carolina: The petition of citizens of North Carolina, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WALSH: The petition of Enos Ray, Alfred Ray, B. C. King, Henry Hoyle, J. W. Barker, W. B. Beall, and A. G. Osborn, trustees of Emory church, Brightwood, District of Columbia, for compensation for the use and occupation of said church property by the United States Army and for wood taken and used by said Army. the United States Army and for wood taken and used by said Army, to the Committee on War Claims.

By Mr. WELLS, of Missouri: Remonstrance of citizens of Missouri, against granting permission to build a bridge over the Missouri River at or near Glasgow, to the Committee on Commerce.

By Mr. WILLIAMS, of New York: The petition of E. W. Hunt, M. N. Nichols, and others, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

# IN SENATE.

# THURSDAY, February 1, 1877.

The Senate met at eleven o'clock a. m. Prayer by the Chaplain, Rev. Byron Sunderland, D. D.

The Journal of yesterday's proceedings was read and approved.

HOUSE BILL REFERRED.

The bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes, was read twice by its title and referred to the Committee on Patents.

#### REPORT OF DISTRICT BOARD OF HEALTH.

The PRESIDENT pro tempore laid before the Senate the following concurrent resolution from the House of Representatives; which was referred to the Committee on Printing:

Resolved by the House of Representatives, (the Senate concurring,) That 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for use and distribution by said board.

#### DISTRICT POLICE COMMISSIONERS-VETO MESSAGE.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives upon the bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia; which was read, as follows:

In the House of Representatives January 30,

January 30, 1877.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same, and it was

\*Resolved\*, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

GEORGE M. ADAMS, Clerk.

Mr. EDMUNDS. I move that the bill and message be referred to the Committee on the District of Columbia.

The motion was agreed to.

#### PROCEEDINGS OF ELECTORAL COMMISSION.

Mr. EDMUNDS. I ask unanimous consent out of order, for the reason that I am obliged to leave the Chamber, to offer the following resolution, and I ask for its present consideration:

Resolved by the Senate, (the House of Representatives concurring,) That the public proceedings of the electoral commission appointed under the act of Congress approved January 29, 1877, as taken down under the direction of the commission, be printed in the CONGRESSIONAL RECORD; and also that a number of copies of the same, equal to the number of copies of the RECORD and of uniform size therewith, be printed separately; 500 copies thereof for the use of the commission, and the residue for the use of the Senate and House of Representatives.

The Senate proceeded to consider the resolution.

Mr. MERRIMON. I beg to ask the Senator if that will embrace the debates before the commission?

Mr. EDMUNDS. Yes, sir; it is understood, just as the proceedings of the Senate it will embrace everything that takes place in public.

Mr. WRIGHT. I understand that it is contemplated by the reso-

Mr. WRIGHT. I understand that it is contemplated by the resolution that all the proceedings shall be published and printed in the RECORD, and that the same proceedings shall be printed separately in uniform size. What is the object of having that done?

Mr. EDMUNDS. It was stated by several gentlemen in considering the subject that they desired to have, just as in the impeachment trials that have occurred, the daily RECORD containing the proceedings and also, as was done in the impeachments, a separate volume of the same size that should contain those proceedings and nothing else. That was the object. I am told that is the way that has been usual. usual.

The resolution was agreed to.

# GOVERNMENT OF SOUTH CAROLINA.

Mr. ROBERTSON. I present resolutions adopted at a mass-meeting of the white and colored voters of Barnwell County, South Carolina, which I ask may be read and referred to the Committee on Privileges and Elections. These resolutions were offered by Mr. E. Mercer Sumpter, a prominent colored man of that county, and unanimously adopted, a large number of colored men being present.

The PRESIDENT pro tempore. The resolution will be read if there

be no objection.

The Chief Clerk proceeded to read as follows:

BARNWELL COURT HOUSE, SOUTH CAROLINA January 15, 1877.

At a mass-meeting of the citizens of Barnwell County, South Carolina, held this day at Barnwell Court House, the following resolutions submitted by Mr. E. Mercer Sumpter were unanimously adopted:
"Resolved, That the 700 colored voters who enrolled their names in the democratic clubs, and the 976 who cast their ballots for General Wade Hampton and the candidates on his ticket, did so to secure to their native State honest government and home rule, and to free her from the thicking government under which she has so long suffered, from corrupt carpet-baggers and infamous scalawags"—

Mr. SARGENT. I should like to inquire what the paper is and how it is before the Senate.

Mr. ROBERTSON. These are resolutions presented by a prominent

colored man of Barnwell County, South Carolina, and adopted at a large mass-meeting there, and sent to me for presentation to the Senate.

Senate.

Mr. SARGENT. Is the paper a petition addressed to the Senate?

Mr. ROBERTSON. It is sent to me to be presented to the Senate.

The PRESIDENT pro tempore. It is the resolution of a mass-meeting and is not in the form of a petition.

Mr. SARGENT. I object to its reading. It is not addressed to the Senate. We certainly have had enough of vituperation in every form.

I presume persons could be got together in any corner of this country to pass language intemperately abusing those they do not like politically.

Mr. ROBERTSON. I will state to the Senator that the resolution

was adopted at a mass-meeting presided over by Judge Maher.

The PRESIDENT pro tempore. The Senator from California objects to the reading. The Chair will submit the question to the Senate, Shall these resolutions be read?

Mr. SARGENT. I understand that this is not a petition addressed to the Senate.

The PRESIDENT pro tempore. So the Chair understands.

Mr. SARGENT. The order of business is the reception of petitions. Therefore, I insist that it is out of order, and I ask the Chair to rule

upon my point of order.

Mr. MORRILL. And it is not in respectful language.

Mr. SARGENT. It certainly is not in respectful language. It is grossly abusive. I raise the point of order that it cannot come under

the present order, which is the reception of petitions.

The PRESIDENT pro tempore. It is not under the order of petitions in any form; and, therefore, it will be ruled out of order, not coming in the form of a petition. It is not a petition, and does not

purport to be a petition.

Mr. MERRIMON. I ask if the paper does not request the Senator to present these resolutions to the Senate?

Mr. DAVIS. Let the Clerk read the beginning of the paper.
The PRESIDENT pro tempore. It is not addressed to the Senate.
Mr. ROBERTSON. I was requested to submit these resolutions by a mass-meeting of citizens of Barnwell County, South Carolina.

The PRESIDENT pro tempore. The Chair understands there is a resolution asking the Senator from South Carolina to present the

paper to Congress.

Mr. DAVIS. There is such a resolution, I understand.

The PRESIDENT pro tempore. So the Chair understands, a resolution asking the Senator to present it. It is not in the form of a memorial, is not signed by any Senator or party, and does not come

Mr. SAULSBURY. With all respect to the Chair, I submit that it is not important that the resolutions composing the paper should present the formula of words to make a petition. I apprehend it does not require any particular formula of words to bring it within the

The PRESIDENT pro tempore. The Chair will answer the Senator from Delaware that there is no signature to the paper. If the Senator appends his name or any Senator, the Chair will entertain it as a memorial to the Senate.

Mr. DAVIS. Is it not indorsed by the Senator who presents it?

The PRESIDENT pro tempore. It is not signed by the Senator from South Carolina who presented it.

Mr. DAVIS. If it were, which would only take a minute, it would

then be in order, I understand.

The PRESIDENT pro tempore. If any will then be in the form of a memorial. If any Senator signs the paper, it

Mr. DAVIS. Then I submit to the Senator from South Carolina to indorse his name on its back and let it be read, as such papers have been read in all cases when the reading was asked for by the Senator presenting them.

Mr. WALLACE. Do I understand that it is the rule of the Senate that when a Senator rises in his place and presents a memorial, in-dorsing it as from his own constituents, with its substance, that in dorsing it as from his own constituents, with its substance, that in addition thereto it requires the signature of the Senator before the Senate will entertain it? We every day present memorials from boards of trade and other organizations, conched in proper language and asking that they may be presented to the Senate. Why is a different rule to be made to apply to the Senator from South Carolina when he presents what is simply a memorial? He rises in his place

when he presents what is simply a memorial? He rises in his place and presents to the Senate as a representative of his people a memorial, as is his right.

The PRESIDENT pro tempore. The Chair will remind the Senator from Pennsylvania that the ruling of the Chair is precisely as was ruled before in the case of the Senator from Missouri [Mr. Bogy] who presented a paper here and it was required that he or some other party should sign it, for otherwise such a paper is not in the order of petitions and memorials. The Chair stated that if the Senator from South Carolina or any individual would sign the paper the Chair would receive it as a petition. The Senator from South Carolina stated that he had not signed it. The paper shows that he did not sign it.

Mr. ROBERTSON. I have signed it.
The PRESIDENT pro tempore. The Senator has now signed it, and it is now in order.

Mr. WALLACE. I do not specially rise in reference to this case,

but to learn the rule. Here is a memorial which is required in its very terms to be presented to the Senate. It has been the practice of the Senate so long as I have been here to receive such memorials. The case of the Senator from Missouri differed from this. That was a private paper, and in it there was nothing that suggested that it

should be presented to the Senate. It was a report to other parties.

The PRESIDENT pro tempore. The Chair will remind the Senator that it was a counter statement, and reported from a special commit-

that it was a counter statement, and reported from a special committee or a portion of a special committee.

Mr. WALLACE. I understand that; but I desire to learn whether in the case of a memorial, for instance, of a board of trade of the chief city of my State, presented by me, containing a resolution asking that I should submit it to the Senate, when I rise in my place and present it to the Senate I am required also to place upon it my indorsement that it is such a memorial.

The PRESIDENT pro tempore. It is not required, because it bears the signature of some officer. The Chair did not understand that there were any signatures to this paper. The Chair is now advised that it bears the signatures of the president and secretary of the meeting. It therefore comes within the ruling of the Chair. The Chair ing. It therefore comes within the ruling of the Chair. The Chair was not so advised before. The memorial is now fully in order, as the Senator from South Carolina has appended his signature. The Secretary will now read the paper.

Mr. SARGENT. A memorial should be respectful in its terms?

The PRESIDENT pro tempore. Certainly.

Mr. SARGENT. It should be decorous in its language, no matter to whom that language may be applied. I understand that it can

to whom that language may be applied. I understand that it cannot be read in any event without unanimous consent. I object to its not be read in any event without manimous consent. I object to its reading on that ground, not that it is presented by the Senator from South Carolina, for whom I have very high respect. I should object to language like this if read in the presence of the Senate by any one, unless the Senator had a right to have it read, and then of course my objection would be of no avail. We have heard a partial reading of this paper. I find that the terms "carpet-baggers" and "scalawags" are sowed through it, peppered all the way through it. Who are meant by "scalawags?" Persons of southern birth who dare to be republicans are "scalawags."

meant by "scalawags." Fersons of southern birth who dare to be republicans are "scalawags."

Mr. ROBERTSON. I am a republican.

Mr. SARGENT. Who are "carpet-baggers?" Men from my State, from Massachusetts, or from Illinois, or any other State, who may go to South Carolina or to Florida or some other State and entertain republican principles. I say that language like that is not fit to be read in the presence of the Senate. It would hardly be decorons in the debates of the Senate; but that would have to be left to the taste of the Senator speaking. If I have a right to object to the reading of a document made up of vile and abusive language to large classes of people of some portions of the country with whom I sympathize in political sentiment, then I interpose that objection; and I desire the Chair to rule whether I have a right to object to the reading of the document. Mr. INGALLS. I

Mr. INGALLS. I call for the reading of Rule 15.
The PRESIDENT pro tempore. The Chair will read Rule 15:

When the reading of a paper is called for, and the same is objected to by any enator, it shall be determined by a vote of the Senate, and without debate.

The Chair had already said he would put the question to the Sen-

Mr. SARGENT. I ask for the yeas and nays on the question.

Mr. SARGENT. I ask for the yeas and nays on the question.
The yeas and nays were ordered.
Mr. PATTERSON. What is the question?
The PRESIDENT pro tempore. The resolutions of a mass-meeting in Barnwell County, South Carolina, were presented by the Senator from South Carolina, [Mr. ROBERTSON,] who asked to have them read. The question is, Shall the paper be read?
Mr. ROBERTSON. And I ask that it be referred to the Committee

on Privileges and Elections.

The PRESIDENT pro tempore. The Senator from California has ob-ceted to its reading. Under Rule 15 the Chair submits that question

The PRESIDENT protempere. The senator from Carlotha has objected to its reading. Under Rule 15 the Chair submits that question to the Senate, on which the yeas and nays have been ordered.

Mr. PATTERSON. I have not heard the paper read at all, but I hope it will be read. I have no objection to having it read. Let it be read. I want to have everything read that the people of South Carolina want read in this Hall, on both sides. I hope it will be read. I shall vote to have it read.

Mr. SARGENT. If the Senator from South Carolina desires that foul language like this, emanating from his State and applying to his State, shall be read, I withdraw my objection if I may be allowed to

Mr. PATTERSON. I do not know what is in the paper at all; but if any persons in South Carolina have sent anything to the Senate that is not respectful let it be read, and let the Senate form its own

Mr. SARGENT. If I am allowed to do so, I withdraw my objection

to the reading.

Mr. ROBERTSON. I will state that it is respectful in its language.

The PRESIDENT pro tempore. The Senator from South Carolina states that the paper is respectful in language. The objection of the Senator from California is withdrawn; and if there be no objection the resolutions will be read.

Mr. ROBERTSON. Then the country can judge of its language.

The Chief Clerk read as follows:

The Chief Clerk read as follows:

At a mass-meeting of the citizens of Barnwell County, South Carolina, held this day at Barnwell Court-House, the following resolutions, submitted by Mr. E. Mercer Sumpter, were unanimously adopted:

Resolved, That the seven hundred colored voters who enrolled their names in the democratic clubs, and the nine hundred and seventy-six who cast their ballots for General Wade Hampton and the candidates on his ticket did so to secure to their native State honest government and home rule and to free her from the thieving government under which she has so long suffered from corrupt carpet-baggers and infamous scalawags.

Resolved, That we indignantly repel, as a vile and malicious slander, that charge that intimidation was used to force us to the performance of this wise and patriotic duty; that we cast our ballots as free and independent citizens, and that the only threats made or violence used in the canvass were made and used against us by radical partisans to prevent us from going to the polls and exercising this franchise.

Resolved, That Senator ROBERTSON, of South Carolina, and Representative SMALLS, of this congressional district, be requested to present these resolutions to their respective Houses in the Congress of the United States.

President.

ANDREW C. DIBBLE, EDWARD M. LAWTON,

Mr. BOUTWELL. I will ask the Senators from South Carolina whether they have knowledge of the persons whose names are appended to this paper; and, if so, that they will give us some statement

in regard to it

Mr. ROBERTSON. I have knowledge of the gentleman who presided at the meeting and the gentleman who presented the resolution. The gentleman who offered the resolution is a prominent colored man who lives in the county, and I have been informed by persons whom I have a right to believe, and whom I do believe, that the resolutions were adopted unanimously.

Mr. BOUTWELL. I ask whether the persons whose names are ap-

pended are colored men or white men?

Mr. ROBERTSON. They are very prominent citizens of South

Mr. BOUTWELL. Are they colored men or white men?
Mr. ROBERTSON. A colored man offered the resolution and both white men and colored men composed the meeting.

Mr. BOUTWELL. But the persons whose signatures are appended

to this paper?

Mr. ROBERTSON. The chairman is a very prominent and distinguished citizen of that county, a white man, and both the secretaries

Mr. PATTERSON. I should like to ask my colleague if Mr. Maher

is the name of the president in Mr. ROBERTSON. John J. Maher.

Mr. PATTERSON. He is a brother of Judge Maher?

Mr. ROBERTSON. He is Judge Maher him Mr. PATTERSON. He is a good democrat. He is Judge Maher himself.

Mr. ROBERTSON. And a good man.
Mr. PATTERSON. He is a good democrat; that is all.

Mr. ROBERTSON. And a good man too.

The PRESIDENT pro tempore. The paper will be referred to the Committee on Privileges and Elections.

## PETITIONS AND MEMORIALS.

Mr. BOGY presented a resolution of the Legislature of Missouri, in relation to the construction of the Southern Transcontinental Railway on the thirty-second and thirty-fifth parallels of latitude; which was referred to the Committee on Railroads.

Mr. KERNAN presented the petition of Mrs. A. P. Miles, praying for legislation that will authorize payment to her of certain amounts due her from the eastern band of North Carolina Cherokee Indians; which was referred to the Committee on Appropriations, that committee having charge of the Indian appropriation bill.

### AFFAIRS IN LOUISIANA.

Mr. SAULSBURY. I am requested to present a printed memorial of bankers, merchants, and clergy of Louisiana in relation to the late election in that State; which I ask may be read.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and the memorial will be read.

The Chief Clerk read as follows:

Memorial of bankers, merchants, and clergy of Louisiana to the President, Senate, and House of Representatives.

The undersigned, citizens of Louisiana, not office-holders, nor office-seekers, nor

The undersigned, citizens of Louisiana, not office-holders, nor office-seekers, nor consulting with either class, but representing the opinions and sentiments of the thousands of good citizens in the State, desire in justice to themselves, as well as a the good fame of Louisiana, your serious and unbiased consideration of this address. By the politicians of one party the white people of Louisiana have been held up to their fellow-citizens as virtually barbarians, continually engaged in acts of violence and cruelty against the virtuous and inoffensive colored people of the State. In ex parte, partisan, and interested statements such representations have been hastily and indecently thrust before Congress and the country as a reason for disfranchising the whole people of this State and continuing over it a government which it has repudiated.

An issue produced by such action is no longer political. It is one which calls upon citizens of Louisiana to vindicate their good name by resenting a gross and reckless slander. That in our misgoverned State crimes of violence are common, we are only too well aware. That the great mass of our people deplore them and would have them punished and suppressed is the fact here as in all civilized communities.

The misfortune of Louisiana has been, and is, that the political exigencies of the usurped government imposed upon the State against the people's will demand rather the fostering than the suppressing of crimes. The first function of government is the protection of life and property by doing justice. A government exist-

ing upon frauds and sustained against the people's will by force is barred from this primary function because it is itself an organized injustice.

Such a government, also, if sustained by a power from without, finds itself tempted to encourage lawlessness and crime among those it governs, in order to find an excuse for calling upon the continued help and interference of that power. This is the condition of the existing government of Louisiana. By the evidence which it chose to addince before the returning board it showed what all intelligent citizens of the State know, that it does not perform the first function of government. It does not protect life nor property. On the other hand, it exhibited iself in the attitude of profiting by crimes of a certain class. It has use for them to sustain itself. Instead of pursuing them by the sheriff and punishing them by the courts, it summons them by political agents, gives ex parte accounts of them before a political canvassing board, and demands their market value in votes.

For some years past crime has thus been at a premium in Louisiana. A certain class of it has been encouraged and not suppressed; when violence has been perpetrated and whites were the victims, there was little said and as little done; when black men were the victims, quite as little was done, but a great deal was said; and the representation always made if possible that the crime, no matter by whom perpetrated, or with what purpose, had a political meaning, and was worth so many votes and so much Federal interference. The course of the late "count of votes" must be evinced to thoughtful people of this unheard-of perversion of the functions of government.

The reckless use of the pardoning power in partisan interests has been another.

must be evinced to thoughtful people of this unheard of perversion of the functions of government.

The reckless use of the pardoning power in partisan interests has been another wrong under which we have suffered until certain of the criminal class have come to feel that they possess an almost total immunity.

As a specimen of this, we would state that two years ago Acting Governor Kellogg, in the space of a few weeks, pardoned sixty-nine convicts, among whom thirteen were murderers, five were convicted of rape, two of assault with intent to kill, two of perjury, six of manslaughter, three of burglary, four of robbery, and two of arson. In some cases, as of arson, citizens have spent large amounts in obtaining the arrest and conviction of the guilty, and have thereafter seen them turned loose again upon society and helping to decide the politics of the State. To complete the climax of injustice these crimes so fostered by political necessity and so pardoned when imperious public opinion demanded conviction, have been proclaimed as evidence that the people of Louisiana are no better than barbarians and incapable of self-government.

dence that the people of Lomisiana are no better than baroarians and incapanie or self-government.

We deem it due to ourselves and to the thousands we represent who desire to pursue our honest callings in peace with all men and to have justice administered by a civilized government, to protest solemnly before our countrymen and the world against the representations made by interested adventurers here, and partisan reckless politicians from abroad, virtually charging the good people of Louisiana with fostering or even tolerating murder or violence. We protest against being held responsible for the imbecility and fraud of a usurpation which lacks the confidence of honest men and which to sustain stself offers a premium to violence as political capital, and encourages murder by using it as a factor in the counting of votes.

political capital, and encourages murder by using it as a factor in the counting of votes.

The people of Louisiana cannot believe that their friends, relatives, and fellow-citizens of other States can seriously think them so lost, not to deceney or civilization only, but even to self-interest and common sense, as to encourage a reign of violence and bloodshed about their own homes and those of their children.

That which exists of these in Louisiana above the ordinary average of settled well-ordered communities they charge plainly upon a government holding its place by fraud and force by the tenure of making one class and one section of the country distrust and detest another. We appeal for simple justice in their judgment as to the calm good sense of the unpartisan masses of our fellow-citizens. We only desire to have good order, peace, and justice established among all classes, and crime, no matter by whom perpetrated, resolutely put down and punished. We are not barbarians, but civilized men and Americans.

By the late elections, everywhere peaceable, as we have reason to believe, and that not from any act of the usurping administration here, whose interests would rather have been served by violence, no matter how excited, but by the calm self-restraint of conservative and sober-minded people, have in strict conformity and in obedience to those of the United States, relieved ourselves of a rule which we have patiently endured for years in all its imbecility and anarchic tendencies, we now carnestly appeal to our fellow-citizens in all the States of the Republic not connive at the reversal of our lawful action, and to force us to confront against the evils of a government fatal alike to our interests and our good name, which exists by fraud and stands by hatred and prejudice and the destruction of interests which should be common, and is compelled to defend its shameful imbecility by charging indescriminately upon a whole community the guilt of crime it profits by and does not punish.

Mr. WEST. Let us have

Mr. WEST. Let us have the names.
The PRESIDENT pro tempore. The names of the signers will be read. The Chief Clerk read as follows:

The Chief Clerk read as follows:

J. B. Lafitte, Ang. Bohn, Samuel Boyd, G. W. Sentell, Emory Clapp, John T. Hardie, Carleton Hunt, A. H. May, James I. Day, Jules Aldige, Edw. Toby, Henry Abraham, E. P. Rareshide, W. B. Krumber, J. C. Morris, J. Buckner, F. N. Ogden, James McConnell, G. R. Preston, J. J. Gidiere, C. G. Johnson, R. M. Waldesley, C. A. Conrad, C. L. Chace, R. Herrick, D. Urquhart, E. J. Hart, S. Hernsheim, J. M. Lewis, E. Connery, H. Galley, John Phelps, A. Schreiber, Lionel C. Levy, R. H. Devan, A. Baldwin, John Cheffe, S. B. Newman, E. J. Hamilton, Henry Renshaw, H. Frellsen, A. Carriere, Sam. Jamison, S. M. Bickham, Victor Meyer, Sam. Flower, Alf. Moulton, W. F. Halsey, P. N. Strong, R. Renshaw, jr., C. Chism, Wm. C. Black, J. S. Groves, T. C. Herndon, Scott McGehee, E. Conery, jr., J. U. Payne.

Mr. WEST. That will do.
Mr. SAULSBURY. Ithink that memorial is indorsed by the clergy of the city of New Orleans, and as the names have been called for we may as well have the names of the clergy read.
Mr. HOWE. If any Senator is ambitious of advertising the gentlemen whose names are signed to that paper, I hope he will have an opportunity to parade them here in the Senate. I hope the Senator from Louisiana will withdraw his objection to the reading of the names until it is concluded.

Mr SAULSBURY. He called for it.

Mr. WEST. I do not object. The petition was read without any of the names being stated, and we wanted to know somewhat of the of the names being stated, and we wanted to know somewhat of the character of the gentlemen signing it. I recognize them as men of high standing and I have no objection now, if it will not occupy the time of the Senate much longer, to have the entire names read, but I should like to say in response to my friend from Delaware that very likely the entire clergy of the city of New Orleans do not attach their names to this petition.

Mr. SAULSBURY. I will say that I know nothing of the names of the parties appended to the memorial. I was requested to present it this morning, and I stated that I held in my hand a printed memo-

rial which I was requested to present, addressed to the President, the Senate, and the House of Representatives, and I complied with the request of my fellow-citizens in presenting their petition without desiring to add one word of remark. I think the Senator from Wisconsin conveyed an imputation in his remark that there was a desire on my part to have the names of these parties paraded, whereas sire on my part to have the names of these parties paraded, whereas the reading of the names of the petitioners was called for by the Senator from Louisiana. Inasmuch, however, as we had certain of the names, knowing that there was an indorsement by a respectable portion of the clergy of New Orleans, I called likewise for the reading of the names of the clergymen appended to it. That was my whole connection with the petition; nothing more.

Mr. HOWE. I do not find any fault with the Senator's connection. I wish to aid him in his relation to this paper so far as I can. I thought he was unwilling to have the reading of the names stopped until the names of the clergymen appended to it had been paraded before the Senate. I sympathize with that view of the Senator and wish to have these names read if there be no objection anywhere.

Mr. SAULSBURY. Let the reading begin at that point.

Mr. SAULSBURY. Let the reading begin at that point.

The PRESIDENT pro tempore. Do Senators desire further names to be read?

Mr. SAULSBURY. Yes, sir; let the names be read.

The PRESIDENT pro tempore. The reading of the names will con-

The Chief Clerk resumed the reading, as follows:

Samuel H. Kennedy, president State National Bank; George Jones, president Canal Bank; Thomas A. Adams, president Crescent Mutual Insurance Company; Edward C. Palmer, president Louisiana Savings Bank; I. N. Marks, president Firemen's Insurance Company; John G. Gaines, president Citizens' Bank of Louisiana; Lloyd R. Coleman, president Mechanics and Traders' Insurance Company; H. Peychaud, president Hope Insurance Company; L. B. Cain, president Germania National Bank; Ed. A. Palfrey, president Factors and Traders' Insurance Company; C. Kohn, president Union National Bank; P. M. Schneidan, secretary People's Insurance Company; Pike Brothers & Co., bankers; S. Hopkins, jr., president Bank of La Fayette; F. Rickert, vice-president Teutonia Insurance Company, and many others.

National Bank; Ed. A. Palfrey, president Factors and Traders' Insurance Company; C. Kohn, president Union National Bank; P. M. Schneidan, secretary People's Insurance Company; Pike Brothers & Co., bankers; S. Hopkins, jr., president Bank of La Fayette; F. Rickert, vice-president Teutonia Insurance Company, and many others.

The attention of the undersigned has been called to the following expression embodied in the statement of the case of the republican committee presented to the committee of the United States now in session in New Orleans.

After reciting several cases of murder and atrocity, and presenting an exparta account of the circumstances attending them and the motives for which they were perpetrated, they add: "There has been no condemnation of these acts by the press, by public meetings, or by the clergy."

Ariaigned in this way publicly, the undersigned desire to say that their uniform teachings is love to God and love to man; that on all occasions they condemn crime and violence, and deplore their existence; that the burden of their teaching and preaching is in the interests of justice, mercy, righteosaness, and truth.

They add that to have attacked and condemned specific and individual crimes, would have been to attack and condemn a government which by its lack of utter confidence, and from the necessities of its peculiar condition, is, by its own confession, unable to put down crime among the people, and is really fostering and increasing it by its peculiar treatment every day of its existence.

In no sense politicians, nor destrings on hix ourselves with political affairs, and In no sense politicians, nor destrings on hix ourselves with political affairs, and In no sense politicians, nor destrings on hix ourselves with political affairs, and in recasing it by its appeal of the destring to mix ourselves with political affairs, and our silence misrepresented, we are compelled in self-respect to speak and we do so by this explanation, and by adopting as a general fair-setting forth of the causes

Mr. HOWE. I think that paper ought to be referred. The several gentlemen who have signed it have secured immortality in this world, or something very like it. They will live as long as the Record lives. Whether they have secured an immortality here which is worth having is a question which interests them and ought to interest us all. They have put their names to a paper which contains a great many very serious charges and which are true or false. I think Senators will agree with me that, if they are false, it is about the

heaviest and most atrocious lying that has been done this century, and there has been a good deal of that.

heaviest and most atrocious lying that has been done this century, and there has been a good deal of that.

Of course I do not pretend to say whether these charges are true or false. I know the reputation of a great many of the signers of that paper. I know a large number of the clergymen of the city of New Orleans have put their names, deliberately or otherwise, to that paper. Some very remarkable gentlemen have lent their names to that paper. I recognize the name of one man there, under whose preaching I sat myself while I was in the city of New Orleans, and I have rarely in my whole life listened to a man in the pulpit or elsewhere who I thought was equal, intellectually, to this gentleman. Nevertheless, those gentlemen undertake to tell us and to tell the world, and to urge as an excuse why they have not protested, as they otherwise would, against murder, even, that they could not very well do it without attacking a government. I think it is rather an unwholesome sort of ethics, to say nothing about religion, which would deter a man from attacking crime, such crimes as are referred to in that paper, even although they have to say something rather disrespectful of a government. But I rather thought I heard some language in that paper which indicated that the signers to it had not the utmost respect, in fact, for the government of Louisiana and were really not adverse to saying as much in their way. And if they are willing to attack that saying as much in their way. And if they are willing to attack that government directly, I should not think they need hesitate to attack such crimes as murder, although they are committed in spite of that government.

But I do not mean to detain the Senate by commenting on that paper or by criticising it. I think the country ought to know how much of this accusation hurled against the government of Louisiana is true and how much of it is untrue; and I therefore move that the paper be referred to the Committee on Privileges and Elections with instructions to subpœna such of the signers of that paper as they deem advisable to give avidence mean the accurations made in the paper.

advisable to give evidence upon the accusations made in the paper.

Mr. SAULSBURY. I do not know that I can second the motion entirely. I am perfectly willing that the petition should be referred and that the Committee on Privileges and Elections should take such and that the Committee on Privileges and Elections should take such action upon it as in their judgment is proper. Without expressing any opinion as to the facts stated in the petition, I think, from what has been said by the Senator from Wisconsin, that he at least indorses the fact that it is signed by gentlemen of very great respectability, gentlemen of talents and character; and I apprehend that a thorough investigation into the affairs of Louisiana referred to in the petition will substantiate the general correctness of the allegations contained in the recognition. in the memorial.

I shall not deem it necessary to enter into any defense of these gentlemen's character or to say that what they utter is true. Their high character precludes any other idea than that they themselves believe every fact that they have stated to be true and beyond question. I was a little surprised, I may be permitted to say, however, that the Senator from Wisconsin should think it necessary on the presentation of a single memorial to indulge in any remark either in reference to the facts asserted in the memorial or in reference to the character of the signers of that memorial. acter of the signers of that memorial. I should be glad to have this memorial referred, but I shall not second the motion that these parties be subpænaed to appear, because I see no good to result from such a course.

Mr. McMILLAN. Mr. President, as the Senator who presented this memorial declines to second the motion made by the Senator from Wisconsin to refer with instructions, I rise to second the motion of

the Senator from Wisconsin.

We have here a large number of persons, citizens of Louisiana, who have appended their names to a memorial to this Senate embodying certain facts which they state to be true. In connection with that statement certain ministers of the gospel of Christ append their names to an additional statement in that memorial. Now, Mr. President, there are two ways of telling untruths, each of which is culpable; one is a statement of fact as true which is known to be false; the other is a statement of fact as true which the party making the statement ought reasonably to know is false. If these ministers of the gospel do not know the facts to be true which they have stated, then let that be ascertained. If these men, filling the pulpits of the Christian churches of New Orleans, have made statements here which are not sustained by the facts as they ought to have known, then let us understand that. We can have from them their statement; and it does seem somewhat singular that the signers of this memorial should have instructed the Senator from Delawaret o present it upon the day on which the commission appointed by Congress to memorial should have instructed the Senator from Delaware to present it upon the day on which the commission appointed by Congress to count the presidential votes meets and upon which the Congress of the United States is to count the presidential vote, although the memorial has been spread before the country in the public prints of the nation a long time since. Here the Senator is instructed to present it to the Senate upon this morning when we meet to count this vote. Can it be that it was intended to produce any effect upon the nation particularly at this time? If so, certainly the motive is far from a worthy one. I hope the motion of the Senator from Wisconsin will be agreed to and that this paper will be referred with the instructions agreed to and that this paper will be referred with the instructions

included in his motion.

Mr. SAULSBURY. Mr. President, but for the reference of the Senator from Minnesota to the fact that I have been instructed to present this petition on this morning, I should not have added another word.

I will say to the Senator from Minnesota that the petition was placed I will say to the Senator from Minnesota that the petition was placed in my hands this morning, not until this morning; and my habit is, when a petition is placed in my hands for presentation, to do it on the first opportunity. I do not desire to indulge in any remarks upon a mere presentation of a petition; but it seems strange to me, exceedingly strange, that the Senator from Minnesota and the Senator from Wisconsin, upon the mere presentation of a petition, should rise in their places and impliedly at least attempt to create the impression that the assertions contained in the memorial are false. Why, sir, I take it for granted that the gentlemen who appended their names to take it for granted that the gentlemen who appended their names to this memorial, or petition, know whereof they testify much better than either the Senator from Wisconsin or the Senator from Minnesota. It is true that those gentlemen have been honored recently with a commission to go to the State, and spent a few weeks in the State, of Louisiana; but could they have had the same facilities in arriving at the facts as gentlemen who are domiciled there, who were born on the soil, and who are familiar with all the facts of which they speak? I say again that it is exceedingly strange that upon the mere presentation of a memorial Senators living in a far-distant section of the country should feel it incumbent on them to rise in their places and indulge in criticism, impliedly at least calling in question the assertions contained in the memorial.

I felt called upon, after the remarks which have been indulged in,

to make these suggestions.

The PRESIDENT pro tempore. The Senator from Wisconsin moves the reference of the memorial to the Committee on Privileges and

Elections with instructions. Mr. HOWE. I want to say one word to my friend from Delaware, that while I do not dispute the correctness of his statement, that the signers of the paper know much better what has transpired in Louisiana than myself, yet he will see that that is the very reason why their testimony should be taken, because when they are put under the obligations of an oath and they have testified I shall either know as much as they do about what they testify or they will not tell what they know. I think that is the very reason why we should make that reference

The PRESIDENT pro tempore. The question is on the motion to

refer with instructions.

The motion was agreed to.

#### COMMITTEE SERVICE.

Mr. MAXEY submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved. That the President pro tempore of the Senate be, and he is hereby, authorized to fill the vacancies on the Committee on Post-Offices and Post-Roads, and on the Committee on Education and Labor heretofore filled by David M. Key, whose term of service has expired.

The PRESIDENT pro tempore appointed Mr. Bailey to fill both va-

# PACIFIC RAILROAD ACTS.

The PRESIDENT pro tempore. The morning hour has expired. The Chair will lay before the Senate the unfinished business, which is the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

DESTITUTE POOR OF THE DISTRICT OF COLUMBIA.

Mr. WINDOM. I appeal to the Senator from Ohio to let me call up the bill for the relief of the destitute poor of the District of Columbia. It will take but a very few moments, I think, to dispose of it. Mr. THURMAN. Subject to call of the regular order, I have no

objection.

The PRESIDENT pro tempore. The regular order will be subject to

By unanimous consent, the bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia was considered as in Committee of the Whole.

The bill was read.

Mr. WINDOM. I do not know that any remarks I could submit

could make this case any more clear than it is as presented by the reading of the bill itself. If the Senate is ready, I ask for the vote. The bill was reported to the Senate, ordered to a third reading, and

Mr. COCKRELL. I ask for the yeas and nays on the passage of

The yeas and nays were ordered; and being taken, resulted-yeas 45, nays 9; as follows:

45, nays 9; as follows:

YEAS—Messrs, Allison, Anthony, Bailey, Barnum, Blaine, Bogy, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christianey, Clayton, Conkling, Conover, Cragin, Davis, Dawes, Dorsey, Eaton, Edmunda, Ferry, Frelinghuysen, Goldthwaite, Hamilton, Ingalls, Johnston, Kelly, Kernau, Merrimon, Mitchell, Morrill, Morton, Paddock, Patterson, Robertson, Sargent, Sherman, Speneer, Teller, Wallace, West, Whyte, Windom, and Wright—45.

NAYS—Messrs. Alcorn, Booth, Cockrell, Cooper, Hitchcock, McCreery, Maxey, Ransem, and Withers—9.

ABSENT—Messrs. Bayard, Cameron of Peunsylvania, Dennis, Gordon, Hamlin, Harvey, Hereford, Howe, Jones of Florida, Jones of Nevada, Logan, McDonald, McMillan, Norwood, Oglesby, Randolph, Saulsbury, Sharon, Stevenson, Thurman, and Wadleigh—21.

So the bill was passed.

#### CREDENTIALS.

Mr. CHAFFEE presented the credentials of Henry M. Teller, elected by the Legislature of the State of Colorado a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

Mr. FRELINGHUYSEN presented the credentials of John R. Mc-Pherson, elected by the Legislature of the State of New Jersey a Sen-ator from that State for the term beginning March 4, 1877; which was

read and ordered to be filed.

#### THE ELECTORAL COMMISSION.

The PRESIDENT pro tempore submitted the following communica-tion from the commission on the count of the electoral votes; which

WASHINGTON, D. C., February 1, 1877.

Sm: I have the honor to inform the Senate that the commission consistence of the act of Congress approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," has met and (the members thereof having taken and subscribed the oath prescribed by law) organized, and is now ready to proceed to the performance of its duties.

Very respectfully, yours,

NATHAN CLIFFORD

NATHAN CLIFFORD, President of the Commission.

To the PRESIDENT OF THE SENATE.

The PRESIDENT pro tempore. The communication will be placed

#### REPORT ON INELIGIBILITY OF ELECTORS.

Mr. MITCHELL. Mr. President, the Committee on Privileges and Mr. MITCHELL. Mr. President, the Committee on Privileges and Elections, on which was imposed the duty by a resolution of the Senate introduced early in the session by the Senator from Vermont [Mr. EDMUNDS] of inquiring into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States to whom certificates of election have been or shall be issued by the executive authority of any State as such electors, assigned that duty to a subcommittee. The subcommittee has authorized me to submit a report, which I now present. I desire to have the report read; and subcommittee. The subcommittee has anthorized me to submit a report, which I now present. I desire to have the report read; and inasmuch as a good portion of it was hastily prepared and is in my own handwriting, in pencil, I ask the privilege of reading it myself

The PRESIDENT pro tempore. The Chair hears no objection, and the Senator will read the report.

Mr. MITCHELL proceeded to read as follows:

Mr. MITCHELL proceeded to read as follows:

The Committee on Privileges and Elections beg leave to report that on the 5th day of December, 1876, the Senate adopted the following resolutions:

"Whereas it is provided by the second section of the fourteenth article of the amendments to the Constitution of the United States that 'Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be a reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.'

"And whereas it is alleged that in several of the States, and particularly in the States of South Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi, the right of male inhabitants of said States, respectively, being twenty-one years of age, and citizens of the United States, to vote at the late elections of the electors for President and Vice-President of the United States, and for Representatives in Congress, and for the executive and judicial officers of such States, and for members of the Legislature thereof, has been denied or greatly abridged: Therefore, "Resolved, That the Committee on Privileges and Elections, when appointed, be, and it hereby is, instructed to inquire and report as soon as may be—

"I. Whether in any of the elections named in said amendment in said States in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to

"6. By what authority or pretended authority has such denial or abridgement been exercised.

"Resolved further, That the said committee have power to employ such number of stenographers as shall be needful, and to send for persons and papers, and have leave to sit during the sessions of the Senate, and to appoint subcommittees with full power to make the inquiries aforesaid and report the same to the committee. "Resolved further, That said committee, in order to the more speedy performance of its duties, have power to provide for the taking of depositions, on the subjects aforesaid, before any officer authorized by the laws of the United States to take depositions, and to receive and consider the same.

"Resolved further, That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors; and whether the appointment of electors or those claiming to be such in any of the States has been made, declared, or returned, either by force, fraud, or other means, otherwise than in comformity with the Constitution and laws of the United States and the laws of the respective States; and whether any such appointment or action of any such elector has been in anywise uncenstitutionally or unlawfully interfered with; and to inquire and report whether Congress, or either House thereof, has any constitutional power, and if so, what, and the extent thereof, in respect of the appointment of or action of electors of President and Vice-President of the United States, or over returns, or returning to errificates of votes of such electors; and that said committee have power to send for persons

and papers, and to employ a stenographer, and have leave to sit during the session of the Senate."

In discharge of the duties imposed upon the committee by the last of the foregoing resolutions, the committee have examined the questions touching the alleged

ing resolution

Mr. MERRIMON. I wish to ask the Senator whether the report he proceeding to read is from a subcommittee of the Committee on Privileges and Elections ?

Privileges and Elections?

Mr. MITCHELL. I stated distinctly when I rose that it was the report of the subcommittee to which was intrusted the duty imposed upon the general committee by the resolution of the Senate.

Mr. MERRIMON. I submit that a subcommittee has no right to make a report without the sanction of the committee.

Mr. MITCHELL. I submit that they were authorized to make the report by the action of the committee.

Mr. MERRIMON. I would thank the Senator to read that clause in the resolution which supports the making of such a report

in the resolution which authorizes the making of such a report.

Mr. MITCHELL. I say that as matter of fact the subcommittee was authorized to submit this report by the action of the committee

Mr. MERRIMON. As the report of the committee or the subcommittee?

Mr. MITCHELL. As the report of the subcommittee, as a matter

of course

Mr. MERRIMON. It seems to me this report ought to have been submitted to the Committee on Privileges and Elections, and that committee ought to have considered it and consented to the report before it is brought to the attention of the Senate. It ought to be the report of the committee, not of the subcommittee, which is under the direction of the Committee on Privileges and Elections all the time.

Mr. MITCHELL. The subcommittee was authorized to make this report to the Senate by the action of the whole committee just as in some other cases that I could call attention to.

Mr. SAULSBURY. I desire to call the attention of the Senator from Oregon to one fact. I understand him to say that this report of a subcommittee was authorized to be made by the general com-

of a subcommittee was authorized to be made by the general committee. Am I correct?

Mr. MITCHELL. That is correct.

Mr. SAULSBURY. Then it follows, I suppose, that that would be the report of the general committee on that subject. Now, as a member of the Committee on Privileges and Elections, I want to say in this connection that I have never had the pleasure of listening to any report from the subcommittee on this subject in the general committee. committee.

committee.

Mr. MITCHELL. Will the Senator allow me?

Mr. SAULSBURY. Just one moment. And therefore I do not wish to be held responsible as a member of that committee for this report in any respect. If it is true, as I have no doubt it is, that the Senator from Oregon has the permission of that committee to make the report in the Senate, it becomes tipso facto the report of the committee itself; and I wish here to enter my disclaimer, as a member of that committee, from having any responsibility for or any knowledge whatever of the report.

Mr. MERRIMON. I wish to say—

Mr. MITCHELL. I decline to yield at this time further on account of the time—

Mr. MERRIMON. I think this is a matter that members of the

Mr. MERRIMON. I think this is a matter that members of the committee ought, at least, to be heard upon.

Mr. MITCHELL. Mr. President, I stated—

Mr. MERRIMON. I wish to say—

The PRESIDENT pro tempore. The Senator from Oregon has the floor. Does he yield to the Senator from North Carolina?

Mr. MITCHELL. For a moment.

Mr. MERRIMON. I will raise the point of order that this report is not in order, that a subcommittee of a committee has no right to make a report, and that the committee itself has no power to empower a subcommittee to make a report directly to the Senate. Any report a subcommittee to make a report directly to the Senate. that has been agreed to by a subcommittee must be submitted to the committee recognized by the Senate, and that committee must act upon it and determine whether it shall be submitted to the Senate or

I wish to make a further remark in raising this point of order, that I know nothing in the world about this report; I do not know whether I concur in it or otherwise.

The PRESIDENT pro tempore. The Senator from North Carolina

raises a point of order.

Mr. SARGENT. On the point of order, I should like to state, if it is proper to state, that the Senator seems to imply by his remark that the other fact exists that this matter was submitted to the committee as a whole and the subcommittee were authorized to report for the committee to the Senate. They certainly were authorized. As to the power of the committee so to authorize them, I think there can be very little question under the resolution under which these subcommittees have been acting, which was that the subcommittee should act as committees of the Senate. They had exceptional powers given to them in that direction.

Mr. MITCHELL. By special resolution.
Mr. SARGENT. Yes, sir; special privileges given to them under the direction of the Senate; but, not content with that, the subcommittee laid before the general committee the subject, and after an interchange of views they were directed by the general committee

(and I dare say it so appears on the minutes of the committee) to report directly to the Senate.

Mr. MERRIMON. I should like to see the resolution that passed the Senate which recognized these subcommittees as committees of the Senate.

Mr. KERNAN. I should like to inquire of the Senator from California if he can state whether there was authorization except from

mr. SARGENT. That was the time the action took place.

Mr. KERNAN. It is probably due to these other members to say that I was there and none of the members who have spoken was there, and I think the Senator from California will remember that there was not a quorum of the whole committee there.

Mr. SARGENT. On the contrary, my recollection is that there was

Mr. KERNAN. I think there was not a quorum of fifteen. My recollection is that I suggested at the time that there was not a quorum of the whole committee present.

Mr. SARGENT. There were some twelve there. During the morn-

Mr. SARGENT. There were some twelve there. During the morning fourteen were there.

Mr. KERNAN. When this question came up yesterday?

Mr. SARGENT. Yes, sir; when this question came up yesterday.

Mr. KERNAN. I will not go into any question of fact.

Mr. SARGENT. It was debated by the Senator from North Caroline himsel?

lina himself.

Mr. KERNAN. He was not there yesterday.
Mr. SARGENT. He subsequently left, stating that he had to go.
Mr. MITCHELL. The important part of the thing is that the Senator from North Carolina did not remain until the meeting of the

ommittee came to a close.

Mr. SARGENT. Here is the resolution the Senator calls for—
Mr. MERRIMON. The Senator from California is utley mistaken Mr. MERRIMON. The Senator from California is atterly mistaken as to myself; for yesterday morning I called by the chamber of the Committee on Privileges and Elections to notify the committee, and left word with him, he being the only member then present, that I was obliged to attend a meeting of the Committee on Rules and I was absent there

absent there.

Mr. SARGENT. The Senator is correct except as to the number of members present. There were seven or eight there at the time the Senator called. The chairman was present; the Senator—

Mr. MERRIMON. That was the day before yesterday; but, sir, that is apart from the point of order that I make. The point of order I make is that a subcommittee has no power, nor can any power than the point of the power of the property of the power be conferred upon it by the committee, to make a report as a sub-committee. Where the Senate has charged the Committee on Privi-leges and Elections to consider a certain matter specified in the reso-lution ordering the inquiry, when they consider it and agree to a report, then the committee make the report to the Senate. This report purports to be, as it is, a report from a subcommittee of the Committee on Privileges and Elections. I raise the point of order that such a report cannot be entertained by the Senate.

Mr. SARGENT. On the point of order I wish to read the resolu-

On the 11th of December the Senate adopted the following

resolution:

Resolved, That the several subcommittees of the Committee on Privileges and Elections authorized and instructed by the resolution offered by Mr. EDMUNDS (being Senate Miscellaneous Document No. 1, of this session) to inquire and report concerning certain matters relating to elections, and any other subcommittees into which said first-named subcommittees may be subdivided, shall be committees of the Senate, so that the chairmen thereof shall be authorized to administer oaths under the provisions of section 101 of the Revised Statutes.

If that does not make each subcommittee a committee of the Sen-

ate, I do not know what does.

The PRESIDENT pro tempore. The Senator from Oregon having the floor, and proceeding to read a report, the Senator from North Carolina raises the point of order that a subcommittee cannot make

carotina raises the point of order that a succommittee cannot make a report to the Senate. That the Chair understands to be the point of order made by the Senator from North Carolina.

Mr. MERRIMON. Yes, sir.

Mr. MORTON. I desire to make a statement. The labor thrown upon the Committee on Privileges and Elections has been so great upon the Committee on Privileges and Elections has been so great that it became necessary to appoint a number of subcommittees. The committee was divided into five subcommittees. Two of them went to Louisiana, one to South Carolina, another to Florida, and one remained here. The action of the committee, as I understand it, was that when these subcommittees came to make their reports, while in form they would be made to the general committee, they were in fact to be made to the Senate. Accordingly the Senator from California who went to Florida made his report directly to the Senate, and it was understood that the Senator from Tennessee would ate; and it was understood that the Senator from Tennessee would make a minority report also to the Senate. I think the Senator was present and had that understanding.

Mr. COOPER. That was presented by the chairman, and it was

understood I should have leave to make a minority report.

Mr. MITCHELL. The same understanding was had in regard to

Mr. COOPER. Permit me to say that I understood that as being a report from the subcommittee to the general committee at the time it was made, but that it was presented simply to be printed, but I saw differently after reading it. My understanding was that it was a report to the committee.

Mr. MORTON. My understanding was that the report was to be made directly to the Senate. The fact was that there was not time for the general committee to take up these different reports of the subcommittees and go over them; and, therefore, the subcommittees were given the right and also the responsibility of making their re-ports. The Senator from North Carolina under this understanding has a right to make a report and to make it directly to the Senate from

the South Carolina subcommittee.

Mr. MERRIMON. Let me remind the Senator from Indiana, the chairman of the Committee on Privileges and Elections, that the resolution read by the Senator from California a moment ago was adopted, not for the purpose of giving these subcommittees a distinctive character apart from the Committee on Privileges and Elections, but for the purpose of enabling the chairmen of those several subcommittees to administer oaths, and I have never understood that it was contended until now that the subcommittees could report directly to the

Senate.

Mr. SARGENT. They are called "committees of the Senate."
Mr. MERRIMON. I know they are, and for the purpose I mentioned, to enable the chairmen of the several subcommittees to administer oaths. We do not get at the voice or the judgment of the Committee on Privileges and Elections by a report of this sort; and if the power exists that the Senator from California contends for, this subcommittee did not need to have said a word to the Committee on Privileges and Elections at all. They have a right to make a report if they are independent committees of the Senate without talking to the Committee on Privileges and Elections one word about whether they shall make a report or what its character shall be. I maintain that the orderly and the lawful course is for these several subcommittees they have a property of the several subcommittees. that the orderly and the lawful course is for these several subcommittees to make their reports to the Committee on Privileges and Elections, that their reports shall be considered by that committee and agreed to or disagreed to, and if a majority of the committee shall disagree to the report the whole committee will make a report satisfactory to itself and submit the same to the Senate, and any minority report will be the minority report not of the subcommittee but of the Committee on Privileges and Elections, one recognized by the Senate and charged with this important duty.

If this report shall be accepted by the Senate and it shall express any opinions upon questions of law or fact, those opinions will be the opinions of three members of the Committee on Privileges and Elections which at this time consists of fifteen members, and if there shall

tions which at this time consists of fifteen members, and if there shall be a minority report from this subcommittee the opinions contained in it will be those of one or two members of the Committee on Privi-leges and Elections only. So that outside of the fact that it is illegal to make this report and out of order to make this report, it will not matters to the Committee on Privileges and Elections. What the Senate desired was the judgment of the whole committee.

Mr. MITCHELL. Mr. President, I do not wish to be placed in any

false position by any statement of the Senator from North Carolina, I desire to submit a statement of the senater from which Caronia, to the effect that it is illegal and out of order to make this report. I desire to submit a statement of the facts in a very few words.

I stated in my opening when I arose that I proposed to submit the report of the subcommittee. I called the attention of the Senate

to the fact that the duty imposed on the general committee had been assigned to a subcommittee. I now state, in addition to that, that this subcommittee was authorized by a unanimous vote of a quorum of the whole committee to make this report. At that meeting the democratic member of the subcommittee, the Senator from New York, [Mr. Kernan,] was present, and made no dissent. He has also concurred in this report; that is, in the fact that the report shall now be made, although the Senator from New York on the subcommittee does

made, although the Senator from New York on the subcommittee does not concur, as I understand him, fully in all the conclusions of the subcommittee; and that I desired to state before taking my seat after having finished the reading of the report.

Now then, Mr. President, these being the facts in the case, I maintain that it is the report of the committee; and if the Senator from North Carolina or any other Senators had desired that this matter should take any other course them it was their duty to attend the should take any other course, then it was their duty to attend the meetings of the committee and to raise the objection then and there. But when the committee by unanimous vote authorized the subcommittee to make this report directly to the Senate, then I say that the report that I am now submitting becomes to all intents and purposes, so far as the making of the report is concerned, the report of the committee. As a matter of course any individual members of that committee can dissent to any extent that they may see proper afterward from either the findings of fact or the conclusions arrived at by the

Mr. MERRIMON. May I ask the honorable Senator a question?

Mr. MITCHELL. Certainly, two or three if you like.
Mr. MERRIMON. Has this report ever been submitted to the Com-

mittee on Privileges and Elections at all?

Mr. MITCHELL. I have never said it was submitted to the Committee on Privileges and Elections. There can be no room for misunderstanding what I did say on that point. I said that the subcommittee was authorized by a unanimous vote of the whole committee, a majority of the committee being present, to proceed and prepare their report and make it directly to the Senate, instead of to the com-mittee. That is what I said. I do not wish to place the honorable Senator from North Carolina or any other member of the committee

in any awkward position, and I do not propose that any statement made by him shall place me in any false position.

Mr. MERRIMON. I have no such desire; but the Senator from

Oregon now changes, it seems to me, the ground that he occupied at

first.

Mr. MITCHELL. Not at all.

Mr. MERRIMON. He insisted that he was making a report from the subcommittee, and that the subcommittee had a distinctive existence that was recognized by the Senate, and in such a way as to enable that committee to make this report; and the Senator from California, coming to his support, cited the resolution, which he read. That resolution was not adopted for the purpose of giving this subcommittee a distinctive character; but, as I said a moment ago, it was adopted for the purpose of enabling the chairman of a subcommittee to administer an oath; and it is provided expressly in that resolution to that effect. It says—I will read the whole resolution:

Resolved That the several subcommittees of the Committee on Privileges and

Resolved, That the several subcommittees of the Committee on Privileges and Elections authorized and instructed by the resolution offered by Mr. EDMUNDS (being Senate Miscellaneous Document No. 1 of this session) to inquire and report concerning certain matters relating to elections, and any other subcommittees into which said first-named subcommittees may be subdivided, shall be committees of the Senate—

Now see what follows-

so that the chairman thereof shall be authorized to administer oaths under the pro-visions of section 101 of the Revised Statutes.

Not for the purpose of making a report; and the only committee for the purpose of making a report recognized by the Senate, I contend still, is the Committee on Privileges and Elections, and these several subcommittees of that committee must make their reports to the whole committee. Those committees must consider what is submitted to them. They may adopt, if they will, the report agreed to by the subcommittee; but when that shall be done, it will then be the report agreed to by the Committee on Privileges and Elections, and in that form only, may it he submitted to the and in that form, and in that form only, may it be submitted to the Senate.

Senate.

Now, sir, I am as far as I could be from desiring to place the honorable Senator from Oregon in any false position. I think he has taken an erroneous view of his power as chairman of that subcommittee, and I raise the point of order and am content that the Senate shall decide it. I have explained why I was not present at the meeting yesterday. I was called away to attend a very important meeting of the Committee on Rules; but whether I was present or not makes no sort of difference if there were a quorum of that committee present, and I would not complain one month if that course had been adopted. But it seems that this is not the report of the committee provides it. But it seems that this is not the report of the committee, nor does it purport to be. And the other point that I make is that the Committee on Privileges and Elections, a quorum being present, had no power to authorize the subcommittee to make a report. It had power only to do what it was charged to do, and to exercise the powers devolved upon it, as they were devolved upon it; that is, to consider whatever matter might properly be brought before them and agree to a report and submit that to the Senate.

Further, the Senator says this report never was submitted to that

ommittee.

Mr. MITCHELL. All I desire to say in reply to the Senator from North Carolina is, that so far as I am concerned as chairman of the subcommittee, I am only doing precisely what the whole committee has directed me to do, including the democratic members as well as the republican members. If there is anything wrong about it, that must rest with the whole committee.

Mr. SAULSBURY. The Senator says it was done by the whole committee, including the democratic members. That assertion would imply that we were present at the meeting.

ply that we were present at the meeting.

Mr. MITCHELL. Not at all; because I have already stated that certain members of the committee were not present when this action was had. I stated at the same time that there was a quorum of the committee present, and that certain democratic Senators were pressent, including the democratic Senator who is a member of the sub-

ommittee.

Mr. MERRIMON. It did not embrace me.

Mr. MITCHELL. It did not; but the Senator should have been there attending to his duties as the rest of us were.

Mr. MERRIMON. I was attending to another committee quite as

important at that time.

Mr. MITCHELL. I ask for the ruling of the Chair.

The PRESIDENT pro tempore. The Chair will restate the question.

The Senator from Oregon rose, without objection, to make a report from the subcommittee. The Senator from North Carolina makes the point that a subcommittee has no authority to make a report. The Senator from Oregon states that the subcommittee was authorized by the full committee to make report to the Senate. The Chair will

submit the question to the Senate whether this report shall be received by the Senate.

Mr. MERRIMON. I beg the Chair to allow me to interrupt him a moment. I understood the Senator from Oregon to say that he was making a report from the subcommittee, and that he does not purport to make a report for the Committee on Privileges and Elections. point I make is that a subcommittee has no power or right to make such a report, and that the Committee on Privileges and Elections, under the resolution referring the several matters embraced by this

report to it, has no power to delegate authority to such subcommittee

Mr. CHRISTIANCY. I wish to call attention to the fact that the resolution by the authority of which these subcommittees were appointed declares expressly that they are to be considered committees

of the Senate.

Mr. MERRIMON. For a purpose, I repeat again, they are committees of the Senate for one purpose, and one purpose only, and that is specified in the resolution, to wit, "so that the chairman thereof shall be authorized to administer oaths under the provisions of section 101 of the Revised Statutes." That was the purpose, and the only purpose, for which they were designated as committees of the

Senate.

Mr. McDONALD. These are subcommittees of the Committee on Privileges and Elections. They are not authorized to report to the Senate, but they are expressly authorized to make their reports to the committee, as will be seen by an examination of the resolution authorizing them. It seems to me, therefore, that in undertaking to report to the Senate instead of reporting to the committee that detailed them for the work, they are not only acting unauthorizedly, but in violation of the resolution itself.

Mr. MITCHELL. I call for the yeas and nays on the question. The PRESIDENT pro tempore. The yeas and nays are demanded. The yeas and nays were ordered.

Mr. BOGY. I am at a loss how to vote on this subject, and I wish to ascertain one fact. If the report of this subcommittee which is now being read by the Senator from Oregon was submitted to the general committee, it then becomes the report of the general committee; but if it were not submitted to the general committee, but is made here by a subcommittee alone, of course it has no business here. Now, the Senators on this side seem to feel a doubt as to whether this

Now, the Senators on this side seem to feel a doubt as to whether this Now, the Senators on this side seem to feel a doubt as to whether this thing was or was not authorized by the general committee. The Senator from Oregon says it was. Now, if it is authorized by the general committee, it is not the report of the subcommittee, it is the report of the general committee. My honorable friend from North Carolina, with very great timidity, seemed to say they were not aware of any such authority; but whether they were present or not, if a quorum of the committee was there and authorized this report, it is

quorum of the committee was there and authorized this report, it is
the report of the committee; but if there was no quorum, and the
Senator from New York [Mr. KERNAN] said there was no quorum
present at the time the committee met, of course they could not authorize a report by this subcommittee. These are facts that we must
ascertain positively before we can vote.

I would take the statement of any member of that committee,
knowing that he is a Senator and a man of truth. There is evidently
a misunderstanding. I do not say the Senator from Oregon does not
state what is perfectly true; he knows better than that; but there
is a misunderstanding somewhere, and I wish to ascertain that fact.
If the report was authorized by the general committee, that is the end
of it; if not, it is the end of it also, and it cannot be read here. I
must know that fact positively before I can vote.

Mr. MITCHELL. Two Senators have already stated, the Senator
from California and myself, that at a meeting of the Committee on
Privileges and Elections, when there was a quorum present, by a
unanimous vote of that committee the subcommittee having this matter in charge was directed to make their report directly to the Senate.

ter in charge was directed to make their report directly to the Senate.

Mr. BOGY. This report itself was then not submitted to the general committee; but it seems that this general committee when there was a quorum present did authorize subcommittees of the general was a quorum present did authorize subcommittees of the general committee to report directly to the Senate. Under that statement of fact this report has no business here at all. A report of a subcommittee must be made to the general committee; because we know nothing of a subcommittee. Taking the simple statement of the Senator from Oregon, about which I have no doubt, the report has no business here at all. It is not the report of the committee; it is the report of a subcommittee; and the general committee has no right to authorize its subcommittee to make a report to the Senate, unless that report be first submitted to the general committee and adopted by it as its report.

by it as its report.

Mr. MORTON. Mr. President, my understanding of the action of the committee is that the subcommittees were authorized to report directly to the Senate instead of to the Committee on Privileges and directly to the Senate instead of to the Committee on Privileges and Elections; and it grew out of this consideration: The committee had been divided up into four or five subcommittees; a great deal of testimony had been taken; a great deal of labor was involved; and, inasmuch as a commission had been created and the counting of the votes was to be begun very soon, and it was understood that these reports were to go before that commission for information, it became necessary to put in the reports as rapidly as possible, and there was not time and it was impossible in point of fact that the whole committee could consider these different reports one after the other. It was from that consideration that this understanding was had. I would ask my colleague if it was not the understanding that the minority of the subcommittee that went to Louisiana was authorized to

make its report directly to the Senate? There was not time to take up and consider these reports if the condition of things was so anomalous. We have had nothing like it before and shall not perhaps again.

Mr. BOGY. The report of a special committee sent to one of the Southern States of course is very different from the report of a standing committee of this body. There the reports of these fractions of

committees may be authorized to be made: the report of a majority and the report of a minority; but the report of a standing committee of this body must always be made by the standing committee of the body, and not by a subcommittee. It is very different from a special committee sent to Florida, South Carolina, or Louisiana for a special

purpose, and is not governed by the same rules at all.

Mr. McDONALD. I ask that the Secretary read the resolution I have marked—the resolution referred to the Committee on Privileges

The PRESIDENT pro tempore. The Senator from Indiana asks for the reading of a resolution; which will be read. The Chief Clerk read as follows:

Resolved further. That the said committee have power to employ such number of stenographers as shall be needful, and to send for persons and papers, and have leave to sit during the sessions of the Senate, and to appoint subcommittees with full power to make the inquiries aforesaid and report the same to the committee.

Mr. McDONALD. That is all.
Mr. THURMAN. Is there anything clearer in parliamentary law than that the Senate can receive no report except from the committee that the Senate has appointed or that the Senate has charged with the particular duty upon which to make a report? Our rules know the particular duty upon which to make a report? Our rules know nothing of subcommittees. Our rules know nothing of reports from subcommittees. Parliamentary law knows nothing of reports from subcommittees. The only report the Senate can receive is a report from one of its committees, standing or special. It cannot receive a report from any subcommittee. If the general committee shall adopt that report, it must make it as its own report. The subcommittee is a body unknown to the Senate. The general committee must adopt it and make it as its own report. Nothing can be plainer than this than this.

Now I understand that this committee has undertaken to prescribe a rule, not for itself alone, but for the Senate, that a subcommittee may report directly to the Senate. It might adopt the report of the subcommittee and make it as the report of the whole committee or of a majority of that committee; but it cannot impose upon us the obligation to receive a report from a fraction of a committee. We

obligation to receive a report from a fraction of a committee. We charged no fraction of the committee with this duty, the duty to report to us. The opinions which we wanted were the opinions of the committee appointed by us or charged by us with this particular duty, and that committee alone is known to the Senate and that committee alone can report to us.

Mr. MERRIMON. Mr. President, I wish to make one remark before this running discussion closes. I speak with very great reluctance of anything that happened in the committee. I feel a great delicacy in alluding to it at all; it is not proper that I should speak of it, and I will not do so any further than is absolutely necessary to make myself nuderstood. I did not attend the meeting of the Committee on Privileges and Elections yesterday morning, for the reasons that I have already explained; and if—

The PRESIDENT pro tempore. The Chair will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE.

# MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had agreed to the resolution of the Senate for the printing of the proceedings of the commission in the Congressional Record.

The message also announced that the House had appointed Mr. Philip Cook, of Georgia, and Mr. William H. Stone, of Missouri, tellers on the part of the House provided for by the act of Congress approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877."

The message further announced that the House was now ready to receive the Senate for the purpose of proceeding to open and count the votes of the electors of the several States for President and Vice-

President.

# TELLERS OF ELECTORAL VOTE.

The PRESIDENT pro tempore. The Senator from North Carolina will allow the Chair. It was the intention of the Chair in appointing the tellers to appoint one teller on the part of the republican side and one teller on the part of the democratic side. On listening to the report from the House of Representatives the Chair changes his intention and appoints two republicans as the tellers on the part of the Senate under the law stated. The Chair appoints as those tellers the Senator from California [Mr. Sargent] and the Senator from Iowa, [Mr. ALISON] [Mr. Allison

[Mr. ALLISON.]
Mr. SARGENT. I desire to offer my resignation as one of the tellers. I understand I have been appointed in that capacity. There are several reasons why I cannot serve in that capacity, among others my connection with the Florida case. I ask to be excused.

The PRESIDENT pro tempore. The Chair will appoint then, in place of the Senator from California, the Senator from Kansas, [Mr. Deserved and the Senator from Kansas, [Mr. Deserved and the Senator from Kansas].

INGALLS.]

### REPORT ON INELIGIBLE ELECTORS.

Mr. MERRIMON. If the Committee on Privileges and Elections yesterday morning had a regular meeting and agreed to this report, I wish to say that I should have no objection to receiving it; but the point I make is, without doubting the statement of what was done in

that committee, that this subcommittee had no right to make a report in the first place. There was no action of the Senate that recognized it for any such purpose. And in the next place, if the Committee on Privileges and Elections undertook to confer upon this subcommittee the power to make a subcommittee's report, it transcended its powers.

I now beg to ask the Chair what is the state of the question be-

fore the Senate?

fore the Senate?

The PRESIDENT pro tempore. The Chair was about to submit the question, but there will not be time enough to take the yeas and nays, the yeas and nays having been ordered, if the call will be insisted on. Shall the vote be taken otherwise?

Mr. STEVENSON. I shall insist on the yeas and nays.

Mr. MITCHELL. Mr. President, I desire to have the floor.

Mr. MERRIMON. I think I have the floor, sir.

Mr. EDMUNDS. Let us have order.

The PRESIDENT pro tempore. Senators will resume their seats.

Mr. MERRIMON. I submit to the Chair that I am entitled to the floor.

The PRESIDENT pro tempore. So the Chair understands, on the question of order. The Chair understood the Senator from Oregon as claiming the floor on the main subject. The Senator from North Carolina has the floor on the question of submission to the Senate.

Mr. MERRIMON. Yes. sir.
Mr. MITCHELL. The Senator had better occupy it then.
Mr. MERRIMON. I was just asking the Chair to state the condition of the question before the Senate.

tion of the question before the Senate.

The PRESIDENT pro tempore. The Chair will state the question if Senators desire. The Senator from Oregon had risen to make a report and had proceeded with the reading of the report, when the Senator from North Carolina rose, took exception to the further reading of the report, and made the point of order that it was not in order to make a report from a subcommittee. The Chair submits this question to the Senate, whether this report from the subcommittee shall be received. mittee shall be received.

Mr. ME RRIMON. Thereupon I state that I make the point of order upon these two distinct grounds: First, that the Senate does not recognize this subcommittee in such a way as to warrant it in making any report to the Senate at all; secondly, that, if at a regular meeting of the Committee on Privileges and Elections that committee undertook to authorize its subcommittee as a subcommittee to make a report, that committee, inadvertently of course, transcended its power. No such report can be made, because the Committee on Privileges and Elections have no power to authorize that subcommittee to make a

#### COUNTING OF THE PRESIDENTIAL VOTE.

The PRESIDENT pro tempore. The Chair will announce that by the provisions of an act approved on the 29th instant, known as the electoral act, the Senate is required to appear in the Hall of the House of Representatives at one o'clock on this day. It is now within two minutes of that time.

Mr. EDMUNDS. I move that the Senate proceed to the House of

Representatives. The motion was agreed to; and the Senate, preceded by the Sergeant-at-Arms, thereupon proceeded to the Hall of the House of Representatives.

The Senate returned to its Chamber at three o'clock and ten min-

utes p. m.

The PRESIDENT pro tempore. The Senate, having returned from the joint meeting of the two Houses in the Hall of the House of Representatives, resumes its session.

### COMMITTEE SERVICE.

Mr. HAMLIN. Mr. President, owing to the termination of the time for which the late Senator from Tennessee [Mr. Key] held a seat in this body there has become a vacancy in the Committee on Post-Offices and Post-Roads.

Offices and Post-Roads.

Mr. BOUTWELL and others. It is filled.

Mr. INGALLS. It was filled this morning.

Mr. HAMLIN. I am told the vacancy has been filled. I was going to submit a motion to have it filled.

Mr. WRIGHT. I wish to call the attention of the Senate to the fact that there is a vacancy in the Committee on Claims by reason of the termination of the term of service of the Senator from West Virginia, [Mr. Price.] I move that the vacancy be filled by the Chair.

Mr. WEST. I ask, also, on behalf of the Committee on Railroads, that like action be taken by the Chair with respect to filling the vacancy on that committee.

cancy on that committee.

The PRESIDENT pro tempore. The question is on the motion of

The PRESIDENT pro tempore. The question is on the indicion of the Senator from Iowa.

Mr. COCKRELL. What is the motion?

The PRESIDENT pro tempore. That the Chair fill the vacancy in the Committee on Claims.

The motion was agreed to.

The PRESIDENT pro tempore. The Senator from Louisiana moves that the vacancy in the Committee on Railroads be filled by the Chair. The motion was agreed to.

which was read twice by its title, and referred to the Committee on

#### BILL RECOMMITTED.

On motion of Mr. BRUCE, it was

Ordered, That the vote postponing indefinitely the bill (H. R. No. 3281) granting a pension to Hannah A. Wood, be reconsidered, and that the bill be recommitted to the Committee on Claims.

#### WITHDRAWAL OF PAPERS.

On motion of Mr. WRIGHT, it was

Ordered, That A. J. Smith have leave to withdraw his discharge from the volunteer service and his commission as officer from the files of the Senate.

On motion of Mr. CONOVER it, was

Ordered, That J. G. Gibbs have leave to withdraw his petition and papers from the files of the Senate on leaving copies.

#### REPORT ON INELIGIBLE ELECTORS.

Mr. MITCHELL. I call for the regular order.

The PRESIDENT pro tempore. The question is on the point of order raised by the Senator from North Carolina [Mr. MERRIMON] to the admission of the report of a subcommittee of the Committee on

Privileges and Elections.

Mr. WRIGHT. I wish to inquire whether the regular order is not the bill of the Judiciary Committee in relation to the Pacific Rail-

roads.

The PRESIDENT pro tempore. The Senator from Oregon [Mr. MITCHELL] had the floor to make a report, when the point of order was interr

Mr. WRIGHT. I merely make the inquiry. I supposed the report was taken up by consent and would not displace the regular order. It is understood that the regular order is not displaced.

The PRESIDENT pro tempore. It is not displaced. So the Chair

Mr. MITCHELL. The Senator from Ohio, [Mr. Thurman,] who has charge of the Pacific Railroad bill, gave way to me for the pur-

pose of making the report.

Mr. WRIGHT. I merely wanted to have it understood.

The PRESIDENT pro tempore. The question pending is the point of order raised by the Senator from North Carolina, [Mr. MERRIMON.]

The Senator from Oregon [Mr. MITCHELL] submitted a report and

The Senator from Oregon [Mr. MITCHELL] submitted a report and was reading the report, when the Senator from North Carolina raised the point of order that a subcommittee could not report directly to the Senate. The Chair submitted the question to the Senate, Shall this report be received? on which the yeas and nays were ordered. The Secretary will call the roll.

Mr. CONKLING. If I supposed the honorable Senator from North Carolina would listen to an appeal, I should feel moved to appeal to him to withdraw his point of order. The Chair has submitted to the Senate the question whether this report shall be received or not. That is not exactly the question with which the Senator from North Carolina began; not that I mean it is not the proper form in which to submit it. I call the attention of the Senator from North Carolina, however, to the fact that a vote upon the question, Shall this report submit it. I call the attention of the Senator from North Carolina, however, to the fact that a vote upon the question, Shall his report be received or not, is not a vote upon, and will not make a record upon, the point of order aimed at the right of a subcommittee to report directly to the Senate. Therefore, if the honorable Senator from North Carolina wishes to record the judgment of the Senate upon the point he made, the decision of this question in the form in which it is about to be submitted to the Senate is not a felicitous proceeding for that process.

that purpose.

The Senator from North Carolina will no doubt agree with me in saying that, should the Senate sustain the point of order were it to be submitted in form, as it is not to be submitted in form, as indicated by the Chair, it would impose upon the Committee on Privileges and Elections the trouble, the necessity of holding a meeting and agreeing that the document produced by the Senator from Oregon should be reported to the Senate. That they could do without committing themselves to it at all, but could authorize the report to be made; so that coming around in a circle we shall reach the same result, except that some inconvenience will be caused to the Senator from Oregon, some inconvenience will be caused to the members of the committee, and some delay will be interposed between now and the reception of the report. In view of that I submit to the Senator whether it would not be better to withdraw the point of order and allow the report to come in; and especially so, in conclusion, I urge upon him again, because under the question as submitted by the Chair upon him again, because under the question as submitted by the Chair no record will be made decisive of the point or expressive of the judgment of the Senate upon the point whether a subcommittee as such can report directly to the Senate or not. There is some conflict of statement as to what occurred in the committee, and the Chair resolving this conflict as well as he could, chooses to submit, has the right to submit to the Senate the practical question, Shall this report be received or not? Suppose I vote that it shall be received. I may give that vote upon an understanding of facts quite different from that which is accepted by the Senator from North Carolina; but, whether so or not, the form of the question and the rendition of the The motion was agreed to.

BILL INTRODUCED.

Mr. STEVENSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1209) for the relief of W. N. Haldeman; ing in their narration, to cut the matter short and receive the report

now, because the Senate thinks it ought to be received, regardless of the technical objections which have been interposed against it.

Looking at all this and not wishing myself, I say frankly, to be called upon to vote on the question, somewhat changed in form and somewhat obscure, though it may be the question whether a subcommittee has a right to make report to the Senate without first reporting to the general committee and having the report authorized by the general committee, so as to become the report of either a standing or a special committee of the Senate—not wishing, I say, to be compelled to record myself upon a question submitted in this form and beclouded somewhat by a contrariety of statements, it would be to me a relief, as I imagine it would be to other members of the Senate me a relief, as I imagine it would be to other members of the Senate who wish to observe at once the parliamentary law and the rules of the Senate and yet subserve convenience and expedition in business, to be relieved from the sort of guess-work to which we shall be brought when the roll is called and we are compelled to give a vote which hereafter may be understood in one way or understood in another way, and which definitely and precisely ascertains nothing upon the point of order which the honorable Senator has at heart.

Mr. MERRIMON. Mr. President, I did not raise the point of order out of any captious spirit or with a view to do the slightest discourtesy to the honorable Senator from Oregon. I could not understand, when he stated that he was about to make a report from a subcommittee, how that could be done. Besides, I knew nothing of the report, for I had not heard it read. I had not been consulted about it. I, as a member of the Committee on Privileges and Elections, did not

I, as a member of the Committee on Privileges and Elections, did not wish to make it known that I was in no way responsible, that I did not concur in it one way or the other. My object was to have the question decided whether or not a subcommittee of one of the leading committees of the Senate could make a report, even with the consent

of the committee itself.

If, however, it is not interesting to the Senate to decide this question, I am not disposed to press it at all. If it is embarrassing to anybody in view of some conflict of statement, I do not care to do it. any body in view of some conflict of statement, I do not care to do it. The debate has shown exactly how this report comes here; that it is not the report of the Committee on Privileges and Elections, but of only three members of that committee, perhaps but two of that subcommittee. I do not know how the facts are. I will not, after what has been said in the Senate on either side, be held responsible for any opinion of law or ascertainment of fact stated in the report. With a view to relieve any hold, from embayers small. With a view to relieve anybody from embarrassment I withdraw the point of order.

Mr. CONKLING. I am much obliged to the Senator.
Mr. MITCHELL. The Senator from North Carolina, in justice to myself, will agree with me that a similar report from a subcommittee has heretofore been made to the Senate in the case of Florida.

Mr. MERRIMON. I understand so, but not with my sanction. Mr. MITCHELL. Mr. President, shall I proceed with the reading of the report?

The PRESIDENT pro tempore. The Senator will proceed, the point

of order having been withdrawn.

Mr. MITCHELL. I had read the resolution of the Senate authorizing the inquiry, and shall now proceed with the report of the sub-

izing the inquiry, and shall now proceed with the report of the subcommittee:

In discharge of the duty imposed upon the committee by the last of the foregoing resolutions, the committee have examined the questions touching the alleged ineligibility to be elected and to serve as a presidential elector of Benjamin Williamson, of New Jersey. Mr. Williamson was chosen at the late presidential election in the State of New Jersey as an elector. The governor of the State of New Jersey, under the act of Congress of 1792, certified to the appointment of Mr. Williamson as an elector, and delivered a certificate thereof to him, who thereupon prepared a resignation in swriting, which was delivered to the governor before the time for the meeting of the college of electors. On the 6th day of December, when the college of electors met, it accepted the resignation, and proceeded to fill the vacancy by an election under the following provision of the statutes of that State:

"And be itenacted, That when any vacancy shall happen in the college of electors of this State, or when any elector shall fail to attend, by the hour of three o'clock in the afternoon of the day fixed by the Congress of the United States for the meeting of the college of electors, at the place of holding such meeting, those of the said electors who shall be assembled at the said hour and place shall immediately after that hour proceed to fill by ballot and by a majority of votes all such vacancies in the electoral college."

It appeared by the evidence that Mr. Williamson had been appointed by the circuit court of the United States, under the authority of an act of Congress which is still in force, a commissioner with certain criminal jurisdiction and to take testimony and other powers specified in the act, about twenty-five years ago, and that he had never resigned the office.

Mr. Williamson testified that he had never exercised the duties of the office but in two instances, and those were an authentication of two papers as a commissioner of the circuit

States."

The committee report that Mr. Williamson was, at the time of his appointment as an elector, holding an office of trust and profit under the United States, and that as such he was incligible to be appointed as an elector.

Your committee, however, are of the opinion that the vacancy thus occasioned in the electoral college was one which the electors appointed and present could legally fill under the statute of New Jersey.

Daniel M. Frost, a resident of Saint Louis, State of Missouri, was chosen at the late presidential election as an elector for the third district of the State of Missouri. By the law of that State the electors are voted for in the State at large,

but they are designated for the several congressional districts. Mr. Frost was declared by the proper State authority to have been chosen as an elector, and as such received a certificate from the governor of the State. Learning that the question of his eligibility to serve as an elector had been raised, he failed to meet with the college of electors on the 6th day of December, and the other electors proceeded to fill the vacancy, voting by ballot for that purpose.

The statute of Missouri on the subject of filling vacancies in the electoral college reads as follows.

to fill the vacancy, voting by ballot for that purpose.

The statute of Missouri on the subject of filling vacancies in the electoral college reads as follows:

"If the electors appointed under chapter 30 of the general statutes, or any of them, shall fail to attend at the seat of government by the hour of two o'clock in the afternoon of the day appointed by act of Congress for their meeting, then the electors present may appoint other persons to act as electors in the place of those absent."

It is alleged that Mr. Frost was ineligible because he had been an officer in the Army of the United States before the late war of the rebellion and had afterward taken part in the rebellion and served in the confederate army. That had been such an officer was clearly proved, and that he had taken the oath required by law of an officer of the Army. It was also shown that he had been a member of the senate of the Legislature of Missouri in 1854, and as such had taken an oath to support the Constitution of the United States.

To rebut the idea that Mr. Frost was ineligible to serve as an elector under the fourteenth amendment to the Constitution of the United States, it is alleged that the oath which he took as an officer of the Army did not contain an averment that he would support the Constitution of the United States. The oath was in the following words:

I, Daniel M. Frost, born in the State of New York, appointed brevet second lieutenant in the Army of the United States, do solemnly swear (or affirm) that I will bear true allegiance to the United States, do solemnly swear (or affirm) that I will bear true allegiance to the United States, of America, and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever, and observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles for the government of the armies of the United States.

DANIEL M. FROST,

DANIEL M. FROST,
Brevet Second Lieutenant, First Artillery.

Sworn to and subscribed before me, at Phillipstown, this 31st day of July, 1844.
ISAAC B. PINDY,
Justice of the Peace.

HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, January 2, 1877.

A true copy.

THOMAS M. VINCENT, Assistant Adjutant-General.

To further rebut the claim of his ineligibility, it was alleged and proved that on the 23d of October, 1865, he received a pardon from the President in the following

Andrew Johnson, President of the United States of America.

To all to whom these presents shall come, greeting:

Whereas D. M. Frost, of Missouri, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and

Whereas D. M. Frost, of Missouri, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and penalties;

And whereas the circumstances of his case render him a proper object of executive elemeny;

Now, therefore, be it known that I. Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said D. M. Frost a full pardon and amnesty for all offenses by him committed, arising from participation, direct or implied, in the said rebellion, conditioned as follows:

1st. This pardon to be of no effect until the said D. M. Frost shall take the oath prescribed in the proclamation of the President dated May 29, 1865.

2d. To be void and of no effect if the said D. M. Frost shall hereafter, at any time, acquire any property whatever in slaves, or make use of slave labor.

3d. That the said D. M. Frost first pay all costs which may have accrued in any proceedings instituted or pending against his person or property before the date of the acceptance of this warrant.

4th. That the said D. M. Frost shall not, by virtue of this warrant, claim any property, or the proceeds of any property, that has been sold by the order, judgment, or decree of a court under the confuscation laws of the United States.

5th. That the said D. M. Frost shall notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon.

In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this 23d day of October, A. D. 1865, and of the Independence of the United States the ninetieth.

[I. 8.]

ANDREW JOHNSON.

ANDREW JOHNSON.

[L. S.]
By the President:
W. HUNTER,
Acting Secretary of State.

W. Hunter,

Acting Secretary of State.

If Mr. Frost, by reason of having been an officer in the Army of the United States, was ineligible to be appointed an elector, it is urged that the vacancy in the college of electors was not such a one as the other electors could fill under the statute of Missouri.

Mr. Charles G. Stifel was the opposing candidate upon the republican ticket for the office of elector in the third district of Missouri, and received the next highest number of votes. Mr. Stifel went before the governor of the State at the time the votes were canvassed and claimed that Mr. Frost was ineligible to be appointed as an elector, and that he (Stifel) having received the next highest number of votes was elected, and demanded from the governor a certificate as an elector, which was refused by the governor. Mr. Stifel afterward appeared before the college of electors on the 6th day of December, and before the votes were cast produced before such college a copy of the returns of the votes in the State of Missouri as certified by the secretary of state and the governor, showing that he had the next highest number of votes to Mr. Frost, and claimed that he was duly elected an elector, and demanded that he should have the right to vote and to act as an elector before such college. This right was refused, and the college proceeded to fill the vacancy arising from Frost's non-appearance.

Your committee find that Mr. Frost, having previously taken an oath as a member of a State Legislature to support the Constitution of the United States, and having subsequently engaged in insurrection and rebellion against the United States, was ineligible as an elector of President and Vice-President under the third section of the foorteenth amendment to the Constitution of the United States.

Your committee further find that the disability of Mr. Frost was not affected or removed by the pardon of the President; that such ineligibility could only be removed by Congress by a vote of two-thirds of each House. And, furthermor

them, shall fail to attend," there was in this instance clearly no such vacancy as the electors present could fill; and the filling of such vacancy by the electors present was void.

The difference between the powers of the electors present on the day of the meeting of the electoral college to fill vacancies, under the statutes of Missouri and those of Oregon, is at once apparent upon comparison of the two statutes. That of Oregon provides that "if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect toattend, or otherwise, the electors present shall immediately proceed to fill, by vica voce and plurality of votes, such vacancy in the electoral college;" whereas the statute of Missouri provides—
"If the electors appointed \* \* \* or any of them shall fail to attend \* \* \* then the electors present may appoint other persons to act as electors in the place of those absent."

If Mr. Frost was never appointed, as we hold he was not, then there was no failure to attend by any elector appointed, and consequently the only contingency in which those present could appoint another person to act as an elector in the place of the one absent, did not arise. Did the Missouri statute, as does the Oregon statute, and in fact the statutes of the most of the States, provide that any vacancy occasioned by death, refusal to act, neglect to attend, or otherwise, could be filled by the electors present, then the vacancy occasioned by the absence or resignation of Mr. Frost might have been filled by the electors present.

Your committee further find that should the doctrine assumed by Governor Grover, of Oregon, that the alleged ineligibility of Watts elected Cronin, and entitled him to a certificate, be held good, (and we repudiate it as wholly untenable, either in law or morals,) then Mr. Stifel was appointed an elector in the State of Missouri, and he should have been certified as such, and allowed to vote as such in the electoral college.

F. W. M. Holliday was chosen an elector in the

and he should have been certified as such, and allowed to vote as such in the electoral college.

F. W. M. Holliday was chosen an elector in the State of Virginia at the late presidential election, and as such received a certificate from the governor of that State. Learning that his eligibility to serve as an elector was questioned, he failed to attend the meeting of the electoral college on the 6th day of December, and the other electors proceeded to fill the vacancy. The statute of Virginia, under which the other electors assumed to fill the vacancy, reads as follows:

"Without such special order, the electors shall convene at the capitol, in the city of Richmond, on the first Wednesday of December after their election, at the hour of twelve o'clock at noon of that day; and if there be any vacancy in the office of elector, occasioned by death, refusal to act, neglect to attend, or other cause, the electors present shall immediately proceed to fill, by ballot and by a plurality of votes, such vacancy in the electoral college; and when the electors shall appear, or the vacancy shall have been filled, as above provided, they shall proceed to perform the duties required of such electors by the Constitution and laws of the United States."

the vacancy shall have been liked, as above provided, they shall proceed to perform the duties required of such electors by the Constitution and laws of the United States."

Mr. Holliday was about two years ago appointed a centennial commissioner, and as such duly commissioned by the President of the United States, having been nominated by the governor of Virginia, as provided by law. He accepted the appointment and entered upon the discharge of its duties, and has never resigned. The office of centennial commissioner is one of trust, and rendered him ineligible under the Constitution of the United States to be appointed as an elector.

Your committee are of the opinion that the electors present had the legal right, under the laws of Virginia, to fill the vacancy occasioned by the neglect to attend of Mr. Holliday, the statutes in that State and the State of Oregon being almost identical, and covering a vacancy occasioned by any cause.

If the doctrine that is claimed in the case of Oregon, that the ineligibility of the highest candidate had the effect to elect the candidate having the next highest number of votes, a doctrine which we repudiate, then the next highest candidate upon the republican ticket for elector in Virginia was elector, and should have received the certificate of the governor and have been permitted to act upon the college of electors.

Mr. President, this is all of this report. It will be observed that Mr. President, this is all of this report. It will be observed that the report only relates to the three cases arising in the States of New Jersey, Missouri, and Virginia, and does not include the contested case of Oregon. That matter is being investigated under another resolution of the Senate directing the investigation, and the report will be made hereafter at an early day.

I now give way to the Senator from New York, who is also of the subcommittee, for the purpose of making any remarks that he may wish in reference to this report.

Mr. KERNAN. Mr. President, I ask the attention of the Senate for a minute only to make a brief statement as to each of these reports. I do so because I am a member of the subcommittee. I have not had an opportunity to put anything in writing, inasmuch as the

not had an opportunity to put anything in writing, inasmuch as the reports were only submitted to the subcommittee this morning; but the chairman said he would give me an opportunity to make an oral

statement.

I differ with the committee in reference to the case arising in New Jersey in this respect: The committee hold that Mr. Williamson was ineligible under the Constitution of the United States to be appointed an elector on the 7th of November. I ask the attention of the Senator from Oregon for one moment. The conclusion of the committee is that Mr. Williamson was ineligible under the Constitution at the

time of the election. Am I right?

Mr. MITCHELL. That is correct. That is the conclusion of the

committee

Mr. KERNAN. I differ from that view; and I wish to state briefly why. Mr. Williamson was appointed some twenty-five years ago com-missioner of the United States circuit court. Some ten years after missioner of the United States circuit court. Some ten years after he was appointed chancellor of the State of New Jersey, and served as chancellor the full term of seven years; and he has never acted as a United States commissioner since he was appointed chancellor, having only acted twice before. My conclusion is that he ceased to be a commissioner of the United States when he accepted the office of chancellor of the State of New Jersey. Senators will find the provision of the constitution of New Jersey, in the recent of the constitution of New Jersey. be a commissioner of the United States when he accepted the office of chancellor of the State of New Jersey. Senators will find the provision of the constitution of New Jersey in the report of the subcommittee. At my request they inserted it. I submit that the moment he accepted the office of chancellor of the State of New Jersey by the constitution of that State he ceased to be a commissioner of the United States. The language of article 7, section 2, of the constitution of New Jersey was, when Mr. Williamson accepted the office of chancellor, and still is:

The justices of the supreme court and chancellor shall hold their offices for the term of seven years.

Then the clause relates to their salaries; and then follows this lan-

And they shall hold no other office under the government of this State or the United States.

When he accepted the office of chancellor he ceased to be a commissioner of the United States.

Mr. MITCHELL. That there may be no misunderstanding it is greed, I presume, between the Senator from New York and myself that his term as chancellor expired long before this election, and also

that he never resigned as commissioner.

Mr. KERNAN. That is true. He held the office for seven years, being appointed some fifteen or more years ago. He has never acted as commissioner since. That is the fact, and my conclusion is that he ceased to be a commissioner at the time he accepted the office of chancellor. I do not desire at this time to argue the question; I wish only to call attention to the conclusion I came to and my reason for that conclusion. The effect of the State constitution I think was that he ceased to be a United States commissioner when he became chancellor.

Mr. MITCHELL. I should like to ask the Senator from New York one question.

Mr. KERNAN. Certainly.
Mr. MITCHELL. And that is, whether the Senator from New York concurs in the conclusion of law reported by the subcommittee to the effect that the vacancy occasioned, if there was a vacancy, was such

a one as the electors could fill.

Mr. KERNAN. I shall answer frankly that, inasmuch as I came to the conclusion that he was not ineligible to be appointed an elector and inasmuch as the State laws differ as to filling vacancies, I have not examined carefully this question and have no opinion to express as to whether if he had been ineligible to be appointed an elector the college of electors under the laws of New Jersey could have appointed

another to act as an elector in his stead.

another to act as an elector in his stead.

Permit me to speak for a moment in reference to the case arising in the State of Missouri. The report of the subcommittee shows that Mr. Frost, before the year 1850, was a United States officer, a lieutenant in the Army, and took the oath which is set out in the majority report of the subcommittee, which was in substance that he would bear true faith and allegiance to the United States, &c., as was read by the Senator from Oregon and is set out in his report. As an officer of the Army he never took any oath to support the Constitution of the United States. Prior to about 1862 the law did not require an officer of the Army to do so. In about 1851 he resigned his position in the Army, and in 1853, or about that time, he was elected a senator of the State of Missouri, and took an oath then as a member of the Legislature of that State to support the Constitution of the United States. I understand the subcommittee in their report not to put their conclusion that he was ineligible to be apreport not to put their conclusion that he was ineligible to be appointed an elector, by virtue of section 3, article 14, of the United States Constitution, by reason of the oath which he took as an officer in the Army of the United States, but that he was ineligible because he as a senator, a member of the Legislature of the State of Missouri, took the oath to support the Constitution of the United States, and

took the cath to support the Constitution of the United States, and hence was rendered ineligible by section 3 of the fourteenth amendment of the Constitution of the United States.

Mr. MITCHELL. We put it on both grounds.

Mr. KERNAN. Very well, on both grounds. Then I will ask to be heard on both questions. I say that as an officer of the Army, lieutenant as he was, he is not ineligible under section 3, article 14, of the Constitution, and I will read it that Senators may see whether it touches any officer of the United States except one that took an oath to support the Constitution of the United States. It is conceded that he did not take an each to support the Constitution of the United States. the did not take an oath to support the Constitution of the United States as a military officer. I submit that under section 3 of article 14 he was not disqualified, and I will read it. Let us see who are disqualified. The third section is as follows:

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Who were disqualified by this? Were all the officers of the Army who were disqualified by this? Were all the officers of the Army high and low who prior to the rebellion took exactly this same oath taken by Frost, and no other, disqualified although they left the Army long before 1861 and took part in the rebellion against the United States? If they were not it is because they did not take an oath to support the Constitution of the United States, and hence were not within the third section of the fourteenth amendment. They were not disqualified; the amendment was intended only to disqualify these who as officers had taken an oath to support the Constitution. were not disqualified; the amendment was intended only to disqualify those who, as officers, had taken an oath to support the Constitution of the United States. I think it will be found when gentlemen examine it that the third section only disqualifies a man who was an officer, civil or military, of the United States, and certain other State officers who took an oath to support the Constitution of the United States and afterward took part in the rebellion against the United States.

Mr. MITCHELL. The Senator from New York will bear in mind that Mr. Frost was a military officer.

Mr. KERNAN. I concede he was, but he did not as such take an oath to support the Constitution of the United States, and hence he cath to support the Constitution of the United States, and hence he may not be included in section 3 of article 14. But I only want at this time to have go with the report of the subcommittee the suggestion which I make that Mr. Frost was not disqualified by reason of the oath which he took as a military officer, because that oath was not to support the Constitution of the United States, but a very different one, which is set out in the report; and therefore I will not read it.

read it.

It is said in the report, and this is true, that Mr. Frost was a member of the Legislature of the State of Missouri in 1854 and 1855, after his resignation, and that he then took, as such member, an oath to support the Constitution of the United States, and that by section 3 of article 14 such persons are disqualified from being electors. That section disqualifies, among others, any one who, as a member of any State Legislature, &c., took an oath to support the Constitution of the United States, and afterward engaged in the rebellion. My answer to his being disqualified on this ground is that Mr. Frost is relieved from the disability imposed upon him by reason of his having as a member of the Legislature of Missouri taken an oath to support the Constitution of the United States, by the act of Congress of May 28, 1872. I will read it. It is entitled:

An act to remove the political disabilities imposed by the third section of the four-teenth article of amendments of the Constitution of the United States.

Be it enacted, &c., That all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever, except—

Now mark the exceptions, and see if it does not except men who were members of State Legislatures and took the oath to support the Constitution of the United States—

removed from all persons whomsoever, except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of Departments, and foreign minis-ters of the United States.

This act will be found in volume 17 of the Statutes at Large of the

United States, page 142.

Thus you will observe that this act, passed by a two-thirds vote, removed all disabilities imposed by section 3 of the fourteenth amendment from all the men who had taken an oath as members of a State Legislature to support the Constitution of the United States. Therefore, as to Mr. Frost, I admit he was rendered ineligible by section 3 of article 14, as it was adopted. He had been a member of the State Legislature, and as such he had taken an oath to support the Constitution of the United States; but the act of 1872 removes the disability from-

All persons whomsoever, except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses, officers in the judicial, military, and naval service of the United States, heads of Departments, and foreign ministers of the United States.

It relieves all the men who had taken an oath to support the Constitution of the United States as officers of a State, and particularly stitution of the United States as officers of a State, and particularly those men who were members of State Legislatures. Therefore Mr. Frost was perfectly eligible to be appointed as an elector, and when he did not attend the meeting of the electoral college another was properly appointed in his place. No question arises as to the construction of the State law as to vacancies. He was eligible to be appointed an elector and they properly filled the vacancy that occurred from his non-attendance according to the law of Missouri which is quoted in the report of the subcommittee.

This statement will enable gentlemen who desire an apportunity to

This statement will enable gentlemen who desire an opportunity to do so to examine whether I am right in differing in my conclusion from the majority of the subcommittee who hold that Mr. Frost was eligible. I express no opinion in reference to the construction of the eligible. I express no opinion in reference to the construction of the Missouri statute relative to filling vacancies in the electoral college where an ineligible person was voted for, for I have not been able to get the volume containing that statute, though I have sent for it to the Library several times. The protest contained in the report recites a section of the statute and I assume it is recited correctly; but I wanted the rest of the statute, and I express no opinion whether the electoral college could or could not have appointed another elector in Mr. Frost's place under the laws of Missouri had he been ineligible.

Now in reference to the case arising in Virginia I agree in the con-

Frost's place under the laws of Missouri had he been ineligible.

Now, in reference to the case arising in Virginia, I agree in the conclusions of the report. There is a difference between that and the Oregon case. I do not think it wise to be treating the two cases together. Whenever we come to pass upon another case, we must look at it. I agree to the conclusion without at all assenting to the reasoning of the majority about the two States of Virginia and Oregon. This is all that I desire to say now. It is due to the gentlemen on the subcommittee to say that they are very much occupied, trying to get evidence on these various cases; and I have satisfied myself as to the conclusions which will enable the New Jersey and Missouri cases to be settled without question. I hold that Mr. Williamson was eligible when elected, and Mr. Frost was eligible when elected; and I have not bestowed any time at all in comparing the Virginia statute as to vacancies with the statutes on that subject in other States. Having said this much, whenever the matter comes up for discus-

Having said this much, whenever the matter comes up for discussion on other cases I will give my opinion on them; or if it should become important, whether I am right or wrong in my conclusions, that the persons appointed electors in New Jersey and Missouri were

eligible and properly appointed and the vacancies, by reason of their non-attendance, properly filled, I will discuss that then, but not

Mr. RANDOLPH. Mr. President, I failed to hear distinctly the report as read by the member of the subcommittee, especially as to the New Jersey case. I rise to ask whether the subcommittee came to the conclusion that there was no contest over the electoral votes cast by the electors of New Jersey. Do I understand that there is no con-

Mr. MITCHELL. All the Committee on Privileges and Elections did in reference to that matter was to inquire into the eligibility or non-eligibility of Mr. Williamson, in reference to whom there was a question raised.

a question raised.

Mr. RANDOLPH. Relating particularly to Mr. Williamson?

Mr. MITCHELL. Yes, sir. The committee found that Mr. Williamson was a circuit-court commissioner appointed under an act of Congress some twenty-five years ago; that he had never resigned that commissionership, and they found that that was an office of trust and profit under the Constitution of the United States, and that therefore he was rendered ineligible to be appointed an elector. They found as a matter of fact that Mr. Williamson resigned as an elector, placed his resignation in the hands of the governor of the State of New Jersey, prior to the meeting of the electoral college; that he did not attend the meeting of the electoral college; and that the electors present at the time when the electoral college meet proceeded to fill the vacancy caused by the resignation and neglect to attend of to fill the vacancy caused by the resignation and neglect to attend of Mr. Williamson. The committee found, furthermore, that under the laws of the State of New Jersey the electors present could legally

laws of the State of New Jersey the electors present could legally fill that vacancy.

Mr. RANDOLPH. And did.

Mr. MITCHELL. And did. The only dissent made by the Senator from New York, as I understand, is this: I understand him to hold that, inasmuch as Mr. Williamson accepted a State office, that of chancellor under the constitution and laws of the State of New Jersey, therefore that act was a resignation in law of the office of commissioner, and hence, as I suppose, he concludes that he was not a United States officer at the time of the election, and was therefore not ineligible.

Mr. RANDOLPH. Well, Mr. President, it is not material, the

Mr. RANDOLPH. Well, Mr. President, it is not material, the committee having come to the conclusion that they have, that I should discuss this question at all. I am familiar with the action taken by the electoral board.

Mr. MITCHELL. I should like to know from the Senator from New Jersey whether he agrees with the committee in holding that the vacancy caused by the failure of Mr. Williamson to attend was one that the electors present could legally fill under the laws of New Largery?

Mr. RANDOLPH. Under the laws of New Jersey, I have no doubt the electors had the right to fill the vacancy. Mr. MITCHELL. That is all I wanted to know. I agree fully. Mr. KERNAN. Will the Senator from New Jersey yield to me for minute?

a minute?

Mr. RANDOLPH. Certainly.

Mr. KERNAN. I wish to say he having been chancellor at an early day, which under the constitution of the State vacated his previous commission as a commissioner, I have not gone into the question of construction considered by the committee, in reference to whether if he had been ineligible the vacancy could or could not have been filled, because that would involve an examination of their State law, which

because that would involve an examination of their State law, which I have not given.

Mr. MITCHELL. I did understand, however, that the Senator from New York agreed with the majority of the committee in their conclusion of law in reference to the Virginia case. In other words, I understand the Senator from New York to agree that the electors present when the electoral college met at Richmond, Virginia, did have the power under the Virginia statute to fill the vacancy caused by the failure to attend of Mr. Holliday.

Mr. KERNAN. I distinctly said that I had not examined the Virginia law, except an extract sent me from the code, and I expressly stated that as there was no practical question involved I did not give

ginia law, except an extract sent me from the code, and I expressly stated that as there was no practical question involved I did not give it attention; but I did not say whether they were right or wrong in their construction of that law. In a word, I said that I did not desire to discuss it, because they had come to a conclusion which rendered it unnecessary for me to do so. In a word, I wanted to take up each case and dispose of it briefly.

Mr. MITCHELL. Ido not desire to argue this matter.

Mr. CONKLING. The report having been received, unless some other Senator wishes to be heard upon it, I move that the Senate proceed to the consideration of executive business.

The PRESIDENT pro tempore. It will be understood that the unfinished business, which is Senate bill No. 984, is pending. It is restored to its place so as to be the unfinished business for to-morrow. The Senator from New York moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After forty-one minutes spent in executive session the doors were re-opened, and, on motion of Mr. Mc-CREERY, (at four o'clock and forty-eight minutes p. m.,) the Senate took a recess until ten o'clock a. m. to-morrow, (Friday, Febru-

## HOUSE OF REPRESENTATIVES.

THURSDAY, February 1, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

I. L. TOWNSEND.

The Clerk proceeded to read the Journal, and after having proceeded for some time was interrupted by

Mr. KASSON, who said: I ask that the resolutions which were acted upon by the House yesterday be read in full, instead of being omitted as is usual in reading of the Journal. I will not ask that the names in the list of yeas and nays be read.

The SPEAKER. The gentleman from Iowa asks unanimous consent that in reading the Journal this morning the names in the list of yeas and nays be omitted.

of yeas and nays be omitted.

Mr. KASSON. I will simply ask that the entire Journal be read, instead of omitting the parts usually omitted.

The SPEAKER. The Chair is informed by the Clerk that there are two or three resolutions not incorporated in the Journal, because there has not been sufficient time for the purpose. Those resolutions will have to be read from the RECORD, which has just come to hand.

Mr. KASSON. That will be equally satisfactory. My object is to have the entire Journal read, as many of us were not present last

night.
The Clerk resumed the reading of the Journal, and was again in-

Mr. CONGER, who said: There has been a request that all the resolutions be read, and I do not think the Clerk is reading them all.

The SPEAKER. Wherever there is in the Journal an omission of a resolution, the Clerk will refer to the CONGRESSIONAL RECORD,

which has just come to hand, and will read from the RECORD the proper resolution.

The Clerk resumed the reading of the Journal. When he had reached the part relating to the letter from the Secretary of War in reference

to the case of J. E. Maley, which on yesterday was taken from the Speaker's table and referred to the Committee on Military Affairs, Mr. CONGER said: I ask that the letter here referred to be read by

the Clerk.

The SPEAKER. The Chair thinks that is not in order. The Journal merely records the fact that such a letter was presented and referred.

Mr. CONGER. If the letter was read yesterday, it should be a part

of the Journal.

The SPEAKER. If it was read it would be a part of the Record, but not of the Journal. If all that is read is made a part of the Journal, then the Journal would be as long as the Congressional Record.

Mr. CONGER. I do not ask for the reading of any long communication, only for the reading of the letter.

The SPEAKER. The letter is not in possession of the Clerk, but having been referred by the House is now in possession of the Committee on Military Affairs.

Mr. CONGER. If the letter is published in the Record it should be a part of the Journal.

The SPEAKER. The letter is not published in the Record, so the Chair is informed, and if it were, would not appear in the Journal in full.

## MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, informed the House that the Senate had passed and requested the concurrence of the House in a resolution to provide for printing the public proceedings of the electoral commission.

### READING OF THE JOURNAL.

The Clerk resumed the reading of the Journal. When he had reached the yea and nay list on the motion of Mr. Wilson, of Iowa, to reconsider the order for yeas and nays on the motion to lay on the table the appeal from the decision of the Chair,

Mr. HOSKINS said: I ask that the names be read.

The SPEAKER. The Clerk will read the names.

The Clerk resumed the reading of the Journal, and when he had reached the portion of the Journal containing the yeas and nays on the motion of Mr. PAGE that the House adjourn,

Mr. CONGER said: I call for the reading of the names of the absentees or those not voting.

The SPEAKER. The Clerk will read those names.

The names having been read,

The names having been read,
Mr. FOSTER said: Is my name recorded among the names of those

absent or not voting ?

The SPEAKER. The Chair is informed by the Clerk that the name of the gentleman from Ohio [Mr. FOSTER] is recorded among those not voting.

Mr. FOSTER. I was present and voted in the affirmative.

The SPEAKER. The Journal and RECORD will be corrected in that

Mr. CONGER. The Clerk omitted to read the names of those not voting in the yea-and-nay list previous to this. I ask that those names be now read.

The SPEAKER. It is too late to call for the reading of those

names at this time.

The Clerk resumed and concluded the reading of the Journal.

The SPEAKER. If there be no objection, the Journal as read will

Mr. CONGER. I object to the approval of the Journal at this time, and I ask that that question stand over until to-morrow morning. We have not yet had before us the RECORD of last night's pro-

ceedings, and have not been able to compare it with the Journal.

The SPEAKER. Will the gentleman indicate in what respect the

Journal is not correct?

Mr. CONGER. I have a memorandum of some motions which were made last night, and I think some of them are not included in the Journal.

The SPEAKER. The Chair supposes that the gentleman from Michigan [Mr. Conger] merely desires to consume time. The Chair has several communications here to present which will occupy all the

Mr. CONGER. I do not know why the Chair should presume that. I stated that there were some motions made last night of which I

have memoranda, which I did not hear read as a part of the Journal.

The SPEAKER. There were no motions which the Chair entertained that are not included in the Journal.

Mr. PAGE. I move that the House now take a recess until two

minutes before one o'clock.

The SPEAKER. Will the gentleman yield to the Chair to submit one or two necessary matters to the House?

Mr. PAGE. Certainly I will do so.

#### TELLERS ON COUNTING THE ELECTORAL VOTE.

The SPEAKER announced, as the tellers on the part of the House

The SPEAKER announced, as the tellers on the part of the House to count the electoral votes for President and Vice-President, Mr. COOK, of Georgia, and Mr. STONE, of Missouri.

Mr. KASSON. Will the Chair allow me respectfully to inquire if he is not inclined to give the minority on this side of the House a representative among the tellers? We regard it as a violation of customary rights and of all precedents that the minority should not be represented in an important function like this. I make this statement at the request of my associates on this side.

The SPEAKER. The Chair would state the facts. These gentlemen have been appointed by the Chair under the authority of the

men have been appointed by the Chair under the authority of the House. The action of the Chair has been communicated to the President of the Senate, and the President of the Senate being aware of that fact will, as the Chair understands, in reference to his appointments, govern himself accordingly, and appoint on the part of the Senate from the majority of that body.

Mr. KASSON. Of course the Chair will advise the House at the

same time that that was done in consequence of the action of the

presiding officer of the House.

Mr. COX. I object to that sort of debate.

Mr. WOOD, of New York. This is an impertinence on the part of the member from Iowa

The SPEAKER. The Chair does not feel offended. He is performing his duty.

ORGANIZATION OF THE ELECTORAL COMMISSION.

The SPEAKER laid before the House the following:

WASHINGTON, February 1, 1877.

Washington, February 1, 1877.

Sin: I have the bonor to inform the House of Representatives that the commission constituted under the act of Congress approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, has met and, the members thereof having taken and subscribed the oath prescribed by law, organized, and is now ready to proceed to the performance of its duties.

Very respectfully,

NATHAN CLIFFORD, President of Commission.

To the House of Representatives.

PROCEEDINGS OF ELECTORAL COMMISSION.

The SPEAKER laid before the House a concurrent resolution of the Senate; which was read, as follows:

Resolved by the Senate, (the House of Representatives concurring.) That the public proceedings of the electoral commission appointed under the act of Congress approved January 29, 1877, as taken down under the direction of the commission, be printed in the CONGRESSIONAL RECORD; and also that a number of copies of the same, equal to the number of copies of the RECORD and of uniform size therewith, be printed separately, 500 copies thereof for the use of the commission and the residue for the use of the Senate and House of Representatives.

Mr. VANCE, of Ohio. I move—
Mr. PAGE. I cannot yield to the gentleman from Ohio.
The SPEAKER. The Chair desires to state to the gentleman from California [Mr. PAGE] that there are one or two matters which it is absolutely essential should be attended to on the part of the House prior to the meeting of the joint convention. If the gentleman from California will temporarily withhold his motion, he shall be recognized afterward whenever he may wish.

Mr. PAGE. Very well.

Mr. VANCE, of Ohio. I move that the resolution of the Senate be concurred in.

The motion was agreed to.

NOTIFICATION TO THE SENATE.

Mr. PAYNE submitted the following resolution; which was read, considered, and adopted:

Resolved. That the Clerk inform the Senate that the House is now ready to receive that body for the purpose of proceeding to open and count the votes of the electors of the several States for President and Vice-President.

#### RECESS.

Mr. PAGE. I move that the House take a recess until two minutes before one o'clock.

The SPEAKER. The Chair would suggest to the gentleman to say "five minutes" instead of "two minutes"

Mr. PAGE. Very well; I modify my motion in accordance with the suggestion of the Chair.

The motion, as modified, was agreed to; and a recess was accord-

ingly taken.

The SPEAKER (at five minutes before one o'clock p. m.) again called the House to order.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, announced that the Senate had passed, without amendment, the bill (H. R. No. 4473) for the relief of destitute poor of the District of Columbia.

Columbia.

The message further announced that Mr. Sargent and Mr. Allison had been appointed tellers on the part of the Senate to perform the duties required by the act approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877."

Another message from the Senate (received a few minutes later) announced that Mr. INGALLS had been appointed a teller to act in the joint convention in place of Mr. Sargent excused.

joint convention in place of Mr. SARGENT, excused.

#### COUNTING THE ELECTORAL VOTE.

At one o'clock the Doorkeeper announced the Senate of the United States

States.

The Senate entered the Hall, preceded by its Sergeant-at-Arms and headed by its President pro tempore and its Secretary, the members and officers of the House rising to receive them.

In accordance with the law seats had been provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; for the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses in front of the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform.

The PRESIDENT pro tempore of the Senate took his seat as Presiding Officer of the joint meeting of the two Houses, the Speaker of the House occupying a chair upon his left.

Senators Ingalls and Allison, the tellers appointed on the part of the Senate, and Mr. Cook and Mr. Stone, the tellers appointed on the part of the House, took their seats at the Clerk's desk, at which the Secretary of the Senate and the Clerk of the House also occupied

The PRESIDING OFFICER. The joint meeting of the two Houses of Congress for the counting of votes for President and Vice-President of the United States will now come to order. In obedience to dent of the United States will now come to order. In obedience to the Constitution, the Senate and House of Representatives have met to be present at the opening of the certificates, the counting, and the declaring of the results of the electoral votes for the President and the Vice-President of the United States for the term of four years commencing on the 4th day of March next. In compliance with law, the President of the Senate will now proceed, in the presence of the two Houses, to open all the certificates of the several States, in alphabetical order, beginning with the State of Alabama.

Having opened the certificate of the State of Alabama, received by messenger, the Chair hands to the tellers the certificate to be read

messenger, the Chair hands to the state of Alabama, received by messenger, the Chair hands to the tellers the certificate to be read in the presence and hearing of both Houses.

Senator ALLISON (one of the tellers) read in full the certificate of the electoral vote of the State of Alabama, giving 10 votes for Samuel J. Tilden, of New York, for President, and 10 votes for Thomas A. Hendricks, of the State of Indiana, for Vice-President of the United States United States

The PRESIDING OFFICER. The certificate of the vote of the State of Alabama having been read, the Chair has opened and hands to the tellers the duplicate certificate received by mail from the same State, which will likewise be read.

Mr. STONE (one of the tellers) proceeded to read the duplicate cer-

Senator CONKLING, (interrupting.) I venture to interrupt the reading to suggest it can hardly be necessary to read in extenso the duplicate certificates received by mail, and if that should be the impression of the Presiding Officer and of the two Houses I make the further suggestion that hereafter when the tellers read a certificate the tellers not reading had better overlook the duplicate certificate

at the same time in order that a comparison may thus be made.

The PRESIDING OFFICER. The suggestion of the gentleman from New York has been heard. Is there objection to following that suggestion? The Chair hears none and it will be followed hereafter. Mr. STONE (one of the tellers) then concluded the reading of the

duplicate certificate of the State of Alabama.

The PRESIDING OFFICER. Are there any objections to the certificate of the State of Alabama? The Chair hears none, and the votes of the State of Alabama will be counted. One of the tellers will announce the vote, so there can be no mistake.

Mr. COOK, (one of the tellers.) The State of Alabama gives 10 votes for Samuel J. Tilden, of New York, for President of the United States, and 10 votes for Thomas A. Hendricks, of Indiana, for Vice-

The PRESIDING OFFICER. The Chair hands to the tellers the certificate of the electoral vote of the State of Arkansas, received by messenger, and the corresponding one received by mail. In accordance with the suggestion of the Senator from New York, but one will be read, and the other will be examined as the original is read. The

be read, and the other will be examined as the original is read. The tellers will follow the reading of the one received by messenger in every case with the one received by mail.

The tellers then proceeded in the manner indicated to announce the electoral votes of the States of Arkansas, California, Colorado, Connecticut, and Delaware, it being mentioned in each case that the certificate of the election of the electors was signed by the governor and content of the certificate of the second by the source of the second by the second of the sec and countersigned by the secretary of state, and in each case the Presiding Officer asked whether there were any objections to the certificate; and, there being none, the vote in each case was then

The PRESIDING OFFICER. The Chair hands to the tellers a cer-

tificate from the State of Florida, received by messenger, and the corresponding one by mail.

Mr. STONE (one of the tellers) read the certificate in extenso giving 4 votes for Rutherford B. Hayes, of Ohio, for President, and William A. Wheeler, of New York, 4 votes for Vice-President.

The PRESIDING OFFICER. The Chair hands another certificate received by messenger from Florida and the corresponding one re-

ceived by mail.

Mr. STONE (one of the tellers) also read in extenso the certificate from the State of Florida indicated, giving 4 votes for Samuel J. Tilden, of New York, for President, and 4 votes to Thomas A. Hendricks,

of Indiana, for Vice-President.

The PRESIDING OFFICER. Still another certificate from the State of Florida has been received by messenger, January 31, and it is now handed to the tellers, and the corresponding one received by

mail, January 30.

Senator ALLISON (one of the tellers) read the certificate, and then Senator INGALLS (another of the tellers) proceeded to read the papers accompanying the certificate.

Senator CONKLING. I understand the teller is proceeding to read a list of the counties and returns in detail; and the counties being twenty-nine in number— Mr. SPRINGER. Thirty-nine.

Mr. SPRINGER. Thirty-nine.
Senator CONKLING. Thirty-nine—I will correct myself—all appearing in long printed lists. I know the act of Congress under which the two Houses have met requires these certificates and papers shall be read. I rise after consultation with some members of either House about me, to suggest that by consent the announcement of the result of these lists by the tellers be deemed by the two Houses a reading satisfying the act, and that these papers go as they must go under the statute to the provisional tribunal raised to examine them in the first instance. I can see nothing to be gained by a reading literally

first instance. I can see nothing to be gained by a reading literally of all the figures attenuated upon that printed list.

Mr. SPRINGER. The paper will be printed in full in the RECORD. Senator CONKLING. Of course I assume that the paper will be printed in full; every part of the certificate, just as if everything

The PRESIDING OFFICER. Is there objection to the suggestion of the Senator from New York that the reading of this list be dispensed with, except the footing? [After a pause.] The Chair hears none.

of the Senator from New York that the reading of this list be dispensed with, except the footing? [After a pause.] The Chair hears none. Senator INGALLS (one of the tellers) read the footing of the votes and the remaining portion of the certificate.

The PRESIDING OFFICER. Are there objections to the certificates from the State of Florida?

Mr. FIELD. The following is an objection to the votes, certificates, and lists mentioned in the return first read. I send it to the desk.

The PRESIDING OFFICER, (having examined the paper sent up.) The objection complies with the law, having attached the signatures of Senators and Representatives, the Clerk of the House will read the objection. read the objection.

The Clerk of the House read as follows:

The vindersigned, Charles W. Jones, Senator of the United States from the State of Florida; Henry Cooper, Senator of the United States from the State of Tennessee; J. E. McDonald, Senator of the United States from the State of Indiana; David Dudley Firld, Representative from the State of New York; J. Randolff Tucker, Representative from the State of New York; J. Randolff Tucker, Representative from the State of Pennsylvania; and William M. Springer, Representative from the State of Illinois, object to the counting of the votes of Charles H. Pearce, Frederick C. Humphries, William H. Holden, and Thomas W. Long, as electrons of President and Vice-President of the United States in, for, or on behalf of the State of Florida, and to the paper purporting to be a certificate of M. L. Stearns as governor of the said State and Thomas W. Long were appointed electors in, for, or on behalf of the said State, and to the papers purporting to be the lists of votes cast by the said Charles H. Pearce, Frederick C. Humphries, William H. Holden, and Thomas W. Long for President and Vice-President of the United States, and to the votes themselves for the reasons and upon the grounds following among others, that is to say: First. For that the said Charles H. Pearce, Frederick C. Humphries, William H. Holden, and Thomas W. Long were not appointed by the said State of Florida in such manner as its Legislature had directed, or in any manner whatever, electors of President and Vice-President of the United States.

Second. For that Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock were appointed by the said State.

Third. The manner of appointing electors of President and Vice-President of the United States in, for, or on behalf of the State of Florida was by the votes of the United States in, for, or on behalf of the State of Florida was by the votes of the United States in the Third and the United States on the Third and the United States of the State of Indian State on the Third and November, 1876, and the qualified electors of the said State did on the said 7th day of November, 1876, and the qualified electors of the said State did on the said 7th day of November, 1876, and the power by appointing Wilkinson Call. James Delithment against the State of The State of President and States of the State of States of the State of States of S

names of the electors chosen on the 7th day of November, 1876, bearing date January 29, 1877.

Seventh. The certificate of Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock, elected and appointed by the State of Florida, of the vote cast for President and Vice-President by them, bearing date of January 26, 1877.

Eighth. The record of the proceedings and judgment of the circuit court of Leon County, second judicial circuit of the State of Florida, on information in the nature of quo varranto, in the name of the State of Florida ex ret. F. C. Humphries, Charles H. Pearce, William H. Holden, and T. W. Long; also, a certified copy of the act of the Legislature of the State of Florida, approved January 28, 1877, aforesaid, and the certificate of the State canvassers aforesaid, and the proceedings and judgment on the information aforesaid, transmitted to and received by the House of Representatives on the 31st day of January, 1877.

CHARLES W. JONES, HENRY COOPER, J. E. McDONALD,

DAVID DUDLEY FIELD,
J. R. TUCKER,
G. A. JENKS,
WILLIAM SPRINGER,
Members of the House of Representatives.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Florida?

Senator SARGENT. In behalf of certain Senators and members of the House of Representatives who signed the same, I present three papers containing objections. The first one of which I send to the Clerk's desk and ask to have it now read.

The Secretary of the Senate read as follows:

An objection is interposed to the certificates, or papers purporting to be certificates, of the electoral vote of the State of Florida as having been cast by Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock, upon the ground that said certificates or papers are not authenticated according to the requirements of the Constitution and laws of the United States so as to entitle them to be received or read or the votes stated therein, or any of them, to be counted in the election of President and Vice-President.

S. B. CONOVER, A. A. SARGENT, JNO SHERMAN, H. M. TELLER,

Senators.

WM. WOODBURN.
MARK H. DUNNELL,
JNO. A. KASSON,
GEO. W. MCCRARY.
Mcmbers of the House of Representatives.

Senator SARGENT. On the same behalf I present the paper which send up and ask to have read. The Secretary of the Senate read as follows:

The Secretary of the Senate read as follows:

An objection is interposed to the certificates, or papers purporting to be certificates, of the electoral votes of the State of Florida as having been cast by James E. Yonge, Wilkinson Call, Robert B. Hilton, and Robert Bullock, upon the ground that said certificates or papers do not include or are not accompanied by (in the package or inclosure in which they were received and opened by the President of the Senate in the presence of the two Houses) the certificate of the executive authority of the State of Florida, of the list of the names of said electors, Yonge, Call, Hilton, and Bullock, or any of them, as being said electors, nor are said certificates or papers objected to accompanied by any valid or lawful certification or authentication of said electors, Yonge, Call, Hilton, and Bullock, or any of them, as having been appointed or as being electors to cast the electoral vote of the State of Florida, or entitling the votes of said Yonge, Call, Hilton, and Bullock, or either of them, to be counted in the election of President of the United States or of Vice-President of the United States.

S. B. CONOVER.

S. B. CONOVER. A. A. SARGENT, JOHN SHERMAN, H. M. TELLER,

Senators. WILLIAM WOODBURN, MARK H. DUNNELL, JOHN A. KASSON, GEORGE W. McCRARY, Members of the House of Representatives.

Senator SARGENT. On the same behalf I present the further ob-

jection which I send to the desk.

The Secretary of the Senate read as follows:

The Secretary of the Senate read as follows:

An objection is interposed to the certificates, or papers purporting to be certificates, of the electoral votes of the State of Florida as having been cast by J. E. Yonge, Wilkinson Call, Robert B. Hilton, and Robert Ballock, upon the ground that by a certificate of the electoral vote of the State of Florida, in all respects regular and valid and sufficient under the Constitution and laws of the United States, and duly authenticated as such, and duly transmitted to and received by and opened by the President of the Senate in the presence of the two Houses of Congress, it appears that Frederick C. Humphries, Charles H. Pearce, William H. Holden, and T. W. Long, and each of them, and no other person or persons, were duly appointed electors to cast the electoral vote of the State of Florida, and that the said above-named electors did duly cast the votes, and did duly certify and did transmit the said electoral vote of the State of Florida to the President of the Senate; by reason whereof the said certificates or papers purporting to be certificates objected to are not entitled to be received or read, nor are the votes therein, or any of them, entitled to be counted in the election of President of the United States or of Vice-President of the United States or of Vice-President of the United States.

S. B. CONOVER.

S. B. CONOVER.
A. A. SARGENT,
JOHN SHERMAN,
H. M. TELLER,
Senators.

WM. WOODBURN,
MARK H. DUNNELL,
GEORGE W. MCCRARY,
JOHN A. KASSON,
Members of the House of Representatives.

The PRESIDING OFFICER. Are there any further objections to the certificates from the State of Florida? Senator JONES, of Florida. I send up to be read a further objec-

The Secretary of the Senate read as follows:

The Secretary of the Schate read as follows:

The undersigned object to the counting of the votes of F. C. Humphries as an elector for the State of Florida, apon the ground that the said Humphries was appointed a shipping commissioner under the Government of the United States at Pensacola, Florida, heretofore on the 3d day of December, 1872, and qualified as such thereafter on the 9th day of December, 1872, and continuously from the last-named day until and upon the 7th day of November, 1876, and thereafter until and upon the 6th day of December, 1876, wherefore and by reason of the premises the said F. C. Humphries held, at the time of his alleged appointment as an elector of said State, and at the time of casting his vote as an elector thereof, an office of trust and profit under the United States, and could not be constitutionally appointed an elector as aforesaid.

C. W. JONES, Senator.

C. W. JONES. Senator. C. G. THOMPSON, Member of the House of Representatives.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Florida?

Mr. KASSON. I present a further objection, duly signed by members of the Senate and House of Representatives, to the last paper purporting to be a certificate and read at the Clerk's desk. The Clerk of the House read as follows:

The Clerk of the House read as follows:

The undersigned object to the last paper read, purporting to be a certificate of electors and of the electoral votes of the State of Florida, and to the counting of the votes named therein, because the same is not certified as required by the Constitution and laws of the United States, the certificate being by an officer not holding the office of governor, or any other office in said State, with authority in the premises at the time when the electors were expecised, nor until the duties of electors had been fully discharged by the lawful college of electors having the certificates of the governor of Florida at the time of the action of said lawful college, and duly transmitted to the President of the Senate as required by law.

Second. Because the proceedings as recited therein as certifying the qualifications of the persons therein claiming to be electors are expost facto, and are not competent under the law as certifying any right in the said Call, Yonge, Hilton, and Bullock to cast the electoral vote of the said State of Florida.

Third. Because the said proceeding and certificates are null and void of effect as retroactive proceedings.

A. A. SARGENT, JOHN SHERMAN, Senators.

JOHN A. KASSON, S. A. HURLBUT, Members of the House of Representatives.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Florida? [After a pause.] If there are none, the certificates and papers, together with other papers accompanying the same, as well as the objections presented, will now be transmitted to the electoral commission for judgment and decision. And the Senate will now withdraw to its Chamber.

Accordingly (at three o'clock and five minutes p. m.) the Senate

withdrew.

Mr. KASSON. I move that the House take a recess for ten minutes in order that the Hall may be cleared for business.

Mr. COX. I do not see that there is any necessity for that.

The motion was not agreed to.

#### ELECTORAL VOTE OF FLORIDA.

Mr. HOPKINS. I ask the previous question on the adoption of the resolution accompanying the report of the select committee on the election in Florida.

The SPEAKER. The resolution will be reported.

The Clerk read as follows:

Resolved. That at the election held on November 7, A. D. 1876, in the State of Florida, Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock were fairly and duly chosen as presidential electors, and that this is shown by the face of the returns and fully substantiated by the evidence of the actual votes cast; and that the said electors having, on the first Wednesday of December, A. D. 1876, cast their votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, they are the legal votes of the State of Florida and must be counted as such.

Mr. HURLBUT. It appears to me that under the law creating the electoral commission this resolution ought to go to that commission. Mr. BURCHARD, of Illinois. I rise to a parliamentary inquiry.

Mr. COX. I object to debate unless we can have debate on both

The SPEAKER. The Chair desires to hear the suggestions of gentlemen on both sides. He will recognize the gentleman from New York in a moment.

Mr. BURCHARD, of Illinois. I desire to ask whether this resolution has ever been offered in the House?

The SPEAKER. This is unfinished business.
Mr. BURCHARD, of Illinois. Last night the report of the committee was read; but this resolution was not presented nor was any motion made.

The SPEAKER. It was presented as part of the report, but the reading was waived with the understanding that it should all be printed in the Congressional Record.

Mr. BURCHARD, of Illinois. The report was presented and the

reading in full was waived, but—

The SPEAKER. The report and accompanying resolution were considered as read and were allowed to be published by general con-

Mr. BURCHARD, of Illinois. But my recollection is that the resolution was not offered in the House.

Mr. HOPKINS. The resolution formed the conclusion of the report. The reading was waived by unanimous consent.

Mr. BURCHARD, of Illinois. Objection was made to the reading

Mr. DUNNELL. Last night leave was given by unanimous consent for the minority of the committee to present their views and have them printed. We have not yet presented the minority report, and I respectfully submit that the House should not act on this reso-

and I respectfully submit that the House should not act on this resolution until the minority have had an opportunity to present their report under the leave given them last night by unanimous consent. The SPEAKER. Authority was given last night for the presentation of the minority report whenever ready.

Mr. PAGE. I do not find in the RECORD the resolution just read. The SPEAKER. The gentleman does not carefully look.

Mr. PAGE. On what page is it printed?

The SPEAKER. On page 59.

Mr. WILSON, of Iowa. If we are to act on this question without having both sides properly presented, I move that the House adjourn. Several MEMBERS. That is right.

The SPEAKER. The Chair thinks that some arrangement in re-

gard to this matter can be made.

Mr. McCRARY. In the interest of the public business, I suggest that gentlemen on both sides ought to be willing to postpone action on this subject until the minority can present their views. I am told on this subject until the minority can present their views. I am told that they have not yet had possession of the testimony, and have therefore been delayed in preparing their report, but they will be ready, I understand, to present it to-morrow morning.

The SPEAKER. That, then, would require unanimous consent that this matter shall go over as unfinished business until to-morrow morning after the reading of the Journal.

Mr. HOPKINS. There is no objection to that on the part of the

Mr. HOPKINS. There is no objection to that on the part of the majority of the committee.

Mr. CONGER. I rise to a point of order.

The SPEAKER. The Chair will hear the gentleman's point in a moment. The Chair is informed by the gentleman from Pennsylvania [Mr. HOPKINS] representing the majority of the committee that there is no objection to the understanding which has been suggested.

gested.

Mr. CONGER. I do not know whether I would have any objection to the arrangement proposed; but my point is that although the report was ordered to be printed in the RECORD, and has been so printed, yet no member presented this resolution last night or called for any action of the House whatever upon it, and that the taking up of this resolution is therefore not untinished business.

The SPEAKER. The gentleman is mistaken. The resolution is part of the report—in fact, the essential part of it. The resolution was presented last night with the report, and will be found printed in the RECORD. The reading of the report in full was dispensed with

by consent

Mr. WILSON, of Iowa. I must object to having it go over as unfinished business. It can be recommitted with the right to report at

any time.

The SPEAKER. The understanding the Chair hears is this: both sides consent that this business shall by unanimous consent go over until to-morrow morning after the reading of the Journal, the object being to give to the minority an opportunity to present their views before the House shall be called upon to vote on the resolution of the

Mr. HALE. That would reserve to both sides every right each

would have if it came up this morning.

Mr. WILSON, of Iowa. I understand from the gentleman from Minnesota that the report of the minority of the committee cannot be printed—the time is too short; and therefore I believe the better plan to pursue is to allow the committee under its leave to report at any time to have this subject recommitted to it. It can then report the resolution back at any time for action when the minority have pre-

The SPEAKER. The Chair thinks that is not what the gentlemen composing a majority of the committee desire, but if to-morrow morning the views of the minority should not be printed, then it would be competent for the gentleman from Minnesota to ask for further

delay.

Mr. WILSON, of Iowa. I know it, but we give that away which

Mr. WILSON, of lowa. I know it, but we give that away which we might get now by a fair arrangement.

The SPEAKER. The Chair thinks the proposition as proposed results neither in injury nor advantage to either side.

Mr. KASSON. Will the Chair be good enough to state it as he under-

stands it ?

stands it ?

The SPEAKER. It is agreed by unanimous consent that this report and accompanying resolution shall go over as unfinished business until to-morrow morning after the reading of the Journal, the object being to give to the minority an opportunity of presenting their views.

Mr. KASSON. Both sides having the same rights to-morrow morning they would have now?

The SPEAKER. Certainly; and the Chair is at a loss to see how any right either side has now can be lost by agreeing to this arrangement.

Mr. HALE. We want that settled, that nothing on either side shall

be waived.

Mr. BURCHARD, of Illinois. Then let the gentleman having charge the report withdraw the demand for the previous question.

The SPEAKER. The gentleman from Pennsylvania [Mr. Hopkins] who has the floor has moved the previous question.

Mr. WILSON, of Iowa. Pending that I moved the House adjourn, and that is how it stands. The gentleman from Minnesota has not

and that is now it stands. The gentleman from Minnesota has not been heard as yet.

The SPEAKER. The gentleman from Minnesota will be heard.

Mr. DUNNELL. Mr. Speaker, I regret that I am unable at this moment to say positively the minority report will be ready to-morrow morning. If we do not have the report ready to-morrow morning after the reading of the Journal, it may be ready some time during the day, and it will be printed in the RECORD of Saturday morning. I trust therefore there will be no objection to letting this matter go over until Saturday morning after the reading of the Journal.

Mr. HARRIS, of Virginia. That is too long. Mr. DUNNELL. It is but fair to the minority. We have had less time than we ought to have had to make our report. All the evidence has not as yet been placed upon our desks. There are portions of it not yet within our reach. I respectfully appeal, therefore, Mr. Speaker, to the House that the minority shall not be compelled absolutely to have their report ready to-morrow morning.

The SPEAKER. The Chair thinks there is no disposition to crowd the gentleman from Minnesota.

Mr. DUNNELL. I trust not.

Mr. HOPKINS. The gentleman from Minnesota has had as much

time to prepare the views of the minority as the majority on the committee had. We agree the resolution shall go over as unfinished business until to-morrow morning after the reading of the Journal; the previous question being considered as called or the majority of the committee retaining the floor to demand it.

The SPEAKER. The majority have the right to control the pro-

cedure.

Mr. LAPHAM. I desire to make a point of order.

The SPEAKER. The gentleman will state it.

Mr. LAPHAM. This House having by the act confided the decision of this question to the electoral commission, and having reserved the right to review its decision when it shall be announced, should not in advance of the action of that commission pass upon this

The SPEAKER. That is not a point of order. It is a question for

the House to determine.

Mr. HOLMAN. I trust by unanimous consent this matter will lie

over until to-morrow, to come up then as unfinished business.

The SPEAKER. That is the understanding which is trying to be

Mr. HOLMAN. I move to go into Committee of the Whole on the

Mr. WILSON, of Iowa. What is the understanding?

The SPEAKER. It is that this business shall go over until tomorrow morning after the reading of the Journal, to come up then as the unfinished business.

the unfinished business.

Mr. WILSON, of Iowa. For one I do not agree to that. I move that the House adjourn. If the gentleman from Minnesota [Mr. DUNNELL] cannot be ready by that time I do not wish the consideration of the report to be proceeded with. We want fair play.

The SPEAKER. You shall have it as far as the Chair is concerned. Mr. WILSON, of Iowa. I am satisfied as to that. I am only speaking through the Chair.

Mr. CLYMER. I desire to report back from the Committee on Appropriations the Military Academy appropriation bill with amendments by the Senate, and to move non-concurrence in the amendments. ments.

Mr. PAGE. Before proceeding to other business, I wish to ask if the previous question has been moved on the report from the Florida

committee.

The SPEAKER. The previous question has been moved.

Mr. WILSON, of Iowa. Then I press the motion to adjourn.

The SPEAKER. The Chair would ask the gentleman from Iowa

[Mr. Wilson] to withdraw for a moment his motion to adjourn, to allow the gentleman from Pennsylvania [Mr. Clymer] to make a report from the Committee on Appropriations.

Mr. CONGER. Let this matter be first disposed of.

Mr. CLYMER. I ask the gentleman from Iowa to yield to me to

make the report.

Mr. WILSON, of Iowa. I will do so, provided I am recognized after the gentleman from Pennsylvania [Mr. CLYMER] gets through.

The SPEAKER. The gentleman will be recognized for that pur-

pose. Mr. WILSON, of Iowa. I withdraw the motion.

### ENROLLED BILLS SIGNED.

Mr. HAMILTON, of Indiana, from the Committee on Enrolled Bills, reported back that the committee had examined and found truly enrolled bills and a joint resolution of the following titles; when the Speaker signed the same:

Speaker signed the same:

An act (H. R. No. 3367) to remove the charge of desertion from the military record of Alfred Rouland;

An act (H. R. No. 1558) to remove the political disabilities of Robert Ransom, of Virginia;

An act (H. R. No. 2736) to remove the political disabilities of N. H. Van Zandt, of Virginia; and

A joint resolution (H. R. No. 181) authorizing the Public Printer to hind in alch the stitched service of the Harm compilation antitled. bind in cloth the stitched copies of the House compilation entitled Counting the Electoral Vote.

### REPORT OF FLORIDA COMMITTEE.

Mr. HOLMAN. I think there can be no objection to let this matter go over till Saturday. I ask unanimous consent for that purpose.

Mr. DUNNELL. Mr. Speaker, I am satisfied that the gentleman from Pennsylvania [Mr. Hopkins] who moved the resolution will, on reflection, be willing to allow the matter to go over until Saturday morning. It is impossible for me to promise that the report of the minority will be ready to-night so that it may go into the RECORD. My colleague in the minority is not present and I do not feel at liberty to agree that the matter shall be presented by to-morrow morning. We have not expected to have the report ready before to-morrow evening, and in that case it will appear in the RECORD of Saturday morning; and then both reports will be before the House. The House will then be informed of the views of both sides when it

is called on to act on Saturday. I trust the gentleman from Pennsylvania will agree to let the matter go over till Saturday morning. It certainly is a question which ought not to be voted on without full information on both sides. Another reason why it need not be hurried, as has been suggested by the gentleman from New York, is, that the question is now in the hands of those who have been appointed under the recent left if the recent left is considered.

under the recent act to consider it.

Mr. WALLING. I trust that the request of the gentleman from Minnesota [Mr. Dunnell] will be acceded to. As one member of the committee, I am willing that this matter shall go over till Saturday, occupying the same position then that it does now.

The SPEAKER. The Chair understands the gentleman from Minnesota [Mr. Dunnell] to request that the unfinished business of today shall go over by consent, to be the unfinished business after the reading of the Journal on Saturday. Is there objection? [After a pages 2] The Chair hears none.

reading of the Journal on Saturday. Is there objection? [After a pause.] The Chair hears none.

Mr. HOSKINS. If I rightly understand what is the question before the House, the motion to adjourn is now pending. Am I right? The SPEAKER. The motion to adjourn is not pending. The gentleman from Iowa [Mr. WILSON] withdrew that motion.

Mr. HOSKINS. While I am up, I desire to call the attention of the Chair and of the House to the fifth section of the act under which we are now proceeding. Under that act I think it is not competent for the House to adjourn. We can only take a recess not beyond the the House to adjourn. We can only take a recess not beyond the next day at the hour of ten o'clock in the forenoon until the electoral vote shall have been counted.

The SPEAKER. The Clerk will read the section of the act re-

The SPEARER. The Clerk will read the section of the act referred to by the gentleman from New York.

Mr. KASSON. I would suggest that the Chair take a little time to consider the effect of the provision in the act referred to by the gentleman from New York. I know it has puzzled a number of gentlemen.

The SPEAKER. The C.erk will read the section.

The Clerk read as follows:

The Clerk read as follows:

Sec. 5. That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of the electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any question is being considered by said commission, either House may proceed with its legislative or other business.

Mr. KASSON. That we may gain a little time to consider the obligations imposed by the act, I suggest that, if it necessitates the taking of a recess to an hour not later than ten o'clock to-morrow, a motion to take a recess to that hour be now made. And by that time we will learn the construction which both branches of Congress put upon the act.

Mr. COX. There is only one construction of the law. We are all tied up in a hard knot.

The SPEAKER. The Chair desires to say that the effect of that will be that seven or eight calendar days might be all embraced in this

one legislative day, Thursday.

The Chair thinks that the suggestion of the gentleman from Iowa [Mr. Kasson] is a good one, that the House take a recess until tomorrow morning at ten o'clock, and in the mean time the two presid-

morrow morning at ten o clock, and in the mean time the two presiding officers of the respective Houses can consult together and determine what construction they will give to that act.

Mr. BURCHARD, of Illinois. Was the proposition for further time on the Florida report accepted?

The SPEAKER. It was agreed unanimously that that report should go over until Saturday after the reading of the Journal, and come up then as unfinished business, the gentleman from Pennsylvania [Mr. Honyuyal having the flore and by wine demanded the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents are supported by the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents and the significant contents are supported by the significant contents are supported HOPKINS] having the floor and having demanded the previous ques-

Mr. SPARKS. I understand that under this law no motion to adjourn and no motion to take a recess are necessary. The matter is simply under the direction of the Speaker.

Mr. COX. My friend is mistaken; either House can adjourn or

Mr. HOLMAN. I call for the regular order.

The SPEAKER. The regular order is the question upon taking a

Mr. HOLMAN. I hope the House will not take a recess at this

Mr. HARRIS, of Virginia. If the motion is debatable, I desire to

say a word upon it.

The SPEAKER. It is not debatable. [Loud cries of "Regular order!"] The regular order is demanded, which is the question on the

Mr. HOLMAN. I hope that will not be done.
The question was taken on Mr. Kasson's motion; and on a division there were ayes 140, noes not counted.
So the motion was agreed to.
And accordingly (at three o'clock and forty minutes p. m.) the

House took a recess until to-morrow morning at ten o'clock.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. AINSWORTH: Protest of the Board of Trade of Dubuque, against the passage of the bill imposing a capitation tax on immigrants, to the Committee on Commerce.

By Mr. CUTLER: Petition of citizens of Baltimore, Maryland, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

By Mr. DANFORD: The petition of T. A. Scott and 16 others of

By Mr. DANFORD: The petition of T. A. Scott and 16 others, of Ohio, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. DENISON: The petition of E. W. Wilson and others, of similar import, to the same committee.

similar import, to the same committee.

Also, the petition of Frederick Billings and others, for a repeal of laws by which banks are taxed, to the Committee of Ways and Means. By Mr. FOSTER: The petition of citizens of Ohio for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HOAR: The petition of Andrew Parkhurst and others, of Rockbottom, Massachusetts, for arrears of pension, to the Committee on Revolutionary Pensions.

By Mr. SAMPSON: The petition of W. R. McCully and 51 others, that pensioners be allowed arrears of pension from the date of their discharge, to the Committee on Invalid Pensions.

# IN SENATE.

# FRIDAY, February 2, 1877-10 a.m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session. What is the pleasure of the Senate?

Mr. MORRILL. I move that the Senate take a recess until twelve

o'clock.

The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock.

Cess until twelve o clock.

The Senate re-assembled at twelve o'clock m.
Prayer by the Chaplain, Rev. Byron Sunderland, D. D.
The PRESIDENT pro tempore. The recess having expired, the Senate will come to order. The Secretary will read the Journal of yes-

terday.

The Journal of the proceedings of Thursday, February 1, was read and approved.

J. MILTON BEST.

Mr. MITCHELL. I desire to give notice that on next Tuesday morning, after the morning business is over, I shall ask the Senate to take up the bill (S. No. 174) for the relief of Dr. J. Milton Best, of Kentucky, to consider it and act upon it.

## PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a joint resolution of the Legislature of Colorado, in favor of the passage of a law granting ninety thousand acres of land to the agricultural college of the State of Colorado; which was referred to the Committee on Public Lands. Mr. HAMLIN presented two petitions of citizens and tax-payers of the District of Columbia, praying the passage of the House bill providing for the reduction of taxes imposed upon them; which were referred to the Committee on the District of Columbia.

Mr. DAWES presented the memorial of Harrington & Richardson

ferred to the Committee on the District of Columbia.

Mr. DAWES presented the memorial of Harrington & Richardson, of Worcester City and County, Massachusetts, remonstrating against the passage of the bill (H. R. No. 3192) for the relief of William Wheeler Hubbell; which was referred to the Committee on Patents.

Mr. CAMERON, of Pennsylvania, presented the petition of J. W. Douglass, late collector of internal revenue for the nineteenth district of Pennsylvania, praying to be re-imbursed a certain sum of money lost by him through the embezzlement of his clerk; which was referred to the Committee on Finance.

lost by him through the embezzlement of his clerk; which was referred to the Committee on Finance.

Mr. CLAYTON presented the memorial of the Choctaw Nation of Indians, praying for the settlement of their claim arising under the treaty of 1855; which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. BOGY presented the petition of a large number of citizens of Texas County, Missouri, praying an amendment to the pension laws so as to allow arrearages of pensions; which was ordered to lie on the table.

He also presented the petition of a large number of citizens of Saint Louis, Missouri, praying for the repeal of the law imposing taxes upon deposits, circulation, and capital of banks; which was referred to the

Committee on Finance.

Mr. DAVIS presented a petition of business men of West Virginia, praying that a part of the present tax imposed upon the circulation and deposits of national banks may be repealed; which was referred to the Committee on Finance.

Mr. KERNAN presented a petition of E. S. Gillett, Daniel Spraker, and others, of Montgomery County, New York, praying for the repeal of the law imposing a tax upon the deposits, circulation, and capital of all banks; which was referred to the Committee on Finance.

Mr. COOPER presented the memorial of the Armstrong Tennessee Brigade of Florida Volunteers, praying the passage of the House bill granting pensions to the soldiers of the Florida war; which was ordered to lie on the table.

Mr. WALLACE presented the petition of the Pennsylvania Association of Veterans of the War of 1812, praying for the passage of the law granting them pensions; which was ordered to lie on the table. He also presented a petition of citizens of Harrisburgh, Pennsylvania, praying for the repeal of the law imposing taxes upon deposits, circulation, and capital of banks; which was referred to the Committee on Finance.

He also presented the petition of Mary G. Harris, widow of Colonel John G. Harris, late commandant United States Marine Corps, praying for an increase of pension; which was referred to the Committee

ing for an increase of pension; which was referred to the Committee on Pensions.

#### DISTRICT TAX BILL.

Mr. SPENCER. I am directed by the Committee on the District of Columbia to move that there be printed for the use of that committee the bill (H. R. No. 4554) for the support of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes, as proposed to be amended by the commissioners of the District of Columbia, and also some communications from the commissioners of the District of Columbia to the District Committee. I desire to state that the committee will meet to-morrow morning, and I ask the order to print the bill with the proposed amendments and also the communications for the use of the Committee on the District of Columbia, so that the committee may have them to-morrow morning.

The PRESIDENT pro tempore. Is there objection to the motion to

print? The Chair hears none, and it is so ordered.

#### REPORTS OF COMMITTEES.

Mr. WRIGHT. I presented some days since the petition of John D. Thorne, praying compensation for certain cotton taken and appropriated by the United States troops in Louisiana during the late At the last session the Committee on Claims reported upon this claim recommending its rejection. It has been recommitted with additional papers and we again have had it under consideration, and I am instructed to report it back and ask to be discharged from its further consideration and to move the rejection of the claim.

The motion was agreed to.

Mr. SARGENT, from the Committee on Naval Affairs, to whom was referred the petition of Joseph Beale, jr., late a cadet midshipman at the Naval Academy at Annapolis, Maryland, praying to be restored to the Naval Academy, from which he was dismissed by a sentence of a court-martial, submitted a report; which was ordered to be printed; and asked to be discharged from the further consideration of the petition; which was agreed to.

# BILLS INTRODUCED.

Mr. CAMERON, of Pennsylvania, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1210) for the relief of John W. Douglass; which was read twice by its title and referred to the

W. Douglass; which was read twice by its title and referred to the Committee on Finance.

Mr. BOGY (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1211) defining the manner in which certain land scrip may be located; which was read twice by its title and referred to the Committee on Private Land Claims.

Mr. INGALLS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1212) to enable Indians to become citizens of the United States; which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. RANSOM. I ask leave to introduce a bill. I have not had time to examine it. I was requested to present it, and I am satisfied from the high character of the gentleman who made the request that it is meritorious.

it is meritorious.

By unanimous consent leave was granted to introduce a bill (S. No. 1213) to transfer to the Secretary of the Treasury all stocks and evidences of indebtedness due and held in trust by the Secretary of the Interior on account of the Creek orphans' fund; which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. SARGENT asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1214) to amend an act amending section 5457 of the Revised Statutes relating to counterfeiting; which was read twice by its title and, with the accompanying paper, referred to the Committee on Finance.

Mr. PADDOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1215) to authorize the Council Bluffs and Nebraska Ferry Company to construct a ponton wagon-bridge across

Nebraska Ferry Company to construct a ponton wagon-bridge across the Missouri River at Omaha, Nebraska; which was read twice by its title and referred to the Committee on Commerce.

# PUNISHMENT OF COUNTERFEITING.

Mr. SHERMAN. I move that the Senate proceed to the considera-tion of Senate bill No. 1147.

The motion was agreed to; and the bill (S. No. 1147) for the punishment of persons making or having in possession dies, molds, &c., for manufacturing counterfeit coin was considered as in Committee

of the Whole.

Mr. SHERMAN. I will simply state that in the Revised Statutes in the sections for punishing the counterfeiting of coin the revisers

have omitted, or there was not sufficient law on the subject, provision for punishing persons having in their possession dies, &c., for manufacturing coin. This bill is simply intended to remedy that defect in the statutes. I suppose there will be no objection to it.

The bill was reported to the Senate without amendment, ordered to

be engrossed for a third reading, read the third time, and passed.

Mr. SHERMAN. There is another bill reported by the Committee on Finance which I wish to have acted upon now. I move that the Senate proceed to the consideration of the bill (S. No. 1109) relating to public accounts and claims.

The motion was agreed to; and the Senate, as in Committee of the

Whole, proceeded to consider the bill.

Mr. SHERMAN. I will state very briefly the reasons that make it important to pass this bill now as a public law. This bill is confined simply to the presentation of claims before the Treasury Department. It does not affect at all the law as to the Court of Claims or the commissioners of claims, or any of the various claims that may be presented before any of the courts. It relates entirely to claims before the accounting officers of the Treasury Department. The bill has been very carefully prepared.

Mr. DAVIS. Does it affect present claims or relate to those to be presented hereafter?

Mr. SHERMAN. All from this time forward, forever more. Mr. DAVIS. My question is whether it affects claims now before

the accounting officers.

Mr. SHERMAN. There is one section here that touches the statute of limitations. The bill has been very carefully prepared in the Treasury Department and has undergone considerable revision and careful

of limitations. The bill has been very carefully prepared in the Treasury Department and has undergone considerable revision and careful consideration by the Committee on Finance. There were two sections of the bill as prepared by the Department to which the Committee on Finance were not prepared to give their sanction. I may say that we approved of the objects but were not prepared to go so far. The Department, however, still thinks that sections 4 and 6 ought to be retained. The Committee of Finance have also provided a new section relating to notice by sureties.

The chief object of the bill is to secure a statute of limitations, so that claims against the United States presented to the Treasury Department shall not be paid after a certain term of years. The necessity of such a law is obvious and it ought to have been passed long ago. The claims that have grown out of the war are very numerous. Some twelve years have now elapsed, and the Department deemed it wise to make a statute of limitations carefully framed, with a view to cut off those claims that were to be presented to the Department. As a matter of course, the bill does not affect the presentation of claims to Congress, except that it provides that where claims are pending before Congress they shall not be prosecuted before the Department. Sometimes claimants who are eager commence the prosecution of their claims before the Department and also press them in Congress, and in that way multiply their chances for getting through perhaps doubtful claims. I think every Senator will see the importance of passing the bill, when he examines it, for the public interest.

Mr. DAVIS.- I should like to ask the Senator from Ohio what is to be the effect of the bill upon claims now pending and which have been suspended for want of time to examine them on the part of the Department. For instance, agents of the Government are sent through the country, in different border States particularly, to ex-

Department. For instance, agents of the Government are sent through the country, in different border States particularly, to examine into claims. In some cases I know claimants have been delayed for years by the Department for want of such persons to examine claims, not owing to the claimants at all, for they have been urgent, but for want of time on the part of the Department to have them examined. If that state of things continues, in the case of claims presented in proper time, presented in good faith, and believed to be just at least by the claimants when there has been necessaring. to be just at least by the claimants, when there has been no examina-tion of the claim on the part of the Government, are the claimants to be entirely debarred from presenting their claims before the De-

Mr. SHERMAN. The Senator will see by the first section of the bill that it does not affect claims which have been presented and which are pending, as a matter of course. I will read the section itself, which will explain it. The first section of the bill provides:

That all claims against the United States which the accounting officers of the Treasury or the heads of any Department or bureau are authorized to examine and decide shall be barred unless presented within six years from the time the same

As a matter of course, if they are presented in six years they may be pending for six years more, and therefore they are not barred.

Mr. DAVIS. I will say that I was not in my seat at the moment the bill was read, and I did not notice the first section; but the Senator will remember that I asked him whether the bill affected claims now pending before the Department, and I understood him to say that it did

Mr. SHERMAN. If I answered the Senator that way, I was in error, but I did not so understand him. I thought the Senator asked whether it affected claims that had accrued already.

Mr. DAVIS. I meant claims now pending.
Mr. SHERMAN. O, no; if they are now pending, having been presented before the Department, this bill does not cut them off.
Mr. COCKRELL. For six years?

Mr. SHERMAN. No; if they have been presented and are now pending, they are not cut off. They will last as long as the case of Jarndyce rs. Jarndyce; but they must be commenced in six years.

Mr. COCKRELL. And as to claims that have been in the Department ten years, and have accrued and action is now pending, would this bill cut them of?

Mr. SHERMAN. O, no; and if they are now presented before the bill becomes a law it would not cut them off. I will say that the second section provides that even in the case of old claims they have four years to present them after the passage of this act. It provides—

That claims existing which would be barred by the operation of this act, or within two years after the same goes into effect, may be presented within four years from the date of this act, but not afterward.

It gives them four years afterward to present their claims.

Mr. WRIGHT. I was not aware that this bill was to be brought up, and my attention has not been directed to it except from the reading. There are two or three things which occur to me that I will suggest to the Senator from Ohio. If I understand the bill from the reading, it is proposed to fix a certain time as to claims that have already accrued, and as to claims that may accrue hereafter there is a different time fixed. Another inquiry that I would make is, whether there is any provision in the bill that will prevent the possibility of reviving claims that have already been barred by some statute that reviving claims that have already been barred by some statute that is now in force. We have some statutes which provide now that certain claims are to be filed before the Department at a certain time, and if not, they are barred.

Mr. SHERMAN. This does not affect that, the Senator will see.

Mr. WRIGHT. My inquiry is, if we do not have a positive provision in this bill whether it may not be taken to revive claims that are now harred?

barred?

Mr. SHERMAN. On the contrary, section 2, if the Senator will look at it, is very carefully worded and meets that point. It pro-

That claims existing which would be barred by the operation of this act, or within two years after the same goes into effect, may be presented within four years from the date of this act, but not afterward.

If they are now fully barred, not by this bill but by existing acts,

Mr. WRIGHT. I know the bill itself would not revive them; but my inquiry is whether it would have the effect of reviving them.

Mr. SHERMAN. I think not. If the Senator will express it in better language than is contained in the bill, I should be very glad

to have him do so.

Mr. WRIGHT. The proposition I make is that you have a statute of limitations that runs, and by which particular claims are barred. If we pass a new statute, and say nothing about the old, my inquiry is whether the new statute does not apply to all claims, unless

make an exception.

Mr. SHERMAN. This bill is expressly applied to claims existing which are to be barred by the operation of this proposed act. If the Senator deems it necessary to add as a proviso, "Provided, That this shall not be construed in any way to revive or renew a claim which has already been barred," I have no objection to such an amendment.

Mr. WRIGHT. I think that would be necessary. The Senator will remainly that some years since, before the Finance Committee, we

has already been barred." I have no objection to such an amendment.

Mr. WRIGHT. I think that would be necessary. The Senator will remember that some years since, before the Finance Committee, we had this question of the statute of limitations concerning claims before the Departments, and at that time we had such a provision, "that nothing in this act shall be so construed as to revive claims barred by any existing statute."

Mr. SHERMAN. If my friend will take Senate bill No. 1109 and add such a proviso to section 2, I shall be very glad to have him do so.

Mr. INGALLS. I have very grave doubts about the policy of this bill. It is certainly in contravention of the spirit of the law as it now exists. There is an old Latin maxim, nullum tempus occurrit regi, which is as old as the books. It has always been a principle, I believe, that statutes of limitation do not run either for or against a government. The bill which the Finance Committee have reported I believe proposes to establish a statute of limitations that is more exacting and more onerous than any with which I am familiar in any of the States, because there is no saving clause for persons under disability. In statutes of limitation under State laws infants and insane persons and those who are disabled from suing by certain disabilities have always their rights protected. Here is an absolute inhibition forbidding any claim to be presented or allowed if they are not presented within the period named in the bill. In the first section the time fixed was five years, and as amended by the committee it is six years. Certainly, if the Government is to be protected against claimants, the rule ought to work both ways and individuals ought certainly to be protected from having claims enforced against them by the Government. If the principle is to be adopted in favor of the Government that claims shall not be enforced unless presented within six years, it certainly is a very poor rule that will not work the other way and say that the Government shall not be allowed

Mr. SHERMAN. The answer to that is that the bill simply forbids the officers of the Treasury Department to allow claims after they have accrued for six years. Six years are allowed to transpire, and if a claim is not presented within six years it shall not be paid by the accounting officers of the Treasury. That is manifestly proper, because the remedy for an individual to Congress or to the courts is always open, and the bill would not affect that proceeding. If there is a proper claim for the Court of Claims there is a remedy open there; but an accounting officer of the Treasury Department, who simply pursues the ordinary passing of accounts in the current order, ought not to be allowed to go back and pay old claims without the action of Congress.

In regard to the provision reserving the rights of minors and widows and persons under disability, that would be very well if you were deal-ing with courts, which have the power to discriminate, to take the requisite testimony, &c.; but these accounting officers are rather in the nature of auditors, and there is no reason for such a provision in favor of minors and persons under disability. These accounting officers really ought not to pass upon anything but claims that come up

in the ordinary current run of business

It is true there is some force in the objection made by the Senator from Kansas, that there is no bar here against the Government. The Treasury Department in preparing this bill put in section 6 to operate as a statute of limitations against the Government. I shall read it. That section which the committee have stricken out reads:

That suits against sureties on bonds given to the United States shall be barred unless brought within five years after the termination of the office of the principal therein, if the bond be an official bond, or unless brought within five years from condition broken, if the bond be a bond given by any person to whom has been awarded a contract with the United States.

The committee were not prepared to adopt so radical a rule against the United States, because what is everybody's business is nobody's, and sometimes delays occur in the settlement of accounts in favor of and sometimes delays occur in the settlement of accounts in tavor of the United States which do not occur when the accounts are in favor of individuals. Every individual claimant naturally presses his claim against the United States. Therefore, the reasonable limitation of six years can operate no wrong to individuals, while with the Government, which is an aggregation of forty millions of people, sometimes such a statute of limitations would be very unjust. In order to meet the case as far as we thought it was safe to meet it, we have provided in section 4-

That whenever any surety, on any official bond given to the United States, shall, at any time after the expiration of the term of office of the principal of such bond, give notice in writing to the head of the proper Department that he demand an examination and settlement of the accounts of such principal, it shall be the duty of the head of such Department to cause such examination and settlement to be made forthwith; and if the principal shall be in default on such bond, it shall be the duty of the head of the Department to cause a suit to be commenced against the sureties within two years from the filing of such notice.

Here is a new provision in favor of sureties. On the whole we thought it was a very wise one. After an office has expired a man who has become a surety on an official bond has a right to demand an examination and settlement of the Government, and the Government should properly state the account. If the Government does not state the account and commence suit and take the proper steps to collect the money from the principal in two years the surety should be discharged. That provision is clearly right. It only operates in cases where the surety calls the attention of the Government to the possibility or probability that the principal may be in default; and the burden ought to be thrown upon the surety who goes upon the

bond rather than to provide a general statute of limitations which may cut off a great number of claims.

I will say that these provisions have all been carefully considered, and as the bill relates simply to the auditing and accounting officers of the Treasury Department we felt that it was better to have a rule stringent in favor of the Government rather than otherwise, because these officers, as we all know, are not bonded officers; they are not in the nature of courts, but in the nature of accounting officers. They the nature of courts, but in the nature of accounting officers. They simply adjust and account, and they are not like a court where the proceedings must be open. These accounting officers may be deceived by affidavits or by ex parte testimony or the like; and the rule, therefore, ought to be much more stringent against their powers than against the powers exercised by a court where the United States may be represented by counsel and where the proceedings are all open. It is one of the most dangerous features of our Government to allow claims to be made in the Treasury Department and to be passed upon by a single officer or by two or three officers without open scrutiny and investigation before a court.

vestigation before a court.

It seems to me that the fact that this proposed law was recommended by the Treasury Department, prepared in a great measure by the very accounting officers who have passed upon these claims and see the possibility or probability of abuse without a statute of limita-tion, shows that the time has now come when such a bill ought to

pass. Such propositions have often been before the Committee on Finance, but I do not know that we have ever before reported a bill of this kind, but now I think such a bill ought to be passed.

Mr. MERRIMON. Large sums of money are due from the Government by way of arrearages for carrying the mails to persons who were engaged, some of them technically, against the Government during the late war.

Mr. SHERMAN. They are already barred by existing law, and

such claims could not be presented except by an act of Congress. This bill as a matter of course does not affect any proceeding before Congress or any claims to be presented to Congres

Mr. MERRIMON. I suppose it is understood that those claims are not embraced or affected by this bill at all.

Mr. SHERMAN. They are already barred by law and cannot be paid except by an act of Congress. They are not affected at all by this bill.

Mr. DAWES. Mr. President, I desire to call the attention of the Senate to section 4 of the bill. While as far as it goes it seems to me to provide for a good deal, in certain respects it falls very far short of what is due to parties who are under obligation to the Government. The Treasury Department, as I think my colleague must know, is full of bonds given a long time ago, which under the general law, I suppose, hold principal and surety twenty years; and there the accounts lie unsettled, or it may be they have been settled. A revision of them discloses mistakes in settlement, and a dozen or fifteen years after they are supposed to be settled, and very often after the principal himself has died and his estate has been settled, sureties are called upon to respond. They are called upon to respond sometimes under circumstances under which the principal himself is not to blame at all. I have had my attention directed within a year or two to a call of the Department upon sureties' bonds, where the form of a settlement has been gone through with years ago, and a revision of a settlement has been gone through with years ago, and a revision of a settlement has been gone through with years ago, and a revision of the accounts has shown an honest mistake; but the principal has passed away; his estate has been settled; and one of the sureties who has been found surviving, is called upon years afterward, when it is utterly impossible for him to make clear facts which could have been made clear if the Government had been prompt in the adjustment of these accounts. I have in my possession in my desk letters which apply to a case which this section does not provide for as I understantly in the section does not provide for as which apply to a case which this section does not provide for as I understand it. Any surety under this amendment may relieve himself after two years; still for two years after he applies to the Government for some sort of statement that will relieve him, he is liable. In States like the State that I represent, the estate of the principal is all settled in less than two years and closed up, and the Government may lie still two years after his representatives demand to know whether there is any claim against him. The surety cannot stop the closing up of the estate of his principal, and he can have no claim to do so. I have precisely a case of that kind in my desk at this time. Therefore it seems to me that while so far as it goes this bill is just and right, yet I suggest to the Committee on Finance whether the Government should have two years longer. Why not say one year?

Mr. SHERMAN. I will say, in answer to my friend, that I was afraid two years were too short a time, for the reason that it is often very difficult to effect a settlement in that time. Take a paymaster's accounts. They have to go through various offices: first, the War Department, and then the Treasury. I think two years is too short

for some cases.

Mr. DAWES. Let me consider that a moment. Is it too short a time, after it has lain there ten years, and attention is called to that particular account, when they have all the vouchers and the surety has not any? The principal has gone, his papers are in somebody else's hands; the surety has command of nothing that can aid him at all. Every voucher, every evidence of a claim is in the possession of the Government. The Government's attention is called to this particular account; it is called, too, by a surety who is closed against his deceased principal in less than two years; and yet my friend from Ohio says that, under those circumstances, he thinks the Government ought to have a longer time than two years to determine whether ought to have a longer time than two years to determine whether they have after all any claim upon such a bond as that. I submit to my friend from Ohio, I submit to my colleague here, whether, when their attention is called to a particular bond, and called, too, by a surety upon that bond, and when they of all others and more by a surety upon that bond, and when they of all others and more than all others have it in their power to determine definitely whether there can be any just claim of the Government upon that bond, they ought to have as long a time as two years after that to hold a surety? Is there no justice, is there no propriety in saying to the Government, "If you sleep on these claims while all the evidences of defense to them and adjustment of them are moldering away and passing out of sight, and you have all there are in your control, you shall only hold two years longer your claim upon the surety?" I insist that there are two sides to this case. If the rights of the citizen upon a bond are to be held in the hand of the Government just as long as the Government please, when the Government undertakes to set up a bar against the citizen himself, when he makes a claim upon the Government, they, at least, ought to be willing to submit to a reasonable bar against themselves upon like claims.

Mr. KERNAN. I ask the Clerk to correct an error, probably in printing, on line 1 of section 4. The word "or" should be "on;" so as to read:

as to read:

That whenever any surety on any official bond, &c.

The PRESIDENT pro tempore. That correction will be made.

Mr. KERNAN. Now, in reference to the two years, I think the somewhat excited speech of the Senator from Massachusetts is not called for by this bill. As the law has been heretofore, there has been a much longer time when a man is sued upon his sealed bond. In many of the States a man can be sued on his sealed bond any time

within twenty years from the time when the cause of action accrued. The object of the bill is to give a surety a chance to be discharged within a reasonable time from his obligation on the bond of his principal. I concurred in committee in fixing two years, being uneasy, however, lest we thereby made the time too short; but still on the whole I thought it better if the surety gave notice and required the Government to examine and find whether there was any default, then if the Government did not bring suit within two years, let the surety be discharged, although the principal is not discharged by the section. The hardship is not as stated. Take it in almost all the States, sureties on promissory notes, or ordinary contracts, although their principal dies, are still liable for six years after the debt accrues, after the note becomes due. With reference to the Government it will often happen that they will have great difficulty, and very likely will not always discover that there is a default within two years, but still when they have notice served I am willing to say that they should then bring a suit if they ever intend to make any claim. It surely is not harsh to give the Government two years in which to do this. I venture to say that this is the most liberal statute of limitations in favor of sureties that has ever been passed anywhere, and I think there is no hardship in it. If the surety is uneasy, if he desires to secure his rights, let him individually and as soon as the term of office of his principal expires, give the notice. Then the Government will have to examine, and decide, and sue within two years. Looking to the statutes of the States as to sureties, and as the Federal Government has run without any statute on this subject heretofore. I think that the bill is not open to the criticism that it is not liberal enough to ever the statutes. then if the Government did not bring suit within two years, let the fore, I think that the bill is not open to the criticism that it is not liberal enough to sureties. Therefore I hope the time will not be made any shorter.

Mr. MORRILL. Mr. President, this bill is to remedy what would be otherwise an almost interminable evil, of holding the signers of bonds for an indefinite period. Practically, I think, that the Senator from Massachusetts will find that the moment this notice is given suit will be commenced before two years or before the expiration of one year. Immediately after calling the attention of the Department to any case of this kind, I have no doubt that the practical result will be the institution of a suit to terminate the amount of indebt-

edness at once. I can see no reason whatever in not allowing the bill to pass as it has been reported.

Mr. WRIGHT. I have myself been long oppressed by great anxiety and indeed a sense of the absolute necessity of some such arrangement as is proposed by this bill. Each day's experience satisfies me that the Government is greatly wronged by leaving open the door an interminable time for claimants to present their claim before these interminable time for claimants to present their claim before these Departments. As the law stands now, claimants present their claims and sustain them by ex parte testimony. Failing at one time they come in again, failing then they come in again, and there is no end to the time during which they can harass and trouble and embarrass the Departments in presenting claims. I can see no reason in the world why the claimants having demands upon the Government should not be held to some reasonable time, precisely upon the same principle and the analogy that the statutes of limitation obtain in the States and between individuals. Whether the time fixed by this bill is the proper time it is for others to determine. I think it is bill is the proper time it is for others to determine. I think it is sufficient in length to give every person an opportunity to be heard. I think the provision of this bill which requires that the testimony shall be taken upon interrogatories is also emineutly proper and will tend largely to protect and save the Government.

It will be seen by a reference to the provision touching sureties upon official bonds that that is a departure from the law as itstands now as to the rights of sureties. The surety, as the law stands now, cannot compel the Government to sue by giving notice. The Government can take its time, and there is no time in which it is bound to bring suit; but for the benefit of and as a protection to sureties, it is now proposed that when the surety gives notice the Government must sue in two years, and if the Government does not sue in that time then the surety is released. I think that is right; I think it is just to the sureties; and I think the Government ought to be induced to diligence by the action of the sureties in this way.

I therefore am in favor of the general provisions of this bill. I think the bill is right in every respect. I do not see how any individual can claim to be harmed if we pass such a law as this. So far as to the right of the Government to continue its claim against the individual for an indefinite time, I think the provision is eminently

individal for an indefinite time, I think the provision is eminently proper. We should have some limitation there also and especially so far as sureties are concerned. These sureties are upon the bonds. They, of course, are held for the same length of time in law as the principal and must respond if the principals are unable to respond, and for the same length of time, and they are liable to be brought into court for the same number of years. Now, if we provide that, by giving notice to the Department, unless suit is brought and the account is closed in two years, the sureties will no longer be liable, they are thus in an attitude where they can protect themselves, and the Government is also required to be diligent in the prosecution of its claims. This is in analogy with the provisions found in the statutes of many of our States, that where the surety will be liable upon the paper or bond he can by giving notice to the creditor require the creditor to present. creditor to prosecute.

I suggested a short time ago an amendment that I thought was necessary to this bill, and I now propose the amendment and invite

the attention of the Senator from Ohio, who has the bill in charge, to it. I move to add at the close of the third section the words:

And nothing in this act shall be construed to revive any demand or claim which already barred by existing statute or statutes.

Mr. SHERMAN. I have no objection to the amendment proposed by the Senator from Iowa. It seems to me if there is any danger it ought to be adopted.

Mr. INGALLS. Let the amendment be read.

The Chief Clerk read the amendment.

Mr. SHERMAN. I do not think the fears of the Senator from Iowa are well grounded. However, I have no objection to the amend-

The PRESIDENT pro tempore. If there be no objection, the Chair will put the question on this amendment first, before the amendments of the committee are acted upon.

The amendment was agreed to.

Mr. JOHNSTON. I call the attention of the Senator from Iowa to the fact that the fourth section of the amendment of the committee ought to be amended grammatically.

The section reads:

"That whenever any surety, or any official bond."

The word "or" appears to be improperly substituted for "on." Mr. SHERMAN. That is a typographical error which has been

The PRESIDENT pro tempore. That correction has been made. The amendments of the Committee on Finance will be reported. The first amendment of the Committee on Finance as in section 1, line 6, to strike out "five" and insert "six;" so as to read:

That all claims against the United States which the accounting officers of the Treasury or the heads of any Department or bureau are authorized to examine and decide shall be barred unless presented within six years from the time the same

The amendment was agreed to.

The next amendment of the Committee on Finance was in section 2, line 1, after the word "claims," to insert the word "existing;" and, in line 3, to strike out "three" and insert "four" before "years;" so

That claims existing which would be barred by the operation of this act, or within two years after the same goes into effect, may be presented within four years from the date of this act, but not afterward.

The amendment was agreed to.

The next amendment was to strike out section 4, in the following words:

That all bonds given to secure centracts with the United States, and all official bonds of public efficers, except of postmasters, marshals, clerks, and other officers of the courts of the United States, shall be submitted to the Solicitor of the Treasury for examination and approval.

And insert in lieu thereof:

SEC. 6. That whenever any surety on any official bond given to the United States shall, at any time after the expiration of the term of office of the principal of such bond, give notice in writing to the head of the proper Department that he demands an examination and settlement of the accounts of such principal, it shall be the duty of the head of such Department to cause such examination and settlement to be made forthwith; and if the principal shall be in default on such bond, it shall be the duty of the head of the Department to cause a suit to be commenced against the sureties within two years from the filing of such notice; and in case suit is not so brought, the sureties on such bond shall be relieved, and such notice shall hereafter be deemed a bar to suit against such sureties; but nothing herein contained shall be so construed as to relieve the principal from liability.

Mr. ALLISON. I do not know that I understand fully what is meant here by "the head of the proper Department." Suppose, for example, that this provision should be applied to the account of an

Mr. SHERMAN. That would be in the Interior Department.
Mr. ALLISON. But the Interior Department will not have control
of these accounts. The Interior Department might adjust the account, so far as the office of the Commissioner of Indian Affairs is

concerned, and then send it to the Treasury Department.

Mr. BOUTWELL. The Treasury Department adjusts all accounts.

Mr. ALLISON. The Treasury adjusts finally all these accounts.

Then why should not this notice be sent to the Treasury Department? Suppose I give a notice to the Secretary of the Interior under this section. The Treasury Department will have no notice of the fact; and in the mean time the two years will have expired and the surety will have been absolutely released. Should not the section say that this notice shall be given to the Secretary of the Treasury, in whose Department all these accounts are finally adjusted and settled?

Mr. SHERMAN. That would be just as well. I do not see any

Mr. ALLISON. That would make it definite, so that the surety may know where the notice is to be given, and there would be no confusion with reference to the different Departments.

Mr. SHERMAN. I do not myself see any objection to that. I suppose, as a matter of course, that these accounts will come from the different Departments, and all the accounts finally will be settled at the Treasury. It would perhaps be better to specify that Department than to say "the head of the proper Department." Unless the Senator from Massachusetts [Mr. BOUTWELL] thinks differently I shall concur in such an amendment. concur in such an amendment.

Mr. BOUTWELL. I do not think there can be any objection to making it read "the Secretary of the Treasury."

Mr. EATON. Do I understand the Senator from Ohio to consent

to the suggestion?

Mr. SHERMAN. I do not see any objection to it. I think it proper to say "the Secretary of the Treasury

Mr. EATON. I think the section ought to be so amended. It will require several amendments in the section to make it correspond.

Mr. SHERMAN. Just say "the Secretary of the Treasury."

Mr. ALLISON. Imove in line 4 of section 4 to strike out "proper De-

partment" and insert "Secretary of the Treasury;" in line 6 to strike out "head of such Department" and insert "Secretary of the Treas-ury;" and in line 9 to strike out "head of the Department" and insert

"Secretary of the Treasury."

Mr. SHERMAN. Yes, that is right.

The amendment to the amendment was agreed to.

Mr. JOHNSTON. Is an amendment to the fourth section in order?

The PRESIDENT pro tempore. The question is on the amendment as amended, and an amendment to it is in order.

Mr. JOHNSTON. I may be to insert in line 3 of section 4 as reported.

Mr. JOHNSTON. I move to insert in line 3 of section 4, as reported by the committee, after the word "bond," the words:

Or if the principal, while in office, shall be in default.

So that if amended it will read:

That whenever any surety on any official bond given to the United States shall, at any time after the expiration of the term of office of the principal of such bond, (or if the principal, while in office, shall be in default,) give notice in writing to the Secretary of the Treasury that he demands an examination and settlement of the accounts of such principal, &c.

The object of that amendment is to protect the surety while the

principal is in office.

Mr. BOUTWELL. I think the Senator from Virginia will see that that proposition if adopted would be useless and dangerous as well. Whenever a public officer is in default, it is the duty at once of his superiors to remove him from office as soon as the default is known. I take it that the contrary never happens, that a person is held in office after default, and the moment he is out of office of course this provision would be effectual. But even this provision would be unnecessary because the first thing done, when a public officer is in default, is to make a statement of his accounts and to commence pro-

accounts and to commence proceedings against his sureties. That is the first thing that should be done. I hope the amendment will not be adopted. I think the Senator from Virginia will see that it is hardly necessary.

Mr. KERNAN. The proposition of the amendment just submitted was, I think, considered in committee, and this was the danger with regard to it, that the surety might at the end of six months give a notice; the Government might not be able to ascertain that the principal was in default and use it would be about the way in default and use it would be about the way in default and the surety might was been about the way in default and the surety might was in default and the surety might was in default and the surety might as the way in default and the surety might was in the way in default and the surety might was the danger with the surety might be about cipal was in default and yet it would be a bar in two years from the cipal was in default and yet it would be a bar in two years from the time at which the notice was given, when the Government might not be able to discover that the party was in default. I think it would be better that we should leave the language as it is, particularly in view of the fact that the party goes upon the bond voluntarily for the period of his term of office, and if when the term is out we give the surety two years, that, I think, is all that should be done.

Mr. WRIGHT. It occurs to me that the objectiom to the proposed

amendment is found in the fact that, if the principal is in default, then this law would require the suit to be brought upon the bond after notice given, though the bond itself had no provision that you had the right to bring suit for a mere default. That is to say, if you incorporate in this bill the provision proposed by the Senator from Virginia, if there is any default without reference to the right of the Government to bring suit, upon the default you would be be bound to bring suit any how.

The PRESIDENT pro tempore. The question is the amendment of the Senator from Virginia [Mr. JOHNSTON] to the amendment of the

committee.

The amendment to the amendment was rejected.

The amendment, as amended, was agreed to.
The next amendment of the Committee on Finance was to strike out section 5, in the following words:

That suits against sureties on bonds given to the United States shall be barred unless brought within five years after the termination of the office of the principal therein, if the bond be an official bond, or unless brought within five years from condition broken, if the bond be a bond given by any person to whom has been awarded a contract with the United States.

The amendment was agreed to.

The next amendment was to strike out section 6, in the following words:

words:

SEC 6. That where a public officer has given bond to the United States, or where any person has become a contractor with the United States and has given bond to perform the contract, and a new additional or strengthening bond is given to the United States by such public officer or contractor, the sureties on such new additional or strengthening bond, together with the sureties on the original bond of such officer or contractor, shall be liable for the balance found due on final adjustment of the account of such officer or contractor, and suit may be brought against the sureties on either bond or both bonds of such officer or contractor to recover said balance; and when an officer shall be re-appointed to an office, and shall give a new bond to secure afaithful performance of the duties thereof, the sureties on such bond shall be held liable for any default or indebtedness of their principal existing at the time of the execution of such bond, as well as for any defalcation occurring during the term of office for which such bond was given: Provided, however. That the liability of the sureties on the bond given for a faithful performance of the duties of the preceding term of office shall in no wise be lessened or impaired. The condition of such bonds shall conform to the requirements of this section, and the transcript of the accounts of such officer, made by the accounting officers of the Treasury, under sections 886 and 889 of the Revised Statutes, shall be prima facie

evidence of the balance found to be due from such officer in a suit on any of said

The amendment was agreed to.

The next amendment was in section 7, [5] line 2, to strike out the word "settle" and insert the word "state:" so as to read:

That the accounting officers of the Treasury shall adjust and state the final accounts of public officers or persons to whom contracts have been awarded within two years from the expiration of the term of office of the officer, or within two years from the time the contract has been completed or default made therein.

The amendment was agreed to.

The next amendment was in section 8, [6] line 6, to strike out "has" and insert "shall have;" in line 9, after the word "public," to insert "after due notice shall have been given to the adverse party, and;"

That no written testimony of any witness shall be admitted as evidence in relation to any claim or account against the United States pending before the head of any Department or bureau, other than the Commissioner of Pensions, or before the accounting officers of the Treasury, unless the same shall have been taken on oath before a judge or clerk of a court of the United States, or a commissioner of a circuit court of the United States, or a notary public, after due notice shall have been given to the adverse party, and upon interrogatories and cross-interrogatories, &c.

Mr. INGALLS. Who is "the adverse party?"

Mr. COCKRELL. That is the question I was about to ask, who in this case is "the adverse party" to whom notice can be given?

Mr. SHERMAN. The claimant is the United States. For instance,

if the United States desire to take testimony to rebut evidence on the Chief States desire to take testimony to rebut evidence on the part of the claimant, the United States would have to give the adverse party notice of the time, or if the claimant should desire to take testimony to support his claim he must give notice to the United States. That is the object of the provision.

Mr. COCKRELL. To what officer of the Government would the

claimant then give notice?

Mr. INGALLS. To the President?

Mr. SHERMAN. To the Secretary of the Treasury.

Mr. COCKRELL. That question certainly ought to be determined as to whether notice is to be given to Congress, to the President, or to the Attorney-General.

Mr. BOUTWELL. The law settles that. All suits for or against

the United States are under the control of the Attorney-General.

Mr. SHERMAN. Or the proper district attorney.
Mr. COCKRELL. This is not a suit, though, properly speaking.
Mr. BOUTWELL. Yes, it is.
Mr. SHERMAN. I would here say that it is almost impossible to define the meaning more explicitly. The whole section shows it.
You will see that it is carefully prepared in that respect. It reads;

That no written testimony of any witness shall be admitted as evidence in relation to any claim or account against the United States pending before the head of any Department or bureau other than the Commissioner of Pensions, or before the accounting officers of the Treasury, unless the same shall have been taken or

These claims may be pending in different Departments of the Government. As a matter of course this notice would have to be given in the particular Department in which the claim was made. I think the phrase "adverse party" covers the case perhaps as well as it could be covered.

Mr. COCKRELL. The language is "after due notice shall have been given to the adverse party." In what way given? Given by the head of the Department wherein the claim has been pending?

Mr. ALLISON. It may be the other way. The head of the De-

partment may want to give notice.

Mr. SHERMAN. It may be the other way.

Mr. BOUTWELL. I think if the Senator from Missouri will read the concluding words of the section in connection with what has been read, he will see that the course to be pursued is clear:

And upon interrogatories and cross-interrogatories, when cross-interrogatories are proposed, shall have been previously filed on behalf of the Government and the claimant in the office of the Department or bureau before which such claim is

It seems to point to the place where the notice is to be given, where the adverse party is to be found, and the Government is the adverse

Mr. INGALLS. Is it the intention of the Committee on Finance that no affidavit or written testimony of any kind can be filed in any auditor's office unless notice has been given to the adverse party of

the intention to file it?

Mr. SHERMAN. On the contrary, that is expressly provided. This provision is only intended to apply to claims "pending before the head of any Department or bureau other than the Commissioner of

Pensions or before the accounting officers of the Treasury.

Mr. INGALLS. To what does it apply?

Mr. SHERMAN. It applies to claims in the War Department, where war claims are made, or to the Post-Office Department, where claims are made by contractors for extra service, &c. They must be supported by the proof of witnesses whom the Government has had an opportunity to cross-examine in case they desire to cross-examine them.

Mr. INGALLS. The language of the section is certainly broad enough to cover all cases either before the War Department or the Post-Office Department. As the Senator from Ohio has suggested, take the case of a contractor who desires pay for the transportation of the mails. If there has been any temporary neglect in regard to which an explanation may be necessary, it would seem that under this section no testimony can be filed, not even an affidavit or a writ-ten statement explanatory of the claim under consideration, unless there has been notice given to the head of the Department and cross-interrogatories filed on behalf of the Government and the claimant. It seems to me to be an extraordinary provision.

Mr. SHERMAN. When the next section is read it will be found that all this is provided for:

That it shall be the duty of the Attorney-General or some officer of the Department of Justice designated by him, to prepare and promulgate forms and regulations in conformity to which, depositions, to be used in relation to claims and accounts against the United States pending before the head of a Department or bureau, or before the accounting officers of the Treasury, may be taken.

Consequently the Attorney-General prescribes the form in which testimony shall be taken. We have heard a good deal about ex parte affidavits and the like. Surely the Government of the United States ought to have the benefit of depositions taken in due form where witnesses are necessary. The great mass of claims are decided upon papers. For instance, where a contractor has a claim against the Government and the money becomes due he is entitled to it by the terms ernment and the money becomes due he is entitled to it by the terms of the contract; the amount is usually fixed or can be ascertained on the face of the paper; but where it is necessary for him to produce witnesses to prove a fact in pais, a fact outside, or a material fact, then that fact must be ascertained according to the forms prescribed by the Attorney-General. This section prescribes that no written testimony of any witness—that is, where testimony is necessary—shall be admitted unless it is taken according to these forms. It seems to me that that is very proper. It is what any private individual could demand in a suit in which he was interested.

The PRESIDENT pro tempore. The question is upon the amend-

ment of the committee.

The amendment was agreed to.

The next amendment of the Committee on Finance was in section 8, [6] lines 10 and 11, after the word "cross-interrogatories," to insert "when cross-interrogatories are proposed, shall have been;" so as to read:

And upon interrogatories and cross-interrogatories, when cross-interrogatories are proposed, shall have been previously filed on behalf of the Government and the claimant in the office of the Department or bureau before which such claim is pend-

Mr. SHERMAN. That is part of the same section which we have just been considering.

The amendment was agreed to.

The PRESIDENT pro tempore. This concludes the amendments reported from the Committee on Finance.

Mr. WRIGHT. I suppose it is intended that the section of the bill just passed upon shall be applicable to testimony to be taken hereafter, and it is not intended to exclude testimony that may be on file, which has been taken under the rules as at present in force.

Mr. SHERMAN. Certainly it is not intended that this bill shall have a retroactive effect if it becomes a law.

Mr. WRIGHT. Therefore I suggest to my friend whether it would not be well to insert, in the first line of the sixth section, the word "hereafter;" so that it shall read:

That no written testimony of any witness shall hereafter be admitted as evi-

Mr. SHERMAN. I think that the meaning which the Senator desires to express is clearly shown by the language in the fourth line of the last section, which reads "depositions to be used," the meaning of which is, of course, depositions hereafter to be used. However I have no objection to the insertion of the word "hereafter." Where does the Senator propose to insert it?

Mr. WRIGHT. At the close of the first line of the sixth section, after the word "shall;" so as to read:

That no written testimony of any witness shall hereafter be admitted as evi-

Mr. SHERMAN. I have no objection to that.
Mr. CONKLING. It does not convey to my mind the idea.
Mr. SHERMAN. I ask the Senator from Iowa to repeat the amend-

ment and let us see exactly how it will read.

Mr. WRIGHT. I move to add after the word "shall," at the end of the first line of the sixth section, the word "hereafter;" so as to

That no written testimony of any witness shall hereafter be admitted as evidence in relation to any claim or account against the United States, &c.

Mr. CONKLING. I suggest to my honorable friend that he had better look with a little care at that. "Shall hereafter be admitted." Admitted where and when? Admitted on a hearing? Admitted on consideration? If it shall be held to mean that, will it not signify

the reverse of which the honorable Senator wishes it to signify?

Mr. WRIGHT. The object that I have in view is to make it apply to testimony hereafter taken.

Mr. CONKLING. When you use the word "admitted," you refer to the use of the testimony, and not to the taking of the testimony; and there you should guard it.

Mr. SHERMAN. I dislike to allow any new phraseology here, because I know that these sections have been prepared with the utmost care, not by the Committee on Finance, but by the Department and upon the advice of the law officers. Therefore, I believe that it is as well-worded as it can be.

Mr. WRIGHT. I do not know that the amendment is strictly necessary; but it occurred to me that by possibility they might construe this section so as to exclude all testimony that has been taken.

Mr. SHERMAN. It only applies to testimony to be admitted. That already admitted is in, and as a matter of course cannot be excluded.

Mr. WRIGHT. I know that the testimony is in, but the case has not yet been brought to a hearing and their attention has not been given to the case. When a case is brought up and they come to consider the evidence the question is whether they will not regard that star the evidence the question is whether they will not regard that the testimony has not been taken according to the rule here prescribed and that they cannot consider it.

Mr. SHERMAN. I think it is right as it is.

Mr. COCKRELL. I make this suggestion to the Senator from Iowa, that the girth earlier health weather.

that the sixth section should read:

That no written testimony of any witness hereafter taken shall be admitted as

Mr. SHERMAN. That is not necessary. However I do not care. Mr. ALLISON. That will not hurt it any, and that is exactly what

The PRESIDENT pro tempore. Does the Senator from Iowa withdraw his amendment?

Mr. WRIGHT. I withdraw it.
The PRESIDENT pro tempore. The amendment is withdrawn. The

bill is still open to amendment.

Mr. MERRIMON. I direct attention to section 3. I know by repeated experience while I served upon the Committee on Claims that claimants very often present their claim to the head of a Department. It goes to some accounting officer; he, the officer, is in doubt about his jurisdiction. Sometimes he sends the claimant to Congress. He comes to Congress, presents his petition setting forth his claim and the grounds for relief. The matter pends before Congress for a long time and finally the claimant goes back to the head of the Department to have his claim passed upon and determined. According to the reading of section 3 pending the time that the claim is before Congress the head of the Department or accounting officer shall suspend his action. I submit that it would not be fair or just to count that time against the claimant.

Mr. SHERMAN. It is not counted.

Mr. MERRIMON. As I understand the bill it is.

Mr. KERNAN. Will the Senator yield to me a moment?

Mr. MERRIMON. I will.

Mr. KERNAN. The claimant under the section presents his claim to the Department. claimants very often present their claim to the head of a Department.

Mr. KERNAN. To what section does the Senator refer?
Mr. KERNAN. I will take section 1, which provides—

That all claims against the United States which the accounting officers of the Treasury or the heads of any Department or bureau are authorized to examine and decide shall be barred unless presented—

Not acted upon-

unless presented within six years from the time the same accrued.

Mr. SHERMAN. The statute does not run while the claim is pending. Mr. MERRIMON. Suppose the claimant comes to Congress. Does not that discontinue his application to the head of the Department? Mr. SHERMAN. O, no; it is expressly provided otherwise. Section 3 provides:

That no claim shall be decided or considered by any head of a Department or of a bureau, or by any accounting officers the Treasury, while the same is pending before Congress by petition, bill, or otherwise, but shall be suspended until final action by Congress has been had thereon.

The claim is not rejected, but the effect of the claim being before

Congress is in the nature of a supersedeas.

Mr. MERRIMON. With that understanding I am content.

The bill was reported to the Senate as amended, and the amendments were concurred in. The bill was ordered to be engrossed for a third reading, read the third time, and passed.

# PACIFIC RAILROAD ACTS.

The PRESIDENT pro tempore. The morning hour has expired. The Chair calls up the unfinished business, which is Senate bill No. 984, to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in

amendment of said first-named act.

Mr. WRIGHT. Mr. President, when the Senate adjourned to the Mr. WRIGHT. Mr. President, when the Senate adjourned to the House on Wednesday, it was announced that the Senator from Georgia [Mr. Gordon] was anxious to be heard upon this bill, but that he was detained from the Senate by indisposition. I learn that he is indisposed this morning. It is known also that the Senator from Ohio who has this bill in charge, [Mr. Thurman,] as also the chairman of the Committee on the Judiciary, [Mr. Edmunds,] from which committee the bill was reported, are both necessarily absent. If any Senator is prepared to proceed upon the bill this morning, of course there can be no objection to his doing so. If not, I trust, in view of the absence of the Senators to whom I have referred, and especially the necessary absence of the Senator from Georgia, that there will be no objection that this bill may be passed over informally, not to lose its place, but passed over at least for a short time until later in the day, or until to-morrow, when the Senator from Georgia will be able to be in his place and be heard. I make this suggestion and trust there will be no objection to it at this time. Of course if any Senator is prepared to proceed upon the bill, there can be no objection to

his being heard.

Mr. WEST. Let it go over.

Mr. WRIGHT. I suppose there will be no objection. I understand there is no objection to the proposed arrangement. Let the bill be called up to-day before the adjournment, so as not to lose its place. I have a hope, I may be allowed to say, that if the Senator from Georgia is not present to-morrow to proceed other Senators perhaps will be ready to proceed at that time, and that we may have the assistance of the Senator from Ohio who has the bill in charge. I make this suggestion after conferring with him, and I trust it will suit the convenience of the Senate.

Mr. SHERMAN. I hope that the bill will go over indefinitely because the Senator from Ohio, my colleague, can call it up when he

Mr. WRIGHT. I trust that will not be done. I could not consent to that until I had an opportunity to confer with him, and I trust that what I suggest may be concurred in.

#### SCHOOL LANDS IN CALIFORNIA.

Mr. BOOTH. I move that the Senate proceed to the consideration of the bill (S. No. 805) relating to indemnity school selections in the State of California.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. BOOTH. The object of this bill is fully explained in a report

of the Committee on Public Lands recommending it. Perhaps I can state it in a briefer time than the reading of the report would occupy. By a law of Congress passed in 1866, where the sixteenth and thirty-sixth sections had fallen within the limits of a Mexican or Spanish grant, the State was allowed to select other sections in lieu of those lands after the final survey was made. Up to last March that law had always been construed to mean that the final survey was made when the limits were fixed under the decree of the court by the surveyor-general; and under that construction the title to many thousands of acres had passed to the State of California and had been consands of acres had passed to the State of California and had been conveyed by that State to purchasers. Last March the Department rendered a decision that "final survey" in the act of 1866 meant the issuance of a patent, and that no lands had properly been listed to the State under the construction given before that time. The attention of the Department was called to the great hardship that it worked, that the title to lands which had been held in possession, many of them ten years, had been transferred, many of which lands had been improved, many of which were very valuable lands; and the decision was nodified so as to conform very nearly, if not entirely, to the bill was modified so as to conform very nearly, if not entirely, to the bill I have introduced; but in view of the fact that such a decision as the last one might be rendered under an incoming officer, it has been deemed important that this construction should be given to the law, or rather that the titles should be confirmed. I may state that the bill has the approval of the Department, the approval of the land commission of California, and is unanimously recommended by the Committee on Public Lands.

The PRESIDENT pro tempore. The amendments reported by the Committee on Public Lands will be reported.

The first amendment of the committee was in line 4 of section 1, after the word "school," to strike out "sections" and insert "selec-

The amendment was agreed to.

The next amendment was to strike out the proviso at the end of section 1, in the following words:

Provided, That this section shall not apply to suck lands as have been selected and certified to said State in lieu of sixteenth and thirty-sixth sections, which shall not be included within the final survey of such grants when patented.

The amendment was agreed to.

The next amendment was to insert in section 2, line 5, after the words "grant, or" the word "are," and after the word "invalid," in line 5, to strike out "and such lands shall" and insert:

The same are hereby confirmed, and the sixteenth or thirty-sixth section in lieu of which the selection was made shall, upon being excluded from such final survey, be disposed of as other public lands of the United States: *Provided*, That if there be no such sixteenth or thirty-sixth section, and the land certified therefor shall.

So that the section, if amended, will read:

So that the section, if amended, will read:

SEC. 2. That where indemnity school selections have been made and certified to said State, and said selection shall fail by reason of the land in lieu of which they were taken not being included within such final survey of a Mexican grant, or are otherwise defective or invalid, the same are hereby confirmed, and the sixteenth or thirty-sixth section in lieu of which the selection was made shall, upon being excluded from such final survey, be disposed of as other public lands of the United States: Provided, That if there be no such sixteenth or thirty-sixth section, and the land certified therefor shall be held by an innocent purchaser for a valuable consideration, such purchaser shall be allowed to purchase the same at \$1.25 per acre, not to exceed three hundred and twenty acres for any one person: Provided, That if such person shall neglect or refuse, after knowledge of such facts, to furnish such proof and make payment for such land, it shall be subject to the general land laws of the United States.

Mr. INGALLS. This bill appears to be seen as \$1.25 per acre.

Mr. INGALLS. This bill appears to be one of considerable importance; and if I remember correctly it has been previously debated in the Senate. I profess that I am unable to understand its

provisions, and I would like to ask the Senator from California if it has been submitted to the Commissioner of the General Land Office,

and, if so, whether it has his approbation?

Mr. BOOTH. I will say in reply to the Senator from Kansas that most of these amendments were made at his suggestion; this one

most of these amendments were made at his suggestion; this one particularly was.

Mr. INGALLS. Can the Senator from California state the amount of land that is affected by this bill?

Mr. BOOTH. Not with any considerable accuracy.

Mr. INGALLS. Approximating what?

Mr. BOOTH. More than perhaps five hundred thousand acres have been received by the State in all; but I do not understand really that this affects the title to any land, except as it merely confirms titles that have already been granted under the construction of the law which was given at the time. If ever there was a bill of peace and quiet, this is that bill.

Mr. WRIGHT. I should like to understand from the Senator from California that this makes no grant of land at all, but merely con-

California that this makes no grant of land at all, but merely confirms the title to certain selections made under a prior construction

of the Department.

Mr. BOOTH. Yes, sir.

Mr. BOOTH. And makes no grant whatever?

Mr. BOOTH. No grant whatever.

Mr. WRIGHT. And takes no land from the Government?

Mr. BOOTH. Takes no land from the Government.

Mr. WRIGHT. But virtually confirms patents or certificates issued heretofore under a construction given to the law by the Department, but which has been changed; and now this is to validate selections but which has been changed; and now this is to validate selections

heretofore made.

Mr. BOOTH. That is all.

Mr. WRIGHT. I understand that the amendments to the bill pro-

posed by the committee have the concurrence of the Department.

Mr. BOOTH. Yes, sir.

Mr. INGALLS. Under the conflicting rulings of the Department,
I should like to ask the Senator from California if adverse claims to any of these lands have existed; and, if so, whether they are saved by the bill? Mr. BOOTH. I will read section 3, which is intended to save any

conflicting claims:

SEC. 3. That the foregoing confirmation shall not extend to the lands settled upon by any actual settler claiming the right to enter not exceeding the prescribed legal quantity under the homestead or pre-emption laws: Provided, That such settlement was made in good faith upon lands not occupied by the settlement or improvement of any other person, and prior to the date of certification of said lands to the State of California by the Department of the Interior: And provided further, That the claim of such settler shall be presented to the register and receiver of the district land office, together with the proper proof of his settlement and residence, within twelve months after the passage of this act, under such rules and regulations as may be established by the Commissioner of the General Land Office.

The amendment was agreed to.

The next amendment of the Committee on Public Lands was to strike out the third section of the bill in the following words:

SEC. 3. That nothing herein contained shall be construed as affecting the rights of third persons existing at the date of the said selection.

This act shall not apply to any mineral lands.

and in lieu thereof to insert:

SEC. 3. That the foregoing confirmation shall not extend to the lands settled upon by any actual settler claiming the right to enter not exceeding the prescribed legal quantity under the home-stead or pre-emption laws: Provided, That such settlement was made in good faith upon lands not occupied by the settlement or improvement of any other person, and prior to the date of certification of said lands to the State of California by the Department of the Interior: And provided further. That the claim of such settler shall be presented to the register and receiver of the district land office, together with the proper proof of his settlement and residence, within twelve months after the passage of this act, under such rules and regulations as may be established by the Commissioner of the General Land Office.

The arranglement

The amendment was agreed to.

The next amendment was to insert as section 4 the following:

SEC. 4. That this act shall not apply to any mineral lands nor to any lands in the city and county of San Francisco, nor to any incorporated city or town, nor to any tide, swamp, or overflowed lands.

The amendment was agreed to.

Mr. BOOTH. In line 8 of the first section I move to strike out the words "and its vendees." The object of the amendment is to confirm the title to the State, leaving out the words "and its vendees." I do not think it would change the legal effect at all; but if there have been any titles obtained from the State by fraud I do not wish by any possible implication to confirm them.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

UNION NATIONAL BANK OF LOUISIANA.

Mr. CAMERON, of Wisconsin. I move that the Senate proceed to consider Senate bill No. 1018.

The motion was agreed to; and the bill (S. No. 1018) for the relief of the Union National Bank of Louisiana, successor to the Union Bank of Louisiana, was read the second time and considered as in Committee of the Whole.

The preamble recites that on the 10th of September, 1863, there

were in the possession of the Union Bank of Louisiana certain funds belonging to the Planters' Bank of Tennessee; that in pursuance of a general order of General N. P. Banks, dated August 17, 1863, those funds were illegally seized by the quartermaster of the United States, against the protest of the bank; that the Planters' Bank has since sued and obtained judgment against the Union Bank for the sum of \$36,873.99, being the full value of the funds so seized as aforesaid; and that the Union Bank has paid over the amount to the Planters' Bank in satisfaction of the judgment; therefore the bill directs the Secretary of the Treasury to pay to the Union National Bank of Louisiana, the successor of the Union Bank of Louisiana, the sum of \$36,873.99 in full satisfaction of all losses sustained by that bank by reason of the seizure. reason of the seizure.

Mr. INGALLS. Is there a report? If so, I should like to hear it

The Secretary read the following report, submitted by Mr. Cam-ERON, of Wisconsin, from the Committee on Claims, on the 2d of August, 1876.

The Committee on Claims, to whom was referred the petition of the Union Bank of Louisiana, praying compensation for losses sustained by reason of the illegal seizure by General Banks, in 1863, of certain deposits in their hands, have examined the same, and beg leave to bring in the following report:

The facts in this case are as follows:
The Union Bank of Louisiana was a corporation doing business under the laws of the State of Louisiana, in the city of New Orleans, at the time of the capture of that city by the Federal troops. Among its correspondents were several banking-houses in the State of Tennessee, at that time confederate territory. On the 17th day of August, 1863, General Banks, being then in command of the Federal troops at New Orleans, issued the following general order:

HEADQUARTERS DEPARTMENT OF THE GULF,

New Orleans, Louisiana, August 17, 1863.

The several banks and banking corporations of New Orleans will, without delay, pay over to Colonel S. B. Holabird, chief quartermaster, or to such officer of the Quartermaster's Department as he may designate, all money in their possession belonging or standing upon their books to the credit of any person registered as an enemy of the United States or engaged in any manner in the military, naval, or civil service of the so-called Confederate States, or shall have been or may thereafter be convicted of rendering any aid or comfort to the enemies of he United States, and all moneys in their possession or standing upon their books to the credit of any corporation, association, or pretended government in hostility to the United States. These funds will be held and accounted for by the Quartermaster's Department, subject to the future adjudication of the Government of the United States.

By command of Major-General Ranks.

By command of Major-General BANKS:

# RICHARD B. IRWIN, Assistant Adjutant-General.

The banking-houses of New Orleans appealed to General Banks to know whether this order should be held to apply to credits on their books in favor of banks within confederate territory, and he decided that it should be so held.

At this time there were on the books of the Union Bank of Louisiana credits in favor of certain banks in Tennessee to the following amounts, to wit:

 To the Planters' Bank of Tennessee
 \$180,657 82

 To the Union Bank of Tennessee
 48,054 45

 To the Bank of Tennessee
 23,644 22

On the 10th of September, 1863, the above amounts, in confederate money, were taken from the Union Bank by Captain J. W. McClure, assistant quartermaster, acting under and by authority of the order above recited, the bank making its formal protest.

acting under and by authority of the order above recited, the bank making its formal protest.

No part of these sums of money was ever returned to the Union Bank.

Some time in the month of September, 1866, and after the close of hostilities, the Planters' Bank of Tennessee instituted suit against the Union Bank of Louisiana, in the United States district court for the district of Louisiana, to recover the value of the deposits to their credit with the Union Bank. The Union Bank pleaded the seizure of those deposits by the United States and the order of General Banks, of Angust, 1863. The case was brought to trial and judgment was first given for plaintiffs for some \$113,000. A new trial, however, was granted, and finally verdict and judgment were rendered for \$24,713.79, with interest from the 15th September, 1853, and costs.

A writ of error was taken from this decision to the Supreme Court of the United States, and finally, in December, 1872, the judgment of the court below was affirmed.

Upon this latter judgment the Union Bank of Louisiana did, on the 16th day of May, 1873, psy over to the attorney of the Planters' Bank the sum of \$36,873.99, being in full for principal and interest and costs.

For this amount the Union Bank claims conspensation of Congress, on the ground that it has been subjected to so much loss through the illegal and tortious act of the agent of the United States, in having taken from it, by force, moneys belonging to the Planters' Bank, and to which moneys the United States had no color of right. Of course, if the act of the agent was illegal, either the Government or the agent is responsible. If General Banks had no right to force the Union Bank to turn over its deposits to the military authorities, under the authority of his order of August 17, 1863, then either he or the Government must make good the losses sustained by reason of such coercion.

But Justice Strong, in delivering the opinion of the court in the case of the Planters' Bank te. Union Bank, (16 Wallace, page 494,) very

"It follows, then, that the order of General Banks was one which he had no authority to make, and that his direction to the Union Bank to pay to the quartermaster of the Army the debt due the Planters' Bank was wholly invalid."

Your committee agrees entirely with this conclusion of the Supreme Court, and finds the orders of General Banks illegal and void.

The bank can have no remedy against General Banks, for the Federal Government has passed a law exempting military officers from all actions and suits for any acts done in their military capacity.

Your committee is, therefore, of the opinion that the Union Bank is rightfully entitled to recover from the Government the amount which it was compelled to pay to the Planters' Bank, namely, \$36,873.99.

The petition of the Union Bank also claims the further sums of \$22,245.93 and \$10,000, which it alleges it has paid to the Union Bank of Tennessee and the Bank of Tennessee, respectively, upon compromises, the same being in full for the

amounts placed to the credit of those banks on the books of the Union Bank of Louisiana, September 10, 1863, and seized by order of General Banks, as above set forth. Your committee, however, is not inclined to allow these amounts, on the ground that the evidence in support of them is not sufficiently clear to place them upon the same basis as the case of the Planters' Bank. There is some evidence that suits were brought by these banks to recover the amounts due them from the Union Bank and that compromises were had; but, especially in the case of the Union Bank of Tennessee, the proof is not clear enough to warrant the committee in recommending the payment by the Government of these amounts.

Your committee, however, are of the opinion that, in all right and justice, the United States should relieve this petitioner from the loss which, beyond any doubt, has been incurred by it by reason of the fillegal and invalid act of General Banks in making the seizure of its deposits.

Your committee, therefore, recommend the passage of the bill herewith reported.

Mr. COCKRELL. I desire to ask the Senator reporting this bill if these amounts of money found by General Banks in the Planters' Bank of Tennessee, the Union Bank, and the Bank of Tennessee were in confederate notes?

Mr. CAMERON, of Wisconsin. They were confederate notes.
Mr. COCKRELL. That was my understanding and recollection.
The question was asked me and I so answered it. This money was confederate money in the hands of these banks in New Orleans belonging to the banks in Tennessee. I understand further these confederate notes were placed here in the Treasury Department and are there vet

Mr. CAMERON, of Wisconsin. That was so reported to us by the

Mr. CAMERON, or Wisconsin. That was so reported to us by the Treasury Department.

Mr. COCKRELL. And the Government realized nothing in the world from them and made no disposition of them?

Mr. CAMERON, of Wisconsin. Nothing whatever.

Mr. MORRILL. I have nothing to say as to the merits of this question; but it seems to me that the result shows that the United States have been about as wise in their action as the Irish mob were in burning up the notes of a banker that he would be obligated to redeem if they had not been burnt up. So iar as the action that took place at New Orleans is concerned, we seem to have destroyed or withheld from circulation or from the parties making the notes the notes that we are now called upon ourselves to pay.

Mr. DAVIS. I have some recollection of this claim though not distinct the content of the content o

tinct. I believe it was once examined while I was a member of the Committee on Claims. My recollection of it is somewhat different from what the Senator from Wisconsin says. He says that the property seized was confederate notes that were taken and are now in the Treasury. I have some faint recollection that the money was seized and used by the quartermaster, went into the hands of the quartermaster and was accounted for by him on his returns. I may be wrong about it, but that is my recollection. I should be glad if the Senator who examined the claim would give the details as to that.

Mr. SARGENT. How could he use confederate money?

Mr. DAVIS. My recollection is that they were bank-notes and not

confederate money.

Mr. CAMERON, of Wisconsin. I think the Senator from West Virginia is mistaken, and has confounded this case with some other cases that he examined when a member of the Committee on Claims. I think this claim was first examined by the Committee on Claims during the last session of the present Congress, and there is no mistake in regard to the fact. The facts are precisely as they are set forth in the report made by the Committee on Claims, and in brief they were these: While Louisiana and Tennessee were both confederate territory, the Union Bank of Louisiana, doing business in New Orleans, received large amounts of confederate money and some specie from certain banks doing business in the State of Tennessee, among others the Planters' Bank of Memphis. In 1863, after New Orleans had been captured by the Federal forces, Gen. Banks issued the order which has been incorporated in the report and which has been read by the Clerk. Under that order confederate notes or credits in confederate notes were seized by the quartermaster under the order of Gen. Banks, and those identical notes are now in the Treasury. In 1866 the Planters' Bank of Tennessee instituted a suit against the Union Bank of Louisiana in the circuit court of the United States for Louisiana. Judgment was recovered in that case in the first place for \$113,000 and some odd cents. A new trial, however, was granted and upon the new trial judgment was recovered for \$24,000 and something over; that is, judgment was recovered for the value of the confederate notes in Federal currency at the time the confederate notes were seized under the order of Gen. BANKS.

der the order of Gen. BANKS.

The judgment recovered in the circuit court for Louisiana was carried by a writ of error to the Supreme Court of the United States, and the judgment was affirmed by the Supreme Court of the United States. The opinion was rendered by Mr. Justice Strong and it is reported in 16 Wallace, page 483. The opinion of the court was unanimous, except that Justice Bradley dissented, on the ground, however, that the creditor in this case, that is, the Planter's Bradley dissented and not competed. Tennessee, should apply to the Government for relief, and not compel Tennessee, should apply to the Government for reliet, and not compet the Union Bank of Louisiana to pay to the Planters' Bank of Tennessee; but that the Planters' Bank of Tennessee should in the first instance apply for relief to the Government.

Mr. MITCHELL. I desire to ask the Senator from Wisconsin if the Supreme Court of the United States did not hold in that case that the military order of General Banks was void?

Mr. CAMERON, of Wisconsin. It did, and it is so stated in the

report.

Mr. SHERMAN. I should vote against the bill from instinct if nothing else. It seems to me whatever may be the rights between these two banks, the Government of the United States ought not to be called upon to pay the value of confederate notes, and I certainly would not be willing to vote to pay out of the Treasury any money for confederate notes taken during the war either from a bank or from a private individual. It seems to me that confederate notes might well be regarded as contraband of war, to be destroyed under all circumstances and at all times, in whosoever possession they might be. Whatever theory this decision of the Supreme Court may be based upon, it seems to me that to ask the Government of the United States to pay the value of confederate notes seized by the United States during the war would be just about equivalent to making us pay for the muskets that were used or the cannon that were used or the shot

the muskets that were used or the cannon that were used or the shot that were used or the powder that was used in resisting the Government of the United States. I shall therefore, without examining this bill, feel it my duty to vote against it, and ask for the yeas and nays. I may add that if this money is paid the Government cannot fairly refuse to pay all the other banks involved in the same condition. The action of General Banks may have been unlawful, may have been void; but if he got a lot of confederate bills by unlawful practices, I am willing to give back the identical bills when properly identified in any way to whoever had them originally. Whoever wants them may have them. If we received confederate notes by a void order, I would surrender them. I certainly would not hold property obtained in that way; but to pay for confederate notes in Government money is carrying the joke too far.

Mr. DAVIS. I stated my recollection of the bill a moment ago. I am told by the Senator from Missourion my left [Mr. COCKRELL] that I have confounded this claim with another that he has examined. I

I have confounded this claim with another that he has examined. I only want to make the statement to relieve myself of a false impression that I had.

sion that I had.

Mr. BOGY. It seems to me that this bill is very just and proper and ought to pass. The misfortune of the case is, that the property seized—for I will call it property—was confederate money. It was property. The commanding officer, General Banks, had no right to take it; and if he did so in violation of the proclamation of the President of the United States, which guaranteed protection to all private rights in Louisiana, he made the Government he represented responsible. It throws a shade of discredit on this case and all similar cases heaves the amount of money is called confederate money; but yet sible. It throws a shade of discredit on this case and all similar cases because the amount of money is called confederate money; but yet it had a value; it was property; and it is said that the \$130,000 or \$140,000 taken was worth about \$24,000 or \$25,000. It had a value; it was property—property protected by the law of nations—property protected by the proclamation of the President of the United States when the city of New Orleans surrendered that private property should be protected as well as be protected as well as, and I may say better than, it had been protected under the former government. The commanding officer in taking possession of that property in violation of law, in violation of the law of nations, in violation of the proclamation of the President of the United States, did commit an act making the Government that he the United States, did commit an act making the Government that he represented there responsible. And as this case was investigated by the very highest tribunal in the land, holding the bank in Louisiana responsible to the bank in Tennessee, there can be no reason why the same rule which applies to and which was enforced between the two banks should not be enforced between the Government of the United States and the bank in Louisiana. It was an improper act, an act in violation of law. Disembarrass this case from the idea of confederate money, and there can be no doubt of the responsibility of the Government. Supposing an amount of greenbacks had been selected, or an amount of gold had been spoliated—

Mr. WEST. Or an amount of fodder which might have been fed

to the Government mules.

Mr. BOGY. Anything in the world that has a value. It is property; and as his act was illegal he has made the Government through

him responsible.

I must say it is a misfortune that a case of this kind should be I must say it is a misfortune that a case of this kind should be blended in our minds with the idea of confederate money; but it does not change the law, it does not change the question of justice; it does not change the question of responsibility in the least; and I cannot see any objection to it at all. I think the report of the committee is perfectly proper and just and right, and the bill ought to pass. There is a reponsibility there beyond a doubt. Although it was confederate money, that money at that time in that country had a value, which value has been ascertained to be about \$24,000. To that extent it seems to me Government is clearly responsible, and the bill ought to pass.

Mr. INGALLS. It certainly would be a novel principle of law make a superior responsible for the tortions act of a servant, and if General Banks had no authority to seize this property, if his act was illegal and without warrant of law and absolutely void, then there can be no ground on which this claim can be enforced against his superior, the Government of the United States; and to permit that theory to be adopted it seems to prove well seen the door to a very

theory to be adopted it seems to me would open the door to a very great deal of difficulty in the future.

But there is another view of this case that strikes me as one that requires attention. It seems that in the first place when this matter was brought to trial a judgment was given for the plaintiff for \$113,000. From some reason that does not appear in the report of the committee, it seems that this judgment was reversed and a new trial

ordered and judgment rendered for \$24,713.29, with interest from the 15th of September, 1863, and costs. I believe that it is a prin-ciple that never has been changed that the Government never pays interest. I think the Committee on Claims will sustain me in that proposition, that there never has been a recognition of the liability of the Government to pay interest on deferred claims. This bill cer-

of the Government to pay interest on deferred claims. This bill certainly authorizes the payment of interest on this amount from the 15th of September, 1863, when this act was committed, down to the time when judgment was rendered.

Mr. CAMERON, of Wisconsin. If the Senator from Kansas will allow me one word, a judgment was recovered in the circuit court of the United States for Louisiana for \$24,000. A judgment was recovered by the Planter's Bank of Tennessee against the Union Bank of Louisiana for \$24,000 and odd, and interest from the time the property was seized; that is, from some day—I do not recollect the exact date—in 1863; so that the principle to which the Senator has referred, that the Government does not pay interest, does not apply in this case at all. We do not propose to pay any interest, the short apply in this case at all. We do not propose to pay any interest. The amount recovered by the Planter's Bank of Tennessee against the Union Bank of Louisiana was \$36,000 and something over.

Mr. INGALLS. A portion of that was interest. It is certainly un-

disputed that you are calling on the Government now to pay interest disputed that you are calling on the Government how to pay interest upon this amount that was taken by General Banks in 1863. It is immaterial whether you interpose one other person between the Government and the plaintiff or not. There is certainly a payment of interest by the Government of the United States in this sum that is named in this bill. I say that is contrary to every principle that has ever been recognized in regard to the establishment of claims against the Government.

the Government.

But there is another feature about this. It seems by the latter portion of this report that there are several other claims that stand very nearly in the same category with this:

The petition of the Union Bank also claims the further sums of \$28,245.93 and \$10,000, which it alleges it has paid to the Union Bank of Tennessee and the Bank of Tennessee, respectively, upon compromises, the same being in full for the amounts placed to the credit of those banks on the books of the Union Bank of Louisiana, September 10, 1863, and seized by order of General Banks, as above set forth. Your committee, however, is not inclined to allow these amounts, on the ground that the evidence in support of them is not sufficiently clear to place them upon the same basis as the case of the Planters' Bank.

It is very evident that these plaintiffs have still further claims against the Government that in their opinion stand very nearly in the same category with this, and that if we pass this bill it will be regarded as a precedent upon which they will urge further action for the payment of those additional claims. I believe that this is vicious in theory, that the whole thing is pernicious in practice, and that by the plain showing of the committee themselves this claim is entirely in opposition to what has repeatedly been established as the law of Congress in regard to claims against the Government.

Mr. CAMERON, of Wisconsin. One word, Mr. President. There is nothing mysterious at all about this claim. The order of General Banks, as has been decided by the circuit court for Louisiana and the

is nothing mysterious at all about this claim. The order of General BANKS, as has been decided by the circuit court for Louisiana and the Supreme Court of the United States, was a void order, an order that he had no right to make. Now, the Senator from Kausas says that General BANKS, not having any legal right to make that order, that order being a void order, his principal, that is, the Government of the United States, cannot be held for the amount. Now, the trouble about that is just this, that the Government of the United States has assumed these acts of its military commanders. The Congress of the United States has passed laws assuming these acts of the military. United States has passed laws assuming these acts of the military

commanders.

Mr. INGALLS. I do not understand that to be so at all. I understand the United States Government have passed acts exonerating the commanders from the consequences of any illegal acts, but not

assuming responsibility for them.

Mr. CAMERON, of Wisconsin. I submit that that is an assump-

Mr. INGALLS. May I ask the Senator does it appear anywhere in evidence that the United States Government received any benefit from this confederate money seized by General Banks?

Mr. CAMERON, of Wisconsin. On the other hand, it appears that

it did not. Mr. INGALLS. Mr. INGALLS. Never received any benefit from it, never used it?
Mr. CAMERON, of Wisconsin. The confederate notes, as I have already stated, are now on deposit, so to speak, in the Treasury Dearready stated, are now on deposit, so to speak, in the Treasury Department in this city.

Mr. INGALLS. The identical property seized by General Banks?

Mr. CAMERON, of Wisconsin. The identical property.

Mr. INGALLS. Then it ought to be returned to the banks. Cer-

Mr. CAMERON, of Wisconsin. The court held otherwise, and that is the trouble with the gentleman's argument. The circuit court for Louisiana treated these confederate notes as so much property, just

as though General Banks had tortiously seized a horse.

Mr. INGALLS. Does the Senator say that the identical confederate money is in the possession of the United States Government in

the Treasury to-day?

Mr. CAMERON, of Wisconsin. Yes, sir.

Mr. INGALLS. And he is now asking us to pay for these confed-Mr. CAMERON, of Wisconsin. That is precisely the case.

Well, that is an extraordinary proposition.

Mr. CAMERON, of Wisconsin. These notes were seized by General Banks, were taken possession of by the Government, and were conbanks, were taken possession of by the Government, and were converted by the Government to its own use, whatever use it could make of them. In 1866, as the report says, and as I have already stated, an action was commenced in the circuit court for Louisiana by the Planters' Bank of Tennessee, the Planters' Bank of Tennessee being the owners of the credits upon the books of the Union Bank of Louisiana. The circuit court treated these credits in confederate money as so much property, and the jury was directed to ascertain the value of the confederate notes in Federal currency at the time of the seizure of the confederate notes. Under the instructions from the circuit court the jury did so assess the value; and the value was assessed at \$36,000, including interest. The Planters' Bank of Tennessee recovered this amount in Federal currency from the Union Bank of Louisiana, and now the Union Bank of Louisiana asks Congress to re-imburse it. That is all there is in the case.

Louisiana, and now the Union Bank of Louisiana asks Congress to re-imburse it. That is all there is in the case.

Mr. BOGY. Mr. President, the fact that this money, called confederate money, is yet in possession of the Government is of itself reason enough why the Government should pay for this property. They are yet in possession of the property which was seized illegally by the commanding officer of that department, and that property at the time of the seizure was worth the sum of \$24,000 it is said. The fact that it is in confederate money does not change the question at all and ought not to change the question. It was property at that time worth \$24,000, illegally seized, and which property is yet in possession of the Government. The circumstance that it may be valueless matters not; they are yet in possession of property which was session of the Government. The circumstance that it may be valueless matters not; they are yet in possession of property which was illegally seized, which was spoliated by General Banks. The Supreme Court of the United States has passed upon this question as between the two banks, and the same degree of responsibility and the same argument of responsibility which made the bank in Louisiana liable to the bank in Tennessee ought to make the Government of the United States liable to the Bank in Louisiana, and there would be no doubt about it if this money was not called confederate money. Supposing it had been gold, supposing it had been what are called greenbacks, the only difference would be then that the Government could have availed itself or could avail itself yet of that kind of property; but that does not change the law; that does not change the responsibility. If the act was wrong, if the Government had been responsible for a given amount of gold or a given amount of paper money of any kind, it is responsible for that amount of money represented in this responsible does not change the responsible for that amount of money represented in this responsible for that amount of money represented in this responsible for a given amount of the form of it has money of any kind, it is responsible for that amount of money represented in this paper called confederate money. The form of it does not affect the question at all. It is a mere question of Government responsibility for property which has been taken illegally; that is all; and the same law that would apply to gold or greenbacks ought to apply to this case when you ascertain the value of the property, which I understand is yet in the possession of the Government; and the fact of its being in possession of the Government is a reason, of itself conclusive to my mind, that the Government should pay this amount of money.

Mr. MORRILL. Mr. President—
Mr. CAMERON, of Wisconsin. If the Senator from Vermont will

give way for a moment-

give way for a moment—
Mr. MORRILL. I merely want to appeal to the Senator from Wisconsin to withdraw this bill at the present time, because there is not a sufficient number of Senators present to consider so important a bill. I desire while up to say a single word. It is evident that, if this bill is to pass, it is in a certain form an assumption of the confederate debt. These were merely notes of the confederate government which they and they alone were obligated to pay. We complained of the British government for acknowledging belligerent rights to the confederacy. Are we to go forward at this late day and say that that government (in which the government of Great Britain were wrong in even acknowledging the existence of belligerent rights) say that that government (in which the government of Great Britain were wrong in even acknowledging the existence of belligerent rights) had sufficient power to create confederate notes of such a pecuniary money value that we are under obligation to pay them after they had been contiscated by order of a military general? I think not.

Then there is another question that arises. These notes at that time were subject to a large discount, and the judgment was undoubtedly rendered payable in United States notes, and those notes at that time were at a large discount.

doubtedly rendered payable in United States notes, and those notes at that time were at a large discount, probably 30 or 40 per cent. less than gold, whereas to-day they are only 5½ per cent. less than gold. Then, even on the judgment of the court, this judgment as then rendered, payable in the currency of to-day, would be paid in a currency worth 30 or 40 per cent. more than the judgment called for. But I assume at once that any payment of these notes is in fact, to the extent of the assumption a payment of the debt of the confor. But I assume at once that any payment of these locality to the extent of the assumption, a payment of the debt of the confederate government, and therefore ought not to be considered or

passed upon by Congress.

Mr. INGALLS. I offer the following amendment to the bill: Strike out section 1 all after the enacting clause, and insert in lieu of it:

That the Secretary of the Treasury be and he is hereby authorized and directed to return to the Union National Bank of Louisiana, the successor of the Union Bank of Louisiana, the confederate money taken by order of General Banks September 16 1862

Mr. CLAYTON. It seems to me the question that actually arises is, was this confederate money property? And, if it was property, then, was it the property of the confederacy or was it the property of individuals? I think it must be answered that it was property,

because it had a fixed value, as has been ascertained by the court because it had a fixed value, as has been ascertained by the court which adjudicated on this question. Then, if it was property, was it the property of the confederacy or of individuals? It was not the property of the confederacy manifestly, but of individuals. The taking of this confederacy manifestly, but of individuals. The taking of this confederacy manifestly, but an advantage to it. If the Government of the United States had seized one-half of the whole confederate issue they would have been retiring so much of that issue and would have made the balance so much more valuable to them. It would really have been to their advantage if the Government of the United States had seized any considerable amount of their currency. I cannot for the life of me see siderable amount of their currency. I cannot for the life of me see why the officers should have seized this money in the first place. If the Government of the United States could have induced the issue of twice the amount it would have crippled the confederate resonrces and finances that much. To retire one-half the amount would have relieved them that much.

I know this thing has a suspicious look on its face. When you I know this thing has a suspicious look on its face. When you mention confederate money it is calculated to arouse suspicion; but here, it seems to me, was a species of property of a fixed value, the property of individuals held by a corporation. This corporation was deprived of that property. The courts have held that those taking it were responsible. It seems to me, in my view of the case, we ought to give relief. We cannot say that if this officer acted without authority his act was void and that the Government should not be bound by it, because the Government to-day recognizes his acts by

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Kansas.

Mr. STEVENSON. I do not know much about the facts of this ase; but I cannot assent to some of the arguments that I have heard case; but I cannot assent to some of the arguments that I have heard in opposition to it. I think a case very much like this has already received the sanction of the Senate, perhaps more than one. I remember that many years ago, in General Doniphan's expedition, Colonel Mitchell was required by him to destroy certain property of traders which he feared would fall perhaps into the hands of the enemy. Colonel Mitchell did execute that order, and property was destroyed. Afterward the traders sued Colonel Mitchell; he pleaded the order of his superior officers, the court declared that order void. The order of his superior officer; the court declared that order void. case was taken to the Supreme Court of the United States, and the Supreme Court of the United States affirmed the decision and a judgment of many hundred thousand dollars was rendered against Mitchell. He then appeared before Congress, filed his petition, and the Congress of the United States paid the amount with scarcely a dis-

sent.

That, it seems to me, is a full answer to my friend from Ohio, who said that the Government would never pay a claim for property destroyed by a subordinate under the illegal order of his superior. Sir, it would be a monstrons doctrine. The Supreme Court of the United States decided that the order to Mitchell was illegal; and very properly and very equitably as I think, the Congress of the United States did relieve that officer who seized the property under the order of his superior, lieve that officer who seized the property under the order of his superior, although that superior officer had no authority to issue it. Why, sir, what would be the consequence if Congress did not in any instance relieve such cases as that? It has been a long time since I looked at the case of Harmony vs. Mitchell; but my friend on my right, [Mr. Bogx,] who perhaps did know Colonel Mitchell, as I did, will bear me out that I have stated substantially the facts of the case, and, so far as that goes, it seems to me to be perfectly in analogy with this.

Now, if the Supreme Court have decided that the Union Bank of Louisigns is light to the Bank of Tennessee of course the measure of

Louisiana is liable to the Bank of Tennessee, of course the measure of the liability would be the value of the confederate money at the time. That is property which will buy property; and, if this was worth so much at the time to the Tennessee Bank, and the Louisiana Bank, by a judicial decision, has been rendered liable for it, it seems to me to make a very strong appeal to the clemency and equitable considera-

tion of Congre

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Kansas.

Mr. SHERMAN. I understand the Senator from Wisconsin pro-

poses not to insist on a vote to-day.

Mr. CAMERON, of Wisconsin. I think that the Senate may as well vote upon the bill now as at any other time.

Mr. McRILL. Let it be postponed. There ought to be a fuller

Mr. SHERMAN. In order to test the sense of the Senate, I move that the bill be indefinitely postponed.

The PRESIDENT pro tempore. The Senator from Ohio moves the indefinite postponement of the bill.

The question being put, there were on a division—ayes 14, noes 17;

no quorum voting. Mr. CAMERON, of Wisconsin. I call for the yeas and nays. The yeas and nays were ordered; and being taken-resulted, yeas 19,

nays 24, as follows:

YEAS—Messrs. Allison, Bailey, Booth, Boutwell, Cockrell, Conkling, Cragin, Dawes, Ferry, Frelinghuysen, Hamilton, Hamilin, Ingalls, Jones of Nevada, Morrill, Paddock, Sharon, Sherman, and Windom—19.

NAYS—Messrs. Barnum, Bogy, Burnside, Cameron of Wisconsin, Christiancy, Clayton, Cooper, Davis, Goldthwaite, Hereford, Johnston, Kelly, McCreery, Maxey, Merrimon, Norwood, Patterson, Randolph, Robertson, Stevenson, Wallace, West, Withers, and Wright—24.

ABSENT—Messrs. Alcorn, Anthony, Bayard, Blaine, Bruce, Cameron of Penn-

sylvania, Chaffee, Conover, Dennis, Dorsey, Eaton, Edmunds, Gordon, Harvey, Hitchcock, Howe, Jones of Florida, Kernan Logan, McDonald, McMillan, Mitchell, Morton, Oglesby, Ransom, Sargent, Saulsbury, Spencer, Teller, Thurman, Wadleigh, and Whyte—32.

So the motion was not agreed to.

So the motion was not agreed to.

Mr. WRIGHT. I voted against the indefinite postponement of
this bill and have been inclined to favor the bill largely and I may
say exclusively upon the ground that I felt the conclusive effect of
the ruling of the court in Louisiana and the adjudications of our
courts upon this subject. The question, I concede, is one of very great
importance and not a little difficulty. I think that in my course
upon the Committee on Claims, as the reports that have been made
here show, I always have been exceedingly careful not to have any
precedent or principle sattled or recognized about which there was nere snow, I always have been exceedingly careful not to have any precedent or principle settled or recognized about which there was any fair doubt. I do not think a matter of this kind, where a principle is involved of so much importance, should be settled or passed upon by the Senate except when we have a fairly full attendance and the question examined and discussed fully. I therefore propose at this time, in view of what has been said and the light that has been thrown by this discussion, to move that the bill be recommitted to the Committee on Claims. I make that motion.

The motion was agreed to.

#### THOMAS H. HALSEY.

Mr. MORRILL. I move to take up the bill (S. No. 912) for the relief of Thomas II. Halsey, paymaster United States Army.

The motion was agreed to; and the Senate, as in Committee of the

Whole, proceeded to consider the bill.

The bill was reported from the Committee on Military Affairs with an amendment to fill the blank before the word "dollars" with an amendment to fill "1.788;" so as to read:

That the proper accounting officers of the Treasury are authorized and directed to credit to the account of Thomas If: Halsey, paymaster United States Army, the sum of \$1,788, being the amount charged against him, and embezzled by the forgeries of his clerk, William F. Piper.

Mr. WITHERS. Is there a report accompanying the bill?
Mr. WRIGHT. There is a report accompanying the bill.
The PRESIDENT pro tempore. Does the Senator from Virginia call

for the reading of the report?

Mr. WITHERS. I wish to either hear the report read or to have the chairman of the committee who reported the bill make a verbal state-

ment of the facts.

Mr. WRIGHT. I think I can state the facts in a few words, although the report is quite brief. Mr. Halsey was a paymaster, and is a paymaster yet in the United States Army. There is most abundant evidence of his integrity and fidelity to duty, and that he at all times discharged well and promptly all the duties required. He had in his employ a clerk whose name I do not now remember. He was ordered to Sau Francisco. While there the paymaster was somewhat indisposed and unable to be at his office at all hours of the day. It seems that this clerk in making payments upon the vouchers raised the posed and unable to be at his office at all hours of the day. It seems that this clerk in making payments upon the vouchers raised the vouchers and committed forgeries to the amount of \$1.788 without any knowledge upon the part of the paymaster, and he had no reason to suspect that there was the least frand being perpetrated by this clerk. That is to say, the clerk would take the vouchers that would be signed by the soldiers, and, as the illustration is given in the report, where he paid \$53 he would raise it to \$153, and in that way it appeared that the paymaster had paid out \$153 instead of \$53; and so in many other cases running over three or four months. In Feb. so in many other cases running over three or four months. In February of 1870 I think this paymaster's clerk absconded, and he never yet has been found, though diligent search has been made for him and every effort to recover this money from him.

The paymaster found soon after his clerk absconded that these forgeries had been committed, and there was lost to him the sum of \$1,788 as I have already stated. If the Government will at all relieve a paymaster or an officer by reason of the forgery and theft of a subordinate, this is one of those cases where relief should be granted. It presents precisely that case. We have had several such cases before us, and I believe almost uniformly have reported against them, because upon the facts we did not think that the equities were established in favor of the paymaster or the officer so that he should be relieved. My friend, the Senator from Missouri, [Mr. COCKRELL,] who is near the Senator from Virginia, will remember this case. If any person has been strict upon this subject he has been so himself, and I believe

that he heartily gave his concurrence to this report.

The amendment was agreed to.
The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CHARLES C. CAMPBELL.

Mr. WRIGHT. I have a little bill from the Committee on Claims that I should like to have the attention of the Senate to. I move that the Senate proceed to the consideration of the bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County,

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill.

Mr. CONKLING. Is there a report in that case? If there is I should like to hear it.

The PRESIDENT pro tempore. The report will be read.

Mr. WRIGHT. I will direct the attention of the Secretary to the fact that the report made in the last few days is the report that should he read.

Mr. CONKLING. Does it conflict with the one made before?

Mr. WRIGHT. They are all given in that.

The Secretary read the following report, submitted by Mr. WRIGHT from the Committee on Claims January 17:

The Committee on Claims, to whom was recommitted the bill (H. R. No. 429) for the relief of Charles C. Campbell, having reconsidered the same, submit the following

rener or Charles C. Campbell, having reconsidered the same, submit the following report thereon:

This bill was reported back on the 1st of July, 1876, from your committee, with a favorable recommendation. Some question having been made as to the correctness of this recommendation, the bill was, by order of the Senate, recommitted to your committee on the 9th instant, and has, with the additional papers submitted by the petitioner, received their attention. That the full nature and character of the claim may be seen, we incorporate the report of the House committee (4.36) by Mr. Hoskins, of the War-Claims Committee, and the former report of this committee, (441,) as follows:

[Report No. 446.]

"That the memorialist, Charles C. Campbell, is a native of Virginia, and resided in said State during the war of the rebellion; that, in the year 1864, he was the owner of certain salt-works at Saltville in the State of Virginia, used and occupied by him at that time in the manufacture of salt; that he was also the owner of five four-horse and mule teams, fully equipped with harness and wagons, used in hauling supplies for said salt-works and for other purposes; that the said Campbell was also engaged in the manufacture of flour at Marion, Tennessee.

"In the latter part of the year 1864, the Union forces under command of Generals S. G. Burbridge, Stoneman, and Shakelford, took possession of certain personal property belonging to the memorialist, to wit, mules, horses, wagons, harness, salt, and flour, and used the same as supplies for the Army of the United States, a particular and itemized statement of which appears in the evidence submitted to your committee.

"In support of this claim, the memorialist presents his own affidavit, with that of eight or ten others, some of them being eye-witnesses to the taking of most of said property by the Union Army. The witnesses, many of them, are old residents of that vicinity, and some are colored persons, at that time in the employ of the said Campbell.

of that vicinity, and some are colored persons, at that time in the employ of the said Campbell.

"The loyalty of the claimant is fully and conclusively proven by many witnesses. Indeed, his loyalty has never been questioned by any one, as he was one of the few who remained true during the entire period of the war.

"General S. G. Burbridge submits a letter fully acknowledging the taking of the property for Army supplies, and also certifies to the loyalty of the claimant.

"Yourcommittee, therefore, report back to the House the accompanying bill, with amendments, recommending the appropriation of the sum of \$6,000 in full satisfaction of the claim.

"[Report No. 441.]

Petitioner represents that during the late war he resided in Washington County,

with amendments, recommending the appropriation of the sum of \$6,000 in full satisfaction of the claim.

"Petitioner represents that during the late war he resided in Washington County, Virginia, and was the owner of a large property, consisting of salt-furnaces, salt-store goods, salt-sacks, borses, mules, wagous, harness, and cotton yarn, to each of which items he attaches a value, amounting in the aggregate, to \$40,210; that the salt-furnaces and salt were taken and destroyed by the Union armics under the commands of Generals Burbridge and Stoneman, and the other articles, amounting in the aggregate, to \$5,500, were taken and used as supplies by the armies aforesaid. He therefore prays compensation.

"In addition to his own affidavits, the petitioner filed with his petition the depositions of eight witnesses, establishing beyond question his loyalty to the Union, his ownership, and the value of the personal property, and the fact that it was taken under orders and used by the Federal forces.

"In the course of the Investigation before the House committee, the petitioner seems to have surrendered his claim for compensation to a portion embraced in the list set forth in his petition, and to have committee seems to have made down the salt of the course of the investigation before the House of the placed at \$6,762. From the petition of the committee seems to have made down to have surrendered his affine and the placed at \$6,762. From the course of the course of the delay attending the prosecution, the petitioner back the House bill without amendment, and to recommend its passage.

"In explanation of the delay attending the prosecution, the petitioner has filed his affidavit. in which he states that within the term for filling his claim before the southern claims commission, who resided within three or four miles of petitioner, who promised petitioner to put it in proper form and file it before the board; and that he did not know of his neglect to do so until after the explration of the period within which is a s

of the Government. Your committee cannot for a moment believe that the fact that salt manufactured at these works was sold to private citizens without inquiry as to their re ations to the Government, and especially in the absence of any shown intention that such sale was to aid the rebellion, wou d have the effect to make the wagons, teams, and other property of petitioner contraband, and liable to seizure without right to compensation.

So that your committee feel it to be their duty to again report this bill back and recommend its passage.

Mr. HAMLIN. I believe the claimant in this case alleges that he lost Mr. HAMLIN. I believe the claimant in this case alleges that he lost some sixteen or eighteen thousand dollars. The committee have reported a bill allowing him but \$6,000. The body has, I think, been pretty liberal this morning; and if we were to sleep upon this matter we might be more liberal than the committee and allow the petitioner something near what he thinks he has lost. Indeed, if he has lost that sum I see no reason why he should not be paid the whole of it if he is to be paid \$6,000. This is a case, however, which I think will keep. I think there is just about enough salt in it to preserve it until tomorrow, and I will move that the Senate take a recess until ten o'clock to morrow. o'clock to-morrow.
Mr. WRIGHT. I hope not.

The PRESIDENT pro tempere. The Senator from Maine moves that the Senate take a recess until to-morrow at ten o'clock.

Mr. WRIGHT. Allow me to ask my friend at all events that the pending order, the railroad bill, may be laid before the Senate, or that it be considered as laid before the Senate, before we adjourn. I trust there will be no recess now, but I want the railroad bill kept

in its place.

Mr. WEST. Before that bill is taken up I should like to have an anderstanding with the Senator from Iowa, who is now temporarily charged with its care, as to what he proposes to do and how long he proposes to postpone it now. It has been postponed pro and con to accommodate gentlemen who desire to be heard upon it; but if we have a vote compared to the control of the are to legislate upon the subject, we had better have a vote at some

time or other, a fixed time perhaps.

Mr. WRIGHT. I suppose my friend understood this morning what I said on the subject, that I trusted there would be no objection to

have it put over to-day.

Mr. WEST. That is true.

Mr. WRIGHT. I only ask that the bill may be kept in its place.

Mr. WRIGHT. I only ask that the bill may be kept in its place. I do not know that there will be any objection to taking it up to-morrow and passing upon it. I merely want it before the Senate.

Mr. WEST. I desire to say that when the Senate resumes the consideration of that bill I shall press a vote upon it.

Mr. STEVENSON. I gave notice the other day that on yesterday I would call up the bill for the benefit of Warren M. Mitchell. The attention of Senators, however, to the electoral vote prevented me from getting up the bill. I now wish to give notice that on Tuesday next I shall call up the bill.

Mr. MITCHELL. I would remind the Senator from Kentucky that some two hours ago I gave notice that on that very day I would call up for the consideration of the Senate the case of Dr. J. Milton Best, of Kentucky.

of Kentucky.

Mr. STEVENSON. I will give my notice for Wednesday.

Mr. INGALLS. It is due that I should also state that several days since I gave notice to the Senate that at the conclusion of the debate on the Pacific Railroad bill I would ask attention to the bill granting pensions to the soldiers of the war of 1812, and also granting arrears of pensions, making pensions date from the discharge or disability of the soldier. That subject is one of very great importance. It is continually urged upon the attention of the Senate by numerous petitions from all parts of the country, and I shall endeavor with such residuity as I possess when constants of the country.

tions from all parts of the country, and I shall endeavor with such assiduity as I possess when opportunity offers to ask the consideration of that bill by the Senate.

Mr. KELLY. If there is any virtue in giving notice, I give notice that I shall on Thursday after the morning hour call up House bill No. 1316, to adjust the claims of owners of lands within the limits of the Klamath Indian reservation in the State of Oregon. It will be remembered that this bill was considered and discussed at the last session of Congress. I am desirous that it shall be disposed of at an early day, and therefore give notice that on Thursday next I

shall call it up.

Mr. WRIGHT. I wish to say one word. The bill that is now before the Senate I have had no opportunity to say one word upon. I do not propose to say anything at this time. I have made two or three efforts to get the bill before the Senate. I do not know any better time to consider the bill than now. There is nothing about it unusual. It has been twice considered by the committee. It is for the mere payment for property that was taken by our officers and used for the benefit of our Army, precisely such property as we have paid for over and over again. We can do that to-day. I insist that this bill shall either be defeated by the Senate or that we shall vote upon

bill shall either be defeated by the Senate or that we shall vote upon it and see what the disposition of the Senate is.

Mr. INGALLS. Which bill does the Senator mean, the railroad bill?

Mr. WRIGHT. Not at all, but this bill which has been reported twice from the Committee on Claims.

The PRESIDENT pro tempore. The Senator from Maine moves that the Senate take a recess until ten o'clock to-morrow. If the motion for a recess shall prevail, is it the understanding that the same order of business which occurred this morning from ten to twelve shall occur on subsequent days? If such be the understanding the Chair will be so governed.

Mr. SHERMAN. Is it proposed that we shall transact legislative business to-morrow, Saturday?

The PRESIDENT pro tempore. On Saturday at twelve o'clock, with the same understanding, the Chair understands, as occurred this morn-

the same understanding, the Chair understands, as occurred this morning. We cannot adjourn.

Mr. SHERMAN. I was going to say, as I know very well that there will be no business done here to-morrow, that we might as well make the understanding broad enough to give us the whole day. I am however perfectly willing to come back here.

Mr. CONKLING. I venture to suggest to the Senator from Ohio that to-morrow at twelve o'clock, or any other hour, it will be in order to take a recess until the next legal day, which will be Monday. The bill expressly excepts Sunday as one of the days in which it is to operate.

Mr. MERRIMON. Is it to be the understanding that there is to be no business done to morrow? Some of us may want to attend to other

matters and desire to be absent at ten o'clock.

The PRESIDENT pro tempore. The question is on the motion to

Mr. WITHERS. Before that motion is put, I wish to inquire whether it is the understanding of the Chair that on to-morrow, whether the Senate meets at ten o'clock or twelve o'clock, it will be in order to move a recess until Monday?

The PRESIDENT pro tempore. We meet at ten o'clock and take a recess until twelve, and the Senate can take a recess from then until

Monday at ten o'clock, if it should see fit.

Mr. CONKLING. And the Senator can judge from the expression of Senators that that will be the purpose of the body.

#### ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. G. M. Adams, its Clerk, announced that the Speaker had signed the following enrolled bills; and they were thereupon signed by the President pro

A bill (H. R. No. 3367) to remove the charge of desertion from the military record of Alfred Rouland;
A bill (H. R. No. 1558) to remove the political disabilities of Robert

Ransom, of Virginia;
A bill (H. R. No. 2736) to remove the political disabilities of N. H. Van Zandt, of Virginia;
A bill (H. R. No. 4473) for the relief of destitute poor of the District

Columbia; and

A joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the stitched copies of the House compilation entitled Counting the Electoral Vote.

### EXECUTIVE COMMUNICATIONS.

The PRESIDENT pro tempore laid before the Senate a communication from the President of the United States, transmitting, in response to resolution of the Senate of the 16th ultimo, a report of the Secretary of State, with accompanying papers, relative to the claims between citizens of the United States and Mexico; which was referred to the Committee on Foreign Relations, and, on motion of Mr.

INGALLS, ordered to be printed.

He also laid before the Senate a communication from the Secretary of War, transmitting an abstract of the militia force of the United States, as required by section 232 of the Revised Statutes of the United States; which was ordered to lie on the table and be printed. He also laid before the Senate a letter from the Secretary of the

Interior, submitting for the consideration of Congress a deficiency estimate for the year ending June 30, 1876, in the surveying service; which was referred to the Committee on Appropriations, and ordered to be printed.

## PRINTING OF A BILL.

On motion of Mr. INGALLS, it was

Ordered, That the bill (H. R. No. 2454,) amending the laws granting pensions to the soldiers and sailors of the war of 1812, and their widows, with the Senate amendments, be printed.

## PACIFIC RAILROAD ACTS.

The PRESIDENT pro tempore. Does the Senator from Louisiana desire that the special order shall be called up, that it may be the unfinished business?
Mr. WEST. Yes, sir.

The PRESIDENT pro tempore. That being the understanding, Senate bill No. 984 is the unfinished business. The question is on the motion of the Senator from Maine [Mr. Hamlin] that the Senate take a recess until ten o'clock to-morrow.

The question being put, there were on a division-ayes 21, noes 16;

no quorum voting.

Mr. WRIGHT. I call for the yeas and nays in order to test whether

Mr. White T. I can for the just any just come in.

Mr. CONKLING. Several Senators have just come in.

The PRESIDENT pro tempore. If there be no objection, the Chair will test the question again by a division.

Mr. WRIGHT. I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a second to the call for the

Mr. CONKLING. Let us take the question by a division again. Mr. STEVENSON. Let us have the yeas and nays.

The yeas and nays were ordered; and being taken, resulted-yeas

YEAS—Messrs. Anthony, Barnum, Blaine, Booth, Boutwell, Bruce, Burnside, Chaffee, Christiancy, Clayton, Conkling, Conover, Cragin, Hamilton, Hamilia, Hitchcock, Ingalls, Logan, Morrill, Paddock, Sharon, Sherman, Wallace, West, and Windom—25.

dom-25.

NAYS-Messrs. Allison, Bailey, Bogy, Cameron of Wisconsin, Cockrell, Cooper, Davis, Dennis, Eaton, Ferry, Hereford, Johnston, Kelly, McCreery, Maxey, Merrimon, Mitchell, Norwood, Randolph, Ranson, Stevenson, Withers, and Wright-23.

ABSENT-Messrs. Alcorn, Bayard, Cameron of Pennsylvania, Dawes, Dorsey, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Harvey, Howe, Jones of Florida, Jones of Nevada, Kernan, McDonald, McMillan, Morton, Oglesby, Patterson, Robertson, Sargent, Saulsbury, Spencer, Teller, Thurman, Wadleigh, and Whyte-27.

So the motion was agreed to: and (at three calculus and ten minutes).

So the motion was agreed to; and (at three o'clock and ten minutes p. m.) the Senate took a recess until Saturday, February 3, at ten o'clock a. m.

### HOUSE OF REPRESENTATIVES.

# THURSDAY, February 1, 1877.

[CALENDAR DAY, February 2.]

AFTER THE RECESS.

The recess having expired, the House re-assembled at ten o'clock a.m., (Friday, February 2.)
Mr. WILSON, of Iowa. I move that the House take a recess for one

hour.

Mr. HALE. Why not make a motion to take a recess until five minutes before twelve o'clock. The Senate, I learn, adjourned with that understanding, and a great many members of the House, knowing that, will not be here before twelve o'clock.

Mr. WILSON, of Iowa. I am quite willing to modify my motion

in that way.

The SPEAKER. The Chair desires to say that it is in contemplation to introduce a bill with a view to make it a law changing the original act in reference to counting the electoral vote, and perhaps it will be better that the House should take a recess until fifteen or twenty minutes before twelve o'clock, so that if necessary the bill may pass to-day.

Mr. HOLMAN. I move that the House resolve itself into Committee of the Whole on the state of the Union of the legislation.

tee of the Whole on the state of the Union on the legislative appropriation bill.

The SPEAKER. That motion is not in order, as there is a motion

pending for a recess.

Mr. WILSON, of Iowa. I will modify my motion, so that the House

may take a recess until twenty minutes to twelve o'clock.

The motion was agreed to.

And accordingly (at ten o'clock and two minutes a. m.) the House took a recess until eleven o'clock and forty minutes a. m.

### AFTER THE RECESS.

The recess having expired, the Speaker again called the House to order at eleven o'clock and forty minutes a. m.

## SALE OF LANDS IN ALASKA.

Mr. WALLING, by unanimous consent, reported, from the Committee on Public Lands, House bill No. 4560 as a substitute for the bill of the House (H. R. No. 4260) authorizing the sale of certain lands in the Territory of Alaska upon paying the Government price therefor, and for other purposes; which was read a first and second time, recommitted to the committee, and ordered to be printed, not to be brought back by a motion to reconsider.

#### FORECLOSURE SUITS.

Mr. LYNDE, by unanimous consent, introduced a bill (H. R. No. 4561) to provide for appearance in the behalf of the United States in foreclosure suits; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

### · LEGISLATIVE DAYS-ADJOURNMENTS.

Mr. WILSON, of Iowa. I ask leave to report from the Committee on Rules, for consideration at this time, a bill which I send to the Clerk's desk. Before it is read I will state that it is approved by such members of the Committee on Rules as I have been able to con-

The title of the bill was read, as follows:

A bill amendatory of an act entitled "An act to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877.

The bill provides that until the announcement of the final result of The bill provides that until the announcement of the final result of counting the votes for President and Vice-President, and the final adjournment of the joint meeting of the two Houses of Congress, either House, when engaged in legislative business, may order an adjournment until ten o'clock in the forenoon of the next calendar day, Sunday excepted, unless the joint meeting of the two Houses shall have previously provided for a joint session at an hour previous thereto.

No objection was made, and the bill (H. R. No. 4562) was received and read a first and second time.

The question was upon ordering the bill to be engrossed and read a third time.

legislative point known as "to-day," whether the House could adjourn, has induced the Committee on Rules to examine the subject, and they have instructed me to report the bill which has just been read and to recommend its passage.

The first difficulty presented under the act which it is proposed now to amend is that, if the joint meeting of the two Houses should be engaged for a week, or for two or four weeks, in arriving at a conclusion relative to the counting of the votes for President and Vice-President, all of the proceedings of the House will have to be journalized as of one day, Thursday, the 1st day of February. Now it does not require a great stretch of imagination to arrive at the conclusion that that would bring great confusion in the public business. I might call your attention, Mr. Speaker, to a few of the consequences that might result, that will result, unless some amendment of the law be made.

We can have nothing but the regular order of business proper to be transacted on Thursday. We can have no Monday for the reference of bills in the morning hour upon the call of States and Territories. We can have no Friday for the consideration of private business

We can have no Friday for the consideration of private business ries. We can have no Friday for the consideration of private business or of business upon the Private Calendar. Of course it would not interfere with the reports of committees that are privileged to report at any time. But for perhaps a month we could have only one morning hour in which committees can be called for reports that they have matured throughout this session of Congress.

Now, in the interest of good legislation and for the purpose of preventing confusion that would result from the transaction of business in the war. I think it is rise to wars this amountation, each legislation.

in that way, I think it is wise to pass this amendatory act. You might hold, Mr. Speaker, that under the terms of the electoral-commission bill you would be justified in ruling that the legislative day, instead of beginning at twelve o'clock, shall begin at ten o'clock; but that would be a forced construction of the terms of the act. You

that would be a forced construction of the terms of the act. You might also hold that the House would be justified in having prayers at twelve o'clock each day, in having its Journal read and approved, and beginning in the usual way, when not in joint meeting, to proceed with legislative business; but that would also be a forcing of the terms of the act which we have passed for regulating the count of the electoral votes for President and Vice-President.

I see no other reasonable way by which we can have the time occupied by the two Houses in joint meeting divided as it were into calendar days and the business that is transacted by the two Houses in their legislative capacity journalized and approved. This act merely provides that, instead of taking a recess until ten o'clock in the forenoon of the next calendar day, we may adjourn until ten o'clock of the next calendar day. That would carry everything with it, so far as journalizing our proceedings and reading and approving the Journal are concerned.

the Journal are concerned.

Let me for a moment call attention to some other of the inconsistche not a moment can attention to some other of the inconsist-encies that we will be inevitably led into without some amendment of the law. For example, the President of the United States sends us a communication dated on the 12th day of February, and it is journalized as having been received by the House on the 1st day of February. One of the heads of the Departments sends us a communication dated the of the heads of the Departments sends us a communication dated the 15th of February, and it is journalized as having been received by the House on the 1st day of February. One of our committees empowered to send for persons and papers has a contumacious witness. The committee brings that matter before the House, and the proceedings had in that committee are read as having occurred on the 8th day of February; but we take up and consider the matter on the 1st day of February according to our Journal. That would lead to great day of February according to our Journal. That would lead to great confusion in the correct understanding in future of what we are now doing.

And look at it from another stand-point; I see no advantage that

And look at it from another stand-point; I see no advantage that will be taken of any individual, of any committee, or of any body by the passage of this amendatory act. I have looked at it from every stand-point, I have consulted members of the Committees on Rules of both Houses. I would be glad to have any suggestion made by any gentleman who sees that in any way this amendatory act would cause any difficulty or would work with any friction. I have drawn up this bill hastily, and it may be that some suggestions can be made which would render the matter more clear and more explicit. I have striven to reach the one noint merely, that while we are proceeding striven to reach the one point merely, that while we are proceeding in legislative business our proceedings shall be journalized as of the calendar day.

Allow me to say further that this bill, if it shall become a law, will not prevent us from taking recesses in our legislative proceedings that shall run from day to day. If we do not see fit to adjourn, we can take recesses from day to day, as we have done previously, for two or three calendar days in succession. But it puts it in our power to adjourn from day to day when such adjournment does not in any

way conflict with the business of the joint meeting of the two Houses.

The SPEAKER. The Chair desires to state that this morning, in conference with the presiding officer of the Senate, he learned that, in accordance with a determination of a majority of the members of that body, the presiding officer will to-day proceed in this manner: the Senate having already provided for a meeting at twelve o'clock, he will, on the arrival of that hour, ask the Chaplain to offer prayer, and will then cause the Journal of the Senate to be read as though and read a first and second time.

The question was upon ordering the bill to be engrossed and read a third time.

Mr. WILSON, of Iowa. The question raised some hours ago in this day, known as "yesterday" from a calendar stand-point, but from a third time. Still he is quite willing that the question shall be waived for the day, and that the manner of proceeding agreed upon in the Senate shall be adopted in the House.

The remedy for such a construction is of course in some such bill The remedy for such a construction is of course in some such bill as is indicated by the gentleman from Iowa; but to say that a single legislative day shall be indefinitely continued by a series of recesses would in the judgment of the Chair lead to the greatest possible confusion. For instance, a bill sent to the President for his signature ten days hence (if the joint commission should not reach a decision within that time) would appear as if passed and submitted to him on the legislative day of February 1, and, as the Constitution requires that the President shall be entitled to ten days for the consideration of any bill, he would thus be deprived of that constitutional privilege, because, while the bill bore date as having been passed by the two Houses on the 1st day of February, it possibly might not go to him until the 11th of February.

him until the 11th of February.

The Chair is of opinion that some legislation is necessary and, as a member of the Committee on Rules, he assented to the reporting of this bill so that the House might have an opportunity either to pass it or take into consideration the propriety of some other amendatory legislation so as to obviate the present difficulty.

Mr. MONROE. We would be glad to have the bill read again.

The bill was again read.

The bill was again read.

Mr. WHITTHÖRNE. I would like to make a single remark if the gentleman from Iowa will indulge me. Recognizing all the confusion and possible evil that may arise from the present condition of things so far as the legislation of the two Houses is concerned, my view has been directed to the other aspect of this question; and that is, as the Constitution provides that the "votes shall then be counted," whether we can permit other days to intervene before the counting is finished. If we do so, shall we "then" discharge that duty imposed upon us by the Constitution? By adjournment from day to day do we not run the risk of a greater evil than all those which have been pointed out by the Representative from Iowa and by the Speaker? May we not complicate the presidential question? I therefore request the gentleman from Iowa [Mr. WILSON] not to urge, at least at the present time, the adoption of this measure. time, the adoption of this measure.

The SPEAKER. The Chair desires to ask unanimous consent that he may conform to the manner of proceeding determined upon by the

Mr. HALE. For this day.
The SPEAKER. For to-day only.
Mr. WILSON, of Iowa. I will agree to that.
Mr. COX. I was about to make a motion to refer this bill to the Committee on Rules, that there may be some joint consideration and action by both bodies. That will evidently save time. I agree with the Chair that great confusion will result unless something be done to amend the compromise bill in this particular. For instance, if the gentleman from Tennessee [Mr. Bright] should move to-day as the order of business for Friday that the House go into Committee of the Whole on the Private Calendar, the Journal would show that the legislative day was Thursday; that method of journalizing cannot be avoided. So next Monday would, according to the Journal be Thursday, and a motion to suspend the rules could not be in order on that

day, and a motion to suspend the rules could not be in order on that day. Great confusion will thus ensue unless we do something in this matter.

I do not apprehend the trouble which my friend from Tennessee [Mr. Whitthorne] apprehended, because there will be a large gap during the consideration by the commission of these questions connected with the electoral vote. Florida will be considered perhaps for days by the commission, and meanwhile the business of the House and the country ought to go on. The appropriation bills must be passed, and I only wish it were possible that no business except the appropriation bills should be taken up until they are disposed of, except this matter of counting the votes, which is a large question and of the greatest importance. greatest importance.

The SPEAKER. As the hour of twelve o'clock is at hand, the Chair asks consent that without any committal on the part of the House to an adjournment the Chaplain may now be allowed to offer prayer. Mr. WILSON, of Iowa. To that extent, I hope there will be no

objection.

The SPEAKER. Waiving the qestion whether there has been an adjournment, the Chaplain will now offer prayer.

The prayer was then offered by the Chaplain, Rev. I. L. TOWNSEND.

Mr. WILSON, of Iowa. I now yield to the gentleman from Maine,

The SPEAKER. The next proceeding in order, if this were the commencement of a legislative day, would be the reading of the

Mr. WILSON, of Iowa. That we have not determined. Let that

matter be passed over.

The SPEAKER. That question will be waived for the present.

Mr. HALE. I yield for a moment to the gentleman from Michigan [Mr. WALDRON] to make a request.

### DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON. I am requested by the Committee on Appropriations to ask unanimous consent that the Committee of the Whole on the state of the Union be discharged from the further consideration of the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877,

and for prior years, and for other purposes, and that the bill be recommitted to the Committee on Appropriations.

There being no objection, it was ordered accordingly.

Mr. HALE. Mr. Speaker, this is a very important matter, affecting the whole course of our business for the rest of the session, and for one I am glad that the gentleman from Iowa, [Mr. WILSON,] from the Committee on Rules has reported this bill. If the Committee on Rules desire as suggested by the gentleman from York York. tee on Rules desire, as suggested by the gentleman from New York, [Mr. Cox,] that it be sent to them for further consideration, to that I have no objection; but should that be done, I trust the committee will report very speedily something that will let us out of the difficulty in which we find ourselves. I have great doubt whether if both officers, the President of the Senate and the Speaker of this House, should agree at present, as the law is, the House might adjourn in customary fashion when attending to legislative business, no real objection could be made to that; but perhaps it is not possible for the two Houses under the direction of their presiding officers to come to that agreement, while a bill like this if it is passed saves all questions.

Looking at the law which forms the electoral commission and reulates these proceedings, it is very plain it is intended there should be no dissolution of the joint session. It is also intended and expressed when attending in the separate Houses to the duties under that electoral commission devolved upon the Houses there should be nothing but a recess. At the close of section 5 is this provision:

And while any question is being considered by said commission either House may proceed with its legislative or other business.

It is a question whether under that is not carried the power which is extended to every-day legislation, to adjourn from day to day. I for one should have no doubt, if the two officers had agreed upon that construction, which might be done; but this bill at any rate re-

lieves us from the embarrassment.

The gentlemen will readily see some of the embarrassments that will come. We cannot have any Monday, no suspensions of the rules, no morning hour, no private-bill day, but a continuous day's session until this matter is terminated. All the legislative business is heaped and banked into one day of which there perhaps is one journal, and every gentleman will see readily the inextricable difficulty almost in which we are engaged.

which we are engaged.

which we are engaged.

I suggest to the gentleman, instead of providing that we adjourn to ten o'clock from day to day, that he should make it twelve o'clock, and then we are left precisely as we are whenever during the sessions of Congress an adjournment takes place. If by the pressure of business the House wants a portion of the morning, we can, as has been stated, take a recess to ten or eleven o'clock. If we must adjourn every day to ten o'clock the next day, that obliges every gentleman to be here at ten the next day, unless some agreement is made every day that nothing shall be done between ten and twelve o'clock. I do not see any objection as we are to legislate to regulate this to do not see any objection, as we are to legislate to regulate this, to substituting the hour of twelve o'clock for ten o'clock; and if we adjourn we adjourn as we customarily do, and members come at twelve o'clock, and committees attend to their business, and there is no annoyance in having an early hour forced upon us every day. Does

the gentleman see any objection to that?

Mr. WILSON, of Iowa. I was going on to remark that this provision dates back to Senator Morton's celebrated bill for counting the electoral votes for President and Vice-President. It has been taken from that celebrated bill, No. 1, almost verbatim. It was a feeling of veneration which induced me to adhere to the provision of the original bill, and as contained in the law under which we are now

acting; but if that be the wish of the House, I am willing to change it.

Mr. HALE. As the gentleman does not see any difficulty in fixing
twelve o'clock instead of ten o'clock for the hour of meeting every

day, I hope that will be done.

Mr. WILSON, of Iowa. We can provide for the meeting each morning at that hour unless the joint meeting of the two Houses shall be fixed at an earlier hour.

Mr. HALE. You have that provision already in the bill. I think that is already covered. It will suit the business of the House bet-

ter to make it twelve instead of ten o'clock.

Mr. HOLMAN. I trust there will be no objection to referring this subject to the Committee on Rules. It is manifest the subject will have to be so referred. The embarrassments on either side are so apparent that something must be done. I suggest that it be referred

Mr. WILSON, of Iowa. I accept the suggestion that it be recommitted to the committee, as we can report at any time.

The SPEAKER. The Chair desires to say on the point connected with the suggestion made by the gentleman from Tennessee, [Mr. WHITTHORNE,] that the Constitution reads as follows:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the preson having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

The language of the Constitution would seem to imply that the exercise by the House of that constitutional power should not oc-cur, except immediately after the declaration of the joint convention. Mr. WILSON, of Iowa. I accept the suggestion to recommit.

The SPEAKER. The gentleman from New York [Mr. Cox] moves that the bill be recommitted to the Committee on Rules. Is there objection? The Chair hears none, and the bill is recommitted.

#### ORDER OF BUSINESS.

Mr. HOLMAN. I move that the rules be suspended and that the House resolve itself into Committee of the Whole for the consideration of the legislative appropriation bill.

Mr. CONGER. I ask the gentleman to yield to me for a moment

to offer a resolution.

Mr. HOLMAN. I yield to the gentleman.

### ENROLLED BILL SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 4473) for the relief of the destitute poor of the

District of Columbia.

### COMPENSATION OF REPRESENTATIVE FROM COLORADO.

Mr. CONGER, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on the Judiciary be directed to inquire and report, for the instruction of the Sergeant-at-Arms, from what date the compensation of the Representative from Colorado should be computed, with leave to report at any time.

#### POST-ROADS.

Mr. CLARK, of Missouri. I rise to make a privileged report. I submit the report of the committee of conference on the bill to establish post-roads

The Clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the bill of the House (H. R. No. 3628) establishing post-roads, having met, after a full and free conference, have been unable to agree.

JOHN B. CLARK, Jr.,
L. L. AINSWORTH,
S. F. MILLER,
Managers on the part of the House.
H. HAMLIN,
A. S. PADDOCK,
S. B. MAXEY,
Managers on the part of the Senate.

The SPEAKER. The question is on the adoption of the report of the conference committee

The report was adopted.

Mr. CLARK, of Missouri, moved to reconsider the vote by which
the report was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. CLARK, of Missouri. I move that the committee be discharged and that the House ask for a further conference on the disagreeing votes of the two Houses

The motion was agreed to.

### BROWN'S TYPE-DISTRIBUTING MACHINE.

Mr. BALLOU, from the Committee on Printing, reported back, with an adverse recommendation, the petition of F. M. Nichols and others that Brown's type setting and distributing machine may be put upon trial in the Government Printing Office at Washington; and the same was laid on the table, and the accompanying report ordered to be printed.

## PROPERTY OF CONGRESSIONAL GLOBE.

Mr. BALLOU. I desire, also, to report from the Committee on Printing the resolution which I send to the desk, and ask that it may be considered at this time, and referred to the Committee on Appropria-

The Clerk read as follows:

Resolved. That the Committee on Appropriations are hereby authorized and directed to report as a part of the sundry civil bill a provision to purchase of the present owners and proprietors of the Congressional Globe all the stereotype plates, bound and unbound volumes, and the copyright, together with the fire-proof building located in the rear of the Globe office, for the sum of — dollars.

The SPEAKER. The Chair thinks that that resolution is subject to objection.

Mr. SMITH, of Pennsylvania. I object.

The SPEAKER. The resolution requires the Committee on Appropriations to do what the House does not permit to be done except by a suspension of the rules.

Mr. WALLING. I object. Let the resolution take its regular

Mr. BALLOU. I think if I am permitted to make a statement in explanation there will be no objection.

The SPEAKER. The Chair will hear the gentleman.

Mr. BALLOU. I wish to state to the House that the property of the Congressional Globe is to be sold; that it consists in bound and unbound books and in stereotype plates; that there are one hundred and eight volumes in all, embracing the debates of Congress from 1833 that here ights there are well as the congress from 1833 that he ights there are present in terretical than the congress from 1833 that he ights there are no particularly the congress from 1833 that he ights there are no particularly in the congress from 1833 that he ights there are no particularly in the congress from 1833 that he ights there are no particularly in the congress from 1833 that he is a statement in the congress from 1833 that he is a statement in the congress from 1833 that he is a statement in the st to 1873; that eighty-three volumes are now in stereotype plates; there being twenty-five volumes that are not stereotyped; that there are about twenty-five thousand copies of bound volumes and about forty thousand copies of unbound volumes. This property is to be sold. It will bring, if sold now, perhaps, only what the type-metal will bring. The volumes will bring only what the paper will bring, and

it is thought that it would be better that the history of Congress from 1833 to 1873 should be preserved by us for this and future generations than that it should be otherwise disposed of. Unless it is purchased by Congress in some form, it will probably be destroyed or scattered. The object of this resolution is simply to have the Committee on Appropriations fix a price for the property. It certainly is worth what it will bring for old type-metal and old paper; and if we can get it for that or a little more, it will be the property of Congress and will not be lost. I hope, therefore, there will be no objection as the proposition is that the price shall be fixed by us.

The SPEAKER. The Chair desires to say that this is a resolution proposing to instruct the Committee on Appropriations to do what they have not the power to do under the rules; that is, to report appropriations not in compliance with law or outside the authority of it is thought that it would be better that the history of Congress from

law. This the Committee on Appropriations have not the power to do. They have not the power to report appropriations except in obedience to law; and when they report appropriation bills it is uniformly the practice for some gentleman to rise and reserve points of

formly the practice for the gradient of the gradient of the gradient them.

Mr. BALLOU. I think it might be done by unanimous consent in a matter of such importance as this.

The SPEAKER. The Chair will ask for unanimous consent. Is

The SPEAKER. The Chair will ask for unanimous consent. Is there objection?

Mr. ATKINS. Objection to what? I think I may be pardoned for asking the question because there is so much confusion that we in this part of the Hall do not know what is going on.

Mr. BALLOU. The proposition is to refer the resolution to the Committee on Appropriations.

The SPEAKER. The gentleman from Rhode Island now qualifies his motion. He moves to refer the resolution to the Committee on Appropriations.

his motion. He moves to refer the resolution to the Committee on Appropriations.

Mr. WALLING. There is no objection to that.

The SPEAKER. There being no objection, the resolution is referred to the Committee on Appropriations.

Mr. BALLOU. On reflection, it seems to me that this resolution should pass and then be referred to the Committee on Appropriations. It leaves it to their discretion to fix the amount we will pay for the

property.

The SPEAKER. The Chair misunderstood the gentleman from Rhode Island. The Chair supposed that he simply desired to have the resolution referred.

Mr. BALLOU. The resolution should be passed, and then referred to the Committee on Appropriations to fix the amount to be appropriated for this name of the committee.

priated for this purpose.

Mr. CLYMER. I object to the consideration of the resolution.

The SPEAKER. In view of the statement of the gentleman from Rhode Island, [Mr. Ballou,] the Chair now asks unanimous consent for the consideration of the resolution.

Mr. CLYMER. I object, though I have no objection to its reference to the committee.

The SPEAKER. Objection being made, the resolution is not be-

fore the House.

## REPORT ON LABOR, ETC.

Mr. SINGLETON, from the Committee on Printing, reported back, with a recommendation that it do not pass, a resolution to print 600 copies of the report on labor, &c.; and the same was laid on the table.

### MEDICAL AND SURGICAL HISTORY OF THE WAR.

Mr. SINGLETON also, from the same committee, reported back, with a recommendation that it do not pass, the bill (H. R. No. 3535) to authorize and require the Secretary of the Interior to supply at cost the Medical and Surgical History of the War; and the same was laid on the table, and the report ordered to be printed.

#### BOUNTY LANDS.

Mr. BAKER, of Indiana. I ask unanimous consent to introduce for Mr. BAKER, of Indiana. I ask unanimous consent to introduce for reference the petition of 290 officers and soldiers of the thirteenth congressional district of Indiana, asking a grant to each honorably discharged officer and soldier of one hundred and sixty acres of the public lands now subject to entry. I desire further to ask that the petition without the signatures, it being very brief, may be printed in the RECORD and referred to the Committee on Military Affairs.

The petion to refer was greed to

The motion to refer was agreed to.

No objection was made to printing the petition in the RECORD. The petition is as follows:

To the House of Representatives of the Forty-fourth Congress :

HONGRABLE SIRS: The undersigned soldiers, residing in the district of Indiana, respectfully ask you, at as early date as possible, to pass a bill granting to each soldier, or to his heirs if he be dead, a warrant for one hundred and sixty acres of any lands subject to entry on each honorable discharge which he or his heirs may hold from the service of the United States during the late war. Your early and favorably action in the premises will command our confidence and our hearty thanks.

### HOT SPRINGS RESERVATION.

Mr. GAUSE. I ask unanimous consent to report back from the Committee on Public Lands and ask the passage of the bill (H. R. No. 4312) authorizing the sale and disposition of the Hot Springs reservation in the State of Arkansas, and for other purposes.

Mr. HURLBUT. I object.

#### ADMISSIONS TO THE CAPITOL.

Mr. LORD, by unanimous consent, submitted the following concurrent resolution; which was referred to the Committee on Rules:

Resolved by the House of Representatives, (the Senate concurring,) That so much of the concurrent resolution of the 31st ultime as prevents any person from being admitted to the south wing of the Capitol extension be, and the same is hereby, repealed, and that the tickets therein referred to be required only at the doors of the gallery.

#### ELEANOR N. MEEDS.

Mr. ROBBINS, of North Carolina, from the Committee of Claims, reported a bill (H. R. No. 4563) for the relief of Eleanor N. Meeds, widow of Benjamin N. Meeds, deceased, of Washington, District of Columbia; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and with the accompanying report ordered to be printed.

ROBERT L. M'CONNAUGH.

Mr. ROBBINS, of North Carolina, also, from the Committee of Claims, reported a bill (H. R. No. 4564) for the relief of Robert L. Mc-Connaugh; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and with the accompanying report ordered to be printed.

#### MONUMENT TO THE VICTIMS OF THE PRISON-SHIPS.

Mr. BLISS. I ask unanimous consent to present a memorial from prominent citizens of the city of Brooklyn, New York, praying for congressional aid in erecting a proper monument at Fort Greene, Brooklyn, New York, over the remains of the victims to British cruelty on board of the prison-ships in the harbor of New York during the revolutionary war. I ask that the memorial be referred to the Committee on Military Affairs and printed in the RECORD.

There was no objection, and it was so ordered.

The memorial is as follows:

To the honorable the Senate and House of Representatives in Congress:

The memorial is as follows:

To the honorable the Senate and House of Representatives in Congress:

The memorial of the undersigned, a committee appointed at a meeting of the citizens of Brocklyn on the 4th of July, 1576, for the purpose of taking measures to secure an appropriate monument over the remains of the victims of British cruelty on board the prison-ships in the harbor of New York during the revolutionary war, respectfully represents:

That the subject of a national memento of the services and patriotism of those citizens of America who perished in the prison-ships at the Wallabout has been repeatedly brought to the attention of Congress and the country. In 1803, and again in 1845, it was presented to the House of Representatives, but on both occasions it failed to secure a vote owning to circumstances in no way due to a want of merit in the application but on the latter occasion to a want of time. In 1808 a popular movement was started for the purpose, and, t. rough the instrumentality of the Tammany Society, of New York, a vault, intended to be surmounted by a monment, was erected near the navy-yard in this city for the reception of the bones of the martyrs, which, slightly buried, had began to be exposed to public view by the washing of the title and other causes, and the bones were with great demonstration and public display placed therein; but with that effort the matter subsided and no monument was raised. Many years later by the pione secretions of an old soldier, Benjamin Romaines Ily improvement of the adjoining grounds; but that structure, left mattended to, decaved, and the vault thus supprotected became again exposed in the midst of a crowded population to ignorant and thoughtless desceration, when at length the authorities of Brooklyn, in June, 1573, caused the remains to be removed to a neighboring spot on the beautiful slopes of Fort Greene appropriated and maintained as a public park and overlooking the waters of the bay, the scene of so much horror and suffering and where so many live

We appeal, in the name of the citizens of Brooklyn, but on behalf of our countrymen everywhere, to the justice and not merely the generosity of Congress. This is a debt imposed upon the Union by the Confederation. It is perhaps the only one of its kind, and as it is without a parallel so it will not be a precedent. It was not discharged in 1803, simply for the reason that the bill was then united with others for individual monuments, the expediency of which was doubted at that time and the necessity of which now no longer exists.

The victims are entitled to burial at the cost of the nation as much so as they were to their support when in service. In expense, the erection of an imposing monument to all of them in common would hardly exceed that of a decent headstone to each in particular. On the other hand, the shaft which would be raised would redound one-hundred-fold to the benefit of the Republic in the incentive it would offer for the present and future generations to patriotism and public virtue.

Your memorialists, therefore, pray that an appropriation of a sum not less than \$50.000 be made out of the public Treasury for the purpose here proposed.

Frederick A. Schroeder, chairman; S. B. CHITTENDEN, Hon. C. Murphy, John R. Kennaday, J. Y. Cuyler, John F. Henry, Alonzo Slote, George L. Fox. J. J. Van Nostrand, Henry W. Slocum, Thomas S. Dakin, James McLeer, Charles Schurig, E. C. Parkinson, J. S. F. Stranahan, S. L. Woodford, John C. Jacobs, F. B. Fisher, Silas B. Dutcher, A. J. Perry, T. H. Rodman, Daniel Maujer, John B. Woodward, James Jourdan, R. C. Ward, James Tanner, committee.

#### LEAVE TO PRINT.

Mr. WARD. I ask unanimous consent to have printed in the Record, as a part of the debates of the House, some remarks which I have prepared upon the coinage features in the legislative appropriation, &c., bill.

There was no objection, and the leave was granted.

### ORDER OF BUSINESS.

Mr. HOLMAN. I now insist upon my motion that the Honse resolve itself into Committee of the Whole on the state of the Union for the purpose of considering the legislative, &c., appropriation bill.

Mr. BRIGHT. Pending the motion of the gentleman from Indiana I move that the House resolve itself into Committee of the Whole on the Private Calendar.

The SPEAKER. The motion of the gentleman from Tennessee will be in order after the morning hour; the motion of the gentleman from Indiana is in order either before or after the morning hour.

Mr. BRIGHT. I will withdraw my motion then until after the

Mr. BRIGHT. I will withdraw my motion then until after the morning hour and will then renew it.

#### TAXES ON BANKING CAPITAL.

Mr. WOOD, of New York, by unanimous consent, introduced a bill (H. R. No. 4565) to repeal all taxes on banking capital and deposits; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

### THE DIGEST.

Mr. HOSKINS, from the Committee of Accounts, reported back, with a recommendation that it do pass, the following resolution; which was read, considered, and agreed to:

Resolved, That there be paid out of the contingent fund of the House such sum as may be necessary to complete the compilation of questions of order decided in the House of Representatives, ordered by the House on the 15th of August last, subject to the approval of the Committee of Accounts.

Mr. HOSKINS moved to reconsider the vote by which the resolution was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## ORDER OF BUSINESS.

Mr. HOLMAN. I call for the regular order.
Mr. BRIGHT. I rise to make a parliamentary inquiry.
The SPEAKER. The gentleman will state it.
Mr. BRIGHT. I wish to know what time the morning hour will

expire.

The SPEAKER. It will expire at the end of sixty minutes after it has been entered upon.

Mr. BRIGHT. I suppose it is understood that there is to be a morn-

ing hour.

The SPEAKER. Not necessarily.

Mr. BRIGHT. At the end of the hour I shall renew the motion to go into Committee of the Whole on the Private Calendar.

The SPEAKER. The Chair desires to make himself understood. The motion of the gentleman from Tennessee [Mr. BRIGHT] is in order at any time after the morning hour on Friday, but the motion of the gentleman from Indiana [Mr. HOLMAN] is in order before the morning hour; and therefore under the rule the Chair is compelled to recognize the gentleman from Indiana to submit his motion and to recognize the gentleman from Indiana to submit his motion and test the sense of the House upon it.

Mr. BRIGHT. I desire to make another parliamentary inquiry.

The SPEAKER. The Chair will hear the gentleman.

Mr. BRIGHT. Does the gentleman from Indiana [Mr. HOLMAN]

propose to go into Committee of the Whole pending the morning hour and as part of the morning hour?

Mr. HOLMAN. No; before the morning hour, of course.

Mr. BRIGHT. I will then call for the regular order, the morning

The SPEAKER. The Chair will read from the Manual upon this

A motion to go into Committee of the Whole House on the state of the Union may be entertained on private-bill day, but the motion to go into a Committee of the Whole House takes precedence. [unless according to the general, although not universal, practice, a special order is pending in the former.]

miversal, practice, a special order is pending in the former.]

Mr. BRIGHT. I call for the regular order, the morning hour.

The SPEAKER. The regular order is the motion of the gentleman from Indiana [Mr. HOLMAN] that the House resolve itself into Committee of the Whole for the purpose of proceeding to the consideration of the legislative, executive, and judicial appropriation bill.

Mr. BRIGHT. I called for the regular order, which I understand is the morning hour.

The SPEAKER. The regular order is the motion of the gentleman from Indiana, which motion may be made at any time.

Mr. BRIGHT. Is it not proper during the pendency of that motion.

Mr. BRIGHT. Is it not proper during the pendency of that motion to call for the morning hour?

The SPEAKER. The remedy for the gentleman from Tennessee [Mr.

BRIGHT] is very plain. If the House concur with him they will vote down the motion of the gentleman from Indiana, and thus bring about a morning hour; if the House do not concur with him, they will support the motion of the gentleman from Indiana and go on with

support the motion of the gentleman from Indiana and go on with the appropriation bill.

Mr. WILSON, of Iowa. Has the Chair held that this is Friday?

The SPEAKER. The Chair has not committed himself on that point. Even if he did hold that this was Friday, the motion of the gentleman from Tennessee [Mr. BRIGHT] would not be in order until after the morning hour; while the motion of the gentleman from Indiana [Mr. Holman] would be in order at any time. If to-day be the legislative day of Thursday, then the gentleman from Tennessee is not at all in order in moving to go into Committee of the Whole on the Private Calendar.

messee is not at all in order in moving to go into Committee of the Whole on the Private Calendar.

Mr. O'BRIEN. We have already had one morning hour to-day; that is, we had it yesterday, which is a part of to-day or to-day is a part of yesterday. [Laughter.]

The SPEAKER. If this is still Thursday, then the gentleman from Tennessee would not reach his object, because the Private Calendar and private bills are not in order on Thursday.

The question was then taken upon the motion of Mr. HOLMAN; and upon a division there were—ayes 105, noes 40.

Before the result of the vote was announced, Mr. WELLS, of Mississippi, called for tellers. Tellers were not ordered, there being 5 in the affirmative, not one-

fifth of a quorum.

So the motion of Mr. Holman was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, Mr. REAGAN in the chair.

The CHAIRMAN. The Clerk will report the title of the bill to be considered by the Committee of the Whole.

#### LEGISLATIVE, ETC., APPROPRIATION BILL.

The title of the bill was read, as follows: "A bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for

other purposes."

Mr. HOLMAN. I ask unanimous consent that the first and formal reading of the bill be dispensed with.

There was no objection.

The CHAIRMAN. The Clerk will now proceed to read the bill by paragraphs for amendment.

The Clerk read the following:

For compensation of Senators, \$342,000; and from and after the 30th of June next the compensation of said Senators shall be \$4,500.

Mr. FOSTER. I move to strike out the last clause of the paragraph

Mr. FOSTER. I move to strike out the last clause of the paragraph just read, being the words "and from and after the 30th of June next the compensation of said Senators shall be \$4,500 per annum."

For one I regret exceedingly that the Committee on Appropriations should have seen fit to re-open the dicussion upon the question of salaries. If there was any one thing definitely settled last year it was this question of salaries.

I do not propose at this time to discuss the question whether \$5,000 a year or \$4,500 a year is too much or too little to pay a member of Congress. I have only to say upon general principles that I have been so intimately associated for the past two years with the gentleman from Indiana, [Mr. HOLMAN,] the chairman of the Committee on Appropriations, that I am led to believe that possibly that salary is

But I deprecate the discussion of this question at this time. It was settled in the committee of conference at the last session to the satisfaction, I believe, of both bodies. All this House can expect now is to be coerced, if I may say so, into accepting in the end \$5,000 a year each. We put ourselves into the humiliating attitude of desiring to be forced into accepting our present salaries. That is where we will land; that is where every member on this floor expects to land. I say let us act like men and stand up to what we expect the action of Concress to be, and fix the salary as now fixed by law, where the

of Congress to be, and fix the salary as now fixed by law, where the conference committee of the last session fixed it, and in accordance with the action of Congress of last session.

The question being taken on agreeing to the amendment of Mr.

FOSTER, there were—ayes 120, noes 24.

Mr. HOLMAN. There is no quorum voting, I believe. I call for tellers, this proposition is so extraordinary and the vote so unex-

Mr. HALE.

Mr. HALE. Was there not a quorum voting?

Mr. HOLMAN. I call for tellers; this action is so extraordinary.

Mr. HALE. I hope the gentleman will not impede the progress of the bill by calling for tellers after so decisive a vote.

Mr. HOLMAN. I know that we can have a vote on this question

in the House.

Mr. HALE. We want to get the bill through. Mr. FOSTER. I hope the gentleman from Indiana will not make Mr. BAKER, of Indiana. I trust the gentleman will insist on the

call for tellers.

Tellers were ordered; and Mr. Holman and Mr. Foster were appointed.

The committee divided; and the tellers reported—ayes 133, noes 31. So the amendment of Mr. FOSTER was adopted.

Mr. HOLMAN. I shall be content to take a vote on this question in the House

Mr. FOSTER. In view of the amendment just adopted, I suggest that the sum fixed in the bill as the gross appropriation for compensation of Senators, \$342,000, be increased to \$350,000, so as to conform to the vote just taken.

Mr. HOLMAN. Of course the gentleman from Ohio is correct in

this motion if the House should confirm the extraordinary vote just taken. I use very mild terms when I say an extraordinary vote. Less than a year ago the House almost with unanimity held that \$4.500 was a reasonable salary, and the gentleman from Ohio then went so far as to say to the House that the salary which he had been paid at the close of the war and during the war, when the cost of living was greatly above what it is now, was a sufficient salary. At that time I heard no gentleman advocate a salary above \$3,000 or \$3,600. That was prior to the time when the country was to determine who should occupy these seats for the coming Congress. That election is over, and now the House, if it shall confirm the vote just taken in Committee of the Whole, goes back directly upon that record and proposes to continue this salary at \$5,000 a year, which was fixed at a time when the expense of living in this city was almost twice what it is now. At the same time when the salaries of clerks who have received \$1,200 a year and upward are being reduced at the rate of 10,15, or 20 per cent., this House, if the action just taken is to be deemed an indication of what the House will deliberately do, proposes to make no further effort to reduce its own pay below \$5,000 per annum.

In 1865, when the cost of living in this capital was twice what it is to-day, a proposition to increase these salaries would have met, I think, with universal reprobation. In 1866, the measure increasing the pay to \$5,000 a year was carried through in a very extraordinary manner; and the reason urged for it was that by reason of the inclose of the war and during the war, when the cost of living was

manner; and the reason urged for it was that by reason of the inflation of our currency \$5,000 was practically not much greater than \$3,000 had been at the commencement of the war and a few years preceding that time. And now, when the cost of living is largely decreased; when the value of the money in which members are paid is largely appreciated; when the volume of currency is heavily diminished; when every member sees that it is proper and fair and just to reduce the salaries of all the employés of the Government below the grade of heads of deposition that the cost of the cost of the salaries of all the employés of the Government below the grade of heads of departments, whose salaries are only \$8,000 though they are employed during the whole year; when almost every salary of the Government is being reduced, we are to be placed in

the position of refusing to reduce our own.

Mr. Chairman, the gentleman from Ohio states that the House only wants to be forced to abandon this amendment. I must say to him that in this remark he speaks for himself; he convicts no other party of that frailty; by his own words he convicts himself of having been of that frailty; by his own words he convicts himself of having been anxions at the last session of Congress to be forced to retain the salary of \$5,000 a year. I repeat, the gentleman from Ohio can only speak for himself in this matter. The House, so far as I was able to learn and according to my sincere belief, made an honest persistence last session in the effort to reduce the high salary of \$5,000 a year when all other salaries were being reduced; for it was an unseemly thing that the legislators of the people should themselves insist upon the high salaries of the period of war and inflation, while insisting more reducing the salaries of subordinate employes of the Governupon reducing the salaries of subordinate employés of the Govern-

upon reducing the salaries of subordinate employes of the Government on the ground that the cost of living had been greatly reduced, [Here the hammer fell.]

Mr. WADDELL. Mr. Chairman—

Mr. HOLMAN. I have not finished my remarks. The five-minute rule is not prevailing. General debate was not cut off on this bill.

Mr. RUSK. Then we had better get out of Committee of the Whole in order to cut it off.

Mr. HOLMAN. It was well understood that no general debate

would take place upon this bill—

The CHAIRMAN. The understanding of the Chair is that when in Committee of the Whole upon this bill no special order is necessary to limit the debate upon amendments to five minutes.

Mr. FOSTER. I hope the gentleman from Indiana will not insist upon general debate now. To avoid that I am willing to yield him any time I may have remaining.

Mr. HOLMAN. I am perfectly willing it should be unanimously understood that the five-minute rule is prevailing.

Mr. HALE. I think the committee understood when the reading of the hill began that we were proceeding under the five-minute.

of the bill began that we were proceeding under the five-minute

Mr. FOSTER. Certainly.
Mr. HOLMAN. The reason why I did not move all general debate should be cut off on this legislative appropriation bill was to have the opportunity to speak in reference to this matter at length in

the opportunity to speak in reference to this matter at length in case it should arise.

The CHAIRMAN. If there is any doubt on this point the Chair will submit it to the House.

Mr. HOLMAN. If there is no objection, I certainly do not object to closing the general debate and having the further consideration of the bill proceed under the five-minute rule.

Mr. HALE. Would not the gentleman having charge of the bill prefer that course? Will he not see the difficulty we will get in, if general debate he not closed when we are proceeding to consider the general debate be not closed when we are proceeding to consider the bill paragraph by paragraph and item by item.

Mr. HOLMAN. I do not presume that this motion would be made.

I did not know that it would be made or else I would have seen the reason why the gentleman from Ohio [Mr. FOSTER] would require more than five minutes of time to show why this extraordinary motion was made.

Mr. FOSTER. I did not take quite five minutes to convince the

House I was right.

Mr. HOLMAN. I did suppose there might be some general debate on this bill, on this subject, and therefore did not make the motion to cut off the general debate and to leave the bill proceed under the operation of the five-minute rule.

Mr. CONGER. I call for the regular order of business and the en-

The CHAIRMAN. Unanimous consent is asked that the Committee of the Whole on the state of the Union shall proceed with the consideration of this bill under the five-minute rule, all general debate

There was no objection, and it was ordered accordingly.

Mr. WADDELL. Now have the five minutes of the gentleman from

The CHAIRMAN. The time of the gentleman from Indiana has expired and the Chair has recognized the gentleman from North Caro-

Mr. WADDELL. Mr. Chairman, I had no idea of saying a word on

Mr. WADDELL. Mr. Chairman, I had no idea of saying a word on this subject until a moment ago, but I have sat here now for six years "under the drippings of the sanctuary" of the gentleman from Indiiana until I have got an overdose of it. [Langhter.]

The gentleman alluded to the last election, and what the people intended by it. He will recollect the Forty-third Congress kept these salaries at \$5,000 a year, and perhaps the gentleman will also recollect one of the results of the election was that he will not occupy a seat upon this floor in the next Congress.

Mr. FORT. That is too hard.

Mr. WADDELL. Now, sir, I for one think, and have always voted in that direction, that the services of a member of Congress are worth \$5,000 a year when he quits all other business at home and comes here to give them to the country, or they are worth nothing. Perhaps mine are not worth anything in the estimation of the gentleman from Indiana, but I think they are worth that or they are worth bing. I am tired almost to death, and I say so with respect to the gentleman, of this two-cent economy, and I wish never again to see on this floor any attempt made to cut down the salaries of the servants of the people.

I am one of those who believe the true policy is to reduce the force of the public service to the lowest number, and to keep their salaries up to the highest figure consistent with the character and importance

of the duties devolved upon them.

Several Members. And that is right.

Mr. WADDELL. I believe that is true economy and true statesmanship, if it is not ridiculous to use that word in these days.

But, Mr. Chairman, I simply got up to utter my protest and express my disgust at these repeated attempts to chop down everybody's salary on a false idea of economy. And that is all I have to say.

The CHAIRMAN. The Chair would request the gentleman from Ohio to state exactly the motion he makes.

Mr. FOSTER. My motion is to strike out, in line ten, "\$342,000" and in lieu thereof to insert "\$380,000;" so it will read: "For compensation of Senators, \$380,000; and from and after the 30th of June next the compensation of said Senators shall be \$5,000 per annum." This amendment necessarily follows the other.

Now, Mr. Chairman, I am not surprised at the chagrin of the chairman of the Committee on Appropriations. If it were proper to refer to what has transpired in committee I might show I warned the gentleman himself against further trifling with this question in this House; that we were bringing ourselves thereby into ridicule, and he could not bring his democratic friends up to sustain him on a prop-

osition of this kind.

If there ever was anything settled in this House it certainly was this salary question at the last session of Congress. But the gentle-man says his side of the House made resistance. Let me call you man says his side of the House made resistance. Let me call you back, Mr. Chairman, to that scene when this House yielded to the demands of the Senate. You could not get the yeas and nays. The chairman of the Committee on Appropriations refused to rise to demand the yeas and nays, the chairman of the great Committee of Ways and Means refused to vote for the yeas and nays, and the gentleman from New York [Mr. Cox] refused to rise for the yeas and nays on that celebrated occasion. You could not get twenty-two democrats to rise for the yeas and nays on that question to aid the few on this side of the House. It tell you if there ever was niesne few on this side of the House. I tell you, if there ever was an issue in this world settled or if there ever was a body of men who allowed themselves with delight to be forced into the adoption of a proposition, it was this House on the question of retaining their salaries at \$5,000 a year.

The gentleman from Indiana tries to involve me in inconsistency The gentleman from Indiana tries to involve me in inconsistency because I moved to reduce the salary of members to \$2,700 a year. I did so upon the ground that, if we undertook to reduce by 10 per cent. the pay of clerks that was fixed in 1854, when our salaries were \$3,000 a year, to be consistent—and I desire to preserve the consistency of this democratic House—we should make our salaries \$2,700 a year. I am not here now to discuss the question as to whether \$5,000 is too much or too little. I say that question is settled and I told the gentleman from Indiana that it was settled and that he would find

himself leading a very small minority of this House upon that question. That has turned out to be true and I am not surprised at the gentleman's chagrin and disappointment on failing to lead this House on this important question.

Mr. BLOUNT obtained the floor, and yielded his time to Mr. Hol-

Mr. HOLMAN. I am much obliged to the gentleman from Georgia. The gentleman from North Carolina [Mr. WADDELL] should not The gentleman from North Carolina [Mr. WADDELL] should not have published to the House that he was quite indifferent to the taxation of the people of this country and to the drains upon the public Treasury. I am not aware of any instance during the six years that he has been a member of the House in which he has ever exhibited the slightest solicitude to relieve the toiling millions of this country from the several hardons of taxation investors are the several hardons of taxation investors. from the severe burdens of taxation imposed upon them. On the contrary, he has always been eager that whoever desired it might be permitted to make a successful grab at the public Treasury. The gentleman need not have paraded the fact of his indifference to the public interest. It is well known. I cannot, however, but think of the contrast there is between the gentleman and the great men I have seen from North Carolina in other days. The gentleman says that my constituency does not sustain my course in endeavoring to retrench the expenditures of this Government. When the gentleman shall have been in this House for even half the period I have been here he may begin to talk about the judgment of the people. When he has possessed the confidence of a constituency as long as I have done—and which confidence I have the honor to state that I still pos--he will have some occasion to criticise my conduct. But a young man who comes into this House and announces at the very outset that he is tired and ashamed of the attempt at reform and retrench-

Mr. WADDELL. I said no such thing. The gentleman has no right to misrepresent me in that way, and he knows that he misrep-

resents me when he says it.

The CHAIRMAN. The gentleman from Indiana is entitled to the

Mr. HOLMAN. He was disgusted. It was disgust.
Mr. WADDELL. It was and is.
Mr. HOLMAN. I think his constituents will feel a profounder disgust for the gentleman than he has expressed here, if the spirit which

gust for the gentleman than he has expressed here, if the spirit which animated them, even twenty years ago, still animates them in their desire to reduce the burdens upon labor and to retrench the overgrown and profligate expenses of this Government.

I did not expect that the gentleman from Ohio [Mr. Fosten] could forego an opportunity of making his usual fling at reasonable retrenchment in the Government. That is the drift of the gentleman's trenchment in the Government. That is the drift of the gentleman's mind. He believes in an expensive government and handsomely salaried officers. But that the statement should come from this side of the House that economy produced a sentiment of disgust was something I was hardly prepared for. If this House refuses to stand by an effort, an honest and fair effort to reduce its own salaries and can at the same time consistently with its own manhood consent to the reduction of the salaries of other employes of the Government, then it must be admitted that the salary paid to members of Congress is higher, considering the period of time occupied in the discharge of their public duties, than the salaries paid to any other employés of this Government, except it may be the persons employed in subordinate positions in the two ends of the Capitol.

No, sir; I believe and I said to my democratic friends everywhere, and to my republican friends everywhere, that the democratic party as a whole was a party which believed that, to secure purity in the Government and to banish venality from its councils, low salaries and severe economy were absolutely necessary. And yet every man knows, Mr. Chairman, that there will be no severe economy in the administration of this Government if the gentlemen who make the laws insist upon salaries for themselves beyond a fair and reasonable compensation for the time complexed.

tion for the time employed.

[Here the hammer fell.]
Mr. WADDELL. I move to strike out the last word.
Mr. Chairman, the gentleman from Indiana has been pleased to allude to the length of service respectively of himself and myself. All I have to say on that point is this: That the gentleman has served long enough to fatigue his constituents, who have chosen his successor, whereas I was elected last November for the fourth time, as I have

been elected every time to Congress, by a majority nearly double my previous majority. That shows the estimation in which our respective constituencies hold us.

The gentleman was pleased to say, also, that I had expressed myself as opposed to retrenehment and reform. I am a very plain-spoken man, and I told the gentleman promptly that he misrepresented me man, and I told the gentleman promptly that he misrepresented me in saying that and knew he misrepresented me when he said it. I repeat it, and have no apologies to make for what I said and no excuses for it, one way or another. I believe the people of this country do want certain reforms. I do believe they want (to use an expression peculiar to one portion of the country) to "run" this Government on as economical principles as possible; but the American people are not a mean people, and they do not wish the gentleman from Indiana to serve them, if they wish him to serve them at all, at a less compensation than his services are worth, nor do my constituents wish me to do the like. They elected us at the last election upon our votes in the Forty-third and Forty-fourth Congresses on the salary bill that our services were worth \$5.000 a year. services were worth \$5,000 a year.

Now, sir, I was suddenly and unwillingly dragged into this debate because I could not repress the indignation I felt at hearing the gentle-man from Indiana, with his long and distinguished service in this House, man from Indiana, with his long and distinguished service in this House, again get up, as he has done at every session heretofore since I have been here, and attempt to induce the House to adopt what I call "two-cent economy." The people do not want it. We might as well speak plainly about this thing. The people want, I repeat, to run this Government on economical principles, and they want reform in certain cases. But they do not want anybody here who leaves his profession to come here and serve for what is less than an adequate salary. And let me say, as a Representative from one section of this country, that if the salaries are cut down—I will not say to \$4,500, for if the gentleman were here next session he would move to cut it down to \$4,000, and then to \$3,500, and then to \$3,000, and so on—but if this cutting-down process is continued, people from my section of the country could not afford to come to Congress, for as a general rule we have no income outside of the salary, and those who come here have to give up their profession and business at home, whereby they make an honest living.

That is all I have to say. I have said it unexpectedly. I heard the remarks of the gentleman from Indiana and almost involuntarily took the floor and made the few observations which I have submitted.

Mr. HOLMAN. This "two-cent economy," to which the gentleman has referred, reduced the expenses of the Government, for the cursor con constant and all the control of has referred, reduced the expenses of the Government, for the current year, \$25,000,000, a sum almost one-half as large as the entire expense of this Government twenty-five years ago. And it was the pride and boast of this side of the House, as every gentleman on this side of the House whom I look in the face knows, that during the campaign of last summer before the masses, before the men who possess the power to determine who shall fill this Hall, it was the pride and boast of these gentlemen and myself that we, by this "two-cent economy" which the gentlemen has referred to and which so disgusted him, had reduced the burdens of the people \$25,000,000. Yet it is from this side of the House that the humiliating confession comes that that was false pretense. I think I speak for every honorable gen-tleman here when I repel that insinuation. It was not a false at-tempt at economy. It was an honest attempt at retrenchment, and I think this side of the House will to-day vindicate themselves from the charge of acting in bad faith before the country during the past

the charge of acting in bad faith before the country during the past important political campaign.

The gentleman makes the boast that he comes here by an overwhelming majority from a democratic district. If he would remain in his seat and honor me by listening to me I should tell him that, when he has come here to Congress after Congress representing a republican district, as I have had the honor to do, he will then find whether the people favor this "two-cent economy" or not. He will learn that fact when he shall have represented three or four districts always largely republican as I have had the honor to do. Then he always largely republican, as I have had the honor to do. Then he may come here and pride himself upon being disgusted with "two-cent economy," the "two-cent economy" which gave this House a democratic majority in the next House and which alone gave it that ma-

jority.

Mr. Chairman, but a word further. I trust the gentlemen of the committee will not consent to reduce all other salaries under the Government, the salaries of the twelve-hundred-dollar clerks, the fourteen-hundred-dollar clerks, the sixteen-hundred-dollar clerks, and the eighteen-hundred-dollar clerks, and also the salaries of the ladies employed in the Treasury, who are supporting their little children, and keep them at the present reduced standard, and yet to refuse to reduce our own salaries.

Mr. FOSTER. What salary has been reduced? I know of none. Mr. HOLMAN. The gentleman is mistaken, none of these ladies get more than \$1,000.

Mr. FOSTER, Give me a square answer Say what salary was re-

duced? I know of no salary that has been reduced.

Mr. HOLMAN. Salaries were reduced by the change of the classification of the clerks, those of one class being changed into another class, and in that way there was a reduction.

Mr. KELLEY. I move to strike out the last two words, and I do

it for the purpose of rejoining briefly to the gentleman from Indiana, who in the course of his several speeches has spoken of the economy that characterized the democratic party in past days and to the reduction of expenses by this Congress at its last session. He says they reduced the expenses of the Government \$25,000,000 last session. When, in the course of the last campaign, I had the honor of addressing some of the gentleman's constituents, I charged, and I believe I charged truly, that this Congress had been to the American people the most expensive that had ever assembled, and that its economies

the most expensive that had ever assembled, and that its economies were wastefully extravagant. What did it do? We are paying rent in every important city for a great number of offices. In Chicago alone I think we are paying for offices from \$37,000 to \$45,000 a year.

Mr. CAULFIELD More than that; \$70,000, I think.

Mr. KELLEY. We are paying \$70,000 a year in Chicago, although we have there a building nearly completed and which if completed would save us that amount of rent. We have expended nearly \$4,000,000 on that building, and true economy required that we should finish it at the earliest day. But this Congress, under the lead of the gentleman from Indiana, [Mr. HOLMAN,] withheld the necessary appropriation, and we are still paying \$70,000 a year rent and losing the interest on the \$4,000,000 invested.

And the same thing is true in regard to my city of Philadelphia, where \$3,000,000 has been expended upon a public building. The stone is bought, cut, and fitted for the building; the place to receive it has been prepared, and yet we pay for rents of offices in that city something like \$45,000 a year, because the appropriation which was made is so pitiable that as yet the stone is not laid above the ground. And

is so pitiable that as yet the stone is not laid above the ground. And so all over the country.

Mr. BLOUNT. I would like to ask the gentleman a question.

Mr. KELLEY. Not now; I have but five minutes. We could make many small appropriations for the improvement of rivers and harbors, but we made them so bunglingly that the President has withheld one-half of the amount appropriated. We still owe for the public buildings which we have partially constructed; we still owe for the improvements that have been commenced upon our rivers and

lie buildings which we have partially constructed; we still owe for the improvements that have been commenced upon our rivers and harbors. The debt does not appear in our debt statement, but the work will be completed some day, and the heaped-up amount of interest must be paid by the tax-paying people of this country.

Again, on this subject of economy, you could not give \$2,000,000 in one year to complete our public buildings which are needed so much, but you could pledge the country to pay \$2,500,000 of coin interest for purchasing material out of which to make a subsidiary currency, while you were having that currency provided at an actual cost of but \$1,400,000 a year. You authorized the purchase of \$50,000,000 of silver bullion, to be paid for in coin bonds at 5 per cent., making an annual interest through all time of \$2,500,000 of coin for the mere material out of which to manufacture at great expense a substitute for fracout of which to manufacture at great expense a substitute for frac-

out of which to manufacture at great expense a substitute for fractional currency which was costing us but \$1,400,000 a year.

Look over the whole of your economic legislation, and you will find that it is a blow at labor, at the productive interests of the country. What is a public building \$\frac{1}{2}\$ As I said to the constituents of the gentleman, it is 95 per cent. of labor and 5 per cent. of capital.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. TOWNSEND, of Pennsylvania. This question of salaries has been before the House repeatedly within the last three or four years, and offers have been continually made to out them down. It is true

and efforts have been continually made to cut them down. It is true the House has kept the salary of its members up to \$5,000 a year each, and I have yet to learn of any gentleman having displeased his constituents because he voted for a salary of \$5,000 a year. Any man who is fit to come here and participate in the debates and legislation of Congress is truly worth that amount, and his constituents have ratified our action in that respect.

But the economy of the democratic party for the last year or two is beyond all doubt precisely what my colleague from Philadelphia [Mr. Kelley] has said, a wasteful economy. There are two kinds of economy, a sound economy and a false economy. The economy that has been pursued for the last two years under the lead of the gentleman from Indiana [Mr. Holman] has been a false economy. It has crippled the service of the Government in every direction. It has crippled it in the Land Office, in the Patent Office, in the Surgeon-General's Office, and in the Pension Office. To-day there are applying to the Surgeon-General's Office thousands of men, wounded soldiers, who are entitled to commutation for artificial limbs in place of diers, who are entitled to commutation for artificial limbs in place of legs and arms lost in the late war. They have been denied it in consequence of the miserable appropriation made last year, which was cut down under the lead of the gentleman from Indiana. If I am not mistaken, there is a deficiency bill now before the House which will require the appropriation of something like two hundred or three hundred thousand dollars in order to make up the amount justly due to the goldiers. to the soldiers

Mr. ATKINS. Will the gentleman allow me to interrupt him a mo-

Mr. TOWNSEND, of Pennsylvania. Not now.

Mr. ATKINS. You ought not to make that statement.
Mr. TOWNSEND, of New York. You can correct him after he is through.

Mr. TOWNSEND, of Pennsylvania. You can correct me after I am through. In regard to the Patent Office it is the same thing. The appropriation for clerks has been cut down so far that patents cannot be issued as rapidly as they ought to be. In regard to the Land Office the number of clerks has been cut down so much that there are thousands and tens of thousands of settlers in the western country who are not able to get their patents for their lands.

Now this economy has in a measure reached the Pension Office. The force in the Pension Office has been cut down so low that there are, I think, some twelve hundred pension cases filed and awaiting examination because of the want of a sufficient clerical force to bring them forward.

Mr. TOWNSEND, of New York. The work in the Pension Office is

about two years behind.

Mr. TOWNSEND, of Pennsylvania. I am corrected and am told by a gentleman of the Committee on Pensions that there are eighty-four thousand pension cases behind in the Pension Office awaiting examination because of the want of sufficient clerical force. So it has been throughout all the Departments of the Government. Everywhere the cutting down of clerical force has retarded the operations of the Govcertaing down of ciercal force has retarded the operations of the Gov-ernment and prevented men who are entitled to have their cases ex-amined by one Department or another from having them examined. These cases are postponed from day to day, from month to month, from year to year. - I protest against this niggardly economy because I consider it ruinous to the public service and injurious to the best in-

[Here the hammer fell.]

Mr. KELLEY withdrew his pro forma amendment.

Mr. MacDOUGALL. I move to amend by striking out the last three words; and I yield my time to the gentleman from Pennsylvania, [Mr. Kelley.]

Mr. Kelley. I thank the gentleman from New York, [Mr. Mac-

DOUGALL, and gladly avail myself of his courtesy to continue my remarks. Having referred to the suspension of work on public buildremarks. Having referred to the suspension of work on public buildings and the improvement of rivers and harbors, I had remarked that the policy pursued by the present Congress in those matters, as in the case of the currency, was a blow at labor. A public building is 95 per cent. of labor and but 5 per cent. of capital; and in this terrible season of depression the expenditure of the ordinary sum for public buildings would have been a relief to tens of thousands if not hundreds of thousands of families.

hundreds of thousands of families.

I had asked what is a public building? The cellar is a mere matter of labor. The foundation is stone, without value save in the presence of a market. Labor extracts it, shapes it, lays it. The superstructure is material of a finer character, manufactured from the clay of yonder brick-field, handled by skilled labor and converted into enduring brick. Again, that superstructure is iron-ore and coal and limestone of little value save in the presence of a demand. Labor digs these, labor brings them to the furnace; labor watches them until the iron is made for the rafters and beams and ornaments, or until converted into steel for parts requiring strength and beauty. Public buildings and other public improvements are in the first instance timber upon the field, obstructing the progress of western settlement and civilization, and of little or no value until the woodman's ax hews them and labor transports them and transforms them into shapes of strength, utility, or beauty, to, be embodied in public into shapes of strength, utility, or beauty, to be embodied in public

works.

Thus, sir, in order to strike a blow at the depressed labor of the respective to the lead of the gentleman from Indiana, country this Congress, under the lead of the gentleman from Indiana, left us subject to all the rents we are paying for Government offices in cities where there are incomplete buildings; wasted the interest on the many millions already invested, and then went through the country to preach economy. Thank God the American people have

some intelligence!

The gentleman from Indiana assured the gentleman from North Carolina [Mr. WADDELL] that his economy had secured a majority in the next Congress. Ah, indeed! The democratic majority now is about equal to two-thirds of the House; in the next Congress it will be a questionable majority of two or four; and the gentleman will stand out in the cold to-look at it. His own constituents went be-hind his rhetorical phrases of economy, and looking at the consum-mate extravagance into which he had urged this House, voted accordingly. Sir, there is a pretended economy that is wasteful and there is a seeming extravagance that is economical and beneficent. Against is a seeming extravagance that is economical and benencent. Against the latter the gentleman has arrayed himself; and the people will hold him and his political associates chargeable as the most oppressive Congress to the laboring-people of the country that they have known in their day and generation.

The gentleman said that to lessen the expenses of the Government \$25,000,000 was to reduce them half the sum that was necessary to

carry on the Government at a time before the war when there was no Chicago, no San Francisco, and had been no rebellion.

[Here the hammer fell.] Mr. CARR. Mr. Chairman, while I favor this amendment, I still Mr. CARR. Mr. Chairman, while I favor this amendment, I still believe in retrenchment and reform; and I think I understand something about what the people mean by those terms. By the term retrenchment they mean that the wasteful expenditure of the public money shall be stopped, that the robbery of the public Treasury which has been going on for the last ten or fifteen years shall be ended; that no extraordinary appropriations shall be made for fancy jobs, such as letting large mail contracts upon straw bids and the like. What they mean by reform is that a better class of men shall be given in charge of our public affairs; that there shall be greater integrity.

What they mean by reform is that a better class of men shall be given in charge of our public affairs; that there shall be greater integrity and ability brought into requisition in governmental concerns.

But I have never understood retrenchment and reform to mean that those who are employed by the Government shall be starved, nor do I believe them to mean that the ordinary and necessary expenditures of the Government shall be cut down below a living figure. I believe it is a mistaken idea of retrenchment and reform to cut down the salaries of so high a grade of public servants as members of either House of Congress. I believe the people demand a higher order of brains, greater intellect and capacity, rather than a lower grade of salaries. I believe that the people will commend us if we now put into operation a law which will command in the future a higher order of intellect, greater and more comprehensive capacity for the disof intellect, greater and more comprehensive capacity for the dis-charge of public concerns, instead of allowing a mere pittance which

charge of public concerns, instead of allowing a mere pittance which will command at best but second or third rate men.

I do not expect to be a member of either House of Congress in the succeeding term, and therefore can speak on this subject without being charged with interest in it.

I say that \$5,000 a year is not too much for service of that kind which is rendered by members holding these positions. I say that men of sufficient capacity cannot afford to leave their professions at home or other luminess at a less any neal salary than this home or other business at a less annual salary than this

The people will not require of us any action of this kind or character. Five thousand dollars is as little as a man can afford to leave his home for, especially to come here; and the people understand this. While I dislike very much to differ with the able chairman of the Committee on Appropriations, and while I can commend his conduct and course through all the past in his efforts at retrenchment and reform, still I must think that committee has made a slight mistake in endeavoring to cut down the salaries of Senators and Representaives to \$4,500 a year.

Mr. McDOUGALL, by unanimous consent, withdrew his amend-

Mr. HOLMAN. I renew it.

Mr. Chairman, the gentleman from Pennsylvania [Mr. Kelley]
has made a somewhat remarkable speech. It seems to be gratifying

has made a somewhat remarkable speech. It seems to be gratifying to him that my constituency left me, to use his expression, "out in the cold." The gentleman has never represented a district that did not agree with him in political opinion, while I represent at this time the largest republican district in the State of Indiana.

Mr. CONGER. Let me ask the gentleman from Indiana a question.

Mr. HOLMAN. O, no; excuse me. It is not an exceedingly profitable subject for me to discuss, however courteous it may have been on the part of the gentleman from Pennsylvania to refer to it. I do not know it is yeary nunsual for men to be heaten in a political connot know it is very unusual for men to be beaten in a political contest where the political sentiment is strongly against them. But I never heard the gentleman from Pennsylvania ever represented a constituency which did not fully agree with him on all questions of

Mr. KELLEY. I have represented such a constituency.

Mr. HOLMAN. A nomination in such an instance is all that is required. The gentleman would be glad to have the people of this whole country suffer that vast sums of money might be spent in Phila-

delphia. We have already spent in that city on a palatial building far beyond the necessities of the public service a very large sum of money. I wish to refer to that for a moment.

money. I wish to refer to that for a moment.

Mr. KELLEY. I have already called attention to that.

Mr. HOLMAN. We have spent there in that city on a large palatial building, at the expense of the general industries of the country, \$3,350,000.

Mr. KELLEY. And now you are losing the interest on that large

Mr. HOLMAN. The gentleman makes efforts every Congress, year after year, to get very handsome sums appropriated to be expended under his eye. The country understands the spirit in which these vast appropriations are made. He will not expect to be left out in the cold so long as he has the public Treasury to go to, to pour into the lap of his constituency. He makes a boast of it that through his instrumentality and influence these wast expenditures at the expense of the general constituency. He makes a boast of it that through his instrumentality and influence these vast expenditures at the expense of the general industry have been thrown among his own constituents. industry have been thrown among his own constituents. He whines about his own constituency suffering by the depression of the present year, and asks to have them relieved by the taxation of the entire country. We appropriated for that public building this present year \$350,000—there was no necessity for that building at all; \$350,000, when we have spent on that palatial building already \$3,350,000 of the money drawn from the people by taxation.

The gentleman's colleague [Mr. Townsend] talks about our economy by which \$25,000,000 were saved to the body of the people of the country for the present year. He talks about our economy in

omy by which \$25,000,000 were saved to the body of the people of the country for the present year. He talks about our economy in the Departments. Can the gentleman say so when he knows that under the eye of his political chieftain these same employés of the Government who are receiving the money from the Treasury were taxed, and taxed heavily, to carry on a political campaign? One statement, taken under oath, shows that no less than \$25,000 was taxed upon these employés to carry on the campaign of the party with which he is identified. Yet he would insinuate the salaries of those employés are too low. If they were too low, then how dishonorable to tax them for such a purpose!

A Member. And besides, they were furloughed for two months to go home to yote.

go home to vote.

go home to vote.

Mr. HOLMAN. Yes; and in addition they were allowed two months' furlough to go home and vote, and yet the gentleman says the public service suffers because of the reductions made by this House at the last session, saving to the people over \$25,000,000.

[Here the hammer fell.]

Mr. CLYMER. Mr. Chairman, this discussion has wandered far from the initial point, which was the motion of the gentleman from Ohio [Mr. Foster] to strike out the amount for salary of Senators, and of course for members of this House. There might be su housest

Ohio [Mr. Foster] to strike out the amount for salary of Senators, and of course for members of this House. There might be an honest difference of judgment, sir, upon that question. Some persons may conceive the services of members here to be worth \$5,000 and others may think they are worth a smaller sum. But, sir, last year, in obedience to what the Committee on Appropriations and this House then believed to be a well-defined sentiment of the people of the United States, they introduced a bill which was passed almost without dissent, in this House, reducing the salaries to \$4,500. The Senate of the United States resisted this effort, and, after a long and protracted struggle between conference committees this House finally yielded to the demand of the Senate. Rightly, as I think, the Appropriations Committee at this session have adhered to what they had a right to conceive to be the settled judgment of this House, representing the conceive to be the settled judgment of this House, representing the settled convictions of a large majority of the people, when they were

uninfluenced by the action of the Senate, who are not directly responsible to them. Therefore, in obedience to this conviction and in obedience to what they conceived to be right as a general principle, they have introduced this proposition for reduction.

It is surprising to me that either on this side of the House or the other the distinguished chairman of the Committee on Appropriations should be reproached for this effort toward economy. Sir, it is tions should be reproached for this effort toward economy. Sir, it is but a part and parcel of the same effort which was started in this House last year and by which this country was saved \$30,000,000 in expenditures for one year alone. For, sir, if we do not reduce our own salaries, by what right can we reduce the salaries of others? And I say, if that be true, while it may not be personally or individually pleasant or agreeable, or convenient, yet a member who desires to act on a principle should vote for this portion of the bill as it has been reported by the committee.

And let me say to you, sir, and to other members of the committee,

has been reported by the committee.

And let me say to you, sir, and to other members of the committee, that it is ill-becoming in any one here to attempt to revile or belittle the efforts of the chairman of the Committee on Appropriations on behalf of economy. If he may be reviled here he will not be reviled among our masters, the people. If he may be reviled now he will not be reviled hereafter; for the people will ever hold in grateful remembrance the name of one who, during a long service on this floor, has stood the very watch-guard of the Treasury, through whom and by whom more disgraceful jobs have been prevented, more attempted robberies of the Treasury of the United States have been prevented, than, I venture to say, by any one other man who has ever served the robberies of the Treasury of the United States have been prevented, than, I venture to say, by any one other man who has ever served the public as a representative in Congress. And, sir, that he does not appear in the next House will be a source of deep regret to every one everywhere who desires purity and economy in the public service. I know no one who is to take his place and stand here to guard the Treasury from the thieving hands of the hundreds who would rob it. From my heart I thank him for his services in the past and wish him all good fortune in the future.

Mr. KELLEY. I seek the floor for perhaps a few apologetic words to my friend from Indiana, [Mr. HOLMAN.] No man on this floor, not my colleague who has just taken his seat, has a higher estimate of the integrity of purpose of the gentleman from Indiana as well as his industry. What I object to in him is that he has so long contemplated dimes and threepences that in financial matters his vision has become microscopic, and that in consequence he has misled his party. I did not mean to make any invidious remark about the gentleman when I reminded him that he had been left out in the cold. I take leave to say that I have been a Representative of my district

take leave to say that I have been a Representative of my district when a majority of its votes were against me. I meant to class him with the whole class of dead men on the other side. Why, sir, when we pass there on the way to the committee-rooms the impression is that we are going through a morgue on that side of the House, and when the atmosphere becomes a little uncertain one sees as it were in the air the "sheeted and gibbering ghosts" of dead members of Congress flitting about. Therefore I hope he will apply my remarks not as personal to him, but to that majority which his unwise

and inhuman economy came so near to extinguishing.

Mr. FOSTER. I think we have had discussion enough upon this question. I move that the committee rise for the purpose of closing

Mr. HALE. Let us take a vote now.
[Cries of "Vote!" "Vote!"]
Mr. HOLMAN. I withdraw the proforma amendment.
The question being taken on Mr. Foster's amendment, there were

ayes 104, noes 40.

Mr. HOLMAN. A quorum has not voted; but as we will take a vote on this in the House I do not make a point on that.

The Clerk resumed the reading of the bill, and read as follows:

For mileage of Senators, \$36,000.

Mr. WHITE. I offer the following amendment:

Strike out the line just read and insert the following:

For mileage of Senators, twice the amount of their actual traveling expenses by the most usually traveled route from their respective homes to the capital and thence back again, each session of Congress.

Mr. CLYMER. I make the point of order on that amendment.

Mr. HOLMAN. O, let him have a vote on it.

Mr. CLYMER. I make the point of order that the amendment proposes a change of law, and it does not appear that it is a reduction, and I do not suppose it is a reduction.

Mr. FOSTER. It does not appear on the face of it that it is a re-

The CHAIRMAN. The Chair sustains the point of order.

The Clerk resumed the reading of the bill, and read as follows:

The Clerk resumed the reading of the bill, and read as follows:
For compensation of the officers, clerks, messengers, and others receiving an annual salary in the service of the Senate, namely: For Secretary of the Senate, including compensation as disbursing officer, \$4.896, and for hire of horses and wagons for the Secretary's office, \$000; Chief Clerk, \$2.500, and the additional sum of \$1,000 while the said office is held by the present incumbent, and no longer; principal clerk, principal executive clerk, minute and journal clerk, and financial clerk in the office of the Secretary of the Senate, \$2.500 each; librarian, and seven clerks in the office of the Secretary of the Senate, at \$1.800 each; clerk of printing records, \$2.000; five clerks, at \$1.800 each; keeper of the stationery, \$1.600; one messenger, \$1.200; four laborers in the office of the Secretary of the Senate, \$7.20 each; one special policeman, \$1.200; Chaplain, \$900; secretary to the Vice-President, \$2.000; clerk to the Committee on Finance, \$2.200; clerk to the Committee on Appropriations, \$2.500; clerk to the Committee on Commerce, \$1.800; clerk to the Committee on Private

Land-Claims, \$1,800; assistant keeper of the stationery, \$1,200; Sergeant-at-Arms and Doorkeeper, \$4,000; assistant doorkeeper, \$2,000; acting assistant doorkeeper, \$2,000; three assistant doorkeepers, at \$1,800 each; Postmaster to the Senate, \$2,100; assistant postmaster and mail-carrier, \$2,000; four mail-carriers, at \$1,000 each; superintendent of the document-room, \$1,800; two assistants in document-room, at \$1,400 each; superintendent of the folding-room, \$1,800; one assistant in the folding-room, \$1,200; twenty-one messengers, one of whom shall act as upholsterer, at \$1,200 each; one laborer in charge of private passage, \$340; chief engineer, \$1,700; three assistant engineers at \$1,400 each; assistant engineer in charge of the elevator, \$1,200; conductor of elevator, \$900; messenger in charge of store-room, \$1,200; two firemen, at \$300 each; eight skilled laborers, at \$340 each; ten laborers during the session, at \$720 each per annum; to pay Kate Dodson, in charge of the ladies retiring-room, \$720; telegraph-operator, during the session, \$600; making, in all, \$145,976.

Mr. ATKINS. I move to amend that paragraph by striking out in lines 55 and 56 the words "\$1,500" and insert in lieu thereof "\$1,440;" so that it will read "one assistant in the folding-room, \$1,440."

My purpose in offering the amendment is to equalize the salaries between these officers. The assistants in the document-room and folding-room ought manifestly to receive the same pay, and my purpose in offering the amendment is to equalize their pay. But I am informed, however, by the chairman of the Committee on Appropriations that it was agreed that the salaries of these assistants should tions that it was agreed that the salaries of these assistants should be \$1,200 instead of \$1,440, and therefore I withdraw my amendment and offer an amendment to strike out, in lines 53 and 54, \$1,440 and insert in lieu thereof \$1,200; so that it will read, "two assistants in document-room, at \$1,200 each."

The amendment was agreed to.

Mr. HOAR. I desire, Mr. Chairman, to make a trifling amendment.

I move to insert, after line 54, what I send to the Clerk's desk, and which will be very much for the convenience of every member of this House; and if the chairman of the Committee on Appropriations will give it his attention, I think he will assent to it. It is to insert in line 54 the following:

To enable documents in the folding-room to be properly stamped on the outside of the envelope with the name of the document inclosed, \$500.

I suppose, Mr. Chairman, there is no member of the Honse who has not found great inconvenience in regard to all the speeches and other documents which are inclosed in wrappers in the folding-room without anything upon the outside to distinguish them. The consequence is that if you want a speech of one particular gentleman, unless you are very careful in keeping the bundles apart, you are unable to distinguish them. I understand from the superintendent of the foldingroom that there is no appropriation which enables them to put on that little steneil stamp. I propose to offer a similar amendment when we come to the appropriations of the House.

Mr. HALE. I would suggest to the gentleman that the amendment would come in better at the end of the fifty-sixth line.

Mr. HOAR. Very well; I will offer it at that point. There is probably no member of the House who has not suffered from this inconvenience.

venience.

Mr. HOLMAN. I think the gentleman from Massachusetts is laboring under a mistake. The appropriation for the current year was made with the understanding that it was amply sufficient for all the service in the folding-rooms of the House and the Senate. I supposed that all the documents were stamped. If they are not all stamped it is only an occasional document that is not stamped.

Mr. HOAR. I suppose I have in my pressession after eight years'

only an occasional document that is not stamped.

Mr. HOAR. I suppose I have in my possession, after eight years' service, more than a thousand speeches of gentlemen in this House, some of them of great interest to the public and for which I have frequent applications. Now they are all folded alike, without anything on the outside to distinguish the one from the other. Suppose the gentleman from Indiana makes a speech which he publishes in pamphlet form; there ought to be a stamp on the outside wrapper, "Mr. Holman's speech," of whatever date, or some little stamp of that kind, to distinguish it from other speeches. I was informed at the folding-room that that could not be done, because there is no appropriation for it. The head of the folding-room told me that the appropriation would not permit that to be done.

Mr. HOLMAN. During a presidential campaign millions of these

Mr. HOLMAN. During a presidential campaign millions of these speeches are sent out. That was the case during the last campaign, but of course during the coming fiscal year the number sent out will

be comparatively small.

Mr. HOAR. The sending out of those speeches is done by the committees of the political parties at their own cost. This is a different thing. What I want is that if any gentleman in this House has his speech folded in the folding-room in pamphlet form there should be a stamp on the outside, designating what the inclosure is. It is a very trifling matter and it is hardly worth while to say much about it, but it would be a matter of great convenience to members of the

Mr. YOUNG. I may say to the gentleman from Masssachusetts [Mr. HOAR] that I had occasion to investigate the matter to which he refers and I learned in the course of investigation in the folding-room that all documents folded are stamped.

Mr. HOAR. That is not true as to speeches.

Mr. YOUNG. The reports of the Agricultural Department, of the Secretary of the Interior, and various other documents are circulated under the existing law of Congress without postage, and they are always stamped as he desires. I think the amendment well enough, but I give the gentleman this information because it came to me in the course of investigation. the course of investigation

Mr. HOLMAN. This is a very small matter; but would not this amendment require a stamp to be prepared for every member of the Senate and the House, and also that more or less persons should be employed to put the stamp upon every speech that would be sent

Mr. HOAR. If my friend will permit me, exactly what will be done is this: there will be a little round stencil or hand-stamp into which Mr. HOAR. If my friend will permit me, exactly what will be done is this: there will be a little round steneil or hand-stamp into which type can be put. For instance, the gentleman from Indiana makes a speech on economy or on any public question, and whenever that speech is printed in pamphlet form and folded, the type "Speech of Mr. HOLMAN," on such a day and on such a subject, will be set in a little hand-stamp, and the folder will stamp that on the wrappers as fast as he can move his hand, and every gentleman who gets that speech will have something on the outside of the wrapper to designate whose speech it is and what it is about; and if any one writes to him three years afterward for that speech he can readily find it; otherwise he cannot do so.

Mr. HOLMAN. I have seen more than forty boys engaged in folding these speeches at one time. Now if we put upon the wrappers the words "part of Congressional Record," as I believe is done now, it seems to me that will be sufficient. The gentleman from Massachusetts [Mr. HOAR] will lead us by this operation into an expenditure that he does not now dream of. I have seen as high as forty boys employed in folding these speeches.

Mr. HOAR. One boy can stamp five thousand of these speeches in an hour, as fast as his hand can move.

Mr. HOLMAN. But he will be obliged to have a different stamp for each member, and that will require a great number of them. I do not like to antagonize an item so small as this, but I really wish the gentleman from Massachusetts would not press his amendment. The question was taken upon the amendment of Mr. HOAR; and upon a division there were—ayes 76, noes 26.

Mr. HOLMAN. No quorum has voted, but I will not raise that point now. I will give notice that I will ask for a separate vote in the House on this amendment.

No further count being called for, the amendment was declared

the House on this amendment.

No further count being called for, the amendment was declared

Mr. RIDDLE. I move to amend by striking out "21," in line 57, and inserting "22" as the number of messengers; also, to insert after the word "each," in line 58, the words "and one of whom shall be employed to stamp, cut, and prepare paper for folders, at \$1,200;" so that the clause will read as follows:

Twenty-two messengers, one of whom shall act as upholsterer, at \$1,200 each; and one of whom shall be employed to stamp, cut, and prepare paper for folders, at \$1,200.

Mr. HOLMAN. That is not necessary.

Mr. RIDDLE. My reason for offering the amendment is this: a messenger to perform the duties provided for in my amendment has been recommended by the Doorkeeper of the House. His employment has also been recommended by the assistant superintendent of the folding-room. His services are said to be necessary. A resolution was referred a few days since to the Committee of Accounts, and I understand they entertain it favorably; but to prevent any further consideration of that resolution by them I would be very glad to have this amendment adopted. I am assured by those officers of the House who ought to know that the services of such a messenger as this is necessary.

as this is necessary.

Mr. HOLMAN. The Senate has asked for nothing of the kind.

Mr. RIDDLE. I beg pardon; I thought this was the paragraph relating to the House. I will withdraw the amendment.

The Clerk resumed the reading of the bill, and read the following:

House of Representatives:

For compensation of Members of the House of Representatives and Delegates from Territories, \$1,359,000; and from and after the 30th of June next, the compensation of said Members and Delegates shall be \$4,500 per annum.

For mileage \$100,000.

Mr. WHITE. I move to amend by striking out line 129, "for mileage, \$100,000," and—
Mr. FOSTER. I hope the gentleman will withdraw for a moment until I can move an amendment to come in before that.
Mr. HOLMAN. I object to going back in the bill.
Mr. FOSTER. I rose in time.
Mr. HOLMAN. The gentleman did not rise until the next parameters by was read. I specified that

Mr. HOLMAN. The gentleman did not rise until the next paragraph was read; I observed that.

Mr. FOSTER. I rose while it was being read.

Mr. HOLMAN. I object to going back.

Mr. FOSTER. O, well, if the gentleman wants to make a distinction between the two Honses—

Mr. HOLMAN. Yes, for once in my life I object. [Laughter.]

Mr. ATKINS. I hope the chairman of the Committee on Appropriations will not make that objection. Let the pay of members of the House be made the same as the pay of Senators.

Mr. FOSTER. I propose to move an amendment, to make the sal-

Mr. FOSTER. I propose to move an amendment, to make the salaries of members of the House conform to the salaries we have fixed for members of the Senate.

Mr. HOLMAN. I have no objection to the gentleman offering his amendment in the House.

fixing the salaries for members of the House after the 30th of June

Mr. HOLMAN. I object; I rise to a question of order.
Mr. FOSTER. I want order.
The CHAIRMAN. What is the amendment which the gentleman

from Ohio [Mr. Foster] proposes to move?

Mr. FOSTER. I move to strike out all of the paragraph from and including the words "and from and after" in line 125 of the printed

The CHAIRMAN. Did the gentleman rise while the Clerk was

The CHAIRMAN. Did the gentleman rise while the Clerk was reading that paragraph?

Mr. FOSTER. Certainly.

The CHAIRMAN. Then the gentleman was in time.

Mr. FOSTER. I move to strike out the words "and from and after the 30th day of June next, the compensation of said Members and Delegates shall be \$4,500 per annum."

Mr. HOLMAN. I ask the Chair to rule on that question.

Mr. FOSTER. The Chair has ruled.

Mr. HOLMAN. I object to going back.

Mr. FOSTER. The Chair has ruled once.

The CHAIRMAN. If the Chair understands the gentleman from Ohio correctly, he has stated that he rose before the conclusion of the reading of that paragraph.

Mr. HOLMAN. No, sir; the gentleman from Ohio will not say that. The CHAIRMAN. If that is so—

Mr. FOSTER. The chairman recognized me.

Mr. HOLMAN. The gentleman from Ohio [Mr. FOSTER] will not say that he rose in time.

Mr. FOSTER. I ask a vote.
Mr. HOLMAN. If the gentleman will say that he rose in time, I will yield at once.

Mr. FOSTER. If the gentleman from Indiana does not like the de-

cision of the Chair, he may appeal from it.

The CHAIRMAN. The Chair overrules the objection of the gentleman from Indiana.

Mr. HOLMAN. I rise to a question of order. The gentleman has not said that he rose before the reading of the next paragraph was

commenced. Mr. FOSTER. I rise to a question of order; after the chairman has once ruled upon a point, discussion upon that point is not in order except upon an appeal.

Mr. HOLMAN. The gentleman from Ohio did not rise until the

except upon an appeal.

Mr. HOLMAN. The gentleman from Ohio did not rise until the next paragraph was read.

The CHAIRMAN. The Chair has ruled upon that point.

Mr. ATKINS. I hope that my distinguished friend, the chairman of the Committee on Appropriations, will not make any such point as this. In my opinion he will not strengthen this bill, he will not strengthen the cause he advocates, by making a point of this kind. Certainly the House ought to have an opportunity to express its view on this subject. It has expressed it adversely to the views of the majority of this committee. I sympathize with my distinguished friend upon this subject; I vote with him, and I have no sympathy with the gentlemen who have assailed him this morning. I think he has rendered great service to the country in years past, and especially at the last session of Congress; but I cannot sustain him in a position which I think is wrong. The sense of the House ought to be had fairly; and when it has been had I do not think the gentleman ought to make such a point of order as this.

Mr. HOLMAN. Now, Mr. Chairman, my friend from Tennessee [Mr. Atkins] makes serious what was rather a matter of pleasantry.

Mr. ATKINS. I am always serious in legislation.

Mr. HOLMAN. The gentleman from Ohio was not following the reading of the bill; he was very negligent and only became vigilant when he heard the salaries of members of the House mentioned. Then his vigilance was excited wonderfully, but it was not aroused quite soon enough. I think the gentleman from Ohio should be content—

Mr. FOSTER. The Chair has decided that the amendment was

Mr. FOSTER. The Chair has decided that the amendment was

offered in time.

Mr. HOLMAN. I think the gentleman should be content to offer this amendment in the House, but still I shall not press the objection. I presume that a vote will be taken in the House at any rate.

Mr. FOSTER. I trust by common consent the amendment may be agreed to, and that the gross sum appropriated may be changed accordingly.

ordingly.

Mr. HOLMAN. I take it for granted that such is the sentiment of the Committee of the Whole; and inasmuch as a vote will be had in the House I think it unimportant to object further. Let the change be made.

The amendment of Mr. Foster was agreed to.

Mr. FOSTER. I hope now that the aggregate sum will be increased to correspond with this amendment.

Mr. HOLMAN. That is not necessary. At the end of the bill the Clerk will of course be authorized to change these footings wherever

Mr. WHITE. I move to amend by striking out the paragraph in regard to mileage and inserting the following:

Mr. FOSTER. The Chair has recognized me, I believe.
Mr. HOLMAN. I shall object to going back.
Mr. FOSTER. I ask for order. I move to strike out the clause

In lieu of mileage, each Representative and Delegate shall be entitled to receive twice his actual traveling expenses from his home to Washington, and thence back to his home, once each way for each session of Congress.

Mr. CLYMER. I rise to a point of order on this amendment.
Mr. WHITE. Before that point of order is decided I would like to
state that a few moments ago a point of order was raised that this
amendment on its face did not show that it would make a reduction
of expenditure. Now, I do not see how that can be made to appear
on the face of the amendment unless I put in words to that effect. I
am prepared to show that it is a reduction. In 1866 the mileage of
Members and Delegates in this House was \$196,000. Under the act of
Congress which gave actual traveling expenses instead of mileage
those expenses for one year in the Forty-third Congress were only
\$23,476. Now, if it is not plain on the face of this proposition that it
is a reduction I would like some gentleman to tell me how it can be
made plain.

made plain.

Mr. CLYMER. The point of order, I have no doubt, will be sus tained. There is another reason in support of it. The amendment of the gentleman from Kentucky is so indefinite that whether it be a saving or an increase of expense would depend—

Mr. WHITE. I rose expressly to make that point plain; and the

gentleman is assuming that the very thing I propose to prove is un-

mr. CLYMER. No, sir; I made no assumption of that kind, as I will explain. My idea is that whether this would be a saving or an increase of expenditures would be entirely dependent upon the tastes, habits, and inclinations of different members. If you allow members to be paid their expenses going and coming, there is no telling what bills of expenses may be incurred.

Mr. WHITE. I undertake to say—

Mr. CLYMER. I believe I am entitled to the floor. After I am through the gentleman from Kentucky may take it.

As I was about to say, the effect of the amendment would be to leave the subject quite open. I believe that this whole system of mileage is an abuse which should be remedied in some way if we can get at it. My fear is that the proposition of the gentleman from Kentucky would lead to still greater abuse. If we could equalize mileage so as to make it precisely just as between members residing near the capital and those living farther away, I should accede to the proposition gladly. sition gladly.

Mr. WHITE. I make the point on the gentleman from Pennsyl-

vania.

Mr. CLYMER. I believe I have not yielded the floor.
Mr. WHITE. I make the point on the gentleman from Pennsylvania that he is arguing the negative of a question which should have

Mr. WHITE. I make the point on the gentleman from Pennsylvania that he is arguing the negative of a question which should have the affirmative argued first.

Mr. CLYMER. And the gentleman from Kentucky is neither arguing the affirmative nor the negative, which is the way with him. If he can show this is an actual saving I would not insist on the enforcement of the rule. It is a mere presentation of the case on the individual opinion of the gentleman from Kentucky.

Mr. WHITE. Not at all.

Mr. CLYMER. I trust the gentleman will refrain from making any remarks until I have yielded the floor. I do not know his opinions on subjects of this kind or any other are entitled to such great weight and consideration in this House as to put it at sea in regard to this expenditure. I insist on the point of order.

Mr. WHITE. The gentleman has availed himself of the opportunity to make the assertion that he did not know my opinion in regard to these matters was worthy of any considerations on this subject or any other. I am aware, Mr. Chairman, that generally the gentleman from Pennsylvania puts himself a little more before this House, that in a greater degree his sympathetic manner would cause tears to be shed more than most men, but I will prove to the Chairman of this House before I sit down, if gentlemen will only give me their attention, that my opinion is worthy the consideration of this House.

The object of my amendment Mr. Chairman is simply this: that

The object of my amendment, Mr. Chairman, is simply this: that the Members and Delegates in this House may receive equal consideration or absolute equality in regard to mileage or actual traveling expenses. The only fear the gentleman has is that there will be some dishonesty on the part of some dishonest member. I do not believe it, Mr. Chairman. When each member in this House is required to state over his own signature what his actual expenditures are from home to the capital and from the capital home again, he will be more likely to put it at a lower figure than to overstate it. It is to his interest to do it. Policy would demand this of him if he were not honest enough to do it.

What are the facts in this case? I find a statement carefully pre-

what are the facts in this case? I find a statement carefully prepared by the distinguished gentleman from Pennsylvania, [Mr. SMITH,] in which he shows by the accounts of members in 1866 the mileage actually received was \$196,557. I turn over a leaf and find in the Forty-third Congress the actual traveling expenses of members, asked for and received, were only \$23,476. Does not that show on the face of it there is to be a saving of the difference between \$196,000

and 23,000 ?

My friend from California reminds me there were two sessions of Congress. Admit it. Divide by two, and there is still a difference between \$98,000 and \$23,000, which is worth saving.

If we double the twenty-three thousand dollars and subtract the product from \$98,000, we still have over \$50,000 remaining.

I have risen for this purpose, to call the attention of the House to this matter, which I am sure the country does not fully understand,

and never will, for we do not understand it ourselves. \$5,000 a year of salary, twenty cents a mile once each way for our mileage, and \$125 a year for stationery. Why not say our salaries shall be five thousand so many hundred dollars, or \$5,000, and stop there. I would be willing to see it put at \$4,000, or even less. I do not believe, if we wish the country to indorse the action of the House in favor of economy, retrenchment, reform, and all that sort of doctrine which the opposition has been preaching this year, they will ever believe it unless we practice what we preach.

The CHAIRMAN. The Chair, in following the rulings already made heretofore on this same point, holds that, when a process of reasoning is necessary to determine the fact an amendment reduces expenditures, the amendment is not then to be allowed under the rule. The Chair therefore systains the point of order.

Chair therefore sustains the point of order.

The Clerk read as follows:

Chair therefore sustains the point of order.

The Clerk read as follows:

For compensation of the officers, clerks, messengers, and others receiving an annual salary in the service of the House of Representatives, including compensation as disbursing officer of the contingent fund, \$4,500, and for hire of horses and wagons for the use of the Clerk's office, \$600; Chief Clerk, journal clerk, two reading clerks, and tally-clerk, five in all, at \$2,500 each; disbursing clerk, file clerk, printing and bill clerk, and enrolling clerk, four in all, at \$2,250 each; for assistant to Chief Clerk, assistant to enrolling clerk, four in all, at \$2,250 each; disbursing clerk, newspaper clerk, superintendent of document-room, index clerk, and librarian, seven in all, at \$1,800 each; distributing clerk, \$1,600; station-cry clerk, \$1,600; document-clerk, and upholster and locksmith, one chief messenger in the office of the Clerk of the House, and one messenger assisting librarian four in all, at \$1,400 each; bookkeeper and four clerks, \$1,600; each; one chief engineer, \$1,700, and two assistant engineers, \$1,200 each; and all engineers and others who are engaged in heating and ventilating the House shall be subject to the orders, and in all respects under the direction of the Doorkeeper; for five firemen, at \$900 each; one laborer, at \$320 each; and four laborers, at \$720 each; and one telegraph operator, \$600; for clerk to the Committee of Ways and Means, \$1,200; clerk to the Committee on Appropriations, \$2,500; messenger to the Committee of Ways and Means, \$1,200; clerk to the Speaker's table, \$1,800; private secretary to the Speaker, \$1,800; Sergeant-at-Arms, \$2,000; clerk to the Committee on War Claims, \$2,000; clerk to the Speaker's table, \$1,800; private secretary to the Speaker, \$1,800; sergeant-at-Arms, \$2,000; four messengers at \$1,000 each; eight messengers at \$1,000 each; clerk to the Sergeant-at-Arms, \$2,000; four messengers, at \$1,000; four messengers, at \$1,000; clerk to the Sergeant-at-Arms, \$2,000; four messeng

Mr. ROBERTS. I offer the following amendment:

In line 152 strike out "two" and insert "four," and in line 153 strike out "\$1,200" and insert "\$1,440" in lieu thereof; so that it will read—
And four assistant engineers, \$1,440 each.

And four assistant engineers, \$1,440 each.

Mr. Chairman, I desire to call the attention of the committee to the disparity that exists in regard to the employés of this House and the Senate who take care of the ventilating and heating apparatus of the respective Houses. The Senate at this time employs four assistant engineers. The House virtually employs only one assistant engineer to regulate three costly and expensive engines. There are two provided for in the bill, it is true; but the fact of the case is that one is employed solely as the electrician, having in charge the lighting of this House and of the Dome and the various portions of this side of the building; so that, practically speaking, there is but one engineer who takes charge of the heating of this House and of all the committee-rooms. He goes on duty in the morning at seven o'clock, and in the event of a night session he is compelled to remain here from morning till night and during the night, without any one to relive him. I say that, simply regarding our own health and the safety of the members of this House, it is but just to ourselves to see that we have a sufficient number of employés to discharge the duties connected with the heating and ventilating of the House.

I desire furthermore to call the attention of the House to the fact that we pay this one individual \$1,200 per annum while the four on the Senate side received \$1,440 each. I say this disparity should not exist. There is a statute now in existence which declares that eight hours per day should be regarded as a day's labor; and yet the employés of this House, many of them, are compelled to go on duty early in the morning and some of them remain on duty all the night without receiving any additional compensation. I ask the House to take into consideration the fact of this disparity and the injustice that is done both to the members themselves and to the employés.

out receiving any additional compensation. I ask the House to take into consideration the fact of this disparity and the injustice that is done both to the members themselves and to the employés.

Mr. ATKINS. I will state to the gentleman from Maryland that the salary of the assistant engineers of the Senate was put at \$1,200. I admit in the bill it is \$1,440, but that is a clerical error.

Mr. ROBERTS. The paragraph appropriating for the Senate employés has already been passed upon by the committee, and they assented to giving these assistant engineers \$1,440 each. I desire to see the one force on an exact equality with the other; especially as those on the Senate side have not to discharge anything like the same duty as those on this side. There are few who at all appreciate the amount of labor involved in connection with the heating and ventilation of this House; and it would be well for gentlemen to make an lation of this House; and it would be well for gentlemen to make an

examination for themselves, which would enable them to vote intel-

examination for themselves, which would enable them to vote interligently on the subject.

Mr. HOLMAN. I will say to the gentleman from Maryland [Mr. Roberts] that I presume we shall not differ about this. There is a possibility that a third engineer is required. We have got along very well hitherto; but the Senate seems to require three assistant engineers, and that furnishes some argument why there should be the same force on this side.

Mr. ROBERTS. Let me say that it was at the special request of the gentleman from Indiana that I made an inquiry into this matter. I do not know why the chairman of the Committee of Accounts should be considered to have charge of this, although it has been the custom for some years, and I am willing to surrender the duty; but at the special request of the gentleman from Indiana I have made a careful examination not only on the Senate side but on the House side.

Mr. HOLMAN. And you think three are required on this side?

Mr. ROBERTS. Yes; I say three are required on this side and a fourth one to act as electrician.

fourth one to act as electrician.

Mr. HOLMAN. It seems to me there may be reason, as the gentle-man suggests, that the number of assistant engineers on this side of the Capitol should be increased from two to three, although they have the Capitol should be increased from two to three, although they have got along without any inconvenience hitherto. But I think the gentleman should confine his motion to an increase of the number to three—the same number that is employed in the Senate. I find on examination that in the bill the salary of the assistant engineers in the Senate is as the gentleman has stated, \$1,440. That, however, I believe, is a mistake; we shall ask unanimous consent to have it changed, and if there be objection an amendment will be offered in the House.

Mr. ROBERTS. I have not the slightest objection to that.

Mr. HOLMAN. And I am willing that the number on this side be increased to three and the salaries fixed at \$1,200. I ask that by unanimous consent in the clause at line 61, "three assistant engineers at \$1,440 each," the amount "\$1,440" be struck out and "\$1,200" be substituted. That would be in conformity with the views of the Committee on Appropriations.

Mr. ROBERTS. I do not object to that. I understand the gentleman from Indiana to assent to my amendment modified in like manner.

The CHAIRMAN. Is there objection to the amendment proposed

The CHAIRMAN. Is there objection to the amendment proposed by the gentleman from Indiana?

There was no objection, and the amendment was made.

The CHAIRMAN. Does the gentleman from Maryland [Mr. Roberts] modify his amendment?

Mr. HOLMAN. I would suggest to the gentleman that he make the number three instead of four.

Mr. ROBERTS. I think it ought to be four, and if the gentleman from Indiana will permit me to say a word I will make this statement.

There are at this time three engines on the House side of the Capitol. Those engines cost the Government of the United States nearly a million of dollars. It is utterly impossible for those engines to be a million of dollars. It is utterly impossible for those engines to be properly cared for without an engineer for each particular engine. The duties of these officers do not cease with the adjournment of Congress; they must remain here, and perhaps the most arduous part of their duty is done during the recess of Congress. They are compelled to be here from one end of the year to the other, and the electrician has everything to do that he can do now. It should be taken into consideration that the engineers employed on the Senate side have nothing whatever to do with the Rotunda or the old Hall of the House of Representatives, and that all that comes under the charge of the House side, and therefore these additional engineers are needed in my opinion, and in the opinion of the engineers themselves.

Mr. HOLMAN. I hope the gentleman from Maryland will be content with three. I move to amend the amendment so as to make the whole number three instead of four.

whole number three instead of four.

whole number three instead of four.

Mr. ATKINS. I will state to the chairman of the Committee of Accounts that this bill appropriates money for the year ending June 30, 1878, and it does not affect the present service at all.

Mr. ROBERTS. I am very well aware of that fact, and if I did not believe that the provision I propose ought to be in existence at this time I would not offer it for next year.

Mr. HOLMAN. I move to amend the amendment of the gentleman from Maryland so as to make the number three instead of four. We had a very thorough examination of this matter last year by a sub-

had a very thorough examination of this matter last year by a subcommittee, and we thought then that two engineers were sufficient.
But upon the statement made by the gentleman from Maryland we
are willing, I think, to vote for three.

Mr. ROBERTS. I accept the modification of my amendment suggested by the gentleman from Indiana.

Mr. O'BRIEN. I desire to inquire whether that amendment makes

any increase of salary?

Mr. HOLMAN. It fixes the salaries of these officers at \$1,200 each.
The amendment of Mr. Roberts, as modified, was agreed to.
Mr. BLOUNT. In line 191 I move to strike out the words "\$400" and insert "\$200;" so that it will read:

Three clerks in the folding-room, one at \$1,600, and two at \$1,200 each.

That is the amount fixed by the law of last session. The chairman of the Committee on Appropriations understands that this is a clerical error. Certainly the question as to the increase of these salaries was

never discussed in the committee, and until I discovered it in the bill as printed and reported from the committee my attention was not called to it. It is an increase of the salaries of each of these employés of \$200 a year, and there was no reason made known to the committee why such increase should take place. So far as I can learn from the gentlemen of the committee around me, they think the amendment a proper one.

Mr. CLYMER It was an error

Mr. CLYMER. It was an error.
Mr. BLOUNT. My friend from Pennsylvania reminds me that it was an error, and that there was no purpose to increase the salaries established last year.
The amendment was agreed to.

Mr. HOAR. I offer the following amendment to come in after line 192. It is the same provision in regard to the folding of documents that was put in the clause providing for the Senate:

To enable documents in the folding-room to be properly stamped on the outside of the envelope with the name of the document inclosed, \$500.

That provision has already been put in the provision for the Senate and I hope gentlemen will not object to our making the same provision for the House.

Mr. ATKINS. I did not say anything when the gentleman from Massachusetts offered his amendment to the provision for the Senate, but I think the gentleman will find that in detail the amendment

but I think the gentleman will find that in detail the amendment would be impracticable.

Mr. HOAR. If it should prove so, the plan can be abandoned.

Mr. ATKINS. To execute the plan you would have to have over three hundred stamps.

Mr. HOAR. This matter seems to be very much misunderstood. The whole cost of the thing is for a little hand-stamp into which type can be set, and when the speech is folded they will put on it with the hand-stamp the name of the speaker.

Mr. ATKINS. O. then I have no objection.

Mr. ATKINS. O, then I have no objection.
The amendment was agreed to.
Mr. STONE. I move to strike out in lines 196, 197, and 198 the

Mr. STONE. I move to strike out in lines 196, 197, and 198 the words "eight messengers, at \$1,200; ten messengers, at \$1,000," and insert in lieu thereof eighteen messengers, at \$1,500 each.

By reference to the appropriation bill for the year ending June 30, 1876, I find that there were eight messengers employed at \$1,800 and ten at \$1,440, aggregating \$28,400.

I was a member of that Congress and I did not think we were better served by the messengers then than we had been in the preceding Congress. I find in the bill for the year ending June 30, 1877, that the same number were employed, eight at \$1,200 and ten at \$1,000, making an aggregate of \$19,600, or a reduction as compared with the year ending June 30, 1876, of \$9,200.

Now, Mr. Chairman, I propose by this amendment to have eighteen messengers at salaries of \$1,500 a year, which will aggregate \$27,000, and there will thus be a saving of \$1,800 from the amount appropriated for the year ending June 30, 1876.

I am one of those who believe that the laborer is worthy of his hire. Having been a laborer all my life, I appreciate the services of the gentlemen who act as messengers to this House. For one I say that the simple pittance we are now giving these messengers will not

the simple pittance we are now giving these messengers will not even pay their expenses to and from their homes to this capital, much less clothe them respectably and provide them subsistence during their term here. I therefore hope that gentlemen on this floor will vote for my amendment providing for eighteen messengers at \$1,500 a year each.
The question was taken upon the amendment; and there were—

ayes 9, noes 34.

Before the result of the vote was announced,
Mr. STONE said: No quorum has voted; I call for tellers.

Tellers were ordered; and Mr. STONE and Mr. HOLMAN were appointed. The committee again divided; and the tellers reported that there

vere 3 in the affirmative.

Before the negative vote was counted,
Mr. STONE said: I will withdraw the call for a further count, as
gentlemen do not seem to understand the amendment.

Mr. STONE said: I will withdraw the call for a further count, as gentlemen do not seem to understand the amendment. So the amendment was not agreed to.

Mr. FRANKLIN. I move to amend the paragraph so as to make the salary of the paying teller for the Sergeant-at-Arms \$2,100 instead of \$2,000 as proposed by this bill.

Mr. HOLMAN. O, these salaries were fixed at the last session.

Mr. FRANKLIN. I have only a word to offer in favor of this amendment. The Committee on Appropriations I see have allowed the clerk to the Sergeant-at-Arms a salary of \$2,100. I do not think that salary is too high; in fact, if anything, it is too low. But taking it for granted that the committee have placed it at the proper sum, \$2,100, I am at a loss to know why the salary of the paying teller should be fixed at \$2,000 when his duties are equally onerous, and equally as much ability and certainly as much integrity is required of the paying teller as of the clerk.

I think the chief clerk and the paying teller should have \$2,500 each. I cannot see why any discrimination in this respect should be made by the Committee. Gentlemen may say that it is in accordance with the law of last year; that does not make it right. These men are employed from early morning until late in the evening. It requires men of integrity, not only of integrity but of ability, to fill these places. I

do not think the salary of the paying teller should be put below that of the clerk, especially when the salary of the clerk is placed at a

very low figure.

/ Mr. ATKINS. This is simply adjusting salaries to labor; that is all. 1 am not very familiar with the operations of banks, but I understand that in the banks in our large cities tellers get from \$1,500 to \$2,000 a year, while the clerks of the banks get from \$2,000 to

\$3,000 a year, while the cierks of the banks got like \$3,000 a year.

The amendment was not agreed to.

Mr. RIDDLE. I move to amend the pending paragraph in line 198, before the words "four laborers under the superintendent of the folding-room," by inserting the words "and one special messenger to perform the duties of stamping, cutting, and preparing paper for the folders in the folding-room, at \$1,000."

I desire to call the attention of the Committee on Appropriations to the fact that the employment of this messenger has been recom-

I desire to call the attention of the Committee on Appropriations to the fact that the employment of this messenger has been recommended by the proper officers of the House under whom he would be a subordinate. I desire also to call the attention of the committee to the fact that the employment of this special messenger will be recommended, is recommended now, by the Committee of Accounts of this House. A resolution to this effect was introduced into the House sometime ago, and referred to the Committee of Accounts, and that committee I understand is ready to report that the services of this officer are necessary for the proper conducting of the business in the folding-room. I would be very glad to have the Committee on Appropriations accept this amendment and not offer any opposition to it.

Mr. HOLMAN. I trust this amendment will not be pressed. The Committee on Appropriations have carefully inquired into the force necessary for the folding-room and are satisfied that the force now employed there is sufficient. This is the 2d of February, and gentlemen must see that if we go back over the action of the last session of this Congress and undertake to do everything over again, this bill will read be present. this bill will never be passed. I trust that the force now employed, which is sufficient, and with which we are getting along very well, will be left as it is. There is an everlasting tendency to create new employments and to increase salaries; that is well known to us all. We should let the matter rest when it has been settled on a reasonable heads. able basis.

able basis.

Mr. FORT. I certainly have no disposition to increase the force employed about this House; I take it that all gentlemen understand that. Nor do I have any disposition to increase the expenditures of this House. Yet, as an humble member of the House, I have endeavored to look into these matters somewhat, and I am thoroughly convinced that the amendment now proposed is a proper one.

More than that. If I had offered it myself I would have made the salary \$1,200 a year instead of \$1,000. If the amendment adopted by the House on the motion of the gentleman from Massachusetts [Mr. HOAR] was right, then this amendment is eminently proper.

Mr. RIDDLE. I will modify my amendment by adding to it these words, "and that he also stamp speeches and documents, and that the \$500 appropriated for that purpose shall be applied to the payment of his salary pro tanto."

of his salary pro tanto."

Mr. FORT. Mr. Chairman, the amendment as now proposed is,

Mr. FORT. Mr. Chairman, the amendment as now proposed is, in my judgment, better than it was in its original form. It is clear to me that this officer ought to be provided for by law. It is necessary that these documents should be stamped; it is necessary to have the paper prepared; for, as the House is aware, the folding is now done by contract, the folders receiving so much per thousand. They are not expected to cut and prepare their paper; they claim that this is an extra job, which ought to be attended to by some other person. I take it that they are right in this, because the amount which they earn in folding by the piece is but a very small compensation.

Mr. HOLMAN. We already have four persons to do this work.

Mr. FORT. The honorable gentleman from Indiana is mistaken.

Mr. FORT. Twelve or fifteen persons have been engaged off and on in folding. At times perhaps four folders could do the work; but if there are but four folders I want the gentleman from Indiana to tell the House why he thinks it necessary to have a gentleman from his district employed at a large salary to superintend those four men. The gentleman is mistaken; that is all there is about it. Often a large number of folders are engaged; and this person ought to be provided to prepare the paper and do the stamping for the folders, because otherwise the duty will not, in my judgment, be properly performed. It is in the interest of economy to make provision for a certain person who shall do this work so that it shall not fall upon the folders who are engaged upon piece-work.

Mr. GOODIN. Which is often done very hadly.

son who shall do this work so that it shall not fall upon the folders who are engaged upon piece-work.

Mr. GOODIN. Which is often done very badly.

Mr. FORT. I am informed that the work is sometimes done badly. To avoid this we must have some system, and in doing so we must incur some expense. In my judgment the better and cheaper way is to have some man appointed to do this work who will be responsible for it, because now it is not properly done.

It seems to me that this amendment ought to be adopted—perhaps not in the exact words in which it is offered, because it ought to have been adopted before the amendment of the gentleman from Massachusetts. However, that appropriation is included in this, and I certainly hope that the House will adopt the amendment.

Mr. VANCE, of North Carolina. I ask the Clerk to read a state-

ment on this subject from the Doorkeeper, showing that he considers this assistance necessary

The Clerk read as follows:

HOUSE OF REPRESENTATIVES, Washington, D. C.

To the Committee of Accounts:

I would respectfully represent to your committee that a special messenger or employé is necessary in the folding-room to cut and prepare and stamp paper for the folders; and I recommend the permanent employment of such a messenger, as I regard such a position indispensable to the proper conduct of the business in that

R. D. BROWN, Foreman House F. R.

John H. Patterson, Doorkeeper.

I state that a person has always been employed at cutting and stamping paper, and that the one so employed before we came in received \$1,314 per annum.

R. D. BROWN.

Mr. FORT. That is the very position provided for by this amendment, and is in accordance with what has always been done. Now

that the folding is done by the piece, it is very necessary that this assistance should be provided.

Mr. BLOUNT. Mr. Chairman, I hope the amendment will not be adopted. My friend from North Carolina has just had read a communication from the Doorkeeper to enlighten this House in regard to its employes. This is not the first effort of the kind that has come before the Committee on Appropriations. During the last session there was not a Department or bureau of this Government from which documents of this kind did not flood in upon the committee. Employés documents of this kind did not flood in upon the committee. Employés who expected to be turned out of employment by these reductions were here with their friends; and we were told that we were going to ruin the public service. We did make large reductions in the number and pay of employés, but we have never heard anything since of the ruin which was predicted as the result. On the contrary I have heard gentlemen of both parties speak of it as a matter of congratulation that these reductions in the Departments had been made. As we have rejected appeals of this kind when they came from the Departments, I hope we shall treat them in the same manner when they come from our friends, unless there is some good reason to the contrary. trary

I have great respect for the Committee of Accounts; but I remem-I have great respect for the Committee of Accounts; but I remember quite well how carefully during the last session of Congress the gentleman from Missouri [Mr. Wells] and the gentleman from Ohio, [Mr. Foster,] acting in conjunction with the present Speaker of the House, went into a detailed examination of the duties of the various employés of the House and made report thereon. We remember the struggle which was then had on the several appropriation bills with the Senate. After careful labor, upon a full examination during a long session of Congress, with the amplest opportunity for investigation, we reached a conclusion which was satisfactory.

Now there is hardly any proposition for increase of service which cannot be accompanied by some plausible statement; but I do hope that the progress of this bill is not to be delayed in this manner. I hope we shall be content to accept the work of the last session, done in deliberation, in preference to anything which may be attempted at

hope we shall be content to accept the work of the last session, done in deliberation, in preference to anything which may be attempted at this short session and which must be done in haste.

Mr. ROBERTS. I move to amend by striking out the last word. While I am not opposed to any proper economy, I state frankly what is within my knowledge, that the number of employés in the House at the present time is greatly below what a proper organization of the business of the House requires. As chairman of the Committee of Accounts, I shall be compelled to make application for an increase of force under the Doorkeeper, in order to meet the emergency now. of force under the Doorkeeper, in order to meet the emergency now

existing.

It is a notorious fact that the employés of this House who are upon the messengers' roll have in many cases been placed in other locations than they should have been. Indeed laborers at \$720 a year have been assigned as messengers. Even pages upon the floor of the House have been compelled to go to the doors and act as doorkeepers. Now while true economy is one thing, parsimony is quite another, and in my judgment the proper policy on the part of the House is to recognize the wants and needs of the House and to supply them in a way conformable to what is right and just.

Mr. FORT rose.

Mr. HOLMAN. I hope by unanimous consent after the gentleman from Illinois has concluded what he has to say all further debate on this paragraph cease; otherwise I shall move the committee rise for that purpose.

Mr. FORT. I will not occupy the floor but a moment.

### MESSAGE FROM THE SENATE.

The committee informally rose and a message was received from the Senate, by Mr. Sympson, one of its clerks, which announced the passage of the following bills; in which the concurrence of the House was requested:

An act (S. No. 805) relating to indemnity school selections in the State of Calfornia;

An act (S. No. 912) for the relief of Thomas II. Halsey, paymaster United State Army;
An act (S. No. 1109) relating to public accounts and claims; and
An act (S. No. 1147) for the punishment of persons making or havin possession dies, molds, &c., for manufacturing counterfeit coin.

THE LEGISLATIVE, ETC., APPROPRIATION BILL.

The committee resumed its session.

Mr. FORT. Mr. Chairman, the gentleman from Indiana [Mr. Holman] and the gentleman from Georgia [Mr. Blount] seem to have the idea there is a disposition to increase the force of the House. Now the Committee on Appropriations reduced that force at the last session to a very great extent. Much of what was done no doubt was proper, but allow me to remind the gentlemen of that committee that in doing so they cut down the Doorkeeper's force so that for the Committee of Accounts at the present session there was no messenger to attend its door. That committee has had the service of a messenger in attending to their door ever since the first day of this session, when there was no law for his employment and he had to serve and get his pay by piecemeal out of the contingent fund. I would like to know whether that is not a true statement.

Mr. ROBERTS. Not the Committee of Accounts, but the Committee on Appropriations have had the use of a messenger at their door when there was no law providing for such officer, and therefore none

when there was no law provided for his pay.

Mr. FORT. I stand corrected by the chairman of the Committee of Accounts, and I am obliged to him. What I meant to say was that the Committee on Appropriations so cut down the Doorkeeper's force at the last session of Congress that that committee had nobody to attend to the door of the committee-room, and it had to employ for that purpose an irregular messenger who has served there up to this years day without any appropriation therefor. The Committee for that purpose an irregular messenger who has served there up to this very day without any appropriation therefor. The Committee of Accounts has been called upon to pay that man who attended the door of the Committee on Appropriations out of the contingent fund, and I submit to this House whether there is any economy in this House pursuing any such policy as that.

Mr. FRANKLIN. Where is the necessity of having any one to attend the door of the committee-room?

Mr. FORT. They can answer that question for themselves.

Mr. HOLMAN. It is not by our request.

Mr. RANDALL. We told these officers repeatedly we did not need any spen man at the deep of the Committee on Appropriations at the

any such man at the door of the Committee on Appropriations at the

Mr. HOLMAN. The committee never dreamed of asking for such

an officer

Mr. FORT. I am informed the messenger has served there all the

Mr. FRANKLIN. You are a member of the Committee on Territories, and I ask you whether that committee ever had any one to attend its door at the last session?

Mr. FORT. No, sir; not to my knowledge. Mr. FRANKLIN. Do we need any?

Mr. FRANKLIN. Do we need any f
Mr. FORT. I think not. The Committee on Appropriations, however, are in session every day, and they have had the services of a man to attend the door without any appropriation by law for his pay.

Mr. RANDALL. He is assigned there by the Doorkeeper, and so far

as my knowledge extends, during the last session we never wanted him. He is not needed there now, and never has been. Mr. ROBERTS. We understand he is not assigned by the Door-

keeper. The Doorkeeper expressly said he did not need his services, and yet he is retained by the Committee on Appropriations. One of the members of that committee presented and had referred to the Committee of Accounts a resolution which is pending at this time. The party himself says it is done with the assent and approbation of the Committee on Appropriations.

Mr. ATKINS. I as one of the members of the Committee on Appropriations never heard anything of it in my life—never.

Mr. RANDALL. The idea that the Committee on Appropriations

need a man on the outside of the door is altogether a mistake, for they can keep people out by merely dropping the latch, whenever

they can keep people out by merely dropping the latch, whenever they want to.

Mr. HOLMAN. The committee gave no intimation of a desire to have any such messenger employed at the door of the committee-room. Very recently it was discovered that a man was employed there. But we took it for granted that it was simply an assignment by the Doorkeeper of one of his employés.

Mr. ROBERTS. I withdraw the pro forma amendment.

Mr. WELLS, of Missouri. I renew it. I wish to state to the House the number of messengers employed. The number of messengers now employed by this House is thirty-two, the same number as has been employed for the last ten years. The bill before the House last session did not decrease that number, nor does this. It has been customary that these messengers should act as doorkeepers of the respective committee-rooms during the sessions of those committees, and the doorkeeper assigned last week to the Committee on Appropriations was one of the regular messengers. We have also twenty-four or twenty-five laborers on the pay-roll who are provided for by appropriations. The difficulty arises that prior to the passage of the last legislative bill there had been employed under the Doorkeeper in the folding-room a number ranging from seventy-five to one hundred employés, many of whom had never been in that room from the time they were placed on the pay-roll. Under the present law the folding-room is conducted on a different system. Men are paid by the piece. Consequently a difficulty has arisen on the part of members because their friends have been dismissed and have not been employed as heretofore in that department. heretofore in that department.

Now, I wish to state further that the pay-roll in the folding-room for folding books now ranges from \$300 to \$500 a month; while prior to the inauguration of the present system it ranged over \$4,000 a month. For the same duties and the same amount of work performed pay now from \$300 to \$500 a month what used to cost us from

\$4,000 to \$4,500 a month.

We have employeesufficient, I believe, Mr. Chairman, to discharge the duties around this Capitol without any increase. As regards the amendment which has been offered to employ an extra man to do the stamping and to cut the paper, I think the foreman of the folding-room can do all that is necessary to assist the folders in their duties. It is very easy to increase the numbers of employés in this House. But we have found it very difficult, as we did last session, to go through the different departments of this House and put them on a proper footing. We had a great deal of difficulty in performing that duty, and I am sorry the Senate did not concur with the House when the conference committee made a change in the manner of conducting our business in regard to employés.

regard to employes.

Mr. FORT. I would ask the gentleman if it is not a fact that these folders, the men who were on the folders' roll, were engaged on other duties, such as those of messengers and doorkeepers, and that when the folders' roll was cut off these men were necessarily cut off? The

the folders' roll was cut off these men were necessarily cut off? The folders' roll was made to bear the names of many persons engaged in other duties, and the folding per se never did cost such a sum of money as has been named by the gentleman from Missouri.

Mr. WELLS, of Missouri. That may be so. But we have provided a sufficient number of messengers to keep the doors also. As regards the folding-room, if the gentleman will take the trouble to make an examination he will find that there were men on the payroll of the folding-room who had never been in it, men who had been not there because they asked for employment. put there because they asked for employment.

Mr. HOLMAN. I ask that by unanimous consent debate on this

paragraph be closed.

Mr. RIDDLE. I ask the indulgence of my friend from Indiana to make a remark or two.

The CHAIRMAN. Is there objection to the proposition of the gen-

tleman from Indiana, that debate on this paragraph be now closed?

Objection was made.

Mr. RIDDLE. I desire only a moment or two. I have not been in the habit of consuming the time of the House, and I do not propose to do so now; but I do propose to call the attention of the House to the fact that this messenger is declared to be necessary by the Committee of Accounts, and I submit the question, which one of those committees is the better judge of the necessity of the employment of this officer, the Committee on Appropriations, on whom devolves such immense and multitudinous labor, or the Committee of Accounts, which has the supervision of matters of this kind? It seems to me the Committee of Accounts should know whether his services are nec-

essary or not.

essary or not.

I have been in favor of economy all the time. I give the Committee on Appropriations credit for all they have done in that direction. But I do not think that we antagonize true economy in employing those officers who are declared to be necessary by the proper committees of the House. I stated in my own district the other day, and I repeat it now, that the Committee on Appropriations is entitled to the thanks of the country for reducing the expenditures of the Government \$30,000,000 and that they would do a good work if they could go on and make the reduction \$50,000,000. I voted to-day for reducing my own salary and will do so again whenever I have the opportunity. my own salary and will do so again whenever I have the opportunity But when the recommendation comes before us for the employment of an officer whose employment is declared to be absolutely necessary of an officer whose employment is declared to be absolutely necessary for conducting a certain department in this Capitol, I shall always vote for it. And it must be remembered that this appropriation, under the amendment of the gentleman from Massachusetts, [Mr. Hoar,] involves additional labor. That labor is imposed on this officer. Five hundred dollars has already been appropriated, and by the terms of this amendment another \$500 will be appropriated, which will give him \$1,000 a year. will give him \$1,000 a year.

Mr. HOLMAN. I ask that by unanimous consent debate be closed

upon this paragraph.

Mr. DURHAM. I want to introduce some amendments and to make an inquiry or two as to other matters embraced in this paragraph. So far as this amendment is concerned I have no objection to closing debate.

The CHAIRMAN. No objection being made, the debate is closed

upon the pending paragraph.

Mr. VANCE, of North Carolina. I did not understand the proposition; I want to offer an amendment.

The CHAIRMAN. The gentleman will have that opportunity.

The question was put on Mr. RIDDLE's amendment; and there were ayes 20, noes not counted.

ayes 20, noes not counted.

So the amendment was not agreed to.

Mr. VANCE, of North Carolina. I offer an amendment to come in after line 196.

The CHAIRMAN. Debate is closed on-this paragraph.

Mr. VANCE, of North Carolina. But I have a right to offer amendments to it. If I had understood the proposition to close debate I should have objected, for I wanted to add a few interesting remarks to the amendment which I now offer, which is to strike out in line 196 after the word "dollars" down to line 197 after the word "dollars"

lars," as follows: "eight messengers at \$1,200," and insert, "eighteen messengers at \$1,200 each."

The question was taken upon the amendment; and upon a division there were yeas 7, ayes not counted.

So the amendment was not agreed to.

Mr. DURHAM. I did not understand that by unanimous consent all debate was closed upon this paragraph, but simply upon the amendment offered by the gentleman from Tennessee.

Mr. EDEN. I object to debate. All debate is closed.

Mr. DURHAM. I think debate was only closed on the pending

amendment to the paragraph.

The CHAIRMAN. Debate was closed upon the entire paragraph.

Mr. DURHAM. But I objected to that.

The CHAIRMAN. The Chair did not understand the gentleman as

objecting. Mr. DURHAM. I move then to amend the paragraph by striking out in lines 164, 165, and 166 the words "messenger to Committee on Appropriations, \$1,200."

Mr. FORT. That is all right; they said they did not want him.

Mr. DURHAM. I want to test the sincerity of the committee in

the reduction of expenses.

Mr. WELLS, of Missouri. Before the vote is put upon that amend-

ment I desire to say a word.

Mr. DURHAM. If there is to be any debate, I should like myself to have five minutes.

The CHAIRMAN. No debate is in order. The question was put

and the Chair announced that the amendment was agreed to.

Mr. WELLS, of Missouri. Is there no chance to be heard at all?
The messenger referred to in the bill—
Mr. DURHAM. I object to debate. The chairman of the Committee on Appropriations himself moved to close the debate, and the Chair has declared the amendment carried, and we have passed to other busines

The CHAIRMAN. The Chair desires to hear what the gentleman from Missouri [Mr. Wells] wants to say.

Mr. Wells, of Missouri. I want a division upon the adoption of

the amendment

Mr. GOODIN. The gentleman was on his feet calling for a division when the Chair announced the result of the vote.

Mr. BOONE. I understand that there is no debate allowed on this paragraph; and I make the further point of order that there is so much confusion in the Hall that it is impossible for me to understand what is going on.

Mr. WELLS, of Missouri. I endeavored to get the attention of the

Chair to get a division on the question.

The CHAIRMAN. Debate is not in order.

Mr. FORT. The members of the Committee on Appropriations closed the debate themselves.

Mr. ATKINS. But I ask for a division upon the adoption of the

Mr. WELLS, of Missouri. I was endeavoring to obtain the attention of the Chair when he put the vote.

The CHAIRMAN. Debate is not in order.

Mr. ATKINS. Nobody wants to debate, but we want a division

Mr. ATAINS. Nobely wants to debate, but we want a division upon the adoption of the amendment.

Mr. FRANKLIN. It is too late.

Mr. WELLS, of Missouri. I call the attention of the gentleman from Kentucky [Mr. DURHAM] to the fact that he is mistaken—

The CHAIRMAN. The Chair will again put the question to the

The question was put; and on a division there were-ayes 34, noes

Mr. DURHAM. No quorum has voted; and I call for tellers, and I ask that the amendment be again read.

The Clerk again read the amendment.

Mr. CLYMER. This man is really the assistant clerk of the com-

Mr. DURHAM. Then why did not you say so in the bill ?
Tellers were ordered; and Mr. DURHAM and Mr. ATKINS were appointed.

Mr. GOODIN. I ask unanimous consent that permission be given Mr. DURHAM. I have no objection to that.
Mr. HOLMAN. It cannot be done.
Mr. DURHAM. I understand that there is some misapprehension

about this matter, and if the gentleman be allowed to explain the House will understand it.

The CHAIRMAN. No explanation is in order.

Mr. RUSK. Let them call him assistant clerk and we will let it go.

Mr. HOLMAN, O, we do not want to call him that.

Mr. RUSK. Why not?

Mr. HOLMAN. He performs the duty of both offices.

The committee divided; and the tellers reported—ayes 16, noes 56.

Mr. DURHAM. I am satisfied that there is not a quorum here, but I will not insist upon a further count so as to retard the public busi-

No so the amendment was not agreed to.

Mr. DURHAM. I have another amendment to offer. I move to amend by striking out of lines 161, 162, and 163 the words "messenger to the Committee of Ways and Means, \$1,200." I move to

Mr. WOOD, of New York. I rise to a question of order.

The CHAIRMAN. The gentleman will state it.

Mr. WOOD, of New York. It requires unanimous consent in Committee of the Whole to go back in the consideration of a bill.

Mr. DURHAM. I am not going back; I am moving an amendment to the paragraph now pending.

The CHAIRMAN. The entire paragraph is open to amendment, but we delect in order.

but no debate is in order.

Mr. WOOD, of New York. I hope the amendment will not be adopted. This messenger is simply an assistant clerk of our com-

Mr. FORT. I understand he gets pay for another service.

The question was taken upon the amendment; and upon a division there were—ayes 18, noes 46.

No further count being called for, the amendment was not adopted. The Clerk resumed the reading of the bill, and read the following:

For twenty-eight pages, while actually employed, (including three riding-pages,) at \$2.50 per day, and for hire of horses, \$500, \$14.700.

Mr. PHILIPS, of Missouri. I move to amend by inserting after the paragraph just read that which I send to the Clerk's desk.

The Clerk read as follows:

That there be and is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to Hon. John Y. Brown the sum necessary to pay him the pay and mileage of a member of the Fortieth Congress, less the sum of \$2,500 heretofore paid him.

Mr. FOSTER. That is right.
Mr. FRYE. I would like to inquire of the gentleman from Missouri [Mr. Philips] if this \$2,500 was paid to Mr. Brown as his ex-

penses in an election contest.

Mr. PHILIPS, of Missouri. It was.

Mr. FRYE. Then I do not see the slightest propriety in excepting Mr. FRYE. Then I do not see the slightest propriety in excepting the payment of \$2,500. If the amount proposed to be appropriated is due to the gentleman from Kentucky the whole amount is due, and clearly the expenses to which he was subjected in that contest should not be excepted. I therefore move to amend the amendment by striking out the words "less the sum of \$2,500 heretofore paid him." Mr. PHILIPS, of Missouri. I accept the amendment. The amendment, as modified, was then agreed to.

The Clerk resumed the reading of the bill, and read the following:

### LIBRARY OF CONGRESS.

For compensation of the Librarian, \$4,000; and for fifteen assistant librarians, two at \$2,200 each, one at \$2,000, four at \$1,600 each, two at 1,400 each, two at \$1.200 each, two at \$1,200 each, one at \$1,000, and one at \$900 per annum; in all, \$26,300.

two at \$1,200 each, one at \$1,000, and one at \$900 per annum; in all, \$26,300.

Mr. MONROE. I move to amend the paragraph just read by striking out "\$2,200," and inserting "\$2,250" as the salary of the first two assistant librarians. I desire to state to the committee a few facts in regard to the two officers whose salaries it is proposed by this bill to fix at a less rate than they have ever been heretofore.

These two officers, as is well known, had \$2,500 each until the appropriation bill of last year was passed. That bill fixed their salaries at \$2,250 each; \$50 more than the present bill does.

I should perhaps have said nothing in regard to this matter—as there has been a kind of understanding that we would take the legislation of last year as the basis of the legislation of this year upon the subject of salaries—if the Committee on Appropriations had not still further reduced the salaries of these officers by this bill.

They are the most important assistants in the Congressional Library, being those upon whom Mr. Spofford principally relies in his

They are the most important assistants in the Congressional Library, being those upon whom Mr. Spofford principally relies in his great work. The first of them, Mr. Hoffman, has charge, as the gentlemen are aware, of the law library, to which many of us are often so glad to resort. The labor that he has to perform is very important, I know; and I think any person will see by talking with these gentlemen and learning their circumstances, the expense to which they are put necessarily for the support of their families, the responsibilities of their position, and the peculiar character of the work which they have to do, that the sum proposed by this bill is too low, and that it ought at least to be as high as it was fixed last year. Indeed, it never ought to have been reduced below \$2,500.

It may seem to be a small matter to members to add but \$50 a year to this salary; but I can assure gentlemen that in the condition in

to this salary; but I can assure gentlemen that in the condition in which these gentlemen are \$50 more is a matter of some consequence. I would be glad to put the salaries of these two officers back to \$2,500 a year, what it used to be. But I will not move to do more than put them back to what they were fixed in the appropriation bill of last

year.

The other assistant, Mr. Solyom, has charge of what is called the catalogue department. I am assured by a gentleman who has every means of knowing, that this officer has a very fair knowledge of at least nine different languages. He is the only man in that department who understands Sanscrit. Being at the head of the catalogue department, it is his business to assign to each book coming into the Library its locality. To the efficiency and ability which he exhibits we are largely indebted for being able to find at any moment any book we may wish. I sincerely hope that the chairman of the Combook we may wish. I sincerely hope that the chairman of the Committee on Appropriations will at least allow the salary to be restored to what it was last year. The difference is but slight.

Mr. ROBERTS. As an amendment to the amendment of the gentleman from Ohio, [Mr. MONROE,] I move to insert, in lieu of the paragraph just read, the entire paragraph contained in the law of the

last session under the head of "Library of Congress." This goes a step further than is indicated by the gentleman from Ohio. The only objection I have to his amendment is that it does not go far only objection I have to his amendment is that it does not go far enough. The effect of this amendment will be to insert after the words "hundred" in line 265, the words "and forty," and to insert after the word "hundred," in line 268, the words "and sixty."

Mr. HOLMAN. I rise to a question of order. The gentleman cannot submit more than one amendment at the same time.

Mr. ROBERTS. I have offered but one amendment, which is to insert the entire paragraph of the law of last session.

The CHAIRMAN. The gentleman from Ohio moved an amendment to which the gentleman from Maryland moves another amendment.

ment, to which the gentleman from Maryland moves another amend-

ment, which being only in the second degree is in order.

Mr. ROBERTS. I connection with this amendment and as an illustration of the manner in which the law of last session operated with respect to many of these assistant librarians, I wish to say that Mr. Hoffman, to whom the gentleman from Ohio just made allusion, has stated to me that those in charge of the Law Library were compelled to supply themselves with stationery; and when called upon to facilitate members of the House in working up cases were compelled to buy the paper, ink, and pens with which this was accomplished. I suggest that this is not exactly a proper thing; and I sincerely trust that the substitute I have submitted will be accepted since it simply carries out the expressed wish of the House as con-

tained in the law passed at the last session.

Mr. HOLMAN. Mr. Chairman, the salaries of a large class of a employés in this House and in the Departments are diminished by employes in this House and in the Departments are diministed by this bill. Indeed, sir, the movement for reform in this Government will stop far short of the expectations of the country if it does not go beyond the legislation of last session. The employés of the House and the Senate and other employés about the Capitol, such as those and the Senate and other employes about the Capitol, such as those connected with the library, are associated with us so that we encounter them every day; but I submit to the fair-minded gentleman from Ohio [Mr. Monroe,] and the equally just gentleman from Maryland [Mr. Roberts] that nothing is so unfair as a system of discrimination in favor of this particular class of employés. We should not allow our feelings of personal friendship to operate in favor of these continuous areas a system of these continuous areas and as while we represent the selection of the gentlemen around us, while we remorselessly reduce the salaries of officers deserving just as much but who are not here with us.

The reduction here proposed is very slight. These gentlemen no doubt perform their duties just as well as any other employes of the

Government; but their services are no more valuable than those of others. They are admirable gentlemen, all of them, and do their duties well; but if personal considerations of friendship are to swerve our judgment in matters of this kind it seems to me we shall become eminently chargeable with partiality in our legislation. I would be very glad to put these salaries higher if it could be done consistently with the condition of the country and the standard of compensation prevailing throughout unofficial branches of business; but these sala-

ries are not reduced any more than others.

Let me get the ear of the gentleman from Ohio for a moment.

Does he know that according to the reports from the Treasury Department our public debt is increasing at the rate of over two million and a half dollars per month. Had it not been for what gentlemen regard as the system of remorseless economy adopted in the last Congress, the addition to the public debt at this time would be simply frightful. The increase has been \$2,000,000 for the last month, four and a half million dollars for the previous month, and half a four and a half million dollars for the previous month, and half a million dollars for the month before. Yet it is proposed to keep salaries at the high standard we reached during the war and during a period of inflated currency. But for the efforts at retrenchment made during the last session of Congress, the public debt during the last month would have been increased more than \$4,000,000.

All over this country skilled laborers in the various departments of industry are begging for employment at \$1.50 a day, yet such salaries as \$2,000 are regarded as niggardly on the part of this Government. On the ground of fairness to those who pay the taxes, on the

ment. On the ground of fairness to those who pay the taxes, on the score of economy and purity in the Government, I insist that every one of these official salaries shall steadily be reduced until it has reached a compensation corresponding with that paid in the private employments of life for similar service. My friend will admit that all these salaries are now above that standard.

We do not touch the salary of the Librarian, Mr. Spofford. We talked about it last session, but the general sentiment being against it, we let it stand. The other reductions made this session are moderate and reasonable, corresponding to those made in other places under the Government. I trust my friend will not press his amendment.

Mr. WOOD, of New York. Mr. Chairman, I have generally acted with the gentleman from Indiana in his reduction in the expendi-tures of the Government. I sustained him at the last session in making very general and in some respects very radical reductions in expenditures about this Capitol. I think, however, he should discriminate more than he seems disposed to do in respect to the class of employés to whom these reductions should be applied. The clerks in the Congressional Library are, so to speak, skilled artisans in a par-ticular branch requiring great study and experience. The persons to whom my friend refers as wishing to be employed at a dollar and a half a day wish to be employed in a class of employment the duties of which can be discharged by any one who walks the streets but the ability to discharge these special and important duties, requiring

years of practice and great study, intelligence, and the acquisition of literary knowledge, I submit with all respect to my friend cannot be acquired at once or without a great deal of labor. And when we have in the employment of the Government persons who are specialists in a particular branch, important in its character, to which all have to look for information to enable us to legislate intelligently, I submit the reduction made last year in their pay should be considered as

sufficient even at this time.

The bill now reported by the committee makes a further reduction in the compensation of these clerks. I think therefore in that view the amendment of the gentleman from Maryland is certainly reason-able and fair, and while I am for sustaining every possible economy, I do think there are some things in reference to which it is false economy to make any further curtailment. I am in favor, therefore, of the amendment of the gentleman from Maryland and hope it will

be adopted.

The CHAIRMAN. Debate on the amendment is exhausted. Mr. MONROE. I will speak to the amendment of the gentleman

from Maryland.

The CHAIRMAN. Debate on that amendment is exhausted.

Mr. MONROE. I move then to strike out the last two words.

Mr. Chairman, I wish to say a word or two in reply to my friend from Indiana. I do not at all antagonize, and was not intending to

do so, the general system which he is endeavoring to carry on for the relief of the tax-payers of the country. I sympathize with many of his efforts and often vote with him; but I think it is making too much of this simple matter to regard it as a hostile movement directed against honest attempts at retrenchment and economy, directed against the interests of the tax-payers of this great country. Why, sir, the tax-payers, in my humble judgment, have not the slightest objection to having these skilled gentlemen in the Congressional Library receive \$2,250 a year instead of \$2,200 a year.

Mr. HOLMAN. That is not all.
Mr. MONROE. Why, sir, the gentleman from Indiana speaks as if I were engaged in the work of increasing the national debt. I do not understand the national debt to be increasing. I understand it to be

on the average steadily decreasing; but, whatever may be the fact in regard to that, I do not think it is going to help us pay the national debt to economize on our own means of intelligence on this floor. It debt to economize on our own means of intelligence on this floor. It is not going to help this House to legislate for the country in any direction for members to go into that Library and not be able to find at once an important book which they need in the intelligent discharge of their duties on this floor. It is not going to help pay the national debt to put out our own eyes, to darken our own souls, to shut off from inquiring minds here the means of information in regard to questions of the greatest importance which come before the House. No, sir; it is good economy to have the means of informa-tion. It is good economy to know where to find at once the books we need and the information we require to perform the service to the country we undertake here.

Now, sir, these two men are not personal friends of mine. Now, sir, these two men are not personal irreless of finite. I have no personal interest in them in the ordinary sense. I simply have an interest in the rare and peculiar and skillful and most valuable work that they perform. That is the thing in which I have an interest. And it seems necessary, Mr. Chairman, if we would make that Library available, if we would make it useful to us, that we should not put out these two eyes of that great institution. These are the two most important helpers that Mr. Spofford has. Their work is all under his supervision. They are responsible to him. But they are of the greatest importance to him.

Sir, there is no difference between the gentleman from Indiana and myself but this: He would agree with me that we need those officers, that we need the rare, peculiar sort of skill and of knowledge which they possess. And he will agree with me, also, that they should be decently paid; that they ought to have enough to keep their families from lacking bread while they are engaged in this important service for us. The only point in dispute is, what is enough for this? And I submit that \$2,250 is not too much. Twenty-five hundred dollars I know is not too much; but I name \$2,250 because that is the amount of last year's bill, which I understood the gentleman from Mississippi [Mr. Singleton] to say would be taken as the basis for operations

Mr. HOLMAN. I think that \$2,200 is a very handsome salary. The point of difference between the gentleman from Ohio [Mr. MONROE] and myself is this: My friend inadvertently and unintentionally yields to the force of his associating largely with that peculiarly favored class of persons who are classed among the literary men of the time, while I conceive that my sympathies are more with the laboring masses of the people, and I will not believe and I cannot believe that it is more important for this Government—and I certainly differ from my friend from New York on that point, that it is more differ from my friend from New York on that point—that it is more important to this Government to give handsome salaries to men enterprise that gaged in literary pursuits than to men of skill in the industries that add to our wealth. I know the gentleman from Maryland can go to gaged in literary pursuits than to men of skill in the industries that add to our wealth. I know the gentleman from Maryland can go to his own city of Baltimore and find there men of as high attainments as any in this Capitol, skillful men who are mechanics; and yet if these men get \$500 or \$600 a year by hard labor, such as men of intellectual pursuits are never called upon to perform, they regard themselves as doing well, and their wives and children are by these meager means kept furnished with the necessities of life, while here we talk about \$2,200 a year as being an insufficient salary. I had before me only a moment ago a newspaper, one of the leading and most influential papers connected with industry, drawing attention to the fact that while a gentleman of elegant leisure and an office-seeker was drawing up a letter asking a salary of \$2,000 a year, a laboring-man, with his wife and children at his side, with hammer and ax on the carpet, was wringing his hands and appealing for work at \$2 a day. We talk about \$2,000 a year as being an insufficient salary because it is a literary man who is to receive it, not a man learned in that learning which adds to the national wealth of the country.

Mr. TOWNSEND, of New York, rose.

Mr. HOLMAN. I wish only to add that the increase proposed by

Mr. HOLMAN. I wish only to add that the increase proposed by the gentleman from Maryland in these salaries amounts to about \$3,000 a year.

Mr. ROBERTS. You are mistaken.

Mr. MONROE. I withdraw the pro forma amendment.

Mr. TOWNSEND, of New York. I move that the committee rise.

Mr. ROBERTS. If the gentleman from New York will withhold that retire for a more part of the salaries for a way.

that motion for a moment or two I desire to say a word.

Mr. TOWNSEND, of New York. I will withdraw the motion if the committee want to vote on the amendment.

Mr. HOLMAN. Let us hear the gentleman from Maryland and then

take a vote.

Mr. ROBERTS. I only desire to say that I do not wish it to be understood that the gentleman from Indiana is the only one here to express an interest in the masses of the people of this country. I am just as much interested in them as he is; and they are interested in this matter equally with everybody else. They are interested in seeing that justice is done.

The gentleman from Indiana made a remark which seemed to indi-

cate that I had some personal interest in this matter.

Mr. HOLMAN. O, no; I disclaim that entirely.

Mr. ROBERTS. I desire to say I have no interest in any of these librarians beyond the fact of my meeting them in the respective libraries. It is a sense of justice alone that has actuated me in offering this amount. ing this amendment, and I trust sincerely that it will be favorably acted upon by the committee.

Mr. FOSTER. I understood my friend from Indiana [Mr. Holman]

to say that the public debt was increased in January.

Mr. HOLMAN. The Union, a newspaper of this city, puts down

the increase at something over \$2,000,000.

Mr. FOSTER. It is a decrease of \$2,000,000.

Mr. KELLEY. It is a decrease for the month of \$2,000,000 and a

Mr. KELLEY. It is a decrease for the month of \$2,000,000 and a decrease on the year so far of \$8,000,000.

Mr. HOLMAN. The statement I referred to is that there was an increase of the debt during the past month of \$2,069,000.

Mr. FOSTER. The gentleman is wrong about that. The chairman of the Committee on Appropriations, whose services I appreciate and whose withdrawal from the House I shall regret, ought to be careful when he makes a statement of this kind. There is another matter to which I shall advert. The gentleman from Indiana, the chairman of the Committee on Appropriations, has done a great many

ter to which I shall advert. The gentleman from Indiana, the chairman of the Committee on Appropriations, has done a great many good things in the interest of economy and he is in great distress about the laboring-men of the country. I find this to be the fact:

We are paying, in this bill, the laborers and the messengers all about this Capitol \$720 a year, and also the same class of employés in all the Departments, and my friend from Indiana has never in a single instance proposed a reduction of the pay of those engaged in this class of service, when he knows that private employers do not pay within 50 per cent. of that amount. I cannot understand why, in the enunciation of his principle that public employés should not be paid more than private ones, on the pay of this class of employés he de-

more than private ones, on the pay of this class of employés he declines to make any reduction whatever.

Mr. HOLMAN. I read from the Union of February 2 that the increase of the public debt during the past month was \$2,069,669.71. I only wish to add that it was upon that authority that I made the

statement.

Mr. FOSTER. That is a democratic newspaper, and I do not think that the chairman of the Committee on Appropriations should, upon a statement in a democratic newspaper, say to the country what may not be true. He ought to get his information from official sources.

Mr. KELLEY. Allow me to say that the public debt has been diminished \$6,000,000 this year. And now there is a further diminition of

\$2,069,669.71.
Mr. HOLMAN. We shall have the debt statement to-morrow and

Mr. HOLMAN. We shall have the debt statement to-morrow and then we shall know what the exact figures are.

Mr. KELLEY. Unless by deducting \$2,000,000 from \$6,000,000 you can make \$8,000,000 the gentleman's figures were a mistake.

Mr. HOLMAN. I now ask unanimous consent that debate be closed upon the pending paragraph.

Mr. HURD. I object. I desire to say a single word as to the duties of one of the assistant librarians. I refer to the assistant librarians. librarian who has charge of the law library. The importance of his labor must be familiar to anybody who has occasion to examine the books in his department. He is required to purchase books for that library, both those published in the United States and those published in foreign countries. He is required to systematically arrange and classify those books so that those who desire to examine them may have speedy and satisfactory access to them; he is required to have a familiarity with the law in order to render assistance to members of Congress who have occasion to visit the library.

His duties require a knowledge of modern and ancient languages, a thorough knowledge of law, a knowledge of the reports of law cases, and likewise a general knowledge of literature.

The present incumbent possesses these qualifications in an eminent degree. He speaks four foreign languages, French, Italian, Spanish, and German. He is thoroughly versed in the ancient languages, and during the many years that he has held this position he has given universal satisfaction to those who have had occasion to visit that universal satisfaction to those who have had occasion to visit that library. His salary originally was \$1,800 when there were but eight thousand volumes in the Library, and now when there are forty thousand volumes he receives only \$2,500, and it is proposed to reduce that amount. I submit that his knowledge of languages and his familiarity with law fit him better for the place than any one else who would be likely to be appointed, and that his compensation is not too great; indeed, in my judgment it is too small. I hope the amendments proposed by the gentleman from Ohio [Mr. Monroe] and the gentleman from Maryland [Mr. Roberts] will be adopted.

The question was taken on Mr. Monroe's amendment; and it was not agreed to.

not agreed to.

The question recurred on Mr. Roberts's amendment; and on being

put there were upon a division ayes 61, noes not counted.

Mr. HOLMAN. Let it go as adopted. I shall call for a separate

vote in the House.

So the amendment was agreed to.
Mr. WADDELL. I move that the committee do now rise.
Mr. HOLMAN. If the House wishes to take a recess until this evening I have no objection to that motion, otherwise I must object.
[Loud cries of "Regular order!"]
The CHAIRMAN. No debate is in order upon a motion that the

Mr. TOWNSEND, of New York. We had an evening session a few days ago on an appropriation bill.

Mr. WADDELL. I insist upon my motion—

Mr. FOSTER. That we take a recess until to-night.

Mr. TOWNSEND, of New York. We came here one night and what

was the result?

Mr. FOSTER. We can have a distinct understanding as to the

business that is to be transacted to-night.

The question was taken on Mr. WADDELL's motion; and it was

The Committee of the Whole accordingly rose; and the Speaker having resumed the chair, Mr. REAGAN reported that, pursuant to the order of the House, the Committee of the Whole on the state of the Union had had under consideration the Union generally and particularly the special order, being the bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

#### ORDER OF BUSINESS.

Mr. HOLMAN. I move that the House now take a recess until half past seven o'clock this evening, with the understanding that the session shall be devoted to the consideration in Committee of the

Whole of the legislative appropriation bill.

Many Members. "No!" "No!"

Mr. WADDELL. I move to amend so that the House shall take a recess until ten o'clock to-morrow morning.

The question was taken upon the amendment; and upon a division

The question was taken upon the amendment; and upon a division there were—ayes 76, noes 45.

Before the result of the vote was announced,
Mr. HOLMAN said: I will have to ask for tellers on this motion.

I trust that gentlemen will bear in mind that this is the 2d day of February, and it is very important that we should take prompt action on the appropriation bill.
Mr. WADDELL. I object to debate.

The question was taken upon ordering tellers; and there were 22 in the affirmative, not one-fifth of a quorum.

Mr. HOLMAN. I believe that no quorum voted on the last vote.
The SPEAKER. If the gentleman makes that point, the Chair will order tellers.

order tellers

Mr. HOLMAN. As the House seems inclined to hold no session to-night, under the circumstances I will not call for a further count upon the motion to take a recess until to-morrow at ten o'clock.

No further count being called for, the motion of Mr. WADDELL was accordingly agreed to.

Pending the announcement of the result of the vote,

## ENROLLED BILL SIGNED.

Mr. HARRISON, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (H. R. No. 3156) to perfect the revision of the statutes of the

United States.

## SARAH E. THOMPSON.

The SPEAKER, by unanimous consent, laid before the House a re-port from the commissioners of claims in the case of Sarah E. Thomp-son, of Tennessee; which was referred to the Committee on Appropriations.

SALE OF WASTE TIMBER ON INDIAN RESERVATIONS.

The SPEAKER also laid before the House a letter from the Secre-

tary of the Interior, recommending legislation authorizing the sale of waste timber on Indian reservations; which was referred to the Committee on Indian Affairs.

#### EXTENSION OF CADET BARRACKS.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting estimates for the extension of cadet barracks; which was referred to the Committee on Appropriations.

#### YUMA, ARIZONA.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report from the Adjutant-General on the bill (H. R. No. 4179) to sell quarry reservation to the village of Yuma, in Arizona; which was referred to the Committee on Military Affairs.

### FRANK A. PAGE.

The SPEAKER also laid before the House a letter from the Secretary of War, concerning a report on the case of Frank A. Page, late lieutenant of the United States Army, retired; which was referred to the Committee on Military Affairs.

#### JOHN STEWART.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General in the case of John Stewart, late captain Fifteenth Michigan Infantry, and a letter from the Secretary of War, transmitting papers in the case of John Stewart, late captain Fifteenth Michigan Infantry; which were referred to the Committee on Military Affairs.

### FORT DUNCAN, TEXAS.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report of the Quartermaster-General, relative to improvements on the site of Fort Duncan, Texas, made by the Government; which was referred to the Committee on Military Affairs.

#### E. F. WENCKEBACH.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General in the case of E. F. Wenckebach, late captain United States Army; which was referred to the Committee on Military Affairs.

#### MILL CREEK HARBOR OF REFUGE.

The SPEAKER also laid before the House a letter from the Secre tary of War, transmitting a report on the harbor of refuge at Mill Creek, on the Ohio River; which was referred to the Commistee on Commerce, and ordered to be printed.

#### BRIDGE ACROSS THE MISSOURI AT GLASGOW, MISSOURI.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report on House bill No. 4342, providing for a bridge across the Missouri River near Glasgow, Missouri; which was referred to the Committee on Commerce.

#### IMPROVEMENT OF DES MOINES RAPIDS.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report of engineers on House bill No. 4169, for the relief of employés on the improvement of the Des Moines Rapids; which was referred to the Committee on Commerce.

#### LANDS IN SAN FRANCISCO COUNTY, CALIFORNIA.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report on House bill No. 4180, concerning certain lands in San Francisco County, California; which was referred to the Committee on Public Lands.

### DEFICIENCY FOR COMMISSARY SERVICE.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting an estimate from the Commissary-General for a deficiency in the appropriation for the fiscal year ending June 30, 1877; which was referred to the Committee on Appropriations.

## NEW JAIL IN DISTRICT OF COLUMBIA.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, transmitting estimates of the Supervising Architect of the Treasury of the amount required to complete the new jail in the District of Columbia; which was referred to the Committee on Appropriations.

## DEFICIENCY FOR SURVEYING.

The SPEAKER also laid before the House letters from the Secretary of the Interior, transmitting deficiency estimates for the surveying service for the year ending June 30, 1877; which were referred to the Committee on Appropriations.

## T. J. GALBRAITH.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, in relation to a re-appropriation to pay balance due late Indian Agent T. J. Galbraith; which was referred to the Committee on Appropriations.

#### COMMISSARY AND QUARTERMASTER STORES.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting lists of four hundred and forty-nine claims for commissary and quartermaster stores; which was referred to the Committee on War Claims, and ordered to be printed.

#### SMITHSONIAN INSTITUTION.

The SPEAKER also laid before the House a preamble and resolution from the Board of Regents of the Smithsonian Institution, relative to additional room for the collections of the Institution; which was referred to the Committee on Appropriations.

#### FOUNDATIONS OF WASHINGTON MONUMENT.

The SPEAKER also laid before the House a letter from the president of the Washington Monument commission, transmitting the results of an examination of the foundations of the Washington Monument; which was referred to the Committee on Appropriations.

#### SCOTT LEGION OF MEXICAN VETERANS.

The SPEAKER also laid before the House a resolution of thanks from the Scott Legion of Mexican Veterans of Philadelphia, in relation to the passage of the pension bill; which was laid on the table.

#### AGRICULTURAL COLLEGE LANDS FOR COLORADO.

The SPEAKER also laid before the House a joint resolution of the Legislature of Colorado, asking a grant of land to the agricultural college of that State; which was referred to the Committee on Publie Lands.

#### PATENT-OFFICE REPORT.

The SPEAKER also laid before the House a letter from the Commissioner of Patents, transmitting his annual report; which was laid on the table, and ordered to be printed.

#### TESTING IRON AND STEEL.

The SPEAKER also laid before the House the following message from the President of the United States; which was referred to the Committee on Appropriations:

### To the Senate and House of Representatives:

Committee on Appropriations:

To the Senate and House of Representatives:

I desire to call the attention of Congress to the importance of providing for the continuance of the board for testing iron, steel, and other metals, which by the sundry civil appropriation act of last year was ordered to be discontinued at the end of the present fiscal year.

This board, consisting of engineers and other scientific experts from the Army, the Navy, and from civil life, (all of whom except the secretary give their time and labors to this object without compensation,) was organized by authority of Congress in the spring of 1875, and immediately drafted a comprehensive plan for its investigations and contracted for a testing machine of four hundred tons capacity, which would enable it to properly conduct the experiments. Meanwhile the subcommittees of the board have devoted their time to such experiments as could be made with the smaller testing machines already available. This large machine is now just completed and ready for erection at the Watertown arsenal, and the real labors of the board are therefore just about to be commenced. If the board is to be discontinued at the end of the present fiscal year, the money already appropriated and the services of the gentlemen who have given so much time to the subject will be unproductive of any results.

The importance of these experiments can hardly be overestimated when we consider the almost endless variety of purposes for which iron and steel are employed in this country and the many thousands of lives which daily depend on the soundness of iron structures. I need hardly refer to the recent disaster at the Ashtabula bridge in Ohio and the conflicting theories of experts as to the cause of it, as an instance of what might have been averted by a more thorough knowledge of the properties of iron and the best modes of construction.

These experiments cannot properly be conducted by private firms, not only on account of the expense but because the results must rest upon the auth

EXECUTIVE MANSION, January 30, 1877.

## LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted— To Mr. Phelps, for one week from Monday next on account of sickness in his family.

To Mr. O'NEILL, until Monday next.

## WITHDRAWAL OF PAPERS.

By unanimous consent, leave for withdrawal of papers was granted

To Mr. Walling, in the case of Ralph Spencer;
To Mr. Dunnell, in the case of James M. Lee; and
To Mr. Slemons, in the case of J. J. Busby.

### REMOVAL OF TAXES ON BANKS.

Mr. PHILIPS, of Missouri, by unanimous consent, presented a petition of numerous citizens of the State of Missouri, for the removal of war taxes on banks; which was referred to the Committee of Ways and Means, and ordered to be printed in the RECORD without the signatures, as follows:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of the undersigned respectfully showeth, that war-taxes, both heavy and unequal in their burden, are imposed on the national banks, State banks, savings-banks, and private bankers of this country, which taxes have been for several years productive of great commercial injury; that in no other country are such taxes incurred by the business of banking, and the exigency having passed away, the war taxes can be taken off without any sacrifice to the Treasury at all commensurate with the benefits which will result to the agricultural, financial, and commercial interests of the country.

That the present time is a proper one for Congress to interfere for the relief of these interests; that the taxes now levied by the General Government on the deposits, circulation and capital of all banks should be immediately repealed, and the subject of bank taxation be remitted to the several States and Territories as be-

fore the war.

And your petitioners will ever pray, &c.

JANUARY, 1877.

And then, in pursuance of the vote previously taken on the motion of Mr. WADDELL, the House (at four o'clock and forty minutes p.m.) took a recess until ten o'clock a. m. to-morrow.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk

under the rule, and referred as stated:

By Mr. BEEBE: The petition of citizens of Rockland County, New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Orange County, New York, of sim-

ilar import, to the same committee.

By Mr. BLOUNT: The petition of Thomas J. Williams, for compen-

By Mr. BLOUNT: The petition of Thomas J. Williams, for compensation for property taken by the United States Army, to the Committee on War Claims.

By Mr. CANNON, of Utah: The petition of William W. Magnire, G. D. Folkman, Morroni Skeen, and others, of Plain City, Utah Territory, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Post-Roads.

By Mr. CRAPO: The petition of John Kenrick and 30 others, of Orleans, Massachusetts, of similar import, to the same committee.

Also, the petition of Timothy Gordon and 19 other citizens of Plymouth, Massachusetts, for the removal of the tax upon deposits and capital of banks, to the Committee on Banking and Currency.

By Mr. DURAND: Four petitions of citizens of Michigan, of similar import, to the same committee.

Also, the petition of citizens of Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. EGBERT: The petition of citizens of Emlenton, Pennsylvania, of similar import, to the Committee of Ways and Means.

By Mr. FRYE: The petition of Charles Lana and others, of similar import, to the same committee.

By Mr. FRYE: The petition of Charles Lana and others, of similar import, to the same committee.

Also, the petition of Henry E. Peelle, J. H. Cloud, and other citizens of Cambridge City, Indiana, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

By Mr. GARFIELD: Memorial of Henry Talcott, of Jefferson, Ohio, against repealing the law by which banks are taxed, to the Committee of Ways and Means.

By Mr. HENDERSON: The petition of H. B. Carpenter and 33 other citizens of Rock Island County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HUMPHREYS: The petition of citizens of Indiana, for a post-route from Hillham, via Simmons's and Ellis's, to Celestine, Dubois County, Illinois, to the same committee.

By Mr. HUNTON: The petition of W. W. Mackall, of, Virginia, for the removal of the disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, to the Committee on the Judiciary. mittee on the Judiciary

Also, the petition of Henry B. Tyler, of Virginia, of similar import,

By Mr. HURD: The petition of citizens of Ohio, for a post-route from Fayette, Fulton County, to Pioneer, Williams County, Ohio, to the Committee on the Post-Office and Post-Roads.

By Mr. KASSON: The petition of citizens of Iowa, that pensioners

By Mr. KASSON: The petition of citizens of Iowa, that pensioners be granted arrears of pension from the date of their discharge, to the Committee on Invalid Pensions.

By Mr. LUTTRELL: The petition of the president of the National Bank of Napa, California, for the repeal of the check-stamp tax, to the Committee of Ways and Means.

Also, the petition of J. P. Crockett and others, of California, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads. By Mr. McMAHON: The petition of Michael Jackson, for a pension, to the Committee on Invalid Pensions.

Also, the petition of Hugh B. Mockin, late of Company A, Eighth United States Veteran Volunteers, of similar import, to the same committee.

By Mr. O'BRIEN: Resolutions of the city council of Baltimore, requesting the removal of Fort Carroll in the harbor of Baltimore, the same being an obstruction to the commerce of said city, to the Committee on Commerce.

By Mr. O'NEILL: The petition of insurance companies, shipping merchants, and others interested in maritime affairs, for an appropriation for printing charts and sailing directions, to the same com-

By Mr. PHILLIPS, of Kansas: Resolution of the Legislature of Minnesota, favoring such legislation as will appropriate the proceeds of the sales of the public lands in the several States afflicted with grasshoppers to those States, to be used in the payment of bounties for the destruction of such grasshoppers, to the Committee on Public Lands

Also, the petition of citizens of Minneapolis, Kansas, for the removal of the tax on banks, to the Committee of Ways and Means.

By Mr. JAMES B. REILLY: The petition of citizens of Schuylkill County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

the Post-Office and Post-Roads.

By Mr. STENGER: The petition of citizens of Huntingdon County, Pennsylvania, of similar import, to the same committee.

By Mr. THORNBURGH: The petition of David R. Sasseen, late of Company D, Third Tennessee Cavalry, for the correction of his military record, to the Committee on Military Affairs.

By Mr. WELLS, of Missouri: The petition of citizens of Missouri, for the removal of the tax on banks, to the Committee of Ways and

By Mr. WHITTHORNE: The petition of W.D. Fulton, S. Claybrook, and other citizens of Williamson County, Tennessee, for a post-route from Nashville to Leiper's Fork, Tennessee, via Granny White and Hillsborough, Tennessee, to the Committee on the Post-Office and Post-

By Mr. WILSON, of West Virginia: The petition of Isaac L. Simers and 9 others, of White Pine, West Virginia, for cheap telegraphy,

to the same committee.

## IN SENATE.

# SATURDAY, February 3, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session. What is the pleasure of the Senate?

Mr. PADDOCK. I move that the Senate take a further recess until twelve o'clock.

The motion was agreed to; and the Senate accordingly took a re-ess until twelve o'clock.

The Senate re-assembled at twelve o'clock.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The PRESIDENT pro tempore. The recess having expired, the Senate will come to order. The Secretary will read the Journal of yesterday.

The Journal of the proceedings of Friday, February 2, was read and

approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the Speaker of the House had signed the enrolled bill (H. R. No. 3156) to perfect the revision of the statutes of the United States; and it was thereupon signed by the President pro tempore.

### CREDENTIALS.

The PRESIDENT pro tempore presented the credentials of HENRY G. DAVIS, elected by the Legislature of the State of West Virginia a Senator from that State for the term beginning March 4, 1877;

which were read, and ordered to be filed.

Mr. PADDOCK presented the credentials of ALVIN SAUNDERS, elected by the Legislature of the State of Nebraska a Senator from that State for the term beginning March 4, 1877; which were read,

and ordered to be filed.

## EXECUTIVE COMMUNICATION.

The PRESIDENT pro tempore laid before the Senate a letter of the Secretary of the Interior, communicating estimate of appropriations required for the surveying service to supply deficiencies for the fiscal year ending June 30, 1877; which was referred to the Committee on Appropriations, and ordered to be printed.

### REPORT OF SUPERINTENDENT OF COAST SURVEY.

Mr. ANTHONY, from the Committee on Printing, to whom was referred a concurrent resolution to print extra copies of the report of the Superintendent of the Coast Survey, reported it without amendment; and it was agreed to, as follows:

Resolved by the Senate, (the House of Representatives concurring.) That there be printed 1,000 extra copies of the report of the Superintendent of the Coast Survey for 1876, for the use of the Superintendent of the Coast Survey.

### GOVERNMENT PRINTING OFFICE.

Mr. ANTHONY. I offer the following resolution for reference to the Committee on Appropriations:

Resolved, That the Committee on Appropriations be instructed to report a bill making appropriation for the support of the Government Printing Office.

I am apprised by the Public Printer that the appropriation for the printing of Congress is nearly exhausted, with the exception of the fund appropriated for the publication of the RECORD, and that in a few days he will be unable under the law to execute the orders of the two Houses of Congress for printing. I move the reference of the resolution to the Committee on Appropriations.

The motion was agreed to.

#### C. G. FREUDENBERG.

Mr. SHERMAN. If there be no further resolutions, I move that the Senate proceed to the consideration of Senate bill No. 189, a private

bill reported from the Committee on Military Affairs.

The motion was agreed to; and the bill (S. No. 189) placing the name of C. G. Freudenberg upon the retired list of the United States Army was considered as in Committee of the Whole.

The bill was reported from the Committee on Military Affairs with an amendment.

The amendment was in lines 7 and 8 to strike out the words "15th day of December, 1870" and insert the words "and after the passage

of this act."

Mr. WEST. Is there a report in that case?

Mr. BURNSIDE. There is no report in the case. The amendment only changes the date at which the bill is to take effect so as to make it take effect from and after its passage.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

### FORT DALLES MILITARY RESERVATION.

Mr. KELLY. I move that the Senate proceed to the consideration of the bill (S. No. 1001) to provide for the disposition of Fort Dalles

The PRESIDENT pro tempore. Is there objection to the motion?
The Chair hears none, and the bill will be read for information.
The Chief Clerk read the bill.

Mr. INGALLS. Is there a report accompanying the bill? The PRESIDENT pro tempore. There is.
Mr. ALLISON. Is the bill before the Senate?

The PRESIDENT pro tempore. It is not. The Chair was about putting the question, Will the Senate proceed to its consideration? The PRESIDENT pro tempore put the question, and declared that the noes appeared to prevail.

Mr. KELLY and Mr. MITCHELL called for a division.

Mr. WEST. We know what the result of that will be. There is no quorum here.

Mr. KELLY. As soon as the report of the committee is read there will be no doubt about the bill.

Mr. WEST. I move that the Senate take a recess until Monday

morning at ten o'clock.

Mr. McMILLAN. I ask the Senator from Louisiana to withdraw the motion for a moment. I desire to present one or two memorials. The PRESIDENT pro tempore. Does the Senator from Louisiana yield to the Senator from Minnesota?

Mr. WEST. Before yielding to the solicitations of Senators who desire to present morning business, which I shall do, I wish to say that according to my understanding upon our adjournment last evening it was understood that the Senate should transact no business to-day of a legislative character. I think it is due to those who were here who had that understanding with us that the Senate should now take a recess. I desire to say, however, that I shall withdraw the motion in order to allow Senators to offer morning business and at the conclusion of the morning business I will again renew the motion to take

Mr. McMILLAN. I present a joint resolution of the Legislature of Minnesota instructing her Senators and requesting her Representa-

Mr. KELLY. I believe I have the floor.

The PRESIDENT pro tempore. The Senator from Louisiana has moved to take a recess, which motion has priority.

Mr. KELLY. The Senator from Louisiana has withdrawn his mo-

Mr. KELLY. The Senator from Louisiana has withdrawn his motion as I understand. I hope he will withdraw it, at least.

Mr. McMILLAN. I have the floor by the consent of the Senator from Louisiana, for the purpose of presenting morning business.

Mr. WEST. I have withdrawn the motion to take a recess in favor of morning business.

The PRESIDENT pro tempore. The Senator from Louisiana has violed for morning business.

The PRESIDENT pro tempore. The Senator from Louisiana has yielded for morning business.

Mr. DAVIS. I submit, Mr. President—
The PRESIDENT pro tempore. Does the Senator from West Virginia desire to speak to the motion for a recess?

Mr. DAVIS. I desire to speak to the ruling of the Chair a moment ago that the Senator from Louisiana resigned the floor for any particular purpose or for anything after moving a recess. I think as the Senator from Louisiana resigned the floor and withdrew his motion the floor belongs to the Senator from Oregon who had the floor when a recess was moved. Am I right in that?

The PRESIDENT pro tempore. The Senator from West Virginia is correct.

Mr. DAVIS.

Mr. DAVIS. Then the Senator from Oregon has the floor.

The PRESIDENT pro tempore. The Chair understood that there was no objection to the reception of morning business. The Senator

was no objection to the reception of morning business. The Senator from Oregon made no objection.

Mr. KELLY. I make no objection whatever to morning business provided that it does not interfere with my right to the floor.

The PRESIDENT pro tempore. The Senator from Louisiana yielded to morning business, and on that ground the Chair recognized the Senator from Minnesota. The Senator from Oregon was taken from the floor by the motion for a recess. That motion being withdrawn the floor by the motion for a recess. That motion being withdrawn the Senator from Oregon is entitled to the floor but yields to morning business, the Chair understands.

Mr. KELLY. Yes, sir.

The PRESIDENT pro tempore. The Senator from West Virginia is quite correct. The Chair will entertain morning business.

#### PETITIONS AND MEMORIALS.

Mr. McMILLAN presented a resolution of the Legislature of Minnesota, in favor of legislation providing a bounty to be paid for the destruction of grasshoppers and their eggs; which was referred to the Committee on Agriculture.

He also presented a petition of citizens of Minnesota, praying the establishment of a mail-route from Fergus Falls to Pesham in that State; which was referred to the Committee on Post-Offices and Post-

Mr. WHYTE presented a resolution of the first branch of the city council of the city of Baltimore, requesting the Senators and Representatives from Maryland to urge the passage of a law providing for the removal of Fort Carroll, it being an obstruction to the commerce of Baltimore; which was referred to the Committee on Commerce.

#### REPORTS OF COMMITTEES.

Mr. CHRISTIANCY, from the Committee on the Revision of the Laws of the United States, which was instructed by a resolution of the Senate of the 12th of January to inquire into the propriety of providing for the publication of a new edition of the Revised Statutes, reported a bill (S. No. 1216) to provide for the preparation and publication of a new edition of the Revised Statutes of the United

publication of a new edition of the Revised Statutes of the United States; which was read twice by its title.

Mr. HAMLIN, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. No. 1155) to amend section 8 of the act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876, and for other purposes, reported it without amendment.

He also from the same committee to whom the subject was re-

He also, from the same committee, to whom the subject was referred, reported a bill (S. No. 1221) to authorize the Postmaster-General to pay the rent as it may fall due under leases by the Government of certain premises for post-offices, now held and occupied by post-masters of the third class; which was read twice by its title.

#### BILLS INTRODUCED.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1217) to incorporate the Metropolitan Life-Insurance Company of the United States of America; which was read twice by its title, and referred to the Committee on the District of Columbia.

He also asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 2218) to establish a certain post-road; which was read twice by its title, and referred to the Committee on Post-Offices

and Post-Koads.

Mr. CHRISTIANCY (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1219) authorizing the Commissioner of Patents to extend the patent of Horace A. Stone for improvement in the manufacture of cheese; which was read twice by its title, and referred to the Committee on Patents.

Mr. TELLER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1220) for the relief of James W. Richard and J. S. Brown & Brother, of Denver, Colorado; which was read twice by its title, and referred to the Committee on Indian Affairs.

### AMENDMENTS TO AN APPROPRIATION BILL

Mr. HAMLIN, from the Committee on Post-Offices and Post-Roads, reported three amendments intended to be submitted by him to the bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1578, and for other purposes; which were referred to the Committee on Appropriations, and ordered to be printed.

### FORT DALLES MILITARY RESERVATION.

Mr. KELLY. The bill that was read a while ago, Senate bill No. Mr. KELLY. The bill that was read a while ago, senate bill No. 1001, the consideration of which I have moved, originated with the Committee on Military Affairs. I think the reading of the report of that committee will perhaps be better than anything that I can say. It will show fully the ground upon which the bill is based. I therefore call for the reading of the report of the committee.

The PRESIDENT pro tempore. The report will be read if there be

The Secretary read the following report submitted by Mr. Cock-RELL, from the Committee on Military Affairs, January 30:

RELL, from the Committee on Military Affairs, January 30:

The Committee on Military Affairs, to whom was recommitted the bill (S. No. 1001) to provide for the disposition of Fort Dalles military reservation and accompanying report heretofore made from this committee, have duly reconsidered the same and the additional facts, and submit the following report:

"The former report made by your committee is as follows, to wit:

"Mr. Cocknell submitted the following report, (to accompany bill S. No. 1001:)

"The Committee on Military Affairs, to whom was referred the petition of citizens of Oregon, asking Congress to grant to the State of Oregon, for the purpose of a State insane asylum, the lands and buildings known as the Dalles military reservation, have duly considered the same, and submit the following report:

"Two petitions were presented and referred to your committee.

"General O. O. Howard signs one of these petitions, with the following statement:

"The old fort will probably never be used again for military purposes, and I do not know of a better disposition of the land and old buildings than to donate them to the purposes of an asylum, as proposed."

Your committee addressed a letter of inquiry to the Secretary of War, and re-

ceived the following answer, to wit:

WAR DEPARTMENT, Washington City, June 26, 1876.

War Department,

Washington City, June 26, 1876.

Sir: Returning the petitions inclosed in your letter of 3d of April last, from citizens of Oregon, asking that the land and buildings known as the Dalles military reservation be granted to the State for an insane asylum, I have the honor to invite your attention to the inclosed copy of letter from the Secretary of War to the United States Senate, dated May 25, 1874, recommending the passage of an act to authorize the relinquishment of this reserve to the control of the Secretary of the Interior, it being no longer needed for military purposes.

The present area of the reservation is about four hundred and two acres. The Inspector-General reports the surrounding country hilly or rather mountainous; soil in the valleys along the creeks (Mill Creek, Three, Five, Eight, Ten, and Fifteen-Mile Creeks) very productive, on the hills light and sandy, but producing excellent pasturage for stock. Timber rather scarce in the vicinity of the post, but plentiful about eight miles west. All the cereals can be raised to perfection in the valleys. River navigable the whole year by steamers.

Early in 1871, the improvements consisted of two frame buildings, for company quarters, requiring considerable repairs; two frame buildings for officers' quarters, in serviceable condition; one quartermaster and one commissary storehouse, both substantial frame buildings. Hospital built of logs in 1848; in sinking condition. Two-story gnard-house; lower story of stone, upper story framework, serviceable. Cavalry stables for sixty-seven horses; balloon frame, in good order.

The inclosed map shows the present limits of the reserve, buildings, &c.

Very respectfully, your obedient servant,

J. D. CAMERON,

Secretary of War.

J. D. CAMERON,

Hon. F. M. Cockrell, Committee on Military Affairs, United States Senate.

The letter of the Secretary of War sent to the Senate March 26, 1874, and referred

"WAR DEPARTMENT, May 26, 1874.

"The Secretary of War has the honor to recommend to the United States Senate legislation by Congress authorizing the transfer of the military reservation at Fort Dalles, Oregon, to the Secretary of the Interior for disposition for cash according to existing laws of the United States relative to the public lands, the said reservation being no longer needed for military purposes.

"As there are certain buildings upon the lands it is recommended that the land be sold, subject to the condition of the ist section of the act of 24th February, 1871. (16 Statutes, 420-431.)

"WM. W. BELKNAP. "Secretary of War.

"Secretary of War.

"Secretary of War.

"Secretary of War.

"The United States own this reservation, about four hundred and two acres, sitnate in the State of Oregon.

"Your committee see no greater reason or grounds for granting this particular four hundred and two acres of the public domain with the buildings thereon to the State of Oregon, for an asylum or any other object, than there would be for granting any other portion of the public domain in the State of Oregon for this purpose.

"No greater claims are shown to exist in favor of this particular grant to the State of Oregon than may exist in favor of any other grant to said State, or to any other State, of public lands within its territorial bounds.

"Your committee are not advised that Oregon has not received her full share of the public lands from the United States, with other States.

"Your committee are not advised that Oregon has not received her full share of the public lands from the United States, with other States.

"Your committee, therefore, see no special reason for this grant as prayed, and therefore recommend that the prayer of the petitioners be not granted, and that the said reservation be transferred to the Department of the Interior for disposition, and that the accompanying bill for that purpose be passed."

Since the recommitted of the foregoing report and the said bill, (S. 1001,) Senator Kelly, of Oregon, appeared before your committee, and suggested certain amendments to said bill by adding certain additional words to section 1 and adding an additional section at the end of the bill.

Your committee could see no impropriety or injustice in such amendments; but, desiring to be exact, your committee submitted said bill and said proposed amendments to the Commissioner of the General Land Office, and received the following report, to wit:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE.

Washington D. C. Japangara, p. 1877

report, to wit:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January —, 1877.

SIR: I have the honor to acknowledge the receipt of Senate bill No. 1001, providing for the disposal of Fort Dalles military reservation, and accompanying papers, referred by you to this office for an examination and report. I see no objection to the bill as amended by Senator Kelly, and would accordingly recommend its pas-

I herewith return the bill and accompanying papers. Very respectfully,

J. A. WILLIAMSON,

Hon. F. M. COCKRELL. United States Senator.

Your committee, therefore, recommend the passage of the accompanying bill, being the same as originally reported, with the amendments submitted to and approved by the Commissioner of the General Land Office.

The PRESIDENT pro tempore. The question is on the motion that the Senate proceed to the consideration of this bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1001) to provide for the disposition of Fort Dalles military reservation.

The bill was reported from the Committee on Military Affairs with

an amendment to strike out all after the enacting clause and to insert in lieu thereof the following:

That the Secretary of War be, and hereby is, authorized to transfer to the custody and control of the Secretary of the Interior, for disposition for cash, according to existing laws relating to the public lands, after appraisement, to the highest bidder, and at not less than the appraised value, nor at less than \$1.25 per acre, the United States military reservation known as the Fort Dalles military reservation, at Dalles in the State of Oregon, as the same was established by order of Brigadier-General W. S. Harney, in the year 1859, excepting any portion of said reservation as may have been granted to any settler under the act of Congress making donations of the public lands in Oregon to settlers, approved September 27, 1850, or which may have been granted under any other act of Congress previous to the time when such military reservation was established.

SEC. 2. That the Secretary of the Interior, if in his opinion the public interests require it, may cause the said lands in said reservation, or any part thereof, to be subdivided into tracts less than forty acres each, and into town-lots, or either; and, in such cases each subdivision or lot shall be appraised and offered separately for sale to the highest bidder, as before provided, after which any tract or lot so offered, and not sold for want of bidders, shall be subject to sale at private entry at the appraised value.

SEC. 3. That the Secretary of the Interior shall cause the improvements, buildings, materials, and other property, which may be situate upon said reservation, or upon any such tract or lot into which the same may be subdivided, to be appraised, and may cause the same to be sold, together with the tract or lot upon which the same may be situate, at not less than the appraised value of the land and improvements, &c., or may, in his discretion, cause the said improvements, &c., to be sold separately at public sale at not less than the appraised value, to be removed by the purchaser within such time as the Secretary of the Interior may direct; and if the improvements are offered and not sold for want of bidders, then the Secretary of the Interior is authorized to sell the same at private sale for not less than the appraised value.

SEC. 4. That the land lying between the northern boundary of said military reservation, and the northern boundary of the military reservation as established by order of Major G. I. Rains in the year 1855, shall be disposed of under and according to the provisions of title 32, chapter 8, of the Revised Statutes of the United States, except any portion of the same to which there may be a valid pre-emption claim; and all controversies arising under this act, in regard to the right or title to any part of said lands, shall be decided by the register and the receiver of the proper land office, subject to an appeal to the Commissioner of the General Land Office by any person or party interested therein.

Mr. INGALLS. Mr. President, this bill comes before us in such

Mr. INGALLS. Mr. President, this bill comes before us in such questionable shape that I believe I must speak to it. It seems to me to be remarkable in several particulars. In the first place, it omits to state both in the report and the bill what is the value of this reservation or the area of it. It also fails to furnish us with any information as to the number of settlers upon the reservation or the value of the improvements that they have made; and, most remarkable of all, if I understand the amendments proposed by the committee, it proposes to authorize the Secretary of the Interior to go into a town-site speculation and divide this reservation up into town lots and sell them out to purchasers. Now, such a departure as this from the established policy of the Government in regard to the disposition of the public domain certainly requires some explanation, and it appears to me that in the present condition of the Senate the Senator from Oregon

that in the present condition of the Senate the Senator from Oregon ought not to insist upon the consideration of this bill.

Mr. KELLY. Mr. President, I think the explanation that I can give will show that the bill ought to be passed. As I stated, the bill originated with the Committee on Military Affairs, upon a petition presented by General Howard and a number of other gentlemen, asking that this military reservation be donated to the State of Oregon for the purpose of establishing an insane asylum. After due consideration, the Committee on Military Affairs thought it not proper to grant to the State of Oregon this land, but recommended that it should be transferred to the Secretary of the Interior to be disposed of by him according to law. The reason of this recommendation is that the fort at that place is altogether useless, now being in the midst of a settled country, and, of course, will never be used for milimidst of a settled country, and, of course, will never be used for military purposes again. There are many buildings upon it going to decay and loss, and, for this reason, it should be disposed of. The Senator from Kansas says there is no statement of how many settlers are on it. There are no settlers upon it.

Mr. INGALLS. Then why does the bill provide that that portion of the reservation shall be excepted which has been granted to set-

of the reservation shall be excepted which has been granted to settlers under the act of Congress making donations of public lands to settlers, approved the 27th of September, 1850?

Mr. KELLY. That I will explain. This reservation was laid out in 1859. It had been previously laid out or established by Major Rains in 1855. As it was altered in 1859, it excluded a portion of a donation claim that had been established long before that time.

Mr. INGALLS. Is there any town near this reservation?

Mr. KELLY. Yes, sir.

Mr. INGALLS. What is its name?

Mr. KELLY. The town of The Dalles.

Mr. INGALLS. How many inhabitants has the town?

Mr. KELLY. Fifteen hundred or two thousand.

Mr. KELLY. Fifteen hundred or two thousand.
Mr. INGALLS. Is that town on the reservation or immediately adjoining ?
Mr. KELLY.

Mr. KELLY. Immediately adjoining. There is this donation claim, which of course could not be taken away from the owner without his consent. He was never paid for it; or at least that is the claim.

There is another portion of the reservation to which section 4 applies. In 1855 there was a reservation established by Major Rains, as I stated before. In 1859 it was reduced for the purpose of allowing stated before. In 1859 it was reduced for the purpose of allowing settlements to be made at that place, and it has been settled upon, houses have been built, and no title can be procured to that portion of the former reservation. This bill recommends that that portion lying between the old and the new reservation shall be disposed of according to the town-site law; and I do not know of a more equitable and just way of disposing of it. The town-site law provides that where persons have settled upon lands they shall have a lot not to exceed a certain extent, so many thousand feet; that they shall have the right, as it were, to pre-empt it at \$10; and where it is not occupied that it shall be sold to the highest bidder. That is the town-site law. The bill only requires that that portion lying between the old and the new reservation shall be sold according to the town-site law. Of course those gentlemen desire to have some title to their

lots and they cannot get it in any other way, I presume, than according to the town-site law of the United States. That is an equitable and just law. Therefore I hope that this bill will pass.

Mr. COCKRELL. I was delighted with the criticisms of the Senator from Kansas [Mr. INGALLS] upon this bill. Unfortunately for him, his criticisms do not correspond with or reflect upon the report of the committee. He says there is nothing said about the quantity of land. If he will turn to the first page of the report, in the communication of Hon. J. D. Cameron, Secretary of War, he will see that the present area of the reservation is about four hundred and two acres. I think that the quantity of the land is very fully stated.

Mr. INGALLS. May I interrupt the Senator for a moment?
Mr. COCKRELL. Certainly.
Mr. INGALLS. Section 4 provides—

That the land lying between the northern boundary of said military reservation and the northern boundary of the military reservation, as established by order of Major G. I. Rains in the year 1855, shall be disposed of under and according to the provisions of title 32, chapter 8 of the Revised Statutes of the United States, except any portion of the same to which there may be a valid pre-emption claim.

That is the uncertain quantity. The limits of the present military reservation comprise four hundred and two acres, but there is nothing said as to what are the contents or the amount of the land lying

ing said as to what are the contents or the amount of the land lying between the present reservation and the northern boundary established by Major Rains.

Mr. COCKRELL. If your committee had been competent to have copied the map which accompanied the papers, that would have been shown very definitely. The map that accompanied the report from the Commissioner of the General Land Office explains it definitely. In regard to the improvements upon the reservation, this statement from the Secretary of War is just as definite as it could be. to the State of Oregon for the benefit of an asylum. I referred to the State of Oregon for the benefit of an asylum. I referred the matter to the Secretary of War, and it was then referred to the commanding officer in Oregon, and here is a description of the reserva-

The inspector-general reports the surrounding country hilly or rather mountainons; soil in the valleys along the creeks (Mill Creek, Three, Five, Eight, Ten, and Fifteen Mile Creeks) very productive, on the hills light and sandy, but producing excellent pasturage for stock. Timber rather scarce in the vicinity of the post, but plentiful about eight miles west. All the cereals can be raised to perfection in the valleys. River navigable the whole year by steamers.

Early in 1871, the improvements consisted of two frame buildings, for company quarters, requiring considerable repairs; two frame buildings for officers' quarters, in serviceable condition; one quartermaster's and one commissary store-house, both substantial frame buildings. Hospital built of logs in 1848; in sinking condition. Two-story guardhouse; lower story of stone, upper story frame-work, serviceable. Cavalry stables for 67 horses; balloon frame, in good order. Two quartermaster stables, frame, one serviceable and one unserviceable. Corrals built of boards and slabs; in good order.

In 1874 the Secretary of War, in a communication to Congress, recommended the disposition of this land which is made by this bill; and the matter has been pending ever since.

In regard to the Secretary of the Interior going into town-lot spec-

ulations, I am very much astonished at that criticism from the Senator nlations, I am very much astonished at that criticism from the Senator from Kansas. He is certainly very familiar with chapter 8, title 32, of the general statute, the law of the land, which provides expressly for the reservation of town lots and the Secretary of the Interior going into the sale of them. That act was passed in 1863; it was amended in 1864; again in 1865; again in 1867; and again in 1868.

I think certainly that this bill is only in compliance with that general law, and only refers to that general law. I think the bill is correct. It is approved by the Secretary of War. The amendments proposed by the Senator from Oregon were submitted to the Secretary of

posed by the Senator from Oregon were submitted to the Secretary of the Interior; and the Commissioner of the General Land Office approves of them. It is but fair and proper that the bill should pass just in the shape that it is in. The interests of the United States will be protected and no injustice will be done to any citizen or other per-

Mr. INGALLS. I certainly have no objection to this bill if the interests of the United States are protected. It certainly cannot concern me as a local matter whether this property in Oregon is sold or cern me as a local matter whether this property in Oregon is sold or whether it remains as it is at the present time; but by the admission of the Senator from Oregon [Mr. Kelly] here is a tract comprising several hundred acres of land immediately adjacent and contiguous to one of the most populous and thriving towns in the State of Oregon. So far as I can judge from the very cautious declarations and statements made by the Senator, a portion of this land, in violation of law, has already been taken possession of by some enterprising settlers; I conclude, also, if I can put a proper estimate upon his language, that in some mysterious way a certain portion of the town of Fort Dalles has crawled over on to this reservation in violation of law; has been cut up into town lots and improvements made upon them by has been cut up into town lots and improvements made upon them by various gentlemen who have not in any way yet secured any legal title to the property; and they are now endeavoring in some way or other to secure the title at a dollar and a quarter an acre.

It appears, what was not known to me before, that this is not the first effort that the State of Oregon has made to obtain possession of

this property; that a short time since they were not so anxious to have the property sold or laid out in town lots, but that the first scheme was to obtain possession of the reservation for the purpose scheme was to obtain possession of the reservation for the purpose of making it the site of some State institution, I believe, for the care of the insane. That having failed, this bill is now introduced, and it is evidently the purpose, although not expressly avowed by the Senator from Oregon, to in some way ratify and confirm titles that now exist upon this property, upon which these persons have unlawfully and in violation of the regulations of the military authorities of this Government made settlement. If this land is adjoining to one of the most populous and thriving towns in the State of Oregon, and is partly covered at the present time by an addition to that town, it

certainly is worth more than a dollar and a quarter an acre; and what I object to is the effort that is being made by the Senator to obtain possession of this property at a figure that is very much less than its actual cash value. The first section of the amendment pro-

That the Secretary of War be, and hereby is, authorized to transfer to the custody and control of the Secretary of the Interior, for disposition for cash, according to existing laws relating to the public lands, after appraisement, to the highest bidder, and at not less than the appraised value, nor at not less than \$1.25\$ per acrethe whole of this reservation.

Mr. MITCHELL. I would ask the Senator from Kansas if under this bill the Government would be compelled to dispose of it at one dollar and twenty-five cents an acre?

Mr. INGALLS. No; but they will.
Mr. MITCHELL. I should like to know how the Senator from

Mr. MITCHELL. I should like to know how the Senator from Kansas knows that.

Mr. INGALLS. I have seen this thing tried too often. I know just what the result will be. If there are at the present time claims made upon this property to cover the whole of it—and I do not doubt that there are; I do not doubt that there are claimants for every foot of this property—if that is the case, and they are sufficiently numerous, as I presume they are, to make a respectable faction in the State of Oregon, I venture to say that there will be none of the land sold at more than \$1.25 an acre. It would not be healthy for any man to go in there and offer to pay more than a dollar and a quarter an acre.

Mr. MITCHELL. I object to the Senator from Kansas illustrating the Oregon case by anything that may have happened in regard to railroad lands in Kansas.

Mr. INGALLS. I have a right to illustrate it by that, because I

Mr. INGALLS. I have a right to illustrate it by that, because I am entirely familiar with the rule that has been pursued in these

Mr. MITCHELL. That may be the rule in Kansas but it is not the

Mr. MITCHELL. That may be the rule in Kansas but it is not the rule in Oregon.

Mr. INGALLS. I know how it is done; and therefore the Senator from Oregon does not dispute me when I allege that this whole property is to-day covered by illegal claims.

Mr. KELLY. No, sir; that is not the case.

Mr. INGALLS. I suppose half of it is.

Mr. INGALLS. Are there no town lots upon the reservation?

Mr. KELLY. Yes, sir.

Mr. INGALLS. Who claims them?

Mr. KELLY. I will state to the Senator that there are two—

Mr. INGALLS. Answer my question.

Mr. KELLY. Not upon the reservation established by Major Rains.

Mr. INGALLS. That is included in this bill?

Mr. KELLY. No, sir; the portion that was established by Major

Mr. KELLY. No, sir; the portion that was established by Major Rains was thrown out for the purpose of permitting the town to set-tle upon it, and that portion which lies between the new and the old reservation it is now proposed to dispose of according to the town-site law of the United States. So far as the new reservation is concerned, that is to be disposed of by having the land appraised

Mr. INGALLS. Are there not pre-emption claims upon this reser-

vation ?

Mr. KELLY. No, sir; not one.
Mr. INGALLS. What does this language mean in lines 7 and 8 of

Except any portion of the same to which there may be a valid pre-emption claim?

Mr. KELLY. That means upon that small portion that is thrown off by the last reservation; that is, the portion of that is thrown off by the last reservation; that is, the portion of the land which is embraced between the old and the new reservation, but it is not in the reservation that it is now proposed to sell.

Mr. MITCHELL. It is not in it at all.

Mr. KELLY. It is not in it at all.

Mr. INGALLS. What is the value of land in the immediate vicinity

of Fort Dalles ?

Mr. KELLY. I cannot say, but I suppose that those who make the appraisement will ascertain that fact.

appraisement will ascertain that fact.

Mr. INGALLS. I ask the Senator to give me his information as to the value of the land in the vicinity.

Mr. KELLY. Perhaps five, ten, fifteen, or twenty dollars; in the neighborhood, I mean.

Mr. INGALLS. Not more than \$20 \circ\*

Mr. KELLY. No, I think not.

Mr. MITCHELL. Some of it is not worth one-tenth of that.

Mr. INGALLS. The bill under consideration proposes to sell this land at \$1.25 per acre. The Senator from Missouri [Mr. COCKRELL] endeavored to correct me in regard to my interpretation of the townsite law. In section 2 the provision is entirely in contravention of site law. In section 2 the provision is entirely in contravention of the town-site law. It makes no reference whatever to the town-site law, but simply provides-

That the Secretary of the Interior, if in his opinion the public interests require it, may cause the said lands \* \* \* to be subdivided into tracts less than forty acres each, and into town lots, or either; and, in such cases, each subdivision or lot shall be appraised and offered separately for sale to the highest hidder, as before provided, after which any tract or lot so offered, and not sold for want of bidders, shall be subject to sale at private entry at the appraised value.

If that is not an extraordinary and suspicious provision to incorporate in a bill for the sale of public lands, I certainly am unable to construe the English language correctly.

I believe that this bill has not been properly considered, and I move that it be referred to the Committee on Public Lands for further con-

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The Senator from Kansas moves that the bill be referred to the Commit-

tee on Public Lands.

Mr. KELLY. It seems to me the remarks made by the Senator from Kansas are somewhat extraordinary. They certainly reflect upon the Military Committee; but I leave the committee to defend itself. The Military Committee; but I leave the committee to defend itself. The gentlemen of that committee can defend themselves, and I know are well able to do it. This was not a bill that originated with me, nor with my colleague, nor with any Senator; but it originated, as I said before, with the Committee on Military Affairs itself. Petitions had been presented in the Senate asking that this land might be given to the State of Oregon for an insane asylum. They were referred to the Committee on Military Affairs. That committee, thinking that the State of Oregon was not entitled to it, reported this bill for the disposition of that fort. Without any suggestion from me, without any state of Oregon was not entitled to it, reported this sin to the disposition of that fort. Without any suggestion from me, without any suggestion from any one, the Committee on Military Affairs reported that this land should be turned over to the Secretary of the Interior to be by him appraised, that is, subdivided into lots, so that it might bring the most that it possibly could. The bill provides that the land shall be subdivided into lots, and the lots appraised, and then put up and sold to the highest bidder; and in case no one bids the appraised value, then there is no sale; but the land shall be subject to private "alue, then there is no sale; but the land shall be subject to private entry by paying the appraised value. It is to be put up at auction at a certain time and sold to the highest bidder. Is there any other disposition which can be made of this public land that would pay more to the United States than that? It must be remembered that this fort is useless for military purposes. It must be remembered that the buildings are going to decay; and is the land to be kept in the possession of the Government utterly valueless, or is it to be disposed of? If it is to be sold, why not sell it, as this bill proposes, to the highest bidder; and why not sell it in small quantities, because it will bring more by being sold in small parcels than it would if the whole tract should be put up and sold to one individual purchaser? Therefore this bill does just what the Senator from Kansas says it ought to do, it proposes to sell the land to the highest bidder.

With respect to the other portion, some twenty-five or thirty acres,

With respect to the other portion, some twenty-five or thirty acres, which lies between this reservation and the old reservation, and which has been settled upon by individual claimants of the land, that is proposed to sell under the town-site law of the United States. it is proposed to sell under the town-site law of the United States. What more equitable and proper way to sell it is there than under the general law of the United States, whereby it will bring money into the Treasury of the United States instead of letting it remain, as it is now, unsold? These gentlemen who have been for the last eighteen or twenty years living upon these lots desire to procure titles to their land; and I do not know a better way to dispose of it than under the general law of 1864, which authorizes lots to be sold. I must read a section of that law to show how equitable and just it is.

I read section 2382 of the Revised Statutes:

I read a section of that law to show how equitable and just it is. I read section 2382 of the Revised Statutes:

That in any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it shall and may be lawful for them to cause to be filed with the recorder for the county in which the same is situated a plat thereof for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; the said map and statement to be ver fied under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and, when the premises are within the limits of an organized land district, a similar map and statement shall be filed with the register and receiver, and at any time after the filling of such map, statement, and testimony in the General Land Office, it shall and may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of \$910 for each lot; and such lots as amy not be disposed of at public sale shall thereafter be liable to private entry at said minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months notice, in view of the increase or decrease in the

There is a just and reasonable way provided for disposing of town sites, and it is proposed to dispose of this land in that way. If any one can produce a more just and equitable law than that, I should like to see it. Certainly the Senator from Kansas who objects to the passage of this bill ought to devise some way by which a better disposition can be made than the present law of the United States provides.

Mr. MITCHELL. I must confess that I am surprised at the objec-tions made by the Senator from Kansas to this bill, and not so much surprised at the objection as I am at the criticisms of the honorable Senator upon the different provisions of the bill. What is the bill? What does it propose to do? The Senator from Kansas seems to intimate that there is some cat in the meal-tub; that there is something wrong about this bill.

Mr. INGALLS. A hen on.

Mr. MITCHELL. That there is a hen on; that there is some spec-

ulation on foot. I am afraid the fears of the honorable Senator from Kansas are the result more of some speculations that have occurred, perhaps, in his own State than of anything that appears on the face of this bill or in connection with the report submitted by the unanimous vote, as I understand, of the Military Committee. What is the bill? What is there wrong about it? What is there in connection with the bill that is so different from the usual course as to excite the fears and apprehensions of my honorable friend from Kansas? What is there in any provision of the bill that would indicate that there is "a hen on," to use the language of my friend from Kansas; that there is a cat in the meal-tub; that somebody is to be swindled; that the interests of the Government are not to be protected; that some citizen of Oregon, or of some other place to the honorable Senator from Kansas unknown, is to realize profit from some speculation arising out of some provision in this bill?

There is nothing in the bill to justify the apprehensions of the honorable Senator from Kansas. The bill is in the regular line of legislation of this character in reference to the abandonment and throwing open to settlement of military reservations. Here is a mili-tary reservation established in the first instance in 1855 by a mili-

tary reservation established in the first instance in 1855 by a military officer. Afterward, in 1859, the boundaries of that reservation were changed and a new reservation was established known as the Fort Dalles reservation, by order of Brigadier-General W. S. Harney. The PRESIDING OFFICER. The morning hour having expired it becomes the duty of the Chair to call up the special order, which is the unfinished business of yesterday, being the bill (8. No. 934) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean" & 6.

Pacific Ocean," &c.

Mr. MITCHELL. I ask the consent of the Senate to be allowed to finish what I have to say. It will only take a few moments. I shall get through in five minutes.

Mr. WRIGHT. I have no objection to that, but I propose to move an executive session, as there is important executive business to be transacted. I propose to make that motion after the Senator from Oregon gets through.

The PRESIDING OFFICER. Does the Chair understand the Sen-

Mr. WRIGHT. I do not wish to interfere with my friend from Oregon, but will allow him to conclude his remarks.

The PRESIDING OFFICER. The Senator from Oregon will pro-

ceed by unanimous consent on the bill relative to the Klamath reser-

wation.

Mr. MITCHELL. It is conceded, Mr. President, by the report of the Military Committee, by everybody, that this reservation is no longer required for military purposes; that when it was established it was in the midst of an Indian country, and it was established for a feet the protection of the cartless against the Indians. Now it was in the midst of an Indian country, and it was established for a purpose, for the protection of the settlers against the Indians. Now it is in the midst of a widely settled country. It has been abandoned as a matter of fact for years, as appears from the report of the War Department and from the report of the Military Committee, and it is proposed by the bill to direct the Secretary of War to turn over this nilitary reservation to the Secretary of the Interior; that the lands included in it shall be appraised by the Secretary of the Interior or under his direction; that that appraisement shall not be less than \$1.25 an acre as to certain portions of it; and that then it shall be sold, but it shall not be sold for less than \$1.25 an acre, and sold a auction to the highest bidder. Can there be anything more fair than that? Is there any room for manipulation, or management, or speculation? Everything is to be done openly and aboveboard; the land is to be sold at public auction.

is to be sold at public auction.

Then in reference to that portion of the reservation which was formerly the reservation lying between the northern boundary of the military reservation as it now exists and the northern boundary of the reservation as established by order of Major G. I. Rains in 1855, it is proposed that that shall be disposed of under and according to the provisions of title 32, chapter 8, of the Revised Statutes of the United States, excepting always "any portion of the same to which there may be a valid pre-emption claim." There is nothing wrong about that. It proposes to exempt any valid pre-emption claim, just as section 1 proposes to exempt from the operation of the bill any donation claim that may have been made to any citizen of Oregon under the provisions of the donation law of Oregon of September 27, 1850, and the amendments thereto. There are perhaps some claims of that kind. It frequently occurs in reference to these reservations in the different States and Territories that, prior to the time when the that kind. It frequently occurs in reference to these reservations in the different States and Territories that, prior to the time when the reservations have been laid out either by executive order or by Congress, grants have been made to citizens. If there are any of this kind of grants within this reservation to citizens under the donation law of September 27, 1850, which applied to Oregon alone, and not to the whole country, then persons claiming under these grants are excepted from the operation of the provisions of the bill; and that is right. So in reference to that portion which is to be sold under the provisions of the town-site law: if there are any valid pre-emption claims there, of course they are not to be affected by this proposed act.

Mr. MERRIMON. The Senator from Oregon seems to be familiar with this subject, and I should like to ask him a question or two.

Mr. MITCHELL. I will state that my colleague is more familiar with the subject than I am. Still I shall try to answer any question which the Senator from North Carolina may ask.

Mr. MERRIMON. Is the land mentioned in the first section of the proposed amendment and the land mentioned in section 4 the same or two distinct bodies of land-?

Mr. MITCHELL. I understand it to be two distinct bodies. That specified in section 1 refers to the land included within the boundaries of the present reservation, and the other section refers to a piece of land lying between the northern boundary of the present reservation and the nor hern boundary of the reservation as originally established by Major Rains in 1855

lished by Major Rains in 1855

Mr MERRIMON. Then there are two distinct bodies of land?

Mr. MITCHELL. Yes, sir.

Mr. MERRIMON. I beg to ask the Senator what are the special motives for putting this land into market at this time? Why not let it lie there until the country becomes populous, when the Government can realize something like its value?

Mr. MITCHELL. This reservation lies right in the immediate vicinity of one of the thriving towns of Oregon, and I cannot see any propriety or sense in tying up this tract of land in this settled country and holding it for years in order to get a higher price for it.

Mr. KELLY. The buildings are going to decay. There were very valuable buildings put upon this reservation when it was first laid out, quite a number of them, and these buildings are going to decay. If the reservation is permitted to remain in the condition it now is, they will go to decay and the Government will lose the benefit of them. The bill provides for an appraisement of these buildings, as the Senator from North Carolina will see by a reference to the bill. Section 3 provides: Section 3 provides:

That the Secretary of the Interior shall cause the improvements, buildings, materials, and other property which may be situate upon said reservation, or upon any such tract or lot into which the same may be subdivided, to be appraised, and may cause the same to be sold, together with the tract or lot upon which the same may be situate, at not less than the appraised value of the land and improvements, &c.

Mr. MERRIMON. Is the land worth \$1.25 an acre?
Mr. MITCHELL. Some of it may not be worth more than that

and some of it very much more.

Mr. EOGY. It would be a very fair sale of it if the lands could be sold for \$1.25 an acre, and it would be a good thing for that new State and a good thing for the Federal Government.

Mr. MITCHELL. I have no doubt that this reservation would be appraised at more than \$1.25 an acre and that it would sell for more than that. Some portions of it may not be actually worth \$1.25 an acre, because a portion of it laps over on a rocky bluff, and that I imagine is not worth probably twenty-five cents an acre. I am very familiar with the tract of land; I have been over it any number of times.

I hope the Senator from Kansas will withdraw his motion to refer the bill to the Committee on Public Lands. It has been carefully ex-

amined by the Military Committee, and they have reported in favor of the bill.

Mr. MERRIMON. I see that by the fourth section judicial powers are conferred upon the Commissioner of the General Land Office.

Mr. MITCHELL. What does the Senator from North Carolina re-

Mr. MERRIMON. The Commissioner of the General Land Office, by the fourth section, is to decide all questions arising out of the title to this land; so that if an action of ejectment were brought by anybody, I suppose it would have to be brought before the Commissioner of the General Land Office.

Mr. KELLY. I will suggest to the Senator that this is nothing but what is the ordinary course of proceeding in the disposal of all the public lands of the United States.

public lands of the United States.

Mr. COCKRELL. And has been for the last fifty years.

Mr. MITCHELL. And does not exclude any proceedings in the courts.

Mr. KELLY. Not at all.

Mr. MERRIMON. I should think that a very unwise provision.

Mr. KELLY. It is only preliminary to final adjudication.

Mr. MITCHELL. It is preliminary to the issuance of a patent.

Mr. WRIGHT. I think I shall have to call for the regular order.

Mr. MITCHELL. We shall get through in a moment.

Mr. WRIGHT. The understanding was yesterday that we would not do any legislative business to-day.

Mr. MITCHELL. I think we can have a vote now.

Mr. WRIGHT. If that was the understanding, it ought to be carried out. Therefore I move that the Senate proceed to the consid-

Therefore I move that the Senate proceed to the consideration of executive business.

Mr. MITCHELL. I hope the Senator from Iowa will not press his

motion for a few moments.

Mr. WRIGHT. I understand the Senator from Kansas intends to insist on his motion to refer the bill to the Committee on Public Lands.
Mr. MITCHELL. That we can vote upon at once.
Mr. INGALLS. I am not half through yet.
Mr. WRIGHT. I insist on my motion that the Senate proceed to

Mr. KELLY. Then that will leave this bill as the unfinished business for Monday.

Mr. CHAFFEE. I offer the following proviso as an amendment to

Provided. That any bona fide settlers on any part of said reservation shall have the prior right to purchase so much of said land as is occupied by him or them, at the appraised value thereof.

Mr. MITCHELL. That is a very good amendment.

The PRESIDING OFFICER. The motion pending is to refer the bill, and the amendment is not in order at this time. The Senator from Colorado can give notice that he will offer the amendment when

it is in order.

Mr. CHAFFEE. Very well.

Mr. SARGENT. I hope we shall proceed to the consideration of

Mr. WRIGHT. I insist on my motion.

Mr. KELLY. Let me understand. If we take a recess now, this bill is left as the unfinished business, as I understand, for Monday.

Mr. WRIGHT. The railroad bill is the unfinished business by the

undersanding

Mr. BLAINE. This bill will be the unfinished business in the

morning hour.

The PRESIDING OFFICER. The unfinished business was laid aside informally, being the railroad bill. The unfinished business of Monday will be Senate bill No. 984.

Mr. WRIGHT. I insist on my motion.

The PRESIDING OFFICER. The question is on the motion of the

Senator from Iowa, that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifteen muutes spent in executive session the doors were re-opened, and (at one o'clock and twenty-six minutes p. m.) the Senate took a recess until Monday, February 5, at ten o'clock a. m.

## HOUSE OF REPRESENTATIVES.

## THURSDAY, February 1, 1877. [CALENDAR DAY, February 3.]

AFTER THE RECESS.

The recess having expired, the House (at ten o'clock a. m. Saturday, February 3) resumed its session.

ORDER OF BUSINESS.

Mr. ATKINS. I move that the House take a recess till ten minutes before twelve o'clock.

Mr. CLYMER. I think we might go on with the legislative appro-

Mr. CLYMER. I think we might go on with the legislative appropriation bill, instead of wasting these two hours.

Mr. ATKINS. There is no quorum.

Mr. CLYMER. Then let some member raise that question.

Mr. WILSON, of Iowa. We are getting along toward the close of the session, and there is so much business to be done that I think this time ought to be utilized by going into Committee of the Whole on the appropriation bill. If a quorum is not here it can be brought here under the rules of the House.

### WASHINGTON CITY AND SAINT LOUIS RAILROAD.

Mr. HARRIS, of Virginia. The bill (H. R. No. 2798) to authorize the Washington, Cincinnati and Saint Louis Railroad Company to construct a narrow-gauge railway from tide-water to the cities of Saint Louis and Chicago is now in Committee of the Whole, where it will probably not be reached during the session. I desire unanimous consent that the Committee of the Whole may be discharged from its further consideration, and that it be made a special order for some day next week.

Mr. SAVAGE. I object.

## LEGISLATIVE APPROPRIATION BILL.

Mr. HOLMAN. I move that the House resolve itself into Committee of the Whole to resume the consideration of the legislative appropriation bill.

The motion was agreed to.

The House accordingly resolved itself into the Committee of the Whole on the state of the Union (Mr. Reagan in the chair) and resumed the consideration of the bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes.

Government for the year ending June 30, 1878, and for other purposes. The Clerk continued the reading of the paragraphs relating to the Library of Congress.

Mr. MONROE. I take the liberty of stopping the reading for the sake of being sure that I understood the gentleman from Indiana [Mr. Holman] in regard to this matter. As I understood him, all the paragraphs in regard to the Library of Congress have been restored to the position in which they stood under last year's bill.

Mr. HOLMAN. O, no; I meant that the appropriations for salaries, as made by the existing law, had been substituted for the amounts named in the bill.

Mr. MONROE. Then I misunderstood the gentleman. I desire to make a motion to restore these paragraphs so as to conform to the law passed last year.

law passed last year.

Mr. HOLMAN. The whole of them?

Mr. MONROE. Yes, sir; so as to restore all these paragraphs to the basis adopted last year. I hope the gentleman will not interpose any objection to going back.

Mr. HOLMAN. Of course if the gentleman misunderstood me and supposed that I referred to all the provisions in regard to the Library, I cannot object to his going back. I supposed he referred to the sala-

Mr. MONROE. I move to amend by striking out "\$5,000" and inserting "\$7,000" as the appropriation for the purchase of books for the Library. This amendment conforms precisely to the present law.

Mr. HOLMAN. The reason why the amount was not made \$7,000 was this: It is well known that there is a very large amount of books

was this: It is well known that there is a very large amount of books which cannot be placed in the Library and never can be until the new Library is built or increased facilities furnished for putting up the books. In the next place, a very large accumulation of books is occurring every year by the deposit in the Library without cost to the Government of one copy of each work that is issued. We thought, therefore, that \$5,000 in addition to that enormous increase of books annually would be a very ample appropriation. It is not an item large enough to have any controversy about it; but I trust the gentleman from Ohio will see that it is one of those items where a slight retrenchment can occur without any possible injury to the country.

Mr. MONROE. I was about to give in a word the reasons for my proposing this amendment. I am aware that the Library is in some departments overcrowded. But the reason for this appropriation of \$7,000 last year was this: It is true that a great number of books come into the Library under our copyright system, and it is true that a considerable number is secured in the way of exchanges; but the

come into the Library under our copyright system, and it is true that a considerable number is secured in the way of exchanges; but the object of having an appropriation of \$7,000 a year in addition to replacing books that are lost or anything of that sort, is—and that is the especial object—to purchase rare books which come out and happen to be for sale, the opportunity for procuring which may pass not to return; and I do not think \$7,000 too much for that purpose. I take the bill of the gentleman from Indiana [Mr. Holman] of last year as my standard. I thought that a pretty good bill, and the gentleman from Indiana ought not to object to the system of retrenchment which we then adopted.

ment which we then adopted.

Mr. HOLMAN. O, we only commenced it then. My friend must know that the expenses of this Government, if it is to be administered with any degree of economy, must come down thirty-five millions lower than they are now. But I think we can agree upon this. We appropriate \$1,500 for purchase of files of periodicals and newspapers. I suggest to the gentleman from Ohio that that may be increased to

Suggest to the gentleman from Onto that that may be increased to \$2,500, the appropriation for purchase of books remaining as it is.

Mr. MONROE. Very well; I agree to that. The increase of that appropriation is very important, because, as the Librarian informs me, he is now compelled to break a great many of his files.

I withdraw the amendment and accept the proposition of the gen-

tleman from Indiana.

Mr. HOLMAN. I offer then the following amendment: In line 273 strike out "\$1,500" and insert "\$2,500" in lieu thereof.

I ask the Clerk to read the paragraph as it will be if thus amended. The Clerk read as follows:

For purchase of books for the Library, \$5,000; for the purchase of law-books for the Library, \$2,000; for purchase of files of periodicals and newspapers, \$2,500; for expenses of exchanging public documents for the publications of foreign governments, \$1,000; in all, \$9,500.

The amendment offered by Mr. HOLMAN was agreed to.

The Clerk read the following paragraph:

For postage on copyright business, \$

Mr. MONROE. I desire to ask the gentleman from Indiana if he

has any objection to increasing this appropriation to \$700?

Mr. HOLMAN. The appropriation made here is the same as last

Mr. MONROE. The appropriation was \$700 last year, and I am

told it was not too much.

Mr. HOLMAN. We did not get that impression from the Librarian.

Mr. MONROE. I have before me the law of last year, and the paragraph is as follows:

For postage on copyright business, \$700.

Mr. HOLMAN. Is the gentleman assured by the Librarian that that amount is necessary?

Mr. CLYMER. I saw the Librarian yesterday, and he made no com-

plaint about this matter.

Mr. MONROE. He did not make half the amount of complaint

which he wanted to make.

Mr. CLYMER. He made various suggestions, as my friend from Ohio will remember, and I do not think this was one of them.

Mr. MONROE. I move to amend by striking out \$500 and insert-

ing \$700.

The amendment was agreed to.

The Clerk resumed the reading of the bill and read the following

paragraph:

For compensation of the President of the United States, \$25,000; and section 153 of the Revised Statutes be, and the same is hereby, repealed, so far as the same relates to the salary of the President.

Mr. KEHR. I offer the following amendment:

Strike out "\$25,000" and insert "\$50,000;" so that it will read: "For compensation of the President of the United States, \$50,000."

The question being taken, the Chairman stated that in the opinion of the Chair the "noes" had it.

Mr. KEHR. I make the point that a quorum has not voted. Mr. HOLMAN. I hope the gentleman will not insist on a quorum. We will give the gentleman a vote in the House upon that.

Mr. KEHR. Very well. I do not insist on further count.

Mr. FOSTER. I was not in when the Clerk finished reading the portion of the bill making appropriations for public buildings and grounds, and I desire to go back to that point in order to offer an amendment which was agreed to by the Committee on Appropriations.

Mr. ATKINS. That can only be done by unanimous consent.
Mr. HOLMAN. I suggest to the gentleman that we will not object to his going back when we get through the bill.
Mr. FOSTER. It was a little matter, and it was agreed to by the

committee.

I offer the following amendment:

After line 335 add the following:

That there be allowed and paid to the two watchmen in the Smithsonian grounds, the two laborers in the Capitol building, one public gardener, and one watchman in Lincoln Square, discharged by reason of the second section of the act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 39, 1877, and for other purposes, approved August 15, 1876, the sum equal to the amount of their respective pay from August 16, 1876, to September 15, 1876, \$420.

The amendment was agreed to.

The Clerk resumed the reading of the bill, and read the following

Supervising Architect:
In the construction branch of the Treasury: For Supervising Architect, \$4,000; chief clerk, \$2,250; photographer, \$2,000; two clerks of class four; two clerks of class three; two clerks of class one; one clerk, at \$900; and one messenger; in all, \$19,190.

Mr. WELLS, of Missouri. I offer the following amendment:

In line 444, after "\$2,000," insert "one principal clerk, at \$1,800;" and strike out ne words "two clerks of class four" and insert "one clerk of class four, at \$1,800."

Mr. FOSTER. Why is the salary of the principal clerk made \$1,800 while the other is \$1,800 also?

Mr. HOLMAN. That was agreed to by the committee. It is all

The amendment was adopted.

The Clerk resumed the reading of the bill, and read the following paragraph:

Second Comptroller of the Treasury;
For Second Comptroller of the Treasury, \$4,500; deputy Comptroller, \$2,500; five chiefs of division, at \$2,000 each; five clerks of class four; twelve clerks of class three; thirteen clerks of class two; eight female clerks of class one; and three laborers; in all, \$33,200.

Mr. WALLACE, of Pennsylvania. I ask the chairman of the committee if there is not a clerical error at line 462 where eight "female" clerks of class one are spoken of. I do not understand that there are any female clerks of that class.

Mr. HOLMAN. The word "female" should be stricken out. It is a clerical error. I ask that that correction may be made.

There was no objection, and the word "female" was stricken out.

The Clerk read as follows:

Commissioner of Internal Revenue:
For Commissioner of Internal Revenue, \$5,500; one deputy commissioner, \$3,200; seven heads of division, at \$2,250 each; one stenographer, \$1,400; twenty clerks of class four; thirty clerks of class three; thirty-five clerks of class two; twenty-five clerks of class one; fifty clerks, at \$900 each; four messengers; and ten laborers; in all, \$244,410.

Mr. WALLACE, of Pennsylvania. I offer the following amendment. I move to insert after the word "each," in line 630, the fol-

And that so much of the act making appropriations for the legislative, executive, and judicial expenses of the Government, approved March 3, 1875, which declares "that on and after January 1, 1876, the appointments of this" (Treasury) "Department shall be so arranged as to be equally distributed between the several States of the United States, Territories, and District of Columbia, according to population," be, and the same is hereby, repealed.

Mr. HOLMAN. Does the gentleman offer that amendment at this

Mr. WALLACE of Pennsylvania. Certainly I do.

Mr. HOLMAN. I do not know but it should be repealed, but it is quite manifest it is not a measure of retrenchment and changes ex-

quite manifest it is not a measure of retrenchment and changes existing law. It has not been before the Committee on Appropriations. It has been insisted on for several years by some gentlemen. It got into the law through a conference committee. I hope the gentleman will not press it. If he does I must insist on my point of order.

Mr. WALLACE, of Pennsylvania. I have no interest in the matter. It was put in the appropriation bill a few years ago and there is no sense in it. I think it is a provision not business-like. If it is a good thing it should be applied to all the Departments. It applies now only to the Secretary of the Treasury, a responsible officer of the Government, and, while we hold him responsible for the proper discharge of his duties, we declare where he must get his clerical force.

Mr. HOLMAN. I hope the gentleman from Pennsylvania will not press this. He can offer it at the close of the bill.

Mr. RUSK. It is new legislation and not in order.

The CHAIRMAN. If the point of order is insisted on, it will have to be sustained.

to be sustained.

Mr. ATKINS. It is just and fair and ought not to be repealed, and I therefore insist on the point of order.

The CHAIRMAN. The Chair sustains the point of order and rules

the amendment out.

The Clerk read as follows:

For dies, paper, and stamps. \$450,000; said engraving and printing to be done in the Bureau of Engraving and Printing of the Treasury Department, provided the cost does not exceed the price paid under existing contracts.

Mr. CLYMER. I move in line 636, after the word "department," Mr. CLIMER. I move in line 655, after the word "department," to insert the following words: "to be expended under the direction of the Secretary of the Treasury."

Mr. HOLMAN. It will still require the work to be done in the Bureau of Engraving and Printing.

Mr. CLYMER. Most certainly.

The amendment was agreed to.

Mr. HOLMAN. I move to strike out "four hundred and fifty" in line 633, and to insert "four hundred and sixty-six;" so it will read

Mr. Chairman, \$466,000 was the amount appropriated last year. The Committee on Appropriations reduced it to \$450,000. The Commissioner of Internal Revenue thinks it should be still higher. We have not had time to consider the subject before the Committee on Appropriations. My amendment merely proposes to increase the amount to what was appropriated last year for this purpose.

The amendment was agreed to. The Clerk read as follows:

The Clerk read as follows:

For salaries and expenses of collectors, \$1,675,000; and from and after the 30th day of June next there shall be no more than one hundred and twenty collection districts; and it shall be the duty of the President, and he is hereby authorized and directed, to reduce the internal revenue districts to not exceeding the number aforesaid, in the manner heretofore provided by law. And the Secretary of the Treasury is hereby authorized and directed to cause a careful examination to be made of allowances to collectors of internal revenue under the provisions of section 3145 of the Revised Statutes, for collection of revenue in the several districts, and to equalize the same, and reduce the aggregate of such allowances not less than 5 per cent. on the amount of the same.

Mr. FOSTER. I move to strike out the last word for the purpose of saying that, for one, I do not agree to the proposition of the Committee on Appropriations to reduce the collection districts to one hundred and twenty. I do not propose to test the sense of the House on that question, but I do desire to enter my protest against it. I believe, sir, we have carried this too far already, and that in our attempt at economy in this direction we are losing vast sums of money, largely in excess of any amount heretofore saved.

withdraw the amendment. The Clerk read as follows:

For detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving in such crime, including payments for information and detection, \$60,000.

Mr. CABELL. I move in line 660 to strike out "60,000" and insert

"40,000;" so it will read "\$40,000."

I take it for granted this system has arrived at that degree of per-

I take it for granted this system has arrived at that degree of perfection the appropriation for that duty can be lessened, and I hope it will be the pleasure of the House to adopt my amendment.

Mr. HOLMAN. I do not think the Committee on Appropriations will have any objection to the amendment of the gentleman from Virginia. The appropriation heretofore made was \$100,000; but there is great force in the suggestion that year after year, under our internal-revenue system in time of peace, matters are becoming more arrefunctived, and there would not seem to be the same necessity as systematized, and there would not seem to be the same necessity as

in former years for large appropriations.

Mr. HARRISON. I rise to oppose that amendment. I think gentlemen are not aware of one difficulty the country will have to encounter for the next few years. We are commencing to coin silver, and machinery is now more extensively engaged in striking off silver coin than it has been for years in striking off greenbacks.

Mr. CABELL. I would suggest to the gentleman that this appro-

priation relates to the internal revenue, and has no connection what-

ever with the matter he is now discussing,
Mr. HARRISON. I thought this referred to the regular detective

Mr. CLYMER. I suggest to the gentleman from Virginia [Mr. CA-BELL] to name in his amendment \$50,000.

Mr. CABELL. I accept that suggestion, and modify my amendment accordingly.

Mr. HALE. I hope that this amendment will not be insisted upon. If it should be, it is a matter of so much importance to the department that I think we ought to have a full vote upon it. The appropriathat I think we ought to have a full vote upon it. The appropria-tion now in the bill is lower than the former appropriation; and while what has been said about simplifying details may be true, it is an actual fact that there has been more trouble in the collection of internal revenue within the last few months, and more need for this force in detecting frauds, than at any time during the last three or four years. If any change should be made in this appropriation of \$60,000, it ought to be increased rather than decreased. I will say to the chairman of the Committee on Appropriations that I do not think we should be doing justice to the department by assenting on the part of the committee to this amendment. The Department would be glad to have more than the sum named in the bill and believes that it requires more. I think the appropriation had better be left as it is at \$50,000.

left as it is, at \$50,000.

Mr. CABELL. I would be perfectly willing to agree to that if I did not think that, in view of the perfection to which the system ought to be brought by this time, \$50,000, as suggested by the gentleman from Pennsylvania, [Mr. CLYMER,] should be sufficient. An ap-

propriation of \$60,000 was made last year; and from all that I can ascertain that has been entirely sufficient. It is to be presumed that the department is going on perfecting this system month by month and year by year; and if \$60,000 were sufficient last year, \$50,000 should and year by year; and it soo, boo were sumceent as tyear, \$50,000 salond certainly be enough for the present year. The system in any aspect is a bad one, and if we could do without it, ought not to be continued. I would not undertake to hamper the Government in its operations now, though if we could get rid of such a system, it would be very much better. I know that this detective system has aided in some degree in the detection of crime, but at the same time it is often provocative of crime. The gentleman must see that the system has in many cases operated badly. The disclosures which have been made from time to time before committees of Congress have shown that the men occupying these positions as detectives are frequently not such persons as should be sent out by the Government, and do many other things besides the duties assigned them by their official

superiors.

Mr. HALE. I agree fully with the gentleman that any detective system is likely to be abused; and I do not doubt that there have been abuses in this department. The detective system in the collection of customs dues is a system which at times runs pretty rank, involving exactions and espionage upon citizens which to my mind are very offensive. I have no doubt that in the collection of the revenue in that large portion of the country lying south of us such things have come about. But you may depend upon it, Mr. Chairman, that so long as we collect a large portion of our revenue through this Internal Revenue Bureau, and so long as there is temptation for fraud in the manufacture of liquors and tobacco, we must have a large and efficient detective force. The remedy for what the gentleman speaks of is not so much with us in cutting down appropriations as with the Department in enforcing a good service, and securing as its agents men of character, capacity, shrewdness, and nerve, who will attend to the legitimate duties of their offices. That is not a thing which we can regulate. Thirty million dollars or forty million dollars cannot be colregulate. Thirty million dollars or forty million dollars cannot be collected as the internal-revenue tax upon liquors of one kind and another without a large and efficient force of this kind. The department is fully satisfied that this appropriation of \$60,000, instead of being too much, is not sufficient; and taking off \$10,000 will cripple the operations of the department. We are all interested in having the revenue system properly enforced.

Mr. CABELL. I would remind the gentleman from Maine that I

have consented to a modification of my amendment to the extent of \$10,000, so that the appropriation shall be \$50,000 instead of \$60,000.

Mr. HALE. Still I say that if this reduction of \$10,000 be made it will seriously cripple the department. I have no doubt the department would prefer more; and it may be that an attempt will be made in the other branch of Congress to increase the appropriation. I am in favor of sticking to this appropriation of \$50,000, and if anything more should be added in the Senate, doing as we did last year—insisting on the House figures. I think the gentleman will be better satisfied in the end if, instead of changing this appropriation which the committee has agreed upon, we let it go at \$30,000, with the understanding that if it should be put up elsewhere we shall hold the department to \$60,000.

Mr. CABELL. I think \$50,000 are amply sufficient. I ask a vote on

my amendment.

The question being taken on the amendment of Mr. Cabell, it was not agreed to.

Mr. CABELL. Mr. FOSTER. Mr. CABELL. I shall ask for a vote in the House.

You cannot get it.
I will endeavor to get it, at any rate.

Mr. LAPHAM. I offer the following amendment, to come in after

The Secretary of the Treasury is hereby authorized to employ, in addition to those now in the service, fifteen special agents of the Treasury, whose compensation shall not exceed \$3 per day, with actual necessary traveling expenses when

employed.

The Secretary of the Treasury shall have authority to assign a special agent to duty as supervising special agent of the Treasury Department, to be paid such compensation as he may deem proper.

Mr. HALE. Is not that amendment subject to a point of order?

Mr. LAPHAM. I hope the gentleman will not make it.
Mr. HOLMAN. I shall have to insist upon the point of order, for the amendment changes the existing law.

Mr. LAPHAM. I hope the gentleman will not do that.
Mr. HOLMAN. I hope the gentleman from New York will not press
the amendment, for I shall have to insist upon the point of order.
The CHAIRMAN. The Chair sustains the point of order, and the
amendment is not in order.

The Clerk resumed the reading of the bill, and read as follows:

For temporary clerks for the Treasury Department and the several Executive epartments, according to the exigencies of the public service, to be apportioned to the Secretary of the Treasury, \$60,000: Provided, That no part of this sum shall a paid to any officer or employé of the Government as additional compensation.

Mr. HOLMAN. I move to insert after the word "Treasury," in line 667, the words: "including such employment as may be required in the Sixth Auditor's Office."

The reason why that bureau is mentioned especially is that it is a growing bureau and it is desirable that the force actually required there should be furnished, for it is one of the most important bureaus of the Government.

Mr. FOSTER. What Department does the bureau belong to?
Mr. HOLMAN. The Treasury Department.
Mr. FOSTER. Then is not the amendment rather a reflection on Mr. FOSTER. Then is not the amendment rather a reflection on the Secretary of the Treasury? Mr. HOLMAN. Not at all; we leave it discretionary with him as

to what force should be employed.

Mr. FOSTER. Does that amendment come from the Committee on

Appropriations?

Mr. HOLMAN. It has been submitted to the committee.

Mr. FOSTER. I think there is no occasion for it.
Mr. HOLMAN. The Sixth Auditor's Office is in the Post-Office Department, but under the Treasury Department, and it is a growing

Mr. FOSTER. But it is a part of the Treasury Department, and

Mr. FOSTER. But it is a part of the Treasury Department, and this would be a direct reflection upon the Secretary of the Treasury.

Mr. HOLMAN. O, no; no reflection at all.

Mr. ATKINS. It is in the Post-Office Department building,
Mr. FOSTER. But it is attached to the Treasury Department, and you should east no reflection upon the officers of that Department.

Mr. ATKINS. It is not a reflection at all.

Mr. HOLMAN. The amendment is offered in perfect harmony with the riseasure of a president of the Treasury Department.

Mr. HOLMAN. The amendment is offered in perfect harmony with the views of a prominent officer of the Treasury Department.

Mr. FOSTER. The views of the Sixth Auditor himself.

Mr. HOLMAN. I have offered the amendment at the instance of a

prominent officer of the Government.

Mr. FOSTER. Yes, the Auditor himself, I suppose.
Mr. HOLMAN. The gentleman from Ohio must see that there is no objection to the amendment. I dislike occupying time about such a matter as this.

The question was taken on the amendment; and on a division there

ere—ayes 29, noes 20.
Mr. FOSTER. Has a quorum voted ?
The CHAIRMAN. No quorum has voted.

Mr. FOSTER. I must insist upon a further vote. Mr. HOLMAN. Then I withdraw the amendment.

It was offered at the especial request of a very important officer of the Government, but I will not break up a quorum by insisting upon it. I withdraw it. The Clerk resumed the reading of the bill, and read as follows:

#### INDEPENDENT TREASURY.

Office of the Assistant Treasurer at New York:
For assistant treasurer, \$7.200; for deputy assistant treasurer, \$3.240; cashier and chief clerk, \$3.780; chief of coin division, \$4,000; chief of note-paying division, \$2,700; chief of chee receiving division, \$2,700; chief of cheek division, \$2,700; chief of free hieroreta division, \$2,250; chief of free hieroreta division, \$2,250; chief of fractional-currency division, \$2,250; chief of bond division, \$2,160; chief of canceled-cheek and record division, \$1,800; two clerks, at \$1.000 each; six clerks at \$1,530 each; ten clerks, at \$1,530 each; ten clerks, at \$1,200 each; four clerks, at \$1,300 each; four clerks, at \$1,200 each; four clerks, at \$1,200 each; five messenger, \$1,200; keeper of building, \$1,620; chief detective, \$1,620; assistant detective, \$1,260; three hallmen, at \$1,000 each; six watchmen, at \$730 each; one engineer, \$1,000; one porter, \$900; in all, \$137,540.

Mr. MacDOUGALL. I offer the following amendment:

Strike out, in lines 744 and 745, "one thousand six hundred and twenty" and sert "two thousand."

I offer this amendment from the fact that this is really the most important man about the Treasury, excepting perhaps those who are intrusted with the money. He has to remain in the building six hours every night including Sandays. He must live in the city, and cannot live in the country, where rents and living are cheaper, and it seems to me that his salary should be increased. For six months he spends six hours of every night in the building and six hours of every day, not even excepting Sundays.

The question was taken on the amendment, and it was not agreed

The Clerk resumed the reading of the bill, and read as follows:

For checks and check-books for disbursing officers and others, and certificates of eposit for offices of the Treasurer and assistant treasurers and designated deposits.

Mr. HOLMAN. I move to strike out "\$6,000" and insert in lieu thereof "\$8,000" in lines 867-'8; so that it will read:

For checks and check-books for disbursing officers and others, and certificates of deposit for offices of the Treasurer and assistant treasurers and designated depositaries, \$8,000.

The amendment was agreed to.

The Clerk read the following under the head of "Mint at San Francisco, California."

For wages of workmen and adjusters, \$250,000.

Mr. PIPER. I move to amend by striking out "\$250,000" and inserting "\$275,000."

The question was taken upon the amendment; and upon a division

there were—ayes 5, noes 20.

Mr. PIPER. No quorum has voted. I desire to say that the appropriation asked for by the Director of the Mint for this purpose is

Mr. HOLMAN. I will consent that a vote may be had on this amendment in the House.

Mr. PIPER. Very well, if that can be done I will not press the matter now.

It was accordingly agreed by unanimous consent that a vote be taken upon the amendment in the House.

The Clerk read the following under the same head:

For material and repairs, fuel, lights, chemicals, and other necessaries, \$75,000.

Mr. PIPER. I move to amend the clause just read by striking out "\$75,000" and inserting "\$100,000."

Mr. CLYMER. Let a vote be taken on that in the House

Mr. PAGE. I hope the gentleman from Indiana [Mr. Holman] will consent that the amendment be adopted.

Mr. HOLMAN. I am willing that a vote be taken upon it in the House.

Mr. PAGE. We have some papers which we would like to submit.
Mr. HOLMAN. We have some papers also which I will submit to
the gentleman before we get through with the bill. We can vote on
this amendment in the House.

There being no objection, it was agreed that a vote be taken upon the amendment in the House.

The Clerk read the following:

Assay-office at Charlotte, North Carolina: For salary of assayer and melter, \$1,500; for labor and other expenses, \$250; in all, \$1,750.

Mr. HALE. Before we pass from the portion of the bill relating to the Treasury Department, I desire to call the attention of the gentleman from Indiana [Mr. HOLMAN] to one thing. I desire to move an amendment in the paragraph relating to the Supervising Architect of the Treasury. That paragraph was just passed when I came in this morning. I had no idea that this bill would come up this morning.

this morning. I had no idea that this bill would come up this morning.

Mr. HOLMAN. We will be very glad to go back when we get
through the bill; and the clerk of our committee will call the atten-

tion of the gentleman from Maine to this point.

Mr. HALE. There will be no objection to going back then?

Mr. HOLMAN. No, sir.

The Clerk resumed the reading of the bill, and read the following:

Territory of Washington:
For salaries of governor, chief-justice, and two associate judges, at \$2,500 each; and secretary, at \$1,800; \$11,800.

Mr. JACOBS. I move to strike out the paragraph just read and to insert in lieu thereof the substitute which I send to the Clerk's desk. The Clerk read as follows:

Territory of Washington:
For salary of governor, \$2,500; and for chief-justice and two associate justices, at \$3,000 each, and secretary at \$1,800, \$13,300.

Mr. JACOBS. The salary of the judges in all the Territories at the present time. I believe, is \$3,000 each. That amount was fixed several years ago, and was made to apply to the judges of all the Ter-

ritories. It was adjusted as being a fair salary.

Prior to that time in most of the Territories of the United States the judges could not live upon the salaries paid them by the United States, and at the same time pay the large traveling expenses which they were required to pay. Therefore the territorial Legislatures were in the habit of making an appropriation to pay these judges an additional amount, so that they might be able to support themselves. It is but fair to these judges in the Territories, whose traveling expenses are very large, that their salaries should remain at least as high as they are now by law. In all the States provision is made to pay the traveling expenses of the district judges, when they are compelled to go outside of their districts. While the cost of living in the Territories is about the same as it is here, yet the expenses of traveling are very much greater.

For instance, the judge in my Territory living at Walla Walla is obliged to travel one hundred and fifty miles to attend court at one place, and one hundred and twenty-five miles to attend court at place, and one hundred and twenty-five miles to attend court at another place, and he has to attend the session of the court at those places twice a year. There is no public conveyance by which he can go to those places, and it costs him at least \$10 a day in gold coin while he is traveling, and it takes him from four to five days to make the trip. I say it is no more than fair and just that the salaries of these judges should be left where they are now, at \$3,000.

Besides, as every lawyer knows, the jurisdiction of these territorial courts is more extensive than that of any other court in the United States. They have jurisdiction over the enforcement of all the laws of

States. They have jurisdiction over the enforcement of all the laws of the United States, criminal and civil, and also admiralty jurisdiction, the United States, criminal and civil, and also admiralty jurisdiction, as well as the enforcement of the laws passed by the territorial legislation. In the district in which I live there is a large admiralty jurisdiction, and the judge of that district is in the habit of going to different places in the district for the purpose of hearing and determining the admiralty causes; and he pays his own expenses while doing so, thus saving to the Government of the United States a large sum of mover. He is not convelled to go and should be remained to them. money. He is not compelled to go, and should he remain at home he would be justified in doing so if his salary was reduced as it is proposed to be reduced by this bill. And in that way the Government of the United States would be a large loser by this reduction of

I hope that as a matter of justice to these justices their salaries will not be reduced below what they are now fixed by law.

Mr. HOLMAN. It is believed by the Committee on Appropriations,

after careful inquiry, these salaries are high enough and all the Territories are put on the same footing. The salary of the governor is virtually \$3,000 a year, as I understand he receives the benefit of the contingent fund of \$500 appropriated by this bill for each one of the Territories.

As to the judges, I can only say these salaries are above the average salaries paid in the United States by the States themselves. It is fully up to the salaries paid in any one of the States of the Northwest, according to my information, and \$1,000 more than is paid certain judges in some of the States of the Northwest. That is a consideration I hope the gentleman from Washington Territory will not overlook. It is important these appointments shall be made from citizens of the Territories. As long as the salary is disproportionately high the tendency is to make these appointments from the States instead of from the citizens of the Territories. When salaries are comparatively low, at least as low as the salaries paid in the States, there is less motive to press for these offices on the part of citizens outside of the Territories. I think myself it is desirable these officers should be appointed from the citizens permanently located in the several

Territories of the United States.

The committee has considered the propriety of dispensing with the office of secretary of the Territory, and the general impression seems that office might be dispensed with, but we have left that officer with a salary of \$1,800 a year in the bill. I do not think the gentleman should urge discrimination in favor of his own Territory, but that all

should be put upon the same footing. Mr. JACOBS. Mr. Chairman, I can see no justice in paying to the district judge living at Portland, whose duties are not night as onerous, and who has no traveling expenses at all, four to five thousand dollars a year, when the duties of that judge, so far as the Government of the United States is concerned, are not as onerous as the duties of the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned, are not as onerous as the duties of the United States is concerned. ties of the district judge in the third judicial district in Washington Territory at a salary no higher than is proposed in this bill. The ad-Territory at a salary no higher than is proposed in this bill. The admiralty jurisdiction of the judge of the third judicial district in Washington Territory is far more extensive than that of the United States district judge from Oregon. The United States criminal jurisdiction for that judge is far more extensive than that of the district judge in Oregon. Then why should the district judge for Oregon receive four or five thousand dollars a year and his traveling expenses paid in addition if he goes out of that district, while this judge of the third judicial district, going wherever sailors are arrested, and trying them under the law for summary proceedings, and paying his own expenses, only receives the salary here provided for? I say where is the justice of such discrimination? If this Congress will make provision for paying the traveling expenses of the judges it will be all right. If that be done, I shall not complain. It is not because we want high salaried officers, but because we want competent judges in the Territories that I are concessed to the reduction of their solaries. tories, that I am opposed to the reduction of their salaries. I make no opposition to the reduction of salaries so far as the other officers are concerned, but I say the salaries of these judges should be left where they are.

The House divided; and there were—ayes 12, noes 20.

Mr. JACOBS. I call the attention of the Chair to the fact that no quorum has voted.

The CHAIRMAN. No quorum having voted, the Chair will order

Mr. JACOBS. I will be content if the gentleman from Indiana will agree to give us a vote in the House on this proposition.

Mr. HOLMAN. I am willing to let the gentleman have a vote in

the House on the proposition.

The CHAIRMAN. Then the amendment will be considered as agreed to for that purpose."

The Clerk read as follows:

That the Secretary of War is hereby authorized to detail not exceeding twenty enlisted men for clerical service in his Department in addition to those hereinbefore provided.

Mr. WELLS, of Missonri. I move in line 1211 to strike out "twenty" and insert "thirty;" so it will read "thirty enlisted men."

The motion was agreed to.

The Clerk read as follows:

DEPARTMENT OF THE INTERIOR.

For compensation of the Secretary of the Interior, \$8,000; assistant secretary, \$3,500; chief clerk, \$2,250; four clerks, at \$2,000 each, one of whom shall be disbursing clerk; four clerks of class four; five clerks of class three; five clerks of class two; five clerks of class one, one of whom shall be the telegraph operator of the Department; three copyists; two messengers; two assistant messengers; and four laborers; in all, \$58,650.

Mr. FOSTER. I move in line 1324 to strike out "four" and insert

Mr. FOSTER. I move in line 1324 to sure out.

"eight."

Mr. Chairman, there are now in the Secretary's office eight clerks, who are receiving a salary of \$2,000 a year, and I know of no reason why a distinction should be made now between the clerks in this office. They have been classified as at present for years. They occupy very responsible positions, equal probably to similar positions held in the office of the Secretary of the Treasury, where the compensation is much larger. I think at least all these officers, who are the eyes and ears of the Secretary of the Interior, should be treated equally. I hope therefore my amendment will be adopted, so these officers will be reinstated as they now are.

Mr. HOLMAN. That will be a greater disproportion. I hope the gentleman will agree to six.

gentleman will agree to six.

Mr. FOSTER. I do not know where to draw the line.

Mr. HOLMAN. This is placing this Department in a much more favorable position than the other Departments.

Mr. FOSTER. I hope my amendment will be agreed to.

Mr. HOLMAN. I think six will be ample; four I believe to be sufficient, but I do not wish to break a quorum, and I trust the gen-

sumcient, but I do not wish to break a quorum, and I trust the gentleman will not object to six.

Mr. FOSTER. Eight is hardly enough.

Mr. HOLMAN. Take six.

Mr. FOSTER. I will compromise on seven. [Laughter.]

Mr. HOLMAN. I move to amend the amendment by inserting six.

The committee divided; and there were—ayes 30, noes 28.

So the amendment to the amendment was agreed to

So the amendment to the amendment was agreed to. The amendment, as amended, was agreed to.

Mr. HALE. I think that in making up the bill there must have been a mistake made at line 1323. The salary of the chief clerk of the Department of the Interior is cut down from \$2,500 to \$2,250, while the chief clerks of the other Departments are getting \$2,500. I do not think it could have been intended to make this difference.

He is not the chief of a bureau, but the chief clerk of a Department.

Mr. HOLMAN. My friend from Maine is mistaken in his statement of the facts. If he will turn to page 46, line 1115, he will find that we have put the chief clerk of the War Department on exactly the same footing. He will find there this item:

One chief clerk, at \$2,250.

I wish to remind my friend of the fact that all through the expensive period of the war the chief clerks of the various Departments received only \$2,000. Even as the bill stands now it is an increase of \$250 over the salaries in the most expensive period of our

Mr. HALE. This has always been \$2,500.
Mr. HOLMAN. Not at all.
Mr. HALE. I think the gentleman is mistaken. If we give \$2,500

it is not a large salary for such an office.

Mr. HOLMAN. If we agree to that we will have to go back through the whole bill to make salaries correspond in the other De-

Mr. HALE. The chief clerk in the Treasury Department has

Mr. HOLMAN. But in the War, Navy, and other Departments we have put the salaries of the chief clerks at \$2,250.

Mr. HALE. In those Departments they have not as onerous duties

as in the Interior Department.

Mr. HOLMAN. I think we cannot discriminate between the Interior and those other Departments.

Mr. HALE. It is the next largest Department, so far as the duties are concerned, to the Treasury Department.

The question being taken on Mr. HALE's amendment there were—

ayes 31, noes 49.

So the amendment was not agreed to.

The Clerk resumed the reading of the bill, and read the following paragraph:

For expenses of packing and distributing official documents, (including salary of superintendent, at \$1,600,) \$5,000.

Mr. WALLACE, of Pennsylvania. I offer the following amendment which I send to the desk.

The Clerk read as follows:

In line 1347 strike out "\$1,600" and insert "\$2,600," and in line 1348 strike out "\$5,000" and insert "\$6,000."

Mr. WALLACE, of Pennsylvania. The superintendent of documents occupies a laborious and responsible position. His correspondence is probably as extensive as that of any officer in the Government.

In addition to the care of documents and their distribution to colleges, public libraries, &c., he has the supervision of the library of the Department, and also of the requisitions for printing and binding, and the postage of the Department. Besides, it is made his duty by statute to prepare the Biennial or Blue Book of the Government, which necessitates much care and labor and readers. which nece sitates much care and labor, and requires more than ordinary ability.

I think we ought not to reduce his salary.

The question being taken on the amendment of Mr. WALLACE, of

Pennsylvania, it was not agreed to—ayes 33, noes 47.

The Clerk resumed the reading of the bill, and read the following paragraph under the head "General Land Office:"

For maps of the United States, (including paper.) \$2,000.

Mr. WALLING. I offer the following amendment: Strike out "\$2,000" and insert "\$4,000."

The amount hitherto appropriated for publishing these maps has been \$6,000 annually. The sum here proposed to be appropriated, \$2,000, will scarcely pay for the change in the plates from which the maps are printed. It will not furnish any maps for general distribumaps are printed. It will not furnish any maps for general distribution, and probably hardly enough for departmental purposes. Having received from the chairman of the Committee on Appropriations a request to state the amount that will be necessary for this purpose, the Committee on Public Lands were willing to go as far as they possibly could in cutting down expenses; but we think it would be destroying the utility of this branch of the service to cut the appropriation down to \$2,000. But desiring to make a reduction of expenditures wherever possible the Committee on Public Lands ask the House to make the amount \$4,000, instead of \$5,000 as it has been heretofore.

Mr. CLYMER. The amount of this appropriation last year was

\$5,000. It is one of those appropriations which ought from the nature of the case to decrease from year to year; for nearly all the members and others who need these maps and are entitled to them have already and others who need these maps and are entitled to them have already been supplied, and the Committee on Appropriations think that \$2,000 would be ample for the purpose. But if the Committee on Public Lands feel that there is a necessity for any increase above that, we are willing to increase the amount to \$3,000, but certainly not to \$4,000. I think this is a case where we can effect a saving without any injury to the public service.

The CHAIRMAN. Does the gentleman from Ohio accept the proposition of the gentleman from Pennsylvania?

Mr. WALLING. I do not think that we can accept that proposition. I think we cannot get along without \$4,000.

Mr. CLYMER. I move to amend the amendment by inserting "\$3,000" instead of "\$4,000."

The question being taken on the amendment to the amendment, it

The question being taken on the amendment to the amendment, it was agreed to; and the amendment, as amended, was agreed to.

Mr. GOODIN. I desire to offer an amendment at line 1357.

Mr. CLYMER. I suggest that that part of the bill has been

Mr. WELLS, of Mississippi. The Clerk was reading so fast that the gentleman could not stop him in time.

Mr. GOODIN. I ask unanimous consent to go back to that para-

graph.

Mr. CLYMER. What is the gentleman's proposition?

Mr. GOODIN. To strike out "\$1,800" as the salary of the recorder of the General Land Office and to insert "\$3,500."

Mr. CLYMER. We cannot consent to any such increase as that.
Mr. GOODIN. I do not at present ask your consent to the amendment, but I ask that I may be allowed to propose it.

The CHAIRMAN. Is there objection to going back to the paragraph indicated by the gentleman from Kansas? The Chair hears

The paragraph is as follows:

General Land Office:
For the Commissioner of the General Land Office, \$4,000; chief clerk, \$2,000; law clerk, \$2,000; recorder, \$1,500; three principal clerks at \$1,500 each; five clerks of class from, twenty-two clerks of class three, forty clerks of class two, seventy clerks of class one; one draughtsman, \$1,600; one assistant draughtsman, \$1,400; two messengers; three assistant messengers; eight laborers; and two packers; in all, \$213,440: Provided, That the Secretary of the Interior, in his discretion, shall be, and he is hereby, authorized to use any portion of said appropriation for piecework, or by the day, month, or year, at such rate or rates as he may deem just and fair, not exceeding a salary of \$900 per annum.

Mr. GOODIN. I offer the following amendment:

In line 1357 strike out "\$1,800," and insert in lieu thereof "\$3,500;" so that it will read: "recorder, \$3,500."

I desire to say that I have given considerable attention to this matter of the compensation of the recorder in the General Land Office. I understand that this office was established with a compensation to that officer of \$2,000. I understand that at the time the office was established this officer had fully three-fourths of the clerical force of the office under his immediate superintendence and supervision. I understand further that by a subsequent act of Congress the office of solicitor has been abolished and the duties of that office devolved upon the recorder. He has at this time over one-fourth of the entire clerical force of the office under his care and supervision, and it does seem to me that the compensation which is now given him in this bill, of \$1,800 a year, is not enough, and my amendment proposes to increase it to \$3,500.

I have investigated this matter very carefully, and I will say further that the committee of which I have the honor to be a member, the Committee on Public Lands, have also taken it under consideration, and I believe I may state that it is the unanimous wish and desire of that committee, after investigation, that this increase should

be made.

Mr. HOLMAN. I move that the committee do now rise.

Mr. FOSTER. Before that motion is put I desire to correct a

Mr. FOSTER. Before that motion is put I desire to correct a statement made yesterday by the gentleman from Indiana [Mr. HOLMAN] in reference to the public debt.

Mr. HOLMAN. Allow me to say that after the adjournment I saw the official statement of the public debt, and found that there had been a reduction of two million sixty-nine thousand and odd dollars, instead of an increase, as published in a city paper. I move that the committee do now rise.

The motion was agreed to.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Reagan reported that the Committee of the Whole on the State of the Union had had, according to order, under consideration the bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes.

Mr. HOLMAN. I move that the House take a recess until twelve colorly.

o'clock.

The motion was agreed to.

And accordingly (at eleven o'clock and fifty-nine minutes a. m.) the House took a recess until twelve o'clock m.

### AFTER THE RECESS.

The recess having expired, the House resumed its session at twelve o'clock m.

The SPEAKER. The Chair asks unanimous consent that the Chaplain now offer prayer.

No objection was made, and prayer was offered by the Chaplain, Rev. I. L. TOWNSEND.

#### THE FLORIDA ELECTION.

Mr. HOPKINS. By unanimous consent, the report of the committee on the Florida election was to come up to-day after the reading of the Journal. Inasmuch as the Journal is not to be read and in

of the Journal. Inasmuch as the Journal is not to be read and in order to avoid any discussion or confusion about the matter, after conference with the minority of the committee, I ask unanimous consent that the subject shall go over, keeping its present position until after the Journal shall be read the next time.

Mr. HALE. What is the proposition? I could not hear it.

The SPEAKER. The gentleman from Pennsylvania, unanimous consent having been heretofore given that the subject of the Florida report be considered to-day after the reading of the Journal and in consequence of no Journal being read to-day, asks that it may be considered immediately after the first time the Journal is read, and the Chair thinks that is an equitable arrangement.

Mr. HALE. Saving all rights.

Mr. HOPKINS. Certainly. I conferred with the gentleman from Minnesota, [Mr. DUNNELL,] a member of the minority of the committee, before making this request.

mittee, before making this request.

No objection was made, and it was so ordered.

#### LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. HOLMAN. I now insist upon my motion that the House resolve itself into Committee of the Whole on the state of the Union for the purpose of considering the legislative, &c., appropriation bill.

The motion was agreed to; and the House accordingly resolved itself into Committee of the Whole on the state of the Union. (Mr. Reagan in the chair,) and resumed the consideration of the bill (H. REAGAN in the chair,) and resumed the consideration of the bill (H. R. No. 4472) making appropriations for the legislative, executive, and indicial expenses of the Government for the year ending June 30, 1878, and for other purposes; the pending question being upon the amendment offered by Mr. GOODIN, in line 1357, under the heading of General Land Office, to strike out "\$1,800" and insert in lieu thereof "\$3,500;" so as to read: "the recorder, \$3,500."

The question was taken on the amendment; and on a division, there ere—ayes 5, noes 22.

No further count being called for, the amendment was not agreed

The Clerk read the following, under the same heading:

For diagrams, stationery, parchment paper for land patents, furniture and repairs of the same, miscellaneous items, (including two of the city newspapers, to be filed, bound, and preserved for the use of the office.) for the actual expenses of clerks detailed to investigate fraudulent land entries, trespasses on the public lands, and cases of official misconduct, and for advertising and telegraphing, \$25,000.

Mr. GOODIN. I move to amend that paragraph by striking out in line 1381 "\$25,000" and insert in lieu thereof "\$27,500."

Mr. Chairman, I understand, on conference with the Commissioner of the General Land Office, that the last appropriation for this purpose amounted to \$27,500, and that that amount has been entirely in-adequate for the purpose named. This amendment simply proposes to give for this purpose the same amount that was given last session. The question was put, and the Chair announced that it was de-

ided in the negative.

Mr. GOODIN. I call for a division; not more than a dozen members vote on any of these amendments.

The committee divided; and there were—ayes 7, noes 27.

No further count being insisted on, the amendment was not agreed to. The Clerk read the following:

Indian Office:
For compensation of Commissioner of Indian Affairs, \$3,000; chief clerk, \$2,000; four clerks of class four; seven clerks of class three; one stenographer, at \$1,600; hine clerks of class two; twelve clerks of class one; eight copylists, at \$900 each; one messenger; one assistant messenger, and one laborer; in all, \$61,450.

Mr. FOSTER. I move to amend the paragraph just read so as to make the salary of the Commissioner of Indian Affairs \$3,000 instead make the salary of the Commissioner of Indian Affairs \$3,000 instead of \$3,000, as proposed by this bill.

Mr. HOLMAN. The present salary of the Commissioner is \$3,000.

Mr. FOSTER. And I propose to make it \$3,600.

Mr. HOLMAN. That is an increase of salary.

Mr. FOSTER. Of course it is.

Mr. HOLMAN. I ought to make a point of order on that amendment.

ment.

Mr. FOSTER. It is too late to do that. The effect of this amendment if adopted will be to place the Commissioner of Indian Affairs ment it adopted will be to place the Commissioner of Indian Affairs in point of salary upon the same footing as the Auditors of the Treasury, the Commissioner of Pensions being an officer of like importance. No one will deny but what it is one of the most responsible positions under the Government, and in my judgment the salary proposed by this bill is inadequate to the position. My amendment simply proposes to make the salary of this officer conform to the salaries of other officers of similar grade. We have in one case increased the salary of the Commissioner of Customs to correspond with like salaries of Computedlers of the Treasury. It is but fair that the salary of this Comptrollers of the Treasury. It is but fair that the salary of this officer should be made to correspond with the salaries of other officers of like importance.

Mr. HOLMAN. I am very glad to bear testimony to the high character and official integrity of the present incumbent of this office; but the law fixes his salary at \$3,000 a year, and we have but followed the law in this appropriation bill.

The question was taken upon the amendment of Mr. Foster, and it was not exceed to

it was not agreed to.

The Clerk read the following:

Pension Office:
For compensation of the Commissioner of Pensions, \$3,600; chief clerk, \$2.000; medical referee, \$2,250; twenty-six clerks of class four: fifty-two clerks of class three; eighty-four clerks of class two; one hundred and twenty-two clerks of class one; one skilled mechanic, at \$1,200; twenty-five copyrists, at \$900 each; one messenger, twelve assistant messengers; eight laborers; two watchmen; one engineer, at \$1,200; and one assistant engineer, at \$1,000; in all, \$444,430; Provided, That upon application of the Secretary of War, when the necessities of the public services or require, a transfer of not exceeding fifteen clerks may be made from the force employed in this office, to serve in the office of the Surgeon-General of the Army.

Mr. DANFORD. I raise the point of order against the proviso of the paragraph just read that it changes existing law, and is therefore

not in order in this bill. Mr. HOLMAN. Even if it did change existing law, I trust the gentleman from Ohio [Mr. Danford] will not seek to deprive the Department of the benefit of this clerical force. I believe it is a change

of law as to number, but it is not a change of law as to principle, for the same thing has been done heretofore. It is so important that the Surgeon-General's Office should have these clerks that I trust there

Surgeon-General's Office should have these clerks that I trust there will be no objection to this proviso.

Mr. DANFORD. In reply to the remarks of the chairman of the Committee on Appropriations [Mr. Holman] I desire to say that this Pension Bureau is one in which the very poorest and most needy classes of our people have great interest. In conversation with the Commissioner of Pensions only this morning, I was informed that there were in round numbers 80,000 unadjudicated cases in his bureau at this time. He also gave me a statement from the chief of the mail division, showing that, at the close of last week, there remained unanswered over thirty-seven hundred letters, and that there are received over one thousand letters weekly. The full statement from the chief of the mail division is as follows: the chief of the mail division is as follows:

Pension Office-summary of letters of inquiry received.

	Inv.	Wid.	1812	Med.	Fin.	B. L.	S.S.D.	Miss.	Total.
Not answered last week. Received this week	2, 309 668	356 243	57 24	4 5	106 57	88 41	119 27	585 108	3, 624 1, 173
To be answered Answered this—	2, 977 618	599 213	81 15	9 9	163 59	129 30	146 3	693 111	4, 797 1, 058
Not answered this date	2, 359	386	66		104	99	143	582	3, 739

JANUARY 27, 1877.

There should be no contingency in which this important bureau of the Government should be called upon to give up the services of any of its clerks to any other bureau. And the Surgeon-General's Office is in the same condition. I am informed that in that office there are between twelve thousand and thirteen thousand unadjudicated cases.

Both of these bureaus unquestionably need a greater clerical force in order to enable them to meet the daily demands made upon them by the almoners of the Government. I insist that this contingency should not be allowed to hang over the Pension Bureau, but that we should give to the Surgeon-General's Office the necessary force in order that the duties of that office may be performed in accordance with the demands of the public service. I insist upon the point of order

Mr. HOLMAN. Of course the gentleman cannot make a speech, and then insist upon his point of order.

Mr. DANFORD. I made my remarks in reply to the gentleman.

Mr. HOLMAN. The gentleman made a speech upon the merits of the question.

the question.

Mr. DANFORD. Just as the gentleman himself did.

Mr. HOLMAN. The gentleman cannot make his speech, and then avail himself of the point of order.

Mr. DANFORD. It was all upon the point of order.

Mr. HOLMAN. O, no. I wish to call the attention of the gentleman, for of course he is entitled to a vote on his proposition—

Mr. FOSTER. Let us have the point of order decided.

man, for of course he is entitled to a vote on his proposition—
Mr. FOSTER. Let us have the point of order decided.
Mr. HOLMAN. I am following the example of my friend. The delay in answering these letters is occasioned by the difficulty in the Surgeon-General's Office. The force in the Pension Office is very ample, but the delay in communicating with the applicants for pensions results from the delay in the Surgeon-General's Office.
Mr. DANFORD. Let me ask the gentleman a question.
Mr. HOLMAN. Excuse me a moment. The object of this proviso is simply to enable the War Department to increase the force of the Surgeon-General's Office when required, and when the clerks are not required in the Pension Office.

required in the Pension Office.

Mr. DANFORD. Will the chairman of the Committee on Appropriations [Mr. HOLMAN] answer just this one question? As I am

informed there are but between twelve and thirteen thousand unadjudicated cases in the Surgeon-General's Office, while there are in the Pension Bureau in round numbers eighty thousand unadjudicated cases; how does it happen, then, that the failure to make prompt answers in the Pension Bureau depends upon the delay in the Surgeon-General's Office?

Mr. HOLMAN. That is easily explained. It is a delay in obtaining communications from the Surgeon-General's Office, which frequently requires the writing of several letters. The gentleman will observe another fact: that is, that as you diminish the service in the Pension Bureau there is a growing tendency to enlarge the correspondence. It will be found that frequently the same letters are writspondence. It will be found that frequently the same letters are written over and over again, without any explanation being made of the necessity of constantly writing the same letters, calling for the same proof, even after it has been understood by the party that the proof

has been furnished. I call for a vote.

Mr. DANFORD. I insist on the point of order.

Mr. HOLMAN. I shall not insist that the question of order has been waived. If the Chair thinks the point a good one, let it be sus-

The CHAIRMAN. The point of order is sustained.

Mr. RIDDLE. I move to amend by striking out "\$600," so as to make the compensation of the Commissioner of Pensions \$3,000 instead of \$3,600. I make this motion in order that a statement may be made to go upon the record why there is this discrimination in regard to the compensation of the different commissioners. The Commissioner of Internal Revenue gets, I believe, \$6,000 a year.

Mr. HOLMAN. Fifty-five hundred dollars.

Mr. RIDDLE. The Commissioner of Indian Affairs gets only \$3,000,

while the Commissioner of Pensions gets \$3,600. It seems to me that these offices are of equal dignity, and I desire the chairman of the Committee on Appropriations to state why the compensation is not the

Mr. HOLMAN. In answer to the honorable gentleman from Tennessee, [Mr. Riddle,] I wish to state that the law has always made a distinction between the salary of the Commissioner of Indian Affairs and that of the Commissioner of Pensions. The reason for this distinction seems to me quite manifest. The duties of the Commissioner of Indian Affairs, while important to the country, do not require the same range of acquirements nor the same special devotion of time and talent on the part of the Commissioner as do the duties of the Pension Bureau. An efficient Commissioner of Pensions is a matter of vital concern not cally to the very bedy of pressure and vital concerns. of vital concern not only to the vast body of persons applying for pensions, but also for the purpose of securing reasonable economy in that branch of the public service. It is a branch whose operations extend to every section of the country, affecting almost every class of our people; and a thoroughly trained legal mind is required to meet the constantly recurring questions so difficult to decide as to the rights of the applicant on the one side and the rights of the Government on the other. I think the law has provided wisely and reasonably in making this distinction; for while the present Commissioner of Indian Affairs is one of the best officers of our Government, an honest, uprigot man, who deserves well of the country for his good intentions and earnest purposes in the discharge of official duty, yet the position of the Commissioner of Pensions is unquestionably more important; and I trust the present incumbent will be found a valuable officer

Mr. RIDDLE. I withdraw the amendment.

The Clerk read as follows, under the head of Pension Office:

For actual expenses of clerks detailed to investigate suspected frauds and attempts at fraud, as provided by law, \$40,000.

Mr. DURHAM. I move to amend so as to make this appropriation \$50,000 instead of \$40,000. I certainly do not want one dollar appropriated beyond what is necessary to protect the Government and Pension Department; but I am satisfied that there are now upon the pension-rolls a great many persons who ought not to be there. There is but one way in which this abuse can be obviated, and that is by increasing the efficiency of the detective system provided for in this part of the bill. I have been informed, and have brought the matter to the attention of the Commissioner of Pensions, that in my own district quite a number of individuals now upon the pension-rolls are no more entitled to pensions than I am, although I never was engaged in the late war. These persons have made statements of their cases which have been submitted to the proper department, and upon the prima facie case pensions have been granted; yet to-day those individuals are as well able to make a living at their various occupations as perhaps any gentleman upon this floor. It is true that in some cases these men may have been wounded for the time being, yet they have not been disabled to the extent provided for in the pension laws.

Under the existing system it seems to be impossible for the Commissioner of Pensions to send out agents into the various States to missioner of Pensions to send out agents into the various States to investigate these matters and to discover the persons who are improperly borne upon the pension-rolls. I am thoroughly satisfied from what I have heard that upon a rigid examination nearly 10 per cent. of those now borne upon the pension-rolls ought to be stricken from them. If this be true, an additional appropriation of \$10,000 for the detection of these frauds, these impositions upon the Treasury, would effect a saving of two millions and a half of dollars to the Treasury without doing a particle of injury to any interest that

ought to be protected.

In addition to this consideration, the economy which may be accomplished by striking from the pension-rolls those not entitled to pensions will enable the Government more easily to place upon the rolls the class of persons specified in the bill passed by the House a short time ago; I refer to those who served in the Mexican war. Thus it time ago; I refer to those who served in the Mexican war. Thus it may occur that if the pension laws should be carried out strictly, no additional charge would be incurred by the Treasury in consequence of the passage of the bill granting pensions to Mexican soldiers. For this reason, with the view of having absolute fairness dealt out as regards the interest of the Government and the interests of pensioners, I move to increase this appropriation \$10,000, so as to put it within the power of the Government to send out agents for the detection of the frauds now being practiced upon the department.

Mr. MUTCHLER. I believe, Mr. Chairman, that there has been more abuse in the expenditure of this special fund for the Pension Bureau than in the expenditure of any other fund appropriated by Congress. I am willing to admit there are many persons upon the

Bureau than in the expenditure of any other fund appropriated by Congress. I am willing to admit there are many persons upon the pension-rolls whose names ought not to be there, but I am not willing to admit so large a fund as proposed by the gentleman from Kentucky is necessary to detect the fraud of persons whose names are improperly upon the pension-rolls.

This fund, as I understand it, is used for the purpose of paying the expenses of clerks who are detailed to travel through the country to

ascertain what names are upon the pension-rolls which ought not to be there, and to detect other frauds in that bureau. The special agents' account in the Pension Office, I am informed, shows thousands of dollars to have been charged to a late Commissioner of Pensands of dollars to have been charged to a late Commissioner of Pensions himself. He never attempted to investigate a single case, but whenever he took a trip through the country his expenses were paid out of this fund. I am also credibly informed that a certain individual who occupied a position as chief of the special division from July, 1875, to December of that year, drew in addition to his salary of \$1,800 a year an average of three or four dollars a day from this fund; that he drew his traveling expenses time and again between Washington and Mount Vernon, Ohio, where he lived, although he never investigated a solitary case. This is the way this special fund is abused in this bureau. is abused in this bureau.

is abused in this bureau.

I am prepared, Mr. Chairman, to show also from Table 3 of the Commissioner's report that the statement made by the Commissioner is not true; that there is a false showing of the expenditure of this fund. The Commissioner says that during the year there were 2,633 cases investigated. Now, sir, out of the 2,633 cases investigated there were but 513 dropped from the roll. So that it cost the sum of \$33,142.80 of the \$40,000 appropriated last year to investigate 2,100 cases which are still upon the roll, going to show this fact: that during the campaign whenever a clerk in the Pension Bureau or anybody attached to the bureau desired to travel through the country for electioneering purposes or to go home to yoté he collected a lot of these tioneering purposes or to go home to vote he collected a lot of these cases, traveled off with them at \$4 a day and mileage during the time

of his absence.

The Commissioner also attempts to show in his report there was a sum of \$140,000 saved during the last year. If you will add together all the items he claims to have been saved, you will find it amounts to \$99,400. So upon the face of the report itself there is a discrepancy of nearly \$38,000, which he claims to have shown was saved, which was not saved at all.

There are other inaccuracies, Mr. Chairman, in this report that I might call the attention of the House to, as, for instance, the Commissioner claims the amount due in each claim is estimated at \$577.29. Now, sir, in response to a resolution passed by this House two or three years ago, inquiring what the average amount of pension due to each claimant was, one of the clerks in the bureau gathered together fifty cases. He took them indiscriminately out of the originals, and the average of the fifty cases was the amount stated of \$577.29. Since that average of the fifty cases was the amount stated of \$577.29. Since that time, the limitation has interevened, and pensioners now draw pensions from the date of their application. Before that they drew from the date of disability and death, and I affirm now the average amount due applicants for pensions to-day does not amount to one-quarter of what the Commissioner says it does in his report, and consequently the amount saved to the Government in that item is not the amount the Commissioner says it is.

[Here the hammer fell.]

Mr. DURHAM's amendment was disagreed to.

Mr. MUTCHLER. I now move to strike out "40,000" and insert "25,000," so as to reduce the appropriation from \$40,000 to \$25,000.

Mr. RUSK demanded a division.

The House divided; and there were—ayes 33, noes 67. So (no further count being demanded) the amendment was dis-

The Clerk read as follows:

United States Patent Office:

For compensation of the Commissioner of the Patent Office, \$4,000; for assistant commissioner, \$2,750; for chief clerk, \$2,250; three examiners in-chief, at \$2,750 each; examiner in charge of interferences, \$2,500; trade-mark examiner, \$2,250; twenty-two principal examiners, at \$2,500 each; twenty-two first assistant examiners at \$1,800 each; twenty-two third assistant examiners, at \$1,600 each; twenty-two third assistant examiners, at \$1,400 each; one machinist, \$1,600; four clerks of class four, (one of whom shall receive \$200 additional for services as financial clerk, and shall give bond in such amount as the Secretary of the Interior may de-

termine;) five clerks of class three; fifteen clerks of class two; and twenty-five clerks of class one; also for twenty permanent clerks, at \$1,000 each; for forty copyist-clerks, at \$900 each; for three skilled draughtsmen, at \$1,200 each; for one messenger and purchasing clerk, \$1,000; for one skilled laborer, \$1,200; for four attendants in model room, at \$1,000 each; for three attendants in model room, at \$900 each; for three attendants in model room, at \$900 each; for threy-five laborers, at \$720 each; for six laborers, at \$600 each; in all, \$347,900.

Mr. LUTTRELL. I move to amend in line 1443 by inserting, after the word "three," "one of whom shall be designated as translator of languages." It now reads "five clerks of class three." I pro-pose to add, after the word "three," "one of whom shall be designated as translator of languages." This will not increase the expense at all, as translator of languages." This will not increase the expense at all, but it is, I am informed, much desired by the Department.

Mr. WILSON, of Iowa. There is no objection to that amendment.

The amendment was agreed to.

Mr. VANCE, of North Carolina. For the purpose of asking the

For the purpose of asking the gentleman from Indiana a question, I move to strike out the last word.

I desire to ask the chairman of the Committee on Appropriations if

I desire to ask the chairman of the Committee on Appropriations if it is not true that the present bill cuts down the force in the Patent Office seventy-nine below last year; that is, below the fiscal year ending 30th of June last? Is not that true?

Mr. HOLMAN. There is some reduction.

Mr. VANCE, of North Carolina. I want to ask the gentleman if he thinks it is wise to reduce that force below what that office absolutely needs? I think that our sources of information ought to be from those in charge; but I am assured by the Commissioner of Patents that, while they may be able to get along with the present force, yet a reduction like the one proposed, a reduction of seventy-nine in number, will cripple the Patent Office. I am told that in some portions of the office now they are two months behind. I do not offer an amendment, but I wish to hear what the gentleman has to say about that. about that

Mr. HOLMAN. The appropriations made by this bill for the pur-coses of this office are \$347,900 as against \$384,900, as I understand

poses of this office are \$347,900 as against \$384,900, as I understand for the present year.

I wish to say, Mr. Chairman, that there is no bureau of the Government where, as a general proposition, the salaries are so high as are the salaries of this particular office. There is no bureau where a thorough reform is more absolutely demanded. The theory that this bureau is self-sustaining has had a very curious effect on the management of the office. It has given rise, as the gentleman from North Carolina is aware, to more criticisms as to the employés and as to the number of persons on the pay-roll and drawing pay while rendering no service then perhaps any other office in recent years. The committee in attempting a slight retrenchment in this bill have simply sought to promote the purity of the public service there; so that the amount shall be the sum required, but no more than the sum required for the economical administration of the bureau.

In comparison with other governments ours is the most extrava-

In comparison with other governments ours is the most extravagant—I mean in comparison with the amount of business done—of all the patent offices in the world. In the government of Great Britain while an amount equal to \$350,000 of our money is expended annually it yields a revenue to the government of \$400,000 of our money, while, with all the elements taken into account, this Patent Office of ours, out of which grow a great many questionable monopolies injurious to the public interests, scarcely supports itself; and in the only case where we are able to make a comparison with Great Britain it is, as I have said, an important source of revenue to the

Government

The Committee on Appropriations are satisfied that an effort at reasonable retrenchment in this bureau is absolutely necessary to promote the purity of that branch of the service. We understand that the head of that Department has taken that matter in hand and is determined that that bureau shall be administered upon a more economical principle and with more of an exclusive regard for the

public service than heretofore.

Mr. SAMPSON rose.

Mr. VANCE, of North Carolina. I withdraw the pro forma amendment, that my friend from Iowa [Mr. SAMPSON] may renew it.

Mr. SAMPSON. I renew the pro forma amendment.

I only desire to say a word or two in relation to this office. The gentleman from Indiana, [Mr. Holman,] as I understood him, made the remark that the Patent Office was barely self-sustaining. Now, sir, I took occasion at the last session of Congress to examine this question. tion, and I found that there were in the Treasury to the credit of this office nearly \$1,000,000; that not only has it been self-sustaining, but that it has actually brought in a revenue to the Treasury of nearly \$1,000,000, the surplus overpaying the expenses of the office amount-

I desire to say also that it is reported by that office that it is impossible to keep up with the great number of applications made by inventors. Men will employ their time and their money, some of them years upon years, in the preparation of these important inventions and discoveries, and make applications to this office for their patents, and then they are delayed for want of service on account of Congress cutting down the appropriations for this office. It is but just, as it seems to me, that these applications by inventors should be passed upon promptly. But even with the force they had before they were unable to keep up with the business of the office. These inventors are constantly writing letters, sending their attorneys, and pressing upon the Commissioner and examiners to have their cases decided, and it is but an act of justice to them that there should be a sufficient force there to pass upon these applications. There are now thousands and thousands of them lying there, and the office is unable to take them up and consider them. It seems to me that the force of this office, under these circumstances, ought not to be further re-

I withdraw the pro forma amendment.

The Clerk resumed the reading of the bill, and read the following

paragraph:

For contingent and miscellaneous expenses of the Patent Office, namely: For stationery for use of office, repair of model-cases, stationary portfolios for drawings, furniture and labor connected therewith, repairing, papering, painting, carpets, ice, advertising, books for library, moneys refunded, printing engraved patentheads, international exchanges, plumbing, gas-fitting, extra labor on indexes and abstracts for annual reports, itting rooms, and other contingencies, \$50,000; and no money appropriated by this paragraph shall be expended for advertising in newspapers published in the city of Washington other than the Patent Office Official Gazette.

Mr. VANCE, of North Carolina. I offer the following amendment: In line 1465 strike ont "\$50,000" and insert "\$60,000."

Last year the amount appropriated for this purpose was \$70,000. believe there is no objection to my amendment on the part of the committee

not sufficient.

Mr. CLYMER. What is the reason for it?
Mr. VANCE, of North Carolina. The reason is, because \$50,000 is of sufficient. Last year \$70,000 was appropriated.

There are two or three of the items under this heading which I think ought to be increased, and I think the chairman of the Committee on Appropriations will give his consent to have them increased a very small amount. I will indicate them as they are reached.

The amendment was adopted.

The Clerk resumed the reading of the bill, and read the following

For photolithographing, or otherwise producing copies of drawings of current and back issues, for use of the office and for sale, including pay of temporary draughtsmen, \$20,000; the work to be done under the supervision of the Commissioner of Patents, who shall receive competitive bids therefor.

Mr. HUBBELL. I offer the following amendment:

In line 1473, after the word "Patents," add these words "in the city of Washington."

If I can get the attention of the chairman of the Committee on Appropriations for a few minutes, I think I can explain this matter so that he will not object to the amendment.

Mr. HOLMAN. I wish to reserve all points of order on the amend-

Mr. HUBBELL. I can show the inconsistency of the language in this law as it stands. This work must necessarily be done under the personal supervision of the Commissioner of Patents. Originally it personal supervision of the Commissioner of Patents. Originally it was done in the Patent Office. But as the volume of business increased it began to be done outside, but always under the supervision of the Commissioner. It is a work that requires celerity and dispatch. The drawings are the drawings which go with the patents issued to the inventive geniuses of the country. And a patent cannot be issued without the drawing, and the drawing after being photolithographed has to be compared before the patent can issue. Now under the present system it is required that the work shall be done under the supervision of the Commissioner of Patents, and that competitive bids be received. Well, a similar provision was in the corresponding clause of the appropriation bill of last year, and under that provision the Secretary of the Interior or the Commissioner, being required to receive competitive bids from parties residing in dif-

ing required to receive competitive bids from parties residing in different parts of the country, was required to receive bids from parties in San Francisco, in New Orleans, in Boston, in New York, and in every place. But in his contract with the parties with whom he contracted there was a provision inserted that the work should be re-

turned in seven days.

Now let us see what the working was under that provision. Last year, under the provisions of law, the contract for "current work" was awarded to Osgood & Co., of Boston, and required the work to be returned in seven days. That contract was awarded on the 1st of September, 1876, to take effect upon October 1, 1876, the work to be delivered within seven days from the receipt of copy. No work was ever delivered, within the time specified, by Messrs. Osgood & Co. The contract ran so far behind the work for October 10 that the office was compelled to go outside and get the work done for October 17 and 24. From that time to November 29 the contractors failed to deliver drawings for nearly four hundred patents. The quarto-page drawings have never been received except for October quarto-page drawings have never been received except for October 3 and 10, and those were nearly two months late. The issues of October 17, 24, and 31, and of November 7, 14, 21, and 28, more than five hundred pages in all, were never photolithographed. In the drawings for October 3 and 10 five errors, omissions, occurred. The rejectives are received except for October 3.

Well, Mr. Chairman, the Commissioner of Patents was compelled to annul that contract. The men who had applied for patents, and who found their cases so far behind, became so clamorous that he was compelled to annul that contract and let another. When it was known that this contract was to be annulled the patent attorneys of the country representing the inventions coming the country representing the inventions. the country, representing the inventive genius of the country, pre-

sented a petition to the Secretary of the Interior, a copy of which I hold in my hand and will ask the Clerk to read.

The Clerk read as follows:

To the Hon. Secretary of the Interior:

The undersigned, doing business in the United States Patent Office as solicitors of patents, respectfully suggest that in consequence of the delay caused in procuring copies of drawings under the present arrangement, great delay is caused in issuing patents, and that such delay often works great hardship to our clients, as well as to ourselves.

It is not an uncommon thing for the issuing of patents to be delayed several weeks; even now patents which should have been sent out, of the issue of October 10, are yet held by the office on account of the delay in furnishing the drawings. There are also many of intermediate dates in the same condition, some copies of which have been forwarded to the office and have been several times rejected on account of imperfect workmanship.

One fruitful cause of this delay is that in sending the negatives to New York and getting proof-copies here for examination and approval and the returning them to be printed, and waiting for the return by steamer of the printed copies, consumes a considerable amount of time; but when several attempts are made to get fair copies, which are unsuccessful, as is often the case, the time consumed becomes a grievous burden.

We venture to suggest that, whoever may be awarded the contract for the printing of these drawings, it should be done here, where it can be supervised by the employées of the office, so that the time now lost in transporting them from New York here may be saved. We beg leave to remind your honor that during all of the time that the printing was done in this city there never was a delay of a single day in sending out a current issue consequent upon a delay in printing the drawings.

We venture also to call your attention to the fact that there is in the law making

day in sending out a current issue consequent upon a delay in printing the drawings.

We venture also to call your attention to the fact that there is in the law making provision for this work a provision that the Commissioner of Patents shall supervise the same, which, it seems to us, cannot properly be done while it is executed in a distant city. Newton Crawford, Blanchard & Singleton, Prindle & Co., Charles E Foster, Bakewell & Kerr, T. W. Ritter, jr., Daniel Breed, Dodge & Son, T. J. W. Robertson, A. W. Hart, Hill, Ellsworth & Spear, Ellis Spear, E. E. Masson, R. D. O. Smith, Alexander Mason, T. H. Alexander & Co., Leggett & Leggett, H. A. Seymour, C. H. Watson & Co., Johnson & Johnson, Geo. W. Dyer, Wm C. McIntire, Hamway & McCallum, Jno. W. Frazee, Jno. J. Halstead, J. S. Brown, Chas. A. Neale, Wm. H. Brereton, Stanbury & Muno, H. S. Abbot, D. P. Holloway, Worth Osgood, B. E. J. Eils, Baldwin, Hopkins & Peyton, De Witt C. Allen, W. Read, Gilmore, Smith & Co.

WASHINGTON, D. C., December 27, 1876.

Here the hammer fell.

Mr. HOLMAN. I ask that the amendment be again read.
The amendment was again read.
Mr. HOLMAN. I do not suppose that this amendment is subject to the point of order which I reserved, but I wish to submit to the gentleman from Michigan that this provision should not be allowed to interfere with fair competition for the doing of this work.

Mr. HUBBELL. It does not at all.

Mr. HOLMAN. The Patent Office is a source of great expense to

the Government, instead of being a source of yery great revenue, as the patent offices under other governments are. It is not with us, every element considered, a self-supporting bureau. As I remarked a moment ago, the experience of last year shows that in Great Brit-ain, with a less number of patents and not a material difference in the charges for obtaining patents, the revenues of Great Britain were very large from this source, exceeding, in fact, \$400,000, the expenses being about half what the expenses are with us for carrying on the bureau. I suggest therefore that in providing for this bureau the expenses should not be increased.

Mr. HUBBELL. Let me say one word in regard to that. I think the gentleman is quite mistaken about the Patent Office not paying, for I think if he will examine the balance-sheet of the Patent Office for the past year he will find that the net profits of that office were for the past year he will find that the net profits of that office were \$105,000. Now those profits come from the inventive talent of the country. My friend is all right in the main in his desire that this work should be thrown open to competition. I claim that all work should be thrown open to competition, but I claim that this peculiar class of work is one which needs to be done under the direct and personal supervision of the Commissioner of Patents. It is a work in which the inventive talent of the country is interested. I will undertake to say that there is hardly a member upon this floor who has not received a letter from some of his constituents desiring him to inquire about some patent the issue of which has been unduly delayed, some about some patent the issue of which has been unduly delayed, some-times even suspecting the honesty of the attorney who has the matter in charge. This all grows out of the fact that there is so much delay in sending the drawings abroad and having them photolithographed and then brought here and then returned. A photolithographic establishment does not cost much money, and all the persons engaged in invention ask that the work shall be done here, where it may be under the supervision of the Commissioner of Patents and where they can have dispatch, and after the patent is issued the drawings attached to it can be furnished in a day or two, so that the patent may go home to the man who claims it.

It is not a monopoly. If it required a great outlay of money to build up what would be called a photolithographic establishment, then it would be different. But we are expending from \$60,000 to \$100,000 and \$120,000 a year, and there is no reason why we cannot be economical and at the same time meet the honest and fair demands of the inventive classes of our people. in sending the drawings abroad and having them photolithographed

of the inventive classes of our people.

Mr. CLYMER. The point of order was reserved against this amendment by the chairman of the Committee on Appropriations, [Mr. Holman,] and I rise to insist upon it, and I will state my reasons. This proposition is to require this work to be done in the city of Washington, which will require the Commissioner of Patents to have this work done in this city investment in the cost. That is now logisly work done in this city irrespective of the cost. That is new legislation, and it is not shown that is will reduce expenditures. It is manifest that, if this work is open to competition all over the country, we will be very much more likely to have the work done cheaply than if it is confined to this city, where, so far as I am informed, there are no facilities for doing the work. I therefore insist upon the point of order that this amendment is new legislation and does not show upon its face that it reduces expenditures. The mere statement of the proposition renders it probable that the expenditures would be increased rather than decreased by the adoption of this amendment.

proposition renders it probable that the expenditures would be increased rather than decreased by the adoption of this amendment, and I therefore insist upon the point of order.

Mr. LUTTRELL. I suggest to the gentleman from Michigan [Mr. HUBBELL] that his amendment had better come in after the words "the work to be done," instead of after the words "Commissioner of Patents," so that it shall read, "the work to be done in the city of Washington under the supervision of the Commissioner of Patents,"

The CHAIRMAN. The point of order being insisted upon, the

The CHARMAN. The point of order being insisted upon, the Chair will have to sustain it.

Mr. TOWNSEND, of Pennsylvania. I would call the attention of the gentleman from Michigan [Mr. HUBBELL] to the paragraph contained in lines 1482 to 1485, and suggest that he had better move his amendment to come in after the words "to be done," in that paragraph. The paragraph relates to the three preceding paragraphs, and the amendment would more appropriately come in in that paragraph than in the one now under consideration.

Mr. HUBBELL. I will accept the suggestion of the gentleman

Mr. HUBBELL. I will accept the suggestion of the gentleman from Pennsylvania, [Mr. Townsend.]

The CHAIRMAN. The point of order was made against this amendment, and the Chair sustains the point of order.

Mr. PAGE. Cannot the gentleman from Michigan [Mr. Hubbell] withdraw his amendment now and offer it when we reach the paragraph indicated by the gentleman from Pennsylvania, [Mr. Town-

graph interests of the second of the second

amendment at this time.

The amendment was accordingly withdrawn.

Mr. VANCE, of North Carolina. I move to amend the pending paragraph by striking out "\$20,000" and inserting "\$25,000."

Mr. CLYMER. I believe there is no objection to that amendment.

The amendment was agreed to.

The Clerk read the following:

For photolithographing, or otherwise producing copies of the weekly issues of drawings, to be attached to patents and copies, \$20,000.

Mr. VANCE. I move to amend the paragraph just read by striking out "\$20,000" and inserting "\$25,000."

The amendment was agreed to.

The Clerk read the following:

The work of the said photolithographing, or otherwise producing plates and copies, referred to in this and the two preceding paragraphs, to be done under the supervision of the Commissioner of Patents, subject to the approval of the Secretary of the Interior.

Mr. TOWNSEND. I move to amend the paragraph just read by inserting after the words "to be done" the words "in the city of

Mr. CLYMER. I make the same point of order upon that amendment that was made upon it when it was moved by the gentleman from Michigan [Mr. HUBBELL] to a preceding paragraph.

The CHAIRMAN. The Chair must sustain the point of order.

Mr. HUBBELL. I am inclined to accept the modification sug-

Mr. HUBBELL. I am inclined to accept the modification suggested by the chairman of the Committee on Appropriations, [Mr. HOLMAN,] which would relieve the amendment from the point of

Mr. CLYMER. I would have no objection to the amendment if it is so modified that the work shall be done as cheaply here as elsewhere under competitive bidding.

The amendment was modified to read as follows:

In the city of Washington, if as cheaply as elsewhere

Mr. CLYMER. Add to that "under competitive bidding."
Mr. HUBBELL. That is already in the bill.
Mr. CLYMER. It will do no harm to repeat it.
Mr. PAGE. Very well, let that be inserted also.
The amendment was again modified, so as to read:

In the city of Washington, if as cheaply as elsewhere, under competitive bid-

The amendment, as modified, was agreed to. The Clerk read the following:

For surveyor-general of California, \$2,500; and for the clerks in his office, \$8,000.

Mr. PAGE. I move to amend the paragraph just read so as to make the salary of the surveyor-general of California \$3,000 instead of \$2,500. At the last session of this Congress the Committee on Appropriations reported a reduction of the salary of the surveyor-general of California from \$3,500 to \$3,000. It is proposed in this bill to make a further reduction of \$500. I hope the Committee of the Whole will not adopt the provision as reported by the Committee on Appropriations. It will be far better to abolish the office altogether than to give this inadequate sum for so important an office as the office of surveyor-general of California.

I find that this bill gives to the surveyor-general of Arizona a salary of \$2,750. There are to-day in the State of California over seventy-five million acres of unsurveyed public land. In a recent conversation with the chairman of the committee he informed me that it was the inwith the charman of the committee he informed me that it was the intention of the committee to do away with the offices of surveyor-general in all States and Territories now provided by law. If that is his object and he will present his proposition I will vote for it. But I will not vote to cut down the salary of the surveyor-general of California to this inadequate sum. It was reduced \$500 at the last session of Congress, and I hope the chairman of the Committee on Appropriations [Mr. Holman] will not now insist upon a further reduction of

\$500.

Mr. HOLMAN. Mr. Chairman, it is quite manifest now that the office of surveyor-general in the various States and Territories can be dispensed with, and that the public lands yet requiring to be surveyed can be surveyed under direct contract by the Commissioner of the General Land Office. I think that all gentlemen who have looked into this subject are satisfied that the entire surveyor-general system can be dispensed with. Considering that the principal duties of these surveyors-general will be to wind up the duties of their offices, it seems to me that a salary of \$2,500 is ample. The aggregate amount of surveyed public lands undisposed of on the 30th of June last was 175,876,165 acres. In the State of California there are 21,102,966 acres surveyed and unsold. It is manifest from the statement which I will submit as a part of my remarks that but slight appropriations ought hereafter to be made for the survey of public lands; that the system of public surveying is greatly in advance of settlement, and has inured to the benefit of speculators, enabling them to select and buy at the minimum price of \$1.25 an acre the best lands of the Government. We think that a salary of \$2,500 is reasonable and corresponds substantially with other salaries paid in this branch of the public service.

I incorporate as part of my remarks a letter and an accompanying statement from the Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. O., January 19, 1877.

SIR: I have the honor to acknowledge the receipt of a communication dated the 11th instant, from the House Committee on Appropriations, requesting to be furnished with a statement of the lands surveyed and unsold in the States and Territories west of the Mississippi River and in the Southern States.

In reply, I have the honor to transmit, herewith inclosed, a statement prepared to show the amount of surveyed land undisposed of under the laws of Congress at the end of the last fiscal year, which is a near approximation.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,

J. A. WILLIAMSON,

Hon. WILLIAM S. HOLMAN, Chairman Committee on Appropriations, House of Representatives.

Statement showing amount of surveyed land undisposed of June 30, 1876.

	A.Cres.
Louisiana	4, 866, 948
Florida	8, 018, 832
Alabama	
Arkansas	
Iowa	
Missouri	
Minnesota	
Kausas	29, 789, 121
California	21, 102, 966
Nevada	7, 066, 248
Oregon	
Nebraska	16, 912, 750
Dakota	
Colorado	
New Mexico Territory	
Idaho Territory	
Washington Territory	5, 677, 639
Montana Territory	5, 823, 177
Utah Territory	4, 327, 514
Wyoming Territory	4, 266, 353
Arizona Territory	
2210000 2011003	1,010,110
Total	175 976 165

Mr. LUTTRELL. I would like to put one question to the chairman of the Committee on Appropriations. Why is this discrimination made against the surveyor-general of California? Why is the surveyor-general of Arizona allowed a larger salary than the surveyor-general of our State?

Mr. HOLMAN. Until this moment, I had not noticed that discrimination. I do not think it should exist. The salary of the surveyor-general of Arizona should be the same—\$2,500; and whenever it is in order I am prepared to move such an amendment on behalf of the committee. In Arizona, as gentlemen very well know, there is very little land adapted to cultivation, so that the duties of the surveyor-general in that Territory are comparatively light. I see no reason why his salary should be more than \$2,500.

Mr. LUTTRELL. Now I will venture to say that, at a salary of

Mr. LUTTRELL. Now I will venture to say that, at a salary of \$2,500, you cannot find a competent engineer or surveyor in my State who will accept this compensation. I hope that the amendment offered by my colleague [Mr. PAGE] will be adopted. I do not think the reduction proposed in the bill should be made at this time. This officer not only superintends the surveying of the public lands, but also the surveying of what are known as the Spanish grants, in regard to a large number of which the surveys have have not yet been perfected. This is one of the most important offices to the people of

Mr. HOLMAN. I trust the gentleman from California will submit an amendment proposing to increase this salary to \$2,750. Although I have not consulted with the members of the Committee on Appropriations, such an amendment will not perhaps be subject to objection.

Mr. LUTTRELL. Five hundred dollars is a very small matter when we take into consideration the importance of this office and the fact that a first-class man is required to fill the position. Many hundred Spanish grants in the State of California are to be surveyed; the surveys need to be perfected and examined. We need for such duties a man of first-class talent. I hope the chairman of the Committee on Appropriations will assent to the amendment offered by my

Mr. HOLMAN. We cannot do that; but if the amendment be modified so as to make the salary \$2,750, I do not know that there

will be objection.

will be objection.

Mr. PAGE. One word in reply to the gentleman from Indiana, the chairman of the committee. He stated that he was in favor of discontinuing these offices. Let me inform him that, if he will examine the mineral laws of Congress, he will find that it is the duty of the surveyor-general of California to appoint deputy surveyors for the purpose of surveying mining claims. There are to-day one hundred and twenty deputy mineral surveyors who have to report to the surveyor-general of the State. Of course in these cases the surveys are small, ambraging in same instances not more than four or five acres, and in the embracing in some instances not more than four or five acres, and in the case of quartz claims perhaps not more than two acres. I ask the gentleman whether he believes that the people of that State can dispense with this important officer?

It is well known, Mr. Chairman, that \$2,500 will not secure the services of a fit man to occupy the position of surveyor-general of that State. It is very well known that salaries are higher in California than in many States of this Union.

services of a lit man to occupy the position of surveyor-general of that State. It is very well known that salaries are higher in California than in many States of this Union.

Mr. HOLMAN. There is no reason for it.

Mr. PAGE. There is a reason for it. The reason is that it costs more to live; that a public officer must pay all his expenses in gold coin; and when he receives his pay in legal-tenders or greenbacks he must lose a discount of 10 or 12 per cent.

Mr. CLYMER. The premium on gold is only 4 per cent. to-day.

Mr. PAGE. I do not know what it may be now. But not long ago an officer receiving in California a salary of \$125 a month would not realize in coin more than about \$112. I hope, therefore, that my amendment will prevail. To reject it would, it seems to me, be an act of injustice; for the salary of this officer was cut down \$500 at the last session of Congress.

It is suggested to me by my colleague [Mr. LUTTRELL] that the surveyor-general of California is obliged to act as a judge upon each one of these different mineral cases submitted to him. I therefore ask the chairman of the committee to permit this salary to remain as the committee fixed at the last session of Congress, at \$3,000.

Mr. LUTTRELL. One word more and I will yield the floor to the gentleman on the other side. Thousands and hundreds of thousands of mining claims, valued at hundreds of thousands of dollars, have to be passed upon by this surveyor-general, and we cannot expect a first-class man who is qualified to assume this responsible position and pass upon these claims at a salary of \$2,500 a year. I hope, therefore, the amendment will be adopted.

Mr. CLYMER. I move to insert \$2,750 instead of \$3,000.

Mr. Chairman, my object in doing that is this: The highest salary paid to any one of these surveyor-general of the Territories is \$2,750, the salaries ranging from \$2,000 to \$2,750. I believe a majority of the committee is willing the surveyor-general of California should be paid a salary equal to that of the highest class. It wi until a year or two ago a surveyor-general,) they are not paid more than the sum here proposed. With the large amount of clerk hire provided in this bill, \$8,000, as compared with that allowed in any other Territory, it is apparent we have provided amply and fully for the office of surveyor-general in California.

Mr. MacDOUGALL. What has clerk hire to do with the surveyor-

Mr. CLYMER. It lessens the amount of work put upon the sur-

veyor-general.

Mr. PAGE. I accept the amendment as proposed by the gentleman from Pennsylvania, and will modify my amendment by making it

The amendment, as modified, was agreed to.

The Clerk read as follows:

For surveyor-general of the Territory of Montana, §2,750; and for the clerks in his office, §2,500.

Mr. MacDougall. I move to strike out "\$2,500" and insert "\$4,000," and yield the floor to the Delegate from Montana to explain the reason for this amendment.

Mr. Maginnis. Mr. Chairman, I wish to call the attention of the

gentleman from Indiana [Mr. HOLMAN] and the gentleman from

Pennsylvania [Mr. CLYMER] to the fact that they are laboring under a misapprehension about this matter of clerk hire. I know the lan-guage of the paragraph is for "clerk hire," but that covers draughtsguage of the paragraph is for "clerk hire," but that covers draughtsmen in the surveyor-general's office. If gentlemen are familiar with the work of these surveys, they know contracts are made with men who go into the field and return their field-notes to the surveyor-general's office. All those field-notes have to be transcribed and all township plots have to be drafted. I undertake to say there is not a surveyor-general's office in any of the Territories which can be run without a draughtsman and two transcribing clerks; and certainly the sum of \$2,500 would not compensate more than one clerk and one draughtsman. I suggest therefore to the gentleman from Pannsul. draughtsman. I suggest, therefore, to the gentleman from Pennsylvania this work in Montana cannot be done for the sum of \$2,500, and I hope he will not interpose any objection to increasing the apand I nope he will not interpose any objection to increasing the propriation to \$4,000.

Mr. CLYMER. I suggest the amendment be allowed to pass.

Mr. HOLMAN. Very well.

The amendment was adopted.

The Clerk read as follows

That public lands situated in States in which there are no land offices may be entered at the General Land Office, subject to the provisions of law touching the entry of public lands; and moneys received by the Commissioner of the General Land Office for lands entered by cash entry shall be covered into the Treasury.

Mr. GOODIN. I offer the following amendment, to come in after the word "lands" in line 1564:

And that the necessary proofs and affidavits required in such cases may be made before some officer competent to administer oaths, whose official character shall be duly certified to by the clerk of a court of record.

Mr. HOLMAN. That is right.

Mr. GOODIN. I desire to say that in my opinion the Committee on Appropriations must have had in view the action of Congress at the last session in abolishing the offices at Chillicothe, Ohio, Indianapolis, Indiana, and Springfield, Illinois. Those local land offices were abolished, but no provision was made whatever by which any of the public lands in those States could be entered. The attention of the Committee on Public Lands was called to it, as well as of the Commissioner of the General Land Office, and therefore I have offered the amendment, now pending.

offered the amendment now pending.

Mr. HOLMAN. Those words were omitted, and I had prepared an amendment to cover the omission. I hope the gentleman's amend-

ment will be adopted.

The amendment was agreed to. The Clerk read as follows:

POST-OFFICE DEPARTMENT.

POST-OFFICE DEPARTMENT.

For compensation of the Postmaster-General, \$8,000; three assistant postmasters-general, at \$3.500 each; superintendent of money-order system, \$3,000; superintendent of foreign mails, \$3,000; topographer, \$2,500; chief of division of mail depredations, \$2,000; chief of division of of dead letters, \$2,250; chief of division of postage-stamps, \$2,250; superintendent of post-office building and disburging officer, \$2,100; chief clerk to the Postmaster-General, \$2,200; three chief clerks to the assistant postmaster-sgeneral, at \$2,000 each; chief clerk to the superintendent of money-order system, \$2,000; chief clerk to the superintendent of foreign mails, \$1,800; chief of division of free delivery, \$2,000; superintendent of blank agency, \$1,800; assistant superintendent of blank agency, \$1,800; chief of division of free delivery, \$2,000; superintendent of blank agency, \$1,800; chief of division of free delivery, \$2,000; superintendent of blank agency, \$1,800; chief of division of free delivery, \$2,000; superintendent of blank agency, \$1,800; assistants of blank agency, \$1,200 cach; two assistants of blank agency, \$1,200 cach; stenographer, \$1,800; seventeen clerks of class four; sixty-three clerks of class three; forty-cight clerks of class two; sixty-five clerks of class one; forty-seven female clerks, at \$900 cach; one messenger to Postmaster-General, \$900; three messengers to assistant postmaster-general, \$240 cach; soven assistant messengers, \$720 each; captain of the watch, \$1,000; nine watchmen, at \$720 each; twenty-seven laborers, \$720 each; one engineer, \$1,400; one assistant engineer, \$1,000; one carpenter, \$1,200; one fireman, who shall be a blacksmith, \$900; one fireman, who shall be a steam-fitter, \$900; one fireman, \$720; three female laborers, \$480 each; one for many clerks, \$10,000; making, in all, \$434,240.

Mr. MacDOUGALLL. I move, in line 1694, to strike out "forty-

Mr. MacDOUGALL. I move, in line 1694, to strike out "forty-seven" and insert "fifty;" so that it will read, "fifty female clerks." I am informed by the Postmaster-General that the work of the dead the informed by the Postmaster-General that etter office is nearly a year behind.

Mr. HOLMAN. There is no objection to that.

The amendment was agreed to.

The Clerk read as follows:

DEPARTMENT OF AGRICULTURE.

DEPARTMENT OF AGRICULTURE.

For compensation of the Commissioner of Agriculture, \$3,000; chief clerk, \$1,800; entomologist, \$2,000; chemist, \$2,000; assistant chemist, \$1,400; superintendent of experimental gardens and grounds, \$1,800; statistician, \$1,800; disbursing clerk, \$1,600; superintendent of seed-room, \$1,600; librarian, \$1,400; botanist, \$1,800; microscopist, \$1,800; three clerks of class four; three clerks of class three; four clerks of class two; six clerks of class one; engineer, \$1,200; superintendent of folding-room, \$1,200; two copyists, at \$900 each; two attendants in the museum, \$1,000 each; one messenger, at \$340; two assistant messengers, at \$720 each; one carpenter, at \$900; two watchmen; and eight laborers; making, in all, \$61,640.

Mr. CALDWELL. I move, in lines 1630 and 1631, to strike out "1,800" and insert "2,000."

"1,800" and insert "2,000."

The effect of this amendment is a very small increase of the salary of the chief clerk of this Department. The Committee on Agriculture, after a careful observation of the duties of this officer—

Mr. HOLMAN. I think we will not come in conflict with the gentleman upon that point. That brings the appropriation up to about the same as the expenditure for the present year.

Mr. GOODIN. What is the increase proposed?

Mr. CALDWELL, of Alabama. Two hundred dollars.

Mr. HOLMAN. There is no objection to that.

The amendment was agreed to.

Mr. CALDWELL, of Alabama. I am instructed also by the Com-

mittee on Agriculture to move the same increase in the salary of the statistician connected with that Department; an increase of \$200. I offer the following amendment:

In line 1635 strike out "\$1,800" and insert "\$2,000;" so that it will read: "statistician, \$2,000."

In support of this amendment I desire to say that there is no officer connected with the Department of Agriculture who renders more efficient service than the statistician. All of the statistics in the agricultural reports connected with the agricultural interests of this country are compiled by this officer or under his immediate supervision; and I venture the assertion that there is not an officer having the same qualifications to be found in any employment, either private or public, who is so poorly compensated as the statistician in the Agricultural Department. The salary attached to this office was originally \$2,500; and in the anxiety of the Committee on Appropriations to make reductions I think they have made a serious mistake in reducing the salary of this officer to \$1,800. I therefore offer the amendment, and I trust it will be adopted.

The question being taken, the amendment was adopted, ayes 66,

noes not counted.

Mr. CALDWELL, of Alabama. I am authorized by the Committee on Agriculture to offer another amendment, which I send to the desk. The Clerk read as follows:

In line 1637, before the word "librarian," insert "lady superintendent of flower seed, \$900."

Mr. CALDWELL, of Alabama. I desire to submit a single fact in support of the amendment. When the Department of Agriculture was first established the flower-seed department was put under the superintendence of a lady who has presided in the division ever since; a worthy elderly lady, and she has been receiving the compensation of a day laborer.

Mr. HOLMAN. How much?

Mr. HOLMAN. How much is Mr. CALDWELL, of Alabama. She has received \$720 a year for her services. And it is doing no injustice to any one connected with the Agricultural Department to say that this superintendent of that division, although not so classed by name, is more familiar with the work assigned to her, and has been more serviceable to the Department than any other one of the employés. I speak of those now who are engaged in distributing valuable seeds. Seven hundred and twenty dollars is not a just compensation for her labor. The effect of this amendment is to make an increase upon her salary of only

\$180 per annum. Nine hundred dollars is the amount asked for.

Mr. HOLMAN. We will agree to that, and at the same time reduce
the number of laborers from eight to seven.

Mr. CALDWELL, of Alabama. I wish to say further, that if you
give this superintendent of the flower-seed department the salary
asked for, she is only put on a footing with the lowest female clerks
in any Department. I trust the committee will agree to the amend-

Mr. HOLMAN. I have intimated that we will consent to this proposition, but I trust it is the last amendment the geutleman has to offer. We are running this Department up too much; but we propose, Mr. Chairman, to accommodate the views of the gentleman from Alabama, the chairman of the Committee on Agriculture, by fixing this lady's salary at \$900 and reducing the number of laborers to seven.

this lady's salary at \$900 and reducing the number of laborers to seven. The amendment of Mr. Caldwell, of Alabama, was agreed to.

Mr. HOLMAN. I now move to amend by striking out the word "eight" in line 1649 and inserting "seven;" so that it will read: "And seven laborers." That makes a slight increase; this lady, s salary being raised from \$720 to \$900, while her present salary is covered by the appropriation or eight laborers at \$720 each. I propose that the number shall be reduced to seven.

The question being taken on Mr. Holman's amendment, it was agreed to.

agreed to.

Here the committee informally rose, and the Speaker having taken the chair, a

MESSAGE FROM THE SENATE

was communicated to the House, by Mr. Sympson, one of its clerks, announcing that the Senate had passed a bill (S. No. 189) placing the name of C. G. Freudenberg upon the retired list of the United States Army; in which the concurrence of the House was requested.

The message further announced that the Senate had adopted a reso-

lution, in which the concurrence of the House was requested, providing for the printing of one thousand extra copies of the Report of the Coast Survey for 1876, for the use of the Superintendent of the Coast Survey.

LEGISLATIVE, ETC., APPROPRIATION BILL.

The Committee of the Whole resumed its session.

The Clerk read the following paragraph:

For collecting agricultural statistics, and compiling and writing matter for monthly, annual, and special reports, \$5,0.0: Provided, That no part of this sum shall be paid to any person receiving at the same time other compensation as an officer or employé of the Department.

Mr. CALDWELL, of Alabama. I beg the indulgence of the House while I offer one other amendment. I move to amend by striking out "\$5,000" in line 1653, and inserting in lieu thereof "\$15,000."

The effect of that amendment would be to increase the appropriation for collecting agricultural statistics, compiling and writing matter for the monthly, annual, and special reports from \$5,000 to \$15,000.

I beg leave to state in this connection that the original appropriation for this purpose was \$20,000. During the last session of Congress the Committee on Agriculture c nferred with the Committee on Appropriations, and there was an agreement and an understanding between the two committees that certain clerks were to be provided for who would discharge the duty now discharged by the men employed out of this appropriation of \$15,000. The statistical division of the Agricultural Department is one of great importance, as I had occasion to say a month ago. Under the bill which passed the House at the last session, the statistical division of the Department could the have got along with a smaller appropriation, because that bill gave them a greater number of clerks. But in the conference committee the arrangement which had been agreed upon was defeated. I send to the desk a communication from the statistician of the Department,

which I ask the Clerk to read.

The Clerk commenced the reading of the letter.

Mr. HOLMAN, (interrupting.) It is not necessary to read the whole of that. It is a very voluminous letter. I suggest to the gentleman from Alabama that we will agree to make this appropriation the same that was made for the present year, \$10,000. The committee thought that was too large a sum and reduced it to \$5,000. The farmers of the country are glad to furnish all this information. They do it voluntarily over the entire country. In addition to this, it should be the country are glad to furnish all this information. They do it voluntarily over the entire country. In addition to this it should be considered that the agricultural portion of the people are now relying mainly on the information derived from the great agricultural papers to a much greater extent than they do on the reports of the Commissioner of Agriculture; indeed the arrangements among the farmers of the several States of the Union are made almost perfect, so that the farmer depends on the information he receives of the exactso that the farmer depends on the information he receives of the exactcondition of the crops in that way rather than upon any official report from the Agricultural Department. I find that the farmers
among whom I live depend almost altogether upon these independent sources of information. And they give as a reason that the sources
of information upon which the Department relies are persons, lawyers and others, in the towns and cities, while the agricultural people
themselves depend upon their practical farmers for information, and
I think therefore that an appropriation of \$10,000 for this purpose
will be ample. will be ample.

will be ample.

Mr. CLYMER. I make the point of order that this amendment changes existing law. The existing law appropriates \$10,000, and this is an appropriation of \$15,000 and is a change of existing law. Mr. WILSON, of Iowa. What law?

Mr. CLYMER. The last appropriation bill.

Mr. WILSON, of Iowa. That was only an appropriation for last year and terminated with the close of the fiscal year. Unless the chairman of the Committee on Agriculture wishes to speak, I desire to submit one or two remarks upon this opposition.

to submit one or two remarks upon this question.

Mr. CALDWELL, of Alabama. I hope the gentleman will proceed. Mr. WILSON, of Iowa. It is true, Mr. Chairman, that the farmers of the country have to rely on themselves and in a great measure upon agricultural journals for information. The farmer of to-day is a reader, always well informed, sometimes a scholar. But I want to call the attention of the gentleman from Indiana to this fact: that we have not in the United States an agricultural journal that is national in its character, nor is any periodical devoted to national agriculture except the Department reports. There are agricultural journals in Iowa, for instance, which treat of the agricultural affairs of that State and perhaps of the entire Northwest; there are eastern agricultural journals, which treat of matters relative to the East, and there are southern journals which do the same relative to the South. But the climate, crops, systems, and soils are different in all these sections of the countries. try, and hence the information conveyed by the local journals is of little value to those living in different sections except as relates to conditions common to all sections.

There are other considerations that may be brought to bear upon this question, which I think no member of the Committee on Appropriations has ever dreamed of. Let me call the attention of the gentleman to this as a sample: The British government is running a tleman to this as a sample: The British government is running a railroad system away up into the temperate zone of India. They shipped, if I recollect properly, 40,000,000 bushels of wheat to England last year, a country that previously got its supplies mostly from America and Russia. There is a question now to be determined between farmers of the United States and those of Russia and British India, who shall furnish these breadstuffs to the European countries that cannot supply themselves. We want agricultural statistics on this question, to know not what is being done in Iowa but what is being done all over the United States and in the world in that respect, covering cost of transportation from each grain field to market spect, covering cost of transportation from each grain field to market, in order that we may determine what is best for us individually and our country in the future.

Let me state another fact. The meat supply of the United States is not keeping pace with the growth of its population. Did it ever occur to you that to-day it costs more to buy a beefsteak than it did at any time before, except perhaps for a few years during the war; that the laborer of the United States, like the laborer of Europe, is not now able at all times to eat meat, and the question arises whether we are raising in the United States, and if so in what States, as many animals for food supply as we have been raising in former years? A careful examination of the census report will show that the number of live animals in proportion to the number of individuals is gradu-

ally decreasing. Correct information relative to that fact can be ascertained and disseminated now only once in ten years through the census reports. The whole condition of agriculture in many departments may change in ten years, but the statistics upon this point could be disseminated every year from the Agricultural Department, which is the only Department in the United States looking all over the country, and which can tell one State what the other States are doing in this matter as well as what the world is doing and indicate in what direction the brain and muscle will find most profitable employment.

These are only samples. Again, there is a struggle now going on between the cheese-makers of the United States and the cheese-makers of Great Britain, and I think the time will come when we will furnish cheese and butter to the foreign market almost entirely. The foreign dairyman is being driven out of the business and compelled to raise meat, while the American farmer is attempting to make a living by producing grain instead of producing first-class meat to supply the

foreign demand.

Information upon these points should be communicated to the agricultural portion of the people of this country, who produce at least nine-tenths of what we export; a fact which I think is not very well understood. We cannot now get this information. I think, Mr. Chairman, that the small amount asked for by the chairman of the Agricultural Committee ought to be given, and that we ought either to do something with this Department of Agriculture and not hamper it in its operation, or else abolish it altogether.

in its operation, or else abolish it altogether.

Copies of its reports are sent to every newspaper in the land. If it fails to give new and current statistics relative to the growth of agriculture at home and abroad in all its departments, then it is comparatively valueless. No country in the world does so little to spread agricultural information as ours. It seems as if this great interest, that keeps all others going, is to be ignored as the one industry that cannot be constitutionally fostered; and yet our wheat, meats, dairy products, cotton, tobacco, &c., are the life of the nation. We are an agricultural people, almost exclusively. We buy annually six hundred million dollars' worth of foreign wares and pay for them with the products of the farm, mainly. The balance of 'trade, so heavily in our favor, is the result of the development of scientific agriculture. All other interests languish, but the farmer is quietly lifting the na-All other interests languish, but the farmer is quietly lifting the nation up to higher planes morally, intellectually, materially, religiously, by fidelity to duty as a citizen, toward family, school, farm, church, and country. We can instruct him in no duty, but we can provide means whereby he can see his condition compared with farmers

olsewhere. We can enable him to see the situation; he will be quick to turn it to his own and his country's advantage.

Mr. DAVIS. One word in favor of the amendment. The amount of information collected by this-Department cannot be procured from any other source at a cost of ten times as much as is asked for by the chairman of the Committee on Agriculture. [Mr. CALDWELL, of Alabama.] There are from three to five correspondents in every county in each State of the United States. Those correspondents are generally farmers, not, as my friend from Indiana [Mr. HOLMAN] says, lawally farmers, not, as my friend from Indiana [Mr. HoLMAN] says, lawyers in the towns. They are renerally farmers, who give information to the Department, and that information, the most reliable that can be obtained, is sent out to the country by the Department. The agricultural journals generally get their most reliable information from these reports. The amount proposed here to be appropriated for this purpose really would not more than pay postage on the reports that come up from the various farmers all over the land.

This matter is of great importance to the agricultural interest of the country, and that is much the largest interest in the United States. There are from twenty-five to thirty millions of people supported by

There are from twenty-five to thirty millions of people supported by those engaged in agriculture to produce what is needed to fill the mouths of forty-five millions of people in this country. Yet that great interest does not receive as much attention from the Government as the mining, the railroad interest, the manufacturing interest, or many other of the great industries which I could name. In behalf of the twenty-five or thirty millions of people supported by farming, I ask that this appropriation be made. It seems to me that it is not unreasonable; I think it should be restored to what it was originally, \$20,000; I certainly think \$15,000 is not unreasonable.

Mr. TOWNSEND, of Pennsylvania. The institution of a monthly specific that the former and the

report of agriculture has been of great benefit to the farmer, and also to the consumer in every part of the country. That benefit arises from the fact that it lays before the producer and before the consumer monthly accounts of the condition of the crops throughout the country. It has tended to prevent speculation in breadstuffs all over the country, and in that way it has prevented speculative prizes in the price of breadstuffs, and thus has been of great advantage to

It has been of advantage to the producer, because from it he could ascertain exactly what was the condition of crops throughout the Union, and could make an estimate whether or not prices would rise or fall and be enabled to form an independent judgment as to what he should ask for his produce, rather than to depend upon what the speculator might offer him.

It has also been of benefit to the consumer, because from the same source of information he could obtain sufficient knowledge to enable him to judge when he was paying proper prices for breadstuffs, or whether the speculators were imposing upon him.

The small increase of the amount proposed by the bill, I think, will be repaid ten times over, probably a hundred times over, to the people of the country by information brought before them readily and

frequently.

Mr. TOWNSEND, of New York. I desire to say one word in favor of this amendment. The first word I have to say is that if the Committee on Agriculture desire to make the amount \$20,000 I am prepared to vote for it. It would seem that every interest in this country can obtain appropriations more readily than the agricultural interest. Yet we are an agricultural nation. God has given us, from the peculiar position in which find ourselves, advantages for getting ahead of all the rest of the world in agricultural productions. There is where our strength lies, and there is where we want information, there is where we want knowledge.

I do not mean to make a speech upon this subject. on not mean to make a speech upon this subject. I have but one word more to say. The gentleman from Indiana [Mr. Holman] says that most farmers depend upon their agricultural papers for information. That is so; but where are the agricultural papers to obtain the statistics that will be collected by this bill? They must get them from this bureau or go without them. It is for the purpose of supplying the information that will be disseminated through the local agricultural papers that these statistics are to be collected by the Agricultural Bureau.

Mr. HARRIS, of Georgia. I desire to call the attention of the House to the disproportion that exists between the appropriation for House to the disproportion that exists between the appropriation for the collection of statistics in the Treasury Department and the appropriation for collecting statistics in the Agricultural Department. We ask for only \$15,000 to enable us to collect statistical facts in regard to agriculture, the products of the country, &c., from every county in every State in the Union. We ask only about one-fourth of the amount which is appropriated for the collection of commercial statistics in the Treasury Department.

To show you the importance of this information, I might say the transcendant importance of the one over the other, I will venture to assert that there are thousands of reports of the agricultural reports of the Agricultural Department called for annually by our constitu-

of the Agricultural Department called for annually by our constituents to where there is one single copy called for of the reports of the

Treasury Department.

The trouble is, we are appropriating too much to commerce and too little to agriculture and our productive interests. That is the trouble with our country to-day. Our commerce languishes because production is paralyzed. We think that we are very modest when we ask but for \$15,000 to scatter broadcast over this country a knowledge of the condition of the crops and information which will contribute to

the condition of the crops and information which will contribute to build up the material interests of the country and restore that prosperity which is desired by every one.

Mr. CUTLER. Mr. Chairman, I am in favor of the proposition of the chairman of the Committee on Agriculture, [Mr. CALDWELL, of Alabama.] In the early part of this session it was my privilege to introduce a joint resolution asking the Committee on Appropriations to report an appropriation of \$5,000 toward the expense of publishing this monthly report during the residue of the fiscal year. At the last session the Department of Agriculture asked at the hands of this this monthly report during the residue of the iscal year. At the last session the Department of Agriculture asked at the hands of this committee \$15,000 for the publication of the annual report as well as the monthly report. The committee gave only \$10,000, and the result has been that last December the monthly publications were necessarily abandoned because there was no money to pay for them; and unless this amendment be adopted the further publications of the monthly reports must be suspended and the great agricultural intersects of the country be not in isomorphy.

monthly reports must be suspended and the great agricultural interests of the country be put in jeopardy.

Now, when it is remembered that there are over seven thousand correspondents of this bureau who in every section of the country are gathering statistics and other material for the use of this bureau and the community, and that their only compensation is in receiving the monthly and annual reports of this Department, it seems to me bad policy on the part of this committee to array themselves against the great agricultural interests of the country in withholding this small appropriation: for certainly the giving of these reports in against the great agricultural interests of the country in withholding this small appropriation; for certainly the giving of these reports in compensation for the services of these correspondents is but a small return and poor remuneration. The agricultural interest of the country is the most important interest; it is the power, the wealth of the country; and every effort to elevate it and add to its power

should be approved and encouraged.

should be approved and encouraged.

I trust, therefore, that the Committee on Appropriations will withhold all further opposition to this amendment and that the Department of Agriculture may thus be enabled to furnish to all its correspondents the monthly and annual reports for which this appropriation of \$15,000 is intended to provide, and thus afford the Department of Agriculture the means and facility of adding to the material wealth of the country by furnishing information to this great

Mr. CLYMER. I am quite sure that no member of the Committee on Appropriations would willingly impair the usefulness of the Agricultural Bureau of this Government. We all have entire confidence in its administration under the distinguished gentleman who now has charge of it. We have seen, as others have, and value as highly as others the results flowing from the operations of this Bureau. But, sir, it is our duty, so far as in us lies, to protect the revenues of this Government. It is our duty, if possible, to repress the extravagance and lop off the excrescences which habitually grow up in all these

Bureaus and Departments. In this, I believe, we are but following the general desire of the people; and I am quite certain that no class throughout this country are more seriously intent upon such results throughout this country are more seriously intent upon such results than those engaged in agricultural pursuits. I represent them very largely; they predominate decidedly in my county. I know them very well. I belong to them, I am happy and proud to say. But when it is claimed that \$15,000 are necessary for the collection of agricultural statistics and for compiling and writing matter for these reports, I say that it is an extravagant estimate of the amount required for such purposes.

Gentlemen appeal to me and say that a large amount is necessary for postage. Now, sir, I have made a calculation in which I assume that there are in this Union twenty-two hundred and eighty counties, and estimating that in each county there are three correspondents.

and estimating that in each county there are three correspondents, each one of whom writes twelve letters annually to the Department, the expense for postage upon this correspondence would be less than the expense for postage upon this correspondence would be less than \$2,500. This would leave \$12,500 of this appropriation to be expended for the other purposes set forth in the item. I think the amount is extravagant. I cannot believe such an appropriation necessary. I know that the Committee on Appropriations are willing to give this Department \$10,000 for these purposes; and that sum I believe to be amply sufficient. I believe I can say with entire truth, not only for myself personally but for the committee of which I am a member, that, if we did not thus believe, we would grant any reasonable sum which the Committee on Agriculture might propose. But able sum which the Committee on Agriculture might propose. But

able sum which the Committee on Agriculture might propose. But our duty to ourselves and to the country forbids us to stand here and see these appropriations, increased item by item so that at the end the appropriations made by this bill may be swelled to such enormous proportions as cannot be justified.

Mr. CALDWELL, of Alabama. Mr. Chairman, the Committee on Agriculture feel as profoundly impressed as the Committee on Appropriations in regard to their duty in protecting the public Treasury. After careful consideration of this proposition the Committee on Agriculture came to the conclusion that to deny this appropriation of \$15,000 would be an absolute stab at the statistical division of the Agricultural Department. As I before stated, the Committee on Appropriations had provided for a sufficient number of clerks to prepare the matter for the annual and the monthly report. A failure to make this appropriation will result in crippling the operations of the Department. It will deprive the public of the report which now reaches them monthly, containing matters interesting and important to all engaged in agriculture. I trust the chairman of the Committee on Apriculture that this appropriation is important in order to carry on successful this. culture that this appropriation is important in order to carry on successfully this Department of the Government. If gentlemen do not desire to sustain the Agricultural Department, let them make a motion to strike out the whole appropriation for this Department.

Mr. DURHAM. How much does the Department ask for this pur-

Mr. CALDWELL, of Alabama. Only \$15,000 to carry on the statistical division.

Mr. RUSK. The Department wanted \$20,000; but we have cut it

Mr. RUSK. Th down to \$15,000. Mr. HOLMAN. down to \$15,000.

Mr. HOLMAN. I fully indorse the views of the honorable gentleman from Pennsylvania, [Mr. CLYMER,] who lives in the heart of one of the most highly improved agricultural sections of the Union, who is himself identified with agriculture, and fully sympathizes with all that pertains to progress in that field of industry. These lawyers and professional gentlemen in this House misconceive the temper of the farmers of this country. I have the misfortune to represent almost alone the farmers of this House.

Mr. CALDWELL, of Alabama. I beg the gentleman's pardon; we are all farmers. [Laughter.]

Mr. HOLMAN. Gentlemen who live in towns and practice law for a living, while they engage in farming as a pleasant or mamental pur-

a living, while they engage in farming as a pleasant ornamental pur-

a living, while they engage in farming as a pleasant ornamental pursuit, may call themselves farmers.

Mr. RUSK. They are not farmers, but agriculturists.

Mr. HOLMAN. There are, however, few real farmers here—men devoted to the actual pursuit of that industry. I think not one farmer out of every five thousand ever receives a copy of this statistical report. It is sought to be issued once every two months, and yet it is quite clear that whatever of value of statistical information can be furnished by the Agricultural Department would be confined to three receives nished by the Agricultural Department would be confined to three reports in the progress of the year—in the spring, during the summer, and again late in the fall.

As I have already stated, Mr. Chairman, for one farmer who receives this monthly statistical report there are thousands upon thousands who never see it. Lawyers and other professional men in and out of Congress are much more apt to receive copies of that statistical report than such bona fide farmers as my friend from Iowa, [Mr.

Mr. WILSON, of Iowa. Our impression is this, that the Department sends to every newspaper in the United States a copy of this monthly statistical report, and the statistics thus supplied are placed within the reach of all who read those newspapers. Without the sum here asked for, the Department will not be able to continue this dis-

Mr. HOLMAN. This information is distributed to comparatively few. Now if this Committee on Agriculture, composed of bona fide

agriculturists as it should be, but I fear not so made up—if they had reported in favor of abolishing the flower garden run at great expense to the Government for the cultivation of exotic plants, if they had reported to do away with the conservatory started upon the theory of being necessary for the general diffusion of information concerning economic plants, if they had abolished that and done away with the fancy establishment to furnish bouquets to special friends around about this capital, then we could have appropriated this \$10,000 without any increase in the aggregate expenditures for this Depart-

ment.

Mr. DAVIS. The gentleman from Indiana is much mistaken because the elegant department to which he refers belongs to the Committee on the Library and not to the Committee on Agriculture. It is entirely under the charge of my friend from Penusylvania, [Mr. CLYMER.] [Laughter.]

Mr. HOLMAN. That which is under the charge of Professor Smith is the Botanical Garden, and of course it has the finest collection of exotics in this whole country. But that is not the one to which I refer. Under the pretense of cultivating economic plants for the benefit of farmers and manufacturers throughout the country a handsome conservatory was established upon the agricultural grounds. They

efit of farmers and manufacturers throughout the country a handsome conservatory was established upon the agricultural grounds. They are there cultivating fuchsias, japonicas, and an endless line of—

A MEMBER. Hollyhocks. [Great laughter.]

Mr. HOLMAN. And an endless variety of exotics for the benefit of the farmers of the country I suppose. [Laughter.] Gentlemen get very elegant bouquets of course from that conservatory for their friends. I ask my friend from Pennsylvania, [Mr. CLYMER.] although he gave arguments which cannot be answered against this growing extravagance, to withdraw all objection and to yield to these fancy farmers, or, rather lawyers, who constitute the Agricultural Committee. [Laughter.]

[Laughter.]
Mr. CLYMER. I cannot resist such an appeal as that, and therefore will yield to the fancy farmers on the Agricultural Committee.
Mr. CALDWELL, of Alabama. In the name of the people, we thank

Mr. DAVIS. And the gentleman from Pennsylvania, in the name of the ladies, should be thanked for keeping up the Botanical Garden which supplies them with so many bouquets. [Laughter.]

Mr. HARRIS, of Georgia. I wish to state, Mr. Chairman, that the course pursued by the Committee on Appropriations in withdrawing objection is a complete vindication of the propriety of the action

objection is a complete vindication of the propriety of the action suggested by the Committee on Agriculture.

Mr. RUSK. I ask that the communication from the Agricultural Department be printed.

Mr. GOODIN. No; I ask that it be read.

Several MEMBERS. Let it be printed at least in the RECORD.

There was no objection, and it was ordered accordingly.

The communication is as follows:

DEPARTMENT OF AGRICULTURE, Washington, February 1, 1877.

Washington, February 1, 1877.

SIR: In response to the request of your committee for a showing of the inadequacy of the proposed appropriation for the statistical division of this Department, allow me to present the following considerations:

The appropriation is for the entire expenses, including clerical service of this division, the current work of which includes—

1. Statistical investigation in more than twenty-five hundred counties of the United States

2. The crop-reporting system, now including our organized corps of correspondents in seventeen hundred of the principal counties.

3. Investigations for furnishing advanced and practical original material for the annual volume.

4. Record and tabulation of such statistics, with current data from official statistics of States, boards of agriculture and of trade.

5. Translation and compilation of foreign official and other statistics of agriculture.

5. Translation and compilation of foreign official and other statistics of agriculture.

6. Writing and editing fifteen hundred printed pages, annually, of regular and special reports, and preparing an equivalent of one thousand pages more for industrial, and commercial, and other organizations; in all an annual average of seventy-five hundred manuscript pages.

For this work, at its initiation, thirteen years ago, \$2,000 was appropriated in addition to the salary of the statistician. With the decrease of appropriations, a few years later, as the war-begotten labors of other branches of the civil service declined, the pro rata system of reduction was applied to this new work, when its importance and usefulness demanded increase, and the appropriation was cut down to \$15,000. Last year it was reduced to \$10,000 for all these purposes, when the salaries of the regular force of clerks employed in tabulating and recording amounted to \$10,600, leaving nothing for collecting statistics, statistical investigation, or the preparation of material for the annual volume or other work. This staggering blow might have been regarded as a vote of censure but for the fact that on the day before an appropriation of \$130,000 was voted for the printing for congressional distribution of 300,000 copies of the annual, for which no future provision was apparently desired. But it was evidently an accident of the conference committee, as it was less than provision made in the House bill, which was enlarged by a Senter of the printing proposed in the present bill, \$5,000, if all applied to the collections of the proposed in the present bill, \$5,000, if all applied to the collections of the present was properly to the proposed of the propo

ate amendment.

The appropriation proposed in the present bill, \$5,000, if all applied to the collection of statistics, will not give twenty cents for each monthly county return or pay the postage between our county correspondents. If applied to the routine office work exclusively, it would not pay \$2 each per day for the smallest force for its possible accomplishment. If used for investigations and writing for the annual, all other work being discarded, it could not produce a volume worthy an edition of 200,000 copies, or even 10,000. In fact, it would be far better to blot out the \$5,000 and the division and its work together, and with it the Department, rather than to degrade and dwarf to utter inefliciency a branch of the service which has possibilities of eminent usefulness and needed protection to both producers and consumers, who have already been saved the plunder of millions by heartless speculators through its instrumentality.

You know well the history of agricultural appropriations; that a hundred dollars has been given in the aid of commerce to every dollar appropriate for the promotion or protection of agriculture. There is no lack of provision for investigation in aid of other industries. One of the geological explorations of the Rocky Mountains

in 1876 obtained \$75,000; another \$40,000; a third \$25,000, and \$40,000 more were given for illustrations of two of them. In the same year the appropriation for the observation and report of storms was \$470,000, for the benefit of commerce. There was appropriated for clerical service in compiling commercial statistics, during the same year, \$59,440, and an additional fund of \$20,000 for special investigation. There was also as large a sum appropriated for the preparation of a single annual of mining statistics, in the same year, as was given for all the operations of the statistical division. And yet there is no Government publication for which the popular demand is so imperative and public appreciation so marked as for the reports of agriculture.

We have at least the value of \$150,000 per annum in gratuitous service of public-spirited citizens. We need \$50,000 per annum to supplement this work and render it truly efficient. But for the present year \$20,000 is as small a sum as should be given for present purposes.

I am, very respectfully, your obedient servant,

J. R. DODGE,

J. R. DODGE, Statistician Department of Agriculture.

Hon. John H. Caldwell, Chairman Committee on Agriculture.

Mr. Caldwell's amendment was agreed to. The Clerk read as follows:

For purchase and distribution of new and valuable seeds and plants, \$60,000; for expense of putting up the same, including purchase of one paper-box machine, for labor, bagging paper, twine, gum, and other necessary materials, \$5,000; in all, \$65,000.

Mr. TOWNSEND, of Pennsylvania. I move, in lines 1658 and 1662, to strike out the word "sixty" and insert the word "seventy."
Mr. Chairman, the supply of those new and valuable seeds and plants

Mr. Chairman, the supply of those new and valuable seeds and plants is entirely inadequate to the demand. It was a good thing to institute the introduction of new seeds into the country, the value of which has been found recently by the propagation very extensively of some of the new cereals. New kinds of wheat, new kinds of corn, and new kinds of oats have been introduced. They are being constantly sent about the country. The farmers write to the seat of Government expression thanks to manhers of Congress who furnish them with these about the country. The farmers write to the seat of Government expressing thanks to members of Congress who furnish them with these new seeds, and they say that they are an improvement on the old seeds that we have been cultivating for a long series of years. It is well known that the introduction of new seeds upon soils that have been used for a long time in the cultivation of any particular kind of cereal improves the grain that is raised; and for that reason a large benefit is derived all over the country from the introduction of these new seeds. This would be the case from the introduction of a single one, but we have introduced more than half a dozen. Take, for instance, the article of oats alone. A new kind of oats has been distributed in various parts of the country that is highly prized by all the farmers.

the farmers.

The agricultural population numbers about 54 or 55 per cent. of all the occupations of the country, and I notice that in this bill there is only about one hundred and fifty thousand dollars appropriated for that great interest. I think they do not get their fair share, and I think it is right and will be beneficial to the country in every respect that we should give them every facility possible in the way of the introduction of these new seeds and the dissemination of information throughout the land. There is not a mail that comes to me but contains requests for the agricultural reports the annual or monthly contains requests for the agricultural reports, the annual or monthly reports of the Department, and also that I should send some of the seeds that are being distributed by that Department, and I feel that the supply that is furnished to me is entirely inadequate to the demand. This little item of \$65.000 is quite insufficient to meet the demand that is made upon the Department for these seeds and plants, and I trust there will be no hesitation on the part of the Committee on Appropriations about allowing the amendment to be adopted.

Mr. HOLMAN. I call the attention of the gentleman from Pennsylvania to the fact that the Committee on Agriculture do not ask for

this increas

Mr. TOWNSEND, of Pennsylvania. It does not make any difference whether the Committee on Agriculture asks it or not. The people ask it. They are asking it continually, and there is not a member of the House that is able to supply the demand of his constituents in agricultural districts.

ents in agricultural districts.

Mr. HÖLMAN. I will say, Mr. Chairman, that so far as I am aware there has not been in the last four years any new variety of seeds or plants sent out to the country. We are simply sending out again and again, through members of Congress, the same varieties of seeds and roots and cuttings that have been cultivated for years in our respective neighborhoods. I trust this amendment will not be adopted.

Mr. TOWNSEND, of Pennsylvania. I am aware that there are new kinds of wheat and new kinds of oats that have been introduced within the last two or three years, and, as I have said, the sumply is

within the last two or three years, and, as I have said, the supply is entirely inadequate to the demand.

Mr. HOLMAN. I mean varieties which could not be obtained from

Mr. TOWNSEND, of Pennsylvania. I speak of those imported from

abroad.

Mr. HOLMAN. Intelligent farmers of this country are not depend-Mr. HOLMAN. Intelligent farmers of this country are not dependent for getting their cereals and their garden and field seeds upon the Agricultural Department. There are depots for furnishing supplies of these in all the leading cities of the country from one ocean to the other. These seeds that are sent out by the Agricultural Department go to a few favored persons. I ask for a vote.

The question being taken on the amendment of Mr. Townsend, of Pennsylvania, there were—ayes 47, noes 39; no quorum voting.

Mr. HOLMAN. I insist on a further count. The Agricultural Committee do not ask for this.

Committee do not ask for this,

Tellers were ordered; and Mr. Townsend, of Pennsylvania, and Mr. HOLMAN were appointed.

Mr. MILLER. I ask that the amendment may again be reported. The amendment was again read.

The committee again divided; and the tellers reported, ayes 70, noes not counted.

So the amendment was adopted.

Mr. DUNNELL. I offer the following amendment:

Between lines 1662 and 1663 insert the following: For the purchase of garden and field seeds and for their distribution in those States which in 1876 were ravaged by grasshoppers and locusts, \$5,000.

It will be remembered by the House that two years ago \$20,000 were appropriated for the purchase of garden and field seeds for those States which had been afflicted by the ravages of the locusts. I wish to say in support of this amendment that there are counties in Minnesota and in Northern Iowa and in Nebraska, especially the two former States, that have been utterly cleaned out by these insects for the last four years

Mr. HOLMAN. This involves a matter of \$5,000. The appropriation is now very large and if this sum is to be taken out of the appropriation already made, I will not object to the amendment of the

gentleman from Minnesota.

Mr. DUNNELL. Let the condition of the gentleman from Indiana

Mr. HOLMAN. I move to amend the amendment by adding these words:

The same to be deducted from the foregoing appropriation.

Mr. DOUGLAS. I ask that the whole amendment, as proposed to be amended, be reported.

The amendment, as proposed to be amended, was read.

Mr. DOUGLAS. I think we should add the Colorado bug. My
State has been terribly ravaged by it. [Laughter.]

The amendment to the amendment was adopted, and the amend-

ment, as amended, was adopted.

The Clerk resumed the reading of the bill, and read the following paragraph:

United States courts:

For the Chief-Justice of the Supreme Court of the United States, \$10,500; and for eight associate justices, \$10,000 each; in all, \$90,500; and hereafter the marshal of the United States for the District of Columbia shall, in addition to his own official duties, perform those heretofore appertaining to the office of marshal of the Supreme Court of the United States; and so much of sections 677 and 680 of the Revised States as an whorizes the appointment and payment of a marshal of the Supreme Court of the United States is hereby repealed; and all acts and parts of acts now in force relating to and prescribing the duties of the marshal of the Supreme Court of the United States shall apply to the said marshal of the United States for the District of Columbia.

Mr. HOLMAN. I offer the following amendment:

Strike out all of the paragraph after "\$90,500" and insert the following: "For marshal of the Supreme Court of the United States, \$2,500."

The Committee on Appropriations, Mr. Chairman, after some consideration has thought it was proper to restore the old practice of the marshal for the District performing the duties of marshal of the Supreme Court. The geutleman proposing that change seems to desire that the marshal should be appointed by the court, and the Committee on Appropriations have recommended this amendment to be made,

tee on Appropriations have recommended this amendment to be made, giving the court the appointment of their own marshal.

Mr. HALE. I only wish to say that all the members of the Committee on Appropriations do not agree in the proposition just stated by the gentleman from Indiana. The court has had its marshal for years, and I think should now. The dignity of the court and its uses and needs require that the marshal should be maintained there as he has been for years past. I hope the amendment will not be adopted.

Mr. HOLMAN. Why, that is the effect of the proposition as it now stands in the bill

Mr. HOLMAN. Why, that is the effect of the proposition as it now stands in the bill.

Mr. HALE. The gentleman does not deny that the committee propose to abolish the present marshal of the Supreme Court?

Mr. HOLMAN. The gentleman is laboring under a misapprehension. That provision is in the bill, but my motion is to strike out that and to insert a provision for the salary of the marshal of the Supreme Court. The old practice used to be that the marshal of the District of Columbia acted as marshal of the Supreme Court. That was the rule up to six or seven years ago, when a gentleman from Supreme Court. The old practice used to be that the marshal of the District of Columbia acted as marshal of the Supreme Court. That was the rule up to six or seven years ago, when a gentleman from Ohio was appointed, under authority of law, marshal of the Supreme Court. Mr. Parsons, a former member of this House was the first appointee. We proposed originally to abolish this office and devolve the duties of the marshal of the Supreme Court upon the marshal of the District of Columbia. I have now, as I have already said, moved to strike out that provision and to insert in lieu thereof a provision for the payment of the salary of the marshal of the Supreme Court.

Mr. HALE. Perhaps I did not fully understand the gentleman's amendment, for I have but just come into the House. What is the amendment now pending ?

Mr. HOLMAN. It is to strike out the provision of the bill requiring the duties of the marshal of the Supreme Court to be performed by the marshal of the District of Columbia and make an appropriation of \$2,500 for the salary of the marshal of the Supreme Court.

The question was taken on the amendment; and it was agreed to. Mr. DURHAM. I have an amendment to offer which is to add at the end of the paragraph just passed, after line 1706, the following: And shall make a semi annual report, the same as other United States marshals of the United States are required by law to do.

Mr. HOLMAN. O, I hope the gentleman will not press that amendment. This marshal does not serve any process. The Supreme Court has scarcely any original jurisdiction. The court is simply an appellate court, and there are no processes to be served and there are no fees in the office and he would have nothing to report upon.

Mr. DURHAM. If that is true, I will not insist on the amendment

ment.

Mr. HOLMAN. O, no; there are no fees in the office.
Mr. CALDWELL, of Alabama. The marshal is simply an officer of that court alone.

Mr. HOLMAN. Yes, only of that court. Mr. DURHAM. I was laboring under the I was laboring under the impression that he acted as marshal for the whole District.

Mr. HOLMAN. O, no. There is a District marshal besides.

Mr. DURHAM. Then I withdraw the amendment.

The Clerk read the following paragraph:

For salary of the reporter of the decisions of the Supreme Court of the United States, \$2,000.

Mr. HOLMAN. I desire to offer an amendment in relation to that paragraph providing the salary for the reporter of the decisions of the Supreme Court. The salary used to be \$2,500. The Committee on Appropriations thought that it might be omitted, but on further examination, inasmuch as three hundred copies of the reports are furnished to the various courts of the United States at \$5 each, it would require an appropriation of \$1,500 to meet that amount, and that would leave the pay of the reporter of the decisions of the Supreme Court \$1,000 a year. On conferring with gentlemen familiar with this subject and with those members of the Committee on Appropriations who have had their attention called to it, I think perhaps that the original appropriation should be restored. I therefore move to amend by inserting after the word "thousand," in line 1714, the words "five hundred."

The amendment was agreed to.
The Clerk resumed the reading of the bill, and read as follows:

Office of the Attorney-General; \$8,000; Solicitor-General, \$7,000; three assistant attorney-general at \$5,000 each; one assistant attorney-general of the Post-Office Department, \$4,000; solicitor of internal revenue, \$4,500; examiner of claims, \$3,000; law clerk and examiner of titles, \$2,500; chief clerk, \$2,000; stenographic clerk, \$1,600; one law clerk, \$2,000; three clerks of class four; additional for disbursing clerk, \$200; two clerks of class two; two clerks of class one; five copyists; one telegraph-operator, at \$1,000; one messenger; one assistant messenger; two laborers; and two watchmen; in all, \$70,340.

Mr. LAWRENCE. I desire to move to amend that clause, in lines Mr. LAWRENCE. I desire to involve to anicht that the state 1736 and 1737, by striking out "\$3,000" and inserting "\$3,500;" so that it will read: "examiner of claims, \$3,500."

I would ask if this is not the only reduction of salaries in the State

Department ?

Mr. HOLMAN. There is a slight reduction.
Mr. LAWRENCE. I hope the reduction will not be made. I hope
I may have the attention of the members of the Commistee on Appropriations for a moment as to this matter. This is the only salary in the Department of State which has been reduced by this bill. In fact, I think that this officer, the examiner of claims, is not strictly and technically an officer of the Department of State, but rather of the Attorney-General's office, and although his title is examiner of claims he is in fact an assistant attorney-general, the adviser of the United States in one of the most important offices in the Department. He is the law adviser of the Department of State and all matters relating to our foreign intercourse and in all matters, as I understand it, when a legal opinion is required in the Department.

Now it will be apparent to every gentleman here that a salary of

\$3,000 is utterly inadequate to command the talent and services which such an officer should have. No other officer connected with the State Department has been reduced, and I submit that there is no reason why they should be reduced; in fact there is an increase of \$500 in the pay of one of the officers of the Department.

Mr. HOLMAN. Where?

Mr. LAWRENCE. In the salary of the law clerk just following

Mr. HOLMAN. Whereabouts?

Mr. HOLMAN. Whereabouts?

Mr. LAWRENCE. I do not know exactly where it is, but I know there is an increase. I know the examiner of claims in the State Department. He is a gentleman of talent and great learning, whose long experience in the Department renders him particularly valuable. Now my friend from Indiana [Mr. HOLMAN] knows that I have almost uniformly voted with him in favor of every reduction which has been proposed during the last year in the salaries and expenditures of this Government. In that respect I have differed with some of my party friends. I am now ready to go with him in cutting down many, many of the salaries of the Government, and many of the expenditures even below what they are now. But I submit that this is a matter of too much consequence, and we ought not to cripple the service of the State Department by this reduction of salary. Of course I am not authorized to speak for the examiner of claims, but I believe that he will not continue to hold the office if his salary is reduced as prohe will not continue to hold the office if his salary is reduced as proposed.

Mr CAULFIELD. You speak of this service as in the Department

of State.

Mr. LAWRENCE. The duties of this officer are in the Department of State, and he has a room in that building; but he is an officer of

the Department of Justice, just as there is an Assistant Attorney-General whose business and room where he transacts his official business are located in the building of the Interior Department, although he is an officer of the Department of Justice. He is the legal advisor of the Interior Department, but actually an officer of the Department of Justice.

The Department of Justice is unlike almost any other Department. A number of its officers are scattered about in the various Departments of the Government for convenience in giving advice to the heads of the various Departments. That is the condition of the examiner of claims in the Department of State. I submit that the gentleman from Indiana ought not to object to restoring the salary of this

man from Indiana ought not to object to restoring the salary of this officer to \$3,500 a year.

Mr. HOLMAN. The gentleman from Ohio [Mr. LAWRENCE] predicates his motion on the assumption that the salary of the clerk and examiner of titles has been increased \$500.

Mr. LAWRENCE. The law clerk.

Mr. HOLMAN. Instead of that, the present salary of that officer is but \$2,700, while the salary proposed by this bill is \$2,500. That is a reduction of the salary of \$200, instead of an increase of salary. I know the gentleman from Ohio naturally sympathizes with his own profession. profession.

Mr. LAWRENCE. Yes, sir.
Mr. HOLMAN. Naturally. But I know very well that there is no class of employés of this Government whose salaries generally range so high as officers in the Attorney-General's Department. We think that the salary of the examiner of claims in comparison with the salary of the examiner of claims in comparison with the salary of the examiner of claims in comparison with the salary of the salary of the examiner of claims in comparison with the salary of t ries of officers in other and corresponding employments is very ample at \$3,000 a year. That is as much as we pay to the head of a bureau.

Mr. LAWRENCE. How much do you pay to an assistant attorney-

general?

Mr. HOLMAN. I know; that is what I am complaining about,

Mr. HOLMAN. I know; that is what I am complaining about, the attempt to raise all that class of salaries.

Mr. LAWRENCE. Why cut down this, and not the others?

Mr. HOLMAN. The attempt is to raise all this class of salaries, as though the profession of law was entitled to greater compensation than any other. The Commissioner of Indian Affairs receives but \$3,000 a year, although he is the head of a bureau expending four or five millions annually. The attempt is made to put the salary of the examiner of claims above the salary of the head of a bureau. I have understood that this is a very competent officer.

examiner of claims above the salary of the head of a bureau. I have understood that this is a very competent officer.

Mr. LAWRENCE. Of course an assistant attorney-general should be put above the head of a bureau; it is a more important office.

Mr. HOLMAN. My friend is the last man who should talk about trying to run up some salaries because others are high. Why not reverse that proposition and reduce the other salaries? You first create a fulcrum in the shape of a high salary and then propose to raise all other salaries up to that standard. No one ever proposes to equalize the salary of a head of a department or of a bureau by taking a

all other salaries up to that standard. No one ever proposes to equalize the salary of a head of a department or of a bureau by taking a lower standard; it is always up.

Mr. LAWRENCE. O, well, let me state a fact. The examiner of claims in the State Department, according to my information, has examined and passed upon claims amounting to \$13,000,000 in the last five years. Now the idea of getting an inferior officer for such a position as that is one which I do not believe the Committee of the Whole will sanction or tolerate for one moment.

Mr. HOLMAN I wish to say that as far as the information of the

will sanction or tolerate for one moment.

Mr. HOLMAN. I wish to say that, as far as the information of the Committee on Appropriations is concerned, we would much prefer seeing the salary of the clerk and examiner of titles, an office now held by a very excellent gentleman and a very good lawyer, restored to what it was, \$2,700 a year, than to see the salary of this officer increased to \$3,500 a year. Indeed, as far as the committee are able to form a judgment, there should be no difference between the two salarios

Mr. LAWRENCE. One thing at a time.

Mr. LAWRENCE. One thing at a time.

Mr. HOLMAN. And my friend complains because the one is \$2,500 and the other is put at \$3,000 a year.

Mr. LAWRENCE. One thing at a time. Let us attend to this officer now and then we can decide with regard to the other.

Mr. CLYMER. I believe there is no amendment pending.

Mr. LAWRENCE. I move to strike out "\$3,000" and insert "\$3,500," as the salary of the examiner of claims in the State Department. You cannot expect an assistant atterney general to sarve for the same salary. cannot expect an assistant attorney-general to serve for the same sal-

ary as the head of a bureau.

The question was taken upon the amendment of Mr. LAWRENCE; and upon a division, there were—ayes 25, noes 46.

No further count being called for, the amendment was not adopted. The Clerk read the following:

For official postage-stamps for the Department of Justice, \$5,000.

Mr. CAULFIELD. I move to amend the paragraph just read by striking out "\$5,000" and inserting "\$1,500." I am very much surprised to find that a committee practicing so much economy in this House should allow a matter of this kind to pass unnoticed. As one of the members of the Committee on Expenditures in the Department. of Justice, I made last year, together with other members of the committee, a very careful examination in regard to the expenditures of that Department. I found that the year previous \$10,000 had been

appropriated for postage-stamps.

Mr. HOLMAN. The gentleman will allow me to say that this appropriation of \$5,000 is in accordance with the estimate. Practically,

of course, this is only an appropriation to the Post-Office Department; that is all there is about it. If the gentleman thinks that \$1,500 will be sufficient we do not object to that amendment, for it does not

make a particle of difference.

Mr. ATKINS. I want to say in reply to the gentleman from Illinois [Mr. CAULFIELD] that the \$5,000 appropriated last year was I think recommended by the very committee of which the gentleman

Mr. CAULFIELD. Not at all. In our examinations into the expenditures of the Department of Justice we found that of \$10,000 appropriated for this purpose the year before only \$750 had been expended for postage-stamps. Therefore our committee recommended to the

for postage-stamps. Therefore our committee recommended to the Committee on Appropriations that the appropriation for this purpose should not exceed \$1,000; but the committee, against our remonstrance, reported an appropriation of \$5,000.

Mr. HOLMAN. Last year?

Mr. CAULFIELD. Yes, sir.

Mr. HOLMAN. O, no.

Mr. CAULFIELD. The papers on file in your committee-room will sustain my statement. The gentleman from Kentucky [Mr. DURHAM] joined with me in reporting that the appropriation should be cut down to \$1,000, but the Committee on Appropriations reported \$5,000 for this purpose; and now the same item is reported in this bill.

Mr. HOLMAN. It is a matter of no possible consequence how much we appropriate for this purpose, as my friend must see. The only

Mr. HOLMAN. It is a matter of no possible consequence how much we appropriate for this purpose, as my friend must see. The only object we have in indicating any sum at all is to have a more accurate notion of the amounts which go to make up the deficiency of the Post-Office Department. This is not an appropriation of money in the ordinary sense. In the law of last session the amount of the estimates was adopted in this respect for the various Departments.

Mr. CAULFIELD. Then the gentleman is willing to cut this appropriation down to \$1,500?

Mr. HOLMAN. Certainly.

Mr. DURHAM. Certainly.

Mr. DURHAM. I move to amend by striking out the last two. I want to verify the statement of my colleague on the committee, [Mr. CAULFIELD.] I hold in my hand the report of the Attorney-General CAULFIELD.] showing exactly the expense of postage-stamps for the past year; it

Mr. ATKINS. Why then did the Attorney-General estimate \$5,000?

Mr. DURHAM. I cannot tell.
Mr. HOLMAN. It does not make a particle of difference.
Mr. DURHAM. Why should the Committee on Appropriations pro-

Mr. DURHAM. Why should the Committee on Appropriations propose to appropriate more than is necessary?

Mr. SPARKS. That is the question; why do they act so extravagantly? [Laughter.]

Mr. HOLMAN. There is no extravagance at all.

Mr. DURHAM. I am astonished at the extravagance of my friend, the chairman of the Committee on Appropriations. [Laughter.]

Mr. HOLMAN. Do not gentlemen see that this is simply an appropriation for the support of the Post-Office Department? All the way through we have simply taken the estimates, regarding these as way through we have simply taken the estimates, regarding these as appropriations of so much money for the Post-Office Department, to be taken into account in determining how much we should appropriate for the deficiency in that Department.

The amendment of Mr. CAULFIELD was adopted.

The Clerk read as follows:

Office of the Solicitor of the Treasury:
For compensation of the Solicitor of the Treasury, \$4.000; assistant solicitor, \$3.000; chief clerk, \$2.000; two clerks of class four; two clerks of class three; two clerks of class two; three clerks of class one; one messenger; and one laborer; in all, \$23,700.

Mr. HALE. I move to amend by striking out \$4,000 and inserting \$4,500 as the compensation of the Solicitor of the Treasury. The effect of this amendment is to continue the present salary. This is one of the most important offices of the Government. The Solicitor of the Treasury is called upon to deal with most extensive questions, of the Treasury is called upon to deal with most extensive questions, requiring for their proper examination a first-class lawyer. The salary has been \$4,500, and it should not be reduced. I cannot see what justice there is in allowing to the Solicitor of the Internal Revenue Department (which is in fact a bureau of the Treasury Department) a salary of \$4,500, as we have done in a paragraph already passed, while the Solicitor for the whole Treasury Department is cut down to \$4,000. I did not notice until a moment ago that this discrimination had been made. Certainly an inferior officer of a bureau in this Department should not receive a larger salary than his super in this Department should not receive a larger salary than his superior officer who is Solicitor for the whole Department. I do not think the gentleman from Indiana himself will oppose leaving this salary where it has been, at \$4,500. I hope there will be no opposition to the amendment.

The question being taken on agreeing to the amendment, there

were—ayes 25, noes 36.

The CHAIRMAN. The amendment is not agreed to.

Mr. HALE. Has a quorum voted?

The CHAIRMAN. No, sir.

Mr. HALE. The provision of the bill is manifestly so unjust that if this discrimination is to be made, I must insist on its being done

Mr. HOLMAN. There will be no objection to a vote in the House. Mr. HALE. No, sir; it must be settled here. I cannot consent to this injustice.

Tellers were ordered; and Mr. Holman and Mr. Hale were appointed.

The House divided; but before the tellers had reported,
Mr. HOLMAN said: I shall not object to the amendment being regarded as pro forma. It goes to the House for a vote.

Mr. HALE. That will be satisfactory. I desire only that it shall come up as an amendment which has been adopted.

The Clerk read as follows:

Sec. 3. That all acts or parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed.

Mr. HALE. I raise the point of order on that section that it is the very essence of new legislation, repealing nobody knows what and no-body knows for what reason. I have never known any such sweep-

ing provision of repeal in an appropriation bill before.

Mr. HOLMAN. This is clearly within the rule in reference to the appropriations made for the several purposes indicated in this bill. The rule is that no provision changing the existing law shall be in order unless germane to the bill and retrenching expenditure. The Chair will perceive if a salary was fixed by law at \$3,000 and the appropriation was reduced by this bill down to \$2,500 it was intended by the reduction to fix the salary at the lower sum hereafter. If there were no such provision as this contained in this bill, parties might go to the Court of Claims and recover the balauce between the sum fixed in this bill and that which the law has heretofore provided. It is not in the line of retrenchment, but I am willing to substitute for the language here other language which I have prepared.

Mr. HALE. Let me suggest to the gentleman from Indiana that he is going upon the assumption that everything we have done here has been in the way of reduction of salaries, and therefore the repeal of all previous laws would carry out such reduction. Now, we may and actually have in this bill increased certain salaries, as we had a right to do. Here, then, is a provision in contravention of what we have done in this bill. You are actually repealing by this wearing always a law which was given been always that sweeping clause a law which may give a less salary than that provided for here. I do not suppose the gentleman from Indiana would claim the rule adopted last winter provided for any such contingency as that.

Mr. HOLMAN. I have no objection to substituting other language for that contained in the bill.

Mr. HALE. I insist first that we shall have the ruling of the Chair on my point of order.

Mr. HOLMAN. I propose to offer as a substitute for the language

in this section, as follows:

That the sums respectively appropriated by this act for the salary and compensation of officers and employes herein named shall be the salary and compensation of such officers and employes.

The CHAIRMAN. As it does not seem to be denied that there are cases where the bill provides for increase of salaries as well as for cases where salaries are decreased under the rulings heretofore made, the Chair must sustain the point of order raised by the gentleman The section therefore is stricken out.

from Maine. The section therefore is stricken out
Mr. HOLMAN. I move to insert the following:

That the sums respectively appropriated by this act for salary and compensation of the officers and employés herein named shall be the salary and compensation of such officers and employés.

The amendment was agreed to.

The amendment was agreed to.

Mr. CLYMER. I ask, by unanimous consent, to return to the paragraph commencing with the line 1518, page 63, and to strike out "seven hundred and fifty" and insert "five hundred;" so it will read: "For surveyor-general of the Territory of New Mexico, \$2,500;" and in line 1530 to strike out "four" and insert "five;" so it will read: "And for the clerks in his office, \$5,000."

There was no objection; and the amendment was received and

agreed to.

Mr. FENN. I ask, Mr. Chairman, by unanimous consent, to go back to line 987, so I may be permitted to offer the amendment which I send up to the Clerk's desk.

The Clerk read as follows:

Strike out lines 957 and 988, as follows: "For preservation and care of the building, \$1,000;" and insert:

Assay office at Boisé City, Idaho Territory:

For salary of assayer and melter, \$1,800; for wages of workmen, \$1,200; for fuel, crucibles, chemicals, repair, and incidental expenses, \$500; in all, \$3,500.

Mr. ATKINS. It is not in order to go back unless by unanimous

Mr. FENN. -I believe I have the consent of the chairman to go back in reference to this matter.

Mr. HOLMAN. Inasmuch as it was agreed to at the time the gentleman from Idaho should have the right to go back and offer his amendment, I think there will be no objection to letting it come before the committee.

Mr. FENN. I was absent, and consulting with the chairman of the committee it was understood that I should have the opporthe committee it was understood that I should have the oppor-tunity without objection to move this amendment when the bill had been gone through with.

Mr. HOLMAN. There is no objection to the amendment.

The committee divided; and there were—ayes 30, noes 67.

Mr. LANE. No quorum has voted.

Mr. FENN. I insist that this matter shall be agreed to now, and

therefore call attention to the fact that no quorum has voted.

Mr. LANE demanded tellers

Tellers were ordered; and Mr. LANE and Mr. HOLMAN were appointed.

Mr. HOLMAN. I have no objection to giving the gentleman a vote

Mr. LANE. That is all we ask for.
Mr. FENN. It will be satisfactory to me to have a vote on this amendment in the House.

The amendment was agreed to, with the understanding that a vote

should be taken on it in the House.

Mr. HOLMAN. I move to strike out lines 1143, 1144, and 1145, as

In the Bureau of Military Justice : One clerk, at \$1,800. For contingent expenses, \$250.

And in lieu thereof to insert the following:

In the Bureau of Military Justice:
One chief clerk, \$1,800; one clerk of class three, \$1,600; two female copyists, at 900 each; in all, \$3,200.
For contingent expenses, \$500.

The amendment was agreed to.

Mr. HOLMAN. I move to strike out all of section 2 after the word "Congress" in the sixth line.

The section was as follows:

Sec. 2. That the Secretaries respectively of the Departments of State, Treasury, War. Navy, and of the Interior, and the Attorney-General, are hereby authorized to make requisitions upon the Postmaster-General for the necessary amount of postage-stamps for the use of their Departments, not exceeding the amount stated in the estimates submitted to Congress; and, upon presentation of proper vonchers therefor at the Treasury, the amount thereof shall be credited to the appropriation for the service of the Post-Office Department for the same fiscal year; and that the Postmaster-General in his annual report shall state the sum credited to his Department on account of each of the Departments aforesaid for postage-stamps.

Mr. HOLMAN, On reflection, I think the whole of that section.

Mr. HOLMAN. On reflection, I think the whole of that section ought to be stricken out. I move to strike out the section.

The motion was agreed to.

Mr. HOLMAN. I have one other amendment to offer. I offer the following:

After line 1729 insert these words:

For defraying the contingent expenses of the courts, and the fees, per diem, and traveling expenses of the United States marshal in the Territory of Utah, with expenses of summoning jurors, subpomaing witnesses, of arresting and guarding and transporting prisoners, of hiring and feeding guards, of supplying and caring for the penitentiary, arising under the act of June 23, 1874, in relation to courts and judicial officers in the Territory of Utah, for the fiscal year ending June 30, 1878, to be paid under the direction and order of the Department of Justice upon accounts duly verified and certified, \$20,000

This \$20,000 is the amount required to be appropriated under the act of 1874 in regard to the Territory of Utah, as gentlemen will call to mind. This same appropriation was made for the present fiscal

The amendment was adopted.

Mr. COX. I ask unanimous consent to go back to page 27 for the purpose of making a correction.

The CHAIRMAN. Is there objection to going back to the point

The CHAIRMAN. Is there objection to going back to the point indicated by the gentleman from New York? [After a pause.] The

Mr. COX. I would like to have stricken out after "\$466,000," in line 634, the words:

Said engraving and printing to be done in the Bureau of Engraving and Printing of the Treasury Department.

So that the paragraph as thus amended would read:

For dies, paper, and stamps, \$466.000, to be expended under the direction of the Secretary of the Treasury; provided the cost does not exceed the price paid under cristians on the treasury. existing contracts.

This would make the Treasury Department entirely responsible for the conduct of this critical business Mr. FRANKLIN. I object.

Mr. COX. Unanimous consent was given that I should make that motion.

Mr. O'BRIEN. I object to going back. The CHAIRMAN. The Chair asked if there was objection to the request of the gentleman from New York and no objection was made.

Mr. RANDALL, (the Speaker.) Gentlemen could not object until
they knew what it was they were to object to.

The CHAIRMAN. The Chair will again submit the request of the gentleman from New York that by unanimous consent the committee return to the paragraph he has indicated. Is there objection?

Mr. O'BRIEN. I object.

Mr. COX. I believe there was no objection when I made the re-

The CHAIRMAN. The Chair put the request before the matter was understood.

Mr. COX. I should like to have a vote on it.
Mr. FRANKLIN. I object.
Mr. COX. The gentleman should have objected sooner.
Mr. FRANKLIN. It was impossible to object until we knew what the gentleman from New York wanted to go back to.

I offer this amendment because no vote of the Hous has been taken on this substantive proposition that the Secretary of the Treasury shall have the right to direct this business to be done on the cheapest plan, whether that be in the Treasury or out of the Treasury.

The CHAIRMAN. The Chair directs to be read the section as proposed to be amended.

The section, as proposed to be amended, was read.

Mr. FRANKLIN. I withdraw my objection. I agree to have the amendment of the gentleman from New York voted upon in the

Mr. HOLMAN. I move that the committee rise and report the bill

The motion was agreed to.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Reagan reported that the Committee of the Whole on the state of the Union had had under consideration the special order, being the bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes, and had directed him to report the same back to the House with sundry amendments.

#### MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was presented by Mr. SNIFFEN, one of his secretaries, who also announced that bills of the following titles, having been presented to the President on the 20th of January and not returned by him to the House within the ten days prescribed by the Constitution, had become laws with-

the ten days prescribed by the Constitution, had become laws without his signature:

An act (H. R. No. 940) for the relief of Edwin Ebert;

An act (H. R. No. 2842) granting a pension to Robert S. Toland;

An act (H. R. No. 1521) granting a pension to Louis A. McLaughlin;

An act (H. R. No. 3500) granting a pension to Nelson Ainslie;

An act (H. R. No. 2242) granting a pension to George McColly;

An act (H. R. No. 4155) amending the act of July 28, 1876, entitled

"An act for the relief of Kendrick & Avis, Kuner, Zisemann & Zott,

Kuner & Zott, all of Saint Louis, Missouri, and Nachtrieb & Co., of

Galion, Ohio;" and

An act (H. R. No. 767) for the relief of Samuel B. Stauber and others.

An act (H. R. No. 767) for the relief of Samuel B. Stauber and others.

LEGISLATIVE, ETC., APPROPRIATION BILL.

The SPEAKER. Is a separate vote desired on any of the amendments reported from the Committee of the Whole to the legislative

appropriation bill.

Mr. HOLMAN. During the progress of this bill through the Committee of the Whole, there were certain propositions considered by the committee and not acted upon, with the understanding that they should be voted upon in the House. I am not able at this moment to recall what the propositions were.

The SPEAKER. The Clerk has a record of all such.

Mr. HOLMAN. Very well; I call the previous question on the bill

and amendments.

and amendments.

The previous question was seconded and the main question ordered.

Mr. HALE. I suggest to the gentleman from Indiana that the amendments he refers to are very slight, amounting only to a few hundred dollars; and as he wants to get the bill through to-night, in order to send it to the Senate, he had better let the amendments go. The SPEAKER. The Chair will put the question on the amendments in gross, on which a separate vote is not asked.

Mr. HOLMAN. I think it will be better for the Clerk to read over the propositions on which a separate vote has been called.

the propositions on which a separate vote has been called.

The Clerk proceeded to read the amendments on which it had been stated in the committee that a separate vote would be called in the

Mr. HOLMAN. I ask for a separate vote on the salaries of the members of the Senate, those of members of Congress, the salary of the President of the United States, and upon the two small appropriations of \$500 each to stamp the names of the members on the speeches made by them. I will add, also, the amendment offered by the gentleman from Maine, [Mr. Hale,] increasing the salary of the

Mr. HALE. I think the gentleman can afford to let that go.
Mr. HOLMAN. Let it come before the House for a vote.
Mr. HALE. That was considered as passed. I think the gentleman might allow that to pass and take a vote on the other matters.

Mr. HOLMAN. I will ask a separate vote on the amendments in reference to the salaries of the members of the House, the members of the Senate, the President, and the Solicitor of the Treasury; those

Mr. HALE. I think the gentleman had better let the solicitor go, for that is also a small matter.

Mr. LANE. I ask a separate vote on the amendment offered by the Delegate from Idaho, [Mr. FENN.]

The SPEAKER. The amendment to which the gentleman from Oregon alludes is marked upon the Clerk's record as having been rejected.

Mr. LANE. It was adopted with the understanding that a separate vote should be taken upon it.

Mr. HOLMAN. I believe it was understood that the gentleman should have a vote in the House and I will consent that it shall be

offered, if I can do so.

Mr. LANE. That was clearly the understanding.

The SPEAKER. It is now too late.

Mr. HOLMAN. I hope, as that was the understanding, that it will now, by unanimous consent, be considered as having been offered before the previous question was called.

The SPEAKER. Then it had better be entered upon the record of the Committee of the Whole that it was adopted.

Mr. HALE. I understand that that amendment was ruled out be-

cause it was objected to.

The SPEAKER. As the Chair is informed it was rejected on the vote of the committee, but no quorum voted, and the gentleman from Oregon [Mr. Lane] insisted that there was no quorum on that vote; whereupon an arrangement was made by which he was to be allowed to have a vote upon it in the House.

Mr. LANE. That was the distinct understanding.

Mr. HOLMAN. I ask unanimous consent that that amendment be

considered as having been offered before the previous question was

There was no objection, and it was so ordered. Mr. COX. I ask a separate vote on the amendment which I offered

upon page 27.

The SPEAKER. What amendment?

Mr. O'BRIEN. The one in relation to the printing of the Treasury Department.

The SPEAKER. That amendment is not in.

Mr. COX. That amendment is in, with all due respect to the Chair. It was the last amendment offered, and all objections to it were withdrawn.

The SPEAKER. The present occupant of the chair has nothing to do with what took place in the committee. The Clerk will report what was the action of the committee upon that amendment.

Mr. COX. I know there is a local interest in it, but I must abide

San Francisco.

by these little local interests.

The SPEAKER. The Chair has nothing to do with localities. The Chair must abide by the report of the chairman of the committee.

Mr. HALE. The amendment is certainly not before the House.
Mr. COX. I beg to say that it was the understanding of the committee that I should have a vote on the amendment in the House.

Mr. O'BRIEN. There is not a doubt about that.

The SPEAKER. The Chair has no objection whatever, but he can only be guided by the report of the chairman of the Committee of the Whole on the state of the Union.

Mr. COX. I ask unanimous consent that a vote be taken upon it.
Mr. HARTZELL. As I understand the proposition, I am obliged to
object. Gentlemen have no right to make an objection and then go
back on it. I must object to the withdrawal of the objection made to

The SPEAKER. This took place in the Committee of the Whole, and the Clerk informs the Chair that the report of the committee corresponds with the statement that the amendment was not admit-

Mr. PIPER. It was also agreed that we should have a separate vete upon the two amendments which I offered in relation to the mint at

Mr. O'BRIEN. Let us reject the bill or recommit it.

Mr. HOLMAN. It was agreed that the gentleman from California should have a right to offer an amendment in the House in relation to the mint at San Francisco.

The SPEAKER. That amendment is upon the list of amendments

upon which a separate vote was demanded.

Mr. HOLMAN. I ask for a separate vote on that amendment.

The Clerk then read the amendments upon which the right to a sep-

arate vote was reserved I would like to rise to a point of order as to my amend-

ment. I understand the gentleman from Illinois [Mr. Hartzell] objects to the withdrawal of the objection of the gentleman from Mary-

and, [Mr. O'BRIEN.]

The SPEAKER. The Chair has nothing to do with anything that occurred in Committee of the Whole. The Chair must be governed by the report of the chairman of the Committee of the Whole, and those gentlemen who have offered amendments will be maintained

in their rights if those amendments have been adopted.

Mr. COX. Will the Chair hear me a moment? If the report of the chairman of the Committee of the Whole is unintentionally erro-

meous, cannot we have it corrected?

Mr. BUCKNER. Would you go behind the certificate?

Mr. COX. Well, then I must move that the House adjourn.

The SPEAKER. The Chair thinks that it is not competent for the House to adjourn at this time.

Mr. O'BRIEN. I would like to say a word about this matter. the amendment was offered by the gentleman from New York in the Committee of the Whole, I objected to its consideration because he proposed to go back, and I was the only one who did object; all other objections had been withdrawn. I then withdrew my objection, and it was perfectly understood that a vote should be taken on the amendment in the House; by unanimous consent it was agreed that a vote should be taken.

Mr. HOLMAN. I hope unanimous consent will be given.
Mr. HALE. I was watching at the time, and should have objected
if necessary. I understood that after the amendment had been offered in Committee of the Whole, as suggested by the Chairman, it was satisfactory to the gentleman from New York, [Mr. Cox,] and his amendment was withdrawn. I did not understand that any leave was given to have a vote on his amendment in the House.

The SPEAKER. The Chair recollects that the gentleman from

New York [Mr. Cox] asked consent to go back for the purpose offering his amendment. The Chairman of the Committee of the Whole asked for objection and there was none. But when the paragraph came to be read, so that the committee could understand it, then there was objection made to going back and the Chairman sus-

tained the objection.

Mr. COX. Those objections were withdrawn. I think, as the Hon. Speaker was standing here at the time, he must remember that the ob-

jections were withdrawn.

Mr. O'BRIEN. There is no doubt about that.

Mr. MILLIKEN. The gentleman from Missouri [Mr. Franklin] made the objection.

The SPEAKER. The gentleman from New York [Mr. Cox] now asks unanimous consent that a vote be taken upon the amendment he has suggested.

he has suggested.

Mr. HALE. I must object.

Mr. COX. I do not care about an objection in the House; I go back of the Committee of the Whole as regards the objection.

The SPEAKER. The Chair does not know how the gentleman can

go back to the Committee of the Whole.

Mr. CAULFIELD. The gentleman wants to go behind the returns.

[Laughter.] Mr. COX. I move to reconsider the vote by which the main question was ordered, for the purpose of offering my amendment and having a vote upon it in the House. If the amendment is voted down, I will be content.

The question was taken upon the motion to reconsider; and upon a division there were—ayes 43, noes 75.

Mr. COX. Is there a quorum present?

The SPEAKER. No quorum has voted.

Mr. COX. May I be allowed to say a word upon this matter?

The SPEAKER. Does the gentleman want a further count?

The SPEAKER. Then the Chair will order tellers; and the gentleman from New York, Mr. Cox, and the gentleman from Maine, Mr. Hale, will act as tellers.

The House again divided; and the tellers reported that there were—

ayes 37, noes 69.

Before the count was completed, Mr. COX said: Would it be in order to move that the House now take a recess

The SPEAKER. It would be.

The tellers proceeded with their count, and finally reported that

there were—ayes 66, noes 93.

So the motion to reconsider was not agreed to.

Mr. WILLIS. I ask unanimous consent to have printed in the RECORD, as a portion of the debates of this House, some remarks which I have prepared upon the pending appropriation bill.

No objection was made, and leave was granted accordingly. [See

Appendix.]
The SPEAKER. If there is no objection, the question will first be taken upon agreeing to all the amendments reported from the Committee of the Whole, except those which have been reserved for a separate vote.

No objection was made, and the amendments were accordingly

The first amendment upon which a separate vote had been demanded was to strike from lines 11, 12, and 13 of the bill the follow-

And from and after the 30th of June next the compensation of said Senators shall be \$4,500 per annum.

The question was taken upon agreeing to the amendment, and upon a division there were ayes 110.

Before the negative vote was counted, Mr. HOLMAN called for the yeas and nays upon agreeing to the

Mr. PAGE. Pending that I move that the House now adjourn.
The SPEAKER. A motion to adjourn is not in order.
The question was taken upon ordering the yeas and nays; and upon a division there were—ayes 32, noes 132; not one-fifth voting

in the affirmative.

Mr. HOLMAN. I ask for tellers upon ordering the yeas and nays and I trust that the House will allow the yeas and nays to be taken

on the amendment. The question was taken upon ordering tellers, and there were 26 in the affirmative, not one-fifth of a quorum. So tellers were not ordered, and the yeas and nays were not ordered.

The amendment was accordingly agreed to.

Mr. HALE moved to reconsider the vote by which the amendment was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. COX. I move that the House now take a recess until Monday morning at ten o'clock.

The SPEAKER. The Chair has an important message from the President. If the motion for a recess shall prevail, the Chair would ask the privilege of reserving the announcement of the vote on that motion until the message is read.

No objection was made.

#### PENSION BILLS.

Mr. HOAR. I will be unable to be present on Monday, and I therefore ask consent to introduce and have referred to the Committee on Invalid Pensions some pension bills.

No objection was made, and accordingly the following bills were received, read severally a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed:

A bill (H. R. No. 4566) granting a pension to Elizabeth E. Holbrook;
A bill (H. R. No. 4567) granting a pension to Simeon E. Ball, of Leicester Massachusetts:

A bill (H. R. No. 4567) granting a pension to Simeon E. Ball, of Leicester, Massachusetts;
A bill (H. R. No. 4568) granting a pension to D. W. Plympton, of Grafton, Massachusetts;
A bill (H. R. No. 4569) granting a pension to Susan E. Alger, of Worcester, Massachusetts; and
A bill (H. R. No. 4570) granting a pension to Helen James, of Worcester, Massachusetts.

The question was then taken upon the motion of Mr. Cox for a recess; and it was not agreed to; upon a division, ayes 52, noes not counted.

#### RESUMPTION OF SPECIE PAYMENTS.

The SPEAKER laid before the House a message from the President of the United States; which was read, as follows:

To the Senate and House of Representatives:

The SPEAKER laid before the House a message from the President of the United States; which was read, as follows:

To the Senate and House of Representatives:

By the act of Congress approved January 1873, "to provide for the resumption of specie payments," the 1st of January, 1873, is fixed as the date when it shall actually become obligatory upon the Government to redeem its outstanding legal-tender notes in coin on presentation, but it is certainly most desirable and will prove most beneficial to every pecuniary interest of the country to hasten the day when the paper circulation of the country and the gold coin shall have equal values:

At a later day if currency and coin should retain equal values it might become advisable to authorize or direct resumption. I believe the time has come when by a simple act of the legislative branch of the Government this most desirable result can be attained. I am strengthened in this view by the course trade has taken in the last two years, and by the strength of the credit of the United States at home and abroad.

For the fiscal year ending June 30, 1876, the exports of the United States exceeded the imports by \$190,213,103; but our exports include \$40,560,621 of specie and bullion in excess of imports of the same commedities. For the six months of the present fiscal year, from July 1, 1876, to January 1, 1877, the excess of exports over imports amounted to \$103,744,809, and the import of specie and bullion exceeded the export of the precious metals by \$1,192,147 in the same time. The actual excess of exports over imports for the six months, exclusive of specie and bullion announted to \$113,757,040, showing for the time being the accumulation of specie and bullion in the country amounting to more than \$6,000,000 in addition to the national product of these metals for the same period. In the same time. The actual results of the precious metals can be utilized at home in such a way as to make it in some manner remmerative to the holders, it must seek a foreign market as such

EXECUTIVE MANSION, February 3, 1877.

The SPEAKER. The message will be referred to the Committee

The SPEAKER. The message will be referred to the committee of Ways and Means.

Mr. BLAND. As there was a commission appointed at the last session of Congress for the purpose of taking into consideration the resumption of specie payments and the remonetizing of silver in connection therewith, I think that this message should be referred to that commission. I therefore move that reference.

Mr. KELLEY. The message refers to the payment of a certain portion of the public dalt and prayiding the means therefor. It seems

Mr. KELLEY. The message refers to the payment of a certain portion of the public debt and providing the means therefor. It seems to me that it belongs legitimately to the Committee of Ways and Means and should receive that reference. The distinction hitherto, as between the Committee on Banking and Currency and the Committee of Ways and Means, has been that whatever related purely to banks, bank currency, &c., should go to the former committee, and that whatever touched the public debt and the means of extinguishing any part of it, belonged legitimately to the Committee of Ways and Means.

The SPEAKER. The Chair indicated the Committee of Ways and Means, because the President in his message suggests legislation providing for an additional issue of bonds. Questions of that kind have

always been under the control of the Committee of Ways and Means. It is, however, entirely within the power of the House to determine

It is, however, entirely within the power of the House to determine upon whatever reference it may deem proper. The Chair will therefore entertain the motion of the gentleman from Missouri, [Mr. BLAND, upon which the judgment of the House can be tested.

Mr. BLAND. Allow me to make one further suggestion. The resolution under which this commission was organized authorized and required an investigation of the subject of the return to specie payments. That is a part of the duty of the commission; and it does seem to me that this message should go to the special committee charged with that duty.

charged with that duty.

Mr. SPRINGER. I raise a point of order on the motion of the gentleman from Missouri, [Mr. BLAND.] I submit that it is not in order to refer a message of the President to a commission. This commission

is not one of the standing committees of the House.

The SPEAKER. The Chair did not understand the gentleman from Missouri as proposing the reference to a commission, but he supposed

the reference suggested was to a committee of this House.

Mr. SPRINGER. No, sir; to the silver commission.

The SPEAKER. The Chair cannot entertain that motion.

Mr. ROBBINS, of Pennsylvania. I move the reference of the message to the Committee on Banking and Currency.

Mr. BURCHARD, of Illinois. Is not a proposition pending to refer the message to the Committee of Ways and Means?

The SPEAKER. The Chair understands the gentleman from Penn-

sylvania [Mr. Kelley] as making that motion; and the motion of the gentleman from Pennsylvania [Mr. Robbins] will be regarded as an amendment.

Mr. KELLEY. The Committee on Banking and Currency have nothing to do with the issue of bonds.

The question being taken on the amendment of Mr. Robbins, of Pennsylvania, to refer the message to the Committee on Banking and Currency, it was not agreed to.

The question then recurring on the motion of Mr. Kelley to refer the message to the Committee of Ways and Means, it was agreed to.

Mr. Kelley moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### MILITIA FORCE OF THE UNITED STATES.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting an abstract of the militia force of the United States; which was referred to the Committee on the Militia.

### JOHN JACKSON.

The SPEAKER also laid before the House a letter from the Secretary of War, in relation to the bill (H. R. No. 4318) to authorize the President to restore John Jackson to his former rank in the Army; which was referred to the Committee on Military Affairs.

# DISTRIBUTION OF UNITED STATES ARMY.

The SPEAKER also laid before the House a letter from the Secretary of War, relative to the distribution and location of the United States Army; which was referred to the Committee on Military Affairs.

## BUILDINGS AT FORT DUNCAN, TEXAS.

The SPEAKER also laid before the House a letter from the Secretary of War, in relation to the estimated value of the buildings at Fort Duncan, Texas; which was referred to the Committee on Military Affairs.

# REGIMENTAL RANK.

The SPEAKER also laid before the House a letter from the Secre-The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a petition of Lieutenants Volkman, Ferbush, King, and Augur, of the Fifth Cavalry, against the passage of the bill (H. R. No. 4256) to give officers who were voluntarily transferred from the unassigned list the same date of rank in their new regiments as they had in the Army prior to said transfer; which was referred to the Committee on Military Affairs.

# IMPROVEMENTS ON SANTEE RESERVE.

The SPEAKER also laid before the House a letter from the Secretary of War, in relation to an appropriation for improvements on Santee reserve, removal of saw-mill and erection of grist-mill; which was referred to the Committee on Appropriations.

### WHITE-EARTH CHIPPEWAS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting an estimate of appropriation for White-Earth Chippewas; which was referred to the Committee on Appropriations.

# LEGISLATIVE, ETC., APPROPRIATION BILL.

The SPEAKER. The question next recurs on the second amendment from the Committee of the Whole on the state of the Union, on which a separate vote has been asked, which the Clerk will read. The Clerk read as follows:

Page 3, line 56, under the heading "Senate," insert the following:
To enable documents in the folding-room to be properly stamped on the outside
of the envelope with the name of the document inclosed, \$500.

The House divided; and there were ayes 106, noes not counted.

Mr. HOLMAN. As members seem to desire this accommodation I withdraw all further demand for a division.

The SPEAKER. The amendment then is concurred in.

The next amendment from the Committee of the Whole on which a separate vote was demanded was as follows:

Page 6, under the heading "House of Representatives," strike out the following words: "and from and after the 30th of June next, the compensation of said Members and Delegates shall be \$4,500 per annum."

Mr. HOLMAN. I demand the yeas and pays on the adoption of

The House divided; and there were ayes 16.

Mr. HOLMAN. Count the other side; I wish to see how many members will not go on the record.

The SPEAKER proceeded to count the negative.

Mr. HOLMAN. I will not insist on the Chair counting any further. [Great laughter.]

So the yeas and nays were not ordered. The amendment was then concurred in.

The next amendment from the Committee of the Whole on which a separate vote was demanded was on page 9, line 192, under the heading "House of Representatives," to insert the following after the word "dollars:"

To enable documents in the folding-room to be properly stamped on the outside of the envelope with the name of the document inclosed, \$500.

The amendment was concurred in.

The next amendment from the Committee of the Whole on which a separate vote was demanded was on page 15, line 238, to strike out "twenty-five" and insert "fifty;" so it will read, "for compensation of the President of the United States, \$50,000."

Mr. HOLMAN. On that I demand the yeas and nays.

The yeas and nays were ordered.

Mr. HOLMAN. I wish to make a parliamentary inquiry. Those in favor of increasing the President's salary to \$50,000 will vote no

The SPEAKER. The amendment has been read and it is not within the province of the Chair to direct how members shall vote.

Mr. HOLMAN. Let the amendment be again read.

The amendment was again read.

Mr. HOLMAN. It is apparent to all members that a vote in the affirmative is in favor of increasing the President's salary to \$50,000 and a vote in the negative is to let it remain as it was reported by the Committee on Appropriations, at \$25,000.

Mr. HALE. Striking out \$25,000 and inserting \$50,000 is merely letting the selection as it was reported.

letting the salary remain as it now is.

The question was taken; and it was decided in the negative—yeas 47, nays 126, not voting 117; as follows:

The question was taken; and it was decided in the negative—yeas 47, nays 126, not voting 117; as follows:

YEAS—Messrs Adams, George A. Bagley, William H. Baker, Ballou, Banks, Bradley, Horatio C. Burchard, Caswell, Crounse, Denison, Dunnell, Eames, Hale, Hanoock, Benjamin W. Harris, Hathorn, Hoar, Hubbell, Hurd, Kehr, Kelley, Lapham, Lynch, MacDougall, McDill, Nash, Norton, Oliver, Page, Platt, Rainey, James B. Reilly, Seelye, Sinnickson, Smalls, Stone, Stowell, Strait, Thornburgh, Martin I. Townsend, Washington Townsend, Waddell, Alexander S. Wallace, G. Wiley Wells, James Williams, Alan Wood, jr., and Woodburn—47.

NAYS—Messrs, Ashe, Atkıns, Bagby, John H. Bacley, jr., John H. Baker, Banning, Bland, Blount, Bradford, Bright, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Carr, Cate, Carllfield, Chapin, Clymer, Cochrane, Collins, Conger, Cowan, Crapo, Culberson, Cutler, Darrall, Davis, De Bolt, Dibrell, Durham, Eden, Faulkner, Felton, Finley, Forney, Fort, Foster, Franklin, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, Hartzell, Hatcher, Haymond, Hendec, Henderson, Goldsmith W. Hewitt, Holman, Hopkins, Hoskins, House, Hunphreys, Hunter, Jenks, Thomas L. Jones, Kimball, King, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Lord, Lewis, Lynde, Magoon, McFarland, Metcalfe, Milliken, Mills, Monroe, Morgan, Mutchler, Neal, Odell, Packer, John F. Philips, Piper, Poppleton, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Robbins, Sobrins, Sampson, Savage, Scales, Sheakley, Singleton, A. Herr Smith, Springer, Stanton, Stenger, Stevenson, Tarbox, Terry, Thompson, Tufts, Van Vorhes, John L. Vance, Robert B. Vance, Waldron, Warner, Erastus Wells, Whithorne, Wigginton, Willard, Andrew Williams, Charles G. Williams, Jere N. Williams, William B. Williams, Willis, Benjamin Wilson, James Wilson, and Yeates—126.

NOT VOTING—Messra, Abbott, Ainsworth, Anderson, Bass, Beebe, Belford, Bell, Blackburn, Blair, Bliss,

So the amendment was not concurred in.

During the roll-call, Mr. LAPHAM stated his colleague, Mr. Blackburn, was sick and unable to be in the House to-day.

Mr. LAPHAM stated that his colleague, Mr. Leavenworth, was detained at home by illness.

Mr. HANCOCK stated his colleague, Mr. THROCKMORTON, was ab-

sent on account of sickness.

Mr. EDEN moved the reading of the names be dispensed with;

which motion was agreed to.

The vote was then announced as above recorded.

The next amendment on which a separate vote was demanded was on page 28, line 667, to strike out "sixty" and insert "fifty;" so it will read:

For temporary clerks for the Treasury Department and the several Executive Departments, according to the exigencies of the public service, to be apportioned by the Secretary of the Treasury, \$50,000: Provided, That no part of this sum shall be paid to any officer or employe of the Government as additional compensation.

The amendment was concurred in.

The next amendment on which a separate vote was asked was on page 38, line 929, "mint at San Francisco," to strike out "fifty" and insert "seventy-five;" so it will read:

For wages of workmen and adjusters, \$275,000.

The House divided; and there were ayes 32, noes not counted. So the amendment was not concurred in.

The next amendment on which a separate vote was asked was read, as follows:

In line 931, under mint at San Francisco, California, strike out "75,000" and inert "\$100,000;" so that it will read:

For material and repairs, fuel, lights, chemicals, and other necessaries, \$100,000.

The question being taken, there were ayes 12, noes not counted. So the amendment was not concurred in.

The next amendment on which a separate vote was requested was the following:

At line 1092 strike out these words:

Terri ory of Washington:
For salaries of governor, chief-justice and two associate judges, at \$2,500 each; and secretary at \$1,800, \$11,800.

And insert in lieu thereof the following:
Territory of Washington:
For salary of governor, \$2,500; and for chief-justice and two associate judges, at \$3,000 each; and secretary at \$1,800, \$13,300.

The amendment was not concurred in.

The next amendment on which a separate vote was asked was an amendment to the paragraph making an appropriation for the assay office at Boisé City, Idaho Territory.

Mr. HOLMAN. I ask unanimous consent to substitute for the

amendment reported by the committee the following words:

Assay office at Boisé City, Idaho Territory:
For salary of assayer, who shall also perform the duties of melter, \$1,800; wages of workmen, fuel, chemicals, repairs, and other incidental expenses, \$1,300.

That will be satisfactory to the Committee on Appropriations. There was no objection, and the amendment of Mr. Holman was

Mr. HOLMAN. There was also an amendment increasing the salary of the Solicitor of the Treasury \$500, on which the right to a

separate vote was reserved. The Clerk read as follows:

In line 1761 strike out "\$4,000" and insert "\$4,500;" so that it will read: "For compensation of Solicitor of the Treasury, \$4,500."

The amendment was not concurred in.

Mr. HOLMAN. I ask that by unanimous consent where changes have been made in the amounts by the amendments which have been adopted the enrolling clerk be directed to make the corresponding changes in the footings.

There was no objection, and it was so ordered.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed

Mr. HOLMAN moved to reconsider the vote by which the bill was assed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# APPOINTMENT ON COMMITTEE.

The Chair desires to announce the appointment The SPEAKER. of Mr. Wilson, of West Virginia, as a member of the Committee on Commerce in place of Mr. Hereford, of West Virginia, who has ceased to be a member of this House.

# LEAVE OF ABSENCE.

Mr. TURNEY, by unanimous consent, obtained leave of absence for a few days on account of sickness.

# WITHDRAWAL OF PAPERS.

On motion of Mr. TARBOX, by unanimous consent, leave was given to withdraw from the files of the House the papers in the case of Julius S. Bohrer, a master in the Navy, accompanying report No. 4035, there being no adverse report thereon.

# ESTATE OF JACOB SENSENEY.

On motion of Mr. TERRY, by unanimous consent, the bill (8. No. 947) for the relief of the estate of Jacob Senseney, of Winchester, Virginia, was taken from the Speaker's table, read a first and second time, referred to the Committee of Claims, and ordered to be printed.

Mr. TERRY moved to reconsider the vote by which the bill was referred to the Committee of Claims; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## TAX ON NATIONAL BANKS.

Mr. HENDERSON, by unanimous consent, presented a petition of Hon. J. W. Gould and 180 others, citizens of Moline, Illinois, praying

for the repeal of laws imposing certain taxes on national banks; and the same was referred to the Committee of Ways and Means.

Mr. TOWNSEND, of New York, by unanimous consent, presented three several petitions of citizens of Troy, New York, praying for a reduction of taxes onnational banks; and the same were referred to the Committee of Ways and Means.

#### PRESIDIO RESERVATION.

On motion of Mr. HARDENBERGH, by unanimous consent, the reference of a communication from the Secretary of War, relative to the Presidio reservation in California, heretofore made to the Committee on Public Lands, was changed to the Committee on Military Affairs.

#### REPORT OF SUPERINTENDENT OF COAST SURVEY.

On motion of Mr. VANCE, of Ohio, by unanimous consent, the concurrent resolution of the Senate to print extra copies of the report of the Superintendent of the Coast Survey for 1876 was taken from the Speaker's table and referred to the Committee on Printing.

Mr. HOLMAN. I ask, by unanimous consent, that when a recess is taken this evening until ten o'clock on Monday it be understood that no business shall be transacted, but that a recess shall again be taken from that hour until ten minutes before twelve o'clock

taken from that hour until ten minutes before twelve o'clock.

Mr. CONGER. Why does the gentleman make that proposition?

I should like to have a reason for it.

Mr. HOLMAN. The committees are anxious to meet on Monday morning. That is the sole reason.

The SPEAKER. The gentleman from Indiana asks that it may be understood that when the House meets at ten o'clock on Monday a further recess be taken until ten minutes before twelve o'clock. Is

Mr. WILSON, of Iowa. The Chair will have to be taken formally at ten o'clock.

The SPEAKER. The object being as suggested by the gentleman from Indiana, to allow the committees an opportunity to meet on Monday morning. It is necessary for the House to meet at ten o'clock on Monday under the provisions of the law; and the gentleman from Indiana asks that it be understood by unanimous consent that there shall then be a further recess until ten minutes of twelve o'clock on the same day.

There was no objection, and it was so ordered.

And then, on motion of Mr. HOLMAN, (at five o'clock p. m.,) the House took a recess until Monday morning at ten o'clock.

The following petitions were presented at the Clerk's desk under the rule, and referred as stated:

the rule, and referred as stated:

By the SPEAKER: The petition of John George Sohrzer, for a pension, to the Committee on Invalid Pensions.

Also, the petition of William Moore, late colonel Seventy-third Regiment Pennsylvania Volunteers, for re-imbursement for the loss of a horse, to the Committee on War Claims.

By Mr. ABBOTT: The petition of national-bank officers and others, of Boston, Massachusetts, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

By Mr. ADAMS: Three petitions from citizens of New Market, Phænix, and Newburgh, New York, of similar import, to the Committee of Ways and Means.

By Mr. BAKER, of New York: Three petitions from citizens of Geneseo, Middleport, and Granville, New York, of similar import, to the same committee.

the same committee.

By Mr. GEORGE A. BAGLEY: The petition of 140 citizens of Brooklyn, New York, of similar import, to the same committee.

By Mr. BEEBE: Three petitions from citizens of New York, of similar import, to the same committee.

ilar import, to the same committee.

By Mr. BELL: The petition of Seneca A. Ladd and other citizens of Meredith, New Hampshire, of similar import, to the same com-

By Mr. CROUNSE: The petition of R. S. Norval and other citizens of Nebraska, of similar import, to the same committee.

By Mr. BURCHARD, of Illinois: The petition of A. A. Terrell and others, of Sterling, Illinois, that pensioners be allowed arrears of pension from the date of their discharge, to the Committee on Invalid

By Mr. CANDLER: The petition of citizens of Atlanta, Georgia, for the removal of the tax on banks, to the Committee of Ways and

By Mr. COX: The petition of Elmira H. Kain, of New York, for the removal of all her political disabilities, and that she be declared a citizen of the United States, clothed with the power to vote and hold office to the same extent as male citizens, to the Committee on the Judiciar

By Mr. CUTLER: Three petitions of citizens of the respective cities of Elizabeth, Somerville, and Camden, New Jersey, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. DE BOLT: The petition of T. J. Johnson, C. Crossen, and 170 other persons from the tenth congressional district of Missouri, of similar import, to the same committee.

By Mr. DOUGLAS: The petition of citizens of Virginia, for a post-route from Cappahosic to Gloucester, Virginia, to the Committee on the Post-Office and Post-Roads.

By Mr EAMES: The petition of John J. Reynolds and other citizens of Wickford, Rhode Island, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. FAULKNER: Two petitions, signed by J. C. Beeson and others of Marion County, and Edward Tearney, G. A. Porterfield, and others of Jefferson County, West Virginia, of similar import, to the same committee. same committee

By Mr. FOSTER: Five petitions from citizens of Troy, Cuyahoga Falls, Sandusky, and Conneaut, Ohio, of similar import, to the same committee.

By Mr. FLYE: The petition of W. W. Thomas and 20 others, of Portland, Maine, of similar import, to the same committee.

By Mr. FRYE: The petition of J. G. Pendleton and others, of Searsport, Maine, of similar import, to the Committee on Banking and Cur-

Also, the petition of citizens of Somerset, Maine, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HALE: Three petitions, signed by N. B. Nutt and 150 others, S. M. Smith and 73 others, C. J. Staples and 26 others, for an appropriation for establishing a light-house in Eastport Harbor, Maine, to the Committee on Appropriations.

By Mr. HAMILTON, of New Jersey: The petition of 79 citizens of

New Jersey, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. HATCHER: Four petitions, signed by citizens of Madison, Saint Genevieve, Cape Girardeau, and Randolph Counties, Missouri, of similar import, to the Committee on Banking and Currency.

By Mr. HAYMOND: The petition of citizens of Stark County, Indiana, for cheap telegraphy, to the Committee on the Post-Office and

Post-Roads.

By Mr. HENDEE: Two petitions, one from John L. Hanmond and 90 other citizens of Orrville, Vermont, the other from Parley Starr and 13 other officers of banks in Vermont, for the repeal of the banktax laws, to the Committee of Ways and Means.

By Mr. HOAR: The petition of Charles Curtis and others, of Taunton, Massachusetts, of similar import, to the Committee on Banking and Currency.

By Mr. HOGE: The petition of citizens of South Carolina, of simi-

lar import, to the same committee.

By Mr. HOUSE: The petition of A. G. Goodlett and other citizens of Montgomery County, Tennessee, of similar import, to the same committee.

Also, the petition of George Stacker and others, of Cumberland City, Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LORD: The petition of Clifton P. Sarvery, for a pension, to the Committee on Invalid Pensions.

Also, three petitions from citizens of New York, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. LAPHAM: The petition of citizens of New York, of similar import, to the same committee.

By Mr. MacDOUGALL: The petition of 57 citizens of Keeseville, New York, for the repeal of the bank-tax laws, to the same committee.

By Mr. McFARLAND: The petition of George D. McClister, as guardian for the minor heirs of Stephen D. Simmons, deceased, late a private in Company G, Fourth Tennessee Volunteer Cavalry, for a pension, to the Committee on Invalid Pensions.

Also, two petitions, one signed by A. L. Burem and 2° other citizens of Hawkins County, the other by C. Austin and 39 other citizens of Washington County, Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of M. Burns and others, bankers, of Tennessee, for the repeal of the bank-tax laws, to the Committee of Ways and

Means.

By Mr. MEADE: Two petitions, one from citizens of Castleton, the other from citizens of Canajoharie, New York, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

By Mr. MONROE: The petition of Frederick Hinkel, that his naturalization as a citizen of the United States may be annulled, to the Committee on Foreign Affairs.

Also, three petitions, signed by citizens of Wooster, Doylestown, and Wadsworth, Ohio, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

By Mr. O'BRIEN: The petition of Hamilton Easter and other citizens, of Baltimore, Maryland, of similar import, to the Committee of

Ways and Means

By Mr. ODELL: Two petitions, one from citizens of New York City, the other from citizens of Buffalo, New York, of similar import,

to the same committee.

By Mr. PHILIPS, of Missouri: The petition of citizens of Macon, Missouri, of similar import, to the same committee.

By Mr. PLATT: Three petitions from citizens of New York, of sim-

ilar import, to the same committee.

By Mr. RICE: Two petitions, one from A. Farrington and other citizens, of Shelby, Ohio, the other from R. M. Muncy, of Painesville, Ohio, of similar import, to the same committee.

By Mr. SEELYE: Four petitions from citizens of the cities of Westminster, Boston, and Lowell, Massachusetts, of similar import, to the same committee.

By Mr. SPRINGER: The petition of J. J. Hauslin and Stephen French, of Sangamon County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

on the Post-Office and Post-Roads.

By Mr. STANTON: The petition of citizens of Pennsylvania, that the subject-catalogue of the National Medical Library be printed, to the Committee on Printing.

By Mr. STONE: The petition of citizens of Missouri, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. STRAIT: The petition of citizens of Minnesota, for a postroute from Minnesota Falls, via Sorlein's Mills, Wood Lake, Railroad Grove, Curry's Crossing, to Marshal, Lyon County, Minnesota, to the Committee on the Post-Office and Post-Roads.

By Mr. TARBOX: Two petitions, one from citizens of Holyoke and other towns of Massachusetts, the other from citizens of Boston, Massachusetts, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

Ways and Means

Ways and Means.

By Mr. VANCE, of North Carolina: The petition of H. C. Metcalf and others, of North Carolina, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WALDRON: The petition of A. Sherman and 55 other citizens of Paw Paw, Michigan, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

Also, the petition of C. M. C. Andrews and 27 other citizens of Jerome, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WALLACE, of Pennsylvania: The petition of citizens of Washington and Beaver Counties, Pennsylvania, that pensioners receive arrears of pensions from the date of their discharge, to the Committee on Invalid Pensions.

By Mr. WARREN: The petition of F. A. Sanford and 45 other citizens of Connecticut, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Post-Office and Post-Roads.

By Mr. WELLS, of Mississippi: Two petitions from citizens of Mississippi, for the repeal of the bank-tax laws, to the Committee of Ways and Means

By Mr. WHITING: The petition of citizens of Canton, Illinois, of

similar import, to the same committee.

Also, the petition of 63 bankers and business men of Peoria, Illinois, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WILLARD: The petition of H. K. White and 42 other citizens of Lapeer, Michigan, of similar import, to the same committee.

By Mr. WILLIAMS, of New York: The petition of J. Lapham and others, of Glens Falis, New York, of similar import, to the same com-

By Mr. A. S. WILLIAMS: The petition of Daniel T. Wells, captain Eighth Infantry United States Army, that the Secretary of War be directed to change the record of the dates of his service as a first and second lieutenant, to the Committee on Military Affairs.

By Mr. WILSON, of West Virginia: Two petitions from citizens of West Virginia, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

## IN SENATE.

# Monday, February 5, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session. What is the pleasure of the Senate?

Mr. MORRILL. I move that we take a further recess until twelve

o'clock.

The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock.

The Senate re-assembled at twelve o'clock m.
Prayer by the Chaplain, Rev. Byron Sunderland, D. D.
The PRESIDENT pro tempore. The recess having expired, the Senate will come to order. The Secretary will read the Journal of Sat-

urday.

The Journal of the proceedings of Saturday, February 3, was read and approved.

## CREDENTIALS.

Mr. WRIGHT. I take pleasure in presenting to the Senate the credentials of my successor, Samuel J. Kirkwood, showing that he has been elected by the Legislature of Iowa a Senator from that State for six years from the 4th of March next. I ask that they be read. The credentials were read and ordered to be filed.

# PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial and resolution of the Legislature of Colorado, in favor of a grant of public lands and the right of way to the Golden, Georgetown and Central Railroad Company; which was referred to the Committee on Railroads.

Mr. SPENCER presented a joint resolution of the General Assembly of the State of Alabama, in favor of a grant of the public lands in

that State not heretofore disposed of, in aid of public schools; which was referred to the Committee on Public Lands.

He also presented a memorial of the General Assembly of the State of Alabama, in favor of an appropriation for the improvement of the Alabama River; which was referred to the Committee on Commerce.

He also presented a memorial of the General Assembly of the State of Alabama, in favor of so amending the revenue laws as to allow the distillation of spirits from fruits free from tax or duty; which was referred to the Committee on Finance.

He also presented a memorial of the General Assembly of the State He also presented a memorial of the General Assembly of the State of Alabama, in favor of an amendment of the homestead law of 1862, entitled "An act to secure homesteads to actual settlers on the public domain," so as to authorize the General Land-Office to issue patents on homestead entries upon certificate of such entries; which was referred to the Committee on Public Lands.

Mr. BOGY presented two petitions of citizens of Missouri, praying for an amendment of the pension laws, so as to allow arrearages of pension; which were ordered to lie on the table.

He also presented a patition of citizens of Missouri, praying for an amendment of the pension of the pension of the pension of the solution of the pension.

pension; which were ordered to lie on the table.

He also presented a petition of citizens of Missouri, praying for a repeal of the law imposing a tax upon the deposits, circulation, and capital of banks; which was referred to the Committee on Finance.

Mr. Allison. I present a memorial of the Board of Trade of Duduque, Iowa, remonstrating against the passage of House bill No. 3853, it being a proposition, as they believe, to interfere with the freedom of immigration to this country. I move that it be referred to the Committee on Commerce.

The protion was agreed to

The motion was agreed to.

Mr. ALLISON presented a petition of the officers of the Board of Trade of Dubuque, Iowa, praying for the repeal of the law imposing a tax on the deposits, circulation, and capital of banks; which was referred to the Committee on Finance.

Mr. CAMERON, of Pennsylvania, presented resolutions of the Board of Trade of the city of Philadelphia, protesting against the free importation of books from foreign countries; which were referred to the Committee on Finance

He also presented a petition of citizens of Pennsylvania, praying

He also presented a petition of citizens of Pennsylvania, praying that the pension laws may be so amended as to allow arrearages of pensions; which was ordered to lie on the table.

Mr. HAMLIN presented a letter from the general superintendent of the railway mail service, addressed to the chairman of the Committee on Post-Offices and Post-Roads of the Senate, in relation to the needs of the postal railway service; which was ordered to be printed.

Mr. OGLESBY presented a memorial of the Chicago Board of Trade, in favor of the repeal of the law imposing a tax on the denosits, circulation, and capital of banks; which was referred to the

posits, circulation, and capital of banks; which was referred to the

Committee on Finance.

He also presented the petition of Solomon Morris, late sergeant of Company A, Thirty-eighth Regiment Illinois Volunteers, praying for

company A, Intry-eighta Regiment Illinois Volunteers, praying for the passage of a law authorizing him to be mustered and paid as second lieutenant for the time he was held as a prisoner during the late war; which was referred to the Committee on Military Affairs. He also presented the petition of D. Wilson, W. L. Halburt, and others, citizens of Illinois, praying for the prohibition of the manufacture, importation, and sale of all intoxicating beverages in the District of Columbia and the Territories; which was ordered to lie on the table.

## REPORTS OF COMMITTEES.

Mr. MERRIMON, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1179) providing for the care and punishment of vagrants, drunkards, idlers, and for other purposes, reported adversely thereon, and the bill was postponed indefinitely.

# REPORT OF DISTRICT BOARD OF HEALTH.

Mr. ANTHONY. I am instructed by the Committee on Printing, to whom was referred a resolution of the House of Representatives to print 1,000 extra copies of the report of the board of health for the District of Columbia, to report it without amendment and recommend its passage. I ask for its present consideration.

The resolution was considered by unanimous consent, and agreed

to, as follows:

Resolved by the House of Representatives, (the Senate concurring.) That 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for use and distribution by said board.

Mr. ANTHONY. A similar resolution was passed by the Senate and sent to the House. I move that a message be sent to the House recalling the Senate resolution.

The motion was agreed to.

### ELECTIVE FRANCHISE IN FLORIDA.

Mr. COOPER. The majority of the Committee on Privileges and Elections, who were instructed by a resolution of the Senate of the 5th of December last to inquire into and report upon the extent of aloth of December last to inquire into and report upon the extent of alleged denial of or abridgment of rights of citizens in certain Southern States to vote for electors of President and Vice-President, members of Congress, and State officers, have submitted their report. I now desire to present the views of the minority and ask that they may be printed in connection with the report of the majority.

The PRESIDENT pro tempore. Is there objection to printing the views of the minority in connection with the majority report? The Chair hears none, and it is so ordered.

#### GOVERNMENT PRINTING OFFICE.

Mr. WINDOM. I am instructed by the Committee on Appropria tions, who were directed by a resolution of the Senate to report a bill making appropriation for the support of the Government Printing Office, to report a bill, and I ask for its present consideration.

The bill (S. No. 1222) to provide for a deficiency in the appropria-

tion for the public printing and binding for the current fiscal year

was read twice by its title.

Mr. WINDOM. I ask a moment to make an explanation before the question is put upon proceeding to the consideration of the bill. On Saturday, at the instance of the Senator from Rhode Island, [Mr. ANTHONY,] a resolution was referred to the Committee on Appropriations instructing them to report a bill supplying a deficiency for the public printing. The reason the committee instruct me to ask action to-day is that there is no money now provided for doing any of the congressional printing, except the CONGRESSIONAL RECORD, and, unless the money be appropriated to-day, the printing will probably cease to-morrow, as the law prohibits the Public Printer from incurring any obligations or making any expenditures beyond the appropriation; and hence it is of the utmost importance that action be taken to-day.

By unanimous consent, the Senate, as in Committee of the Whole By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It appropriates the sum of \$350,000 to supply deficiencies for congressional printing and binding (including the Congressional Record) and the necessary materials therefor for the current fiscal year, and of this amount \$5,000 may be used for printing and binding for the Supreme Court.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

DISTRICT POLICE COMMISSIONERS-VETO.

Mr. INGALLS. The bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia passed both Houses and was returned to the House of Representatives, in which it originated, with the objections of the President. Upon reaching the Senate the bill and the message were referred to the Committee on the District of Columbia for considera-tion, and I am directed by that committee to report the bill back to the Senate, with the recommendation that it pass, notwithstanding the objections of the President. It is proper that I should say in this connection that the subject is one of very considerable importance and requires, in my judgment, careful consideration. It is a matter that should receive immediate attention, for reasons that are obvious and need not be stated by me to the Senate. I shall feel it my duty, whenever the Senate shall be sufficiently full to give the subject that consideration which I believe it merits, to ask the consideration of the Senate to the subject and submit to them whether the bill shall pass over the veto or not. There are so few Senators present this morning that I feel that it would be hardly just to the importance of the sub-There are so few Senators present this morning ject to ask immediate action.

### BILLS INTRODUCED.

Mr. BOGY (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1223) to amend title 57, section 4738,

of the Revised Statutes relating to pensions; which was read twice by its title and referred to the Committee on Pensions.

He also (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1224) to provide for ascertaining and settling private land claims in certain States and Territories; which was read twice by its title and referred to the Committee on Private Land Claims.

## PERSONAL EXPLANATION-LOUISIANA AFFAIRS.

Mr. WEST. Mr. President, I avail myself of this opportunity to make an explanation in connection with proceedings in Louisiana in regard to the election of President that I was not permitted to make

regard to the election of President that I was not permitted to make before a committee of the House of Representatives on Saturday.

Sometime during the course of last week I became cognizant, through the public press, that the investigations of the Committee on the Judiciary of the House of Representatives had elicited the fact that a letter, addressed to myself, from the president of the returning board of Louisiana, dated back in November last, had been suppressed; and it appearing also from the developments that the committee were very anxious to obtain possession of that letter and become possessed of its contents, I could only await such further developments as might occur.

On Saturday last, when I was informed that the committee was in possession of that letter, without even waiting for a subprepa from

"On Saturday last, when I was informed that the committee was in possession of that letter, without even waiting for a subpœna from them or any request whatever, I attended at their session. Had I seen proper to do so I could have availed myself of my prerogative as a Senator and declined to obey any subpœna from that committee until so ordered by the Senate. Furthermore, I could have declined to disclose the contents of that letter until so ordered by the Senate. But desiring to further the ends of public justice and desiring also that whatever information I might have or might control in connection with the alectoral vote of Louisians should be placed before the tion with the electoral vote of Louisiana should be placed before the public, I attended at once, and at the solicitation of that committee I opened that letter and read it. I did so for the further reason that I do not hold, nor do I intend to hold, any clandestine correspondence on the subject of manipulating electoral votes. After going to that

length to enable that committee to discharge their duty and to obtain information, the scant courtesy was denied me of making a statement which I desired should go to the public at the same time. I now avail myself of the privilege of a member of this body to make

that statement.

About the time that letter should have been delivered to me-and About the time that letter should have been delivered to me—and I take no exception to its non-delivery I am sure—I was apprised by the Secretary of War that a man by the name of Maddox was here in this city professing to trade off the returning board of the State of Louisiana. I asked the Secretary of War what the man wanted and what he had disclosed. The Secretary replied that this man professed to have come here to be paid for the returning board of Louisiana a consideration for rendering the vote of that State. I said it was impossible, he expressing at the same time great surprise. I added "If such is the case I will telegraph to-day to New Orleans and ask for some explanation of it." So the moment I learned that anybody was professing to be here negotiating for such a purpose I took steps to ascertain his authority. Not having any cipher telegram with the president of that board, whom I had not had the pleasure of seeing for over six months preceding his action, I telegraphed to a friend ing for over six months preceding his action, I telegraphed to a friend in New Orleans in cipher to this effect—and the reason I cannot give the telegram is because to-day it is in the possession of the House of Representatives; but my memory is tolerably good, because the facts were very forcibly impressed upon my mind at the time. I telegraphed to this effect:

Tell Governor Wells that a man by the name of Maddox is here professing to be authorized to speak for him and for the returning board of Louisiana. What does this mean?

And the answer came immediately as quick as the wire could bring

Governor Wells says Mr. Maddox has no such authority.

So, Mr. President, I desire now to make the statement that I was denied by a committee of the House of Representatives the privilege of making, that, as soon as I learned that any such peddler was here, I took the opportunity to sift his authority and his credentials to the bottom. I make that statement in justice to Governor Wells and in justice to myself, and I thank the Senate for allowing me the opportunity to do so.

Mr. SHERMAN. I should like to ask my friend from Louisiana if

the committee were aware of the facts that are now disclosed as being

within his knowledge?

Mr. WEST. I could not tell; but my language to the chairman of that committee was that I had done him and them the courtesy to come there and give them that information, and they had used me up to the point that suited their purposes, but they denied me the opportunity of giving a statement that did not suit their purposes.

Mr. SHERMAN. Did you communicate to any member of the committee the substance of what you have here stated?

Mr. WEST. I had no opportunity to do so; I was crowded down.
Mr. BOGY. I will ask the Senator if this man Maddox was unauthorized to make this negotiation, how does the Senator explain the letter from Governor Wells, which appears to be a genuine letter? I do not implicate the Senator in that thing, because it was never delivered to him; but how can that letter be explained? That does show there was some authority given to Mr. Maddox to do that very

thing.

Mr. WEST. Then I understand the Senator to ask me for my construction of the language of that letter?

Mr. SHERMAN. Yes, give it.

Mr. WEST. I am glad of the opportunity, for, as I said, it spoke of Wells all the way through. The first part of that letter as I read it refers to my personal matters with Governor Wells. I presume that Senators know that I had some ambition to be my own successor in this leady and I think Governor Wells, who was my supporter and friend, body, and I think Governor Wells, who was my supporter and friend, had reference to what possibly my rivals were doing in connection with that position. But where he speaks of millions being sent there to be used in the interest of Tilden, or millions against the republican party—I beg pardon for using the expression—I think he uses it in a figurative sense, somewhat as Colonel Sellers did; but we will take the amount of millions out of this and I suppose it implies that there was a "barrel of money" there, that the intelligence, and the wealth, and the influence of the democratic party of Louisiana and of the nation is there centered to sustain their cause, and that the returning board are comparatively alone and helpless; that they need aid; that they need counsel. In other words, it is an intimation that where money is spent honestly on one side it may be spent honestly on the other. If any other construction was intended by Governor Wells, if any other intimation was intended by him, I cannot see that it can be inferred from that language. That is all I know about it. I never saw the letter before.

Furthermore, I will say that about Christmas I saw Governor Wells, and evidently the letter must have been of very little consequence in his mind, for he never alluded to it at all; he never asked me if I got it or what I did about it. Of course I was anxious that the pubhe should see the contents of that letter, because I would not rest for a moment under any suspicion of trafficking or peddling in the elect-

Mr. DAVIS. Will the Senator be kind enough to allow me to ask him whether he knows that Maddox, who was the bearer of the letter, was a Government officer and if he was sent down to New Orleans for any special purpose as a Government officer? I ask whether the has any knowledge upon that subject?

Mr. WEST. At the time in question, November last, it was represented to me that this man Maddox was a Government agent, but, on inquiry, I could not substantiate that fact. I inquired at the Treasury Department, but it appears I did not go to the proper bureau; there being so many of them there, I went to the wrong one. I heard that he was an agent of the Government and I went to the Department to inquire if such was the fact, and I could not ascer-

Mr. DAVIS. The Senator did not think of answering a part of my question, which was whether he knew of this man's mission to New Orleans and his subsequent return to Washington

Mr. WEST. Mr. President, I never heard of Maddox until January 1, except just in the way I mentioned, that he was here trying to peddle off the vote of Louisiana. At the same time I heard he was a Treasury agent, and I made inquiry, but could not substantiate that fact. That is all I know about it and that is quite enough.

#### RECUSANT WITNESS-J. F. LITTLEFIELD.

Mr. HOWE. I wish to occupy the attention of the Senate for a moment on a question of privilege. On Saturday last the subcommittee of the Committee on Privileges and Elections, which was instructed to make inquiry touching the recent election in Louisiana, had before it, under subpœna, a witness by the name of J. F. Littlefield. At some time between four and five o'clock-I do not remember the exact time—the witness was dismissed from the stand and the committee adjourned to meet at ten o'clock this morning, saying to the witness that they would probably want to ask some more questions of him at that time. The witness complained of fatigue at the time of the adjournment. This morning the committee met. The witness of the adjournment. This morning the committee met. The witness did not appear. We waited for his appearance sometime. I think between eleven and twelve the assistant sergeant-at-arms of the Senate met him on his way to some committee-room of the House of Representatives and reminded him that the committee was waiting for him here. He replied that he did not know that we were expecting him; that the committee said only that they might want to put to him some more questions. He was told that the committee wanted to put more questions and were waiting for him. He did not come. Some one, I believe, acting for the Sergeant-at-Arms of the House, was in company with him and said that he was expected to be before a committee of the House of Representatives. Another witness was then on the stand, as we were informed by our assistant sergeant-atarms, and therefore there did not seem to be any occasion for his delaying to appear before our committee. Upon being notified of this interview by our assistant sergeant-at-arms, we directed him to go for Mr. Littlefield, and if he were not on the stand to request again that he would appear and conclude his testimony before our commit-tee. The assistant sergeant-at-arms of the Senate went for him, he says searched for him, went to the committee-room, and went through the other rooms of the House of Representatives, and was not able to find him. It seems to me pretty clearly that he is evading or attempting to evade the committee, and I send to the Chair a resolution which I should like to have adopted.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The Senator from Wisconsin offers a resolution, which will be read.

The Chief Clerk read as follows:

Resolved, That the President of the Senate issue his warrant directed to the Sergeant-at-Arms of the Senate commanding him forthwith to arrest and bring to the bar of the Senate the body of J. F. Littlefield, to show cause why he should not be punished for contempt, and in the mean time to keep the said Littlefield in his custody to await the further order of the Senate.

The PRESIDING OFFICER. Does the Senator ask for the present

onsideration of the resolution?

Mr. HOWE. I do.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution? The Chair hears no objection, and

the resolution is before the Senate.

I do not know that I have any objection to the reso-Mr. DAVIS. lution; I do not know that I ought to have any objection; but I would suggest to the Senator who offers it whether it would not be better to delay action just now. It may be that the man was taken sick, especially if he had been complaining of not being well; and he may be detained by some other cause. Therefore I suggest, before probe detained by some other cause. Therefore I suggest, before proceeding to some summary means, whether it would not be better to know the fact a little more definitely that his intention was to evade an appearance before the committee.

Mr. CLAYTON. It is usual to be prompt in such cases.

Mr. DAVIS. I understand that it is very usual to hurry up such a matter, but I, however, submit to the Senate whether this action may not be too summary. I do not want to be understood as objecting to the passage of the resolution. I rise for the purpose of asking the Senator who submitted the resolution to know whether he is satisfied in his own mind that the witness had actually attempted to evade the summons to appear before the committee of the Senate, and to suggest whether or not in his own mind he thought it actually necessary to pass this resolution now. I make no objection, however; but I submit to the Senator himself that it is rather a summary proceeding. I believe it is something that has not occurred probably

since I have been in the Senate that a witness for not attending a particular session of a committee has been arrested and brought to

the bar of the Senate.

Mr. HOWE. The Senator probably did not attend to the statement I made, that we were informed by the assistant sergeant-atarms of the Senate that he had notified Littlefield himself, then bearms of the Senate that he had nothed Littleheld himself, then being in the Capitol, that our committee was waiting for his appearance, and the excuse urged for his not coming was that he was wanted before a committee of the House. We then sent back to see if he was being used by the committee of the House and to ask him again, if he was not required there or being used there, to appear before our committee; and when we sent back for him we could not find him. So it seemed very evident that if we sent this same officer for him again, having so much difficulty in finding him this time, he should be prepared with papers which would secure his attendance when he did find him again. I think there was no difference of opinion among the members of the subcommittee as to the propriety

opinion among the memoers of the succommittee as to the propriety of asking for this process.

Mr. DAVIS. I understood the Senator in the beginning of his remarks to say that on Saturday when the witness was before the committee he complained of being unwell.

Mr. WADLEIGH. Fatigued.

Mr. HOWE. Yes, sir.
Mr. DAVIS. As I said, I do not mean to object to the passage of the resolution; but unless it is positively ascertained and known to the committee that there was an attempt on the part of the witness to evade the committee, I think the resolution is probably too sum-

Mr. HOWE. We supposed that we were quite safe in the conclusion that his attendance was not prevented by ill health from the fact that he was in the Capitol this morning.

Mr. MERRIMON. I do not rise to object to bringing this witness before the committee or subcommittee, nor to any proper proceeding to that end. I think there ought to be a proceeding, but it ought to be in proper order. It is no light matter to arrest a man by a capias. The statement of the Senator from Wisconsin shows that what is laid as the groundwork for this order did not come under the personal observation of the committee at all. The assistant sergeant-at-arms goes out about his office. He sees a witness and makes a statement of facts to him. He does not take him before the commit-tee at that time. He is sent back again and does not find him. He goes and makes a report to the committee, but it does not appear that the report was under oath or that he made any official report. There-upon the committee comes into the Senate and reports that fact and asks that a capias issue against the witness. I submit to the honorable Senator from Wisconsin whether it is according to the practice of the Senate, for he has very large experience here, to order a capias to issue upon a simple representation of that sort unsustained affidavit. If a witness were misbehaving before a committee, if he refused to answer, and the committee had official notice of the facts and should report those facts, I think then the order might issue. Where the committee has not official notice, where the act did not take place before the committee but is a mere report of a subordinate, the informal report of a subordinate, I think that a capias ought not to issue unless there is some affidavit to sustain a resolution such as

Mr. HOWE. The honorable Senator from North Carolina I think did not attend to the statement that this witness was actually before the committee on Saturday last, left our presence only when the committee committee on Saturday last, left our presence only when the committee adjourned, and neglects to appear to-day. In addition to that fact is the special notice which a sworn officer of the Senate says he gave the witness within the Capitol this morning. It was his duty I apprehend to appear before the committee this morning, if he had

I appear to appear before the committee this morning, it he had no other notice in the world.

Mr. MERRIMON. There is no doubt of that; but suppose he is sick? Suppose some accident has interposed which makes it absolutely impossible for him to get before the committee? It is true we have a statement that there is reason to believe that he is evading the committee, but I submit whether upon that mere naked statement the Senate has power to issue a capias to arrest the witness. In an ordinary court of justice, where it is desired to put a witness in contempt under such circumstances as this, I think there can be no doubt that an affidavit would be required. I merely meant to suggest to the honorable Senator from Wisconsin that it is no light matter to arrest a man under a capias, and that there ought to be either the solemn report of a committee having personal cognizance of the facts upon which the motion for a capias is asked, or if the facts are not within the knowledge of the committee they ought to appear by affi-

Mr. HOWE. Certain facts are within the knowledge of the committee; and they are, that the witness was before the committee on Saturday last, was not discharged, and does not appear to-day. The other facts we only know through the statement of a sworn officer of the Senate. The Senator suggests again that he may have failed to appear through sickness. That is possible, in spite of the information to the contrary which comes to us; but if he had been so sick that he could not discharge his duty, it is very likely he could have communicated that fact to the committee, which he has not done. I believe that the practice which I have followed here is the practice of the Senate, and was practiced here but a few weeks since on a

motion made by the chairman of the Committee on Privileges and Elections.

The resolution was agreed to.

# WITHDRAWAL OF PAPERS.

I am requested to ask leave to have an order Mr. MERRIMON. made to withdraw the papers in the case of William J. Anderson which are on file. The bill (S. No. 393) for the relief of William J. Anderson is on the Calendar with an adverse report of the committee. The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) That

order will be made if there be no objection, of course upon leaving copies under the rule.

#### FORT DALLES MILITARY RESERVATION.

Mr. KELLY. When the morning hour expired on Saturday, the Senate had under consideration Senate bill 1001. I ask that the consideration of it may be resumed, as I know it can be disposed of in a very few minutes. I move that the Senate proceed to its considera-

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1001) to provide for the disposition of Fort Dalles military reservation, the question being on the motion of Mr. INGALLS to refer the bill to the Committee on Public Lands.

Mr. INGALLS. With the consent of the Senate, after examination of this matter, I do not care to press the motion further; and, if there is no objection, I will withdraw the motion.

The PRESIDING OFFICER, (Mr. Anthony in the Chair.) The motion is within the power of the Senator. It is withdrawn. The question recurs on the amendment reported by the committee, to strike out all after the enacting clause and insert the substitute which has been read.

The amendment was agreed to.

Mr. CHAFFEE. I move to add at the end of the second section of
the substitute which has been agreed to the following proviso:

Provided, That any bona fide settlers on any part of said reservation shall have the prior right to purchase so much of said land as is occupied by him or them, at the appraised value thereof.

Mr. KELLY. I have no objection to the amendment; but I think the quantity should be limited that any one may have a right to purchase. I will say here that when the military forces abandoned the reservation there was a sergeant placed in possession of the buildings, Mr. Jacob Fritz. He has been living there a number of years, and has had a little portion of that reservation in his occupancy, which he has always been desirous of purchasing. He refers, in several letters that he has written to me, to his military service; and I know he is an estimable gentleman and has served the Government well. He has been living there in that capacity, as I have stated—a mere custodian of the buildings. He is the only settler on the reservation proper. I think that it would be right that he should have the privilege of purchasing a small quantity of this land at the appraisement that may be made, and I shall make no objection to the amendment although I think it ought to be limited to twenty acres. Mr. CLAYTON. Mr. President—

Mr. WRIGHT. I wish to inquire of the Senator from Oregon whether there are any bona fide settlers on this reservation now? chase. I will say here that when the military forces abandoned the

Mr. WRIGHT. I wish to inquire of the Senator from Oregon whether there are any bona fide settlers on this reservation now † Mr. CLAYTON. That is the question I was going to ask. Mr. KELLY. As I stated a moment ago, there is only one settler on it, and he is Jacob Fritz, a sergeant left by the military forces there in custody of the buildings when the troops were moved away. He is there looking after this property and seeing that the buildings are cared for. Mr. CLAYTON.

Mr. CLAYTON. What is he now, a sergeant still?

Mr. KELLY. No, I think not. I think he is not in the military service. I think he has been discharged; but he is still the custodian

of the buildings.

Mr. CLAYTON. Is he paid by the Government?

Mr. KELLY. I think so. I do not know whether he is paid any

Mr. WRIGHT. I suppose it is true that he is either in actual occu

Mr. WRIGHT. I suppose it is true that he is either in actual occupancy of these premises or he is not. He is the only actual bona fide settler there on the reservation, I understand.

Mr. KELLY. He is the only one on it.

Mr. WRIGHT. Therefore, if he is the only bona fide settler on that land, if any one is entitled to entry at all, he is the only man.

Mr. KELLY. He is the only one.

Mr. WRIGHT. I suggest to my friend that either this man can take the whole land or else there are no settlers that can take the land after this bill is passed, and we do not want to hold out an invitation for persons to go on the land.

Mr. KELLY. That is the reason I suggest that the quantity should be limited to a certain number of acres. How much he has culti-

be limited to a certain number of acres. How much he has cultivated, I do not know. He has a garden spot there. He asks in a letter that I have before me for forty acres of the land.

Mr. CHAFFEE. I should like to ask the Senator a question. understood, in the discussion of this bill on Saturday, that a portion of this reservation was occupied in town lots; and that is the reason why I proposed the amendment. If there are persons occupying any portion of this land in town lots on which lots they have buildings, it occurred to me that they ought to have a prior right to purchase

the property at the appraised value. If there are no town lots on it I shall withdraw my amendment.

Mr. KELLY. The honorable Senator from Colorado is laboring

under a slight mistake. That portion which is laid off in town lots was included in the former reservation established by Major Rains in 1855. In 1859 the reservation was curtailed and limited by order of Brigadier General Harney, who was then in command of that military district. The portion that lies between the old reservation and the new was laid off into town lots; indeed, it was thrown off at the request of the citizens there, for the purpose of establishing a town. of the citizens there, for the purpose of establishing a town. They wished it, and their request was so reasonable and just that it was done. That portion has, as I stated on Saturday, been laid off in town lots, and it was appropriated as such immediately after the boundaries of the reservation were curtailed. As I said on Saturday, it is the desire of the people there to have that portion lying between the old and the new reservation disposed of under section 4; that is, by the town-site law of the United States, which was established in 1864. I refer the Senate to the Revised Statutes, section 2382, in which it is provided that these lots shall be disposed of in a manner similar to the disposition of the public lands under the pre-emption laws; and there is this proviso at the end of the section:

Provided. That any actual settler upon any one lot, as aforesaid, and upon any additional lot in which he may have substantial improvements, shall be entitled to prove up and purchase the same as a pre-emption, at said minimum, at any day before the day fixed for the public sale.

The minimum under the town-site law is \$10 for a lot, that is, a lot containing a certain number of feet stated in the law in another section, I believe. The property is limited for which the pre-emptor can acquire title by paying \$10. So far as this portion lying between the old and the new reservation is concerned, it is not necessary that the amendment should be adopted. The amendment of the Senator from Colorado applies to settlers on the actual military reservation and it would embrace the claim made by this gentleman, Jacob Fritz, which I think ought to be allowed.

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Provided. That any bona fide settler on any part of said reservation shall have the prior right to purchase so much of said lands as is occupied by him or them, not exceeding twenty acres, at the appraised value thereof.

Mr. COCKRELL. I hope that amendment will not be adopted. That matter was not passed upon by the Committee on Military Affairs. I do not think it would be right to give that privilege to persons who may have gone there in violation of law and squatted upon that land. It would be giving them a reward for their violation and

sons who may have gone there in violation or law and squatted upon that land. It would be giving them a reward for their violation and infringement of the law.

Mr. CHAFFEE. It seems to me that, if a settler has gone on that land and built houses or made any other improvements, he ought to have a prior right to purchase the land at the appraised value, in preference to any outsider or any other bidder coming in to bid the land off, who would take the improvements for nothing.

Mr. COCKRELL. The point I make, the Senator will understand, is that no one has a right to go there and make improvements. They are trespassers upon that land. The Senator from Oregon says there is only one man there upon the reservation. As to that portion of a former reservation which was left out in the Harney reservation and which is proposed to be divided into town lots and sold in that way, I have no objection to that provision applying if they have settled there; but in regard to the Harney reservation, which has been held by the Government and to keep possession of which in the name of the Government they have placed this solitary individual there in possession of the building, I do not think it is right to let squatters have any rights there at all. It is simply encouraging a man to go on a military reservation and make his home there without any lawful right, in the loope, in the event that the military reservation shall be turned over as public land and sold, that he shall have a prior right to any one else. If the amendment were made applicable to the other portion of the land. I should have no objection to I. If that right to any one else. If the amendment were made applicable to the other portion of the land, I should have no objection to it. If that is not done, as the member of the committee reporting the bill I must insist that the bill as reported shall be agreed to or else I shall move its recommittal.

Mr. CHAFFEE. The principle of my amendment applies to the

whole reservation.

Mr. CLAYTON. The town-site law applies to the other portion of the reservation, and the town-site law does give that privilege to the settlers.

Mr. COCKRELL. Certainly.
Mr. CLAYTON. So that it is unnecessary to make the amendment apply to the whole reservation.
The PRESIDING OFFICER. Does the Chair understand the Sena-

Mr. COCKRELL. I say that if this amendment is adopted I shall move that the bill be recommitted? Affairs.

The PRESIDING OFFICER. This is an amendment to the amendment of the committee. The amendment of the committee has been adopted. The amendment, therefore, is not in order without reconsidering the vote by which the amendment was adopted.

Mr. COCKRELL. Then I hope the motion to reconsider the vote by which the amendment was adopted will not be agreed to.

Mr. KELLY. I think the Senator from Missouri is laboring under a slight mistake. The amendment of the committee was adopted and now it is proposed to amend that amendment by the Senator from Colorado so as to allow settlers upon the reservation to purchase the land at the appraised value. I will state, if the Senator from Missouri will give me his attention for a moment, that there is but one

Missouri will give me his attention for a moment, that there is but one settler, as I said, upon the reservation, if you may call a person a settler who was placed there as the custodian of the buildings by the military authorities when they left. This gentleman, Mr. Fritz, is the only person on the reservation, and if the amendment should be adopted it would apply only to him.

Mr. CLAYTON. And to nobody else?

Mr. KELLY. And to nobody else. As I said before, I rather think he has some equitable right and I shall vote for the amendment, simply because I think a man who has staid there many years looking after the buildings of the Government ought to have the right to purchase the small portion which he has cultivated as a garden. That is all there is of it. I would have even that limited to twenty acres, and that is, as I understand, what is proposed by the Senator from Colorado. If his amendment should be adopted by the Senate, it would apply only to one solitary individual who went there by permission of the Government or by permission of the military authorities, and who has had these buildings in custody.

Mr. COCKRELL. Mr. President, that question was not investigated by the Committee on Military Affairs. The Senator from Oregon says that this man was a soldier and placed there by the military authorities, and has continued since. If he has been performing services for the Government he has been pead for those services doubtless, and doubtless, he has been receiving annual compensation. Now, if the

for the Government he has been paid for those services doubtless, and doubtless he has been receiving annual compensation. Now, if the Senator from Oregon desires this amendment to the bill I must insist Senator from Oregon desires this amendment to the bill I must insist that the whole bill be recommitted to the Committee on Military Affairs. As the bill now stands it has been submitted to the Secretary of War, submitted to the Secretary of the Interior, and it has their sanction; and I cannot consent that amendments be put upon the bill which may change the whole theory of it. I admit that there was but one man upon the tract at the time the Senator received the letter from this individual; there may be fifty squatters upon it before the bill will take effect, and every one of them will claim to be a bona fide settler. It would not be just then to make this provision. If you desire to make provision for this man who has had charge of the improvements there, let a special bill be introduced for his benefit, and let his claims be considered and acted upon by the appropriate committee.

The PRESIDING OFFICER. The hour of one o'clock having arrived, it becomes the duty of the Chair to call up the special order, which is the unfinished business of yesterday, Senate bill No. 984,

the Pacific Railroad bill.

[A message was received from the President of the United States,

by Mr. U. S. Grant, jr., his Secretary.]
Mr. CHAFFEE. If the Senate does not care to protect the rights of the settlers, I will withdraw my amendment and let the bill pass. I do not want to jeopardize the bill, and I withdraw the amendment. The PRESIDING OFFICER. The amendment of the Senator from

Colorado is withdrawn.

Mr. KELLY. I ask that the bill be put on its passage. As the amendment has been withdrawn I suppose there will be no objection

Mr. WRIGHT. I have no objection if the vote can be taken at once; but if it is to take any time I insist on the regular order.

Mr. KELLY. It will take no time.
Mr. INGALLS. I want to call the attention of the Senator from
Oregon to a verbal correction that should be made in lines 8 and 9
of the third section of the bill. The words "and so forth" occur

Mr. COCKRELL. These words can be stricken out. It is a mis-

take in the print.

Mr. INGALLS. It is very slouchy and slipshod.

Mr. COCKRELL. Every bill that is presented has some mistake

Mr. INGALLS. It could not be a mistake of the Military Commit-

The PRESIDING OFFICER. That amendment will be made. The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

### PACIFIC RAILROAD ACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1834, in amendment of said first-named act.

Mr. WRIGHT. The Senator from Georgia [Mr. Gordon] is desirous of addressing the Senate upon this bill. He was in the Senate

Chamber this morning, but was so indisposed that he preferred to wait until to-morrow. I believe there are other Senators who propose to discuss the bill. The understanding is on the part of the Senator

from Louisiana [Mr. West] and myself that there shall be no vote pressed to-day, but that the bill being before the Senate if any Senator desires to proceed in the discussion of it he can do so, and the discussion will continue to-day, but no vote shall be taken until to-

Mr. WEST. Do I understand my friend from Iowa that if nobody

Mr. WEST. Do I understand my friend from Iowa that if nobody is prepared to address the Senate to-day then the bill goes over?

Mr. WRIGHT. As I think, that was the understanding.

Mr. PADDOCK. Do I understand the Senator from Iowa to give notice that the bill will be pressed to a vote to-morrow?

Mr. WRIGHT. Not at all. I do not wish to be understood that way; but no vote will be taken until to-morrow. Whether a vote will be pressed to-morrow will depend upon circumstances.

Mr. CHRISTIANCY. Mr. President, I do not propose to go into the argument upon all the various questions presented by these bills, but

argument upon all the various questions presented by these bills, but shall confine myself chiefly to the main legal or constitutional objec-tions made against the bill reported by the Judiciary Committee, and call attention to some imperfections in that reported by the

Railroad Committee.

The main argument thus far presented to the bill from the Judiciary Committee is that it proposes to amend the contract made with the companies by the act of 1864. It is asserted with great earnestness and apparent confidence that that act, together with the act of 1862, constituting a contract between the Government and the railroad companies, are not, under the general and unqualified reservation of power in the act of 1864, so far amendable by Congress as to affect or modify any of the terms of that contract. If this be so, in what particular, let me ask, is the act amendable or repealable under the express power given without any express restrictions to amend or repeal? If the act constitutes a contract, every part of it constitutes a part of that contract, and does not the argument urged against the power to amend or repeal any part of the contract, if it be sound, take away all power to amend or repeal any part of the act and render the provision giving the power of amendment and repeal wholly nugatory, ineffectual, and absurd?

If it be claimed that some effect may still be given to the provision granting this power, by allowing such amendments as may release or lessen an obligation of the companies to the Government, but not such as would increase such obligation or impose a new one, then I The main argument thus far presented to the bill from the Judi-

such as would increase such obligation or impose a new one, then I would suggest whether so much at least could not have been done without the express reservation of this power, as well as with it; and whether, in either view, this argument does not completely nullify

the power expressly given.

I am aware of no judicial decision which goes to the extent of holding this power of amendment and repeal so absolutely nugatory. On the contrary, there will be found a long list of cases in the several States and in the Federal courts which hold that this reservation of power, when general, as in the present case under the act of 1864 is good and effectual. I have not the time here to enter into an examination or citation of them, but they go to the full extent of holding that under this power amendments may be made which materially affect the contract, and not only so, but that the charter of a corpora-tion may under such a power be repealed as to the future, but of course not as to the past, so as to affect property obtained or vested or the rights of third parties already accrued. The decisions cited by the Senator from Ohio [Mr. Thurman] sufficiently show this, es-pecially that of Tomlinson rs. Jessup, 15 Wallace, (see Judiciary report, page 5.)

It is true that several dicta and one or two State decisions may be

found tending to show that this power of amendment does not extend to the alteration of an express provision of a charter and to the prejudice of the corporation; but no such arbitrary limitation of the general power, when expressly given, can be sustained upon principle; and the general current of authority sustains the princi-

principle; and the general current of authority sustains the principle for which I contend.

Much is said of vested rights. The first pertinent question is what species of right it is which is vested here. Whether it is absolute or conditional. Now, whatever privileges or powers these companies obtained under the act of 1864, at least, were subject to the exercise by Congress of this right to make such amendments in the contract itself as, in their opinion, the public interest may require.

And it seems to me this right extends to both the acts of 1862 and 1864. To many intents undoubtedly both are to be construed together as one act. But the power of repeal, &c., in the two acts being different, that in the act of 1862 of no consequence, renders the qualified power given in the act of 1862 of no consequence.

renders the qualified power given in the act of 1862 of no consequence, and that of 1864 applies now to all. This is sufficiently shown by the history of this legislation.

The history of these acts I understand to be this: The act of 1862

contained only a qualified right of repeal or amendment. But that contained only a qualified right of repeal or amendment. But that act, as claimed by the company, was not liberal enough to induce them to go on with the enterprise. They appealed to Congress for more liberal provisions; and Congress, with an unprecedented liberality which astonished the nation, granted all the privileges asked. This was done by amending the act of 1862 by the act of 1864, in which, while granting those extraordinary privileges, they undertook to give at the same time additional safeguards to the Government by reserving this unqualified power of amendment and repeal contained in the amendatory act. Doubtless the companies might then have rejected this amendatory law, by refusing to accept or act or claim any

rights under it. But they could not take the benefits conferred by the latter act without accepting the burdens or conditions in consid-eration of which they were given. They could accept no benefit under the act otherwise than subject to this power of amendment and re-They did accept the benefits conferred by this amendatory act, and they must therefore be held to accept this reservation of power

to be exercised by Congres

But the Senator from Louisiana, while virtually admitting that such power of amendment might be exercised in the case of an ordinary corporation charter, where the power is expressly reserved; because in the case of such ordinary corporations their charters were granted as a favor or benefit to them, and not for the benefit of the public, nor for the common benefit of the corporators and the public; yet insists that no such power can be exercised in reference to these railroad acts, because they were passed and the privileges granted for the public benefit; he does not venture to say for the public benefit alone, but that the public interest being strong and clear for the construction of these roads, these acts were passed quite as much for the pro-

motion of the public interest as for the interests of the companies.

Now, Mr. President, I contend that such is, in theory and principle at least, the case with all great corporation charters granting exclusive and corporate powers to the corporators not possessed by the citizens at large; and that it is the public interest alone which justifies the granting of such corporate powers; and that such has been the well-settled and recognized principle from the foundation of our Government. It is this benefit the public is expected to reap from the granting of such corporate powers which operates as the induce-ment and consideration for such corporate powers. For the purpose of showing what is the general principle applicable to such cases, I refer to the thirteenth section of Angell and Ames on Corporations, where the principle is stated; and I call the attention of the Senator from Louisiana to the fact that the principle is identical with that of the present bill. It is always the public interest. This authority

The public benefit is deemed a sufficient consideration of a grant of corporate privileges; and hence, when a grant of such privileges is made, (being in the nature of an executed contract,) it cannot, in case of a private corporation, which involves private rights, be revoked.

The writer is speaking of cases where the power has not been reserved to revoke :

The object in creating a corporation is, in fact, to gain the union, contribution, and assistance of several persons for the successful promotion of some design of general utility, though the corporation may, at the same time, be established for the advantage of those who are members of it. The principle is, and has been so laid down by Domat, that the design of a corporation is to provide for some good that is useful to the public. "With respect to acts of incorporation," says one of the judges of the court of appeals of Virginia, "they ought never to be passed but in consideration of services to be rendered to the public."—Angell and Ames on Corporation, page 7.

And the extent and liberality of the powers granted are always supposed to be in proportion to and only justified by the extent of public benefit expected to be received by the public from the grant.

The case, therefore, of these railway acts is in no way exceptional, nor out of the general principle applicable to corporations and corporation charters in other cases. It is true in this case very great public benefits were expected to be realized by the construction of these roads; but it is equally true, at the same time, that most extraordinary powers, privileges, and grants of lands and public credit were given to the companies.

It is therefore, as it seems to me, wholly idle to contend that the great public benefits expected to be realized from the enterprise take this case out of the ordinary rules applicable to corporation charters in general, when such unqualified power of amendment and repeal are reserved. If it be objected that this power, if it exists, has no defined limits, this may be true as to the power of amendment, so far as it does not divest property already vested or the rights of third parties; but it is equally true of many other acknowledged legisla-tive powers which find their limits only in the discretion, the com-

mon sense, and common honesty of Congress.

mon sense, and common honesty of Congress.

When the companies, therefore, sought the liberal powers granted by the act of 1864, Congress, in passing that act, said to them in effect, we will grant you the powers and privileges you ask upon one condition—and the extraordinary extent of the powers and privileges demand of us the condition as a security to the public—that you must hold those powers and privileges subject to the power of Congress to modify or control them to such extent as in the future they may deem essential to the public interest and safety, and hold them subject to the discretion and sense of justice of the legislative power. And by accepting the grants the companies assented in advance to such amendments as Congress might thus make.

The Senator from Louisiana, however, asserts that the companies did not petition for this act of 1864. The Senator may be technically

and literally correct in this assertion.

Mr. WEST. If I do not interrupt the Senator, before he leaves that subject I should like to ask him a question.

Mr. CHRISTIANCY. If it relates to this point I will yield.

Mr. WEST. It does not relate to that point, but to the point which the Senator has just left. Does the Senator contend that the power to alter, amend, or repeal without qualification, of the act of 1864 would have empowered and does empower Congress to alter entirely at its discretion the terms of that contract without limitation?

Mr. CHRISTIANCY. I have confined it to the limitation proposed by the bill reported from the Judiciary Committee, and I am arguing the question upon that basis. It is unnecessary for me to claim futrher power. I say the Senator from Louisiana has taken the ground that the company did not petition for this act of 1864. The Senator may be technically and literally right in this assertion; but he will be more successful than he or any other Senator has ever been if he succeeds in satisfying the American people that the companies did not apply for and urge the passage of this amendatory act of 1864 in a much more effectual though by no means more creditable way than by an open and formal petition to Congress; and I am greatly mistaken if the history of the past already written and the more effectual verdict of the history yet to be written do not stamp some of the means used by those companies as disgraceful to the age and destructive of all principles of honest legislation. Had the Senator taken the ground that, on account of the large sums paid out by the companies to procure the act of 1864, it would be unjust to them to amend the act, his argument would I fear have been equally well founded in truth, and would have been quite as sound as the argument he has attempted to make based upon the difference between But the Senator admonishes us to take heed lest by the passage of

this act we lose the entire claim of the Government against these companies, and asserts that such would be the effect of a decision of the Supreme Court against the constitutional validity of the act proposed by the Judiciary Committee. I am at a loss, Mr. President, to see how this consequence can flow from such a decision against the constitutionality of the act.

If the act be decided unconstitutional and void, I had certainly If the act be decided unconstitutional and void, I had certainly supposed it would be on the ground that, in legal effect, it is not a law but void and ineffectual. And if this be so would not the old law, sought to be changed by it, stand as it was before? There is no clause repealing the acts sought to be amended. There could be no possible ground for holding the present bill to be partly void and partly valid on constitutional grounds. If held void it must be on the ground that it attempts to change the contract without consent of the companies, and this will apply to every provision of the bill; so that the bill will either be valid as a whole or void as a whole. If valid as a whole it will effect its purpose and protect the Governvalid as a whole, it will effect its purpose and protect the Government; if void, nothing is lost, as the present law will remain in force. I see, therefore, none of the dangers which the Senator from Louisiana appears to apprehend.

But the Senator from Louisiana cites the case of the Union Pacific Railroad decided by the Supreme Court at the October term, 1875, and reported in 1 Otto, as tending to show that such an amendment as that proposed by the Judiciary Committee would be unconstitutional. No such question was involved in that case, and no such question could have been decided in it; if attempted, the decision, or argument rather, would have had no more authority than that of any private rather, would have had no more authority than that of any private citizen. It could be nothing more than a mere dictum if attempted, but it was not attempted. The only question in that case was, what is the law as enacted in 1862 and 1864, not whether Congress has the power to alter or amend that law? And all that was said in the opinion bore legitimately upon the question of what the law was, as it now stands, and what was the intention of Congress in the constant. stands, and what was the intention of Congress in its passage, not at

A few words now as to the bill reported by the Railroad Committee.

As was clearly demonstrated by the Senator from Ohio, the provisions of this bill, section 1, and the \$750,000 required to be paid by the first part of section 2, would never extinguish the interest, much less the principal of the debt to the United States on account of its bonds.

Yet section 3 makes the payments required by the first and second sections operate as payment in full of all obligations of the company on account of the bonds issued to it. The only provision, therefore, which saves the bill from the charge of making a payment of less than the interest operate as payment of both principal and interest is that provision in the second section, that if the foregoing provisions shall prove insufficient to extinguish the Government bonds and interest by October 1, 1912, the semi-annual payments shall be increased to such sum as will be sufficient for that purpose.

Now the pertinent question arises, when and how and by whom is it to be ascertained that the sums required by the "foregoing provis-ions shall prove insufficient" to extinguish the entire debt to the Govions shall prove insulate to extinguish the child the total course of the bonds issued in its behalf? Are we to wait till 1912 to ascertain this, and is the obligation of the companies to make up the necessary deficiencies in the semi-annual payments by increasing them to commence then or at some earlier period, and if at an earlier period, then at what period must the increase in these

semi-annual payments commence

It seems to me the bill is very blind in this particular, especially as it is apparent from the face of the bill that the provisions in the first section and the first part of the second section will not pay off the principal and interest of the bonds by the time mentioned in the latter portion of section 2, namely, 1912. This is very material and a very pertinent inquiry, when the first part of the third section makes the payments previously mentioned a full satisfaction of all the obligations of the companies to resimbles as the Company of the companies. I do not doubt the good faith of the committee, but it seems to me here is a dangerous trap set which the Government will do well to

Again, the provisions of the fourth section in reference to the mortgage of the Government and its effect is made to depend upon the same uncertainty, the same equivocal provision of section 2.

I need not repeat the very cogent objection of the Senator from Ohio to the provisions of the third section, releasing the companies from all obligation to keep up the road and telegraph line after the Government has been paid for its bonds and interest, for which release I can discover no possible reason. There are other provisions in the bill of the Railroad Committee which will require amendment if it is likely to the provisions of the result of the results of the res if it is likely to pass, but which at present I refrain from noticing.

The PRESIDING OFFICER, (Mr. WRIGHT in the chair.) The bill

is still in Committee of the Whole and open to amendment.

Mr. WEST. I move that it be passed over for to-day.

The PRESIDING OFFICER. Does the Chair understand the Senator from Louisiana to suggest that the bill be passed over inform-

Mr. WEST. That it be passed over informally, subject to be called

for as the regular order at any time during the proceedings.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the bill will be passed over informally.

## HEIRS OF WILLIAM K. SEBASTIAN.

Mr. CAMERON, of Wisconsin. I move that the Senate now take up and proceed to consider the resolution reported the 2d of August last from the Committee on Privileges and Elections, annulling the resolution of July 11, 1861, for the expulsion of William K. Sebastian, late Senator from the State of Arkansas.

Mr. INGALLS. Does the Senator from Wisconsin call this matter up for the purpose of submitting some remarks upon it or of taking a vote on the passage of the resolution now?

Mr. CAMERON, of Wisconsin. I call it up for the purpose of ask-

ing a vote of the Senate upon it at this time.

Mr. INGALLS. Does the Senator think it would be wise in the present condition of the Senate to ask a vote on a matter so impor-

Mr. CAMERON, of Wisconsin. I was rather of the opinion that

on Senator would object to the passage of the resolution.

Mr. INGALLS. It certainly is a matter of very considerable importance and involves several questions of novelty, if not of very considerable magnitude. I should think the matter ought to be explained erable magnitude. I should think the matter ought to be explained fully and that no Senator can desire to vote upon the resolution unless there had been some definite explanation of it.

Mr. CAMERON, of Wisconsin. The resolution is accompanied by a written report which, I think, if read would explain very fully to

the Senator from Kansas the whole matter embraced in the resolution. I can explain it very briefly if the Senator desires.

Mr. COCKRELL. This matter ultimately involves several thousand dollars. It is not worth while to disguise the fact that the object of the resolution is to open the door of the Treasury and give the heirs of Mr. Sebastian an opportunity of coming in and presenting their claim. I think it is a matter of considerable importance, and I would dislike very much to see it acted upon when there is only and I would district very much to see it acted upon when there is only a minority of the Senate here. If there were a quorum of the Senate present I should have no objection to the resolution being acted upon. I do not make objection for the purpose of interposing mere delay. If we can get by a call of the Senate a quorum here, I should be perfectly willing to act upon the resolution.

Mr. CAMERON, of Wisconsin. The Senator from Missouri is correct in stating that one object of the resolution is that the heirs of Sebastian may be paid whatever amount was found due to him at the time of his death, if any. The resolution provides for that in express terms. As the Senate is thin this morning, and as the Senator from Missouri and also the Senator from Kansas rather object to the consideration of the resolution at this time, I will content myself by giving notice that, say, on Thursday next of this week, immediately at the conclusion of the morning business, I will, if I can obtain the floor, (and I hope that no Senator will object to my obtaining the floor for this purpose,) call this matter up. The resolution was re-ported from the Committee on Privileges and Elections on the 2d of August last.

CAPTAIN JOHN A. DARLING.

Mr. SPENCER. I move that the Senate proceed to the consideration of the bill (S. No. 1202) for the relief of John A. Darling.

The PRESIDING OFFICER. The question is on proceeding to the

consideration of this bill.

Mr. HAMILTON. I ask the Senator from Alabama if there is any public necessity for this act or whether it is for the accommodation of the officer alone?

Mr. SPENCER. I will answer the Senator from Texas by stating that Major Darling was a captain in the Second Artillery and was a most valuable officer. He was placed on the supernumerary list and unjustly mustered out of the service. The bill enables the President to do an act of justice and to re-appoint him to the first vacancy that occurs. It is a very just and meritorious bill and received the unanmous indorsement of the Committee on Military Affairs. It is a perfectly just case and costs the Government nothing, but only enables the President to account him the first party that the provider to account him the first party that the provider to the provider to the first party that the

the President to re-appoint him on the first vacancy that occurs.

Mr. KELLY. Why cannot the President appoint him now?

Mr. SPENCER. As the law stands now, the President cannot ap-

point an officer above the grade of second lieutenant except the person next in rank

Mr. HAMILTON. Has not the President the power to appoint him

Mr. SPENCER. The President has not the power now. There is no more just case that the committee have investigated.

Mr. SAULSBURY. I do not like to see an act of special legislation passed in favor of Army officers; not that I am much skilled in Army and Navy matters, but I have sometimes learned that by that kind of legislation injustice has been done to other officers. It seems very strange that this gentleman should be mustered out if there were no

charges against him. I do not know anything about this case at all; but I should like to have some information in regard to it.

Mr. SPENCER. There is a very minute and exhaustive report on the subject which can be read; but it would take a long time to read it, and I do not think it is hardly necessary. The Senator from Maine

[Mr. Hamin] is fully conversant with the circumstances.

The PRESIDING OFFICER. The question is upon the motion to

take up the bill.

Mr. HAMLIN. I hope it will be taken up and receive the favorable consideration of the Senate, as it did receive the unanimous vote of the Military Committee. The committee gave it careful consideration, and they gave it a unanimous approval. If any Senators will hear the reading of the report which was submitted, my own judgment is that there is not a Senator in this body who will not vote to whom it is the President to restore this man when there is a vacancy. authorize the President to restore this man when there is a vacancy. It was a most unjust dismissal, as the report shows. I hope the bill will be taken up and receive the favorable consideration of the Sen-

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1202) for the relief of John A. Darlipg. By it the President of the United States is authorized to nominate and, by and with the advice and consent of the Senate, appoint John A. Darling, late captain Second Artillery, a captain of artillery in the Army of the United States, with the rank and date of commission from December 9, 1873, and he is to be assigned to the first vacancy of his grade occurring in the artillery arm of the

Mr. COCKRELL. I am not disposed to make any captions objection to this bill; but I am opposed to the whole system of legislation embodied in it. I do not and cannot give my consent to Congress constituting itself a mere board of recommendation to recommend to the President whom he shall appoint in the Army. Under the law regulating promotions or appointments in the Army, the President cannot appoint any one above the rank of second lieutenant, except it be the person next highest in rank. This bill regulates and prescribes the manner in which the President shall make this appointment. Officers who are not in the Army come in and ask to be restored to the Army, and some of them obtain the ear of Congress to direct the President to appoint them. The President cannot, under the law as it is, appoint above the rank of second lieutenant except as I stated Whenever the President desires to make the appointment of a man who has been in the Army or a civilian to a position in the Army above that to which he can appoint him under the law, if I would be willing to vote for the promotion of that man, I would be willing to vote for an act giving the President the consent of Congress to do that; but simply to be passing bills continually here stating that the President is authorized or can do so and so, without any desire expressed by the President, I think is vicious legislation. I simply desire to give this expression of my views in regard to this and all similar cases.

Mr. SPENCER. In answer to what the Senator from Missouri says, I will state that the President is anxious to do an act of justice to Major Darling. I know personally, and other Senators know, that the President is anxious to do this, but he cannot do it without the passage of this bill. This officer was unjustly mustered out of the service of the United States. He was mustered out through fraud and misrepresentation and this bill is to allow the President to re-inand misrepresentation and this bill is to allow the President to re-instate him whenever the first vacancy occurs. It will be doing an act of justice to a brave and gallant soldier who was several times brevetted during the last war for bravery in the face of the enemy. I hope the bill will pass. If Senators desire it, the report can be read. Mr. COCKRELL. O, I have heard the report and know all about the case, and do not propose to consume the time of the Senate by calling for the reading of the report. If the President of the United State desires to which was interest as I said before bravity.

States desires to make this appointment, as I said before, knowing nothing which would induce me to vote against the confirmation of this officer, I make no objection to the passage of the bill; but I was raising the point about Congress passing bills authorizing the President to appoint Tom, Dick, and Harry to positions when such bills have no more effect in law than simply a recommendation on the part of Congress that the President shall appoint. If the President cannot make the appointment and desires to make the appointment, I say then an act of Congress is necessary and is proper, and I am always perfectly willing to vote for such an act where I would be willing to vote for the confirmation of the officer. So far as I know, in this case, the officer was an honorable officer, and I should vote for his confirmation if he were appointed by the President; but I am only speaking upon the general question, and not from any objection to this case. I have uniformly supported the cases where there was any

evidence before the Senate that the President desired to make an appointment, and as he desires it in this case, as the Senator from Alabama says, as a matter of course I have no objection to the bill in the world.

The bill was reported to the Senate without amendment, ordered

to be engrossed for a third reading, and read the third time.

The PRESIDING OFFICER. The question is on the passage of

the bill.

Mr SAULSBURY. I should be very glad if, before the bill passes, the Senator from Maine, who seems to be cognizant of the matter, would state the circumstances of this case. Some of us have not had the pleasure of examining these reports. I have been in the Senate but a very few days during this session. I do not wish to vote against a man whose promotion or admission to the Army is proper, when he is entitled to it; but I am not familiar with the case, and, as I have had no opportunity to examine the report on the subject, I wish the Senator from Maine would state the nature of the case a little more

Mr. HAMLIN. The papers in this case were submitted to me for my examination. I did examine them, and the facts are embodied in the report. They are not clear enough in my mind to state them as distinctly as I should like to the Senator from Delaware; and I will therefore ask that the report be read, as that will state the facts very clearly. I examined the facts, and I have no doubt that there was an absolute wrong, and an error both, in his dismissal.

Mr. SPENCER. He was not dismissed; he was mustered out.

The PRESIDING OFFICER. Is the reading of the report called

Mr. HAMLIN. If the Senator from Delaware wants the specific

points, I think we must have the report read.

The PRESIDING OFFICER. Does the Senator from Delaware ask

for the reading of the report?

Mr. SAULSBURY. No, sir; I will not insist upon it. The bill was passed.

SCHOOL LANDS IN MISSOURI.

Mr. COCKRELL. I move that the Senate proceed to the consideration of the bill (H. R. No. 280) to amend the act entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for," approved May 20, 1876.

The PRESIDING OFFICER. The bill will be read for informa-

The Chief Clerk read the bill.

Mr. SHERMAN. That bill seems to be rather too important to consider in our present condition. It involves a large amount of

Mr. COCKRELL. It cannot possibly involve more than three or or four thousand acres of land. That is the highest possible limit. It is only to provide for certain sixteenth sections in Missouri where they were covered by old Spanish claims, and where those Spanish claims were declared paramount to the title of the United States, claims were declared paramount to the title of the United States, claims which originated before the cession of the territory. The Senator from California [Mr. Booth] who reported the bill from the Committee on Public Lands can state its provisions fally.

Mr. BOOTH. My recollection of the bill is as stated by the Senator from Missouri that this school land had been lost by reason of the sixteenth sections falling within the Spanish or Mexican grants. The State was to receive it. I think it only applies to one county.

Mr. SHERMAN. But there must have been in Missouri a large amount of Spanish grants and French grants as well. There must be a very large amount of land in Missouri which would be covered by the terms of the bill.

Mr. COCKRELL. Suppose it was a million acres, it would only af-

Mr. COCKRELL. Suppose it was a million acres, it would only affect one section in every township. Section sixteen was given by the act organizing Missouri as a State of the Union to the State for school purposes. There was a pledge by Congress that each township should purposes. There was a pledge by Congress that each township should have one section designated as the sixteenth section. Under former laws which have been passed, where that section had been previously entered or taken up, provision was made for selecting lands elsewhere or adjoining lands. Now, there remain a few townships in Saint Charles County where the sixteenth section has been in litigation and where the old titles have been declared superior to the other titles; and we desire simply to enable those townships to select other lands in Missouri to make up the deficiency which they have lost. The Spanish grants were confined almost exclusively to Saint Louis. There were only a few outside of that city; and, as a matter of course, where only a few outside of that city; and, as a matter of course, where they would strike the sixteenth section, it would be a mere accident, here and there, one mile out of every six. There are only a few cases of this kind, and it is simply to place these townships upon an equality with the other townships of the State, and to carry out the object and intention of Congress when Missouri was admitted into the Union, and guaranteed that these sixteenth sections should be for school purpo

The Senate has passed bills of this kind time and again. Only the day before yesterday Senate bill No. 805 passed the Senate, relating to indemnity school selections in the State of California which affected ten times as much land as is affected by this bill. The matter was brought up, and it was discussed here in the Senate and was passed. This is a very small matter. I am certainly astonished at some of my

distinguished friends interposing objections to such a noble, laudable, and commendable object as the education of the masses of the people. and commendate object as the education of the masses of the people. This bill is for the purpose of furnishing these particular townships which have not had the benefit of a public-school fund that fund which the Government pledged itself when Missouri was admitted into the United States should be provided and appropriated for every township in the whole State. These townships are without it. In some of these townships many of my colored constituents live. Missouri is providing liberally for the education of that class of her citi-I desire that they shall all be placed on the same equality and that the benefits which have been derived to ninety-nine out of every one hundred of the townships shall be derived to and enjoyed by the one hundredth township, for that would scarcely be the proportion. I do hope that there will be no objection made to this bill. It passed the House, passed the Committee on Public Lands, and has been reported favorably to the Senate.

Mr. SHERMAN. I know if a bill similar in character to this had

Mr. SHERMAN. I know if a bill similar in character to this had passed in regard to Ohio it would give every school fund there an enormous amount of land; but it so happened that nearly one-third of the State was granted away by wholesale by act of Congress by State reservations. Nearly one-third of the State was granted away; and the people of Ohio did not get any subsidy or substitute for school lands in nearly one-third of the State. Where there are no public lands in the county I suppose this bill goes to every part of the State and gives other land.

Mr. COCKELL, It gives other land in the State of Missouri

Mr. COCKRELL. It gives other land in the State of Missouri. There is no objection to the bill. That matter has been submitted to the Commissioner of the General Land Office, and I have his letter before me stating that he sees no objection to the passage of the bill Mr. COCKRELL. That is that they can make other selections, in-

Mr. COCKRELL. That is that they can make other selections, instead of being confined to the township.

Mr. SHERMAN. The words "unappropriated land within the State" might cover any land that the United States might have for military purposes or any other. I suggest, therefore, the bill ought to be amended so as to read "any other unappropriated public lands" subject to entry

Mr. COCKRELL. That is the way the Commissioner of the General Land Office interpreted it.

Mr. SHERMAN. But it does not read so.
Mr. COCKRELL. It was the intention, as a matter of course, simply to enable them to select other public lands in lieu of those of which they were deprived.
Mr. SHERMAN. The bill provides that they may "select the tracts

this act and the act to which it is amendatory, out of any unappropriated land within the State," &c.

Mr. PADDOCK. The word "public" should be inserted before "land." of land to which each of said townships may be entitled by virtue of

Mr. SHERMAN. It should read, "public land subject to entry." Mr. PADDOCK. There can be no objection to that amendment. The PRESIDING OFFICER. The Chair will suggest that the bill is not yet before the Senate. The question is, Will the Senate pro-

ceed to its consideration?

Mr. SHERMAN. My friend from Missouri is usually very good humored, and I do not want to interfere with him, but if he will let the bill go over until to-morrow and call it up I shall not have the slightest objection to it. I think he had better do that. I should like to have a message from the President, which ought to be read, laid before the Senate.

The PRESIDING OFFICER. There is a message from the President of the United States upon the table. Is there objection to its being laid before the Senate?

Mr. COCKRELL. I object to anything being done until this bill is disposed of. If there are not Senators enough present to dispose of this bill there are not Senators enough present to do any other business, and I shall move a call of the Senate.

Mr. INGALLS. Would it be in order to move a recess until to-

morrow?

Mr. SPENCER. Let us have an executive session.

The PRESIDING OFFICER. Does the Senator from Kansas move

that the Senate take a recess †

Mr. INGALLS. Yes, sir.

Mr. SHERMAN. I will withdraw my objection, unless some other
Senator entertains a similar one, against this bill being acted upon.

I withdraw my objection to its consideration.

The PRESIDING OFFICER. The Senator from Kansas moves that

the Senate take a recess until to-morrow at ten o'clock.

Mr. PADDOCK. I hope that will be withdrawn until the Senator from Missouri may have an opportunity, now that the Senator from Ohio has withdrawn his objection, to secure a vote upon the bill. It is a very equitable bill.

The PRESIDING OFFICER. The question is on the motion of the Senator from Kansas that the Senate take a recess until to-mor-

The PRESIDING OFFICER put the question, and declared that the noes appeared to prevail.

Mr. INGALLS. I ask for a division.

Mr. PADDOCK. I hope the Senator from Kansas will withdraw his motion for a moment in order to allow the passage of this bill.

The PRESIDING OFFICER. The Senate is now dividing, ten

Senators have risen in the affirmative.

Mr. INGALLS. The negative has not been called for.

The PRESIDING OFFICER. It has not.

Mr. INGALLS. If it is desired that there shall be an executive session, I will yield for that purpose.

Mr. CHAFFEE. I move that the Senate proceed to the considera-

tion of executive business.

The motion was agreed to; and the Senate proceeded to the con-The motion was agreed to; and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were re-opened, and (at two o'clock and twelve minutes p. m.) the Senate took a recess until Tuesday, February 6, at ten o'clock a. m.

# HOUSE OF REPRESENTATIVES.

THURSDAY, February 1, 1877.

[CALENDAR DAY, February 5.]

AFTER THE RECESS.

The recess having expired, the House re-assembled at ten o'clock a. m., (Monday, February 5.)
Mr. BANNING. I ask unanimous consent to present three memo-

rials. The SPEAKER. The Chair desires to say to the gentleman from Ohio [Mr. Banning] that it was the understanding that no business should be done to-day until ten minutes before twelve o'clock.

Mr. BANNING. If that be the case, and the Chair thinks I had

better not present these memorials, then I move that the House take a recess until ten minutes before twelve o'clock.

The motion was agreed to.

And accordingly (at ten o'clock and three minutes a. m.) the House took a recess until eleven o'clock and fifty minutes a. m.

#### AFTER THE RECESS.

The recess having expired, the House resumed its session at eleven o'clock and fifty minutes a. m.

#### TAXES ON BANKING INSTITUTIONS.

Mr. BANNING, by unanimous consent, presented the following petitions; which were referred to the Committee of Ways and Means:

The petition of twenty-eight banking institutions of Cincinnati, Ohio, asking that the law under which the taxes now levied by the General Government on the deposits, circulation, and capital of banks are collected be immediately repealed, and that the subject of bank taxation be remitted to the several States and Territories as before the

war;
The petition of Thomas F. McGraw and 50 other citizens of Springfield, Ohio, asking the repeal of the war tax on banks and the subject of bank taxation be remanded to the several States and Territories;

The petition of P. W. Parkhurst and 74 other citizens of Clyde, Ohio, asking that all the taxes now levied by the General Government on the deposits, circulation, and capital of all banks be immediately repealed and the subject of bank taxation be remitted to the several States and Territories as before the war.

## PUBLIC LANDS IN COLORADO.

Mr. BELFORD, by unanimous consent, presented a joint memorial and resolution of the Legislature of Colorado, praying Congress to graduate the price of public lands in the State of Colorado not susceptible of irrigation; which was referred to the Committee on Publie Lands.

GRANT OF PUBLIC LANDS TO COLORADO.

Mr. BELFORD also, by unanimous consent, presented a memorial of the State of Colorado, praying for a grant of land to aid in the construction of the Golden, Georgetown and Central Railroad of Colorado; which was referred to the Committee on Public Lands.

# CENTENNIAL EXHIBITION.

Mr. HOPKINS, by unanimous consent, from the Committee on the Centennial Celebration, to whom was referred so much of the President's message as related to the preservation of the Government exhibit at the centennial exhibition, submitted a report, accompanied by letters from Professor Henry and Professor Baird, and moved the same be referred to the Committee on Public Buildings and Grounds and ordered to be printed, not to be brought back on a motion to reconsider.

The motion was agreed to

### WILLIAM MAJORS.

Mr. WALLING, by unanimous consent, presented the petition of General George W. Morgan and 55 other officers and citizens of Knox and Franklin Counties, in the State of Ohio, praying that a pension may be granted to William Majors, a soldier in the war of 1812; which was referred to the Committee on Revolutionary Pensions.

AMENDMENT OF THE REVISED STATUTES.

Mr. PLATT, by unanimous consent, introduced a bill (H. R. No. 4571) to amend section 1556 of the Revised Statutes of the United States, approved June 20, 1874; which was read a first and second time, re ferred to the Committee on Naval Affairs, and ordered to be printed.

JAMES D. JOHNSTON.

Mr. HARTRIDGE. I ask unanimous consent to introduce and have passed at this time a bill to remove the political disabilities of James D. Johnston, of Savannah, Georgia. It is accompanied by the proper petition

Mr. HURLBUT. Let the petition be read; if it is in proper form will not object.

The petition was read, as follows:

To the honorable Senate and House of Representatives of the Congress of the United States:

The petition of James D. Johnston, of Savannah, Georgia, respectfully shows that he was an officer in the Navy of the United States; that on April 10, 1861, he resigned his commission as such officer and entered the naval service of the late Confederate States, whereby he fell under the disabilities imposed by the fourteenth amendment to the Constitution of the United States; which disabilities he prays your honorable bodies to remove.

JANUARY 30, 1877.

There being no objection, the bill (H. R. No. 4572) was received, read three several times, and passed; two-thirds voting in favor

#### GRASSHOPPER PLAGUE.

Mr. STRAIT, by unanimous consent, introduced a bill (H. R. No. 4573) to appropriate the proceeds of the sales of the public lands in the several States and Territories afflicted with grasshoppers or their eggs, to be used in the payment of bounties, or otherwise, for the destruction of such grasshoppers or their eggs; which was read a first and second time, referred to the Committee on Public Lands,

and ordered to be printed.

Mr. STRAIT also presented a joint resolution of the Legislature of Minnesota, approved January 17, 1877, requesting the Senators and Representatives from Minnesota in the Congress of the United States to secure if possible such legislation as will appropriate the proceeds of the sales of public lands in the several States afflicted with grasshoppers to those States, to be used in the payment of bounties for the destruction of such grasshoppers; which was referred to the Com-mittee on Public Lands, and ordered to be printed.

Mr. STRAIT also presented a joint resolution of the Legislature of the State of Minnesota, approved January 23, 1877, requesting the United States Senators and Representatives from Minnesota to use their efforts to secure a bounty for the destruction of grasshoppers and their eggs; which was referred to the Committee on Agriculture, and ordered to be printed.

### SETTLERS ON ODD-NUMBERED SECTIONS.

Mr. STRAIT also presented a joint resolution of the Legislature of the State of Minnesota, approved January 19, 1877, requesting the House of Representatives of the United States Congress to pass the bill (8. No. 547) for the relief of certain settlers on odd-numbered sections; which was referred to the Committee on Public Lands, and ordered to be printed.

### PRIVATE LAND CLAIMS.

Mr. BUCKNER, by unanimous consent, introduced a bill (H. R. No. 4574) to provide for ascertaining and settling private land claims in certain States and Territories; which was read a first and second time, referred to the Committee on Private Land Claims, and ordered to be printed.

# SOUTHERN TRANSCONTINENTAL RAILWAY.

Mr. BUCKNER also presented a joint resolution of the senate and house of representatives of the twenty-ninth General Assembly of the State of Missouri, relating to the construction and the completion of the Southern Transcontinental Railway on the line of the thirty-second and thirty-fifth parallels of latitude; which was referred to the Committee on the Pacific Railroad, and ordered to be printed.

Mr. CLYMER. I move that the House take a recess until twelve o'clock.

The motion was agreed to.

And accordingly (at eleven o'clock and fifty-nine and a half minutes a. m.) the House took a recess until twelve o'clock m.

## AFTER THE RECESS.

The recess having expired, the House resumed its session at twelve o'clock m.

The SPEAKER. The Chair asks unanimous consent that the Chaplain now offer prayer.

No objection was made, and prayer was offered by the Chaplain, Rev. I. L. TOWNSEND.

## WHALE'S BACK ISLAND, PORTSMOUTH, NEW HAMPSHIRE.

Mr. JONES, of New Hampshire, by unanimous consent, introduced a bill (H. R. No. 4575) for the erection of a Dafoll trumpet signal on Whale's Back Island, in the harbor of Portsmouth, New Hampshire; which was read a first and second time, and, with the accompanying paper, referred to the Committee on Commerce, and ordered to be printed.

#### REPEAL OF BANK TAX.

Mr. JONES, of New Hampshire, also presented, by unanimous consent, the petition of H. C. Abbott and other citizens of Conway, New Hampshire, praying that the law authorizing the assessment of a tax on capital, deposits, and circulation of banks be repealed; which was

referred to the Committee of Ways and Means.

He also presented the petition of Frederick Smyth and other citizens of New Hampshire, praying that the law authorizing the assessment of a tax upon capital, deposits, and circulation of banks be repealed; which was referred to the Committee of Ways and Means.

## MEMPHIS, TENNESSEE.

Mr. YOUNG, by unanimous consent, introduced a bill (H. R. No. 4576) to provide for changing and fixing the boundaries of certain property ceded to the Government of the United States by the city of Memphis, Tennessee; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

## BATAVIA SHIP-CANAL COMPANY.

Mr. YOUNG, by unanimous consent, also introduced a bill (H. R. No. 4577) providing for the incorporation of the Batavia Ship-Canal Company; which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

PUNISHMENT OF CRIMES COMMITTED ON INDIAN RESERVATIONS.

Mr. KIDDER, by unanimous consent, introduced a bill (H. R. No. 4578) to extend the jurisdiction of the district and circuit courts of the United States for the punishment of crimes over Indian reservations in the limits of any State or organized Territory; which was read a first and second time, referred to the Committee on the Revision of the Laws, and ordered to be printed.

#### EDWARD T. RYAN.

Mr. KIDDER also, by unanimous consent, introduced a bill (H.R. No. 4579) for the relief of Edward T. Ryan; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

#### TERRITORIAL TRANSPORTATION COMPANIES.

Mr. KIDDER also, by unanimous consent, introduced a bill (H. R. No. 4580) authorizing the Legislative Assembly of the Territory of Dakota by general incorporation acts to permit persons to associate themselves together as bodies-corporate for the transportation of freight and passengers by land and water; which was read a first and second time, referred to the Committee on the Territories, and ordered to be printed.

### CESSION OF BLACK HILLS.

Mr. KIDDER also, by unanimous consent, presented a memorial of the General Assembly of the Territory of Dakota, praying for the ratification of the agreement with the Sioux Indians for the cession of the Black Hills; which was referred to the Committee on Indian Affairs, and ordered to be printed.

### TERRITORY OF PEMBINA.

Mr. KIDDER also, by unanimous consent, presented a memorial of the Legislative Assembly of the Territory of Dakota, praying for the organization of a new territory out of the northern part thereof to be called Pembina; which was referred to the Committee on the Territories, and ordered to be printed.

### SOUTHERN CLAIMS COMMISSION.

On motion of Mr. EDEN, by unanimous consent, the bill (S. No. 1128) to extend for two years the act establishing the board of commissioners of claims, and the acts relating thereto, was taken from the Speaker's table, read a first and second time, and referred to the Committee on War Claims, not to be brought back on a motion to recon-

# CLAIMS IN THE DISTRICT-OF COLUMBIA.

Mr. HARDENBERGH, by unanimous consent, introduced a joint resolution (H. R. No. 187) for re-adjustment of claims in the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

### JAMES A. BATES.

Mr. WAIT, by unanimous consent, introduced a bill (H. R. No. 4581) for the relief of James A. Bates; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

# HORACE A. STONE.

Mr. WILLIS, by unanimous consent, (by request) introduced a bill (H. R. No. 4582) authorizing the Commissioner of Patents to extend the patent of Horace A. Stone for improvements in the manufacture of cheese; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

Mr. WILLIS also, by unanimous consent, (by request) introduced a bill (H. R. No. 4583) to remove the political disabilities of Lillie Devereaux Blake; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. LEAVENWORTH, by unanimous consent, introduced (by request) a bill (H. R. No. 4584) to relieve the political disabilities of Lillie Devereaux Blake; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. MacDOUGALL. I ask unanimous consent, Mr. Speaker, to introduce a bill (H. R. No. 4581) to authorize the President to appoint Dr. Thomas Owens as assistant surgeon in the Navy, and to move that it may be put upon its passage at this time.

Mr. WHITTHORNE. I object.

Mr. MACDOUGALL. Then I ask the bill be introduced merely for reference to the Committee on Naval Affairs.

Mr. WHITTHORNE. I have no objection to that.

The bill was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

Matilda Joslyn Gage; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

#### HICKEY'S CONSTITUTION OF THE UNITED STATES.

Mr. MUTCHLER, by unanimous consent, submitted the following resolution; which was referred to the Committee on Printing:

Resolved. That the Clerk of the House is hereby authorized and directed to pro-cure from the proprietors fifty copies of Hickey's Constitution of the United States for the use of each member, provided the same can be obtained at the rate of \$1.50

## DEEDS, ETC., MADE IN FOREIGN COUNTRIES.

Mr. O'NEILL, by unanimous consent, introduced a bill (H. R. 4585) to validate and confirm certain acknowledgments of deeds and other instruments of writing under seal, made in a foreign country, for lands lying in the District of Columbia, and the records thereof; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

#### SETTLEMENT OF THE PUBLIC DOMAIN.

Mr. O'NEILL also, by unanimous consent, introduced a bill (H. R. No. 4586) to encourage emigration of citizens of the United States to such portions of the public domain as are open to pre-emption under the homestead laws; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

#### R. T. WILSON.

Mr. O'NEILL also, by unanimous consent, introduced a bill (H. R. No. 4587) to re-instate R. T. Wilson, late captain Fifth United States Cavalry, to his former rank in the service; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

#### MRS. E. R. HUTTON.

Mr. O'NEILL also, by unanimous consent, introduced a bill (H. R. No. 4588) for the relief of Mrs. E. R. Hutton; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

## RE-ESTABLISHMENT OF LAND OFFICES.

Mr. HURLBUT, by unanimous consent, introduced a bill (H. R. No. 4589) to re-establish certain land offices therein named; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be pointed.

## ABRAM V. MILLER.

Mr. MACKEY, by unanimous consent, introduced a bill (H. R. No. 4590) granting a pension to Abram V. Miller, late a lieutenant in Company E, One hundred and eighty-fourth Regiment Pennsylvania Volunteers; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

# MILITARY ACADEMY BILL.

MILITARY ACADEMY BILL.

Mr. CLYMER. I am directed by the Committee on Appropriations to report back the amendments of the Senate to the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes, and to move that the amendments be non-concurred in, and the bill and amendments be ordered to be printed.

There was no objection, and it was ordered accordingly.

The SPEAKER. The bill and amendments go to the Speaker's table.

## FORTIFICATION BILL.

Mr. HALE. I ask the same course be taken with reference to the fortification bill; that the amendments of the Senate be non-concurred in, and the bill and amendments ordered to be printed.

There was no objection, and it was ordered accordingly.

# SETTLERS ON ODD-NUMBERED SECTIONS.

Mr. DUNNELL, by unanimous consent, introduced joint resolutions of the Legislature of Minnesota, asking for the passage of the bill (S. No. 547) for the relief of certain settlers on the public lands; which were referred to the Committee on Public Lands, and ordered to be printed.

### ROUND VALLEY INDIAN RESERVATION.

Mr. LUTTRELL, by unanimous consent, submitted the following resolutions; which were referred to the Committee on Public Lands:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to ascertain the extent and value of all lands claimed within the exterior boundaries of the Round Valley Indian reservation in California, under titles derived from said State, and to report upon the same to Congress at its next session.

Resolved, That the United States Attorney-General be, and he is hereby, requested to suspend all suits in the United States courts in the State of California relating to said lands until Congress shall have been informed thereon through the Secretary of the Interior and action had thereon by Congress.

# DR. THOMAS OWENS.

Mr. MacDOUGALL. I ask unanimous consent, Mr. Speaker, to in-

#### FRANCIS A. PAGE.

Mr. HUMPHREYS, from the Committee of Accounts, reported the following resolution; which was read, considered, and agreed to:

Resolved, That the Clerk of the House of Representatives be, and is hereby, authorized and directed to pay out of the contingent fund to Francis A. Page, an employé of this House on the soldier's roll, the amount of his salary as a disabled soldier from July 15, 1876, the date when he was last paid, to September 1, 1876, amounting to \$160.

Mr. HUMPHREYS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### WILLIAM P. THOMAS.

Mr. HUMPHREYS also, from the same committee, reported the following resolution; which was read, considered, and agreed to:

Resolved, That the Clerk of the House of Representatives is hereby instructed and authorized to pay to William P. Thomas \$59.34 for service rendered in the Doorkeeper's department from April 1 to 15, 1876, inclusive.

Mr. HUMPHREYS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### AMENDMENT OF THE RULES.

Mr. COX. I ask unanimous consent, Mr. Speaker, to present for reference to the Committee on Rules the resolution which I send to the Clerk's desk to be read. I should like very much to get an expression of the House on the point involved.

The Clerk read as follows:

Resolved. That the rules of the House be, and hereby are, so amended that, pending the counting of the electoral vote and when the House is not required to be engaged thereon, it shall, on assembling each calendar day after recess and every preceding day, proceed at and after twelve o'clock m. with its business as though the legislative day had expired by adjournment.

Mr. O'BRIEN. I object to that.

Mr. HALE. Is it offered for reference or action?

Mr. COX. For reference only. I should like to have an expression of intelligent members of the House as to the effect of that resolution. Mr. HALE. I do not think there should be any objection to the

reference of the resolution.

Mr. COX. I do not propose to pass it now.
Mr. O'BRIEN. I object to the introduction of the resolution for a reason which I will state. I may then withdraw my objection for reference of the resolution to the committee.

Mr. COX. I would like to hear the gentleman's reason.

The SPEAKER. The Chair will hear the gentleman from Maryland if he desires to make any statement, unless the House objects.

Mr. O'BRIEN. The question of order which I desire to raise at this

time is the very question which is embraced in the resolution; and if my point of order is not sustained, then I will withdraw the objec-

tion.

Mr. COX. I would like to hear my friend from Maryland [Mr. O'BRIEN] give his opinion as to the effect of a resolution of this kind in connection with the compromise bill.

Mr. O'BRIEN. That is exactly what I propose to do.

Mr. COX. And that is what the Committee on Rules proposes to do. It proposes to make a critical examination of this question.

The SPEAKER. The Chair cannot entertain a question of order on the motion of reference. The gentleman from Maryland can, in his own right, object to the introduction of the resolution. That he his right. But there is no point of order which would lie against the his right. But there is no point of order which would lie against the resolution. A point of order might be raised against a report from the Committee on Rules.

Mr. O'BRIEN. I object to the introduction of the resolution; and now raise the question of order that we should proceed as ordinarily on Monday to the regular order namely, the call of States and Territories for bills on leave and joint resolutions. I desire to submit a remark or two in connection with that point of order and ask the indulgence of the Chair and the House while I do so.

Mr. COX. I will say to my friend from Maryland that the question of order which he raises is really involved in this resolution which I have introduced, and my object is not to pass the resolution at this time; but to have an investigation into the questions to which it re-

Mr. O'BRIEN. I understand that

Mr. COX. For, if we are to be occupied for a couple of weeks, as we may, with this electoral count it may be important for the business of the House that we should have some more convenient mode of dispatching business than appears to be provided by the compromise bill. I hope my friend from Maryland will allow the resolution to go to the Committee on Rules.

Mr. O'BRIEN. Not yet. I will say to my friend from New York that the solution of the question of order which I now raise will solve the very difficulty which he apprehends to exist, and for the solution of which he thinks an amendment of the rules required. And if the gentleman will hear me for a few moments—if the Speaker and the House will hear me—I think I will be able to satisfy the gentleman

from New York, [Mr. Cox.]
Mr. SAYLER. I think the Chair has already ruled upon that point

of order.

The SPEAKER. The Chair has ruled that the session of Thursday is continuing

Mr. SAYLER. And unquestionably the Chair is right under the

present rules.

Mr. O'BRIEN. I desire to raise a question of order that it may be decided whether or not we are now in the legislative day of Thursday, February 1, or the legislative day of Monday, February 5.

The SPEAKER. The gentleman from Maryland raises the point of order that to-day is the legislative day of Monday. Is that the point

Mr. O'BRIEN. That is my point of order.

The SPEAKER. The Chair overrules the point of order.

Mr. O'BRIEN. I ask the attention of the Chair a few moments that I may explain my reasons for raising the point of order.

The SPEAKER. The Chair then withdraws his decision to allow

the gentleman to be heard.

Mr. COX. I hope the gentleman from Maryland will at the same time withdraw his objection to my resolution; otherwise he cannot

raise the point of order.

The SPEAKER. The Chair desires to state on this point that he does not see how the House can do any act which they have forbidden themselves from performing. In other words, the Chair is unable to see, after the House has agreed with the Senate, for instance not to adjourn, how a motion can be carried, or even entertained, to adjourn. Nay, more, the Chair is unable to see when the House has by an enactment of law said that it would not adjourn, how the Chair can entertain a motion to adjourn, or how the House can adjourn.

Mr. O'BRIEN. That is the very question involved in my point of

The SPEAKER. And the Chair has overruled the point of order, Mr. O'BRIEN. I desire respectfully to assign a reason why I raise

Mr. O'BRIEN. I desire respectivity to assign a reason way I take
the point of order at this time.

The SPEAKER. The Chair will withdraw his decision to enable
the gentleman from Maryland to be heard.

Mr. O'BRIEN. That is what I desire.

Mr. COX. Does the gentleman withdraw his objection to the reference of my resolution?

Mr. O'BRIEN. Not yet.

Mr. COX. I am content. Go on.

Mr. COX. I am content. Go on.
Mr. O'BRIEN. The question whether we are in the legislative day
of Thursday, February 1, or Monday, February 5, I understand has
been provisionally determined by the Speaker, he at the same time
reserving the right to change his decision.
The SPEAKER. Not provisionally. The Chair has withdrawn his
decision absolutely to enable the gentleman from Maryland to address

the House.
[Cries of "Go on!" "Go on!"

Mr. O'BRIEN. I hope I will have the respectful attention of the

[Cries of "Go on!" "Go on!"]
Mr. O'BRIEN. I hope I will have the respectful attention of the House, because in giving the opinion which I propose to submit I give that which I think will commend itself, as a greater and more enlightened mind than my own, one who is recognized upon this floor as one of the leading lawyers in the House, fully coincides with me in the view I desire to present. The question whether this is the legislative day of last Thursday, or Monday, is necessarily a question which is involved in the construction of the act known as the electoral bill. In the views that I will submit, I will consider the question as undecided by any previous action of the House.

Now, sir, if we are in the legislative day of last Thursday, February 1, because of the fact that in the electoral bill it is stated that either House may take a recess until the next day, it may be possible that we will remain in the legislative day of Thursday, February 1, until the coming of the next 4th of March; and I would inquire of the Speaker and of the House whether, when the hour of twelve o'clock meridian upon the 4th of March is reached, if the counting of the votes shall not then have been completed and if the joint convention shall not have been dissolved, whether or not then we shall not be in the legislative day of the 4th of March and compelled to adjourn under the Constitution, or whether we shall be in the legislative day of Thursday, February 1? It seems to me that that is conclusive of the question when we consider it in relation to what would be the extension of the argument upon which is based the theory that we are now in the first the second of the second of the heavy that we are now in the second of the argument upon which is based the theory that we are now in the second of day, February 17 It seems to me that that is conclusive of the question when we consider it in relation to what would be the extension of the argument upon which is based the theory that we are now in the legislative day of last Thursday, February 1. It reduces the argument to an absurdity and proves it to be fallacious from the beginning. Because if to-day we are in the legislative day of Thursday, February 1, and if the provisions of the bill by which we are placed in what I may call this unfortunate position have not been erroneously determined, we may remain in that position until twelve o'clock on the 4th of March, when we shall be compelled to recognize the fact that we are in the calendar day of the 4th of March and under the Constitution compelled to adjourn. Moreover, by the rules of the House, which are more imperative and more binding than any ordinary construction of the statutes by the Speaker, the House has certain rights.

The SPEAKER. Does the gentleman mean to state that the rules of the House are more binding than a law of Congress?

Mr. O'BRIEN. By no means. But I say that the construction of law by the Speaker of the House is not more binding than the rules of the House; because the construction of the law by the Speaker of the House may be overruled by the House, and I think no one will

deny that proposition.

Now, I say that the construction of what is known as the electoral

law, which it is alleged limits the power of the House to the taking of a recess, has been determined for the House only by the construction placed on that law by the decision of the Speaker, and I have the greatest respect for the decision of the Speaker although I think it was an error.

it was an error.

Now, Mr. Speaker, the rules of the House admit, not only upon Mondays but upon the last six days of the session, a right to call for a suspension of the rules upon any resolution or pending bill and have the same passed by a two-thirds vote of the House. If we are to remain in the legislative day of Thursday, February 1, until the 28th day of February, then the rules of the House will not permit any member upon this floor to rise and ask a suspension of the rules, and the difficulty may exist until the 4th of March shall have dawned upon us, the bour arrived the moment come when the Speaker's and the difficulty may exist until the 4th of March shall have dawned upon us, the hour arrived, the moment come when the Speaker's gavel must forever determine the ending of the Forty-fourth Congress. But, sir, on that legislative day it will become compulsory on the Speaker to recognize the fact that we are on the calendar day and legislative day of the 4th of March.

Now, I imagine that the difficulties which have supervened arise out of what I consider a misconstruction of the electoral bill. It is with

of what I consider a misconstruction of the electoral bill. It is with great diffidence that I submit my views of the proper construction of this bill. Section 5 provides that the joint meeting shall not be dissolved until the count of the electoral votes shall be completed and the result determined. It does not say that neither House shall adjourn. It merely provides that the joint meeting shall not be dissolved. But in the very next provision of the law it gives power to either House to adjourn to the next calendar day, although in fact the law uses the words "take a recess." I am not here to be told, nor can this House be told, that the meaning of the word "recess" which may attach to it under ordinary construction may not be properly construed so that the word "recess" in this connection may mean adjourn. In other words, if instead of the word "recess" the law had used the word "adjourn" there would have been no difficulty, because the law provides that the recess shall be until the next culty, because the law provides that the recess shall be until the next day, meaning the next calendar day, and therefore if the word used had been "adjourn" instead of "recess," why of course we would have on Thursday last adjourned until the next calendar day; and have on Thursday last adjourned until the next calendar day; and therefore it strikes me that the whole difficulty arises entirely from the construction, or rather the misconstruction of the word "recess." I know that in ordinary parlance the word "recess" does not mean to adjourn, nor would it be so construed; but when you construe the whole text of section 5 of the bill you find, while the bill provides against a dissolution of the joint meeting, it also provides in effect that either House shall have all the powers which it previously excercised of adjourning excepting the power of adjourning beyond a single day; that is to say, the House has no power to adjourn for two or three days, as it has the privilege to do under the Constitution, but the law continues the power in either House of adjourning, or, in other words, taking a recess for a day.

Now, suppose the word "recess" is construed to mean adjournment, that is, adjournment in its ordinary acceptation. If that is done the

that is, adjournment in its ordinary acceptation. If that is done the difficulty will not only be solved, but no difficulty whatever would be presented. I say not only that it is not a forced construction for the Speaker to say that the word "recess" in this law means adjournment, Speaker to say that the word "recess" in this law means adjournment, but that upon a proper reading of the law it can mean nothing else. It can never be presumed that a law of the United States, framed by the two Houses of Congress, could have in view the object of defeating all the rules of both Houses and preventing the two Houses from exercising their ordinary power of adjournment from day to day.

My attention is called to the last clause of section 5, which says:

And while any question is being considered by said commission, either House may proceed with its legislative or other business.

How proceed? Proceed in the ordinary way. That is, either House may adjourn from day to day except, understand me, Mr. Speaker, except that the power to adjourn is limited by the words "not beyond

the next day."

Am I to be told here in the angust presence of the two Houses of Congress and of the country that our business is not only to be thrown into confusion, but almost into chaos, because of the construction given to a single word, especially when that construction is totally unnecessary? On the other hand, I assert without hesitation that, if this question be considered by the Committee on Rules or by the lawyers on the Committee on the Judiciary, they would not hesitate to say that it is better for the interests of Congress and of the country, but because it is right and in accordance with the proper construction it is better to construct the word "recess" as meaning an adjournment from day to day than to pass another law to remove the difficulty. I submit this to the House as a correct view of this question.

Mr. COX. Mr. Speaker—
Mr. HUBBELL. I rise to a question of order.
Mr. COX. I yield to the gentleman from Texas [Mr. HANCOCK.]
Mr. HANCOCK. I would, with considerable diffidence, offer a few remarks upon the subject now before the House in regard to the proper interpretation to be given to the fifth section of the electoralcommission law passed a short time since.

I may not have a great reverence for rules as some other members, but I hope I have a proper appreciation of them, and I recognize the necessity of their observance. In the view I take of this law I do not conceive that it necessarily makes any infraction upon the ordi-

nary rules governing the procedure of this House. It seems to me that the law was framed with reference to a contingency such as we now find ourselves in, and that it has made ample provision for the transaction of the ordinary business of legislation without interruption by the reason of the change of adjournments into recesses.

It seems to me that the language implied in the law is peculiarly fitted to accomplish that particular object:

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes—

That contingency has arisen. A question has occurred in relation to the counting of certain electoral votes. Hence the joint meeting was in a condition to take a recess. The law proceeds—

in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next

That undoubtedly carries us out of one calendar day and into the next calendar day, and places the House in session on the next calendar day, precisely as if we had adjourned to the next calendar day.

If there could be any doubt as to this being the correct interpretation of the design of the law, it is made most manifest by the concluding clause of the same section:

And while any question is being considered by said commission—

That is, a question in regard to counting any electoral votes either House may proceed with its legislative or other business

It certainly could not have been intended by the broad terms here employed to restrict the House to the particular character of legisla-tion or other business that might have been in order on the day when tion or other business that might have been in order on the day when the joint meeting commenced—that is, the 1st day of February—and to hold that, notwithstanding the enlarged powers given to the respective Houses to proceed with their legislative or other business, it must be construed as but one legislative day, and the business to be transacted is to be only that which is legitimate and proper on that particular day. Having taken a recess from the one day to the next, the business of the House on that next day is to be governed by the rules applicable to the particular day to which the recess has been taken.

This view makes the law and the rules entirely consistent in so far as to give effect to the rules when they do not necessarily come in conflict with the law. Just so far as the rules come in conflict with the law, of course the rules must fall, be pretermitted, in order to give full

force and effect to the law.

In that view we were in session on Friday for the purpose of taking up and considering such legislative business, or any other business. ing up and considering such legislative business, or any other business which devolved upon the House, in like manner as if we had adjourned from Thursday to Friday. The law seems to have been drawn with great care to enable us to take a recess from Saturday until Monday, for it says "in which case it shall be competent for either House acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted." We are now in session on Monday by virtue of a recess taken from Saturday to Monday as if we had adjourned from Saturday to Monday. And to-day the business is to be taken up and acted upon under the rules applicable to Monday, without reference to the fact that we did not adjourn but took a recess from Saturday to Monday. With this interpretation I think there can be no trouble or difficulty, and without it we are certainly in most inextricable confusion with reference to the power of the House to legislate upon fusion with reference to the power of the House to legislate upon

matters of grave importance.

Under the Speaker's interpretation that this is one elongated day, extending from the 1st of February until perhaps the middle or perchance the 20th, we may pass an act which upon its being carried to the President he sees proper to veto; but on inspection of the dates as journalized it is found that when he returns the bill, twenty days instead of ten days have elapsed, so that the veto does not avail. Thus this interpretation would break down the executive power of the Government, leaving legislation simply at the discretion of the the Government, leaving legislation simply at the discretion of the

two House

On the other hand, under the interpretation by which we pass from On the other hand, under the interpretation by which we pass from one calendar day to the next calendar day, the business takes date with the day to which the recess is had; and the proceedings are as legitimate and regular from day to day as if there had been no such recess, but an actual adjournment. Suppose that in the first instance the law had required the sessions of Congress to be continuous, that throughout the session there should be no adjournment. In that case there would be no difficulty in conforming to the same character of rules we now have. So that during a session of three or six or nine months without an adjournment, a recess being taken from day to months, without an adjournment, a recess being taken from day to day, the rules of the respective Houses might provide that upon cer-tain days a certain character of business should be taken up, and that certain other business should not be allowed. For instance, although certain other business should not be allowed. For instance, although no adjournment should take place, it might be declared by the rules that on Monday a suspension of the rules should be in order, and in the same way any other legislative regulation of the proceedings might be adopted by either branch of Congress.

I feel very clear, Mr. Speaker, that the law admits of this interpretation; and I must conclude that it was drawn for the purpose of permitting the legitimate legislative business of the two Houses to

go on in the same manner as if there had been an adjournment, and not to operate as a qualification upon the power of each House so as to confine it to the character of legislation that may have been in order upon the day on which the joint session commenced.

The SPEAKER. The Chair submits that the view of the question

taken by the gentleman from Texas [Mr. HANCOCK] would require a

change of the rules.

Mr. HANCOCK. I say that the law changes the rules in this respect.

Mr. COX. I now yield five minutes to the gentleman from Iowa,

[Mr. WILSON.]
Mr. WILSON, of Iowa. Mr. Speaker, I am pleased with the ability with which the wrong side of the question has been presented. I always recognize ability wherever I am capable of recognizing it. I have before me the proceedings had in this House in 1801 when the House met on the 11th of February to count the votes for President and Vice-President. Thirty-six ballots were had and the order of proceeding was this: whenever a ballot had been taken we find an order that the ballot be repeated at a certain hour, sometimes on the next calendar day, no legislative act being performed whatever, there being no adjournment nor recess.

there being no adjournment nor recess.

Now, under the interpretation put by the gentleman from Maryland [Mr. O'BRIEN] upon the term "recess" you would be put, Mr. Speaker, in the disagreeable position of ruling that the convenience of this House should override the terms of an act of Congress. You have ruled, sir, that a joint rule of the two Houses until abrogated by both is still in force. Now a joint rule does not require the signature of the President; and you having so held—conscientiously no doubt—

The SPEAKER. The Chair has not given any decision at variance

Mr. WILSON, of Iowa. I say then with how much more force must

Mr. WILSON, of Iowa. I say then with how much more force must you hold that a law of the land to which we have agreed, suspending many of our rules, cannot be abrogated unless with the concurrence of both Houses? That remark which you made (to use an old phrase) touches the thing with a needle. It requires that this term "recess" be changed by law into the word "adjourn."

I have made a statement of what in my view we can and what we cannot do under the law as it now stands. We can consider appropriation bills in the Committee of the Whole. We can consider reports from committees privileged to report at any time. Not only can we consider bills in Committee of the Whole on the state of the Union, but we can consider bills in Committee of the Whole on the Private Calendar by going into committee for that purpose by a ma-Union, but we can consider bills in Committee of the Whole on the Private Calendar by going into committee for that purpose by a majority vote. We can consider all special orders made under a suspension of the rules. We can by unanimous consent do anything the House sees fit to do. The Committee on Appropriations can report at any time, and so can the Committee of Ways and Means.

The SPEAKER. And also, the Chair would suggest, the Committee on Printing. All privileged reports and all questions of privilege can be entertained.

Mr. WILSON, of Iowa. Certainly the reports of all committees

Now let us see what we are prohibited from doing. We cannot refer a bill without unanimous consent, but consent is never denied for that purpose. We cannot, except by unanimous consent, move to suspend the rules; and of course unanimous consent would obviate

the necessity for such suspension.

Now, then, to speak plainly, here is where one of the difficulties comes in. I do not suppose unanimous consent will be denied to any gentleman who wants to direct the further action of the House relating to its legitimate business; but unanimous consent would be denied at once to anything of a political nature offered from either side of the House. That we cannot entertain a proposition is the greatest difficulty we meet. We cannot entertain reports from standing committees of the House of the House the committees which werelly report. mittees of the House, the committees which usually report Tuesday, Wednesday, Thursday, and Saturday. Under the present condition of affairs I do not suppose leave would be denied to any gentleman in charge of a bill matured by a committee to bring it before the House. charge of a bill matured by a committee to bring it before the House. But we cannot go to the Speaker's table without unanimous consent; and I call the attention of gentlemen to the fact we never do go to the Speaker's table, or seldom go there, without unanimous consent; that is to say, we hardly ever proceed to the regular consideration of business upon the Speaker's table, every message from the President of the United States and every communication from the head of any one of the Departments being taken up usually by the Speaker and referred by unanimous consent

I believe we can act under the rule proposed if the House thinks it wise to pass it; I believe we can do it, but I am not clear how legal we would be in doing it. I know if we pass an amendatory act declaring while pursuing legislative duties the Houses may adjourn when the commission is absent—I know if we change the word "rewhen the commission is absent—I know if we change the word "recess" to "adjourn" and the Senate concurs in it and the President signs the bill then it would be legal. But the word "recess" is too well understood by members of the House to have it interpreted to mean "adjourn." That bill came to us and found the House with a code of rules. It suspended a certain portion of the rules. It said you may take a recess, and every legislator knows until there is an adjournment the legislative day continues.

Mr. O'BRIEN. Let me ask the gentleman a question.

Mr. WILSON, of Iowa. Certainly. Mr. O'BRIEN. The House will observe what the gentleman from Mr. O'BRIEN. The House will observe what the gentleman from Iowa does not seem to apprehend now while he is at the moment arguing this particular question, that the word "recess" has no relation whatever to the word "adjourn." I will explain: The word "adjourn" means the act of the House; the word "recess" means that period of time between the ending of one session and the beginning of another. If the law had used the proper word it would have used some other word than the word "recess," to mean we could not adjourn. What the law does mean, and what it only means, is that we can provide for an interval of time between one legislative session and another. another.

## MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, announced the passage of an act (S. No. 1222) to provide for a deficiency in the appropriation for the public printing for the current fiscal

resolution of the Senate of January 22, 1877, to print 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for the use and distribution of said board. It further requested the return of the resolution of the Senate of January 22, 1877, to print 1,000 extra copies of the report of the board of health of the District of Columbia for the resolution of the Senate of January 22, 1877, to print 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 for the use and distribution of said board.

#### AMENDMENT OF THE RULES.

Mr. O'BRIEN. The law only means that either House may provide for an interval of time between the beginning of one legislative sessionand another. That is to say, it shall not remain in continuous session. It does not mean it shall not adjourn; on the contrary, it means it shall have power to adjourn. That is to say, it shall have power to end one session and begin another session upon the next calendar day.

Mr. WILSON, of Iowa. Mr. Speaker, I do not think that is cor-

Mr. WILSON, of Iowa. Mr. Speaker, I do not think that is correct; recess does not mean adjourn.

Mr. O'BRIEN. That is in my judgment the meaning of it.

Mr. WILSON, of Iowa. I do not think the gentleman is correct at ali. The other day when I brought in a bill to cure this difficulty, to change by force of law the word "recess" to enable us to adjourn, an objection was made by the gentleman from Tennessee [Mr. Whitthorne] it would infringe the Constitution where it says "the votes shall then be counted." In conformity with the idea that we shall sit in perpetual session until that act enjoined by the Constitution is performed, they employed a term perfectly familiar to all of us; clearly explained in Barclay's Digest; clearly explained by all the authors on parliamentary law as to what "recess" is and what our powers are under it.

powers are under it.

Mr. O'BRIEN. Let me ask the gentleman, suppose the law had said, which is an equivalent term, shall "suspend" legislative business from one day to the next calendar day, does the gentleman say

we could not adjourn?

Mr. WILSON, of Iowa. Then it would have said adjourn.

Mr. O'BRIEN. That is the meaning of it, and it means nothing else.

Mr. WILSON, of Iowa. Those gentlemen who prepared that law knew the force of terms. They knew what adjournment is and what

Mr. O'BRIEN. Abler law-makers than any of them have made laws which have been susceptible of more than one construction. Mr. WILSON, of Iowa. It is difficult to find more able law-makers Mr. WILSON, of Iowa. It is difficult to find more able law-makers than the gentlemen on that commission. But, Mr. Speaker, I believe in the few words in which you gave it your ruling is unanswerable. We undoubtedly can reach the Speaker's table and allow the standing committees to report and have motions to suspend the rules; we can do all that by a rule such as that proposed by the gentleman from New York. But I am not positive whether we will not thereby be infringing the law. If we amend that one word "recess" and call it "adjourn," then all the rules under which we operated before this act became law will be in force, and the House will proceed without hinderance. I am clear on that, but not clear that it would not be a violation of law to evade by a rule of the House the act creating the commission.

Mr. WOOD, of New York. The whole difficulty in this case is as to the construction of section 5 of this so-called compromise act. That section evidently refers entirely and exclusively to the original formation of the joint convention. The beginning of the section provides as to the assembling of the Houses, the positions of the presiding officer, the Speaker, the tellers, and the Clerk, &c. It then goes on to refer to the session of the joint convention; but there is, in my judgment, a great misapprehension as to the nature and character of this so called continual session. This portion of the act is not mandatory in its terms upon either House; but the language is:

In which case it shall be competent for either House-

It shall be competent-

in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

It does not say that either House "shall" take a recess.

Now, sir, I submit, it being left entirely discretionary with either House, one or both, the law making it competent for either House to

take a recess, that the proper construction of that is that we have a discretion to consider what we shall do; that we may or we may not take a recess and may adjourn. I think, therefore, we should have to-day the morning hour of Monday as usual.

Mr. HARRIS, of Virginia. I am satisfied that the true meaning of this act is not to interfere with ordinary legislation or to prevent the adjournment from day to day. In the first place, there is an extrajudicial or legislative body created out of the two Houses; and while acting in that capacity its functions are distinct and separate from those of ordinary legislation. those of ordinary legislation.

The bill provides, in the first place,-

That the Senate and House of Representatives shall meet in the Hall of the House of Representatives, at the hour of one o'clock post meridian, on the first Thursday in February, A. D. 1877; and the President of the Senate shall be their presiding

The third section provides:

That while the two Houses shall be in meeting, as provided in this act, no debate shall be allowed and no question shall be put by the presiding officer, except to either House on a motion to withdraw; and he shall have power to preserve order.

Now, if in the contemplation of the law we are still in joint session, and if to adjourn one House would be to dissolve the joint session then, under the law, you have no power to have debate at all. For it provides that while we are in joint session we cannot have debate. I draw the distinction between actual physical joint session and legal joint session; and the theory of those who contend that we have no right to adjourn is that we are in joint session all the time; and if that be true you cannot have debate or any proceeding at all. Then, in section 5 it is provided:

That at such joint meeting of the two Houses seats shall be provided as fol-

And the same section provides:

Such joint meeting shall not be dissolved until the count of the electoral votes shall be completed and the result declared—

I admit that this body, created by law as an extrajudicial or legislative body, cannot be dissolved until the count shall be completed and the result declared. But it says further—and I desire the attention of the Chair especially to this, because if we are going to stick in the bark and say there can be no adjournment of either House of Congress, then, according to the letter of the statute, you can have but one recess on each disagreement of the Houses—

and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

Now, that only provides for one recess. And if this language means that the two bodies are in perpetual session, with the one exception stated in the statute of a recess not beyond the next day at ten o'clock, why, then, when we shall have met after the issue has been raised, why, then, when we shall have met after the issue has been raised, we are in perpetual session, under the language of the statute, and we have no authority to take a recess from day to day as we are doing; for the statute says that there shall be but one recess, and that not beyond the next day at ten o'clock in the forenoon. It does not say that the next day either House may take a recess again from day to day or from hour to hour.

The statute provides further:

And while any question is being considered by said commission, either House may proceed with its legislative or other business.

may proceed with its legislative or other business.

Now what does that mean? It does not say "and may have power to adjourn from day to day." But it meant this: The makers of this law knew when they were framing it that under the law as it stood it was likely the joint convention would be occupied until the 4th of March counting the electoral vote. Therefore anticipating the period of counting, they changed it from the 14th of February to the 1st of February. And will the Speaker of the House believe that those gentlemen who framed this law meant that this House should sit in a perpetual business session for perhaps thirty days, one whole calendar month, with no power to adjourn—the whole to be treated as one day—when they said that we should go on with our legislative business as usual? Does not that imply the right to adjourn, or take a recess, or do any other legislative act which Congress has power to do? When the two Houses are in joint session they can do nothing but count the vote. When not in joint session they can do anything else but that. else but that.

Mr. PAGE. I rise to a parliamentary inquiry. What is the question before the House?

The SPEAKER. The question of the reference of the resolution of the gentleman from New York, [Mr. Cox.]

Mr. PAGE. Does it not require unanimous consent?

Mr. O'BRIEN. I understand the question is upon the point of or-

der that I raise

The SPEAKER. The Chair considers that the subject is before the

Mr. PAGE. Can the reference of this resolution be made by a ma-

jority of the House on to-day?

The SPEAKER. The resolution was introduced by unanimous consent and has been discussed; and the question now is upon its reference to the Committee on Rules.

Mr. O'BRIEN. I objected to the introduction of the resolution, and I apprehend that the question before the House is upon the question

of order, whether this, as a legislative day, is Monday or Thursday

The SPEAKER. The present condition of the House of Represent-atives is not new. It has frequently occurred before that a legisla-tive day has extended beyond the actual twenty-four hours, and it has uniformly been held that until the House did adjourn it was the same legislative day. The Chair recollects one occasion when the legislative day extended for seventy hours nearly. The House is in a condition very much in fact similar to that in which the House of Representatives was in 1801 upon an employees case the declaring of Representatives was in 1801 upon an analogous case, the declaring of an election of a President of the United States. It seems that in that an election of a President of the United States. It seems that in that case the House neither adjourned nor took a recess, but passed a resolution that they would on the next day take another ballot in reference to the subject-matter. They recognized at that time that the legislative day extended beyond twenty-four hours. The Chair (and the House) is presented in this case with the actual words of the statutes, and he has in consequence of that statute ruled that he could not entertain a motion to adjourn, and without a motion to adjourn a new legislative day cannot be reached. The Chair, in view of the binding force of the law, states that the law which stops the House from adjourning prevents the bringing up of new business belonging to the opening of a new day, which may be provided for by the rules.

by the rules.

The Chair does not say now but what the resolution proposed by the gentleman from New York would remedy the difficulty the House is in, but the Chair is not willing now to determine whether the introduction and adoption of that rule by the House would not be in fact an evasion of the law or a negation of the law. When that time comes the Chair will decide that point as he is best enlightened on it. The Chair, however, sees no difficulty in the reference of this resolution, either to the Committee on Rules or to the Committee on the Judiciary, so that they may determine in either committee what is the effect of the law. But with the law before the Chair, that neither this House nor the Senate shall adjourn pending this count, the Chair is unable to make any other decision than the one which he has reached.

reached.

Mr. PAGE. Do I understand that the resolution of the gentleman from New York [Mr. Cox] is now before the House?

The SPEAKER. It is, for reference.

Mr. PAGE. Is not objection to it now in order?

The SPEAKER. The resolution is not before the House for action. The Chair would like to say, and thinks it not unparliamentary to say, that the gentleman from New York [Mr. Cox] introduced this resolution rather at the suggestion of the Committee on Rules, so that the judgment of members of the House may be reached and so the committee may come to an intelligent conclusion as far as possible.

Mr. PAGE. If it is not too late to object to the reference of the resolution, I do object.

The SPEAKER. The Chair thinks it is too late.

Mr. WHITTHORNE. I desire to make a parliamentary inquiry, and it is this: Inasmuch as the Speaker of the House, on Friday night last I believe it was, decided that he could not entertain a motion to adjourn beyond a given day, because of the existence of the electoral law, as I term it, and such having been the decision of the Speaker, has it not become the law of the House, and is it not too late to make objection now? objection now?

The SPEAKER. The Chair so decided, and was clearly right in that. The Chair decides that this House cannot do anything which

that. The Chair decides that this House cannot do anything which they have bound themselves by law not to do.

Mr. BLAND. I desire to call attention to one or two points in this connection, which, it seems to me have been somewhat overlooked. Clearly the bill provides for two modes of proceeding; that cannot be disputed. The first section provides for a joint meeting and for objections that may be made to a State from which there are no double returns. That is the first section; and when an objection is made to counting the vote of a State from which there is no double return, there is nothing for the two Houses to do but to separate and vote, and during that time they cannot take a recess.

and during that time they cannot take a recess.

The second section provides for a different case entirely. It provides that where there are double returns the double returns shall be remitted to this commission, and pending the consideration of them by this commission the bill provides as I will read in a moment. We must take the whole bill together, and not particular parts of it. The bill provides that pending the consideration by the commission of the double returns this House, or either House, may proceed with its legislative business, and it uses this language in the fifth section:

And while any question is being considered by said commission either House may proceed with its legislative or other business.

Now I ask you, Mr. Speaker, how can this House proceed with its legislative business unless it be under the rules of the House, and not under this bill? If this House is to proceed with its regular legislative business it must be under the rules of the House and not under the bill. But while a question is pending, where there is but one return, and which question does not go to this commission, then the bill provides that only a recess shall be taken and we cannot proceed to any other business but that pending before the joint conven-

tion.
So I say the law distinctly provides for two different cases. Where there is objection to the vote of a State and no double return, that ob-

jection must be considered by the two Houses, and the joint meeting cannot be dissolved, nor can an adjournment take place, but only a recess; nor can we proceed in that event to the consideration of legislative business. But when we have referred to this commission under the law the case of a double return, then the law provides that under the law the case of a double return, then the law provides that we may proceed to our ordinary regular legislative business, and that can be done only under the rules of the House. It is not under this bill at all that we proceed to legislative business pending the consideration of any question by the commission, but under the rules of the House. Whether you call it an adjournment or a recess, we are acting under the rules of this House, and any motion or business that can be entertained in the regular order of our business can be entertained and considered while any question is being considered by the commission. commission.

Section 4 of this bill provides that "when the two Houses sepa Section 4 of this bill provides that "when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon an objection to a report of said commission." I call particular attention to this, because gentlemen refer to the provision that the joint meeting shall not be dissolved until the count of the electoral vote shall be completed and the result declared. That refers to the meeting of the two Houses after this commission has completed the consideration of and decided all questions referred to it, and when the House is proceeding under this law and this law alone. We cannot proceed with the regular legislative business of the House except under the rules of the House, not under this law.

Mr. HOOKER. I desire to say a single word upon the resolution offered by the gentleman from New York, [Mr. Cox.] I differ with reluctance from the gentleman from Iowa, [Mr. WILSON,] who always exhibits great knowledge with reference to the rules of the House and expresses himself with great clearness and perspicuity in regard

It is very evident that this act, which transferred the counting of the electoral vote from the two Houses of Congress to the commission, proceeded upon the idea that the joint meeting of the two Houses, as proceeded upon the idea that the joint meeting of the two Houses, assembled under the Constitution to count the electoral vote, would meet with an obstacle in the performance of its duty which was new and strange in the history of the country. And the distinction drawn by the gentleman from Missouri [Mr. Bland] strikes me with great force and pertinency, namely, that the first section of the bill refers to that class of cases which come before the two Houses when objection is made to the count of an electoral vote of a State from which but a single certificate has been received. The first section of the act was designed and intended to conform to the constitutional mandate that when the presiding officer of the Senate had opened the returns that when the presiding officer of the Senate had opened the returns he should hand them to the tellers; the tellers should count the vote and report the result to the Vice-President or President of the Senate, and he should announce it to the two Houses. And when any objection was made to the count of a vote, in the case of a single certificate, the two Houses should separate, come to a decision thereon, and meet immediately again in joint meeting without the transaction of any legislative business

It was well-known when this law was proposed that there were some four States from which there were dual electoral returns. This law provides for the creation of a commission for the consideration law provides for the creation of a commission for the consideration of those dual returns. It goes on to provide that while this commission—which is now sitting in the Supreme Court room and adjudicating upon one of the questions contemplated by the law, that is, the question of the vote of the State of Florida—while this commission is so considering that question, the two Houses sitting as legislative bodies, the Senate in its Chamber and the House in its Chamber, may proceed with its ordinary legislative business. That means not only the legislative business which was pending when the joint meeting took place, but that which might subsequently be introduced, showing that it was the purpose and object of the framers of this showing that it was the purpose and object of the framers of this law not only that the two Houses might proceed with the business before it but to receive and consider new business. How? Under the rules of the House as they stood before this electoral bill became

a law.

The closing paragraph of the first section of the bill is as follows:

"When the two Houses have voted"—that is, shall have voted upon an electoral vote of a State from which there were not dual returns, but only a single return—"they shall immediately again meet," in conformity with the provision of the Constitution, "and the presiding officer shall then announce the decision of the question submitted." That shows that it was the purpose and object of the framers of this electoral law that where there was but a single return from a State the only business that could be transacted in either House should be the business of deciding upon any objection raised against such single return.

The second section goes on to provide for the commission now sitting, and which is considering the case of Florida, with not only its dual returns, but its triplicate returns. When the law came to provide for that case they used in the fifth section of the law this lan-

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House.

Either House possesses the power to take a recess. I call the attention of the Speaker especially to the language of this section. It is not imperative upon either House to take a recess, but the power exists in either House to direct a recess. The simple question as to the time beyond which the recess should not be taken is the only limitation which is put upon the power of either House.

Thus it will be seen that my learned friend to whose views on par-Thus it will be seen that my learned friend to whose views on parliamentary law I always listen with so much attention and respect is mistaken in supposing that the electoral law arbitrarily requires the two Houses to take a recess. It does no such thing. It leaves each House to act for itself on this question, simply prescribing that the recess, if taken, shall not be for a longer period than till ten o'clock the next day. That recess may not be taken at all. The language is: language is:

It shall be competent for either House, acting separately, in the manner herein-before provided, to direct a recess of such House not beyond the next day, Sunday ex-cepted, at the hour of ten o'clock in the forenoon. And while any question is be-ing considered by said commission, either House may proceed with its legislative or other business.

This language was obviously designed to leave the question of the recess to be determined by each House separately, the power being reserved to each House by positive enactment to proceed under its ordinary rules with ordinary legislative business. No man who gave his assent to that law—no man who joined in proposing or voting for it—contemplated that there could possibly be any determination of this question of the electoral count within less than ten days or perthis question of the electoral count within less than ten days or perhaps two weeks. This latter clause of the law, to which I call the attention of the Speaker, was not designed to limit the power of legislation, but to reserve in express terms the power of either House to proceed with its ordinary "legislative or other business." Under the construction adopted by my friend from Iowa the business to be entertained would be limited to the classes which he enumerated, unless unanimous consent to the contrary should be given.

I submit that the whole law must be taken together and construed, in view of all its terms, as we ordinarily construed attention.

in view of all its terms, as we ordinarily construe statutes. I do not think that in our interpretation exclusive reliance is to be placed upon the word "recess;" for the law does not say that we shall take a recess, but that either House may direct a recess if it chooses to do so, which recess, if taken, is not to be longer than till ten o'clock the so, which recess, if taken, is not to be longer than till ten o'clock the next day. It is expressly provided that each House during the pendency of these questions before the commission may proceed with its ordinary legislative business. This provision could only have been intended to preclude a possible construction of the Constitution that, so long as the count of the electoral vote had not been completed, no legislative business whatever could be done. Inasmuch as the act provides that, during the pendency of the count and while questions are under consideration by the electoral commission, the "legislative or other business" of each House may proceed, it must have been designed that this business should proceed in accordance with the rules of the respective Houses. In view of the fact that the taking of a recess is not imperative, but is left within the discretion of either House, it seems to me that the ruling on this subject must be, to that extent at least, qualified.

to that extent at least, qualified.

Mr. COX. Allow me to say only one word further. The object of bringing this resolution to the attention of the House has been accomplished in the expressions of opinion given by the various gentlemen who have spoken. One of the two opinions advanced is that held by my friend from Tennessee, [Mr. WHITTHORNE,] who believes that the great business of declaring who is the President-elect of the United States is paramount to everything else, and that any recess, any adjournment might lead to such trouble and complication that any adjournment might lead to such trouble and complication that the power of the House over the members for the time being would be gone, and thus we might fail to declare the result of the electoral votes. The other opinion, advanced by gentlemen who have strength-ened their view by citations from the law, is that this act by its terms makes it "competent" (using the language of the act) for either House to take a recess, and only a recess. Now in view of this contrariety of opinion, and inasmuch as the Committee on Rules has already referred to it the joint resolution of the gentleman from Iowa, I think it is wise to refer this resolution and give the committee au-

I think it is wise to refer this resolution and give the committee authority to examine this question heedfully.

Mr. BLAND. Do I understand the gentleman from New York [Mr. Cox] to concur in the idea that the framers of the Constitution expected Congress to count the electoral vote in one day; that there should be no adjournment until it was counted? Did they not expect us to take time to count the vote properly, even if it took six months? Does an adjournment necessarily dissolve a joint meeting any more than a recess?

Mr. COX. I was not giving my opinion. I was stating the differences of opinion in the House. These expressions of opinion are important for the instruction of the Committee on Rules, and I am glad to hear the gentleman from Missouri [Mr. Bland] and all other members express their views on this point. I think, however, that the question should receive careful consideration, or we may have five or ten days hence a difficulty which we cannot solve so well as we can at present.

Mr. WOOD, of New York. My colleague [Mr. Cox] will pardon me a moment. I desire to submit that this question resolves itself simply into one of judicial construction of an existing statute. That is all there is of it; and it does appear to me that upon the construc-

tion of a statute the Committee on Rules is not the proper authority for the consideration of the question.

The SPEAKER. The Chair will entertain as an amendment a mo-

ion to refer the subject to any other committee.

Mr. WOOD, of New York. I desire to move that it be referred to the Committee on the Judiciary.

Mr. O'BRIEN. I wish to offer an amendment or substitute for the pending resolution.

The SPEAKER. The question now is simply on the reference of this resolution; it is not amendable.

Mr. COX. I am very willing to have the interpretation of the Committee on the Judiciary upon this subject.
Mr. WOOD, of New York. Lawyers, I suppose, are the only competent authority to construe an act of Congress.
Mr. O'BRIEN. I hope my amendment may be read for information.
Mr. COX. There is no objection to hearing it read.

The Clerk read as follows:

Resolved, That the Committee on the Judiciary be instructed to inquire into the true construction of section 5 of the electoral bill known as No. 17, and as to the right of the House under said bill to adjourn from day to day, with power to report

Mr. O'BRIEN. That is a proper resolution.
Mr. COX. That is not before the House. I now yield to my friend from Tennessee, who desires to discuss this question.

The SPEAKER. The Chair would like to know of the gentleman from New York whether he makes the motion to refer to the Com-

from New York whether he makes the motion to refer to the Committee on Judiciary?

Mr. WOOD, of New York. I do.

Mr. WHITTHORNE. My friend from New York was mistaken in ascribing to me the position this House could not take a recess. I do hold under the law the House cannot take an adjournment. In that regard the ruling of the Speaker has been correct. It is stated in the law, to which reference is made, and positively enjoined that the joint meeting of the two Houses shall not be dissolved. If either House can adjourn, we can take from the Speaker and the officers of this House the control of the members of the House and in that way prevent the joint meeting of the two Houses. That is the objection I have. I may be mistaken.

I may be mistaken.

Again, I started out with my scruples upon this proposition upon the other side of the question. I admit and recognize the inconvenience which would result to the business of the House; but my examination of the Constitution, my examination of the precedent ience which would result to the business of the House; but my examination of the Constitution, my examination of the precedents governing this question, my examination of the law, every law looking to the electoral count, deepens my conviction that no body of men ever believed it was possible to adjourn this act of sovereignty of counting the electoral votes from one week or day to another. It is one continuous act under the Constitution; and, Mr. Speaker, I beg my friends on this floor to beware how they part with the sovereignty now belonging to the people of the United States in the joint meeting of the two Houses. Adjourn and you take away from this House immediately the power to proceed to the election of a President. That legal question may be thrown upon you with all its consequences. We had better "bear the ills we have than fly to others that we know not of." Therefore I made objection to the consideration of the proposition originally submitted by the gentleman from Iowa. This proceeding should be taken, in my judgment, with the utmost care, caution, and prudence.

Mr. PAGE. I understood when the gentleman from New York presented his resolution it was objected to by the gentleman from Maryland. That objection was not withdrawn, and therefore this resolution is not before the House.

The SPEAKER. If the gentleman from Maryland had persisted in his objection he could not have addressed the House.

Mr. O'BRIEN. I appeal to the record (and I have looked at it within the last three minutes) that I not only did not withdraw it, but proceeded with the leave of the Speaker, as the reporters' notes show, and addressed the House without withdrawing that objection.

The SPEAKER. The Chair will remind the gentlemen from Mary-

The SPEAKER. The Chair will remind the gentlemen from Maryland that he could not entertain an objection and at the same time allow the gentleman to make a point of order.

Mr. O'BRIEN. I appeal to the record, and ask that it be read.

The SPEAKER. The Chair entertained the point of order, and we have been discussing it under the point of order, and of course the

have been discussing it under the point of order, and of course the gentleman's objection fell.

Mr. SAYLER. The objection of the gentleman from Maryland was not pending or this dicussion could not have proceeded. It is now too late to make objection.

Mr. O'BRIEN. I did not withdraw it. I was, however, under pledge to the gentleman from New York to withdraw it, and as it is not now too late, I do withdraw it.

Mr. PAGE. I renew it.

The SPEAKER. The Chair rules, the question having been discussed an hour and a half, the objection does not hold. Where a question has been stated and discussion commenced it is too late to

question has been stated and discussion commenced it is too late to

raise the question of consideration.

Mr. PAGE. The gentleman from Maryland objected when the resolution was offered, and has withdrawn his objection and I now renew

it.
The SPEAKER. The Chair has decided no objection was pending,

as the discussion had proceeded, which could not have happened if any objection had been entertained or insisted upon.

Mr. HALE. Does this give the Committee on the Rules any more power than they now have under the resolution of the gentleman from

ing report this resolution if they saw best under the reference of the gentleman from Iowa.

Mr. HALE. No additional power then is given to the committee? The SPEAKER. None in the world.

Mr. COX. The resolution was introduced by me this morning only for the purpose of securing an expression of the members of the Honse on the point involved.

The SPEAKER. Does the gentleman from New York ask that the Committee on the Judiciary shall have the right to report at any

Mr. WOOD, of New York. I do.
Mr. PAGE. If that requires unanimous consent, I object.
The SPEAKER. The gentleman has the right to vote against a reference to the Committee on the Judiciary.
Mr. O'BRIEN. I ask unanimous consent to offer the resolution

which is in the hands of the Clerk.

The SPEAKER. That is not in order. This is a question of the reference of a resolution. It is not amendable.

Mr. O'BRIEN. I am not proposing to amend it; that is already passed. I ask unanimous consent to offer this resolution.

The question being taken, the motion of Mr. Wood, of New York, was agreed to; and Mr. Cox's resolution was referred to the Committee on the Judiciary.

Mr. HALE. That cannot be brought back on a motion to reconsider?

The SPEAKER. It cannot, having been introduced by unanimous consent. The Clerk will report the resolution offered by the gentleman from Maryland, [Mr. O'BRIEN.]

The Clerk read as follows:

Resolved. That the Committee on the Judiciary be instructed to inquire into the true construction of section 5 of the electoral bill, known as No. 17, and as to the right of the House under said bill to adjourn from day to day, with power to report at any time.

Mr. HALE. I must object. The SPEAKER. Objection being made, the resolution is not before the House.

## DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON, from the Committee on Appropriations, reported back the bill (H. R. No. 4559) making appropriation to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes; and moved that it be printed and referred to the Committee of the Whole House on the state of the Union.

The motion was agreed to.

Mr. WILSON, of Iowa. I reserve all points of order on the bill.

Mr. WALDRON. I give notice that I shall on to-morrow ask for the consideration of this bill in Committee of the Whole.

The SPEAKER. If the gentleman gives notice in that form he perhaps will not be able to accomplish his object. The gentleman gives notice that he will some time hence [laughter] ask the House to proceed to the consideration of the bill in Committee of the Whole.

Mr. WALDRON. I will do so as soon as the bill is printed.

Mr. WOOD, of New York. I must object to every proposition that requires unanimous consent until we determine whether we have the

power to adjourn or not.

The SPEAKER. The Chair did not ask unanimous consent for the gentleman from Michigan [Mr. Waldron] to report back this bill. He reported it in the right of the Committee on Appropriations to report at any time.

Mr. COX. I move that the House take a recess until ten o'clock Mr. COX. I move that the House take a recess until ten o'clock to-morrow morning. I desire to say to the House that the gentleman from Indiana [Mr. HOLMAN] states that there is no appropriation bill ready to be taken up.

Mr. STONE. I desire to offer a bill for reference.

Mr. COX. I demand the regular order.

The question being taken on the motion of Mr. Cox, there were—ayes 66, noes 56; no quorum voting.

Tellers were ordered; and Mr. Cox and Mr. PAGE were appointed.
The House again divided; and the tellers reported—ayes 104, noes 49.

## WITHDRAWAL OF PAPERS.

Pending the announcement of the vote, Mr. DUNNELL said: I ask that by unanimous consent James M. Lee be permitted to withdraw from the files his commission as captain in volunteer service. An adverse report has been made in the case, but the party simply desires to withdraw his captain's commission which was put in among the papers by error.

There was no objection, and leave was granted.

# LEAVE OF ABSENCE.

Mr. TEESE, by unanimous consent, obtained leave of absence until Friday the 9th instant.

The result of the vote on Mr. Cox's motion was then announced; and accordingly (at one o'clock and forty-five minutes p. m.) the House took a recess until Tuesday morning at ten o'clock.

PETITIONS.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. JOHN H. BAGLEY: The petition of citizens of Brooklyn and New York, New York, for the repeal of the bank-tax law, to the Committee of Ways and Means.

By Mr. BALLOU: The petition of Thomas Coggshall, of the Aqueduct National Bank, of Newport, Rhode Island, of similar import, to

the same committee.

By Mr. BANNING: The petition of W. W. Livingston, captain and brevet lieutenant-colonel United States Army, that his Army record be corrected so as to show that he is entitled to promotion to the rank of major of artillery before Captains McMullen and Scott of the artillery service, to the Committee on Military Affairs.

By Mr. BEEBE: The petition of citizens of Orange, New York,

that pensioners receive pensions from the date of their discharge, to the Committee on Invalid Pensions.

By Mr. BLISS: The petition of citizens of Brooklyn and Buffalo, New York, for the repeal of the bank-tax law, to the Committee of Ways and Means.

By Mr. BRADFORD: The petition of citizens of Mobile, Alabama,

of similar import, to the same committee.

By Mr. BRADLEY: The petition of A. F. R. Brailey and 22 other citizens of Saginaw, Michigan, of similar import, to the same commit-

By Mr. BROWN, of Kansas: The petition of citizens of Kansas, for such legislation as will prevent the manufacture or importation in the United States of spirituous liquors, to the Committee on the Judic-

iary.

By Mr. BURCHARD, of Wisconsin: Two petitions, one from Daniel Heard and others, the other from Farnsworth & Smith, citizens of Wisconsin, for the repeal of the bank-tax law, to the Committee of Ways and Means.

By Mr. CALDWELL, of Alabama: The petition of Thomas Henry and other bank officers of Mobile, Alabama, of similar import, to the

same committee.

same committee.

By Mr. CASON: The petition of citizens of Miami, of similar import, to the same committee.

By Mr. CLYMER: The petition of citizens of Leechburgh, Pennsylvania, of similar import, to the same committee.

By Mr. CROUNSE: The petition of Samuel Peters and other citizens of Missouri, of similar import, to the same committee.

By Mr. DAVIS: The petition of William E. Anderson and 75 other business men of Raleigh, North Carolina, of similar import, to the same committee. same committee

By Mr. DENISON: The petition of H. W. Albee and others, of Lud-

low, Vermont, of similar import, to the same committee.

Also, the petition of George D. Barton and others, of Vermont, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. DUNNELL: Four petitions signed respectively by William Mitchell and 80 others, J. C. Easton and 58 others, David Anthony and 80 others, and L. L. Bennett and 15 others, citizens of Minnesota,

for the repeal of the bank-tax laws, to the Committee of Ways and

By Mr. DURAND: Two petitions, one from 24 citizens of Howell, Michigan, the other from 27 citizens of Brighton, Michigan, of similar import, to the same committee.

By Mr. FRANKLIN: Two petitions, one from citizens of Weston, the other from citizens of West Waterville, Missouri, of similar im-

port, to the same committee.

port, to the same committee.

By Mr. FULLER: Seven petitions, signed respectively by G. P. Gillette and 120 others, of Evansville; D. Rayner and others, of Lafayette; J. A. Pennill and 75 others, of Zionsville; John Gilbert and 75 others, of Evansville; A. Gist and others, of Covington, and officers of the Central Bank, of Indianapolis, and of the People's Bank at Portland, Indiana, of similar import, to the same committee.

Also, the petition of A. J. Rutledge and 42 others, of Newburgh, Indiana, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

and Post-Roads.

By Mr. GUNTER: The petition of citizens of Mount Comfort, Ar-kansas, for the repeal of the bank-tax laws, to the Committee of Ways and Means

By Mr. HATHORN: Two petitions, one from Oswego, the other from citizens of Schuylersville, New York, of similar import, to the same

committee.

By Mr. HENDERSON: Two petitions, one from John Buffum and 10 others of Andalusia, the other from W. L. Hay and 14 others of Bureau County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HENDEE: The petition of citizens of New Windsor, Maryland, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

land, for the repeat of the bank and the solution of 8,000 citizens of yermont, regardless of sect or party distinction, condemning the action of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Floration of the corrupt and partisan returning boards of Louisiana, Louisia ida, and South Carolina, which seek to subvert the will of the peo-ple, and approving the action of the House of Representatives in sending committees to those States to investigate the true condition of affairs therein, to the committee on the powers and duties of the

House of Representatives in counting the vote for President and Vice-President of the United States.

By Mr. HUBBELL: Three petitions, signed respectively by Norman Larabe and 75 others, of Eastport; John Christie and 20 others, of Benzie County; and E. W. Trout, B. B. Chadwick, and 50 other citizens of Reed City, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HURD: The petition of Charles Greely and others, of Milton Centre, Ohio, of similar import, to the same committee.

By Mr. JOYCE: The petition of citizens of Ripton, Vermont, of

similar import, to the same committee.

By Mr. KNOTT: The petition of citizens of Carlisle, Kentucky, for the repeal of the bank-tax laws, to the Committee of Ways and Means. By Mr. MAGOON: The petition of J. W. Douglass and 52 other citizens of Shullsburgh, Wisconsin, of similar import, to the same com-

By Mr. McCRARY: The petition of citizens of Brighton, Iowa, of similar import, to the same committee.

Also, the petition of Samuel Knauss, late a private in Company B, Thirty-seventh Regiment Iowa Volunteers, for a pension, to the Committee on Invalid Pensions.

By Mr. McFARLAND: The petition of R. C. G. Fry and 27 others, of Greene County, Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. McFCALFE: The petition of citizens of Fort Ann New York

By Mr. METCALFE: The petition of citizens of Fort Ann, New York, for the repeal of the bank-tax laws, to Committee of Ways and

By Mr. MILLER: Two petitions, one from 31 citizens of Riverhead,

By Mr. MILLER: Two petitions, one from 31 citizens of Riverhead, New York, the other from 7 citizens of Binghampton, New York, of similar import, to the Committee on Banking and Currency.

By Mr. MORGAN: Six petitions, signed respectively by G. G. Easton & Co. and 17 others of Hannibal, R. L. McElhaney and 23 others of Springfield, Paul F. Thornton and 37 others of Vernon County, C. H. Brown & Co. and others of Lamar, C. W. Flower and 23 other citizens of Joplin, and O. D. Knox and 26 other citizens of Bolivar, Missouri, of similar import, to the Committee of Ways and Means.

By Mr. OLIVER: The petition of A. W. Hubbard and others, of Sioux City, Iowa, of similar import, to the same committee.

Also, the petition of William H. Higgins and other citizens of Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-

for cheap telegraphy, to the Committee on the Post-Office and Post-

By Mr. PAGE: The petition of citizens of California, of similar im-

port, to the same committee.

By Mr. PHILLIPS, of Kansas: The petition of citizens of Kansas, of similar import, to the same committee.

By Mr. PLATT: The petition of citizens of Havana, New York, for

the repeal of the bank-tax law, to the Committee of Ways and Means. By Mr. POTTER: The petition of John J. Bush and 32 other citizens of Lansing, Michigan, of similar import, to the same commit-

By Mr. ROBBINS, of North Carolina: The petition of citizens of Mount Mourne, North Carolina, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SAMPSON: Two petitions, one from W. F. McCluny and 161 other citizens of Henry County, the other from L. F. Smith and 7 others, citizens of Winterset, Iowa, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. SAYLER: Two petitions, one from J. S. Perdue & Co. and other citizens of Minerva, the other from citizens of Washington Court House, Ohio, of similar import, to the same committee.

By Mr. STRAIT: Four petitions, signed respectively by A. J. Fowler and others of Lake City, Minnesota, by citizens of Red Wing, Albert Lea, and Lake City, of similar import, to the same committee.

By Mr. SWANN: Two petitions, one from Slingluff & Co. and 16 other firms of Baltimore, the other from S. Taylor & Co. and 17 other firms of the same city, of similar import, to the Committee on Bank-

ing and Currency.

By Mr. THORNBURGH: The petition of J. W. Lillard and 100 other citizens of Knoxville, Tennessee, of similar import, to the Committee of Ways and Means

By Mr. THROCKMORTON: The petition of R. W. Collins and others, of Texas, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WADDELL: The petition of citizens of North Carolina, of

similar import, to the same committee.

By Mr. WALDRON: The petition of G. S. Bartholomew and 50 other citizens of Reading, Michigan, of similar import, to the same com-

mittee.

By Mr. WHITTHORNE: Three petitions, signed respectively by John R. Bond and 60 others of Brownsville, J. M. Fowler and others of Columbia, and B. Richmond and others of Memphis, all citizens of Tennessee, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

By Mr. WILLIS: The petition of Lillie Devereux Blake, for removal of her political disabilities, to the Committee on the Judiciary.

By Mr. WILSON, of Iowa: Two petitions, one from citizens of Bellefontaine, the other from citizens of Wapello, Iowa, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

# IN SENATE.

# TUESDAY, February 6, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session.

#### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. U. S. Grant, jr., his Secretary, announced that the President had, on the 31st day of January, approved and signed the act (S. No. 155) to amend sections 533, 556, 571, and 572 of the Revised Statutes of the United States relating to courts in Arkansas and other States.

#### RESUMPTION OF SPECIE PAYMENTS.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States:

To the Senate and House of Representatives :

To the Senate and House of Representatives:

Fy the act of Congress approved January 14, 1875, "to provide for the resumption of specie payments," the lat of January, 1879, is fixed as the date when such resumption is to begin. It may not be desirable to fix an earlier date when it shall actually become obligatory upon the Government to redeem its outstanding legal-tender notes in coin on presentation, but it is certainly most desirable and will prove most beneficial to every pecuniary interest of the country to hasten the day when the paper circulation of the country and the gold coin shall have equal values.

At a later day if currency and coin should retain equal values it might become advisable to authorize or direct resumption. I believe the time has come when by a simple act of the legislative branch of the Government this most desirable result can be attained. I am strengthened in this view by the course trade has taken in the last two years, and by the strength of the eredit of the United States at home and abroad.

a simple act of the legislative branch of the Government this most desirable result can be attained. I am strengthened in this view by the course trade has taken in the last two years, and by the strength of the credit of the United States at home and abroad.

For the fiscal year ending June 30, 1876, the exports of the United States exceeded the imports by \$120,213,102; but our exports include \$40,569,621 of specie and bullion in excess of imports of the same commodities. For the six months of the present fiscal year, from July 1, 1876, to January 1, 1877, the excess of exports over imports amounted to \$107,544,869, and the import of specie and bullion exceeded the export of the precious metals by \$6,192,147 in the same time. The actual excess of exports over imports for the six months, exclusive of specie and bullion, amounted to \$113,737,040, showing for the time being the accumulation of specie and bullion, amounted to \$113,737,040, showing for the time being the accumulation of specie and bullion, amounted to \$113,737,040, showing for the time being the accumulation of specie and bullion in the country amounting to more than \$6,000,000 in addition to the national product of these metals for the same period, a total increase of gold and silver for the six months not far short of \$60,000,000. It is very evident that unless this great increase of the precious metals can be utilized at home in such a way as to make it in some manner remunerative to the holders, it must seek a foreign market as surely as would any other product of the soil or the manufactory. Any legislation which will keep coin and bullion at home will, in my judgment, soon bring about practical resumption, and will add the coin of the country to the circulating medium, thus securing a healthy "inflation" of a sound currency to the great advantage of every legitimate business interest.

The act to provide for the resumption of specie payments authorizes the Secretary of the Treasury to issue bonds of either of the descriptions named in the act

EXECUTIVE MANSION, February 3, 1877.

The message was referred to the Committee on Finance, and ordered to be printed.

### RECESS.

Mr. PADDOCK. I move that the Senate take a further recess un-

til twelve o'clock.
The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock.

The Senate re-assembled at twelve o'clock m.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D. The Journal of the proceedings of Monday, February 5, was read and approved.

# PETITIONS AND MEMORIALS.

Mr. CONKLING presented a petition signed by numerous citizens of Bethel, New York, praying the passage of the bill allowing arrears of pensions; which was ordered to lie on the table.

i Mr. CONKLING. I also present the petition of Elizabeth Schoonmaker, praying to be invested with the rights of self-government at the ballot-box. I inquire of the Chair to what committee this appropriately goes?

priately goes?
The PRESIDENT pro tempore. The Committee on Privileges and Elections

Mr. CONKLING. I move its reference to that committee.

The motion was agreed to.

Mr. CONKLING. I present also the petition of Mrs. Mary Dove, and as I see my honorable friend, the chairman of the Committee on Claims [Mr. Wright] before me, I beg to make a remark. This is

a petition praying compensation for two lots and buildings thereon in Nashville, Tennessee, occupied one as a warehouse for commissary stores, the other as a hospital for the Union forces during the late war of the rebellion. I know this petitioner. She lives in the town in which I live. I am quite sure of her loyalty. She does not belong to the race to which the Senator from Iowa and myself belong. Accompanying her petition are the affidavits of numerous citizens, surgeons in the war, lawyers, and others, stating her ownership of this property, stating its occupation, stating that it was taken by the authorized authorities of the United States, and stating why and how she was unable to obtain compensation at the time. If any assurance of mine can give the chairman of the committee a prejudice surance of mine can give the chairman of the committee a prejudice in favor of the loyalty and the merit of this claim, I beg to give that assurance. I believe the case a meritorious one, and I hope the honorable Senator may remember the few words I have said, and consider

it kindly in committee.

The PRESIDENT pro tempore. The petition will be referred to the

Committee on Claims.

Committee on Claims.

Mr. CONKLING. I present also the memorial of many members of the bar of the State of New York, particularly of the city of New York, being in the southern district of that State, praying legislation to augment the judicial staff by increasing the circuit judges. With this petition is a letter from Mr. Wetmore, a highly respectable member of the bar; and I move that the letter with the petition be referred to the Committee on the Judiciary.

The motion was agreed to.

Mr. CONKLING. I present also a petition signed by Henry R. Selden, a well-known citizen of the State of New York, and signed in all by 216 men and 394 women, 610 citizens of the State of New York, asking for a sixteenth amendment of the Constitution. In presenting this petition I am requested to read the three lines which com-

ing this petition I am requested to read the three lines which compose it:

The undersigned, citizens of the United States, residents of the State of New York, \* \* \* earnestly pray your honorable body to adopt measures for so amending the Constitution as to prohibit the several States from disfranchising United States citizens on account of sex.

I move its reference to the Committee on Privileges and Elections.

I move its reference to the Committee on Privileges and Elections. The motion was agreed to.

Mr. CONKLING. I present also a petition, indorsed upon the back by an appeal by Mrs. Elizabeth Cady Stanton and others officers of the national Woman Suffrage Association, praying in like tenor and effect as the last petition. It is signed by a number of women citizens of the county of Herkimer in the State of New York. I move its reference to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. SHERMAN. I present a memorial of the Cincinnati Chamber of Commerce, setting out the great interest taken by that body in geographical discoveries and polar explorations, and stating that in the interest of science, as well as in behalf of commerce and trade, mutually and inseparably linked together, they heartily approve and urge the passage of the bill providing for another expedition toward the North Pole for the purposes of exploration and the establishment of a colony at some point north of the eighty-first degree of north latitude. They approve of an appropriation of \$50,000 by the General Government for this purpose. I move the reference of the memorial to the Committee on Appropriations.

erai Government for this purpose. I move the reference of the memorial to the Committee on Appropriations.

The motion was agreed to.

Mr. DAVIS presented the petition of Rev. Thomas Scott Bacon, of Oakland, Maryland, praying to be allowed to give evidence before the Committee on Privileges and Elections in relation to affairs in the State of Louisiana; which was referred to the Committee on Privileges and Elections leges and Elections.

Mr. BOOTH presented a petition of citizens of California, praying the passage of a law allowing arrears of pension; which was ordered to lie on the table.

Mr. CRAGIN presented a petition of J. P. Jameson and 30 others, praying for the passage of a law that will provide for cheap telegraphing, &c.; which was referred to the Committee on Post-Offices and Post-Roads.

and Post-Roads.

Mr. JOHNSTON presented the petition of Catesby ap R. Jones, of Selma, Alabama, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. WHYTE presented the petition of H. H. Lewis, of Baltimore City, Maryland, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

### COMMITTEE SERVICE

The PRESIDENT pro tempore appointed Mr. Hereford a member of the Committee on Claims in place of Mr. Price, whose term of service has expired.

# FREEDMAN'S SAVINGS AND TRUST COMPANY.

Mr. SHERMAN. I am directed by the Committee on Finance to report back the bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other purposes. If there is no objection, I should like to have the bill acted on now. It is a very brief House bill.

There being no objection, the bill was considered as in Committee of

the Whole.

The first section provides that the commissioners of the Freedman's

Savings and Trust Company, their survivors or survivor, and their or his successors, shall have the right and authority to buy in, for the benefit of the company, any real or other property which may be offered for sale at public auction to pay debts or liabilities due the company, if, in their or his judgment, the property will otherwise be sacrificed, and to dispose of the same at public or private sale, as, in their or his judgment, may be deemed most advantageous to the their or his judgment, may be deemed most advantageous to the creditors of the company, furnishing to the purchaser or purchasers of any property thus sold by them or him good and sufficient deeds of conveyance for their respective purchases.

The second section approves and ratifies the action of the commis-

sioners in buying in each and every of the pieces of real and other property heretofore purchased by them to prevent their sacrifice, and in selling and conveying sundry parcels thereof, and authorizes the commissioners, their survivors or survivor, and their or his successors, to sell and convey any of the property not heretofore sold, to any purchaser or purchasers, upon the most favorable terms for the cred-

itors of the company.

Mr. COCKRELL. Is there a report?

The PRESIDENT pro tempore. There is no report. It is a House

Mr. COCKRELL. I should like to hear some explanation of it.
Mr. SHERMAN. I will say that the commissioners believed they
had the power conferred by this act, and they proceeded to bid in the property sold on trust deeds from time to time, and again to sell that property. When they came to convey it a question was raised as to their power to convey their title. A question was raised by lawyers and conveyancers here that there was some doubt as to their title, their authority to sell the property under these circumstances, and to convey it. They have, however, in many cases sold the property, and this doubt being raised as to their title it is necessary to appeal to Congress to pass a law on the subject. The committee examined it very carefully, because anything relating to this Freedman's Bank has undergone very careful scrutiny in both Houses. The House passed the bill after full examination, and we came to the conclusion that it was absolutely necessary to pass it to enable the trustees to get full value for the property.

Mr. DAVIS. It refers to the Freedman's Bank of the District of

Columbia ?

Mr. SHERMAN. Yes, sir.
Mr. CAMERON, of Pennsylvania. I desire to know whether the sale is to be made by public outcry or by individual offers. Let the Clerk read that section which authorizes the sale.

The PRESIDENT pro tempore. The Secretary will read the section

referred to.

referred to.

The Chief Clerk read the bill.

Mr. CAMERON, of Pennsylvania. I move to strike out the words
"or private" before "sale." I do not desire to allow these commissioners to sell in private any property. There has been great mismanagement in the institution referred to. A few years ago I opposed the supplement to the charter which gave them the right to take real estate security. From the amendment then made to the charter has come all the trouble in that institution. The whole loss as I believe of the Freedman's Savings institution or bank or whatever it is called arose from the amendment to the charter which allowed them to take real estate as security. Their original charter, I think, gave them authority only to invest their funds in public securities, stocks of the United States, and other similar stocks. I could not consent to allow some, as I understand, of the same people who mismanaged the affair to have the right to dispose of this property as may suit themselves. Therefore I move that the words "or private"

Mr. SHERMAN. I was myself disposed in committee, after examining this matter very carefully, to allow these commissioners to sell property at private sale. If they are required to sell at public sale, it must be on the order of some tribunal, some court, in which case it must be on the order of some tribunal, some court, in which case it would be necessary to apply for an order of sale, involving a considerable amount of costs. We were informed to-day by the commissioners that much of this property was of a very cheap character. Loans were made on property in this city, in some cases small loans, on property of small value, and to require an order of court for a cold in the contract of the on property of small value, and to require an order of court for a sale in each case would involve very large expense, of course. A public sale would give no greater security for fidelity, I think, than a private sale. We have got to depend upon the fidelity and the honor and faithfulness of these commissioners for the proper execution of their duties. The names of the three commissioners are probably known to the Senate. They are men of responsibility, at least they have been so considered; and the committee thought, on the whole, it was better to trust them and hold them responsible rather than put the trust to the expense of making a public sale by adverwhole, it was better to trust them and hold them responsible rather than put the trust to the expense of making a public sale by advertisement and by order of the court in every case, which would involve a very large sum of money. It is, however, for the Senate to determine. I think myself it is better to trust to them and hold them rigidly responsible. They are required to make a report of their sales to Congress in every case.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Pennsylvania.

The amendment was rejected.

The amendment was rejected.

Mr. CONKLING. May I inquire of the Senator from Ohio who are the commissioners referred to in the bill?

Mr. SHERMAN. Mr. Creswell is one; Mr. Leipold, formerly an officer of the Treasury Department, is one; and the other is from Pennsylvania, a Mr. Purvis I think.

Mr. DAWES. I should like to inquire of the Senator from Ohio if there is anything in the past management of that establishment that justifies such an extreme confidence being placed in this board as there seems to be by this bill?

Mr. SHERMAN. In the old management of the Freedman's Bank

Mr. SHEKMAN. In the old management of the Freedman's Bank I think there was not only gross abuse, but I have often expressed my opinion upon that subject. I have heard no allegation against the present commissioners who are managing the trust.

Mr. DAWES. I inquired simply to know whether the Senator was so entirely satisfied with the method in which this establishment, if I may call it so for want of a better name just at this moment, has been closed up to this time that he is willing beforehand to ratify

everything they will do, as the bill proposes to do.

Mr. SHERMAN. I know nothing about the management of the present commissioners that is to their discredit; I have heard nothing of that kind. I know that the original management of the Freedman's Bank grossly and scandalously abused its trust; and all the powers conferred by Congress on that corporation were in my judgment abused. A given the mean general of these commissions.

powers conferred by Congress on that corporation were in my judgment abused. Against the management of these commissioners in closing up the business, I have heard nothing.

Mr. DAWES. I do not allude to the management of the institution originally; that is past all cure. I allude to the manner in which the closing up of it by these commissioners has been transacted, and I see by the bill that the Senator proposes beforehand, without the slightest knowledge of what it may be, to ratify everything that may be done by these commissioners under this bill. I do not know but that I may be mistaken about it, but there has been a great deal but that I may be mistaken about it, but there has been a great deal of discussion in one House and the other about the manner in which the closing up of this institution has been managed. I remember that in the other House quite an excited discussion took place during the last session of Congress over a bill giving these commissioners

the last session of Congress over a bill giving these commissioners some new power.

I am not arraigning the commissioners; I am inquiring of the Senator who has charge of this bill if he is entirely satisfied with the management. The Senator will excuse me for saying that after having intimated that he does not know anything about the management of this concern by these commissioners, I should not want to declare beforehand that I would ratify everything they would do if I did not know what they had done.

Mr. SHERMAN. This bill does not ratify what these gentlemen have done except in the purchase of land on which they hold trust-deeds and in the sale of that land. That is all that is ratified. There is a doubt as to their power, although I believe the courts of the Dis-

is a doubt as to their power, although I believe the courts of the District have decided that they had the power, but as that case was not taken to the Supreme Court there is still a doubt about it.

As to the Supreme Court there is still a doubt about it.

As to the management of these commissioners I never have heard any allegation against it. If my friend has and will make that known, of course I shall hesitate and pause; and they ought to be removed if well-founded allegations have been made against these men so that the commissioners who are now settling up the affairs of this bank have excited doubts of their fidelity and integrity. If that be so, this bill ought not to pass and their authority ought to be repealed; but I have not heard anything of that kind. Two of the commissioners came before the Committee on Finance this morning and stated the circumstances and facts which justify the passage of and stated the circumstances and facts which justify the passage of this bill. It has already passed the House of Representatives, and we examined it carefully and came to the conclusion unanimously that the bill ought to pass. If there were any doubt about the integrity of the commissioners, that would raise quite a different question. The bill as recommended on the supposition that they were men of integrity

was recommended on the supposition that they were men of integrity who had not abused their trust.

Mr. DAWES. The Senator will not understand me as raising any doubt about the integrity of the commissioners. We are not in the habit with those in whom we have the utmost confidence of putting quite so much power in their hands; but I observed that the Senator voted to permit these parties to sell any of the real estate of this institution at private sale anywhere or at any time. If I understand the transactions of this institution, they are all over the country, especially the Southern States. There have been some of the most remarkable loans that were ever known, and the strangest sort of securities were taken of imaginative and of inflated stocks and all sorts of property. This property may be taken by these commissionsecurities were taken or imaginative and of inflated stocks and all sorts of property. This property may be taken by these commissioners under this law and sold at private sale anywhere and everywhere and under any circumstances, and to any party, and the language of this bill is, and we hereby ratify everything that they may do under this bill. I suggest to the Senator that that is rather strong language. I would not myself like to vote for such a sweeping measure.

Mr. CAMERON, of Pennsylvania. I think we had better postpone this bill for the present.

Mr. CAMERON, of Pennsylvania. I think we had better postpone this bill for the present. I should like to have a report from the commissioners who have this institution now in charge. I learn that they are three gentlemen doing the business which one man could do and that each gets \$3,000 a year. The whole management of the affair hitherto has been, if not corrupt, most badly done. I am afraid to trust them with the power which they have now; I certainly would not give them any more. I should not be unwilling at all to authorize them to buy in property to save any debts they may have against it, and that is all the power they ought to have. If they can save their

debts by making a purchase of the property it is right they should do so. An individual would do that, and these gentlemen, like business men, ought to do so. But there is a shifting of responsibility here as there is among a great portion of the officers in this town. There is a chief, and then there is a deputy, and then there is a deputy of a deputy, and so on. In this case, I think \$2,000 a year salary to one man, with one clerk at \$1,200 more, ought to manage the whole of this defunct institution. Why shall Mr. Somebody receive \$3,000 a year because he has been a chief clerk in a Department, and somebody else get \$3,000 hereause he is a friend of somebodyelse and so on? It is all get \$3,000 because he is a friend of somebody else, and so on? wrong. No business man would so conduct his business. Here was money, scraped from the poor negroes all over the country, which has been wasted in giving salaries that men may live riotously and fare sumptuously every day, while these poor negroes are starving. It was

I move that we postpone the bill. Let us get a report from the commissioners having this matter in charge, and let us look into their stewardship before we give them any more authority. My motion is

to postpone the bill.

The PRESIDENT pro tempore. The Senator from Pennsylvania moves to postpone the bill.

Mr. MORRILL. I hope the bill will not be postponed. Evidently a bill of this character ought to pass, for the reason that it is not sufficient authority that these men shall have power to foreclose mortgages and obtain property unless they shall have equal power to dispose of it. By withholding the power of sale, we lock up the assets of this unfortunate institution, so that there can be no distribution of the proceeds.

I have never heard that the present commissioners have been derelict in their duty. It has sometimes been charged that there are too many of them; that the management is too expensive; that the business might as well be done by one man; but certainly the power conveyed by the proposed bill is a necessary power; and it should pass in the interest of those who have made deposits in the institution. It will facilitate the closing up of the affairs of the bank, and that at as early a period as will be proper, considering the depressed state of

business in this city.

I therefore hope that the bill will not be postponed, and if any action is to be taken in relation to diminishing the number has are employed in conducting this business it perhaps had better be considered in a separate bill. I trust that there will be a disposition on the part of the Senate to act upon the bill. I can see no peril in this bill. It is certainly well that somebody should be responsible for whatever is done by these men that have charge of winding up this institution, and if we distribute this among the courts and the commissioners polocy will be responsible.

institution, and if we distribute this among the courts and the commissioners nobody will be responsible.

Mr. CLAYTON. It is very evident this bill is going to occupy the morning hour with discussion. I move that it go over until we get through the morning business.

The PRESIDENT pro tempore. Is there objection to its temporary postponement for morning business?

Mr. SHERMAN. I have no objection to that.

The PRESIDENT pro tempore. The bill will be passed over and the business of the morning hour continued.

### REPORTS OF COMMITTEES.

Mr. CLAYTON, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1114) to authorize the President to restore John Jackson to his former rank in the Army, reported adversely thereon; and the bill was postponed indefinitely

He also, from the same committee, to whom was referred the bill (S. No. 1052) for the relief of A. W. Greely, submitted an adverse report thereon; which was ordered to be printed, and the bill was post-

port thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill
(S. No. 939) for the relief of John S. Bishop, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S.
No. 1110) for the relief of Captain Edwin R. Clarke, submitted an adverse report thereon; which was ordered to be rejuded and the bill was verse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. CLAYTON. I am also directed by the same committee, to whom

was referred the petition of the heirs of Daniel Spaulding, deceased, praying to be allowed compensation for services rendered by said Spaulding during the war of 1812, to ask to be discharged from its consideration. This compensation seems to be in the nature of a pension, and the Committee on Military Affairs thought it ought to go to the Committee on Pensions.

The PRESIDENT pro tempore. The committee will be discharged from the further consideration of the petition and it will be referred

Mr. SPENCER, from the Committee on Military Affairs, to whom was referred the bill (S. No. 407) to authorize the restoration of George A. Armes to the rank of captain, reported it with amend-

He also, from the same committee, to whom was referred the bill (S. No. 1111) for the relief of Thomas E. Maley, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill

(S. No. 605) for the relief and re-appointment of Captain Thomas B. Hunt assistant quartermaster in the United States Army, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

bill was postponed indennitely.

Mr. WINDOM subsequently said: I ask leave to enter a motion to reconsider the vote by which the report of the Committee on Military Affairs on the bill for the relief of T. B. Hunt was agreed to, indefinitely postponing it, and I ask that it be now reconsidered. I think the Senator reporting it will not object.

The PRESIDENT are tempore. In their objection to the present

The PRESIDENT pro tempore. Is there objection to the present consideration of the motion to reconsider?

There being no objection, the motion to reconsider was agreed to.
Mr. WINDOM. I move that the bill be recommitted to the Committee on Military Affairs.
The motion was agreed to.
Mr. CAMERON, of Pennsylvania, from the Committee on Foreign Relations, to whom was referred the bill (S. No. 1141) to encourage

and promote telegraphic communication between America and Europe,

and promote telegraphic communication between America and Europe, reported it with amendments.

Mr. PADDOCK, from the Committee on Public Lands, to whom was referred the bill (S. No. 1162) for the relief of certain settlers on the public lands, reported it without amendment.

Mr. WINDOM. I am instructed by the Committee on Appropriations to report back the bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jettles and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico under contract with the United States, adversely with a written report. I give nowith the United States, adversely with a written report. I give notice that I shall ask the consideration of the subject to-morrow morn-

The report was ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, to whom was referred the joint resolution (S. R. No. 30) to amend the joint resolution authorizing the Secretary of War to issue arms, approved July 30, 1876, reported it without amendment.

Mr. ALLISON. The Committee on Appropriations, to whom was referred the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, have instructed me to report it back with sundry amendments. I give notice that at the earliest possible opportunity I will call the bill up for consideration.

I desire to say further that the committee have instructed me to report back an amendment proposed by the Senator from Missouri [Mr. Bogy] to this bill without recommendation, and I ask that the amendment lie on the table in order that the Senator from Missouri may have an opportunity of calling it up if he desires to do so.

### T. A. WALKER.

Mr. WINDOM. I ask that the papers in the claim of T. A. Walker, praying to be re-imbursed the amount of certain money paid by him for clerk hire while acting as register of the United States land office at Des Moines, Iowa, which were referred to the Committee on Public Lands by mistake, be referred to the Committee on Claims. I move that the Committee on Public Lands be discharged from their further consideration, and that they be referred to the Committee on Claims.

The motion was agreed to.

## DENVER AND RIO GRANDE BAILWAY.

Mr. WEST. The Committee on Railroads, to whom was referred the bill (8. No. 1083) to amend an act entitled "An act granting the right of way through the public lands to the Denver and Rio Grande Railway Company," approved June 8, 1872, instruct me to report it back with an amendment; and as this is a mere extension of a grant to a local railroad, and the only prospect of its passage at all at this session of Congress is to put it on its passage in this body now, I ask that it be done.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The amendment reported by the committee was to strike out the word "repealing" in line 6 and insert "making," and inserting after the word "act" in line 7 the word "read;" so as to make the bill read:

That an act entitled "An act granting the right of way through the public lands to the Denver and Rio Grande Railway Company," approved June 8, 1872, be, and the same is hereby, amended by making the second proviso in said act read as fol-

the same is hereby, amended by maning the lows, to wit:

Provided, That said company shall complete its railway to a point on the Rio Grande as far south as Santa Fé within five years of the passage of this act, and shall complete fifty miles additional south of said point in each year thereafter; and in default thereof the rights and privileges herein granted shall be rendered null and void so far as respects the unfaished portions of said road.

Mr. MERRIMON. I ask the Senator from Louisiana whether the act of which this bill is amendatory grants any subsidy?

Mr. WEST. No, sir; the mere right of way.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### BILLS INTRODUCED.

Mr. KELLY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1225) to amend section 2291 of the Revised Statutes of the United States, in relation to proof required in homestead entries; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. WRIGHT asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1226) for the payment of the disbursing agent of the Joint Committee on the Library of Congress for his services;

which was read twice by its title.

Mr. WRIGHT. With that bill I present a petition and some accompanying papers, which, with the bill, I move may be referred to the Committee on the Library.

The motion was agreed to.

Mr. BURNSIDE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1227) for the protection of widows, orphans, and heirs at law of officers of the Army of the United States; which was read twice by its title, and referred to the Committee on Military

Affairs.

Mr. CRAGIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1228) for the erection of a Daball trumpet signal on Whale's Back Island, in the harbor of Portsmouth, New Hampshire; which was read twice by its title, and referred to the Committee on Commerce.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1229) for the relief of Donald McKay; which was read twice by its title, and referred to the Committee on Naval Af-

Mr. CLAYTON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1230) for the relief of Patrick Sullivan; which was read twice by its title, and, with the accompanying petition, referred to the Committee on Military Affairs.

## W. G. FORD.

On motion of Mr. CLAYTON, and by unanimous consent, it was Ordered. That the vote postponing indefinitely the bill (H. R. No. 492) for the relief of William G. Ford, of Tennessee, administrator of the estate of John G. Robinson, deceased, be reconsidered.

#### HALL'S ARCTIC EXPEDITION.

Mr. SARGENT submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved. That the Secretary of the Navy furnish, through the Superintendent of the Naval Observatory, a narrative of the second expedition to the Arctic regions made by the late Captain C. F. Hall during the years 1864 to 1869; said narrative to be compiled from the manuscripts purchased from the widow of said Hall by an act of Congress approved June 23, 1874.

## MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. A message from the House of Representatives, by Mr. GEORGE M. Adams, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4572) to remove the political disabilities of James D. Johnston, of Savannah, Georgia; and

A bill (H. R. No. 4472) making appropriations for the legislative, executive, and judical expenses of the Government for the fiscal year region. June 20, 1878, and for other purposes.

ending June 30, 1878, and for other purposes.

The message also announced that the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 3628) establishing post-roads having reported that having met, after full and free conference they were unable to agree, it was

Resolved. That the House further insist upon its disagreement to the six hundred and fourth and six hundred and fifth amendments of the Senate to the said bill, insisted upon by the Senate, and ask a further conference on the disagreeing votes of the two Houses thereon.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes.

# POST-ROUTE BILL

Mr. HAMLIN. I present a report of the committee of conference on the bill just received from the House. The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 3628) establishing post-roads, having met, and after a full and free conference have been unable to agree.

H. HAMLIN,
A. S. PADDOCK,
S. B. MAXEY,
Managers on the part of the Senate.

of the conference committee on the disagreeing votes and have suggested a new conference. They have sent us no names of conferees. I move that the bill be returned to the House for the purpose of having the committee of conference appointed in the House before

having the committee or conference appointed in the House before we join in it.

The PRESIDENT pro tempore. The Senator from Maine moves that the bill be returned to the House for the purpose of having the conferees of the House named.

The motion was agreed to.

Mr. HAMLIN. And until it is so returned that there be no committee appointed on the part of this body.

The PRESIDENT pro tempore. Then the Senator withdraws his

previous motion !

Mr. HAMLIN. I withdraw the motion to join in the conference until we are furnished with the committee on the part of the House.

The PRESIDENT pro tempore. The Senator moves to reconsider the vote by which the further conference was ordered.

The motion to reconsider was agreed to.

# LAND SURVEYS IN MICHIGAN.

Mr. CHRISTIANCY. I move to take up for present consideration the bill (H. R. No. 967) authorizing the survey of certain townships in Michigan and making an appropriation therefor.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill, which directs the Commissioner

Whole, proceeded to consider the bill, which directs the Commissioner of the General Land Office to cause to be surveyed towns Nos. 18 and 19 north, of range 1 west, in the State of Michigan, these towns having never been properly surveyed; and it appropriates a sum sufficient to pay the expense thereof, not exceeding \$2,500.

Mr. INGALLS. Is there any report in the case?

Mr. CHRISTIANCY. There is not. I will explain in a moment. If the Senator from Florida [Mr. Jones] who reported the bill were here he could explain it. It is a bill introduced in accordance with a recommendation of the Commissioner of the General Land Office. It refers to some land which had been returned as surveyed, but which

recommendation of the Commissioner of the General Land Office. It refers to some land which had been returned as surveyed, but which in fact never had been surveyed except the running of the exterior lines. It has the approbation of the Committee on Public Lands, and I presume there will be no objection to its passage.

Mr. INGALLS. There is a good deal of the public domain that has been surveyed at a vast expense to the Government where the lines and corners and bounderies have become obliterated by reason of the work having been imperfectly done. If this land has been once surveyed and the surveys paid for and the work made ineffectual by reason of those imperfections, the Government ought not to be called upon again to pay the bills. The contractors or their sureties should be the persons to whom application should be made for the resurvey of this land.

Mr. CHRISTIANCY. This is one of those cases where there has been

Mr. CHRISTIANCY. This is one of those cases where there has been no survey made at all except the exterior lines, as I understand. In the no survey made at all except the exterior lines, as I understand. In the mean time the lands cannot be disposed of, and no lines canbe established. The bill is asked for by the Commissioner of the General Land Office, and I think it is entirely just. The sureties on any surveyor's bond can of course be reached at any time. In the mean time the public interests should not be allowed to suffer.

Mr. WRIGHT. I should like to inquire of the Senator from Michigan whether I understand him to say that this lend has never leave.

igan whether I understand him to say that this land has never been

Mr. CHRISTIANCY. Neversurveyed, and I think none has been sold

Mr. CHRISTIANCY. Neversurveyed, and I think none has been sold of any consequence.

Mr. WRIGHT. I should like to inquire whether any of these lands have ever been settled.

Mr. CHRISTIANCY. Not that I know of.

Mr. WRIGHT. I think that is a very material and important inquiry. We should know whether these lands have been sold. If they have been sold they have been sold by description of course, and the necessity for a resurvey does not appear to me now. Not only that, but I suggest another thing, that if these lands have been sold by congressional subdivision and description, then there must have been some plat showing the lines of the subdivisions of the sections; and now if you have a resurvey, unless the resurvey shall agree with the lines that appear on the lands. It occurs to me—though of course I leave the matter entirely with the Senate—that perhaps we shall produce more of discord and confusion by passing the bill than if we leave the matter as it is now.

the matter as it is now.

Mr. CHRISTIANCY. There is a letter from the Commissioner of the General Land Office which I will ask the Clerk to read.

The PRESIDENT pro tempore. The letter will be read. The Secretary read as follows:

Managers on the part of the Senate.

JOHN B. CLARK, JR.,
L. L. AINSWORTH,
S. F. MILLER,
Managers on the part of the House.

Mr. HAMLIN. I move that the Senate agree to the further conference asked by the House.

The motion was agreed to.
Mr. HAMLIN. I move that the bill which has just been received from the House (H. R. No. 3628) establishing post-roads be returned to the House that the committee of conference may be thereby appointed. They have sent us notice that they have received the report

In view of these facts, the provisions of the bill are fully approved by this office, and its passage recommended.

I am, very respectfully, your obedient servant,

J. A. WILLIAMSON,

Hon. CHARLES W. JONES,
Of Committee on Public Lands, United States Senate,

Mr. INGALLS. It appears by the statement of the Commissioner of the General Land Office that this is an attempt to make the of the General Land Office that this is an attempt to make the United States Government pay for imperfect surveys that have been made under contracts for that purpose heretofore with the Government. It establishes a very doubtful and a very dangerous precedent, and I merely desire to call the attention of the Senate to that fact in order that they may vote understandingly. If surveys are to be made by contractors and paid for at a vast expense to the Government, and then such operations as those detailed by this letter from the Commissioner are to be sanctioned, it is simply an invitation to those who may hereafter obtain contracts for the survey of the public lands to omit to set their corners, to omit to run the lines, to make fictitious and fraudulent field-notes and return them to the Department and get their pay. I should regret to see this precedent established.

Mr. CHRISTIANCY. I would ask the Senator from Kansas if there is anything in the bill which interferes with or undertakes to release the liability of the surveyor or his bondsmen? He and they will remain still liable as before. In the mean time if the lands cannot be brought into market and sold until that surveyor has been brought to his responsibility and the amount recovered from him to survey them, I think the public interest will not be protected. The bill was reported to the Senate without amendment, ordered to

a third reading, read the third time, and passed.

## ORDER OF BUSINESS.

Mr. JOHNSTON. I move to proceed to the consideration of the bill (H. R. No. 431) for the relief of the heirs of William A. Graham.

Mr. PADDOCK. I should be glad to have this bill lie over until to-morrow. I have received a letter in reference to it this morning, but I have not the letter with me. It seems there are some conflicting interests in respect to it. I desire to have that letter with me and present it to the Senate perhaps in connection with the bill. I dislike to object to taking up the bill, but still I should be compelled to do it under the circumstances. it under the circumstances

Mr. JOHNSTON. The bill is on the Calendar regularly reported

from the committee.

The PRESIDENT pro tempore. The question is on the motion of the

Senator from Virginia.

Mr. BOUTWELL. Is there a report with this bill?

The PRESIDENT pro tempore. There is a report. The morning

hour has expired.

Mr. WEST. I call for the regular order.

The PRESIDENT pro tempore. The unfinished business is the bill of the Senate No. 984, amendatory of the Pacific Railroad acts.

Mr. HITCHCOCK. Mr. President—
Mr. PADDOCK. I should like to ask my colleague to give way a
few moments until I can call up Senate bill No. 1163—a short bill of only a few lines, and very just and proper, and one that it is neces

Mr. HITCHCOCK. Very well.

Mr. STEVENSON. May I have the consent of the gentlemen claiming the floor to present a memorial?

Mr. HITCHCOCK and Mr. PADDOCK. Certainly.

## BUILDING FOR CENTENNIAL EXHIBITS.

Mr. STEVENSON. I desire to present a memorial from the Regents of the Smithsonian Institute, which I desire to have read. It will be found to refer to a subject in which the entire country must, I am sure, feel a very deep interest.

It is known to the Senate that the Smithsonian Institution was rep-

resented at the late centennial exhibition at Philadelphia. At the close of that exposition a number of the foreign powers there represented, and who contributed to that grand national display at its close generously donated to the Smithsonian Institute most of their articles and products there exhibited. A list of the articles donated and the name of the donors accompany this memorial. Among these gifts will be found an exquisite pair of vases valued at some \$17,000.

The motive which prompted these donations to the Smithsonian Institution was unquestionably one of amity and respect entertained by the foreign powers donating them for the Government of the United States. But unquestionably these donors expected that this Government would, through the agency of the Smithsonian Institute, keep these articles thus donated on public exhibition, and in this way the respective products of each country would become known to the people resented at the late centennial exhibition at Philadelphia. At the

respective products of each country would become known to the people

of our entire country.

The articles donated are valuable, rare, varied, and occupy much space. They are all I believe now stored in Philadelphia, for the reason that the Smithsonian Institution has no building in which they can be either exhibited or safely preserved. They must remain, therefore, in boxes, subject to injury and to decay, unless Congress shall take some immediate action toward the erection of a building in all respects suitable for their exhibition and preservation. The capacity of such a building is estimated by competent architects to be four times as large as the Smithsonian building. A plan of such a struct-

ure has been already drawn by General Meigs. Its estimated cost will not exceed \$200,000.

The Regents of the institution by this memorial ask Congress to The Regents of the institution by this memorial ask Congress to make at once the necessary appropriation. If it be promptly done, a beautiful and capacious building can be put up and finished by the assembling of Congress in December next. Of course this memorial should go first to the Committee on Public Buildings and Grounds. The prompt erection of the proposed building is a public necessity, which, I hope, will commend itself to the judgment of that committee—and I trust they will at the earliest moment make a report. I submit that the honor and good faith of our country seems to demand and require prompt and liberal action by Congress. That is all I have now to suggest

have now to suggest.

Mr. CONKLING. What is the worth of these articles?

Mr. STEVENSON. It is stated in the memorial that the estimated value is a million dollars. I ask that the memorial be now read. The Secretary read as follows:

Mr. CONKLING. What is the worth of these articles?

Mr. STEVENSON. It is stated in the memorial that the estimated value is a million dollars. I ask that the memorial be now read.

The Secretary read as follows:

To the Senate and House of Representatives of the United States of America in Congress assembled:

The undersigned, recents of the gress assembled:

The undersigned, recents of the States of the United States of America in Congress of the United States of America in Congress and the Congress of the United States of America in Congress of the Patent Office and other public buildings, devolved upon the regents of that institution the custody of "all objects of art and of foreign and curious research, and belonging or hereafter to belong to the United States, which may be in the city of Washington:

In accordance with this enactment the institution has received and carefully preserved all the specimens which have been brought together from more than lifty public exploring expeditions, and has added specimens collected by itself or oning of 1876 had become full to everflowing.

By an act bearing date July 31, 1876, additional duties were laid upon the Smithsonian Institution as custodian, and \$4,500 were appropriated "for repairing and fitting up the so-called Armory building, on the mall between Sixth and Seventh streets, and to enable the Smithsonian Institution to store therein and to take care of specimens of the extrestive series of the ores of the precous metals, marbition in Philadelphia, including other objects of practical and economical value presented by avious foreign governments to the national museum."

As a fruit of this act of the General Government, the Smithsonian Institution and on closing of that exhibition had been presented to the centennial exhibition and on closing of that exhibition had been presented to the process of specimens of the extress of the ores of the preconstruction of the precon

as a first installment, to be followed by others, but as sumcient entirely to complete the edifice.

Should this appropriation be made at an early day the building could be ready or the reception of articles before the next session of Congress.

M. R. WAITE,

M. R. WAITE,

T. W. FERRY,

H. HAMLIN,

J. W. STEVENSON,

A. A. SARGENT,

HIESTER CLYMER,

BENJ. H. HILL,

GEO. W. McCRARY,

PETER PARKER,

ASA GRAY,

PETER PARKER,

GEO. BANCROFT,

Regents of the Smithsonian Institution.

Mr. MORRILL. I desire to say to the Senate that the Committee on Public Buildings and Grounds have already had the subject before them and would have made a report before this time, but we understood that the same subject was before a committee of the House, where it was being favorably considered. As I have stated in years past, it has seemed to be a necessity that we should provide for a national museum. It has been the opinion of the Committee on Public Public Policy of the Committee on Public Publ national museum. It has been the opinion of the Committee on Public Buildings and Grounds on the part of the Senate, I believe unanimously, for some years, that we ought to take all of the squares next east of the public grounds, throughout the length and breadth on the north and south range of one square, taking one square in depth and the whole length, for the purpose of a national museum and Congressional Library; and evidently this matter should be provided for at once. The national armory I understand is already filled from basement to top.

Mr. SARGENT. With boxes without any opportunity for displaying their contents; and there are at this time, as I am informed, at least fifty car-loads of articles that have been given to us by foreign governments. Thirty-two or thirty-three out of the forty nationalities abroad have given us their entire exhibits at the centennial ex-

ties abroad have given us their entire exhibits at the centennial exthes abroad have given us their entire exhibits at the centennial exhibition. Their money value is scarcely computable, but if it were to be computed it exceeds our own, as large as our exhibits were there and as creditable to the country. Our own, I believe, in money value have been computed at \$400,000. These foreign exhibits are computed, at least in money value, at the sum of \$600,000, but in historical and scientific interest they perhaps surpass anything that has been assembled in any national museum on the globe.

I shall, therefore, hope to receive favorable consideration of the report of the Committee on Public Buildings and Grounds at an early day if in the mean time we do not receive a bill from the House on the subject.

Mr. STEVENSON. I now move, Mr. President, that this memorial be referred to the Committee on Public Buildings and Grounds. Allow me to add a single word. I hope that speedy action will be had by both the Senate and the committee. I hope this building will be put both the Senate and the committee. I hope this building will be put on the Smithsonian grounds. There is ample room on that square with the cost of additional ground. Professor Henry assures me that with the erection of the contemplated building on the plan of General Meigs, with the articles now on exhibition in the Smithsonian Institute, with those just donated, we shall have the nucleus of a national museum which in a few years will equal any in the world.

Mr. SARGENT. Accompanying this memorial is a list of the various articles contributed by different powers, by different exhibitors, and by States of the Union, and I think that if Senators will take the pains to examine that list they will find that articles, rare in their character, of great interest in a scientific point of view and of

their character, of great interest in a scientific point of view and of intrinsic value, have been given to the Government of the United States. To properly display these objects will be to furnish education of the most valuable character to all of our people (and there are millions of them who come here) who visit this capital.

I wish to add my earnest desire that the committee will promptly

report a measure that will enable us to open this great educational institution to the people of the United States, to utilize this vast and valuable collection which has been given to us, to show that we re-ceive them from these powers in good faith and are disposed to show that we properly appreciate the riches which they have placed within

I move that the list with the memorial be printed and that they both go to the Committee on Public Buildings and Grounds.

The motion was agreed to.

## PROFESSOR JENNEY'S REPORTS.

Mr. ALLISON. I present a letter from the Secretary of the Interior, addressed to the chairman of the Committee on Indian Affairs, terior, addressed to the charman of the Committee of Indian Affairs, transmitting a copy of a communication from the Commissioner of Indian Affairs in relation to the final report of Professor Walter P. Jenney, of explorations in the Black Hills, Dakota, 1875. I move that the letter of the Secretary and the accompanying papers be printed.

The motion was agreed to.

Mr. ALLISON. Professor Jenney asks that a certain number of his reports be printed. I make that motion, and move its reference to Committee on Printing.

The motion was agreed to.

## PRE-EMPTORS BECOMING HOMESTEADERS.

Mr. PADDOCK. I now ask for the consideration of Senate bill No. 1163.

Mr. WRIGHT. I wish it understood that that bill, if taken up, is subject to the regular order. If it provokes no debate and takes no time I shall not object, but if it does I shall insist on the regular

Mr. PADDOCK. I shall not insist on the bill being considered if there is objection. There will be no objection.

Mr. WEST. I should like to hear the title of the bill read, so that we may understand what it is.

Mr. PADDOCK. It is the bill (S. No. 1163) for the relief of settlers the public ledge under the pre-amortion laws.

on the public lands under the pre-emption laws.

Mr. WEST. The very title of that bill indicates debate.

Mr. PADDOCK. I can assure my friend there will be no objection to the bill. It is but six lines long, and it is simply to give to homestead settlers-

Mr. WEST. I join with the Senator from Iowa in stating that I shall call for the regular order if the bill provokes discussion.

The PRESIDENT pro tempore. The bill will be read for informa-

The Chief Clerk read the bill.

Mr. PADDOCK. This bill is reported favorably by the Committee on Public Lands by a unanimous vote. The object sought to be accomplished is simply this, that where settlers under the pre-emption laws have, from one misfortune or another, because grasshoppers have devastated their fields and destroyed their crops, been unable to secure their lands under the pre-emption law within the period in which they are required by law to prove up and pay for their claims in taking the benefit of the homestead law which they may now do if they so elect, they shall receive credit for the length of time which they shall have already consumed under the pre-emption law toward the perfection of their title under that plan upon their probational term of five years under the homestead law. To illustrate: Two years consumed in perfecting title and improving a claim of one hundred and sixty acres under the pre-emption laws would, if a party should change to secure title under the homestead law, leave but three years additional time to entitle him to his patent under the homestead law, whereas under the law as it now stands five years would be required.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It provides that, when any person who has made a settlement on the public lands under the pre-emption laws shall change his filing to that for a homestead entry, the time required to perfect his title under the homestead laws shall be computed from the date of his original settlement made under the preemption laws.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed.

#### PACIFIC RAILROAD ACTS.

Mr. MAXEY. I beg to call up Senate joint resolution No. 30, to amend the joint resolution authorizing the Secretary of War to issue

arms, approved July 3, 1876.

Mr. WRIGHT. I must insist on the regular order.

The PRESIDENT pro tempore. The regular order is now before the

The Senate, as in Committee of the Whole, resumed the considera-tion of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,

approved July 2, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. HITCHCOCK. Mr. President, it is my fortune to reside upon the line of the Pacific Railroad. It was my fortune to see the first spadeful of earth ever thrown upon the grading of that road and to be somewhat familiar with the history of its construction, with its method of operation, and with the beneficent results which have come to the country and to the world from that construction and operation. This, therefore, is my excuse for claiming the attention of the Senate very briefly in the consideration of the bill now before us.

The construction of a railroad across the continent from ocean to ocean marked an era in the material prosperity and development not of this continent alone, but of the world. Existing for a quarter of a century or more only in the brain of enthusiastic dreamers, it remained for the statesmen who controlled the destinies of the country in the dark hour of her struggle with armed rebellion, to crystallize that dream into a practical legal enactment, and it remained for the daring enterprise of the capitalists and business men of that time to carry out that enactment to a glorious consummation.

Like everything human, no matter how excellent, it had its imperfections. It was marred and scarred by the connection with it in its early history of sordid men, who saw nothing in it better than a means of adding to their wealth and their gain; and, like everything human

that is successful, it had no somer become a success than it became, and still is, the object of continued, bitter, and persistent attack.

During the process of its construction the country rang with plaudits of the magnificence of the enterprise and approval of the courage and energy with which it was prosecuted. No sooner was it completed than the country rang, as it still rings, with denunciations of it as a mighty fraud and swindle. I assert, Mr. President, and I do so without fear of successful contradiction, that, assuming that not one dollar of the principal or interest of the bonds which were advanced by this Government to this railroad had ever been or ever would be paid except by the transportation which this company afwould be paid except by the transportation which this company arfords to the Government, and saying nothing of the vast and almost
measureless secondary and consequential advantages which this country has received and is receiving and is destined to receive, this country has received every year, in transportation alone, twice the amount
of the interest which she has paid upon these bonds; that she has
received a fund which so far exceeds the interest she has paid upon
these bonds that it will, prior to the time when these bonds become due, amount to a much greater sum than the amount of the bonds.

In 1860 General Samuel R. Curtis, then chairman of the Pacific Rail-In 1860 General Samuel R. Curtis, then chairman of the Pacific Railroad Committee of the House of Representatives, reported that the aggregate amount which was paid by this Government in the transportation of mails and military and naval stores from the Missouri River to the Pacific Ocean reached more than \$6,000,000. In 1862 Mr. Campbell, of Pennsylvania, then chairman of the House Committee on the Pacific Railroad, after having obtained from the War, Navy, Indian and Poetal Departments the property which these Departments on the Pacific Railroad, after having obtained from the War, Navy, Indian, and Postal Departments the amounts which these Departments were paying for their transportation across the continent, reported that that sum aggregated more than \$7,300,000. Now, sir, admitting that the Government pays the whole interest on the entire aggregate of bonds issued to all these companies, which amount in the aggregate to about \$65,000,000, the whole interest upon the bonds amounts annually to a sum something near \$3,800,000. Subtract \$3,800,000 from \$7,500,000 and you have a remainder of \$3,700,000 which goes to make up a sinking fund for the repayment to this country of the principal of these bonds, besides paying the annual interest on the bonds.

This you will understand is upon the basis of the amount of transportation which was then needed for the miserable conveniences then afforded in wagons, of the mails and munitions of war which

then afforded in wagons, of the mails and munitions of war which were then transported across the continent. Think of the increase of those mails, of those munitions of war, between that time and the

present, and see the result.

I have heard further that at the time the act of 1862 became a law at the time this contract was made between the Government and the railroad companies, neither the people nor Congress nor the companies expected that these bonds would be repaid except in transportation. To sustain that position, I propose to read from the debates which were current at the time the bill passed. On the 12th of May, 1862, on a motion to make the bill a special order, the chairman of the Senate Committee on the Pacific Railroad, among other statements of fact, made use of the following remarks:

When the road shall have been completed, assuming the bonds issued to be \$62,880,000, the maximum estimate, and the entire interest will be but \$3,773,800 per annum.

I understand, sir, that to some gentlemen these figures may seem large. But permit me to call the attention of these gentlemen to some facts—practical business facts.

ness facts.

In 1860 General Curtis, as chairman of the House committee, estimated the amount yearly paid by the Government for the transportation provided for by this bill at some \$6,000,000. The present able chairman of the House committee took occasion to inquire directly of the Government the exact cost to the Government of this service, and found it to be \$7,357.000, or about 100 per cent. more than the full charge of interest against the Government when the road shall have been completed.

On the 17th of June, 1862, the bill being again under discussion, Mr. Wilson, of Massachusetts, made the following remarks:

I have little confidence in the estimates made by Senators or members of the House of Representatives as to the great profits which are to be made and the immense business to be done by this road. I give no grudging vote in giving away either money or land. I would sink \$100,000,000 to build the road, and do it most cheerfully, and think I had done a great thing for my country if I could bring it about. What are seventy-five or a hundred millions in opening a railroad across the central regions of this continent, that shall connect the people of the Pacific and the Atlantic and bind them together!

On the same day he used the following language:

On the same day he used the following language:

As to the security the United States takes on this road, I would not give the paper it is written on for the whole of it. I do not suppose it is ever to come back in any form except in doing on the road the business we need, carrying our mails and munitions of war. In my jud-gment we ought not to vote for the bill with the expectation or with the understanding that the money which we advance for this road is ever to come back into the Treasury of the United States. I vote for the bill with the expectation that all we get out of the road—and I think that is a great deal—will be the mail carrying and the carrying of munitions of war and such things as the Government need, and I vote for it cheerfully with that view. I do not expect any of our money back. I believe no man can examine the subject and believe that it will come back in any other way than is provided for in this bill, and that provision is for the carrying of the mails and doing certain other work for the Government.

On the same subject, Mr. Clark, of New Hampshire, said:

On the same subject, Mr. Clark, or New Hampshire, said:

The Senator from Massachusetts may be entirely right, that the Government may never receive back this money again, and it may be that we make the loan for the purpose of receiving the services; but it will be well to take a mortgage to secure the building of the road through, and then, to secure the performance of these services which we expect them to perform in the transmission of mails and munitions of war, after the road is built, I think we had better adopt the amendment of the committee. It will make it safer for the Government, and safer in this regard, that we shall get the road built and have the service performed.

Mr. Latham, of California, in the course of the same debate, used this language:

The loan of the public credit at 6 per cent. for thirty years for \$65,000,000, with absolute security by lien with stipulations by sinking fund from profits for the liquidation of the principal, official reports and other authoritative data show that the average annual cost, even in times of peace, in transportation of troops, with munitions of war, subsistence, and quartermaster supplies, may be set down at \$7,300,000. The interest upon the credit loan of \$65,000,000 will be annually, \$3,900,000, leaving a net excess of \$3,400,000 over the present cost, appealing with great force to the economy of the measure, and showing, beyond cavil or controversy, that the Government will not have a dime to pay on account of its credit nor risk a dollar by authorizing the construction of this work.

Further on in the same debate Mr. Clark, of New Hampshire, used the following language:

Whether I am right or not, I do not build the road because I think it is to be a paying road. I build it as a political necessity, to bind the country together and hold it together, and I do not care whether it is to pay or not. Here is the money of the Government to build it with. I want to hold a portion of the money until we get it through, and then let them have it all.

Mr. Ten Eyck, of New Jersey, used the following language:

The great object of the Pacific Railroad bill is to have a national means of communication across the continent. That is the idea which the public have entertained for years past, and the only idea—a great national measure to cement the Union—to bind with a belt of iron the Atlantic and the Pacific. \* \* This is the inducement which the old States have in doing what they believe will be for the benefit of the common country, to the prejudice of the Treasury, so to speak, yet the general returns may be beneficial in the long run.

Mr. Collamer, of Vermont, used this language:

This bill carries the idea, and in this section provides for the repayment of the loan, as gentlemen call it. In a subsequent section it is provided that the payment shall be made in the carrying of the mails, supplies, and military stores for the Government, at fair prices; and also 5 per cent. of the net proceeds or sums to be set apart for the Government. That is all the provision there is in the bill for

Mr. McDougall, of California, used the following language:

At the time it was suggested I did not see the serious objection to it that I see now. I wish to say with regard to this obliquity the gentleman seems to perceive in the appearance of this bill, that it was not designed the Government should foreclose a mortgage on this road iff the road was completed in good faith and did the Government business. As I have had occasion before to remark, the Government is now paying over seven millions per annum for the service which this road is bound to perform. That is about 100 per cent, more than the maximum of interest upon the entire amount of bonds that will be issued by the United States when the road is completed. The Government is to-day, on the peace establishment, without any war necessity, paying for the same service 100 per. cent. more than the entire interest on the amount of bonds called for by the bill. Besides that it is provided that 5 per cent. of the net proceeds shall be paid over to the Federal Government every year. Now, let me say, if this road is to be built, it is to be built not merely by the money advanced by the Government, but by money out of the pockets of private individuals.

\*\*It is proposed that the Government shall advance \$60,000.000, or rather their

It is proposed that the Government shall advance \$60,000,000, or rather their bonds at thirty years, as the road is completed in the course of a series of years; that the interest at no time can be equal to the service to be rendered by the road as it progresses; and that the Government really requires no service except a compliance on the part of the company with the contract made. It was not intended that there should be a judgment of foreclosure and a sale of this road on a failure to pay. I wish it to be distinctly understood that the bill was not framed with the intention to have a foreclosure. to pay. I wish it to be distinct

In case they failed to perform their contract. That is another thing; that is a stipulation; that is a forfeiture in terms of law; a very different thing from a fore-closure for the non-payment of bonds. The calculation can be simply made, that at the present amount of transportation over the road, supposing the Government did no more business, that that alone would pay the interest and the principal of the bonds in less than twenty years, making it a direct piece of economy if the Government had to pay for them all. However, I am not disposed to discuss this matter. I say it was not understood that the Government was to come in as a creditor and seize the road on the non-payment of the interest. It is the business of the Government to pay the interest, because we furnish the transportation.

The honorable Senator from California, [Mr. SARGENT,] then a member of the House, in the course of debate there on this question used the following language:

When the road is fully completed and we are experiencing all the security and commercial advantages which it will afford, the annual interest will be less than \$4,000,000, and that sum will be but gradually reached year after year. The War Department has paid out, on an average, \$5,000,000 per year for the past five years for transportation to the Pacific coast, and the mails cost \$1,000,000 more at their present reduced rates. The saving of the Government would be two millions per year on these items alone.

So much, Mr. President, for the act as it was understood when it became a law; so much for the act as it was understood when it became a law; so much for the contract as it was understood to be by those who made that contract on the part of the Government; and now comes the Judiciary Committee with a new contract, with a new bill, with a new proposition which it proposes shall be adopted whether the other party to the contract is willing or not—a very different proposition from the one which this country offered to the capitalists when this country needed those capitalists to come forward and save it from the danger which there the different the capitalists when the danger which there there is the time of ward and save it from the danger which threatened it in the time of the civil war, the danger of losing our Pacific possessions.

Mr. President, I will not assume or undertake, I have no ambition

Mr. President, I will not assume or undertake, I have no ambition to undertake to argue the legal right of Congress to pass a measure like that which is offered to us by the Judiciary Committee. Admitting, if you please, that it is constitutional and legal, it seems to me there are other questions of grave importance which should be considered and thoughtfully considered by Congress before any such bill as this should be pressed to a vote.

I cannot see what right Congress has to step in, nor can I see what we have the contraction of the congress has to step in the first wentered.

excuse there is for Congress to step in between the first-mortgage creditors and the railroad companies and undertake to settle their affairs between them, undertake substantially to make a new contract affairs between them, undertake substantially to make a new contract for them and in their behalf. It does seem to me that that provision of the bill which is before us is certainly very strange. Here are the first-mortgage bondholders holding a first-mortgage bond on this road, supposed to be amply secured, supposed to be secured to their satisfaction; and what does this bill undertake to do? It proposes to say to the Pacific Railroad companies, "You shall not pay these bonds; you shall not pay the principal and interest of these bonds to the first-mortgage bondholders as you have undertaken to do;" and it proposes to say to these first-mortgage bondholders, "You shall not receive your money from these companies as they have promised to pay you. your money from these companies as they have promised to pay you; but we will set up this Government as a sort of general collection agency and the Pacific Railroads must pay their money into the Treasury of the United States, and we will dispense that fund hereafter when it suits our convenience as we see fit." It certainly seems to me that that proposition is an extraordinary one. There is another rather extraordinary provision in section 9, which reads as fol-

Sec. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States, or into the Treasury, or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon.

What is the effect of that proposition, assuming it to be legal, assuming that Congress can do that? Take my own State, for instance. There is a vast tract of land in that State granted to one of these roads There is a vast tract of land in that State granted to one of these roads by the Government. It is held by the road to-day. The company is engaged in a gigantic system of bringing immigrants to that land, of selling and disposing of the land as fast as possible to immigrants. What will be the result of that section if it shall be enacted into a law? Can the road sell one acre of that land? Can it convey a title to a single acre of that land? Not a single foot. Enact that section into a law and you enact that that land shall remain an unoccupied desert for the next thirty years. It provides that the company shall have no right to convey the title to a single foot of that land, and I venture the assertion that an act of that kind would be one of the greatest calamities that could befall my State or the country along the line of this road from the Missouri to the Pacific.

Mr. President, I do not believe that the American nation desires a

Mr. President, I do not believe that the American nation desires a bill of this nature to be passed. I do not believe that an act of this kind would be justified, that a violation of a contract of this sort between one business man and another could be justified by any rightthinking man, and I do not believe that the American people require

mr. BOUTWELL. Mr. President, I am inclined, although I am not disposed to continue the debate at any length, to make some remarks upon the legal questions involved in this bill. If I could see that there was power in Congress to pass the bill, I should not be very much troubled about the provisions touching the duty of these rail-road companies; but, after listening to what has been said upon the legal right of Congress to pass this measure, I am still very far from being convinced of the existence of that right. I speak now of the bill reported by the Judiciary Committee.

I have examined also the authorities that have been quoted by several Senators and I cannot reach the conclusion that they cover or include within legislative powers the right to pass a bill containing provisions which are found in this bill. There is in the act of 1862, at the close of the eighteenth section, this provision:

And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

If the powers of Congress remained to this time just as they were when the act of 1862 was approved, it is very clear that those words do not reserve to Congress the power to amend or alter this act in every particular. There are some things manifestly contemplated by every particular. There are some things manifestly contemplated by the language employed in this provision of reservation which Con-gress cannot do; and I have to say further in support not only of the doctrine which flows from the words employed here, but also from the general doctrine legally derived from the most comprehensive powers of reservation of legislative authority in reference to corporations, that the courts in every case have held that there were some things which the legislative power was not competent to do in reference to which the legislative power was not competent to do in reference to corporations even where the reservation was most complete. I think that in every opinion that has been rendered by the Supreme Court of the United States touching legislative powers in reference to corporations, where there was a reservation of legislative authority and the most complete language employed, the declaration has been made that there were some things which the legislative power was not competent

But we need not refer to the general doctrine. It is sufficient to say that in reference to the reserved powers of Congress under the act of 1862 Congress can do only those things by legislation without the consent of the corporation which are calculated "to promote the public interest and welfare" by the use of the "railroad and telegraph line and keeping the same in working order and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes." Here are the reasons set forth for the exercise of this power, and the scope of these reasons measures the power of Congress. That is to say, under the act of 1862 Congress reserved to itself power over this corporation for the purpose of employing its faculties in the public service in certain respects, but not for other things. That, I think, would have been the construction of the act of 1862 if it had remained until this time.

Mr. LOGAN. The Senator regards that as a limitation on the power

of Congress?

Mr. BOUTWELL. A limitation put by Congress itself on the exercise of its power of amendment and repeal; and the enumeration of the objects for which this power could be exercised works the exclusion of the exercise of the power for other purposes.

Mr. MITCHELL. Congress would have had more power in reference to amending or repealing that bill if that clause had not been in.
Mr. BOUTWELL. I think the doctrine is the other way, that if

Mr. BOUTWELL. I think the doctrine is the other way, that if there had been no reservation of power to Congress, then the power of Congress would have been very limited.

Mr. MITCHELL. The power in that reservation is a limited one.

Mr. BOUTWELL. It is a limited power undoubtedly.

Mr. MITCHELL. That is confined to specific purposes. Now if that had not been in, would not the power of Congress to alter, amend, or repeal have been more enlarged and greater than it is

Mr. BOUTWELL. I do not say that. I say the language here employed limits the exercise of the power to the particular subjects to which reference is made in the language of the reservation.

Now we come to the act of 1864. I am aware that the title of an act does not control the language of the text; but yet I think, in considering the question we are now called to consider the title of this sidering the question we are now called to consider, the title of this act may well be referred to for the purpose of measuring the language which is employed in the act itself:

An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862.

And the text of the act throughout, in every section, justifies the use of the language employed in the title. It was an act to amend the act of 1862, and therefore it is to be considered in connection with the act of 1862. It is not an independent measure of the Government. The Senator from Ohio, a member of the Judiciary Committee, [Mr. Thurman,] doubting, I think, whether the act of 1862 gave to Congress the power to pass the bill which the committee reported, relied finally upon the twenty-second section of the act of 1864:

That Congress may at any time alter, amend, or repeal this act.

If that language stood by itself and was not connected with the act of 1862, it would undoubtedly be a very broad declaration of the power of Congress; but it is not broader than the general statute of Massachusetts. That statute, giving to the Legislature the right to alter, amend, or repeal all acts of incorporation passed after the year 1831, is as broad as language can make it. In the case of the Holyoke Company vs. Lyman, which is reported in 15 Wallace, the question was this: Whether a grant having been made to the Holyoke Company to build a dam across the Connecticut River, and there being no provision in the charter that the company should maintain a fishway, the Legislature was competent to compel the company under way, the Legislature was competent to compel the company, under way, the Legislature was competent to compete the company, under the general reservation of power, to construct a fish-way through the dam at Holyoke. The court held that the power of the Legisla-ture was sufficient for that purpose; but the court did also say that if in the charter there had been a provision that the company should not be required to construct a fish-way through the dam the Legisla-ture would not have been competent to compel them to do it. And yet if the power were as broad as is now claimed, and the reservation yet if the power were as broad as is now claimed, and the reservation to the Legislature of the State was even more comprehensive than this reservation in the act of 1864, it would have been just as competent for the Legislature to say they should build a fish-way as to pass any other provision in regard to the duty of the corporation.

Manifestly the reason why the Legislature would not have been competent to compel the corporation to construct a fish-way if it had been provided in the charter that they need not construct a fish-way, was to be found in this, that there was a specific agreement and contract which was of such a nature that the Legislature could

and contract which was of such a nature that the Legislature could and contract which was or such a nature that the Legislature could not avoid it or disregard it. The rule rests upon some principle. A corporation, especially a railroad corporation, is created for certain public purposes. It is endowed with authority, with faculties, with capacity for doing particular business in the public interest. It derives all that authority and power and faculty from the legislative grant. Where there is a reservation, I think the rule is that the power is to be so applied as to make the corporation work out these results for the public interest in that reason which in the discretization. results for the public interest in that manner which in the discretion

results for the public interest in that manner which in the discretion of the Legislature seems best calculated to promote those interests, the original intent always being kept in mind.

These two acts considered together have two distinct qualities in them and which, perhaps, I can define by saying that one portion of these two acts, not divisible by distinct reference to sections, may be considered in the nature of what we call an executed contract; that is, the Legislature grants certain powers and the company take them to do the business for which the corporation is created. There are other portions of these two acts that are in the nature of an executory agreement; that is to say, Government declares to the corporation, "If you will do certain things the Government will do certain other things." The corporation may do those things that are specified or it may not do them. If it does those things, then the Government is just as much bound to do the particular thing that it has agreed to do as an individual would be bound to fulfill his agreement with another individual, if the thing to be done by him was ment with another individual, if the thing to be done by him was contingent upon the doing of something that the other party agreed to do; and no government can stand creditably upon any other doc-

What was the agreement? It was, first, that if this corporation would commence the construction of a railway and would build forty miles of it in a certain way with certain materials and bring it to a certain degree of perfection the Government of the United States would issue its own bonds to that corporation for a certain sum of money, and conditioned that at a certain time, and at a certain rate of interest, and in a certain way, and with certain security, the corporation should respond. It is not at all necessary to inquire whether that arrangement were a wise one or not; it was an agreement entered into by the Government. Two years afterward that agreement was modified by the Government, so that the company were to receive bonds when they built twenty miles of the road, and they were to receive patents for lands whenever twenty miles of the railroad were constructed.

Nor is it necessary to inquire whether the interest was to be paid semi-annually or annually or when the bonds matured. That was written in the agreement, and the courts have ascertained what the agreement was; and it is nothing to say to us now that it was a bad bargain, that it was an unwise thing. That does not help us in regard to the contract one way or the other.

If I put one question to those who advocate this bill, I think they will be obliged to so answer it as to show that it is not competent for Congress to pass this bill. That question is this: When one of these corporations had constructed forty miles and the commissioners apcorporations had constructed forty miles and the commissioners appointed by the Government had examined it, had approved it, had reported that in every particular it answered to the requirements of the act of Congress, would it then have been competent for Congress to say "We will not issue the bonds; we have the power to repeal this statute, to amend it, to alter it, and we will not issue these bonds, notwithstanding your part of the agreement has been performed to the very letter?" I think every person must answer that it would not be competent, legally competent—I do not mean to undertake here to measure the powers of Congress either to do or not it would not be competent, legally competent—I do not mean to undertake here to measure the powers of Congress either to do or not to do—for Congress at that moment to say "We will neither issue bonds nor grant patents for the lands." I do not know whether the corporation would have had a standing in any judicial tribunal, but I have the utmost confidence that being legally in a tribunal and having a day in court there could have been no doubt as to the judgment of any judicial tribunal that the Government of the United States was bound to issue these bonds and to issue the patents for the lands. That act of denial would have been marely the exercise of the power. That act of denial would have been merely the exercise of the power of alteration and amendment of the acts of 1862 and 1864. It would have been nothing else. Now, does any person who advocates the Judiciary Committee's bill maintain that it would have been competent for Congress to have so legislated—I mean legally competent in view of the power in a judicial tribunal to do that which was right

view of the power in a judicial tribunal to do that which was right between the Government and the corporation? I think not. In what particular does that hypothetical exercise of power differ from this proposed exercise of power? As far as I can discover, in nothing that is essential to the adjudication of the questions that would arise. What is in contemplation by this bill? Certainly this, or else the bill is utterly valueless: that the terms of payment which were provided in the act of 1864 shall be changed by the legislative power of Congress; that is, that the agreement between the railroad companies and the Government, on one side the construction of the railroad, on the other side the issue of bonds payable at a certain time at a certain rate of interest in a certain way and with certain security, shall be different; that is the gist of the whole question. The stipulation to issue the bonds was a stipulation not only to issue the bonds, but to wait a certain period of time for the payment of those bonds; and if this bill means anything it means that by the provisions set forth in it the corporation shall be required to provide for the payment of those bonds in another and different manner from that stipulated in the acts of Congress, and therefore this agreement between lated in the acts of Congress, and therefore this agreement between the Government and the railroad companies, which at the time the the Government and the railroad companies, which at the time the acts passed was in the nature of an executory contract, performance in the future to be rendered on each side, must stand altogether or it must fall altogether. All that is now claimed is, and ever has been from the day the acts were passed, within the legislative power of Congress, or it never has been in the legislative power of Congress, and, if it never has been, it never can be. Time does not work any change in the relations between the Government and the corporation in this particular.

in this particular.

The point that I make—and I believe all the authorities that have been cited furnish some support to the point I make—is that in those particulars in which the Government agreed that if the corporation would do certain things the Government of the United States would do certain other things, and both were in the future and did not re-late to the administration of the road, the Government of the United

late to the administration of the road, the Government of the United States has no rightful legal power, more than a party to a contract of the same nature would have, to dissolve or rescind or annul the contract by the mere force of his own will.

Mr. CONKLING. Mr. President, it is to be regretted, that many of those likely to vote upon a measure as grave as this is, have been absent during its discussion. It would, I think, have been fortunate had every Senator heard the observations which have just fallen from the Senator from Massachusetts, [Mr. BOUTWELL.] Unless I quite mistake, there were in those observations, suggestions, inquiries, and doubts, not easy to resolve favorably to one at least of the pending measures.

indemnity for the past and security for the future. Second, the managers of these large railway enterprises should be allowed to address themselves to the thorough management of their trust, and to that end they should be dismissed from attendance in Washington to defend themselves in never-ceasing congressional controversies. Third, it is fit and wholesome that Congress should be relieved from a subject which for years has cousumed much time, and interfered hurtfully with the business of legislation. If the bill before the Senate reported from the Committee on the Judiciary fairly meets and disposes of the occasion, surely it ought to pass.

I shall not attempt to run the boundaries of the power of Congress to discipline corporations it has created, or corporations created by

I shall not attempt to run the boundaries of the power of Congress to discipline corporations it has created, or corporations created by the Legislature of a State. I shall not try to measure the power which Congress of right has to withdraw the privileges or impair the franchises it has once conferred, or its power to deal in these respects with the creatures of State legislation. Whatever may be the limit in this regard, whatever measure of power might be asserted now, and ultimately maintained before judicial tribunals, it suffices me to know that any exertion of power, working injustice, and calculated to breed future controversies, is unwise and unjustifiable.

breed future controversies, is unwise and unjustifiable.

In respect of the transactions and affairs to which the pending bill relates, it may, I think, be affirmed, that the United States sustain a double relation, and appear in two characters. The nation is a sovereign, endowed with all the attributes and invested with all the powers and prerogatives of a sovereign. This is one character in which it appears here. It appears also in another character. It is a party to a transaction, as the Senator from Massachusetts so forcibly said. The rights of the Government as a government, must not be confounded with its rights as a party to a business transaction. These rights are distinct in nature and origin, and widely different in the present instance. They must not be mistaken for each other.

That I may relieve the Senate from observations of my own on this head, I take up a case reported by Wallace, junior, in the third volume, and read the language of Judge Grier. The case grew out of the alleged default of Swartwout, a collector. His property was sold; it was bid in by the United States. Under the United States parties took title. Between those who took from the United States and others controversies arose; and speaking of one of them, Judge Grier employed these words:

When the Government—

When the Government-The National Government-

in the exercise of the rights and functions of a civil corporation, purchases lands to secure a debt, the accident of its sovereignty in other functions cannot be set up to destroy or affect the rights of persons claiming a title or lien on the same lands. Thus, when the Government of the United States became a partner in a trading corporation, such as the United States Bank, it divested itself, so far as concerned the transactions of that company, of its sovereign character, and took that of a citizen; consequently, its property and interests were subject to the decrees and judgments of courts, equally with that of its copartners.—Elliot vs. Voorst et al., pages 302, 303, 3 Wallace, jr.

The Supreme Court has recognized the same distinction and maintained it. Common sense, and common right, will always maintain it. The passage read sufficiently illustrates the dual character of the Government touching the subject-matter before us. The Government of the United States is the sovereign which endowed some of these corporations with certain franchises. It is also one of the parties to a transaction, and in its character of party, like any other party, it has rights to assert, and these rights may be challenged and disputed by the other party; and the issue, when an issue thus arises, is to be fairly considered and justly determined. This distinction, clearly seen, and honestly respected, dispenses with the need of exploring the possibilities of power in Congress to alter grants after they have been made and accepted, or to revoke chartered rights.

Let us apply the distinction to the matter in hand.

For convenience, I select of the several corporations on which the The Supreme Court has recognized the same distinction and main-

Let us apply the distinction to the matter in hand.

For convenience, I select of the several corporations on which the bill is to operate, a single one—the Central Pacific Railroad Company. This corporation is the creature of the State of California. Congress did not create it. Congress found it an existing person—a corporation is a person, although an artificial person—and speaking to it as one person speaking to another person, concluded with it a certain understanding. That understanding in the preamble of this bill is thus recited:

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California,—

Now I ask the Senate to observeundertook-

This corporation thus existing undertook-

to construct a railway after the passage of said acts over some part of the line mentioned in said acts.

Thus, according to the preamble, here was a legally and actually existing party, and that party undertook with the United States the performance of certain acts. The United States on its part gave the company bonds to be sold for money with which help build a railroad, and from the company was withheld one-half the compensation to be company by the transportation of freight for the Green doubts, not easy to resolve favorably to one at least of the pending measures.

It is certainly desirable that some act of legislation shall make adequate and final disposition of this subject. There are at least three reasons for such an act. First, the United States should have chiefly to say that it was not to loan money for interest, or as the scriptures say "usury;" the action of Congress was not designed as a speculation, or the investment of money for the income the money would bring in. The purpose was very different; it was much higher and broader. A transcontinental railway was regarded as a paramount national need. Both political parties of the country had pronounced in national convention in favor of the undertaking. In Congress the enterprise was denominated "a national necessity." The purpose was to hold out adequate inducements to tempt capitalists to undertake the construction of a great artery of commerce—a channel of travel, trade, and traffic, through which might flow from sea to sea the values and exchanges of the present and the future. The purpose and motive was even greater still; the unity, the existence of the country was endangered, and it was deemed wise and patriotic to bind together with bands of iron, and by the subtile forces of commingling interests, the distant States of the far west-

forces of commingling interests, the distant States of the far western slope, and the middle and eastern regions of the country.

Such was the end sought—the terms agreed to, were only means to that end. Of the fruits obtained, it is not my purpose now to speak. Much might be said, indeed hardly too much could be said of the advantages, not to be expressed in pecuniary profit alone, reaped by the nation from the construction across deserts and over mountains and rivers, of a railway to the Pacific. Much might be said of the saving

rivers, of a railway to the Pacific. Much might be said of the saving to the public, or rather the governmental, service, weighed in golden scales, and stated in the tables of annual expenditure for transportation of mails, munitions of war, and Army and Indian supplies.

Here is a report from the Pacific Railway Committee of the Senate on the 24th of February, 1871. It would be hazardous, unsupported by authority, to venture such estimates and items as here appear of cost saved in the operations of the Government by the cheap and rapid facilities the Pacific Railroad supplied. After referring to the rates and totals paid by the Government for fraight and mails before the and totals paid by the Government for freight and mails before the railroad was built, the report says:

The amount which the transportation—for which \$4,178,967.90 was paid—would have cost, at the rate of \$1.30 per one hundred pounds per one hundred miles, is therefore a matter of mathematical calculation. That sum would have been \$21, 730,633.80, showing a saving of \$17,551,666, which would pay all arrears of interest now due upon the bonds issued to the Pacific Railroad companies more than three times over.

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The Secretary of War on the 15th of February, 1571, in answer to a resolution of the Senate, estimates the cost of the military service, through the War Department of the control of the Senate, estimates the cost of the military service, through the War Department of the control of t

Auditor of the Treasury shows that none of these accounts for 1869-'70 have yet been returned.

The committee, however, do not think it necessary to recommend any further legislation, at the present time, on the subject. The employment of these roads for Government purposes, in all proper cases, is so manifestly for the interest of the United States that it is believed that the several Departments of the Government will, under existing laws, extend to them all the patronage in their power consistent with the public interest.

### Again the report asserts:

The cost since the completion of the road is the annual interest—\$3,877,129, to which must be added one-half the charges for services performed by the company, about \$1,63,138 per annum, making a total annual expenditure of about \$5,000,000, and showing a saving of at least \$3,000,000 per annum.

The purpose then being not to invest money for profitable interest, or to speculate with money, but to insure the undertaking and completion of a colossal enterprise of questioned feasibility, certain undertakings were entered into by the Government on the one side, and by these several corporations on the other. The question now is not whether the terms were or were not the best which might have been made; the only honest inquiry about the terms is, what were they, and what by those terms are the just rights of each party. The road has been completed. The date of the completion is one of the points on which the pending bill largely depends. The road has been completed, and despite blemishes in its history, it is a great achievement. For years, however, and especially during this debate, sweeping allegations have been made that flagrant default has occurred on the part of the corporations whereby the Government has been the part of the corporations whereby the Government has been the part of the corporations whereby the Government has been wronged and injured. A statement in the Senate the other day must have roused some indignation—it should have done so. It was stated that these corporations had not paid as they were bound to pay, that they had never paid to the Government a penny of the large sums due, and long past due, that they had come short in all their obligations; and the inference was, at least such was my inference, that whatever could be done, without actual bad faith, should be done at once, to visit on willful delinquents the penalties and forfeitures due to derelict and dishonest debtors. Since then, I have looked into the history and facts somewhat, and I confess they do not seem to warrant such broad assertions.

I will refer to some of these alleged defaults. they exist, as stated, they go far to provoke and excuse, if not to justify the exertion of extreme power. If they do not exist, as far as I have gathered the sense of those who support the pending bill, it has scanty footing, if any footing at all. The first default heretofore alleged, was a ing, if any footing at all. The first default heretofore alleged, was a failure to pay current interest on bonds. It was insisted on one side that the true intent and meaning of the acts of Congress required these companies to pay, as it accrued, interest on the subsidy bonds year by year semi-annually. They, on the other hand, alleged that the law required them on, and not until the maturity of the bonds, to be answerable for principal and interest, but that in the mean time the credit of the Government was one of the stipulated benefits given to them, one of the means whereby they were to conduct, complete, and carry on the enterprise. The Senate Chamber often resounded, and so did the House, with animated debates over this issue. At last by an act which would be called a compromise now, it was enacted by so did the House, with animated debates over this issue. At last by an act which would be called a compromise now, it was enacted by the two Houses that the question who was to pay interest during the life-time of the bonds should be submitted to the tribunals of the country, and especially to the highest judicial tribunal. It was submitted; and, instead of these companies, being adjudged in default in that regard, the unanimous judgment of the Supreme Court, no judge dissenting, was that there had never been a right on the part of the United States to exact interest as it accurach, but that on the maturity of the bonds and not till then, would inner the claim of the United. of the bonds, and not till then, would inure the claim of the United States for interest. This final decision might be supposed the end of this one alleged default. But the statement already made does not dispose of it, because the truth requires me to add that having before the decision, withheld on account of this claim of interest, the moneys earned by these railroads for carrying the supplies, stores, munitions, agents, and mails of the United States, after the court decided that there was no such claim, the Government continued still to hold, and as I am told holds, and withholds to this day, the whole of these earnings. The chairman of the Railroad Committee now remarks that one of the companies has become bankrupt in consequence of this action; and he adds that it is a weak company.

Mr. President, to Mr. Jefferson, I believe, is attributed the saying that corporations have no bodies to kick and no souls to damn. It is

that corporations have no bodies to kick and no souls to damn. It is not unfashionable or unpopular anywhere, at any time, so far as I know, to assail corporations; but I venture to take to myself the caution—perhaps it need not be given to other Senators, that a legislative body is in the greatest danger of doing a wrong, and overpassing the bounds of equity and right when he against whom the act is to be done is unpopular, unfashionable, or odious. It is not a tendency of human nature to run riotously against approved and commended people or things. The tendency is rather to do injustice to those against whom feeling, prejudice, and opposition prevail.

What is the next alleged default to which attention has been called? The act requires that after the completion of the road 5 per cent. of the net earnings shall be paid to the United States. Here is a matter which deserves the attention of every Senator. In 1874 by an act, now in my hand, Congress sent to the courts the question, "What are the net earnings of these companies," whereof 5 per cent. belongs to

the net earnings of these companies," whereof 5 per cent. belongs to

the United States. The act directed the Attorney-General to institute the necessary suits and proceedings,

To collect and otherwise obtain redress in respect of the same in the proper circuit courts of the United States and to prosecute the same with all convenient dispatch to a final determination.

With all convenient dispatch suits were commenced. One was tried in the court of the circuit in which Nebraska is, I think. Two judges sat. They deemed the question sufficiently grave and doubtful to go to the Supreme Court. They entered pro forma a judgment for the companies and against the United States and the case is on its way to the Supreme Court, if it has not reached it already. Other suits have been commenced. Some of them have been tried. In some the proofs have been taken. In one or two, I believe, the final argument has been heard, or the day for it fixed, and the courts have the cases now under advisement, an early decision being expected. I shall in a moment ask the attention of the Senate to the fact that the question involved in pending lawsuits instituted by Congress itself, committed

involved in pending lawsuits instituted by Congress itself, committed to the judicial tribunals, there heard, and awaiting decision, the question which underlies these cases, is to be adjudged by an act of Congress in one of the sections of this bill.

What is this question of net earnings? The obligation is to render 5 per cent. of net earnings after the completion of the road. What is that completion? Has it occurred? When did it occur? I heard it argued the other day that as often as a section of twenty miles, or forty miles, was finished and the bonds received for that section, that was a completion, pro tanto, of the road, and that at that moment, if I understood the argument, commenced the time when 5 per cent. of net earnings was to be paid.

mr. President, there is a doctrine long known to the law, denominated estoppel. It is sometimes a tyrannous doctrine, and sometimes equitable. The controversy about this 5 per cent. of net earnings reminds me of it; I think the Senate will be reminded of it. In 1869, the minds me of it; Ithink the Senate will be reminded of it. In 1869, the last section of road from the Missouri River to Sacramento had been finished in that sense, which enabled the companies to receive the bonds for many of the sections. The allegation now is that ever since 1869 5 per cent. of net earnings has been constantly inuring to the benefit of the United States, that this due has been constantly withheld, and remains now as of all that time an accumulated default. That is the allegation. Let us turn to the history. In 1869 and 1870, and 1871 and 1872 and 1873 and 1874, these corporations for the plainest reasons of self-interest were any ions to assume that the the plainest reasons of self-interest were anxious to assume that the road was completed. This is obvious from several considerations. First, because, if it was completed they could not be required to expend because, if it was completed they could not be required to expend additional millions in consummating that completion; second, because they would be allowed to receive all the bonds, patents for lands, and all else which was to come to them from the United States. Their interest was to assert the completion of their roads, to insist upon it as soon as possible.

as soon as possible.

What was the interest of the United States? It was to erect a standard of perfection as high as in justice might be erected, to try the road by that standard, and to deny its completion until it had been brought up to that standard of perfection. Accordingly, commissions were appointed. I will not stop to give them in detail. The language creating them, the language of their reports, the proceedings attending each one of them seriatim, is instructive. I speak of them together, subject to correction if I fall into error. A board of engineers was appointed. That board established what they termed a standard. Another commission was appointed and another. One neers was appointed. That board established what they termed a standard. Another commission was appointed and another. One of them reported the number of millions in money which must still be expended to complete the road. Finally in 1874, all, in consequence, let me say of an opinion written in September 1868 by the Attorney-General affirming the right of the Government thus to require additional expenditure before completion should be deemed to have taken place the last commission was created—on the 21st of September 1874 I think. Their report was made, in October 1874, the Senator from Louisiana says the on 7th of October. An order to which I wish more especially to call attention was made on the 18th of November 1874.

Before referring to that order let me remind the Senate of the attitude of these parties then. They were entitled by the act, to which reference has been made, to alternate odd sections of land. If their road was completed, beyond all peradventure they were entitled to patents for all these sections. The patents were withheld—patents for alternate odd sections. The Secretary of the Interior, acting under the advice of the law-officer of the Government, refused to deliver or issue patents for one-half the land for which patents were to go, upon the ground that the condition-precedent had not been performed. What was the condition-precedent? The completion of the road. Thus the matter stood on the 17th of November, 1874.

On the 18th of November, if I have the date precisely, the Secretary of the Interior received from the President of the United States an acceptance and approval of the report of the last commission, which had been created to ascertain whether the road had been completed or not. The President transmitted the report to the Secretary of the Interior, and thereupon he revoked his prior order and released the patents, and thus for the first time affirmed, on the part of the Gov-Before referring to that order let me remind the Senate of the atti-

patents, and thus for the first time affirmed, on the part of the Government, that the road was completed. Despite these acts, it is now alleged that the road was completed five years anterior, and that during all these years in which these companies were required to expend millions to bring the road up to the point of completion; in

reality completion had already taken place and the 5 per cent. was running.

reality completion had already taken place and the 5 per cent. was running.

It is not my duty to decide, the measure before us does not call upon the Senate to decide, which side of this question is the true and right side. I do not mean to express an opinion as to the side entitled to prevail. My purpose is to submit to the Senate whether a question of that sort already by the action of Congress submitted to judicial tribunals is to be decided in pending cases by a legislative act. To see the force of this question of legislative propriety and discretion, it is not necessary to see to the end the merits of the controversy or the ultimate decision which ought to be made.

Again, 5 per cent. of net earnings. What are net earnings consist of all that the railroad corporation receives, deducting only actual running or operating expenses. On the other side it is maintained that net profits or net earnings or net result from any business, is that which remains after paying not only running or operating expenses in the case of a railway, but taxes, interest, expenditures. I do not mean to argue this question: I only state it. If I should borrow from my friend from Iowa [Mr. WRIGHT] \$100,000, and embark it in business, and from that business should receive in gross in a year \$14,000, the question would be, whether the \$7,000, which for that year I should owe and must pay as the interest of the money with which the business was done, must be deducted before I could speak of the net profits or the net earnings of the business. The question would arise whether I could take my \$14,000 and say to myself with truth and with sense, "I have paid but \$4,000 for wages to other persons and for current expenses for managing this business, and therefore the net profits, the net earnings of this venture are \$10,000 for this year." The Senator from Iowa, and second all the rest of the \$4,000 save only that which I have already paid out to the clerks who assisted me in the business—whether such gratification would be aself-delusion of law and men of sense, is a question which I state without de-

ciding.

The issue in part between these parties contestant is whether "net earnings" is that which is left after paying interest, taxes, and actual expenses of all sorts; or whether it is all that remains if nothing be deducted save only actual operating expenses. That question is in the courts. It is, I am told, involved in pending cases. Is it right for one party by an act of legislation to attempt to settle it for both parties 1

But again, speaking of the single company to which I more especially referred in the beginning, its road is thirteen hundred miles in length. Eight hundred and sixty miles have been aided by the United States, and four hundred and forty miles have received no such aid whatever. One of its roads runs up the Sacramento Valley; another runs down the San Joaquin Valley; and you Mr. President [Mr. Booth in the chair] know whether I am right in supposing that these two valleys are among the most fertile and productive portions these two valleys are among the most fertile and productive portions of your prolific State. A statement was made a year or two ago—I did not treasure it accurately and will not venture to repeat it—of the proportion of wheat grown in these valleys and passing over these roads,—the proportion of the whole crop and the quantity. It amazed me at the time. Each of these branches is one hundred and fifty miles in length, I understand, and other branches belong to the company. They are not sources of poverty but sources of wealth. I am told they are great contributors to the volume of traffic which passes over the residue of the road, and that they swell the total earnings. Now it is insisted that the United States is entitled not only to 5 per cent.

it is insisted that the United States is entitled not only to 5 per cent. of the net earnings of the eight hundred and sixty miles which the United States helped to build, but is entitled also to 5 per cent. of the net earnings upon the four hundred and forty miles with which the United States never had anything to do.

Again, I forbear to express any opinion upon this question. I remind the Senate that Congress by law has sent the question to the judicial tribunals of the country. These corporations have been summoned there to answer. They have answered. They have submitted the controversy. Decisions are forthcoming; and pendente lite it is proposed by an act of Congress to decide the question.

There, Mr. President, in the claim of 5 per cent. net earnings, are three, if not four serious and awkward elements. There are three questions in every one of which the United States must triumph in order to maintain the full claim asserted. Yet, refusal to admit the full 5 per cent. claim, is one of the alleged defaults, justified by which we are invited to legislate in these words:

invited to legislate in these words:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the net earnings mentioned in said act of 1862, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary and actual expenses of operating the same and keeping the same in a state of repair, and not otherwise, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of 1864, as well as of said act of 1862.

The bill with its preamble as I understand it subjects to this provision every mile of rail owned by the corporations to which it applies.

I speak in the presence of instructed lawyers, and if one of them knows an instance in which any court ever held that to be the rule by which net earnings or net profits are to be ascertained, I beg him to mention the case—net earnings to be ascertained by making no deduction for any interest paid or owing upon any indebtedness whatever. Various authorities might be cited on this subject; I will not stop to cite them; but I submit that the advocates of such a section should be able to produce one instance in which a court has

section should be able to produce one instance in which a court has maintained such a doctrine.

Another default has been suggested to pave the way for this legislation. I think it was suggested by the honorable Senator from Ohio not now in his seat, [Mr. Thurman.] An act of Congress to which he referred required an annual report to be made to the Secretary of the Treasury. These reports were made for a time, and then they ceased; and, if I remember aright, the Senator from Ohio said there was a default which worked a forfeiture. That seemed very plain at the time; but, on examination, it turned out that the statute which he relied upon was long ago repealed, and a later statute directed and required the reports to be made to the Secretary of the Interior; and in the Interior Department I am assured the reports may all be and in the Interior Department I am assured the reports may all be

and in the Interior Department I am assured the reports may all be found, regularly made in conformity with the law.

Other defaults may have been spoken of. I confess when the debate began I had a strong suspicion that derelictions and short-comings had occurred which would be potent in enabling Congress to assert rigorous powers. Statements of one or two of them impressed me, accepting the statements as I did at first; but hearing their correctness challenged, I have looked at the evidence, and I must in candor confess my surprise at the instances in which these allegations turn out to be unsurported. out to be unsupported.

One fact bearing upon the question of the 5 per cent., perhaps I omitted to refer to—it occurs to me now. Ever since 1869, the entire compensation earned for carrying the mails and for carrying every thing else for the Government has been withheld by the United States. I said before it was so withheld after the Supreme Court decided the interest question. It may now be added, as I am told, that these earnings have been retained to this day, and are now retained, not, I take it, on account of the interest claim which the court has overruled, but retained now as indemnity in respect of the court has overruled, but retained now as indemnity in respect of the 5 per cent. alleged to be due; and the chairman of the Railroad Committee tells me that these parties do not object, that they have stipulated that these moneys may be so retained. I am told also that the sum is more than large enough to pay 5 per cent. of the earnings since the road was completed in 1874, even assuming that the 5 per cent. is to be taken of the earnings of the whole road, that part which the Government aided to build and also the part to which the Government gave no aid.

Mr. President, in the face of such facts I cannot approve a bill which proceeds on the idea that those at whom it is aimed have refused utterly and dishonestly to pay a farthing of their just and honest debts. That not a farthing had been paid, was one of the statements made the other day. On the contrary I feel bound to treat these directors as trustees, the trustees of stockholders behind them; their own interas trustees, the trustees of stockholders behind them; their own interest may be large; but there are many people whose individual interest is not large who stand as other shareholders stand in business corporations. In their representative right as trustees, besides their own rations. In their representative right as trustees, besides their own right of self-interest, these directors resist certain demands. They say it is not true or right that 5 per cent. shall be taken from the whole of all the roads, because they say that hundreds of miles of road the Government did not help to build. They say that 5 per cent. is not to be taken during five years when the road was not completed and not accepted. They say that 5 per cent. is not to be taken from the gross earnings deducting only running expenses, but it is to be taken from the net earnings after deducting the tax account, the interest account, and the expenditure account. My honorable friend from Rhode Island [Mr.Burnside] knows of what such accounts are made up better than I, and could state more clearly; but I think it would be news to him if he were to learn that it is quite clear, so clear that there is no question about it, that the net earnings of a railroad consist not of what would be divided among the stockholders, but consist of the gross earnings, deducting nothing except running or operating expenses.

the gross earnings, deducting nothing except running or operating expenses.

These parties say there is question in each of these particulars. They say we have sent them to the courts. They say they have a right there to litigate. This bill declares by one stroke, in one section, the whole thing shall be ended, as we say. I say that such an exertion of power, whether technically competent or not, is penny-wise and pound-foolish. Gold may be bought too dear. A great government may seize advantage at too much cost. A government is never so great as when it is just. An upright government should never, in such a matter, put itself in an attitude which an individual would not be allowed to assume—it should never attempt that which a citizen would be chastised by a court of instice for atthat which a citizen would be chastised by a court of justice for attempting. An act of questionable fairness, is a greater blunder in a government, than in an individual; and it was of a transaction less than this, that a great master of the philosophy of human affairs remarked that a blunder is worse than a crime.

Mr. President, I have said much more than I intended. I repeat that

I shall be very glad to see a judicious, just, and adequate measure adopted. I have not been able, for want of time and interruptions, to make such examination of all the pending amendments and sub-

stitutes as I hope to do. I will not venture now to express an opinion between them; but speaking of the bill which lies at the foundation of our proceedings now, the bill reported from the Judiciary Committee, for reasons some of which I have assigned, it seems to me the discretion and wisdom of Congress can devise something more justifiable, something requiring less explanation and defense, and more certain to give a quietus to a disturbing and troublesome contention.

Mr. GORDON. Mr. President—
Mr. WEST. I ask the Senator from Georgia if it will not be more agreeable to him to be assigned the floor to-day to proceed with the debate on this subject to-morrow, and enable the Senate to have an executive session at the present time? If that will be agreeable to him, I will make the motion that the Senate proceed to the consideration of executive busines

The PRESIDING OFFICER, (Mr. BOOTH.) Does the Senator from

Mr. GORDON. I yield for that purpose.

Mr. WEST. On the condition that the Senator has the floor.

Mr. ALLISON. I desire to give notice that to-morrow I shall call up the Indian appropriation bill.

Mr. WEST. If the Senator can get the floor, I presume.

Mr. ALLISON. I shall make the effort.

Mr. ALLISON. I shall make the effort.

Mr. WEST. That will depend on the pleasure of the Senate. The Indian appropriation bill has no preference over any other business. Mr. WRIGHT. I desire to say, before the question is put on the motion of the Senator from Louisiana, that the Senator from Texas, whom I do not see in his seat at present, [Mr. Maxey,] desired to have the attention of the Senate to a bill that he seemed to be exceedingly solicitous to have considered to-day. When he called it up this morning I made an objection to having it interposed so as to displace even informally this bill. If the Senator were present now I should be very glad if the Senate would proceed to the consideration of that bill, for I had made an objection to it once before and did not know

bill, for I had made an objection to it once before and did not know at the time he suggested it that it was the same bill.

Mr. WEST. Call it up yourself. There will be no debate.

Mr. BURNSIDE. That bill has been reported on favorably, and I should like to see it passed.

Mr. WRIGHT. The Senator from Texas is in his place now. I trust there will be no objection to taking up the bill to which he referred this morning.

Mr. WEST. I yield for that purpose.

Mr. WRIGHT. It being understood of course that it does not displace the railroad bill, the Senator from Texas will call attention to his bill.

his bill.

## ARMS TO THE FRONTIER STATES.

Mr. MAXEY. I move that the Senate proceed to the consideration of the joint resolution (S. R. No. 30) to amend the joint resolution authorizing the Secretary of War to issue arms, approved July 3, 1876. It relates to the disposition of arms to the Territories and States

1876. It relates to the disposition of arms to the Territories and States bordering thereon, and the purpose of the joint resolution is to give effect to the act of July 3, 1876. It was reported favorably from the Committee on Military Affairs.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the joint resolution. It amends the joint resolution approved July 3, 1876, authorizing the Secretary of War to issue arms to the Territories and the States bordering thereon, by inserting, after the words "each of said Territories," the words "and ammunition for the same, not to exceed fifty ball-cartifieds for each arm" ridges for each arm."

The joint resolution was reported to the Senate without amend-ment, ordered to be engrossed for a third reading, read the third time,

and passed.

## DISTRICT POLICE COMMISSIONERS-VETO MESSAGE.

Mr. INGALLS. The bill abolishing the Metropolitan police commissioners of the District of Columbia, with the veto message of the President, is lying upon the table with the recommendation of the Committee on the District of Columbia that the bill pass notwithstanding the objections of the President. I ask the Senate to proceed to the consideration of that bill and message.

Mr. WRIGHT. I trust that that will not be done at this time. There is a pending order which was laid aside merely informally.

Mr. INGALLS. I do not wish to interfere with the pending order

at all.

Mr. WRIGHT. I suggest to my friend from Kansas that perhaps it would be better to call that measure up to-morrow morning when the Senate will be fuller than it is at this time. The Senator from Louisiana has already suggested an executive session, and he gave way for the purpose of having the joint resolution moved by the Senator from Texas considered.

Mr. INGALLS. There is a quorum of the Senate present and the Mr. INGALLS. There is a quorum of the Senate present and the afternoon is not sufficiently far spent to prevent a vote on this question. The only question before the Senate is, shall the bill pass notwithstanding the objections of the President? I have no desire to detain the Senate by any remarks upon the subject. I presume that every Senator is familiar with the merits of the case and ready to vote upon it. It is exceedingly important that the matter should determined one way or the other, either that the board should be abolished or that it should be continued in force, as at the present time

the police force is demoralized and practically without a head. There are many reasons why it is exceedingly important that this matter should be acted upon now, and without any desire to interfere with the pending order I ask the Senate to vote upon that bill.

Mr. WEST. Has the joint resolution moved by the Senator from

Texas been passed?

Several SENATORS. It has passed.

Mr. WEST. Then I renew my motion that the Senate proceed to the consideration of executive business.

Mr. INGALLS. I ask the Senator to let me have a vote on this

Mr. BURNSIDE. I hope the Senator from Louisiana will allow this bill to be voted upon. I think it is very important.

Mr. WEST. I beg pardon. I did not know there was anything before the Senate. I was called out a moment.

Mr WRIGHT. I suggest to the Senator from Kansas that he allow this patter to pass for the present with the understanding that we this matter to pass for the present with the understanding that we take the vote to-morrow at one o'clock at the expiration of the morning hour, and if it can be understood that we can have a vote at that time, Senators will have the opportunity at least to be present who

are not now here.

Mr. INGALLS. The morning hour to-morrow will be consumed probably by general business on the Calendar. At one o'clock, I understand, the pending order will come up for consideration; and in the mean time this matter will be indefinitely procrastinated and deferred. There are two hundred members of the police force, and it is of ferred. There are two hundred members of the police force, and it is of the very greatest importance to the lives and property and peace and good order of this community that this matter should be acted upon, and acted upon now. I therefore shall submit the matter to the Senate whether the vote shall be taken now or whether it shall be postponed. I feel it to be my duty as a member of the committee having this subject in charge to call the attention of the Senate to the im-

ate whether the vote shall be taken now or whether it shall be postponed. I feel it to be my duty as a member of the committee having this subject in charge to call the attention of the Senate to the importance of this subject, and having done so, of course if the Senate see fit to pass it by, my duty will have been discharged.

Mr. BURNSIDE. I am satisfied that on a call of the yeas and nays at this moment there would appear a larger vote than to-morrow at one o'clock. I agree with the Senator from Kansas that this is a proper time to have a vote. There are more Senators now in their seats than I have seen here in three or four days, and a call of the yeas and nays would bring more into the Chamber who are in the building. I think we ought to have as large a vote as possible on this subject. It is a very important matter, as the Senator from Kansas has already said, and it is one upon which all Senators would like to cast their votes. I see no reason under the sun why it should be postponed until to-morrow at one o'clock, and I see grave reasons why we should vote on the subject now. Every Senator has made up his mind as to how he will vote upon it, and there is no reason, in my mind, for delay. With all due respect to the Senator from Iowa I see no reason why the vote cannot be taken now.

Mr. WHYTE. During my absence from the Senate last summer, the President of the Senate did me the honor to put me on a commission created by an act of Congress passed toward the close of the session, that committee being charged with the preparation of a form of government for the District of Columbia. We spent a considerable period of time in examining into the affairs of this District. In the bill which was finally prepared, and which has been submitted to Congress through the branch of the commissioners which we provided as the permanent governing body within the territory of the District of Columbia. An examination of the affairs relating to the police department in this District satisfied us that that power ought to be be made, and that the power over the police force in this city should

be lodged with the District commissioners. I hope the Senate will not let this day pass without taking up this bill.

Mr. WRIGHT. In my suggestion that this matter pass over till to-morrow I was influenced by several considerations. In the first place, there was no notice at all that we should be expected to vote on this bill this afternoon. I know the Senator from Kansas said he would call it up at the earliest moment practicable, but there are Senators absent this afternoon with no expectation that anything of this kind would come up; and it was supposed that the debate would continue on the railroad bill until the adjournment of this day's session. It is known that five members of the Senate are engaged in other duties at this time, and I know some of them take a deep interest in this bill. If it can be understood that we shall vote tomorrow, those Senators can be present at least at that time, while it would be difficult and even impossible to obtain them at to-day's session. I therefore, have thought, and I yet think, that it would be better to have this bill taken up to-morrow. I do not see how a post-ponement of the measure for one day can make any difference. I un-

derstand that the police matters in this District are still going on; that this bill has not at all disturbed them in any way, and it will not be until this bill shall have passed, if it is to pass, that the duties will be transferred to another tribunal. At present the duties are being discharged by the old tribunal, as I understand; and I do not see how the postponement of this measure for twenty-four hours or such a matter can make any difference. I have no disposition at all to antagonize a vote if it is deemed advisable and thought better to take it at this time; but in view of the fact I have suggested, I think it is not expedient that we should take a vote on this bill at this time. There are Senators absent who take a deep interest in it, and who would like to be present at the time the vote is taken. I think it best, therefore, to postpone the measure in order that Senators may know that to-morrow the vote shall be taken, and that those Senators who are now absent may have the opportunity at least

of being present.

Mr. INGALLS. If we are to wait until the five absent members of the Senate who are on the electoral commission return to the discharge of their legislative duties on this floor, the probability is that the opportunities for the transaction of business will be comparatively limited for want of time. The Senate is as full to-day as it ordinarily is, and is as full, I believe, as it will be at any time in the immediate future. This bill has already been postponed from day to day for a fuller Senate, to have the presence of Senators who are otherwise employed, and in the mean time-great peril impends the peace and property of this District. If it is postponed until to-morrow at one o'clock, again this same difficulty will arise. The Senator from Iowa or the Senator from Louisiana will rise in his place and say that the Pacific Railroad bill is the pending order; that this matter will give rise to debate, and that therefore it must go over until a more convenient season. The facts are that while the police functions of this District are at the present time exercised by the Metropolitan board of police, yet in consequence of the doubt and un-Metropolitan board of police, yet in consequence of the doubt and uncertainty that attends the policy that is to be pursued with regard to the administration of this arm of the service, there is a total want of efficiency and of responsibility. No one can tell what a day may bring forth. The police force is inefficient and disorganized, and we ought to vote this bill up or vote it down. If the board is to be abolished, then let everybody understand that, and let the District commissioners have charge of this matter; if it is not to be abolished, then let us determine that and put the commissioners who have lately been appointed in the full and efficient exercise of their powers.

Every Senator knows that within a very short time there will be an

Every Senator knows that within a very short time there will be an immense influx of strangers here to witness the inauguration of Governor Hayes. There are a great many reasons why this police force should be made more effective.

Mr. WITHERS. Is that the only reason why the Senator wants this measure acted upon?

Mr. INGALLS. That is one very important reason. There is a special reason, therefore, that this force should be made effective for the cial reason, therefore, that this force should be made ellective for the preservation of the property, the life, and the good order of this community that may not exist hereafter, and that has not existed herefore. It is especially important at this particular juncture; and as a quorum of the Senate is present, and it is immaterial to me whether this bill is voted up or down, I must insist that now is the appointed time, and that now is the day of grace. I hope the Senate will not postpone this matter until one o'clock to-morrow, but will vote upon

The PRESIDING OFFICER. The question is on the motion to proceed to the consideration of the bill and message indicated by the

Senator from Kansas.

Senator from Kansas.

Mr. INGALLS. I do not think it is necessory to take up the bill by a motion. Whenever a bill is returned to either House with the veto of the President, the Constitution provides that the question shall then be taken, whether the bill shall pass, the objections of the President to the contrary notwithstanding; so that it does not require a vote of the Senate to take this bill up. It is before the Senate; and the only question is, shall the bill pass, the objections of the President to the contrary notwithstanding; to the contrary notwithstanding?

The PRESIDING OFFICER. The Chair understands that there

a pending measure before the Senate, the Pacific Railroad bill.

Mr. INGALLS. That has been informally laid aside, by unanimous consent, to enable the Senator from Georgia [Mr. GORDON] to take the floor to-morrow morning. Therefore the business of the Senate is not in a condition that requires any motion. There is no business before the Senate to interfere with this, as that bill which was under consideration has been informally laid aside by unanimous consent. The PRESIDING OFFICER. The Chair rules that a motion is

necessary to take it up.

Mr. INGALLS. Then I make that motion.

Mr. WRIGHT. Do I understand the Senator from Kansas to move to postpone the present and all prior orders in order to take up this measure?

Mr. INGALLS. All prior orders have been informally laid aside.
Mr. HAMLIN. The motion is to proceed to the consideration of
this bill and the message of the President.

I move that the Senate proceed to the consid-

Mr. INGALLS. Yes. I move that the Senate proceed to the consideration of the House bill No. 4350, and the accompanying message of Mr. WRIGHT. I do not want any motion which shall be carried

by a majority to have the effect of displacing the pending order. If the temper of the Senate is to proceed to consider and vote upon the message of the President at this time, I do not want to be under-

the temper of the Senate is to proceed to consider and vote upon the message of the President at this time, I do not want to be understood as standing in the way.

Mr. WEST. I presume that a decision of the Senate to take up this question at the present time, and then debate it, without coming to any conclusion this evening, would leave it the unfinished business for to-morrow. I should like to ask the Chair if that is the case.

Mr. INGALLS. I do not understand the Senator.

Mr. WEST. I say that the action of the Senate in taking up this measure at the present time and proceeding to its consideration without coming to any conclusion to-night, and adjourning or taking a recess thereon, would leave this bill the unfinished business to-morrow at the expiration of the morning hour.

Mr. INGALLS. If this bill is taken up and not finished at the adjournment this afternoon, I shall ask unanimous consent that it may not displace the pending order. I certainly shall give my consent as one, and shall ask the rest of the Senate to give their consent to it, that if this bill is not concluded this afternoon it may not displace the pending order.

The PRESIDENT pro tempore. Is there objection to postponing the present and all prior orders for the purpose of proceeding to the consideration of the bill and message?

Mr. WRIGHT. With the understanding that if this bill is not concluded to-day the railroad bill shall come up as the unfinished business to-morrow, I shall not object.

The PRESIDENT pro tempore. It will be understood to be subject to a call for the regular order.

Mr. WRIGHT. The unanimous understanding now is that the

railroad bill is to be the pending order if we do not get through with

The PRESIDENT pro tempore. That the District police bill shall be displaced and the pending order shall resume its place if that bill shall not be concluded before the time expires for a recess. If that be the understanding, the bill is before the Senate. The action of the House of Representatives and the message of the President will

The Chief Clerk read as follows:

IN THE HOUSE OF REPRESENTATIVES, January 30, 1877.

January 30, 1877.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same, and it was

\*Resolved\*, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

GEORGE M. ADAMS, Olerk.

The PRESIDENT pro tempore. The bill will be read. The CHIEF CLERK. The bill is in the following words:

An act to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia.

trict of Columbia.

Be it enacted, &c., That the board of commissioners of the Metropolitan police of the District of Columbia is hereby abolished, and that the powers and duties now exercised by it, and the members thereof, are hereby transferred to the commissioners of the District of Columbia and their successors, who shall have authority to employ such officers and agents, and to adopt such rules and regulations as may be necessary to carry into execution the powers and duties imposed upon said board of commissioners of the Metropolitan police of the District of Columbia by avisting laws.

Mr. WRIGHT. I should like to have the message of the President

The PRESIDENT pro tempore. It will be read. The Chief Clerk read as follows:

To the House of Representatives :

To the House of Representatives:

I return herewith House bill No. 4350, to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia, without my approval.

It is my judgment that the police commissioners, while appointed by the Executive, should report to and receive instructions from the District commissioners. Under other circumstances than those existing at present I would have no objection to the entire abolition of the board and seeing the duties devolved directly upon the District commissioners. The latter should, in my opinion, have supervision and control over the acts of the police commissioners under any circumstances. But as recent events have shown that gross violations of law have existed in this District for years directly under the eyes of the police, it is highly desirable that the board of police commissioners should be continued, in some form, until the evil complained of is eradicated and until the police force is put on a footing to prevent, if possible, a recurrence of the evil. The board of police commissioners have recently been charged with the direct object of accomplishing this end.

Executive Mansion, January 23, 1877.

EXECUTIVE MANSION, January 23, 1877.

THE PRESIDENT pro tempore. The question is, Shall the bill pass the objections of the President of the United States to the contrary

the objections of the President of the United States to the contrary notwithstanding? which question must be taken by yeas and nays. Mr. ALLISON. I should be glad to have the Senator from Kansas who has charge of this bill state some reason why this particular action should be had at this time. As I understand, the personnel of the police board has been entirely changed within the last few weeks, and it does seem to me that unless there is some special reason this police board should be independent of the action of the commissioners of the District of Columbia. I had occasion some years ago, in

connection with other gentlemen of the Senate, to make an examconnection with other gentlemen of the Senate, to make an examination into this subject, and as a result of that examination we made a report establishing the present commissioners of the District of Columbia. We however did not disturb the then existing board of Metropolitan police. We found that this police board was originally organized by act of Congress and was made absolutely and entirely independent of the District government under its old organization. For nearly ten years this police service was maintained by the Government of the United States, and the police force was under the control of the United States and absolutely independent of the control of the District of Columbia. It was only by a device to increase the compensation of the police force that the District of Columbia was ever permitted or allowed to pay any portion of the

crease the compensation of the police force that the District of Columbia was ever permitted or allowed to pay any portion of the expenses of the police force. Now, unless there is some reason that I have not yet heard, it seems to me that the police of this District should be under the absolute control of Congress and the President of the United States. There may be reasons that I do not know.

The Senator from Maryland says that in the new organization proposed the police service is absorbed within the new commission proposed by a bill which is recommended by a joint committee; but it seems to me as at present organized the police board ought to be an independent board. If we have not competent and careful men managing the police of this District I think it is the duty of the President and of the Senate to secure good men. I understand the men who have recently been appointed have been confirmed by this body. Therefore I should be glad to hear some reason why this board should Therefore I should be glad to hear some reason why this board should

be abolished.

be abolished.

Mr. INGALLS. I have no reasons to give why the board should be abolished, or why it should not be abolished. It is immaterial to me whether it is abolished or not. The Senator does not seem to understand the attitude of this question. The bill abolishing the board of Metropolitan police has passed both Houses and was vetoed by the President. It has been sent to the Senate with the message of the President, the House having passed the bill by a two-thirds majority over the objections of the Executive. It has been reported from the Committee on the District of Columbia to the Senate with the recommendation that it pass notwithstanding the objections of the President. If the Senator from Iowa does not agree to that he can vote against it. Those who do agree with it can vote in the affirmative. against it. Those who do agree with it can vote in the affirmative. I am not advocating either position; I am only saying that the matter ought to be determined one way or the other, and by each Senator upon his own individual judgment.

Mr. SARGENT. Is it the report of the committee that the bill should pass notwithstanding the objections of the President?

Mr. INGALLS. Notwithstanding the objections of the President.

Mr. SARGENT. Is that the report of the committee?

Mr. INGALLS. That is the recommendation of the committee.

Mr. INGALLS. That is the recommendation of the committee, Mr. SARGENT. Does the Senator speak for the committee? Mr. INGALLS. I do not.

Mr. BURNSIDE. I propose to sustain this veto because I believe the President of the United States has possession at this time of more information and more knowledge on this subject than I have, and probably more than any Senator in this body has. We can abolish the board at any time, if that step becomes necessary. I think it would be eminently wise on the part of this body to sustain the veto of the President and fail to pass this bill over his veto. One reason why I think the vote ought to be taken now is because there is a full Senate here, as I said before, a fuller Senate than we have had for several days past. I think it will be the sense of the members of the Senate present that the President's veto should be sustained, and that Senate present that the President's veto should be sustained, and that

Senate present that the President's veto should be sustained, and that for the present generation we should not attempt to interfere with the police force of the District.

Mr. DAWES. I do not know that I understand the Senator from Iowa correctly, but I thought I understood him to say that the members of this police board had been confirmed by the Senate.

Mr. ALLISON. I do not know, on reflection, that it is necessary under the law to have them confirmed by the Senate.

Mr. DAWES. I wish to state to the Senator that the original board was appointed under a law which required a confirmation by the

Mr. DAWES. I wish to state to the Senator that the original board was appointed under a law which required a confirmation by the Senate. In the revision of the statutes accidentally the phrase "by and with the advice and consent of the Senate" was left out. When the trouble arose a few weeks since with the board, this accidental omission was discovered. The present board received their appointment without the confirmation of the Senate. The bill which we have passed correcting errors in the Revised Statutes restores that provision of the law, so that when that bill becomes a law—and I do not know whether it has yet been approved or not—these commissioners will not hold their offices in conformity with law. It will be necessary for them to be renominated and confirmed by the Senate the moment that bill becomes a law.

Mr. CONKLING. The moment the bill before us becomes a law?

Mr. CONKLING. The moment the bill before us becomes a law?

Mr. CONKLING. The moment the bill before us becomes a law?
Mr. DAWES. No; I refer to the bill correcting errors in the Revised Statutes. The exact stage that bill is in I am not able to say.
I do not myself desire to criticise the message of the President. My own opinion is that the whole government here should be under one head. I believe that, and I believe that the President's veto was simply at the time to accomplish what I understand has been accomplished in the way of an investigation and the correction of errors. This veto came in some weeks ago, and I understand all that has been accomplished; and I understand from the message itself that the

opinion of the President is that if that was done it would be wise that there should be one head in the government of this District, which should be responsible for the peace and good order of the District. I shall vote, without having the slightest disposition to criticise the message of the President, for the bill, notwithstanding this veto, because I understand the veto merely to be that that board should not be abolished pending an investigation which is now concluded. After that investigation was over, as I infer from the message, everybody would be of the opinion that there should be one head. I know in some cities the experiment of a separate board has been tried. It is the case perhaps in the city of New York. If it is, then it is no example that commends itself specially to me; but I know it has been tried and failed in a good many other cities that have one governtried and failed in a good many other cities that have one government of the city for one purpose and another government for another. The more important of all is that the head, the executive, should command the police forces of the city. Responsible as that head is for the character of the city government, for the security and peace of the people and life and property, it seems to me that it should have control of the police. That consideration leads me to vote for

Mr. MERRIMON. I feel it my duty to say that it was the deliberate judgment of a majority of the Committee on the District of Columbia, that it is positively important that this bill should pass. Under the District government as it exists now, there are three or four heads; and very much of the confusion in the city and the police grows out of that fact. We have police commissioners, fire department commissioners, and a health board, I believe it is called. There are three or four heads to the government in the District of Columbia, and very much of the confusion that exists here grows out of that fact. As the Senator from Massachusetts has well remarked, it is all-As the Senator from Massachusetts has well remarked, it is allimportant that there should be a oneness about this government; and the sooner we can arrive at it the better. The police force are largely instrumental in executing the orders and ordinances of the city of Washington; and they ought to be under the direction, control, and command of the commissioners, through proper ordinances framed for

that purpose.

In addition to all that, as a measure of economy this bill ought to pass. It would be a saving of several thousand dollars annually to the city and the Government, if the bill should pass.

Mr. SHERMAN. I will ask the Senator how much these commissions.

sioners get per annum.

Mr. WHYTE. Three thousand five hundred dollars.

Mr. MERRIMON. It is a saving to the Government of several thousand dollars.

Mr. SHERMAN. I refer to the police commissioners. Do they get

Mr. MERRIMON. They are paid.
Mr. ALLISON. They get a per diem.
Mr. MERRIMON. It is a saving of three or four thousand dollars a year. Again, the Senator from Massachusetts has said truly that the principal ground on which the President vetoed the bill is out of the way. The investigation which he desired to take place has taken place, and I doubt exceedingly if the matter were before him now

that he would veto the bill.

Mr. LOGAN. When we start out wrong the only way to do is to correct the error as soon as possible. A few years ago the question came up as to the organization of the city government, providing a governor with an immense staff and all the paraphernalia of a great man, and "the pride, pomp, and circumstance" of war. I opposed it on the ground that it was unconstitutional, but some of the great lights of this parion concluded that I was too small a way to talk lights of this nation concluded that I was too small a man to talk about constitutionality. There was the error in the start of this thing. We started out wrong, and we are like a man who starts out to swear a lie and has to tell a thousand to keep himself straight on to swear a lie and has to tell a thousand to keep himself straight on the record. That is the difficulty on this question now. Two or three years ago Congress started to do that which the Constitution did not authorize them to do, and they have been in trouble ever since. There has been investigation after investigation; there have been charges of fraud and everything else, because you did not let the city government remain as it was. It was in good shape, in good condition, and went along all right, and there was no trouble. It had a mayor and a council, and got along as other cities did; but from that day to this, day after day, experience has shown the want of wisdom in the legislation which changed the organization of the political system here in this city.

I am in favor of the President's veto. I am in favor of it for two or three reasons: First, because I think his examination of this question probably is greater than our own. I think that he understands

tion probably is greater than our own. I think that he understands it better, perhaps, than we do. Second, I desire this city government to remain as it is until Congress shall come back to the original proposition, that they have no right to make a Territory out of this District or to govern it in any way except according to the provisions of the Constitution. Until Congress agrees to do that and puts it back to its original position, where it ought to be and where it was for years upon years without trouble, I am in favor of keeping the con-

dition just as it is precisely.

Another reason is this: What benefit are you to derive from changing one board of police commissioners and transferring the power to another board? What advantage is that to be to the city or the community of people composing it or surrounding it? Is it any ad-

vantage? Are the District commissioners any better than the men who may be appointed by the President? Have they not enough to take charge of now? The power of these commissioners is to regulate and organize the police of the city. I think a police commission is necessary in this city. I think it absolutely necessary to organize and arrange and have an organization of policemen here and a board to regulate the affairs of this city. I do not know whether this commission is the right one or whether another commission would be better. It does not make any difference to me. The party who are mission is the right one or whether another commission would be better. It does not make any difference to me. The party who appoints them is responsible for it, and the President appointing this board is responsible for the board himself, whether it be the old board or the new board. I believe in holding somebody responsible for the regulation of the police of the city of Washington, and I think the President had as well be held responsible as anybody else. In vetoing this bill the President says to us that he is in favor of retaining the commission, not the individuals, but the commission as a body. The law authorizes him to appoint whom he pleases, and he is responsible for it. He is to be responsible to Congress for the appointment of the men who hold the office.

The question of economy is suggested by my friend from North

The question of economy is suggested by my friend from North Carolina. He certainly has a right to suggest it, for if there is any man in this Chamber in favor of economy, he is one, and he is entitled to great credit for it. The only thing that he is not economical in is in his use of words in this Chamber. In every other respect he is economical. But I differ with him in reference to this particular question. I think that we ought to sustain the President on this bill. I will say that I have not examined the bill; I know very little about it; but on general principles I think the President is right. On general principles, I think there ought to be a board such as is established eral principles, I think there ought to be a board such as is established here in the city, and that that board ought not to be abolished until the Congress of the United States agrees to abolish all of these boards and re-organize this city according to the Constitution of the United States. Until that is done, I am opposed to any change whatever in reference to the machinery of the city government. We should agree to change it and wipe out all this machinery and put it back to where it was when we had a city government that was respected by somebody at least. Since that time we have had one respected by nobody. I am in favor of keeping; it in the present condition for the present

body at least. Since that time we have had one respected by nobody. I am in favor of keeping it in the present condition for the present, and therefore I shall vote to sustain the President's veto.

Mr. WRIGHT. I wish to say just one word in reference to this bill. I shall vote to sustain the veto. I should have liked very much if my friend from Kansas, who reported the bill from the committee, had stated to us fully the grounds upon which the committee made the report and also advised us as to his own views and opinions as to the propriety of the President vetoing this message at this time; but I shall vote to sustain the veto for the reasons I stated.

In the first place I wish to suggest to my friend from Massachu.

In the first place, I wish to suggest to my friend from Massachuatt I think he labors under a very great mistake in assuming that I think he labors under a very great mistake in assuming that this investigation has closed. I understand that the investigation has in fact just commenced; that the charges are preferred, and that they are now about entering upon the investigation. Sofar from the investigation being concluded, they are just about entering upon it; and for that reason the ground which he states is entirely without foundation. out foundation.

I have conversed and conferred with many of the very best citizens in this city, and, as far as I learn, there is but one opinion among them, and that is, in order to hold the bad men in this city by the throat and to do what is best for the interests of this city and its morals, this police board ought to be continued. I shall therefore vote for doing that, because of this investigation now in progress

just commenced.

vote for doing that, because of this investigation now in progress just commenced.

I shall vote for sustaining the President's veto also for another reason. The Senator from Maryland stated that the matter of the city government had been under consideration by a committee. Whether they have or have not reported I do not know, nor is it material. It is sufficient that there has been no action on that report. I think we ought to leave matters in statu quo, at least until we act on that report, and not interfere by piecemeal with the different organizations of this city. I think it is better to leave things as they are until we take the whole thing up and give the city either a new city government or determine that we shall not. I believe with the Senator from Illinois, that we ought to have this board or some such board in this city. I believe it is better that we should leave it with the citizens here who have been appointed by the President, who are residents, who are identified with the interests of the city, who know what is wanted, who know what is best for the police force of the city, rather than transfer the power to an organization a majority of whom are taken from persons outside of the city, as is proposed by this repealing bill. I do not understand that there is any objection to these police commissioners, but that they are among the very best and most responsible and worthy citizens in this city; they are identified with its interests and have been for years, and they will take hold of this matter with an earnest determination, with a purpose and with an ability in their hands to discharge their duties well, and that they will investigate this matter and give to this city such a police as it ought to have if it has not got it now. So far from the President's veto being construed as the Senator from Massachusetts construes it, that the necessity for this board has ceased because the investigation has ceased, I do not understand the message in such a way, nor do I understand that the facts warrant it.

Mr. MERRIMON. I stated that the principal ground upon which the committee proceeded in recommending the passage of this bill over the veto of the President was the impossibility of concentrating the power exercised in administering the government of the District of Columbia. We know that it has numerous heads. There are three or four different departments of the government, each independent of the other, and each coming constantly in conflict with the other. If we know anything we know that those who make the ordinances and who chiefly rule the city ought to have control of the police. The police execute the ordinances of the city; they execute in some measure the orders issued by the District commissioners, and they ought to be directly responsible to the commissioners. As it is, they are in a large measure independent of them. They obey the police commissioners' orders rather than the commissioners who rule the city. The police are independent of the commissioners who rule the city. The police are independent of the commissioners who rule the city. They are independent of those who make ordinance to protect the peace, liberty, and property of the people. They are not responsible to obey their orders, but do it when they will, and there is a constant conflict of authority that ought to be suppressed and at the earliest possible moment. The President himself recognizes the investment of this year thing for he says: importance of this very thing, for he says:

It is my judgment that the police commissioners, while appointed by the Executive, should report to and receive instructions from the District commissioners. Under other circumstances than those existing at present I would have no objection to the entire abolition of the board and seeing the duties devolved directly upon the District commissioners. The latter should, in my opinion, have supervision and control over the acts of the police commissioners under any circumstance. But, as recent events have shown that gross violations of law have existed in this District for years directly under the eyes of the police, it is highly desirable that the beard of police commissioners should be continued in some form until the evil complained of is eradicated, and until the police force is put on a footing to prevent, if possible, a recurrence of the evil.

The President himself recognizes the importance of a change of the laws regulating this District in this very particular, and he says that when the present emergency shall have passed it will be wise to abolish this board. At all events he suggests that he would have no objection to it then. Therefore I may venture to say to the Senator from Massachusetts that the reasons which moved him to desire the delay of passing a bill of this character do not exist at this moment. The examination which he desired should take place has taken place and there is no longer any reason existing in the view that he presented to Congress why the board of police commissioners should continue

Mr. LOGAN. Before the gentleman takes his seat I should like to ask him one question. I know I exhibit my ignorance of this matter in talking about it, for I have not examined it very closely. I should like to ask the Senator whether in the organization of govenough like to ask the Senator whether in the organization of government, a city government, State government, or county government, of any character whatever, it is not well generally to organize it from the citizens who reside within the jurisdiction?

Mr. MERRIMON. I am very frank to say to the Senator that I think so. I think it would be very wise and well. I do not concur in much of the legislation that has been had in reference to the District of Columbic.

trict of Columbia.

Mr. LOGAN. I should like to ask the Senator a further question. Are not this board of police commissioners the only officers of the District of Columbia connected with the city government who have a location, a residence, a citizenship in this city?

Mr. MERRIMON. I am not able to answer that question.

Mr. LOGAN. I merely ask if that is not the fact?
Mr. MERRIMON. I do not know what the fact is.
Mr. LOGAN. One of the District commissioners, I think, lives in Ohio; one of them lives in New York, and the other one lives I do

Mr. MERRIMON. The wisdom of Congress, however, led it to pass the law providing for those very commissioners. I am not sure that I as a member of the Senate approved of that course; but it is the law. The point here is to concentrate the power by which the government of the District of Columbia is administered. The commissioners of the District make the ordinances in great part which control the people of the city and protect their lives and their property, and the policemen are essential to execute their orders. The police are not under the direction and control of the District commissioners, but are more or less independent of them; and hence the disorders which we have witnessed.

Mr. LOGAN .. I will ask the Senator this further question, whether he does not think the control of the police force would be as likely to be calculated to protect persons and property where it was under the control of the citizens of the District as where it was under the control of foreign residents?

Mr. MERRIMON. I am willing to concede that; but that does not go to the merits of the objection which I make. Perhaps I would be more than willing to see the commissioners who now compose the board of police commissioners administering the government of the city; I do not know how that would be; but if they did administer the government of the city they ought to have control of the police, the power by which the city is regulated, in order that it may be done

Mr. LOGAN. I ask the Senator whether it would not be better to hold this thing in statu quo until a law shall be passed by which the partment in this city.

citizens of this District may have something to do with their own

Mr. MERRIMON. The prospect is that any such law will not be assed soon. We have had considerable experience on that subject, passed soon. and have found great difficulty in agreeing upon any law. It has been stated, not only by myself but by others, that the police force of this city is in a state of disorder. There is a condition of affairs in the administration of the city government that is lamentable.

Mr. LOGAN. I will say to the Senator, then, that if the organization of this city government is not in a symple way it is the fault of

Mr. LOGAN. I will say to the Senator, then, that if the organization of this city government is not in a proper way it is the fault of Congress, and certainly is not the fault of the citizens.

Mr. MERRIMON. That may be. I do not reflect on the citizens of the District. It is to be deplored that there is no efficient local government here. We ought to remedy existing evils as fast as we can; and if there be the presence of a grave evil here, which the President himself recognizes in his message, it seems to me Congress ought not to hesitate one moment to apply that remedy as far as it will go.

will go.

Mr. DAWES. I want to be understood as finding no fault with the board of police commissioners. As at present constituted as far as I know they are honorable men. There is no more security, howas I know they are nonorable men. There is no more security, however, that the police commissioners will be residents of this District than there is that the District commissioners will be residents of it. They can be appointed by the President, and until we change the law they can be taken, even without the consent of the Senate concurring in their appointment, from any part of the United States. All that is required is that they shall be citizens of the United States. But it so becomes that they are a received to force I have But it so happens that they are an excellent board so far as I know.

I want to call the attention of the Senator from Iowa to the re-

mark of the President, to see what it does mean. I believe the Senator is mistaken when he thinks I have drawn a wrong inference from The President says:

It is my judgment that the police commissioners, while appointed by the Executive, should report to and receive instructions from the District commissioners. Under other circumstances than those existing at present—

And he tells what those are clearly, this investigation-Under other circumstances than those existing at present, I would have no objection to the entire abolition of the board and seeing the duties devolved directly upon the District commissioners.

I infer from that language, subject however to correction by the Senator from I was, if I am mistaken, that the President was in favor of the measure except that pending an investigation he thought it not wise to break it up. My information does not exactly concur with that of the Senator from I was about the state of the investigawith that of the Senator from Iowa about the state of the investigation. I do not know except what the papers inform me, and the papers inform me that the chief of police has been restored to his duty,
and two detectives who were charged with some offense have been
restored to their duty, and that the police commissioners have gone
about their duty, and so far as there is any outward appearance the
investigation has stopped. There is nothing at all left of the investigation that I know of. The men who were accused by that member
of the board who disappeared from the board have been restored by
this commission to their duty, and so far as I have observed nothing
further is concerned. I am in favor of having one government, and
not two. I am not in favor of dual governments anywhere, least of
all in the matter of police. I have no choice myself and care nothing all in the matter of police. I have no choice myself and care nothing about it, but the idea of keeping up a dual government here is as absurd as it is in Louisiana.

Mr. ALLISON. I entirely differ from my friend from Massachu-Mr. ALLISON. I entirely differ from my friend from Massachusetts with reference to this police board. It in no sense constitutes a dual government. The duties enjoined on this board are duties fixed by statute and fixed by statute long before the present commissioners of the District of Columbia were provided for. The police board has always been independent of the city government, and my distinguished friend participated in the making of the law which originally established the police board and when it was made independent of the District or city government; and for ten years, I think—perhaps not quite so long—the Government of the United States paid the entire expense of this police board and the police establishment when all the other expenses of the District were paid by taxation upon the District, thus showing that in its organization and inception it was intended that the Government should exercise absoinception it was intended that the Government should exercise absolute control over it for the purpose of protecting its own property and public buildings and grounds in this District.

So far from its being economical to abolish this board, I want to ask my friend from North Carolina if the District commissioners will not be obliged to substantially establish a board of District police. Are these District commissioners, with their manifold duties, to go about this city seeing that order is preserved here and there, and that vices are suppressed here and there? The board of District commissioners to-day have supreme authority in this District, save and except authority over the police and over the health of the District. They exercise full and plenary powers with that exception. The other organizations in this District are subordinate organizations to the commissioners of the District; yet they exist and they have expensive machinery as the Senator from North Carolina will find if he examines into that machinery. The fire department is a department subordinate to the District commissioners. It is not an independent deordinate to the District commissioners. It is not an independent de-

Therefore we do not reduce the number of officers in any sense. This police board was intended to be composed of the best citizens of Their compensation is limited by law to \$250 per annum.

Mr. MERRIMON. May I ask my friend a question?
Mr. ALLISON. Yes, sir.
Mr. MERRIMON. Is it not manifest, taking what he says to be true so far as the principle goes, that the police ought to be under the direction and control of the power that makes the ordinances for

and rules the city?

Mr. ALLISON. Congress thought very differently when they es tablished the board of police, because they expressly provided that it should be independent of the control of the city authorities of the District, and I can see no reason why this board, under the authority given by statute, cannot enforce the ordinances of the city. They have authority to do so.

I care nothing about this matter, but it seems to me that if we are ever to have a government here different from the one we now have we had better revise it all at the same time. The District commiswe had better revise it all at the same time. The District commissioners when they were established by law were intended to be temporary. In the very terms of the law creating that organization it was provided that it should be temporary; but that law still stands, and the Senator from Maryland and other Senators have been engaged in providing a permanent form of government for this District. Now let us permit these different boards to exist until some established form of government is provided for by law.

The PRESIDENT pro tempore. The question is on the passage of the bill notwithstanding the objections of the President of the United States on which the year and navs will be called.

States, on which the yeas and nays will be called.

The vote being taken by yeas and nays, resulted-yeas 33, nays 22; as follows:

AS IOHOWS:

YEAS—Messrs. Alcorn, Barnum, Blaine, Bogy, Booth, Chaffee, Cockrell, Cooper, Davis, Dawes, Dennis, Eaton, Goldthwaite, Hamilton, Hamlin, Hereford, Johnston, Jones of Florida, Jones of Nevada, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Robertson, Stevenson, Teller, Wadleigh, Wallace, Whyte, and Withers—33.

NAYS—Messrs. Allison, Bruce, Burnside, Christiancy, Clayton, Conkling, Conover, Cragin, Ferry, Hitchcock, Ingalls, Logan, McMillan, Mitchell, Paddock, Patterson, Sargent, Sherman, Spencer, West, Windom, and Wright—22.

ABSENT—Messrs. Anthony, Bailey, Bayard, Boutwell, Cameron of Pennsylvania, Cameron of Wisconsin, Dorsey, Edmunds, Frelinghuysen, Gordon, Harvey, Howe, Morrill, Morton, Oglesby, Randolph, Ransom, Saulsbury, Sharon, and Thurman—20.

The PRESIDENT pro tempore. On the passage of this bill the yeas are 33 and the nays are 22. Two-thirds of the Senators not voting for the same, the bill is not passed.

PACIFIC RAILROAD ACTS.

Mr. WRIGHT. I ask that the Senate resume the consideration of the railroad bill.

The PRESIDENT pro tempore. The regular order is Senate bill No.

Mr. CONKLING. I move that Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session, the doors were re-opened, and (at four o'clock and fortyfive minutes p. m.) the Senate took a recess till ten o'clock a. m., Wednesday, February 7.

## HOUSE OF REPRESENTATIVES.

# \* THURSDAY, February 1, 1877.

[CALENDAR DAY, February 6.]

AFTER THE RECESS.

The recess having expired, the Honse re-assembled at ten o'clock a. m., (Tuesday, February 6.)

Mr. WADDELL. I move that the House take a further recess until five minutes to twelve o'clock.

The motion was agreed to; and accordingly (at ten o'clock and one minute a. m.) the House took a recess until eleven o'clock and fiftyfive minutes a. m.

AFTER THE RECESS.

The recess having expired, the House re-assembled at eleven o'clock and fifty-five minutes a. m.

## PUBLIC PRINTING AND BINDING.

On motion of Mr. BLOUNT, by unanimous consent, the bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year was taken from the Speaker's table, read a first and second time, ordered to be printed, and referred to the Committee on Appropriations, with leave to report at any time.

## SAND-BAR AT NEWTOWN CREEK.

Mr. BLISS, by unanimous consent, introduced a bill (H. R. No. 4592) to provide for the removal of the sand-bar at Newtown Creek, between Brooklyn and Long Island City, in the State of New York, where it empties into the East River, so that vessels of greater tonnage may navigate said stream for the greater facility of commerce; which

was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

PRESBYTERIAN CONGREGATION, SAINT AUGUSTINE, FLORIDA.

Mr. FINLEY, by unanimous consent, introduced a bill (H. R. No. 4593) granting to the trustees of the Presbyterian congregation in Saint Augustine, Florida, a lot of land on which to erect a church building and parsonage; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

## UNIVERSITY OF NOTRE DAME, INDIANA.

Mr. HAYMOND, by unanimous consent, introduced a bill (H. R. No. 4594) authorizing the Secretary of the Treasury to exempt from customs duty a tabernacle and accompanying articles imported for the use of the University of Notre Dame, Indiana; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed. ordered to be printed.

## AMENDMENT OF THE RULES.

Mr. KNOTT. I rise to submit a privileged report from the Committee on the Judiciary. We report back, with a recommendation that it do pass, the resolution referred to us yesterday, and which I ask the Clerk to read, and upon it I ask the previous question.

The Clerk read the resolution, as follows:

Resolved. That the rules of the House be, and hereby are, so amended that, pending the counting of the electoral vote and when the House is not required to be engaged thereon, it shall, on assembling each calendar day after recess and every preceding day, proceed at and after twelve o'clock m. with its business as though the legislative day had expired by adjournment.

Mr. COX. I do not object to the consideration of the resolution, but I desire to make a point of order upon it.

Mr. KNOTT. I would state that the resolution now reported is substantially similar to the one which was discussed yesterday.

Mr. COX. I rise to a point of order. I do not antagonize the resolution, but I would like to state my point of order.

The SPEAKER. The gentleman will state it.

Mr. COX. It is perhaps rather in the nature of a parliamentary suggestion.

suggestion.

The SPEAKER. The Chair would state to the gentleman from New York [Mr. Cox] that if he desires to address the House upon the subject of this matter, the gentleman from Kentucky should yield

temporarily for that purpose.

Mr. KNOTT. I made the report with the impression that the House desired the earliest possible action on the resolution. If it does not, let the report be withdrawn.

## PRAYER.

The SPEAKER. The hour of twelve o'clock having arrived, the Chair desires that business be suspended for a moment, and asks unanimous consent that the Chaplain be allowed to offer prayer. No objection was made, and prayer was offered by Rev. I. L. Town-SEND, Chaplain of the House.

## AMENDMENT OF THE RULES.

Mr. HALE. Before any debate ensues upon the resolution reported

Mr. HALE. Before any debate ensues upon the resolution reported by the gentleman from Kentucky I wish to reserve points of order.
Mr. KNOTT. I withdraw the report.
Mr. COX. I object to the withdrawal.
Mr. HALE. It can be withdrawn, of course.
The SPEAKER. The gentleman from Kentucky has that right.
Mr. COX. Not when the resolution is already before the House.
The SPEAKER. The gentleman from Maine [Mr. HALE] rose to a point of order to object to the reception of the report.
Mr. HALE. The gentleman from Kentucky has withdrawn it, and

Mr. HALE. The gentleman from Kentucky has withdrawn it, and it is not now before the House.

Mr. O'BRIEN. It was read from the Clerk's desk, and therefore

it cannot be withdrawn.

Mr. WILSON, of Iowa. I understand that the chairman of the Committee on the Judiciary reported back the resolution offered yesterday; I thought at first that it was a different resolution.

The SPEAKER. The Chair from following the resolution understands that it is exactly the same resolution that was yesterday re-

ferred.

Mr. WILSON, of Iowa. But it was referred to the Committee on the Judiciary for their opinion upon it.

The SPEAKER. The Chair desires to state to the gentleman from

Iowa that the report has been withdrawn.

Mr. WILSON, of Iowa. Whatever report comes from the Committee on the Judiciary on this question should go to the Committee on

The SPEAKER. The gentleman from Kentucky has withdrawn the report and it is not now before the House.

Mr. COX. I object to the withdrawal of it, and make the point of order that the report cannot be withdrawn after being brought before

the House and read.

The SPEAKER. The gentleman from New York makes the point. of order that the gentleman from Kentucky has no right to withdraw the report, and the Chair overrules the point of order, and refers the gentleman to the Manuel, page 32, under the heading of "Withdrawal of Motions."

Mr. COX. - I was about to make a parliamentary inquiry, whether

or not an amendment of the rules does not require the consideration of the Committee on Rules. I do not want to oppose the resolution. The SPEAKER. The understanding yesterday was that this resolution should be referred to the Committee on the Judiciary to inquire touching the effect it might have upon the law. The Chair therefore thinks that the resolution is properly before the Committee on the Judiciary now.

Mr. CLYMER. It was withdrawn, was it not?
The SPEAKER. It was withdrawn.
Mr. WILSON, of Iowa. All right.

### DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON. I move that the rules be suspended and that the House resolve itself into Committee of the Whole on the state of the Union for the purpose of considering the deficiency appropriation bill; and pending that motion I move that all general debate upon the bill be closed in five minutes.

Mr. MONROE. I understand that the bill is not yet printed.

The SPEAKER. The bill is printed.

Mr. CAULFIELD. I ask the gentleman from Michigan to withdraw his untiperfore a propent so that I may make a privileged re-

draw his motion for a moment, so that I may make a privileged re-

port which is very brief.
Mr. WALDRON. I must insist upon my motion.
The question was taken on the motion to close debate in five min-

The question was taken on the motion to close debate in five minutes; and it was agreed to.

The question was then taken on the motion to go into Committee of the Whole on the state of the Union; and it was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. EDEN in the chair,) and proceeded to the consideration of the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes.

The CHAIRMAN. All general debate upon this bill is closed in five minutes by order of the House.

Mr. WALDRON. I desire to state briefly that this bill appropriates the sum of \$1,417,216.46, and that the two items which form the bulk of this appropriation are an appropriation of \$500,000 for deficiency in the Navy and an appropriation of \$217,000 which it becomes necessary to appropriate under the law of August last granting compensation to soldiers who have lost their limbs. That law provides that every soldier who has lost a limb in the service shall be entitled once in five years to a new limb, or commution therefor, and entitled once in five years to a new limb, or commution therefor, and it becomes necessary this year to expend under the provisions of the law the sum of \$264,000. The appropriation for this purpose is \$52,000, making a deficiency of \$112,000. If any information be desired in regard to other items of the bill, I will endeavor to give it. I now ask that the first and formal reading of the bill be dispensed

' Mr. WHITTHORNE. Before that motion is put, will the gentle-man from Michigan [Mr. WALDRON] allow me to ask him to explain how and in what manner this deficiency in the pay of the Navy oc-

The CHAIRMAN. General debate is limited to five minutes.

Mr. BLOUNT. You can get that information in the debate under

Mr. BLOUNT. You can get that information in the debate under the five-minute rule.

Mr. WALDRON. I will say that the estimate of the Secretary of the Navy for the expenses of his Department was for \$7,300,000, and the amount appropriated was \$5,750,000, being less by \$1,550,000 than the amount asked by the Secretary. In lieu of that the Committee on Appropriations have been willing to allow a deficiency of but \$500,000, which in their opinion is the largest amount which should be given

be given.

Mr. WHITTHORNE. I did not hear fully the explanation made by the gentleman from Michigan, [Mr. WALDRON,] and I do not suppose that any one near me heard it, on account of the confusion in the

The CHAIRMAN. The gentleman from Michigan will suspend until order is obtained. [After a pause.] The gentleman from Michigan

order is obtained. [After a pause.] The gentleman from Michigan will now proceed.

Mr. WALDRON. In reply to the inquiry of the gentleman from Tennessee [Mr. WHITTHORNE] I stated that the estimate of the Secretary of the Navy for the expenses of the current fiscal year, submitted at the last session of Congress, was \$7,300,000, and the amount appropriated at the last session was \$5,750,000. In other words Congress at its last session appropriated \$1,550,000 less than the amount asked for by the Secretary of the Navy. The Secretary of the Navy now asks to have incorporated in this deficiency an appropriation of \$1.550,000, and the Committee on Appropriations have inserted an now asks to have incorporated in this deficiency an appropriation of \$1,550,000, and the Committee on Appropriations have inserted an appropriation of \$500,000, which in their judgment is the proper amount to be appropriated.

Mr. WHITTHORNE. I think the gentleman from Michigan [Mr. WALDRON] did not fully understand my question. I want to know for what particular account or what particular deficiency this \$500,000 is to be used.

Mr. WALDRON. The deficiency is in the item of pay for the Navy.

Mr. HALE. I rise to a question of order.

The CHAIRMAN. The gentleman will state it.

Mr. HALE. As we are proceeding under the five-minute rule, the

Mr. HALE. As we are proceeding under the five-minute rule, the time for general debate having been exhausted, I would inquire if there is any amendment pending before the committee?

The CHAIRMAN. No amendment is pending.

Mr. BLOUNT. The gentleman from Tennessee [Mr. WHITTHORNE]
vas making an inquiry of the gentleman from Michigan, [Mr. Wal-

Mr. HALE. That is why I wish to have the business conducted in a proper manner. Of course any gentleman can discuss this bill for

a proper manner. Of course any gentleman can discuss this bill for five minutes upon an amendment.

The CHAIRMAN. The question really before the committee is the request of the gentleman from Michigan [Mr. WALDRON] that the first and formal reading of the bill in Committee of the Whole be dispensed with, and that it be read by paragraphs for amendment. If there be no objection that will be the order.

There was no objection.

The Clerk proceeded to read the bill by paragraphs for amendment, and read the following:

NAVY DEPARTMENT.

For pay of officers and men of the Navy, being a deficiency for the fiscal year 1877, \$500,000.

Mr. WHITTHORNE. I move to substitute for the paragraph just read that which I send to the Clerk's desk.

The Clerk read the following:

That the accounting officers of the Treasury be, and they are hereby, authorized and directed to adjust and settle the accounts of the officers of the Navy on the active list whose pay has been affected by the general order of the Secretary of the Navy No. 216, since the 1st day of September, 1876, on the basis of waiting-orders pay; and such sum as may be necessary to make up the difference between the furlough and waiting-orders pay of such officers is hereby appropriated for that purpose out of any moneys in the Treasury not otherwise appropriated.

That section 1442 of the Revised Statutes of the United States be, and the same is hereby reposed.

is hereby, repealed.

That no officer of the Navy shall be placed on furlough, except at his own request or by sentence of court-martial; and all laws and parts of laws inconsistent with this act are hereby repealed.

Mr. HOLMAN. I raise the point of order upon that amendment that it proposes to change existing law and is not in the interest of

I hope the chairman of the Committee on Appropriations [Mr. HOLMAN] will not insist upon that point of order. amendment is evidently in the right direction, and has been fully

considered by the Committee on Appropriations.

Mr. HOLMAN. I must insist upon my point of order.

Mr. WHITTHORNE. I think if I had time to argue with my friend from Indiana [Mr. HOLMAN] I could show him that his point of order is not well taken

The CHAIRMAN. The Chair will hear the gentleman on the point

Mr. WHITTHORNE. If I understand it, the point of order made Mr. WHITTHORNE. If I understand it, the point of order made by the gentleman is that this proposed amendment changes existing law. In the opinion of the Committee on Naval Affairs the amendment which I have submitted is in harmony with the existing law of the land, and the Secretary of the Navy, when he issued his order No. 216, transcended the existing law of the land. The object of this amendment is to put the pay of the Navy back in harmony with its usages, in harmony with the customs prevailing therein, and in harmony with the law of the land as it existed at the time of the passage of the appropriation bill of the last session.

mony with the law of the land as it existed at the time of the passage of the appropriation bill of the last session.

To be sure there is upon the face of the amendment apparently a change or repeal of section 1542 of the Revised Statutes. But in my opinion at least, and also in the opinion of other members of the Committee on Naval Affairs, that section of the Revised Statutes was in violation of the then law of the land, and ought never to have been included in the Revised Statutes; it was not a part of the law. been included in the Revised Statutes; it was not a part of the law

of the land at the time.

Mr. CLYMER. I would suggest to the gentleman that the point of order is not only that the amendment changes existing law, but that it is not in the interest of economy. I would like to hear the

gentleman on that point.

Mr. BLOUNT. By the permission of the gentleman from Tennessee
[Mr. Whitthorne] I would say that I hope my friend from Penn-

Mr. CLYMER. I wish to hear the opinion of the gentleman from Tennessee upon the point of economy.

Mr. WHITTHORNE. Upon that point I have to say that if, as a matter of right, as a matter of justice, as a matter of equity, this pay is due the servants of the Republic, the servants of the Government, then it resolves itself simply into a question of postponing that justice and that equity. I cannot now go into the argument whether this is justly due or not to these servants of the Republic. But whether we pass it to-day or not, the time will come when this Government will be just to its officers and to its agents who, by a strange construction of the law, by a revival of what was obsolete, have been subjected to

of the law, by a revival of what was obsolete, have been subjected to what amounts to a disgrace to those officers of the Navy who are affected by the General Orders No. 216 of the Secretary of the Navy. It is not a question of economy; it is at this moment a question of duty. The question of economy does not enter into consideration at all. I trust the Chair will overrule the point of order.

The CHAIRMAN. The point of order is that the amendment proposes a change of existing law and is not in the interest of economy. The rule, as the Chair understands, which has been observed heretofore is that, unless the Chair can see from the provisions of the proposed change of law that it is in the interest of economy, the point

of order must be sustained. This amendment proposes to repeal a section of the Revised Statutes, and it also provides that no furlough shall be granted to a naval officer except at his own request. Now, as these provisions certainly change the existing law and as it is impossible for the Chair to see that the proposed amendment is in the interest of economy, the Chair holds that the point of order is well taken.

Mr. WHITTHORNE. Very well, then; by permission of the Chair, I will withdraw so much of the amendment as is embraced in sections 2 and 3; and the remainder of the proposition I submit as an amendment.

Mr. HALE. The gentleman clearly has the right to modify his amendment.

The CHAIRMAN. The amendment will be reported as now proposed.

The Clerk read as follows:

That the accounting officers of the Treasury be, and they are hereby, authorized and directed to adjust and settle the accounts of the officers of the Navy on the active list whose pay has been affected by the general order of the Secretary of the Navy, No. 216, since the 1st day of September, 1876, on the basis of waiting-orders pay; and such sum as may be necessary to make up the difference between the furlough and waiting-orders pay of such officers is hereby appropriated for that purpose out of any moneys in the Treasury not otherwise appropriated.

Mr. WHITTHORNE. I yield to the gentleman from Massachu-

setts, [Mr. HARRIS.]
Mr. HARRIS, of Massachusetts. Mr. Chairman—
Mr. HOLMAN. I wish to insist on the point of order against this

amendment.

amendment.

Mr. HARRIS, of Massachusetts. I address myself to the point of order. It is claimed that this is a change of existing law. Now, Mr. Chairman, by order No. 216, issued last year in consequence of the deficiency of the appropriation, the Secretary of the Navy was obliged to put upon furlough many officers of the Navy on the lowest possible pay. Those officers are now entitled to waiting-orders pay. In the appropriation of last year there is a deficiency of the amount necessary to give these officers waiting-orders pay; and the amendment sary to give these officers waiting-orders pay; and the amendment which is now offered is designed to supply that deficiency. That is its scope; nothing more. These officers are entitled by law to the pay provided for in this amendment; and I think it cannot be properly said to be a change of existing law.

Mr. BLOUNT. It will be observed that in this bill we propose to appropriate \$500,000 as a deficiency for the Navy Department, and with the amount already appropriated for the current year, I think gentlemen ought to be satisfied that this will be enough to cover the whole deficiency, furlough pay and all; so that it does not make any difference whether the point of order is sustained or not.

Mr. WHITTHORNE. The point of order comes too late anyhow. The Chair had recognized me.

Mr. HOLMAN. I have pressed the point of order from the begin-

ning against this proposition.

The CHAIRMAN. After the point of order of the gentleman from Indiana had been sustained the amendment was modified by the gentleman from Tennessee.

Mr. HOLMAN. I then renewed my point of order.
Mr. WHITTHORNE. I was upon the floor, had been recognized
by you, Mr. Chairman, and it was too late to raise the point of order.
The CHAIRMAN. What is the point of order of the gentleman
from Indiana upon the amendment as modified?
Mr. HOLMAN. That this is in fact a change of existing law and
is not a measure of retrenglment.

is not a measure of retrenchment.

Mr. SPRINGER. I would like to speak to the point of order.
Mr. WHITTHORNE. The point of order comes too late, I insist.
Mr. SPRINGER. Is the point of order entertained as being in time?
Mr. HOLMAN. I made it, Mr. Chairman, at the very instant that

this modification was read.

Mr. WHITTHORNE. I was upon the floor and the gentleman from Indiana could not obtain the floor to make the point of order.

Mr. MILLS. Mr. Chairman—

The CHAIRMAN. For what purpose does the gentleman from Texas [Mr. MILLS] rise?

Mr. MILLS. I rise for the purpose of discussing the question before

the Chair.

The CHAIRMAN. The question is upon the point of order raised by the gentleman from Indiana.

Mr. MILLS. I trust that the gentleman from Indiana will withdraw his point of order and permit this amendment to be voted upon. At the last session it was charged upon the party which the gentleman from Indiana had the honor to lead in this House that they were cutting down the appropriations to such an extent that the officers of the Government could not be supported. He repelled that charge then made against his party. The law which was then reported and passed by the party which he led, and of which I am an humble member, has in its execution been so administered by the head of the Navy Department that officers of the Navy have been deprived of the enjoyment of the salaries intended to be awarded to them under the law. It is our duty as a party to see that these officers do not suffer, whether this arises from a misconstruction of the law or otherwise. That question it is not in our mouths to discuss. It is our duty to see that an appropriation is made to pay the officers of the Navy.

The CHAIRMAN. The Chair is still willing to hear gentlemen on

the point of order.

Mr. WHITTHORNE. I insist the point of order was not made in

me—that it came too late.

The CHAIRMAN. The Chair holds the point of order made by the gentleman from Indiana was made in time, as the amendment had

just been read and no debate had taken place.

Mr. SPRINGER. I wish to say a word in regard to the point of order. I do not understand, Mr. Chairman, this is a change of existing law. It is a change of an order issued by one of the Departments of the Government, a change in the construction that officer put upon an act of Congress and not any change of what was intended when the law was passed by the two Houses of Congress. The amendment of the gentleman from Tennessee simply proposes to construe the act of Congress in accordance with what was the intention of this House when the law was passed at the last session. It is this and nothing

Mr. HALE. I wish the gentleman from Illinois would tell the committee where the head of the Navy Department made this misapplication of the law. I understand the gentleman to state that the head of the Navy Department made a misapplication of the law or rather perverted the meaning of Congress in the official order to which reference is made. I wish he would tell the House in what that misapplication consists application consists.

The only question before the committee is the The CHAIRMAN.

The CHAIRMAN. The only question before the committee is the point of order.

Mr. HALE. I refer to a statement made by the gentleman from Illinois in discussing the point of order as to the perversion of the intention of Congress in the order issued by the Secretary of the Navy. If my question is not answered now, I hope it will be before this debate is ended. I want the gentleman to state where the misapplication of law is tion of law is

Mr. SPRINGER. The gentleman from Tennessee is much more familiar with this whole subject than I am, and I have no doubt he will make a full statement of the case when the amendment comes up for

argument.

The CHAIRMAN. It is not in order now to discuss that point, as the only question before the House is the point of order raised by the gentleman from Indiana. In the judgment of the Chair, the amendment moved by the gentleman from Tennessee does not propose to repeal any law but merely to supply a deficiency of appropriation under the law as it now exists, and he therefore holds the amendment to be in order.

amendment to be in order.

Mr. WHITTHORNE. Have I the floor?
The CHAIRMAN. The gentleman is entitled to the floor for five minutes in favor of his amendment.

Mr. WHITTHORNE. Mr. Chairman, at the proper time I will most likely, unless another gentleman should do so, move to reduce the amount named here, but for the present—

Mr. BLOUNT. What does the gentleman propose?

Mr. WHITTHORNE. I propose to reduce this sum, but I do not say how much.

say how much.

But for the present I will consider the merits of the proposition submitted by myself, and have to remark to gentleman on this floor that it has the unanimous approval of the Committee on Naval Affairs.

But I do not propose now to enter into the discussion of the propriety of this amendment in any partisan point of view. I have simply to state, Mr. Chairman, that I believe the House of Representatives at its last session was misled in passing the appropriation bill by the term made use of "waiting-orders pay." In the uneducated mind probably of the House or of the country, the belief was that furlough pay and leave pay were one and the same thing.

Mr. BLOUNT. I hope the gentleman does not mean to say we did not know better than that.

Mr. WHITTHORNE. If the gentleman pushes me to the wall I will state that I believe the gentleman from Georgia himself did not know better, because I so apprehended from the remarks he made at the time, and the table which he submitted to the House. Mr. BLOUNT. I have no objection of course to the gentleman's

estimate of my remarks, but we did know at that time what we in-

tended to do.

Mr. WHITTHORNE. By reference to the gentleman's remarks at that time and the table he submitted, it will be seen by the House, as it is seen by the country, that table did not include furlough pay; as it is seen by the country, that table did not inclide furlough pay; and according to the common accepation of the term, furlough pay and leave pay would be regarded as the same. But what is furlough pay? Furlough pay in the Navy has been regarded as a badge of disgrace and a punishment. The House of Representatives at its last session did not mean, therefore, to put into the hands of the Secretary of the Navy the power to degrade and punish at his will the entire Navy, for so he could do if his construction of the section of the law 1542 was correct. He could put every officer of the Navy poon furlough pay. upon furlough pay.

Mr. HALE. Let me ask the gentleman a question.

Mr. WHITTHORNE. Certainly.

Mr. WHITTHOENE. Certainly.

Mr. HALE. What does he suppose the Secretary of the Navy would be obliged to do, if Congress should so vote to give him only \$1,000,000 for the pay of the Navy? What does he suppose the Secretary of the Navy would be obliged to do but put the officers upon the smallest pay duty he could find?

Mr. WHITTHORNE. The Secretary of the Navy ought to make in

that case the distribution of his pay just and equal among the officers of the Navy. Mr. HALE.

Would not it result in nine-tenths of them going on

the lowest pay?

Mr. WHITTHORNE. If the Secretary of the Navy had intended to be just in that regard he would have been to all the officers of the Navy and pay them as far as the pay authorized by Congress would go, and would then have come and made a clear statement to Con-

Mr. HALE. Presented a deficiency.
Mr. WHITTHORNE. But, sir, look at this question—that of furlough pay—for one moment, how unjust it is. I have in my mind's eye now a warrant officer of the Navy whose leave pay would be \$700 a year and whose furlough pay is \$350. I take another officer, a commissioned officer of the Navy, whose furlough pay is but \$1,000. That is insufficient to pay either one of them, and I protest for and on behalf of Congress that they did not mean this injustice to the officers of the Navy

of the Navy.

[Here the hammer fell.]

Mr. HALE. I am very glad that this question has come up just as as it has right here. The gentleman from Tennessee has got a garment or a coverlet which if he pulls it up over his shoulders will be short at his feet and if he pulls it down over his feet will be short at his shoulders. And that is all there is about this pay for the Navy.

Last year this House insisted, against the protest of the Secretary of the Navy and against a motion made on this floor by myself, on curtailing the pay of the Navy much below what the Secretary wanted. The result of that was that the Secretary had to put many officers on the very lowest or furlough pay: and it was announced beofficers on the very lowest or furlough pay; and it was announced beforehand that if the small appropriation passed such would be the result. Now, at the end of the year or nearly at its end, gentlemen, finding that the result of this was to pinch meritorious officers and refinding that the result of this was to pinch meritorious officers and reduce them to a pay that was a grievous hardship to them, come in and, instead of boldly taking the responsibility, as this House ought to do, put it on the head of the Department. And the gentleman from Tennessee, the chairman of the Committee on Naval Affairs, says that the Secretary ought to have gone on and paid these officers what they were entitled to under the higher rates, and when the money was exhausted to have come to Congress with a bold front; that is to say, that he should have spent in nine months the money we gave him for a year, and come here for a deficiency. He has been obliged to come here as it is with a deficiency bill. And what is the reception it gets? He asks for seventeen hundred and odd thousand dollars to meet the deas it is with a deficiency bill. And what is the reception it gets? He asks for seventeen hundred and odd thousand dollars to meet the deficiency of last year, making a bold front of it, as the gentleman from Tennessee says, and the committee has cut him down here in this bill to \$500,000; not giving him what he asks. And still gentlemen com-plain of him because naval officers, with families, are reduced to a

plain of him because naval officers, with families, are reduced to a mere sustenance, and hardly that.

Why, sir, there is but one remedy in this matter, and that is to give fair, liberal appropriations. I tell the gentleman from Tennessee that not only the present Secretary of the Navy, but any future Secretary, if he attempts to conform to the bill as reported in this House last year or if he attempts to conform to any such bill as that reported this year, must take this scale of graduated pay of naval officers which I hold in my hand, and must bring scores of men from shoreduty, and leave, and waiting-orders to furlough pay.

When the gentleman from Tennessee says that anybody did not understand the distinction between shore or leave and waiting-orders and furlough pay. he makes a proposition as absurd as if he had said

and furlough pay, he makes a proposition as absurd as if he had said that members of this House do not know the difference between pay and mileage. Why, sir, this is a thing running all through the life of naval officers, and everybody who has an interest in a naval officer knows that his pay may be cut down to a third or a quarter of his knows that his pay may be cut down to a third or a quarter of his sea pay, by assigning him to special duty; and you oblige the Secretary of the Navy to assign him to that duty when you curtail his funds. He cannot make the garment if you do not give him the cloth. There is not an ounce, an iota of blame resting upon the Secretary of the Navy. The blame is right here, and will be still greater if we cut down the appropriations after the fashion we have been doing.

doing.

[Here the hammer fell.]

The CHAIRMAN. Debate on the pending amendment is exhausted.

Mr. BLOUNT. I move to strike out the last word.

"It's a number of matters that have been brought up There are quite a number of matters that have been brought up here, and I regret very much that I cannot go over them in the short time that is allotted to me under the five-minute rule.

Mr. DANFORD. I rise to an inquiry. Has the point of order been disposed of that was raised against the amendment?

The CHAIRMAN. It has. The point of order has been overruled.

Mr. BLOUNT. Mr. Chairman, the honorable gentleman from Maine who has just taken his seat has referred to the fact that the Secretary who has just taken his seat has referred to the fact that the Secretary of the Navy has asked for a deficiency of \$1,500,000 for the fiscal year 1877, and that it is made up by taking the amount appropriated from the amount of his estimate. But let me say here that in the Book of Estimates he makes for the pay of the Navy the large estimate of \$7,300,000, while the amount we had appropriated was \$5,750,000. Now, sir, I am becoming impatient with this lack of candor on the part of an officer standing at the head of a Department. I hold in my hand a table, which I now present, showing the actual expendi-

ture for the pay of the Navy, made up at the Treasury Department by the Register of that Department. It is as follows:

Statement of the pay of the Navy from June 30, 1868, to June 30, 1876, in-

				cutsive.			
June	30, 1	1868,	to July 1,	1869	\$8, 529,	568	37
				1870			
June	30, 1	870,	to July 1,	1871	7, 061,	410	44
				, 1872	7, 674,	359	14
June	30, 1	872,	to July 1,	1873	6, 031,	038	09
June	30, 1	1873,	to July 1	. 1874	7, 499,	628	06
				1875	6, 445,	001	91
June	30, 1	875.	to July 1.	1876	6. 233	365	73

A true abstract from the records in the office of the Register of the Treasury.

JOHN ALLISON,

During the whole of these last eight years, up to the end of the During the whole of these last eight years, up to the end of the last fiscal year, making an average, the total amount has never reached \$7,000,000, and this officer makes this statement in face of the fact that the appropriation which he had in his hands when he came to the head of that Department was based on a law allowing the enlistment of 15,000 men in the Navy, and when 13,000 men were enlisted and sent off upon cruises and therefore their pay was postponed for two or three years; he makes it also in face of the fact that during our troubles with Spain fifteen hundred additional men were enlisted in the Navy but there was not an average in the pay of the enlisted in the Navy, but there was not an average in the pay of the

enlisted in the Navy, but there was not an average in the pay of the Navy during all these years of \$7,000,000.

There are now only sixty-three hundred enlisted men.

What can this mean? I think I understand it, and will state it directly. The gentleman from Maine [Mr. HALE] says that we were forewarned by the Secretary of the Navy that there would be this deficiency if we did not appropriate the money that he called for in his estimate. Now, I am here to deny that absolutely. I cannot of course state what may have occurred privately between the gentleman from Maine and the Secretary of the Navy, but I do know that he did state without qualification that \$6,250,000 was ample for the pay of the Navy. And here I have a statement made by the chairman of the Committee on Naval Affairs, and made from the Navy Register, showing the actual expenditure for the year ending June 30, 1876, for the pay of the Navy, and that amount is \$6,300,000. I submit that table:

	Submit that table.	
	Line officers, active list, (776). Staff officers, active list, (592). Line officers, retired list, (109). Staff officers, retired list, (135).	1, 562, 600 333, 825
I	Total pay of commissioned officers	
	Warrant officers, active list, (212). Warrant officers, retired list, (28). Cadet midshipmen and engineers, (317). Mates, (50).	270, 600 28, 650 158, 500 18, 000
۱	Total	475, 750
	Estimated for officers volunteer navy.  Estimated for petty officers and seamen, (7,500,) at an average of \$20 per man	40, 000 1, 800, 000
I	Total pay	6, 339, 105

[Here the hammer fell.]
Mr. CLYMER obtained the floor and yielded his time to Mr. BLOUNT. Mr. BLOUNT. The estimates of the Secretary of the Navy do not harmonize with each other, and when the Secretary of the Navy said to the committee that \$6,250,000 was ample for the pay of the Navy he said it bearing in mind and in face of the fact that the number of men in the Navy has been reduced one thousand in number.

Now, furthermore, in reference to this pay law. Some men have been put on "waiting orders" and some on "furlough pay." He stated distinctly to the committee when he was asked whether put-ting an officer on "furlough pay" was regarded as punishment, that it was not. I then asked if it was not true that this amount of the pay of the Navy could not be further reduced, and was informed with

earnestness, yes, \$1,000,000.

Mr. WHITTHORNE. That, I understand, was the statement of

the Secretary of the Navy.

Mr. BLOUNT. That was his attitude then, and I have been aston-Mr. BLOUNT. That was his attitude then, and I have been astonished in the face of these facts to find that as soon as Congress adjourned the Secretary of the Navy should issue an order placing these men on furlough pay and throwing scorn and contempt on the democratic party in that they had caused that necessity. I hurl the charge back upon him with scorn and contempt for his lack of candor toward the House of Representatives of the United States. This proceeding on his part took place just before the election and it came heavily upon the officers of the Navy. The Admiral and some of the best officers of the Navy were placed on furlough pay.

Furthermore, sir. I think we are correct in another item. On ref-

Furthermore, sir, I think we are correct in another item. On reference to the pay of several officers of the naval service, there has been a very great abuse, probably which any administration might be liable to make. Why, sir, think of it. Notwithstanding our corps of professors at the Naval Academy at Annapolis, there are sixty-two other officers of the Navy employed at the Academy, now on shore pay, professedly to teach the boys; and when the Naval Academy bill comes here you will find that you provide them with few professors and here you will find that you provide them with few professors and

make a beautiful show of economy, but when you pull the curtain you will find that there are sixty-two officers at the Naval Academy asyou will find that there are sixty-two officers at the Naval Academy assigned to duty there as professors. And so it is in reference to various other points. I believe that if the Navy was honestly administered we could get along, without paying any officer furlough pay, at an expense of \$5,750,000, and I would never have consented to this deficiency bill being reported from the committee of which I have the honor to be a member but for the fact that I could not find the Administration in harmony with us in record to it. The number of ministration in harmony with us in regard to it. The number of vessels in the Navy has been increased, while they promised that there should be a decrease of the number of vessels in commission.

[Here the hammer fell.] Mr. SPRINGER. I renewed the amendment. I stated when speaking to the point of order that the Secretary of the Navy had misconstrued the act of Congress. If members will refer to the bill of last session making appropriation for the naval service, which is found on page 65 of the session laws of last session, they will find that the words of the statute making appropriations for the pay of the naval officers are as follows:

For pay of commissioned and warrant officers at sea, on shore, on special service, and of those on the retired list and unemployed, and for the actual expenses of officers traveling under orders, and for pay of the petty officers, seamen, ordinary seamen, landsmen, and boys, including men of the engineers' force, and for the Coast Survey service, seven thousand five hundred men, \$5,750,000.

Now, here is an appropriation for the pay of the salaries of the naval officers according to the then existing law. A specific sum is appropriated for that purpose. It is plain to every one, that if the salaries appropriated by law should require a greater sum than is appropriated in the statute, all the Secretary of the Navy had to do would be to continue to pay the salaries provided by the general law until the appropriation was exhausted; and especially as there was another session of Congress to intervene before the expiration of the fixed year. It was therefore his duty to do that and report to the iscal year. It was therefore his duty to do that and report to the House that the amount appropriated for the pay of the officers of the Navy was not sufficient to pay them what the law required them to have; just as in the case of members of Congress who are entitled by law to a specific sum. If the aggregate sum appropriated is not sufficient to pay that amount, the duty of the officers of the Government is to pay them monthly the amount to which they are entitled under the general law as long as the appropriation lasts, and to let the deficiency take care of itself.

But it was evidently supposed by the Secretary of the Navy, previous to the last presidential election, that he might use this reduced appropriation for the purpose of making a little political capital. Therefore he put a great number of naval officers on the retired list

Therefore he put a great number of naval officers on the retired list at half pay, and sent them over the country to tell the people that the economy proposed by this House was a sham and a delusion.

I shall support this amendment because I believe it is in accordance with the spirit of the law. These officers should receive the pay to which they are entitled under the general law. It was not intended by the House of Representatives to reduce in the least the pay of naval officers by the appropriation bills of last session.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. DANFORD. I rise to oppose the amendment to the amendment.

Mr. FOSTER. I would like to ask the gentleman from Illinois [Mr. SPRINGER] a question. Mr. SPRINGER. Certa

Certainly. I will answer it, with pleasure, if

Mr. FOSTER. I understood the gentleman to criticise the action of the Secretary of the Navy because he failed to pay these officers

Mr. SPRINGER. No, sir; but because he failed to pay them the amount to which they were entitled under the general law as long as the appropriation lasted.

Mr. FOSTER. I misunderstood the gentleman.
Mr. DANFORD. I think it will be remembered, at least by the Mr. DANFORD. I think it will be remembered, at least by the members of the Committee on Appropriations and of the Committee on Naval Affairs and possibly by many other gentlemen upon this floor, that while the naval appropriation bill was under discussion in the House at the last session this matter of the pay of the Navy was the subject of discussion. It was then shown to be a matter of actual calculation, of mere dollars and cents, as to the amount of money that must necessarily be appropriated to pay the officers and enlisted men of the Navy; that it required so much; that the number of officers in the active service requiring sea pay, the number on shore duty and waiting orders was known, and the amount required was a mere matter of calculation. We were informed by the Department that unless the appropriation was larger than that contemplated by that unless the appropriation was larger than that contemplated by the Committee on Appropriations there would not be a sufficient amount to pay these officers duty pay.

Mr. BLOUNT. Will the gentleman inform the House where that

communication is?

Mr. DANFORD. That statement was made upon the floor of the House, and it undoubtedly shows a very considerable ignorance on the part of the members of the Committee on Appropriations, when the number of officers in the Navy are known, when the number of enlisted men are known, when the amount of pay to which they are entitled upon active service or upon waiting orders is a mere matter

of calculation. It is rather a strange spectacle to see the Committee on Appropriations or the Committee on Naval Affairs come into the House this session and claim that they are not responsible for the deficiency that is asked for at this time, that they are not responsible for the fact that the Secretary of the Navy was compelled to place a portion of the officers of the Navy upon furlough.

I believe that he did, with the means at his command, the very best that he could have done. I believe that he used the money appropriated for the pay of the officers and men of the Navy to the full extent that he could use it. And it does not come with good grace from the committee that refused the appropriation asked for, refused the amount called for in the estimate, to come into the House now and complain of the conduct of the Secretary.

[Here the hammer fell.]

Mr. WHITTHORNE. I hope the gentleman from Ohio [Mr. DAN-FORD] will withdraw his amendment.

The CHAIRMAN. The amendment to the amendment, which is to strike out the last word, was offered by the gentleman from Illi-

nois, [Mr. Springer.]
Mr. WHITTHORNE. Then I hope the amendment will be voted down.

The amendment to the amendment was not agreed to.

Mr. WHITTHORNE. I move to amend by striking out the last wo words. I am very much gratified this morning by the statement two words. I am very much gratified this morning by the statement made by the gentleman from Georgia, [Mr. Blount,] a member of the Committee on Appropriations. I have long suspected, if I did not indeed know the fact, that this suggestion for putting officers upon furlough pay originated not with gentlemen in this House, not with the Committee on Appropriations, not with the Committee on Naval Affairs, but with the Secretary of the Navy himself. We have that statement made here to-day by the gentleman from Georgia.

I have no partisan purpose at all; and I now intend to disclaim any partisan reference. My present object and motive is to do justice to the officers of the Navy. I pass no reflection that might be justified by this statement upon the Secretary of the Navy; I reserve that for some other time. It is now simply a question of justice to the officers of the Navy, a question over and above party.

These officers of the Navy, a question over and above party.

These officers have been made to suffer in public estimation; they have been made to suffer in their purses; they have suffered innocently, and I would do justice to them. No man who looks over the question of and I would do justice to them. No man who looks over the question of furlough pay according to the customs of the Navy in its administration can fail to see that it has been esteemed a badge of disgrace and a punishment. No man after seeing the amount of furlough pay can fail to understand that it is inadequate for the support of these officers. While we keep up a Navy, let us be just. Here is the law; turn to the law-book; it provides the amount of pay that these officers shall receive

Consider for a moment the position of an officer placed upon fur-lough or waiting orders. He cannot leave his home; he does not know the moment that he may be ordered into service; he does not know the period of his punishment; he is not relieved from active duty for any fixed time; the term dwells alone in the mind of the Secretary of the Navy. Gentlemen, this is too much power to be exercised by any one individual. The injustice to those who suffer under it is too great.

At the last session of Congress I stated my belief that \$6,250,000 was demanded as an appropriation for this Department; I so believe now. In that belief I asked at the last session, on behalf of the Comnow. In that belief I asked at the last session, of belief in mittee on Naval Affairs, that the number of officers be reduced; I asked a reduction in several regards, which the House refused. So long as you continue the present order of things, so long you ought in justice to make an appropriation adequate for the decent support and maintenance of the officers in the service. I hope the amend-

ment I have submitted will be adopted.

Mr. HALE. I rise to oppose pro forma the pending amendment. I am glad that the chairman of the Committee on Naval Affairs [Mr. WHITTHORNE] has presented this matter in the proper spirit. He has found out that the only way to run any Department of the Government fairly and justly is to make fair and just appropriations; and I am glad that the gentleman has had the courage in the face of the action of the last Congress to make that statement, which after all in the long run must be our rule of action.

But, Mr. Chairman, what a lowering of the standard there has been on this question of appropriations since the last year! Then we were told that there should be no deficiencies; that there was no need of deficiency appropriations; that the sums given were sufficient and would run all the Departments of the Government. To-day the gentleman from Illinois, [Mr. Springer,] who led the van last year in cutting and carving and reducing and pinching every appropriation, tells us that the duty of the head of a Department was to go on and spend the money, to use it up, and when a portion of the year had expired, come to Congress with an estimate for a deficiency. That is the result, that is the outcome of the ground taken last year in regard to appropriations for carrying on the Government. Truly there is no road to economy so easy as to give but little money, count it as the whole expenses of the Government, let it be spent in six or nine months, and then turn over the unpaid officers of the Government to the mercies of the next session of Congress.

Plenty of gentlemen on this side predicted last year what would be the result; but I did not look for this confession from the gentleman

who has made it. I did not suppose that he would be the first to come forward and declare that rather than there should be pinching under an appropriation act, the money should be expended so far as it would go and a deficiency should be thrust before Congress. But so it is, and so it will be.

it is, and so it will be.

The next year, Mr. Chairman, will tell the same story. If you cut down this appropriation for the pay of naval officers your Secretary of the Navy must either put men and officers upon the lowest scale as to pay or he must spend during a part of the year all the money appropriated and come in here for a deficiency appropriation. The remedy is just what my friend from Tennessee has stated, that is, to make a fair appropriation; but the responsibility shall not with my consent be shirked by this House and thrown upon any executive

[Here the hammer fell.]
The CHAIRMAN. Debate on the pending amendment is exhausted.
Mr. WHITTHORNE. I withdraw the amendment to the amend-

Mr. BLOUNT. Mr. Chairman, I renew the pro forma amendment. I desire the country to see where this deficiency really comes from, and where the intelligence upon this question lies. Gentlemen on the other side of the House who have had so much experience and the other side of the House who have had so much experience and know how much it has taken to run the Navy Department through the whole administration have found it about as follows: In 1873 the estimate was about \$6,500,000 and the appropriation \$6,315,000; in 1874 the appropriation was the same; and in 1875, \$6,285,000. Gentlemen on the other side have never made an appropriation upon the idea they are now advancing.

Mr. HALE. Does not the gentleman know that at the time he mentions there were balances which the Secretary of the Navy was

drawing upon and paying out from time to time?

Mr. BLOUNT. The gentleman asks me a question. Let me ask him why the Department did not consume those balances the first year

why the Department did not consume those balances the first year and thus square the account with the country.

Mr. HALE. They were consumed from year to year.

Mr. BLOUNT. I know they were; but they might have been consumed at once; and the trouble now, in my judgment, is that the money we have appropriated to pay the men and officers of the Navy, instead of being held until they returned from their cruises the second and the third year, has been taken to pay the expenses of previous years. That is the ground of the trouble; and gentlemen are trying to put the deficiency where it does not below.

ous years. That is the ground of the trouble; and gentlemen are trying to put the deficiency where it does not belong.

The gentleman from Maine [Mr. HALE] says (and he says rightly) that, if we do not do what the Department calls for, there will be deficiencies again. Yes, they intend to have money if they have to extort it from the gallant officers of the Navy. They will keep every ship in the service that they possibly can, although we were promised during the last winter that the number of vessels in the Navy should be reduced. Notwithstanding the reduction of the appropriations the vessels are to be kent in service fifty or sixty officers are ations the vessels are to be kept in service, fifty or sixty officers are to be kept at the Naval Academy and at various other places through-

out the country.

These officers will be put on furlough and money extorted from them; and whenever, Mr. Chairman, they are put in that attitude, anxious as I am to reduce the expenditures of the Government, whenever the question comes in that shape, I will vote to supply the deficiency for that purpose, but not until then.

While I am not authorized by the committee to say so, yet, so far as one member is concerned, I believe there is no danger in putting into this bill the provision suggested by the gentleman from Tennes-

into this bill the provision suggested by the gentleman from Tennessee [Mr. Whitthorne] that a certain portion of this money should be used to make up the difference to these officers between furlough

pay and waiting-orders pay.

The gentleman from Ohio [Mr. Danford] commenced by very modestly telling the House how little we did know. The Committee on Appropriations and the Committee on Naval Affairs had the Navy

Register before them. Well, sir, I suppose if the Secretary of the Navy has made the same mistake, being at the head of the Department, the gentleman certainly ought not to make complaint about our conduct. The estimate I had was that of the Navy Department and it was corroborated by the estimate of the chairman of the Committee on Naval Affairs, as well as by several officers whose distinguished service had elevated them to an eminent position in the country. I have regarded them rather than estimates made by the

country. I have regarded them rather than estimates made by the Department, which seem calculated to mislead.

[Here the hammer fell.]

Mr. SPRINGER. Mr. Chairman, I rise to oppose the formal amendment. The gentleman from Maine [Mr. Hall] stated he predicted the very condition of things we have now upon us, namely, that the reduced appropriations at last session were to be made up by future deficiency bills; thus leaving the impression there was nothing saved at the last session of Congress, and that we are now simply making up for a false and sham economy then palmed off upon the country.

Mr. HALE. I did not say there was nothing saved, but that in this matter nothing was saved.

mr. FALE. In the say there was nothing saved, but that in this matter nothing was saved.

Mr. SPRINGER. In this matter? There was at least an inference that the gentleman's remarks applied to all other subjects.

Mr. HALE. Not by any means.

Mr. SPRINGER. Not by any means? Then the gentleman does admit something was saved at the last session of Congress.

Mr. HALE. Certainly I do.
Mr. SPRINGER. I am glad the gentleman admits it now, although he did not admit it, so far as I know, previous to the last presidential election. I am glad it is admitted on the other side of the House something was saved at the last session of Congress. I believe the amount saved over the last session of Congress. I believe the amount saved over the previous year was \$30,000,000 in round numbers. I am informed by the chairman of the Committee on Appropriations that at this session there will be a further reduction in appropriations below the sums appropriated at the last session of Congress of below the sums appropriated at the last session of Congress of \$10,000,000, making an aggregate reduction in the two years in which the House of Representatives of the Forty-fourth Congress have appropriated the people's money of \$40,000,000 below what the appropriations for previous years of the Government were.

Mr. HALE. What was the figure of saving stated by the gentleman from Illinois?

Mr. SPRINCER Listed that in the appropriation bills this year.

Mr. SPRINGER. I stated that in the appropriation bills this year ten millions would be saved in addition to what was saved last year, which will make the saving by this Congress for two years \$40,000,000 in round numbers.

in round numbers.

Mr. HALE. I understood the gentleman to say that \$20,000,000 would be saved over the appropriations of last year.

Mr. SPRINGER. Not twenty millions, but ten millions this year below the appropriations of last year. That will also include the deficiency we are compelled to make by reason of this mistake in the construction of the statute in reference to naval officers.

There was a specific sum appropriated for naval officers' salaries last session, and I did not then understand, nor did any one on this side of the House sectors I know understand there was any observed.

side of the House, so far as I know, understand there was any change contemplated or provided concerning the pay of certain naval officers. Certainly nothing on the face of the statute indicated a change. It was only by a forced construction of the statute that the Secretary was only by a forced construction of the statute that the Secretary of the Navy could have supposed any such change to have been intended. It was simply an arithmetical calculation to determine from the general law, where the pay of officers is fixed, the amount needed for the purpose, and if the sum of money appropriated at the last session of Congress under that general law fixing the pay of naval officers was not sufficient. If in that amount those who made the calculation simply fell into a mistake in the amount precessary (and it culation simply fell into a mistake in the amount necessary (and it was understood at that time these officers were to receive the same was understood at that time these officers were to receive the same pay for this fiscal year they did for the last fiscal year) the duty of the Secretary of the Navy was plain. If Congress had not appropriated a sufficient amount to meet what the law required, it was his duty to pay so long as the money lasted and then let Congress take the responsibility for the deficiency at the end of the year if the appropriation should be exhausted and a deficiency bill should be rendered received. dered necessary

[Here the hammer fell.]
Mr. CLYMER. I desire to say a word.
The CHAIRMAN. Debate is exhausted on the pending amend-

Mr. WALDRON. I wish to move the committee rise for the purpose of closing debate on the pending paragraph.

Mr. FOSTER. I hope the gentleman will not make that motion at

Mr. WALDRON. If gentlemen desire further debate, I will waive

it for the present.

Mr. CLYMER. I ask the gentleman from Georgia to withdraw his amendment.

amendment.

Mr. BLOUNT. I withdraw it.

Mr. CLYMER. I renew it.

Mr. Chairman, the gentleman from Maine [Mr. Hale] who is on the Appropriation Committee taunts the majority on this floor with making low appropriations last year, as I understood him, for the purpose of affecting the political sentiment of the country at that time, and now come here with deficiency bills in order to make good their dereliction at that time. That I understand in brief to be his their dereliction at that time. That I understand in brief to be his position. Now, sir, I assert the large amount of money proposed to be appropriated in this bill is to supply deficiencies created prior to the present fiscal year, and the other side of the House which was then in power is justly responsible for such deficiencies, and not the party represented by the majority of the Committee on Appropriations. I assert, furthermore, that even last year the deficiency bill as it passed, including re-appropriations, was \$2,908,000; being an excess of more than a million dollars over what is proposed to be appropriated this year. ated this year.

I say, sir, that in the face of these facts the taunt of the gentleman from Maine against the majority on this floor comes with a poor grace. I assert furthermore that if the majority on this floor had had the Departments of this Government in accord with it, acting honestly and fairly, determined to co-operate with it in its just endeavors to reduce the expenditures of this Government, the appropriations made last year for the present fiscal year were amply sufficient, and we would not have needed to have asked any deficiency whatever. But, sir, when we are constantly met as we are met to-day by demands unheard of, unauthorized, unwarranted by the condition of affairs for more money, we shall resist them; and we do not intend to stand here and endure, if we can prevent it, these unjust charges against the majority on this floor. We have endeavored to do our duty faithfully and manfully—radically, if you please—and we intend to proceed in the same direction. We are responsible to the country and

will abide by its judgment whether we have impeded the Government or not. I claim that the service of the Government has been as well performed and as amply provided for as its needs required; and I say that to appropriate more would be merely wasteful extrava-

We are not here for any such purposes as these. We are here to ask for deficiencies, the larger portions of which were made when our friends on the opposite side were in power. When we ask for deficiencies to cover up our own delinquencies in the matter of appropriations, then will be the time to blame us for doing so.

Mr. RANDALL. I renew the proforma amendment.

I take part in this debate with a good deal of hesitation; but when gentlemen make an attack upon the policy of the last session of Congress as to the reduction of the appropriations, I think I may be pardoned if I say a word or two in reply. I say to-day that all the predictions of the minority of this House which they indulged in during the last session about the confusion that was to be made in the adthe last session about the confusion that was to be made in the administration of the Government by reason of the reductions have in no instance and in no material degree been realized. We reduced the expenditures of this Government about thirty millions of dollars; and I would like gentlemen to-day to point out to me throughout the length and breadth of this land any place wherein we have hampered the due and honest administration of the Government.

the due and honest administration of the Government.

Mr. HALE. Here is one place.

Mr. RANDALL. I am going to come to this. The general deficiency bill—and I say it in no spirit of partisanship, but only as stating a fact—is of republican growth. Now, sir, as to this Navy matter to which the gentleman from Maine directs my attention, I remember very well having gone with the gentleman from Maine and the gentleman from Georgia, and after full consultation with the Secretary of the Navy that matter of the amount was fixed, as I understood, without much dissent from him.

Mr. HALE. What amount?

Mr. RANDALL. I will not say, as some have been unkind enough to say, that he was prompted by political considerations; nor will I

to say, that he was prompted by political considerations; nor will I say that he sought by a reduction of the appropriation to reduce the pay of certain naval officers against whom he had had complaint to

Mr. DANFORD. What amount was fixed ?

Mr. HALE. Let me ask the gentleman from Pennsylvania— Mr. RANDALL. In a moment. But I will say that he did not, as an officer of this Administration, resist as he ought to have resisted if

an officer of this Administration, resist as he ought to have resisted if the amount was not sufficient.

Mr. HALE. Will the gentleman allow me to ask him one question?

Mr. RANDALL. In a moment. Now it happened that heretofore the Secretary of the Navy had the right to expend unexpended balances; and the gentleman from Maine will realize the fact that those unexpended balances do not come under the provisions of law which provided that the unexpended balances of the Navy shall go into the Treasury at the end of two years.

Now, sir, with this exception—and the exception proves the propriety of our action in these reductions—we are to-day without a legitimate complaint in any part of the country as to the reductions

legitimate complaint in any part of the country as to the reductions made. Nay more, where would your Treasury have been to-day but for these reductions? Where would your deficiencies have been? Instead of the expenditures being five millions behind the receipts at stead of the expenditures being live limitions behind the receipts at this time, they would have been twenty millions behind; and at the rate you are going now, if the receipts are not increased you would have had at the end of this fiscal year forty millions of deficiency with but one resort to meet it, and that resort, additional taxation. That we have at least protected the people from.

Mr. HALE. Mr. Chairman, I rise to oppose the pro forma amendment.

ment.

I luckily have the Record before me, not only to show, upon this matter, that the appropriation fixed last year for pay was not agreed to by the Secretary, nor by the minority, as stated by the gentleman from Pennsylvania, but also to show that this matter of furlough pay, which is now shirked by the other side of the House, was brought up here as a reason why we could reduce appropriations. I ask the Clerk to read the remarks and motion of the gentleman from Georgia, who had charge of the naval bill last year, so that this House may see whether furlough pay has just come up as an abuse not thought of before, and also whether the amount we appropriated was agreed upon beforehand. Let the Clerk read.

Mr. BLOUNT. Will the gentleman allow me to ask him a question?

Mr. HALE. The Clerk must read this now or there will not be time to read it in my time. I call attention to the fact that this is a cita-

to read it in my time. I call attention to the fact that this is a citation from the debate upon the naval appropriation bill of last session, of which the gentleman from Georgia had charge.

The Clerk read as follows:

Mr. Blourt. I move to amend the paragraph just read by striking out "\$6,200,-000" and inserting the following:

"Five million seven hundred and fifty thousand dollars. And so much of the act of June 16, 1874, making appropriations for the support of the Army for the fiscal year ending June 30, 1875, and for other purposes, as provides that only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States while engaged in public business as is applicable to officers of the Navy so engaged, is hereby repealed; and the sum of eight cents per mile shall be allowed such officers while so engaged, in lieu of their actual expenses."

Mr. HALE. And now I ask the Clerk to read the remarks of the gentleman from Georgia following that.

The Clerk read as follows:

The Clerk read as follows:

Mr. Chairman, the first proposition relates to the pay of the Navy. I yesterday called the attention of the House to the fact that the note in reference to the amount of money required for the pay of the Navy, as estimated by the Fourth Anditor, was clearly an error. There has been no satisfactory explanation given, and I cannot conceive that there is any. For this reason the committee have thought that there might be a considerable reduction, amounting to nearly \$600,000.

Furthermore, a table on page 15 of to-day's Record, furnished to me by the Secretary of the Navy, discloses the fact that a very large proportion of the officers of the Navy who are not on sea service are on what is termed other-duty pay, instead of being, as the committee think they might be, either on waiting orders or on furlough. We have thought that the abuse in this particular grew largely out of the fact of the influence of these officers and their importunities for higher pay, and we have felt that there was but one remedy: the reduction of the appropriation itself.

There, Mr. Chairman, is the declaration of the gentle-Mr. HALE. man who had charge of the naval appropriation bill last year, and who came into the House and moved a reduction of the pay of the who came into the House and moved a reduction of the pay of the Navy \$45,000 below what the estimate had fixed it and below what was called for by the Secretary of the Navy before the committee, and as a reason he wished it to be done he stated that the committee believed that many officers of the Navy might be put on "leave pay" or on "furlough pay," and to-day we are told that "furlough pay" is a punishment to officers of the Navy, and that the position of officers is a matter in the mind of the Secretary, and that any fixing of the status of these officers has been done for political effect or to punish some one against whom he had a grudge. Luckily I had or to punish some one against whom he had a grudge. Luckily I had the record before me-

[Here the hammer fell.]
Mr. WALDRON. Unless I can have an understanding that the committee will close debate upon this question, I move that the com-

Mr. BLOUNT. I hope the gentleman will allow me to reply to the gentleman from Maine.

Mr. WALDRON. I must insist on my motion that the committee

Mr. BLOUNT. The gentleman will not gain any time by doing that

Mr. WALDRON. If the motion to rise prevails, I shall move that all debate upon this amendment be limited to ten minutes, which will give the gentleman from Georgia an opportunity to reply to the gentleman from Maine, [Mr. HALE.]

The question was taken on Mr. WALDRON's motion; and on a divis-

on there were ayes 15, noes not counted.

So the committee refused to rise.

Mr. RANDALL. I withdraw my formal amendment.

Mr. FOSTER. I renew it.

The CHAIRMAN. That amendment is not in order, because it has once been voted on.

Mr. FOSTER. Then I move to strike out the last three lines of the amendment. I did not intend, sir, to participate in this debate at all, and I would not do so now but for the reckless and extravagant statements made by the former chairman of the Committee on Appropriations, now Speaker of the House. That gentleman, in face of the facts, stands up before the American Congress and the American people and says that but for the action of this democratic House the

people and says that but for the action of this democratic House the deficiency for this year in the revenues and receipts of the Government would have been \$40,000,000 or over.

I would like to know, Mr. Chairman, upon what basis the gentleman makes a statement like this. I am not here to lecture him, but I want to remind him that he is the Speaker of the House and that his words goto the country with more weight than the words of an humble mayber of the House like myself

ble member of the House like myself.

Mr. RANDALL. Do you want an answer? In the first place, we saved \$30,000,000 because we did not allow you this sum of money to

Mr. FOSTER. In the first place, that is untrue. You did not reduce the expenses of the Government \$22,000,000 or \$30,000,000, but official data at the Treasury Department shows that the reduction is but \$23,000,000, as I showed satisfactorily to the House that it would

omena data at the reasury Department shows that the reduction is but \$23,000,000, as I showed satisfactorily to the House that it would be at the close of the last session.

Now, I am willing to give the gentleman from Pennsylvania [Mr. RANDALL] and this democratic House credit for what they did, but a man occupying the position of Speaker of this House ought to be very careful as to how he makes statements of this kind.

Mr. RANDALL. I agree to that.

Mr. FOSTER. Now, you got through with a decrease in expenditures of \$23,000,000 and I told you that there would be a deficiency at the close of the session. I do not believe that when the fiscal year ends it will show as much reduction as the previous year of a republican Congress. You talk about this deficiency bill being less than it was last year. Do not gentlemen know that this is but a small part of the deficiency which has to be provided for? Why it does not include \$200,000 for printing when the Public Printer says it will take \$350,000 to complete the work now on hand, and he is to-day without an appropriation to carry on operations, having already been compelled to discharge a large number of employés, and unless an appropriation is made to-day the Government printing must stop.

I will give gentlemen opposite credit that the reductions they made were made with as little harm as such reductions could be made with, but harm has been done in several instances; but as to the case of

but harm has been done in several instances; but as to the case of officers of the Navy, I say here and now that the committee willingly,

knowingly, and with malice aforethought, realized what exactly the effect would be. This committee went to the Secretary of the Navy and asked him in God's name can we reduce these officers' pay, and the answer was: It will save a half million of dollars; and this democratic committee said then we will disgrace them and save a half

democratic committee said then we will disgrace them and save a half million of dollars. That is the controversy to-day.

Mr. SPRINGER. Is there anything in the act of the last session different from the act of the preceding year?

Mr. FOSTER. Nothing; you were deceived; you did not know the inside working in the committee. You did not know that they were degrading these officers for the sake of reducing the appropriation.

Mr. SPRINGER. Then I understand that the committee of which the gentleman was a member willfully deceived the House and the

Mr. FOSTER. They did, against my voice.
Mr. SPRINGER. We did not hear your voice at that time.
Mr. FOSTER. Yes, you did.
Mr. BLOUNT. The gentleman from Ohio who has just taken his seat is possessed of information from the Secretary of the Navy which never came before the Committee on Appropriations.

never came before the Committee on Appropriations.

Mr. FOSTER. I got it from you.

Mr. BLOUNT. No, you did not; you are mistaken. The gentleman got no such information from me. The gentleman from Maine [Mr. Hale] who has just taken his seat has had read a part of my speech on the naval appropriation bill of last session, to show that it was the design of the committee to put a portion of the officers of the Navy on furlough pay. I tell him that I am ready to take my share of responsibility; but the trouble is that his side of the House, and the Secretary of the Navy, are not ready to do so.

There was an agreement to the appropriation of \$6,250,000; the gentleman from Ohio [Mr. FOSTER] agreed to it, and the gentleman from Maine [Mr. Hale] agreed to it. The only reduction made was of \$500,000, upon my own motion. As to a part of that appropriation the Record puts me in favor of putting a portion of these officers upon furlough pay. I have given my reason for that. It was that I was informed by the Secretary of the Navy that it could be done; instances were given where it had been done, and reasons were assigned why it should be done again. I therefore did make that motion. signed why it should be done again. I thereforedid make that motion. He further said that the appropriation could be reduced a million of dollars. In view of what occurred I did say to this House that that was the purpose. And I now say that with a proper use of that fund it is susceptible of proof that it could have been expended and every officer paid, and not a single officer put on furlough pay. Instead of doing that the number of vessels were increased, the number of officers put on sea duty was increased, no attempt was made to reduce the number on shore service, and although paymasters and other offi-

the number on shore service, and although paymasters and other officers could have been dispensed with, they were kept in the service. I now come to the statement made by the gentleman from Ohio, [Mr. Danford.] He says there was published at that time a statement from the Navy Department as to the number of officers on sea pay, the number on shore pay, &c. If the gentleman will compare that statement with the Navy Register he will find that it is nothing but an estimate; that it does not pretend to be a copy of the record in the Navy Register.

Mr. DANFORD. The gentleman referred to that in his remarks.

Mr. BLOUNT. "The gentleman" did refer to it because he expected candor.

pected candor.

Mr. DANFORD. The gentleman referred to it, and based his re-

Mr. DANFORD. The gentleman referred to it, and based his remarks upon that estimate.

Mr. BLOUNT. I hope the gentleman will not take up my time. I did refer to it, and I expected candor. I asked for an estimate, and that was handed to me, and a million of dollars more than was required, according to the estimate of the Committee on Naval Affairs, for the expenditures of that very period. And this in the face of the fact that we proposed to reduce expenditures.

Mr. DANFORD. But will the gentleman—

Mr. BLOUNT. I cannot give up my time in this way.

Mr. DANFORD. But I do not understand that the gentleman has answered my question.

Answered my question.

Mr. BLOUNT. I have answered it in my own way. The gentleman from Maine [Mr. Hale] has endeavored to explain this matter shown that they did not proceed upon honest principles.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired, and de-

bate upon the amendment to the amendment is exhausted.

Mr. FOSTER. I withdraw the amendment to the amendment.

Mr. KELLEY. I renew it. This debate has made me very happy in one respect. I find both sides of the House are ready, so far as they can, to do reparation to the officers they have degraded in the

estimation of the service and of their associates.

It has been said that this is the only place where our economy has produced such effects. Sir, naval officers are scattered through the country, they are gentlemen of influence, and they have been able to make themselves felt. But it is not so with the poor printers, six hundred of whom were furloughed last Saturday without any pay. It is not so with the messengers, laborers, and poor women who in this time of depression, when private employment cannot be had, have been turned out of employment. They are obscure people; they shrink into their humble homes.

As the year advances it will be found that in every quarter the public service has been interfered with. Thirty-odd thousand pensions are awaiting examination, and the number is continually increasing and the office getting behindhand with its work. The Patent Office is embarrassed for want of sufficient clerical force. The whole economy of last session comes up again, as I showed the other day, as a

omy of last session comes up again, as I showed the other day, as a fraud and an imposture.

The gentleman from Illinois [Mr. Springer] said that the committee and members of the House understood so and so. Why, sir, they ought to understand the language they were using when they enacted a clause that required the Secretary of the Navy to furlough these men in order to make the appropriation run through the year; they ought to have understood it. They ought to have understood it as well as the gentleman did the amendment he drew up and offered to appropriation bill and which cut the Government out of one and an appropriation bill, and which cut the Government out of one and a half millions of dollars unless it should come from unexpected profits.

profits.

Mr. BLOUNT. A half a million of dollars was my amendment.

Mr. KELLEY. I refer to the centennial amendment. [Laughter.]

It is not for the republican party to furnish brains or understanding to gentlemen on the other side.

Mr. SPRINGER. It would be a fruitless task to undertake to furnish brains to the gentleman from Pennsylvania, [Mr. KELLEY.]

Mr. KELLEY. I profess to understand the ordinary import of the English language. We did warn the gentlemen. I am no economist; I confess I am rather too extravagant. But all wise governments, when there comes a depression in private trade, try to sustain the people and at the same time accomplish economy by brying chean people and at the same time accomplish economy by buying cheap labor and cheap material. Over and over again during the last session did I protest against these nominal economies as extravagant inhumanities toward the people. Wait till we get through the session and we shall find appeals coming to us from people who do not wear gold lace, from people less prominent in the community than naval officers, people who, had they been permitted to live by honest industry, would have been relieved from embarrassment and suffer-

Mr. RANDALL. My colleague, [Mr. Kelley,] it seems to me, is quite unfortunate in his allusion to the two instances in which he alleges distress has come by reason of the action of this House at the last He first alludes to the Public Printer. An investigation by a committee of this House showed that the amount which had been appropriated was sufficient and the same committee declared that in the management of the public printing there had been gross irregularities. I am not surprised therefore that there is a deficiency. Nay, more, the Congress of the United States, in confirmation of that judgmore, the Congress of the United States, in confirmation of that judgment, passed a law by which the two Houses were given control, in a measure, of this printing establishment. In other words, Congress declared that in its judgment the right man was not at the head of the public printing. How did your Executive act upon that case? In my judgment—I say it with all proper respect—he acted with no possible regard to the legislative branch of the Government. Immediately after the action of our committee and the action of Congress, he re-appointed this same man whom our committee had declared guilty of reckless conduct in the administration of that establishment; and thus we have been compelled to submit longer to the mismanage-ment of this officer. It is no wonder, then, that there is a deficiency in this respect.

The gentleman alludes to the discharge of women from the Bureau of Engraving and Printing. I say that the Committee on Appropriations sought to protect these women in that bureau, to the injury it is true of certain bank-note companies of my own city and of the city of New York; but if the Secretary of the Treasury had followed the letter of the law and permitted that bureau to print the revenue stamps, which we provided for, not a woman would have been removed from the Department at the other end of the Avenue.

moved from the Department at the other end of the Avenue.

Now I will tell the gentleman in a word what we want. We want the drooping revenues of the Government to revive. We want this crusade against the South to cease. We in the North desire that the South shall again become, as she formerly was, a purchaser of our manufactured goods, and that she may again by prosperity have the money wherewith to pay for them.

Mr. KELLEY. Amen.

Mr. RANDALL. Until you cease this crusade against the South you can never have a prosperous North. As I said at the close of the last session, you might as well expect a man paralyzed on one side to walk with agility and vigor as to hope that a country can prosper

to walk with agility and vigor as to hope that a country can prosper when one-half of it is crushed and prostrate. [Here the hammer fell.]

Mr. KELLEY. I withdraw my proforma amendment.

The question then recurred on the amendment of Mr. WHITTHORNE, which read as follows:

That the accounting officers of the Treasury be, and they are hereby, authorized and directed to adjust and settle the accounts of the officers of the Navy on the active list whose pay has been affected by the general order of the Secretary of the Navy No. 216, since the 1st day of September, 1876, on the basis of waiting-orders pay; and such sum as may be necessary to make up the difference between the furlough and waiting-orders pay of such officers is hereby appropriated for that purpose out of any moneys in the Treasury not otherwise appropriated.

The CHAIRMAN. The Chair understands that this is offered as an addition to the pending paragraph.

Mr. WHITTHORNE. Yes, sir. The amendment was adopted. The Clerk read as follows:

For defraying expenses incurred in the prosecution of whisky and cotton cases and the Credit Mobilier case, for payment of special counsel for the United States, and other expenses incident to the trial of said causes, \$67,255.55.

Mr. WELLS, of Missouri. I move to amend by adding to the paragraph just read the following:

<sup>5</sup> To pay W. H. Bliss, of Saint Louis, \$1,500, for extra services as assistant United States attorney in the whisky cases.

I I have here a letter from the Attorney-General recommending this appropriation. Mr. Bliss, while employed in the capacity of assistant district attorney, performed these extra services in connection with the whisky trials. I have here the law authorizing the Attorney-General to employ special counsel and assistant attorneys. I ask the Clerk to read section 363 of the Revised Statutes. The Clerk read as follows:

The Attorney-General shall, whenever in his opinion the public interest requires it, employ and retain, in the name of the United States, such attorneys and counselors at law as he may think necessary to assist the district attorneys in the discharge of their duties, and shall stipulate with such assistant attorneys and counsel the amount of compensation, and shall have supervision of their conduct and

Mr. WELLS, of Missouri. I hold the Attorney-General was justified in recommending this payment under the section read by the Clerk. A number of these special attorneys appointed in various sections of the country have been paid for their service. Mr. Bliss, assistant district attorney at Saint Louis, was included in the number recommended to be paid by the Attorney-General. The committee, however, thought proper to strike out that item. I know some of the services rendered by this gentleman and I believe he is fairly entitled to this money, and therefore hope the amendment will be adopted.

Mr. ATKINS. Mr. Chairman, I dislike very much to antagonize anything my friend from Missouri offers as an amendment to this bill, but I think the proposition now pending is wrong in principle. It is to pay \$1,500 to a gentleman who was assistant district attorney, who has been already paid by the Government \$2,500 a year for his services. The principle sought to be established by the amendment is one I believe to be radically wrong, and therefore oppose it. I care nothing about the additional sum which might be given to the gentleman by the adoption of this amendment, but I think the principle is a vicious one and should not be recognized by us in the slightest degree. I do not think when the Government employs an officer and navs him a stated salary we should pass any such propo-Mr. ATKINS. Mr. Chairman, I dislike very much to antagonize slightest degree. I do not think when the Government employs an officer and pays him a stated salary we should pass any such proposition as this giving him additional pay for the same services.

MESSAGE FROM THE SENATE.

The committee informally rose, and a message was received from the Senate, by Mr. Sympson, one of its clerks, announcing the passage of the following bills; in which concurrence was requested:

An act (S. No. 1001) to provide for the disposition of the Fort Dal-

An act (S. No. 1001) to provide for the disposition of the Fort Dalles military reservation;
An act (S. No. 1003) to amend an act entitled "An act granting the right of way through the public lands to the Denver and Rio Grande Railway Company," approved June 8, 1872;
An act (S. No. 1163) for the relief of settlers on the public lands under the pre-emption laws;
An act (S. No. 1202) for the relief of John A. Darling; and
An act (S. No. 1203) to remove the political disabilities of M. L. Bonham of South Carolina.

Bonham, of South Carolina.

It further announced that the bill (H. R. No. 3628) establishing post-roads, with the amendments of the Senate thereto, upon which the House of Representatives had asked a further conference, was returned to the House with the request that the appointment of conferees on the part of the House accompany the request for further conference.

DEFICIENCY BILL.

The committee resumed its session.

The CHAIRMAN. The gentleman from Tennessee is entitled to

Mr. ATKINS. I am opposed to the amendment of the gentleman from Missouri. On the same principle, Mr. Chairman, we might bring in a deficiency bill to pay salaries of nearly every officer of the Govin a deficiency bill to pay salaries of nearly every omcer of the Government. Twenty-five hundred dollars a year is a handsome salary for a young man. I think the matter has been acted on in the Committee on Appropriations, duly weighed and considered, and the committee came to the conclusion to reject it. I think it would be well enough for us to consider the propriety of adopting such a precedent in legislation.

Mr. FOSTER rose.

The CHAIRMAN. Debate is exhausted on the pending amendment.

ment.
Mr. FOSTER. I move to strike out the last word.
The case, Mr. Chairman, covered by the amendment of my friend on the Committee on Appropriations is just this: This gentleman was acting district attorney at Saint Louis at the time of the appointment of Mr. Dyer district attorney, and he desired to withdraw from the service, alleging he could not afford to give his services for the regular pay. They were considered by Mr. Dyer and the Attorney-General so valuable as to induce them to offer additional salary if he

would remain in office. On that condition he remained. He has no regular claim on the Government, but he has an equitable or moral one. To refuse to make this allowance is to act in bad faith toward this officer who accepted this service on the sole condition he was to this officer who accepted this service on the sole condition he was to have the compensation allowed by the Attorney-General. The Attorney-General reports the amount of his allowance. We have paid every other officer the full amount allowed by the Attorney-General save this one alone. I think it is the duty, Mr. Chairman, of this House to act in good faith toward him, ratifying the bargain made by the officer of the Government who continued him in service.

Mr. ATKINS. Did not the officer get a stated salary?

Mr. FOSTER. I have stated the case.

Mr. ATKINS. Did not be get a stated salary?

Mr. FOSTER. I have stated the case.

Mr. ATKINS. Did not he get a stated salary?

Mr. FOSTER. He got his salary as assistant district attorney.

Mr. DURHAM. I am sorry to state, Mr. Chairman, that I believe there is a great abuse of power on the part of district attorneys of the United States in employing counsel. The Committee on Expenditures in the Department of Justice last session introduced a bill limiting the power of the Attorney-General to employ assistant counsel. I am surprised therefore at the report of the Committee on Appropriations in this case in asking for an additional sum for this assistant counsel. Why, sir, I hold in my hand the report of the Attorney-General for the last year in regard to matters of this sort, and in running up, the fees which have been paid to assistant attorneys, in round numbers, amount to \$240,000. The bare statement of the sum will show that there is a want of discretion on the part of the Attorneyshow that there is a want of discretion on the part of the Attorney General of the United States in employing these counsel. I resist it, and I am very glad that one of the members of the committee sees proper to resist the amendment of my friend from Saint Louis giving this additional pay to Mr. Bliss. I do not believe that he is entitled to a dellar

Mr. ATKINS. If the gentleman will allow me I will state that the majority of the committee is opposed to it.

Mr. DURHAM. I am glad to hear it. Mr. Chairman, I have looked into this business, and I am in favor of paying all the employés of the Government a fair and liberal compensation for service rendered; but when I know the fact that a certain distinguished gentleman of but when I know the fact that a certain distinguished gentleman of the city of Saint Louis sent in a bill to the Attorney-General for \$26,000 for three months' service I undertake to say that it was an

outrage.

Mr. FOSTER. Was it allowed?

Mr. DURHAM. No, sir; and it ought not to have been allowed. But it shows the length to which these attorneys who are employed at

random by the Attorney-General are disposed to go.

Mr. FOSTER. What was the outrage?

Mr. DURHAM. The outrage was in undertaking to ask such a sum; and the amount allowed was too much.

Mr. FOSTER. Who was the man?
Mr. DURHAM. Perhaps you had better not ask the name.
Mr. FOSTER. You say it was an outrage. I would like to know the name

Mr. DURHAM. Well, if you ask me the name I will say it was Mr.

Mr. DURHAM. Well, if you ask me the name I will say it was Mr. Henderson. I was informed by the former Attorney-General that that was the sum asked and that \$5,000 was allowed, when the Attorney-General who serves the whole year only gets \$8,000 and h s to live here in the city of Washington.

[Here the hammer fell.]

Mr. FOSTER. I withdraw the proforma amendment.

Mr. BLOUNT. I renew it. I desire to say that the Committee on Appropriations refused to allow the appropriation recommended by the Attorney-General for the payment of Mr. Bliss. A section of the Revised Statutes has been read which authorizes the Attorney-General to employ counsel for the purpose of assisting district attorneys. But Mr. Bliss is one of the assistant district attorneys, and therefore this law has no application. But the gentleman from Ohio [Mr. FOSTER] states to the House that there is a question of faith involved. And what is it? Why, that the Attorney-General, assuming to himself the power to nominate and confirm these officers, is entitled to fix what shall be paid to them besides what the law declares. There is, sir, no authority on the part of the Attorney-General to make any conno authority on the part of the Attorney-General to make any contract for this additional sum. And therefore the committee determined that they would not allow it, on the ground that when Congress fixes salaries by law the law ought to be carried out.

fixes salaries by law the law ought to be carried out.

The gentleman from Kentucky [Mr. Durham] says he is surprised at the action of the Committee on Appropriations in allowing these large sums of money at Chicago, Saint Louis, and other places to assist in the prosecution of whisky cases. Sir, we were as much opposed to these appropriations as he could have been. But we found authority in the law for the Attorney-General to make contracts with these attorneys. We found the contracts had been made, and we did not feel that we had a right to violate the good faith of the United States toward them. That is our justification for allowing these appropriations to be placed in the bill. At the same time we have felt that there has been a good deal of extravagance here in the matter. that there has been a good deal of extravagance here in the matter of these prosecutions, and that the pardoning of these various crimitakes posecutions, and the sense of propriety of a large portion of the people of this country. This has made the Committee on Appropriations inclined if possible to curtail these amounts. It is the fact that large sums were squandered on attorneys, and that as soon as their work was completed it was undone by the Executive.

Mr. CLYMER. It is an ungracious thing to oppose an appropriation of this kind, and I certainly would be much more willing to sit here and allow it to be adopted in silence, if I did not feel there was a principle involved, of which I beg the committee to take notice.

This gentleman had been appointed assistant district attorney in Saint Louis with a fixed yearly salary of \$2,500. The law provides that the Attorney-General, in certain cases where he deems it necessary to have counsel to assist a district attorney, may employ special counsel and may fix the fee. But the law nowhere gives him the right to increase the salary or add to the fees of officers regularly appointed and with a regular salary attached to the office. I think this is the first case—at least the first case within my knowledge—that this Government has been called upon to make an appropriation that this Government has been called upon to make an appropriation for additional salary, as it were, to an officer whose salary has been fixed by law, in this way. I conceive that the principle is a vicious one; that allowing this would lead to extravagance, and that it should

not be agreed to.

Mr. DURHAM. I ask the gentleman if it is not true that there was

Mr. DUKHAM. I ask the gentleman if it is not true that there was no such communication received from the Department as was stated by the gentleman from Ohio, [Mr. FOSTER.]

Mr. CLYMER. I have no knowledge of any such communication being received. I will say, moreover, that this practice of employing special counsel has grown in the judgment of the House to be such an abuse that in the last session of Congress a law was passed limiting the amount that might be paid to special counsel to \$2,500 in any one the amount that might be paid to special counsel to \$2,500 in any one case. Hitherto we have been paying special counsel at the rate of \$10,000 under agreements made by the Attorney-General, and to pay which agreements the Committee on Appropriations felt themselves bound in honor to recommend appropriations. They do not recommend this appropriation. They consider it wrong. They consider it vicious; and if the committee attach any weight to the judgment of the large majority of the Committee on Appropriations, they will vote down the amendment offered by the gentleman from Missouri.

Mr. DURHAM. Have not the Committee on Appropriations upon investigation found that the Attorney-General has exceeded his power.

investigation found that the Attorney-General has exceeded his power

by paying extra fees to these regular attorneys?

Mr. CLYMER. I do not know that any one instance has come to the knowledge of the committee where the Attorney-General has made such payment to regularly appointed assistant district attorneys throughout the United States; but that he employed special counsel without number and at prices beyond conscience almost, we well know; and there has been a law passed to put an end to the

Mr. DURHAM. Under the resolution of Mr. Parsons at the last session, the matter was submitted to me as a subcommittee; and I hold in my hand a statement showing that \$53,000 were in one year

and six months paid to these attorneys.

Mr. CLYMER. That has now been stopped.
Mr. WELLS, of Missouri. I move to strike out the last line.
I regret very much that some of the members of the Committee on Appropriations have seen proper to bring before the House the action of that committee. It may be proper, therefore, for me to state that the question in regard to this amendment in the committee was decided by a very close vote. It was rejected by one vote.

I do not offer this amendment as a member of the committee, but

as a member of this House, and I claim that right as a member of the House. It was stated by the gentleman from Pennsylvania [Mr. CLYMER] who last addressed the committee that there had been no recommendation from the Attorney-General in regard to this item. I beg now to read the communication from that gentleman. I find this item in the communication of the Attorney-General addressed to the chairman of the Committee on Appropriations:

To William H. Bliss, extra services as assistant United States attorney in whisky

That is the item. It must be remembered by gentlemen of this House that these whisky cases in Saint Louis required a great deal of labor. Over one hundred and forty indictments were drawn up and came on for trial in Saint Louis. This gentleman was an excellent officer. His duties were very arduous in connection with these ases; and during their preparation and trial it was impossible for him to do any business whatever of a private character outside the Attorney-General's office. Consequently his time was all occupied, and he informs me, and stated so to the Committee on Appropriations, that he communicated these facts to the Attorney-General and the Attorney-General proposed to pay him extra for his services during that time. It is a matter simply of \$1,500, and I have felt it my duty, knowing the character of the services rendered by this gentleman in my own city, to move this amendment; and I trust that the House as a matter of simple justice will adopt it.

The question being taken on the amendment of Mr. Wells, of Missouri there were agos 50 new 50 new course vectors.

souri, there were—ayes 59, noes 52; no quorum voting.

Mr. ATKINS. I call for a further count. This is a bad precedent.

The CHAIRMAN. A quorum not having voted, the Chair will order tellers, and appoints the gentleman from Missouri, Mr. Wells, and the gentleman from Tennessee, Mr. ATKINS.

The committee again divided; and the tellers reported-ayes 81,

noes 72. So the amendment was adopted.

Mr. ATKINS. I give notice that I will call for a vote upon that in the House.

Mr. WELLS, of Missouri. I offer the following amendment which becomes necessary in consequence of the last amendment having been adopted:

Strike out in line 153 "\$67,255.55" and insert "\$69,755.55."

The amendment was agreed to.
Mr. LYNDE. I offer the following amendment:

Amend after line 156 by inserting: To pay to S. S. Dixon, special counsel for United States at Milwaukee, \$10,000.

I offer that amendment for the reason that Mr. Dixon was employed as special counsel to assist the United States in the whisky cases in Milwaukee. He is one of the ablest counsel in the city. He was occupied during the entire year in the prosecution of the whisky cases in Milwaukee and succeeded with the assistance of the United States district attorneys in recovering the sum of \$150,000 to be paid into the United States Treasury. The time of Mr. Dixon was occupied during the whole year. He presented his bill to the Attorney-General and the Attorney-General put down the amount to be allowed him at \$10,000. \$10,000.

Mr. WALDRON. I desire to interrupt the gentleman and to say

that that is provided for in the pending section.

Mr. LYNDE. I understood that only \$5,000 is provided for in this section.

Mr. WALDRON. The gentleman is mistaken.
Mr. LYNDE. If I am mistaken I will withdraw my amendment.
Mr. BLOUNT. I will state to the gentleman that that is provided

Mr. LYNDE. Then I withdraw my amendment. Mr. WALDRON. I offer the following amendment:

After line 154 insert the following:
To pay James St. C. Boal, two months' special services as special counsel for United States, assisting the district attorney for the northern district of Illinois, from January 20 to March 20, 1876, \$400.

This account of Mr. Boal's came in a letter from the Attorney-General, but at so late an hour that the claim was not acted on by the Committee on Appropriations. I offer the amendment on my own responsibility. The letter of the Attorney-General shows that Mr.

responsibility. The letter of the Attorney-General shows that Mr. Boal was appointed an assistant district attorney for the northern district of Illinois on the 20th day of January.

He commenced his services then, but he was not sworn in until the 20th day of March. The Attorney-General states that these services were rendered and that the charge is reasonable; but under the law he has no authority to pay him for the two months during which he served before he took the oath under his commission.

Mr. BLOUNT. Was he paid a salary or by fee?

Mr. WALDRON. The letter of the Attorney-General does not state that, but I suppose he was paid at the rate of \$3,500 a year.

The question was taken on the amendment, and it was agreed to.

The question was taken on the amendment, and it was agreed to. The Clerk resumed the reading of the bill, and read as follows:

To pay W. A. Britton, late United States marshal for the western district of Arkansas, amount found due him by the accounting officers of the Treasury Department, being a deficiency for the fiscal year 1873, \$8,912.07, which is hereby reappropriated from the unexpended balance of the appropriation for expenses of courts for the said fiscal year and made available for said purpose.

Mr. DURHAM. I move to strike out the last word, for the purpose Mr. DURHAM. I move to strike out the last word, for the purpose of making an inquiry. I desire to inquire of the gentleman having charge of this bill whether this account has really been allowed by the Department of the Treasury? I will state that I have some knowledge of this matter, as a member of the Committee on Expenditures in the Department of Justice, and during the last Congress there was a large unascertained balance, according to his account, due to Mr. Brit ton, and upon the investigation of that committee a large portion of the accounts were determined to be false and fraudulent, and the committee referred the whole matter back to the Department of Justice. mittee referred the whole matter back to the Department of Justice. mittee referred the whole matter back to the Department of Justice. The Department of Justice, as I understand it, reported the matter to the Treasury Department. Now, if the officers of the Treasury Department have investigated this matter and come to the conclusion that this allowance is correct, I have not a word to say against it. But unless it has passed through the various channels which investigate these matters, I shall oppose the appropriation.

Mr. WALDRON. I send up a letter from the First Comptroller of the Treasury, which will fully answer the question of the gentleman from Kentucky.

The Clerk read the letter, as follows:

The Clerk read the letter, as follows:

R. W. TAYLER, Comptroller.

The Clerk read the letter, as follows:

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,
Washington, D. U., February 5, 1877.

SIE: In compliance with your request of this morning I have to state that in the judicial investigation of the accounts of late Marshal W. A. Britton, of the western district of Afkansas, made pursuant to a resolution of the House of Representatives adopted June 9, 1874, the jury found that there was "due and owing to the defendant, W. A. Britton, from the United States the sum of \$8,772.57."

From said amount there will be retained in the Treasury on account of money received by the late marshal, the sum of \$500.50, leaving due him from the United States a balance of \$8,412.07.

In addition to said balance there is due the late marshal the sum of \$500 for advances made to the physician of the United States jail at Fort Smith, said amount having been deducted from the physician's account, adjusted at the Treasury.

The amount of both balances has been included in an estimate submitted to Congress of money required to close accounts for expenses of courts for the year ending June 30, 1873; said estimate amounts to \$30,000.

Very respectfully,

R. W. TAYLER, Comptroller.

R. A. Burton, esq., Attorney for W. A. Britton.

Mr. DURHAM. I withdraw the amendment.

The Clerk resumed the reading of the bill, and read as follows:

For payment of the necessary expenses incurred in defending suits against the Secretary of the Treasury or his agents for the seizure of captured or abandoned property, and for the examination of witnesses in claims against the United States pending in any Department, and for the defense of the United States in the Court of Claims, to be expended under the direction of the Attorney-General, being a deficiency for the fiscal year 1877, \$15,000.

Mr. BELFORD. I move to insert at the close of that clause the following amendment:

For payment of salaries of the justices of the supreme court of the late Territory of Colorado, from the 1st day of August, 1876, to the 1st day of December, 1876, \$3,000, or so much thereof as may be necessary.

I desire to state, in relation to that amendment, that on the 3d of March, 1875, Congress passed a bill enabling the people of Colorado to form a State government, and the sixth section of that act provided that the judges holding commissions should continue to act until their successors should be qualified. The President issued his proclamation admitting the State of Colorado into the Union on the 1st day of August last. These judges served until the 1st day of December, 1876, their successors not having qualified until that time. For that time they have received no salary from the Treasury. It seems to me that having performed these services as United States judges for six months, the Government should pay them for the services rendered in that behalf. And this amendment simply provides that they shall be paid for the time they actually served.

Mr. WALDRON. The legislative, &c., appropriation bill of the last session of Congress provided for the payment of the judges of Colorado so long as Colorado remained a Territory, and consequently they were paid up to the 1st of August, when the proclamation of the President of the United States admitted Colorado into the Union as a State under the law of Congress. It strikes me that any liability March, 1875, Congress passed a bill enabling the people of Colorado

a State under the law of Congress. It strikes me that any liability for the payment of their salaries does not rest upon the United States.

Mr. BELFORD. I desire to say a word in reply to the gentleman

from Michigan.
The CHAIRMAN. Debate is exhausted on the pending amend-

The question was taken on the amendment; and on a division there were ayes 26, noes not counted.

So the amendment was not agreed to.

The Clerk resumed the reading of the bill, and read as follows:

For printing and binding for the Patent Office by the Public Printer, \$25,000; and so much of sections 490, 491, and 492 of the Revised Statutes as authorizes and provides for the printing for gratuitous distribution of specifications and drawings of patents is hereby repealed.

Mr. CONGER. I move, in line 179, to strike out "\$25,000" and to insert in lieu thereof "\$41,000;" so that it will read:

For printing and binding for the Patent Office by the Public Printer, \$41,000; and so much of sections 490,491, and 492 of the Revised Statutes as authorizes and provides for the printing for gratuitous distribution of specifications and drawings of patents is hereby repealed.

I call the attention of the committee to the fact that the printing of the Patent Office is increasing year by year. For the last fiscal year Congress appropriated \$115,000 for the printing of the Patent Office, and the appropriation now for the deficiency is \$25,000. I refer to the year before the current fiscal year. In the current fiscal year the appropriation was \$96,000, and a little more was actually

year the appropriation was \$96,000, and a little more was actually expended on the necessary printing of the Official Gazette and the specifications and drawings required by law. For this fiscal year Congress appropriated \$55,937.73, leaving a difference between the actual expenditures of former years and the appropriation for this year of over \$41,000. The Committee on Appropriations have proposed to make up this deficiency to the extent of \$25,000, leaving about \$16,000 of necessary expenses unprovided for.

Now I desire to say that under the existing law the Official Gazette of the Patent Office is made the organ of the United States by law, and there are published in it all the specifications of patents, and this appropriation covers the printing of all the forms and blanks of the entire proceedings of the office. There would need to be, even if there were no increase in the business of the office of last year, an increased appropriation of over \$16,000 to carry on the business of the Patent Office. The revenues of the Patent Office for the last fiscal year paid by the inventors of the country were \$103,000 larger than year paid by the inventors of the country were \$103,000 larger than the expenditures of the office, and there is now in the Treasury of the United States to-day more than \$1,000,000 paid by the inventors of the country as fees, which under the law were required to be paid into the Treasury, more than the Treasury has been charged with for the support of the office. It is a self-sustaining and more than self-sustaining institution of the Government. Now the object of this publication is solely for the benefit of the inventors who pay this publication is solely for the benefit of the inventors who pay this surplus into the Treasury of the United States. It is stated that the surplus for the current year over and above the expenditures of the office will be \$127,600. Therefore it is right and it is necessary for carrying on the office that it should be appropriated out of the Treasury, which has within it a fund belonging to this Patent Office, and that they should be allowed all that is proper and necessary to lay before the inventors of the country all the information in regard to patents, all the specifications, &c., which may enable them to understand inventions which have been made and to make their specifications for new inventions. fications for new inventions.

Let me say that it has been suggested by my colleague who has charge of this bill [Mr. WALDRON] that the remaining part of this paragraph provides for less printing, and therefore a less amount is needed to be appropriated. My colleague upon the Committee on Patents, who sits near me, [Mr. SAMPSON,] will move to strike out that portion of the paragraph for the very reason that the gratuitous distribution spoken of in it, and which is to cease if the latter part of this clause be adopted, is the gratuitous distribution to the library of every State and to the public libraries in every congressional district throughout the States. That is the gratuitous distribution which brings to the inventors of the entire country the Patent Office Gazette containing full information of the specifications and of new inventions. inventions.

[Here the hammer fell.]
The CHAIRMAN. The time of the gentleman has expired.
Mr. WALDRON. It is true, as my colleague [Mr. CONGER] states, that the Commissioner of Patents asked for a deficiency appropriathat the Commissioner of Patents asked for a deficiency appropria-tion of \$41,000. And judging by the expenditure for this purpose in the past, with no change of existing law, that amount of money would probably benecessary. But the Committee on Appropriations recommend an appropriation of only \$25,000 for this purpose, and they couple with that recommendation a provision that will relieve the Patent Office to a great extent of the expense now incurred for these publications. It prohibits the gratuitous distribution hereafter of drawings and specifications of patents. If the paragraph is taken as a whole, and that provision is left in it, the appropriation of \$25,000 is amply sufficient for the purpose. is amply sufficient for the purpose.

Mr. SAMPSON. I move to strike out the last word. The gentle-

man from Michigan in charge of this bill [Mr. Waldbon] takes the position that the sum of \$25,000 will be sufficient for this purpose, for the reason that the expense will be greatly reduced by providing that hereafter there shall be no further gratuitous distribution of these

drawings and specifications.

I do not believe, Mr. Chairman, that this House is prepared to amend the patent law in that particular. I remember that but a day or two ago it seemed to be the object of the House to protect persons who had innocently interfered with patent rights and had been using patent property. It has been heretofore, and is now, the policy of the law to advise the public of what has been patented in order that

the law to advise the public of what has been patented in order that persons may not be led into any infringement of the rights of these patentees and the owners of patent property.

The only means of knowledge which the public now has of what may be patented are the drawings and specifications that may be on file in this city in the Patent Office, and on file in the capitals of the different States and Territories and in the public libraries of the country. This law which this bill proposes to amend for the purpose of try. This law which this bill proposes to amend for the purpose of reducing expenditures provides that there shall be kept one copy of these drawings and specifications on file in the capital of each State and Territory, and also in the office of the clerk of the district court for each district. It further provides that libraries throughout the country may be supplied with these drawings and specifications by simply paying the cost of binding and transportation.

This enables the public to consult these libraries in the different States in the clerk's offices of the different district courts, in order to ascertain what has been patented. If you denrive them of that right

States in the clerk's offices of the different district courts, in order to ascertain what has been patented. If you deprive them of that right, if you take away from them that means of information, there is no other way to obtain it except to apply to an attorney in Washington City. Then they must come to Washington in order to determine whether there has been a patent issued or not.

It will be impossible for the public to determine what patent property they may use and what they may not use; and whenever there is an infringement they will be liable to damages.

Now I say it is but just and proper and right to the public that these

Now I say it is but just and proper and right to the public that these specifications and drawings should be on file in the capitol of every State and Territory of this Union, and also on file in the office of the clerk of the district court of each district. We know that the courts of the United States have exclusive jurisdiction of this class of cases. It is frequently necessary to produce evidence in those courts. As the law now is, application can be made to the clerk of the court to procure this evidence, which is already there and certified, ready for introduction as evidence in the court. If you repeal this law, then it may be necessary for them to send to the city of Washington and procure these drawings and specifications before they can be introduced as evidence in these cases. duced as evidence in these case

It is but just and right that this law should remain. When the vote shall have been taken upon the pending amendment, I propose to move an amendment striking out the latter part of this paragraph

move an amendment striking out the latter part of this paragraph repealing the existing law.

Mr. BLOUNT. The honorable gentleman from Indiana, [Mr. Holman, ] not myself, had the principal charge of the appropriation of this bill. The reasons, however, upon which this paragraph is based are evident upon a reference to it. The sections of the Revised Statutes which it is proposed to repeal are the following:

SEC. 490. The Commissioner of Patents is authorized to have printed, from time to time, for gratuitous distribution, not to exceed one hundred and fifty copies of the complete specifications and drawings of each patent hereafter issued, together with suitable indexes, one copy to be placed for free public inspection in each capitol of every State and Territory, one for the like purpose in the clerk's office of the district court of each judicial district of the United States, except when such offices are located in State or territorial capitols, and one in the Library of Con-

gress, which copies shall be certified under the hand of the Commissioner and seal of the Patent Office, and shall not be taken from the depositories for any other purpose than to be used as evidence.

SEC. 491. The Commissioner of Patents is authorized to have printed such additional numbers of copies of specifications and drawings, certified as provided in the preceding section, at a price not to exceed the contract price for such drawings, for sale, as may be warranted by the actual demand for the same; and he is also authorized to furnish a complete set of such specifications and drawings to any public library which will pay for binding the same into volumes to correspond with those in the Patent Office, and for the transportation of the same, and which shall also provide for proper custody for the same, with convenient access for the public thereto, under such regulations as the Commissioner shall deem reasonable.

SEC. 492. The lithographing and engraving required by the two preceding sections shall be awarded to the lowest and best bidders for the interests of the Government, due regard being paid to the execution of the work, after due advertisement by the Congressional Printer under the direction of the Joint Committee on Printing; but the Joint Committee on Printing may empower the Congressional Printer to make immediate contracts for engraving, whenever, in their opinion, the exigencies of the public service will not justify waiting for advertisement and award; or if, in the judgment of the Joint Committee on Printing the work can be performed under the direction of the Commissioner of Patents more advantageously than in the manner above prescribed, it shall be so done, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe.

The Committee on Appropriations see no necessity for supplying every library in every congressional district with these drawings and specifications free of charge. A large number of them are scarcely ever referred to for any purpose. The committee have thought that this appropriation should be reduced because there was no necessity this appropriation should be reduced because there was no necessity for this gratuitous distribution. It is a charge upon the General Government, and parties if they want this information could resort to the Department in this city and obtain it. It is a matter of their own concern, and not belonging to the people at large, to put this information in every possible place that can be conceived of simply to increase the amount of expenditures here.

Mr. VANCE, of North Carolina. Will the gentleman allow me to ask him a question?

Mr. BLOUNT. Certainly.

Mr. VANCE, of North Carolina. The gentleman says that the furnishing of these drawings and specifications is a charge upon the General Government. How does he make that out when the inventors of the country not only pay all the expenses of the Patent Office but a large surplus besides?

Mr. BLOUNT. If the gentleman will take into account all the expenditures connected with the Patent Office he will find that all this colat in reference to that office paying its own expenses is utterly false.

éclat in reference to that office paying its own expenses is utterly false.

Mr. SAMPSON. I withdraw my amendment.

Mr. CONGER. I repew the amendment. Gentlemen of the committee place this question on fair grounds; I have no fault to find in that respect. Whether this is a change of law in the interest of economy or not I am willing to leave the question to the judgment of every gentleman in this House who, within his own district, has seen the benefits of this gratuitous distribution. The existing law on this subject was passed in compliance with the demand of inventors of every State in this Union, except one, and from every Territory; upon such applications it was recommended by the Committee on Patents and was made the law of the land. Under this law we have the right to have in the library at each State capitol and in the office of the

to have in the library at each State capitol and in the office of the clerk of each district court one copy of this report; and every public and collegiate library in the State is also entitled to one copy.

Mr. BLOUNT. Not every collegiate library.

Mr. CONGER. Well, every public library. Thus places are provided to which men can go and obtain information in regard to these patents. Every member of this House has the right to designate eight libraries in his district, (if there be so many,) each of which may receive gratuitously one copy of the Official Gazette containing the specifications and drawings.

the specifications and drawings.

Now, I am in the habit of receiving during every session hundreds of letters of constituents of my own or other gentlemen, asking in regard to matters contained in these Official Gazettes; and I say that no more definite and exact means has ever been provided by which farmers, mechanics, and business men throughout the country can meet successfully the attempted fraud of imposters in regard to in-ventions. When men offer for sale fraudulent patents these records ventions. When men offer for sale fraudulent patents these records in the libraries and courts can be turned to and will show whether such patents have been issued and whether they are properly described. I venture to say that hundreds and thousands of dollars which would have been obtained by fraudulent venders of patents have been saved to the public through having these volumes in the district courts and the public libraries for ready reference. To these sources we all refer our constituents. In this way there is furnished the greatest check ever yet provided upon itinerant venders of false or fraudulent or assigned patents in the agricultural and rural districts.

I hope that the amendment I have offered may be adopted, and that the amendment of my colleague providing against any altera-tion of the law in this respect may also be adopted. I believe that

tion of the law in this respect may also be adopted. I believe that the continuance of this system, which thus far has proved so beneficial, is of great importance to the people.

One word more. Prior to the passage of this law the Government was compelled to pay largely for publishing in one newspaper of every State what is now published in the Official Gazette. Prior to the publication of the Official Gazette and the adoption of the photolithographing process, every copy of the drawings and the specifications, which now cost less than five cents a piece, cost from \$1 to \$5. Under

a former law fifty copies of all these specifications were distributed to members to be sent to their constituents. Thus there is a great saving to the Government in the expenditures for the Patent Office.

to members to be sent to their constituents. Into there is a great saving to the Government in the expenditures for the Patent Office. [Here the hammer fell.]

Mr. CONGER. I withdraw my formal amendment.

Mr. WALDRON. I renew the amendment. There is nothing in this provision of the bill that interferes at all with the publication of these drawings and specifications for sale; there is nothing in the provision that interferes with their publication for the use of public libraries at the cost of binding and printing. The only effect of the provision is to prohibit their gratuitous distribution to libraries at State capitals and to the offices of the clerks of the different district courts. I think that experience has shown that litigants in patent cases have never availed themselves of these drawings and specifications deposited at State capitals and in the offices of the district courts, but have in all cases sent to the Patent Office here for certified copies. The publication of these drawings and specifications for gratuitous distribution is intended to be repealed by this section, and that I regard as a useless expenditure. I trust, therefore, that the Committee of the Whole will stand by the recommendation of the Committee on Appropriations.

the Committee of the Whole will stand by the recommendation of the Committee on Appropriations.

Mr. CONGER. One word in reply to my colleague, [Mr. Waldron.]

Our laws declare that this Official Gazette shall be taken as evidence in all courts. In this respect it has the same rank as a certified copy from the Patent Office, and it is thus used to-day in all courts as the authentic copy of the transactions of that office. In this way thousands of dellars have been event to litigate.

sands of dollars have been saved to litigants.

Mr. TOWNSEND, of Pennsylvania. I would like to ask the gentleman from Michigan what is the cost of these additional copies which

we propose to save by this provision?

Mr. CONGER. It is supposed to be \$16,000.

Mr. TOWNSEND, of Pennsylvania. There are only one hundred Sixteen thousand dollars for whatever number of

copies are furnished gratuitously.

Mr. TOWNSEND, of Pennsylvania. Only one hundred and fifty copies are authorized to be thus issued; the expense cannot be \$16,000. Mr. SAMPSON obtained the floor.

Mr. TOWNSEND, of Pennsylvania. I would like to ask the gentleman what amount of money will be saved by making this change

in the law?

in the law?

Mr. SAMPSON. The gentleman from Pennsylvania [Mr. Townsend] makes the inquiry what it will cost to supply the libraries at the different State capitals with one copy each of this Official Gazette, and also to file one copy in the office of the clerk of each district court. It will cost \$375 annually. I think that is a fair estimate.

Mr. TOWNSEND, of Pennsylvania. The whole amount?

Mr. SAMPSON. Yes, sir; the whole amount to supply a library in each State capital and also one to the clerk's office of the district court.

Mr. TOWNSEND, of Pennsylvania. What would be the aggregate?

gate?

Mr. SAMPSON. Taking this and the other section, and eight copies to each member, the whole cost would be about \$15,000.

Mr. TOWNSEND, of Pennsylvania. Members do not get copies.

Mr. SAMPSON. Eight copies of this Official Gazette are distributed to each member; that is to say, he names the libraries and they are distributed to such libraries. Including in the number those called for by other libraries the whole amount would be about \$15,000.

As I understand it, the gentleman from Michigan in charge of the bill takes the position this will not interfere with the distribution to those libraries willing to pay for binding and transportation. Now, I find on examination it repeals that provision by which libraries can obtain copies of this Patent Office Gazette by paying for binding and transportation.

transportation.

[Here the hammer fell.] Mr. WALDRON, by unanimous consent, withdrew his formal amendment to the amendment.

The question then recurred on Mr. WALDRON'S amendment.

The House divided; and there were-ayes 38, noes 56; no quorum

voting.
Mr. CONGER demanded tellers.
Mr. CLYMER moved the committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Eden reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration a bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes, and had come to no resolution theorem.

Mr. CLYMER. I move the House take a recess until ten o'clock

to-morrow morning.

The SPEAKER. Pending that the Chair desires to lay before the House certain communications.

## CAPTAIN THOMAS II. BRADLEY.

TheS PEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report on the services of Captain Thomas H. Bradley; which was referred to the Committee on Military Affairs.

## UNION PACIFIC RAILWAY.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report on the survey of the Union Pacific Railway; which was referred to the Committee on the Pacific Railroad.

### ARMY ESTIMATES.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting estimates for the support of the Army for the fiscal year ending June 30, 1878; which was referred to the Committee on Appropriations.

### FORT PECK INDIANS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting estimates of appropriation for Fort Peck Indians; which was referred to the Committee on Appropriations.

#### MEMORIAL OF POTTAWATOMIES.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting a memorial of the Pottawatomies in regard to payments under treaty; which was referred to the Committee on Indian Affairs.

#### POST-ROUTE BILL

The SPEAKER also announced that he had appointed Mr. Clark of Missouri, Mr. Holman, and Mr. Cannon of Illinois as conferees on the part of the House on the disagreeing votes of the two Houses on the bill (H. R. No. 3628) establishing post-roads.

### JOHN C. REA AND OTHERS.

On motion of Mr. GUNTER, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the case of John C. Rea and others, no adverse report having been

## LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. John REILLY, for one day.

#### ORDER OF BUSINESS.

Mr. JENKS. I ask my colleague to yield to me.
Mr. CLYMER. I yield to my colleague to make a request.
Mr. HALE. I demand the regular order of business.
Mr. VANCE, of Ohio. I rise to a parliamentary inquiry. Is it understood when the House takes a recess until ten o'clock to-morrow it is then to take another recess until five minutes before twelve?

The SPEA FEE. No understanding of that earthes before twelve?

it is then to take another recess until five minutes before twelve?

The SPEAKER. No understanding of that sort has been reached.
Mr. VANCE, of Ohio. I ask then, by unanimous consent, some such arrangement be made, so committees may have opportunity to meet.
The SPEAKER. Is there objection that when the House meets to-morrow at ten o'clock there shall be no business transactions, but a recess shall be taken until five minutes before twelve?

There was no objection, and it was ordered accordingly.
Mr. HALE. That being done, I withdraw the demand for the regular order.

# LOUISIANA COMMITTEE.

Mr. JENKS. I am instructed by the special committee appointed to investigate the election of the presidential electors in the State of of Louisiana to report to the House the testimony taken by that committee, and to ask that all such testimony which has not been printed

be printed.

Mr. HALE. Is that by agreement of all the members of the com-

The SPEAKER. The committee have the right to report at any time

Mr. HALE. The privilege to report at any time is to report generally on a subject. I have no objection, however, to this if the committee agree to it.

The SPEAKER. The Chair would rule under the right to report at any time the committee has the right to report a resolution to print the testimony taken.

print the testimony taken.

Mr. HALE. Does this exhaust their right?

The SPEAKER. The Chair would suggest to the gentleman from Maine that the committee having the right to report at any time, have the right to report in part.

Mr. HALE. Have they the right to report from time to time and keep on reporting?

The SPEAKER. Such has been the ruling.

Mr. HALE. Then we must be more careful in giving such authority bereafter.

The SPEAKER. If there be any complaint, it does not lie against the gentleman from Maine nor the Chair, as the power granted in this case was given under a suspension of the rules.

Mr. WILSON, of Iowa. I wish to say to the gentlemen of that committee that if this committee is now reporting generally I want them to give us some information about the outrage which I believe has been perpetrated upon the privileges of this House, relating to the printing of testimony taken, by a private printer and not by the Public Printer. Public Printer.

The SPEAKER. Is that inquiry propounded to the Chair?
Mr. WILSON, of Iowa. No, but to the committee. I want to know if there is any truth in the reports which have appeared in the pub-

lic press that they have printed a portion of the testimony without

an order of the House.

Mr. DANFORD. Is this anything more than a request upon the part of the committee to print the testimony now received by them?

The SPEAKER. That is all.

Mr. JENKS. I demand the previous question on the resolution.

Mr. CONGER. I object, unless I can be heard for a moment.

The SPEAKER. The Chair is desirous of hearing everybody who

The SPEAKER. The Chair is desirous of hearing everybody who desires the right to speak.

Mr. CONGER. Reserving the right to object to this resolution, I wish to say that it calls for the printing of such parts of the testimony as have not been already printed. I am informed that a portion of that testimony, mutilated and partially erased, has been printed, not by an order of the House, but by a private printer. It may be that this resolution is not in the regular form ordering the printing of testimony. I insist that it must be in the usual form.

Mr. JENKS. That state of facts does not exist in reference to the

report of this committee.

Mr. CONGER. I am informed that the matter to which I refer re-lates to another committee, and if so, I do not wish to apply my objections to this case.

Mr. DANFORD. It does not apply to this case.

Mr. BANKS. I ask that the resolution be again read.

The resolution was again read.

Mr. JENKS. The resolution is before the House, and I move the previous question upon it.

The previous question was seconded and the main question ordered; and under the operation thereof the ressolution was agreed to.

Mr. JENKS moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## SALARY OF A MEMBER OF CONGRESS.

Mr. CAULFIELD, by unanimous consent, from the Committee on the Judiciary, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the salary of JAMES B. BELFORD, the member from the new State of Colorado, shall begin from the date of his election, to wit, the 3d day of October, 1876.

Mr. CAULFIELD moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## EXECUTIVE DOCUMENT NO. 1182.

Mr. BANNING, by unanimous consent, from the Committee on Military Affairs, reported back Executive Document No. 1182, and moved that the Committee on Military Affairs be discharged from the further consideration of the same, and that it be referred to the Committee on Appropriations.

The motion was agreed to.

## JAMES CULLIN.

Mr. STONE, by unanimous consent, introduced a bill (H. R. No. 4595) granting a pension to James Cullin, father of the late Timothy Cullin, private in Company E, Second Battalion Seventy-eighth Regiment of United States Infantry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

## JAMES MACKLIN.

Mr. WILLIS, by unanimous consent, introduced a bill (H. R. No. 4596) for the relief of James Macklin, a lieutenant of the Eleventh Infantry United States Army; which was read a first and second time, referred to the Committee on Militay Affairs, and ordered to be

## MARY SHERIDAN.

Mr. WILLIS also, by unanimous consent, introduced a bill (H. R. No. 4597) granting a pension to Mary Sheridan, mother of James Sheridan; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

Mr. WILLIS also, by unanimous consent, introduced a bill (H. R. No. 4598) granting a pension to Robert Butler; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

## WILLIAM A. BRITTON.

On motion of Mr. McCRARY, by unanimous consent, the Committee on the Judiciary was discharged from the further consideration of the memorial of William A. Britton, of the western district of Arkansas, and the same was referred to the Committee on Appro-

## ORDER OF BUSINESS.

Mr. THROCKMORTON. I rise to make a parliamentary inquiry. The bill regulating freights over the Omaha bridge upon the Union Pacific Railroad was made the special order for to-day, and I would

like to inquire if it would not be the regular order?

The SPEAKER. The gentleman from Texas rises to inquire whether the Omaha bridge bill, which was assigned for Tuesday the

6th day of February, is not now in order. That day has not been reached and the gentleman asks unanimous consent that that bill may be considered when next we shall have a day after the morning hour. Is there objection? The Chair hears none, and it is so ordered.

#### W. H. CUMMINS.

Mr. KASSON, by unanimous consent, introduced a bill (H. R. No. 4599) granting a pension to W. H. Cummins, late a private in Company H, Eighth Iowa Infantry Volunteers; which was read a first and second time, and, with the accompanying papers, referred to the Committee on Invalid Pensions, and ordered to be printed.

## AMERICAN REGISTRY TO A BRITISH BARK.

Mr. CRAPO, by unanimous consent, introduced a bill (H. R. No. 4600) granting American registry to the British bark W. A. Farnsworth, and changing the name of said vessel to The Lapwing.

#### SARAH WHARTON.

Mr. FLYE, by unanimous consent, introduced a bill (H. R. No. 4601) granting a pension to Sarah Wharton; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### CAPITOL GROUNDS.

Mr. LEAVENWORTH, by unanimous consent, submitted the following resolution; which was read, and referred to the Committee on Public Buildings and Grounds:

Whereas it is a matter of great public interest that the beautiful but comparatively naked grounds about the Capitol should be adorned with trees and shrubbery at the earliest practicable day;

And whereas the persons now employed to accomplish this very desirable object seem to be profoundly ignorant of the first elements of the science of arboricult-

seem to be profoundly ignorant of the first elements of the science of arboriculture; this appears:

First, by their neglect to remove all superfluous branches;
Second, by omitting to form symmetrical heads to the trees; and
Third, by neglect to cut in the branches which form the heads, in consequence of
which neglect a very unusual and unnecessary proportion of said trees, amounting
in some parts of the grounds to one-half, have died, and those which have survived
have no beauty of form and little constitutional vigor: Therefore,

\*Resolved\*, That the Committee on Public Buildings and Grounds be, and they are
hereby, instructed to inquire into the necessity of causing some suitable person to
be employed to perform this important work.

### MARTHA E. BETTIS.

Mr. RIDDLE, by unanimous consent, introduced a bill (H. R. No. 4602) for the relief of Mrs. Martha E. Bettis, of Sumner County, Tennessee; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

## SYDNEY F. STILLEY.

Mr. HYMAN, by unanimous consent, introduced a bill (H. R. No. 4603) for the relief of Sidney F. Stilley, late postmaster at Washington, North Carolina; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## E. R. AMES.

Mr. SPRINGER, by unanimous consent, introduced a bill (H. R. No. 4604) to authorize the President to re-instate E. R. Ames, late captain Sixth Infantry, and assign him to a regiment; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

## MILO M. ADAMS.

Mr. SPRINGER also, by unanimous consent, introduced a bill (H. R. No. 4605) granting an honorable discharge to Milo M. Adams, of Company B, One hundred and eleventh Regiment Pennsylvania Volunteer Infantry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

## OWEN T. EDGAR AND OTHERS.

Mr. WILLIAMS, of Delaware, by unanimous consent, introduced a bill (H. R. No. 4606) for the relief of Owen T. Edgar, Charles G. Evans, William W. Graham, Charles B. Smith, and the heirs of Joseph J. P. Ouidan; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## ARCTIC EXPLORATION.

Mr. SAYLER. I ask unanimous consent to present at this time a memorial from the Chamber of Commerce of Cincinnati, and as it is

very brief I will ask that it be printed in the RECORD.

Mr. CONGER. What is the subject of it? I want to know before

we give consent.

Mr. SAYLER. It relates to a bill providing for another explora-

Mr. SATLER. It relates to a bill providing for another explora-tion to the north pole.
Mr. CONGER. I have no objection.
No objection being made, the memorial was received, referred to the Committee on Naval Affairs, and ordered to be printed in the RECORD. It is as follows:

# CINCINNATI CHAMBER OF COMMERCE AND MERCHANTS' EXCHANGE

At a regular session of the Cincinnati Chamber of Commerce, held this day, the following resolutions were adopted:

"To the honorable Senate and House of Representatives of the United States of America in Congress assembled:

"Whereas the Cincinnati Chamber of Commerce, whose province relates specially to commerce and trade, is assured that the security and extension of the commerce of the world depend largely upon accurate information respecting the physics of

the globe, and that most of such information already acquired has been facilitated by observations made within the arctic regions, and that the benefits accruing directly and indirectly to the commerce of the world from polar explorations are more than equal to the money expended in such explorations: Therefore, "Reit resolved, That we, in the interest of science as well as in behalf of commerce and trade—mutually and inseparably linked together—heartily approve and respectfully urge the passage of the bill providing for another and eminently practicable expedition toward the north pole for purposes of exploration and the establishment of a colony at some point north of the eighty-first degree of north latitude.

tablishment of a colony as some provided an appropriation of \$50,000 by the General Government for this purpose.

"Resolved, That a copy of the foregoing preamble and resolutions be transmitted to our Senators and Representatives in Congress.

A true copy from the minutes of the chamber.

B. EGGLESTON, President.

B. EGGLESTON, President. BRENT ARNOLD, Secretary.

### HELEN M. STANSBURY.

Mr. RAINEY, by unanimous consent, from the Committee on Invalid Pensions, reported back, with a favorable recommendation, the bill (S. No. 832) to increase the pension of Helen M. Stansbury; which was referred to the Committee of the Whole on the Private Calendar. Mr. RAINEY. The Committee on Invalid Pensions have adopted the report of the Senate Committee on Pensions upon this bill, and I ask that it be reprinted for the use of the House.

No objection being made, it was so ordered.

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Mr. RAINEY also, by unanimous consent, reported from the same committee adversely upon the petition of Mrs. Margaret A. Gillem, praying for an increase of pension; which was laid on the table and the accompanying report ordered to be printed.

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Mr. FENN, by unanimous consent, presented the memorial of the Legislative Assembly of the Territory of Idaho, for reducing the limits of the Fort Hall Indian reservation; which was referred to the Committee on Indian Affairs, and ordered to be printed.

## W. S. M'COMB.

Mr. BLOUNT. I ask unanimous consent to take from the Speaker's table for consideration at this time Senate bill No. 286, for the relief

of W. S. McComb, of the State of Georgia.

The bill, which was read, directs the proper accounting officer of the Treasury to audit and settle the claim of W. S. McComb, of the State of Georgia, for furnishing stable-room for Government animals after the suppression of hostilities in the late war, and for which a

after the suppression of hostilities in the late war, and for which a voucher now on file in the Treasury Department was given, and to allow him the sum of \$195, the amount named in the voucher.

Mr. CONGER. That should go to the Private Calendar.

Mr. RUSK. Let it be referred to some committee.

Mr. BLOUNT. If there is objection to its present consideration, I will ask that it be referred to the Committee on Military Affairs.

Mr. EDEN. It should go to the Committee on War Claims.

Mr. BLOUNT. It is a matter that came up since the war, and should go to the Committee on Military Affairs.

Mr. WILSON, of Iowa. The bill says that there is a voucher on file for that amount of money, and it must be an exception to the general rule. general rule.

Mr. CONGER. Let it go to a committee.
Mr. BLOUNT. It was before a Senate committee and passed with-

out objection.

Mr. CONGER. Let it go to a House committee.

Mr. BLOUNT. Then I ask that it be referred to the Committee on

Military Affairs.

No objection being made, the bill was taken from the Speaker's table, read a first and second time, and referred to the Committee on Military Affairs, not to be brought back on a motion to reconsider.

## PENSION BILLS.

Mr. BAGBY, by unanimous consent, from the Committee on Invalid Pensions, reported back with a favorable recommendation the following bills; which were referred to the Committee of the Whole on the Private Calendar, and the accompanying reports ordered to be printed:

A bill (S. No. 813) granting a pension to Lawrence P. N. Landrum; A bill (S. No. 882) granting a pension to Stillman E. Diggs, of Hampton, Virginia; and A bill (S. No. 980) granting a pension to Irena Garrett.

## SURVEY OF UNION PACIFIC RAILWAY.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report of the survey of the Union Pacific Railway; which was referred to the Committee on the Pacific Railroad, and ordered to be printed.

## LUCY A. BARKER.

Mr. WATTERSON, by unanimous consent, introduced a bill (H. R. No. 4608) for the benefit of the heirs of Lucy A. Barker; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

6th day of February, is not now in order. That day has not been reached and the gentleman asks unanimous consent that that bill may be considered when next we shall have a day after the morning hour. Is there objection? The Chair hears none, and it is so ordered.

### W. H. CUMMINS.

Mr. KASSON, by unanimous consent, introduced a bill (H. R. No. 4599) granting a pension to W. H. Cummins, late a private in Company H, Eighth Iowa Infantry Volunteers; which was read a first and second time, and, with the accompanying papers, referred to the Committee on Invalid Pensions, and ordered to be printed.

### AMERICAN REGISTRY TO A BRITISH BARK.

Mr. CRAPO, by unanimous consent, introduced a bill (H. R. No. 4600) granting American registry to the British bark W. A. Farnsworth, and changing the name of said vessel to The Lapwing.

#### SARAH WHARTON.

Mr. FLYE, by unanimous consent, introduced a bill (H. R. No. 4601) granting a pension to Sarah Wharton; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

### CAPITOL GROUNDS.

Mr. LEAVENWORTH, by unanimous consent, submitted the following resolution; which was read, and referred to the Committee on Public Buildings and Grounds:

Public Buildings and Grounds:

Whereas it is a matter of great public interest that the beantiful but comparatively maked grounds about the Capitol should be adorned with trees and shrubbery at the earliest practicable day;
And whereas the persons now employed to accomplish this very desirable object seem to be profoundly ignorant of the first elements of the science of arboriculture; this appears:

First, by their neglect to remove all superfluous branches;
Second, by omitting to form symmetrical heads to the trees; and
Third, by neglect to cut in the branches which form the heads, in consequence of which neglect a very unusual and unnecessary proportion of said trees, amounting in some parts of the grounds to one-half, have died, and those which have survived have no beauty of form and little constitutional vigor: Therefore,

Resolved, That the Committee on Public Buildings and Grounds be, and they are hereby, instructed to inquire into the necessity of causing some suitable person to be employed to perform this important work.

#### MARTHA E. BETTIS.

Mr. RIDDLE, by unanimous consent, introduced a bill (H. R. No. 4602) for the relief of Mrs. Martha E. Bettis, of Sumner County, Tennessee; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

## SYDNEY F. STILLEY.

Mr. HYMAN, by unanimous consent, introduced a bill (H. R. No. 4603) for the relief of Sidney F. Stilley, late postmaster at Washington, North Carolina; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## E. R. AMES.

Mr. SPRINGER, by unanimous consent, introduced a bill (H. R. No. 4604) to authorize the President to re-instate E. R. Ames, late captain Sixth Infantry, and assign him to a regiment; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

## MILO M. ADAMS.

Mr. SPRINGER also, by unanimous consent, introduced a bill (H. R. No. 4605) granting an honorable discharge to Milo M. Adams, of Company B, One hundred and eleventh Regiment Pennsylvania Volunteer Infantry; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

## OWEN T. EDGAR AND OTHERS.

Mr. WILLIAMS, of Delaware, by unanimous consent, introduced a bill (H. R. No. 4606) for the relief of Owen T. Edgar, Charles G. Evans, William W. Graham, Charles B. Smith, and the heirs of Joseph J. P. Ouidan; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## ARCTIC EXPLORATION.

Mr. SAYLER. I ask unanimous consent to present at this time a memorial from the Chamber of Commerce of Cincinnati, and as it is very brief I will ask that it be printed in the RECORD.

Mr. CONGER. What is the subject of it? I want to know before

Mr. SAYLER. It relates to a bill providing for another explora-

Mr. CONGER. I have no objection.

No objection being made, the memorial was received, referred to the Committee on Naval Affairs, and ordered to be printed in the RECORD. It is as follows:

It is as ionows:

Cincinnati Chamber of Commerce and Merchants' Exchange,

February 2, 1877.

At a regular session of the Cincinnati Chamber of Commerce, held this day, the following resolutions were adopted:

"To the honorable Senate and House of Representatives of the United States of America in Congress assembled:

"Whereas the Cincinnati Chamber of Commerce, whose province relates specially to commerce and trade, is assured that the security and extension of the commerce of the world depend largely upon accurate information respecting the physics of

the globe, and that most of such information already acquired has been facilitated by observations made within the arctic regions, and that the benefits accruing directly and indirectly to the commerce of the world from polar explorations are more than equal to the money expended in such explorations: Therefore, "Be it resolved, That we, in the interest of science as well as in behalf of commerce and trade—mutually and inseparably linked together—heartily approve and respectfully urge the passage of the bill providing for another and eminently practicable expedition toward the north pole for purposes of exploration and the establishment of a colony at some point north of the eighty-first degree of north latitude.

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INDIANS IN NEW YORK, NORTH CAROLINA, AND MICHIGAN.

Mr. SEELYE. I ask unanimous consent to report back from the Committee on Indian Affairs a bill to which I think there will be no objection, and to ask for its consideration at this time.

The title of the bill was read, as follows:

A bill (H. R. No. 3593) to provide for the transfer to the States of Michigan, New York, and North Carolina of the care and custody of the Indians and their lands now found within those States.

The bill was read, as follows:

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Bettenacted, &c., That the Secretary of the Interior be, and is hereby, authorized to negotiate with the governors of the States of Michigan, New York, and North Carolina, and with the Indian tribes occupying reservations within said States, for a transfer to these States respectively of the special guardianship now exercised by the United States over these Indians and their lands.

SEC. 2. That whenever it shall appear that either of the States aforesaid will accept the care and custody of the Indians and their lands within its borders, and the Indians shall give their assent to the same, the special guardianship now exercised by the United States over these Indians and their lands shall cease; and the annual interest upon all stocks and bonds now held in trust for such Indians by the United States shall thenceafter be paid to such officer of the said State as may be authorized to receive the same.

Mr. PHILLIPS, of Kansas. I object.
Mr. O'BRIEN. I call for the regular order.
The SPEAKER. The regular order is the motion of the gentleman from Pennsylvania [Mr. CLYMER] that the House take a recess until to-morrow morning at ten o'clock.
Mr. CONGER. Will the Chair please state the understanding as

to the order of business when we meet to-morrow?

The SPEAKER. The understanding is, that at ten o'clock to-morrow morning there shall be a further recess until five minutes before twelve o'clock.

The motion of Mr. Clymer was agreed to; and accordingly (at three o'clock and thirty minutes p. m.) the House took a recess until ten o'clock a. m. to-morrow.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. AINSWORTH: The petition of 103 citizens of Adel, Iowa, for the repeal of the bank-tax laws, to the Committee of Ways and

Means. By Mr. J. H. BAGLEY: Three petitions from citizens of Illinois,

By Mr. J. H. BAGLEY: Three petitions from citizens of Illinois, of similar import, to the same committee.

By Mr. BANKS: The petition of W. C. Thompson, of Lynn, Massachusetts, that greenbacks may be received in payment of customs duties and all other dues to the Government, to the same committee.

By Mr. BLACKBURN: The petition of citizens of Woodford County, Kentucky, of similar import, to the same committee.

By Mr. BOONE: The petition of J. M. Gill and others, of Kentucky, of similar import, to the same committee.

By Mr. BURCHARD, of Illinois: The petition of citizens of Illinois, for cheap telegraphy, to the Committee ou the Post-Office and Post-Roads.

By Mr. CANNON of Illah: The petition of citizens of Rush Lake.

By Mr. CANNON, of Utah: The petition of citizens of Rush Lake,

By Mr. CANNON, of Utah: The petition of citizens of Rush Lake, Utah, for cheap telegraphy, to the same committee.

By Mr. CASWELL: The petition of G. Van Steinwick and 136 other citizens of La Crosse, Wisconsin, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. CATE: The petition of J. W. Bingham and others of New London, Wisconsin, of similar import, to the same committee.

By Mr. CAULFIELD: The petition of citizens of Charleston, Illinois, of similar import, to the same committee.

By Mr. CRAPO: The petition of the National Bank of Redemption and 13 other banking institutions of Massachusetts, of similar import, to the same committee.

port, to the same committee.

Also, the petition of T. Hoffman and 26 others of Stockbridge,

Also, the petition of T. Holman and 26 others of Stockbridge, Massachusetts, of similar import, to the same committee.

By Mr. CUTLER: A paper relating to the establishment of a post-route from Morris Plains to Parsippany, via Littletown, to the Committee on the Post-Office and Post-Roads.

By Mr. DAVIS: Three papers relating to the establishment of post-routes between Clayton and Wilson, between Nashville and Peachtree, and between Raleigh and Rogers's Store, North Carolina, to the same committee.

same committee.

By Mr. DAVY: The petition of citizens of Webster, New York, for

By Mr. DAVY: The petition of citizens of Webster, New York, for cheap telegraphy, to the same committee.

Also, the petition of citizens of Rochester, New York, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. DURAND: The petition of F. F. Hyatt and 42 other citizens of Flint, Michigan, of similar import, to the same committee.

By Mr. DURHAM: The petition of citizens of Lexington, Kentucky, of similar import, to the same committee.

By Mr. EGBERT: The petition of citizens of East Greene, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Post-Roads.

Also, the petition of citizens of Scranton, Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways and Means. By Mr. FINLEY: The petition of citizens of Saint Augustine, Florida, for the donation of a certain lot of land in said city by the United States on which to erect a church building, to the Committee on Public Lands.

By Mr. FORNEY: The petition of citizens of Mobile, Alabama, for the repeal of the bank-tax laws, to the Committee of Ways and Means

Means.

By Mr. FORT: Two petitions, one from James Rodgers and 170 other citizens of Illinois, the other from E. A. Bowen and 100 other citizens of Mendota, Illinois, of similar import, to the same committee.

By Mr. GLOVER: Two petitions, one from 57 citizens of Bates and Butler Counties, the other from 154 citizens of the twelfth congressional district of Missouri, of similar import, to the same committee. Also, the petition of J. F. Howard, M. D., Columbus Alexander, J. E. Morgan, M. D., and 26 other citizens of the District of Columbia, for an appropriation for the erection of the Washington Inebriate Asylum, to the Committee on Appropriations.

By Mr. GOODE: The petition of the Mexican Veteran Association of Norfolk and Portsmouth, Virginia, that pensions may be granted to them without reference to political disabilities, and that the same may date from the time of their discharge, to the Committee on Invalid Pensions. valid Pensions.

By Mr. GUNTER: The petition of John A. Purner, of Washington, District of Columbia, for compensation for damage to his property by reason of a change of the drainage of the grounds of the Soldiers' Home, to the Committee for the District of Columbia.

By Mr. HALE: The petition of Daniel Farnsworth and 37 other citizens of Jonesborough, Maine, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HARRISON: Three petitions from citizens of Manchester, Chicago, and Ford County, Illinois, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

Also, the petition of the Board of Trade of Chicago, Illinois, of similar import, to the same committee. By Mr. GUNTER: The petition of John A. Purner, of Washington,

Also, the petition of the Board of Trade of Chicago, Illinois, of similar import, to the same committee.

By Mr. HAYMOND: The petition of 21 citizens of Monticello, Indiana, of similar import, to the same committee.

By Mr. HENKLE: The petition of the mayor and city council of Baltimore, Maryland, for the removal of Fort Carroll from the Potapsco River, to the Committee on Commerce.

By Mr. HILL: Memorial of Mary Ann Washington, that her title to certain Lands at Hot Springs, Arkansas, may not be destroyed, to the Committee on Public Lands.

By Mr. HOPKINS: The petition of 151 bank officers and business men of Pittsburgh, Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. HUNTON: Two petitions, one from R. B. Holladay, cashier of the Union Bank of Winchester, the other from other citizens of Winchester, Virginia, of similar import, to the same committee.

By Mr. KASSON: The petition of citizens of Iowa, of similar import, to the same committee.

port, to the same committee.

By Mr. KIDDER: The petition of 250 citizens of Northeast Dakota, for a new land district in Northern Dakota and location of local land office therefor at Pembina, Dakota Territory, to the Committee on

Public Lands.

By Mr. LANDERS, of Connecticut: The petition of Charles W.

Brown and 30 others of Stamford, Connecticut, for the repeal of the
bank-tax laws, to the Committee of Ways and Means.

By Mr. LANDERS, of Indiana: The petition of 55 citizens of Greens-By Mr. LANDERS, of Indiana: The petition of 55 citizens of Greensburgh, Indiana, that pensioners be granted pensions from the date of their discharge, to the Committee on Invalid Pensions.

Also, the petition of 55 citizens of Cartersburgh, Indiana, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LAWRENCE: Two petitions, one from citizens of Loudonville, the other from citizens of Pomeroy, Ohio, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. LEAVENWORTH: The petition of Lewis H. Redfield, William Brown Smith, and 38 other citizens of Canandaigua, New York, of similar import, to the same committee.

similar import, to the same committee.

By Mr. LE MOYNE: Three petitions, from citizens of Chicago and Douglas County, Illinois, of similar import, to the same committee.

By Mr. LYNCH: Two petitions, one from David Furguson and 20 others, bankers of Milwaukee, the other from M. W. McDonnell and 32 others, bankers and citizens of Wisconsin, of similar import, to the

same committee.

By Mr. MACKEY: Three petitions, from citizens of Dauphin and Lebanon Counties, from citizens of Germantown, and from citizens of Freeport, Pennsylvania, of similar import, to the same committee.

By Mr. MAGOON: The petition of L. D. Hopkins and 62 other citizens of Crawford County, Wisconsin, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. MAISH: Three petitions from citizens of Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

Means

By Mr. MORGAN: A paper relating to the establishment of a postroute from Dayton, via Shoalsburgh, to Murphysburgh, Missouri, to the
Committee on the Post-Office and Post-Roads.

By Mr. MUTCHLER: Two petitions from citizens of Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways

and Means.

By Mr. O'NEILL: The petition of citizens of Pennsylvania, of

similar import, to the same committee.

Also, the petition of physicians and surgeons, for the printing by the Government of the subject catalogue of the National Medical Library, to the Committee on Appropriations.

By Mr. PAGE: Memorial of J. M. Hogan, for compensation on account of damages sustained by depredations of Indians, to the Committee on Indian Affairs.

By Mr. PHILIPS, of Missouri: The petition of citizens of Missouri, of similar import, to the same committee.

By Mr. PHILIPS, of Kansas: The petition of citizens of Topeka, Kansas, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

Ways and Means.

By Mr. PLAISTED: The petition of J. Dingley and 15 other citizens of Auburn, Maine, of similar import, to the same committee.

By Mr. REA: The petition of citizens of the States of Missouri and Illinois, of similar import, to the same committee.

By Mr. JOHN REILLY: Four petitions from 60 citizens of Penn-

sylvania, of similar import, to the same committee.

By Mr. ROBERTS: The petition of citizens of Baltimore, Maryland, of similar import, to the same committee.

By Mr. ROSS, of New Jersey: Five petitions from citizens of Linden, Rahway, Woodbridge, New Brunswick, Randolph, Rochester, Jersey City, and Pitts Grove, New Jersey, of similar import, to the

den, Ranway, Woodbridge, New Britiswick, Randship, Rockett,
Jersey City, and Pitts Grove, New Jersey, of similar import, to the
same committee.

By Mr. SCALES: A paper relating to a post-route from Centre to
Greensborough, by way of Ryan Old Cross Roads, North Carolina, to
the Committee on the Post-Office and Post-Roads.

By Mr. SHEAKLEY: The petition of citizens of Allentown, Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways and Means

By Mr. SPARKS: The petition of citizens of Illinois, of similar im-

port, to the same committee.

By Mr. SPRINGER: Four petitions from citizens of Quincy, Illinois, Cincinnati, Ohio, and Aledo, Illinois, of similar import, to the

same committee.

By Mr. STEVENSON: Three petitions from citizens of Rock Island,
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By Mr. THOMAS: The petition of 21 citizens of Baltimore, Mary

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By Mr. TOWNSEND, of Pennsylvania: The petition of W. H. Foster and 43 other citizens of Honesdale, Pennsylvania, of similar import, to the same committee.

By Mr. TUFTS: The petition of citizens of Decorah, Iowa, of similar import, to the same committee.

By Mr. VAN VORHES: The petition of John G. Peebles and other

officers of various banking institutions of Portsmouth, Ohio, of simi-

lar import, to the same committee.

By Mr. WALLACE: The petition of Francis P. Steel and other bankers of Philadelphia, of similar import, to the same committee.

By Mr. WALSH: The petition of H. H. Haines and other citizens of Washington County, Maryland, of similar import, to the same

committee.

By Mr. WARNER: The petition of John B. Robertson and 81 other citizens of Connecticut, of similar import, to the same committee.

By Mr. WILLIAMS, of Delaware: Three petitions from citizens of Wilmington, Milford, and Newark, Delaware, of similar import, to the same committee.

By Mr. W. B. WILLIAMS: The petition of Charles McKillip and 31 other citizens of Muskegon, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WOOD, of Pennsylvania: The petition of citizens of Mount Carmel, Pennsylvania, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

## IN SENATE.

## WEDNESDAY, February 7, 1877-10 a.m.

The Senate resumes its session. On motion of Mr. SARGENT, the Senate took a recess until twelve o'clock.

The Senate re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. Byron Sunderland, D. D.

The Journal of the proceedings of Tuesday, February 6, was read and approved.

## MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had appointed Mr. John B. Clark, jr., of Missouri, Mr. William S. Holman of Indiana, and B. CLARK, Jr., of Missouri, Mr. WILLIAM S. HOLMAN of Indiana, and Mr. Alexander Camprell of Illinois, conferees on the part of the House at the further conference heretofore asked by the House on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3628) establishing post-roads.

The message also announced that the House had non-concurred in the amendments of the Senate to the bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the amendment thereof for the fixed war working Let 20, 1878.

for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes,

HOUSE BILL REFERRED.

The bill (H. R. No. 4572) to remove the political disabilities of James D. Johnston, of Savannah, Georgia, was read twice by its title and referred to the Committee on the Judiciary.

## MILITARY ACADEMY APPROPRIATION BILL.

The Senate proceeded to consider its amendments disagreed to by the House of Representatives to the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes.

On motion of Mr. WINDOM, it was

Resolved. That the Senate insist upon its amendments to the said bill disagreed to by the House of Representatives and ask a conference with the House of Representatives on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the President pro tempore.

The PRESIDENT pro tempore appointed Messrs. Allison, Logan, and Wallace the conferees on the part of the Senate.

#### PETITIONS AND MEMORIALS.

Mr. HOWE presented a petition of Charles J. L. Meyer and others, and a petition of Edward Pier and others, of Fond du Lac, Wisconsin, praying the repeal of the law imposing a tax on the deposits, circulation, and capital of all banks; which were referred to the Committee on Finance.

Mr. BOGY presented a memorial of business men of Missouri, remonstrating against the passage of the House bill authorizing the construction of a bridge across the Missouri River at or near Glasgow in that State; which was referred to the Committee on Commerce.

Mr. CONKLING presented the petition of Captain Egbert Thompson, United States Navy, praying to be restored to the active list of the Navy; which was referred to the Committee on Naval Affairs.

### REPORTS OF COMMITTEES.

Mr. HOWE, from the Committee on the Library, to whom the subject was referred, reported a bill (S. No. 1231) to provide additional accommodation for the Library of Congress; which was read twice

Mr. INGALLS, from the Committee on Indian Affairs, to whom was referred the bill (8. No. 1212) to enable Indians to become citizens of the United States, reported it with an amendment.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (8. No. 1029) for the relief of persons having claims against the United States under the provisions of the captured and abandoned property act, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill

He also, from the same committee, to whom was referred the bill (S. No. 432) to re-open, state, and settle the claims of the several States against the United States for advances made in the war of 1812, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 2833) for the relief of Susan P. Vance, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

be printed.

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 497) for the relief of Nathaniel McKay, reported it without amendment, and submitted a report thereon; which

was ordered to be printed.

Mr. SARGENT, from the Committee on Naval Affairs, to whom was recommitted the bill (S. No. 932) for the relief of David De Haven, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

## BILLS INTRODUCED.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1232) to repeal an act entitled "An act to incorporate the National Capital Insurance Company," and to provide for winding up the affairs of said corporation; which was read twice by its title, and referred to the Committee on the District of Colum-

Mr. JONES, of Florida, asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1233) to authorize William A. Dorner and others to construct a ship-canal at the head of Lake George, Florida; which was read twice by its title, and referred to the Committee on Commerce.

Mr. LOGAN asked, and by universal consent obtained, leave to introduce a bill (8. No. 1234) to repeal the joint resolution providing for the postponement of the publication of the Army regulations, approved Angust 15, 1876; which was read twice by its title, and ordered to lie on the table.

## POST-ROUTE BILL.

Mr. HAMLIN. I move that the Senate now concur with the House of Representatives in appointing a new conference on the bill (H. R. No. 3628) establishing post-roads.

The motion was agreed to.

The President pro tempore was authorized by unanimous consent to appoint the committee on the part of the Senate, and Messrs. Ham-LIN, DORSEY, and DAVIS were appointed.

## THE LEGISLATIVE DAY.

Mr. BOUTWELL. I present a resolution for reference to the Committee on Rules in regard to the legislative day. I do not know that any trouble will arise from the present mode of proceeding, but I think it would be well to have the Committee on Rules consider whether difficulties may not result.

The PRESIDENT pro tempore. The resolution will be read.

The Chief Clerk read as follows:

Resolved by the Senate, (the House of Representatives concurring.) That during the sessions of the commission appointed under the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4. A. D. 1877, each calendar day shall by each House, when in session, be considered a day for legislative purposes.

The resolution was referred to the Committee on Rules.

#### PERSONAL EXPLANATION.

Mr. DAVIS. I rise to what is in the nature of a personal explana-tion. I find in this morning's Union, published in this city, a letter purporting to have been addressed to myself, headed "Pension Bureau Frauds." It says:

The following copy of a letter addressed to Senator Davis by a former employe of the Pension Bureau has been furnished us for publication.

A letter similar to the one here published was handed me a week or so ago by the gentleman who signs this letter, T. P. Kane, formerly in the special service of the Pension Bureau. I know nothing of the

publication. It in no way came through me.

I have also a letter this morning from the Commissioner of Pensions calling my attention to the letter in the Union, and asking certain questions. I know nothing of the truth of any of the charges made. They may or may not be true. If true, they ought to be looked into. The subject is one for others than myself to look into. The chairman of the Committee on Pensions probably will see the letter and see if there is anything in it worthy of notice.

I make this explanation, it being due as I believe to myself to state that the letter did not come from me for publication.

## ACCOUNTS OF KASKASKIAS, PEORIAS, ETC.

Mr. CLAYTON. I move to proceed to the consideration of the bill (S. No. 1142) to authorize and empower the Secretary of the Interior to adjust and settle the account of the Kaskaskia, Peoria, Pianke-

to adjust and settle the account of the Kaskaskia, Peoria, Piankeshaw, and Wea Indians.

The PRESIDENT pro tempore. Is there objection to the motion?

Mr. WINDOM. I do not object if it does not give rise to debate.

The PRESIDENT pro tempore. The Chair will, if there be no objection, put the question on the motion to proceed to the consideration of the bill.

of the bill.

Mr. WINDOM. I object if it gives rise to debate.

Mr. CLAYTON. I think it will not. I should like to state though in a very few words what this bill proposes to do.

The PRESIDENT pro tempore. If there be objection the motion cannot be entertained at this time.

Mr. INGALLS. Does one objection prevent its consideration?

The PRESIDENT pro tempore. One objection prevents a motion to proceed to the consideration of a particular bill within the morning hour.

Mr. INGALLS. I suppose that applies to all bills. It is rather a

Mr. INGALES. I suppose that applies to all blus. It is rather a cut-throat game.

Mr. CLAYTON. Yes, it is something we can all play at.

Mr. WINDOM. I have no objection to a brief statement from the Senator from Arkansas, provided it does not lead to debate; but there is other business that I think ought to be heard in the morning hour.

Mr. CLAYTON. I shall not press the matter. I merely reported the bill from the committee, and of course I consider it my duty to call

it up. If any Senator sees proper to interpose his objection, of course he can do it.

Mr. WINDOM. I am entirely willing to reserve my objection until the Senator makes a brief statement; and then if it gives rise to de-

the Senator makes a brief statement; and then if it gives rise to debate, I must object.

Mr. CLAYTON. There is a written report; but the report is rather lengthy and therefore I propose to make a brief statement.

The PRESIDENT pro tempore. Is there any objection to the Senator making a statement? The Chair hears none.

Mr. CLAYTON. This bill is reported from the Committee on Indian Affairs. The committee examined into the papers before them and the statements from the Department, and became satisfied that certain sums of money had been diverted from this trust fund. This fund was held in trust by the Government for the benefit of these Indians, and it was required to be invested in securities. The committee became satisfied that there was a claim on the Government for mittee became satisfied that there was a claim on the Government for the improper diversion of certain portions of the fund; but the committee did not feel disposed to enter into all the details of the statement, and therefore by an amendment to the bill the committee pro-pose to have the whole matter referred to the Secretary of the Interior who may re-open these accounts and examine them, and if he finds that any money has been misapplied or misappropriated or diverted from the funds, to report that fact to the next session of Congress. That is all the bill provides for as proposed to be amended; and it

calls for no appropriation.

The PRESIDENT pro tempore. Is there objection to this motion?

The Chair hears none. The Chair will put the question on the mo-

The motion was agreed to; and the bill was considered as in Com-

The motion was agreed to; and the bill was considered as in Committee of the Whole.

The Committee on Indian Affairs reported an amendment to the bill to strike out, commencing on line 11, the following words:

And to enable the Secretary of the Interior to indemnify the funds of said Indians for any diminutions which it may have sustained thereby, the sum of thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated: Provided, That in such readjustment and settlement members who became citizens under the treaty of 1867 shall be treated in all respects as if they were at present members of the tribe, and entitled to an equal share of the tribal property, less any amount heretofore received by them.

And in lian thereof to insert.

And in lieu thereof to insert:

And report the sum so found, if any, to Congress at its next session.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amend-ment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

Mr. SHERMAN. I now call up the bill which was pending yesterday morning. It is important to have it disposed of. It is the bill in regard to the Freedman's Bank. My friend from Massachusetts [Mr. BOUTWELL] has prepared an amendment which I think will remove the only objection made to the bill yesterday.

The PRESIDENT pro tempore. Is there objection to this motion? The Chair hears none. The Chair will put the question on the mo-

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property, and to sell the same

at public or private sale, and for other purposes.

Mr. SHERMAN. I will now offer as an amendment, and I call the attention of the Senator from Pennsylvania [Mr. CAMERON] to it,

this addition to the first section:

Provided, That no sale of real estate shall be made by said commissioners except at public auction, of which due notice shall be given, unless such sale and the terms thereof shall have been first approved by one of the justices of the supreme court of the District of Columbia.

I ought to say that this will involve some expense, but on the whole, if there is any suspicion about the matter, it is better that it should be done than that the sales should be made without limit.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

JAMES B. EADS.

Mr. WINDOM. I move to take from the table House bill No. 4540,

known as the Eads bill.

The motion was agreed to; and the bill (H.R. No. 4540) to provide for the payment of James B. Eads for the construction of jetties and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States, was considered as in Committee of

the Whole.

Mr. WINDOM. I moved to take this bill from the table for the purpose of moving its indefinite postponement under instruction of the Committee on Appropriations.

Mr. CAMERON, of Pennsylvania. Before the Senator makes his motion I wish he would give some reasons for it.

Mr. WINDOM. I submit a printed report from the Committee on

Appropriations.

The PRESIDENT pro tempore. The report will be read.

The Secretary read the following report submitted by Mr. WINDOM, from the Committee on Appropriations, on the 6th instant:

The Secretary read the Ioliowing report stimilited by Mr. Window, from the Committee on Appropriations, on the 6th instant:

The Committee on Appropriations, to which was referred the bill (H. R. No. 4540) appropriating \$500,000 to pay the requisition of the Secretary of War, in favor of James B. Eads, on account of the improvement of the bar at the South Pass of the Mississippi River, respectfully report:

That the act approved March 3, 1875, under which said improvement is being made, provides that when certain conditions therein stated shall be fully complied with on the part of said Eads, and a specified width and depth of channel shall have been obtained, the United States shall pay to said Eads \$500,000.

The act makes it the duty of the Secretary of War "to embody in his annual report the payments made from time to time under this act, and the probable times when other payments will become due," and it declares—

"Sec. 13. That the Secretary of War be, and he is hereby, authorized and directed to carry into effect the provisions of this act on behalf of the United States, and when the said Eads and his associates shall from time to time have fulfilled on their part the several foregoing conditions of this act, to draw his warrants upon the Treasurer of the United States in favor of said Eads, or his legal representatives, in payment of the aforesaid amounts as they respectively become due by the provisions of this act."

And

"Sec. 14. That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved; and the Secretary of the Treasury is hereby directed to issue the bonds of the United States, bearing 5 per cent, interest, of the character and description set out in the act entitled "An act to anthorize the refunding of the public debt," approved July 14, 1870, to said Eads or his legal representatives, in payment at par of the aforesaid warrants

of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of

who say provided for the payment of the same by the necessary appropriations of money."

The committee, having carefully examined the law and the facts, find—
First. That the said Eads, having fulfilled the required condition of the contract on his part, and secured the specified width and depth of channel, received the requisition or warrant of the Secretary of War for \$500,000 on the 19th of January,

1877.

Second. That Congress had not "previously provided for the payment of the same by the necessary appropriations of money."

Third. That no appropriation having been "previously provided," Mr. Eads, on the 20th of January, 1877, demanded payment of the said requisition in bonds.

The committee is clearly of the opinion that Mr. Eads is entitled, under the law to receive at once the bonds therein described, at par, in payment of the said requisition of the Secretary of War in his favor, Congress having failed to "previously provide for the payment of the same by the necessary appropriations of money."

noney."

The committee believe that the act approved March 3, 1875, was intended to, and does, fully provide for the prompt payment of the sums of money therein stated as they shall respectively become due, and that the option of the Government to, pay the same in money or bonds must be exercised by Congress in time to meet the warrants drawn by the Sceretary of War. In the present case Congress had timely notice from the Secretary of War in his annual report, dated November 20, 1876, of the probable time when the payment would become due.

The committee therefore recommend that appropriations to meet the payments which will probably become due during the present assession of Congress, and that as the law fully entitles Mr. Eads to receive the payment now due in bonds, it is recommended that House bill No. 4540 be indefinitely postponed.

Mr. MORRILL. Mr. President, it is a little singular that all these conditions and options should operate against the Government of the Conditions and options should operate against the Government of the United States. I understand that these bonds are worth about 12½ per cent. premium, so that the proposition of this report is to give Mr. Eads about \$60,000 bonus for the reason that the money was not ready in greenbacks on the 17th of January or whatever the day was. I do not know who is responsible for this delay, this omission to make the appropriation. I am sure that no appropriation has been asked for here in the Senate. Whether it has been asked for in the other House or not, I am not advised, but certainly this appears to me to be a legal question, and it strikes me it is far better that we should pass the bill as it came from the House, and then if Mr. Eads has a claim

the bill as it came from the House, and then if Mr. Eads has a claim upon the Government for \$60,000 more, let him pursue it in the courts. Mr. CAMERON, of Pennsylvania. I agree very fully with what has been said by the Senator from Vermont, and I will add that it seems to me there is a sharp practice about this which to the natural mind cannot be explained. I have great desire that that improvement of the Mississippi should be completed, and I have had great faith in Mr. Eads from the beginning. I voted for the contract being made with him, as I have voted for every appropriation while I have been in the Senate which would add to the improvement of the navigation of that great river. Mr. Eads undertook an experiment, and we agreed to pay him a price which no nation in the world would have paid him if it had been certain that he could have succeeded. We paid him a venture upon his experiment, and we paid him a premium upon his great ability, for I believe he has great ability of that kind; and by the way his great ability is his courage, his good sense, and his good judgment. We agreed to give him \$500,000 in money or bonds when he secured a certain depth of water, in the belief that the Government he secured a certain depth of water, in the belief that the Government might not have the money at the time when this sum would become might not have the money at the time when this sum would become due to him, and as is natural in all business the Government was entitled to the alternative. Suppose you make a bargain, Mr. President, with a man to make a great work for you, and you say to him, "If I cannot pay you the money at that day, I will give you my note." He generally believes that note is worth less than the cash will be, and he will charge you more because he is afraid he is not going to get the cash. But after the work is done you find you have got the money in your chest, and you say to him, "I will give you the money." One of your agents may not have been quick enough to have the money your chest, and you say to him, "I will give you the money." One of your agents may not have been quick enough to have the money to present to him, or there may have been some informality in the presenting of the accounts, and he comes and says, "Now I find, Mr. Ferry, that your note is worth 12 per cent. more than your cash, and therefore I demand your note." The injustice is this: Every month the Government of the United States is buying her own bonds. The people of the country and the Congress of the United States are anxious to reduce the public debt, and we say to the Secretary of the Treasury, "Every month whatever balance you have invest in our own securities." Now, when we have the money in bank, as it were, this gentleman comes here and says, "I can make a speculation of \$60,000 by getting your bonds, and adding that much to the debt of the Government of the United States." Would any man in private life say that was right? Not one that I ever heard of. My pursuits all my life have been those of business and money; and I tell you that when I make a bargain to pay either in cash or in my note, the other party believes he is going to suffer if I give him the note in place of the money. If we pay Mr. Eads now his money, that is all he ought to ask for; and if he were as wise a man as I believe he is, he ought to resort to no trick, no sharp practice, because he has got to get a great deal from this nation before his contract is finished. I believe that that work, if it succeeds, and I think it will succeed, will do more than that work, if it succeeds, and I think it will succeed, will do more than any experiment that has ever been tried on the subject of the Mississippi River. But I believe also that if it does succeed, the sum that we agreed to pay him will be the largest sum of money for the amount of labor done that has ever been paid in the world for a similar amount

Mr. WINDOM. - The illustration employed by the honorable Sena-

tor from Pennsylvania strikes me as very appropriate to this case. except that he does not make the right application of it. If the Senator enters into a contract with me that upon the performance of senator enters into a contract with me that upon the performance or certain conditions on my part I may draw upon him for a given sum of money, and if he has not the money ready to meet that draft he will give me his note, I think he will agree with me that as an honorable business man, as I know he is, that his note must be given. It is well known that his note at 6 per cent. would be above par; and if he has agreed to give it to me and has failed to provide the money at the time, I am sure that if I should make the application to him he would not refuse to comply with his contract. And yet that is precisely what the honorable Senator insists the Government shall do, namely, place itself in a position which he himself would not occupy as an individual.

Now, what are the facts? I happen to know something of the contract made with Captain Eads, having been a member of the committee that reported the bill and of the subcommittee that drew the law which we are now interpreting, and I know so much of the intent and meaning of that contract that I cannot for one honorably report otherwise than has been reported from the Committee on Appropriations at this time. The facts were these—and I mention them to illustrate my construction of this law—Captain Eads proposed to to illustrate my construction of this law—Captain Eads proposed to open the mouth of the Mississippi River to a depth of twenty feet, for which he was to receive \$500,000. He was then to add other improvements, increasing the depth to twenty-two, twenty-four, twenty-six, twenty-eight, and thirty feet, and his pay was to be graduated according to the depth reached. The committee having charge of that bill at the time did everything in their power to bind Captain Eads down to the strictest compliance with the law. He proposed to do what no other contractor, so far as I am aware, has ever proposed to do in this country, to perform a great work on his own account and do in this country, to perform a great work on his own account and at his own expense, to guarantee its success, or, in other words, upon the principle of "no cure no pay."

There were serious doubts whether Captain Eads could perform this condition, and the Committee on Transportation, which had charge of the bill, determined, as I said a moment ago, to require from him the strictest performance, and spent several days in studying this measure in order to tie him down as strictly as possible to compliance with his contract. When we had succeeded to our satisfaction in throwing around it every possible safeguard for the completion of the work, Captain Eads said to us, "Now I have agreed to your proposition, I have one to make to you, namely, when I have by the expenditure of my own money performed this work, complied fully with the conditions, I shall not be compelled to await the delays of Congress in making an appropriation for it;" and at his suggestion, in order to avoid that difficulty, we placed this provision in the law, to wit, that if when his conditions had been complied with and the warrant of the Secretary of War was drawn upon the Treasury, the money was not then provided to meet it, the bonds should be delivered to him without delay. What was the object of that provision? Without some such provision Captain Eads might have expended a million or two of money, secured the requisite depth at the mouth of the There were serious doubts whether Captain Eads could perform this ion or two of money, secured the requisite depth at the mouth of the Mississippi, received the draft of the Secretary of War upon the Treasury in the month of July, say, and he must wait six months probably until the meeting of Congress and then five or six months more upon

until the meeting of Congress and then five or six months more upon the delays of Congress, thereby compelling him to invest his own money in this great national work and then await the indefinite delays which everybody knows take place here.

Captain Eads had some experience in this matter. He had built several gunboats for the United States during the war, and he insists that to-day the Government owe him \$59,000 which it has never paid; and rather than come here and hang about Congress to collect it, he has concluded to lose it, deeming it worth more than the money to get it through Congress; and so he determined that he would not involve his friends in the expenditure of several millions of dollars and trust his friends in the expenditure of several millions of dollars and trust to anybody to make the appropriation. Hence when he had acceded to all the conditions required by the committee and by Congress he asked us to make his pay sure and that he might not be compelled to wait a day for it.

Now, I say that he is entitled to the terms of his contract. The Committee on Transportation endeavored to put in the bill a provision which would enable him to get his compensation without delay. They thought they had succeeded. They provided in that law:

SEC. 13. That the Secretary of War be and he is hereby, authorized and directed to carry into effect the provisions of this act on behalf of the United States, and when the said Eads and his associates shall from time to time have fulfilled on their part the several foregoing conditions of this act, to draw his warrants upon the Treasurer of the United States in favor of said Eads, or his legal representatives, in payment of the aforesaid amounts as they respectively become due by the provisions of this act.

There certainly can be no misconstruction of that part of the law. Whenever the conditions were complied with the Secretary of War was to draw his warrant on the Treasurer. But what is the other condition ?

SEC. 14. That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved; and the Secretary of the Treasury is hereby directed to issue the bonds of the United States, bearing 5 per cent. interest, of the character and description set out in the act entitled "An act to authorize the refunding of the public debt," approved July 14, 1870, to said Eads or his legal representatives, in payment at par of the aforesaid warrants of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

"Payment" of what? Of the warrants in bonds. If Congress has not "previously provided" for the payment of the warrant, then the bonds are to issue to Captain Eads. All these conditions were complied with. He has received the certificate of the officers we appointed to inspect his work, that it has been done in accordance with his contract; and on the 19th day of January the Secretary of War drew his warrant upon the Treasury. No money had been provided to meet it, and I submit that any fair construction of that law entitled Captain Eads to the bonds. To repudiate the contract because it would cost \$60,000, as my friend from Pennsylvania says, is as naked an act of bad faith as to repudiate one of the bonds in my friend's bank—precisely the same.

Mr. President, this is not a loss to the Government of \$60,000 or anything like it. My honorable friend from Pennsylvania says that we are calling in our bonds. The Government has six hundred and we are calling in our bonds. The Government has six hundred and sixty odd thousand of 6 per cent. bonds outstanding. They may be called in any day at par. If you do not appropriate the \$500,000, the money that my friend says is in the Treasury, let the \$500,000 be used to call in your 6 per cent. bonds and let us keep faith with Captain Eads, who has so strictly kept faith with us. But do you lose \$60,000 in that way? All you do lose is the difference between gold and currency. You can call in your 6 per cent. bonds which are now due, and the only loss would be about \$24,000, being the difference between gold and currency. If \$500,000 of our 6 per cent. bonds are to remain out five years longer there will be no loss to the Government at all, because the 1 per cent. interest during that time would make the thing even. So I am utterly unable to see how the Government would lose the \$60,000. But if it did lose the \$60,000 here is in my judgment as plain a contract as can be drawn; and if here is in my judgment as plain a contract as can be drawn; and if Congress has failed to comply with it it ought now to comply with the other condition.

Mr. President, whose fault this is I do not know. We well know that the Senate is not permitted to originate appropriation bills. We know that the rules do not prohibit it, but we also know that those bills are invariably laid on the table when they go to the other House. This provision ought to have been made at the last session of Congress to meet the contingent draft upon the Treasury which it was expected would be made by the Secretary of War to pay Captain Eads. It was not made. The Government is in default. Captain Eads comwas not made. The Government is in default. Captain Eads completed this work in December last; he has been compelled to wait more than two months now for his pay since the work was completed, and about a month since the Treasury draft was drawn. Already we are in default some twenty or twenty-five days; and I think it does not become us to insist on repudiating our contract when this man, by the averagiture of his own money has accomplished this most mar-

not become us to insist on repudiating our contract when this man, by the expenditure of his own money, has accomplished this most mar-velous engineering work of the century. Now, what are the facts in reference to that very briefly? For more than forty years the Government has been expending money in the futile attempt to open the mouth of the Mississippi River. It has never succeeded in obtaining more than from sixteen to seventeen feet of uncertain navigation; and that great river, which drains some

feet of uncertain navigation; and that great river, which drains some twenty States, the richest on this continent or any other, has been virtually closed to the commerce of the world.

A private citizen, by his own genius and courage, by his skill as an engineer, came to you and told you how it could be done. The other House had already passed a bill appropriating eight or ten millions for a canal, which I believe would have been a failure. By the information given to Congress through Captain Eads we adopted the other system. We had faith in him; we believed in the man. The result has proved that our faith was not misplaced, and to-day I say that his courage, persistency, and engineering skill have given to the country one of the greatest improvements which have been made in the engineering history of this Government. And now, when we are in default and when this man comes to us and asks that we comply with our agreement, the honorable Senator from Pennsylvania asks Congress to do what as a private citizen he would not for a moment Congress to do what as a private citizen he would not for a moment think of doing. Honesty in private transactions is one thing and honesty in governmental transactions seems to be entirely a different

Mr. President, I insist that the Government shall be honest and comply as strictly with its contracts as it would require a private citizen

ply as strictly with its contracts as it would require a private citizen to do with his.

Mr. CAMERON, of Pennsylvania. Mr. President, I too believe that the Government ought to be honest, as individuals ought to be. No individual can be prosperous unless he is honest; and neither can the Government. But there is no honesty in this expectation of the friends of Captain Eads. Captain Eads agreed to do a certain amount of work for a certain number of dollars. The Government agreed to give him a fabulous price for the work he intended to do; and very few people helieved he ever could succeed in accomplishing. and very few people believed he ever could succeed in accomplishing it. I was one of the few who believed he would, for I looked at his wonderful bridge at Saint Louis, which I think is the greatest structure of its kind in the world, and I believe it is the result of his own genius. At the beginning of the war he was brought to my notice when he came and offered to build gunboats for the Government when nobody else would do it. The Senator from Minnesota says he was not paid the full amount due for that work. I verily believe that he was paid a very large profit upon that work, for at that time the highest prices were paid for everything which the Government had done for it.

Now, what are the facts in this case? Captain Eads has succeeded in getting twenty feet of water against the expectations of everybody else, and he comes for his first installment of pay upon that account. The Government says to him on her side, "We will give so much money and if we cannot pay you in cash we will give you bonds." What would the Senator say, and what would Mr. Eads say, if the Government credit was down, as I have seen it, to less than 40 cents on the dollar? Would he be willing to take the bonds then? No such thing. But now, accidentally, the Government is buying its own bonds and thus giving a value to them above their par, and Mr. Eads, a favorite contractor, with an immense price for his labor, comes here and insists that we shall pay him a premium on our own obligations. I am not in favor of that and I know of no commercial honesty that requires that.

Eads, a favorite contractor, with an immense price for his labor, comes here and insists that we shall pay him a premium on our own obligations. I am not in favor of that and I know of no commercial honesty that requires that.

The Government directed that the Secretary of War, when he was satisfied the work was done, should give an order on the Treasury. The Secretary of the Treasury had no power to pay, because he could not pay without an appropriation by Congress. Did not Mr. Eads know when he made his contract that no money could be paid without the authority and direction of Congress by an act of Congress passed by both Houses and signed by the President of the United States? Certainly he did. The Secretary of the Treasury had no money appropriated to this object; but he reports to Congress, and one House of Congress has made an appropriation on one side, and they are met by Mr. Eads, who says, "You have defaulted twenty-four days, and therefore you shall pay me \$60,000 additional." The Senator from Minnesota says it is not \$60,000; it is only \$12,000. How does he calculate that? The 5 per cent. bonds now are 12 per cent. above par; we are buying them every day, or are supposed to buy them every day.

Mr. WEST. At what do we buy them?

Mr. CAMERON, of Pennsylvania. At whatever is the market price.

Mr. WEST. I beg the Senator's pardon: we buy them at par.

Mr. WINDOM. I ask the Senator from Pennsylvania if our bonds that are past due cannot be called in at any time—6 per cent. bonds?

Mr. CAMERON of Pennsylvania. Not the 5 per cents.

Mr. WINDOM. I ask the senator from Pennsylvania if our bonds that are past due cannot be called in at any time—6 per cent. bonds? Mr. CAMERON, of Pennsylvania. Not the 5 per cents. Mr. WINDOM. There are over \$600,000 of the amount. Mr. CAMERON, of Pennsylvania. The Senator calculates at the price of gold. The market price of gold is variable. It may be today 7 per cent., and day after to-morrow 15 per cent. No man in private life, no man in commercial situation in life would ever be asked to pay more than the cash he promised to pay; and why should asked to pay more than the cash he promised to pay; and why should he run himself in debt? Why should the Government increase its debt when it has the money in its own coffers to meet its obligation? Besides all this, Captain Eads's work is not done. It is only begun. Few men believe he will succeed. I believe he will; and if he does succeed he is entitled to all he gets, and I for one will be willing to vote to him a large premium besides, but I will not pay him a premium at the beginning of his job. I have seen too much of that sort of thing. As the Senator from Vermont said a little while ago, it is strange that all the alternatives in a bargain are always against the Government. We are governed here too much by our feelings. We Government. We are governed here too much by our feelings. We have no special interest; a man tells us a pleasant story; and our hearts are interested in his affairs and we agree to give him all he hearts are interested in his affairs and we agree to give him all he asks. We all do that; I do it very often; but on this occasion I want the Government to deal with Mr. Eads as we deal with everybody else. How many men have claims against this Government that the Government long ago promised to pay? Would you like every one of them to come here and ask you to give him your bond? You might have granted your bonds ten years ago when they were selling at 50 or 60 or 75 per cent., but you would not do it now. No, Mr. President, let us be just; let us be exact; let us do equal and exact justice to every one of our creditors.

Mr. HAMLIN. Mr. President—
The PRESIDENT pro tempore. The morning hour has expired.
Mr. WINDOM. I hope the Senate will continue the consideration of this bill. It certainly ought to be disposed of one way or the other. This gentleman ought not to wait longer for his money.
Mr. CAMERON, of Pennsylvania. I hope the bill will not be continued now.

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tinued now.

The PRESIDENT pro tempore. The Chair will call up the unfinished business and it can be temporarily laid aside by common consent for the purpose of continuing this subject. The unfinished business is Senate bill No. 984, in relation to the Pacific Railroad acts. Shall it be temporarily laid aside?

Mr. WRIGHT. I do not understand that that is consented to. The Senator from Georgia [Mr. GORDON] is entitled to the floor on the railroad bill.

Mr. WINDOM. Then with the consent of the Senator from Georgia.

Mr. WINDOM. Then with the consent of the Senator from Georgia

I will move to lay it aside temporarily.

The PRESIDENT pro tempore. The Chair understood it was to be laid aside by common consent. Does the Senator from Georgia ob-

Mr. GORDON. If it requires but a few minutes, I have no objec-

Let it be subject to a call for the regular order. Mr. WEST. Let it be subject to a carrier regular order.
Mr. WINDOM. Let it be continued subject to be laid aside on a call for the regular order.
Mr. GORDON. Very well.
The PRESIDENT pro tempore. The Senator from Georgia has the

floor on the unfinished business, and it is subject to his call. House

bill No 4540 remains before the Senate.
Mr. WALLACE. I rise to state the other side of the proposition as presented in the Committee on Appropriations. I cannot agree with the report of the majority of the committee on this subject, and it is my duty to give the reason why I believe this bill as it comes from the House should be passed and the recommendation of the Secretary

the House should be passed and the recommendation of the Secretary of the Treasury be carried out.

Mr. SARGENT. Will the Senator allow me to remark that I concurred with him in not agreeing with the majority of the committee?

Mr. WALLACE. I believe the Senator did. The bill as it comes to us is proposed to be indefinitely postponed. That leaves the contract to stand as we find it in the statute. We are to find what the law is and what the contract is, not from what the understanding of the Senator from Minnesota was at the time or from the understand the Senator from Minnesota was at the time or from the understanding of other Senators who took part in the consideration of the committee on that occasion, but from the written contract itself. I cannot see in that contract that the Government is in default or that it

We find that Captain Eads has a contract by which he covenants to make twenty feet of water two hundred feet wide at the South Pass of the Mississippi; that when he has obtained that he is to have a certificate thereof from the Secretary of War in the form of warrants. He has obtained those warrants on the Treasurer of the University of the Treasurer of the Tre States, not on the Secretary of the Treasury but on the Treasurer of the United States. They were presented to the Treasurer on the 22d of January, eight days before this bill came to the Senate. Because they were not then paid, because there was no appropriation of money then in existence to authorize their payment, the demand is now made on the Government for bonds for \$60,000 addition in value to Captain Eads, (whatever it may be to the Government,) more than the \$500,000 of money

Let us look at the contract as found in the law:

Let us look at the contract as found in the law:

First, is the Government in default? It seems to me that the true interpretation of this contract is that the warrants drawn on the Treasurer of the United States are first to be submitted to the Secretary of the Treasury under the general provision of the law that the Treasurer of the United States shall pay no money until the Secretary of the Treasury shall have approved the warrants and seen that the contractor has executed his part of this agreement. The whole the contractor has executed his part of this agreement. The whole subject of payment is under the control of the Secretary of the Treasury.

But it is said that the contract provides that unless we have, previously to the issue of the warrants, provided the appropriation we are in default; in other words, that these warrants are commercial papers, that the Government of the United States is in default if it does not pay them on presentation. That is the proposition broad and and full. I do not concede any such proposition. If you read the

terms of the contract itself, it is

That the option of discharging the obligations herein assumed by the United States, either in money or bonds, is expressly reserved.

Reserved to whom? Not to Captain Eads, but reserved to the Government of the United States.

And the Secretary of the Treasury is hereby directed to issue the bonds of the United States, bearing 5 per cent. interest, of the character and description set out in the act entitled "An act to authorize the refunding of the public debt," approved July 14, 1870, to said Eads, or his legal representatives, in payment at par of the aforesaid warrants of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

Previous to what? The Senator from Minnesota says, previously to the issuing of the warrant. I say previously to the issuing of the warrant. I say previously to the issuing of the bonds, and that is what the Secretary of the Treasury says; that is, that, if previously to the issuing of the bonds the Congress of the United States shall have made an appropriation for the \$500,000, then we are complying with the contract. The argument is conclusive when you go back and inquire when the warrants are to be issued? They are only to be issued after the Secretary of War shall have ascertained through his engineers that the water is there twenty feet deep and two hundred feet wide; the depth of water and issuing the warrants are conterminous, and we are put in the absurd position of making an appropriation for the payment of money which by the very terms of the law we do not know would have been needed at all. Such a construction surely will not be sustained.

The construction of the Senator from Minnesota, the construction

all. Such a construction surely will not be sustained.

The construction of the Senator from Minnesota, the construction contended for by Captain Eads, the construction that must prevail if this bill be indefinitely postponed is that Congress is required to appropriate money before Captain Eads has complied with his contract, and before there is any report made to the Secretary of War by the engineers. Congress could not know, it was impossible in the nature of things for us to know, until we had the report from the engineers, through the Secretary of War, whether the water was there; and after that report, and after the warrants are drawn and are presented at the Treasury, on the 22d of January within eight days the and after that report, and after the warrants are drawn and are presented at the Treasury, on the 22d of January, within eight days, the House of Representatives appropriates the money to pay Captain Eads. Yet we are said to be in default. Why, Mr. President, the very terms of the contract, it seems to me, not alone the intent to be gathered from the words, but the very terms of the contract show that we have done just as rapidly as possible all that the Government is required to do to carry out the contract, not alone in its spirit,

but in its very letter, with Captain Eads. We could have appropriated the money within eight days after the notice came and before the date fixed by the Secretary of War, (February 1.)

The whole question turns upon what was the meaning of the words "previously provided" in this optional section. The committee say that these words "previously provided" mean that Congress must provide the money before the Government knows he is entitled to it. On the contrary, the Secretary of the Treasury, and as I think the statute itself plainly says, if before the bonds are actually issued we appropriate the money, the contract is complied with. It seems to me the whole matter is with the Secretary of the Treasury. I think that the bill ought not to be postponed. It ought to be put upon its passage.

mr. HAMLIN. Mr. President—
Mr. GORDON. I feel it incumbent upon me to call for the regular order. It is very evident that this bill will consume all day.
Mr. WINDOM. I desire to give notice that when the Senator from Georgia has completed his speech I shall move to lay aside the regular order for the purpose of continuing the consideration of this bill.
Mr. STEVENSON. Let us go on with the regular order. That is more important than this

more important than this.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed the bill (8. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, and for other purposes, with an amendment; in which it requested the concurrence of the Senate.

### PACIFIC RAILROAD ACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

[Mr. GORDON addressed the Senate. His remarks will appear in

gress approved July 2, 1864, in amendment of said first-named act.

[Mr. GORDON addressed the Senate. His remarks will appear in the Appendix.]

Mr. COCKRELL. I have been very much interested in the remarks of my distinguished friend from Georgia [Mr. GORDON] and I am seeking light and information on this question. I understand that the object of the bill now offered as a substitute is the perfect protection of the Government and a repayment to the Government of all sums of money for which the Government is now liable. I find in the last statement of the public debt of the United States issued on the 31st of January, 1877, that the bonds granted to the three roads mentioned in the beginning of this bill are to the Central, \$25,885,120; to the Union Pacific, \$27,236,512; and to the Western Pacific, \$1,970,560, making an aggregate of the principal indebtedness of these roads of \$55,992,192, bearing interest at the rate of 6 per cent. per annum payable semi-annually. The interest now due upon those bonds, deducting the amount of transportation performed by the roads for the Government, amounts to \$23,187,783.04, making the total aggregate indebtedness \$78,279,876.04 now standing against the three companies, with an annual interest of \$3,305,531.52.

I find that this bill which has been reported by the Railroad Committee provides for the raising of a fund of two and a half millions of dollars the first year and a million and a half each subsequent year. Now the proposition which I desire to put to my distinguished friend from Georgia and the committee reporting the railroad bill is, How long will it take this sinking fund of two and a half millions of dollars this year and a million and a half subsequently per annum to discharge a present obligation of \$78,279,975.04, with an annual increased interest upon that to the amount of \$3,305,531.52? I should like to have that proposition answered; and I was anxious that my friend from Georgia should not have left his seat until that question was explained; but as I see th

resent, I should like to have that question answered. I put it to

Mr. WEST. The bill itself answers it. It says in 1912. If the Senator had read the bill a little further, he would have found the

term mentioned there.

Mr. COCKRELL. I want to understand the Senator from Louisiana. I think I have read all the provisions of the bill. I want the provision of this bill pointed out which shows the process by which two and a half millions one year followed by one million and a half regularly per annum afterward can extinguish an indebtedness of seventy-eight millions of dollars with an annual increase of over three millions of dollars. The provision in the latter part of section

That if the foregoing provisions shall prove insufficient to extinguish the Government bonds and interest thereon as aforesaid by the 1st day of October, in the year 1912, the semi-annual payments shall be increased to such a sum as will be sufficient for that purpose.

Now he says that will answer. I want the Senator reporting this bill as chairman of the Railroad Committee to answer me how much will be due on the 1st day of October, in the year 1912, from these railroad companies upon the \$78,000,000 now due and an annual increase of over \$3,000,000 added to it, when you have only liquidated

one milion and a half annually. I should like a calculation of that account to be made.

account to be made.

Mr. WEST. In reply to the latter part of the Senator's question, I will answer him emphatically that there will be nothing due from the companies because they will have paid the complete debt. If he asks me how an annual payment of two millions can overtake another annual payment of three millions, I tell him by precisely the same process that the sinking fund of the United States of I per cent. per annum will pay in thirty years the national debt of \$2,000,000,000 with less than \$500,000,000. That is the process.

Mr. COCKRELL. Then I understand the object of this bill—that is the point I want to get at definitely—is to place in the Treasury of the United States the amount of one million and a half of dollars an

the United States the amount of one million and a half of dollars annually and make the United States Government pay 6 per cent. per annum upon that, compounded semi-annually, until the bonds mature, and allow the Government not one cent of interest upon the

ture, and allow the Government not one cent of interest upon the amount which she pays out semi-annually.

Mr. WEST. Well, Mr. President, in reply to that, this bill does not make the United States pay anything. The Supreme Court makes the Government pay the money; and that is the difficulty. But before we get away from this issue let us understand it. We can go into the details of the proposition at a subsequent time. The proposition of the Senator from Georgia [Mr. GORDON] simply submits to the Senate whether the Senate of the United States shall determine that it has the absolute power to covere these companies or whether that it has the absolute power to coerce these companies or whether we shall deal with them upon principles of accommodation. We can go into the details of the business afterward; but the proposition is virtually that we have got that power and that strength in the Government of the United States to do what the Supreme Court of the United States virtually decided we could not do. Then we can go onted States virtually decided we could not do. Then we can go into the details of the question afterward. Let us take a vote now and test the sense of the Senate as to whether we shall coerce or accommodate. Coercion, I say, loses the whole of the money; accommodation gets the whole of it.

Mr. COCKRELL. That is the very point I am after. "Accommodation!" Accommodation of whom? The Government? The interest of the Government? Or is it the interest of the corporation?

terest of the Government? Or is it the interest of the corporation? I want to know how that accommodation can possibly benefit the Government and save the Government any of the amount that the Government is liable for. I want to call attention to another point. I do not propose to discuss the bill at all, but merely to call the attention of the friends of the bill to certain questions, that they may be able to give some information upon them which will guide me to a satisfactory conclusion. I desire to do what is exactly right here. At the end of the third section I find this provision:

And provided also, That all Government freight and transportation west-bound, destined for points between the Missouri River and the Pacific coast, and on the Pacific coast, and from said coast, or any point east thereof, east-bound, shall be sent by the said railroads until the aforesaid claims of the Government on account of bonds advanced to the companies are fully paid and satisfied.

The Senate will see distinctly that this provides that every particle of transportation from the Pacific coast or to the Pacific coast shall be borne upon this railroad. The Committee on Railroads proposes an amendment, and let us see if the amendment does not tie down this transportation closer to this road-bed than originally proposed. What is the amendment offered by the committee?

Whenever such freight can be so transported to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

How? "By any other means of transportation."
Mr. WEST. Mules, for instance.
Mr. COCKRELL. Yes, sir, by mules. Then you cannot bring any other railroad into competition with this railroad. This freight must be carried by some "other means of transportation" than railroad

transportation. You cannot make it mean anything else.

Mr. WEST. How does that appear? Show us that.

Mr. EATON. I desire to say to my friend from Missouri that that clause was added for the very purpose, that in case there should be chartered another railroad, that railroad would be competitive to this road, and this road could charge no higher rate of freight than that new railroad.

Mr. COCKRELL. That may have been the object of the amendment, but the language used in the amendment expresses no such idea. I will read it over again; and I ask the Senate to listen to it.

I read from line 22 on page 4:

Tread from line 22 on page 4:

That all Government freight and transportation west bound, destined for points between the Missouri Riverand the Pacific coast, and on the Pacific coast, and from said coast or any point east thereof, east bound, shall be sent by the said railroads until the aforesaid claims of the Government on account of bonds advanced to the companies are fully paid and satisfied, whenever such freight can be so transported to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

Do not the words "any other means of transportation" necessarily exclude railroad transportation? As a matter of course they do.

There can be no question about it.

Mr. DAWES. I should like to inquire of the Senator from Missouri what this "means of transportation" is if it is not these particular railroads, and if "any other means" would not mean some other railroad? This means of transportation is these specific railroads. "Any other means" is any other railroad or any other method.

Mr. COCKRELL. The Senator from Massachusetts says this means is the railroad means. "Any other means," then, would not be railroad means

Mr. DAWES. No, Mr. President, I did not say so. It was necessary to the argument of the Senator from Missouri to misstate what I did say, or to mishear it. What I said was that this means is by these railroads; it is not any other means. This means is by these railroads. Any other means does not mean these railroads, but means

any other means. [Laughter.]

Mr. COCKRELL. If "any other means" in the second part of the sentence means "any other means," are not these "other means" something besides railroads? [Laughter.]

Mr. DAWES. Mr. President, all the means in the world that are

not these means, according to my understanding of the English language, come within the terms "any other means." [Laughter.]
Mr. EATON. As a member of the Railroad Committee, I desire to say to my friend from Missouri that if he has any doubt in his mind

in regard to the true meaning of that amendment, it is very easy to change it. I undertake to say here that the individual member of the committee who suggested that amendment did it for the very purpose I before indicated, so that if there should be another line of road constructed that road should be placed in competition with this road. That was the intention of the mover of that amendment and

the intention of the Committee on Railroads, as I know.

Mr. WEST. If my friend from Connecticut will pardon me a moment, in order to relieve the great uneasiness of the Senator from Missouri, I will say that I hold in my hand an additional amendment to be attached, in these words:

Or such other railroads as the Government has heretofore aided or may hereafter aid to construct lines to the Pacific Ocean until such time as these obligations are unpaid.

Mr. COCKRELL. Why limit it to railroads the Government may help to build?

Mr. CONKLING. Why not say "or by any other railroad?"
Mr. DAWES. The reason we did not say "by any other railroad"
is that it might go part way by a railroad and then it be necessary
to be carried by other process. There is no trouble about the phrase-

ology.

Mr. CONKLING. Let me suggest to the Senator from Massachusetts and the Senator from Louisiana that, if there be, as I do not think there is, I must confess, any doubt about the meaning of this the wall to add at the end of the provision these language, it might be well to add at the end of the provision these words "or by any other railroad," so as to read:

Not exceeding the cost at which such freight can be carried by any other means of transportation or by any other railroad.

I know as well as the Senator from Massachusetts does that the af-I know as well as the Senator from Massachusetts does that the after-reader would look upon this as extremely industrious and exceedingly painstaking, as drawn by somebody who had conjured up extraordinary specters of possible interpretation; but I repeat, if any Senator really doubts what the words mean now and supposes that they exclude future railroads from competition, then I should think it would be well to allay that doubt by employing the term "railroad" as one of the alternatives so that everybody will see upon the face of it that it means any other means of conveyance, whether that means be on iron rails, or by balloons, or air-machines traversing the atmosphere, or any other means of locomotion, propulsion, or trans-

Mr. DAWES. I would agree with the Senator from New York entirely if I supposed that attempting to cure any such doubt as that would have the least effect.

[Mr. KELLY addressed the Senate. His remarks will appear in

the Appendix.]
Mr. LOGAN. Mr. President—
Mr. WEST. Will the Senator from Illinois allow me to correct some misapprehensions in regard to the action of the committee on

this question?

Mr. LOGAN. Certainly, for a moment. I do not intend to occupy more than a few minutes.

more than a few minutes.

Mr. WEST. What I desired to say was that the Senator from Oregon in speaking of the manner in which this bill was presented to the Senate as receiving, as he said, almost the unanimous indorsement of the Committee on Railroads, was correct. When the Senator from Texas says that it received the sanction of less than a majority of that committee he misunderstands the presentation of the case. This matter has been in the hands of the Committee on Railroads during this entire Forty-fourth Congress. At the last session they made a recommendation without dissent, as I understood. I thought the Senator from Texas joined at that time in the recommendation that a bill should be passed taking as indemnity to the Government half lands and half money. That measure is now substituted by another one, and I will say to him that, as far as my knowledge of the committee goes, he is the only dissenting member on the committee.

mittee goes, he is the only dissenting member on the committee.

Mr. LOGAN. I did not, nor do I now intend to occupy the time of the Senate more than a very few minutes; but I desire to give the reasons to the Senate for the vote I shall cast on this question. I deem the question now to be considered one of very great importance to the country and one that ought to be well considered by the Senate; but there have been features in this discussion that I desire to direct

the attention of the Senate to.

It is a very common thing in our country now to complain of nearly everything that is done. In fact great complaints are made against corporations in this country, and doubtless many of those complaints are just and very many of them are unjust. Corporations are a neces-

are just and very many of them are unjust. Corporations are a necessity in any country; not all corporations but corporations of different kinds, and they will exist in any civilized country.

When Congress or any legislative department of a government shall authorize the organization of a company and make a contract with that company for certain purposes, it is due to that corporation that every agreement on the part of the Government shall be carried out literally or as near so as may be, and that on the part of the corporation they shall equally comply with the duties imposed on them by the charter.

the charter.

The bill of the Judiciary Committee requires certain things to be done by these railroad companies; and in order to enforce the provisions of their bill on the minds of the Senate many things have been suggested that at least attracted my attention. A complaint was made by one of the Senators from Ohio that one of these companies had not acted in good faith with the Government. It was said that after the Government had a right to a first mortgage on their lands and road it was changed, and now the Government has nothing except a second mortgage to rely upon. The answer is, that it is not to be laid at the door of the company that the Government holds a second mortgage, but it was a law passed by Congress which released the lien on the part of the Government and accepted a second mort-

the lien on the part of the Government and accepted a second mortgage before they undertook the work; and if Congress has, by its own enactment, released the lien that the Government had on the property of this corporation and accepted a second one by their own act, it does not lie in their mouth to complain that a wrong has been done the Government on the part of the corporation.

Again it was said that they had refused after the building of the road to pay the percentage into the Treasury of the United States that was contemplated by the charter that was passed by the Congress of the United States. True it is they did refuse. The Secretary of the Treasury withheld from them a part of the compensation, they denying that he had the power to do it and he asserting the authority as agent of the Government; but by the decision of the highest tribunal known to the laws of this land, the Supreme Court of the United States, the law has been decided in favor of the construction United States, the law has been decided in favor of the construction given by the corporation and against the construction given by the agent of the Government. The court has decided that by the charter the Government could not compel the payment of interest until the maturity of the bonds that the Government had issued to aid these corporations; and in that decision of the Supreme Court they make the word "maturity" the controlling word in the contract in the fifth section of the law of 1862, and on that they decide that the Government has no right to demand this payment from these com-

panies from time to time.

Then it does not lie in our mouth, I say again, to complain of that act, because the highest tribunal known to the laws of this land has decided that it was not the fault of the company, but the fault of the legislation of Congress that gave that construction to the contract. Hence, I cannot see the cause of complaint that has been made here in the Senate Chamber in reference to the action of these men in conin the Senate Chamber in reference to the action of these men in construing the charter that was given them by the Congress of this country. I would hold them to as strict an accountability as any Senator or as any citizen of the United States, but that which the law does not require at their hands we have no right to demand, and that which the courts construe in their favor we have no right to find fault with. That which is their contract under the law, they demand shall be

That which is their contract under the law, they demand shall be given to them. When the tribunals of the country decide that they are right, we have no right to complain against them.

On the other side, I say that the Government should hold them to a strict accountability, should require them to comply with their charter and comply with every provision of the contract. But let us for a moment examine this bill reported by the Judiciary Committee. I am not favorable to that bill and I will try to give my reasons. First, I do not believe in the construction given to the charter by the learned Senator from Ohio. I do not believe that the Congress of the United Senator from Ohio. I do not believe that the Congress of the United States has the right to impair the obligations of a contract solemnly entered into by itself by legislation on the part of the Government; nor do I believe that on either side this contract can be abrogated, annulled, or amended except in certain particulars and where an

injury will not result to either party.

In reference to the construction of the charter, I contend that we must construe the act of 1864 and the act of 1862 together in order to get at the intention by which we are to be guided in the under-standing of this contract between the Government and the parties standing of this contract between the Government and the parties entering into it. An argument is made by learned Senators in favor of the right of Congress to change this agreement or this charter because the act of 1864 authorizes Congress "at any time to alter, amend, or repeal this act." That broad language of itself, if it was found in the charter without any language restricting it or without anything by which we could gather the intention of Congress to restrict the power of altering, changing, or amending this act, would give the right, it would certainly give the power, to Congress to change it. But in the act of 1862 we find that Congress, where they use the same language precisely that is used in the act of 1864, pro-

And the better to accomplish the object of this act, namely, to promote the pub-

lic interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same—

For what?

for postal, military, and other purposes.

"Other purposes" of what? Other purposes for the benefit of the Government. Congress shall have the right to do what?

Having due regard for the rights of said companies named herein, to add to, alter, mend, or repeal this act.

Add to, alter, amend, or repeal this act in what particular I call the attention of Senators who have made this claim of the right of Congress to change this charter to this act. In what particular can Congress to change this charter to this act. In what particular can you change it? For the benefit of postal or military service, or for other purposes, where you do not interfere with the rights of the parties acting under this charter. Interfere how? Interfere with any part of the obligation that would become detrimental; but where it does, it cannot be done. The object for which alteration, or amendment, or repeal may be made must be for some of those purposes appropriated in this charter.

enumerated in this charter.

Now, I should like to put one question to any lawyer in the Senate Chamber. You provided in this bill that these parties shall be required to pay a certain per cent. into the Treasury, 25 per cent. for instance; it is immaterial as to the amount; but I should like my friend from Missouri, who showed some astuteness in calculation, or any other gentleman, to answer me this proposition: Has Congress any other gentleman, to answer me this proposition: has Congress the power to declare that the lands given to this company, without any forfeiture on their part under the charter, shall be subject to taxation; has Congress the right to change the ownership of the lands; has Congress the right to-morrow to say that those lands shall be held again by the Government, subject to its uses and purposes? If you have not the right to do that, which you certainly have not, have you the right to change the mode, the manner of payment to the Government except by consent of the corporation that was a party to this contract? Suppose you now require them to pay a million dollars a year, and they do not agree to that; have you not the same right to require them to pay \$10,000,000 per annum without their consent as you have to require them to pay \$1,000,000 without their consent? The change must be by their consent, if it is a radical change of the charter, unless it is done for the purposes enumerated in the charter, for which you may make an alteration or change.

Let me refer to the syllabus of the decision of the Supreme Court.

I do not think there is a lawyer here but knows it is true that these two acts, the act of 1864 merely being an amendment of the act of 1862, must be construed together; they must be taken as a whole; it is from the two acts that the rights are derived and the protection given to the Government, and they must be construed together in order to understand the rights of the parties and the power of Congress in reference to these questions. The Supreme Court, in decidgress in reference to these questions. The Supreme Court, in deciding this case as to the right of the Government to require this pay-

ment to the Secretary of the Treasury, held:

ment to the Secretary of the Treasury, held:

The solution of the question whether the Union Pacific Railroad Company is required to pay the interest before the maturity of the principal of the bonds issued by the United States to the company depends on the meaning of the fifth and sixth sections of the original act of 1862, to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, and of the fifth section of the amendatory act of 1864. Held, under consideration of said sections, of the scheme of said original act, and of the purposes contemplated by it, that it was not the intention of Congress to require the company to pay the interest before the maturity of the principal of the bonds."—1 Otto, 91 United States Reports Supreme Court, 72.

I will not take the time of the Senate by reading fully the sections referred to; but if you will read section 5 of the act of 1802, you will find "that the grants aforesaid are made on the condition that said

find "that the grants aforesaid are made on the condition that said company shall pay said bonds at maturity;" not the body of the bonds and the interest, but "the bonds." You find in section 5 of the act of 1862 the provision is that the interest shall be payable semi-annually; but the language of section 6 of the act of 1862 provides that the bonds, and not the interest, shall be paid at maturity.

Now take these two sections together, and according to the construction that has been given to this contract by Senators here, interest must be paid semi-annually; but the courts say that the word "maturity" applies to the interest and the principal of the bonds, and that they are not payable until maturity. They construct hese two sections together so as to get at the intention of Congress, and in construing this contract they take the act of 1864 and of 1862 and construct them together for the purpose of ascertaining the intention construe them together for the purpose of ascertaining the intention

construe them together for the purpose of ascertaining the intention of the law-maker.

Without further elaboration on this point, and without detaining the Senate, for I certainly do not desire to do so, I will state in brief, generalizing, that the Judiciary Committee bill, in my judgment, from my reading of it, if I can understand it, means that Congress shall take upon itself the power to change the charter of these corporations without their consent in material parts where it would work injury to them. In other words, it means that Congress shall assert the right to change a charter, irrespective of the rights of the chartered parties, without their consent, without any act giving assent on their part in reference to payments of money and in reference to other material things in the charter. That Congress has the right to do this has been argued and will be argued. I do not, as I said, believe that Congress has the right to affect this charter except un-

der the limitations prescribed in the act of 1862, construing that and

the act of 1864 as one act and taking them as a whole.

Now, without saying anything in reference to the bill that was offered by the Senator from Georgia, I sum up what I have to say in this way: The bill of the Judiciary Committee is a preparation for a grand lawsuit between the Government of the United States and these corporations. It means nothing more; it means nothing less. It is a harsh bill in every respect. It is a bill calculated to meet the prejudices of the country that have been worked up against a corporation wherever a decision has been made on the side of the corporation. poration, when the Government is sought to be used for the purporation, when the Government is sought to be used for the purpose of meeting that prejudice and crushing out the corporation. That is the meaning of it, nothing more and nothing less, in my judgment. They could not accept that bill, at least I think not, although Inever conversed with one of these gentlemen on the subject. I know not what their feeling or desires may be; but I could not and would not if I were managing that corporation think for a moment of accepting a bill with that kind of a provision in it. Then, if they do not accept it, what is the result? The result is that the courts again must decide the question between the Government and the corporation. must decide the question between the Government and the corporation. The courts again must be called upon to decide as to the powers of Congress and as to the rights of these corporators under their charter. I do not believe in that kind of legislation. I do not believe in Congress legislating the Government into a lawsit or into court every six months. I believe in justice being done between the Government and these corporators as we may agree. If we cannot agree upon a proposition that is fair, let it stand as it is, and let the courts finally decide the rights under these charters and let it be settled as they have had to do in every movement that has been made by the Government or by these men by the Government or by these men.

I do not believe that it is the interest of the country to so legislate

either for corporations or against corporations as to constantly keep either for corporations or against corporations as to constantly keep the Government in court in order to ascertain its powers and to find out the rights of parties. I do not believe it is right for a great Government like this to pass measures which will work hardship to its citizens. Whether it is a soulless corporation or an individual is immaterial; it is a person in law and we should legislate the same toward those who are known as persons in law as we should toward an individual citizen. The same justice should be dealt out toward all. The same rights should be protected, the same powers exercised,

no more, and no less.

I know very well that it is not very popular nowadays to defend corporations. I have no defense to make for them outside of the rights that are guaranteed to them by their constitution, or charter as it is commonly called. The time was in this country when these charters were fixed, and we must appeal to the history of that time to aid us in construing these contracts. I am justified in saying that by the language enunciated in this decision of the Supreme Court we must appeal to the history of the time when congressional action was invoked in order to honestly and fairly interpret the intention of the law. Then, sir, if we go outside of the great sea of prejudice which has been rolled up in this land against these corporations, and which has been rolled up in this land against these corporations, and ascertain the facts by an examination of the history of the times when this legislation was invoked, we shall find this state of things existing: There was an appeal made from one end of the land to the other to Congress that this continent might be spanned by iron bands, that the commerce of worlds and of this nation might be united, and that this country might be bound together not only by patriotism, but by hooks of steel and bands of iron. The money in the Treasury of the United States was invoked for that purpose at that time. Nearly every member of Congress marched to the front, in order to

Nearly every member of Congress marched to the front, in order to see who could be foremost in developing this great and mighty land of ours, and that too when this country was almost in the throes of death. But, sir, it is too common with us, as time glides along, that the history of the past is forgotten the great men and great enterprises, and the benefits to the country resulting therefrom, go out of sight; and that the present interest overrides all. These things should be remembered by us while we are legislating in this direction.

As I said, every right of the Government ought to be protected; but at the same time every right of these men ought to be protected. When I see the trade of China traveling across our continent, dropping itself in every city from the Atlantic Ocean to the Pacific, when the country is being developed and enriched, I feel as though I am not appealed to either by my constituents or by any prejudice that may exist to vote for a measure that is harsh in all its terms, for the purpose of bearing down and crushing out enterprises in this land. There is no appeal that can be made to me that will allow my prejudice to go so far against individuals or corporations or interests in dice to go so far against individuals or corporations or interests in this land as to lead me to vote for a bill harsh in every section, in every line, in every term expressed, and that merely for the purpose of seeing how great a lawsuit the United States can maintain against a corporation, or that a corporation can maintain against the United

The PRESIDING OFFICER, (Mr. MERRIMON in the chair.) The question is on the amendment of the Senator from Georgia [Mr. Gor-DON] to strike out all after the enacting clause and insert in lieu thereof the bill reported from the Committee on Railroads.

Mr. WALLACE. Mr. President, upon this proposition I have but a word to say. I find that the total bonds issued to the Pacific Railroad are about \$64,000,000, these being the figures from the last re-

port of the Secretary of the Treasury, and we have paid a total of about \$34,000,000 of interest. We have been re-imbursed about \$7,000,000 by Government transportation and otherwise, leaving the unpaid interest some \$27,000,000, making a total of \$91,000,000 at this date which the Government of the United States has advanced this date which the Government of the United States has advanced to these great corporations. The bill of the Judiciary Committee provides for re-imbursing to the United States, as the years progress, a million and a half upon two of these roads, with smaller amounts from each of the other three. The interest annually paid by the United States upon these roads aggregates \$3,877,409, the interest provided to be re-imbursed by the bill of the Judiciary Committee is \$3,525,000, leaving a difference of \$352,409 to be paid by the Government, if the bill of the Judiciary Committee passes the Senate. The bill proposed to be substituted for that of the Judiciary Committee provides as regards the five railroads named in the Judiciary Committee provides, as regards the five railroads named in the Judiciary Committee bill, that we shall be re-imbursed \$1,762,500 annually, thus making the Government advance annually \$2,114,909 of interest upon these bonds more than she will receive from the means set apart by that bill.

The question, as it presents itself upon this bill, is simply whether we can, under the law, devise a means by which this large amount of money can be re-imbursed. I am met with a report from the Judiciary Committee of the Senate composed of leading lawyers, eminent men in their profession, who bring to us a bill which they say is in accordance with the law, which they say will stand the test of the courts, and which they recommend to us to pass. On the other hand, we have the report of the Railroad Committee. On the one side the we have the report of the Railroad Committee. On the one side the lawyers of this body, the legal tribunal of the body, provide as nearly as they can a plan to re-imburse the Government, in which they say the Constitution and law will sustain us. On the other side the Railroad Committee say that we cannot do this, and provide a bill under which there will be a deficiency of over \$2,000,000 annually. To which of these committees are we to listen \$1\$ it seems to me that practical men will look to the lawyers of the body in regard to which course we ought to take in settling this question of legal doubt; for it is a question of legal doubt; for it is a question of legal doubt. It is to my mind a very narrow question.

Mr. WEST. Will the Senator allow me to ask him a question?

Mr. WALLACE. Certainly.
Mr. WEST. I ask the Senator whether he infers that the lawyers on the Judiciary Committee were unanimous on the bill which they reported or whether he knows what majority of the Judiciary Committee are in favor of it to-day?

Mr. WALLACE. I infer that the Judiciary Committee have re-

ported this bill.

Mr. WEST. Yes.
Mr. WALLACE. Three members of that committee have sustained it on this floor.

WEST. Yes.

Mr. WEST. That is just it.

Mr. WEST. That is just it.

Mr. WALLACE. The members of that committee bring in a bill providing means which they say will re-imburse to this Government this money less about \$300,000 annually, and we are asked to take their bill or to take the bill of the Railroad Committee which increases the debt to the Government annually over \$2,000,000 more. As a practical man I must take the recommendation of the lawyers of this body on a question of law, and therefore I shall solve my doubts in favor of the Government and shall vote against the substitute and for the bill of the Judiciary Committee.

Mr. ALLISON. I have waited for two or three hours hoping that there would be some end of this bill. I do not see any present pros-pect of it. I wish to make a motion for the Senate to decide if it

pect of it. I wish to make a motion for the Senate to decide if it will take up the Indian appropriation bill.

The PRESIDING OFFICER. The Senator from Iowa moves that the pending bill be laid aside informally, as the Chair understands, to take up the Indian appropriation bill. Is there objection?

Mr. CONKLING. Can we not get a vote now?

Mr. WRIGHT. I think I am justified in saying that, so far as my conversing the Senate has been concerned. I never have sought to any

course in the Senate has been concerned, I never have sought to antagonize an appropriation bill when it was ready, and certainly not when it was proposed to proceed to the consideration of an appropriwhen it was proposed to proceed to the consideration of an appropriation bill at a stage of the session when it was important that it should have action. I am exceedingly anxious to proceed with this bill. The appropriation bills have to be passed. I shall not antagonize this bill for another reason at this time. I understand that the Senator from North Carolina, [Mr. MERRIMON,] now occupying the chair, desires to be heard on this bill, and that by reason of indisposition for a few days past he is not prepared to proceed to-day, but will be ready to do so to-morrow. I think, therefore, that it would accommodate him if we should at this time proceed to the consideration of the Indian appropriation bill and take up the railroad bill to-morrow. I make this suggestion because the Senator from North Carolina, now occupying the chair, made the suggestion to me that he was desirous to be heard but was not in a condition to take the floor to-day.

Mr. WEST. I may have an erroneous conception of the condition of this matter before this body, but I will state my view of it and we can see whether I am right or not, and let the Senate decide upon it. The proposition now is not to vote upon this bill; the proposition is not now to discontinue a discussion of it; but it is that the Senate shall decide now whether they will sanction the coercive and harsh measures recommended by the Judiciary Committee. ation bill at a stage of the session when it was important that it should

Let me say in reply to the Senator from Pennsylvania [Mr. WAL-LACE] that we have taken the law from the Judiciary Committee to our sorrow; that in three specific instances the Senate and the Congress of the United States have followed their recommendations to defeat; and if once more we are led into that situation there is no retreat for us. Heretofore where decisions have been made against us in following their lead and their judgment, those decisions have not been material or vital; but in the present case, if we adopt the meas-ure recommended by the Judiciary Committee and the decision of the courts shall be once more against us, we shall have no recourse and

courts shall be once more against us, we shall have no recourse and this money will be lost.

But, Mr. President, coming back to the proposition as we now have it, it is not that we shall adopt the bill that is recommended by the Committee on Railroads, but the question is, which measure will you decide in favor of? Will you decide upon adopting such measures of coercion as have hitberto, and invariably, led you to defeat, or will you supply that measure of accommodation with these great corporations that will justify you in protecting the interests of the United States. Then when the bill, the compromise bill as I may call it, of the Committee on Railroads is before you, you can discuss its merits and discuss it in detail, and that will not preclude the Senator from North Carolina or any other Senator from continuing deliber. from North Carolina or any other Senator from continuing deliberation upon this subject. Let us have a vote now and test the sense of the Senate. Have we the power, with the information that we have before us and with the decision of the Supreme Court, to coerce these companies into payment? If we have, let us put it into effect; but I think we have not the power. I think it has been demonstrated here also in the debate that we have not that power, and let us decide upon another measure of protecting the interests of the United

The PRESIDING OFFICER. Is there objection to the motion of

the Senator from Iowa, [Mr. ALLISON \*]

Mr. MORRILL. I do not desire to occupy the time of the Senate; if it is the wish of Senators that the motion of the Senator from Iowa shall prevail, I do not mean to interpose any objection to taking up a regular appropriation bill; but I do desire to occupy perhaps ten minutes in discussing some points in the various bills that are before

The PRESIDING OFFICER. Is there objection to the motion of the Senator from Iowa to lay aside the pending bill in order to take up the Indian appropriation bill? The Chair hears none.

Mr. EATON. I should like to ask for information if the railroad bill goes over until to-morrow.

Mr. WEST. The Chair did not put the question. Let us take a

The PRESIDING OFFICER. The Chair asked if there was objection and no objection was made.

Mr. MORRILL. Which makes it a vote.

Mr. EATON. Is the railroad bill laid aside informally, or does it

The PRESIDING OFFICER. The Chair understands that the railroad bill goes over as the unfinished business for to-morrow.

Mr. SHERMAN. It cannot do that, because it is known that the Indian appropriation bill will take all day to-morrow. As a matter

of course, the bill is subject to a motion to postpone it.

The PRESIDING OFFICER. Whatever bill the Senate adjourns upon will be the unfinished business for to-morrow, unless by an understanding it is agreed that another bill is taken up at the adjournment. No objection being made, the Indian appropriation bill is before the Senate.

## GOVERNMENT PRINTING OFFICE.

Mr. WINDOM. Before the Senator from Iowa proceeds with the Indian appropriation bill I wish to submit to him the propriety of taking from the table the deficiency bill for public printing. It ought to be acted upon at once.

The PRESIDING OFFICER. Is there objection to considering the

bill providing for a deficiency in the appropriation for public printing? The Chair hears no objection.

By unanimous consent, the Senate proceeded to consider the amendment of the House of Representatives upon the bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year.

The amendment of the House of Representatives was to add to the

bill the following proviso:

Provided further, That from and after the close of the present session of Congress the Public Printer shall pay no greater price for labor performed by printers, book-binders, and other employés in the Government Printing Office for each hour's work or piece-work than the average price paid for an hour's work or for piecework of the same description in the cities of New York, Philadelphia, and Balti-

Mr. WINDOM. I move that the Senate non-concur in the amendment of the House of Representatives and ask for a committee of ment of the House of Representatives and ask for a committee of conference on the disagreeing votes of the two Houses. I base the motion on two grounds. In the first place, the amendment itself ought to be non-concurred in upon its merits; and secondly, in the new rules of the Senate I find the following: motion on two grounds. In the first place, the amendment itself ought to be non-concurred in upon its merits; and secondly, in the new rules of the Senate I find the following:

No amendment which proposes general legislation shall be received to any general appropriation bill.

It is true this is not in one sense a general appropriation bill, but yet I hardly see why it might not be called a general deficiency bill

for printing. Whether it directly comes within the rule or not, it certainly comes within the spirit of the rule; and if the Senate agreed to deny itself the privilege of legislation upon appropriation bills, I think the same principle should apply to others. I should like the expression of the Senate upon that subject, because it would be regarded as an instruction to some extent to the Committee on Appropriations as to whether when they find legislation in appropriation bills the merits of which they can approve they shall report it to the Senate or whether they shall regard the rule as requiring them to amend the bill to be brought before the Senate so that it shall contain no legislation. I therefore move to non-concur in the amendcontain no legislation. I therefore move to non-concur in the amendment of the House and to request the appointment of a committee of

or conference on the disagreeing votes.

Mr. SHERMAN. I submit the ordinary motion, that the Senate concur in the amendment of the House, which, I believe, takes precedence of the motion for non-concurrence. As to the rule of the Senate which has been quoted, it certainly cannot apply to the House. We make rules for ourselves, not for the House, and we can scarcely expect to give to our rules the authority in the House that is given

to them in this body.

Mr. WINDOM. I think the Senator did not understand my point. did not mean to insist that our rules should govern the House, but that as we had by our rule prohibited the Senate from legislation on appropriation bills, the spirit of that rule would require the committee of this body to strike out legislation in appropriation bills when

found in House bills.

Mr. SHERMAN. Neither House has ever attempted to enforce even a good principle so far as that. Both Houses have often attached legislative amendments upon appropriation bills, but this is not a general appropriation bill, nor does it come within the spirit of a general appropriation bill. The objection to a legislative amendment upon a general appropriation bill, applying to one particular clause of a general bill, is that it compels one or the other of the two Houses to adopt a faulty principle of legislation perhaps, in their view, as an amendment to a single clause of the bill in order to get the whole bill through which is general in its character. This amendment I under amendment to a single clause of the bill in order to get the whole bill through, which is general in its character. This amendment, I understand, applies only to the money that is appropriated in this bill; that is, that we shall not pay for work on the public printing more than is paid for similar work in the cities of New York, Philadelphia, and Baltimore. I hope the amendment of the House will be concurred in. That is all there is of it. It is an amendment to a particular clause to a particular appropriation; and therefore does not fall even within the spirit of the objection generally made to a legislative amendment to an appropriation bill. amendment to an appropriation bill.

But, Mr. President, the whole of the matter is this: For some years, I was about to say by a sort of demagogism which sprang up after the war, we adopted an eight-hour law, and by every indirect means we have sought to evade and avoid that law. There is doubt about that; and as I voted against it I feel at liberty to say that much. Now the question is whether we ought in the conduct of our public printing to pay a higher rate for services here than is paid in the great cities of New York, Philadelphia, and Baltimore. It is well known that the expense of living in other large cities is as great as it is here. There expense of living in other large cities is as great as it is here. There is great complaint made about the cost of public printing, and it is a well-founded complaint. Our public printing is one of the largest single items of expenditure, amounting to perhaps two or three millions of dollars for a Congress; a very large amount. That is caused largely by the fact that we have adopted a rule for the payment of printers here that does not apply to any other city in the Union. We pay the same amount for eight hours' work here that is paid for ten hours' work in other great cities. The amendment proposed by the House of Revent other great cities. The amendment proposed by the House of Representatives reduces to some extent the cost of public printing. It gives to printers and to those who engage in this business the same compensation that is paid in the large cities. Whether we ought to do it, or whether we ought to pay more to the individual for work done for the Government than when it is done for others, is for the Senate to determine.

If the eight-hour law was defensible and ought to be applied in all cases to all departments of service and to all persons appointed by the Government, it becomes a bounty and a privilege to those employed by the Government; but the principle is not a correct one, and I, for one, am prepared to vote to give to those engaged in public printing just the same pay which is allowed in other large cities lie printing just the same pay which is allowed. That is the ques-where the expenses of living are about the same. That is the ques-where the expenses of Representatives. It is a question of tion presented by the House of Representatives. It is a question of fair and just economy, and I cannot answer it in any other way. There is no reason why we should pay higher wages here for the same character of service than is paid in other cities of the Union.

The PRESIDING OFFICER. The question before the Senate is the motion of the Senator from Ohio [Mr. Sherman] to concur in the

amendment of the House of Representatives.

Mr. SARGENT. If I understand the Senator from Ohio correctly, his impression is that this amendment is simply a limit upon the

tinctly named in the bill that was passed by the Senate. It does not apply to the printing of the Departments, which ordinarily is set out with great particularity in the general appropriation bill. This bill simply provides for the congressional printing and the printing of the Supreme Court, and it is to supply a deficiency for the present fiscal

year.

Mr. SHERMAN. It is an appropriation for the public printing.

Mr. SARGENT. The bill is to supply deficiencies for congressional printing and binding, a portion to be used in printing the debates, for the Congressional Record, and \$5,000 is appropriated for the Supreme Court. That is the whole appropriation. Now, upon that appropriation, limited to this fiscal year, merely to supply deficiencies, there comes in a proposition to regulate printing for all time hereafter and all kinds of printing, not even applying to this year, not even applying to the appropropriation made in the bill which was sent from the Senate to the House. The language of the amendment of the House is: ment of the House is:

That from and after the close of the present session of Congress, the Public Printer shall pay no greater price for labor performed by printers, &c.

The bill applies to no portion of the appropriation for printing, except only such as may be expended for the work of Congress, and to a large portion of the congressional printing it would not apply at all, because we are now piling in upon the Public Printing Office a large amount of matter, and will continue to do so until the close of this Congress on account of the progress of investigations and the

this Congress on account of the progress of investigations and the necessity of the printing of testimony.

It is a very vicious form of legislation, a most vicious form of legislation, to place even upon a general appropriation bill, without the report of a committee, a provision relating to a plan which is to sweep out of existence the existing usage and apply a new rule for the future. The Senator himself does not know, and no one else upon this floor, probably, knows what the difference between the price of printing is in New York, Boston, or Philadelphia and the price that is paid here. We have none of the material upon which to make up an estihere. We have none of the material upon which to make up an estimate. We do not know how the prices here are ascertained, or I judge that the Senator does not know from his remarks on the subject, or whether the compensation has been fairly ascertained.

Mr. SHERMAN. I can give the rate of compensation. I can tell

the Senator, if he will allow me.

Mr. SARGENT. If the Senator knows, he, perhaps, will concur with me in regard to the House amendment. The standing of printers throughout the United States and throughout the world is very high. There is no profession—doctors, lawyers, or preachers—more intelligent than printers as a class. The art of printing not only preserves all arts, but the men who are engaged in it have the general intelligence which comes from continually putting in type and readintelligence which comes from continually putting in type and reading information upon all subjects whatever. I have no doubt that there are printers in this city working by the day in the Government Printing Office and in the newspaper offices here who could give the Senator and myself information, and valuable information, upon a great many matters of which we might stand in need. They have joined intelligence in reference to this matter. They have formed in all the different cities of the Union particular associations regulating the prices of their labor, and there is a strong moral force brought to bear upon those being of their number who dissent from the regulations laid down by their associations. They have terms which they bear upon those being of their number who dissent from the regula-tions laid down by their associations. They have terms which they apply to them, which, in the judgment of men who are subjected to them, are exceedingly severe, and they are exceedingly effective. Those terms I need not reproduce here. They have means by a strong moral force, arising largely out of their intelligence, to execute their orders, and it is found as a general rule that where employers, no matter how powerful, set themselves up against the associations of printers, they fail in the strongle. Now it is proposed by a secondprinters, they fail in the struggle. Now it is proposed by a careless bill passed in this manner, without the examination or recommendation of any committee whatever, put upon a vehicle which ought not to contain it, to involve the Government in a quarrel with this pow-

to contain it, to involve the Government in a quarrel with this powerful and intelligent body of men and probably by that very fact stop all the operations of your printing office.

I do not believe that the cost of public printing in this city arises from excessive wages paid to printers. It is not that at all. Their compensation here is very little more than in other cities. Private proprietors are subjected to it here. Every newspaper carried on here is paying these wages. The Government pays no more than the city newspaper offices pay. There is the same rule applied to the Government work that is applied in all the job offices and all the newspaper offices in the city. The cost of printing is not in consequence of the wages paid to printers who support their families by their exertions. It requires skilled labor, experience, and intelligence in order to conduct the business properly, and it ought to be paid as the wages of a duct the business properly, and it ought to be paid as the wages of a skilled clerk are paid, made exceptional and paid a little above the wages paid an ordinary mechanic at least. It is proposed, I say, to involve the Government in a quarrel with an association like this, founded upon these principles, sustained by its intelligence, and the effect will be that very likely you will stop the operations of your

public printing.

I am opposed to the amendment because it comes in this form. all opposed to the amendment because it comes in this form. It it is a proper reform, if it is in the line of economy, then let our Committee on Printing make a report and show us that it is right. A rule established in this manner is not a proper one. As I said, it is not the amount of money that is paid to the printers which makes

the expense of Government printing, but it is the enormous quantity of printing which we throw upon the Printing Office; it is the liberal demand which we make upon the resources of this office, printing enormous piles of documents, which are brought here daily and laid upon our tables so that Senators can scarcely get to their desks or away from them during the sessions on account of these enormous masses of stuff which we conceive that the necessities of the public service require us to print. If you want to go to the root of this matter you should do it by cutting off the amount of printing, limiting the Departments in allowing fancy surveys and other mat ters to be printed without authority of Congress, and we should not print everything that is suggested in the shape of a public document. A Senator rises in his place and says, "I hold a document in my hand; it is a document of fifty or sixty pages; it comes from my conhand; it is a document of fifty or sixty pages; it comes from my constituents; it is upon a very interesting question and I should like to have it printed. The Chair says, "Is there objection to the printing of this paper?" No objection is made and it is printed, and \$50 or \$100 are drawn out of the Treasury to pay for the printing. There is the bung-hole out of which the public treasury flows; and while you are attending to the spigot here you allow the bung-hole to be open to pour out the substance of the people. I am opposed to an economy which starts out by pinching the laboring man in his wages, and yet allows this great waste of public money in the way of luxurious printing. I trust that the amendment of the House will not be agreed to.

Mr. SHERMAN. I know Mr. President it is not a first many constants.

Mr. SHERMAN. I know, Mr. President, it is much more agreeable to advocate high wages, to be paid not only to managers but to employés and everybody else, than the ordinary, careful, prudent compensation which business men allow. To show how much more pleasure it would give me to vote with the Senator from California than are it would give me to vote with the Senator from California than to vote for this amendment, I have a paper in my hand signed by a number of persons whom I respect highly, who are of the character of persons described by the Senator, intelligent, industrious, prudent, careful people, who object to this amendment on the ground that it reduces their compensation 25 per cent. Therefore, the fact is that this amendment by giving the printers the compensation provided in large cities of the country does reduce their compensation something like from 20 to 25 per cent. I will read the law which authorizes the employment of public printers. Section 3763 of the Revised Statutes provides:

The Congressional Printer may employ, at such rates of wages as he may deem for the interest of the Government and just to the persons employed, such proof-readers, compositors, pressmen, binders, laborers, and other hands as may be necessary for the execution of the orders for public printing and binding authorized by law; but he shall not, at any time, employ in the office more hands than the absolute necessities of the public work may require.

Thus the whole of this vast service, the employment of hundreds and sometimes almost thousands of persons, is left to the absolute discretion of the Government Printer, and we find here adopted a rule allowing him to pay as much for eight hours' labor in Washington as is paid for him to pay as much for eight hours' labor in Washington as is paid for ten hours' labor in the other cities. That is the general result. Undoubtedly the effect of this amendment is to reduce the compensation paid for printing; but is it right, is it just that a single officer of the Government should have the power to fix the compensation of perhaps thousands of employés or five hundred employés, whatever the number may be, without limit or restriction except by what he regards to be best? Is it right that a rule should be applied to printers here and that a different rule should be applied to printers in other cities? If the compensation is reasonable in other cities, is not the same compensation reasonable here? same compensation reasonable here?

I know it is unpleasant to insist upon the rule of equity when the Government is concerned; but the very men who would vote against this proposition may denounce the Public Printer for the cost of the public printing. I have seen myself the strongest statements made by those who probably voted against this amendment elsewhere, arraigning the conduct of the Public Printer because he does not reduce the expenses of printing to the standard that prevails in the

other cities of the Union.

I have said all I desire to say. I believe the amendment of the House is right, although it may not be pleasant to say so. It may be

unpopular to vote for the amendment; yet I shall do so because I think it is right, and it is a right principle.

Mr. ANTHONY. When the new rule was under discussion which excluded legislation from appropriation bills, I suggested that it should be a joint rule and that we should not restrict ourselves from a privbe a joint rule and that we should not restrict ourselves from a privilege which was conceded to the other House; but my idea did not prevail, and the rule was adopted which restricts us from originating legislation upon appropriation bills, yet it leaves us to act upon that which comes from the House. I think, therefore, that this amendment does not come within the rule which we prescribed for our own action, especially as this is not a general appropriation bill, but a special bill

All that the Senator from California said about the intelligence of All that the Senator from California said about the intelligence of the men who are engaged in the printing business, I readily agree to; but the same intelligence prevails among the printers of New York, Baltimore, and Philadelphia as among the printers of Washington. Although I have the best feeling toward those who are engaged in the public printing, I do not see why all the other printers in the country should be taxed in order that the printers in Washington shall have higher wages for less hours of labor than are asked and paid in other cities. It makes the position of a printer here an office rather than a mechanical employment, and people are constantly coming to us to get places in the Government Printing Office, not because they are good printers, but because they are good politicians, and for other ons, rather than for particular proficiency in their art.

The amendment which the House placed upon the bill passed the Senate at a previous session, I think the session before the last, but Senate at a previous session, I think the session before the last, but was lost in the House. The trades union of printers in this city is the most powerful in the country. It consists of printers a majority of whom are employed in the Government office. They therefore fix the rate of wages. They fix the rate of wages without consulting the employers. The printers in the Government Printing Office fix the rate of wages for the whole city. I have just been informed that the printers' union allow their men to work in the city offices for less than they do in the Government office.

Mr. DAVIS. I ask the Senator from Rhode Island whether or not

I ask the Senator from Rhode Island whether or not it is a fact that the wages fixed here have more or less influence in fixing the wages in other cities, and if the fact of wages being higher here than elsewhere has not a tendency even in the other cities to

keep up the general wages?

Mr. ANTHONY. I suppose it must to a certain degree, but the price of printers' wages is much higher here than in any cities except New Orleans and San Francisco, and I think it is higher than

Mr. DAVIS. I believe the trades union have a national organization or a general organization here, and I ask the Senator whether many of the members of that organization are not Government employés and if from that fact they do not govern somewhat the prices to be paid all over the country? Did I misunderstand the Senator

in obtaining that impression from his remarks?

Mr. ANTHONY. The prices vary in different cities. Each city has its typographical association. There is no general rate of wages fixed for the whole country, but each city fixes the scale for itself, and in this city it is much higher than elsewhere. I have just been informed that the typographical association here allows its men to work for the newspaper and city offices in Washington for lower wages than it requires them to demand of the Government Printing

Mr. DAVIS. May I ask the chairman of the Committee on Printing what is the usual average compensation per hour for Government printing?

Mr. ANTHONY. Fifty cents an hour.

Mr. DAVIS. Four or five dollars a day f
Mr. ANTHONY. Four dollars a day for eight hours' work.
The PRESIDENT pro tempore. The question is on the motion of
the Senator from Ohio [Mr. Sherman] to concur in the amendment

Mr. INGALLS. Do I understand from the chairman of the Committee on Printing that the compensation which printers receive is fixed by the trades-union, as it is called, or by the Government?

Mr. ANTHONY. By the trades-union.

Mr. INCALLS. Is the trades-union of sufficient power or influence to carry out its arrangements and enforce its decrees as to what

amount shall be received by the members who belong to it?

Mr. ANTHONY. It has been so.
Mr. INGALLS. Then, if this amendment is passed, as I understand it, Congress is brought immediately into collision with an organization that has sufficient power to enforce its views as against Congress. In other words, it will be an irresistible force meeting an immovable body. If we pass this amendment, then, unless the printers see fit to accept its terms, all operations of the Government Printing Office must cease. It seems to me that it is certainly an extraordinary condition of affairs and one that requires further detiberation. For my part I desire to be informed. I want to vote intelligently upon this proposition. If the Government, which is the contracting party, has the power to fix the compensation of printers to be paid in the Government Printing Office, then it is wise to pass this amendment proposed. But if the result of it will be that we shall be brought into conflict with a prescription that shall be brought into conflict with an organization that can prevent the further operations of the Government Printing Office, I think we

The Senator from Ohio asks whether I think there is any danger. I can only say that from the statements made by the Senator from Rhode Island, I should think there was very serious danger. Whether it exists or not, of course I am not fully informed; but if it does ex-

ist, it is certainly a matter of very grave doubt in my mind whether we should concur in this amendment.

Mr. SHERMAN. The whole of this grows out of the passage of the eight-hour law. If the Government of the United States could the eight-hour law. If the Government of the United States could fix the number of hours of a day's labor all over the United States, in each State, it might be possible to carry out the idea sought to be advocated by the eight-hour men; but the United States can only pass a law so far as it is an employer that it will regard eight hours as a day's labor; and the printers' union, I do not know but properly, took the Government at its own word; and they have said that eight hours' labor for the United States is equivalent to ten hours' labor for others, and there is a difference of just about that proportion, 25 per cent. These printers have got a higher rate, say 25 per cent. over others. others.

The Senator from Kansas fears that if we should pass a law that at the close of this session of Congress we will only pay as much for printing as is paid in New York, Philadelphia, and Baltimore, suddenly the printers all over the United States will refuse to work for the United States. I do not think so. I think when we give as much as anybody else gives in any of these great cities or in this city we shall find printers to work for us. It will not be as heretofore a special prerogative or privilege, but it will be simply a fair day's labor for a fair day's wages. I do not think there will be any trouble about disbanding the Printing Office.

Mr. ANTHONY. I do not think there is any danger of a revolution in the art of printing because the Government refuses to pay any higher wages than are paid in other cities. I suppose that the reason

in the art of printing because the Government refuses to pay any higher wages than are paid in other cities. I suppose that the reason why the typographical union has been able to enforce from the Government higher wages than are paid elsewhere is because there was no restriction on the power of the Public Printer to pay wages, and I presume that when there is this restriction placed on the Public Printer and he is required to pay only such wages as are paid elsewhere printers will be as willing to work for the Government as for other people, as willing to work in Washington as in New York, Philadelphia or Baltimore, where the expenses of living are as high Philadelphia, or Baltimore, where the expenses of living are as high as here

as here.

Mr. LOGAN. I do not think the Senator from Rhode Island, although he is at the head of the Printing Committee, understands this question. It is not a revolution in the art of printing that is apprehended, but the question is whether there shall be a revolution on the part of the printers against Congress, and if that is the danger I think Congress had better back down. [Laughter.] Congress does not want any war. Therefore I am not in favor of agreeing to the amendment of the House, for fear we might get into a war between the Government and the printers, and if we cannot do it in any other the Government and the printers, and if we cannot do it in any other way I think we had better appoint a commission to settle the diffi-

culty. [Laughter.]
Mr. SARGENT. If this is a needed reform, I am very sorry that the Committee on Printing has not the credit of having brought it forward. I am very well aware that the chairman of the committee has been amiably anxious for appropriations for the benefit of the institution, and the Committee on Appropriations have been extremely stitution, and the Committee on Appropriations have been extremely anxious for items in which retrenchment could be made; and if this would reduce the expenses of printing so much, if the better way and the proper way to begin the reduction was by pinching the men who do the work, I am very sorry that my friend has not the credit for himself and his committee of having brought it forward in a regular way, so that we could have passed upon it as we do on measures of that character generally, legislative in their nature.

If, however, the Senator from Ohio is correct, this is an indirect method of endeavoring to repeal the eight-hour law. I say that that is an unfair proceeding. If the eight-hour law is unwise, obnoxious, deleterious to public interests, gives too much favor to working people, why not bring forward a measure to repeal it in a manly way and let us vote upon it? Those who so think can vote for the meas-

and let us vote upon it? Those who so think can vote for the measure; and if there are any of us who do not happen to so think we can vote against it; but I do not think it is well in the single department of public printing here in Washington to repeal the law and leave it in operation in all your navy-yards and in every other place where Government service is performed of a mechanical na-

I suppose, however, as the chairman of the Committee on Printing

I suppose, however, as the chairman of the Committee on Printing brings his powerful influence to bear in favor of the passage of this amendment, it will pass; but I think it is very unjust to those involved in it. It is not beginning economy at the right end.

Mr. ANTHONY. My friend from California says the Committee on Printing should have introduced this reform. The Committee on Printing did introduce it at a previous session, and it met the approbation of the Senate, but was lost in the House. Nor do I think it is proper to apply the term "pinching labor" when we pay the same price for labor that is paid in neighboring cities.

Mr. INGALLS. Is it not true that the conditions of labor are different here from what they are in the cities named in the amendment? Is not the demand more irregular and inconstant? Are not the hours entirely different? Is it not the case that a large number

the hours entirely different? Is it not the case that a large number of printers are brought here upon whom only occasional demands are made for service? They are compelled to hold themselves in readimade for service? They are compelled to hold themselves in readiness to respond to any exigency that may arise. If that is the case, it seems to me that it would be unjust for us to say that precisely the same sum should be fixed as compensation for printers here as for those in Baltimore, or New York, or Philadelphia. I do not believe that a great body of men as intelligent as printers generally are would be guilty of the injustice of making a purely invidious discrimination between this and other points where labor is performed. If a higher compensation is demanded and paid here than in New York, or Boston, or Philadelphia, I believe the action must be because the conditions are so different that there is a necessity for higher compensation here than there.

Mr. ANTHONY. I am not aware of the different conditions that are unfavorable to labor here compared with New York, Philadelphia, or Baltimore. The prices of living are not higher here to persons who reside the whole year than they are there. The prices of living are higher to us who are here but a part of the year. We have to

pay the same rent and some other expenses in the half year that we should have to pay in a whole year; but to persons who reside here the whole year the expenses are not higher than in Philadelphia, New York, or Baltimore.

Mr. INGALLS. But is not the demand irregular?
Mr. WITHERS. May I inquire of the chairman of the Committee on Printing whether I understood him to say that the Government was paying more in this city for the same amount and the same character of work than was being paid by the newspaper establish-

character of work than was being paid by the hewepaper consuments of this city?

Mr. ANTHONY. I am told that the typographical union which fixes the price of printing allows its men to work in the newspaper offices or job offices in this city for lower prices than they exact at the Government Printing Office.

Mr. WITHERS. That of course meets the inquiry of the Senator

from Kansas.

Mr. ALLISON. This bill was presented to the Committee on Appropriations with the understanding or statement that unless it was passed within two days the printing of the RECORD and necessary public printing with reference to the reports of investigating compublic printing with reference to the reports of investigating committees would be stopped. We, originating that appropriation bill in the Senate, sent it to the House of Representatives; and they place now upon this bill, which the chairman of the Committee on Printing informs us, and the Public Printer informs us, is absolutely necessary to pass immediately, important legislation. It may be right or it may be wrong; but we are presented with the alternative of stopping the public printing which is imperatively necessary or agreeing to a proposition which for the time being, at least, has not been before any committee. Now if this proposition is to pass, I trust the chairman of the Committee on Appropriations will withdraw his motion to non-concur and have this measure referred to some committion to non-concur and have this measure referred to some commit-

tion to non-concur and have this measure referred to some committee of the Senate in order that it may be maturely considered; and, if this is a proper amendment, let it pass then; but to pass it now merely because it is imposed upon a bill, the sudden necessity of which is agreed to on all hands, I do not believe is right.

In addition to this, the regular appropriation for next year's printing has not yet passed. This amendment provides that this provision shall take effect after the present session of Congress closes. If it is a wise provision, and I do not say that it is not wise—the Senator from Ohio has given us some very good reasons why it should be adopted—why not let it apply to the next fiscal year when the regular appropriation bill comes in ?

lar appropriation bill comes in ?

The PRESIDENT pro tempore. The question is on the motion of the Senator from Ohio, that the Senate concur in the amendment of

the House of Representatives.

Mr. SHERMAN. I think myself it would be better to let this commence on the 1st of July instead of the 4th of March, because I think it would be unfair to make this change occur in the midst of a season. If in order, I move to amend the amendment of the House so that it shall commence the 1st of July.

The PRESIDENT pro tempore. The Senator from Ohio moves to amend the amendment by striking out the words "the present session of Congress" and inserting "expiration of the current fiscal

Mr. INGALLS. I desire to ask the chairman of the Committee on Printing whether the statement that has been made is correct, that unless this bill passes now the printing of the Record and all the necessary congressional documents will be immediately suspended.

Mr. ANTHONY. Not the printing of the RECORD. The appropriamr. ANTHONI. Not the printing of the RECORD. The appropria-tion for the RECORD does not run out; but the appropriation for the congressional printing is about exhausted. The Public Printer told me yesterday, I think, that he would be able to print an appropria-tion bill that had been offered yesterday, but he thought that after that he would be obliged to stop. It is necessary to have this bill passed for the congressional printing, not for the printing of the

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Ohio to the amendment of the House of Representatives

Mr. WINDOM. It seems to me this illustrates the impropriety of legislating in this way on appropriation bills. This proposition has been referred to no committee; the Committee on Printing have made no recommendation upon it; and the Senate proposes to take it up and amend it here without the consideration of any committee

to whom it properly belongs.

Now, I think probably the suggestion of the Senator from Ohio that this is not strictly a general appropriation bill is true, but yet it seems to me that the principle applies to this as well as to any other bill. I think that the better way would be to non-concur and send it to a committee of conference, and at least it will have a little further consideration there and may be amended if deemed advisable.

I will say for myself that I am opposed to the amendment. I think it ought not to prevail. I believe that the men in the Printing Office are the most poorly paid men in the capital. I believe they work harder for the amount of money they receive than almost anybody else. They are required to work at all times of the night. They do a kind of work that is not excelled, if equaled, anywhere in the United States, and I am informed and believe it to be true that they do not make an average of \$1,200 a year, even the best workmen. I

may be mistaken in that, but I am informed that that is true. it seems to me that we are, I was going to say, tinkering with an amendment of importance that had better be referred to some committee for further consideration. I hope it may go to a conference

committee at least.

Mr. MORRILL. I hope the Senator from Ohio will withdraw his amendment and that we shall concur or non-concur in the amendment

of the House

Mr. SHERMAN. I withdraw the amendment to the amendment.
The PRESIDENT pro tempore. The question is on concurring in the amendment of the House of Representatives.
Mr. SARGENT. I ask for the yeas and nays.
The yeas and nays were ordered; and being taken, resulted—yeas

20, nays 28; as follows:

YEAS—Messrs. Anthony, Bailey, Barnum, Booth, Clayton, Cockrell, Davis, Hamilton, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Morrill, Robertson, Sherman, and Withers—20.

NAYS—Messrs. Allison, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Conover, Cooper, Cragin, Dawes, Dennis, Dorsey, Ferry, Goldthwarte, Ingalis, Logan, McMillan, Morton, Paddock, Patterson, Sargent, Spencer, Teller, Wallace, West, Windom, and Wright—28.

ABSENT—Messrs. Alcorn, Bayard, Biame, Bogy, Boutwell, Conkling, Eaton, Edmunds, Frelinghnysen, "Gordon, Hamiln, Harvey, Hereford, Hitchock, Howe, Jones of Nevada, Mitchell, Norwood, Oglesby, Randolph, Ransom, Saulsbury, Sharon, Stevenson, Thurman, Wadleigh, and Whyte—27.

So the motion to concur was not agreed to.
Mr. WINDOM. My motion is to non-concur and that a committee of conference be appointed.

The motion was agreed to.

By unanimous consent, the President pro tempore was authorized to appoint the conferees on the part of the Senate.

#### INDIAN APPROPRIATION BILL.

Mr. WEST. I wish to inquire from the Chair what is the condition

of the pending business, so that we can understand it distinctly.

The PRESIDENT pro tempore. The railroad bill is the unfinished business to come up on the conclusion of the bill which has been taken up by unanimous consent.

mr. WEST. Then I understand the railroad bill is laid aside informally for the consideration of the Indian appropriation bill.

The PRESIDENT pro tempore. So the Chair understands.

Mr. ALLISON. • I ask that the Indian appropriation bill, which is

when Allison. I ask that the indian appropriation bill, which is under consideration, be read.

The PRESIDENT pro tempore. The bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, is under consideration, the Chair understands.

is under consideration, the Chair understands.

Mr. INGALLS. I move that the Senate take a recess until ten o'clock to-morrow.

Mr. ALLISON. I trust that motion will not prevail.

Mr. WEST. Is the motion debatable?

The PRESIDENT pro tempore. It is not debatable. The question is on the motion for a recess.

Mr. ALLISON. I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. SHERMAN, (when his name was called). If this bill can be read between ten and twelve o'clock to-morrow I will vote "yea."

Mr. ALLISON. Before the result is announced I ask unanimous that this hill should be read:

consent to say that it is important that this bill should be read; it must be read at length. If that can be done between ten and twelve o'clock to-morrow, there will be no objection to an adjournment tonight; but we have had some understanding that no business shall be transacted.

Mr. SHERMAN.

Mr. SHERMAN. The mere reading would not be business.

The PRESIDENT pro tempore. Is there objection to that understanding? The understanding which has heretofore applied to the interval between ten and twelve o'clock is known to Senators.

Mr. PADDOCK. There are many Senators absent who were here when that understanding was made.

The PRESIDENT pro tempore. So the Chair thinks.

Mr. WEST. I suggest that this does not conflict with the understanding. It simply enables the Clerk to read the bill, which is a matter of form and has to be done, and will consume so much time. If it is done between ten and twelve o'clock to-morrow we shall have those two hours to use afterward.

Mr. DAVIS. There are a large number of amendments.

The PRESIDENT pro tempore. The Chair tolerates discussion, if

there be no objection.

there be no objection.

Mr. DAVIS. There are a large number of amendments attached to this bill. If the understanding is simply to read the bill and have the amendments acted on in their order afterward and go over it regularly, very well. I have no objection to letting the bill be read at ten o'clock, with the understanding that when the bill is taken up and acted upon afterward the amendments are to be considered regularly. Is that the understanding †

Mr. ALLISON. That is what I desire.

The PRESIDENT pro tempore. Is there objection to simply reading the bill between ten and twelve o'clock to-morrow without consider-

ing or acting on the amendments? If there be no objection, such will be the understanding. The Chair hears no objection.

The result of the roll-call was then announced—yeas 32, nays 16;

YEAS—Messrs. Bailey, Barnum, Bogy, Bruce, Burnside, Cameron of Pennsylvania, Clayton, Cockrell, Conover, Cooper, Davis, Dennis, Goldthwaite, Gordon, Hamilton, Hereford, Ingalls, Johnston, Kelly, McCreery, McDonald, McMillan, Maxey, Merrimon, Norwood, Paddock, Patterson, Robertson, Saulsbury, Stevenson, West, and Withers—32.

NAYS—Messrs. Allison, Anthony, Cameron of Wisconsin, Chaffee, Christiancy, Cragin, Dawes, Ferry, Morton, Sargent, Sherman, Spencer, Teller, Wallace, Windom, and Wright—16.

ABSENT—Messrs. Alcorn, Bayard, Blaine, Booth, Boutwell, Conkling, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamlin Harvey, Hitchcock, Howe, Jones of Florida, Jones of Nevada, Kernan, Logan, Mitchell, Morrill, Oglesby, Randolph, Ransom, Sharon, Thurman, Wadleigh, and Whyte—28.

So the motion was agreed to; and (at four o'clock and twenty-nine minutes p. m.) the Senate took a recess till Thursday, February 8, at ten o'clock a. m.

## HOUSE OF REPRESENTATIVES.

THURSDAY, February 1, 1877.

[CALENDAR DAY, February 7.]

AFTER THE RECESS.

The recess having expired, the House (at ten o'clock a. m., Wednes-

day, February 7) resumed its session.

Mr. WILSON, of Iowa. I move that the House take a further recess till the time unanimously agreed on yesterday, five minutes before twelve o'clock.

The motion was agreed to, and a recess taken accordingly. The recess having expired, the House re-assembled at eleven o'clock and fifty-five minutes a. m.

#### MARY K. PATTON.

Mr. BAGBY, by unanimous consent, reported from the Committee on Invalid Pensions, as a substitute for House bill No. 4156, a bill (H. R. No. 4609) granting a pension to Mary K. Patton; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be privated. to be printed.

## MARY B. MARSH.

Mr. BAGBY also, by uranimous consent, reported back from the same committee, with a recommendation that it be passed, a bill (H. R. No. 3844) granting a pension to Mary B. Marsh; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

## ADVERSE REPORTS.

Mr. BAGBY also, by unanimous consent, reported back adversely from the same committee bills of the following titles; which were laid on the table, and the accompanying reports ordered to be printed:

A bill (H. R. No. 3382) granting a pension to Mary Clark Bard, of Pennsylvania; and

A bill (H. R. No. 2717) granting a pension to Hugh McGovern.

## ELIZABETH ROSE.

On motion of Mr. BAGBY, by unanimous consent, the Committee on Invalid Pensions was discharged from the further consideration of the petition of Elizabeth Rose, widow, praying for a pension; and the same was referred to the Committee on Military Affairs.

## ADJUDICATION OF PENSION CASES, ETC.

Mr. BAGBY also, by unanimous consent, reported from the Committee on Invalid Pensions a bill (H. R. No. 4610) to regulate the adjudication of pension cases, and to authorize the appointment of pension surgeons and to repeal sections 4744, 4771, 4772, 4773, 4774, 4775, and 4777 of the Revised Statutes; which was read a first and second time, ordered to be printed and recommitted, not to be brought back on a motion to reconsider.

## EVENING SESSION FOR PENSION BUSINESS.

Mr. BAGBY. I am directed by the Committee on Invalid Pensions to ask unanimous consent that an evening session, commencing at half past seven o'clock, may be ordered for Thursday the 15th instant, for the consideration of reports from that committee, and for no other

The SPEAKER. The Chair thinks that at the present time it would be advisable not to make such an assignment of business for a future day. He suggests that the resolution be withheld for the pres-

Mr. RUSK. Can we not do anything by unanimous consent?

Mr. WILSON, of Iowa. This order might interfere with the business in the joint meeting of the two Houses.

Mr. HALE. Of course, unless it should interfere with that business, we could by unanimous consent make this order.

The SPEAKER. The Chair thinks the safer way is to reserve this proposition, at least for the present.

The motion was withdrawn.

The SPEAKER, (at twelve o'clock m.) The Chair asks that business be suspended and that the Chaplain, by unanimous consent, be allowed to offer prayer.

There being no objection, prayer was offered by Rev. I. L. Townsend, Chaplain of the House.

#### DABNEY M. SCALES.

Mr. YOUNG, by unanimous consent, introduced a bill (H. R. No. 4611) to remove the civil disabilities of Dabney M. Scales; which was

read a first and second time.

Mr. YOUNG. I ask unanimous consent that this bill be put upon

its passage at once.

There was no objection.

Mr. HURLBUT. The body of this bill, as well as the title, requires to be modified by striking out the word "civil" and inserting "po-

Mr. YOUNG. I have no objection to that modification.

The SPEAKER. The modification will be made.

Mr. CONGER. I ask that the petition accompanying this bill be

The Clerk read as follows:

The Clerk read as follows:

To the honorable Senate and House of Representatives of the United States of America:

Your petitioner, Dabney M. Scales, a citizen of Memphis, Tennessee, respectfully represents to your honorable body that at the commencement of the late war between the States he was a cadet at the United States Naval Academy at Annapolis, having been appointed thereto from the fifth congressional district of Mississippi, and that when the State of Mississippi passed the ordinance of secession from the Federal Union he resigned from the academy at Annapolis and entered the navy of the Confederate States, where he continued to serve until the close of the war, since which time he has been a law-abiding and loyal citizen of the Government. He therefore prays your honorable body that the disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States may be removed.

DABNEY M. SCALES

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed; two-thirds voting in favor thereof.

#### AMENDMENT OF THE CONSTITUTION.

Mr. MAISH, by unanimous consent, introduced a joint resolution (H. R. No. 189) proposing an amendment to the Constitution of the United States; which was read a first and second time, referred to the Committee on the Judiciary, ordered to be printed and printed in the RECORD.

It is as follows:

Resolution proposing an amendment to the Constitution of the United States.

Resolution proposing an amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-th-rds of each House concurring.) That the following amendment to the Constitution of the United States be proposed to the Legislatures of the several States, which, when ratified by three-fourths of said Legislatures, shall become and be a part of the Constitution, namely:

ARTICLE XVI.

Article 2, section 1, paragraph 2, to be made to read as follows: Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which the State shall be entitled in

number of Senators and Representatives to which the State shall be entitled in Congress.

The first division of the twelfth amendment to the Constitution, ending with the words "directed to the President of the Senate," to be struck out, and the following substituted:

The citizens of each State who shall be qualified to vote for Representatives in Congress, shall cast their votes for candidates for President and Vice-President by ballot, and proper returns of the votes so cast shall be made under scal, within ten days, to the secretary of state or other officer lawfully performing the duties of such secretary in the government of the State, by whom the said returns shall be publicly opened in the presence of the chief executive magistrate of the State, and of the chief iustice or judge of the highest court thereof, and the said secretary, chief magistrate, and judge shall assign to each candidate voted for by a sufficient number of citizens a proportionate part of the electoral votes to which the State shall be entitled, in manner following, that is to say:

They shall divide the whole number of votes returned by the whole number of the State, and shall assign to candidates voted for one electoral vote for each ratio of popular votes received by them respectively, and, if necessary, additional electoral votes for successive largest fractions of a ratio shall be assigned to candidates voted for, until the whole number of the electoral votes of the State shall be distributed; and the said officers shall thereupon make up and certify at least three general returns, comprising the popular vote by counties, parishes, or other principal divisions of the State, and their apportionment of electoral votes as aforesaid, and shall transmit two thereof, under seal, to the seat of Government of the United States, one directed to the President of the Senate and one to the Speaker of the House of Representatives, and a third unsealed return shall be forthwith filed by the said secretary in his office, be recorded therein, an

the sad secretary in his spection.

Article II, section 2, clause 4 to be made to read as follows:

"The Congress may determine the time of voting for President and Vice-President and the time of assigning electoral votes to candidates voted for, which times shall be uniform throughout the United States."

Strike out the words "electors appointed," where they occur in the twelfth amendment to the Constitution, and insert in their stead the words "electoral votes."

## GEORGE P. TURNER.

Mr. HEWITT, of Alabama, by unanimous consent, introduced a bill (H. R. No. 4612) to remove the political disabilities of George P. Turner, of Courtland, Alabama; which was read a first and second

The bill, which was read, provides (two-thirds of each House concurring therein) that the political disabilities imposed by the four-teenth amendment of the Constitution upon George P. Turner, a citizen of Courtland, Alabama, be, and the same are hereby, removed.

Mr. RUSK. I ask that the petition be read.

The Clerk read as follows:

COURTLAND, February 3, 1877.

To the honorable members of the Senate and House of Representatives in Congress assembled:

I have the honor to request my political disabilities imposed by the fourteenth amendment of the Constitution of the United States be removed.

I am, very respectfully, your obedient servant,

GEORGE P. TURNER.

Mr. HURLBUT. I shall have to object; the petition does not set forth how or why

Mr. HEWITT, of Alabama. I will state to the gentleman from

Mr. HURLBUT. I object on that ground.
Mr. HEWITT, of Alabama. Let the bill be referred to the Committee on the Judiciary.
Mr. HURLBUT. I have no objection to its reference.
The bill was referred to the Committee on the Judiciary, and ordered

to be printed.

NEW BERNE NATIONAL CEMETERY.

On motion of Mr. MONROE, by unanimous consent, an act (S. No. 1187) authorizing the Secretary of War to allow the interment in the National Cemetery at New Berne, in the State of North Carolina, of the remains of the late R. F. Lehman, lately commissioner of the United States circuit court in the eastern district of North Carolina, was taken from the Speaker's table, read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed. HANNAH L. LLOYD.

Mr. COX. I move, by unanimous consent, to take from the Speaker's table an act (S. No. 824) for the relief of Hannah L. Lloyd, as executrix, and George W. King, executor, of William Lloyd, deceased, and put it upon its passage at this time. There is but a very small amount involved.

Mr. EDEN. Let the bill be read.

Mr. EDEN. Let the bill be read.

The bill, which was read, directs the proper accounting officers of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Hannah L. Lloyd, executrix, and George W. King, executor, of William Lloyd, deceased, the sum of \$582.55, it being the balance paid into the Treasury, after costs and expenses, arising from the sale of one-fourth interest in the brig Fanny, to which it appears they are entitled.

Mr. COX. There is a Senate report accompanying the bill.

Mr. CONGER. I insist these bills shall go to the Private Calendar.

The SPEAKER. Objection being made, the bill is not before the House.

DIRECTORS OF NATIONAL BANKS.

Mr. BANKS, (by request,) by unanimous consent, introduced a bill (H. R. No. 4613) to provide for the election of directors of national banks; which was read a first and second time, referred to the Committee on Banking and Currency, and ordered to be printed.

## MOHAMMED KAHN.

Mr. NASH, by unanimous consent, introduced a bill (H. R. No. 4614) for the relief of Mohammed Kahn, otherwise John Ammahae, late private in Company E, Forty-third New York Volunteers, granting him an invalid pension; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

## NICHOLAS WAX AND OTHERS.

Mr. NASH also, by unanimous consent, introduced a bill (H. R. No. 4615) for the relief of Nicholas Wax, Mitchell Granary, and Moline Lange; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## MARSILVIA F. WOODARD.

On motion of Mr. CRAPO, by unanimous consent, an act (S. No. 1123) granting a pension to Marsilvia F. Woodard, mother of George R. Woodard, was taken from the Speaker's table, read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

## BUILDING FOR CENTENNIAL EXHIBITS.

Mr. CLYMER. I ask unanimous consent to present for reference to the Committee on Public Buildings and Grounds a memorial of the Regents of the Smithsonian Institution, and beg permission briefly to explain its import.

explain its import.

It sets forth that many foreign nations, states, and individuals, by whom articles were sent to the centennial exhibition at Philadelphia, have made noble and valuable gifts to the Government of the United States of objects of art, of fire-arms, of mineral and agricultural products, and of artistic and mechanic skill. It may not be disputed that the acceptance of them by the Government imposes an obligation that they shall be preserved and exhibited for the gratification and instruction of the people. Their preservation and exhibition must be confided to the national museum, of which by law the Regents of the Smithsonian Institution have the custody. They have

presented for our consideration the necessity for erecting a suitable presented for our consideration the necessity for erecting a strate building for the purposes I have indicated, giving an estimate of its probable cost. I do not ask that the memorial be printed in the RECORD, as one of like import was presented to the Senate, which will be found in its proceedings of yesterday. I therefore ask its reference to the Committee on Public Buildings and Grounds, and reference to the Committee on Public Buildings and Grounds, and that the accompanying list, setting forth the names of the donors and the character of them, be printed in the Record for the information of the House and the country.

Mr. YOUNG. I will say to the gentleman from Pennsylvania that there is already a bill pending before the Committee on Public Buildings and Grounds, on which a favorable report has been prepared, and we only wait a meeting of the committee to order it to be re-

and we only wait a meeting of the committee to order it to be re-

Mr. CLYMER. I am delighted to have that in formation. But it can do the committee no harm to have the memorial referred to it.

The SPEAKER. The gentleman from Pennsylvania asks unani-

mous consent to present a memorial of the Regents of the Smithsonian Institute, and to have the same referred to the Committee on Public Buildings and Grounds, not to be brought back on a motion to reconsider. Is there objection?

Mr. CLYMER. I also ask that the list attached to the memorial be

printed in the RECORD.

Mr. TOWNSEND, of Pennsylvania. I ask that the memorial itself be printed in the RECORD. Mr. CLYMER. With the accompanying list. There was no objection; and the memorial was referred to the Com-

mittee on Public Buildings and Grounds, and ordered, with the ac-

companying list, to be printed in the RECORD.

The memorial and accompanying list are as follows:

mittee on Public Buildings and Grounds, and ordered, with the accompanying list, to be printed in the Record.

The memorial and accompanying list are as follows:

To the Senate and House of Representatives of the United States of America in Congress assembled:

The undersigned, Regents of the Smithsonian Institution, beg leave respectfully to lay before you a question which has suddenly arisen, and which can be solved only by your anthority.

In the year 1846, on the organization of the Smithsonian Institution "for the increase and diffusion of knowledge among men," Congress, to the great relief of the Patent Office and other public buildings, devolved upon the regents of that institution the custody of "all objects of art and of foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens belonging or hereafter to belong to the United States which may be in the city of Washington."

In accordance with this enactment, the institution has received and carefully preserved all the specimens which have been brought together from more than lifty public exploring expeditions, and has added specimens collected by itself, or obtained from foreign museums by exchange, till its present editice in the beginning of 1876 had become full to overflowing.

By an act bearing date July 21, 1876, additional duties were laid upon the Smithsonian Institution as custodian, and 84,500 were appropriated "for repairing and fitting up the so-called armory building on the mall between Sixth and Seventh streets, and to enable the Smithsonian Institution to store therein and to take care of specimens of the extensive series of the ores of the precious metals, marbles, building stones, coals, and numerous objects of natural history now next in Philadelphia, including other objects of practical and economical value, presented by various foreign governments to the national museum."

As a fruit of this act of the General Government, the Smithsonian Institution in Philadelphia, including o

most part packed away in boxes, liable to injury and decay, or shall they be exhibited?

It was the act of Congress which ordered the acceptance in trust of these noble gifts to the United States. The receiving of them implies that they will be taken care of in a manner corresponding to the just expectations of those who gave them; and one of the prevailing motives of the donors was, that the productions of their several lands might continue to be exhibited. The intrinsic value of the donations is, moreover, enhanced by the circumstances under which they were made. They came to us in the one hundredth year of our life as a nation, in token of the desire of the governments of the world to manifest their interest in our destiny. This consideration becomes the more pleasing, when we bring to mind that these gifts have been received, not exclusively from the great nations of Europe from which we are sprung, or from the empire and republics on our own continent beyond the line, but that they come to us from the oldest abodes of civilization on the Nile, from the time-honored empires and kingdoms of the remotest eastern Asia, and from the principal states which are rising into intellectual and industrial and political greatness in the farthest isles and continents; from states which are younger than ourselves and bring their contributions as a congratulatory offering to their elder brother.

We have deemed it our duty to lay these facts and reflections before both Houses of Congress, and to represent to them, that if they in their wisdom think that this unequaled accumulation of natural specimens and works interesting to science, the evidence of the good-will to us that exists among men, should be placed where it can be seen and studied by the people of our own land and by travelers from abroad, it will be necessary to make an appropriation for the immediate erection of a spacious building. Careful inquiries have been instituted to ascertain the smallest sum which would be adequate to that purpose; and the plan of a

States Army. We beg leave further to represent that to accomplish the purpose there would be need of an appropriation of \$250,000. This amount is required not as a first installment to be followed by others, but as sufficient entirely to complete the edifice.

plete the citifice.

Should this appropriation be made at an early day, the building could be ready for the reception of articles before the next session of Congress.

M. R. WAITE,
T. W. FERRY,
H. HAMLIN,
J. W. STEVENSON,
A. A. SARGENT,
HIESTER CLYMER,
BENJ. H. HILL,
GEO. W. MCCRARY,
PETER PARKER,
ASA GRAY,
GEO. BANCROFT,
Regents of the Smithsonian Institution.

WASHINGTON, February 5, 1877.

List of the more important collections presented by foreign commissioners to the United States Government and taken charge of in behalf of the national museum by the Smithsonian Institution.

ARGENTINE REPUBLIC.

Dr. Ernesto Oldendorff, commissioner.

Ores of metals, minerals, pottery, tiles, stuffed animals, leathers and hides, nets, fishery products, samples of woods, fibers, seeds, grains, specimens of silk and wool in great variety.

This donation embraces almost the whole of the exhibit in agricultural hall and a large portion of that in the main building.

AUSTRIA.

Dr. Francis Migerka, commissioner.

Specimens of mineral wax, (ozockerite,) and a variety of mineral and industrial products.

BELGIUL.

Count D'Oultremont, commissioner.

Some specimens of industrial products.

BRAZIL

Dr. J. M. de la Silva Coutinho, commissioner.

Specimens of iron, coal, hides, leather, tiles and pottery, in great variety, specimens in large number of woods, vegetable fibers, substances used as foods, gums, resins, &c.

This collection embraces nearly the whole of the immense display in the agricultural building and a part of that in the main building.

CHILL.

Edward Shippen, esq., commissioner.

A collection of minerals and ores, artificial stone, tiles, terra-cottas, and an extensive variety of grains, seeds, and other vegetable products, embracing by far the largest part of the display of the Chilian government in the main building.

CHINA.

J. L. Hammond, commissioner.

The entire exhibit made by the commissioner of customs of China and displayed in the mineral annex. It includes a complete representation of the manners and customs of the Chinese, such as samples of their foods, medicines, clothing, their domestic and household utensils, their ornaments, objects used in their plays and

domestic and household utensils, their ornaments, objects used in their plays and festivities, &c.

In the collection are numerous full-sized figures, beautifully executed and suitably dressed, representing the different ranks and classes in the community; many hundreds of clay figures about one foot in height, illustrating the different races of the empire; specimens of cotton and silk in great variety; samples of paper, leather, and the like; samples of pottery, such as vases, tea-pots, pipes; matting, caskets, &c.

This collection is of unparalleled interest, and cost the Chinese government a large sum of money. It will require a space fully equal to half of one of the halls of the national museum for its exhibition. There are also three ornamental gateways, three cases, and two pagodas as used in the main building for purposes of exhibition; specimens of wrought iron and other metals; musical instruments; bamboo ware; glass; specimens of tea, oils, and woods, tobacco, and sugar. The entire collection (exclusive of the ornamental gate-ways and cases) filled twenty-one large wagon-loads.

E. Brugsch, commissioner.

Collection of minerals, tiles, and pottery; garden products in great variety; samples of woods and a large collection of objects illustrating the habits and customs of the natives of Soudan, Nubia, and Abyssinia, such as musical instruments, weapons, clothing, &c.

FRANCE.

Captain Anfrye, commissioner.

No collective exhibit was made by the government, but Messrs. Haviland, of Limoges, France, presented a pair of centennial memorial vases valued at \$17,000 and requiring the erection of a special kiln for their production, together with a large panel of tiles.

Mr. Bartels, commissioner.

Specimens of tiles, cements, asphalt-work, fire-brick, manufactures in metals, and woods from the commissioner; and from Mr. F. Krupp, of Essen, a very extensive display illustrating the mineralogy and metallurgy of the iron trade of Germany, with samples of the different manufactures made at the great gun-works at Essen. This collection was one of the largest and most complete at the exhibition, and attracted general attention. A special catalogue of this collection was printed by the exhibitor.

F. R. Hitchcock, commissioner.

Collections of the volcanic and other rocks and minerals, ropes and fibers, to-bacco, sugar, oils, models of boats, nets, and vegetable products in large variety.

ITALY.

Joseph Dassi, commissioner.

Samples of alabaster, terra-cotta, marbles, &c.

JAPAN.

Lieutenant-General Saigo Tsukmichi, commissioner.

A valuable series of tiles and other pottery, the large exhibit of the fisheries of

Japan in the agricultural building, including both products and apparatus, skins and hides of animals, various food preparations, and a series illustrating the materials and manipulations employed in the manufacture of tea and silks; also manufactures of bamboo.

Dr. Mariano Barcena, commissioner.

The greater part of the exhibit of the natural products of the country as shown in the main building, including the ores of gold and silver, obsidian, woods, fibers, and other vegetable products, pottery and terra-cotta. Among the most notable mineral specimens may be mentioned an iron meteorite weighing four thousand pounds.

NETHERLANDS.

Dr. E. H. von Baumhauer, commissioner.

Agricultural products in considerable variety; specimens illustrating the fisheries of Holland, including cod-liver oil, &c., tiles, cements, &c.

William C. Christophersen, commissioner; Gerhard Gade, assistant commissioner.

A very large collection of ores and other specimens illustrating the netallurgy of iron, copper, nickel, &c. A collection illustrating the eatable fishes of Northern Europe, samples of prepared fishes, samples of food preparations, &c. Great variety of agricultural products.

ORANGE FREE STATE.

Charles W. Riley, commissioner.

A collection of agricultural products.

José Carlos Tracy, commissioner.

A series of the principal food and other vegetable products in that country.

PORTUGAL.

M. Jayme Batalho Reis, agricultural commissioner; M. Lourenco Malheiro, industrial commissioner.

The greater part of the very extensive exhibit of minerals, ores, &c., in the main building; also, pottery, samples of industrial products, glass-work, paper, &c., and a full series of the vegetable productions of the kingdom in nearly two thousand varieties. A portion only of this collection filled sixty large boxes.

RUSSIA

General Charles de Bielsky, commissioner; Captain Nicholsky and Captain Semelsh-ken, assistant commissioner.

An enormous collection illustrating the metallurgy of copper and iron, including different varieties of Russian iron and steel; the very extensive collection of minerals of Siberia exhibited by the School of Mines and valued at a high price; samples of rope and cordage, pottery, tiles, cement, and isinglass and other products of the sturgeon.

SPAIN.

Colonel F. Lopez Fabra, commissioner.

A collection of great magnitude, illustrating the mines and mining of coals, iron, copper and silver, salt, &c., in the kingdom of Spain; a very largenumber of bricks, tiles, earthenware and pottery; illustrations of the various fibers and other materials for basket-work, cordage; industrial products in great variety, including samples of paper, leather, &c. A complete series illustrating the agricultural resources of that country.

From the Philippine Islands, as one of the colonies of Spain, were received samples of native work in the form of baskets, nets, boats, &c., and hemp fibers.

SWEDEN.

C. Juhlin-Dannfelt, commissioner.

The entire exhibit of Sweden made in the agricultural department, illustrating the fisheries and agriculture of Sweden, including also specimens of fish, food-fish preparations. &c. specimens of peat working machinery, apparatus for deep-sea sounding and dredging, and also for collecting specimens of natural history; photographs of arctic scenery.

SIAM. No commissioner.

A collection illustrating the products, the industries, &c., of the kingdom of Siam, made for the centennial exhibition with the understanding that it should be presented to the United States at the close. This filled two hundred and sixteen boxes, and embraces many articles of great pecuniary value. This collection, with those from China and Japan, will require a room as large as the upper floor of the Smithsonian Institution, for satisfactory display.

SWITZERLAND.

Mr. Edward Guyer, commissioner.

Specimens illustrating the geology of the Alps and St. Gotthard Tunne.

TURKEY.

G. d'Aristarchi Bey, commissioner.

Illustrations of the metal work of the country, of its mines and minerals, its tiles and pottery, domestic and household utensils; samples of iron and steel, &c.

TUNIS.

G. H. Hcap, esq., commissioner.

A threshing-machine, such as has been used from the time of the ancient Car-

United Kingdom of Great Britain and Ireland, including colonies.

GREAT BRITAIN.

Colonel F. B. Sandford, commissioner.

A very large collection of the private exhibits of tiles, terra-cottas, bricks, and pottery, sanitary ware, as also many industrial products in great variety. Among the more notable articles in the series are collections of tiles and mosaic rooms from Messrs. Minton & Hollins, and many specimens from Messrs. Doulton, of Lambeth, among them several large vases. Some highly important deposits have also been made, subject to a recall after a certain period. Chief among these is the allegorical representation of America, a duplicate of that furnished by Messrs. Doulton to the Albert Memorial in London, embracing several colossal figures. This group is valued at \$15,000. Also the large terra-cotta pulpit and front, and many other specimens of great variety; an extremely complete and important collection of samples of wools from all parts of the world, presented by Messrs John L. Bowes & Brothers, embracing over three hundred varieties each, suitably labeled, with prices marked, &c.; a similar collection of wools in the fleece, exhibited by Messrs, James Oddy and Sons.

A. A. Outerbridge, esq., commissioner.

A great variety of specimens of corals, shells, and other marine objects, models of boats, samples of stone, and wood.

Professor A. L. Selwyn, in charge of geological exhibit.

An extensive collection of the rocks of British North America; many hundreds of specimens exhibited by the geological survey, specimens of coals from all parts of the dominion; ores of different kinds, samples of iron, steel, and copper, stoneware, and pottery.

#### NEW SOUTH WALES.

Augustus Morris, esq., commissioner.

The extensive exhibit illustrating the mining resources, the natural history and the botany and agriculture of the province including a large model of the gold products of the colony up to the year 1875, and specimens of coal-oil, shale, petroleum, &c.

#### NEW ZEALAND.

James Hector, esq., commissioner.

The entire exhibit of the animal, vegetable, and mineral kindoms of the colony, and also specimens illustrating its ethnology. Among these specimens is a model of the gold product of the colony and specimens of its coal.

#### OURENSLAND.

Angus Mackay, esq., commissioner.

Model of the gold product of the colony, specimens of ores and copper, iron, and gold; a large collection of native woods, fibers, and other products.

#### SOUTH AUSTRALIA.

S. Davenport, esq., commissioner.

A full series of all the exhibits from the animal, mineral, and vegetable kingdoms.

#### TASMANIA.

H. P. Welch, esq., commissioner.

Specimens of the iron and other ores, leather, woods, seeds, and grains, fibers, wools, &c.

Sir Redmond Barry, commissioner.

The entire collection of useful, economical minerals of the country exhibited by the mining department, specimens of stone-ware and other products, extensive collections of grains, wools, fruits, fibers, and woods, samples of paper, gums, &c.

#### VENEZUELA.

Mr. Leon de la Cova, commissioner.

The entire exhibit made by this country of minerals, ores, articles of materia medica, fruits, fibers, extracts, &c.

medica, fruits, fibers, extracts, &c.

In general it may be stated that from the countries mentioned in the foregoing the exhibits made by the commissioners in behalf of their respective governments, so far as relates to the animal, vegetable, and mineral kingdoms and their applications, have been presented to the United States, in some cases without any exception whatever, in others all except a few duplicates which were presented to other foreign commissions or to institutions in the United States. Indeed, the only countries from which absolutely nothing was received were Denmark, Luxembourg, Bahamas, British Guiana, Cape of Good Hope, and Jamaica, the exhibits of these countries being either entirely private property or borrowed from the Colonial Museum in London and necessarily returned.

## ORDER OF BUSINESS.

Mr. MILLS rose.

Mr. CONGER. Having seen the report accompanying the bill (S. No. 824) which the gentleman from New York [Mr Cox] desires to have put upon its passage, I withdraw my objection.

Mr. COX. I hope that bill will now be put upon its passage.

The SPEAKER. The Chair has recognized the gentleman from Texas, [Mr. MILLS.]

# HENRIETTA STRINGHAM.

Mr. MILLS, by unanimous consent, from the Committee on Naval Affairs, reported back the petition of Henrietta Stringham, widow of Rear-Admiral Stringham, for a pension, and moved that the commit-tee be discharged from the further consideration of the same, and that it be referred to the Committee on Invalid Pensions.

The motion was agreed to.

# F. V. GREEN AND J. J. SOWERBY.

Mr. MILLS also, by unanimous consent, reported back, with an adverse recommendation, the bill (H. R. No. 4390) authorizing the appointment of Acting Passed Assistant Surgeon Francis V. Green as surgeon and of Acting Passed Assistant Surgeon Joseph J. Sowerby as assistant surgeon in the Navy, and moved that the committee be discharged from the further consideration of the same, and that the accompanying report be printed. The motion was agreed to.

## COUNTING THE ELECTORAL VOTE.

Mr. KNOTT. I am directed by the select committee on the powers, privileges, and duties of the House of Representatives in counting the electoral votes to make a partial report, which I send to the desk and ask the Clerk to read.

The Clerk read as follows:

The select committee on the powers, privileges, and duties of the House of Representatives in relation to the counting of the electoral votes for President and Vice-President of the United States would in part respectfully report to the House of Representatives the accompanying evidence taken by them in presuance of the order of the House, up to and including the 5th day of February, 1877, and ask that the same be printed.

Mr. HALE. Let me ask the gentleman a question.
Mr. KNOTT. My colleague on the committee, the gentleman from Illinois, [Mr. Burchard,] desires to make a remark. After that I shall ask the previous question.

Mr. BURCHARD, of Illinois. I desire to say on behalf of the minority that we do not assent to the proposition of the majority so far as concerns reporting the testimony at this time for printing. We have no objection to a resolution to print the testimony for the use of the committee, as it proceeds; but it is premature to report the tes-timony in part taken, as some of the witnesses have not yet been cross-examined and are now under examination.

Mr. KNOTT. I demand the previous question.
Mr. BURCHARD, of Illinois. I yield a moment to the gentleman

Mr. BURCHARD, of Illinois. I yield a moment to the gentleman from Maine, [Mr. HALE.]

Mr. KNOTT. I only yielded to my colleague on the committee to make a statement for himself.

Mr. BURCHARD, of Illinois. Will the gentleman from Kentucky allow the gentleman from Maine to make a remark?

Mr. HALE. I only wish to ask a question.

Mr. KNOTT. Very well.

Mr. HALE. And that is, whether this is the testimony taken before this committee, a portion of which was printed by some parties outside of the Congressional Printer, to which attention has been called in the newspapers and also yesterday on the floor of this House? House?

The SPEAKER. The Chair is unable to answer that question.

Mr. KNOTT. I suppose that the gentleman from Maine [Mr. HALE]
knew when he raised the question, before what committee this testimony was taken. As to any publication outside of the testimony, he
knows more about it than I do, and I call for the previous question.

Mr. BURCHARD, of Illinois. Will the chairman of the committee

allow me to ask him one question?

Mr. KNOTT. Certainly.

Mr. BURCHARD, of Illinois. Does he not propose under the order of the House that the committee shall print the testimony as it shall be taken, as it proceeds, without any further order of the House?

That is my understanding of the resolution.

Mr. KNOTT. I will state that these papers, the report of the testimony, are accumulating to that degree that we find it necessary to print them from time to time, as the evidence is taken, and it is the understanding of the committee that I am to report, as chairman of the committee, from day to day, the evidence as it may be taken, and

In propose to do so.

Mr. BURCHARD, of Illinois. Does that give the committee the power to print testimony that may hereafter be taken, or does the chairman propose to ask special consent to print testimony taken in

future ?

Mr. KNOTT. The resolution only relates to the testimony already reported, and I will say to my friend that as soon as additional evidence is handed to me by the reporters I will ask the House to

order its printing.

Mr. BURCHARD, of Illinois. I will say to the House that this is in part the testimony that has been privately printed, some of it not be-

ing printed.

Mr. KNOTT. I call the previous question.

The previous question was seconded and the main question ordered;

and under the operation thereof the resolution was agreed to.

Mr. KNOTT moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## H. L. LLOYD AND GEORGE W. KING.

Mr. COX. The gentleman from Michigan [Mr. CONGER] has agreed to withdraw his objections to the consideration of Senate bill 824, for the relief of Hannah L. Lloyd as executrix and George W. King executor of William Lloyd, deceased. And if any one else objects I would like to have he report read. There is only a very small amount of money involved.

The bill was read, as follows:

After our was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Hannah L. Lloyd, exceutrix, and George W. King, executor, of William Lloyd, deceased, the sum of \$582.55, it being the balance paid into the Treasury, after costs and expenses, arising from the sale of one-fourth interest in the brig Fanny, to which it appears they are entitled.

Mr. COX. I ask that the bill be put upon its passage.

No objection was made; and the bill was taken from the Speaker's table, received its third reading, and was passed.

Mr. COX moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table. The latter motion was agreed to.

# ORDER OF BUSINESS.

Mr. WILSON, of Iowa. I must demand the regular order of business, which I believe would be the morning hour, as we have never had one on this legislative day, unless the Committee on Appropriations are prepared to go on with their business. I will yield, however, to the gentleman from Michigan [Mr. WALDRON] on the Committee of the second secon mittee on Appropriations.

# PUBLIC PRINTING DEFICIENCY,

Mr. WALDRON. I am instructed by the Committee on Appropriations to report back the bill (S. No. 1222) to provide for a deficiency

in the appropriations for the public printing and binding for the current fiscal year, with a recommendation that it pass, and I ask unanimous consent that it be now considered in the House as in Commit-

the of the Whole on the state of the Union. I will say to the House that there is a pressing necessity for the passage of this bill to-day.

Mr. KNOTT. I would ask the gentleman to yield to me to make a report which is necessary for the proper adjustment of the accounts of the House, and is in the interest of the employés of the House.

Mr. WALDRON. If I yield to one I must yield to all, so it will do the gentleman no good, for the gentleman from Iowa [Mr. WILSON]

would insist on the regular order.

The bill was read. It appropriates the sum of \$350,000, or so much thereof as may be necessary, to supply a deficiency for congressional printing and binding, including the Congressional Record, and the necessary material therefor for the current fiscal year, provided that of the above amount \$5,000 may be used for printing and binding for the Supreme Court.

for the Supreme Court.

for the Supreme Court.

Mr. WALDRON. I desire to say in explanation of this bill that the amount appropriated for the public printing for the current fiscal year was \$91,000 less than the appropriation for the previous year. I desire to say further that the appropriation for the current year has been intrenched upon in consequence of the last session extending from the 1st day of July to the middle of August; by which means the expenses for six weeks of the next fiscal year, by taking out of the appropriation for the current year the appropriation for printing and binding, is already exhausted, and the Public Printer gives us notice that unless this appropriation be made now he will be compelled under the existing law to suspend work. I now yield, by inpelled under the existing law to suspend work. I now yield, by instructions from the Committee on Appropriations, to the chairman of the Committee on Printing to offer an amendment.

Mr. VANCE, of Ohio. I offer the following amendment as a

Provided further, That from and after the close of the present session of Congress the Public Printer shall pay no greater price for labor performed by printers, bookbinders, and other employes in the Government Printing Office for each hour's work or piece-work than the average price paid for an hour's work or piece-work of the same description in the cities of New York, Philadelphia, and Baltimore.

Mr. CONGER. I raise the point of order upon that amendment

that it involves new legislation.

Mr. DUNNELL. And I hope the gentleman will insist upon his

point of order.
Mr. VANCE, of Ohio. The statute provides-

Mr. VANCE, of Ohio. The statute provides—
Mr. CONGER. I insist upon my point of order that this amendment changes existing law and is new legislation, and does not show upon its face that it is a retrenchment of expenditure.

Mr. VANCE, of Ohio. I will read the law upon the subject.
Mr. CONGER. I may remark that there is nothing in this amendment which shows whether the Government Printing Office pays more released to the provided that the provided in the same of the provided that the provided the provi or less now, or would pay more or less if this amendment should become law, than is paid in New York and other cities for this work. Those who remember the statistics which were furnished to the House I nose who remember the statistics which were firmished to the House during the debate upon this subject will be satisfied that in many cases the printing under this amendment would cost the Government more than is paid in other cities.

Mr. VANCE, of Ohio. I would state that more is paid at the Government Printing Office than is paid in other cities.

Mr. CONGER. That does not appear upon the face of the amendment.

Mr. VANCE, of Ohio. It is not necessary that it should appear upon the face of the amendment.

Mr. CONGER. Then only the gentleman's word is to be taken as

an offset to mine.

The SPEAKER. Under what rule does the gentleman from Michi-

gan [Mr. CONGER] object to this amendment?

Mr. CONGER. Under the rule prohibiting new legislation upon

Mr. CONGER. appropriation bills.

The SPEAKER. That rule would apply as against à general appropriation bill. This is not a general appropriation bill. The Chair presumes that the gentleman from Michigan refers to Rule 120, which is as follows:

No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision in any such bill or amendment thereto changing existing law be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures.

Mr. CONGER. If this is not a general appropriation bill, then the committee has no right to report it at this time.

The SPEAKER. It is in order to report it at this time because on

yesterday the House by unanimous consent gave the Committee on Appropriations the right to report this particular bill at any time. Mr. CONGER. I hold that this is one of the regular appropriations

of the Government.

The SPEAKER. It is not one of the appropriation bills to which Rule 120 applies.

Mr. CONGER. It is a deficiency in a general appropriation for

printing which is made every year.

The SPEAKER. In the first place a deficiency appropriation bill is not known under the rules.

Mr. CONGER. It is a part of the annual appropriations made every

year upon the report from the Committee on Appropriations.

The SPEAKER. The Chair thinks not. Rule 77 indicates the general appropriation bills, which are ten in number, and include all the appropriation bills except the bill appropriating for rivers and harbors and the bill appropriating for deficiencies, which bills are omitted from the enumeration contained in Rule 77.

Mr. CONGER. If the Chair pleases, this is a part of the appropriations contained in the regular sundry civil appropriation bill; that bill is the place for this appropriation. The fact that it comes into the House in this form makes it none the less a general appropriation;

the House it this form makes it hole the less a general appropriation; it is a part of the sundry civil bill.

The SPEAKER. The Chair thinks not.

Mr. CONGER. It is a part of the sundry civil bill reported at this time by leave of the House.

The SPEAKER. The answer to that is very plain. If this was one

of the general appropriation bills it would not require unanimous consent of the House for the Committee on Appropriations to report it at any time.

Mr. CONGER. Because it was not coupled with the other matters

of the appropriation bill. But the sundry civil bill might have had this sole appropriation, which belongs in that bill.

The SPEAKER. Yes, it might have had; but it does not have it. Mr. CONGER. But it is none the less a part of that bill.

The SPEAKER. The Chair thinks the House has recognized this as an appropriation, not of the general character alluded to in Rule 77, as a part of the bills which it is the duty of the Committee on Appropriations to prepare and report. It is not an appropriation of the general character which the restrictive clauses of Rule 120 are intended to reach. In confirmation of the position of the Chair, the House on yesterday recognized the fact that this was not such an appropriation bill by giving unanimous consent that it might be reported at any time from the Committee on Appropriations; that took

it out of the scope of any restrictive rule whatever.

Mr. CONGER. Then the point of order would lie against the bill,

Mr. CONGER. Then the point of order would be against the oil, that, containing an appropriation, this bill must receive its first consideration in Committee of the Whole.

The SPEAKER. The Chair, at the instance of the gentleman reporting the bill, asked unanimous consent that it might be considered in the House as in Committee of the Whole at this time, and the House has given unanimous consent for that manner of proceed-

the House has given unanimous consent for that manner of proceeding with this bill.

Mr. CONGER. I have, of course, to submit to the ruling of the Chair. This subject-matter being one of the appropriations of the Government, an annual appropriation, I cannot see exactly how the spirit of it could be changed by the manner of introducing it.

The SPEAKER. The evil the gentleman complains of consists in the fact that the House incautiously gave unanimous consent on yesterday that the Committee on Appropriations might report this bill at any time, and also that it again incautiously gave unanimous con-

at any time, and also that it again incautiously gave unanimous consent this morning that the bill should be considered in the House as in Committee of the Whole. While the Chair sympathizes with the gentleman from Michigan, [Mr. CONGER,] under the rules there is no

gentleman from Michigan, [Mr. Conger,] under the rules there is no remedy that he can think of.

Mr. Conger. Will the Chair allow me to make a suggestion? The SPEAKER. Certainly.

Mr. Conger. I can see no limit to amendments of every character whatever that may be offered and affixed to this bill.

The SPEAKER. Yes, there is a limit; any amendment to be in order must be germane to the bill.

Mr. Conger. Admitting that, still anything in regard to printing, the whole subject-matter of what might be printed, would be germane to this bill; and in this way all the laws in regard to the printing might be changed. I only submit this as the conclusion which must follow from the ruling of the Chair.

Mr. Vance, of Ohio. This comes under the rule of the House. It is germane to the bill and in the line of economy.

The SPEAKER. The Chair thinks the point of order is well taken.

The SPEAKER. The Chair thinks the point of order is well taken. The gentleman from Michigan, [Mr. WALDRON,] as the Chair understands, demands the previous question on the bill and pending amend-

Mr. VANCE, of Ohio. I would like to say something. Mr. FORT. Does the gentleman from Michigan propose to yield for debate?

Mr. VANCE, of Ohio. I would like to make a few remarks, if the

gentleman from Michigan will yield to me for five minutes.

Mr. WALDRON. I yield five minutes to the gentleman from Ohio.

Mr. DUNNELL. I object, unless there is to be opportunity for

reply.

Mr. VANCE, of Ohio. I hold in my hand a letter which I will ask the Clerk to read; but before it is read I will state that this matter of wages was carefully considered in the Joint Committee on Print-The chairman of the Senate committee and myself had frequent consultations upon this matter, and agreed that it was unjust for the Government to pay a greater price by almost 50 per cent. than is paid in first-class offices throughout the country for similar work. Consequently, about the middle of last August, we joined in writing a letter which I ask the Clerk to read.

The Clerk read as follows:

Sin: In the opinion of the Joint Committee on Public Printing it would be "for the interest of the Government" that you pay such rate of wages as would be the average of what is paid to journeymen printers and bookbinders, and to women

employed in printing and binding, in New York, Phtladelphia, and Baltimore. They also suggest that you employ such number of boys and apprentices as in your opinion will best promote the public service.

Any steps which you may take in these directions, without regard to the dictation of any society or other third party, will receive the cordial approval of the Joint Committee on Public Printing.

ng.

H. B. ANTHONY,
Chairman Committee on the part of the Senate,
JOHN L. VANCE,
Chairman Committee on the part of the House.

-, Public Printer. To -

Mr. VANCE, of Ohio. Mr. Speaker, I desire to state further that the appropriation made at the last session of Congress would have been sufficient under ordinary circumstances to do all the public printing required in one year; and if the advice contained in the letter just read had been followed, the extraordinary amount of printing ordered could have been executed without calling for a deficiency appropriation. In justice to myself and the Printing Committee of the House, I will say that if the rules prevailing in private printing establishments throughout the country had been observed in the Government Printing Office, not one dollar of deficiency would have been asked at this session. In my judgment, the public printing for the current year could have been let out by contract at the figure appropriated by Congress at the last session and a handsome profit made by the contractor.

by the contractor.

I hold in my hand a letter from the Public Printer, directed to the clerk of printing records; and in support of what the gentleman from Michigan [Mr. WALDRON] has very properly said, I will read a portion

The last session of Congress, with the heavy amount of work incident upon the closing weeks of a protracted session, extended for more than six weeks into the appropriation of this year. This was an unlooked for occurrence.

The amount of printing and binding relating to the first session of the Forty-fourth Congress left to be completed under the present appropriation was very considerable; indeed that work was so heavy that in order to complete it before the commencement of the present session it was necessary to work the office in strong force during the entire recess.

[Here the hammer fell.]
Mr. WALDRON. As the House is considering this bill as in Committee of the Whole under the five-minute rule, and as five minutes have been allowed to the gentleman from Ohio to explain the amendament, I now yield five minutes to my colleague [Mr. CONGER] to oppose the amendment, after which I shall call for the previous question.

Mr. FORT. I think we ought to have this question discussed more

fully.

Mr. FORT. I think we ought to have this question discussed more fully.

Mr. CONGER. Mr. Speaker, the impracticability of this proposition has been proved before this House time and again when the same proposition has been made. The idea that we shall ascertain the average price of this labor in New York or Philadelphia through one year, or two years, or ten years, and adopt this average as the standard of prices in the Congressional Printing Office has been proved to be absurd, and indeed it is absurd on its face. In no other office throughout the United States or the world is this particular kind of printing required to be done with the speed and accuracy demanded from this office. It is almost entirely night-work. A large portion of it is that peculiar kind of work requiring great care and exactness. This work is different from the work anywhere else. Besides, the expense of living incurred by printers in Washington is greater than such expenses in New York or Philadelphia. It is not pretended that the printers here receive any more than they ought to receive, taking into consideration the kind of work and the hours at which it is performed. I do not know of any subject that had more thorough and careful investigation, more reports from committees, than this one on several occasions since I have had the honor to be a member of Congress; and it was the opinion of the House from time to time, as these gress; and it was the opinion of the House from time to time, as these matters have been brought before it, that the rule of payment for general work in other offices in other cities could not properly be applied to this class of work, whether done by the Government or by contractors. No contractor would agree to furnish the night-work which has to be furnished in preparing the long records of House proceedings.

proceedings.

Now the committee assume this congressional printing ought to be let to contractors. The fact is no contractor could take the contract to print this class of work and do it, if he were honest in his accounts, as low as the price it costs the Government now.

It seems, Mr. Speaker, as if every proposition which is made, this among others, is directed against the laborer, the night-laborer, the careful, painstaking, hard-working printers, who work while we sleep. That is the object of this amendment, to cut down the wages of the most laborious class of laborers in this city and country, men whose very lives can continue, as it is said, on the average from seven to ten most laborious class of laborers in this city and country, men whose very lives can continue, as it is said, on the average from seven to ten years only following this incessant night-labor. Why should these attacks constantly be made upon these laborers, this most faithful and devoted class to our interest and the interest of the country, who prepare and have ready for our perusal the records of our debates when we rise in the morning, although we may sit here until twelve at night? They work through the long nights in the preparation and printing that long reports from committees may speedily be laid before Congress for our consideration and action. Let reform come in some other direction, and do not strike with such fell hand upon the laborer alone, and that is the sole object of this amendment.

I endeavored to have this amendment ruled out by the Chair, but if that cannot be done I desire to meet it on its merits, and to ask the Representatives of laboring-men at least to stand by their interests in

Mr. FORT. If a member proposes an amendment, then is he not entitled to an hour on that amendment? last word.

The SPEAKER. It has never been so ruled. The gentleman from Michigan has the right, in the opinion of the Chair, to demand the pre-

vious question.

Mr. CONGER. I make this point of order: when the House permitted this to be considered in the House as in Committee of the Whole under the five-minute rule, that carries with it the right to amend and to debate the amendments five minutes for and five minutes

Mr. FORT. Why, that is my point of order!

The SPEAKER. The Chair overrules the point of order and holds the gentleman from Michigan has the right to demand the previous

The previous question was seconded and the main question ordered.

Mr. FORT. Is not the gentleman from Michigan entitled to an hour to close debate?

The SPEAKER. He declines to use it.

Mr. FORT. I move to reconsider the vote by which the main question was ordered. I do not wish to antagonize the bill, but I do wish to antagonize the amendment.

Mr. WALDRON. I do not desire to debate the bill, and ask for the

question. Mr. FORT.

Mr. FORT. I ask for a vote on my motion to reconsider.
Mr. WALDRON. I move to lay the motion to reconsider on the

Mr. FORT. I do not yield for that purpose.

The SPEAKER. The Chair is bound to recognize the gentleman in charge of the bill to make such motion as will advance it.

Mr. FORT. Then I ought not to have been recognized. I have no antagonism with the gentleman from Michigan, but I wish to be heard on the amendment.

The motion to reconsider was laid on the table.

Mr. FORT. If this amendment is agreed to, then we ought to remove this capital to New York.

The SPEAKER. That is not a point of order.

Mr. BALLOU. Is it in order for me to make a statement?

The SPEAKER. It is not.

The question recurred on the amendment.
The House divided; and there were—ayes 86, noes 80.
Mr. CONGER demanded the yeas and nays.
The yeas and nays were ordered.
Mr. FORT. I ask the amendment be again read.

The amendment was again read.

The question was taken; and there were—yeas 118, nays 105, not voting 67; as follows:

voting 67; as follows:

YEAS—Messrs. Ainsworth, Anderson, Ashe, Atkins, John H. Bagley, jr., Beebe, Blackburn, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Backner, Samuel D. Burchard, Burleigh, Buttz, Cabell, John H. Caldwell, Candler, Cate, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Cate, Chapin, John B. Clarke, ir., of Missouri, Cate, Chapin, John B. Clarke, ir., of Missouri, Cate, Chapin, John B. Clark, jr., of Missouri, Cate, Chapin, John B. Clarke, ir., of Missouri, Chaper, Collins, Cook, Cowan, Culberson, Cutler, Davis, De Bolt, Dibrell, Durham, Eden, Egbert, Faulkner, Felton, Finley, Forney, Fuller, Gause, Glover, Gunter, Hale, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Abram S. Hewitt, Hill, Hooker, House, Humphreys, Hurd, Frank Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Levy, Lewis, McFarland, Metcalte, Milliken, Mills, Morgan, Neal, New, Odell, Oliver, Piper, Potter, Rainey, Rea, Reagan, Riddle, John Robbins, William M. Robbins, Mhes Ross, Savage, Sayler, Scales, William E. Smith, Southard, Sparks, Springer, Stevenson, Stone, Teese, Terry, Thomas, Tucker, John L. Vance, Waddell, Waldron, Gilbert, C. Walker, Walling, Ward, Warner, Watterson, Erastus Wells, Whitehouse, Whitthorne, James Williams, Willis, Wilshire, Fernando Wood, Yeates, and Young—118.

NAYS—Messrs. Adams, Bagby, George A. Barley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, William P. Caldwell, Campbell, Cannon, Casson, Caswell, Chittenden, Cochrane, Conger, Crapo, Danford, Davy, Denison, Dunnell, Eames, Evans, Flye, Fort, Foster, Franklin, Frye, Goode, Goodin, Haralson, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hopkins, Hoskins, Hubbell, Hunter, Hurbut, Hyman, Joyee, Kasson, Kell

Jere N. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodburn—105.

NOT VOTING—Messrs. Abbott, Banning, Bass, Bell, Bliss, Horatio C. Burchard, Carr, Caulfield, Cox. Grounse, Darrall, Dobbins, Douglas, Durand, Ellis, Field, Freeman, Garfield, Gibson, Hays, Henkle, Goldsmith W. Hewitt, Hoar, Hoge, Holman, Hunton, Jenks, Thomas L. Jones, Kehr, King, Lawrence, Le Moyne, Lord, Lynde, Maish, MacDongall, McMahon, Meade, Miller, Money, Morrison, Payne, Phelps, John F. Philips, Poppleton, Powell, Purman, John Reilly, Rice, Sobieski Ross, Schleicher, Schumaker, Seelye, Sheakley, Singleton, Stanton, Stephens, Swann, Thompson, Martin I. Townsend, Washington Townsend, Charles C. B. Walker, Wheeler, Wike, Alpheus S. Williams, Benjamin Wilson, and Woodworth—67.

So the amendment was agreed to. During the roll-call,

Mr. CLARK, of Missouri, stated that his colleague, Mr. PHILIPS,

was detained in his room by sickness.

The result of the vote was then announced as above recorded. Mr. VANCE, of Ohio, moved to reconsider the vote by which the amendment was adopted; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and

Mr. WALDRON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.
On motion of Mr. WELLS, of Missouri, the title to the bill was amended by adding the words "and for other purposes."

#### ORDER OF BUSINESS.

Mr. WALDRON. I move that the rules be suspended and that the House resolve itself into Committee of the Whole on the state of the Union for the purpose of resuming the consideration of the deficiency

appropriation bill.

Mr. KNOTT. I ask the gentleman from Michigan to withdraw that motion for a moment till I can make a report from the Commit-

that motion for a moment till I can make a report from the Committee on the Judiciary.

Mr. CONGER. I object.

The question was taken on the motion to go into Committee of the Whole on the state of the Union, and it was agreed to.

#### DEFICIENCY APPROPRIATION BILL.

The House accordingly resolved itself into Committee of the Whole The House accordingly resolved itself into Committee of the Whole on the state of the Union (Mr. Eden in the chair) and resumed the consideration of the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes.

Mr. WALDRON. When the committee rose yesterday it was dividing upon the amendment offered by my colleague from Michigan, [Mr. Conger,] increasing the appropriation for printing and binding for the Patent Office from \$25,000 to \$41,000. The Committee on Appropriations have considered the amendment offered by my colleague

propriations have considered the amendment offered by my colleague

nd are of the opinion that it should be adopted.

The CHAIRMAN. The Clerk will report the pending amendment.

The Clerk read as follows:

In line 179 strike out "\$25,000" and insert in lieu thereof "\$41,000;" so that the paragraph will read:
For printing and binding for the Patent Office by the Public Printer, \$41,000; and so much of sections 490, 491, and 492 of the Revised Statutes as authorizes and provides for the printing for gratuitous distribution of specifications and drawings of patents is hereby repealed.

The amendment was agreed to.
Mr. SAMPSON. I now submit the amendment indicated in the discussion of yesterday, as follows:

Strike out all of line 179 after the word "dollars," and all of lines 180, 181, 182, and 183; namely these words:

And so much of sections 490, 491, and 492 of the Revised Statutes as authorizes and provides for the printing for gratuitous distribution of specifications and drawings of patents is hereby repealed.

Mr. WALDRON. The Committee on Appropriations have considered that amendment and think it should be adopted.

The amendment was agreed to.

The Clerk resumed the reading of the bill, and read the following paragraph:

For rent of building on the corner of Eighth and G streets, known as "Wright's building," \$3,000, being a deficiency for the fiscal year ending June 30, 1877; and hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government, until an appropriation therefor shall have been made in terms by Congress.

Mr. ATKINS. I offer the following amendment:

After "1877," in line 193, add the following: And the Secretary of the Interior is hereby directed to terminate said lease on or before the 30th day of June next.

The object of the amendment is simply to direct the Secretary of the Interior to terminate the contract. This building, in which the Bureau of Education and Labor is placed, is what is known as Wright's building. There is no necessity whatever for renting this building. The Bureau of Education and Labor can be removed to building. The Bureau of Education and Labor can be removed to the Freedman's Bureau building, or to the building now occupied by the Pension Bureau. There is no necessity for renting Wright's building, and we desire to terminate the contract.

Mr. KASSON. I ask the Clerk to read the paragraph as it will be

if amended.

The Clerk read the paragraph as proposed to be amended.

The amendment was adopted.

Mr. COX. I offer the following amendment to come in at the end of the clause, after the word "Congress:"

And that this clause be regarded as notice to all contractors or lessors of any such building or part of building.

Mr. HALE. I ask that the amendment may be again read and meanwhile reserve the point of order.

The amendment was again read.

Mr. GOODIN. Where does that come in?

Mr. COX. At the end of the clause.

Mr. HALE. I have no objection to that. I do not think it changes

any law.
The amendment was adopted.

The Clerk resumed the reading of the bill, and read the following paragraph:

To enable the Postmaster-General to provide for the manufacture of postal cards, \$31,000.

Mr. HALE. I offer an amendment to come in after the paragraph just read, and ask that the letter which I send to the desk be read. It will explain itself.

The Clerk read the proposed amendment, as follows:

For the salary of the naval solicitor, from August 15, 1876, to June 30, 1877, \$3,072.05.

Mr. HALE. Now read the letter.

The Clerk read as follows:

DEPARTMENT OF JUSTICE, Washington, February 3, 1877.

DEPARTMENT OF JUSTICE,

Washington, February 3, 1877.

Sir: I have sent to Hon. Speaker of the House of Representatives (and your committee has probably received) the estimates of this Department for the ensuing fiscal year, and also for deficiencies of the current year. In those estimates is included an appropriation for the salary of the naval solicitor from Angust 15, 1876, to June 30, 1873, and also for the year ending June 30, 1878.

My present purpose is respectfully to urge the importance of making the appropriations required for the payment of that salary.

I was greatly surprised when I discovered that the legislative, executive, and judicial appropriation act of August 15, 1876, omitted all reference to that salary, and the Secretary of the Navy was equally surprised. To both Departments—the Navy Department and the Department of Justice—this omission was unfortunate, because the services of the naval solicitor, who acted also as naval judge-advocate-general, were very important, and unless General Belles, the incumbent of the office, would continue to perform its many duties trusting to the action of Congress in its session of 1876–77, very serious inconveniences and injuries to the public service must have ensued. He has remained faithfully at his post of duty, thus averting the evils that must otherwise have resulted from that omission.

The act creating the Department of Justice, and the Revised Statutes, make the office of naval solicitor a permanent part of that Department. The large number of cases, and of trials by courts-martial, and of questions presented for legal solution in the Navy Department, make the office of naval solicitor a bernament part of that Department. The large number of cases, and of trials by courts-martial, and of questions presented for legal solution in the Navy Department, make the office of naval solicitor a permanent part of that Department. The large number of cases, and of trials by courts-martial, and of questions presented for legal solution in the Navy Department

ALPHONSO TAFT Attorney-General.

Hon. WILLIAM S. HOLMAN,
Chairman of the Committee on Appropriations of the House of Representatives. Mr. HALE. This is merely to fill up a deficiency in the salary made

by the action of the last year.

Mr. CLYMER. What is the amount of his salary?

Mr. HALE. Twenty-five hundred dollars. The amendment is a fair one.

Mr. CLYMER. Was his salary of \$2,500 a year fixed by law?
Mr. BLOUNT. His salary is provided for in another bill; this is only to supply an omission.

The amendment was agreed to.

The Clerk resumed the reading of the bill, and read as follows:

For the National Museum in charge of the Smithsonian Institution: For restoring to their proper place in the National Museum cases are moved to the international exhibition, and re-arranging the collections, and for expenses and preservation of the collections, and for receiving, packing, and transporting the objects presented to the United States at the centennial by State and foreign governments, and for properly storing and preserving them until a proper disposition can be made of the same, \$20,000.

Mr. WADDELL. I move to insert after line 208 the following: For tubs, pots, packing materials, labels, seeds, envelopes, grading, repairing wer, horse-hire, and manure for the Botanical Gardens, \$1,000.

The amendment was agreed to.
The Clerk resumed the reading of the bill, and read as follows: For the public printing, for the public binding, and for paper for the public printing, being a deficiency for the fiscal year ending June 13, 1877, \$200,000.

Mr. CLYMER. I move to strike out that paragraph. In view of the amendment already adopted it is unnecessary.

The amendment was agreed to.

The Clerk resumed the reading of the bill, and read as follows:

To pay for two thousand copies of Barclay's Digest, ordered by resolution of the House of July 14, 1871, \$2,000; and hereafter the Digest shall be prepared and published by the journal clerk of the House, as the House shall from time to time direct.

Mr. WILSON, of Iowa. I offer the following amendment:

And for such additional service hereby required, the journal clerk shall be paid the sum of \$1,000 per annum.

Mr. REAGAN. I wish to amend that paragraph by striking out a portion of the original text.

Mr. WILSON, of Iowa. But it is first in order to amend the text before taking the vote on striking out. Mr. REAGAN. I desire to amend the paragraph by striking out as

And hereafter the Digest shall be prepared and published by the journal clerk of the House, as the House shall from time to time direct.

I offer this amendment because I am not sure that I appreciate or understand what would be the effect of this clause or the object of

Mr. WILSON, of Iowa. I think that it is first in order to consider my amendment before we take a vote upon striking out that part of the clause which I propose to amend. My amendment is one in the nature of perfecting the original text, and if the gentleman will allow us to take a vote on that then the House will have the two prop-

ositions before it, and they can strike out the whole if they see fit.

Mr. CLYMER. I would say to the gentleman from lowa that if
this amendment be inserted by a vote of the committee it cannot afterward be stricken out.

Mr. WILSON, of Iowa. You can strike it out with other parts of

the text, but I am not going to lead gentlemen into a trap.

The CHAIRMAN. The Chair thinks the amendment in order.

Mr. REAGAN. Then I am not particular as to the order in which the question is put, but it seems to me that if my amendment prevails there would be no occasion for the gentleman from Iowa to of-

Mr. WILSON, of Iowa. That is the very thing I want to avoid. The theory of the law of amendments is that you may first perfect the text before a motion is made to strike out the text.

Mr. HOOKER. But before that the question should be taken on the motion to strike out, for unless there is additional labor the compensation of this clerk should not be increased.

Mr. WILSON, of Iowa. That is true.
Mr. HOOKER. It is true.
Mr. WILSON, of Iowa. But the Committee on Appropriations have

Mr. WILSON, of Iowa. But the Committee on Appropriations have reported this provision and I want, if possible, to make it presentable before the vote is taken on striking it out.

Mr. HOOKER. I submit that the proposition of the gentleman from Texas [Mr. Reagan] should be first considered by the committee, because it proposes to strike out that part of the clause which the gentleman from Iowa [Mr. Wilson] proposes to amend, and in case of a failure on the part of the committee to accept that amendment then the motion of the gentleman from Iowa will be in order.

The CHAIRMAN. The gentleman from Iowa proposes an amendment to the text of the paragraph, and it is clearly in order to vote on that before a motion to strike out the clause.

Mr. WILSON, of Iowa. The Committee on Appropriations have thought fit to bring in this clause, and I think that the Committee of the Whole should have an opportunity of making it presentable, if possible, before a motion is entertained to strike it out.

The CHAIRMAN. The Chair thinks that the motion of the gentleman from Iowa is first in order.

man from Iowa is first in order.

Mr. WILSON, of Iowa. If we cannot make the clause presentable,

by a majority vote we can then strike out the clause.

Mr. O'BRIEN. But if the amendment of the gentleman from Iowa prevails, will it then be in order to move to strike it out?

prevails, will it then be in order to move to strike it out?

Mr. WILSON, of Iowa. Yes, you cannot strike out a, b, and c, after being inserted, but you can strike out a, b, c, and d. The Committee on Appropriations have seen fit to put the work of preparing and publishing a new digest upon a clerk of the House. Now, it cannot be necessary to call the attention of the gentlemen to the character of the services imposed upon this clerk. It is a work in which critical knowledge is needed. It requires an expert to do it. Every one who does it must study the laws and must have a comprehensive knowledge of parliamentary law. I have looked somewhat into the previous cost of getting up the Digest, and I find that we paid the old journal clerk \$3,600 a year and his assistant \$3,000.

Now, I do not know to what extent the House is held liable to pay Mr. Barclay for a copyright. I have too much respect and veneration for that gentleman to interfere with his rights, whatever they may be. The new work proposed to be put upon an officer of the House cannot be performed by him for the amount paid to him for his services at the Clerk's desk.

Instead of the journal clerk as heretofore receiving \$3,600 a year,

cannot be performed by him for the amount paid to him for his services at the Clerk's desk.

Instead of the journal clerk as heretofore receiving \$3,600 a year, with an assistant journal clerk at \$3,000 a year, the Committee on Appropriations propose to have all the work done for \$2,500 a year. Now if this work is to be well done, it should be done in such a manner as to be intelligible, including as it does a compilation of all the decisions of the Chair that are well settled. If the new digest is to be prepared in such a way that it may be readily understood by the new members of Congress, as well as the old, then we ought to provide a sufficient remuneration to the gentleman who is to do it. From what little knowledge I have upon this subject I assert that no twenty-five-hundred-dollar clerk can be obtained to do it. You cannot expect a man to do this work for \$2,500; it is unfair to ask any clerk to do it; the work will not be performed for that sum. If this additional work is to be imposed upon the journal clerk of the House, then I ask, as a matter of simple justice, that he be paid at least within \$100 of the salary received by the old journal clerk, who also had an assistant.

Mr. BROWN, of Kentucky. Will the gentleman allow me to ask him a question?

Mr. WILSON, of Iowa. Certainly.

Mr. BROWN, of Kentucky. Did I understand the gentleman corrective as the state of the salary contents and the gentleman corrective as the state of the salary received by the old journal clerk, who also had an assistant.

Mr. WILSON, of Iowa. Certainly.
Mr. BROWN, of Kentucky. Did I understand the gentleman correctly as saying that our journal clerk now performs services for \$2,500 a year for which the House formerly paid \$6,600 ?
Mr. WILSON, of Iowa. Yes, sir.
Mr. BROWN, of Kentucky. The office of assistant journal clerk has been sholished.

Mr. BROWN, of Kentucky. The office of assistant journal clerk has been abolished.

Mr. WILSON, of Iowa. It has been.

Mr. BROWN, of Kentucky. And the present journal clerk of the House does the work of both the old journal clerk and his assistant, and does it for the sum of \$2,500?

Mr. WILSON, of Iowa. That is correct.

Mr. BROWN of Kentucky. I would select the gentlemen what is

Mr. BROWN, of Kentucky. I would ask the gentleman what is his amendment?

Mr. WILSON, of Iowa. It is that if this new labor is put upon the journal clerk, who now journalizes our proceedings for \$2,500 a year, he shall have an additional \$1,000 for compiling the new digest.

Mr. BROWN, of Kentucky. To make his entire compensation \$3,500

Mr. BROWN, of Kentucky. To make his entire compensation \$3,500 a year?

Mr. WILSON, of Iowa. Yes, sir.

Mr. BROWN, of Kentucky. For services for which the House formerly paid \$6,600?

Mr. WILSON, of Iowa. Yes, sir.

Mr. BLOUNT. When this matter was before the Committee on Appropriation from year to year for the purpose of printing Barclay's Digest was altogether an unnecessary expense; that there was no need of having this work done every year. We therefore came to the conclusion that, while we would not abandon the idea of making an appropriation at this time, yet we would devolve the duty of preparing this work hereafter upon the joprnal clerk of this House. It was the judgment of the Committee on Appropriations, and especially of the older members of that committee, that the additional labor required would not amount to much, that the clerk is obliged to compile the decisions of the Speaker anyway. I hope, therefore, that this manner of increasing salaries will not be resorted to and that this amendment will not be adopted.

Mr. SPRINGER. A question.

Mr. BLOUNT. Wait a moment.

Mr. SPRINGER. Let me ask the gentleman a question.

Mr. SPRINGER. Let me ask the gentleman a question.

Mr. BLOUNT. I will in a moment; not now. I do trust that the House will not adopt this amendment. This matter has been carefully considered; the very reasons brought forward by the gentleman from Iowa [Mr. Wilson] have been considered. If anything is to be done at all, if the question comes between an increase of salary and striking out this paragraph altogether, then, in the judgment of the Committee on Appropriations, the paragraph should be stricken out entirely; that is, if we are to elect between the two, I hope the House will not increase a salary in this way; and if it is thought necessary to do so, then I hope the paragraph will be stricken out altogether.

The CHAIRMAN. Debate on the pending amendment has been

The CHAIRMAN. Debate on the pending amendment has been

exhausted.

Mr. SPRINGER. I move to strike out the last word.

The CHAIRMAN. The gentleman will suspend until order is re-

stored in the Hall.

Mr. CLYMER. It seems impossible for the Chair to maintain order in the Hall this morning. I desire to give notice that, if this confusion continues, I shall ask for the enforcement of the rule, so that the floor of the House may be kept clear of those not entitled

Mr. COX. I hope that will not be done. Mr. CLYMER. I say that I give notice that I will do so if this confusion continues

Mr. COX. The gentleman ought to recollect that this is an excit-

Mr. COX. The gentleman ought to recollect that this is an exciting day; everybody is talking about other matters.

Mr. CLYMER. And to the great detriment of the public business.

Mr. SPRINGER. I am informed that the present compiler of Barclay's Digest, Mr. Barclay, receives \$4,000 for each Congress on account of his copyright for the book known as Barclay's Digest. And in the event of there being three sessions in any one Congress he would receive \$6,000 as copyright; that is, \$1 for each copy taken by Congress. Now, if we are paying \$1 for each copy, and there are ordered sufficient copies during two sessions of Congress to pay Mr. Barclay \$4,000 for the copyright of this work, it seems to me it would be more economical to pay \$1,000 additional compensation to the journal clerk for furnishing us a digest of the rules of this House, which will answer every purpose, without paying this copyright now which will answer every purpose, without paying this copyright now

which will answer every purpose, without paying this copyright now provided by law.

Mr. BLOUNT. The committee do not propose to pay this copyright; we do not propose to have the Digest after this session.

Mr. SPRINGER. Then we will not have any Digest from session to session, unless we now provide for it. I think this additional compensation is so small, and the necessity for the compilation—

Mr. ATKINS. This is for a deficiency.

Mr. SPRINGER. This additional compensation is so small that I hope the House will adopt the amendment.

Mr. CLYMER. The gentleman from Illinois [Mr. SPRINGER] and others have spoken of the copyright of Mr. Barclay. I do not understand that he has any copyright to this book; I do not think it possible for him to obtain one. If he had a copyright it would have to be so alleged in the book itself.

Mr. WADDELL. I have a statement from Mr. Barclay himself that he has copyrighted the book; and I have sent a page to the Librarian of Congress to get official information on this subject.

Mr. REAGAN. It is stated at the beginning of the Digest itself that it is copyrighted.

Mr. SPRINGER. It is copyrighted; and we are now paying \$4,000 in each Congress for this copyright.

Mr. SPRINGER. It is copyrighted; and we are now paying \$4,000 in each Congress for this copyright.

Mr. CLYMER. If I am in error in my statement I shall be glad to be corrected, although so far as I have examined the book I find no notice of the copyright, and such notice is required under the law.

I understand that this appropriation made from session to session is a species of gratuity given to Mr. Barclay; and certainly I for one do not begrudge it to him. But we all know that every new edition

of this work is little more than a republication of the former one, with the exception perhaps of a few decisions which may have been made by the Speaker in the interval. The object of the Committee on Appropriations in reporting the provision contained in the bill was to put an end to what they considered an extravagance if not an The proposition is, that for the present session Mr. Barclay shall receive what has been customary and what perhaps in liberality to him, if not in justice, he is entitled to, but that here the matter should end; that hereafter as we may need new editions of this work, which will contain only the new rulings or decisions made from time to time by the Speaker, these decisions shall be compiled and published by one of the clerks at the desk. If it is conceived by the Committee of the Whole that for such service this officer should receive a moderate additional compensation, I for one will not object to it. But I submit that the payment of a dollar a volume each year for the republication of that which properly belongs to the House, and which has been published from time immemorial, should now cease.

The CHAIRMAN. Debate on the pending amendment is ex-

Mr. SPRINGER. I withdraw the amendment to the amendment.
Mr. WADDELL. I renew it. If the preparation of this work is
hereafter to be put upon the journal clerk of the House, it ought undoubtedly be paid for. The only question in which I feel an interest just now is as to the effect which the provision of the bill is to have upon Mr. Barclay. The provision is that we shall pay him for two thousand copies of the Digest furnished at this session, and that hereafter the Digest shall be prepared and published by the journal clerk of the House. To the latter clause of the paragraph I now desire to call attention. I do not know how the House can take a copyright call attention. I do not know how the House can take a copyright and use it without paying for it. There is undoubtedly a portion of this volume which could not properly be copyrighted under the law; but for a portion there is a copyright.

Mr. BLOUNT. Does the gentleman hold that the rules of this House can be copyrighted?

Mr. WADDELL. No, sir; I am speaking of another portion of the back.

book.

Mr. BLOUNT. Or can the decisions of the Chair be copyrighted?
Mr. BLACKBURN. I wish to ask the gentleman from North Carolina [Mr. WADDELL] whether it is not the fact that there are less

olina [Mr. WADDELL] whether it is not the fact that there are less than ten pages of this work that can be copyrighted under the law. Mr. WADDELL. In answer to that question, I say that I do not know how many pages might or might not be copyrighted. I know the fact that a portion of this book is copyrighted; and if there should be any infringement of the copyright, the question of law would be for the courts to decide. I am now speaking of the Digest proper; it is this portion that is copyrighted; it is this that the provision of the bill refers to. I do not see how this House is to use this or get the benefit of it hereafter without paying for it. Whether Mr. Bareley had a right to copyright this work or not is I presume a question of the second of the copyright this work or not is I presume a question. clay had a right to copyright this work or not is, I presume, a ques-

Mr. BANKS. Does the gentleman propose to pay him?
Mr. WADDELL. The paragraph in the bill proposes to pay him.
Mr. BANKS. I would like to say a word on this question. It does not seem to me exactly proper that any person should have a copyright of the rules of the House or any portion of them. But sometimes what appears at first glance to be absurd may be so explained at the beautiful within the rules of recently the proper than the proper tha

as to be brought within the rules of reason.

I remember very well, as do doubtless most other members, that for some years past the House has been governed by the principles and precedents laid down in what is called Barclay's Digest. Every member is once in a while set down by a citation from the Digest, and other members are allowed to continue on the floor upon the same au-thority. The journal clerk of the House is not required in pursuance of his regular duty to prepare a digest, to codify rules, collect precof his regular duty to prepare a digest, to coulty rules, collect precedents, analyze and arrange the parliamentary proceedings of the House, and make a code which is to be followed by the Chair and recognized and observed by members. It appears that Mr. Barclay, who was formerly our journal clerk, has done this work, that the House has accepted it, has been governed by it; and, as every member will doubtless admit, it is now substantially the parliamentary law of the

We refer first to the Digest, and if a question is raised we sometimes go back to the rule of the House; but unless some question is raised the Digest answers every purpose. Formerly we had nothing of this kind. I can remember a period when there was nothing but the plain simple rules of the House, no Digest, no collection of precedents, no analysis of the rules, no interpretation, no explanation given like that contained in the Digest. The Speaker and members of the House had to rely entirely upon the rules in their simplest form of expression. I do not know, sir, but that was the better course; indeed I think we have too many codes in the House to enable us to under-

we have to many cotes in the House to enable as to inderstand pefectly what the rules are.

We have this Digest. It was prepared by Mr. Barclay voluntarily or at the suggestion undoubtedly of former Speakers of the House. I think it began chiefly with Mr. Colfax. I remember his saying to me at one time without this Digest he could not get along at all and wondered how previous Speakers did it. It was done at the suggestions of the beautiful the suggestion of the supplier of the supplier that the suggestion of the supplier of the supplie tion of members occupying the chair at various times by concurrence with members of the House. It was done by the labor of Mr. Barclay. He was the only man connected with the official corps of the House

who was competent and had the time for it. Unquestionably, that being the case, it is his own private property. No one could claim any right to it. The Government could not claim it. From time to time allowance has been made in the way of compensation. I do not know whether too much or too little. If there is to be a change, as I understand, judging from the position taken by members before the House, it will involve the work of Mr. Barclay, which up to this time has been received by everybody as legislative parliamentary authority. If that work is to be taken into any new code, any new arrangement, any new combination, there is the clearest justice in allowing

ment, any new combination, there is the clearest justice in allowing him compensation for it.

[Here the hammer fell.]

Mr. HOOKER. I move to strike out the last word.

The CHAIRMAN. That amendment is now pending.

Mr. WADDELL. I withdraw it.

Mr. HOOKER. I renew it; and I desire, Mr. Chairman, to say a word or two on this proposition, or rather to address myself to what I conceive to be the question which ought primarily to be considered by the House, and that is, whether or not this clause in the bill as reported from the committee should be retained or not. For I really think, with due deference to the gentleman from Iowa, [Mr. WILSON,] it is to be properly considered, first, as to whether or not the amendment of the gentleman from Texas [Mr. Reagan] should prevail before you could consider the question as to what compensation you would give to the new officer for the labor you require him to perform.

Now this book contains, it is true, primarily the Constitution of the United States, the Rules of the House of Representatives, and Jefferson's Manual, but none of those works are embraced in the copyright. On the contrary, the copyright embraces only that which bears the title of Barclay's Digest of the Rules of the House of Representatives of the United States. On page 235 will be found this entry:

Entered according to act of Congress, in the year 1875, by John M. Barclay, in the office of the Librarian of Congress, at Washington.

I find that portion of the Digest contains about two hundred and thirty-two pages, containing it is true a repetition of the rules and a repetition of the provisions of the Constitution in many instances, repetition of the provisions of the Constitution in many instances, but containing the labor which Mr. Barelay has performed and the result which he arrived at as to what is the interpretation of the rules of the House under the Constitution. In the compilation of this work he has undoubtedly spent a large amount of time and labor and intellect, and there is nothing for which the American people have more respect than for labor honestly bestowed, and for the protection which the law gives when it is secured by being copy-

righted, as this has been.

Mr. WADDELL. Let me ask the gentleman from Mississippi a question in that connection, as something has been said about copyrighting the Constitution and laws and rules of this House. Suppose the honorable gentleman from Mississippi were to write a work on constitutional or parliamentary law, in which he necessarily largely quoted from the laws, the Constitution, and the rules of this House, would he be the less entitled because of so making quotations to a

would he be the less entitled because of so making quotations to a copyright under the law? Not in the least.

Mr. HOOKER. Certainly not; it would not be less my book on that account. It will be found the copyright pertains to what is properly called Barclay's Digest, and not to the Constitution, and not to the rules which are published. Evidently this must have been a work of great labor, requiring great discrimination, great experience, and this gentleman has given his labor and experience to the performance of the task. It is true you might authorize any other clerk to make a compilation of the rules and to lay down the law on the subject; but I venture to assert that the truth of the proposition of the gentleman from Massachusetts cannot be disputed, when any man is directed by the House under its bill to compile the rules and decisions, he could not possibly do so without embodying and taking as his guide the labor already performed by Mr. Barclay, and which occupies over two hundred and thirty pages of this Digest. [Here the hammer fell.]

Mr. HOOKER. I desire permission to say a single word further to

Mr. HOOKER. I desire permission to say a single word further to the committee.

the committee.

Mr. COX was recognized and yielded his time to Mr. HOOKER.

Mr. HOOKER. I beg further to say that I take this ground without knowing Mr. Barclay, only in so far as I know him from the fact that I have had occasion frequently while a member of this House to refer to this valuable book, a book so valuable, indeed, that if we should appoint another, a new officer of this House, to perform the labor and continue the work of making the compilation, it still could not be dispensed with. And simply because Mr. Barclay chanced to occupy the position of journal clerk of the House at the time he performed this valuable labor in his annotations on the rules of the House and rulings made by the various Sneakers thereon—I say simply House and rulings made by the various Speakers thereon-I say simply because he chanced to occupy that position, is no reason why the House or the Government should undertake by legislation to deprive him of the benefits of his labor.

the benefits of his labor.

You, Mr. Chairman, and the present Speaker of this House, and all former Speakers, from the time Mr. Barclay commenced these compilations which have been annually published by Congress or authorized by Congress to be published, have reaped the benefit of his labors; and if you put yourselves in the attitude of authorizing a compilation by a new officer you will still be dependent on Barclay's

Digest for what has occurred in the past; a digest so perfect, as has been well said by the gentleman from Massachusetts, that it is constantly referred to in the proceedings of the House, and may indeed be said to have become the authoritative exposition of the rules re-garded by every Speaker as binding and controlling the proceedings

Mr. BROWN, of Kentucky. Can the gentleman state how much Mr. Barclay has already received for this work?

Mr. HOOKER. I do not know how much he has received. I take it for granted that Mr. Barclay has received for what he has done only what Congress has appropriated for it each year. But because he has been paid for the services which he has rendered to past Congresses, is that any reason why he should not be paid by future Congresses,

gresses, is that any reason why he should not be paid by future congresses for the use of his work?

Mr. BROWN, of Kentucky. I am informed that, as a matter of fact, he has received in addition to his regular salary as journal clerk over \$50,000 for this work.

Mr. HOOKER. That does not matter so far as the general proposition I am now enforcing upon the House is concerned. If Mr. Barclay has a copyright on this work it cannot be infringed. I do not care how much the Government has paid him in the past. His copycare now much the Government has paid into in the past. This copyright is sacred and cannot be used by authorizing another officer to continue the compilation of the Digest, and I say it would be an act of gross injustice to this gentleman under these circumstances to deprive him of the benefit of his own labor in compiling this digest of the rules of the House and the rulings upon them.

Mr. BLACKBURN. Before the gentleman from Mississippi takes his seat I wish to ask him a question. I see that this copyright was taken out in the year 1875.

Mr. HOOKER. That has reference only to the last edition. Copyright had been taken out in like manner for the previous editions.

Mr. BLACKBURN. Is it not the fact that before this copyright ever was taken out this very work had been adopted by the House and used for its guidance in the conduct of its business for more than ten years? And I wish to ask further of the gentleman from Mississippi, or any other gentleman who advocates the view that he has expressed, whether in the two hundred and thirty-odd pages that have hear everyther this converted by this converted to the found. pressed, whether in the two hundred and thirty-odd pages that have been covered by this copyright there are as many as ten to be found exclusive of the rules of the House and the decisions of the Speakers and the statute laws of the United States—whether ten pages can be found that can properly be considered as covered by copyright?

Mr. HOOKER. Those are the proper subjects of a digest. If it did not embrace the rulings of the Speaker it would not be a digest.

The CHAIRMAN. Does the gentleman from Kentucky yield to the gentleman from Mississippi?

Mr. BLACKBURN. I will give the gentleman a portion of my time if he desires it

Mr. HOOKER. That is what I say in reply.

Mr. BLACKBURN. I wish further to ask the committee, supposing that to be true, that in these two hundred and thirty-odd pages there cannot be found ten which do not consist of rules of the House, decisions of the Speaker, and the statute laws of the United States, whether it is not about time that such a copyright should die?

Mr. HOÖKER. That does not make any difference. It is a digest of everything governing the proceedings of the House down to the

Mr. BLACKBURN. If \$50,000 have been paid to an officer of this House for a work which he has copyrighted, when in the judgment of many of us he was not entitled to a copyright—the two hundred and thirty-odd pages covered by copyright not containing ten that are composed of subjects and matters entitled to be so covered—I think it is about time that the House should allow such a copyright to die; and I trust that the committee will be supported, and that this sinecure will be cut off.

this sinecure will be cut off.

Mr. BANKS. If the gentleman from Mississippi will withdraw the proforma amendment, I will renew it.

Mr. HOOKER. I withdraw the proforma amendment.

Mr. BANKS. I renew it.

I trust the committee will allow me to say a word in regard to this

I trust the committee will allow me to say a word in regard to this matter of compensation. It may or may not be too much. But it is one which the House has itself fixed. Mr. Barclay has been paid, as far as I remember, the sum fixed by the House of Representatives itself for the use of his Digest on each volume, for each copy printed. Now it is not to be charged against him that the Honse prints a large number of copies of his Digest, and that these copies are sent all over the country. Members of Congress use them in various ways—they do it for their own purposes—and if the compensation paid to Mr. Barclay is too large, that matter can be regulated by some other rule. It is not to be charged against Mr. Barclay that the cost of the work has reached this amount because it has been arranged by the House that he should receive a percentage on each copy.

work has reached this amount because it has been arranged by the House that he should receive a percentage on each copy.

Now one word with regard to the question of copyright. I cannot, and I do not think any other gentleman can, get a digest of the decisions of the laws of any court in this country without paying for it, and I cannot see any more impropriety in copyrighting the Digest of the rules of the House than in copyrighting a digest of the proceedings of a court. The copyright does not interfere in any way with the House. Its object is to prevent other persons from printing the Digest. That is what it is. If it is of any consequence, it does not affect us any more than the copyright of the proceedings of a court itself. of a court itself.

Mr. HOOKER. Allow me to suggest to the gentleman that if what was stated by the gentleman from Kentucky [Mr. BLACKBURN] be true, then the effect of the amendment is to transfer this copyright

over from one man to another.

Mr. BANKS. That is true. The copyright does not affect us at all. Now let me say in regard to this compilation and what its value is, that it must be apparent to every member that a member cannot understand the complicated rules of the House by individual study. No man in the world can take these rules and come into the House and undertake to direct the proceedings of the House without something more than a mere personal study of the rules of the House. Mr. Barclay was here for nearly thirty years, certainly for twenty-nine years, and he knew and thoroughly understood the result and influence of the rules. He was thus enabled to make this compilation. It does not matter at all if there are not ten pages of original matter in the Digest, as stated by the gentleman from Kentucky; if there are only five pages of original matter, those five pages contain the very essence and spirit of the rules, and I undertake to say that without the Digest the business of the House could not go on so correctly as it does now. The reason that this digest is authority is because of the instinctive perception of what was right under the rules and right under parliamentary laws, and is of a thoroughly impartial character, for that is the character of the mind of Mr. Barclay. I have been here at differ-ent times when the House has been controlled by different parties and been under different influences, but I never knew any Speaker or any man interested in questions of parliamentary proceedings who did not rely, whatever party he belonged to, with the same confidence on Mr. Barclay's judgment; and no man during the long period of Mr. Barclay's service has undertaken to propose any innovation upon the complicated rules without consulting him. He is entitled to some comprehended rules without consisting finit. He is entitled to some compensation for this capacity, for the construction of his mind which enables him to decide upon these questions, and for the labor he has given to it. If we want a new code of laws for the House let us authorize some one to prepare them, but so long as we rely upon Barclay's Digest, let us not deprive him of the compensation due

him.

Mr. WILSON, of Iowa. Allow me a moment. I desire to bring the committee back to the matter really under discussion. I have not attacked Mr. Barclay's Digest. I agree with the gentleman from Mississippi [Mr. Hooker] and others who have spoken upon this question, that the present House and the next House cannot get along without it. I go further and say that no man can ever be a parliamentarian by studying the rules of the House. He has got to go to the foundations of parliamentary law and study the first rudiments of it. But this clause proposes an appropriation of \$2,000 for Mr. Barclay's Digest, and I have not touched that; but the committee also propose that the journal clerk shall prepare a Digest of the proceedpropose that the journal clerk shall prepare a Digest of the proceedings; and certainly if that be the case he ought to be paid for doing it. This thing is growing every Congress and every year. Barclay's Digest, as you now have it, will not be an authority five years hence. The work must be carried on, and some day in the future, it may be five years hence, a new Digest will have to be prepared. When Mr. Barclay lost his position as journal clerk he lost the position that enabled him to go on and carry on his work. I do not propose to do without his Digest; the next House cannot do without it. But if the Digest is to be got up by the journal clerk of the House he ought to get \$1,000 additional, so as to make his pay, instead of \$2,500, \$3,500. If the journal clerk of the House is to carry on this work he ought at least to get that amount of salary. My amendment does not interfere with the present contract.

[Here the hammer fell.]
Mr. WALDRON. Unless there can be a unanimous understanding about the vote being taken on the pending paragraph, I must move that the committee rise. I am willing, however, that the debate shall be extended ten minutes, so that the gentleman from Massachusetts

be extended ten minutes, so that the gentleman from Massachusetts [Mr. SEELYE] may be heard.

Mr. BANKS. I withdraw my formal amendment.

Mr. SEELYE. I renew the amendment and I wish to say upon it but a single word. The value of this Digest I suppose makes it desirable for the House of Representatives. Nobody denies that. I suppose I may say it is indispensable; only why shall the author of it be paid on a copyright an amount of 50 per cent. on what is fairly considered the retail price of the book? Such a price was never paid by publishers to the other authors of the country on any book in the land, and it seems to me that this proposal is preposterous on the ground that it is an equable compensation. ground that it is an equable compensation.

Mr. BANKS. I rise to oppose the amendment.
Mr. WALDRON. Unless there can be an understanding that the committee will now proceed to vote, I will move that the committee rise for the purpose of obtaining from the House an order to close de-

bate upon the pending paragraph.

Mr. REAGAN. Not upon the pending paragraph, for I have an amendment which I desire to offer to it.

Mr. WALDRON. When in the House I shall move to close debate, and I propose to allow sufficient time to enable the gentleman from Texas [Mr. Reagan] to offer his amendment and to have an opportunity to discuss it.

Mr. COX. Is it the proposition that the committee rise to close debate upon the pending amendments or upon the pending paragraph?

Mr. WALDRON. That can be determined when we get into the

The question was taken upon the motion that the committee rise;

and it was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. EDEN reported that the Committee of the Whole on the state of the Union, pursuant to the order of the House, had had under consideration a bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes, and had come to no resolution thereon.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, informed the House that the Senate further insisted upon its amendments disagreed to by the House to the bill (H. R. No. 3828) establishing post-roads, agreed to the further conference asked by the House upon the disagreeing votes of the two Houses thereon, and had appointed as the managers of the conference on the part of the Senate Mr. Hamlin, Mr. Dorsey, and Mr. Davis.

The message further announced that the Senate had passed, with

an amendment in which the concurrence of the House was requested,

a bill of the following title:

A bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real estate and other property, and to sell the same at public or private sale, and for

The message further announced that the Senate had passed and requested the concurrence of the House in a bill and joint resolution

requested the concurrence of the House in a bill and joint resolution of the following titles:

A bill (S. No. 1142) to authorize and empower the Secretary of the Interior to adjust and settle the accounts of the Kaskaskia, Peoria, Piankeshaw, and Wea Indians; and

A joint resolution (S. R. No. 30) to amend the joint resolution authorizing the Secretary of War to issue arms, approved July 3, 1876.

The message also announced that the Senate, in pursuance of the Constitution, had proceeded to reconsider the bill (H. R. No. 4350) entitled "An act to abolish the board of police commissioners of the Metropolitan police of the District of Columbia, and to transfer its duties to the commissioners of the District of Columbia," sent by the House of Representatives to the Senate with the proceedings of the House thereon, and the message of the President returning the bill House thereon, and the message of the President returning the bill without his approval to the House, in which it originated, and the Senate had resolved that the bill do not pass, two-thirds of the Senate not agreeing to pass the same.

#### DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON. I move that the rules be suspended and that the House now resolve itself into the Committee of the Whole on the House now resolve itself into the Committee of the Whole on the state of the Union for the purpose of resuming and proceeding with the consideration of the deficiency appropriation bill; and pending that motion I move that all debate upon the pending paragraph and the amendments thereto be limited to twenty minutes.

Mr. BLOUNT. I hope the gentleman will say ten minutes; we have already occupied a great deal of time upon that paragraph.

Mr. REAGAN. I move to amend the motion so as to have the order limiting debate apply to the pending amendment.

limiting debate apply to the pending amendment.

Mr. COX. I think that it was the understanding when we came out of committee that the order to limit debate should apply to the

out of committee that the order to limit debate should apply to the pending amendment.

Mr. WALDRON. If it is desirable to close debate upon the pending paragraph, then the motion should be adopted in the form I have given. If debate is closed only upon the pending amendment, then when that amendment has been disposed of other amendments can be offered and the debate continued indefinitely.

The SPEAKER. That is a subject within the control of the House.

Mr. REAGAN. I desire to say a word. I moved an amendment to the pending paragraph, and yielded to allow another amendment to come in and be acted upon before mine was considered. The committee rose with the understanding that debate was to be closed upon the pending amendment. If the gentleman from Michigan [Mr. WALDRON] will reflect a moment, I think he must see that it would be a snap judgment to limit debate as he now proposes and thereby cut off my amendment. cut off my amendment.

The SPEAKER. The order would not cut off an amendment, it

would cut off debate.

Mr. REAGAN. I know that; but I desire to be heard upon my

amendment.

Mr. COX. It was understood when we rose that the amendment of the gentleman from Texas [Mr. Reagan] should not be included

in the motion to limit debate.

Mr. BLOUNT. I did not so understand it.

Mr. REAGAN. I so understood it.

The SPEAKER. The sense of the House can be tested upon the

The STEARER. The sense of the subsection of the gentleman from Texas [Mr. REAGAN] is also pending.

The SPEAKER. The gentleman from Texas wants debate closed only upon the pending amendment.

Mr. WILSON, of Iowa. The gentleman from Texas moved his amendment, and I moved mine; mine was entertained to be voted on first. Now, if debate be closed upon the pending amendments,

then it will be closed upon his amendment as well as upon mine. It is for his interest that I call attention to that point.

Mr. REAGAN. My amendment has not been discussed; I desire to

state why I offer it.

Mr. WILSON, of Iowa. But if debate is closed upon the pending amendments, then the gentleman will cut off debate upon his amend-

Mr. REAGAN. I did not say "pending amendments," but my mo-tion is to limit debate upon the pending amendment. The question was taken upon the amendment of Mr. REAGAN to

the motion of Mr. Waldron, and it was not agreed to.

The question recurred upon the motion of Mr. Waldron to close all debate upon the pending paragraph and amendments thereto in twenty minutes after the consideration of the deficiency appropriation bill shall have been resumed in Committee of the Whole.

Mr. COX. I desire to call for a division upon the motion of the gentleman from Texas, [Mr. Reagan.]

The SPEAKER. The Chair thinks it is rather late to call for a

The motion of Mr. Waldron to limit debate was then agreed to.

The question recurred upon the motion of Mr. Waldron that the rules be suspended and the House now resolve itself into Committee of the Whole upon the deficiency appropriation bill, and it was agreed

to.
The House accordingly resolved itself into Committee of the Whole,

(Mr. EDEN in the chair,) and resumed the consideration of the defi-ciency appropriation bill.

The CHAIRMAN. Under the order of the House, debate on the

pending paragraph and amendments thereto is limited to twenty minutes

Mr. REAGAN. I desire to say a few words in support of the amend-

ment I have offered.

Mr. WALDRON. Is not the pending amendment the amendment offered by the gentleman from Iowa, [Mr. WILSON?]

The CHAIRMAN. That is the understanding of the Chair.

Mr. WALDRON. I suggest to the gentleman from Texas that it will be best to take the question first on that amendment.

The amendment was read, as follows:

Add to the paragraph the following: And for such additional services hereby required, the journal clerk shall be paid the sum of \$1,000 per annum.

The question being taken on agreeing to the amendment, there were ayes 39, noes 59; no quorum voting.
Tellers were ordered; and Mr. Wilson, of Iowa, and Mr. REAGAN

were appointed.

The committee divided; and the tellers reported-ayes 84, noes 62. So the amendment was agreed to.

Mr. BLOUNT. I give notice that I shall ask a vote in the House upon this amendment.

Mr. REAGAN. I modify my amendment so as to strike out all of the pending paragraph after the word "dollars" where it first occurs, embracing the amendment just adopted. If my amendment be agreed to, the paragraph will then read:

To pay for two thousand copies of Barelay's Digest, ordered by resolution of the House of July 14, 1871, \$2,000.

As to the question of copyright it is not pretended that there is any copyright of the Constitution or of Jefferson's Manual or of the Rules of the House. But there is a copyright for the Digest which is embraced in this volume and which covers more than two hundred pages. I do not propose to enter at all upon the question as to the right of the House to the use of this copyright or whether the exclusive right still remains with Mr. Barclay. That is not the point on which I wish to speak. I desire to call attention to the provision of this paragraph which may be construed as intended to divest Mr. Barclay of his copyright. The language is:

To pay for two thousand copies of Barclay's Digest, ordered by resolution of the House of July 14, 1871, \$2,000; and hereafter the Digest shall be prepared and published by the journal clerk of the House, as the House shall from time to time direct.

It appears evident that the word "Digest" as used in the latter clause refers to the "Digest" previously spoken of; that is, "Barclay's Digest."

Now, I do not propose to adopt legislation which may undertake to

determine the legal rights of any one. If by virtue of his copyright Mr. Barelay has a title to this Digest, which he can use and dispose of, then I think we would undertake a great deal if we attempt in this way by legislation to divest this gentleman of the title to his

copyright.

But I rose more particularly to repeat what has been said by several others, that we can hardly overestimate the great importance of a correct compilation of the rules in the government of this House and correct compilation of the rules in the government of this House and the disposition of its business. These rules are embraced in the Manual, in the rules of the House, in the action of the House, in its various resolutions, as included in the Digest and in the decisions of the Speaker interpreting those rules. The Digest which we now use has been prepared by a gentleman who, as we are informed by the gentleman from Massachusetts, [Mr. Banks,] has had nearly thirty years' service in this particular branch of business; who is not only thoroughly conversant with the action of the House and the effect of its rulings, but who has made himself familiar with the provisions of the Constitution, the laws, and the rules of the House so as to be enabled to comprehend and to arrange with intelligence the judgments of the House, as recorded in the Digest. It seems to me that in any action which we may take justice requires us to have respect to the great length of service and the remarkable ability which have contributed to the proper preparation of this Digest. If anyone is to receive compensation for the annual correction and revision of the Digest, so as to make it conform to the new rulings and decisions of

to receive compensation for the annual correction and revision of the Digest, so as to make it conform to the new rulings and decisions of the House, it appears to me that so long as the author of the Digest, who has proven his capacity for this work, is ready and willing to perform the service, there is a propriety and a justice in allowing him to go on and furnish this compilation. This view of the question does not require me to go into a consideration of the matter of legal right. Without regard to that question I submit that we ought to avail ourselves of the experience and ability which have furnished to us this Digest that has proved so valuable.

Mr. SEELYE. I move to amend the amendment so as to strike out the word "thousand," in the first line of the paragraph, and insert in lieu thereof the word "hundred;" so as to appropriate \$200 instead of \$2,000 for the use of this copyright. This \$2,000, as we understand, is not designed to pay for the printing of these books; that work is entirely extra, and is done at the Government Printing Office without expense to Mr. Barclay. This sum of \$2,000 is wholly in payment for the copyright of this work. Now, estimating the retail selling price of this book at \$2 a copy, which would be a large price, 10 per cent., which is a common rate for copyright, would be about twenty cents a volume. I do not know of any book-publisher in the country who pays to any author more than 10 per cent. on the retail price of the book. I do know of many authors receiving less; I do not know of any author receiving more. I should like to know why Congress should may a convright of 50 per cent for any book hownot know of any author receiving more. I should like to know why Congress should pay a copyright of 50 per cent. for any book, however valuable it may be. I have therefore moved to amend so as to strike out \$2,000 and insert \$200.

Mr. REAGAN. I suggest that the amendment is not in order now.

Mr. REAGAN. I suggest that the amendment is not in order now. It is not an amendment to the pending amendment, but an independent amendment to another part of the paragraph.

Mr. SEELYE. I beg the gentleman's pardon. As I understood his amendment, this is properly in order.

Mr. REAGAN. The amendment of the gentleman from Massachusetts is to the first part, which I do not propose to touch. It is an independent amendment and not an amendment to that offered by me. Mr. SEELYE. It is indifferent to me how it is brought in, provided

Mr. SEPLITE. It is indirected to the now it is considered by the House.

Mr. BANKS. Mr. Chairman, the reasoning of my colleague is proper in connection with the class of publications usually put upon the market, but it has no application to this particular work which is never printed but for the use of the House. How is it possible we can estimate the value of a copyright for a volume printed for the use of the House alone in comparison with a work like Macaulay's History and Macaulay's Essays which are printed by thousands and tens of thousands for general circulation?

Mr. SEELYE. If you will allow me to reply—

Mr. BANKS. I have but a few minutes, and I wish to state that I bought at my seat the other day a Digest of the Constitution of the United States not larger than this book in question for which I paid \$4. And I am told by gentlemen around me of the legal profession

84. And I am told by gentlemen around me of the legal profession that it is a common thing to give one-half the selling price for the copyright of a law-book. It is different with that class of books with which my friend and colleague is so familiar, printed entirely with which my friend and colleague is so familiar, printed entirely for general circulation. The copyright has nothing to do with the case. We pay Mr. Barclay, journal clerk, by name, for the service and labor he supplied, for the experience and ability he brought to it. We pay him for that. We cannot take away his copyright, for that is protected by law. What we do by the bill is to take from him the work which he has done, paying him only \$2,000 for the entire property he has in it. I do not think it is just.

Mr. COX. I rise to oppose the amendment of the gentleman from

Massachusetts

The CHAIRMAN. The amendment of the gentleman from Massa-

The CHAIRMAN. The amendment of the gentleman from Massachusetts is not now in order.

Mr. COX. What is the motion before the House?

The CHAIRMAN. The amendment of the gentleman from Texas.

Mr. COX. Then I will speak to that.

I desire simply to say, so far as the suggestion of the gentleman from Massachusetts is concerned, the Committee on Appropriations will tell us in the first place that this \$2,000 is not too large a sum, and in the next place it has to pay for these books under the contract already existing, and under which some of the books if not all of them have been delivered.

Gentlemen say there has been no contract with Mr. Barelay. If

Gentlemen say there has been no contract with Mr. Barclay. If they will turn to Barclay's Digest they will find that on March 15, 1871, a resolution was adopted—

That there be printed after the close of each session, and on the same terms as heretofore, the usual edition of the Constitution, Manual, Rules, and Barclay's Digest for the use of the members of the House at the next session thereafter.

That resolution has been continued from time to time, and this

contract has been continued under it.

Mr. BLOUNT. I wish to ask the gentleman a question.

Mr. SEELYE. What page is the gentleman from New York reading from?

Mr. COX. No page at all. It is a resolution in the front of the book, under which this book is printed every year.

Mr. BLOUNT. Now, while I agree with the gentleman from New

I think I am in favor of the amendment of the gentle-Mr. COX. man from Texas to strike out the latter clause for the regentle-man from Texas to strike out the latter clause for the reason that if this work is to be done at all by our journal clerk it ought to be done with full pay and compensation. One thousand dollars is not too large. But why do it at all ? This clause says it shall hereafter be done by the journal clerk of the House. The clause itself gives no authority. It requires further legislation. I would leave it to further legislation to strike out the whole clause, but for the present we must carry out the contract with Mr. Barclay.

Mr. SEELYE. I do not see how there is a contract to pay Mr.

Barclay \$1 for every copy.

Mr. COX. I wish to say to my friend from Massachusetts that I have had some experience in book-making and fifty cents is not too

Mr. WALDRON. I raise the point of order that debate is exhausted under the order of the House.

Mr. COX. I am exhausted also. [Laughter.]
Mr. SPRINGER. I move to strike out the last word.
Mr. WALDRON. Debate has been exhausted by order of the

Mr. COX. I suggest to my friend from Illinois to read Barclay's

Digest. [Laughter.]
The CHAIRMAN. The time for debate has not expired, but debate on the pending amendment is exhausted.
Mr. SPRINGER. It seems to me that I know more about Barclay's

Mr. Statistics to the that I know more about Barelay
Digest than my friend from New York. [Laughter.]
Mr. WALDRON. Is debate exhausted or not?
Mr. COX. If debate is not exhausted, I am entitled to the floor.
Mr. ATKINS. The Chair has not ruled on the question.

Mr. ATKINS. Mr. SPRINGER. I move to strike out the last word.
Mr. BLOUNT. Who is recognized?

Mr. SPRINGER. I believe I have the floor, if debate is not exhausted.

Mr. BLOUNT. I ask if the Chair has not stated that no further

amendment is now in order?

The CHAIRMAN. The gentleman from Illinois [Mr. Springer] is speaking to the amendment to the amendment.

Mr. COX. Is debate in order on that amendment?

The CHAIRMAN. The gentleman from Illinois offers an amendment to strike out the last word.

Mr. COX. But is debate in order?

The CHAIRMAN. The time allowed for debate has not expired.

Mr. COX. I thought I was cut off because the time for debate had

expired.

The CHAIRMAN. That was an error.

Mr. SPRINGER. The amendment of the gentleman from Texas, if I understand it rightly, is to strike out these words:

And hereafter the Digest shall be prepared and published by the journal clerk of the House, as the House shall from time to time direct.

There is also the amendment of the gentleman from Iowa [Mr. Wilson] to add to the paragraph. Now, if you strike out these words, the contract heretofore existing between the House and Mr. Barclay, if there is any contract, by which Barclay's Digest is printed every session, and by which we give \$1 a volume for the volumes ordered by the House for the use of Congress, will be continued as heretofore; because it seems to be a continuing contract, and it is only by stopping the order for those volumes that we can escape paying the copyright of \$1 a volume which is now being paid. Therefore, I hope the amendment of the gentleman from Texas will not be adopted, but that we will make a new provision in regard to not be adopted, but that we will make a new provision in regard to the publication of the digest of the rules and the decisions of the Speakers of this House.

Mr. SEELYE. Will the gentleman from Illinois inform us when, where, and how any such contract as this was ever entered into between Congress and Mr. Barclay?

Mr. SPRINGER. I have the resolution of the House before me.
Mr. SEELYE. Which simply directs that the book shall be printed.
Mr. SPRINGER. I will read the resolution. On the 15th of March, 1871, this resolution was adopted:

Resolved, That there be printed after the close of each session, and on the same terms as heretofore, the usual edition of the Constitution, Manual, Rules, and Barclay's Digest for the use of the members of the House at the next session thereafter.

Under this resolution, therefore, the books were printed for which an appropriation is to be made in the text of the bill as it now stands; and unless we make a new rule on that subject to stop this order we will be required to pay the additional \$1 a volume for editions to be published hereafter. So it is cheaper for the House to retain the amendment of the gentleman from Iowa and also the text of the bill as it now stands. I hope the amendment of the gentleman from Texas will not be agreed to.

I withdraw my amendment.
The CHAIRMAN. The time allowed for debate on the pending paragraph has expired.

Mr. BLOUNT. I understand that the time for debate is exhausted,

but I understand further that I can offer, if I so desire, a substitute for the propositions now before the committee.

The CHAIRMAN. The gentleman can offer any amendment that

would be in order.

Mr. BLOUNT. Then I offer the following amendment:

After the word "dollars" in line 216 strike out the residue of the paragraph and

And that the aforesaid resolution is repealed.

That is, the resolution of the 14th of July, 1871.
Mr. SPRINGER. Is that amendment now in order?
The CHAIRMAN. The amendment will be read by the Clerk. The amendment was read by the Clerk.

Mr. REAGAN. If the language of the paragraph be so changed it will have no meaning.

Mr. BANKS. Is that amendment in order? It changes the law. Mr. SPRINGER. I would suggest to the gentleman from Georgia Mr. SPRINGER. I would suggest to the gentleman from Georgia that if he desires to repeal this order, there are several resolutions which make these orders. I do not know to which of them he refers. Mr. BLOUNT. The language of the amendment is "the aforesaid resolution." That is the one which the gentleman from Illinois him-

self read.

Mr. SPRINGER. The gentleman is mistaken. The resolution which I read was adopted on the 15th of March, 1871. The date of this resolution is the 14th of July, 1871.

Mr. BANKS. I make the point of order that the amendment proposed by the gentleman from Georgia [Mr. BLOUNT] is not in order because it changes an existing law. The CHAIRMAN. Rule 120 provides as follows:

No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law—September 14, 1837—unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision in any such bill or amendment thereto changing existing law be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures.—March 13, 1838, and January 17, 1876.

Mr. BLOUNT. This certainly retrenches expenditures. The CHAIRMAN. The amendment proposes to repeal the resolution which provides for the payment of the \$2,000, and therefore is in the line of retrenchment and within the one hundred and twentieth

rule. The Chair overrules the point of order.

Mr. SPRINGER. I ask the gentleman from Georgia to include the resolution which I read.

The CHAIRMAN. Debate is not in order.

Mr. SPRINGER. The gentleman's amendment does not include the resolution under which the House is bound to take these books. Mr. WELLS, of Missouri. I ask that the amendment be again reported.

The amendment was again read.

Mr. SPRINGER. I ask the gentleman from Georgia to add to his amendment the resolution of the 15th of March, 1871, to the same

Mr. BLOUNT. I accept the amendment suggested by the gentle-

man from Illinois.

Mr. WILSON, of Iowa. Does the gentleman from Georgia understand that this will leave all future Houses without a digest?

Mr. BLOUNT. Which they can provide for themselves.

The CHAIRMAN. Debate is not in order. Does the gentleman from Georgia modify his amendment?

Mr. BLOUNT. Yes, sir.

Mr. SPRINGER. I will send it to the desk in writing.

Mr. HOOKER. Do I understand this amendment to be offered as Mr. HOOKER. Do I understand this amendment to be offered as a substitute for all the pending amendments?
Mr. BLOUNT. Yes, sir.
Mr. HOOKER. I hope it will be voted down.
The CHAIRMAN. The Clerk will report the amendment as now

modified.

The Clerk read as follows:

Strike out all after the word "dollars" in line 216 and insert the following: And that the aforesaid resolution, and the resolution of March 15, 1871, and all other resolutions ordering copies of Barclay's Digest for the use of the House, are hereby repealed.

The question was taken upon the amendment of Mr. BLOUNT, as modified; and on a division there were ayes 44, noes not counted.

So the amendment was not agreed to.

The question recurred upon Mr. Reagan's amendment to strike out all after the word "dollars" in line 216 to the end of the clause.

The question was put; and on a division there were—ayes 51,

Mr. COCHRANE. No quorum has voted and I call for tellers. Tellers were ordered; and Mr. WILSON, of Iowa, and Mr. REAGAN were appointed.

The committee again divided; and the tellers reported-ayes 66, noes 74.

So the amendment was not agreed to.

The Clerk resumed the reading of the bill, and read as follows:

To pay the clerk of the select committee investigating the Freedman's Savings and Trust Company, from December 4, 1876, to March 4, 1877, at \$6 per day, \$546.

Mr. SPRINGER. Has the House passed upon the paragraph in regard to the journal clerk?
The CHAIRMAN. It has

Mr. REA. I offer the following amendment:

To pay Eppa Norris for services as assistant engineer under the chief engineer of the House of Representatives from February 1, 1877, to June 30, 1877, at the rate of \$1,200 per annum, \$500.

Mr. WELLS, of Missouri. I desire to make the point of order on The assistant engineers provided for by law have already been appropriated for, and have been paid.

The CHAIRMAN. The amendment is not in order.

Mr. FORT. I offer the following amendment, to come in at the same point as the amendment offered by the gentleman from Missouri. To pay S. C. Mays for services as clerk of the Committee on the Expenditures in the Treasury Department, from December 22, 1876, to January 31, 1877, \$246.

On the 12th day of January the House passed a resolution to furnish that committee with a clerk, and I suppose that it is only proper that

he should be paid, and this amendment provides for his pay.

Mr. BLOUNT. I have no objection myself to this amendment, and
I will make none because the gentleman from Michigan [Mr. Wal-

DRON] has charge of the bill.

Mr. WALDRON. Is this payment authorized by law?

Mr. FORT. It is, by a resolution of the House. Now, sir, I ask that the resolution which passed the House of Representatives January 12, 1877, be read.

The Clerk read as follows:

Resolved, That the Committee on the Expenditures in the Treasury Department be allowed a special clerk for the remainder of the session, to be appointed by the chairman of the committee thereof, to receive the same compensation as clerks of regular committees

Mr. FORT. The amendment that I offered provides for \$6 a day, and if gentlemen have anything to say on that rate of pay I will hear

Mr. WALDRON. Well, there is no objection to it.

The amendment was agreed to.

Mr. COX. I offer the following amendment to come in in the same

To pay to John H. Dougherty for services under the Doorkeeper, from September 1 to December 4, 1876, at the rate of \$3.60 per day, \$350.

Mr. FOSTER. I must make the point of order upon that. It is a little ungracious to do it, but some one must rise to object to the extravagances of this extravagant House. I dislike very much to intravagances of this extravagant House. I district very much to interfere with my friend from New York.

The CHAIRMAN. What is the point of order?

Mr. FOSTER. I withdraw it.

Mr. COX. I thank my friend for withdrawing it.

Mr. FOSTER. But I give notice that I must hereafter object to

this extravagance.

Mr. COX. I will state that this amendment is approved by the Committee of Accounts, who knew the facts in the case.

Mr. BLOUNT. I hope the gentleman will let us have the facts.

This matter has not been before the Committee on Appropriations, and unless there is some good reason given why it should be adopted, I hope it will not be passed.

Mr. COX. The reason why the matter was not brought before the Committee on Appropriations was that I was absent on committee duty in Philadelphia and New York, but I have submitted it to the chairman of the Committee of Accounts, the gentleman from Maryland, [Mr. ROBERTS,] who approved it.

Mr. CLYMER. I think it is due to the Committee on Appropriation.

tions that the gentleman from New York should make some explana-

tion in this cas

Mr. COX. Mr. Chairman, I withdraw the amendment.

The Clerk resumed the reading of the bill, and read as follows:

To pay stenographers to committees for services performed during the first session of the Forty-fourth Congress, as follows: To Eugene Davis, \$676.50; to A. Johns, \$339.25; to D. C. McEwen, \$354; to E. Z. Brailey, \$114.66; to James W. Tooley, \$87; to John H. White, \$163; to E. C. Bartlett, \$6; in all, \$1,740.41.

Mr. WALDRON. I am instructed by the Committee on Appropriations to offer the following, to come in immediately after that paragraph:

To refund to John G. Thompson, Sergeant-at-Arms House of Representatives, the amount advanced by him to pay the necessary expenses of investigating committees ordered by the House of Representatives, \$27,945, to be paid on vouchers to be approved by the Committee of Accounts.

I will state in explanation of that amendment that the Sergeantat-Arms has advanced the amount named in it in addition to the sums heretofore appropriated by Congress for the payment of these ex-

How much has been heretofore appropriated?

Mr. FOSTER. How much has been heretofore appropriated?
Mr. WALDRON. Thirty-five thousand dollars.
Mr. FOSTER. O, no! Sixty thousand dollars heretofore. I was not present in the committee this morning when this matter was before it, and I want to understand it. I do not rise to object to the amendment, but I understand that this is an appropriation for money

amendment, but I understand that this is an appropriation for money already advanced and that there are large sums due for purposes of this sort, for which appropriations will come in hereafter.

Warrants for witness fees are to-day being hawked about this city and sold for sixty cents on the dollar. Now I have previously, in committee and out of committee, protested against this manner of making appropriations. This money has to be paid. I know there is willful, downright extravagance, but the money must be paid.

Why, sic, if you will look about the Sergeant-at-Arms's room of this House you will find there the familiar faces of almost every regular delegate to the Ohio democratic State convention, whose names apdelegate to the Ohio democratic State convention, whose names appear on his roll as deputy sergeants-at-arms. Respectable dead-beats are on his rolls. I presume they are necessary, and I presume they are good officers; I have not a word to say in regard to that. I have no doubt that these men make better sergeants-at-arms than any others would. But I might go over the names of these gentlemen and they would be found to be familiar to the whole country.

and they would be found to be familiar to the whole country.

Now I ask my democratic friends not to pinch these gentlemen, not to force them to sell their warrants for sixty cents on the dollar.

Make your appropriation \$50,000 or \$60,000. You have got to pay it, and you know it. Why come in here every week with a little appropriation of \$25,000 or \$30,000? Why bite the cherry in two? I tell you that \$60,000 more will not meet your expenses. Why not appropriate what is necessary, and have done with it?

Mr. SOUTHARD. I would ask my colleague to give the names of these Ohio delegates that are on the roll of the Sergeant-at-Arms.

Mr. FOSTER. There is General Steadman: there is Mr. Donovan:

Mr. FOSTER. There is General Steadman; there is Mr. Donovan;

Mr. FOSTER. There is General Steadman; there is Mr. Donovan; there is Mr. Hill. Do you want any more?

Mr. SOUTHARD. Yes, I want the whole list.

Mr. FOSTER. Almost every regular delegate to our democratic State convention is on this Sergeant-at-Arms's roll. They are first-rate men, I tell you; they are good officers; I have not a word to say against them on that ground. And my colleague [Mr. SOUTHARD] should be proud of the fact that our fellow-citizens are employed by our Sergeant-at-Arms for this important service.

Mr. SOUTHARD. I understood the gentleman to reflect upon some

Mr. SOUTHARD. I understood the gentleman to reflect upon some of these gentlemen.

Mr. FOSTER. O; no!

Mr. SOUTHARD. I am glad that he considers these gentlemen proper men to discharge the functions of any office.

Mr. BLOUNT. I do not wonder that whenever the gentleman from Ohio [Mr. Foster] gets up and preaches about economy he laughs. It is certainly very funny.

Mr. FOSTER. Democratic economy is very funny. [Laughter.]

Mr. BLOUNT. The reason that he laughs is that he is never in earnest. You never hear any suggestion from him in the committeeroom or in the House on that subject unless he laughs when he makes it. Therefore his scolding, I take it, is nothing very serious; not worthy of consideration.

worthy of consideration.

Mr. FOSTER. Allow me to ask a question. Does not the gentleman know that a further appropriation for this purpose is absolutely necessary and will have to be made?

Mr. BLOUNT. Very well; whenever that comes up we will dis-

ons it.

Mr. FOSTER. Can you not answer my question?

Mr. BLOUNT. The gentleman never makes any suggestion of economy in our committee-room; he never makes any here in the control of the state of the economy in our committee-room; he never makes any here in the House. He votes for nearly every proposition to increase the appropriation bills. Now the gentleman's statement is incorrect, not designedly so, in reference to the amount of money heretofore appropriated for these investigating committees in the Southern States. There was first an appropriation of \$35,000; then there was another appropriation of \$25,000 for the various investigating committees, not only those investigating in the Southern States but for the committees investigating other matters. That fund has not yet been consumed; there has not been as much as \$10,000 of it consumed. But there may be a demand for it; we cannot be sure that there will not be a demand for it. If it is not expended it will remain in the Treasury of the United States. ury of the United States.

But as a matter of right toward the Sergeaut-at-Arms, without con-

necting that question with any other, I say that this appropriation should be made. The money having been advanced by the Sergeant-at-Arms and expended by the various investigating committees, the Committee on Appropriations thought it would be right and proper to make this appropriation in pursuance of the statement of the Sergeant-at-Arms, subject to revision by the Committee of Accounts. But the fact is that the \$60,000 heretofore appropriated has not yet

been exhausted.

Mr. ATKINS. I understand that the twenty-seven thousand and some odd hundred dollars embraced in the amendment offered by the gentleman from Michigan, [Mr. WALDRON,] who has charge of this bill, was advanced by the Sergeant-at-Arms to pay the expenses of the committee that was sent to New York, the committee sent to South Carolina, the committee sent to Florida, and the committee that was sent to Louisiana. Not a dollar of the \$27,945 that we are now asked to appropriate was used to pay any of these dead-beats the gentleman from Ohio [Mr. FOSTER] speaks of as being around the room of the Sergeant-at-Arms. So the gentleman has absolutely misled the Honse. Mr. ATKINS. I understand that the twenty-seven thousand and

Mr. FOSTER. If I have misled the House by any statement I have

made, I am very willing to take it back.

The CHAIRMAN. Debate upon the pending amendment has been exhausted.

Mr. FOSTER. I move to strike out the last word for the purpose of saying that I did not mean to criticise these gentlemen harshly;

I said they were respectable.

Mr. ATKINS. The gentleman called them dead-beats.

Mr. FOSTER. I called them "respectable dead-beats."

Mr. ATKINS. That is a paradox. I never saw a dead-beat that

ras respectable.

Mr. FOSTER. I have. You come out to Ohio and you will find them out there.

Mr. ATKINS. Among the republican party. [Laughter.]
Mr. FOSTER. No; among the democratic party. [Continued laughter.] I desire to ask my friend how they would get here on the roll of the Sergeant-at-Arms if they were not respectable people? I have not a word to say against this appropriation. The gentlement I have not a word to say against this appropriation. The gentlemen from Georgia [Mr. Blount] has seen fit to charge that I am guilty of all sorts of extravagance; I think unkindly and ungenerously to charge me with that. I do not think he intended to be uncandid about it, but nevertheless he was.

What I find fault with and have found fault with in the committee

and in the House is that we have been doling out these appropria-tions, week in and week out, when I and other gentlemen have as-

tions, week in and week out, when I and other gentlemen have asserted and have demonstrated beyond any question that the appropriations ought to be much larger than they have been.

I am not here to say who it is that is profiting by buying these warrants; but if we wanted to profit somebody, if we wanted to establish a brokerage in warrants, we are legislating in just the way to do it. The Committee on Appropriations know that they will be compelled to make further appropriations, and that very shortly, for this very purpose. Why should they bring in an appropriation bill one week to be followed by an appropriation for the same object the next

I do not object to the appropriation. The money has been expended. You gentlemen are responsible for it. I say there has been willful and reckless extravagance in this matter; but nevertheless you have incurred the liability, and I am willing it should be paid.

[Here the hammer fell.]

Mr. WELLS, of Missouri. The Sergeant-at-Arms appeared before the Committee on Appropriations this morning and stated that all this money had been paid by order of the chairmen of the respective committees; that no money has been paid merely upon his own order. It is due to him to make this statement.

The amendment of Mr. WALDRON was agreed to.

Mr. TERRY. I move to amend by inserting the following:

To make up deficiency in appropriation for Capitol police for the fiscal year ending June 30, 1876:
For captain of police \$88; three lieutenants, \$200 each, \$600; thirty privates, \$184 each, \$5,520; in all, \$6,208.

Mr. WALDRON. I make the point of order on this amendment, that it changes existing law and is not in the line of retrenchment.

The CHAIRMAN. The point of order is well taken.

Mr. FRANKLIN. This amendment does not change the existing law. In the act of last session there was no repeal of the law fixing

these salaries.

The amendment I offer does not propose any change Mr. TERRY. The amendment I offer does not propose any change in the existing law. The appropriation made for the fiscal year ending June 30, 1876, failed to give these employés the amount to which under the law they were entitled.

Mr. WELLS, of Missouri. In reply to the gentleman from Virginia, [Mr. Terry,] I will state that in the appropriation bill there was a clause repealing all laws allowing salaries beyond the amounts fixed in that bill

fixed in that bill.

Mr. TERRY. I would be very glad if the gentleman would refer me to the statute.

Mr. FRANKLIN. There is no such statute.
Mr. WELLS, of Missouri. If the gentleman will refer to the legislative, executive, and judicial appropriation bill passed last August, he will find a clause covering this very matter.

The CHAIRMAN. Unless there is a law authorizing this payment

to these officers the point of order must be sustained.

Mr. ATKINS. The first paragraph of the act in question contained a provision that the amounts appropriated should be "in full compensation.

Mr. FRANKLIN. Even if the act does contain the words "in full compensation," those words do not change the law fixing the amount of these salaries.

The CHAIRMAN. The Chair has ruled upon the point of order, and no further debate upon it is in order.

Mr. CANNON, of Illinois. I would like to say a word upon the point of order. I know that the Chair does not desire to rule erroneonsly.

The CHAIRMAN. The point of order is disposed of. Mr. HANCOCK moved to amend by inserting the following:

SURVEYING PUBLIC LANDS.		
Amount due Jesse Applegate for surveys executed under contract with the surveyor-general of Oregon, being a deficiency for the fiscal year		
1871 and prior years  Amounts due A. Gesner and John S. Kincaid for surveys executed under contract with the surveyor general of Oregon, being a deficiency	\$342	0
for the fiscal year 1874	1,073	4
Amounts due J. W. Meldrum, H. Meldrum, W. H. Odell, B. F. Vaughn, and N. O. Walden for surveys executed under contract with the sur-		
veyor-general of Oregon, being a deficiency for the fiscal year 1875  Amount due W. R. Ballard for surveys executed under contract with the	2, 618	8
surveyor-general of Washington, being a deficiency for the fiscal year	324	9
Amount due M. A. Williams for surveys executed under con'ract with	324	3
the surveyor-general of Florida, being a deficiency for the fiscal year 1874	795	5

ed under contract with the ciency for the fiscal year 1875.	and Bailey & Burrill for surveys execut- surveyor-general of Utah, being a defi- llogg, McFarland & Bonnell, and Post &	\$392 28	Amount due J. Rinehart for services rendered as acting agent in 1873, at the Cimarron agency, New Mexico, being a deficiency for the fiscal year 1873 and prior years.  Amount due Charles H. Coleman for shoeing public animals during the	\$400 00
Koch for surveys executed un of Montana, being a deficienc	ider contract with the surveyor-general	213 30	second quarter 1873, for the Mescalero Apache agency, New Mexico, being a deficiency for the fiscal year 1873 and prior years. Amount due Daniel P. Mowner for services rendered as butcher, in sec-	27 00
with the surveyor-general of year 1875.	Louisiana, being a deficiency for the fiscal	484 13	ond quarter, 1873, at same agency, being a deficiency for the fiscal year 1873 and prior years.	133 50
Amount due T. F. White for s surveyor-general of Arizona, Amount due W. H. Carlton for	nrveys executed under contract with the being a deficiency for the fiscal year 1875 surveys executed under contract with the la, being a deficiency for the fiscal year	351 10	This amount, to pay indebtedness incurred on account of the service at the same agency, in second quarter, 1873, namely: Pay of one laborer, \$90, and one blacksmith, \$82.50, as per statement of S. B. Bushnell, agent in charge, on file in the Indian Office, being a deficiency for the fiscal year	land.
Amount due William Maxwell	for surveys executed under contract with	103 24	Amount due W. W. Owen for services rendered as chief herder at the	172 50
To pay William F. Price for s	aska, being a deficiency for the fiscal year ervices as messenger in the office of the	646 31	Navajo agency, New Mexico. during the second quarter, 1873, being a deficiency for the fiscal year 1873 and prior years Amount due Charles Harrison for services rendered as issuing clerk at	180 00
To pay L. F. Cartee, surveyor-	ia, being a deficiency for the fiscal year general of Idaho, for expenses incurred in	91 48	the same agency, same quarter, being a deficiency for the fiscal year 1873 and prior years.  Amount due P. H. Williams for services rendered as issuing clerk at the	180 00-
Land Office, dated November year 1871 and prior years	s under instructions from the General 19, 1868, being a deficiency for the fiscal	299 94	same agency, same quarter, being a deficiency for the fiscal year 1873 and prior years  Amount due A. C. Damon for services rendered as butcher at the same	180 00
A	INDIAN AFFAIRS. for services rendered as Indian agent for		agency, same quarter, being a deficiency for the fiscal year 1873 and prior years. Amount due Peter Whitney for services rendered as teamster at the	180 00
Pueblo Indians, in New Mexi a deficiency for the fiscal yea	co, during the second quarter, 1861, being r 1873 and prior years	271 25	same agency, same quarter, being a deficiency for the fiscal year 1873 and prior years	180 00
for transporting, in 1871, certs Kansas City to Baxter Spring	r, Fort Scott, and Gulf Railroad Company ain Wyandotte and Shawnee Indians from s, en route to the Indian Territory, being		Amount due Navajo Charley for services rendered as herder at the same agency, same quarter, being a deficiency for the fiscal year 1873 and prior years.	90 00
Pointe agency, Wisconsin, in	o for services rendered as clerk at the La June, 1873, being a deficiency for the fiscal		This amount, to pay liabilities incurred on account of the service at the Southern Apache agency, New Mexico, during the second quarter, 1873, namely, Richard Stackpole, foreman, \$175, and Joseph Durand, issue.	
November 6, 1871, at \$8 per da	for services rendered from October 29 to ay, as commissioner to examine Cherokee		clerk, \$150, as per statement of Benjamin M. Thomas, agent, on file in the Indian Office, being a deficiency for the fiscal year 1873 and prior years	325 00:
ficiency for the fiscal year 187 Amount due G. A. Crowell for	services rendered and expenses incurred	72 00	Amount due Felipe Madrille for beef, wheat, and flour furnished, in second quarter, 1873, for the Abiquiu agency, New Mexico, being a de- ficiency for the fiscal year 1873 and prior years	164 25
and Eel River, during the fisc the books of the Indian_Offi	nt of annuities to the Miamies of Indiana al year ending June 30, 1873, as shown by ce, being a deficiency for the fiscal year		Amount due Jacob Krümmeck for subsistence furnished in March and April, 1873, for the service at the same agency, being a deficiency for the fiscal year 1873 and prior years	103 25-
moval of the Indians of Whet	s for transportation furnished in the re- stone agency, from White River, Dakota,		Amount due Speigelberg Brothers for provisions furnished in April, 1873, for the same agency, being a deficiency for the fiscal year 1873 and prior years	43 25-
for the fiscal year 1873 and p	akota, in 1872 and 1873, being a deficiency rior yearslians for arrears of annuities, under the	14, 488 92	Amount due Speigelberg Brothers for blankets, &c., furnished in January and February, 1873, for Indians visiting the New Mexico superintend- ency, being a deficiency for the fiscal year 1873 and prior years.	29 00
third article, treaty of May the said Shawnees for lands	10, 1854, being a part of the balance due ceded to the United States under the first a deficiency for the fiscal year 1873 and		Amount due Tom Navajo for services rendered as herder at the Navajo agency, in June, 1873, being a deficiency for the fiscal year 1873 and prior years.	
Amount due the Kansas Pacific	Railroad Company for amount of charges	10, 406 39	Amount due W. W. Owens for amount advanced to Indian employés of the Navajo agency for herding during the first and second quarters, 1873, being a deficiency for the fiscal year 1873 and prior years.	10 00
pany, on account of transport deficiency for the fiscal year For this amount to be applied	in payment for services rendered by em-	21 30	Amount due Lionel Ayres for amount advanced in goods and money to Indian employés at the Navajo agency, New Mexico, during the first and second quarters, 1873, being a deficiency for the fiscal year 1873 and prior years	388 00°
J. H. Stout, on file in the Ind year 1873 and prior years	ed during the fiscal year ending June 30, ation, Arizona, as by statement of Ageut ian Office, being a deficiency for the fiscal	2, 594 28	Amount due Lionel Ayres for goods furnished the principal chiefs and head-men of the Navajo Indians during first and second quarters, 1873, being a deficiency for the fiscal year 1873 and prior years.	228 00
This amount to re-imburse Cha agent, for amount expended cated at the Ponca agency, Da	rles P. Birkett, late United States Indian by him for the benefit of the Indians lo- kota Territory, during the fiscal year end- y the books of the Indian Office, being a de-		Amount due Serfine Chacon for repairing an ambulance belonging to the Abiquiu agency, New Mexico, in February, 1873, being a deficiency for the fiscal year 1873 and prior years Amount due John B. McCullough for postage-stamps furnished the	12 00
ficiency for the fiscal year 187 Amount due A. M. Jackson f		1,097 22	Cimarron agency, New Mexico, in May and June, 1873, being a defi- ciency for the fiscal year 1873 and prior years. Amount due P. A. Wagner for ammunition furnished the western band	5 00
in 1861, being a deficiency for Amount due Joseph Ayers for	the fiscal year 1873 and prior years board and lodging furnished Silas F. Ken- le on business for the Indian Department,	160 00	of Shoshone Indians in Hamilton Nevada, in January, 1873, being a deficiency for the fiscal year 1873 and prior years. Amount due William P. Harris for services rendered as blacksmith at	65 67
in 1861, being a deficiency for Amount due the B. B. B. and	the fiscal year 1873 and prior years C. Railroad Company for transportation adrick while on Government business in	5 00	the Klamath agency, Oregon, in the fourth quarter, 1871, as per voucher on file in the Indian Office, being a deficiency for the fiscal year 1873 and prior year.	269 00
1861, being a deficiency for the Amount due steamer J. H. Be	e fiscal year 1873 and prior yearsll for transportation turnished late Agent ged on Government business in 1861, being	4 50	Amount due George W. Collins for services rendered as superintendent of farming at Alsea subagency, Oregon, in second quarter, 1873, being a deficiency for the fiscal year 1873 and prior years.	66 66
a deficiency for the fiscal year Amount due J. Rinehart for	services rendered as acting agent at the co, in May, 1872, being a deficiency for the	15 00	Amount due F. H. Sawtelle for articles furnished the Siletz agency, Oregon, in the third and fourth quarters, 1872, being a deficiency for the fiscal year 1873 and prior years	9 49
fiscal year 1873 and prior yea Amount due Ignacio Archetola	of in May, 1872, being a deficiency for the for salt furnished in June, 1873, for the to, being a deficiency for the fiscal year	56 66	Amount due Northrup & Thompson for supplies furnished the Siletz In- dian agency, Oregon, in June, 1872, being a deficiency for the fiscal year 1873 and prior years	356 00
Amount due the Maxwell Land	Grant and Railway Company for rent of Cimarron agency, New Mexico, from Sep-	14 00	Amount due Abbey & Simpson for supplies furnished the Siletz agency, Oregon, in October, 1872, being a deficiency for the fiscal year 1873 and prior years.	29 14
tember 30, 1872, to March 30, 1873 and prior years	1873, being a deficiency for the fiscal year tella for services rendered in March, 1873,	85 00	Amount due Allen & Lewis for supplies furnished the Siletz agency, Oregon, in September, 1872, being a deficiency for the fiscal year 1873 and prior years	79 70
at the same agency, being a d	deficiency for the fiscal year 1873 and prior or services rendered as blacksmith at the	17 00	Amount due H. P. Butler for transportation of flour to the Siletz agency, Oregon, in November, 1872, being a deficiency for the fiscal year 1873 and prior years	64 66
	during the second quarter 1873, being a		Amount due E. Hartless for wheat furnished the Siletz agency, Oregon, in April, 1872, being a deficiency for the fiscal year 1873 and prior years.	71 84
Amount due T. D. Burns for Abiquiu agency, New Mexi 1873 and prior years	supplies furnished in June, 1873, for the co, being a deficiency for the fiscal year	2,670 45	Amount due Frank Hill for transportation furnished for the service at the Siletz agency, Oregon, in November, 1872, being a deficiency for the fiscal year 1873 and prior years.	15 64
Amount due Louis Clark for 3, 1872, for the Indian service i fiscal year 1873 and prior yea	7721 pounds corn, furnished in December, n New Mexico, being a deficiency for the rs	75 45	Amount due S. R. Baxter for shoeing public animals belonging to the Si- letz agency, Oregon, in November, 1872, being a deficiency for the fiscal	
Amount due W. B. Truax for e in connection with the service	xpenses incurred in traveling on business, e at the Pueblo agency, New Mexico, in ciency for the fiscal year 1873 and prior	1512	year 1873 and prior years.  Amount due George Elliott for services rendered as brick-maker at the Siletz agency, Oregon, in May, 1872, being a deficiency for the fiscal	13 00
Amount due James M. Rober	ts for expenses incurred in traveling on the service at the same agency, in October	58 33	year 1873 and prior years.  Amount due T. G. Richmond for board of mules belonging to the Siletz agency, Oregon, in March, 1872, being a deficiency for the fiscal year	25 29
and November, 1872, being a years	deficiency for the fiscal year 1873 and prior r fresh beef and mutton furnished in April	200 00	1873 and prior years .  Amount due Pardon Dodds for herding twenty-eight head of cattle at the Uintah Valley agency, Utah, from December I, 1872, to June 39, 1872,	10 50
1873, for the Abiquin agency	New Mexico, being a deficiency for the		at \$50 per month, seven months, being a deficiency for the fiscal year	350 00

This amount, to be applied in the payment of indebtedness incurred in 1868 and 1869 by H. C. Cole, late Indian agent, in conducting the affairs of the Tulalip Indian agency, in Washington Territory, as per state- ment of Samuel K. Ross, brevet colonel United States Army, and late		This amount to meet liabilities contracted on account of the service at the Denver special agency, Colorado, during the fiscal year ending June 30, 1874, as per statement of J. B. Thompson, agent, on file in the Indian Office. Items: Salary of agent, \$300; and \$277.36 for rent, fuel,	
superintendent of Indian affairs, on file in the Indian Office, being a de-	97, 553 <b>44</b>	lights, stationery, printing, medicines, &c., being a deficiency for the fiscal year 1874. Amount due Agent E. H. Danforth for expenses incurred in traveling on	\$577 36
ice at the La Pointe agency, Wisconsin, being for pay of employes, supplies, &c., as per statement of agent I. L. Mahan, dated December 8, 1875, on file in the Indian Office, being a deficiency for the fiscal year 1874.	3, 594 95	business in connection with the Indian service at White River, Colorado, as shown by vouchers 1 and 5, Abstract B, cash account, third quarter, 1874, being a deficiency for the fiscal year 1874.	210 41
Amount due Charles Rich for supplies furnished Mixed Shoshones, Ban- nacks, and Sheepeaters, under contract, during the second quarter, 1874, being a deficiency for the fiscal year 1874	2, 755 35	This amount, to meet liabilities contracted on account of the service at the Grand River agency, Dakota, during the first and second quarters, 1874, on account of supplies furnished, as per vouchers on file in the	
Amount due L. Speigelberg for beef furnished the Navajo agency, New Mexico, in May, 1874, being a deficiency for the fiscal year 1874.  This amount, to be applied in payment for services rendered by employes at the Navajo agency, New Mexico, during the fiscal year ending June	5, 285 98	Indian Office, being a deficiency for the fiscal year 1874.  This amount, to meet liabilities contracted on account of the service at the Red Cloud agency, Dakota, being for pay of employés and incidental expenses for the first and second quarters, 1874, as per statement of	
30, 1874, as per vouchers certified by agent W. F. M. Arney, on file in the Indian Office, being a deficiency for the fiscal year 1874	3, 412 39	Agent J. J. Saville, on file in the Indian Office, being a deficiency for the fiscal year 1874. Amount due Todd Randall for one hundred tons of hay delivered at the	2, 509 62
goods and supplies to the Pawnee agency during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874	247 77	Red Cloud agency, Dakota, in October, 1873, being a deficiency for the fiscal year 1874. Amount due Northern Pacific Railroad Company for balance due on ac-	1, 650 00
This amount for deficiency of money annuities, for the fiscal year ending June 30, 1874, due the Prairie band of Pottawatomics, under treaty stipulations, being a deficiency for the fiscal year 1874	4, 341 30	count of transportation of supplies to Fort Berthold, in December, 1873, being a deficiency for the fiscal year 1874. This amount, to re-imburse Charles P. Birkett, late United States Indian	704 14
Amount due the Union Pacific Railroad Company for transporting annuity goods and supplies to the Shoshones and Bannacks and other bands of Idaho and Southeastern Oregon, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874.	2,710 96	agent, for amount expended by him for the benefit of the Indians located at the Ponca agency, Dakota Territory, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874.	30, 589, 31
Amount due Union Pacific Railroad Company for transporting annuity goods and supplies to the Sioux Indians during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874	4, 238 61	This amount, to be applied in the payment of indebtedness incurred on account of the service at the Fort Hall agency, Idaho, during the first and second quarters, 1874, as per statement of Henry Reed, late agent, on file in the Indian Office, being a deficiency for the fiscal year 1874.	
Amount due Henry Housman for supplies furnished the Red Cloud agency in December, 1873, and January, 1874, being a deficiency for the fiscal year 1874.	339 66	of the service at Walker River and Pyramid Lake agency, Nevada, dur-	
Amount due E. Nagle for oats, &c., furnished the Red Cloud agency in December, 1873, and April, 1874, being a deficiency for the fiscal year 1874.	180 00	ing the second quarter, 1874, being for pay of employés, subsistence, seeds, traveling expenses of the agent, &c., as per statement of Agent C. A. Bateman, on file in the Indian Office, being a deficiency for the fis-	
Amount due S. F. Estis for ammunition furnished in July, 1873, for the Whetstone agency, Dakota, being a deficiency for the fiscal year 1874. Amount due N. Huss for supplies furnished the Red Cloud agency in	112 00	cal year 1874  Amount due J. B. Lamay for the hire of an ambulance to Agent W. D. Crothers, in April, 1874, being a deficiency for the fiscal year 1874  Amount due Charles Robbins for services rendered as farmer at the Abi-	3, 585 06
November and December, 1873, and January and February, 1874, being a deficiency for the fiscal year 1874. Amount due Jules Ecoffey & Co. for supplies furnished the Red Cloud agency in August and September, 1873, being a deficiency for the fiscal	377 11	quiu agency. New Mexico, in March and April, 1874, being a deficiency for the fiscal year 1874. Amount due W. W. Owen for services rendered as chief herder at the	136 67
year 1874 Amount due Jules Ecoffey for the delivery at the Red Cloud agency, un- der contract, 119,000 feet of sawed lumber, in March, 1874, being a de-	94 85	Navajo agency, New Mexico, during the third quarter, 1873, being a deficiency for the fiscal year 1874  Amount due W. W. Owen for services rendered as chief herder at the	120 00
ficiency for the fiscal year 1874  Amount due Union Pacific Railroad Company for transporting annuity goods and supplies purchased for the service at the White River agency,	1,779 05	same agency, in second quarter, 1874, being a deficiency for the fiscal year 1874. Amount due Charles Harrison for services rendered as issue-clerk at	180 00
Colorado, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874  Amount due Union Pacific Railroad Company for transportation fur-	947 97	same agency, during third quarter, 1873, being a deficiency for the fis- cal year 1874.  Amount due P. H. Williams for services rendered as issue-clerk at the	120 00
nished Indian agents in March and June, 1874, being a deficiency for the fiscal year 1874.	158 55	same agency, same quarter, being a deficiency for the fiscal year 1874.  Amount due A. C. Damon for services rendered as butcher at same agen-	120 00
Amount due Union Pacific Railroad Company for transporting annuity goods and supplies purchased for Indians located in Arizona, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal	26 10	cy, same quarter, being a deficiency for the fiscal year 1874. Amount due Peter Whitney for services rendered as teamster at the same agency, same quarter, being a deficiency for the fiscal year 1874.	120 00
year 1874.  Amount due Harrington and Gilbert for running 1,780.80 feet of tunnel, 5 by 6 feet, through Mesa on the Colorado River Indian reservation, Arizona Territory, to bring water to the irrigating canal, as per agree-	2010	Amount due Navajo Charley for services rendered as herder at the same agency, same quarter, being a deficiency for the fiscal year 1874 This amount, to be applied in the payment of indebtedness incurred on account of the service at the Pueblo agency, New Mexico, during the	30 00
ment dated August 28, 1873, being a deficiency for the fiscal year 1874.  Amount due Harrington and Gilbert for running 1,173 feet of tunnel through Mesa, on the Colorado River Indian reservation, Arizona Ter-	12, 105 40	first and second quarters, 1874, as per statement and vouchers, certified by E. C. Lewis, late agent, on file in the Indian Office, being a deficiency for the fiscal year 1874.	
ritory, in June, 1874, under contract, being a deficiency for the fiscal year 1874.  This amount to meet liabilities contracted during the fiscal year ending	77 77	Amount due Agiela, Ute chief, for services rendered as guide from August 3 to October 25, 1873, at Cimarron agency, New Mexico, being a deficiency for the fiscal year 1874.	50 00
June 30, 1874, at the Papago agency, Arizona, as per vouchers and statement of Agent R. A. Wilbur, on file in the Indian Office, being a deficiency for the fiscal year 1874.	3, 838 84	Amount due Z. Staab & Co. for supplies furnished the superintendent of Indian affairs for New Mexico, in November and December, 1873, and January and April, 1874, being a deficiency for the fiscal year 1874	149 14
Amount due H. W. Livingston for services rendered as laborer at the Colorado River reservation, Arizona, during the first and second quarters, 1874, being a deficiency for the fiscal year 1874.	331 00	Amount due Seligman Brothers & Co. for timber, &c., furnished in sec- ond quarter, 1874, for the New Mexico superintendency, being a defi- ciency for the fiscal year 1874	20 75
Amount due James Brown for services rendered as laborer on the irrigating canal at Colorado River reservation, Arizona, in June, 1874, being a deficiency for the fiscal year 1874.  This amount to meet liabilities contracted on account of services rendered	54 00	Amount due O. C. Crothers for services rendered in March, 1874, at the Abiquiu agency, New Mexico, being a deficiency for the fiscal year 1874. Amount due A. Cayetana Garcia for subsistence supplies furnished dur-	77 41
by employés, &c., at the Moqui Pueblo Indian agency, in Arizona, dur- ing the fiscal year ending June 30, 1874, as per estimates of Agent De-		ing the second quarter, 1874, for the New Mexico superintendency, being a deficiency for the fiscal year 1874 Amount due Nanuello Griego for board furnished two Indian witnesses	69 05
frees, dated April 8 and June 20, 1874, on file in the Indian Office, being a deficiency for the fiscal year 1874	1,336 38	in March, 1874, being a deficiency for the fiscal year 1874.  Amount due Joseph J. Herrera for services rendered in June, 1874, at the Abiquiu agency, New Moxico, being a deficiency for the fiscal year	
Tule River agency, California, in October 1873, being a deficiency for the fiscal year, 1874.  Amount due Mission and Pacific Woolen Mills for clothing furnished un-	237 36	1874. Amount due Probst & Kirchner for 207‡ pounds of beef furnished in June, 1874, for Indians at the same agency, being a deficiency for the	
der contract for the same agency in October, 1873, being a deficiency for the fiscal year 1874.  Amount due Hooker & Co. for hardware furnished under contract for the same agency, in October, 1873, being a deficiency for the fiscal year	499 25	fiscal year 1874.  Amount due M. A. Breeden for rent of post-office box to the superintendent of Indian affairs for New Mexico, in June, 1874, being a deficiency for the fiscal year 1874.	16 60 3 90
1874.  Amount due Murphy, Grant & Co. for goods, &c., furnished under contract for the same agency in October, 1873, being a deficiency for the	413 93	Amount due Maxwell Land Grant and Railway Company for rent of building for the use of the agent at Cimarron agency, New Mexico, in January, 1874, being a deficiency for the fiscal year 1874. Amount due Francisco Griego for keeping Indian horses in February and	
fiscal year 1874.  Amount due Fordham & Jennings for subsistence supplies furnished under contract for the same agency in October, 1873, being a deficiency	345 37	Amount due Francisco Griego for keeping Indian horses in February and March, 1874, being a deficiency for the fiscal year, 1874. Amount due Thomas McDonald, for board furnished employés of the	25 50
for the fiscal year 1874.  Amount due Lindenburger & Burke for hats furnished under contract for the same agency in October, 1873, being a deficiency for the fiscal	266 59	Cimarron agency, New Mexico, in June, 1874, being a deficiency for the fiscal year 1874 Amount due John Orme Cole, late Indian agent, for expenses incurred in	12 00
year 1874.  Amount due S. Greenbaum for transporting annuity goods and supplies to Hoona Valley reservation. California, under contract, during the fis-	35 53	October and November, 1873, in traveling on Government business, being a deficiency for the fiscal year 1874.  Amount due Charles Probst for beef furnished in January, March, April,	177 55
cal year ending June 30 1874 heing a deficiency for the fiscal year 1874	794 52	and May, 1873, for the Abiquiu agency, New Mexico, being a deficiency for the fiscal year 1874. Amount due Charles Probst for beef furnished in June, 1874, for the	920 65
Amount due John Sap for 55,838 pounds of fresh beef furnished the Hoopa Valley reservation, California, under contract, during the first and second quarters, 1874, being a deficiency for the fiscal year 1874.  Amount due A. Brizzard for supplies furnished the Hoopa Valley reservation, California, in March, April, May, and June, 1874, being a defi-	5, 583 80	same agency, being a deficiency for the fiscal year 1874	877 70
ciency for the fiscal year 1874.  Amount due Marcus C. Hawley & Co. for hardware furnished the Hoopa Valley agency, California, during the fiscal year ending June 30, 1874.	1,999 71	being a deficiency for the fiscal year 1874.  Amount due William White for expenses incurred in traveling in April, 1874, on account of the Indian service in New Mexico, being a deficiency	4, 045 20
being a deficiency for the fiscal year 1874	121 72	for the fiscal year 1874	32 00

Amount due William White for services rendered as acting agent at the Cimarron agency, New Mexico, in April, 1874, being a deficiency for the fiscal year 1874.	\$147 30	Amount due E. Andrews for articles of stationery furnished in April and May, 1874, for the office of the superintendent of Indian affairs for New Moxico, being a deficiency for the fiscal year 1874	\$20 25
Amount due M. Traner for supplies furnished in April, 1874, for the same agency, being a deficiency for the fiscal year 1874	73 63	Amount dae J. L. Göuld for services rendered as special agent in November, 1874, at the Navajo agency, Now Mexico, and for traveling expenses in returning to his home, being a deficiency for the fiscal year	
quiu ageney, New Mexico, in September, 1873, being a deficiency for the fiscal year 1874. Amount due Bernardo Sanchez for beef and mutton furnished in Au-	45 10	Amount due Thomas D. Burns for supplies furnished for the service at the Abiquiu agency, New Mexico, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874.	G. Waller
gust, 1873, for the service at the same agency, being a deficiency for the fiscal year 1874.  Amount due A. G. Irvine for hardware furnished in June, 1874, for the	104 00 6 90	Amount due Charles Roselle for services rendered as teamster and la- borer at the Abiquiu agency, New Mexico, in second quarter, 1874,	
service in New Mexico, being a deficiency for the fiscal year 1874 Amount due Hfeld & Co. for supplies furnished the superintendent of Indian affairs for New Mexico in April and May, 1874, being a defi-		being a deticiency for the fiscal year 1874  Amount due Francisco Griego for hire of team for the service at the Cimarron agency, New Mexico, in April, 1874, being a deficiency for	
ciency for the fiscal year 1874.  Amount due Z. Staab and Alexander Gusdorf for 2,900 pounds of flour furnished under contract in February, 1874, for the Abiquiu agency,	19 35	the fiscal year 1874  Amount due Francisco Griego for services rendered as interpreter at the Cimarron agency, New Mexico, in May, 1874, being a deficiency for	
New Mexico, being a deficiency for the fiscal year 1874.  Amount due Z. Staab and Alexander Guzdorf for 12,000 pounds of flour furnished under contract in April and May, 1874, for same agency, be-	123 25	the fiscal year 1874  Amount due W. A. Crocker for services rendered as issue-clerk at the same agency, in May, 1874, being a deficiency for the fiscal year 1874	55 55 53 33
ing a deficiency for the fiscal year 1874  Amount due W. A. Crocker for services rendered in June, 1874, as clerk	510 00	Amount due Maurice Franer for supplies furnished the same agency in February, 1874, being a deficiency for the fiscal year 1874. Amount due George Schafer for 414 leaves of bread furnished the Indians	
at the Cimarron agency, New Mexico, being a deficiency for the fiscal year 1874. Amount due Julien Lopes for 25 cords of wood furnished in November,	40 00	at the Pueblo agency, New Mexico, in the second quarter, 1874, being a deficiency for the fiscal year 1874	34 50
1873, for the Mescalero Apache agency, New Mexico, being a deficiency for the fiscal year 1874 Amount due Charles H. Coleman for shoeing public animals in December,	75 00	Amount due Francisco Griego for transportation furnished two Indians, witnesses to United States court, from Cimarron to Santa Fé, New Mex- ico, in February, 1874, being a deficiency for the fiscal year 1874.	39 00
1873, and January and February, 1874, at the same agency, being a defi- ciency for the fiscal year 1874.  Amount due Z. Staab & Co. for supplies furnished in April, 1874, for	56 00	Amount due John E. Murphy, for medicines furnished for the service in New Mexico during the second quarter, 1874, being a deficiency for the fiscal year 1874	
the Abiquiu agency, New Mexico, being a deficiency for the fiscal year 1874.	155 00	This amount, to be applied in the payment of liabilities contracted on ac- count of the service at the Alsea subagency and the Siletz agency, Or-	
Amount due Pedro Y. Jaramillo for beef and wheat furnished in May, 1874, for the same agency, being a deficiency for the fiscal year 1874 Amount due Culver & Hersey for ammunition furnished in May, 1874, in	194 00	egon, during the fiscal year ending June 30, 1874, as per statement of J. H. Fairchild, on file in the Indian Office, being a deficiency for the fiscal year 1874	12, 163 46
the same agency, being a deficiency for the fiscal year 1874	94 00	This amount, to be applied in payment of liabilities contracted on account of the service at the Malheur agency, Oregon, during the fiscal year	
1874, at the same agency, being a deficiency for the fiscal year 1874 A mount due William A. Crocker for rent of buildings from January 20 to April 20, 1874, for the service in New Mexico, being a deficiency for	8 88	ending June 30, 1874, as per statements of Agents Parish and Linville, on file in the Indian Office, being a deficiency for the fiscal year 1874. This amount, to be applied in payment of salaries due employés, pur-	3, 897 00
the fiscal year 1874  Me William A. Crocker for services rendered at the Cimarron agency, New Mexico, from February 1 to April 20, 1874, being a defi-	54 00	chases of tools, and repair of mills at the Klamath agency, Oregon, dur- ing the fiscal year ending June 30, 1874, as per statement of Agent L. S. Dyar, on file in the Indian Office, being a deficiency for the fiscal	
ciency for the fiscal year 1874	166 66	year 1874	3, 825 00
account of the service at the Mescalero Apache agency, New Mexico, during the second quarter 1874, being for pay of employés and repairs on buildings, as per statement of Agent W. D. Crothers, on file in the		chases of supplies. &c., during the fiscal year ending June 30, 1874. as per statement of Agent P. B. Sinnott, on file in the Indian Office, being a deficiency for the fiscal year 1874	1,905 00
Indian Office, being a deficiency for the fiscal year 1874. Amount due Jesus Alviso for services rendered as Navajo interpreter, from July 1 to August 31, 1873, being a deficiency for the fiscal year	1, 355 00	Amount due G. W. Dodge, late Indian agent, for expenses incurred in traveling from Salt Lake City, Utah, to Aurora, Illinois, in August, 1873 being a deficiency for the fiscal year 1874	128 00
Amount due Chivato (Indian) for services rendered as herder from July	84 24	Amount due Union Pacific Railroad Company for transporting annuity goods and supplies to Indians in Utah during the fiscal year ending	
1 to August 31, 1873, being a deficiency for the fiscal year 1874. Amount due J. W. Southwick for services rendered in May, 1874, at the Abiquiu agency, New Mexico, being a deficiency for the fiscal year	30 00	June 30, 1874, being a deficiency for the fiscal year 1874. Amount due Pardon Dodds for herding twenty-eight head of cattle at the Uintah Valley agency, Utah, from July 1, 1873, to September 30,	631 45
1874 Amount due Don Vicente (Indian) for services rendered in May, 1874, at the same agency, being a deficiency for the fiscal year 1874	46 67 5 00	1873, at \$50 per month, being a deficiency for the fiscal year 1874 Amount due James M. Barker for services rendered as laborer at the Uintah Valley agency, Utah, during the second quarter, 1874, being	150 00
Amount due Chandler Robbins for traveling expenses in May, 1874, in connection with the service at same agency, being a deficiency for the		deficiency for the fiscal year 1874  Amount due James T. Taylor for services rendered as laborer at the same	150 00
fiscal year 1874 Amount due Chiome (Indian) for services rendered in June, 1874, at the same agency, being a deficiency for the fiscal year 1874	47 00 7 20	agency, same quarter, being a deficiency for the fiscal year 1374  Amount due Edward B. Critchlow for services rendered as laborer at the same agency, same quarter, being a deficiency for the fiscal year	and the second
Amount due Fernandez Montana for 256 pounds of hay farnished in May, 1874, for same agency, being a deficiency for the fiscal year 1874 Amount due Z. Staab & Co. for articles of stationery furnished in August	7 50	Amount due Robert C. Turner for services rendered as laborer and mail- carrier at the same agency, same quarter, being a deficiency for the	* 150 00
and September, 1873, for the Southern Apache agency, New Mexico, being a deficiency for the fiscal year 1874 Amount due M. A. Breeden for articles of stationery furnished in May,	32 50	fiscal year 1874 A mount due Peter Van Houten for services rendered as carpenter at the	225 00
1874, for the Mescalero Apache agency, New Mexico, b.ing a deficiency for the fiscal year 1874	17 20	same agency same quarter, being a denoiency for the fiscal year 1874.  Amount due John Kelley for services rendered as blacksmith at the same agency same quarter, being a deficiency for the fiscal year 1874	250 00
Amount due Francis Griego for hire of wagons and horses in April, 1874, for the service at the Cimarron agency, New Mexico, being a deficiency for the fiscal year 1874	10 00	Amount due Maurice K. Parsons for the delivery under contract of 43,593 pounds of fresh beef during the first and second quarters, 1874, at the same agency, being a deficiency for the fiscal year 1874	4, 141 33
Amount due R. H. Longwell and A. Vison for services rendered and ex- penses incurred in connection with the service in New Mexico in June,	297 33	Amount due Daniel S. Moseby for services rendered as farmer at the same agency during the second quarter, 1874, being a deficiency for the	
1674, being a deficiency for the fiscal year 1874. Amount due R. H. Longwell for medicines, &c., furnished in November and December, 1873, for the Cimarron agency, New Mexico, being a		fiscal year 1874.  Amount due John A. Simms, agent, for expenses incurred in traveling on business in connection with the service at the Colville agency,	
deficiency for the fiscal year 1874. Amount due Sixto Chavez for 1,500 pounds of corn furnished for the serv- ice at the Abiquin agency in May, 1874, being a deficiency for the fis-	16 70	Washington Territory, from July 3 to October 7, 1873, being a deficiency for the fiscal year 1874 Amount due Union Pacific Railroad Company for transporting annuity	242 89
cal year 1874.  Amount due Pedro Y. Jaramillo for 6,120 pounds of wheat furnished the same agency in June, 1874, being a deficiency for the fiscal year 1874.	105 00 306 00	goods and supplies to Indians located in Washington Territory, during the fiscal year ending June 30, 1874, being a dedicioncy for the fiscal year 1874.	
Amount due M. Traner for supplies furnished in second quarter 1874, for the Cimarron agency, New Mexico, being a deficiency for the fiscal	179 69	This amount to be applied in the payment of salaries of employes supplies, &c., liabilities contracted on account of the service at the Colville	
year 1874 Amount due Valentine Herbert for services rendered as teamster in May and June, 1874, at the New Mexico superintendency, being a deficiency		agency, Washington Territory, during the fiscal year ending June 30, 1874, as per statement of Agent John A. Simms, on file in the Indian Office, being a deficiency for the fiscal year 1874	2, 129 91
for the fiscal year 1874 Amount due S. Speigelberg for one saddle and three bridles furnished in June, 1874, for the New Mexico superintendency, being a deficiency for	120 00	This amount to be applied in the payment of liabilities contracted at the Central superintendency during the second quarter, 1874, on account of rent, care of Government animals, stationery, gas, storage, traveling expenses, &c., as per statement of Enoch Hoag, late superintendent of	
the fiscal year 1874 Amount due Frederick C. Bishop for services rendered as clerk at the office of the superintendent of Indian affairs for New Mexico in June,	32 50	Indian analis, on me in the indian Omce, being a dencicity for the	
1874, being a deficiency for the fiscal year 1874	75 00	fiscal year 1874.  This amount for salary and traveling expenses of a special agent in Alaska, from July 1, 1873, to June 30, 1874, as per vouchers on file in	
cer in May and June, 1874, being a deficiency for the fiscal year 1874. Amount due Speigelberg Brothers for one sack of flour furnished in February, 1874, to Indians in New Mexico, being a deficiency for the	250 00	the Indian Office, being a deficiency for the fiscal year 1874	1, 956 54
fiscal year 1874. Amount due George Chase for shoeing animals belonging to the Navajo agency, New Mexico, in October, 1873, and May and June, 1874, being	5 00	fering Kickapoo Indian captives at Fort Gibson, Indian Territory, pre- paratory to removal to a new location, during September and Novem- ber, 1873, being a deficiency for the fiscal year 1874	565 66
Amount due William Bolander for repairing harness, &c., in April and June, 1874, for the superintendent of Indian affairs for New Mexico,	70 25	Amount due Joseph D. Gurnoe for services rendered as clerk at the La Pointe agency, Wisconsin, in August and October, 1873, being a defi- ciency for the fiscal year 1874	165 00
Amount due J. B. McCullough for rent of post-office box to the agent	14 45	Amount due J. A. Davis for balance on account for services rendered as superintendent at Red Cliff reservation, Wisconsin, and as clerk to the	
at the Cimarron agency, New Mexico, in April, 1874, being a deficiency for the fiscal year 1874.	2 00	agent at the La Pointe agency, Wisconsin, from September 1, 1873, to February 6, 1874, being a deficiency for the fiscal year 1874	250 00

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Amount due G. A. Crowell for services rendered and expenses incurred in connection with the payment of annuities to the Miamies of Indiana and of Eel River, during the fiscal year ending June 30, 1874, being a		1
deficiency for the fiscal year 1874.  Amount due William Matthewson for 35,000 pounds of flour furnished in  May, 1874, for the subsistence of the Kiowa, Comanche, and Apache	\$310 1- 2,352 8	1
Indians in Dakota, being a deficiency for the fiscal year 1874 Amount due John H. Charles for balance due on flour, bacon, coffee, sugar, &c., furnished the Arickarees, Gros Ventres, and Mandans in September, 1873, being a deficiency for the fiscal year 1874	9, 998 8	2
Amount due Durfee & Peck for flour, bacon, coffee, and sugar furnished for the same Indians in October, 1873, being a deficiency for the fiscal year 1874.	20, 684 2	3
Amount due F. A. Van Ostrand for flour, bacon, coffee, and sugar furnished for the same Indians in October, 1873, being a deficiency for the	1 500 0	13
fiscal year 1874.  Amount due D. W. Marsh for flour, bacon, coffee, and sugar furnished for the same Indians in September, 1873, being a deficiency for the fiscal year 1874.	1, 500 0	
Amount due the Union Pacific Railread Company for transporting an- nuity goods and supplies to Shoshones and Bannacks, and other bands in Idaho and Southeastern Oregon, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874	473 6	1
Amount due Union Pacific Railroad Company for transportation fur-		
nished Indian delegations visiting Washington during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874		1
a deficiency for the fiscal year 1874.  Amount due George B. Duncan for services rendered as issue clerk at Southern Apache agency, New Mexico, in January, 1874, being a defi-	563 3	
ciency for the fiscal year 1874.  Amount due Henry Duane for services rendered as physician at the same agency in fourth quarter 1873, being a deficiency for the fiscal year 1874.	200 0	
Amount due Andrew Berger for services rendered as blacksmith at the same agency in second quarter 1874, being a deficiency for the fiscal year 1874.		2
Amount due Louis Clark for beef and flour furnished in March, 1874, for Jicarilla Apaches in New Mexico, being a deficiency for the fiscal year 1874.	583-2	1
Amount due J. P. Chase for 7,4704 pounds fresh beef furnished in De- cember, 1873, and January, 1874, for Southern Apache agency, New Mexico, being a deficiency for the fiscal year 1874	933 8	1 2
Amount due Luciano Chaner for 12,968 pounds of fresh beef furnished in March, 1874, for same agency, being a deficiency for the fiscal year 1874 Amount due Frank Frenger for 19,733\(\frac{1}{2}\) pounds of fresh beef furnished in January and March, 1874, for same agency, being a deficiency for the	972 6	0
fiscal year 1874 Amount due Green & Lohenstein for supplies furnished in May, 1874, for Mescalero Apache agency, New Mexico, being a deficiency for the	1,608 5	
fiscal year 1874 Amount due F. W. Haskell for sugar, coffee, and flour furnished in Feb- ruary, 1874, for Apaches of New Mexico, being a deficiency for the fiscal		
year 1874. Amount due Estanilsado Montaya for 100,111 pounds of flour furnished in	3, 931 7	5
February, 1874, for Southern Apache agency, in New Mexico, being a deficiency for the fiscal year 1874.  Amount due Pedro Montaya for erecting school-house in December, 1873, and furnishing sixteen tons of hay in August, 1873, for the same agency,	5, 005 5	5
being a deficiency for the fiscal year 1874.  Amount due Numa Reymond for 48,518½ pounds of corn furnished in  January, 1874, for the same agency, being a deficiency for the fiscal year		
1874 Amount due John H. Riley for fresh beef furnished in the first and sec- ond quarters, 1874, for the Mescalero Apache agency, New Mexico, be-	1, 280 8	1
ing a deficiency for the fiscal year 1874 Amount due William Rosenthal for corn and hay furnished in Septem- ber, 1873, for the same agency, being a deficiency for the fiscal year 1874 Amount due Van C. Smith for beef furnished under contract in fourth	7, 165 6 168 0	
quarter, 1873, and January, 1874, for the same agency, being a deficiency for the fiscal year 1874. Amount due Z. Staab for blankets, flour, and other supplies furnished in September, October, and November, 1873, and May, 1874, for the South-	9, 867 0	3 4
year 1874	3, 789 5	2
Amount due Henry G. Fonssant for 15,163 pounds of fresh beef furnished in May, 1874, for the Southern Apaches of New Mexico, being a defi- ciency for the service of the fiscal year 1874. Amount due Manuel Vigel for 20,800 pounds of mutton furnished in June,	1, 213 0	4
Amount due Paul Dowlire for supplies furnished the Mescalero Apache	1, 560 0	0
agency, New Mexico, in May, 1874, being a deficiency for fiscal year 1874 Amount due William Gentry for services rendered as teamster at the	96 0	0 3
same agency during a part of the first and second quarters, 1874, being a deficiency for the fiscal year 1874. Amount due S. C. Agguire for services rendered, hire of teams, &c., plow-		0
ing, &c., in May, 1874, at the Rio Verde reservation, Arizona, being a deficiency for the fiscal year 1874. This amount, to be applied in the payment of indebtedness incurred on	473 0	0
account of the service at the San Carlos division, White Mountain reservation, Arizona, during the fiscal year ending June 30, 1874, as per vouchers and statement of Agent James E. Roberts, on file in the In-		1
dian Office, being a deficiency for the fiscal year 1874.  This amount, to be applied in the payment of indebtedness incurred on account of the service at the Gila River agency, Arizona, during the first and second quarters, 1874, as per statement of Agent J. H. Stout,	4, 206 7	1
on file in the Indian Office, being a deficiency for the fiscal year 1874 This amount, to be applied in the payment of indebtedness incurred on account of the service at Camp Apacho agency, Arizona, during the fiscal year ending June 30, 1874, as per vouchers and statement of Agent	1, 167 5	
James E. Roberts, on hie in the Indian Office, being a denciency for the	33, 372 9	
Amount due W. B. Hooper & Co. for flour and barley delivered under contract during the fiscal year ending June 30, 1874, at the several agen- cies in Arizona, as per vouchers on file in the Indian Office, being a de-		1
ficiency for the fiscal year 1874	47, 518 0	7 1
contract during the fiscal year ending June 30, 1874, for the service in Arizona, as per vouchers on file in the Indian Office, being a deficiency for the fiscal year 1874	13, 971 3	1

Amount due W. B. Hugus for supplies of flour, soap, &c., furnished during the fiscal year ending June 30, 1874, for the service of the San Carlos agency, Arizona, as per vouchers on file in the Indian Office, being	210 000	70
Amount due E. N. Fish & Co. for supplies of stationery, medicines, coffee, sugar, beans, flour, &c., furnished during the fiscal year ending June 30, 1874, for the service in Arizona, as per vouchers on file in the Indian	\$10, 928	
Office, being a deficiency for the fiscal year 1874 This amount to be applied in the payment of indebtedness incurred on account of the service at the Rio Verde reservation, Arizona, being for salaries due employés for services rendered during the fiscal year ending June 30, 1874, as per vouchers on file in the Indian Office, being a	13, 559	77
deficiency for the fiscal year 1874. This amount, to be applied in the payment of indebtedness incurred on account of the service at the Lac Court Oreille reservation, Wisconsin, during the fiscal year ending June 30, 1875, as per statement of J. L. Mahan, agent, on file in the Indian Office, being a deficiency for the	5, 020	
fiscal year 1875. Amount due D. Provencher for 18.840 pounds of beef furnished the Nav- ajo agency, New Mexico, in April, 1875, being a deficiency for the fiscal	4, 369	
year 1875 Amount due D. Provencher for 12,450 pounds of beef furnished the Nav- ajo agency, New Mexico, in March, 1875, being a deficiency for the fis-		
cal year 1875  Amount due Marmion Brothers for corn delivered at the same agency in March, April, and May, 1875, being a deficiency for the fiscal year	620	
Amounts due Walter G. Marmion for beef furnished the Navajo agency, New Mexico, in March, 1875, and F. K. Nichols & Son for yarn, &c., for same agency, in February, 1875, being a deficiency for the fiscal year	2, 080	
Amount due John Sap for fresh beef delivered at the Hoopa Valley agency, California, in July, August, and September, 1875, as per vouch- ers on file in the Indian Office, being a deficiency for the fiscal year		
1875. This amount to be applied in payment of indebtedness incurred on account of the service at the Round Valley agency, California, in the second quarter, 1875, as per estimate of Agent J. L. Burchard, on file in	1, 753	
the Indian Office, being a deficiency for the fiscal year 1875.  Amount due Henry Cox for services rendered as inspector of Indian supplies at San Francisco, during the fiscal year ending June 30, 1875, be-		63
ing a deficiency for the fiscal year, 1875.  Amount due Marcus C. Hawley & Co. for articles of hardware furnished the Hoopa Valley agency, in California, in July, 1874, being a deficiency for the fiscal year 1875.		. 00
for the fiscal year 1875.  This amount to meet liabilities contracted on account of the service at the Hoopa Valley agency, California, during the fiscal year ending June 30, 1875, being for annuity supplies purchased of the following parties, namely: Fleischmann, Siehel & Co., \$1,501.94; Murphy, Grant & Co., \$631.63; C. H. Myers & Bro., \$601.9; Fordham & Jennings, \$760.98; Levi Stranss & Co., \$496.59; J. C. Johnson & Co., \$37.27; Dutton & Wythington, \$74.62; Mission and Pacific Woolen Mills, \$3,463.73; Crane & Brigham, \$113.17; and Hecht Bros. & Co., \$445.08, aggregating \$7,585.		50
10, being a deficiency for the fiscal year 1875	7, 585	
dians in December, 1874, being a deficiency for the fiscal year 1875  Amount due Wyman, Buckwalter & Co. for hardware furnished the Poncaagency in December, 1874, being a deficiency for the fiscal year 1875  Amount due Blall & Buerdorff for sundry articles furnished the same		30
This amount to re-imburse Charles P. Birkett, late United States Indian agent, for amount expended by him for the benefit of the Indians at	9	85
Ponca agency, Dakota, during the fiscal year ending June 30, 1875, being a deficiency for the fiscal year 1875.  Amount due C. A. Broadwater for 175 head of beef-cattle delivered at Fort Peck, Montana, in May, 1875, under contract July 11, 1874, being	1,860	91
a deficiency for the fiscal year 1875.  Amount due Abram Hatch for 50 head of beef-cattle delivered at the Uintah Valley agency, Utah, during the second quarter 1875, as per receipt of J. J. Critchlow, agent, on file in the Indian Office, being a	4, 032	00
deficiency for the fiscal year 1875  Amount due for salary and traveling expenses of a special agent in Alaska from July 1, 1874, to October 7, 1874, as per vouchers of Agent E, D. Hall, on file in the Indian Office, being a deficiency for the fiscal	2, 574	00
year 1875.  Amount due G. A. Crowell for services rendered and expenses incurred in connection with the payment of annuities to the Miamies of Indiana and Eel River, during the fiscal year ending June 30, 1875, being a defi-		37
ciency for the fiscal year 1875.  Amount due Charles P. Birkett for services rendered as United States  Indian agent during the fiscal year ending June 30, 1875, being a de-	417	03
ficiency for the fiscal year 1875.  This amount, to be applied in the payment of expenses incurred in holding general council of Indians in the Indian Territory during the fiscal years 1875 and 1876 and prior years, as per statement of Enoch Hoag, late superintendent of Indian affairs, dated November 19, 1875, on file	133	33
in the Indian Office, being a deficiency for the fiscal year 1876 and prior years  Amount due Gibson & Tyler, balance due on blankets furnished under contract for the service at Leech Lake special agency, Minnesota, dur	17, 500	00
ing the fiscal year ending June 30, 1876, being a deficiency for the fiscal year 1876 To effect a transfer to close the account of Nicholas Boilvin, Indian agent, involving no expenditure of money from the Treasury, being for the	1.889	09
fiscal year 1873 and prior years	3, 148	
Arizona, in 1874.  The Clerk was proceeding to read the foregoing amendment	2, 490	
Mr. HANCOCK (interrupting) said: The amendment just embraces a number of small items which are included in E. Document No. 151, the items ranging from perhaps \$4 to \$3,000	sent xecuti 0, \$4,0	up ive 00,
\$6,000, or \$7,000. I suppose that it will not add anything to the	e und	er-

Document No. 151, the items ranging from perhaps \$4 to \$3,000, \$4,000, \$6,000, or \$7,000. I suppose that it will not add anything to the understanding of the merits of the amendment to read it through. It is merely an enumeration of items contained in the executive document to which I have referred. I ask that the reading be dispensed with.

Mr. HALE. I hope that the suggestion will be agreed to. The reading will take a great deal of time. The gentleman can explain to us the class of items which it embraces.

Mr. HANCOCK. These items, as I stated before, are small amounts

relating mainly to the Indian Bureau of the Interior Department; some of them go back as far as 1861. They are deficiencies occurring in

relating mainly to the Indian Bureau of the Interior Department; some of them go back as far as 1861. They are deficiencies occurring in the Indian service, sometimes by reason of the vouchers not reaching here in time to be paid out of the appropriation before it had been covered into the Treasury; at other times (and probably this is true of the larger amounts) these deficiencies have resulted from the insufficiency of the appropriations in the first instance. These items have all received the examination of that Department and are certified to be accurate and correct. In the main they are founded upon vouchers drawn upon appropriations that had been made, and are for service authorized to be performed.

I believe the subject has received the attention in some respects at least of the Committee on Appropriations, and I have heard of no one who disputes the accuracy of the fact that these sums of money are due by the Government and ought to be paid. Running through such a length of time as is shown by the executive document as is the case with these deficiencies, it must be expected provision for their payment could only be made by appropriating an aggregate sum covering them all, as is done in this instance. The several sums making up this aggregate amount are justly due to these parties, and they have been now already too long kept out of their money. These claimants merely say to the Government, in the language of the good book, "Pay me what thou owest."

Mr. CLYMER. What is the gross amount?

Mr. HANCOCK Four bundred and sixty four thousand one had

"Pay me what thou owest."

Mr. CLYMER. What is the gross amount?

Mr. HANCOCK. Four hundred and sixty-four thousand one hundred and twelve dollars and thirty-eight cents to pay debts justly due and which have been accumulating since 1861.

Mr. WALDRON. These claims in the aggregate amount to about half a million dollars. They are made up of some one or two hundred items contained in the letter of the Secretary of the Treasury sent to this House at the last session. That letter was referred to the Committee on Appropriations and that committee came to the conclusion mittee on Appropriations and that committee came to the conclusion these were in fact claims against the General Government and should receive investigation and attention by the committee properly charge-

able with that duty.

If the gentleman from Texas will turn his attention to page 9 of this document he will find from the notes attached to various items that the Secretary of the Treasury himself regarded them as private claims. The note attached to an item for surveying public lands says

The contingent fund of the office of the surveyor-general of Idaho would not admit, at the time the expenses were incurred, of the payment of this amount. The claim is a just one, and especially so from the fact that the surveyor-general acted under instructions from the General Land Office.

Mr. ELKINS. Is that included in this amendment?

Mr. WALDRON. It is.
Mr. ELKINS. I think not.
Mr. WALDRON. I should like to know wherein this letter of the Secretary of the Treasury the amendment of the gentleman from Texas begins?

Mr. HANCOCK. It is to come in after line 242.

Mr. WALDRON. I meant what items does it embrace. The various items included in the amendment of the gentleman from Texas were a year ago reported back by the Committee on Appropriations, and by order of the House were referred to the Committee of Claims. They have remained in possession of that committee until last week, when the committee reported them back without any recommenda-tion, when they were again referred to the Committee on Appropria-The committee may as well understand as far as the Committee on Appropriations is concerned there has been no examination into the justice and propriety of these claims, and therefore it is the judg-ment of that committee they should not be included in this deficiency bill.

Mr. WALDRON. I ask the gentleman to yield to me for the further statement that after full discussion a year ago, when the deficiency bill was under consideration, when the same effort was made as now to incorporate these items, after full and thorough discussion of the question the Committee of the Whole refused to adopt the amend-

ment.

Mr. HANCOCK. But these just claims still remain due, and the obligation is still the same on the part of the Government to pay

Mr. CLYMER. I think, Mr. Chairman, this is an attempt at most

unheard-of legislation.

The CHAIRMAN. The gentleman from Georgia is entitled to the floor. The confusion has been so great the Chair does not wonder

the mistake was made.

Mr. CONGER. I make the point of order that members shall re-

sume their seats and cease conversation.

Mr. BLOUNT. Mr. Chairman, as stated by the gentleman from Pennsylvania, I think this is a most unheard-of proposition. Here is an attempt in a single amendment to secure the payment of scores of claims. It has been the practice of the Committee on Appropriations in respect to this class of claims to adopt as a safeguard, where the claim was as much as two years old, not to regard it at all, but to refer it to the Committee of Claims.

Mr. ELKINS. Do you say it has been customary to refer these claims to the Committee of Claims? If so, why was it that the Committee on Appropriations allowed the Adams Express Company \$20,000

deficiency last session, and the American Bank-Note Company \$30,000 deficiency in the regular deficiency bill?

Mr. BLOUNT. I have not time to go into those items at present.
Mr. ELKINS. I want to know why that was done, if you are going to refuse these claims.

Mr. BLOUNT. I will tell you some other time. I cannot answer that in the few minutes to which I am now entitled. I say that has

been the practice of the committee in reference to these claims.

Mr. HANCOCK. How long has that practice obtained?

Mr. BLOUNT. I cannot answer, but gentlemen of the committee who have been members in the Forty-third Congress have stated it who have been members in the Forty-third Congress have stated it to have been the practice of the committee to refer all claims which had obtained that age to the Committee of Claims for investigation. During the last session the rule was adopted that all these claims should be referred to the Committee of Claims for examination, and approval or disapproval. As one of the representatives of the people I think there ought to be some indorsement pro or con of these claims. If they are right and proper let them be adopted singly, and not one or two hundred of them embraced in a single item under one appropriation, without an opportunity on the part of the members to have any conception of what is the character of each individual claim. It is the duty of this House to pass upon the propriety and justice of each claim; and they should not be put into the bill in this wholesale manner, to the extent of half a million of dollars. \*\*

Mr. MAGINNIS. In what manner do they differ from any other

Mr. MAGINNIS. In what manner do they differ from any other deficiency contained in this bill?

Mr. BLOUNT. The committee have regarded these in the light of private claims which require investigation on the part of the Com-

Mr. MAGINNIS. Are they not all audited accounts just as every other account appropriated for in this bill?

Mr. BLOUNT. There has been a distinction practically between these claims and others.

Mr. MAGINNIS. There is no difference between any one of them and others that are embraced in this bill.

Mr. BLOUNT. The gentleman may think so.

Mr. MAGINNIS. If there is, let the gentleman from Georgia show

Mr. ATKINS. I wish to say, Mr. Chairman, if the House will hear

me, that the Committee on Appropriations have taken no position whatever in regard to this proposition.

Mr. VANCE, of North Carolina. There is so much disorder in the Hall that if the gentleman will yield to me I will move that the com-

mittee rise

Mr. ATKINS. I think I can outtalk this noise if I try. I have just one statement to make, and it is this: It is that the Committee on Appropriations takes no responsibility whatever in regard to this proposition. The proposition has not been considered at this session by the committee. On the contrary, the committee has absolutely declined to consider it, and we have left it to members of the House to take their own course with regard to it without any recommendation whatever from the Committee on Appropriations.

Mr. BLOUNT. I would like to interrupt the gentleman from Ten-

ssee for a moment.

Mr. ATKINS. The gentleman may proceed; I have finished what had to say

Mr. ELKINS. Mr. Chairman, I think I was recognized a while ago.
Mr. BLOUNT. I understand that the gentleman from Tennessee
yields to me. My friend from Tennessee says that the Committee on Appropriations have taken no position in reference to this matter.

Mr. ATKINS. I said that it had not been considered by the com-

Mr. ATKINS. I said that it had not been considered by the committee during this session.

Mr. BLOUNT. I ask the gentleman, did not the Committee on Appropriations refuse to attach these claims to the appropriation bills of last winter? I further ask him if they were not before the Committee on Appropriations this winter, and if the judgment of the committee was not that they should be referred to the Committee of Claims, and if such was not the action of this House in obedience to the request of the committee?

Mr. ATKINS. I will say in reply to the gentleman—

Mr. WADDELL. Mr. Chairman, I believe the motion that the

Mr. ATKINS. I will say in reply to the gentleman— Mr. WADDELL. Mr. Chairman, I believe the motion that the committee rise is in order.

committee rise is in order.

The CHAIRMAN. It is.
Mr. WADDELL. Then I make that motion.
Mr. ATKINS. I hope my friend from North Carolina will not attempt to take me off the floor by a motion for the committee to rise.
It is not so often that I occupy the floor.
Mr. WADDELL. If the gentleman will permit me, I will say that members are engrossed with another subject and are not listening to his remarks.

his remarks.

Mr. ATKINS. I do not yield the floor for a motion that the committee rise. I am not speaking to the rest of the audience, but to the gentleman from Georgia [Mr. Blount] who is listening to me. The gentleman from Georgia must know that this very morning the committee declined to take any position in regard to these claims, and that it was distinctly understood the proposition should come into the House and that the committee would make no recommendation whatever to the House with regard to it. That was the distinct understanding this morning in the committee.

Now, sir, as far as I am concerned I simply rose for the purpose of Now, sir, as far as 1 am concerned I simply rose for the purpose of disclaiming for the Committee on Appropriations any responsibility whatever in regard to this proposition. And if it pleases the House to vote this large sum of money on its deficiency bill, why, it is their business and not the business of the Committee on Appropriations in any way whatever. Whether it is defeated or whether it is adopted makes no difference to the Committee on Appropriations.

Mr. HOUSE. Have these claims ever been passed on by any committee.

mittee?

Mr. ATKINS. I understand the fact to be this: This deficiency was before the Committee on Appropriations at the last session and that committee referred the matter to the Committee on War Claims and the Committee of Claims. Those committees had the Claims and the Committee of Claims. Those committees had the proposition under consideration and referred them back to the Committee on Appropriations and asked us to act upon them. We have declined to act upon them.

Mr. BLOUNT. I wish to ask the gentleman before he takes his

The CHAIRMAN. The gentleman's time has expired and debate

is exhausted on the pending amendment.

Mr. ELKINS. I renew the amendment.

Mr. ELKINS. I renew the amendment.

Now, Mr. Chairman, I want to explain this matter if gentlemen will give me their attention. These are debts against the Government approved and recommended for payment by the Secretary of the Treasury. They are vouchers, issued regularly and in due form by the officers of the Government for property furnished the Government. That is what they are, and they are certified as correct and proper. I want to read two or three of them as set forth in the amendment. Here is a voucher for \$4.50. Here is another for \$5. Here is a claim for beef, \$123.

I read from the list transmitted by the Secretary of the Treasury

I read from the list transmitted by the Secretary of the Treasury to the House. I will explain to the committee how these matters arose. The Government wanted the property of the people for its uses and its officers offered them what the people asked for it. Sometimes the supplies were furnished under contract and sometimes purchased at private sale. These officers, as is the invariable rule and custom, gave vouchers for what they purchased and these vouchers are taken and received by the people as money. Now it is proposed that Congress shall refuse to appropriate money to pay them the just debts of the Government.

I put the question to the committee: Why is this distinction made? Why cannot the people away on the distant frontier have their rights in this Congress and compensation for their property sold to the Government? All the officers of the Government, from the officer in the first place who purchased the supplies and issued the vouchers up to the Commissioner of Indian Affairs, the Secretary of the Interior, and the Secretary of the Treasury, have approved these claims. How can you, then, except by almost criminal repudiation, hope to avoid paying these vouchers? And if you repudiate and refuse payment how can you expect anybody to have any respect or any confidence in the Government or its agents? You do not question these vouchers. Nobody does and nobody can. You do not intimate they are irregular or under suspicion of any kind, or that adequate consideration was not given the Government for each and every one of them, and that it has had and used for its purposes the people's property without compensation under a promise to pay.

They stand here before the House approved by all of the Departments of the executive branch of the Government through which they pass. Adams Express Company, with its millions of dollars of capital, can get its deficiencies allowed, as was the case last session, and in this Congress and compensation for their property sold to the Gov-

Company can get its claim allowed, as was the case last session, and yet Congress refuses to pay the vouchers of these persons who sur-rendered their property to the Government under solemn contract in

Have these claims been audited?

Mr. FORT. Have these claims been audited?

Mr. ELKINS. They have, as I have said before in substance. They have been examined, audited, and approved by the Commissioner of Indian Affairs. They have received the sanction of the Interior Department, passed the board of Indian commissioners, and now are reported to this House by the Secretary of the Treasury as amounts due by the Government of the United States, as the following letters will show:

Ing letters will show:

Department of the Interior, Office of Indian Affairs,

Washington, D. O., April 17, 1876.

Sir: I have the honor to acknowledge the receipt, by Department reference of the 15th instant, of a letter of Hon. S. B. Elkins, relative to certain deficiency items embraced in Executive Document 151, House of Representatives, for New Mexico, and in reply have to state that the vouchers covering the amounts estimated for have been examined and approved and are on file in this office, suspended, awaiting appropriation to meet the same.

The letter of Mr. Elkins is returned herewith.

Very respectfully, your obedient servant,

J. Q. SMITH, Commissioner.

The Hon, the SECRETARY OF THE INTERIOR.

J. Q. SMITH, Commissioner.

DEPARTMENT OF THE INTERIOR, Washington, April 18, 1876.

SIR: In reply to your letter of the 15th instant, inquiring whether amounts due for incidental expenses of the Indian service in New Mexico, as set forth in letter of the honorable the Secretary of the Treasury of March 24, 1876, transmitting deficiency estimate to the House of Representatives, have been examined and found

correct by this Department, I have the honor to transmit herewith copy of report dated 17th instant, from the Commissioner of Indian Affairs, to whom your letter was referred.
Very respectfully, your obedient servant,

Z. CHANDLER, Secretary.

Hon. S. B. Elkins, House of Representatives.

Now the items in this amendment are the identical ones mentioned Now the items in this amendment are the identical ones mentioned in Secretary Chandler's letter and Executive Document No. 151. They are vouchers, and not claims. They have been already before Congress and the Departments. Now these are facts. I do not care how much they aggregate, the obligation to pay them is the same. I believe they amount in all to about \$500,000 altogether, the deficiencies from all the Territories and some of the States for three or four cies from all the Territories and some of the States for three or four years. Why not pay them? You spend millions in paying other debts and claims not in anywise different from these. There is no reason or justice in refusing to pay these because these people live on the frontier. They have furnished supplies to the Government under contract and the obligation to pay is just as binding as if your Clerk had made a contract with some one here in the city to furnish stationery or anything else which is required for use in the House. I repeat that these was extensive but endited accounts the but the Govern

that these are not claims, but audited accounts due by the Government, and they should not be put down as claims.

Mr. McGINNIS. I wish to ask the gentleman from New Mexico if it is not true that every one of these items is for the payment of an audited and settled account due under contract made by the Govern-

ment in pursuance of law.

man to challenge them in any particular

man to challenge them in any particular—
[Here the hammer fell.]

Mr. FORT. I would like to know for what reason these accounts were not paid by the Department if they had been audited.

Mr. ELKINS. Because there was no money appropriated to pay them and Congress has refused to appropriate, and this refusal, this wrong, and continued injustice is urged as a reason why payment should not be made now.

Mr. FORT. I yield the remainder of my time to the gentleman

Mr. FORT. I yield the remainder of my time to the gentleman from New Mexico, [Mr. ELKINS.]

Mr. ELKINS. Congress would not appropriate this money because there was a presidential election pending and neither party would do it. Neither party had the courage to do this simple act of justice. The republican party would not do it in the Forty-third Congress because they wanted to make a good showing, and the democratic party would not do it in the first session of the Forty-fourth Congress because the presidential election was so near at hand and they wanted to make a better showing. In the name of justice let us adjust them to make a better showing. In the name of justice let us adjust them now. They must be adjusted some time or other, and the presidential election cannot now be influenced by anything we may do on this amendment. It is, fortunately or unfortunately I will not say, taken out of this House and the Senate and committed to fifteen good men

out of this House and the Senate and committed to fitteen good men whose decision we will all approve.

Mr. CONGER. It is not settled yet.

Mr. ELKINS. I think it is pretty well settled now, and I appeal to you to do your duty and pay these debts. Some of these vouchers are for sums as low as \$3, many for sums of five, ten, and twenty dollars. Now has it come to this complexion, that the Government will turn its back on these because they are small, and many of them for no other reason under the sun than payment has been refused by a former Congress? You make your Government despised and con-You make your Government despised and contemptible by such a course. You cannot hope for any kind of affection, loyalty, or respect either for Congress or for the Departments if you continue this injustice and neglect these matters of small moment to the Government, but involving all to the distant frontiersman and

his family.

Mr. CONGER. Why does not the gentleman postpone the pressing of these claims until the presidential election is settled †

Mr. ELKINS. Well, it is about settled, as I have said, and quite so, so far as we are concerned. Some of the people I have the honor to represent whose vouchers are included in this amendment are on the verge of bankruptcy and some in want. They furnished the Government supplies when it needed them, and took vouchers which they ment supplies when it needed them, and took vouchers which they considered as good as money, that heretofore always passed for money. They cannot now pay their debts because the Government refuses to pay them. Up to 1873 Congress uniformly paid deficiencies, and all debts contracted by officers of the Government in the interests of the public service and the people were always promptly paid. And it is unfair and unjust after you have used the property of the people for your purposes to say you will not pay for it, because you had not wisely appropriated enough money. The people trusted the officers, your duly authorized agents, in selling their supplies, and by receiving and using them as you admit by these vouchers; by every rule of right, propriety, and justice you are bound to pay for them; and it is not economy to refuse, but gross and arbitrary injustice.

Mr. HARRISON. Nobody can now. [Laughter.] Mr. ELKINS. Adams Express Company, rich and powerful, and not in need, was paid a deficiency last session. Now why do you make a distinction here between the creditors of the Government? This cannot be defended. Treat all creditors alike. In this very bill you pay a lot of deficiencies. Why not refuse all or pay all? Now I ask that this amendment be adopted, as I believe it will. [Here the hammer fell.]

Mr. ELKINS. I withdraw my formal amendment.

Mr. MAGINNIS. Mr. Chairman, I renew the amendment for the purpose of giving to several gentlemen the exact nature of these claims, or rather of these audited and settled accounts, which cannot fairly be called claims, and to trace them to their source. Under the provisions of the Indian appropriation bills, proposals are issued

the provisions of the Indian appropriation bills, proposals are issued and contracts awarded. These contracts are many in number, and often there are several contractors at each agency. When the accounts from all these different agencies come in at the end of the year, it is often found that the total sum exceeds the appropriation, year, it is often found that the total sum exceeds the appropriation, though all the goods and supplies are furnished by the order and upon the requisition of the Department and vouchers issued. The last vouchers received fail of payment if the appropriation is exhausted, though they may be the most legitimate in the lot and the ones issued most strictly in accordance with law. This seems to have been the case in 1872, 1873, and 1874, when the debts under discussion were contracted. When the vouchers for these years all came in it was evident that they exceeded the appropriations. But all these vouchers were issued for supplies, delivered on contract, such contract made in accordance with the law, and consequently they were audited and passed by the Interior Department, then examined and passed by the board of peace commissioners, and finally examined, audited and allowed and ordered to be paid by the accounting officers of the Treasury; but when presented to the Treasurer for payment, not paid on account of want of funds. Thus it will be seen that they are not claims but deficiencies, and stand on exactly the same basis as every item reported by the committee and provided for in this deficiency bill. ficiency bill.

Gentlemen ask why they were not paid before, and that cry comes np from hundreds of unfortunate holders of vouchers who furnished supplies, expecting immediate payment. The reasons they have up from hundreds of unfortunate holders of vouchers who furnished supplies, expecting immediate payment. The reasons they have not been paid are not particularly creditable. The Secretary of the Treasury in 1874 sent in a list of these deficiencies to Congress. The Appropriations Committee, then under the chairmanship of the gentleman from Ohio, [Mr. GARFIELD,] was endeavoring to get its bills down so low that the coming democratic Congress, the Forty-fourth, could make no capital by cutting any lower, and so left out these items. The act was then denounced as repudiation, and the atten-tion of the House called to the fact that the credit of Government vouchers in the hands of poor people ought to be maintained as sa-credly as that of bonds in the hands of the rich. But the item was not put in, and the appropriations of the Forty-third Congress were

smaller by the amount.

Last year the Secretary of the Treasury sent in another request for Last year the Secretary of the Treasury sent in another request for this deficiency, but the committee, I suppose, thinking the amount shirked over on to their shoulders by the previous committee, asked that it be referred to the Committee of Claims. The Committee of Claims, having considered the matter, report that they are not claims, but adjusted accounts regularly made, deficiencies, and ask the House to refer them back to the Committee on Appropriations, and, as the gentleman from Tennessee [Mr. Atkins] says, that committee has declined action and left the responsibility to the House. Now many of these are small amounts, most of 'them in fact, the large contractors usually getting their money before the appropriations run out. Their non-payment has so injured the credit of the Government in my Territory that farmers will sell supplies to Government for 25 per cent. less in cash than in vouchers.

In all this shuffling and shuttlecock business of tossing these accounts from committee to committee, no one has questioned the fact

counts from committee to committee, no one has questioned the fact counts from committee to committee, no one has questioned the fact that they are justly due, that they have been regularly audited and allowed and certified by the accounting officers to have been contracted according to law; that, by the judgment of two of its own Departments and the extraordinary board of peace commissioners, they are awards against the Government which should have long ago been paid. To delay such payments, to repudiate such debts by non-payment is not only the worst possible policy, but an act of dishonesty of which the American Congress should be ashamed.

Mr. FENN. If I can have the attention of the committee, I will state that among these claims is one for a deficiency for furnishing supplies to the Malheur Indian reservation for labor performed. That account has been andited and certified to, but there was no appropri-

supplies to the Malheur Indian reservation for labor performed. That account has been audited and certified to, but there was no appropriation out of which it could be paid. The man making the claim has labored for this Government honestly and faithfully, but he received but one copy of the voucher, through a mistake of the agent, in place of triplicate vouchers which the law required. The voucher, therefore, had to be returned from Washington to be corrected, and in the mean time the appropriation out of which this claim would have been paid had been exhausted.

Mr. FORT. Was that the only reason why he did not get his pay?

Mr. FENN. That was the only reason in the world; the appropriation was exhausted and there was no appropriation out of which he could get his money.

could get his money.

I, sir, live upon the frontier, where men work for their living, and if

any man living out there treated his creditors as the Government here treats them, he would be driven from the community and compelled to seek pastures new. I hope the amendment will be adopted.

Mr. WALDRON. I trust we shall now come to a vote.

The question was taken on the amendment; and on a division there were—ayes 78, noes 61.

Mr. BLOUNT. I call for tellers.

Tellers were ordered; and Mr. HANCOCK and Mr. BLOUNT were ap-

The committee divided; and the tellers reported that there were-

ayes 90, noes 41. Mr. BLOUNT.

I will not call for any further count.

The CHAIRMAN. Then the amendment will be regarded as adopted.

Mr. CLYMER. I raise the point that no quorum voted, and I move that the committee now rise.

that the committee now rise.

Mr. BLOUNT. I do not think the gentleman understood that I, as one of the tellers, withdrew the call for any further count.

Mr. CLYMER. If that be so, then I withdraw my objection that no quorum voted.

Mr. SHEAKLEY. I renew the objection.

The CHAIRMAN. Objection being made that no quorum has yet voted, the tellers will resume their places and continue the count.

The tellers resumed their places; and after further count reported that there were—ayes 97, noes 53.

So the amendment was agreed to.

So the amendment was agreed to.

Mr. CLYMER. I give notice that I shall call for a vote in the House upon this amendment.

Mr. VANCE, of North Carolina. I move that the committee now

Mr. WALDRON. I hope the committee will continue in session a few minutes longer; I believe there is but one further amendment to be acted upon.

Mr. HOOKER. I hope that the committee will rise.

The question was taken upon the motion of Mr. VANCE, of North

Carolina, and it was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. EDEN reported that the Committee of the Whole on the state of the Union, pursuant to the order of the House, had had under consideration the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes, and had come to no resolution thereon.

## NAVAL APPROPRIATION BILL.

Mr. BLOUNT, by unanimous consent, reported from the Committee on Appropriations a bill (H. R. No. 4616) making appropriations for the naval service for the fiscal year ending June 30, 1878, and for other purposes; which was read a first and second time, and ordered to be printed.

Mr. BLOUNT. I move that the bill be referred to the Committee

of the Whole on the state of the Union.

The motion was agreed to.

Mr. CONGER. I reserve all points of order on the bill.

The SPEAKER. The points of order will be reserved.

## RIVER AND HARBOR APPROPRIATION BILL.

Mr. DURAND, by unanimous consent, from the Committee on Commerce, reported a bill (H. R. No. 4617) making appropriations for the construction, repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes; which was read a first and second time, and ordered to be printed.

Mr. DURAND. I move that the bill be recommitted to the Com-

mittee on Commerce, and that the accompanying report be printed; and also that it be printed in the RECORD.

There being no objection, it was so ordered.

The report is as follows:

The Committee on Commerce, who have had the same under consideration, beg leave to report a bill for the construction, preservation, repair, and completion of certain public works on rivers and harbors, and for other purposes.

The bill referred to makes provision for appropriations for the following objects to the amount stated, that is to say:

Tabulated statement of works provided for in river and harbor bill.

Labutatea statement of works provided for in river and naroor out.	
Harbor at Boston, Massachusetts \$	25, 000
Harbor at Provincetown, Massachusetts	1,000
	10,000
Taunton River, Massachusetts	5, 000
Providence River, Rhode Island	5,000
	35, 000
	00,000
Harbor at Wilmington, Delaware	4,000
Ice harbor at Chester, Pennsylvania	800
Schuylkill River, Pennsylvania	15, 000
	35,000
Harbor at Baltimore, Maryland	60,000
James River, Virginia	40,000
Cape Fear River, North Carolina	40,000
Harbor at Washington, District of Columbia	14,000
Roanoke River, North Carolina	3,000
Harbor at Savannah, Georgia	95, 000
Harbor at Brunswick, Georgia	5, 000
	15, 000
Mouth of Mississippi River	00,000
	28, 000
	20,000
	00,000

1877.	CONGRESSIO	MAL
Duachita River, Arka	ansas and Louisiana	\$8,00
Red River, Louisiana.	mucing Lower Mississippi Piyan	35, (0
Mississippi Missouri	auging Lower Mississippi River	5, 00 65, 00
Mississippi River, bet	tween mouth of Illinois and Ohio Rivers	120, 00
Channel of Mississipp	pi River opposite Saint Louis	70, 00
Little Kanawha River	tween mouth of Hillions and Onlo Rivers pi River opposite Saint Lonis r, West Virginia e mouth of Yellowstone ver Hississippi River Mississippi River w Minusoda	5, 00
Missouri River, above	e mouth of Yellowstone	10, 000
opper Mississippi Ki	Ver	30, 000 95, 000
Rock Island Rapids	Mississippi River	10, 00
Calls of Saint Anthon	iv. Minnesota	5, 000
Cennessee River, belo	ny, Minnesota	200,000
Coosa River, Georgia	F	20, 00
hio River		130, 00
reat Kanawha Kivel	F	100,000
	·····	30, 000 7, 000
uperior Bay	Michigan  ), Wisconsin  , Wisconsin  , Wisconsin  Dity, Indiana	- 2,000
Jarbor at Manitowoo	Wisconsip	5, 00
Iarbor at Shebovgan	Wisconsin	3, 00
larbor at Milwankee	Wisconsin	20, 000
Iarbor at Michigan (	City, Indiana	35, 000
larbor at Chicago, Il	igton Territory d Columbia River	0,000
nake River, Washin	gton Territory	15, 000
ower Willamette an	d Columbia River	20, 000
larbor at Ludington,	, Michigan er, Michigan	10,000
Inrhor at Muskegon	Michigan	5, 000
Iarbor at Grand Hay	Michigan ren, Michigan nd Saint Mary's Falls Canal	8, 000 20, 600
aint Mary's River ar	nd Saint Mary's Falls Canal	100, 000
Iarbor at Cheboygan	, Michigan	15, 000
aginaw River, (mout	, Michiganth)	20,000
aginaw River		10,000
larbor at Lake Huro	n, Michiganio	75, 000
car our at Tolego, On	and Obio	30, 000 40, 000
Iarbor at Erie Penns	and, Ohiosylvania	25, 000
larbor at Buffalo, Ne	w York	50, 000
larbor at Oswego, No	w York ew York her Rivers, California ington California	50, 000
acramento and Featl	her Rivers, California	20,000
TOWN WATER OF IT THEFT	mg.ou, control have a construction of the control o	30, 000
pper Willamette Ki	ver, Oregon	10,000
vamination of surve	o, and Cyprus Bayou, Texaseys of rivers and harbors	30, 000 15, 000
vamination of surve	eys of South Pass, Mississippi River, &c	15, 000
lizabeth River, Virg	rinia	3, 500
larbor at Wilson, No	ew York	10,000
pper Monongahela l	River	10,000
Vicomico River, Mar	yland	5, 000
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ı	Improving Cypress Bayou, Texas	\$13,000 00
ı	Improving White River above Jacksonport.	10,000 00
1	Improving White and Saint Francis Rivers Improving Rush Chute and the harbor of Burlington, Iowa	*******
ı	Improving Rush Chute and the harbor of Burlington, Iowa	10,000 00
ı	Improving harbor at Fort Madison, Iowa	10,000 00
ı	Removing bar in Mississippi River, opposite Dubuque, Iowa	15,000 00
ı	Improving Illinois River	65, 501, 78
ı	Improving Mississippi River above Fall of Saint Anthony	20,000 00
ı	Improving Minnesota River. Improving Chippewa River, Wisconsin	10, 023 44
ı	Improving Chippewa River, Wisconsin	10,000 00
ı	Improving Red River of the North, Minnesota	10,000 00
ı	Improving Hiawassee River, Tennessee	10,000 00
ı	Improving Cumberland River below Nashville, Tennessee	
ı	Improving Cumberland River above Nashville, Tennessee	52,000 00
ı	Improving Oostenaula and Coosawattee Rivers, Georgia	*******
1	Improving Wabash River, Indiana Improving New River in Virginia and West Virginia.	102,600 00
ı	Improving New River in Virginia and West Virginia	15,000 00
ı	Improving harbor at Ontonagon, Michigan	25, 000 00
ı	Improving Eagle Harbor, Michigan Improving harbor at Menomonee, Wisconsin	19, 937 62
ı	Improving harbor at Menomonee, Wisconsin	11,500 00
	Improving harbor at Green Bay, Wisconsin	5, 400 00
	Improving harbor at Green Bay, Wisconsin	
	Improving harbor at Ahnapee Improving harbor of Two Rivers	7, 260 00
	Improving harbor of Two Rivers	4,600 00
	Improving harbor at Port Washington, Wisconsin	8, 750 00
	Improving harbor of Racine, Wisconsin	8,000 00
	Improving harbor at Kenosha, Wisconsin	7,850 00
	Improving Fox and Wisconsin Rivers	156, 500 00
	Improving harbor at Calumet, Illinois	20, 059 00
	Improving harbor at Charlevoix, Michigan	10,000 00
	Improving harbor at Frankfort, Michigan	9, 910 42
	Improving harbor at Manistee, Michigan	19, 796 76
	Improving harbor at Pentwater, Michigan	10 143 50
۱	Improving harbor at Pentwater, Michigan Improving harbor at Black Lake, Michigan Improving harbor at Saugatuck, Michigan Improving harbor at South Haven, Michigan	20 629 65
l	Improving harbor at Sangatnek, Michigan	1 744 86
	Improving harbor at South Haven Michigan	6 590 27
ı	Improving harbor at Saint Joseph's, Michigan	4 365 00
	Improving Au Sable River, Michigan	1, 144 37
	Improving Detroit River, Michigan	2, 222 01
	Improving harbor at Monroe, Michigan	5 004 14
	Improving harbor at Port Clinton, Ohio	5, 016 20
l	Improving harbor at Sandusky City, Ohio	25, 106 77
I	Improving harbor at Vermillion, Ohio	4, 125 45
	Improving harbor at Fair Port, Ohio	2, 421 43
	Improving harbor at Ashtabula, Ohio	5,000 00
	Improving harbor at Dunkirk, New York	15, 500 00
	Improving harbor at Olcott, New York	10,000 00
	Improving harbor at Oak Orchard New York	1 984 64
	Improving harbor at Oak Orchard, New York Improving harbor at Putneyville, New York Improving harbor at Great Sodus Bay, New York.	3, 126, 56
	Improving harbor at Great Sodns Bay New York	6 871 19
	Improving harbor at Little Sodus Bay, New York	5 953 01
	Improving Oakland barbor California	40, 315 80
	Improving Oakland harbor, California.  Improving San Joaquin harbor, California	90,000,00
	Constructing canal around the cascades of Columbia River	20,000 00
	The total sum recommended to be appropriated in the bill, being \$5	2,512,300, is

Constructing canal around the cascades of Columbia River.

The total sum recommended to be appropriated in the bill, being \$2,512,300, is \$2,354,400 less than the amount appropriated by the river and harbor bill of last year, and is \$10,707,800 less than the estimate made in the report of the Chief of Engineers.

This is a very great reduction from the estimates made for the improvement of the different works mentioned, but, in view of the financial condition of the country and the imperative demand for the greatest economy in the public expenditures of the Government, the committee did not deem that they were authorized to recommend a greater appropriation for the purpose than is provided for in the bill accompanying this report. While adhering in amount to the limit set, beyond which they would not pass, the committee have endeavored to do the greatest good to the greatest number by massing the appropriations at the more important points in different sections of the country, having reference to the number of people interested in the improvement, the necessities of the different sections of country tributary to points where given improvements are being made, the quality ad amount of trade and commerce to be affected or benefited by them, the condition and absolute requirements of the improvements either projected or in process of repair, construction, or completion, and also taking into account the amount of unexpended balances now credited to certain points by reason of former appropriations. Without entering into any argument as to the wisdom of limiting the appropriation to the amount specified in the bill, or as to whether other improvements than these mentioned should have received some appropriation for the next year, the committee can give the assurance that they have given each particular object for which estimates have been submitted their most careful attention. They have proposed a bill which commends itself to their judgment, and they most respectfully ask its favorable consideration.

## WILLIAM W. WILSHIRE.

Mr. SAYLER, by unanimous consent, submitted the following resolution; which was referred to the Committee of Elections:

Resolved. That there be paid, out of any money in the Treasury not otherwise appropriated, the sum of \$3.000 to WILLIAM W. WILSHIER, contestee, for expenses in the contest by Thomas W. Gunter against William W. Wilshire, third district of Arkansas, in the Forty-third Congress.

# HENRY METCALFE.

Mr. HALE, by unanimous consent, introduced a joint resolution (H. R. No. 190) authorizing First Lieutenant Henry Metcalfe, of the Ordnance Department of the United States Army, to accept a decoration from the Sultan of Turkey; which was read a first and second time, referred to the Committee on Military Affairs, and ordered printed.

## FREEDMAN'S SAVINGS AND TRUST COMPANY.

Mr. RIDDLE. I ask unanimous consent to have taken from the Speaker's table, the bill, with Senate amendments, (H. R. No. 4284,) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real estate and other property, and to sell the same at public or private sale, and for other purposes, for the purpose of concurring in the Senate amendments.

There was no objection, and it was so ordered.

# LEAVE OF ABSENCE.

By unanimous consent leave of absence was granted, as follows: To Mr. Townsend, of New York, for five days.

#### IRWIN B LINTON.

Mr. POWELL, by unanimous consent, from the Committee of Accounts, reported back, with a favorable recommendation, the following resolution; which was read, considered, and adopted:

Resolved That the Clerk of the House be, and he is hereby, authorized to pay to Irwin B. Liuton, out of the contingent fund, the sum of \$90 for services rendered by said Linton as clerk of the Committee on Expenditures in the War Department from the 29th day of July to the 15th day of August, 1876.

Mr. POWELL moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### DANIEL LEWIS.

Mr. POWELL also, from the same committee, reported back, with a favorable recommendation, the following resolution; which was read, considered, and adopted:

Resolved, That Daniel Lewis be paid the sum of \$275 out of the contingent fund of the House for services rendered in the Doorkeeper's department from the 14th day of August, 1876, to January 2, 1877.

Mr. POWELL moved to reconsider the vote by which the resolution was adopted; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

#### JOHN AMMAHAIE, OR AMMAHAE.

Mr. FINLEY, (by request,) by unanimous consent, introduced a bill (H. R. No. 4618) explanatory of an act directing the Second Auditor to settle the pay and bounty accounts of John Ammahaie, or Ammahae, passed June 30, 1876; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

#### PAY OF COMMITTEE CLERKS.

Mr. KNOTT. On the 20th of December last the Committee on the Judiciary were instructed to report a construction of certain clauses in an appropriation bill in order to enable the Committee of Accounts to audit the accounts of this House. We have been waiting for weeks an opportunity to make the report. It is highly important that the report be made, and I ask unanimous consent to make it now.

Mr. CONGER. Let it be read.

The Clerk read as follows:

The Clerk read as 10110Ws:

The Judiciary Committee, to whom was re erred a resolution of 20th December, 1876, instructing the committee "to inquire whether by the appropriation act of August 15, 1876, the twenty-one clerks to committees therein mentioned are entitled to receive as compensation during the fiscal year ending June 30, 1877, the amount per diem designated in said act for their actual services," have had the same under consideration and make the following report:

The bill begins with this provision:

"That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated in full compensation, for the service of the fiscal year ending June 30, 1877, for the objects hereinafter expressed," (nage 143.)

(page 143.)

service of the fiscal year ending June 30, 1877, for the objects hereinafter expressed," (page 143.)

On page 146 the following provision occurs:

"For twenty-one clerks to committees, at \$6 per day during the session,\$15,120."

Your committee believe that the construction of the last-named provision, in connection with the first, is that the twenty-one clerks named are entitled to \$6 per diem from the 39th day of June, 1876, to 30th day of June, 1877, for each day during the first and second sessions of this Forty-fourth Congress embraced within that fiscal year.

Your committee therefore report the following resolution and recommend that it be adopted by the House:

\*\*Resolved\*\*, That the Clerk of the House be, and he is hereby, authorized and directed to pay, out of the contingent fund of the House, at the rate of \$6 per diem from July 1 to August 31, 1876, inclusive, to the clerks of the twenty-one committees designated by the Committee of Accounts as the committees for payment to clerks of which provision was made in the act of Congress approved August 15, 1876, entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and for other purposes," deducting therefrom any amount which the clerks of said committees respectively may have heretofore received during the time named.

Mr. CONGER. I desire to have this proposition lie over a day or

Mr. CONGER. I desire to have this proposition lie over a day or two. I shall not then object to its consideration.

The SPEAKER. Objection is made; the resolution is not before the

## RECESS.

Mr. BAKER, of Indiana. I move that the House now take a recess until ten o'clock to-morrow morning; and pending that motion I ask unanimous consent that when the House shall re-assemble it shall, without the transaction of any business, take a further recess until five minutes before twelve o'clock.

The SPEAKER. Is there objection to the proposition of the gentleman from Indiana in regard to the order of business to-morrow

morning ?

There was no objection.

The motion for a recess was then agreed to; and accordingly (at four o'clock and thirty-five minutes p. m.) the House took a recess until ten o'clock a. m. to-morrow.

# PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Remonstrance of citizens of Philadelphia against the passage of the bill (S. No. 796) for the further extension of a patent for buckles to Sheldon S. Hartshorn, to the Committee on Patents.

By Mr. BANNING: The petition of Rufus S. Lord, S. T. Herring, and H. C. Burrell, for the passage of the House bill providing that

pensioners may be provided with a truss upon application, to the Committee on Military Affairs.

By Mr. BLAIR: A paper relating to the establishment of a postroute between Jefferson and Highland, New Hampshire, to the Committee on the Post-Office and Post-Roads.

By Mr. BLAND: A paper relating to the establishment of a post-route from Marshfield by way of Ava to Yellville, Arkansas, to the same committee.

By Mr. BRADLEY: The petition of A. R. Mather and 65 others, of Montcalm County, Michigan, for cheap telegraphy, to the same com-

By Mr. BURCHARD, of Illinois: The petition of citizens of Wau-kegan, Illinois, for the repeal of the bank-tax laws, to the Commit-tee of Ways and Means.

By Mr-BURLEIGH: The petition of Enoch Allen and others, of East Parsonfield, Maine, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. CAMPBELL: The petition of J. S. Underhill and 29 others, of

Tonica, Illinois, for the repeal of the bank-tax laws to the Committee on Banking and Currency.

By Mr. CANNON, of Illinois: The petition of Stone & Gere and other citizens of Tolono, Illinois, of similar import, to the same com-

By Mr. CROUNSE: The petition of G. W. Pugh and others, of Nebraska, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

and Post-Roads.

By Mr. DANFORD: Three petitions, signed respectively by R. Brinkerhoff and other citizens of Mansfield, John Dunlap of New Athens, and Wesley Sandige and 27 others of Beach City, Ohio, for the repeal of the bank-tax laws, to the Committee of Ways and Means. By Mr. DOUGLAS: The petition of H. H. Lewis, for the removal of his political disabilities, to the Committee on the Judiciary.

By Mr. FAULKNER: The petition of George W. Murphy, of Morgantown, West Virginia, to have refunded to him certain costs and expresses incurred for medical attendance for a disabiled United States.

expenses incurred for medical attendance for a disabled United States

soldier, to the Committee on War Claims.

By Mr. FORT: The petition of 54 citizens of Ford County, Illinois, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. GARFIELD: Two petitions, one from citizens of Batavia, the other from citizens of Martin's Ferry, Ohio, of similar import, to the same committee.

Also, the petition of citizens of Ashtabula County, Ohio, for an appropriation for the improvement of Ashtabula harbor, to the Committee on Commerce.

mittee on Commerce.

By Mr. GOODIN: Three petitions from citizens of Leavenworth, Ellsworth, and Thayer, Kansas, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. JOYCE: The petition of citizens of Orwell, Vermont, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LANDERS, of Connecticut: Two petitions, one from John B. Carrington and 28 others, of New Haven, the other from Charles Underwood and others, of Tolland, Connecticut, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. LEAVENWORTH: The petition of Frank Hikock, Justus Newell, and 20 other citizens of Onondaga, New York, of similar im-

Newell, and 20 other citizens of Onondaga, New York, of similar import, to the same committee.

By Mr. MACKEY: The petition of citizens of Clearfield County, Penusylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. McDILL: Memorial of 203 settlers in the Des Moines Valley, Iowa, asking for redress of grievances, to the Committee on Public Lands.

lic Lands.

By Mr. MILLIKEN: Two petitions, one from citizens of Louisville, the other from citizens of Springfield, Kentucky, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. OLIVER: Two petitions, one from W. H. Nelson and other citizens of Sibley, Iowa, the other from H. G. Grattan and other citizens of Waukon, Iowa, of similar import, to the same committee.

By Mr. PACKER: Two petitions, one from citizens of Pittsburgh, the other from citizens of Shrewsbury, Pennsylvania, of similar import, to the same committee.

port, to the same committee.

By Mr. PHILLIPS, of Kansas: Resolutions of the Legislature of Kansas, in reference to settlers on Osage ceded lands, to the Commit-

tee on Appropriations.

By Mr. PIERCE: Two petitions, one from Gardner S. Burbank and others of Fitchburgh, the other from Life Baldwin and others of others of Fitchburgh, the other from Life Baldwin and others of Boston, Massachusetts, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. SAMPSON: The petition of B. M. Webster and 26 other citizens of Essex, Iowa, of similar import, to the same committee.

By Mr. SPRINGER: The petition of citizens of Petersburgh, Illinois, of similar import, to the same committee.

By Mr. STEELE: The petition of citizens of Evanstown, Wyoming Territory, of similar import, to the same committee.

By Mr. STEVENSON: The petition of R. B. Latham and 100 other citizens of Logan County, Illinois, of similar import, to the same committee.

By Mr. TEESE: Five petitions from citizens of Jamestown and Newark, New Jersey, of similar import, to the same committee.

By Mr. THORNBURGH: The petition of John L. Shepard and others, of Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. THROCKMORTON: The petition of B. R. Milam and other citizens of Parker County, Texas, of similar import, to the same com-

By Mr. TUCKER: Two petitions, one from citizens of Farmville, and the other from citizens of Berryville, Virginia, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. TUFTS: The petition of H. P. Elliott and other citizens of

Marion, Iowa, of similar import, to the same committee.

By Mr. WIGGINTON: The petition of the board of supervisors of
Los Angeles, California, the common council, and the Chamber of Commerce of the City of Los Angeles, for an appropriation to improve the harbor at Wilmington, California, to the Committee on Commerce.

## IN SENATE.

# THURSDAY, February 8, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session. The unfinished business is House bill No. 4452, which will be read as in Committee of the Whole.

#### INDIAN APPROPRIATION BILL

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending

June 30, 1878, and for other purposes.

The Secretary read the bill.

Mr. WITHERS, (at ten o'clock and twenty-five minutes a. m.) I move that the Senate take a recess until twelve o'clock.

The motion was agreed to.

The Senate re-assembled at twelve o'clock m. Prayer by Rev. S. H. Hall, D. D., of New York City.

The Journal of the proceedings of Wednesday, February 7, was read

and approved.

# CREDENTIALS.

The PRESIDENT pro tempore presented the credentials of A. H. Garland, elected by the Legislature of the State of Arkansas a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

## EXECUTIVE COMMUNICATION.

The PRESIDENT protempore laid before the Senate a communication from the Secretary of War, transmitting a copy of a letter from the Third Auditor of the Treasury, recommending an appropriation of \$10,000 for the payment of Montana war claims, an appropriation of \$5,000 for the payment of Dakota war claims, and that the Secretary of War be authorized by law to designate some officer to make awards on said claims, vice Colonel James A. Hardie, deceased; which was ordered to lie on the table and be printed.

## PETITIONS AND MEMORIALS.

Mr. WINDOM presented two petitions of citizens of Minnesota, praying for the passage of an act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they be entitled to receive in all cases pension from date of discharge of the soldier; which were ordered to lie on the table.

Mr. BARNUM presented the petition of Calvin Adams, praying for

an extension of his patent for an improvement in making locks for doors; which was referred to the Committee on Patents.

He also presented the petition of Seth Thomas and others, citizens of Connecticut, praying for the transfer of the telegraph business to the superinterdence of the Post-Office Department, and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. JOHNSTON presented the petition of B. Lewis Blackford, praying Congress to purchase forty-two hundred volumes of the Annals and Debates of Congress from 1789 to 1824; which was referred to the Committee on Printing.

Mr. MERRIMON presented resolutions of the Legislature of North

Carolina, approving of the passage of the act to provide for and regulate the counting of votes for President and Vice-President, and the late the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, and thanking the committee that reported it, without distinction of party, for their labors and their patriotism; which were ordered to lie on the table.

Mr. KERNAN presented the memorial of F. N. Goddard and others, citizens of New York, remonstrating against the extension of a patent granted to Sheldon S. Hartshorn for an improvement in buckles; which was referred to the Committee on Patents.

Mr. TELLER presented the petition of James Taylor, Robert Tramper, and others, commissioners for the eastern band of the Cherokee Indians of North Carolina, praying for the passage of a law

for the completion of their land titles and the final settlement of their accounts, &c.; which was referred to the Committee on Indian Affairs.

accounts, &c.; which was referred to the Committee on Indian Affairs.

Mr. WHYTE presented the memorial of John H. Semmes and others, citizens of the District of Columbia, praying for the payment of rent for their building in Washington City, known as the Seaton House, lately occupied by the Government for the accommodation of the Pension Bureau; which was referred to the Committee on Appropriations.

Mr. COCKRELL presented a petition of members of the Chickasaw Nation of Indians residing in the Choctaw district, praying for an equitable division of the school funds belonging to said nation; which was referred to the Committee on Indian Affairs, and ordered to be writted

to be printed.

#### REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (S. No. 1065) for the relief of William T. Duvall, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1064) for the relief of L. H. and G. C. Schneider, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WRIGHT. I will state in this connection that those two cases arise out of the same transaction, and there is but, one report accom-

arise out of the same transaction, and there is but one report accom-

panying both bills.

Mr. BOGY, from the Committee on Indian Affairs, to whom was referred the bill (H. R. No. 534) for the relief of Rosetta Hert, (late Rosetta Scoville,) Charles C. Benoist, Emily Benoist, and Logan Fanfan, half-breed Indians, reported it with an amendment.

Mr. BOOTH, from the Committee on Public Lands, to whom was referred the bill (H. R. No. 4261) to provide for the sale of desert lands.

ferred the bill (H. R. No. 4261) to provide for the sale of desert lands in certain States and Territories, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 1010) for the relief of Julius S. Bohrer, master in the United States Navy, reported it with an amendment.

Mr. WEST. The Committee on Appropriations, to whom was referred the bill (H. R. No. 4187) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1878, and for other purposes, have instructed me to report it with sundry amendments. sundry amendments.

I am also directed to report without recommendation an amendment submitted by the Committee on Post-Offices and Post-Roads, and which was referred to the Committee on Appropriations, relat-

ing to the carriage of the mails between San Francisco and China.

Mr. SARGENT. To that amendment that is reported without recommendation I wish to offer an amendment for the purpose of having it printed.

The amendment was ordered to be printed.

## BILLS INTRODUCED.

Mr. MORRILL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1235) to authorize the taking of certain parcels of land for the Congressional Library, and for other purposes; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

## AMENDMENT TO AN APPROPRIATION BILL

Mr. DORSEY submitted an amendment intended to be proposed by him to the bill (H. R. No. 4559) making appropriations to supply defi-ciencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes.

## ORDER OF BUSINESS.

Mr. WRIGHT. I desire to ask the Senate to proceed to the consideration of the bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County, Virginia.

The PRESIDENT pro tempore. Is there objection to that motion?
Mr. INGALLS. Is that the salt-works bill?
Mr. WRIGHT. There are no salt-works about it.
Mr. INGALLS. I object to the bill.

The PRESIDENT pro tempore. The Senator from Kansas objects, and the motion cannot be entertained.

Mr. WRIGHT. Do I understand that one objection will carry the

bill over ?

The PRESIDENT pro tempore. One objection prevents a motion being entertained to go to the Calendar during the morning hour.

Mr. WRIGHT. Then I shall object to every motion of the kind.

Mr. WINDOM. I move to proceed to the consideration of the re-

Mr. WINDOM. I move to proceed to the consideration of the report of the Committee on Appropriations on House bill No. 4540, which is on the Vice-President's table.

The PRESIDENT pro tempore. The Senator from Minnesota moves to take from the table the bill indicated by him.

Mr. WRIGHT. Mr. President, I trust that I can have the attention of the Senator from Kansas while I say a word with reference to this bill. I am very sure this bill ought not to take five minutes.

Mr. WINDOM. I believe I have the floor; but if the Senator from Iowa can negotiate with the Senator from Kansas for his bill, I have no objection.

no objection.

Mr. WRIGHT I wish to make a statement.

The PRESIDENT pro tempore. Is there objection? The Chair hears

Mr. WRIGHT. This bill was passed by the House at the last ses-on. It was reported from the Committee on Claims of the Senate at the last session. It was recommitted, and has been reported again at this session, having the unanimous report of the committee of the House and of the committee of the Senate. The bill is not for a very House and of the committee of the Senate. The bill is not for a very large amount. It is in favor of a man who made sacrifices during the war, and who has shown his loyalty beyond all question. It is for property which was taken from him and used by our Army. He is poor, almost to destitution. His family are sick and in want, by reason of being deprived of the very means that are proposed to be given to him by this bill. It is a matter of the utmost difficulty to have bills considered from the Committee on Claims. We make reports here from our committee, and about two out of ten are reported favorably. We are abused by claimants who are unsuccessful; and it is next to impossible to get the attention of the Senate.when we bring a bill before the Senate.

I insist that my friend from Kansas shall allow this bill to be taken up. As I have already said, there are no salt-works in it; there is no proposition to pay for a thing in connection with the salt-works, but simply to pay for the property that was taken by our officers, which they certify that they took and used. I say again that I trust there will be no objection to taking up this bill. I have tried three or four times to get the bill up; it is a fair bill for the relief of an honest, when here a truncaling in want by reason of being de-

times to get the bill up; it is a fair bill for the relief of an honest, poor man, who has been struggling in want by reason of being deprived of this very money.

Mr. SARGENT. I suppose we will go to the Calendar before a great while and take up matters in their order. It is very important in the condition of the business of the country that the appropriation bills should be considered. The chairman of the Committee on Appropriations is upon his feet, desiring to get the audience of the Senate to one of those bills which are pressing, and as soon as the morning hour expires we want to get on with the regular Indian appropriation bill. I warn the Senate that unless we take this course these important hills will iam at the last of the session and perhaps all the important bills will jam at the last of the session and perhaps all the appropriation bills cannot be attended to, and if not passed it will create the necessity and the expense of an extra session of Congress. We know this is an exceptional year; that there are certain matters occupying the attention of the Senate by turn which are liable to take occupying the attention of the Senate by turn which are liable to take up a great deal of time, exciting in their nature, which distract the attention of the two Houses for ordinary public business. Now when there is a lull in that excitement it seems to me it would be very well for us to pursue diligently the necessary business of the Senate. I therefore trust that any appeal made while there is a pending appropriation bill for the taking up of relief bills will not be heeded.

Mr. WRIGHT. I want to say one word more. This is the first appeal I have made for a bill of this kind for almost a month. I have not objected to a single bill proposed to be brought up when in the

not objected to a single bill proposed to be brought up when in the morning hour. This bill comes from a committee that seems to be almost outlawed here, and it seems utterly impossible to get their bills considered. I think this bill would have been passed long before this if the Senator from Kansas had not interposed, for I do not think there can be any objection to it. But of course I cannot insist that it shall be considered under the rule, that objection not being

withdrawn

Mr. SARGENT. I only make objection because the Committee on Appropriations desire to proceed now with their business. intervals, and long intervals, when such bills as those of my friend can come before the Senate. Probably when we pass the pending appropriation bill we shall not want the attention of the Senate again for a day or two, and private bills can then be considered.

Mr. WINDOM. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Iowa with-

draw his motion ?

Mr. INGALLS. The Senator from California objects to it.
The PRESIDENT pro tempore. Objection being made to the motion of the gentleman from Iowa, it cannot be entertained.

# JAMES B. EADS.

Mr. WINDOM. I move to proceed to the consideration of House bill No. 4540, known as the Eads bill.

Mr. JOHNSTON. I ask the Senator from Minnesota to allow me to take up a bill that will not occupy five minutes.

Mr. WINDOM. I would be glad to accommodate the Senator from Virginia, but really I cannot do it in this case. This bill ought to be acted upon one way or the other. I have no doubt it will take but a very few minutes, and the Senator will have time after this bill is acted on and before the conclusion of the morning hour to get up his bill. bill.

The PRESIDENT pro tempore. The Senator from California has objected to going to the Calendar. The question is on the motion of the Senator from Minnesota.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 4540) to provide for the payment of James B. Eads for the construction of jettles and other auxiliary works to make a wide and deep channel between the South Pass of the Mississippi River and the Gulf of Mexico, under contract with the United States.

The PRESIDENT pro tempore. The question is on the motion to indefinitely postpone the bill, moved by instructions from the Committee on Appropriations.

Mr. DAVIS. I am disposed to favor the indefinite postponement of this bill, but I wish to inquire of the Chair what effect a vote indefi-

this bill, but I wish to inquire of the Chair what effect a vote indefinitely postponing the bill would have upon the report accompanying the bill? I cannot agree with all contained in the report accompanying the bill from the Committee on Appropriations.

The PRESIDENT pro tempore. An indefinite postponement of the bill, if carried in the affirmative, disposes of the bill.

Mr. DAVIS. The Chair probably did not understand my inquiry. There is a report with the bill from the Committee on Appropriations, submitted at the time that the bill was reported from that committee. I ask what effect an indefinite postponement of the bill. mittee. I ask what effect an indefinite postponement of the bill would have upon that report.

The PRESIDENT pro tempore. It disposes of the consideration of the report with the bill. The report is connected with the bill.

Mr. DAVIS. Then affirmative action on this motion would be an

The PRESIDENT pro tempore. The report goes with the bill.

Mr. DAVIS. That was my understanding, and I presume the chairman understands that the indefinite postponement of the bill would

also indefinitely postpone the report.

The PRESIDENT pro tempore. The report concludes with a recommendation of the indefinite postponement of the bill, and therefore to indefinitely postpone the bill would be a ratification or indersement

of the report.

Mr. WALLACE. That is what I was about to ask, whether we do not affirm the conclusions of the committee and affirm the report by indefinitely postponing the bill.

The PRESIDENT pro tempore.

That is the nature of the report. Mr. DAVIS. I expect to give my vote to indefinitely postpone the bill, but not for the reasons assigned in the report in full. The report purports to construe the law, and says, among other things:

The committee is clearly of the opinion that Mr. Eads is entitled, under the law, to receive at once the bonds therein described, at par, in payment of the said requisition of the Secretary of War in his favor, Congress having failed to "previously provide for the payment of the same by the necessary appropriations of money."

I cannot fully indorse the committee on that point. The Secretary of the Treasury and the Attorney-General have each passed upon this question, and, as I understand, clearly the Secretary of the Treas-ury thinks that money and not bonds is due Mr. Eads. That I am not prepared to speak of, nor do I desire to speak of it. My opinion is that it was originally intended that Captain Eads should have the bonds provided the money was not furnished for the payment of the debt. It is a debt. I think Eads deserves great credit. I think he deserves the sympathy of the nation and of us all for his manly effort and its final accomplishment; but to say that the Government must issue bonds because it could not pay or did not pay on the very day

that the demand was made, I am not prepared to vote for.

I believe that the law as it now stands ought to be construed by the Attorney-General. I am sure from what has already taken place on the part of the Secretary of the Treasury that he will refer the maton the part of the Secretary of the Treasury that he will refer the matter to the Attorney-General; and if the law requires bonds, Captain Eads will get them; if it requires money, which I am inclined to believe it does, or if the Government has a right to pay money, then I think the Attorney-General will so decide. Therefore I am willing that this question shall go to the Department in order that it may be determined by the Attorney-General, and that not only for the present case but in the future. But in doing so I do not wish to be understood to indorse what I have read as well as some other sections of the report, although a majority of the Committee on Appropriations

thought differently from myself.

thought differently from myself.

Mr. President, there is another question involved in this case. There is some doubt (I do not know how much; there certainly was doubt in the mind of the Secretary of War and with the Secretary of the Treasury, for the latter referred the question to the Attorney-General) whether or not the conditions have been fully complied with. I do not express the doubt, for I know nothing on that subject; but if you will read the report you will find that the Secretary of War had some doubt, and that the Secretary of the Treasury joined in it, and that the matter was finally referred to the Attorney-General, and he expressed the opinion, that provided certain things had been done Captain Eads was entitled to his pay, but not one word was said as to whether it should be paid in bonds or money. I feel now as if that question ought to go to the Attorney-General, and I believe by the indefinite postponement of the bill it will go there.

Mr. MORRILL. I desire to ask the chairman of the Committee on Appropriations when in his judgment this sum of \$500,000 actually be-

Appropriations when in his judgment this sum of \$500,000 actually be-

Came due to Captain Eads?

Mr. WINDOM. On the 19th day of January. It was due to him before that time but he was entitled to receive it from the Treasury on that day, the day that the Secretary of War drew his warrant.

Mr. MORRILL. Has a warrant been drawn?

Mr. MORRILL. Has a warrant been drawn I
Mr. WINDOM. A warrant was drawn on the 19th of January.
Mr. MORRILL. A requisition?
Mr. WINDOM. It was a requisition. It is called a warrant, how-

Mr. MORRILL. A requisition. It is called a warrant, however, although that may not be the exact term.

Mr. MORRILL. From the whole tenor of this act it is perfectly obvious that it was the intention of Congress to reserve the option to the United States to pay this sum in either money or bonds. It was not known perhaps at that time whether the revenues of the country would be sufficient to pay all the expenditures, and therefore the option was reserved. It does seem to me clearly that if we should pay this man in money, we certainly comply with the contract. I cannot regard it in any other light, and therefore I hope, with the Senator from West Virginia, that this matter will be determined by some tribunal of justice or by the courts, and that we here shall make

the appropriation as it comes to us from the House.

Mr. WINDOM. I do not want to detain the Senate, for I am very anxious to have a vote one way or the other on this question this morning; but I do want to refer to the legal argument of my friend from Pennsylvania [Mr. WALLACE] yesterday. It appears to me that the construction which he gives to this statute if given to a contract between individuals would work remarkably well in favor of the debtor. He says that the bonds are to be issued in payment of this debt unless the money is provided before the bonds are issued. I say that the money must be provided before the warrant is drawn. The Senator from Pennsylvania says it must be provided by the law before

Senator from Pennsylvania says it must be provided by the law before the warrants are issued. According to his construction there is no time whatever fixed for the issue of the bonds. He says that unless the money is paid before the bonds are issued, which have no time fixed, the bonds must be issued.

Mr. WALLACE. The Senator is mistaken.

Mr. WINDOM. Let me go on with my illustration and the Senator can then answer it. Suppose the Senator has agreed upon the performance of certain conditions on my part that he will give me his note, provided he does not pay me before that day. He does not pay me. I perform the condition. I go to him and demand his note. He says I am not entitled to the note if he has provided the money before he gives the note, and there is no time in which he is to give his note; and it occurs to me he will indefinitely postpone my payment. I think that is the construction he gives to this law.

Mr. WALLACE. The Senator errs. He certainly does not understand what I said. I said the whole subject was left to the Secretary of the Treasury as I read the statute, and that unless we appropriate the money which would be paid on a draft from the Treasurer of the United States indorsed by the Secretary of the Treasury of course we have not the option; but if the Secretary of the Treasury of course we have not the option; but if the Secretary of the Treasury does not issue the bonds until we make an appropriation. In other words, if we novelde here an appropriation of the money then we have the right to make the appropriation. In other words, if we novelde here an appropriation of the money then we have the right to make the appropriation. In other words, if we novelde here an appropriation of the money then we have the right to make the appropriation. In other words, if we novelde here an appropriation of the money then we have the right to make the appropriation. then we have the right to make the appropriation. In other words, if we provide here an appropriation of the money before the bonds are issued, that is our right; and I argue that because the contract expressly says that the warrants are to be issued at the time the Secretary of War, through the engineer, determines that the depth of water has been ascertained. Therefore it is clear that the money could not be appropriated before the issuing of the warrants. was the argument I intended to make.

Mr. WINDOM. I think the Senator is entirely mistaken in the last

proposition. The Government had made a contract with a private citizen to perform a certain work. There were certain conditions connected with the performance of that contract. We have reason to suppose that those conditions have been complied with, and it was the duty of Congress at the last session to make a contingent appropriation for this purpose. I want to say here that I think it would have been done but for the desire to keep the appropriations down to a nominal and a very low amount. Hence the appropriation was postponed and this gentleman has to pay the penalty for it. With reference to my other criticism upon the Senator from Pennsylva-

Mr. SHERMAN. I was about to ask whether the Senator moved

the appropriation at the last session.

Mr. WINDOM. I did not, because I was well aware that it would not carry if I did. The Senator from Pennsylvania, in commenting yesterday upon the terms of this contract in the law, says:

Previous to what? The Senator from Minnesota says, previously to the issuing of the warrant. I say previously to the issuing of the bonds, and that is what the ecretary of the Treasury says.

Now the word "previously" here construed by him is the language found in the statute, which provides

That the Secretary of the Treasury is hereby directed to issue the binds \* \* \* unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

It does seem to me that the construction that I have given to the

It does seem to me that the construction that I have given to the honorable Senator's argument is a very fair one. If the word "previously" refers to the issuance of the bonds, then the law is a nullity, for there is no time fixed for the issuing of these bonds unless it be the time previously to the issuing of these bonds unless it be the time previously to the issuing of the bonds; but upon his construction the whole thing is afloat. The bonds may not be issued for a year or five years; the money may not be appropriated, and if the money be not appropriated before the bonds are issued we may appropriate it whenever we please.

The private citizen who undertook this great work did not make the contract with separate Departments of the Government to play fast and loose with each other and in that way; but he made it with the Government as an entirety, as a unit. We did not mean to say that the Secretary of the Treasury might withhold the bonds, nor did we, until Congress had made the appropriation, or, in other words, that the one might depend upon the act of the other and each might postpone the other indefinitely, as the construction of the Senator from Pennsylvania would, in my judgment; but the understanding and intent of the contract, as I said yesterday, was, and I think it is plainly expressed in the words, that when this work was performed

the contractor should have the terms of the contract. I never was

clearer in regard to any construction in my life.

Mr. MORRILL. Let me call the attention of the Senator from
Minnesota to the first paragraph in section 14 of the law, which reads as follows:

That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved.

That is a separate and distinct paragraph. Now where this option is distinctly reserved to the United States it seems passing strange to me that you can make a contract which money will not pay.

to me that you can make a contract which money will not pay.

Mr. WINDOM. I want to answer that proposition of the Senator
from Vermont, for he states it very distinctly and clearly. He reads
the first part of the proposition so far as it is applicable to his own
interest; but when the law has provided an explanation as to how
that option is to be exercised, he ceases reading just at that point.
The law says that the Government has the option. Let me read the part again which the Senator has just quoted:

That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved.

That is true and if you stop there that option is indefinite, but it is not an option suggested by my honorable friend from Michigan [Mr. Christiancy] that the Government may refuse to do either; but the following words in that section explain precisely how that option is to be exercised and when it cease

Mr. MORRILL. Let me say to the honorable Senator that the option continues all the time in the United States, and does not change for the benefit of the payee in any particular. It only provides a means by which the Secretary of the Treasury shall be able to pay if

he has not the money.

Mr. WINDOM. I wish to ask the Senator a question. Following these words which I have quoted, the law says:

And the Secretary of the Treasury is hereby directed to issue the bonds of the United States—

I omit the words that describe them-

to said Eads or his legal representatives, in payment at par of the aforesaid war-rants of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the sum by the necessary appropriations of

The words of the statute are that the Secretary is directed to issue these bonds unless a certain condition is complied with. That condition is that the money must be appropriated before the warrant is issued. What does the Senator understand by the words "unless the

money is appropriated?"

Mr. MORRILL. I understand the Senator from Minnesota to take the last part of this section and to throw away entirely the first part

which gives the option to the United States.

Mr. WINDOM. I think the Senator from Vermont is very well

Mr. WINDOM. I think the Senator from vermont is very wen aware of the construction which the courts always give to a statute, that the whole of it is to be construed together.

Mr. MORRILL. That is my idea.

Mr. WINDOM. I construed the law of the section as one. In the first place there is an express declaration that the Government reserves the option but reserves it upon a certain condition explained in the section. That condition is that the Government shall do a certain the section. tain thing by a certain time. The Government did not do that thing by that time and this option ceases because it was only by compliance with that condition that its option could continue.

Mr. BOOTH. I only wish to make one suggestion, and that is that the words of the section read by the honorable Senator are no part of

the contract between this Government and Mr. Eads. It is simply a direction to a ministerial officer to pay a debt in a particular way in the event the Government does not have the money to pay the debt, and it is no part of the consideration of this contract whatever, and no part of the terms of the contract between the Government and Mr. Eads

Mr. WINDOM. That is the first time in my life I have ever heard that the payment for a contract was no part of it. The contractor understands that the pay is a very material part of his contract when he expends two or three millions of dollars to do a job of work before he realizes anything for it.

he realizes anything for it.

Mr. BOOTH. I presume I am very unfortunate in failing to make myself understood. I did not mean to say anything so absurd.

Mr. WINDOM. I thought the Senator could not mean that, and hence I thought he must have misread the statute.

Mr. BOOTH. I have read the statute, and more than that I have heard the Senator read it. What I endeavored to say is that that part of the statute which refers to the payment in bonds was simply a direction to the Secretary to pay with bonds, if we did not pay the money; that it was simply a ministerial direction, but that it was no part of the contract between this Government and Mr. Eads that it should be paid in bonds.

Mr. WINDOM. Does the Senator hold that Mr. Eads had no interest in the manner and time of the payment of the contract?

Mr. BOOTH. Certainly he had.
Mr. WINDOM. This is the manner given in the statutes, which

provides for the manner and time of payment.

Mr. WITHERS. Mr. President, as a member of the committee I had this matter under investigation, and I am very clear in my construction of what the statute is. Although it may be presumption in me to undertake to give a legal construction of the statute, as I do not belong to the profession of the law, yet, still, when lawyers differ

so widely as to what is the construction of a statute, perhaps a view coming from a non-professional man might have some influence. I look then at the statute as it stands and consider it in connection

with the contemporaneous and incidental history of this whole matter. I find here that the preservation of the navigation of the Mississippi was a problem which taxed the inventive genius of the engineers of was a problem which taxed the inventive gentles of the engineers of this land for years; and they had never been able to solve the problem of how that should be effected; that pending the consideration of various projects which were proposed for the effectuation of that object, a gentleman comes forward and suggests a scheme by which this may be secured; he furnishes to the Congress of the United States his plans and specifications and his reason for the faith which is in him; and although he encountered the opposition of a very large majority of all the skilled engineers in the land, yet still his project had in it such elements as commend it to the favorable consideration of the Congress. He came forward and said he was willing to undertake this job on his own responsibility and at his own cost, provided Congress would assure him the payment of a certain amount of money when the work was consummated. Congress undertook to meet him upon that ground and framed a bill which the contemporaneous hisapon that ground and framed a bill which the contemporaneous history of the whole case shows conclusively was designed to place his pay beyond all contingencies of congressional appropriations, and to make it absolutely and positively sure that, when twenty feet of water had been attained of the requisite width for a channel, the Secretary of War should be thereby at once directed to issue his warrant upon the Treasury for the payment of the amount. That constitutes one step in the process, which is to be considered alone.

The first consideration therefore is whether that has been done. The whole report shows that this has been done, that the work has

The whole report shows that this has been done; that the work has been a success; that the man who undertook so much risk, the man who relied upon his own genius and skill to carry a certain object, has triumphed; and he comes now before Congress and asks that they shall pay him the money which under this act they have obli-

gated themselves to pay.

If it were a mere question of money, if it were not complicated by the issue of bonds, there would be no difficulty whatever about it; but when we come to look at the provisions of the act itself it is stated that the option of discharging this obligation herein assumed is reserved to the United States. That is clear and plain, and, as the Senator from Minnesota states, if the act stopped there, there would be no question about it. That this option exists on the part of the Government is true, but it exists only up to a certain period of time. It is not an indefinite option, that must extend through any uncertain period of time; but it is an option which is fixed by the terms of the act itself. That option expires when the work is done and the Secretary of War issues his warrant upon the Treasury. option ends; and, if at that particular period of time the money has not been provided by definite appropriation to meet this obligation, then the Secretary of the Treasury is directed to issue the bonds of the United States under certain conditions. The whole difficulty turns upon the use of the word "previously" in the act:

Unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

Now to take the construction of the word "previously," as announced by my friend from Pennsylvania particularly; that that word refers to the issue of the bonds alone, it seems to me, would place us in this category: That the Congress of the United States, in endeavoring to secure this man Eads the payment of his money beyond all controversy when he shall have completed his contract according to his agreement, absolutely placed it in the power of an official of this Government to postpone indefinitely his payment either in money or bonds; because, if the bonds cannot be issued until the appropriation is made it seems to me that until Congress chooses to make this anis made, it seems to me that until Congress chooses to make this appropriation this man may be kept out of both money and bonds for an indefinite length of time. It, in other words, would reduce his claim to that of any other claimant of a sum of money due by the claim to that of any other claimant of a sum of money due by the United States Government; and our experiences here show how these claims—I do not care how well founded they may be, I do not care how clear the evidence may be upon which they are sustained and supported—are postponed from session to session and from year to year. Many claims are now pending before us on which the Government itself admits the money is due the applicant, and yet the claimants cannot realize their money. Therefore, I say it cannot be possible that the Congress of the United States and Mr. Eads, the other contracting party, would have entered into an arrangement which

contracting party, would have entered into an arrangement which left his pay contingent upon such a great uncertainty as this.

It is argued that the word "previously" must refer to the issue of the bonds, and not to the issuing of the warrant of the Secretary of the Treasury, because it would otherwise require us to do what they the Treasury, because it would otherwise require us to do what they assume to be an unheard-of thing to make an appropriation in advance of the time when it was required or when it is due. That is done in appropriation bills. It is perfectly competent for this Congress, and it is constantly in the habit of making appropriations which are to be utilized at a future period, and it would have been perfectly competent for Congress at the last session or at the beginning of this session to have passed an appropriation for this specific purpose in view of the probable completion of this contract by Eads under the terms of this act. Therefore, it seems to me that the word "previously" must, in view of the antecedent and contemporaneous history of this

matter, be construed to refer to the completion of the work and the issuance by the Secretary of War of the warrants upon the Treasury.

I do not propose to argue upon the other branch of the proposition which has attracted some attention, that is, as to the premium that is due upon the bonds, and that by receiving bonds this man Eads would receive a larger amount than the terms and letter of his contract with the Government provides, because it does not in my view of the question enter as an element into a proper consideration of this matter at all. The question is whether Eads is entitled to the bonds now by the terms of the act to be issued because the Government has failed to provide by an appropriation the money necessary to meet this payment. If he is thus entitled under his agreement with the Government, it is not the question for us to argue here as to whether the bonds will realize a premium or not. I presume if the bonds were at a depreciation instead of a premium, there would not be so much trouble about paying him in bonds.

Mr. SARGENT. There would not be so much desire on his part to

get them.

Mr. WITHERS. I think likewise; I agree fully with the Senator on that point; but I do not think the question at issue is affected at all whether the bonds are at a premium or at a discount, except that it places the Congress of the United States in what I consider to be the humiliating position of endeavoring to dicker with this man whose genius has overcome the greatest difficulty that has ever been encountered in modern engineering; and, instead of raising a monu-ment to his genius as a public benefactor, we are trying to screw him down and deprive him of the compensation to which, under the con-

tract, he is justly entitled.

tract, he is justly entitled.

Mr. MORTON. Mr. President, to me this matter seems to be a mere matter of law and contract; and if by the terms of the contract Captain Eads is entitled to the bonds, it seems to me that no consideration should prevent Congress or the Secretary of the Treasury from giving them to him. The first important and controlling provision of the law is contained in section 13, and that is, that Captain Eads is entitled to the pay just as soon as the money is due. As soon as it is determined that an installment is due, then the Secretary of War is required immediately to draw the warrants. The tis the first prois required immediately to draw the warrants. That is the first provision, that he is entitled to be paid an installment just as soon as it is ascertained that an installment is due. Then comes the next sec-

That the option of discharging the obligations herein assumed by the United States, either in money or bonds, is expressly reserved.

I understand that to mean that when it is ascertained that an in-I understand that to mean that when it is ascertained that an installment is due, as he is entitled to immediate payment, the Secretary of the Treasury has the option, if an appropriation has been made, to pay him in money or to pay him in bonds. The option depends entirely upon the fact, if on the very day when he is entitled to the installment there is an appropriation of money; and if there be an appropriation of money, but the Government has not got the money to spare, and cannot pay it conveniently; or if it should turn out that the bonds are worth less than their face, less than the money, the Government then has the option on that day to pay him in bonds or money.

Mr. MORRILL. May I ask the Senator from Indiana, what he thinks the instruction to the Secretary of the Treasury would be, provided that this bill should be indefinitely postponed? The House has already voted that he is entitled to the money. The Senate will have voted, if they vote to indefinitely postpone the bill, that he shall have the bonds. What will the Secretary of the Treasury consider it to be his duty to do under the circumstances, the House having interested him are way and the Senate theother.

structed him one way and the Senate theother.

Mr. WEST. There are no instructions at all, if there is no legisla-

Mr. MORTON. There would in that case be no instruction at all; and the Secretary would be left to the performance of his duty as prescribed by the law. The first point, and I shall repeat it again, is that he is entitled to be paid the day the installment is found to be due. If on that day there is an appropriation made by Congress the Secretary of the Treasury has the option to pay him in money or bonds, whichever is for the interest or the convenience of the Government. But now comes the remaining part of the section:

And the Secretary of the Treasury is hereby directed to issue the bonds of the United States, bearing 5 per cent. Interest, of the character and description set out in the act entitled "An act to authorize the refunding of the public debt," approved July 14, 1870, to said Eads or his legal representatives, in payment at par of the aforesaid warrants of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

It amounts to this: if Congress had previously provided an appro-It amounts to this: if Congress had previously provided an appropriation of money, then the Secretary of the Treasury would have the option to pay in money or bonds; but if Congress had not previously provided for the appropriation, then the Secretary of the Treasury is directed to issue the bonds, and he has got no option in the matter. It seems to me there can be nothing plainer than, first, that the law provides that on the very day that the Secretary of War decides that the installment is due, Captain Eads is entitled to payment; and if on that day there be an appropriation made by Congress, the Secretary of the Treasury may pay in money or bonds, whichever is for the interest of the Government; but if on that day there is no appropriation to pay in money, then he is required to be paid in bonds, because Captain Eads is entitled to receive payment

in money or in bonds on the very day that the installment is decided by the Secretary of War to be due.

Mr. WRIGHT. Do I understand the Senator to hold that if there has been previously an appropriation made for this work, then it is at the option of the Secretary of the Treasury to pay in bonds or money 9

Mr. DAWES. At any time previous to the issue of the bonds.
Mr. WRIGHT. That it is at the option of the Secretary if the appropriation has been made?

Mr. WEST. O, no.
Mr. MORTON. It seems to read that way:
That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved.

States either in money or bonds is expressly reserved.

But then follows the absolute direction, the positive command, that if at that time there is no appropriation, the Secretary shall issue the bonds. Now, if on that day there was an appropriation, then the Secretary of the Treasury might pay in money or bonds, whichever he thought proper. One thing is certain, that he is entitled to payment one way or the other at once; and if there is no money appropriated to pay the debt, then it must be paid in bonds. Now, if the bonds were under par, if they were not worth the money, he might be compelled to take them and suffer the loss; but if it so happens that they are worth more than their face, and the Government is not prepared to give the money on that day, then he is entitled to that advantage. It seems to me it is a mere matter of law and of honest contract. He takes the chances; and if the chance falls in his favor He takes the chances; and if the chance falls in his favor

contract. He takes the chances; and if the chance falls in his favor he is entitled to it. If it is against him he is bound to suffer a loss.

The PRESIDENT pro tempore. The morning hour has expired.

Mr. WINDOM. I hope the Senator from Iowa will yield for a few moments. I think we can dispose of this bill within that time and let the Indian appropriation bill go over informally. This is an appropriation bill also and must be acted upon one way or the other.

Mr. BOGY. This will take but a few moments more, and we may as well dispose of it.

The PRESIDENT pro tempore. It is the duty of the Chair to call up the unfinished business, and the Chair will then entertain a motion to postpone it.

to postpone it.

The Chair will state that House bill No. 4452 was the pending busi-

The Chair will state that House bill No. 4452 was the pending business when the Senate took a recess yesterday, with the understanding that the railroad bill should not lose its place.

Mr. WEST. The railroad bill was informally laid aside.

The PRESIDENT pro tempore. It was informally laid aside. Unless some Senator calls for the regular order, the primary order, the Chair will consider the Indian appropriation bill the unfinished busi-

ness.

Mr. BOGY. I move that the pending order be postponed in order to proceed with the consideration of the Eads bill.

Mr. ALLISON I hope the Senator will not make the motion in that way. I have no objection to this discussion going on for a few minutes if the vote can be reached.

Mr. WINDOM. Let it go on for a few moments, subject to a call for the recorder.

for the regular order.

The PRESIDENT pro tempore. Is there objection?

Mr. SARGENT. Subject to a call for the Indian appropriation bill?

The PRESIDENT pro tempore. So the Chair understands. The Chair hears no objection, and the Indian appropriation bill will be

Chair hears no objection, and the Indian appropriation bill will be informally passed over.

Mr. BOGY. It will only take a few moments to dispose of this bill. As I said before, this is the construction of a specific contract, specific in its terms. By the act of March 3, 1875, a contract was entered into by Captain Eads, by which he undertook, for payments to be made at stipulated periods of time, to do a certain work. That work has been done at his own risk, at his own expense, and an expense far exceeding the amount of money which is due him now. The payment of the first installment has been due him for months. As early as November a commission appointed by the Government of the most smivember a commission appointed by the Government, of the most eminent engineers in the country, went to the mouth of the Mississippi to examine this work and ascertain if it was done in a substantial, scientific manner, and they approved it. The Government sent to the mouth of the Mississippi three of the most eminent engineers of this country to examine this work and report upon it. The examination took place, and a report was made that the work had been done in a scientific manner. in accordance with the contract; that the depth and width required to entitle Captain Eads to his first payment had been obtained, and that the character of the work was perfectly in accordance with the contract. He then clearly is entitled to this first payment of \$500,000.

What are the terms of the contract with regard to this bill? The Senator from California [Mr. BOOTH] said awhile ago that this portion of the law was not a part of the contract, but was merely directory to the Secretary of the Treasury. The whole law in relation to this enterprise is the contract; there is no other contract. All the terms and the conditions in that section of the law authorizing this work and the conditions in that section of the law authorizing this work and the payment for it form the contract, and nothing else; and this is as much a part of the contract as any portion of the law. By that contract he was entitled to receive \$500,000 when a given depth and width of water were obtained. That depth has been obtained; the width has been obtained; the work is done; but the Government for a double purpose no doubt did retain the option to pay in bonds or to pay in money. The object of this option is very

plain: It is, first, for the protection of the Government, if the Govphain: It is, first, for the protection of the Government, if the Government desires to avail itself of the option, and, secondly, it was a necessity for Captain Eads; because, if a portion of this work is done, and either the first or the second or the third payment becomes due, and Congress is not in session, and no provision were made for the payment, how is he to go on with the work? Therefore the option was retained by the Government to pay him bonds in the event that one of these installments should fall due during a recess of Congress. As an illustration, in all likelihood one of these payments will be due next July, when he will have obtained an additional depth of water in accordance with his contract. Suppose no previous appropriation has been made and he makes his application to the Secretary of the Treasury for his bonds, being clearly entitled to payment, nobody denying the fact that he is entitled to a second installment, and in denying the fact that he is entitled to a second installment, and in the month of July, Congress not being in session, how is he to obtain his payment? If it be not in the power of the Secretary of the Treas-ury to pay him he must wait until Congress again convenes and can pass upon this question. He must wait for an appropriation. The option of Government is to pay him in bonds or in money. While that is true and nobody denies that it is an option to be exercised by the Government whenever it pleases, yet it must exercise that option. At some period it must make an appropriation of the money. tion. At some period it must make an appropriation of the money. A payment being due in July, if there is no appropriation of money, clearly Captain Eads would be entitled to his payment; and it would not be competent for the Secretary of the Treasury to tell him, "I will postpone paying you until the next meeting of Congress, to see if Congress will not make an appropriation." If it be competent for the Secretary of the Treasury to postpone payment for one day he can postpone for months, until the meeting of Congress.

To me it is the clearest thing in the world that according to the terms of this contract he is entitled to payment either in bonds or in money, and it is competent for the Government to nay him in either.

terms of this contract he is entitled to payment either in bonds or in money, and it is competent for the Government to pay him in either, if the Government had taken the proper steps in accordance with the terms to pay him in either; that is, if an appropriation had been made by Congress. The appropriation not having been made by Congress, the Secretary of the Treasury has no right to withhold from him the payment for one day, because he is entitled to the bonds. It was a necessity. Why a necessity? This man is doing a gigantic work, for which he has expended more than a million dollars. It would be an impossibility for him to carry on this work unless he could now and then received and the carry on this work unless he could now and then received. lars. It would be an impossibility for him to carry on this work un-less he could now and then receive partial payments from the

Government.

It was said by the Senator from California [Mr. SARGENT] awhile ago that Captain Eads would not be very solicitous to obtain these bonds if they were not worth a premium. That is very true, and it is very reasonable that it should be true. The bonds being worth a premium of course it makes him more solicitous to get these bonds, and there is nothing wrong about that. If he is entitled to the bonds, and there is nothing wrong about that. If he is entitled to the bonds, the bonds being worth a premium, as a matter of course he is more anxious to obtain the bonds than if they were not at par; but that does not change the contract. On the other hand, if the bonds were not worth par, the option having been retained by the Government to pay this debt either in money or bonds, the Government, by not making an appropriation, could force him to take the bonds. He has no option in this thing. The option was retained by the Government. He himself had no option. He was required to do a certain work at his own expense, at his own great risk, not at the risk of the failure of his scientific projet, but on account of a failure of the elements. He incurred great risks and expended large sums of money; yet he had no option; he was to take bonds or money at the option of the Government, provided an appropriation was made prior to his application for the bonds. On the 19th of January, when he applied for the bonds, this work having been completed in accordance with the contract, which is not denied but admitted all around, he was under the terms of this law entitled to payment, and there being no appropriation to pay him in money he was entitled to payment in bonds. If it was compactant for the Searchean entitled to payment in bonds. propriation to pay him in money he was entitled to payment in bonds. If it was competent for the Secretary to postpone paying him at that time, next July when the second installment will be due it will again be competent for the Secretary of the Treasury to tell him, "You must wait until the next session of Congress, to ascertain if it be not the will of Congress to make an appropriation to pay you." The fact that Congress is in session only made it more convenient for the Secretary of the Treasury to submit this question to Congress, but it does not change the legal aspect of the case at all. The debt but it does not change the legal aspect of the case at all. The debt is due. He has a right to have bonds, and the fact that the bonds are worth a premium is no doubt the reason why he is more solicitous; but if the Government had been vigilant and if the appropriation had been made this loss to the Government would not have taken

I will do the justice to the Secretary of the Treasury to say that he requested in his annual report that this appropriation should be made. It is our own fault that the appropriation has not been made. We have been negligent in the discharge of our duty. I say "we;" I intend to include both branches of Congress. We have not been faithful, because the subject was brought to the mind of Congress in the annual report of the Secretary of the Treasury and we were asked to make this appropriation in order to enable the contract to be carried out by the payment of the money. This was not done, and, as I said at the beginning of my argument, it is a plain construction of a very plain contract. He is entitled to payment in money or in

bonds, and the money can only be paid when an appropriation has previously been made. No appropriation having been previously made, when the work is done and the warrant is presented, he is clearly entitled to the bonds, no matter whether they be worth a premium or not. If they are worth a premium, it is a good reason why he should be more solicitous for the bonds, and that ought to be a good reason why Congress should have made this previous appropriation, which it did not do. Mr. KERNAN. Will the Senator from Missouri allow me to put a question to him?

Mr. BOGY. Yes, sir. Mr. KERNAN. It seems to me we ought to pass this House bill. Mr. KERNAN. It seems to me we ought to pass this House bill. It appears by the report that this gentleman, Mr. Eads, came to the Secretary of War on the 19th of January and requested a warrant on the Treasury for \$500,000 in money. The report says that on the 20th of January he demanded payment. How do we know officially anything about it further than that? The requisition is out to pay him half a million of money. I think it is the duty of Congress to appropriate the money, and then if he does not choose to take it, or if he has some other right, let that come up in a proper form in the Senate. If we refuse to pass the House bill, it is equivalent to saying that if he chooses to have the money we will make him wait and take bonds. I think we shall do our duty if we pass the House bill. He seems to have had no right to money until about the 19th of January. The House must have very promptly acted upon the matter by appropriating the money for the bill came here on the 30th of January. Without passing upon the question whether the Government will or will not pay the money, or whether he can or cannot get bonds, I think we should do our duty as the requisition is out, by passing the House bill appropriating the money to pay the requisition, and if he does not choose to take it, if he thinks he has some other legal right, let that question come here; but the question now is, shall we refuse to

not choose to take it, if he thinks he has some other legal right, let that question come here; but the question now is, shall we refuse to appropriate the money which his requisition calls for?

Mr. BOGY. My friend from New York said he would ask me a question, and it is very evident that my friend is a lawyer and that he is in favor of encouraging litigation, because his argument is this: if we make this appropriation and Captain Eads refuses to take the money, then he can resort to some other means of obtaining the money in bonds. That means a long lawsuit. It is the argument of a lawyer and I have no doubt of a very good lawyer; but that kind of an argument will not enable this gentleman to carry on this gigantic enterprise at the mouth of the Mississippi River, involving an expenditure of millions of dollars. It is not in the power of any one man to carry on a large Government work at his own private expense and individual risk unless he can now and then get payment from the Government. If you drive him to litigation for his payment, I presume my friend would encourage a second, and a third, and so on, and in the mean time the mouth of the Mississippi River would not be opened. We of the West think that our trade and our commerce with the country and the world turn upon the opening of the mouth of the Mississippi. The litigation suggested by the Senator from New York would not do us any good at all. We want that river opened that we may carry on our commerce and trade and bring our products to the markets of the world. We want it done speedily; and that cannot be done if this gentleman is crippled in his means to accom-

plish that work.

Mr. KERNAN. It is no answer to my argument to say that it is only made by a lawyer. My friend is a lawyer as I am, and I think on all these questions other men differ as well as lawyers. He seems to think that there is something else that can be done

Mr. BOGY. I will remark to my friend that I said that we should

talk as men and not as lawyers.

talk as men and not as lawyers.

Mr. KERNAN. How does my friend know that this gentleman does not want the money which he called for on the 20th of January with his requisition? Why does he not remedy this matter by offering an amendment that he shall be paid in bonds? He might not want to take them. I think our duty is first to take some action which if he chooses to take money, he cannot six months hence want to take them. I think our duty is first to take some action by which if he chooses to take money, he cannot six months hence come to us and say, "Your officers would not pay me bonds and you would not appropriate the money." I think the act would be fairer to him if we should pass the House bill appropriating the money, unless there is some other proposition than a remote postponement with no arrangement to have him paid bonds. If we appropriate the money we do not say he has not a right to the bonds. We leave that to the officers of the Government, and if he comes here then presenting the case on some papers we can then do what we think is right. ing the case on some papers we can then do what we think is right by directing bonds to be issued; but to have no money appropriated and no requisition paid, and to say we will leave it just as it is, I think is unjust to the man and that it is likely to lead to litigation. Therefore if there is no other proposition I think we should appropriate the money to pay the requisition which he received on the 19th, and if for any reason he prefers not to take the money then, we ought to hear him and pay him in some other way if we choose. I think that hear him and pay him in some other way if we choose. I think that is the honest way of dealing with the question, whether a man is a lawyer or a layman.

Mr. SHERMAN. I need not assure the Senate that I am a friend

of the gentleman to whom this money or these bonds are due, and of the project and the scheme which he is engaged in carrying out. Indeed I regard it as one of the most wonderful improvements of our age, and if he succeeds he is well deserving of the money that he

will probably gain under this contract. But I am, I confess, a little displeased at the manner in which this bill is presented and in which it is pressed. The money is due to Mr. Eads and was due to him on the 20th day of January last; and not one dollar before that time. The Government of the United States was not indefault to Mr. Eads on the very day that the papers were properly presented to the Secretary of War, and he made a requisition, not dated on the 19th as is said in the report here but on the 20th. I have a telegram before

Mr. WINDOM. I think the Senator is mistaken about that. The mistake is in the date of his paper instead of in the report.

Mr. SHERMAN. It may be, but I received a telegram from the Secretary of the Treasury stating that the requisition was dated January 20.

January 20. Mr. WEST. Mr. WEST. If the Senator will pardon me, the warrant of the Secretary of War was dated on the 19th, but the requisition of the Secretary of the Treasury was dated on the 20th.

Mr. SHERMAN. I do not care sufficiently about the date exactly to raise a dispute, but this requisition was dated January 20.
Mr. WEST. I corroborated what the Senator said, if he understood

me, that the warrant was dated on the 19th and the requisition was dated on the 20th. That is what the Senator wanted to say, I take it.

Mr. SHERMAN. I said that the requisition was dated on the 20th.

Mr. SHERMAN. I said that the requisition was dated on the 20th. In the ordinary course of the payment in the Treasury Department sometimes it might require a week perhaps before the money for which that requisition was made could be paid; but the Secretary of the Treasury, observing that no appropriation had been made, at once communicated to Congress. I have here the report of the Secretary of the Treasury and I ask the attention of the Senate to this report from the Secretary of the Treasury dated on the 22d of January.

The Chief Clerk read as follows:

TREASURY DEPARTMENT, January 22, 1877.

TREASURY DEPARTMENT, January 22, 1877.

SIR: I would respectfully invite the attention of Congress to the terms of section—of the act approved March 3, 1875, (18 Statutes, part 3,) under which the Secretary of the Treasury is directed to issue bonds of the United States, bearing 5 per cent. Interest, to James B. Eads, of Saint Louis, Missouri, or his legal representatives, in payment at par of the "warrants" of the Secretary of War, unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriation of money in favor of said Eads, on account of the construction of jettles, &c., to maintain the channel between the South Pass of the Mississippi River and the Gulf of Mexico, and to the fact that I am now in receipt of a requisition from the honorable Secretary of War calling for the payment of \$500,000 to said Eads.

Congress having reserved the option of discharging the obligations assumed by the United States in this matter either in money or bonds, I have to recommend that an appropriation of \$500,000 be at once made to enable the Government to make payment to Mr. Eads, it not being wise, in my judgment, to increase the interest-bearing debt of the United States for the purpose of paying obligations of the Government at any time when there is money in the Treasury available for such a purpose.

purpose. Very respectfully,

LOT M. MORRILL, Secretary.

Hon. T. W. FERRY, President of the Senate.

Mr. SHERMAN. We all know the prompt action with which requisitions are usually paid. Application was made here to Congress for an appropriation. It must be remembered that in an official communication upon which this requisition is based, the retary of War notified Congress that probably by the 1st of February payment would be due. The official information laid before Congress by the Executive Department shows that Congress would be expected to make an appropriation by the 1st of February of this present year. The very moment this bill came to the House it was acted upon promptly by the Committee on Appropriations, and reported to the House, and the House would have passed it immediately, and did pass it before the 1st day of February, but then oppositions are the statement of the bill are the statement of the statement sition occurred to the passage of the bill, an interested opposition on the part of the gentleman to whom the money or bonds were due, to prevent its passage. It appears here that upon the motion of Mr. Buck-NER, a member from Missouri, a proposition was made, as follows:

NEE, a member from Missouri, a proposition was made, as follows:

That the Secretary of the Treasury be, and he is hereby, directed to deliver to said James B. Eads, or his assigns or legal representatives, the sum of \$500,000 in bonds of the United States, as provided for by an act entitled "An act making provision for the repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes," approved March 3, 1875, the Secretary of War having determined that said sum is due to said Eads by the terms of a certain written contract entered into by said Eads with the United States under and by the provisions of said act of March 3, 1875.

Therefore, it would seem that the little delay that has occurred has occurred on the part of the claimant for the bonds, who interposed this claim for the bonds instead of the money. That caused a delay in the passage of the bill until the 30th day of January. If the Senate had taken up and passed this bill on the 30th day of January, the day it came here, no doubt, on the statement of the chairman of the Committee on Appropriations, the money would have been appropriated, and the requisition would have been paid before the probable time fixed by the Secretary when the money would become due ble time fixed by the Secretary when the money would become due,

the 1st of February.
Under the circumstances, I think there has been a substantial and Under the circumstances, I think there has been a substantial and honest and faithful effort on the part of the United States to comply with its obligation, and we are not governed by the mere term of three days' grace or by a formal protest. If we have substantially complied with this contract, we have a right to the option reserved in the contract. There is no doubt about that. We are not bound by three days' grace. We are not liable to be protested for non-payment. We are bound to do the thing honestly and squarely, to use the Missouri term, and we are not to be taken up on pin-hooks and technicalities. It is true that by the technical phraseology of this law it was contemplated that Congress would make the appropriation in advance, but did the Committee on Appropriations of either House propose it? On the contrary, the officer whose duty it was to make the requisition tells us that the money would probably be needed on the 1st of February, and the appropriation would have been passed on the 1st of February, and before that time, but for the interposition of parties who wanted the debt paid in bonds.

Mr. CHRISTIANCY. Will the Senator from Ohio allow me to ask him a question?

him a question?

Mr. SHERMAN. I do not care to be interrupted, but I will hear a

Mr. CHRISTIANCY. I wish to know whether Captain Eads was at all responsible for the neglect of Congress to make the appropriation, or for any error of the Secretary of War or anybody else in the calculation as to when the payments would probably be due?

Mr. SHERMAN. I do not know that Mr. Eads was responsible. What I object to is that he tries to take advantage of a temporary delay of a day or two in the passage of this bill. I am told I drew this section, and the Government carefully reserved to itself the right of outline is but it contemplated a previous appropriation.

of option; but it contemplated a previous appropriation.

Mr. WEST. I would ask the Senator—

Mr. SHERMAN. I wish the Senator would not interrupt me. This is a directory provision. It is not in the nature of a penalty. It simply contemplates that Congress shall make an appropriation previously, and if it does not do it, then the Secretary of the Treasury shall pay this requisition by bonds. Within the life-time of an ordinary requisition, within the time fixed by the Secretary of War in his official report giving Congress notice of the necessity of an appropriation that appropriation is to be made, or if not made, it has been defeated in the interest of Mr. Eads, who has no right to complain. I think that Mr. Eads ought to be contented with the ordinary appropriation provided by law, and so the House of Representatives considered. They had this matter before them and debated it and decided upon it. The Secretary of the Treasury tells you that it is not convenient or wise or well for the Government to issue 5 per cent. bonds when these bonds are far above par in gold, that it is not well to have a new issue of United States bonds to the amount of \$500,000. Therefore he asks Congress to make the appropriation, as the United States have the option to pay one or the other, not upon a three days' grace or upon an actual default of delivery as upon a technical contract, as for instance in the purchase of oats and beans, but it is a square and frank appeal to the justice and good sense of Congress. I think the actual observance of the faith of the United States as pledged by that law to Captain Eads would be substantially complied with by a prompt appropriation now of the money; and if a few days' delay has occurred he must blame himself rather than Congress. I say myself that if Congress should adjourn now without appropriating money in advance for the payment due in April there would be a submoney in advance for the payment due in April there would be a substantial failure to comply with the language of the law, and so the Secretary of the Treasury would naturally issue the bonds. But this language must be construed together, and must be presumed to have had a reasonable intent. If Congress pays him the \$500,000 by this appropriation bill he may get his money to-morrow, and there is an end of it. The delay has been caused by himself in his desire to get bonds rather than money.

Let me state to the Senate some of the troubles that will occur if these bonds are issued. In the first place we know as an extend fact

these bonds are issued. In the first place we know as an actual fact, and I regret it, as every Senator regrets it, that the Secretary of the Treasury, whose signature is necessary to carry these bonds into execution, is sick, and in no condition to transact this business. I have ecution, is sick, and in no condition to transact this business. I have his opinion here in writing. The Government has the option. Who knows that he will issue these bonds, and will not a delay be created to Captain Eads? The description of the bonds is pointed out; they are 5 per cent. bonds. The limit of that class of bonds has been reached and passed already. I think under a fair construction of the act 5 per cent. bonds may be issued; but they could only be issued by stamping them anew. The 5 per cent. bonds now having passed away, they could only be issued by stamping upon them by some contrivance the authority of the law under which they are issued. No doubt that can be done in time at the Treasury Department and No doubt that can be done in time at the Treasury Department, and if hurried up it might be done in a few days; but we are compelled to resort to this extraordinary way of issuing a new class of bonds in order to avoid a technical objection made.

That is not all. Another difficulty may occur, it is true of a small nature: a complication in the Treasury accounts. If these bonds are treated as money this bill must be construed as an appropriation of so much money; otherwise the accounts will be confused and rendered complicated. No doubt all that could be overcome, and Mr. Eads might get his bonds, if Congress would say so; and I think that probably we should be compelled under the law to grant bonds, if Congress would say so; and I think that probably we should be compelled under the law to grant bonds, if Congress would say so; and I think that probably we should be compelled under the law to grant bonds, if Congress would say so; and I think that probably we should be compelled under the law to grant bonds, if Congress would say so; and I think that probably we should be compelled under the law to grant bonds. gress now fails to make this appropriation. Perhaps Mr. Eads would get his bonds in due time; but it is not Congress that has prevented the appropriation, it is Mr. Eads. It is not Congress that has prevented the appropriation; it is the gentleman who is to receive the benefit of it. Congress is now ready, and the Senate is to-day ready to pass and would have passed the bill the very day it came here approiating half a million of dollars, but for the fact that it has been pre-

vented and delayed by the gentleman who desires bonds instead. I think, therefore, that there has been on the part of Congress every desire to do this gentleman justice. Believing in him as much as any man on this floor, and desirous of promoting in every way his enterprise, and wishing to do exact justice to him, I think it is a little too narrow to call upon us for an issue of those bonds when we are ready to pay the money and when we have the money in the

I shall vote, therefore, for the appropriation bill as it came from

the House

Mr. WEST. Mr. President, there is much that I should like to say in connection with this subject, but the Senate has been detained for some little time listening to the views of gentlemen, and I will try and trespass upon their patience but a moment. Having been, I think I may without any egotism or vanity, the leading member of this body interested in the consummation of this great scheme, it has possibly impressed itself more vividly upon my mind and my memory than upon the memory of any other member. But, be that as it may, the actual condition and the actual intention of the committee which reported this bill was evidenced and given expression to most clearly this morning by the Senator from Virginia [Mr. WITHERS] when he said that it was the intention of the committee and the intention of the legislation to put the payments provided for in this measure beyond the possible contingency of legislative action in the future. That is what is contended for now. It is a very narrow view to take of the subject to say that Mr. Eads wants these bonds because they bear a premium. Mr. Eads asks nothing but justice from Congress. no premium.

Let us understand what is justly due to him under the law. I take occasion to express my surprise at the enunciation on the floor of the occasion to express my surprise at the enunciation on the floor of the Senate, by the chairman of the Committee on Finance, that when money is due by the Government of the United States the Government can pay it when it suits its convenience. He said that this money was due Captain Eads; he said that it was due to him on the 19th of January. Take the assertion in regard to that and put it side by side with one bond of the United States due at that time and you would be repudiated and dishonered, if you would not meet it at the moment it was due. That is the temper of the Finance Committee, when a promise of the United States is given by statute to pay a debt due on a certain day; you may take your own time to pay it and when a promise of the United States is given by statute to pay a debt due on a certain day: you may take your own time to pay it and your own convenience and your own manner. How will that agree with the bonds of the United States which are now current throughout the financial centers of the world? Is a bond of the United States any stronger than a solemn act of Congress? Is the promise con-veyed upon a piece of parchment any stronger or more binding upon the Government than that upon the archives of the Government in tis legislation and by its statutes? I hold not. Let us see what Congress promises to do, and let us see if to-day it is not in default and dishonored by its non-compliance with the terms of the agreement. I read from the statute:

That the conditions herein prescribed being fully complied with, the United tates hereby promise and agree to pay to said Eads—

Now let us see on what terms, when and how, the United States "promise and agree to pay to said Eads"—

When a channel of twenty, feet in depth. and of not less than two hundred feet in width, shall have been obtained by the action of said jetties and auxiliary works, \$500,000 shall be paid. \* \* \*
That the Secretary of War be, and he is hereby, authorized and directed to carry into effect the provisions of this act on behalf of the United States, and \* \* \* to draw his warrants upon the Treasurer of the United States in favor of said Eads.

As soon, by the necessary examination and report on the part of officers charged with the supervision of the construction and progress of this work, it was ascertained and reported that the requisite

of this work, it was ascertained and reported that the requisite depth of the water was obtained there, that money was due, and one half hour after when you did not pay it you were dishonored. You had made no appropriation. Congress is at fault, not this man.

But it is said that Congress has reserved the option to pay. Yes, it did reserve the option to pay and that option, as has been demonstrated here by the Senator from Indiana, expired at the moment the demand was made, when there was no appropriation. As to this story that the friends of this measure have delayed the appropriation. I cannot see what foundation there is for it.

tion, I cannot see what foundation there is for it.

Furthermore, Captain Eads does not ask for these bonds now, because the bonds are more valuable to him than the money; but he asks that the precedent may be established, that his appropriations and the sums due him in all time to come may be placed where the original act designed to place them—beyond the contingency of conoriginal act designed to place them—legyond the contingency of congressional action. What would be the result if you were to establish this precedent to-day? We know by telegrams, and I tell it wita great satisfaction, that to-day the other \$500,000 have been earned. To-day there are twenty-two feet of water over the bar at the mouth of the Mississippi, notwithstanding the creakings that we have had from the opponents of the measure, but it cannot be certified to here during the time that Congress is in session, and by establishing this precedent of paying him at your will you leave him to wait for twelve months for his second payment, and so on.

Mr. SHERMAN. I should like to ask my friend a question.

Mr. WEST. I return the Senator's courtesy. He declined to yield to me; but now I shall listen to him.

Mr. SHERMAN. I yielded to the Senator.

I beg your pardon.

AN. I ask the Senator, then, why does not the Com-Mr. SHERMAN. mittee on Appropriations to day before the sun rolls round pass the appropriation, saying to him the United States will give the money as soon as he comes with another claim?

Mr. WEST. "Sufficient unto the day is the evil thereof." The Committee on Appropriations deal according to their judgment with every case as it comes before them. But such is the fact. It is not to get the premium on these bonds, but to do what Congress contemplated, what the committee contemplated, what is just and right, to prevent Congress from having any authority in the premises when the money is earned: that is all.

Let me say that Captain Eads does not come here for consideration.

I opine that as years roll by he will be a greater man than any one in this body. Little will any consideration conferred by the Senate of the United States upon such a genius ever reflect upon him when such a monument to his greatness stands as the open and unvexed flow of the waters of the Mississippi to the ocean. No, sir, little did I think here a day or two ago when the Senator from New York [Mr. Conkling] in his place appealed to us to be just, that there would be such an application of that maxim as I find here to-day in this

A great government can seize advantage at too much cost. A government is never so great as when it is just.

You are dishonored by your non-payment on the 19th of January, and you can do the man justice now and remove all obstacles in the way of future payments that may be due him by establishing a precedent when he demands the money that it is your duty to have pro-

when he demands the money that it is your duty to have provided in the Treasury.

Mr. CHRISTIANCY. I do not propose to occupy many moments of time on this question. The Senator from Ohio has referred to the letter of the Secretary of the Treasury saying that it is unwise to issue bonds when they are above par and that it is wiser to pay in cash. I believe the wisest course for this Government is to perform its contracts in good faith. That is the question, and the only question. tion. The Government is to perform its contracts according to their legal effect when the other contracting party demands it. As has well been remarked here, the Government is in default. The only question with me is, what is the kind of contract which the Government has made with Captain Eads and that stands upon the statute? There can be no question that the option was given to this Government to pay either in money or in bonds. The first part of the section to which reference is made clearly gives that option:

That the option of discharging the obligations herein assumed by the United States, either in money or bonds, is expressly reserved.

Then the section proceeds to prescribe the time and manner in which that option is to be exercised, and that is the whole of the rest of the section. What is that time and manner in which the Government may exercise that option? It is that whenever a payment shall become due under that section that option must be exercised. It must be exercised either before or at the time when the duty of payment is thrown upon the Government, and that option is lost if not then exercised. Such is the effect of this statute. I proceed to read the rest of the section for the purpose of showing more clearly that such is the fact :

And the Secretary of the Treasury is hereby directed to issue the bonds of the United States bearing 5 per cent, interest of the character and description set out in the act entitled "An act to authorize the refunding of the public debt," approved July 14, 1870, to said Eads or his legal representatives, in payment at par of the aforesaid warrants of the Secretary of War unless—

And here is the turning point-

unless the Congress of the United States shall have previously provided for the payment of the same by the necessary appropriations of money.

Previously to what, Mr. President? Previously to the time when the duty of payment devolved upon the Government. It is unnecessary for me to spend more time on this point. It has been so clearly and so well illustrated by the Senator from Minnesota on my left and by the Senator from Indiana this morning that I could only repeat what they have said. I have never seen in the course of my life a clearer provision of statute than this appears to be to my own mind, and how any man can contrive to force a doubt into it or squeeze a

doubt out of it exceeds my comprehension.

Mr. MAXEY. A government to be respected must deal with scrupulous honesty to its own people. As was stated very properly, this is simply a question of contract. What is that contract? The Government of the United States contracted and agreed with James B. Eads that if he would deepen the channel of the Mississippi River at its mouth twenty feet, and to a width of two hundred feet he should receive \$500,000. When? Whenever the Secretary of War should by his certificate declare that that work had been done in accordance with that contract. The Secretary of War sends his engineers down to the mouth of the Mississippi River to examine that work. They report that the work has been done according to the contract, and the Secretary of War issues a warrant to James B. Eads, showing what? Secretary of War issues a warrant to James B. Eads, showing what That in strict accordance with that contract there was on that day due to him the sum of \$500,000. Very well. Now it is contended here that the Government of the United States had the option to pay that \$500,000 in money or in bonds. When I When the contract fell due, which was when the work was done, acknowledged so by the Secretary of War and when he had given his warrant upon the Sec-

retary of the Treasury for that amount of money. That warrant was presented to the Secretary of the Treasury and demand made. Then the Secretary of the Treasury had the right to pay the \$500,000 in money or bonds, in other words to exercise the option. If he failed to exercise the right of option on that day, eo instanti, the right of option ceased. But what else? Does the contract stop there? Not at all. The contract goes on to declare that if there has not been previously appropriated by Congress the money to pay this claim, then the Secretary of the Treasury is to issue the bonds at their par value to the extent of \$500,000. Congress had not made the appropriation, the money was not paid, the option was lost; and under that state of things the Secretary of the Treasury was directed to issue those bonds. He did not do it, and the only question is, did Captain Eads have a right to it? Sir, there cannot be a clearer proposition of law. It seems to me that Captain Eads had the perfect right to these bonds.

This contract was close; it was required that he should expend his

This contract was close; it was required that he should expend his money, not upon the west pass, for he was limited to the south pass; not upon the southwest pass, but he was to increase the depth of water there to twenty feet. If he had got it to only nineteen and a half feet, although the Government would have been benefited by that increase, yet if he had failed to come up to the very strictest letter of the law he would not have been entitled to one solitary dollar. But when he did deepen it to twenty feet remaining all the risks himself. when he did deepen it to twenty feet, running all the risks himself, the Government having no risk whatever; when the contract was as close as it was possible to make a contract with a citizen, and when he complied with the contract in every particular, and when that fact was acknowledged by the Government by the issuance to him by the Secretary of War of his certificate, and he presents that and it is not paid, I ask you if he has not, under the strict letter of this statute, the right to those bonds; and is it jast, is it fair for this Government to avail itself of this grandest improvement of the age and stickle at a strict compliance with the contract? I do not be-lieve that it would send this Government before the world in a very fair light to refuse to stand up to a contract such as this.

Mr. ALLISON rose.
Mr. WINDOM. I see the Senator from Iowa is rising to ask to take up the Indian appropriation bill; and I wish to anticipate him by

asking the Senate to vote on this question without further debate.

Mr. ALLISON. If a vote can be taken now I will waive my purpose, but otherwise I must insist on the Indian appropriation bill.

Mr. WRIGHT. I wish to be heard about three minutes on this bill.

I shall not resist the proposition to take up the other bill, however,

Mr. WINDOM. I think the Senator from Iowa [Mr. Allison] had better let us have three minutes more. I think possibly we can get a vote at the end of that time.

get a vote at the end of that time.

Mr. ALLISON. I give way to my colleague.

Mr. WRIGHT. I do not understand that in this question we have anything to do with the grandeur of this improvement. I do not understand that we have anything to do with the question as to whether these bonds are above or below par. It has been suggested, and I think it is a very pertinent suggestion too, that if these bonds were under par the probabilities are that there would not be such an insistment on the part of the person for different legislation from what the House has given. The question is: What is a fair construction of this statute? My friend the Senator from Michigan says he does not see how it is possible for any person to squeeze a doubt out of it. Nor do I. The difference is he thinks it is perfectly clear one way; and I think it is just as clear the other way. It has been inway; and I think it is just as clear the other way. It has been insisted all the time that this provision in the fourteenth section giving the option to the Government must be exercised at a particular time, else the party is entitled to the bonds. It occurs to me that if that be the construction of the statute it is very strange that it had not read differently from what it does. It reads:

That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved.

Reserved to the Government. I understand that what follows after that means this and no more: It is a direction to the Secretary of the Treasury as to the kind of bonds he shall issue, or how it is that the bonds are to be gotten out of the Treasury. I submit this question: If it were intended that he was entitled absolutely to these bonds unless a prior appropriation had been made, why was not this language used: "That the option of discharging the obligations herein assumed by the United States either in money or bonds is expressly reserved, but the said Eads shall be entitled to the bonds of the United

reserved, but the said Eads shall be entitled to the bonds of the United States, unless there has been a prior appropriation?"

Why not put the provision in that way, that the said Eads is entitled to the bonds unless there has been a prior appropriation? My construction is that the right is reserved expressly to the Government, and then it is said, as a direction to the Secretary of the Treasury, that these bonds shall be issued of such a form, or be made bearing such a data and this being a direction to him there is no possible. such a date, and this being a direction to him there is no penalty.

such a date, and this being a direction to him there is no penalty. There is no provision, there is no right given to Eads in the first instance to demand these bonds in the event that there is no appropriation.

Now, I think, in all candor and in all fairness, there is no bad faith on the part of the Government in this thing. Almost immediately after this requisition was made, the very next day, he demands the bonds and immediately Congress proceeds to make the appropriation. I think that when they have done that, they have done all that he has any right to demand. I think with the Senator from Louisiana

it is a matter of vital importance that we settle this question right now; for if we shall settle it upon a false basis, on a precedent that is unfair and cannot be sustained, we shall be led into error for years to come. It seems to me to be perfectly clear that we ought to pass the House bill and not indefinitely postpone it and leave this matter so leave and convolvement that where the Govern loose and so undetermined that you cannot tell where the Government stands or Mr. Eads either.

The PRESIDING OFFICER, (Mr. WALLACE in the chair.) The

question is on the indefinite postponement of the House bill.

Mr. WEST and Mr. WINDOM called for the yeas and nays; and they were ordered.

The Secretary proceeded to call the roll.

Mr. BOOTH, (when his name was called.) On this question I am paired with the Senator from Indiana, [Mr. MORTON.] If he were here he would vote "yea," and I should vote "nay."

The call of the roll was concluded, and the result was announced—

yeas 30, nays 24; as follows:

yeas 30, nays 24; as follows:

YEAS—Messrs. Allison, Bogy, Bruce, Chaffee, Christiancy, Clayton, Cockrell-Cooper, Cragin, Davis, Dawes, Dennis, Dorsey, Ferry, Goldthwatte, Hamilton, Harvey, Hitcheock, Ingalls, Johnston, Jones of Florida, Maxey, Mitchell, Norwood, Spencer, Teller, West, Windom, and Withers—30.

NAYS—Messrs. Balley, Barnum, Boutwell, Cameron of Wisconsin, Conkling, Conover, Eaton, Hereford, Kelly, Kernan, McCreery, McDonald, Merrimon, Morrill, Paddock, Ransom, Robertson, Sargent, Saulsbury, Sharon, Sherman, Stevenson, Wallace, and Wright—24.

ABSENT—Messrs. Alcorn, Anthony, Bayard, Blaine, Booth, Burnside, Cameron of Pennsylvania, Edmunds, Frelinghuysen, Gordon, Howe, Jones of Novada, Logan, McMillan, Morton, Oglesby, Patterson, Randolph, Thurman, Wadleigh, and Whyte—21.

So the motion was agreed to.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed the bill (S. No. 824) for the relief of Hannah L. Lloyd as executrix and George W. King executor of William Lloyd, deceased.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property, and to sell the same at public or private sale, and for other purposes.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4198) to authorize the President to restore Thomas J. Spencer to his former rank in the Army; and

A bill (H. R. No. 4611) to remove the political disabilities of Dabney M. Scales, of Memphis, Tennessee.

# INDIAN APPROPRIATION BILL.

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes.

The bill was reported from the Committee on Appropriations with proceedings.

amendments.

The first amendment was to insert after line 9:

For pay of one superintendent of Indian affairs for the tribes in Dakota, \$2,500: Provided, That \$500 of said amount shall be available on the 1st day of April next.

The amendment was agreed to.

The next amendment was, in line 14, to strike out "sixty-eight" and insert "seventy" in the item appropriating for the pay of agents of Indian affairs, making seventy the number.

Mr. DAVIS. It will be noticed that this is an increase of two Indian agents. I believe I am right in that?

dian agents. I believe I am right in that?

Mr. ALLISON. Yes, sir.

Mr. DAVIS. I only call the attention of the Senate to the fact that it appears to be quite a large number, yet I believe in the total it is

an increase of but two.

Mr. ALLISON. That is all.

The amendment was agreed to.

The next amendment of the Committee on Appropriations was, in line 24, to strike out the word "two" and insert "three," and in the same line, after the word "namely," to insert the words "Hoopa Valley." so as to read. ley;" so as to read:

Three for the tribes in California, namely, Hoopa Valley, Round Valley, and Tule River agencies.

The amendment was agreed to.

The next amendment was, in line 32, to strike out the word "nine" and insert "eleven," and in the same line, after the word "namely," to insert the words "Red Cloud, Spotted Tail;" so as to make the clause read:

Eleven for the tribes in Dakota, namely, Red Cloud, Spotted Tail, Yankton, Poncha, Crow Creek, Standing Rock, Cheyenne River, Fort Berthold, Sisseton, Devil's Lake, and Lower Brulé agencies.

The amendment was agreed to.

The next amendment was, in line 47, to strike out the word "seven" and insert "five;" and in line 48, after the word "Omaha," to strike out the words "Red Cloud, Spotted Tail;" so as to make the clause

Five for the tribes in Nebraska, namely, Great Nemaha, Omaha, Winnebago, Otoe, and Santee agencies.

The amendment was agreed to.

The next amendment was, in line 64, to strike out the word "four" and insert "five;" in line 65, after the word "Maricopa," to insert "Papago;" and in line 66, after the word "hundred," to insert "and three;" so as to make the clause read:

Five for the tribes in Arizona, namely, Colorado River, Pima and Maricopa, Papago, San Carlos, and Moquis Pueblo agencies; in all, \$103,200.

The amendment was agreed to.

The next amendment was, in line 132, to increase the total appropriation for pay of interpreters from \$22,800 to \$32,400.

The amendment was agreed to.

The next amendment was, in line 136, to increase the appropriation for additional payment of interpreters from \$5,000 to \$10,000.

The amendment was agreed to.

The next amendment was, in line 137, to strike out "\$2,500" and insert "\$3,000," and, in line 138, to strike out "\$7,500" and insert "\$9,000;" so as to make the clause read:

For pay of three Indian inspectors, at \$3,000 each, \$9,000.

The amendment was agreed to.

The next amendment was, in line 141, to increase the appropriation "for necessary traveling expenses of three Indian inspectors" from \$4,500 to \$6,000.

The amendment was agreed to.

The next amendment was, in line 143, to increase the appropriation "for buildings at agencies and repairs of the same" from \$15,000 to

The amendment was agreed to.

The next amendment was, after line 162, to insert:

For buildings at the Kiowa agency, including school building, \$20,000.

Mr. DAVIS. The committee agreed to this amendment, but I do not recollect now the necessity for it. It is an appropriation of \$20,000 for new buildings. I would be glad if the Senator from Iowa would explain the amendment.

Mr. ALLISON. This appropriation is intended to cover buildings at the Kiowa agency. For instance, they have now no buildings at this agency of any account belonging to the tribe. They are obliged

this agency of any account belonging to the tribe. They are obliged to use the buildings under the control and direction of the War Department even for their ordinary stores; and, inasmuch as we are under an obligation to build a school building at this agency, it was deemed wise to make a single appropriation which should cover the necessary buildings, including a school building. It is a very necessary appropriation.

The amendment was agreed to.

The next amendment of the Committee on Appropriations was, in line 441, to increase the appropriation for the "purchase of flour and meat" for the Crow Indians from \$75,000 to \$100,000.

The amendment was agreed to.

The next amendment was to insert after the word "dollars" in line

Part thereof to be paid *per copita*, as per said article, and the remainder to be expended for their benefit; and the sum appropriated for like purpose by the act of August 15, 1876, may be expended in the same manner.

So as to read:

Kansas: Ransas:
For interest in lieu of investment on \$300,000, at 5 per cent. per annum, per second article of treaty of January 14, 1846 \$10,000; part thereof to be paid per capita, as per said article, and the remainder to be expended for their benefit; and the sum appropriated for like purpose by the act of August 15, 1876, may be expended in the same manner.

The amendment was agreed to.

The next amendment was, in line 633, to increase the appropriation for the Mixed Shoshones, Bannacks, and Sheepeaters, from \$15,000

the \$20,000.

The amendment was agreed to.

The next amendment was, in line 646, to increase the appropriation for eight of ten installments to be used by the Commissioner of Indian Affairs in purchasing such articles as the condition and necessities

The Navajoes may indicate to be proper, from \$15,000 to \$30,000.

The amendment was agreed to.

The next amendment was, in line 702, to strike out the words "having jurisdiction of Indian affairs" and insert the words "of the Interior;" so as to read:

For nine of ten installments, to be expended by the Secretary of the Interior, &c.

The amendment was agreed to.

The next amendment was to strike out the following proviso in line 710 after the word "dollars:"  $\ensuremath{\textit{Provided}}\xspace$  , That said Northern Cheyennes and Arapahoes shall remove to their eservation in the Indian Territory.

The amendment was agreed to.

The next amendment was, in line 733, after the word "Secretary" to strike out the words "having jurisdiction of Indian affairs" and insert in lieu thereof the words "of the Interior."

The amendment was agreed to.

The next amendment was, in line 736, after the word "the" to strike out the words "Commissioner of Indian Affairs" and insert in lieu thereof the words "Secretary of the Interior."

The amendment was agreed to.

The next amendment was, in line 741, after the word "over," to strike out the words "one-fifth" and insert "one-third;" so as to read: Out of funds belonging to them now in the Treasury of the United States, \$100,000, of which amount not over one-third shall be paid to the said Indians per capita.

Mr. INGALLS. I move to amend the amendment of the committee by inserting "one-half" instead of "one-third." Mr. ALLISON. The Committee on Appropriations considered this

question very carefully; and, after a careful consideration, deemed it wise to allow the Commissioner of Indian Affairs to expend per capita one-third of this sum, deeming that a wiser distribution of the fund than to allow the Osages one-half of the whole sum. I do not think

it is a very important amendment either way.

The PRESIDING OFFICER, (Mr. WALLACE in the chair.) The question is on the amendment of the Senator from Kansas to the

amendment of the committee.

Mr. ALLISON. I ask the Senator from Kansas to waive his amend-

ment until the committee's amendments are passed over.

Mr. INGALLS. I have no objection to that course.

Mr. ALLISON. That amendment may be considered as passed over.

Mr. INGALLS. I agree to that.

The PRESIDING OFFICER. It will be reserved for future action.

The next amendment of the Committee on Appropriations was, in line 742, after the words "per capita," to insert the following:

And out of this appropriation he is hereby authorized to pay for goods and supplies furnished the Osage Indians while upon a hunt during the season of 1875 and 1876 to an amount not exceeding \$14,000.

Mr. BOGY. I do not know exactly what step to take; but at the proper time I will make an objection to that amendment.

The PRESIDING OFFICER. The amendment is now before the

Senate.

Mr. BOGY. Let it be passed over for awhile. Mr. INGALLS. Let it be passed over. Mr. BOGY. I ask to reserve the amendment.

Mr. ALLISON. If the Senator from Missouri has any objection to this amendment let him make it known now.

Mr. BOGY. Let us go through with the whole bill, and let that

come up after a while. Mr. ALLISON. I pr

come up after a while.

Mr. ALLISON. I prefer to have this amendment passed upon now.
The PRESIDING OFFICER. The Senator from Iowa in charge of
the bill asks that the amendment be passed upon now.
Mr. BOGY. The Senate simply has no information on the subject;
none whatever. We have no information whatever; and this seems
to me to be a very loose appropriation, that we shall appropriate
\$14,000 out of the Osage funds to pay the expenses perhaps of a hunting party. There is no evidence furnished to the Senate. There
might have been some furnished to the committee; but there ought
to be some evidence furnished to us here to justify a vote. It is said to be some evidence furnished to us here to justify a vote. It is said to be to pay for goods and supplies furnished the Osage Indians while to be to pay for goods and supplies furnished the Osage Indians while upon a hunt during the seasons of 1875 and 1876 to an amount not to exceed \$14,000. I have never seen anything quite so loose as this. Why should the other Indians who did not go upon that hunting excursion, who did not participate in that pleasure, pay for these parties who went there? The idea that it took \$14,000 to supply Indians who went out hunting buffalo is something remarkable. Gentlemen in the city of Philadelphia and the city of Saint Louis often go upon large excursions and take large quantities of good eatables and good drinkalles with them, and they are quite expensive excursions; yet large excursions and take large quantities of good eatables and good drinkables with them, and they are quite expensive excursions; yet I have never heard of one so expensive as this. What do these Indians want? They have their ponies, their guns, and their ammunition. Was it liquors, or oysters, or what? What goods, what provisions were supplied? When they go out to hunt buffalo they supply themselves with provisions. It would be an utter impossibility to supply a hunting party of Indians with such an amount of goods for that purpose; yet my friend from Iowa says the Department has the evidence. I might be converted, but it would require very good testimony to convert me into the belief that \$14,000 would be necessary to equip a hunting party of Indians. Who are these Indians? For whom is the appropriation designed? From what State or Territory are thoy? I do not think the appropriation has any business here at all. I do not know on what ground the committee recommends it. It struck me as being a very singular thing to appropriate \$14,000 to supply goods for a hunting party of Indians. I do not understand it at all.

do not understand it at all.

Mr. ALLISON. I am very glad to see my friend from Missouri so careful of the funds of the Osage Indians. I am glad to see that he is not disposed to touch these sacred funds without the most careful

Mr. BOGY. Not without their consent.

Mr. BOGY. Not without their consent.

Mr. ALLISON. I am very glad particularly that he desires that these trust funds in the Treasury of the United States shall be carefully protected from intrusion. I quite concur with him. The Committee on Appropriations did not agree with this provision without the fullest examination and without ample testimony. The truth is, as my friend very well knows, because he is familiar with the habits of the Indians that when the did not the state when the of the Indians, that when an Indian tribe start upon a hunt they do not start equipped as gentlemen do who may leave Saint Louis or other cities for that purpose, but they go out once a year for the purpose of supplying themselves with food and provisions by means of the hunt. During the winter of 1875 and 1876, as the testimony which I hold in my hand shows, but which I do not care to trouble the Senate to have read, they went out upon this hunt, I believe into the then Territory and now State of Colorado, at least a distance of three care four hundred miles from the agency, and while there, not finding or four hundred miles from the agency, and while there, not finding game, the whole country having been burned over, not finding a

single buffalo, these Indians, comprising nearly the entire tribe, were in a condition of starvation, and the agent of these Indians at that in a condition of starvation, and the agent of these Indians at that time sent out provisions for the purpose of relieving them and bringing them back to the agency. These matters are fully set forth in papers which I have in my hand. At a regular council of these Indians afterward they asked that this sum should be paid. The agent now in charge of these Indians (and I will say, as I pass, he is a most intelligent and most careful agent with reference to the interests of this tribe) recommends the payment of this sum. The Commissioner of Indian Affairs recommends the payment of this sum, so that this item comes here with all the testimonials that it is possible for it. this item comes here with all the testimonials that it is possible for it

to have, and I trust there will be no objection to the amendment.

Mr. BOGY. I cannot understand how it is possible that a sum so large as this should be necessary for a hunting-party.

Mr. ALLISON. The sum may be large, but of course these accounts must be scrutinized as all accounts are scrutinized. The appropriation is not exceeding a certain sum. Of course these accounts must pass as all accounts in the Indian Bureau pass.

Mr. BOGY. If we pass this appropriation, the amount will be covered with beautiful and accurate vouchers to sustain every one of them, perhaps made in the city of Washington; but they will be perfectly and elegantly made, there is no question about that. It is an utter impossibility that this amount of money could have been reutter impossibility that this amount of money could have been required for this purpose. The Indians who go out upon these excursions require nothing at all. They have their ponies; they have their guns and their ammunition, and it is very little that they need. It is a wilderness, a prairie country. They travel out, camp out, cook their own food, and kill their own game from the very day they leave their homes until they return, and the country could not be so bare of game at any time but what they would find enough to make a living all over that country. The hunt may not have been profitable. They may not have found any large quantity of buffaloes so as to make it a profitable hunt; but to think they were not able to make a living, I say, is an utter impossibility. A white man, a hunter, could make a living in that country at any time under any circumstances, and these Indians could not have wanted any part of this money for this purpose of going on a hunting excursion. It is not for provisions, for goods and supplies. What goods do they need to go hunting Mr. ALLISON. Blankets.

Mr. BOGY. Blankets! They have their blankets. They might have been supplied with blankets before; but this money was expended while upon a hunt, not to start out with but while they were upon a hunt, and that these \$14,000 were furnished to them is an utter impossibility. The amendment ought not to pass. I am careful

apon a nunt, and that these \$14,000 were furnished to them is an utter impossibility. The amendment ought not to pass. I am careful of the Indian funds; I desire to be and have always been; and that is the reason why I do not want these loose appropriations made. I offered an amendment the other day which my friend from Iowa himself opposed, I believe, in the committee, as I have been informed;

perhaps I have no right to say so.

Mr. ALLISON. I do not see how the Senator from Missouri could be informed of what occurred in committee.

Mr. BOGY. Perhaps I have no right to say so. That amendment provides that in all cases of the expenditure of Indian money the Indians should be consulted, as they ought to be consulted, especially the Osage Indians who are intelligent. The chief of that tribe is a the Osage Indians who are intelligent. The chief of that tribe is a very intelligent man, a man of good education, who speaks good English. There ought to be no money belonging to a tribe spent without their consent. I know the money is expended by the Interior Department; but let it be done with their knowledge and with their consent, so as to prevent the immense wastage which is taking place, as has been the history of Indian appropriations for many years back. Within the let the years a million of money has been appropriated. Within the last ten years a million of money has been appropriated for the Indians which there is nothing to show for now. Therefore I object to this amendment, because I cannot be made to believe that \$14,000 could have been necessary to furnish these Indians and equip them to go out on a hunting expedition. The PRESIDING OFFICER. The question is on agreeing to the

amendment of the committee.

The question being put, a division was called for; and there wereayes 17, noes 9; no quorum voting.

The PRESIDING OFFICER. Not a quorum voting. What action

Mr. ALLISON. Such action as is proper when a quorum does not I am perfectly willing that the amendment shall be

passed over for the present, so that we may get through with the amendments

Mr. ALLISON. I desire to pass upon these amendments as we go

Mr. DAVIS. I should like to see the bill proceed. If this amendment can be reserved till the bill is reported to the Senate, nothing will be lost by either party and it will not lose any time. amendment be passed upon now favorably and let us go along and the Senator from Missouri can have it reserved, if he sees proper to do so, when we come into the Senate.

The PRESIDING OFFICER. The Chair defers to the wish of the

Senator who has the bill in charge.

Mr. ALLISON. Let the amendment be agreed to pro forma.

Mr. BOGY. I made that offer two or three times.

Mr. ALLISON. I did not understand the Senator from Missouri.

I understand the Senator from Missouri to agree now that this amendment shall be agreed to pro forma and that we shall take a vote on

it in the Senate.

Mr. BOGY. I made that offer two or three times to my friend, and he was very obtuse if he did not understand me.

Mr. ALLISON. I am obliged to the Senator.

The PRESIDING OFFICER. The amendment will be considered as agreed to.

The next amendment of the Committee on Appropriations was to

insert, after line 746, the following:

For this amount, to be expended for the Osage Indians, in accordance with section 12 of the act of July 15, 1870, being interest on the net avails of Osage trust and diminished-reserve lands sold prior to November 1, 1876, as follows: On \$941,447.66, from November 1, 1876, to January 12, 1877, \$9,285.51; on \$891,447.66, from January 12, 1877, to July 1, 1877, \$20,759.74; and on \$791,447.66, from July 1, 1877, to November 1, 1877, \$13,335.33; in all \$43,380.58.

Mr. BOGY. I shall ask to reserve that for a vote in the Senate.

Mr. ALLISON. If the Senator will allow me for a moment, I will state that this amendment is in accordance with the absolute requirement of the treaty. It is an appropriation simply for the interest upon funds now in the Treasury, upon which we are obliged to pay interest. I certainly think my friend can have no objection to it

Mr. BOGY. Will the Senator explain it ? If this amount is to be expended for the Osage Indians, how is it to be expended ? I object-

expended for the Osage Indians, now is it to be expended? I objected to the loose mode of expenditure in the hunting expedition, and I should like to have the thing specified.

Mr. ALLISON. It is to be expended under the direction of the Secretary of the Interior, of course.

The amendment was agreed to.

The next amendment was, among the appropriations for the Pawnees, to insert in line 784, after the word "dollars," the following proviso:

Provided, That \$5,000 of this sum may be used in the erection of a school-building.

So as to read:

For support of two manual labor schools, per third article of same treaty, \$10,000: Provided, That \$5,000 of this sum may be used in the erection of a school-building.

Mr. BOGY. I should like to reserve that amendment also; for it seems to me the sum of \$5,000 for the erection of a school-house for Indians is entirely too large. A log-house costing about \$250 is entirely too much. There is no necessity in the world for spending \$5,000 in such a way. I therefore should like to reserve that amendment for a vote when we get in the Senate.

Mr. ALLISON. The Senator only wishes a separate vote on it in

the Senate, and there is no objection to that of course.

The amendment was agreed to.

The next amendment was, in line 793, to increase the appropriation for the pay of physicians and purchase of medicines for the Pawnees from \$8,000 to \$12,000.

The amendment was agreed to.

Mr. PADDOCK. I should like to inquire if the amendment at line 785 has been agreed to. The PRESIDING OFFICER. It has been agreed to, but reserved

for separate action in the Senate.

Mr. PADDOCK. I wish to inquire where the money has been ex-

Mr. PADDOCK. I wish to inquire where the money has been expended. These Indians were removed, as I understand, from their former reservation to the Indian Territory.

Mr. ALLISON. This money is to be expended at their new location. Mr. PADDOCK. That is satisfactory.

The next amendment of the Committee on Appropriations was, in line 802, in the appropriations for the Pawnees, to increase the item for "teachers and fuel, books and stationery, for schools," from \$3,000

The amendment was agreed to.

The next amendment was, in line 825, to increase the appropriation to carry on the work of aiding and instructing the Poneas in the arts of civilization, and for subsistence and clothing, from \$5,000 to \$10,000.

The amendment was agreed to.
The next amendment was, in line 1021, after the word "secretary," to strike out the words "having jurisdiction of Indian affairs."
The amendment was agreed to.

The next amendment was, in line 1060, after the word "secretary," to strike out the words "having jurisdiction of Indian affairs" and insert "of the Interior."

The amendment was agreed to.

The next amendment was, in line 1071, in the appropriations for the Six Nations of New York, after the word "four," to insert the words "thousand five hundred dollars;" so as to read:

For permanent annuity, in clothing and other useful articles, per sixth article of treaty of November 17, 1794, \$4,500.

The amendment was agreed to.

The next amendment was to insert, after line 1093:

For pay of additional employés at the several agencies for the Sioux in Nebraska and Dakota, \$47,000.

I will reserve that amendment.

The PRESIDING OFFICER. The amendment will be reserved for

the action of the Senate.

The next amendment of the Committee on Appropriations was, in line 1102, after "million," to insert the words "two hundred and fifty

thousand;" and in the same line, after the word "dollars," to insert the following proviso:

Provided, That \$50,000 of this appropriation may be used for the selection of a location, the construction of necessary buildings, and the removal of the said Sioux Indians to the Missouri River: And provided further. That the sum of \$15,000 of this appropriation, in addition to that heretofore appropriated, may be used for the removal and permanent location of the Poncas in the Indian Territory.

For this amount, for subsistence, including the Yankton Sioux and Poncas, and for other purposes of their civilization, \$1,250,000: Provided, That \$50,000 of this appropriation may be used for the selection of a location, the construction of necessary buildings, and the removal of the said Sioux Indians to the Missouri River: And provided further, That the sum of \$15,000 of this appropriation, in addition to that heretofore appropriated, may be used for the removal and permanent location of the Poncas in the Indian Territory.

Mr. PADDOCK. In line 1107 I propose to strike out the word "fifteen" and insert "thirty," and in line 1110 after the word "Poncas" to insert the words "and Santees," in order that provision may be made for the removal of the Santees as well as the Poncas to the Indian Territory. I will state in this connection that the Santees are now, so to speak, squatters on the public lands in the county of Knox, in the State of Nebraska, and have no defined residence. They ought either to have a permanent reservation in that section of the country, or they ought to be removed elsewhere; and, as I believe the true policy of the Government is to remove all these Indians to the Indian Territory, I propose the amendment to the amendment of the committee

The PRESIDING OFFICER. The Senator from Nebraska moves to amend the amendment as he indicates. It is before the Senate.

Mr. BOGY. If it could be done, I would be willing to accept the amendment of the Senator from Nebraska for the time being, so that the whole matter may be considered in Senate. I am opposed entirely to the removal of any more Indians to the Indian Territory, whether they be Poncas or Santee Sioux; but at the same time, I would be willing to let the amendment be adopted for the time being to be reconsidered in the Senate, if that can be done.

Mr. ALLISON. I trust the Senator from Nebraska will not press

his amendment.

Mr. PADDOCK. I certainly shall.

Mr. ALLISON. I quite agree with him that it would be wise to remove the Santees to the Indian Territory if they are willing to go, and if there is a place there where they can go and be supported or support themselves as well as they can where they are now; but we have no recommendation from the Indian Bureau or from the Secretary of the Interior upon this point, and I think it might be postponed

tary of the Interior upon this point, and I think it might be postponed until we can have a further examination of the subject.

Mr. PADDOCK. Although there may be no recommendation on that subject here from the Indian Office, the necessity of this measure is patent to every citizen of Nebraska; and, if either of these tribes is to be removed to the Indian Territory, it ought to be the Santees, because the Poncas are on a reservation which they own. They are fixed and established there, and rightfully there; but the Santees are not so circumstanced. They are upon the public lands of the United States, which the settlers of that country wish to occupy. They are in the neighborhood of settlements, where the settlers desire to have them removed. There is no sense, or propriety, or decency in asking for the removal of the Poncas from a permanent reservain asking for the removal of the Poncas from a permanent reserva-

in asking for the removal of the Poncas from a permanent reservation and asking that the Santees, who are not upon any reservation, should be left in that country.

The PRESIDING OFFICER put the question on the amendment to the amendment, and declared that the noes appeared to prevail.

Mr. PADDOCK. I ask for the yeas and nays on this question. It is a very important question to my State. I want to know whether my neighbor from Iowa is disposed to allow this sort of thing, which is so damaging to the interests of my State, to continue. I think it is a great wrong and a great injustice.

The PRESIDING OFFICER. The Senator from Nebraska demands the yeas and nays on the pending amendment.

Mr. BOGY. The Senator from Nebraska is doing himself an injustice. I think it may be proper that these Indians should be removed

I think it may be proper that these Indians should be removed to the Indian Territory, but I certainly will not contend that the Senate has the information necessary to certify that removal. The Senator may know the fact himself; I do not deny that it may be so; but no information has been given to the Senate or to the committee which would justify affirmative action upon this subject at all. I think the Senator's amendment cannot be pressed properly, although I do not deny the facts which he has stated. They are within his knowledge, and perhaps within the knowledge of his colleague, but they edge, and perhaps within the knowledge of his colleague, but they do not come to the Senate in any way which would justify the Senate in voting for the amendment. I would be myself opposed to it under any condition; but let that be as it may, I do not think other Senators can vote merely upon his statement, giving to his statement the very fullest credence that I would give to that of any Senator; but it does not come to us in a proper shape. That is all.

Mr. PADDOCK. I state the facts exactly as they come to me from reliable and thrifty citizens of my State, living in that section.

Mr. BOGY. I do not deany that

Mr. BOGY. I do not deny that.
Mr. PADDOCK. And not only from one community but from many

Mr. BOGY. I do not deny the assertion made by the Senator, but

the amendment does not come to us in a way to justify us in voting

Mr. PADDOCK. I should like to inquire of the chairman of the Committee on Indian Affairs if it is not true that the Poncas are on a permanent reservaation.

Mr. ALLISON. The Poncas are on a reservation.

Mr. BOGY. Are not the Santees?

Mr. ALLISON. But the different Sioux tribes claim that under the treaty of 1868 they are entitled to the reservation now occupied by the Poncas; and there seems to be a sort of hereditary quarrel between the Poncas and the Sioux.

Mr. PADDOCK. Are not the Poncas Sioux? To what Sioux does the chairman of the Committee on Indian Affairs refer?

Mr. ALLISON. I allude now more particularly to the Brûlé Sioux. My friend from Nebraska perfectly well understands that within the last year the Poncas were unable to raise their crops for the reason that they were constantly infested by bands of Sioux warriors; and it has been deemed advisable by the Department that these Poncas should be removed to the Indian Territory or to some other reservation, in order that the other tribes of Sioux may occupy this reservation. With reference to the Santees, these Santee Sioux, if I understand the facts correctly, went to their present reservation many years ago. They occupied that reservation, or, if it was land of the United States, they occupied it as white men occupy the unoccupied lands of the United States. These Santees dress as white men, they conduct farming operations as white men do, in the northeastern portion of Nebraska. Now, to remove these Indians without their consent and without some arrangement or understanding with them would be unjust to them. They have erected valuable buildings upon this reservation, and it does not seem just to do it. It does not seem to me that we should take this set without house first the set has the set of th should take this step without having first at least the recommendation of the Department of the Interior, which is responsible for the management of our Indian affairs. That is all I have to

Mr. PADDOCK. My friend states it as a fact that it is a reservation. Is it a reservation at all? Are they not squatters upon the public lands?

Mr. ALLISON. I do not say that these lands have been set apart Mr. ALLISON. I do not say that these lands have been set apart to these Indians as a reservation; but we, in our treaty with the Santee Sioux, agreed to give them lands to till. They have taken possession of these unoccupied lands, and they have occupied them for many years. Now, are we by legislation, without consulting them, to remove them from the soil which they have tilled for these years, and move them to another territory? I say it is unfair to them them.

Mr. PADDOCK. The truth is, as I understand it, that these Santees have not been there so many years as my friend represents them to have been. They have been there for a very short time comparatively speaking. They are temporarily there. As I understand, it was not contemplated when they were put there to have them remain permanently; and for the same reason that the Senator claims they should remain there, I claim, in the interest of the white people of that country who desire those lands, that they should go away. They can be just as well and better provided for in the Indian Territory than they can be there, and inasmuch as it will be necessary very shortly to make a permanent reservation for these Indians, it may as well be done at once and have the matter over.

The PRESIDING OFFICER. Does the Senator from Nebraska insist on demanding the yeas and nays?

Mr. PADDOCK. Yes, sir; I insist on calling the yeas and nays.

The yeas and nays were not ordered. The amendment to the amendment was rejected.

The amendment was agreed to.

The next amendment of the Committee on Appropriations was to strike out the following proviso in lines 1112, 1113, 1114, and 1115:

And the President of the United States is hereby directed to prohibit the removal of any portion of said Sioux Indians to the Indian Territory unless the same shall be hereafter authorized by act of Congress.

The amendment was agreed to.

The next amendment was, after line 1189, to insert:

For the erection of agency buildings on the southern portion of the Ute reservation, as required by article 4 of the agreement made with the Ute Indians, ratified by act of Congress approved April 29, 1874, \$15,000.

The amendment was agreed to.

The next amendment was, in line 1285, to increase the appropriation for the care, support, education, &c., of the "Sioux at Fort Peck agency, the Assinaboines, and Gros Ventres," from \$75,000 to \$100,000.

The amendment was agreed to.

The amendment was agreed to.

The next amendment was, in line 1296, to increase the appropriation for the care, support, education, &c., of the "Arickarees, Gros Ventres, and Mandans," from \$75,000 to \$85,000.

The amendment was agreed to.

The next amendment was, in line 1303, after the word "hundred," to insert the words "and twenty-five;" in the same line, after the word "dollars," to insert the words "in all;" and in line 1304, before the word "thousand," to insert the words "and twenty-five;" so as to

For this amount, to subsist and properly care for the Apache Indians in Arizona and New Mexico who have been or may be collected on reservations in New Mex-

ico or Arizona, namely, for those in Arizona, \$300,000, and for those in New Mexico, \$125,000; in all, \$425,000.

The amendment was agreed to.

The next amendment was, in line 1307, after the word "subsistence," to insert the words "and civilization," and in line 1309, before the word "who," strike out "and transportation of the same;" so as to

For subsistence and civilization of the Arapahoes, Cheyennes, Apaches, Kiowas, Comanches, and Wichitas who have been collected upon the reservation set apart for their use and occupation, \$250,000.

The amendment was agreed to.

Mr. BOGY. I desire to call attention to an amendment passed over, which I did not object to, on page 46, line 1112. This is stricken

And the President of the United States is hereby directed to prohibit the removal of any portion of said Sioux Indians to the Indian Territory unless the same shall be hereafter authorized by act of Congress.

I should prefer that this claim should not be struck out of the bill,

and therefore I will reserve it for action in the Senate.

The PRESIDING OFFICER. The amendment will be reserved.

The next amendment of the Committee on Appropriations was, in line 1333, to increase the appropriation for the care, support, education of the care, support, education for the care, tion, &c., of Indians of the Central superintendency from \$20,000 to

The amendment was agreed to.

The next amendment was, in line 1340, to increase the appropriation for the care and subsistence of the Kansas Indians from \$5,000 to \$10,000.

The amendment was agreed to.

The next amendment was agreed to.

The next amendment was, in line 1351, after the word "Secretary," to strike out the words "having jurisdiction of Indian affairs" and insert "of the Interior," and in line 1352, after the word "food," insert the word "schools;" so as to read:

For this amount, or so much thereof as may be necessary, to provide, under the direction of the Secretary of the Interior, settlements, clothing, food, schools, agricultural implements, and seeds for the Modoc Indians that have been removed to and are now residing within the Indian Territory, \$7,000.

The amendment was agreed to.

The next amendment was, in line 1384, to increase the appropriation for the n cessary transportation of goods, provisions, and other articles for the various tribes of Indians from \$200,000 to \$219,000.

The amendment was agreed to.

The next amendment was, in line 1393, after the word "that," to strike out the word "hereafter;" so as to make the proviso read:

Provided, That contracts involving an expenditure of more than \$2,000 shall be vertised and let to the lowest responsible bidder.

Mr. DAVIS. I think we had better reserve that amendment as others have been reserved for the Senate. That is an amendment, I believe, on which the committee itself divided, as to striking out "hereafter." I will submit to the chairman whether we shall act nion it now, or whether he prefers to leave it for the Senate. I say to him that I have a decided opinion upon this subject, as he knows, and that I desire to pay some little attention to the matter.

Mr. ALLISON. Does the Senator from West Virginia object to striking out the word "hereafter?"

Mr. DAVIS. I do. If the Senator will recollect that in the committee we had some considerable talk about it, and there was a vote upon it. Unless the chairman desires otherwise, I would prefer that the reserved for the Senate.

The PRESIDING OFFICER. The amendment will be reserved for

future action in the Senate.

Mr. ALLISON. That is, it will be agreed to pro forma and reserved

for a vote in the Senate.

Mr. DAVIS. I would prefer that it be not passed upon now, and hope the Senator will not ask that it be now agreed to.

Mr. ALLISON. I think, if the Senator will call to mind the discussion in the committee, which I will not speak of here, he will not object really to the adoption of this amendment. The law now is that the Commissioner of Indian Affairs shall not make an expenditure exceeding \$1,000 without public advertisement. This amendment changes an existing law if you leave the word "hereafter" in; that is to say, in the future the Commissioner of Indian Affairs may pay \$2,000 on advertising. While we were willing to concede to the House that for moneys appropriated under this bill we would allow him to advertise to the extent of two thousand instead of one thousand dollars, yet we did not wish to so change the law as to authorize in all the future his making contracts to the extent of \$2,000 without public letting instead of \$1,000 as now provided by law.

Mr. DAVIS. The Senator is certainly mistaken. The law now contains, and the last appropriation bill contained the word "here-

after.

Mr. ALLISON. Undoubtedly; but it stands in the law "hereafter \$1,000." Here we say "hereafter \$2,000;" and therefore we change

Mr. DAVIS. Then, if the Senator desires it, why not strike out "two" and insert "one," and let the word "hereafter" remain? Then it will be just as it was in the last appropriation bill. But the Senator just transposes it. The committee say that "hereafter" must come out and the word "two" before "thousand" must stay in; which, of course, is a change from what we had last year or in pre-

vious years. However, I think it best to let the amendment be passed over to be acted upon hereafter.

Mr. ALLISON. Very well.

The PRESIDING OFFICER. The amendment will be passed over. The next amendment of the Committee on Appropriations was, in line 1407, after the word "approved," to strike out the word "twenty-second" and insert "twenty-third;" so as to read:

To complete the survey of the lands of the Cherokee Indians of North Carolina, recently acquired from W. H. Thomas by purchase, the Secretary of the Interior, as directed by the act of Congress approved 23d day of June, 1874, &c.

The amendment was agreed to.

The next amendment was agreed to.

The next amendment was, in line 1409, after the word "of," to strike out the word "one" and insert "two," and after the word "dollars," in line 1410, to strike out:

To be paid out of the moneys placed to the credit of the eastern band of Chero-kee Indians upon the books of the Treasury Department under act of August 15, 1876, entitled "An act making appropriations for the current and contingent ex-penses of the Indian Department, and for fulfilling treaty stipulations with vari-ous Indian tribes, for the year ending June 30, 1877, and for other purposes.

And in lieu thereof to insert:

Or so much thereof as may be necessary.

So as to read:

Is hereby authorized to expend the sum of \$2,500, or so much thereof as may be

The amendment was agreed to.

The next amendment was, after line 1419, to strike out the following

For this amount, to pay Marcus Erwin, of Asheville, North Carolina, for services as attorney in examining the papers in the purchase of a judgment on W. H. Thomas in behalf of the North Carolina Cherokees, \$300; to be paid out of the moneys placed to credit of eastern band of Cherokees on the books of the Treasury August 15, 1876.

Mr. BOGY. I have some information in regard to this amendment. A gentleman called upon me yesterday and told me that this should not be stricken out; that this Mr. Erwin has rendered the services mentioned in the bill here and is entitled to reasonable compensa-tion, and he thought the \$300 was about a fair compensation for the work which he did and which is mentioned in the item. I have no

work which he did and which is mentioned in the item. I have no positive information, but I presume the Senator from North Carolina [Mr. Merrimon] has, because this is a North Carolina case.

Mr. ALLISON. This clause was struck out for two reasons. First, we supposed it to be in the nature of a private claim and that it ought not to be in this bill. Secondly, we had no information as to the justice of the claim, and we did not know but that the House committee might have some information. Therefore we proposed to strike it out and the conformace can cartainly rejected; it is not and strike it out, and the conference can certainly re-instate it if upon

strike it out, and the conference can certainly re-instate it if upon examination the proper information is furnished.

Mr. MERRIMON. I have no personal knowledge about this matter further than that Mr. Erwin, I know, was counsel for the Indians, but what his fees amounted to, when due, and how they were to be paid, I do not know. I only know he was counsel, and I dare say he is entitled to the money or this provision would not have been inserted in the House bill.

Mr. ALLISON. I think very likely the Committee on Appropriations had not sufficient information to justify them in recommending the appropriation; and, therefore, we struck it out, and if it is correct we can put it in in conference, as I suppose we shall have a conference on this bill.

The amendment was agreed to.

The amendment was agreed to.

The next amendment was, in line 1427, after the word "the" to strike out the words "Commissioner of Indian Affairs" and insert the words "Secretary of the Interior;" and in line 1429, after the word "appropriation," to strike out the word "bill" and insert "act."

The amendment was agreed to.

The next amendment was after line 1433 to insert:

For this amount, or so much thereof as may be necessary, to enable the Secretary of the Interior to employ counsel to defend suits now pending against the North Carolina Cherokees, \$1,500; said amount to be expended out of the funds in the United States Treasury belonging to said North Carolina Cherokees.

The amendment was agreed to.

The next amendment was agreed to.

The next amendment was in line 1455 after the word "advertising," to insert the words "at rates not exceeding regular commercial rates;" in line 1457, after the word "twenty," to insert the word "five;" and in the same line after the word "dollars," to insert the words "to be available immediately;" so as to read:

To pay the expenses of purchasing goods and supplies, under contract, for the Indian service, including advertising, at rates not exceeding regular commercial rates, inspection, and all other expenses connected therewith, including telegraphing, \$25,000, to be available immediately.

The amendment was agreed to.

The next amendment was in line 1461 to increase the appropriation "for the support of schools not otherwise provided for, for the

tion "for the support of schools not otherwise provided for, for the support of industrial schools, and for other educational purposes for the Indian tribes," from \$25,000 to \$40,000.

The amendment was agreed to.

The next amendment was after line 1462 to insert:

For the services, at not exceeding fifty cents per day each, of Indian police in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations, \$10,000.

The amendment was agreed to.

Mr. BOGY. I wish to reserve that amendment when we get into

The PRESIDING OFFICER. The Senator from Missouri asks that that amendment be reserved. It will be reserved.

The next amendment was to insert, after line 1466:

For this amount, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior in the care and support of the Otter Tail, Pillager, Pembina, and Mississippi Chippewa Indians, on the White Earth reservation in Minnesota, and to assist them in their agricultural operations, \$5,000; and for the erection of a suitable building for a grist-mill in connection with the saw-mill on said reservation, \$5,000; in all, \$10,000.

The amendment was agreed to.
The next amendment was to insert, after line 1475:

The next amendment was to insert, after line 1475:

To enable the Secretary of the Interior to carry out in part the provision of the act entitled "An act to abolish the Miami tribe of Indians, and for other purposes," approved March 3, 1873, the following sums are hereby appropriated, to be charged to the Miami tribal fund, and to be immediately available, namely: For payment to said Miamies as elected to become citizens under said act their proportion of the tribal moneys, \$33,133.96; and for payment to the confederated bands of Kaskaskia, Peoria, Piankeshaw, and Wea Indians, \$24,922.03; in all, \$58,055.99.

Mr. ALLISON. In line 1467, the word "twenty" where it last occurs should be stricken out and "fifty" inserted. That is the exact sum as appears by the appropriations. It should be \$24,952.

The amendment to the amendment was agreed to.

The amendment, as amended, was agreed to.

The amendment, as amended, was agreed to.

The amendment, as amended, was agreed to.

The next amendment was to insert, after line 1489:

That the sum of \$20,000 is hereby appropriated out of the fund provided by article 1 of the treaty with the Great and Little Osages, proclaimed January 21, 1867, known as the civilization fund, for the education of forty youths, to be selected by the Secretary of the Interior from the various Indian tribes in the United States; said youths to be educated at some one or more of the various institutions of learning in the United States which may be willing to receive and provide for them.

Mr. BOGY. I wish to reserve that amendment.

The PRESIDING OFFICER. It will be reserved accordingly.

Mr. ALLISON. That is, it will be agreed to in committee, and reserved for a separate vote in the Senate.

The PRESIDING OFFICER. So the Chair understands; it is to be reserved for action in the Senate.

The amendment was agreed to.

The amendment was agreed to.

The next amendment was, in line 1521, after the word "Territory," to strike out "twenty" and insert "thirty;" in the same line, after the word "California," to strike out "twenty" and insert "thirty;" in line 1523, after the word "Territory," to strike out "ten" and insert "twenty; "in line 1525, after the word "Territory," to strike out "five" and insert "eight;" in line 1528, after the word "Mexico," to strike out "fifteen" and insert "twenty-five;" in line 1529, after the word "Oregon," to strike out "ten" and insert "twenty;" and in line 1531, after the word "and," to strike out "twenty-two" and insert "seventy-five;" so as to make the clause read:

Territoriolegical expenses of the Indian service in the following States and Territory.

sert "seventy-live;" so as to make the clause read:

For incidental expenses of the Indian service in the following States and Territories, namely: In Arizona Territory, \$30,000; California, \$30,000; Colorado, \$4,000; Dakota Territory, \$20,000; Idaho Territory, \$3,000; Montana Territory, \$8,000; Washington Territory, \$10,000; Wyoming Territory, \$1,000; Nevada, \$10,000; Territory of New Mexico, \$25,000; Oregon, \$20,000; Utah Territory, \$10,000; Central superintendency, \$4,000; in all, \$175,000; Provided, That the same shall be used for annuity goods, subsistence, agricultural implements, for educational purposes, for repairs of flour-mills, saw-mills, agency buildings, incidental transportation, and for paying employés.

The amendment was agreed to.

The next amendment was to insert, after line 1536:

For general incidental expenses of the Indian service in Minnesota, \$2,000.

The amendment was agreed to.

The next amendment was to insert, after line 1538:

For general incidental expenses of the Indian service in Wisconsin, \$1,000.

The amendment was agreed to.

The next amendment was to insert, after line 1540:

For general incidental expenses of the Indian service in the Indian Territory, \$1,000.

The amendment was agreed to.

The next amendment was, in line 1556, after the word "dollars," to

The next amendment was, in line 1556, after the word "dollars," to insert the following proviso:

Provided, That the Secretary of the Interior shall ascertain and report to Congress at its next session whether the appropriations heretofore made for the payment of interest on said stocks have been expended according to the provisions of the trusts under which they are held, and if any part of said trust funds, appropriated to and required for educational purposes, have been expended for other purposes by either of said tribes. The Secretary of the Interior shall also inquire and report upon the educational system of the five tribes of the "Union agency" of the Indian Territory, and what they have accomplished, and recommend a plan for the expenditure of the educational funds of said tribes. He shall also ascertain and report what debts have been contracted by said nations, and the objects for which they were incurred, and what legislation, if any, is necessary in regard to the same; and the sum of \$2,000, or so much thereof as may be necessary, is hereby appropriated, to enable the Secretary of the Interior to make said inquiry.

The amendment was agreed to.

The amendment was agreed to.

Mr. BOGY. I wish to reserve that amendment.

The PRESIDING OFFICER. The amendment has been agreed to pro forma, and will be reserved for consideration in the Senate.

The next amendment was, in line 18 of section 2, to strike out the word "two" and insert "three;" so as to make the last provise to rection 2 read. section 2 read:

Provided, however, That no purchase of supplies exceeding in the aggregate \$500 in value at any one time shall be made without advertisement, except in case of exigency, when purchases may be made in open market in amount not exceeding \$3,000.

The amendment was agreed to.

The next amendment was, in section 3, to strike out the following words in lines 1, 2, 3, 4, 5, and 6:

So much of section 5 of the act of March 3, 1875, as limits the annual expenditures for employé force at anyone Indian agency to \$6,000, or, in the discretion of the Secretary of the Interior, to \$10,000, is hereby repealed; and the Commissioner of Indian Affairs.

And insert:

The Secretary of the Interior.

So as to read:

SEC. 3. That the Secretary of the Interior is hereby authorized to employ such persons and at such salaries at any Indian agency as he may deem necessary for aid agency: Provided, That the expenditure for such purpose shall not exceed the limits of existing appropriations; and all sums appropriated by this act for pay of employes, under treaty-stipulations or otherwise, may, if necessary, be used in paying employes other than those specifically named herein.

The amendment was agreed to.

The next amendment was to strike out section 4, in the following words:

SEC. 4. That whenever, in the judgment of the Commissioner of Indian Affairs, the funds herein or hereafter appropriated for any tribes or bands of Indians can be more advantageously used for any other tribe or band of Indians, he is hereby authorized to so use such funds: Provided, That nothing herein contained shall be so construed to extend to appropriations made in fulfillment of treaty provisions, and that the permission herein given is extended to the unexpended balances of appropriations made by the acts of March 3, 1875, and August 15, 1876.

The amendment was agreed to.

The next amendment was, in line 3, section 5, [4] after the word "transportation," to strike out the words "and distribution;" in the same line, after the word "same," to strike out the words "to Indians on reservations which are necessarily supplied by the way of the Missouri River;" and in line 6, after the word "available," to insert the words "but no such goods and supplies shall be distributed or delivered to any of said Indians prior to July 1, 1877;" so as to read:

SEC. 5. [4] That so much of the appropriations herein made as may be required to pay for goods and supplies, and for transportation of the same, for the year ending June 30, 1878, shall be immediately available; but no such goods or supplies shall be distributed or delivered to any of said Indians prior to July 1, 1877.

The amendment was agreed to.
The PRESIDING OFFICER. This concludes the amendments of

The PRESIDING OFFICER. This concludes the amendments of the Committee on Appropriations.

Mr. ALLISON. There is one omission. The Senator from Colorado [Mr. Chaffee] calls my attention to page 5, line 107, in the appropriation for interpreters for tribes in Colorado. The word "two" should be stricken out and "three" inserted, so as to read "three for the tribes in Colorado;" and on page 6, line 108, after the words "White River" "and Southern Ute" should be inserted.

Mr. DAVIS. I ask the chairman whether the first amendment just

read is from the committee?

Mr. ALLISON. Yes, sir. The Senator will see that it was agreed to in committee.

Mr. DAVIS. I only wanted to know.

The PRESIDING OFFICER. The question is on these amendments of the Senator from Iowa, [Mr. Allison.]

The amendments were agreed to.

Mr. MITCHELL. I desire to appeal to the chairman of the Committee on Appropriations and to the Senate for unanimous consent to permit me to offer an amendment that has not been offered heretofore, and which would have been offered and submitted to the committee had I not been detained from the Senate as I have been for a number of days engaged on investigating-committees of the Senate. I will state what the amendment is, and I think there will be no objection to it. I hope there will not be any objection to it at least. I move to insert, after line 9, on page 68, as a separate section of the bill, the following words:

SECTION —. That the Secretary of the Interior be, and he is hereby, authorized to pay, out of the unexpended balance standing on the books of the Indian Office of appropriation heretofore made for the expenses of the board of Indian commissioners for the fiscal year 1576, to James Brown, late Indian agent in Oregon, the sum of \$1,170.33 for services rendered as Indian agent.

I offer this amendment in pursaunce of a letter which I hold in my hand from the Department, and which I shall read in order that the chairman of the committee and members of the committee generally and of the Senate may understand it, as I think, if it is understood, there will be no objection to it. The letter of the Commissioner of Indian Affairs to the Secretary of the Interior states the case fully. I will read it:

I will read it:

Department of the Interior, Office of Indian Affairs,

Washington, D. C., January 10, 1877.

Sir: By authority of the honorable Secretary of the Interior, under date of December 11, 1874. James Brown, of Oregon, was appointed special agent of the Department to look after and exercise control over Indians in that State who leave their reservations and loiter about towns, to the great annoyance of the citizens and to their own demoralization, at a salary of \$2,000 per annum, provided there were funds available for the purpose, this amount to include the expenses of travel and subsistence incident to the duties assigned him.

When this appointment was made it was believed that funds appropriated for incidental expenses in Oregon were applicable to the payment of Mr. Brown's salary, and he was actually paid therefrom for the services rendered by him from the 'fime he recommenced to perform these duties, namely, January 1, 1875, until the 30th of June following.

Upon the presentation of his account for salary for 'he third and fourth quarters of 1875, it was adjusted by this bureau and referred to the Second Auditor of

the Treasury for settlement, the amount to be charged to the appropriation "incidental expenses Indian service in Oregon, 1875."

Under date of January 21, 1876, the account was returned by the Auditor with the remark that his office doubted its authority to report the claim to the Second Comptroller because the appropriation for the fiscal year ending June 39, 1876, provided for only one special Indian agent in Oregon, and the provisions of law, found in sections 3678 and 3682 of the United States Revised Statutes, page 723, seem to forbid the allowances of claims of this kind, especially from the appropriation designated. By this decision of the Auditor, which the solicitor of your Department has informally pronounced to be right, Mr. Brown is debarred from his pay until further legislation by Congress, and was notified that his services as special agent must terminate on the 31st of January last.

There is an unexpended balance of about \$2,000 on the books of this office of the appropriation made for the expenses of the board of Indian commissioners during the fiscal year 1876, and there being no outstanding indebtedness against the same. I respectfully request that the matter be submitted to Congress by the Department with the recommendations that authority be granted by that honorable body to pay out of this balance the amount justly due Mr. Brown for services rendered as above indicated from July 1, 1875 to January 31, 1876, namely, \$1,170.33.

Very respectfully, your obedient servant,

To Hon, the Secketary of the Interior.

To Hon. the SECRETARY OF THE INTERIOR.

This letter of the Commissioner to the head of the Interior Department was transmitted to the honorable chairman of the Committee on Indian Affairs, and by the way I perhaps ought to apologize for having this letter. I was down in the room of the Committee on Indian Affairs a moment ago and I told the clerk I wished to submit it with the amendment to the Senate.

The accompanying letter is as follows:

The accompanying letter is as follows:

DEPARTMENT OF THE INTERIOR
Washington, Junuary 13, 1877.

SIR: I have the honor to transmit herewith a copy of a communication dated the 10th instant from the Commissioner of Indian Affairs upon the subject of the payment of the salary due Special Agent James Brown, who was appointed under authority of this Department in December, 1874, to look after and exercise control over the Indians in Oregon who were in the habit of straying from their reservations.

There appears, under the decision of the accounting officers of the Treasury, to be no fund at present under which Mr. Brown's salary for the third and fourth quarters of 1875, namely, from July 1, 1875, to January 31, 1876, amounting to \$1,170.33, can be paid, and the Commissioner suggests that this sum be taken from an unexpended balance of about \$2,000 standing on the books of the Indian Office of the appropriation made for the expenses of the board of Indian commissioners during the fiscal year 1876, and against which no outstanding indebtedness exists. The subject has the approval of this Department and is respectfully commended to the favorable consideration of Congress.

Very respectfully, your obedient servant,

Z. CHANDLER, Secretary.

Z. CHANDLER, Secretary. Hon. WILLIAM B. ALLISON,
Chairman of Committee on Indian Affairs United States Senate.

I know I have no right to offer this amendment at this time, not having submitted it to the Senate and not having had it referred to the Committee on Appropriations. I was not aware in fact that the Indian appropriation bill had progressed so far as it has. Indeed, I was not aware until last night that it had been reported to the Senate by the Committee on Appropriations, and I appeal to the Senator to allow this amendment to be offered at this time and adopted. Mr. Brown is a one-armed man, a man who has been in the Indian service since Oregon was first extled—a very excellent man. It is evident Brown is a one-armed man, a man who has been in the Indian service since Oregon was first settled—a very excellent man. It is evident from these letters that he has not been paid for these services from the fact that there was a misapprehension in regard to the power of the Department to pay him out of the incidental fund. For the services which have been rendered he has been paid in part, and this is simply to pay him the balance. It makes no new appropriation. It simply asks that this unexpended balance of \$2,000 standing on the books of the Department to the credit of this Indian commissioner's fund and against which there is no indebtedness, he applied to this proposes.

the Department to the credit of this Indian commissioner's fund and against which there is no indebtedness, be applied to this purpose; and I shall be very much obliged, and I shall know that an act of justice and right will have been done if this amendment is adopted.

Mr. ALLISON. I regret exceedingly that I am unable to accommodate my friend from Oregon. I will promise him that the Committee on Indian Affairs, which committee seems to have jurisdiction and charge of this matter, will look into it at a very early day, and make a report upon it. Of course, if this claim should be presented and approved, this bill might be loaded down with a great many other meritorious claims.

meritorious claims.

Mr. WITHERS. We have stricken out several propositions of the

kind.

Mr. ALLISON. I will say to my friend that if it is to be put upon an appropriation bill at all, it should go upon the deficiency bill, and not a bill for the current expenditures of 1877 and 1878.

Mr. MITCHELL. I should like to ask the chairman if there are not appropriations of this kind in the bill before the Senate?

Mr. ALLISON. None whatever that I know of.

Mr. MITCHELL. Under the promise that the chairman of the committee makes me, that he will give the matter early consideration, and try to get it on the sundry civil bill, or the deficiency bill, or some other bill, I shall not insist on the amendment. Knowing that I have not the right to do so I shall not insist upon it.

Mr. BOGY. I desire to offer an amendment. I move to insert on page 32, after line 768, the following:

page 32, after line 768, the following:

And the proper officers are hereby authorized and directed to execute the resolution passed on the 26th of June, 1873, by the Osage national council and approved by the Commissioner of Indian Affairs on the 8th of July, 1874, for the payment of the balance of the debt as fixed and limited by such resolution out of the proceeds of the sales of the Osage lands now in the custody of the United States: Provided, That the authorized authorities of the Osage Nation request the payment of the same.

I move that as an addition to the bill.

Mr. MERRIMON. I beg to give notice now that I shall move, at the proper time, to non-concur in the amendment proposed by the committee, which is found between lines 1420 and 1427. I want that amendment reserved.

Mr. ALLISON. I raise the point of order on the amendment proosed by the Senator from Missouri. That amendment is not in order,

I believe

The PRESIDENT pro tempore. The Senator from Iowa will state

the point of order.

Mr. ALLISON. The point of order is that the amendment provides for the payment of a claim, and not for an expenditure for the fiscal

The PRESIDENT pro tempore. The Chair sustains the point of or-

der.
Mr. BOGY. It is an authority to pay an existing debt of the Osage Nation or the nation of Osage Indians. I thought I understood a moment ago that I was authorized to present this amendment by the consent of my friend himself. The amendment was submitted by myself some days ago and went to the Committee on Indian Affairs. It was reported back by the committee without being adopted, with the distinct understanding that I could offer it in the Senate. I thought that was the distinct understanding of the committee. The amendment has been offered and it went to the committee in regular order at a proper time.

order at a proper time.

Mr. ALLISON. The Senator from Missouri offered an amendment some days ago, which was referred to the Committee on Indian Affairs. That amendment I reported back by direction of the committee without recommendation. When that amendment is offered I presume it will be in order, but that is not the amendment which the Senator has now offered. He has offered another, a new or at least a different amendment from the one proposed.

The PRESIDENT pro tempore. If the Chair understands it so, the Chair will rule it out, as not in order.

Mr. BOGY. I simplified the amendment and made it shorter, but

Mr. BOGY. I simplified the amendment and made it shorter, but I now offer the same identical amendment which was offered before and which went to the committee.

Mr. ALLISON. That amendment, I presume, will be in order.
Mr. BOGY. I withdraw the former amendment and move to strike
out all after and including the words "of which amount," in line 740,
page 31, down to and including the words "per capita," and to insert
the following:

And that no expenditure of any of the foregoing sums appropriated for the Osage Indians shall be expended except for such objects and in such amounts as the Osage national council shall, with the approval of the Secretary of the Interior, direct, and the proper officers are hereby authorized and directed to execute the resolution passed on the 26th of June, 1873, by the Osage national council and approved by the Commissioner of Indian Affairs on the 8th of July, 1874, for the payment of the balance of the debt as fixed and limited by said resolution out of the proceeds of the sales of the Osage lands now in the custody of the United States: Provided, The authorized authorities of the Osage Nation request the payment of the same: And provided further. That the agent of the Osage Indians shall not retain or appoint any person as an employé of his agency other than persons belonging to the Osage Nation except for sufficient reason, to be first certified to the Commissioner of Indian Affairs and approved by him.

I am informed by the Senator from Iowa that I may now modify this amendment so as to make it the amendment which I proposed awhile ago, and I shall do so, as it simplifies the question. The amend-

ment will be so modified as to assume the shape of this amendment.

A claim or a debt has existed against the Osage Nation of Indians for a great many years called the Vann and Adair claim, for services for a great many years called the Vann and Adair claim, for services rendered by these men as attorneys for the Indians. The amount is large and the debt is justly due, admitted to be justly due by the Indians, and they have been very anxious to pay it, but they are not willing to pay the full amount. It is within the power of the Commissioner or the Secretary of the Interior at any time to pay that amount of money out of the Indian fund. A portion of the debt has already been paid. They are very anxious that this matter should be settled and disposed of. They therefore ask that the Secretary of the Interior examine this debt, look into the merits of the claim, and that he allow the sum, subject to their approval, so that the subject

the interior examine this debt, look into the merits of the claim, and that he allow the sum, subject to their approval, so that the subject may be disposed of officially, and that they will not be in danger of paying more than they think they ought to pay.

I could explain here, if it were necessary, the history of this claim. It is a just claim. The Indians admit that it is strictly due; they admit that they are indebted; and all they desire is protection against an overallowance. The chief of the tribe told me a few days ago myself, at my room, that he would not object to a few thousand dollars more or less, but they are anxious that the claim should be setmyself, at my room, that he would not object to a few thousand dol-lars more or less, but they are anxious that the claim should be set-tled. It has been hanging over them for nearly ten years, and it is a large claim. All they ask is that when it is allowed by the Secre-tary of the Interior they shall be consulted. That is the whole of the subject. As it is now, the claim can be allowed without their being consulted at all. A portion of the debt has been paid. Two or three years ago in the Senate I introduced a resolution of inquiry upon this very subject myself. I think the amendment should be allowed. It is at the desire of the Indians. I am familiar with the history of the claim myself. I have talked with the chief very lately. It is inst. is at the desire of the indians. I am infinitar with the instory of the claim myself. I have talked with the chief very lately. It is just, it is fair, and they desire to be protected in the amount which may hereafter be allowed; but they are very anxious that it should be disposed of finally. I therefore hope that the amendment will be

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Missouri, against which the Chair understands

the point of order to be withdrawn.

Mr. ALLISON. I hope the amendment will not be adopted, how-This is a very familiar claim; it has been many times considered; and it is now proposed to place it upon this Indian appropriation bill. As I understand the facts, and the Senator from Missouri will correct me if I am mistaken, this amendment if adopted would compel the Secretary of the Interior to pay \$180,000 out of the funds of the Osages. It leaves to the Secretary of the Interior no discretion whatever. It directs him to pay a certain sum in pursuance of a resolution of the council of the Osages. As I understand, this council have already directed the payment of this sum, or rather they have directed the payment of \$230,000, of which sum \$50,000 has already been paid by the present Secretary of the Interior, or by a former Secretary.

former Secretary.

I do not wish to place any obstacle in the way of a proper adjudication of this question. It is claimed, I know, and very seriously and strenuously, by the representatives of Vann and Adair that they rendered services to these Indian tribes for which they should receive compensation. That claim, whatever it may have been, has been considered by the departmental officers or by the Secretary of the Interior, and has been the subject of investigation by both branches of Congress. What I object to is placing the amendment upon an appropriation bill. I think it ought to be acted upon independently and separately, and stand upon its own merits. The Committee on and separately, and stand upon its own merits. The Committee on Indian Affairs last year made a considerable effort in the way of in-vestigating this claim, as my friend from Missouri will very well recollect, and the committee were divided in opinion as to what should be done with this question. It appears here in the shape of an amendment to be placed upon an appropriation bill. If this amendment is placed upon the bill, there is no escaping the payment of the whole of this sum. I think it is unjust to attempt to place it upon this bill, this sum. I think it is unjust to attempt to place it upon this bill, unjust to this Indian tribe, although they have agreed to pay this sum, but in the Indian council I believe there is a minority at least of these Indians who are opposed to the claim. I think it ought to be fully and fairly considered by a committee of Congress, and then passed upon on its own merit by the Senate and the House.

Mr. BOGY. I would say in one word that the object of the amendment is to protect the Indians. It is to prevent this debt from being allowed, as it may be allowed now by law at any time and paid out of the Indian funds. If the amendment is adopted, the payment can

allowed, as it may be allowed now by law at any time and paid out of the Indian funds. If the amendment is adopted, the payment cannot be made without the consent of the Indians; they would have full control over the subject. It is a large claim, and it is an old claim, as my friend well says, and that is the reason why it should be disposed of. It has been before us two or three times. The Senator admits himself that these people have rendered services, and that there is some merit in the claim. He does not deny that, but he says it has no business on this appropriation bill. If I had time to look over the bill I could find private claims in the text of the bill now. over the bill I could find private claims in the text of the bill now. There can be no objection to the amendment; it is for the protection of the Indians. The Secretary is not compelled to allow the full amount, and whatever he does allow the Indians may refuse to sanc-

Mr. ALLISON. No money can be paid except by appropriations. The Secretary cannot pay one dollar of this claim until Congress acts upon it. It is well known that the Secretary of the Interior is opupon it. It is well known that the Secretary of the Interior is opposed to the payment of this claim or any portion of it. These attorneys have received \$50,000 already for the services which they claim to have rendered. When that was received, as I understood it was upon the idea that it was to be in full for those services. This provision, if placed upon this bill is no restriction upon the Secretary of the Interior. Is it claimed that he can pay a larger sum unless restricted by this law? No sum will be paid unless we pass a law authorizing its payment. I do think that it is not proper to place this character of claims upon an appropriation bill providing for the this character of claims upon an appropriation bill providing for the future service of the Indians. No part of this can be paid until we act upon it.

Mr. OGLESBY. What is the amendment pending !

The PRESIDING OFFICER, (Mr. MORRILL in the chair.) amendment of the Senator from Missouri, which will be read.

The CHIEF CLERK. It is proposed to insert at the end of line 768, on page 32, the following words:

And the proper officers are hereby authorized and directed to execute the resolution passed on the 26th of June, 1873, by the Osage national council and approved by the Commissioner of Indian Affairs on the 6th of July, 1874, for the payment of the balance of the debt, as fixed and limited by such resolution, out of the proceeds of the sales of the Osage lands now in the custody of the United States:

Provided, That the authorized authorities of the Osage Nation request the payment

Mr. OGLESBY. I would ask if the Committee on Appropriations have referred that amendment to the Committee on Indian Affairs of the Senate? I ask the honorable chairman if the subject has been referred to the consideration of the Committee on Indian Affairs?

Mr. ALLISON. No, sir. The honorable Senator from Missouri introduced this amendment a few days ago and had it referred to the Committee on Appropriations. The Committee on Appropriations reported it back without recommendation, and it was laid upon the table. The Senator from Missouri now offers it on his own responsibility to the Indian appropriation bill.

Mr. OGLESBY. It has not been referred to the Committee on Indian Affairs ? Mr. ALLISON.

Last year the Senate-I mean this year for this bill? Mr. OGLESBY.

Mr. ALLISON. Not at all.

Mr. OGLESBY. This proposition was considered of sufficient importance heretofore to be referred on two separate occasions to the Committee on Indian Affairs, certainly once directly by the Committee on Appropriations. The Committee on Indian Affairs gave the subject very considerable attention and reported to this body upon it adversely once, almost with unanimity. It was referred back to the Committee on Indian Affairs and considered in full with all additional information on the subject brought before that committee for consideration. The Committee on Indian Affairs instructed me to report back adversely upon this claim, and I made in open session near the close of the last session of this Congress, by the direction of the Committee on Indian Affairs, an adverse report upon this claim. It is a matter of considerable importance, and I can scarcely think Senators will be willing here upon an appropriation bill to take up an item like this that refers to the proceedings of the Osage Indian council and that refers to contracts made between Vann and Adair, two Indian attorneys, who first made this contract with the Osage Indian tribes, and refers to the Indian treaty itself, and which is a contract that covers a great deal of territory. I say I can hardly think that the Senate would pass this amendment upon an appropriation bill the senate would pass this amendment upon an appropriation bill here, and pass it without sufficient or at least without some consideration of the subject. It involves \$180,000 of a fund that belongs to the Osage Indians, a fund under the control of the Secretary of the Interior. The Secretary of the Interior has declined to pay that amount; he has declined to recognize it. Fifty thousand dollars of the claim was paid to these attorneys. They accepted it, but, I believe, under some sort of protest. Now they come in and ask again and again for \$180,000 more.

It is said that the chief of the tribe and the council of that tribe of Indians are disposed to recognize this claim and permit it to be paid out of that fund. That belongs to all the Osage Indians as well as the council and the chief of the Osage tribe. Neither the President of this body nor the members of the Senate can tell how many of

these Osage Indians have been consulted on this subject. Great force is given to the fact that the council has consented to it.

The \$50,000 more than paid all the attorneys whatever they were entitled to. It was more than an abundant fee for all the services they entitled to. It was more than an abundant fee for all the services they ever rendered. I beg leave to say that the honorable Secretary of the Treasury, now prostrated by sickness, once an honorable member of this body, defeated the purpose to swindle the Osage Indians out of their lands to pay Messrs. Vann and Adair. He was the honorable member of this body who defeated the effort to divest these Indians of their lands and stood by the tribe. He defeated the treaty and defeated the legislation on the subject. Vann and Adair had a and defeated the legislation on the stoject. Value and Adair had a contract with the Osage Indians, it is true, from which they have received \$50,000. At one time they had a contract which would have given them half the proceeds of all that was saved by this proposed treaty with the Osages or by the proposed law of Congress that would have taken their land from them at about sixteen cents an acre. The Secretary of the Treasury did more service toward that tribe when he was a member of this body than all the lawyers they ever had in this body. Yet those attorneys had a contract with the Osage Indians through their council and their chief. I understand their chief is here trying to help put this amendment through against his tribe. I understand he is here getting Senators to vote this appropriation of money from his Indians.

of money from his Indians.

Vann and Adair have been paid all they have earned, and a fair investigation of this case will satisfy the Senate, I doubt not, that another dollar ought never to be paid to them. They were to have a large sum. I do not know but that the attorney's fees would have amounted to over \$2,000,000 at one time. They finally did agree to take \$330,000, and afterward they knocked off a hundred thousand dollar ware and were constitution with this council of Cases India. take \$330,000, and afterward they knocked off a hundred thousand dollars more, and upon consultation with this council of Osage Indians and this chief, they consented to take \$230,000, and they finally did receive \$50,000 from the Secretary of the Interior; and now they want the balance of that \$230,000, a balance of \$180,000 more, and they want the Senate of the United States to place such an amendment upon an appropriation bill and take it out of the funds of these wild Indian tribes for this attorney fee. It has been reported against twice by the Committee on Indian Affairs, and I stand here, if I stand alone, to oppose it once more.

alone, to oppose it once more.

Mr. BOGY. The Senator from Illinois is entirely mistaken when he states that it has been reported adversely from the Committee on Indian Affairs. There has been no report made. The subject was referred to the Committee on Indian Affairs, but I am not aware of any report. I think the Senator is mistaken. There was no adverse

report.

Mr. OGLESBY. The Senator from Missouri is right if he says there was no written report. I made a report verbally in open Senate twice against the claim. The Senator from Kentucky [Mr. McCreery] was present and heard me make a report on it, and although it was not a written report he took occasion to compliment me on the emphatic character of it.

Mr. BOGY. I will tell the Senator that he is entitled to the same

compliment to-day, because he is again very emphatic. This is not

the proper time to go into the merits of this claim. The object is to permit, to authorize the Secretary of the Interior to pass upon the claim, but not to pay it without the consent of the Indians. I say as a matter of law the Secretary of the Interior is authorized to do so now and to pay the money. He has done so before in part. Fifty thousand dollars of this money has heretofore been paid without the knowledge or consent of these Indians, and by law the Secretary can pay the money at any time now, and there would be no protection to these Indians. They want protection.

It is true that the chief of the Osages is in the city and that he is desirous to have this amendment passed. It was given by him to myself. It is his own amendment. I would ask the Senator from Illinois, Who is authorized to represent their interests but their chief? Who is authorized to speak for them but their council? Who is au

Who is authorized to represent their interests but their cinies? Who is authorized to speak for them but their council? Who is authorized to speak for any organized body, be it a nation or a tribe, but some organization, council, or senate, or congress? Certainly the chief has some right as the agent and the representative of that tribe. He wants this amendment adopted. Whether he be a bad man or a good man, whether he is anxious to participate in fraud, I know nothing about it; but he is very anxious that this amendment should be adopted and that this representative the result of the state of th adopted and that this money shall not be paid without the consent of the nation; not of the council, but of the nation, their own nation, and certainly there is the protection. The intention of this amendment is to protect the Indians.

The question being put, there were on a division-ayes 11, noes 13;

no quorum voting..

Mr. PATTERSON. I call for the yeas and nays in order to get a quorum.

Mr. ALLISON. The yeas and nays will be necessary unless the

amendment is withdrawn.

Mr. PADDOCK. I think it is quite apparent that there is no quorum here. I move that the Senate take a recess until to-morrow at

Mr. INGALLS. I hope not. I hope we shall finish this bill. We

can get through with it in fifteen or twenty minutes.

Mr. PADDOCK. I will withdraw my motion until it is ascertained whether there is a quorum here or not. If there is no quorum I shall

renew the motion.

Mr. ALLISON. Let us have the yeas and nays upon the amendment of the Senator from Missouri, to test whether there is a quorum

The yeas and nays were ordered; and being taken, resulted-yeas 16, nays 22; as follows:

YEAS—Messrs. Bogy, Clayton, Conover, Cooper, Davis, Dennis, Eaton, Gold-thwaite, Hereford, Johnston, Jones of Florida, Kelly, Kernan, Norwood, Ransom, and Withers—16.

NAYS—Messrs. Allison, Bailey, Booth, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Dawes, Hamilton, Harvey, Hitchcock, Ingalls, Mitchell, Morrill, Oglesby, Paddock, Patterson, Sargent, Teller, Wallace, and Windom—22.

ABSENT—Messrs. Alcorn, Anthony, Barnum, Bayard, Blaine, Boutwell, Burnside, Cockrell, Conkling, Cragin, Dorsey, Edmunds, Ferry, Frelinghuysen, Gordon, Hamilin, Howe, Jones of Nevada, Logan, McCreery, McDonald, McMillan, Maxey, Merrimon, Morton, Randolph, Robertson, Saulsbury, Sharon, Sherman, Spencer, Stevenson, Thurman, Wadleigh, West, Whyte, and Wright—37.

So the amendment was rejected.

The bill was reported to the Senate as amended.

Mr. ALLISON. I ask that all the amendments may be concurred in with the exception of those specially reserved as we went along. The PRESIDING OFFICER. It is proposed that all the amendments be concurred in except those that were specially reserved. Is there objection? There being no objection they will be considered as having been adopted. The first reserved amendment will now be The CHIEF CLERK. On page 31, line 741, the Senate, as in Committee of the Whole, struck out the words "one-fifth" and inserted "one-third;" so as to read:

That the Secretary of the Interior is hereby authorized to expend for the subsistence and civilization of the Osage Indians, out of funds belonging to them now in the Treasury of the United States, §100,000, of which amount not over one-third shall be paid to the said Indians per capita.

The PRESIDING OFFICER. The question is on concurring in the amendment made as in Committee of the Whole.

Mr. INGALLS. No, sir. I move to amend by striking out "one-third" and inserting "one-half;" so that of the \$100,000 proposed to be paid to the Osage Indians, one-half shall be paid to them per capita. The bill as originally reported provided that one-fifth should be paid. The Committee on Appropriations reported an amendment substituting one-third. I move that one-half of the \$100,000 shall be

paid to them per capita.

The PRESIDING OFFICER. The Senator from Kansas moves that "one-half" be inserted in lieu of "one-third" as proposed by the

committee.

Mr. INGALLS. I understood the Senator from Iowa to say that

Mr. INGALIS. I understood the Senator from lows to say that there would be no objection interposed to this amendment.

Mr. ALLISON. I did not quite say that. The Committee on Appropriations agreed to the provision as reported by them after considerable discussion. We thought one-third would be quite sufficient to test the experiment, and therefore the Committee on Appropriations reported one-third instead of one-fifth. Now the Senator from Kansas proposes to enlarge it to one-half. I do not think the amendment is of such importance as to divide the Senate particularly upon it, because it must go to the House for their concurrence; and I trust the Senator from Kansas will not press his amendment so as to ask

the Senator from Kansas will not press his amendment so as to ask for the yeas and nays.

Mr. INGALLS. The Osages are an independent nation. They are a distinct political sovereignty. They number about twenty-eight hundred. They are entirely capable, in my opinion, of self-government. They have a fund in cash in the Treasury amounting to something in excess of \$3,000,000 at the present time and from lands, and from other assets they will realize no less than \$5,000,000, which, added to that, gives them an aggregate of between eight and nine million dollars, making them the wealthiest community upon this continent, whether white, black, or of any other color. They have made very considerable advance in civilization, and they are exceedingly anxious that of this small pittance provided for their civilization and improvement a certain portion shall be distributed to them per capita to dispose of it as they see fit. The entire amount divided between the tribe pose of it as they see fit. The entire amount divided between the tribe per capita would be about \$35, I think. If one-half of this is given to them for their own personal distribution or expenditure, it would be about \$17.50 a year. If we intend to bring this tribe of Indians up to be self-governing, self-reliant, and to accustom them to the management of their own affairs, it certainly cannot be harmful to trust them individually with the expenditure of \$17.50 per annum.

I trust that upon a proposition that is so fair and so just as this, and that is open to no possible objection on the score of economy—

because this does not come from the Government at all; it comes from the funds of the Indians themselves—no objection will be offered

by the committee having this subject in charge.

Mr. SARGENT. The first step taken in dividing this money into per capita sums for the Indians was a mistake. Even one-fifth of it ought not to be given to them. Most of these Indians are merely blanket Indians. It is nonsense to talk about their being a civilized tribe. The larger proportion of them have no elements of civilization among them at all. They are as wild as almost any Indians, except that they are not quite so dangerous. The amount of money which that they are not quite so dangerous. The amount of money which will be parceled out to them will probably be spent for no beneficial purpose at all. They are not far advanced, and they have no use for money in such a way. They are our wards, and we should take care of them and furnish them the best articles judiciously purchased and adapted to their good. I do not think we ought to make it one-fifth, and if we say one-half, then we had better abandon our whole system of taking care of the Indians. There may be some vice in the system; but I am opposed to dividing up among them a large amount to be expended. to be expended.

Mr. INGALLS. The Senator from California states that my remark in regard to the Osage Indians is all nonsense. I beg to tell him that these Indians are just as capable of representing a State in this body and upon this floor as the Senator from California.

Mr. SARGENT. Will the Senator allow me one moment?

Mr. INGALLS. Yes, sir.

Mr. SARGENT. I merely wish to say that I did not use the discourteous remark which the Senator imputes to me; and as he has followed it up with a remark that is extremely discourteous, I disdain

to make any further reply.

Mr. INGALLS. Then the matter can stand as it is, Mr. President;
I am entirely satisfied. These Indians are capable of self-government, and they are not "blanket Indians" in the sense in which that ment, and they are not branket includes in the sense in which that term is ordinarily used. They are capable of taking care of themselves. They have an independent political organization, with their own council and their own heads of affairs; and they are entirely capable of managing this branch of their own affairs. They ask this themselves. I say that, if we are to bring them to a condition where they will be self-sustaining and self-reliant, we certainly cannot begin better than by granting them this small, insignificant sum annually to spend upon their own nation.

Mr. SARGENT. I am informed by the Commissioner of Indian Affairs that there is not a full-blooded Indian among them who wears white men's clothes; that they are in a state of barbarism. Unless we desire to throw aside the whole system which we have originated with so much care with reference to the Indians we ought

orginated with so much care with reference to the indians we ought to apply it in this instance, and not only apply it to these Indians but everywhere, or it should be entirely abandoned.

Mr. BOGY. I will say that I presume the Commissioner of Indian Affairs never has seen fifty of these Indians in his life.

Mr. INGALLS. By his own report there are two hundred and fortyfour of them who were wearing civilized dress at this time.

Mr. SARGENT. The remark I made was that there is not a full-bleeded Indian among them who were such its representation.

blooded Indian among them who wears a white man's clothes.

Mr. INGALLS. Then the Senator from California, in saying that none of these Indians wear white men's clothes, is undoubtedly mis-

Mr. SARGENT. By ordinary comprehension there would be half-breeds to which that would apply. I spoke of those who were fullbreeds.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Kansas to the amendment.

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question recurs on concurring in the amendment of the committee.

The amendment was concurred in.

The PRESIDING OFFICER. The next reserved amendment will

The CHIEF CLERK. After the words "per capita," in line 742, the Senate as in Committee of the Whole inserted the following words:

And out of this appropriation he is hereby authorized to pay for goods and supplies furnished the Usage Indians while upon a hunt during the season of 1875 and 1876 to an amount not exceeding \$14,000.

Mr. BOGY. I objected to this amendment before in committee, and gave my reasons. It is hardly worth while for me to restate them now. I said that there was no evidence before the Senate that we ought to make this appropriation. I am unable to understand how \$14,000 could be required to supply Indians upon a hunting ex-There is something wrong in the amendment, and we have or evidence to justify this thing at all. There is not a particle of evidence on the subject. It may be that there was some evidence before the committee, but we have not been furnished with that evidence here; and it seems to me the whole amount is entirely too We all know that the Indians need no supplies and no extra large. We all know that the Indians need no supplies and no extra clothing when they go out upon their hunting expeditions. They camp out; they have their own ponies, their own small quantity of ammunition, their goods, and they feed themselves from the very day they leave their homes. The hunt may be a failure, or it may not; but they are always able to supply themselves with food, and I am perfectly satisfied that this amount of goods was not furnished to these Indians to be used by them in a hunting expedition. It is an utter impossibility, and the amount should not be allowed.

The PRESIDING OFFICER. The question is on concurring in the amendment made as in Committee of they hole.

The amendment was concurred in; there being on a division-ayes

25, noes 13.

The PRESIDING OFFICER. The next reserved amendment will

be reported.

The CHIEF CLERK. The Senate, as in Committee of the Whole, inerted the following proviso in the appropriation for the Pawnees, beginning in line 784

Provided, That \$5,000 of this sum may be used in the erection of a school build

So as to read :

For support of two manual-labor schools, per third article of same treaty, \$10.000: Provided That \$5,000 of this sum may be used in the erection of a school building.

Mr. BOGY. It was my objection to this amendment that caused it to be reserved. I say the sum of \$5,000 is entirely too large for building a school-house in the Indian Territory. It is a misappropriation,

but I will not press my opposition to it.

Mr. ALLISON. This is the maximum sum. As the Senator will see, the Commissioner of Indian Affairs or the Secretary of the Interior may use a sum not exceeding \$5,000.

Mr. BOGY. They will be sure to use all of it.

Mr. ALLISON. They may want the entire sum for the purpose of erecting the school-house, and placing the proper furniture in it, or they may use only one-fifth of it. I think it had better stand as

Mr. PADDOCK. I hope the amendment will prevail.
Mr. SARGENT. I should like to make one remark. This is to be
a boarding-school, a school where scholars are to be boarded. I understand furthermore that that kind of a school is an absolute neces sity; because unless the children are separated from their parents you cannot do anything toward separating or teaching them, or improving them in their manners. It is to be a boarding school. Three thousand dollars may put up a building of that kind, and it may require more to crect it and furnish it properly.

Mr. BOGY. The Senator from California has no right to say that it is a boarding-school. The bill does not say any such thing.

Mr. SARGENT. I have it from information given to me as a mem-

ber of the Committee on Appropriations.

Mr. BOGY. I have information that it is an outrageous appropriation. If it is designed for a boarding-school, it says simply a "school-building."

Mr. PADDOCK. I should like to state for the information of the

Senator from California that these tribes of Indians were removed from my State to the Indian Territory. They were removed only the last year, and upon their reservation there they had a school-house

which cost several times the amount.

Mr. ALLISON. It cost a hundred thousand dollars.

Mr. PADDOCK. Certainly \$50,000. They are a tribe of Indians far advanced in education and civilization. I think this appropria-

far advanced in education and civilization. I think this appropriation is a very reasonable one and very just.

Mr. SARGENT. I agree entirely with the Senator from Nebraska.

Mr. DAVIS. There is something in what is said by the Senator from Missouri, that this may be a log house and cost \$250 or \$300. If it is intended to be a boarding-school, let us put in the word "boarding" before "school" by unanimous consent. I know it is out of the regular order to let it go over; but there would be no objection to such an amendment whatever, I think A school-house, as the Senator from Missouri has said, may cost \$250 or it may cost \$500. We all know that. Now, \$5,000 is to be appropriated for a school-house, and we are told by the Commissioner of Indian Affairs, through the Senator from California, that it is to be a boarding-school; but the bill does not say so. My impression is that, unless by unanimous consent we cover the ground intended, the amendment ought to be voted down. I hope the chairman, who has this bill in charge, will submit to an amendment of that kind in his own language.

Mr. CAMERON, of Pennsylvania. Mr. President, I rise mainly for the purpose of asking the Senate to go into executive session; but before I do so I want to say a word about these school-houses, and the folly and extravagance of the country now in building school-Everywhere men who have no interest in the tax-paying in the municipalities, townships, boroughs, and cities build extravagant school-houses for purposes of jobs. What do you want with a school-house costing \$5,000 in the Indian Territory? It is ridiculous; it is trumpery; it is dishonesty. A Senator said here that the school-house which these Indians left in Nebraska cost a hundred thouse of the school house which these resets anything which had man will agree to sand dollars. A house can cost anything which bad men will agree to give to corrupt men who are the contractors; but to think of a log house costing \$5,000; it is wrong.

I am as much in favor of education as anybody can be, but I do not believe that education furnishes brains, and I do not believe that colleges and schools make men fit for rulers; yet I am satisfied that people who are fitted by nature to take the lead in the world will be much benefited by having a school to cultivate them and improve their minds and hearts. It is better to cultivate their hearts than their minds, and if you make them good in health and good in heart they will be good people as leaders; but to think of spending all this money to build a log school-house out in the Indian country, where half the people have no clothes on except a breech-cloth, is ridiculous. Therefore, in order to dispose of this subject for the present, I move that the Senate proceed to the consideration of executive

Mr. ALLISON. I ask the Senator from Pennsylvania not to press that motion. We can finish this bill in fifteen minutes.

Mr. CAMERON, of Pennsylvania. No, we shall not.
Mr. ALLISON. In twenty minutes.
Mr. CONKLING. Let us try to finish it.
Mr. ALLISON. There are only three or four amendments more.
Mr. CAMERON, of Pennsylvania. I shall occupy more than five minutes myself, and besides that, there is a very important treaty between this country and Europe, which I desire to bring before the

Senate and the country.

Mr. SARGENT. We should finish the bill.

Mr. ALLISON. Upon the motion of the Senator from Pennsylvania I ask for the yeas and nays, that we may see whether or not we can finish an appropriation bill within a reasonable time. The PRESIDING OFFICER. The Senator from Pennsylvania

moves that the Senate proceed to the consideration of executive busi-

moves that the Senate proceed to the constant of the control of the reason of the constant of the control of the reason of the control of the

The yeas and nays were not ordered.

Mr. CAMERON, of Pennsylvania. I withdraw the motion for the

Mr. SARGENT. I submit an amendment, if in order, to meet the views of the Senator from West Virginia. In line 786 of the bill I move to strike out the words "school-building" and insert "building

for a boarding-school."

Mr. KERNAN. I wish to ask the chairman in charge of this bill if the Indians ask for this school-house?

Mr. ALLISON. These Indians have been recently moved to the Indian Territory from their reservation in the State of Nebraska. They are now furnished only with temporary buildings. It is necessary if any of these Indians are to attend school that a building. sary, if any of these Indians are to attend school, that a building shall be erected for them. There is a fund of \$10,000 devoted by treaty stipulation to the purpose of education. The only object is to provide a school-building in which the youth of the tribe may be

able to attend school.

Mr. CLAYTON. Is it for the whole tribe?

Mr. ALLISON. It is for the whole tribe.

Mr. KERNAN. Did they have a boarding-school on their old reser-

Mr. ALLISON. The entire tribe has been removed to the Indian Territory. The old reservation is directed by law to be sold, and the process of sale is now going on. I think this provision is entirely cor-

Mr. INGALLS. I am inclined to think that this provision is a trifle extravagant. While I am in favor of all appropriations for education, especially for Indians, I am not sure that this is warranted by the facts relating to the Pawnee tribe. It appears by the report of the Commissioner of Indian Affairs that they have one school in operation at the Pawnee agency. During the past year the number of scholars who attended school was one hundred and ten. The same table of statistics states that \$3,800 was expended for education last year and that no member of the tribe learned to read during that period.

Mr. KERNAN. Was it all for teachers' wages?

Mr. INGALLS. All, I presume, for teachers' wages. If \$3,800 were expended last year and nobody learned to read, it seems a trifle superfluous to expend \$5,000 for another school-house. It may be entirely correct and a wise expenditure of money; but I shall be inclined to death; it

Mr. SARGENT. I understand that last year the Indians moved over from the reservation in Nebraska to this place. Of course that interrupted their schools. They had no school building to begin with until temporary accommodations could be got for them, and it is not until temporary accommodations could be got for them, and it is not strange that under the circumstances very few of them learned to read. If Senators will look at the bill they will find that these are but manual-labor schools that are required under the treaty. The treaty says they shall be maintained. Manual-labor schools teach something besides reading and writing. They imply that, of course; they imply education, but they imply their training in habits of industry. This has been beneficial to the Pawnee Indians in time past from the fact that they have been reased from the law to the pawnee. fact that they have been rescued from the lowest stage of degrada-

tion almost of Indians until they have been more than half civilized.

I believe those who are familiar with the subject will bear me out in stating that the Pawnees are well advanced for Indians. Their in stating that the Pawnees are well advanced for Indians. Their advancement has been very encouraging indeed, and in these schools a great many of them have learned to read and write, although the statistics may not show an instance in the last year. They have been taught habits of industry and are well behaved. They are very friendly, and they are extremely friendly to the Government of the United States. My recollection is that the Pawnees have furnished the scouts of the United States in a great many cases where we have needed them. needed them.

Mr. PADDOCK. That is true.
Mr. SARGENT. The Pawnee scouts are now under General Terry, Mr. SARGENT. The Fawnee scouts are now under General Terry, and it seems to me these Indians deserve well at our hands. Formerly I had charge of this bill and my recollection, a little ancient however, is that these Indians were under charge of the Society of Friends, that they have taken great interest in their welfare, and that is a society which predominate so largely in the State from which my friend from Pennsylvania comes and which he so admirably represents.

The Society of Friends are peculiarly interested in these Indians. They go out there unselfishly, not mainly as teachers, because teachers are poorly paid indeed; but more is spent from the funds of this society than from the Government itself for these Indians. They make the contributions in all their quarterly meetings. That is a matter of missionary effort with them of most devout and unselfish character. The result has been seen upon these Pawnees. I remember that I myself at the time, when I was familiar with the matter and had charge of the bill, became peculiarly interested in the characteristics of the property of the characteristics. acteristics of these Pawnees, their friendship to the Government, their aid to us when we were at war with other tribes. Of course the progress of an Indian in civilization is slow. Nature in him strives

the progress of an Indian in civilization is slow. Nature in him strives against it, and I do not think he ought to be ridiculed for the slow progress he makes or that we ought to be discouraged or despair of doing him ultimate good by the steps we take.

So far as the moneys appropriated in this bill are concerned, they are from funds paid for the exchange of their lands given to the United States. There is not a dollar there which our generosity bestows upon these tribes, and the same is true of two-thirds of the amount appropriated in the bill. It is money which we have given them for land now covered by our cities and farms and enjoyed by our propose and it is right that we should use it for the purpose of them for land now covered by our cities and farms and enjoyed by our people, and it is right that we should use it for the purpose of advancing them in civilization instead of keeping from them the inadequate means which we propose to pay them for lands which we took from them and turned over to our people. I say there ought to be a spirit of generosity on the part of the American people toward the Indians. The United States has agreed to give them school-houses, and their own money is taken to provide school-houses, and means for their Christianization and civilization ought to be provided in a proper spirit. This amendment ought to be liberally construed. in a proper spirit. This amendment ought to be liberally construed. Certainly liberality does not cost much where it does not come out of our own pocket.

The PRESIDING OFFICER. The question is on the amendment of

the Senator from California [Mr. SARGENT] to the amendment of the

committee.

The amendment to the amendment was agreed to.

Mr. DAVIS. Let us hear the amendment read as amended. The PRESIDING OFFICER. It will be reported. The CHIEF CLERK. As amended, the proviso reads:

Provided, That \$5,000 of this sum may be used in the erection of a building for a boarding-school.

The amendment, as amended, was concurred in.
The PRESIDING OFFICER. The next reserved amendment will be reported.

The CHIEF CLERK. The Senate, as in Committee of the Whole, inserted after line 1093 the following words:

For pay of additional employés at the several agencies for the Sioux in Nebraska and Dakota,  $\S47,000.$ 

Mr. BOGY. I took no time to state my objections when I moved that this amendment should be reserved. We have no information here at all as to this large amount being necessary for these Sioux nere at all as to this large amount being necessary for these Sioux Indians. It is a very large sum of money, and we certainly cannot vote for an amendment of this kind without some information. We have none at all. It provides for additional employés in the several agencies of the Sioux, \$47,000. This is a large sum of money, and I should like to be informed before I can vote for it.

Mr. ALLISON. The Senator from Missouri will recollect that this

covers the employés at all the agencies of the Sioux. There are seven different agencies in Dakota and Nebraska. This sum the Commissioner of Indian Affairs states is absolutely necessary for the employes of these agencies. Of course we are obliged to pay some respect to his estimate, and this sum has been used for the last two or three years, and a portion of the time considerably more was used for the necessary employés at these agencies.

The amendment was concurred in.
The CHIEF CLERK. The next reserved amendment is in lines 1112 to 1115 to strike out the following clause:

And the President of the United States is hereby directed to prohibit the removal of any portion of said Sioux Indians to the Indian Territory unless the same shall be hereafter authorized by act of Congress.

Mr. BOGY. I objected to striking out this portion of the bill as it came from the House and think it should be retained. I am not in favor of the removal of the Sioux Indians at any time to the Indian Territory. The object of this provision of the bill as it came from the House was to prevent anything of that kind being done without the special authority of Congress. I think that the bill as it came from the House should be retained without being amended in this

respect.
Mr. ALLISON. The committee did not consider the merits or demerits of this amendment. It is new legislation. Of course, these Sioux cannot be removed to the Indian Territory without special appropriations and special legislation therefor. It is a mere prohibitory declaration at best and it is in the nature of legislation, and I think it ought not to be admitted under our rule.

The PRESIDING OFFICER. The question is on concurring in

the amendment.

The amendment was concurred in.

The PRESIDING OFFICER. The next reserved amendment will be reported.

The CHIEF CLERK. In line 1393, after the word "that," the Senate, as in Committee of the Whole, struck out the word "hereafter;" so as to make the proviso read:

Provided, That contracts involving an expenditure of more than \$2,000 shall be advertised and let to the lowest responsible bidder.

Mr. DAVIS. In the last year's appropriation bill that proviso read:

Provided, That hereafter contracts for transportation involving an expenditure of the amount of \$1,000 shall be advertised and let to the lowest bidder.

of the amount of \$1,000 shall be advertised and let to the lowest bidder.

In the present bill the committee recommend striking out the word "hereafter," and then it is hereafter \$2,000 instead of \$1,000. Striking out the word "hereafter" changes the existing law and I think it is a great injustice to many persons who might want to transport goods under the arrangement heretofore made. If parties know they can only get the contract through agents or through those who choose to favor others, of course there will not be the same competition.

I think the word "hereafter" ought to remain, so that all parties who desire to transport goods will have an equal chance. The amount has been raised from \$1,000 to \$2,000. That I think is wrong, but I made no especial objection to it in committee. I think it ought to continue at \$1,000; but when you strike out "hereafter" what is the meaning of it? The meaning of it is that persons who have heretofore been in the habit of looking at the advertisements will be probably very little advertising.

I understand the smile of the chairman of the Committee on Indian Affairs, who thinks there is nothing in it; but persons who have

dian Affairs, who thinks there is nothing in it; but persons who have

dian Affairs, who thinks there is nothing in it; but persons who have had experience believe there is something in it, or what is the object of having it struck out? Why is it necessary to strike it out? What is the object of striking it out? It is changing the legislation.

Mr. ALLISON. The law now provides that the Commissioner of Indian Affairs shall not make contracts except by public advertisements, to an amount exceeding \$1,000. This bill as it came from the House enlarged that provision to \$2,000, so that he could make contracts to the extent of \$2,000 without public advertising. That was intended to apply in all the future, not to this appropriation. The Committee on Appropriations thought it wise to apply this provision Committee on Appropriations thought it wise to apply this provision enlarging the powers of the Commissioner to the present bill; but the Senator from West Virginia seems to object to it, and I care so little about it that I am entirely willing he shall have his own way, and that "hereafter" may stay. I think nobody will object to it.

Mr. DAVIS. All right.

The PRESIDING OFFICER. Does the Senator from West Virginia propose an amendment?

inia propose an amendment †

Mr. DAVIS. O, no, sir. Let us disagree with the recommendation of the committee, and let the bill stand as it came from the House.

The PRESIDING OFFICER. The question is in concurring in the amendment made as in Committee of the Whole.

The amendment was not concurred in.

The PRESIDING OFFICER. The next reserved amendment will

be reported.

The CHIEF CLERK. The Senate, as in Committee of the Whole, struck out lines 1420 to 1427 inclusive, in the following words:

For this amount, to pay Marcus Erwin, of Asheville, North Carolina, for services as attorney in examining the papers in the purchase of a judgment on W.H. Thomas in behalt of the North Carolina Cherokees, \$300; to be paid out of the moneys placed to credit of eastern band of Cherokees on the books of the Treasury, August 15, 1870.

Mr. ALLISON. I hope the Senator from North Carolina will not ress the retaining of that clause. It is a private claim. I have no oubt it is a just claim.

Mr. MERRIMON. If the Senator will just read it he will see that it is not a private claim.

Mr. ALLISON. I beg the Senator's pardon; I have read it.
Mr. MERRIMON. It is for services rendered under the direction of
the Department, and I trust that the chairman will not insist upon a concurrence in this amendment. I understand from a member of the committee that he is satisfied the claim is entirely just, that it is for services which this person rendered at the instance of the Depart-ment. I do not think it can be properly regarded as a private claim at all.

Mr. SARGENT. I suggest to the chairman to let it go.
The PRESIDING OFFICER. The question is on concurring in the amendment of the committee.

The amendment was not concurred in.

Mr. PADDOCK. I should like to inquire of the Chair if all the reserved amendments are through with?
The PRESIDING OFFICER. They are.

The PRESIDING OFFICER. They are.
Mr. PADDOCK. I move, in line 1107, to strike out "15" and insert "30," and in line 1110, after "Poncas," to insert "and Santees;" so as to read:

That the sum of \$30,000 of this appropriation, in addition to that heretofore appropriated, may be used for the removal and permanent location of the Poncas and Santees in the Indian Territory.

The object of the amendment is that the Santee tribe of Indians which now remains on our public lands within the settlements of Knox County, in the State of Nebraska, may be removed also to the Indian Territory, if it be found practicable to do so. I think the chairman of the committee will not now object to that sensible propo-

Mr. ALLISON. I must object without some further information or recommendation from the Department having charge of Indian affairs. The Senator from Nebraska may be right with reference to this, but

we have not the information necessary to act upon it intelligently.

Mr. PADDOCK. As I said before, when I proposed this amendment
as in Committee of the Whole, I cannot see by what process of reasoning the Committee on Indian Affairs arrives at the conclusion that the Poncas, who are on a permanent, defined settlement which they own, should be removed to the Indian Territory, and the Santees, who are within the limits of a rich and populous county in the State of Nebraska, within its settlement on the public lands, without any interest whatever, with no permanent or defined establishment, should remain there and not be removed, as the removal of the Poncas is provided for in this bill.

The PRESIDING OFFICER. The question is on the amendment

of the Senator from Nebraska. The amendment was rejected.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

## GOVERNMENT PRINTING OFFICE.

The PRESIDENT pro tempore appointed as the committee of conference on the disagreeing votes of the two Houses on the bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year Messrs. Window, SHERMAN, and WALLACE.

## COMMITTEE SERVICE.

Mr. PADDOCK. I ask unanimous consent to retire from the Committee on Public Buildings and Grounds.

The PRESIDENT pro tempore. The Senator from Nebraska asks to be excused from further service on the Committee on Public Buildings and Grounds. Is there objection? The Chairs none.

Mr. HARVEY. I ask to be excused from further service on the Committee on Agriculture.

By pranimous consent Mr. HARVEY was excused and the President of the President o

By unanimous consent, Mr. HARVEY was excused, and the President pro tempore was authorized to fill the vacancy.

# PACIFIC RAILROAD ACTS.

Mr. CAMERON, of Pennsylvania. I move now that the Senate proceed to the consideration of executive business.

proceed to the consideration of executive business.

The PRESIDENT pro tempore. The Chair will first call up the unfinished business according to the understanding, the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

## EXECUTIVE SESSION.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After six minutes spent in executive session the doors were re-opened, and (at four o'clock and fifty-five minutes p. m.) the Senate took a recess until Friday, February 9, at ten o'clock a. m.

# HOUSE OF REPRESENTATIVES.

THURSDAY, February 1, 1877. [CALENDAR DAY, February 8.]

AFTER THE RECESS.

The recess having expired, the House resumed its session at ten o'clock a.m., Thursday, February 8.

Mr. WILSON, of Iowa. In accordance with the unanimous understanding had yesterday, I move that the House now take a further recess until five minutes before twelve o'clock.

The motion was agreed to, and a recess accordingly taken.

The recess having expired, the House resumed its session at five minutes before twelve o'clock a. m.

#### PAY OF HOUSE EMPLOYÉS.

Mr. JAMES B. REILLY, by unanimous consent, submitted the following resolution; which was referred to the Committee of Accounts:

Resolved, That there be paid out of the contingent fund of the House one month's salary to each of the following-named persons, to wit: Francis A. Page, H. T. Burrows, Frank Laman, T. M. Shell, P. M. Higgins, and Wilmot Leach, at the same rate of compensation respectively which they received while in the employ of the House during the last session of Congress, and who were discharged by reason of the reduction of force provided for in the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1877, and for other purposes."

#### DISTRICT POLICE BOARD.

Mr. BUCKNER, by unanimous consent, introduced a bill (H. R. No. 4619) to abolish the board of commissioners of the Metropolitan police district of the District of Columbia, and for other purposes; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

#### WILLIAM H. OLIVER.

Mr. RIDDLE, by unanimous consent, reported back from the Committee on Invalid Pensions, with a recommendation that it be passed, the bill (S. No. 883) granting a pension to William H. Oliver, of Sweetwater, Tennessee; which was referred to the Committee of the Whole on the Private Calendar.

Mr. RIDDLE. The committee have adopted the report of the Senate committee in reference to this bill, and I ask that it be printed for the information of the House.

There being no objection, it was ordered accordingly.

ELECTION CONTEST FROM NEW MEXICO.

Mr. TOWNSEND, of New York, by unanimous consent, submitted the following resolution; which was referred to the Committee of

Resolved, That the Committee of Elections be authorized to consider the claim of STEPHEN B. ELKINS, Delegate from New Mexico, for expenses of his election contest with Pedro Valdez, who gave notice of an election contest against him, but failed to prosecute the same.

## SPIRITS DISTILLED FROM FRUIT.

Mr. BRADFORD, by unanimous consent, presented a memorial of the General Assembly of Alabama, praying the repeal of the tax on spirits distilled from fruits; which was referred to the Committee of Ways and Means.

## LANDS FOR SCHOOLS IN ALABAMA.

Mr. BRADFORD also, by unanimous consent, presented a joint resolution and memorial of the General Assembly of Alabama, asking that the public lands in Alabama be granted in aid of public schools in said State; which were referred to the Committee on Education and Labor.

# LANDS ENTERED UNDER HOMESTEAD LAW.

Mr. BRADFORD also, by unanimous consent, presented a memorial of the General Assembly of Alabama, relative to the patenting of lands entered under the homestead law of 1862; which was referred to the Committee on Public Lands.

# IMPROVEMENT OF ALABAMA RIVER.

Mr. BRADFORD also, by unanimous consent, presented a memorial of the General Assembly of Alabama, asking an appropriation for the improvement of the Alabama River; which was referred to the Committee on Commerce.

## CHANGES OF REFERENCE.

On motion of Mr. BRIGHT, by unanimous consent, the Committee of Claims was discharged from the further consideration of the follow-

Claims was discharged from the further consideration of the following, and they were respectively referred as indicated:

Joint resolution (H. R. No. 178) authorizing the Secretary of the Treasury to pay Mary Fearon and Jessie Crossin, executrices of Samuel P. Fearon, deceased, for certain registered United States bonds redeemed by the Government on forged assignments and power of attorney—to the Committee of Ways and Means.

A bill (H. R. No. 4402) for the relief of George W. Welsh, of Beaver Falls, Pennsylvania—to the Committee on War Claims.

A bill (H. R. No. 2483) for the relief of Alexander Moffit, of the District of Columbia—to the Committee on Public Buildings and Grounds.

Letter of the Secretary of the Interior, transmitting the claim of Simon Wolf, recorder of deeds for the District of Columbia to be reimbursed the amount expended by him for record books for the use of his office for the years 1873, 1874, 1875, and 1876—to the Committee on Appropriations. on Appropriations.

#### RECESS.

On motion of Mr. CALDWELL, of Tennessee, the House took a re-

cess till twelve o'clock m., when,

The SPEAKER said: The Chair asks unanimous consent that the
Chaplain be now permitted to offer prayer.

There was no objection; and prayer was offered by the Chaplain, Rev. I. L. TOWNSEND.

# CRIMES ON INDIAN RESERVATIONS.

On motion of Mr. DURHAM, by unanimous consent, the Committee on the Revision of the Laws was discharged from the further consideration of the bill (H. R. No. 4578) to extend the jurisdiction of the district and circuit courts of the United States for the punishment of crimes over Indian reservations within the limits of any State or organized Territory; and the same was referred to the Committee on the Judiciary.

#### FRANCES A. MOSES.

Mr. DENISON, by unanimous consent, introduced a bill (H. R. No. 4620) granting a pension to Frances A. Moses; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### HARRISON MITCHELL.

Mr. RIDDLE, by unanimous consent, from the Committee on Invalid Pensions, submitted an adverse report on the petition of Harrison Mitchell, formerly of Company F, Forty-eighth Regiment of Indiana Volunteers, for an invalid pension; which was laid on the table, and ordered to be printed.

#### PROHIBITORY LAW.

Mr. FRYE, by unanimous consent, submitted the following joint resolution of the State of Maine, relating to a national prohibitory law; which was referred to the Committee on the Judiciary, and ordered to be printed, and also to be printed in the RECORD.

The resolutions are as follows:

Resolves relating to a national prohibitory law.

Resolves relating to a national prohibitory law.

Whereas a joint resolution has been introduced in the national House of Representatives this the second session of the Forty-fourth Congress, proposing an amendment to the Constitution of the United States in regard to the manufacture, importation, and sale of intoxicating liquors within the United States, and which is as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein,) That the following amendment to the Constitution be, and hereby is, proposed to the States to become valid when ratified by the Legislatures of three-fourths of the several States, as provided in the Constitution:

ARTICLE —.

ARTICLE -

become valid when ratified by the Legislatures of three-fourths of the several States, as provided in the Constitution:

ARTICLE —.

"SECTION 1. From and after the year of our Lord 1900 the manufacture and sale of distilled alcoholic intoxicating liquors, or alcoholic liquors, any part of which is obtained by distillation, or process equivalent thereto, or any intoxicating liquors mixed or adulterated with ardent spirits, or with any poison whatever, except for medicinal, mechanical, and scientific purposes, and for the use in the arts anywhere in the United States and the Territories thereof, shall cease; and the importation of such liquors from foreign states and countries to the United States and Territories, and the exportation of such liquors from and the transportation thereof within and through any part of this country, except for the use und purposes aforesaid, shall be, and bereby are, forever thereafter prohibited.

"SEC. 2. Nothing in this article shall be construed to waive or abridge any existing power of Congress, nor the right, which is hereby recognized, of the people of any State or Territory to enact laws to prevent the increase and for the suppression or regulation of the manufacture, sale, and use of liquors, and the ingredients thereof, any part of which is alcoholic, intoxicating, or poisonous, within its own limits, and for the exclusion of such liquors and ingredients therefrom at any time, as well before as after the close of the year of our Lord 1900, but until then, and until ten years after the ratification hereof, as provided in the next section, no State or Territory shall interfere with the transportation of said liquors or ingredients, in packages safely secured, over the usual lines of traffic to other States and Territories wherein the manufacture, sale, and use thereof for other purposes and use than those excepted in the first section shall be lawful: Provided, That the true destination of such packages be plainly marked thereon.

"Sec. 3. Should this article hall not be resc

IN THE HOUSE OF REPRESENTATIVES, January 25, 1877.

Read and passed finally.

EDM. B. NEALLEY, Speaker. IN SENATE, January 26, 1877.

Read and passed finally.

E. S. KYES, President pro tempore. January 26, 1877.

Approved.

A true copy. Attest.

SELDEN CONNER, Governor.

S. J. CHADBOURNE. Secretary of State.

#### JOHN H. REILLY.

Mr. WILLIS, by unanimous consent, introduced a bill (H. R. No. 4621) granting a pension to John H. Reilly; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### DONATION OF CONDEMNED CANNON.

Mr. POWELL. I ask by unanimous consent that the Committee of the Whole House on the Private Calendar be discharged from the further consideration of the bill (H. R. No. 3396) donating one condemned cannon and carriage to the Soldiers' Monument Association of Susquehanna County, Pennsylvania, and that the same be put upon its passage at this time.

Mr. HURLBUT. I object.

Mr. MacDDOUGALL. I hope the gentleman from Illinois will not

interpose objection.

Mr. HURLBUT. These bills should all be considered by the Committee on Military Affairs.

Mr. POWELL. This bill has been considered by the Committee on

Military Affairs.

Mr. HURLBUT. I must insist on my objection.

## PROMOTIONS IN THE STAFF OF THE ARMY.

Mr. A. S. WILLIAMS, by unanimous consent, introduced a bill (H. R. No. 4622) to repeal the statute forbidding appointments and promotions in the staff of the Army; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

CHARGES AGAINST ASYLUM FOR INSANE.

Mr. GLOVER, by unanimous consent, from the Committee on Military Affairs, reported back the memorial of Alexander Moffitt and M McEwen, asking for a further investigation of the charges made against the management of the Government Hospital for the Insane; and moved that the committee be discharged from the further consideration of the same, and that it be laid on the table and the accompanying report printed.

The motion was agreed to.

#### BOUNTY TO VETERAN VOLUNTEERS.

Mr. GLOVER also, by unanimous consent, from the same committee, reported back with an adverse recommendation the bill (H. R. No. 4450) authorizing full payment of bounty to certain veteran vol-unteers, and moved that the committee be discharged from the further consideration of the same and that it be laid on the table and the accompanying report printed.

The motion was agreed to.

# THOMAS J. SPENCER.

Mr. HARTZELL. I ask unanimous consent that the Committee of the Whole House be discharged from the further consideration of the bill (H. R. No. 4193) to authorize the President to restore Thomas J. Spencer to his former rank in the Army, and that the bill be put on its

passage.

Mr. WILSON, of Iowa. I reserve the right to object until I hear

Mr. WILSO the bill read.

The bill was read. It authorizes and empowers the President to restore to his former rank and relative grade in the Army Thomas J. Spencer, late first lieutenant, Tenth United States Cavalry; provided that said Spencer shall not be entitled to any pay or allowances as an Army officer for the time he may have been out of the military

Mr. HARTZELL. I ask that the report of the Committee on Mil-

itary Affairs may be read.

The report was read, as follows:

The report was read, as follows:

The said Thomas J. Spencer first entered the military service as a private in Loomis's Battery, Michigan Light Artillery, May 28, 1861. August 29, 1802, he was appointed second licutemant of volunteers, cavalry, and in February, 1863, he was detached for ordnance duty at the headquarters of General W. S. Rosecrans, commanding Army of the Cumberland, and subsequently continued on the staff of General George H. Thomas, in command of the same army. He remained on duty as an ordnance officer until the close of the war, and was mustered out of service September 15, 1865. He was appointed second licutenant Tenth United States Cavalry the 28th of July, 1866, and promoted first licutenant June 1, 1867. He was brevetted, for gallantry in action, first licutenant and captain, United States Army, March 2, 1867.

Testimonials from the highest military officials, such as General William T. Sherman, General George H. Thomas, General William B. Hazen, General J. D. Webster, and many others, of his gallantry and good conduct during the war, and of his efficiency and fidelity to duty, as well as respectful bearing and demeanor to his superior officers since his appointment into the Army, are submitted herewith, and in extenuation of the single offense which, in the judgment of a court-martial, was deemed sufficient to deprive him of his office in the Army after an honorable service of nearly fourteen years.

Lieutenant Spencer was dismissed from the Army by sentence of a court-martial, approved April 24, 1875, for writing to his commanding officer, Fart Richardson, Texas, the following letter, namely:

Sunday, July 19, 1874.

Colonel Wood:

SUNDAY, July 19, 1874.

Six: Any officer who refuses to shield the honor of the wife of a brother officer, when clothed with the power to do so and appealed to dispassionately, is a coward,

or worse.

This has been your action in my case, and I denounce you as a moral coward. To the Secretary of War and the civil authorities I propose to submit my case.

First Lieutenant and Brevet Captain, United States Army.

The circumstances which led to the writing of this letter are briefly these:
Lieutenant Spencer, returning to Fort Richardson, Texas, after a month's absence in the field against hostile Indians, was informed of sundry scandalous reports affecting the honor and domestic peace of his family, which reports, he was man's quarrel, he sought the advice and friendly intervention of his commander, as the most judicious mode of showing the falsity of the scandal and of preventing future social quarrels that might lead to serious personal consequences. It is alleged by Lieutenant Spencer that the commander promised attention to the subject, but took no steps to comply with it. At length Lieutenant Spencer sought to avail himself of the presence of Colonel Joseph Taylor, acting assistant inspector general, United States Army, then temporarily at the post on official duty, and he requested of his post commander that the matter might be referred for investigation to that officer. This seems greatly to have excited the anger of his commander, and Lieutenant Spencer was answered with harsh words, and at length told to "shut up and leave him at once."

Smarting under what he deemed very unjust and unmerited treatment, Lieutenant Spencer was no other charge before the court, nor any defense by Lieutenant Spencer beyond a showing that he attempted the next day—after the first excitement had passed away—to withdraw the offensive letter through Captain Baldwin, of his regiment. In his letter to Captain Baldwin he said: "I was suffering and greatly excited at the time."

Lieutenant Spencer also showed by the testimony of brother officers that at all other times he had been prompt and faithful in the discharge of his official duties, and invariably respectful to his superiors.

The sentence of a court-martial is not known to the accused until it is published in general orders. Before the court in question no attempt, for obvious reasons, was made to show the exciting and aggravating circumstances which occasioned the disrespectful

Mr. WILSON, of Iowa. Having heard the bill and report read I have no objection to its passage.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. HARTZELL moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

RECUSANT WITNESSES-J. M. WELLS AND T. C. ANDERSON.

Mr. HALE. I rise to a question of the highest privilege.
The SPEAKER. The gentleman will state it.
Mr. HALE. I have received the following letter, which I respect-

fully present to the House:

CAPITOL BUILDING, Washington, D. C., February 7, 1877.

Washington, D. O., February 7, 1877.

Dear Sir: We beg leave to have presented to the House of Representatives, through you, this statement:

The cell or dungeon in which we are confined by the House of Representatives is damp and utterly without ventilation, so that the air is absolutely poisonous. For criminals such a confinement would not be humane. We are not criminals, but free citizens and officers of a State. We have the misfortune to differ with the majority of the House as to what constituted the proper discharge of the duties which we owe to our State as such officers.

The foulness of the air of this cell is already affecting the lungs of one of us [Mr. Wells] and he is threatened with serious illness therefrom.

Yesterday we were transferred by the order of the Speaker to a room better lighted and ventilated. To-day, by the order of the Sergeant-at-Arms, we have been retransferred to this cell.

Yours respectfully,

J. MADISON WELLS.

J. MADISON WELLS. THOS. C. ANDERSON.

Hon. Eugene Hale, Representative from Maine.

I have been, Mr. Speaker, my attention being called by this letter, to the place where these gentlemen are confined. I can have no doubt, since seeing the room, that what they stated as to its being unwholesome and the air being poisonous, is correct. It is a little room in the basement of this Capitol, with but two windows, opening upon no sunlight, but upon a narrow confined court into which no gleam of sunshine can ever enter. It is a small room. These two men are confined there constantly day and night. They sleep in this room. The gas escapes constantly and poisons the air. One of these gentlemen is at present stretched upon a sick bed. It is not, I think, proper, it is not safe that they should be kept there longer.

I am glad to state, as this letter has told us, that the Speaker humanely interfered and had them transferred to a better place, I presume. Why it was or how it was that the Sergeant-at-Arms retransferred

Why it was or how it was that the Sergeant-at-Arms retransferred them to this bad and unwholesome place, I do not know. But it is a thing of the highest moment to this House. These men are here under our summons. They are here under order of the House, and we

should see that while they are held here they are properly regarded and treated. There is no danger, and never has been, of escape on the part of these gentlemen. They came here voluntarily on being sub-pensed in New Orleans, and were arrested on the morning of their arrival at their hotel. For a time they were kept, as was proper, I am told, at the hotel over at the corner, the Congressional Hotel. I have never heard that anybody in charge of them saw anything in-dicating any desire on the part of these gentlemen to escape. On the contrary, they have from time to time sought and have requested per-mission to give testimony before one of the committees of this House, and have at last been granted that privilege. They are there in this little room by themselves, constantly stood over by a deputy of the Sergeant-at-Arms.

This morning I stopped in to see them so that I might prove for myself what was the situation. I am able to say that no one, unless it be counsel, is permitted to speak to these gentlemen in private corference without a deputy sergeant-at-arms standing over them to listen what he says. I had nothing to say to them but what might be publicly stated here, but I discovered that they were under close guard and that these gentlemen are kept in a dark place, a dismal place, a damp place, a dangerous place, with the gas constantly escaping, and I believe that it is not a fitting thing that these men, the officers of we of the States of the Union, who came here valentarily and officers of one of the States of the Union, who came here voluntarily and have been desirous to testify from day to day, should be so held. It is not proper, it is not fit; I will go further and say it is not decent that this treatment should be extended to them. I would be glad that what the Speaker undertook to carry out, as I understand from this letter, should be done, and that these gentlemen should be removed to a proper place; and I offer the resolution which I send to the Clerk's desk and upon it I call the previous question.

Mr. COX. I hope the gentleman will withdraw the call for the

previous question.

Mr. WILSON, of Iowa. I would like to be heard before the gen-

tleman calls the previous question.

Mr. HALE. I will give these gentleman the opportunity to be

Mr. COX. Let the resolution be first read. The Clerk read the resolution, as follows:

Resolved. That the Sergeant-at-Arms be, and he is hereby, directed to remove J. Madison Wells and Thomas C. Anderson, the witnesses now held in custody by the officers of the House, and now confined in this Capitol, to a place more suitable, and properly lighted and ventilated; to a room where the comfort of the witnesses may be secured and where their health may not be endangered.

Mr. COX. Is it decided by the Chair that this is a privileged ques-

The SPEAKER. The Chair thinks it is; it is one that touches the privileges of the House.

Mr. HALE. I yield five minutes to the gentleman from New York,

Mr. HALE. I yield five minutes to the gentleman from New York, [Mr. Cox.]
Mr. Cox. I would remind the House of Representatives that the last House, which was republican, at least in form, sent Mr. Stewart and Mr. Irwin to the same "dungeon," to the same room, as I am informed, in this Capitol, occupied by the board. There was no complaint then made about the atmosphere. The same complaint about atmosphere is often made about the Hall of the House of Representatives. I do not know but what the atmosphere of this House and its surrounding rooms has become more or less tainted since that time. surrounding rooms has become more or less tainted since that time.

But whatever may be the facts as to this matter, one thing can be said, and that is, these men now in custody can be relieved at any time when they choose to purge themselves of their contempt. All they have to do is to answer the questions propounded to them and to tell the truth in a great transaction that concerns the whole nation. Either of them or all of them can have sanitary relief by telling the truth. [Laughter.] It is health to answer truly. It is no uncommon thing for the House to send recusant or contumacious witnesses to the common jail of the District of Columbia, there to be held in strict confinement until they shall have purged themselves of their contempt. It is nothing unusual. It should not be complained of. The only thing extraordinary about it is the nature of the transaction and the stupendous quality of the crime, if crime has been committed, in regard to which they refuse to answer.

Mr. McCRARY. Will the gentleman state what questions these

gentlemen have refused to answer?

Mr. COX. The gentleman should be familiar with what has taken place in the committee-rooms, while I may not be; but I understand what has taken place as to these witnesses. He denies that they have refused to produce the records which they were called upon to pro-

Mr. McCRARY. That is what they are confined for, and not for refusing to answer the questions. They are confined for refusing to produce the records of their State, which are not now in their posses-

these gentlemen are imprisoned because they will not produce certain records of the State of Louisiana which are not in their possesssion, which they cannot produce, and not for a failure to answer any question whatever.

question whatever.

The SPEAKER. The Chair thinks the debate should be confined to the subject-matter of the pending resolution.

Mr. COX. I will again say to the gentleman from Iowa [Mr. Mc-Crarr] that the House has disposed of that question by committing these men, and there is no unusual cruelty in the cause of their confinement or the manner of their treatment. The same penalty has been enforced on other witnesses. Why can they not, if they please, with the aid of their acute friends on this floor, purge themselves of the contempt of which they were committed by helping their friends in Louisiana or here to develop the facts as they exist in the interest of the Republic? But without disputing the fact, Mr. Speaker, which you have decided as a matter of privilege, (although I doubt whether it is such a question,) I am willing to have the question of humanity considered. That question involves the conduct of the Speaker or the Sergeant-at-Arms and the officers of the House in charge of these prisoners. An adoption of this resolution would be a reflection on prisoners. An adoption of this resolution would be a reflection on the Sergeant-at-Arms of the House, and before the resolution is passed I would like to have a response from that officer as to the facts in the

The SPEAKER. The Chair desires to say that any communication from witnesses who are in contempt it seems to the Chair are privileged. It might be that they would communicate to the House their intention to comply with the requirements of the committee. Therefore the Chair is very clear upon the point that a communication from

witnesses held in confinement is a privileged communication.

Mr. HALE. I do not wish to take up a great deal of the time of the House before calling for a vote.

Mr. WILSON of Iowa. I hope the gentleman will yield to me for

Mr. WILSON, of lowa. For five minutes.
Mr. HALE. For how long?
Mr. WILSON, of lowa. For five minutes.
Mr. HALE. I will yield to the gentleman for five minutes.
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Mr. HALE. I will yield to the gentleman for five minutes.

Mr. WILSON, of lowa. For five minutes.

Mr. HALE. I will yield to the gentleman for five minutes.

Mr. HALE. I will yield to the gentleman for five minutes.

Mr. HALE. I will yield to the gentleman for five minutes.

Mr. HALE. I will yield to the gentleman for five minutes. Mr. WILSON, of Iowa. I am very greatly surprised at the opposition which appears to be manifested to this resolution. Some four days ago I learned that members of the returning board of the State of Louisiana were not being properly treated, and for my own satisfaction I endeavored to ascertain what truth there was in the report. I found the utmost difficulty in obtaining an opportunity to see these men. I had always supposed that a member of this House could of right I had always supposed that a member of this House could of right go into any room in the Capitol, even into a committee-room. But only by the most strenuous and repeated efforts did I succeed in visiting these men. After calling repeatedly at the office of the Sergeant-at-Arms, after getting permits that failed to be of any effect, after having deputies sent down with me to the room without any effect, I finally called upon the Speaker, and only then did I succeed in seeing these men. I believe firmly that without the interposition of the Speaker I would not have obtained an opportunity to see them, the Sergeant-at-Arms being himself absent. My conviction is, them, the Sergeant-at-Arms being himself absent. My conviction is, so far as his action is concerned, that he was and is anxious that these men should be well treated.

I desire to say, however, that so far as the persons in the Sergeant-at-Arms's office are concerned, my conviction is that it is their intention that these men shall not be well treated. I could not escape the conviction that the impression was given to the subordinates of the Sergeant-at-Arms and the officers under him that these men should not be well treated, and that impression is strengthened by the fact

that they have been put back in that hole again.

Sir, these men have been confined in a room such as I would not dare to risk the life and health of any animal on my farm, however invaluable. I do not care what persons have heretofore been kept there, or by whom. It is an outrage, a gross outrage, to confine any person in such a room. The continuance of such confinement will bring this whole House into the deserved contempt not only of the

bring this whole House into the deserved contempt not only of country but of humanity in general.

Think of it; an old man seventy years of age confined in a room where it is so dark that it is necessary to keep gas burning all day; a room that stinks, that smells like the den of some foul reptile, a room where thieves arrested around the Capitol are kept. I do not care what the offense of these men may have been; I do not care if they are murderers under sentence; this room is no place in which to keep them. Mr. Wells is ailing, unable to take food, and his health will be permanently injured.

will be permanently injured. I succeeded after a time in prevailing upon the officers of this House to remove these men to the committee-room of the Committee on Education and Labor, a well-lighted room, a sweet, clean room; a room where, upon inquiry, I ascertained a committee meeting had not been held for a month. The committee has no business, scarcely ever meets, and does not need the room at all. Even if they did meet once in a

Mr. COX. They will not answer in relation to the records. They conveniently put it out of their power to answer! One thing is sure, that this matter has been already disposed of by the House of Representatives. The House itself has disposed of it in so far as the committal is concerned for contumacy. It is too late for the gentleman from Iowa to raise that question now.

Mr. McCRARY. I simply desire that the gentleman from New York [Mr. Cox] shall state the question fairly. He knows very well that

whole House, and of the American Congress. The very idea was ab-horrent to me that any one should tolerate the thought of torturing

horrent to me that any one should tolerate the thought of torturing any human being, ay, of even torturing an animal.

Now I learn with great surprise that these men have been by the authority of any one retransferred to that abominable dungeon. I hope this resolution will prevail, and if these men in the office of the Sergeant-at-Arms will not obey it, then other resolutions will be in order. I do not want to say that the men in that office are not gentlemen, are not civil in their treatment of members of this House. But the impression has forced itself upon me that the study of Mrs. Dahlgren's book on etiquette would not hurt any of them.

Mr. COX. Allow me to say that the Sergeant-at-Arms has just informed me that he has done everything in his power, in a humane way.

formed me that he has done everything in his power, in a humane way, that Mr. Anderson is entirely satisfied with the room where he is, as he has told the Sergeant-at-Arms of the House.

Mr. CONGER. Let him tell us so.

Mr. COX. That remark shows the necessity of having something to offset a mere ex parte statement like that in the resolution. The Sergeant-at-Arms has moreover offered to place these gentlemen in other rooms, or to separate them or place them together, according to their wish and convenience. They have not all been satisfied. And although the Sergeant-at-Arms has assured me just now that he has treated them precisely as other witnesses have been treated here-tofore, by putting them in the same room, together if you please or separately, they are utterly dissatisfied, except Anderson, utterly irreconcilable. And I do not wonder at it.

Why, sir, is there any better place to put them in? Must we place them in a hotel and feed them at the public expense? Must we send them to the common jail? Is that better? Gentlemen objected to that when it was suggested. What can we do with recusant witnesses except to follow the precedents which you of the other side set in the last and other Congresses? Mr. COX. That remark shows the necessity of having something

set in the last and other Congresses ?

Mr. HALE. Mr. Speaker, this is a matter which, as stated by the gentleman from Iowa, [Mr. Wilson,] goes below any party feeling. I did not hasten to bring this subject before the House. I waited, as did the gentleman from Iowa, until I found that the Speaker's humane interposition had been overridden.

The majority of this House cannot afford to take the position which follows logically from what the gentleman from New York [Mr. Cox] has said. This House cannot afford to keep these men in a bad, unhas said. This House cannot afford to keep these men in a bad, unhealthful place for the sake and with the purpose of extracting testimony from them. [A voice: Extorting it.] That is not a thing to be done at this day or in this country. It smacks of the thumb-screw and other instruments of torture. It menaces these men with the loss of health. Why † Because they do not produce papers which they have stated are out of their control.

The SPEAKER. The Chair desires to state to the gentleman from Maine that he does not think discussion upon the question as to why these witnesses were committed is pertinent to this resolution.

Mr. HALE. I do not propose to go into that. The Chair is right

Mr. HALE. I do not propose to go into that. The Chair is right

undoubtedly.

Sir, the real question at issue here cannot be put out of sight by any talk as to what has been done heretofore. If any man (I do not care who he may have been) in the situation of these gentlemen has

care who he may have been) in the situation of these gentlemen has been put in that place, in that little room, in that "hole in the walle" and kept there for any length of time, I do not care by whose order, it was an inhumane act; it ought never have been done, and, with the attention of the House called to it, would never have been allowed. These gentlemen are not satisfied. They are not querulous men who are seeking an opportunity to get before the House. They have waited ten days in this noisome place seeking to give testimony all the time. Their letter has been read. It is signed by Governor Wells and General Anderson, both of the gentlemen who are confined in this room. It declares their discontent and their suffering. It denies this room. It declares their discontent and their suffering. It denies any statement, by whomever made, that they are or that either of them is satisfied. I have seen them this morning; and I know that such is not the fact. Their health is impaired. That old man, Governor Wells, lies upon his bed taking medicine—an ill man. And we

ernor Wells, lies upon his bed taking medicine—an ill man. And we are told that they are to be kept there until they produce papers over which they have no more control than I have or the Speaker of this House has or the Sergeant-at-Arms or any member or any citizen.

Now this is a plain question. The resolution is before the House. The House can, if it chooses, vote it down, and thereby declare, as the gentleman from New York has done, that these gentlemen shall be kept in that place at the peril of their health until they produce the papers. The House may exercise this menace, may inflict this torture upon them, if it chooses. But, as I have said, that is not a thing which we ought to do. It is not a thing to be done by any gentleman or any party or any House that professes to believe in maintaining and protecting the rights of the citizen.

I call the previous question.

I call the previous question.

Mr. COX. I hope the previous question will be voted down, so at we may refer this resolution to some proper committee.

these witnesses could be transferred, and he succeeded in finding the room alluded to by the gentleman from Iowa. The difficulty was that the room was under the control of a committee of the House, whose chairman objected to its being used for the purpose indicated. There is one fact which ought to be stated in reference to this subject, and that is that the room now occupied by these witnesses is the same which has been heretofore used for like purposes for many years. The Chair is fully aware that it is a gloomy room.

When these complaints were made the Speaker felt it to be his duty

to go and see the witnesses and hear their statements in reference to the matter. He inquired first as to their food, and was answered that their food was ample and its quality good; that they had no complaint to make in that respect. Mr. Anderson stated to the Speaker that he was satisfied with the room, but that Governor Wells was not; that the health of Governor Wells was being affected by his oc-

out; that the health of Governor Wells was being affected by his occupation of that room.

Mr. HALE. May I ask the Speaker when that was?

The SPEAKER. That was two days ago, the Chair thinks. Yesterday the Speaker learned that the room which he had desired that the witnesses should occupy had been refused, and that therefore the Sergeant-at-Arms had taken them back to the room they had before occupied. While the Speaker feels that he has no charge whatever of these prisoners, he is quite willing to obey any action of the House

upon this subject.

Mr. HALE. Gentlemen will bear in mind how carefully this resolution has been worded. It simply proposes to carry out what the Speaker undertook to do. Now I care little what one committee or another may say as to the occupation of its room. If this House directs its officer to put these men in a safe and comfortable room (and that is all that the resolution requires) the Sergeant-at-Arms will find a suitable place for the purpose. Nobody need have any doubt about that. The committees are nearly through with their business. I do not suppose that one in twenty of our committees is holding meetings from week to week. Now if the House gives this direction to the from week to week. Now if the House gives this direction to the Sergeant at-Arms, following out the course the Speaker undertook to adopt, (and I am bound to say he did all he could, but he had no power in the matter,) these men will be removed to a proper place. And that is all that is asked in this resolution.

Mr. COX. The Sergeant-at-Arms has said he has done all he could in the premises.

Mr. WOOD, of New York, rose.

Mr. HALE. I will yield for five minutes to the gentleman from

Mr. WOOD, of New York. Mr. Speaker, the proposition of the gentleman from Maine is apparently, on its face, entirely correct, and were it not for the comments the gentleman from Iowa [Mr. Wilson] made upon the resolution and the character of the restraint which an officer of this House has seen proper in pursuance of his duty to impose upon these prisoners I should not feel called upon to say anything. But if it is true, as the gentleman from Iowa has stated, and as I assume upon his personal knowledge of the facts, that these gentlemen are not only restrained of their liberty, but in a condition where their health is liable to be seriously impaired and where this House and its officers are liable to be charged with inhumanity in reference to the character of that imprisonment, then in common with gentlemen upon this floor I believe we have no right to pursue course of that character even to witnesses as contumacious as these seem to be.

This is not the first instance, Mr. Speaker, when complaint has been made to the House of rooms allotted to witnesses held in contempt. made to the House of rooms allotted to witnesses held in contempt. The Speaker will recollect the case of Irwin, who was a witness before the Committee of Ways and Means, when we felt it to be our duty to commit him for contempt for refusing to answer questions propounded by that committee, and after he was incarcerated in the common jail by the entire vote of the republican party of this House, he complained of the character of the rooms and the danger to his health in consequence of dampness and other ill effects which he suffered. This House required he should produce certificates of physicians, and he did produce the certificates of Surgeon-General Barnes and another physician of the District of Columbia, and on those certificates his quarters were changed. Soon after he came to the bar of this House, made a clean breast of it, purged his contempt, and was set at liberty.

Mr. HALE. Let me ask the gentleman a question.
Mr. WOOD, of New York. Certainly.
Mr. HALE. Has the gentleman from New York himself ever been in this place where these gentlemen are confined in Mr. WOOD, of New York. I have not.
Mr. HALE. Then I wish the gentleman would himself personally go there and see it.
Mr. WOOD of New York. I assume Mr. Speaker, and cannot but

Mr. WOOD, of New York. I assume, Mr. Speaker, and cannot but assume under the resolution committing these gentlemen to custody, our Sergeant-at-Arms has done the best he could under the circum-Mr. COX. I hope the previous question will be voted down, so that we may refer this resolution to some proper committee.

The SPEAKER. The Chair desires to state that, strictly speaking, these witnesses are not in his charge. The resolution passed by the House provides that they shall be kept in the close custody of the Sergeant-at-Arms has done the best he could under the circumstances. Our Speaker himself has told you they do not make any complaint to the Speaker; that they appear to be satisfied with their quarters; and certainly I cannot suppose any gentleman upon this floor can excite any sympathy or divert the issue in the minds of the Sergeant-at-Arms has done the best he could under the circumstances. Our Speaker himself has told you they do not make any complaint to the Speaker; that they appear to be satisfied with their quarters; and certainly I cannot suppose any gentleman upon this floor can excite any sympathy or divert the issue in the minds of the people of the country in reference to the necessity, the national necessity, for holding these gentlemen as they are at this time. When, however, we go further than that, further than mere detention, and assume to do that which is inhumane, then I, for one, will not support any conduct on the part of an officer of this House or of any majority of this House which shall attempt to undertake any persecution to that extent. But I submit, until we have some positive information of an official character as to this room and the alleged want of health on the part of Ex-Governor Wells—that until we have some such professional certificate as the basis for our action, we are not

called upon to pass any resolution of this character.

Mr. HALE. I now yield to the gentleman from Iowa, but before doing so I should like to ask the Speaker how much of my hour remains, as I wish to call the previous question before it expires.

The SPEAKER. The gentleman has about twenty-eight minutes

remaining.

Mr. HALE. Then I yield to my friend from Iowa for ten minutes.

Mr. KASSON. The gentleman from New York expresses a desire for official information touching these quarters. In the case to which he refers, that of Irwin, with which we are both so familiar, it appeared to us, although it was in another building, the room was above-ground with some light and air; and knowing that fact by the statement of our own officer, we required as to the effect upon the health of prisoner a certificate of his physicians. In this case I wish to say several of us here have, if it be possible for a Representative to give official information, visited these quarters. Among others, I went there, yesterday or day before, because of information from without which I will explain. An old Quaker friend of mine in Maryland wrote me a letter giving his personal knowledge of the elder of these gentlemen, Ex-Governor Wells, for many years, and his friendship for him, and further that he had seen it stated he was deprived of ordinary comforts at the peril of his life, and asked me to visit him and, if I found that it was as stated, to notify him and solicit permission to supply the wants of these witnesses held in custody. Accordingly I went down and found what is known among us popularly for years as the "Dungeon." No matter by what name called, it is a room with no opening except through a barred window upon a well with high walls, so that no fresh air can circulate, no current can possibly get to it. All the dampness there remains, and not a ray of God's sun can penetrate it except by violating all the laws of nature and penetrating the walls of this building.

I ask the House with these facts before us, with the fact that one

of those witnesses is over seventy years of age—no matter how plucky that spirit within his breast may be, whatever his enemies may say of him they never say he is a coward or quaits in the presence of danger or persecution—I say, with the fact that that body is over seventy years old gentlemen may judge whether such a place is healthy or not for a man of those years. For myself, on investigation I found what the Speaker has stated, that there is no complaint in regard to fixed that there is no complaint in regard to food, that there is no charge of unkindness on the part of the attendants; but they are in a room in itself unhealthy, with certain attached parts to it not necessary to mention which are calculated to increase the impurity of the atmosphere as I am informed. Be that as it may, the simple fact is that both gentlemen have become sick. Both are old men, and in the nature of things the absence of fresh air and of God's sunlight must be injurious to the health of any men,

especially of men sixty and seventy years of age.

I desire to say this much, sir, in order to avoid any occasion for delay touching what is called official information. For, I think, if gentlemen will simply look at the room themselves with the facts before them which are patent to their eyes they will say that it borders on cruelty to confine men of that age in such a place. And the character of the punishment seems unduly severe when you remember that it is not a refusal to testify to facts for which they are held, but a refusal to communicate papers which by State right they say they cannot and ought not to be compelled to produce. It is not, therefore, mere contumacy in the ordinary sense for which they are held, but because they stand on a right which is prima facie valid.

Mr. HALE. I yield five minutes to the gentleman from Michigan,

[Mr. CONGER.]

Mr. CONGER. Mr. Speaker, allusion has been made here to the fact that other witnesses have been confined in former times in this same room. If that were so, and if the room was then equally bad with its present condition, when the matter is called to the attention of the House, such an evil should be remedied. I recollect most distinctly the complaints that were made by the gentlemen on that side of the House now present, when the majority belonging to another party sent witnesses to that room, and sent them to the jail in Judiciary Square. I remember, too, when witnesses have been sent by the party now in power to another jail in this city the complaints and the appeals which were made to this House and to the American morphism were to the great to the great to the great to the strenger to the contract of the con people in regard to the cruelty of such a transaction. But gentlemen will remember that those witnesses were confined in the sultry days of summer, when, if ever, the coolness of such rooms might have made them passable if not desirable when they were not damp, and when the air was not confined as now; when there was a very great difference in the time, and in the condition of the rooms. But whatever party or whomever inflicts such smaller transactions and the summer ever party or whoever inflicts such cruelty upon old men, upon sick men, upon witnesses before this House—witnesses, but citizens—cannot justify it to the American people. There can be no pretense of right or of justice or of humanity in such a proceeding as that.

The mere statement of this to the common American mind would produce the conviction of infamous wrong in this House; and no

man would attempt or dare to attempt to justify any such conduct toward an American citizen when here simply as a witness—no man would dare attempt to justify it, as has been said by my friend from Iowa, if exercised upon the vilest criminal in the land. The days of owa, it exercised upon the vilest criminal in the land. The days of dungeous and thumb-screws and the torture of the rack, thank God, have passed away from the civilized world even for criminals. How far shall an American Congress approach those old means of torture of the body and now torture both body and mind? That is the question for us to consider. I lay no blame upon officers. I lay no blame upon the House in its action heretofore. But to-day the facts have appeared, and been spread before the House; the age of the prisoners, the sickness of one of them; the condition of the room, its filth, its dampness, its want of light and want of air. And whoever may have been confined there before, or by whatever authority they may have been confined there before, or by whatever authority they may have been confined there before, the record now is made up, and in my judgment we should be unworthy of our positions here if we fail to provide at the very first moment a suitable remedy.

Mr. HALE. I now yield five minutes to the gentleman from Pennsylvania, [Mr. CLYMER.]

Mr. CLYMER. I will not require so much as five minutes. I desire to say on behalf of the Sergeant-at-Arms, and he desires it to be understood by this House and by the country, that he has exhausted all the power in his hands for the purpose of rendering these persons more comfortable than they seem to think themselves at this moment. He states further that all the other places in this Capitol ordinarily under his country are now in the respective of the He states further that all the other places in this Capitol ordinarily under his control are now in the possession of the committees of the House. And even if this resolution should be passed, it would not be within his power, without some action of the House, to better their condition. He assures me that in his judgment the rooms they occupy are well heated, well ventilated, and well lighted, save that one of them is not well lighted. He assures me that they are free from dampness, and he alludes to the fact in justification of his action, if it needs any justification, that this room was prepared by one of his predecessors, and is the one uniformly occupied heretofore by prisoners of the House. They are visited constantly by their friends and political associates and have all they require to eat and drink, and in the latter respect there has been no limit to their desires.

Mr. CONGER. Many members and other persons have sought ac-

cess to these gentlemen and it has been denied.

Mr. CLYMER. I know nothing of the kind.

The SPEAKER. The Chair would like to state that the words "close custody" in the resolution have been construed by the Ser-

"close custody" in the resolution have been construed by the Sergeant-at-Arms to cut off such intercourse.

Mr. CLYMER. In that respect the Sergeant-at-Arms is but obeying the order of the House. And I beg further to suggest to the gentleman who makes these complaints, that it is clearly within the power of these persons at any time to unlock the door of their cell. They are there in contempt of the order of the House, and if they are the resolution in the power of the confort, it is suffer some little inconvenience, either as to health or comfort, it is their fault and not the fault of the House. They are contumacious witnesses, and while no member of the House upon either side would be guilty of inhumanity toward prisoners or toward any one in distress, yet when the persons in confinement have the power to release themselves, I say that, if they are not released, the blame rests upon them and not upon us.

Mr. HALF. I desire to ask the gentleman from Pennsylvania a question right there. Would the gentleman himself, who is a humane man, by sickness and prostration and a reduction of the system bring these men to a condition where they would do what he wants them

these their to a condition where they would do what he wants them to do in giving up these papers?

Mr. CLYMER. I would not. But if it be not in the power of the House to treat them differently, the Sergeant-at-Arms should not be thus proceeded against. And when I reflect that by the action of these men hundreds of thousands of people in this broad land have been brought to want and distress, I have no very warm feelings regarding these individuals, no matter what my opinion may be in regard to the treatment of prisoners generally.

Mr. HALE. I would inquire of the Chair at what time the hour

expires? The SPEAKER. Fourteen minutes from the present time.

Mr. HALE. I yield then five minutes to the gentleman from Massachusetts, [Mr. Banks.]
Mr. BANKS. The resolution which has been read states very clearly what the order, and of course what the intention, of the House was. It was that these men should be kept in "close custody." Custody was what the House required. That was all it did. It does not confer upon any officer, nor was it the intention of those who voted for it, of whom I believe I may have been one, that an inquisition should be established, which should compel them by punishment or cruelty to disclose what they thought they ought not to disclose. Still less was it the intention of the House to do what the gentleman from Pennsylvania has just said, to punish them for the indirect consequences which might follow from their act, to punish them for the wickdrays of which they may have been equility.

wickedness of which they may have been guilty.

Now, I think there is no precedent in the history of the House authorizing the execution of this order in the way in which it is now being done. I do not think the close custody, not with standing what the Speaker has said, means anything more than that these men should be kept in safe-keeping.

The SPEAKER. The Chair desires to say that he mentioned that fact as an indication of what the Sergeant-at-Arms construed to be

his duty.

Mr. BANKS. It is a question of construction. I do not censure the Sergeant-at-Arms. I know the difficulty of his position, and how delicate a thing it is for him to arrange matters of this kind. But the resolution requires nothing more than that these men shall be in the start happing of the House. Now they have not been in close construction. the safe-keeping of the House. Now they have not been in close custody. I understand that they have been taken from day to day before a committee and have given testimony, and there has been no order of the House allowing them to be taken out of custody and brought before a committee of the House, and how is it possible that the House can say that these men are to be punished when every day they are brought before a committee and required to answer the questions put

Mr. SPARKS. Does not the gentleman know that when before the committee they are constantly in the custody of the Sergeant-at-Arms? Mr. BANKS. I do not.
Mr. SPARKS. Well, I do.
Mr. BANKS. That is not close custody. I say that when a witness is before a committee he is not in custody; while before a committee he is a free man. And it would degrade the House of Representatives and the members of the committee when the witness was a prisoner to put questions to him and demand answer from him. In a prisoner to put questions to him and demand answer from him. In that moment he is a free man in the custody or in the keeping of the committee alone, and not in the custody or in the keeping of the Sergeant-at-Arms. But I will not debate that point.

Sergeant-at-Arms. But I will not debate that point.

What I want to say is this: When that room has been appropriated to the keeping of prisoners it has been in extreme cases. I remember very well the first occasion when it was so used. It was when some man had been accused of bribing the Senate in an impeachment case, accused of the use of a large sum of money for that purpose. He was asked what he did with the money that he had and he refused to answer. He could have answered that question, but because he refused to do so extreme men on this side of the House, who find their acts now coming hock to plague their inventors or who find their acts now coming back to plague their inventors, or-dered him to be put into the worst place they could find.

[Here the hammer fell.]

A single moment just to complete this statement. They put him in the worst place they could find. After a day or two, not wishing to give the information himself, another witness was brought forward who satisfied the committee what use was made of the money in question, and then he was released.

Now, these men cannot give an answer to the inquiry made of them; they cannot produce the papers that are demanded of them. And if they could, while they refused to do so they certainly ought not to be brought before any other committee of the House and re-leased from the safe-keeping in which the House has placed them by its order. Neither the committee nor the Sergeant-at-Arms has any right to disobey or disregard the order of the House in this matter.

Mr. HALE. I yield three minutes to the gentleman from Ohio,
[Mr. LAWRENCE.]

Mr. LAWRENCE. It seems to me the House is laboring under some misapprehension as to the real facts in this case some misapprehension as to the real facts in this case. These witnesses were summoned before what was known as the Morrison committee in New Orleans, and they were directed, by a subpæna duces tecum, to bring with them the records relating to an election. They had not completed the count for State officers when they received that summons to produce before a committee of this House papers which were essential to enable them to complete the count. For not producing those papers they are now in custody.

Since they were required to produce those papers before the complete.

which were essential to enable them to complete the count. For not producing those papers they are now in custody.

Since they were required to produce those papers before the committee at New Orleans the papers have been delivered up to the secretary of state of Louisiana, in accordance with a State law, and they are now in his custody. It is impossible that these witnesses ever can produce these papers before any committee of this House or before any authority in the world.

The SPEAKER. The Chair would remind the gentleman that he is now discussing a question not before the House.

Mr. LAWRENCE. I am endeavoring to relieve the House of a misapprehension of the facts. One word more. Since that time these witnesses have been brought before another committee of this House, the committee on privileges and powers of the House. They have answered every question which any member of the committee desired to put to them. I know that for a time Governor Wells refused to answer some questions. But I think I am not mistaken when I say that finally all questions were answered that any member of the committee desired to have answered. Here is our respected acting chairman of the committee [Mr. Sparks] and he can correct me if I am mistaken. These witnesses have answered everything that has been asked them, and, it being out of their power to produce any papers, shall we, ought we to keep them in custody any longer?

Mr. BLACKBURN. Will the gentlemon allow me to ask him a

Mr. BLACKBURN. Will the gentlemon allow me to ask him a question right there?

Mr. LAWRENCE. Certainly.

Mr. BLACKBURN. Did not these witnesses themselves put it out of their power to comply with the order of this House to produce these papers?

Mr. LAWRENCE. They were required by law to deposit the pa-

pers where they have deposited them. They never refused to permit

pers where they have deposited them. They never rerused to permit an inspection of the papers.

Mr. BLACKBURN. I know the gentleman from Ohio does not intend to misstate the facts.

Mr. COX. Certainly not.

Mr. BLACKBURN. I beg to assure this House, as a member of that committee, that he has misstated the facts in two important particu-

Mr. LAWRENCE. I think not.

Mr. BLACKBURN. They did flatly refuse to submit these papers for personal inspection. And the law of the State of Louisiana did not require them to turn over these papers to the secretary of state at all. The returns were to be made to the Legislature of the State when convened, which was on the first Monday in January. For three weeks they were in contempt of this House. The law of Louisi-

when convened, which was on the first Monday in January. For three weeks they were in contempt of this House. The law of Louisiana does not require the returning board to deliver these papers to the secretary of state, to the Legislature, or to anybody.

Mr. LAWRENCE. The secretary of state takes the papers for the Legislature; that is all there is of it.

[Here the hammer fell.]

Mr. HALE. I do not think I can yield further. In order to obviate the difficulty about the power of the Sergeant-at-Arms, I will modify my resolution by adding to it these words; "and the Speaker shall designate a room to be used for such purpose." I now call the previous question on my resolution, as modified.

Mr. COX. I hope that the previous question will not be seconded, and that this resolution will be referred to the Louisiana committee.

The SPEAKER. The Chair does not think he has anything to do with this matter. All he has done has been done in the direction of having the situation of these gentlemen made satisfactory. The Chair does not want this power.

having the situation of these gentlemen made satisfactory. The Chair does not want this power.

Mr. WILSON, of Iowa. Unless this is done the House will have to designate the room or the Sergeant-at-Arms will be in as great a difficulty as ever. I think the Speaker ought to take this responsibility. The Sergeant-at-Arms has no power to take a committee-room, and I think the Speaker should assume that power.

Mr. HALE. The suggestion in my modification was simply to get rid of the difficulty, and it did not occur to me that the Chair would object, if the House should pass this resolution, simply to designate which room should be taken for this purpose. He would be simply acting under the order or direction of the House. I see no other way of meeting the difficulty as to the power of selecting a room.

The SPEAKER. The point with the Chair was that he did not want arbitrarily to go to a committee and say "You must give up this room."

Mr. HALE. I understand that many of the committees are through with their business. The Committee on Education and Labor, I am told, has not had a meeting for weeks, perhaps for months. I am told that the Committee of Elections is also through with its busi-

The SPEAKER. The gentleman from Maine [Mr. Hale] demands the previous question upon the resolution as modified.

Mr. COX. I have no objection to the modification, but I propose, if the previous question be voted down, to move the reference of the resolution to the committee charged with the investigation of the Louisiana election.

Mr. HALE. Lock that the resolution

Louisiana election.

Mr. HALE. I ask that the resolution, as modified, be read.

The resolution was read.

Mr. HALE. Now I appeal to gentlemen not to vote down a resolution going no further than this does.

The question being taken on seconding the call for the previous question, there were—ayes 88, noes 119.

So the previous question was not seconded.

Mr. COX. I propose that this resolution be referred to the committee on the Louisiana election, with instructions to investigate the allegations therein contained and report at once to the House. I wish to add a word in reply to what fell from the gentleman from Maine [Mr. HALE] and the gentleman from Massachusetts, [Mr. BANKS.]

They have given a wrong impression to the House and the country as to this matter. They only speak two minutes and then call the previous question.

as to this matter. They only speak two minutes and the country as to this matter. They only speak two minutes and then call the previous question.

Mr. WOOD, of New York. Will not my colleague before he proceeds yield to me for a few moments?

Mr. COX. O, yes; let my colleague speak first.

Mr. WOOD, of New York. My colleague yields to me; and in continuation of his introductory remarks I say that the effort to mislead this House and the people upon this question is certainly, to say the least, not defensible upon any grounds of law or equity. Gentlemen here know very well, especially those who were members of the last and preceding Congresses, that we have had cases, in which they acted unitedly as a party, where witnesses for simply refusing to answer questions touching the appropriation of the public money were committed to the public jail; and when they asked to have their place of imprisonment changed to this Capitol, and produced in support of the application medical certificates from professional men of the highest standing, gentlemen on the other side voted unitedly to keep those witnesses in the common jail notwithstanding.

Now I ask the Clerk to read the proceedings in the case of Irwin in regard to which the remarks of the gentleman from Iowa were calculated unconsciously to mislead the House.

The Clerk read as follows:

The Speaker laid before the House a petition from Richard B. Irwin, praying that his place of imprisonment may be changed from the common jail of the District of Columbia.

The same having been read,
After debate,
Mr. Benjamin F. Butler moved that it be referred to the Committee of Ways and

Means.

Pending which,
On motion of Mr. Tremain,
Ordered, That the petition be laid upon the table.

Mr. Tremain moved that the vote last taken be reconsidered; and also moved that the motion to reconsider be laid upon the table; which latter motion was agreed to.

Mr. WOOD, of New York. I now ask the Clerk to read further proceedings of the House as given on page 145 of the volume I have sent up. The Clerk read as follows:

The Clerk read as follows:

Mr. Dawes presented a letter from W. P. Johnston, M. D., and Alexander Y. P. Garnett, M. D., physicians in attendance upon Richard B. Irwin, representing that his confinement in the common jail of the District of Columbia would be attended with results pernicious to his health.

The same having been read,
After debate,
On motion of Mr. Dawes,
Ordered, That it be referred to the Committee of Ways and Means.
Mr. Benjamin F. Butler submitted the following resolution, namely:
Resolved, That pending the examination and report of the Committee of Ways and Means upon the said subject the Sergeant-at-Arms be, and is hereby, instructed to retain said Irwin in his own custody, and not in the common jail.
And the question being put, it was decided in the negative—yeas 34, nays 160, not voting 94.

Mr. WOOD, of New York. Among those voting in the negative on that question were some of my esteemed friends who now seem exceedingly exercised upon this case.

A MEMBER. Who are they?

Mr. SPRINGER. Let the names be read.

Mr. WOOD, of New York. It is not necessary. I do not wish to individualize gentlemen on the other side; but if they will look at the record, they will see that their position then was antagonistic

to what it is to-day.

Now let me state the difference between that case and this. Mr. Irwin, a witness before the Committee of Ways and Means, was asked to testify as to the disposition of a certain amount of money which he had received from the Pacific Mail Steamship Company, to dis-tribute in Washington to accomplish the purchase of a subsidy from Congress. He declined to answer. He was brought to the bar of the House and committed to the common jail of the District, after being allowed to remain at a hotel for several weeks.

allowed to remain at a hotel for several weeks.

Now in that case the contempt related merely to a matter of money. This case I submit is one of far greater magnitude, calling for more decisive and decided action on the part of Congress. These recusant witnesses refused to produce papers which, if in our possession, might have disposed of this presidential question and set this nation at peace. By their refusal to produce before the Committee in New Orleans the evidences of the shameful frauds perpetrated by that returning board they have produced a condition of things which is simply lamentable, our country being placed in such a position that the whole civilized world is filled with wonder and shame that under any possible circumstances the popular vote of this great nation should be determined by four men who stand before the world convicted of crime. victed of crime.

I assume that in the case of these persons the Sergeant-at-Arms has done his duty, and his whole duty. I cannot believe that there is anything in the elements of his character that would induce him to anything in the elements of his character that would induce him to perpetrate cruelty and inhumanity upon persons placed in his charge by the House. Hence I dismiss as entirely unfounded any accusation that the things stated here to-day have been done to these men. I will only say that, in my judgment, this subject should be presented in the proper form, and if there is anything wrong in the mode by which these men are held as prisoners, we should modify it so as to insure that no inhumanity shall be inflicted upon them.

Mr. COX. Mr. Speaker, I do not mean to reflect upon the intention of any gentleman, but I wish to say that it looks to me very much like lionizing this returning board and making a pretense, in one sense, of humanity in doing it; in other words, making the old argumentum ad misericordiam when every other argument fails.

If these men were aggrieved why did they not come to the proper channel of communication, the Speaker of the House, instead of making their complaint to my distinguished friends from Maine and Iowa, [Mr. Hale and Mr. Wilson ?]

Mr. HALE. They had been there.

Mr. COX. I mean by petition in the ordinary form to be laid before

Mr. COX. I mean by petition in the ordinary form to be laid before the House

Mr. WILSON, of Iowa. They did not make any complaint to me. Mr. COX. The gentleman seems to have had some complaint made to him.

Mr. WILSON, of Iowa. It was merely an act on my part of com-

Mr. WILSON, of Iowa. It was merely an act of my part of common humanity.

Mr. COX. O, yes, the gentleman seems to have had a complaint of some kind. [Great laughter.]

Mr. WILSON, of Iowa. An act of humanity, that is all.

Mr. COX. Again let me call the attention of the House to another fact, that the House has already adjudged the question of contumacy. My friend from Kentucky [Mr. BLACKBURN] well stated the proposition when he said these men had put it out of their power to allow these records and proofs to be produced; and I say that they have

added crime to contumacy. They are in the possession of the House now, and my distinguished friend from Massachusetts [Mr. Banks] thinks that thereby the days of the inquisition have returned. I thinks that thereby the days of the inquisition have returned. I have no doubt when he occupied the chair as Speaker oftentimes he had to discharge the unpleasant duty of sending witnesses to the common jail; and this committee-room is a palace compared to the common jail of this District to which so many were consigned by the order of these "humanitarians" on the other side of the House.

Now what is this room? It is not a cell, it is not a dungeon, it is not a bastile; it is a committee-room of the House, eighteen by twenty feat in size.

feet in size.

Several Members on the republican side. O, no!
Mr. COX. O, yes! it is a room changed from an old committeeroom. It was changed or fixed up for the purpose of confining just or in the purpose of confining just such prisoners by a republican Sergeant-at-Arms of this House, Mr. Ordway. It is the same room where Mr. Wooley, of Ohio, was kept for three weeks uncomplainingly, and others since then. It is well lighted; it is well ventilated, and well heated, and over a cellar.

Mr. HALE. No; it is neither.

Mr. COX. I wish to close this debate now, sir. [Great laughter.]

It is well ventilated. It is heated until eleven o'clock at night. It

has the attendance of one or two men, firemen and others. It is comfortable.

But my friend from Massachusetts thinks the confinement is too "close." Others complain these men have been too much enlarged; so as to go before a committee to testify. So they did thus go; but it was at their own request. They went before this committee to rebut certain testimony in the presence of their minute clerk, at their own

Mr. BURCHARD, of Illinois. They were brought before the com-

mittee. Mr. COX.

Mr. COX. At their own request. Mr. CAULFIELD. They demanded it. Mr. BURCHARD, of Illinois, rose.

Mr. COX. The gentleman had better keep his seat; we have all the facts. [Laughter.] If we have not; my resolution sends this question to the proper committee to get the true state of the case, and you are one of the committee.

and you are one of the committee.

Mr. BURCHARD, of Illinois. Yes, sir.

Mr. COX. Then do not judge it now. [Laughter.]

Mr. BURCHARD, of Illinois. The members were subpœnaed, and after Governor Wells had partially testified—

Mr. COX. Mr. Speaker, the rule requires gentlemen shall speak by consent of those baving the floor.

Mr. BURCHARD, of Illinois. I beg the gentleman's pardon.

Mr. COX. Of course the gentleman can do that.

My friend from Ohio said they never refused to submit those papers for inspection. I read from the record on page 44, Forty-fourth Congress, second session, Miscellaneous Document 34, part 1:

Hall of Chamber of Commerce, New Orleans, December 20, 1876.

Not waiving the demand for production of papers, documents, records, &c., mentioned in subpoens served on each member of the returning board, the committee desire at the present time immediate production for examination by the committee and inspection only of the following papers.

One, two, three, and four, and so on.

These papers, records, &c., were never produced for examination and inspection only. But that matter, as I state again, is foregone. These gentlemen were accused and convicted of contempt. It was not merely like Irwin's case for refusing to develop the stealing of a subsidy for which be was put in the common jail, but this case concerned the stealing the vote of a State and changing the result of the presidential election! And yet they come here after such grand, magnificent larceny, and ask favor of this House of the people; and the advanced republican side of the House say "O, the inquisition has come back!" [Laughter.]

come back! [Laughter.]

Now, Mr. Speaker, I deny that these men were badly treated. The gentleman from Maine has not properly stated it. He says they are going into decline because of bad food and confinement.

Mr. HALE. I said nothing—begging the gentleman's pardon—of cod. I made no complaint about that.

Mr. COX. The gentlem en said something about their systems being reduced by reason of their not being properly cared for.

Mr. HALE. Mr. Speaker, I wish to say—

The SPEAKER. The gentleman from New York cannot be interrupted without his consent.

Mr. COX. I never interrupt gentlemen on the other side, and I do not desire to be interrupted by them. It is said that their systems are being reduced in this well-ventilated, well-lighted, well-heated room; and every day your champions of republicanism, your returning board, at their own request, are marched to the restaurant, where such provision is made for them that if they die they will die from repletion. [Laughter.] But why do gentlemen on the other side try to give the House and the country the impression that these men are becoming as thin as "Death the skeleton, and Time the shadow?" Let them answer the questions and produce the records, and they Let them answer the questions and produce the records, and they will be well. Gentlemen on the other side know that they have the power to do it. Why do you not advise them to do it now, eo instante, when the great trial is depending?

Mr. HALE. Will the gentleman allow me—
Mr. COX. No, sir; no, sir.

The SPEAKER. The gentleman from New York declines to be in-

Mr. HALE. Let me ask him just one question.
Mr. COX. No, sir.
The SPEAKER. The gentleman from New York declines to be interrupted.

Mr. HALE. I yielded to gentlemen on that side to interrupt me.
Mr. COX. The gentleman occupied his hour and called the previous question. It was voted down. I have the floor now and I hope I will be protected while I am on the floor before I call the previous

Mr. HALE. I divided the hour with that side very c Mr. COX. I have no favors to ask of the gentleman. Mr. HALE. You have had them already. I divided the hour with that side very courteously.

Mr. TOWNSEND, of New York. You have some poor men in prison and the gentleman is ranting over them.

Mr. SPARKS. I ask the gentleman from New York to yield to me

for a few moments

for a few moments.

Mr. COX. I yield to the gentleman.

Mr. SPARKS. As something has been said about these witnesses coming before the committee on the privileges, powers, and duties of the House, of which I am a member, I would state that originally as I understand they were subpensed, and were examined in the committee as witnesses; but they have come before that committee repeatedly—that is, the various members of the returning board have were their own demand frequently come there—to offset or answer. apon their own demand frequently come there—to offset or answer testimony that had been given against them. No later than yesterday the examination of a witness then upon the stand was delayed because of the demand of the members of this board to be there and hear the testimony. They have been before that committee on their own request, and the committee is now delayed at this moment on account of the demand of these parties to be before the committee while other witnesses were being examined. These are the facts in the case so far as the action of that committee is concerned.

The SPEAKER. The gentleman from New York [Mr. Cox] demands the previous question.

mands the previous question.

Mr. COX. Before doing so I desire to say just one word more.

I want to correct wrong impressions. If the matter be properly investigated by the Louisiana committee, to which I desire that the resolution shall be referred, wrong impressions will be corrected.

These gentlemen seem to think that great harshness has been used by the Sergeant-at-Arms. I said awhile ago that they have all the benefit of the cuisine below; and as was said by the gentleman from Maine [Mr. Frye] sometime ago one of them at least was such a hearty Union man that he was driven into the swamps to herd with the alligators, but had such a staunch constitution that he survived the alligators, but had such a staunch constitution that he survived it. And now he lives down here below us in a style equal to that of any of our members. Besides, as I hear, they all are marched around the Capitol in custody with cigars in their mouths to enjoy a prome-

nade in the salubrious evening air.
Why, Mr. Speaker, if it had not been for certain threats, if it had Why, Mr. Speaker, if it had not been for certain threats, if it had not been for the miscellaneous arsenal carried by one of these witnesses about his person, if it had not been for threats made (which can be proven) to kill, these men might long since perhaps have been allowed the free privileges which the gentleman from Maine enjoys in his abundance of riches. But, sir, we cannot treat these men just as we treat members of Congress. They are in contumacy toward this body. We cannot do, or rather we refused to do, in these cases this body. We cannot do, or rather we refused to do, in these cases what we did in the case of Pat. Woods, who thrashed a member of Congress in Richmond, far away from here; for we sent him to the common jail for three months on bread and water, like a common common jan for three months on oread and water, like a common criminal. We have not done that; we were too humane to do that. O, yes! We simply did what was done by you gentlemen on the other side, again and again and again in other cases; and now you complain of it. This complaint has no foundation, and so the committee will find out if they examine it. I hope the resolution will be I would like to have the bill of fare of these gentlemen made a part of my remarks. [Laughter.]

Mr. PAGE. I object.

Mr. MILLS. Let the bill of fare be read.

Mr. COX. I send it up to the Clerk's desk to be read.
Mr. WILSON, of Iowa. What is that paper about?
The SPEAKER. The gentleman from New York has demanded the

previous question.

Mr. WILSON, of Iowa. I thought I heard something said about a bill of fare.

The SPEAKER. The Chair knows nothing about the bill of fare.

The SPEAKER. The Chair knows nothing about the bill of fare.
Mr. WILSON, of Iowa. Did not the gentleman from New York ask
to have it included as part of his remarks? I know of my own knowledge, in regard to Mr. Wells, that he cannot eat anything.
Mr. COX. I withdraw the paper and demand the previous question.
The previous question was seconded and the main question ordered,
being upon the reference of the resolution to the special committee
on the Louisiana election.
Mr. WILSON of Iowa. Upon that question I call for the year and

Mr. WILSON, of Iowa. Upon that question I call for the yeas and

nays.

Mr. HALE. As that is only putting off and delaying a decision on the question, I also call for the yeas and nays.

Mr. COX. I object to debate.

The SPEAKER. Debate is not in order.

Mr. LYNCH. I rise to a parliamentary inquiry, and it is whether all the members of the Louisiana returning board are not confined in

The SPEAKER. They are not; it is not a parliamentary inquiry, but the Chair is able to answer that question.

The yeas and nays were ordered.

The question was taken; and there were—yeas 144, nays 89, not voting 57; as follows:

The question was taken; and there were—yeas 144, nays 89, not voting 57; as follows:

YEAS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Blackburn, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Burleigh, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Collins, Cook, Cowan, Cox, Culberson, Cutler, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrisou, Hartridge, Hartzell, Hatcher, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hooker, Hopkins, House, Humphreys, Hurd, Frank Jones, Kehr, Lamar, George M. Landers, Le Moyne, Levy, Lewis, Lord, Luttrell, Mackey, Maish, Metcalfe, Milliken, Mills, Mutchler, Neal, New, O'Brien, Odel, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Schumaker, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddiell, Charles C. B. Walker, Gilbert C. Walker, Walling, Ward, Warner, Warren, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—144.

NAYS—Messrs, Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davis, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Frye, Hale, Benjamin W. Harris, Hathorn, Hendee, Henderson, Hoge, Hoskins, Hunter, Hyman, Jovee, Kasson, Kelley, Lapham, Leavenworth, Ly

So the motion was agreed to.

Mr. COX moved to reconsider the vote by which the resolution was referred; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

# PUBLIC PROPERTY IN WAR DEPARTMENT.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting an inventory of the public property in the bureaus of the War Department; which was referred to the Committee on the Expenditures in the War Department.

# COLUMBUS BOGART.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting the report of the Adjutant-General in the claim of Columbus Bogart, second lieutenant, Fifth Tennessee Volunteers; which was referred to the Committee on Military Affairs.

# NAVIGATION OF THE THAMES RIVER.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting the report of the Chief of Engineers, relating to the removal of the obstructions to the navigation of the Thames River; which was referred to the Committee on Commerce.

## ENLISTED MEN IN ORDNANCE DEPARTMENT.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a communication from the Chief of Ordnance, in regard to the bill (H. R. No. 3506) to repeal section 1289 of the Revised Statutes relative to enlisted men in e Ordnance Department; which was referred to the Committee on Military Affairs.

## MONTANA AND DAKOTA WAR CLAIMS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a letter from the Third Auditor of the Treasury, recommending an appropriation for the payment of Montana and Dakota war claims; which was referred to the Committee on Appropriations.

# CLERICAL FORCE IN POST-OFFICE DEPARTMENT.

The SPEAKER also, by unanimous consent, laid before the Honse a letter from the Postmaster-General, relating to the proposed reduction of clerical force and the contingent expenses of his office; which was referred to the Committee on Appropriations.

## WESTERN SURVEYS.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a letter from Lieu-

tenant Wheeler, of the Corps of Engineers, relative to the appropriation for surveys west of the one-hundredth meridian; which was referred to the Committee on Appropriations.

#### FORT PECK AGENCY.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting an estimate for the removal of the Fort Peck agency; which was referred to the Committee on Appropriations.

#### MINT AT DENVER.

The SPEAKER also, by unanimous consent, laid before the House a memorial from the Legislature of the State of Colorado, relative to the mint at Denver; which was referred to the Committee on Appropriations.

#### MAN-OF-WAR SHOALS, BOSTON HARBOR.

The SPEAKER also laid before the House a letter from the Secretary of War, transmitting a report on the survey of the Man-of-War Shoals in Boston harbor; which was referred to the Committee on Commerce.

#### ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same: An act (H. R. No. 967) authorizing the survey of certain townships

in Michigan and making an appropriation therefor; and
An act (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other
property, and to sell the same at public or private sale, and for other

## WITHDRAWAL OF PAPERS.

Mr. GUNTER asked and obtained unanimous consent for the withdrawal from the files of the House of the papers in the case of John S. Ray and others, owners of the steamboats Champion Nos. 3 and 5, filed in 1867 and 1868, there being no adverse report thereon.

#### LOUISIANA RETURNING BOARD.

Mr. CARR. I ask unanimous consent to submit for consideration and adoption at this time the preamble and resolution which I send

to the Clerk's desk.

The SPEAKER. The preamble and resolution will be read, after which it will be in order to object to their present consideration.

The Clerk read as follows:

Whereas the electoral commission established by an act of Congress and invested with full powers to decide and determine all questions which might or could be raised before them relating to the presidential election held in the several States have declared and decided that no evidence could be used in counting the electoral vote for President and Vice-President touching or relating to the manner of conducting such presidential election, and have further decided that it was not competent for Congress to inquire into the conduct of the returning boards of the several States, whereby the evidence sought by the committee of this House, of which William R. Morrison is chairman, to be adduced from the members of the returning board of the State of Louisiana is rendered and declared to be irrelevant, immaterial, and entirely useless for any purpose pertaining to the recent presidential election:

And whereas that question is now settled by competent adjudication for all future time, and Congress will hereafter be debarred the right to inquire into and correct all frauds which may hereafter be perpetrated by like returning boards, whereby the testimony of said witnesses will be of no future utility to this country; And whereas this House does not desire to inflict unnecessary and useless punishment for a refusal to disclose a crime which itself cannot be punished, but is rendered lawful: Therefore,

Be it resolved, That James Madison Wells, Thomas J. Anderson, Louis M. Kenner, and G. Casanave, members of the Louisiana returning board, now held in custody of this House for contempt of its powers and privileges in rendering to said committee such testimony as has thus been declared irrelevant, immaterial, and useless, be, and they are hereby, released from custody.

Mr. HOOKER and others objected.

The SPEAKER. Objection being made, the preamble and resolu-tion are not before the House.

## U. S. BOON.

Mr. HOOKER, by unanimous consent, introduced a bill (H. R. No. 4623) for the relief of the estate of U. S. Boon, late of Hinds County, Mississippi, deceased; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

Mr. GUNTER, by unanimous consent, introduced a bill (H. R. No. 4624) to revise and amend an act entitled "An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes;" which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

# WILLIAM A. BRITTON.

Mr. CAULFIELD. Some time since the petition of William A. Britton, for re-imbursement of moneys expended by him while marshal of the west district of Arkansas in 1872, was referred to the Committee on Expenditures in the Department of Justice. The petition was improperly referred to that committee, and I now ask that the committee be discharged from its further consideration, and that it be referred to the Committee of Claims.

There was no objection, and it was so ordered.

#### SETTLEMENT OF INDIAN ACCOUNTS.

Mr. GOODIN. I ask unanimous consent to have taken from the Speaker's table at this time and referred to the Committee on Indian Speaker's table at this time and referred to the Committee on Indian Affairs Senate bill No. 1142, to authorize and empower the Secretary of the Interior to adjust and settle the accounts of the Kaskaskia, Peoria, Piankeshaw, and Wea Indians.

There was no objection; and the bill was accordingly taken from the Speaker's table, read a first and second time, and referred to the Committee on Indian Affairs, not to be brought back by a motion to reconsider.

#### ORDER OF BUSINESS.

Mr. CAULFIELD. I ask consent to report, from the Committee on the Judiciary, a bill for consideration at this time. It is important

that it be passed at once.

Mr. WALDRON. I rise to a privileged motion, and move that the House resolve itself into Committee of the Whole on the deficiency appropriation bill.

Mr. CAULFIELD. I do not think the gentleman would object to

this bill if he will hear it read; it is a very short bill.
Mr. WALDRON. I must insist upon my motion.
The motion of Mr. WALDRON was agreed to.

DEFICIENCY APPROPRIATION BILL. The House accordingly resolved itself into Committee of the Whole,

The House accordingly resolved itself into Committee of the Whole, (Mr. Eden in the chair.) and resumed the consideration of the deficiency appropriation bill.

The CHAIRMAN. The Clerk will now proceed to read the second section of this bill by paragraphs for amendment.

Mr. TERRY. Before the committee proceeds to the consideration of that portion of the bill, I desire to renew the amendment which I introduced yesterday, and which I think was ruled out upon a misapprehension. I move to amend by inserting at the close of section 1, after line 242, the amendment which I send to the Clerk's desk.

The Clerk read as follows:

To make up deficiency in appropriation for Capitol police for the fiscal year ending June 30, 1876; For captain of police \$98; three lieutenants, \$200 each, \$600; thirty privates, \$184 each, \$5,520; in all, \$6,208.

Mr. WALDRON. I raise the point of order upon the proposed amendment, that it is not in pursuance of any existing law; and I raise the further point, that the same amendment was offered on yes-

Mr. WELLS, of Missouri. It is due to the gentleman from Virginia, [Mr. Terray,] as I made the point of order upon his amendment yesterday, that I should make a statement. I made the point of order supposing that the time covered by the amendment was the present fiscal year ending June 30, 1877. I learned afterward that it referred to the fiscal year ending June 30, 1876. I find in the bill making appropriations for the legislative, executive, and judicial departments of the Government for the year ending June 30, 1876, that \$2,000 were

appropriated for the captain of the police and the same amount for the privates and lieutenants, as is proposed in this amendment. Now I would like to know whether there is any law fixing the salary of these men, or whether it simply depends on the estimates made by the Department.

The CHAIRMAN. The Chair will hear the gentleman from Vir-

The CHAIRMAN. The Chair will hear the gentleman from virginia [Mr. TERRY] on the point of order.

Mr. TERRY. This amendment simply conforms to the action of the House on several occasions. I will send to the Clerk's desk to be read a brief exposition of the law which was given in a debate that took place in 1872 upon an amendment precisely similar to this, which was then offered to a deficiency bill.

The Clerk read as follows:

Mr. Beck. I desire to offer, by way of amendment, an additional paragraph, to come in at this point, as follows:

"To make up deficiency in appropriation for Capitol police for the fiscal year ending June 30, 1871, \$11.544, as follows: For one captain, \$288; two lieutenants, \$300 each, \$600; twenty-five privates for twelve months, at \$384 each per annum, \$9,600; and three privates for eleven months, at \$384 each per annum, \$1,636; making a total of \$11.544."

Mr. Speaker, this matter was referred to me by the Committee on Appropriations to examine and report upon it, and after a very full examination I find that we have cut down the number of the Capitol police one-half, or thereabouts, but their pay is not proportionately cut down; it is cut down beyond the amount provided by law.

is not proportionately cut down; it is cut down beyond law.

Mr. Lawrence. There is no law for this apppropriation.

Mr. Beck. I beg the gentleman's pardon; there is: By the act of May 2, 1828, the presiding officers of the two Houses were authorized to fix the compensation of the police at the Capitol. (Statutes at Large, volume 4, page 266.) By virtue of that authority the pay of the captain was fixed at \$1,740; private, \$1,100. By act of April 23, 1854, 20 per cent. upon their present pay was added thereto. (Statutes at Large, volume 10, page 276.) By the act of July 28, 1866, 20 per cent. upon their present pay is allowed. (Statutes at Large, volume 14, page 324.) The effect of the proposed amendment is simply to appropriate a sum sufficient to pay the compensation now due under existing laws, the appropriation at the last session of Congress being that amount less than they are entitled to. This being the law, I was compelled to recommend the amendment which I have offered.

The question was taken on the amendment, and it was agreed to.

Mr. TERRY. I think that from the statement just read the Chair Mr. TERRY. Ithink that from the statement just read the Chair will be satisfied that there are statutes authorizing the payment to these police of the amounts this amendment proposes. In the deficiency appropriation bill for the fiscal year ending June 30, 1875, an amendment precisely like that now offered was adopted. But in the appropriation bill for the year ending June 30, 1876, only \$2,000 was

appropriated as the salary of the captain of police, whereas any gentleman who will make the calculation will find that the 20 per cent. addition upon the salary of \$1,740 increases it to exactly \$2,088; and addition upon the salary of \$1,740 increases it to exactly \$2,088; and a corresponding addition was made to the pay of the other officers. By this amendment we seek to give to these police for the fiscal year ending June 30, 1876, the same amount which Congress gave them for the fiscal year ending June 30, 1875—nothing more, nothing less.

The CHAIRMAN. Did not the appropriation bill for the year ending June 30, 1876, provide what pay these officers should receive?

Mr. TERRY. Yes sir.

The CHAIRMAN. And they have received the amount provided for in that act as passed?

Mr. TERRY. I presume they received the amount provided for in the deficiency bill of 1876 for the fiscal year ending June 30, 1875. But this amendment relates to the next year, which has not been pro-

But this amendment relates to the next year, which has not been provided for by any law.

Mr. CANNON, of Illinois. With the permission of the Chairman, I will call his attention and that of the House to an amendment which I offered to the deficiency bill in 1875 covering this same point. The gentleman from Missouri [Mr. Wells,] says that the amount appropriated was the amount estimated for. I presume that is true; but the estimates had been continuously wrong commencing with 1873, the time when Mr. Beck procured the adoption of his amendment, and running on year by year. In 1875 I made a similar motion to that which the gentleman from Virginia [Mr. Terray] now makes; and this amendment was then adopted paying the captain of police at the rate of \$2,084 and privates at the rate of \$1,584. The matter was looked into at that time. The gentleman from Maine [Mr. HALE] had charge of the bill, and after his attention and the attention of had charge of the bill, and after his attention and the attention of the House was brought to the law the amendment was adopted without further discussion.

I want to say further that I have looked into this matter fully, and I want to say further that I have looked into this matter fully, and I have no doubt that the law as it applied to the fiscal year ending last June entitled the captain of police to \$2,084 a year, and the privates to \$1,584; whereas only \$2,000 was appropriated for the captain of police and \$1,400 for the privates. The addition proposed to be given by this amendment is due under the law. If the gentleman from Missouri [Mr. Wells] desires it, I can send up to be read the amendment which was adopted on my motion in 1875. That amendment involved the same question as the amendment now pending and the amendment referred to in the remarks of Mr. Back for ing and the amendment referred to in the remarks of Mr. Beck, for-

amendment involved the same question as the amendment now pending and the amendment referred to in the remarks of Mr. Beck, formerly a member of the Committee on Appropriations, which have been read. I also have before me the sessions laws of 1875 showing what these appropriations are.

Mr. BLOUNT. What is the difference? Where does it arise? Mr. CANNON, of Illinois. The law allows \$2,088.

Mr. BLOUNT. For what?

Mr. CANNON, of Illinois. For the captain of police the appropriation was \$2,000 made by the act of 1875, which I hold here in my hand. The law allows a lieutenant \$1,800, while the appropriation was only \$1,600. The law allowed privates \$1,584, while the appropriation was only \$1,400.

The CHAIRMAN. Will the gentleman from Illinois send up the appropriation act to which he is referring?

Mr. CANNON, of Illinois. Yes, sir.

The CHAIRMAN. What volume is it?

Mr. CANNON, of Illinois. Volume 18, page 385; that is the appropriation under which they received their pay.

Mr. BLOUNT. I think there is a later law than that.

Mr. CANNON, of Illinois. No, there was no later law. This is to pay them for the last fiscal year, ending June 30, 1876, passed in 1875. There was an effort made to legislate for them on the legislative, exceutive, and judicial appropriation bill at the last session for the present fiscal year. Whether it succeeded in changing their salaries then it is not now necessary to discuss. We are now only seeking to pay them what was their pay prior to that attempted legislation.

Mr. WELLS, of Missouri. Mr. Chairman, this is too important a matter to act on at the present time without fuller information. It is a proposition to go back ten years to pay them balances of salary alleged to be due. In 1860 the captain received \$860 and the lieutenant \$620 and now we have a claim that the salary of the captain should be \$2,088 and that of the lieutenant \$1,800. It is important

ant \$620 and now we have a claim that the salary of the captain should be \$2,088 and that of the lieutenant \$1,800. It is important for us to know how these salaries have grown up to be more than double what they were formerly. It is certainly necessary we should have that information before acting on any such amendment as that now proposed. For myself I do not believe there is any law to govern the amendment. As I stated before, the Book of Estimates for the year ending June 30, 1876, showed the salary of the captain of police was

ending June 30, 1876, showed the salary of the captain of police was \$2,000, of the lieutenant \$1,600, and of a private \$1,400, and the appropriation made was precisely what the estimates called for at that time.

The gentleman from Illinois, as well as the gentleman from Virginia, stated that in 1873 20 per cent. had been added to the salary of these officers. But gentlemen do not know where to refer to the law by which such increase of salary has been provided. They merely refer to appropriations in the appropriation bills by which additions were made to these salaries for a certain period of time. As I have been informed by gentlemen more familiar with this subject than I am, there has been no other law on this subject than that contained in appropriation bills.

Mr. CANNON, of Illinois. I wish to say in reply to that, with the

permission of the gentleman from Virginia, there was a resolution fixing these salaries. I will refer the gentleman to a report made by Mr. Beck, of Kentucky, from the Committee on Appropriations, on this subject, in which he will find the law quoted in reference to the pay of officers and privates of the Metropolitan police.

Mr. WELLS, of Missouri. When was that law?

Mr. CANNON, of Illinois. Eighteen hundred and seventy-three.

Mr. WELLS, of Missouri. It is important that law should be read

to the House.

Mr. CANNON, of Illinois. Very well, then I will have it read.

Mr. WELLS, of Missouri. As I understand the law to which the gentleman refers, it is the provision of the appropriation bills increas ing from time to time these salaries, but those provisions of appropriation bills from time to time fixing different sums for these officers are not considered as the law fixing these salaries. They are liable to be repealed or changed in every following appropriation bill.

Mr. CANNON, of Illinois. I call for the reading of the report made by Mr. Beck, of Kentucky, which states the law at different times, and how it was successively amended. I hold that report in the property of the report in the call for the resulting of the report in the call for the report in the report in the call for the report in the

Mr. WELLS, of Missouri. That refers to appropriations made from year to year to pay these officers and privates of the police. Those provisions only apply for the time being, and are not such law as is

demanded in this case to allow the amendment to come in.

The CHAIRMAN. Has the gentleman from Illinois any law fixing the compensation of these officers different from what is fixed in the

appropriation bill of 1875?

Mr. CANNON, of Illinois. It is not fixed at all in the law of 1875.

The CHAIRMAN. It provides what is compensation for that year, and makes appropriation for it.

Mr. CANNON, of Illinois. I desire to call attention to the fact

while the Committee on Appropriations appropriated so much money to pay these parties, it does not say that shall be their compensation. The CHAIRMAN. Has the gentleman any law fixing any other or

The CHAIRMAN. Has the gentleman any law fixing any other or different compensation?

Mr. CANNON, of Illinois. Certainly.

The CHAIRMAN. Then what is it?

Mr. CANNON, of Illinois. I send it up to the Chair, and ask the parts I have marked in the report made by Mr. Beck, of Kentucky, from the Committee on Appropriations of this House, be read.

Mr. ATKINS. Let the gentleman read the statutes himself.

Mr. CANNON, of Illinois. I cannot; they are scattered through half a dozen volumes of statutes, but I will if it is desired.

Mr. ATKINS. That seems to me to be the important point.

Mr. CANNON, of Illinois. I presume when Mr. Beck, of Kentucky, from the Committee on Appropriations, made his report to the House,

from the Committee on Appropriations, made his report to the House, and it was followed for consecutive years, that should be conclusive as to what the law is.

Mr. ATKINS. I think the statute is conclusive if the gentleman

Mr. CANNON, of Illinois. I will send and get the statute if the gentleman desires it. Mr. ATKINS. Certainly; I would rather see the statute than any

Mr. ATKINS. Certainly; I would rather see the statute than any reference to provisions in the appropriation bills.

The CHAIRMAN. The Chair is in some doubt about the point of order. He supposes these officers have received the amounts appropriated in the act of 1875; and the amendment of the gentleman from Virginia [Mr. Terry] is to give them additional compensation.

Mr. TERRY. Certainly not. The amendment is to give them for the year ending 30th of June, 1876, precisely what was given for the year ending 190, 1875.

year ending June 30, 1875.

The CHAIRMAN. The appropriation was made in the legislative appropriation bill of 1875 for the year ending June 30, 1876, and the Chair supposes they have received that compensation fixed in the

appropriation bill.

Mr. TERRY. Congress, for the year ending 30th of June, 1875, made a certain appropriation falling short of what the police were entitled to under the law. Then the next Congress added to the deficiency appropriation bill an amount to make their compensation up to what the law gave them. And the Court of Claims has decided that if Congress makes an appropriation less than a party is entitled under the law to receive, he has a right to go to the Court of Claims and get a judgment for it, or he can get it in the way proposed here,

in a deficiency bill.

The CHAIRMAN. The Chair inquires of the gentlemen from Virginia if these officers did not get the amount that is provided for in

Mr. TERRY. We do not say that they did not get the amount provided in the appropriation bill. But what we say is that the appropriation bill did not give them what they were entitled to under the

The CHAIRMAN. Can the gentleman from Virginia refer to that Mr. TERRY.

Mr. TERRY. I believe I can.
Mr. BLOUNT. I think the Mr. BLOUNT. I think the gentleman is in error in regard to that. By one of the statutes referred to by Mr. Beck, of Kentucky, Statutes at Large, volume 14, there is an increase of 20 per cent. on what these officers had got before in an appropriation bill. This is a sample of the references that have been made. Therefore, so far as we can gather from this, I think we will be very unsafe in acting upon what has been previously done. An examination of the statute shows that it was done on an appropriation bill, and the practice has been, I think, always for it to be done on an appropriation bill.

Mr. CLYMER. What is the language of that statute?

Mr. ATKINS. The Chair could hardly rule the amendment in order unless there is a statute to justify it.

The CHAIRMAN. Unless there is some statute that gives these officers a different compensation from what is given them in the appropriation bill the Chair will rule the amendment out of order.

priation bill the Chair will rule the amendment out of order.

Mr. CANNON, of Illinois. I will send to the Clerk's desk to be read section 1822 of the Revised Statutes.

The Clerk read as follows:

SEC. 1822. The Capitol police shall consist of the following members, to be paid at the following rates, respectively, per annum, on the order of the Sergeant-at-Arms of the Senate and the Sergeant-at-Arms of the House, or of either of them, namely: One captain, at \$2, 401.20; three lieutenants, at \$2,070 each; twenty-seven privates, at \$1,821.60 each; and eight watchmen, at \$1,150 each.

Mr. WELLS, of Missouri. That law was passed when we increased

This increase was made at the time the salaries of members of Congress were increased from \$5,000 to \$7,500, and the subsequent Congress repealed the law increasing the pay of officers, and it was repealed at that time as regards the increase of pay of these police.

Mr. WALDRON, Lamburit that the Chair head area described.

Mr. WALDRON. I submit that the Chair has already sustained the

point of order.

Mr. CLYMER. I wish to say that one of the acts referred to as authorizing this increase of 20 per cent. is the act of April 22, 1854. By that act the pay of certain employés therein named, among whom were the Capitol police, was increased 20 per cent. upon their then salary, which was \$1,740. But by a provise to the fourth section of this act it is expressly provided—

That nothing herein contained shall be construed as making an appropriation for any period beyond the 30th day of June, 1854.

Mr. FRANKLIN. State the law of 1866 and acts passed since that date in relation to the salaries to which this amendment applies. The

law of 1854 does not apply in this case.

Mr. CLYMER. Now it seems clearly to have been the intention of the Legislature at that time that that should be a temporary increase

during that session of Congress of 20 per cent., and not to continue as a permanent salary of the employés of the House.

Mr. DURHAM. I desire to ask if the Chair has not decided that the amendment is not in order? If so, there is nothing before the

The CHAIRMAN. The Chair has not yet decided the point of order.

Mr. ATKINS. An inquiry was made for the repealing act alluded
to by the gentleman from Missouri, [Mr. Wells.] I send it up to the
Clerk's desk to be read.

The Clerk read as follows:

The Clerk read as follows:

An act repealing the increase of salaries of members of Congress and other officers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act of March 3, 1873, entitled "An act making appropriations for legislative, executive, and judicial expenses of the Government for the year ending June 30, 1874," as provides for the increase of the compensation of public officers and employés, whether members of Congress, Delegates, or others, except the President of the United States, and the justices of the Supreme Court, be, and the same is hereby, repealed, and the salaries, compensation, and allowances of all said persons, except as aforesaid, shall be as fixed by the laws in force at the time of the passage of said act: Provided, That mileage shall not be allowed for the first session of the Forty-third Congress; that all moneys appropriated as compensation to the members of the Forty-second Congress in excess of the mileage and allowances fixed by law at the commencement of said Congress, and which shall not have been drawn by the members of said Congress respectively, or which having been drawn, have been returned in any form to the United States, are hereby covered into the Treasury of the United States, and are declared to be the moneys of the United States absolutely, the same as if they had never been appropriated as aforesaid.

Approved January 20, 1874.

Mr. ATKINS. I suppose that embraces the Capitol police?

Mr. ATKINS. I suppose that embraces the Capitol police?
Mr. TERRY. This just remits them back to their salaries as they were prior to this time.
Mr. ATKINS. I simply presented that to show that the law read by the gentleman from Illinois [Mr. Cannon] had been repealed.
The CHAIRMAN. The Chair sustains the point of order, and the amendment is not before the House.

The Clerk resumed the reading of the bill, and read as follows:

Surveying public lands in California: Amount due John Goldsworthy, deputy surveyor, for surveys executed under contract of October 3, 1873, with the surveyor-general of California, being for the service of the fiscal year 1874, \$1,407.15.

Mr. LANDERS, of Connecticut. I offer the following to come in at the close of that paragraph:

To pay Henry W. Olcott for services rendered as assistant messenger in the library of the House for ninety days, at \$3.60 per day, \$324.

Mr. WALDRON. I make the point of order that we have passed the paragraph to which that could refer, and cannot go back.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk resumed the reading of the bill, and read as follows:

Surveying public lands in Oregon: Amount due Jeremiah M. Dick, deputy surveyor, for surveys executed under contract of July 2, 1873, with the surveyor general of Oregon, being for the service of the fiscal year 1874, \$2,094.69.

Mr. McFARLAND. I offer the following amendment to come in at the close of that paragraph:

For the payment of the amount certified to be due to Elizabeth  $\Lambda$ . Walker, by the accounting officer of the Treasury Department, being the amount due her as the only heir of Samuel J. Tinsley, deceased, a soldier of the Mexican war, the sum of \$34.30.

Mr. WALDRON. The gentleman should add that this a re-appropriation.

Mr. McFARLAND. This claim is supported by the Auditor of the Treasury, who certifies that this amount is due to this lady on account of services rendered by her father in the Mexican war. I understand that the balance of the appropriation made for claims of this description has been covered into the Treasury, and the object of the amendment is merely to authorize the payment of this sum out of the fund heretofore appropriated for the payment of such claims. I have in my hand a certified statement of the Second Auditor of the Treasury that this balance is due.

Mr. WALDRON. I have no objection to the amendment.

The amendment was agreed to.
Mr. LANDERS, of Connecticut. I now offer my amendment to come in after the amendment just adopted.

The amendment is as follows:

To pay Henry W. Olcott for services rendered as assistant messenger in the library of the House for ninety days, at \$3.60 per day, \$324.

Mr. WALDRON. We have passed the portion of the bill to which

that would apply, and I must object.

Mr. CLYMER. The gentleman from Connecticut [Mr. LANDERS] will understand that these appropriations are for deficiencies, to be paid out of sums heretofore appropriated but covered into the Treas-

nry.
Mr. ATKINS. This amendment will be in order on the sundry civil bill.

The CHAIRMAN. The Chair sustains the point of order.

Mr. DUNNELL. I move to strike out the following paragraph:

Surveying public lands in California: Amount due John Goldsworthy, deputy surveyor, for surveys executed under contract of October 3, 1873, with the surveyor-general of California, being for the service of the fiscal year 1874, \$1,407.15.

Mr. Chairman, I think that this provision of the bill ought to have some explanation. This clause provides for payment to a deputy surveyor. We have hundreds of as meritorious claims as this is upon the Private Calendar. I am unable to distinguish this from a great mass of claims against the Government. I have noticed that this bill provides for the payment of a great many claims. Now, if a deputy surveyor from the State of California has a claim, it certainly ought to come in here through the surveyor-general. The surveyor-gento come in here through the surveyor-general. The surveyor-general, it seems, made a survey contract with a deputy of his, and he has failed to pay that deputy. I know that in the case of the collector the Government refused to treat with deputy collectors, and it has nothing to do with the deputy surveyor. The Government does not know him. He is responsible to the surveyor-general. I would like some explanation of this class of deficiencies, and I cannot see why this deficiency should arise, or why it should be provided for in this bill.

Mr. WALDRON. I think I can satisfy the gentleman from Minne-Mr. WALDRON. I think I can satisfy the gentleman from minne-sota [Mr. Dunnell] that this appropriation is made under the act of March 3, 1873, for surveys of public lands in the State of California, amounting to \$90,000. Under the operation of the law of June 20, 1874, \$4,700 of that money was covered into the Treasury. After that amount was covered into the Treasury this claim was audited and allowed for \$1,407 to a deputy surveyor, but, as the money which had been appropriated to pay it when audited had been covered into the Treasury it became necessary that it should be paid by a re-apthe Treasury, it became necessary that it should be paid by a re-ap-

Mr. DUNNELL. I would ask the gentleman whether I am to un-derstand that this claim of the deputy surveyor has been audited and allowed?

Mr. WALDRON. That is stated in the letter from the Secretary of

the Treasury, which I hold in my hand.

Mr. DUNNELL. Then I withdraw the amendment.

Mr. LUTTRELL. I offer the following amendment:

Arizona Territory:

for the survey and subdivision of the Colorado River Indian reservation, by Chandler Robbins, designated by the late Secretary of the Interior; assignment of \$6,000 for the work; appropriation per act March 3,

assignment of \$6,000 for the work; appropriation per act March 3, 1875.

Dakota Territory;
For the survey of that part of the Sioux Indian reservation in the Peoria Bottom lying east of the Missouri River, by T. B. Medary, designated by the late Secretary of the Interior; assignment of \$9,000 for the work; appropriation per act March 3, 1875, 18 Statutes, 384).
For the survey of the Devil's Lake Indian reservation, in Dakota Territory, by Charles H. Bates, designated by the late Secretary of the Interior; assignment of \$6,500 for the work; appropriation per act March 3, 1875, (18 Statutes, 384).
For the survey of a part of the Sioux Indian reservation located on the White River, west of the Missouri River, in Dakota Territory, by James W Miller, designated by the late Secretary of the Interior, and under his contract, dated October 2, 1874; appropriation per act June 23, 1874, (18 Statutes, 213).

Idaho Territory:
For the survey of the Fort Hall Indian reservation, in Idaho, (treaty July 3, 1888,) by D. P. Thompson, designated by the late Secretary of the Interior; assignment of \$10,000 for the work out of appropriation of \$292,680, per act approved June 23, 1874, (18 Statutes, 213).

Oregon: 1,310 43 1,384 18 - 11.659 75

4,520 50

#### Examination of surveys in the field.

Colorado:

For examining surveys in the field, in order to test the accuracy of the work before approving the same, under instructions from the surveyor, general to E. H. Kellogg, dated August 14, 1876, no appropriation for the examination of surveys having been made by Congress for the present

Survey of public lands.

Dakota:

James C. Blanding, deputy surveyor, contract February 26, 1874, in excess of the appropriation of \$80,000, per act March —, 1873. The survey was properly executed and is available.

Oregon:

William H. Odell, deputy surveyor. This amount is submitted to cover the work returned in excess of the appropriation, the survey being available. The survey was executed during the fiscal year ending June 30, 1878.

1876.....

27, 163 02

\$110 00

This is an appropriation to provide for contracts entered into by the Secretary of the Interior with the surveyors-general of the sev-eral Territories for the survey of public lands. The contracts have eral Territories for the survey of public lands. The contracts have been approved and the surveys have been done and the accounts audited, and you will find in the Report of the Commissioner of the Land Office for the year 1876, on page 1845, that this amount is recommended by him to be paid. Now here is a contract made with gentlemen in good faith. They have performed the labor of the surveys named in their contracts, and their accounts have been properly audited at the right Department. I can see no objection to the payment of these claims. This is similar to an amendment which was offered any resterday by my friend from Tayas. [Mr. HANGOCK I and which of these claims. This is similar to an amendment which was offered on yesterday by my friend from Texas, [Mr. HANCOCK,] and which was adopted by the Committee of the Whole. I send to the Clerk's desk and ask to have read a communication sent by the Commissioner of the General Land Office, Mr. Williamson, to the Secretary of the Treasury, in connection with the items included in my amendment. The Clerk read as follows:

The Clerk read as follows:

The foregoing estimates for surveying public lands are submitted in order to liquidate balances due to the deputy surveyors for surveys executed under their respective contracts entered into with the respective surveyors-general of the States and Territories. The deficiencies were caused by said surveyors-general underestimating the cost of the work embraced in the contracts; but, as the surveys have been approved and are available to the Government, the respective sums are submitted for appropriation by Congress.

The deficiency of \$344.42 was incurred by the surveyor-general of New Mexico Territory in continuing Messrs. Huggins and Irwin in the needful employment in subserving public interest.

The sum of \$299.94 is submitted to refund the expenses incurred by Mr. Cartee, surveyor-general of Idaho Territory, in investigating and examining certain surveys in the field, pursuant to instructions from the Commissioner of the General Land Office, dated November 19, 1868, the contingent fund of the surveyor-general's office not admitting at the time of liquidating the amount due him. This estimate was formerly submitted for appropriation, but not eventuating in any provision for the purpose, and the claim being a just one, is herewith submitted again, with recommendation that it receive favorable action.

The six following estimates of deficiencies have been caused partly by diversions of certain sums assigned by the late Secretary of the Interior to the respective surveyors for the purpose of liquidating surveying liabilities of a different surveyor, after the several contracts had been entered into and the parties had gone into the fields of their respective operations, and partly by executing work in excess of the terms of their contracts. The surveys, however, as well as the triplicate plats and field-notes of the Indian reservations, having been returned to this office and found correctly executed and available for Indian purposes, the several deficiencies are submitted for congress

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, September 30, 1876.

Mr. LUTTRELL. The Government has received the benefit of the labor performed by these surveyors, and I cannot see why any member should raise an objection to the payment of these honest claims, as recommended by the Commissioner of the General Land Office in

Mr. HANCOCK. I would like to ask for information a question in regard to these amendments. I understand that these different items are made up of balances due on contracts entered into with the

items are made up of balances due on contracts entered into with the Government for surveying lands, which contracts amounted to more than the money appropriated for the purpose.

Mr. WALDRON. The items contained in the amendment moved by the gentleman from California [Mr. LUTTRELL] are items embraced in Executive Document No. 19, being the letter of the Secretary of the Treasury, containing an estimate of balances of deficiencies and dated the 6th of January last. Last week by an order of this House the items contained in the amendment proposed by the gentleman from California [Mr. LUTTRELL] were taken from the Committee on Appropriations and referred to the Committee of Claims, and they are now in the possession of that committee.

are now in the possession of that committee.

I desire to say further, without raising any question as to the propriety of paying these claims, that this is not the proper time to introduce such an amendment. We are now considering that portion of this which relates to the re-appropriation of money from the Treas ury. This amendment contains items for appropriation or for defi-ciency; and in either case the amendment should have been offered when the first section of this bill was under consideration. I raise the point of order that it is now too late to move this amendment to this bill.

Mr. WELLS, of Missouri. I desire to call the attention of the Chair to the wording of the amendment which has just been read at the Clerk's desk. It is not similar to the amendment adopted yesterday by the Committee of the Whole on motion of the gentleman from

Texas, [Mr. Reagan.] This amendment embraces items due upon contracts. By reference to the bill making appropriations for the year to which these items relate, it will be found that a limited sum of money was appropriated for the surveys in these Territories and placed under the control of the Surveyor-General. That officer had no authority to make a contract that would involve more money than was contained in the appropriation. Consequently these claimants, if they made a contract with him, made it with him in his character of private citizen, as he was not authorized to make a contract that would bind the Government beyond the amount appropriated for the purpose. Consequently I hold that this class of claims should be referred to the Committee of Claims and investigated by that committee, and not come before the House at this time. tee, and not come before the House at this time.

The CHAIRMAN. The Chair is of opinion that the point of order is well taken, and rules the amendment out of order.

The Clerk resumed the reading of the bill, and read the following:

Indian affairs:
Pay of superintendents and agents: For payment of amount certified to be due
W. P. Callon, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$178.86.

Mr. WALDRON. I am instructed by the Committee on Appropriations to move an amendment to come in after the paragraph just

The Clerk read the amendment, as follows:

For payment of amount certified to be due T. J. Galbraith, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$2,391. 24.

The amendment was agreed to.

Mr. VANCE, of North Carolina. I move to an after the amendment just adopted the following: I move to amend by inserting

For this amount, to pay James M. Roane balance due for supplies furnished the Indian agent in California in 1858-'59, \$39.34.

I believe there will be no objection to this amendment. here a letter from the Commissioner of Indian Affairs, but I do not here a letter from the Commissioner of Indian Affairs, but I do not think any one will object to the amendment. It is of the same nature as the amendment just adopted. This account has been audited by the proper accounting officers of the Treasury Department and certified by them to be due, and all that is needed is an appropriation.

Mr. BLOUNT. I raise a point of order on the amendment.

The CHAIRMAN. The Chair sustains the point of order.

Mr. VANCE, of North Carolina. I would like to be heard on the point of order. What is it?

The CHAIRMAN. The Chair understands the point of order to be that this is a private claim and under the rule is not in order on an appropriation bill.

an appropriation bill.

Mr. BLOUNT. I do not object to this in any captious spirit. am informed that of the large number of claims that were attached to this bill on yesterday quite a number are merely estimates of a class of claims that have heretofore been referred to the Committee on War Claims that have heretofore been referred to the Committee on War Claims. It is found that that amendment embraced not only claims audited, but claims to be audited. I therefore must object to this class of claims.

Mr. VANCE, of North Carolina. I would ask for the reading of the letter from the Commissioner of Indian Affairs, and then I would

like to be heard on the point of order.

The CHAIRMAN. The point of order being made, the Chair has no discretion in the matter.

Mr. VANCE, of North Carolina. I would like to address myself to the Chair upon the point of order.

The CHAIRMAN. The Chair has already made his decision; but, if the gentleman from North Carolina wishes to be heard very briefly,

the Chair will hear him.

the Chair will hear him.

Mr. VANCE, of North Carolina. I will be very brief. I think that this is not a private claim. As will be shown by the letter which has been sent to the desk, it is embraced in the accounts of N. B. Lewis, Indian agent in California. It stands exactly on the same ground as these appropriations in the bill "for payment of amounts certified to be due W. P. Callon, late Indian agent." The item embraced in my amendment was included in the accounts of Mr. Lewis, and the accounting officer of the Treasury certified that the amount was due to Mr. Roane. This is not a private claim. There is no bill pending for its payment. The matter was once presented to the Committee on Appropriations; but for some reason the appropriation was not on Appropriations; but for some reason the appropriation was not made. I see that this bill is intended by its title to provide for deficiencies "for prior years, and other purposes." I think, therefore, the

ciencies "for prior years, and other purposes." I think, therefore, the point of order is not well taken.

The CHAIRMAN. The deficiencies for prior years relate only to the payment for service authorized by law, and which was not paid for because the appropriation was exhausted. Unless there is some law of the same sort covering this claim, the Chair must rule it out.

Mr. ATKINS. I suggest to the gentleman from North Carolina to reserve this amendment and offer it to the sundry civil appropriation bill. That will be the proper place for it, and no doubt it will then be accented.

The Clerk resumed the reading of the bill, and read the follow-

Buildings at agencies and repairs: For payment of amounts certified to be due W. P. Callon, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$9.61.

Mr. CANNON, of Illinois. I offer the amendment which I send to the Clerk.

Mr. CLYMER. I wish to reserve all points of order on the amend-

The Clerk read as follows:

To make up deficiency for Capitol police for the fiscal year ending June 30, 1876, as follows: For one captain, \$57; for three lieutenants, at \$200 each, \$600; for twenty-seven privates at \$184 each, \$4,968; and three privates in charge of Botanic Garden, at \$184 each, \$552; making, in all, \$6,208.

Mr. WALDRON. I raise a point of order on that amendment. The CHAIRMAN. The Chair has already sustained a point of order on this amendment

Mr. CANNON, of Illinois. I desire to be heard on the point of order. The CHAIRMAN. The Chair has sustained a point of order on the amendment

Mr. CANNON, of Illinois. This amendment has not been offered

before.

Mr. WALDRON. But my objection is that we have passed the only portion of the bill to which it would be appropriate.

Mr. CANNON, of Illinois. This is a new amendment; and I desire to be heard on the point of order.

The CHAIRMAN. The Chair is ready to rule on the point of order.

Mr. CANNON, of Illinois. I will ask the Chair not to do that. This being a new amendment, the amount being changed, so that it is not the same that was named in the amendment of the gentleman from Virginia [Mr. TERRY I] ask the Chair not to rule moon the point of Virginia, [Mr. Terry,] I ask the Chair not to rule upon the point of order till I have been heard, for the reason that I have here the law, section by section and year by year, showing that this amount of money is due to these men. Therefore, I would like to be heard upon

the point of order.

Mr. CLYMER. I hope the gentleman will be confined to the point of order, and not allowed to discuss the merits of a proposition which has been twice ruled out.

Mr. CANNON, of Illinois. This is another and a different amend-

Mr. CLYMER. I trust the gentleman will confine his discussion to

Mr. CAINMER. I trust the gentleman will comme in a discussion to the point of order, and not go into the merits of the proposition.

Mr. CANNON, of Illinois. I propose to do that.

Mr. WALDRON. I rise to a point of order that this is not the proper time to offer the amendment; that we have passed the portion of the bill to which it relates, and can only go back by unanimous

The CHAIRMAN. That point of order is evidently well taken.

Mr. CANNON, of Illinois. I submit that I have a right to be heard
on the point of order.

The CHAIRMAN. The point of order now made is that the amend-

ment is not appropriate to this portion of the bill.

Mr. CANNON, of Illinois. I submit that the point of order comes too late.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. CLYMER]

The CHAIRMAN. The gentleman from Pennsylvania [Mr. CLYMER] reserved all points of order before the amendment was read.

Mr. CANNON, of Illinois. Well, if I cannot be heard, I desire to appeal from the decision of the Chair.

The CHAIRMAN. The question is, Shall the decision of the Chair stand as the judgment of the committee?

Mr. CANNON, of Illinois. That question I desire to debate.

The CHAIRMAN. The rule is that there can be no debate in Committee of the Whole on a point of order.

Mr. CANNON, of Illinois. Very well; then I withdraw the appeal.

Mr. FOSTER. I move to strike out the last line in the bill; and I do this, Mr. Chairman, for the purpose of correcting a statement made do this, Mr. Chairman, for the purpose of correcting a statement made by the Speaker of the House the other day when upon the floor, in relation to the receipts and expenses of the Government for the present fiscal year.

I notice his statement has been commented upon by some of the papers of the country, and I think now he himself would be willing

to modify it.

First, I call attention to the statement he makes that "We," speak-First, I call attention to the statement he makes that "we," speaking of the democratic House at the last session, "reduced the expenditures of this Government about \$30,000,000." This statement, no doubt, he made believing it to be true, but the fact is, as officially ascertained by the Treasury Department, that the reductions made in appropriation bills last year and in other appropriations, compared with the year previous, is about twenty-three million dollars and a half. From this must be deducted the appropriations made at this session of Congress for deficiency and other appropriations to be paid during the present fiscal year, estimated at six and one-half million dollars. So, in fact, the real reduction made at the last session of Congress will be about \$17,000,000.

Ie next makes the statement that "we have".

He next makes the statement that "we have"—
Mr. FORT. I hope the gentleman from Ohio will state how much
was the reduction made the year before.
Mr. FOSTER. About the same as during the present fiscal year;
that is to say, the reduction, when the year is ended and the books are
closed and officially ascertained, will from present indications, in my
judgment, be about the same as the reduction made by the preceding
republican Congress for the preceding fiscal year.

He makes the further statement that the decrease in the public
debt up to the present time is \$5,000,000. That, I have no doubt, is an
oversight on his part.

Mr. RANDALL. Not in the public debt, but a decrease in the revenues below what was estimated.

Mr. FOSTER. I ask the Clerk to read just what the gentleman did say. No; perhaps I had better read it myself, and I will do so. This is his language:

Nay more, where would your Treasury have been to-day but for these reductions? Where would your deficiencies have been? Instead of the expenditures being five millions behind the receipts at this time, they would have been twenty millions behind; and at the rate you are going now, if the receipts are not increased you would have had at the end of this fiscal year forty millions of deficiency with but one resort to meet it, and that resort, additional taxation. That we have at least protected the people from.

I presume this is an oversight on the part of the gentleman from Pennsylvania. He intended to say, and I so understand him now, but for these reductions there would have been a deficiency to-day of but for these reductions there would have been a deficiency to-day of \$20,000,000. Seven months of the year have expired and we are eight million dollars and a half ahead; that is to say, the receipts of the Government are eight million and a half more than the expenditures. About four months and a half belong to the appropriations made at the last session of Congress. Under any conceivable circumstances if the appropriations had remained at what they were last session, we would probably have been about even at this time instead of twenty millions behind, as suggested by the gentleman from Pennsylvania would have the fact but for democratic economy.

The gentleman further says, but for the action of his committee

The gentleman further says, but for the action of his committee and the House at the last session at the end of the fiscal year, we and the House at the last session at the end of the fiscal year, we would have been forty millions behind; in other words there would have been a deficiency of \$40,000,000. I find from the report of the Secretary of the Treasury that the estimates of receipts for the present fiscal year are \$264,000,000, while the estimates of expenditures are \$237,000,000, and on those estimates there would be a surplus of twenty-six million six hundred and odd thousand dollars, not counting the sinking fund. I find the appropriations made at the last session were \$147,700,000 or thereabouts. (I speak in round numbers.) From these we must deduct \$30,000,000 receipts of the Post-Office Department, because we simply appropriated the deficiency. The full sum appears in the tables which have been made up. Deducting these \$30,000,000 it leaves \$117,000,000 as appropriations made by the last session. I estimate the interest on the public debt, including interest I estimate the interest on the public debt, including interest payable on the Pacific Railroad bonds, &c., at \$100,000,000. I estimate the permanent appropriations at \$20,000,000; and this makes a total of \$237,000,000 for our expenses this year. The receipts are estimated by the Treasury Department at \$264,000,000. I called this morning at the Treasury Department and found the receipts have been fully up to the estimates—that is, up to this date—and that we may confidently expect \$264,000,000, the full amount estimated, and perhaps more. This leaves a surplus of \$27,000,000 at the close of the year ending June 30, 1877.

The CHAIRMAN. The gentleman's time has expired.

Mr. KELLEY. I yield my time to my friend from Ohio.

Mr. FOSTER. The actual reductions made by our democratic

friends at the last session when the year closes, probably being about \$17,000,000, show conclusively that instead of having a deficiency of \$40,000,000 at the close of the year, if the appropriations had gone upon the scale of expenditure of the previous year, there would have been a surplus of \$10,000,000.

been a surplus of \$10,000,000.

Now, Mr. Chairman, the chairman of the committee, and the present Speaker of the House may possibly insist that he includes the sinking fund in his statement. Of course the sinking fund of 1 per cent. of the debt is a liability to be met by the Government annually. Nevertheless everything we pay into the sinking fund is so much of a decrease of the public debt. His statement has gone to the country as if but for the action of his democratic friends there would be a deficiency of \$40,000,000, without any explanation whatever in relation to the sinking fund.

would be a deficiency of \$40,000,000, without any explanation whatever in relation to the sinking fund.

Mr. RANDALL. I renew the pro forma amendment.

The gentleman from Ohio may endeavor by the use of a great number of figures to confuse this question; but the substance of what he complains of is this: that I declared that but for the action of last session we should have been behind this year about \$40,000,000, taking into consideration the fact that we reduced the appropriations of last year thirty millions and that the deficiency upon the estimates of the receipts is ten millions, as compared with the previous year.

The appropriations for the year 1876, as I showed clearly at the end of the last session and as the gentleman states them to be to-day, were \$177,303,000. And as I have recently, since I made the statement, found out, the receipts for this year will fall behind the estimates somewhere from twelve to fifteen millions of dollars—quite

mates somewhere from twelve to fifteen millions of dollars-quite twelve millions-and it may run to fifteen millions under the previous

Mr. FOSTER. I think the gentleman is mistaken on that point.
Mr. RANDALL. The receipts will fall behind, in my judgment,
quite twelve millions.

Mr. FOSTER. Behind last year. You said behind the estimates. Mr. RANDALL. Behind the expectation of what the receipts ould be.
Mr. FOSTER. They are fully up to the estimates to the present

day.

Mr. RANDALL. So that the reduction of the appropriations by \$30,000,000 and the probable falling off of the revenues of this year below what they were last year show more than forty millions that

we should have had to provide for by increased taxation if we had not reduced the appropriations as we did to the extent of thirty millions.

Now, as the gentleman has brought this question up again, I want to go a step further in my statement, and show in connection what has been done by the action of the last session and what is likely to be done by the Committee on Appropriations and the House at this session, put them together and compare them with the appropriations session, put them together and compare them with the appropriations of the last Congress during its two sessions. The appropriations of the Forty-third Congress during its first session were \$187,763,388.03. The appropriations during its second session were \$177,303,280.71. So that the appropriations of the last Congress amounted in the aggregate to \$359,066,668.74. On the other hand, the appropriations of the Forty-fourth Congress, according to your own books, made up by the Departments, were during the first session \$148,451,573.78, and the probability is that if the Senate does not resist the appropriations recummended by the Committee on Appropriations as far as I am abla ommended by the Committee on Appropriations, as far as I am able to gather what they will be this session, they will be \$142,286,597.50; making the appropriation bills of the present Congress during its two sessions for the two years aggregate \$290,738,171.28. And the net result of the presence here of a democratic House is thus shown to be a saving to the people of \$68,328,497.46. [Here the hammer fell.]

Mr. CLYMER obtained the floor and yielded his time to Mr. RAN-

Mr. RANDALL. Nay, more; if the policy of this House at its last session had not been resisted to the utmost by the Senate of the United States, the fact is that this Congress would have saved during its sessions more than \$30,000,000 to the people of the United States. And that is a page in history to which every one of those who have been members of this Congress and have been instrumental in any degree in bringing about such a result as this can in all time point with great pride. And the people, too, can look back to this Congress and say to them with truth that they have come up in this respect to the full measure of the hopes they had when they sent them here.

Mr. WALDRON. I move that the committee rise and report the

bill with the amendments.

Mr. FOSTER. I desire to say just a word.
Mr. WALDRON. I yield to the gentleman for a moment.
Mr. FOSTER. The gentleman from Pennsylvania states one thing as his opinion and I state another. We will both be here six months

hence.

Mr. RANDALL. If we live.

Mr. FOSTER. If we live. He states this democratic House at the last session reduced the expenses \$30,000,000; I say \$17,000,000. When the year closes the books will determine who is right.

Mr. RANDALL. I take the aggregate which, according to law, has to be put at the bottom of every bill, and I take your own books to

show it.

Mr. FOSTER. I say that when the books are closed on the 30th day of next June they will tell which is right.

Mr. RANDALL. I do not keep the books, but I am book-keeper enough to detect the wrong, if wrong there be.

Mr. FOSTER. Well, we expect to keep the books.

Mr. RANDALL. If you do, it will be to the great injury of the people.

people.

Mr. WALDRON. I move that the committee rise and report the bill with the amendments.

Mr. LANE. I desire to offer an amendment.
Mr. WALDRON. I yield to the gentleman to offer an amendment.
Mr. LANE. I offer the following amendment:

Amend by inserting the following for payment:

Survey of Indian reservations.

Arizona Territory:

For the survey and subdivision of the Colorado River Indian reservation, by Chandler Robbins, designated by the late Secretary of the Interior; assignment of \$6,000 for the work; appropriation per act March 3,1875, (18 Statutes, 384).

Dakota Territory:

For the survey of that part of the Sioux Indian reservation in the Peoria Bottom lying east of the Missouri River, by T. B. Medary, designated by the late Secretary of the Interior; assignment of \$5,000 for the work; appropriation per act March 3, 1875, (18 Statutes, 384).

For the survey of the Devil's Lake Indian reservation, in Dakota Territory, by Charles H. Bates, designated by the late Secretary of the Interior; assignment of \$6,500 for the work; appropriation per act March 3, 1875, (18 Statutes, 384).

For the survey of a part of the Sioux Indian reservation located on the White River, west of the Missouri River, in Dakota Territory, by James W. Miller, designated by the late Secretary of the Interior, and under his contract, dated October 2, 1874; appropriation per act June 23, 1874, (18 Statutes, 213).

Idaho Territory:

For the survey of the Fort Hall Indian reservation, in Idaho, (treaty July 3, 1868,) by D. P. Thompson, designated by the late Secretary of the Interior; assignment of \$10,000 for the work, out of appropriation of \$292,680, per act approved June 23, 1874, (18 Statutes, 213).

Oregon:

For survey of the Malheur Indian reservation for the Snake and Pi-Ute Indians, in Oregon, by Thompson and Meldrum, under their contract, dated October 24, 1874, payable out of the \$10,000, the amount assigned to them by the late Secretary of the Interior, and chargeable against the appropriation, per act June 23, 1874, (18 Statutes, 213).

Mr. WALDRON. I raise the point of order that this is the same

amendment which was offered by the gentleman from California [Mr. LUTTRELL] and was ruled out of order.

Mr. LANE. I think this amendment is offered in the proper place

at this time.

The CHAIRMAN. The gentleman from Michigan makes the point of order that the amendment comes in not at the proper time.

Mr. LANE. I make the point that it comes in precisely where it

should come in

The CHAIRMAN. The Chair sustains the point of order, and the amendment is not in order.

Mr. CANNON, of Illinois. I offer the following amendment:

To make up deficiency for Capitol police for the fiscal year ending June 30, 1876, as follows: For one captain, \$87; for three lieutenants, at \$200 each, \$600; for twenty-seven privates, at \$183 each, \$4,968; and three privates in charge of Botanic Gardens, at \$184 each, \$552; making, in all, \$6,208.

Mr. WALDRON. I raise the point of order that that amendment changes existing law, and that we have passed that portion of the bill to which it could apply.

Mr. CANNON, of Illinois. Upon that point I desire to be heard a

The CHAIRMAN. The Chair has a right to pass upon the question

The CHAIRMAN. The Chair has a right to pass upon the question of order, and the point of order is sustained.

Mr. CANNON, of Illinois. I rise to a parliamentary inquiry. I suppose I have a right to offer an amendment. This is a separate and independent amendment that I have offered, an amendment that has not been offered before, and in different phraseology, appropriating a different amount for this deficiency. Now, then, I suppose that upon the point of order I ought at least to be entitled to make a statement to show what the law is, because I have the law here in black and white.

white.

The CHAIRMAN. The gentleman from Illinois is not in order; he is not making a parliamentary inquiry at all.

Mr. CANNON, of Illinois. I rise, then, to ask whether or not it is not my right to exhibit the law when the point of order is made.

The CHAIRMAN. That is not a parliamentary inquiry, and the gentleman from Illinois is not in order and will take his seat.

Mr. CANNON, of Illinois, rose.

The CHAIRMAN. The gentleman will take his seat.

Mr. CANNON of Illinois. I have taken my seat and I now vice to

Mr. CANNON, of Illinois, rose.

The CHAIRMAN. The gentleman will take his seat.

Mr. CANNON, of Illinois. I have taken my seat and I now rise to a parliamentary inquiry. In the first place I appeal from the decision of the Chair unless I can be permitted to state what the point of order is and cite the law in regard to it.

The CHAIRMAN. The gentleman is not in order.

Mr. ATKINS. I rise to a point of order. I believe that the rule requires that a gentleman in discussing a point of order shall merely state it and give the reason for his appeal.

requires that a gentleman in discussing a point of order shall merely state it and give the reason for his appeal.

The CHAIRMAN. The point of order has already been ruled upon and sustained by the Chair.

Mr. CANNON, of Illinois. And an appeal is taken from that decision by manufactures.

ion by myself.

The CHAIRMAN. The question then is, Shall the decision of the Chair stand as the judgment of the committee?

The question was taken; and on a division there were-ayes 83,

noes 13.

Mr. CANNON, of Illinois. No quorum voted, and I call for tellers.

The Chairman ordered tellers, and appointed Mr. CANNON, of Illi-

nois, and Mr. CLYMER.

Mr. HURLBUT. I would like to ask the Chair if there is any such thing as an appeal from a decision of the Chair in Committee of the Whole.

The CHAIRMAN. The Chair so understands; that has been the

The CHAIRMAN. The Chair so understands; that has been the practice of the House certainly.

Mr. DUNNELL. Is it in order to offer a suggestion?

The CHAIRMAN. It is not while the House is dividing and the tellers are taking the count.

Mr. CANNON, of Illinois. I am inclined to think that there is no quorum in the House.

Mr. ATKINS. Then let us have a call of the House.

The House divided; and the tellers reported—ayes 115, noes 32.

So the decision of the Chair was sustained.

Mr. WALDRON. I now move that the committee rise and report

Mr. WALDRON. I now move that the committee rise and report

the bill with the amendments to the House.

Mr. DUNNELL. I suggest to the gentleman from Michigan who has charge of this bill that he allow the gentleman from Illinois [Mr. has charge of this bill that he allow the gentleman from Illinois [Mr. CANNON] five minutes to refer to the law upon which he bases his amendment. I think that far more time has been consumed already than would have been consumed if he had allowed the gentleman to state the law. I ask unanimous consent that the gentleman from Illinois [Mr. CANNON] be allowed to state the law.

Mr. SAVAGE and others objected.

The CHAIRMAN. The Chair would suggest that the objection be withdrawn and that the gentleman from Illinois be heard.

Mr. SAVAGE. I insist on the objection.

Mr. WALDRON. I now move that the committee rise and report the bill with the amendments to the House.

the bill with the amendments to the House.

The motion was agreed to.

7,553 44

2,710 96

4, 238 61

158 55

ficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes, and had directed him to report the same back to the House with sundry amendments.

Mr. WALDRON. I move the previous question on the bill and the amendments.

Mr. CANNON, of Illinois. I move that the House now take a re-

cess until to-morrow morning at ten o'clock.

The motion was not agreed to.

The previous question was seconded and the main question ordered upon the deficiency appropriation bill, and the amendments thereto reported from the Committee of the Whole.

mr. WALDRON. I will ask a separate vote on the amendment to the first section, which was adopted in Committee of the Whole on motion of the gentleman from Texas, [Mr. HANCOCK.]

Mr. HANCOCK. Is debate in order?

The SPEAKER. The gentleman from Michigan [Mr. WALDRON] is in charge of this bill, and under the rule is entitled to the floor for one hour if he desires.

Mr. HANCOCK. I think that is very unusual on an appropriation

Mr. EDEN. I ask the gentleman from Michigan to yield to me for a few minutes.

Mr. WALDRON. I will, after a time. The items involved in the amendment adopted on motion of the gentleman from Texas [Mr. HANCOCK] amount in the aggregate to nearly half a million of dollars. The amendment never was read in full in Committee of the Whole. In order that the House may understand the character of some of the items embraced in the amendment, I will ask the Clerk to read such of the items as I have marked.

The Clerk read as follows:

The Clerk read as follows:

Amount due to various parties for transportation furnished in the removal of the Indians of Whetstome agency, from White River, Dakota, to their new reservation in Dakota, in 1872 and 1873, being a deficiency for the fiscal year 1873 and prior years.

For this amount to be applied in payment for services rendered by employés, and supplies purchased during the fiscal year ending June 30, 1873, at the Gila River reservation. Arizona, as by statement of Agent J. H. Stout, on file in the Indian Office, being a deficiency for the fiscal year 1871 and prior years.

This amount, to be applied in the payment of indebtedness incurred in 1868 and 1869 by H. C. Cole, late Indian agent, in conducting the affairs of the Tulalip Indian agency, in Washington Territory, as per statement of Samuel K. Ross, brevet colonel United States Army, and late superintendent of Indian affairs, on file in the Indian Office, being a deficiency for the fiscal year 1873 and prior years.

Amount due Union Pacific Railroad Company for transporting annuity goods and supplies to the Pawnee agency during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year rending June 30, 1874, being a deficiency for the fiscal year rending June 30, 1874, being a deficiency for the fiscal year ending June 30, 1874, being a deficiency for the fiscal year last.

Amount due Union Pacific Railroad Company for transporting annuity goods and supplies to the Shoshones and Bannacks and other bands of Idaho and Southeastern Oregon, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year 1874.

Amount due Union Pacific Railroad Company for transporting annuity goods and supplies to the Shoshones and Bannacks and other bands of Idaho and Southeastern Oregon, during the fiscal year ending June 30, 1874, being a deficiency for the fiscal year ending June 30, 1874, being a deficiency for the fiscal year ending June 30, 1874, being a deficiency for the fiscal year ending June 30, 1874, being a defic 2,594 28

Mr. WALDRON. I will ask permission to have printed in the RECORD the balance of the items I have marked, and not have the

time of the House taken up by the reading of them at this time.

Mr. CANNON, of Illinois. I object.

Mr. WALDRON. Then I will withdraw the request. A sufficient number of these items have been read to show the character of the evidence on which they are based. It is possible that these claims

Mr. CANNON, of Illinois. I call the gentleman to order.
The SPEAKER. Upon what ground?
Mr. CANNON, of Illinois. I ask that all the amendments may be

Mr. CANNON, of Illinois. I ask that all the amendments may be reported.

The SPEAKER. The amendment was not being read. The gentleman from Michigan [Mr. WALDRON] referred in his remarks to certain portions of an amendment that had been offered.

Mr. CANNON, of Illinois. I was under the impression that the amendment was being read.

The SPEAKER. The gentleman was mistaken.

Mr. WALDRON. As I was remarking, it may be possible that all of these claims are just and valid and should be paid. But it is not the business of the Committee on Appropriations to examine these claims, and consequently they could not insert them in a deficiency appropriation bill. On the contrary, these claims have been submit-

claims, and consequently they could not insert them in a deficiency appropriation bill. On the contrary, these claims have been submitted to other committees of this House for investigation.

By reference to the letter of the Secretary of the Treasury, presenting these claims to the attention of Congress, gentlemen will find the character of the evidence upon which these claims are based. Some of them are based on vouchers on file in the Department; others are based upon mere statements of Indian agents or Army officers, and some of them are based upon the mere estimates of Indian agents.

It is on such evidence as that that this House is called to insert in a deficiency bill items of claims aggregating a half a million of dol-

I now yield five minutes to the gentleman from Illinois, [Mr. Eden.] Mr. ATKINS. Are any of these claims in favor of the Union Pacific Railroad; and, if so, to what amount?

Mr. WALDRON. I cannot state the amount. There are a large

Mr. WALDRON. I cannot state the amount. There are a large number of items embraced in this amendment for the benefit of the Union Pacific Railroad Company, amounting to several thousand dol-

Mr. CLYMER. They amount to seven or eight thousand dollars. Mr. EDEN. I wish to submit a few remarks in regard to the amendment submitted by the gentleman from Texas, [Mr. Hancock,] for the reason that I happen to have some information concerning the particular document which contained the items embraced in his amendment. At the last session of Congress a portion of the items embraced in this same executive document was referred to the Committee on War Claims and a portion was referred to the Committee of Claims.

Were they in like form as those now submitted ? Mr. EDEN. They were in the same form as those here presented. The Committee on War Claims investigated very carefully the items referred to that committee. They were items in reference to the hire of quarters for officers on military duty, to barracks for horses in the cavalry and artillery service. In our investigation we found, in regard to about one-half of these items, that there was no proof in the Department to sustain these claims.

The document is simply an estimate of the Department as to what may be required to pay for the service that is embraced in the items referred to. It does not purport to be a document stating a list of claims found due by the Government, but as simply an estimate of what probably will be found due.

Of the items referred to the Committee on War Claims, amounting to about \$130,000, we found that less than one-half the amount had been settled and adjusted in the Department. We reported to the House what we found had been adjusted and settled, and had the amendment covering them put upon an appropriation bill, which became a law. The balance of these claims I have not heard from since. I apprehend that many of these claims have never been passed upon by the Department at all. These are simply estimates of what may be necessary as the claims are proved up in the Department. Some of them filed a number of years ago are awaiting proof. The appropriation for this particular service having been covered into the Treasury under existing law, it becomes necessary whenever the accounting officers may decide that a claim should be paid, to come before Congress and ask a deficiency appropriation. But the fact that these estimates are sent in is no evidence that the accounting officers of the Treasury or anybody else has ever passed upon and allowed these claims. Of the items referred to the Committee on War Claims, amounting allowed these claims.

allowed these claims.

Mr. ELKINS. I would like to ask the gentleman one question. I am informed that the claims of which he is speaking are not embraced in the amendment of the gentleman from Texas.

Mr. EDEN. The claims to which I refer are not in the amendment. Mr. ELKINS. Then they are not before the House.

Mr. EDEN. The claims of which I am speaking were disposed of at the last session of Congress. I only refer to them for the reason that on investigating those claims we found that more than half of them had notyet been allowed by the Department, but were only claims which had been filed and were awaiting further proof: the estimate which had been filed and were awaiting further proof; the estimate was sent in in order that payment might be made when the proof had been furnished.

Mr. BUCKNER. I understand that the objection is made that

these are mere estimates. Now let me call the gentleman's attention to an extract from the letter of the Commissioner of Indian Affairs, as published on page 20 of to-day's Congressional Record. This

officer states that

The vouchers covering the amounts estimated for have been examined and approved and are on file in this office, suspended, awaiting appropriations to meet the

That relates to the claims from New Mexico.

Mr. EDEN. I am not aware that the Commissioner of Indian Affairs audits these claims; I think they have to go through the Treasury Department. But I am not familiar with that subject.

Mr. BUCKNER. I simply wanted some explanation of that letter

of the Commissioner.

of the Commissioner.

Mr. EDEN. I understand that the amounts of the claims as reported are simply estimates of what may be wanted to meet the claims when they are proved up; and it will be entirely safe to refer this document to some committee of the House that can make a thorough examination and ascertain which claims have been proved up and which have not. We ought to ascertain which of the claims are just and right, and which are not properly sustained. I think it is not safe to make an appropriation in the shape proposed in this amendment, without further investigation upon the part of some committee of this House.

Mr. WALDRON. I yield five minutes to the gentleman from Mis-

Mr. WALDRON. I yield five minutes to the gentleman from Missouri, [Mr. STONE.]
Mr. STONE. I desire to call the attention of members to some facts

in connection with this amendment. On the 30th of April, 1874, Mr.

Averill, by direction of the Committee on Indian Affairs, presented in this House the following resolution, which was adopted

Resolved. That the Secretary of the Interior be, and is hereby, requested to furnish the House a list of all the claims for losses through depredations committed by Indians, presented to the Department of the Interior for ten years past, giving in each case the date when and the place where the depredations were committed, the date of the presentation of the claim, the name of the claimant or claimants, and the full amount of the claim; also, the name of the tribe or band of Indians charged with the depredations, and the action of the Department upon each claim, and also the damage done by whites to Indians.

On the 5th of January, 1875, the Commissioner of Indian Affairs reported to the Secretary of the Interior that he had performed the duty imposed upon him under that resolution; and on the 9th of January of the same year the then Secretary of the Interior transmitted to the Speaker of this House a communication giving a list of claims which will be found in Executive Document No. 65, Forty-third Congress, second session. It thus appears that the clerical force of that Department required about eight months in order to prepare this list of claims and to examine the evidence in the Department to establish

Now, I undertake to say without fear of successful contradiction that no committee created by this House can ever take up these claims and examine them. We have already made an appropriation for the investigation of these claims; and why should we ask any committee of the House to further investigate them? I know that a number of them were referred to the Committee on Indian Affairs, who merely took up the evidence which they found in the Interior Department and reported the cases to the House

Now, Executive Document No. 151, Forty-fourth Congress, first session, is merely a repetition of Executive Document No. 65, Forty-third Congress, second session, wherein the then Secretary of the Interior asks for an appropriation to pay these claims.

Mr. EDEN. Is not the gentleman from Missouri [Mr. STONE] aware

Mr. EDEN. Is not the gentleman from Missouri [Mr. STONE] aware that before these claims can be paid they must undergo examination by the accounting officers of the Treasury Department; that the action of the Indian Commissioner upon them is not final at all?

Mr. STONE. But the investigation already made establishes the claims as fully as the investigation of any committee of this House could do.

Mr. EDEN. The gentleman also remarked that no committee of the House would investigate these claims. I will state to the gentle-man that the Committee on War Claims did investigate all the claims

of this class that were referred to them.

Mr. STONE. There is no question about that, because they were so very few that the Committee on War Claims could very readily investigate them.

The Secretary of the Treasury, in his letter of March 24, 1876, transmits a list of these claims to Congress and asks for an appropriation to pay them. They have been so well established that if they were judgments hanging over the heads of members of this House I underjudgments hanging over the heads of members of this House I undertake to say that the sheriffs of the several counties would enforce their payment. But these claims against the Government cannot be paid in any other way than through an appropriation by Congress.

Mr. WALDRON. I now yield five minutes to the gentleman from California, [Mr. LUTTRELL.]

Mr. LUTTRELL. Mr. Speaker, I rise for the purpose of giving my support to the amendment of the gentleman from Texas, [Mr. Han-

COCK.]
In the first place, in reply to the gentleman from Michigan, [Mr. WALDRON,] who reported this bill, when he says these are mere estimates made by Indian agents, I beg to differ from him. I have had occasion to examine several of these vouchers and they are made in due form of law, submitted to the several Departments, passed upon by the proper accounting officers, and in many instances where the appropriation was not exhausted payments have been made upon them; so the appropriation now asked for is merely to pay the balance which remains due.

which remains due.

Gentlemen upon this floor have complained of Indian "rings," of frauds perpetrated under Indian contracts, but they should also remember that just so long as we continue this system of legislation, refusing to pay honest claims when presented, just so long there will be robbery of the Government. When the Government defrauds its creditors of what is justly due them for goods furnished the Government, the contractors will rob the Government and attempt to justify themselves for so doing by alleging they have been refused the payment of their just claims.

Gentlemen ask me, how are they going to rob it \(^1\) I will tell you. Take the accounts made by some of these contractors and you will

find they charge for beef-steers weighing from one thousand to twelve hundred pounds when in reality they only weighed six hundred.

Why do they put in such accounts? It is because Congress refuses to pay their just claims, and they charge double in order to secure

full payment.

Mr. SAVAGE. How many of these are of that class?

Mr. LUTTRELL. If you will examine the reports they will answer each for itself.

Appropriation Committee, to which they were referred, refused to examine them.
Mr. BLOUNT.

Mr. BLOUNT. They were referred to the Committee on Appropriations in the first instance, and by that committee reported back and under an order of the House sent to the Committee of Claims.

Mr. LUTTRELL. Yes; they were referred to the Committee of Claims.
Mr. BLOUNT. The House ordered them there.
Mr. BLOUNT. The House ordered them there.
Mr. LUTTRELL. Yes, sir. But let me call the attention of the House for a few moments to some of these claims in reference to which I know something, as they are made by parties living in my own district. I find here an amount due Mission and Pacific Woolen Mills, for clothing furnished under contract for the Tule agency in October, 1873, being a deficiency for fiscal year 1874, \$499.25. That claim is for blankets furnished the Government and used upon this Indian reservation.

Amount due Hooker & Co. for hardware furnished under contract Amount due Hooker & Co. for hardware furnished under contract for the same agency in October, 1873, being a deficiency for the fiscal year 1874, \$413.93. This amount is due for plows, and hoes, and harrows, required by the Indians on this reservation, and which have been used for several years although no payment has yet been made to the parties who furnished them.

parties who furnished them.

Amount due Murphy, Grant, & Co. for goods, &c., furnished under contract for the same agency, October, 1873, being a deficiency for the fiscal year 1874, \$345.37. These goods I know were furnished, and that the Government still neglects to pay for them. Yes, I know it; because they were furnished to an Indian reservation in my own district with which I am well acquainted. Therefore, while these just claims, made under proper vouchers, audited, and certified to by the Government officers, remain unpaid I cannot refuse to give my support to this amendment, which merely proposes to do them justice. I know these men have furnished these articles, and they should be paid for every dollar's worth.

Throw these men have furnished these articles, and they should be paid for every dollar's worth.

There are a large number of claims for supplies furnished for the Hoopa Valley reservation in the county adjoining the one where I live. Amount due A. Brizzard for supplies furnished the Hoopa Valley reservation, California, in March, April, May, and June, 1874, being a deficiency for the fiscal year 1874, \$1,999.71. He furnished those supplies and his accounts have been audited. This balance remains unpaid although due and audited upon the vouchers already

presented to the Department.

Gentlemen simply object that this amendment should not go into this bill. If this amount were due to gentlemen who smile, and the attempt were made to rule it out of this appropriation bill, I think

We have here, amount due Marcus C. Hawley & Co. for hardware furnished the Hoopa Valley agency, California, during the fiscal year ending June 30, 1874, being a deficiency for the year 1874, \$121.72. That is a claim for plows and other hardware furnished to an Indian That is a claim for plows and other hardware furnished to an Indian reservation at the lowest market price, at the same price they were sold to farmers generally, yet the Government refuses to pay for those goods, and refuses payment year after year when the bill is presented, although the necessary vouchers have been sworn to and the account has been properly audited by the officers of the Government. I need only call attention to the letter of the Secretary of the Interior, as well as the letter of Commissioner Smith, in favor of the payment of these claims.

A MEMBER. Read them.
Mr. LUTTRELL. I will send them to the Clerk's desk and ask they be read.

The CHAIRMAN. The gentleman's time has expired.

Mr. CLYMER. Before the gentleman from California takes his seat I should like to ask him whether there are not items amounting to \$9,683.18 for the Union Pacific Railroad embraced in this amendment, and whether it is not also proposed to pay that amount to that

railroad corporation ?

Mr. LUTTRELL. I am only speaking of those claims I have

knowledge of. Mr. CLYMER. Mr. CLYMER. Does the gentleman propose to pay the Union Pacific Railroad Company—for pay them he will if he votes for this amendment—when it is well known that corporation is indebted to

this Government to the extent of millions of dollars?

Mr. HANCOCK. They will be held back if any money is due to

that railroad.

Mr. LUTTRELL. The law directs that amount shall be withheld if anything be due the Government.

Mr. WALDRON. I now yield to the gentleman from Texas, [Mr.

Mr. HANCOCK. I have a few remarks to make on the amendment now under consideration. The fact just alluded to, that there are some items here found due the Union Pacific Railroad Company, does not occur to me to be a reason why an appropriation should be made to pay those items, nor any just reason why the other items going to make the aggregate of this amendment should be withheld from the parties entitled to the amounts due them. If that corporation is indebted to the Government of the United States, the money Mr. SAVAGE. That is what we say, that such is the character of these claims, and therefore they ought to be referred to the Committee of Claims for careful examination.

Mr. LUTTRELL. Your committees refused to examine them. The adjust matters of account with that corporation any more than with

These various items are yet due as shown by Executive Document No. 151, sent to this House by the Secretary of the Treasury, purport-ing to be an estimate of deficiencies in the various Departments for the fiscal year ending June 30, 1876, and embracing deficiencies for all of the Departments, but in the Interior Department the amount, or nearly the amount, embraced in this amendment. They are not of the character of claims alluded to by the gentleman from Illinois, recently the presiding officer of the Committee of the Whole. The view that he expressed with reference to those claims was of course the proper one. They do not purport to be any other than the estimated amount necessary to pay a supposed indebtedness; and I believe it is usually the case that where amounts are estimated for, they are estimated for probably more than is supposed to be necessary. But these items are not of that character, and the gentleman's argument is totally inapplicable to them; for these amounts are found to be due by the accountcable to them; for these amounts are found to be due by the accounting officers, and the vouchers for them, they state, are on file. They have gone through the regular process. The claims have been found to be correct for the amount stated. They have been allowed, they have been audited, estimated for, and a requisition made upon this House to make appropriations to pay them. It is true, sir, that some of them are pretty old. They run back as far as 1861, a few of

Mr. STEELE. I will say to the gentleman that none of them are

older than 1872 or 1873.

Mr. HANCOCK. The great body of them belong to the years 1872 and 1873, and some of them to 1874. The larger proportion of them had not been brought to the attention of Congress before this executive document was sent in, but some of them had been brought to the attention of Congress previously.

Now I submit that there is no committee of this House in existence,

and I doubt very much whether one can be raised, as competent to make these investigations as the accounting officers in the different Departments where we have to look for information. If the Commit-Departments where we have to look for information. If the Committee on War Claims got any information, no doubt the data on which they formed their opinions were received from the very places that the accounting officers would go to for information if they were required to make up the accounts. It is as I understand a very peculiar thing indeed for the Secretary of the Treasury to present an estimate for an amount stated to have been found due to an individual for which he helds accounts. vidual for which he holds a voucher, as was the case in many of these items. But, when presented, the funds appropriated have either been exhausted, or because of the delay in some instances, as I before stated, the amounts had been covered into the Treasury under the act of 1874, and the vouchers could not be paid.

Now I submit with all respect the question what there is in in-debtedness of this character which should require its reference to the Committee on War Claims or the Committee of Claims. What can they do with it? They can go and look over again the vouchers in the various Departments and bureaus of the Departments, and they can employ a practical and experienced accountant to add up the items, and see whether the clerks have made the proper computation; and that is the end of their power, their capacity, and their jurisdiction. The reference to the Committee of Claims was a matter of expediency. A presidential election was coming on, and we did not pediency. A presidential election was coming on, and we did not want to appropriate any needless amounts of money just at that time. The Committee of Claims had no power over this thing. They could do nothing with it except what they did; let it remain in their pigeon-holes until this session, when they reported it back, that it might come before the House, and it is now properly here for consideration and appropriation. These amounts, belonging to a multitude of people, although individually small in amount, aggregate, it is true, a considerable sum. But if it were a great deal more, is that a good reason for repudiating the indebtedness? The Pacific Railroad, I believe, has an amount here of between six and seven thousand dollars. I do not know just what the amount is, but it is an inconsiderable sum, and it is just like anybody eles's claim against the Government—or debt rather for these are not claims; they are found due by the officers intrusted with the duty of ascertaining the found due by the officers intrusted with the duty of ascertaining fact, found due by the Commissioner of Indian Affairs, by the Commissioner of the Land Office, by the Secretary of the Interior, and passed up to the Secretary of the Treasury, and by him placed before Congress. Do gentlemen mean to intimate that these functionaries will make a false statement and will assert that an amount has been found due here when there is no such fact, and it is only an amount estimated for? So far as I have examined these reports, they invariably contain this distinction: where there is an amount estimated for, it is so stated; but where there is an amount found due, it is stated that a certain amount is found due to A, B, or C.

Mr. EDEN. Will the gentleman allow me to ask him a question? Mr. HANCOCK. Certainly.

Mr. HANCOCK. Certainty.

Mr. EDEN. I will ask the gentleman from Texas if the Secretary of the Treasury, in his letter, has stated that these items are due?

Mr. HANCOCK. No, sir; some of them are estimated. The accounts were incurred under the Interior Department, and the amount due has been ascertained by the accounting officers of the Treas-

ury.
Mr. BUCKNER. I would ask the gentleman whether he is claim-

ing the payment of claims which have not yet been certified or allowed

by the proper department of the Government.

Mr. HANCOCK. The amendment does not embrace all the claims in Executive Document No. 151. All are embraced in this amendment that have been shown to be due by the officer to whom the accounts were referred. The amount of these claims, as I was proceedcounts were referred. The amount of these claims, as I was proceeding to remark, should constitute no reason for the repudiation of the indebtedness of the Government. We might just as well repudiate the whole indebtedness of the Government, and it might be economy to do it in one form, but in another view it would be extravagant. I hold that the Government should deal with its citizens in the same way in which it requires its citizens to deal with one another, and when an amount is found due to any individual, however small the amount may be, whether it be three or four or fifteen or fourteen amount may be, whether it be three or four or inteen or fourteen hundred dollars, as in some of these cases, if the sums are found to be due and owing, an appropriation should be made to liquidate that debt on the part of the Government, so that it may discharge its obli-gations to the citizens as it is the duty of the citizen to discharge his objection toward his fellow-citizens.

[Here the hammer fell.]

Mr. WALDRON. I now yield five minutes to the gentleman from Colorado, [Mr. Belford.]

Mr. Belford. I desire to call the attention of the House to the fact that on yesterday we had an animated discussion on the amendment offered by the gentleman from Texas, [Mr. Hancock,] and that this House voted by 97 yeas to 53 nays in favor of the amendment. I know of no circumstance in the meanwhile that would justify a change of this result. Now, I desire to call the attention of the gentleman from Pennsylvania [Mr. CLYMER] to this charge for transportation by the Union Pacific Railroad Company.

That charge is for transporting supplies to the Weeminuche band of Ute Indians in Southern Colorado. Those Indians for months

past have been levying contributions upon our people—horses, feed, and all the supplies necessary for their support—because the Government has failed to supply them and in so doing failed to protect the people of Colorado against their spoliations and depredations. are now compelled to supply them and to sustain them; and that demand on the part of these Indians will continue till the Government of the United States either furnishes adequate protection to our people or furnishes supplies to these Indians.

It is very nice for gentlemen living here in the East to talk about an Indian policy, a peace policy, and a Christian policy. I believe that I am as much a Christian as is the gentleman from Massachusetts, [Mr. Seelye,] but before he can induce the people of the West to observe a peace policy in reference to the Indians he must be willing to stand on this floor and advocate a measure which will induce the Government to furnish to these wards of the nation the supplies they need. It has not been done heretofore. When we come and ask that these claims for supplies furnished to the Government shall be paid we are met with a statement that they have not been aljudicated or properly audited. I say that they have all been considered by the proper Department. They have undergone judicial inspection and inquiry. They have received the approval of one of the great Departments of this Government and they received the approval of the House yesterday and should receive the approval of the House to-day. It is simply a question whether or not this House intends to repudiate any horast dalt of the Government of the United States for it

diate an honest debt of the Government of the United States, for if you repudiate these debts you will be no more justified than you would be if you repudiated the general debt of the nation incurred in the

prosecution of the late war.

Now, I desire to call the attention of the House to another matter. In Executive Document No. 151, there are a large number of claims of ranchmen who performed duty in Colorado and Idaho, and in Da-kota and in other Territories belonging to the United States west of us. They rendered the service under a law established by the Govern-ment, and yet we are told that their claims, although small in amount,

ment, and yet we are told that the shall not be paid.

People who inhabit the State of Colorado and the Territories surrounding it are generally poor people. They have earned all the money they possess. They need these small sums due them by the Government to help them to tide over this period of depression and want, and I call upon the House to-day to do justice to them.

[Here the hammer fell.]
Mr. WALDRON. I now yield five minutes to the gentleman from

Tennessee, [Mr. BRIGHT.]

Mr. BRIGHT. I rise merely for the purpose of putting this matter correctly before the House, as I understand it. And let me first say a word as to the reference of these claims to the Committee of Claims. They were referred to that committee at the last session; but let me to the gentleman from Texas [Mr. HANCOCK] that the committee

say to the gentleman from Texas [Mr. HANCOCK] that the committee did not decline to act upon them in consequence of the pendency of a presidential election, but because they found it entirely impracticable to give their attention to these claims.

Mr. HANCOCK. I made no such charge as that.

Mr. BRIGHT. Then it is all right. They found that these claims had only been in part audited and that they would therefore require further investigation, and in consequence of the accumulated business on the hands of the committee it was impracticable that they could be disposed of. That is all I have to say upon that point. could be disposed of. That is all I have to say upon that point.

I would state what I understand to be the condition of these claims. I believe that in the main they are just claims; at least they are vouched for by the Commissioner of Indian Affairs as being just vouched for by the Commissioner of Indian Affairs as being just claims as far as he has investigated them. But the proof to sustain these claims is not yet matured and perfected. As I understand from the Commissioner of Indian Affairs, these claims have been filed with the Department, but have not yet been thoroughly and fully investigated. There are three Departments which they must pass before there can be a final adjudication of the validity of these claims. First, they have to undergo the scrutiny of the Interior Department; second, the scrutiny of the executive commisties of Indian commissioners; and third the scrutiny of the accounting offician commissioners. dian commissioners; and, third, the scrutiny of the accounting officers of the Treasury Department. If either one of these Departments condemns or rejects a claim it cannot be paid under the law unless there is provision made in this bill absolutely making an appropriation to pay it.

Mr. ELKINS. They have all been approved, and here is the evi-

dence before the House.

Mr. BRIGHT. I ask that the Clerk read a letter from the Commissioner of Indian Affairs, which will explain the nature of these claims, and I call the attention of the House to the information therein communicated. We seem to have been in dumb confusion while these claims were being considered, and I think this letter will disentangle any misconception that gentlemen may have entertained in relation to these claims. If they will give attention they will perhaps know how to vote more intelligently.

The Clerk read as follows:

The Clerk read as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, D. O., January 12, 1877.

SIR: \* \* By reference to House Executive Document No. 151, first session of the present Congress, it will be observed that those of the items embraced therein belonging to this Department are for supplies furnished either under contract or by open market purchase, and for services rendered by various employés in the Indian service, all of which accounts, so far as I am able to ascertain, are just and honest accounts, and should be paid.

In the event of an appropriation, which I trust will be made, all of the accounts named in said document are subject to the scrutiny of the examining clerks of this bureau, of the executive committee of the board of Indian commissioners, and of the accounting officers of the Treasury Department before payment can be made; and in no case could payment of any one of them be procured unless it be found correct and just and to correspond with the information in regard thereto contained in the records of this office and of those of the Treasury, through which all accounts must pass before payment.

For these reasons I recommend that the estimate of the accounts of this bureau embraced in the document named be referred to the Committee on Appropriations for proper action.

for proper action. Very respectfully,

J. Q. SMITH, Commissioner.

Hon. J. M. BRIGHT, Chairman Committee of Claims, House of Representatives.

Mr. WALDRON. I now yield one minute to the gentleman from Georgia, [Mr. BLOUNT,] my colleague on the Committee on Appro-

Mr. BLOUNT. I ask to have read the telegram which I send to the Clerk's desk, simply to illustrate the truth of what the gentleman from Illinois [Mr. EDEN] has said.

The Clerk read as follows:

TREASURY DEPARTMENT, Washington, D. C., February 8, 1877.

The items referred to in your telegram were reported as deficiencies by the Interior Department, and I cannot say whether or not they all have been audited and allowed by the accounting officers.

C. F. CONANT,

Mr. WALDRON. I now call for a vote.

The SPEAKER. The Chair would suggest that the amendments reported from the Committee of the Whole, to which there are no objections, may be passed upon by a single vote of the House.

Mr. CANNON, of Illinois. Let the amendments be read, and then

if no objection is made they may be considered as agreed to.

The Clerk proceeded to read the amendments; and the first upon which a division was called was the following:

After line 154, section 1, insert: Topay W. H. Bliss, of Saint Louis, \$1,500 for extra services as assistant attorney To pay W. H. Blis in the whisky cases

Mr. WELLS, of Missouri. This is recommended by the Attorney-General.

Mr. ATKINS. Debate is not in order.

The question was taken upon concurring in the amendment re-ported from the Committee of the Whole; and upon a division there were—ayes 38, noes 87.

Before the result of the vote was announced, Mr. Wells, of Missouri, called for tellers.

Tellers were not ordered.

Mr. RUSK. No quorum voted.

The SPEAKER. That point of order was not made at the time and is now too late.

So the amendment was not agreed to.

Mr. HOOKER. I move that the House now take a recess until tomorrow morning at ten o'clock.

The motion was not agreed to, upon a division—ayes 63, noes 68. The next amendment upon which a division was called was the

amendment moved by Mr. HANCOCK and adopted by the Committee of the Whole.

Mr. DURHAM. I ask that the reading of this amendment be disensed with.

There was no objection.

[For amendment see proceedings in Committee of the Whole of esterday.]

The question was taken upon concurring in the amendment; and upon a division there were—ayes 43, noes 69.

Mr. LANE. No quorum has voted.

Mr. HANCOCK and Mr. STONE called for tellers.

Tellers were ordered; and Mr. WALDRON and Mr. HANCOCK were

appointed.

The House again divided; and the tellers reported that there wereayes 67, noes 86.

Before the result of this vote was announced,
Mr. STONE called for the yeas and nays.
Mr. LANE. Pending the call for the yeas and nays, I move that
the House now take a recess until to-morrow morning at ten o'clock, with the understanding that a further recess be taken from that time

until five minutes of twelve o'clock.

The SPEAKER. The latter part of the gentleman's proposition would require unanimous consent. The Chair desires the indulgence of the House a moment. The gentleman from Kentucky [Mr. KNOTT] has all day been seeking an opportunity to submit a report from the Committee on the Judiciary touching the rules of this House in re-lation to the conduct of the business of the House. The Chair would ask that he now be allowed to submit the report so that it may ap-

pear in the RECORD.

Mr. WILSON, of Iowa. For reference to the Committee on the

Rules.

Mr. CONGER. No action to be taken to-night on the report?

The SPEAKER. That is all the Chair asks. The Committee on Rules desire that this report may be received, in order that they may conform their action to it in the future as to the rules.

Mr. CONGER. I wish to save the right to object to the report. The SPEAKER. Certainly.

#### LEGISLATIVE DAYS-ADJOURNMENTS.

Mr. KNOTT. I am instructed by the Committee on the Judiciary to submit the report which I send to the Clerk's desk to be read.

The Clerk read the following:

The Clerk read the following:

The Committee on the Judiciary, to whom was referred the following resolution:

"Resolved, That the rules of the House be, and are hereby, so amended that pending the count of the electoral vote and when the House is not required to be engaged therein, it shall on assembling each calendar day after recess from the preceding day proceed at and after twelve o'clock m. with its business as though the legislative day had expired by adjournment"—

would respectfully report that they have had the same under consideration and find nothing in said resolution which in any manner conflicts with either the letter or spirit of the act entitled "An act to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, "approved January 29, 1877. On the contrary, they are of opinion that the adoption of the resolution would materially aid in carrying out the manifest intent of the provision in that act that while any question is being considered by said commission either House may proceed with its legislative or other business, in order to do which each House may make whatever rules and regulations, consistent with the Constitution, which it may think proper. They would therefore recommend the adoption of the resolution.

Mr. CONGER.— I object to the report at this time.

Mr. CONGER. I object to the report at this time.
Mr. KNOTT. I ask the gentleman whether he will not consent that this report and resolution be referred to the Committee on

Mr. CONGER. Not to-night. That would give the committee the

right to report on it at any time.

The SPEAKER. They already have that power.

Mr. CONGER. I say that I do not wish to consent to the reference of the report to a committee which has the power to report on it at any time

The SPEAKER. The Committee on Rules already has that power and probably will report on the subject without regard to this reference, because the question is already before them in a different

Mr. CONGER. Then my objection cannot hinder their action. The SPEAKER. No, sir, it does not.
Mr. CONGER. Then I insist on the objection.

# MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, announced that the Senate had disagreed to the amendment of the House to the bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, had asked a conference with the House upon the disagreeing votes of the two Houses, and had appointed as conferees on the part of the Senate Mr. WINDOM, Mr. SHERMAN, and Mr. WALLACE.

## ENROLLED BILL SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

An act (S. No. 824) for the relief of Hannah L. Lloyd, as executrix, and George W. King, executor, of William Lloyd, deceased.

#### RECESS.

The SPEAKER. The question is on the motion of the gentleman from Oregon [Mr. Lane] that the House take a recess until ten

o'clock to-morrow morning.

Mr. ATKINS. Pending that motion, I ask unanimous consent that at ten o'clock to-morrow a further recess be taken till five minutes before twelve.

There being no objection, it was ordered accordingly.

The motion of Mr. Lane was then agreed to; and accordingly (at five o'clock and five minutes p. m.) the House took a recess till tomorrow morning at ten o'clock.

## PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated: By Mr. ANDERSON: The petition of 13 citizens of Franklin County,

Illinois, that pensioners be granted pensions from the date of their discharge, to the Committee on Invalid Pensions.

By Mr. BRADLEY: The petition of 54 citizens of Midland County, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. CALDWELL, of Tennessee: Two petitions from citizens of

Tennessee, of similar import, to the same committee.

By Mr. COX: The petition of August Lipka, for a pension, to the Committee on Invalid Pensions.

By Mr. CUTLER: The petition of citizens of Maywood, Massachuetts, for cheap telegraphy, to the Committee on the Post-Office and

Post-Roads. Post-Roads.

By Mr. DENISON: The petition of Philander Perrin and 43 others, that a pension be granted Mrs. Francis A. Moses, widow of F. A. Moses, late of Company A, Third Regiment Vermont Volunteers, to the Committee on Invalid Pensions.

By Mr. DUNNELL: The petition of Franklin Staples, M. D., and others, of Minnesota, for the printing of the object-catalogue of the National Medical Library, to the Committee on Printing.

By Mr. FORT: The petition of Pat O. Hawes, for pay and allowances as a member of Congress from Nebraska, to the Committee of Elections

Elections.

Also, the petition of A. W. Atwood and 96 other citizens of Iro-

Also, the petition of A. W. Atwood and 96 other citizens of Iroquois County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. GOODIN: A paper relating to the bill (S. No. 1142) for the relief of the Kaskaskia, Peoria, Piankeshaw, and Wea tribes of Indians, to the Committee on Indian Affairs.

By Mr. HILL: Two petitions, one from citizens of Rome, the other from citizens of Barnesville, Georgia, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. HOPKINS: Memorial of the Coal Exchange of Pittsburgh, saking for an increased appropriation for the improvement of the

By Mr. HOPKINS: Memorial of the Coal Exchange of Pittsburgh, asking for an increased appropriation for the improvement of the Ohio River, to the Committee on Commerce.

By Mr. LANDERS, of Connecticut: The petition of the Mechanics' Savings Bank of Winstead, Connecticut, for the repeal of the banktax laws, to the Committee of Ways and Means.

By Mr. LEAVENWORTH: The petition of George F. Comstock and 37 other citizens of Onondaga County, New York, of similar import to the same committee.

port, to the same committee.

By Mr. LORD: The petition of 54 citizens of Midland County,

Michigan, for cheap telegraphy, to the same committee.

By Mr. PHILLIPS, of Kansas: The petition of citizens of Kansas, of similar import, to the same committee.

By Mr. POWELL: The petition of J. W. Williams and 62 other citizens of Pennsylvania, for the repeal of the bank-tax laws, to the same committee

By Mr. SEELYE: The perition of William Giles Dix, of Peabody, Massachusetts, for the passage of a law prohibiting the manufacture and sale of munitions of war by citizens of the United States for the use of the Turkish Government, to the Committee on Foreign Affairs.

By Mr. STRAIT: The petition of J. P. Waste and 21 others, of Minnesota, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. TARBOX: The petition of Henry C. Warner and other citizens of Tewksbury, Massachusetts, of similar import, to the same

By Mr. TOWNSEND, of New York: A paper relating to the estab-lishment of a post-route between Nassau and Niverville, New York, to the same committee.

By Mr. TUFTS: The petition of L. J. Penticost and other citizens of Panora, Iowa, for the repeal of the bank-tax laws, to the Commit-

of Panora, Iowa, for the repeal of the bank-tax laws, to the committee of Ways and Means.

By Mr. WALKER, of New York: Two petitions from citizens of New York, of similar import, to the same committee.

By Mr. A. S. WILLIAMS: Remonstrance of Heineman, Butzel & Co., Heavenricht & Co., Charles Root & Co., and other merchants of Detroit, Michigan, against a further extension of letters-patent for buckles, granted to Sheldon S. Hartshorn July 10, 1855, and extended in July, 1869, for seven years, to the Committee on Patents.

# IN SENATE.

# FRIDAY, February 9, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session.

Mr. TELLER. I move that the Senate take a further recess until twelve o'clock.

The motion was agreed to.

The Senate re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. Byron Sunderland, D. D. The Journal of the proceedings of Thursday, February 8, was read and approved.

#### CREDENTIALS.

The PRESIDENT pro tempore presented the credentials of MATT W. RANSOM, elected by the Legislature of the State of North Carolina a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

## HOUSE BILLS REFERRED.

The bill (H. R. No. 4198) to authorize the President to restore Thomas J. Spencer to his former rank in the Army was read twice by its title,

and referred to the Committee on Military Affairs.

The bill (H. R. No. 4611) to remove the political disabilities of Dabney M. Scales, of Memphis, Tennessee, was read twice by its title, and referred to the Committee on the Judiciary.

#### FORTIFICATION APPROPRIATION BILL

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives non-concurring in the amendments of the Senate to the bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament there-of, for the fiscal year ending June 30, 1878, and for other purposes. Mr. WINDOM. I move that the Senate insist upon its amend-

ments and ask a conference with the House.

The motion was agreed to.

By unanimous consent, the President pro tempore was authorized to appoint the committee on the part of the Senate.

#### COMMITTEE SERVICE.

The PRESIDENT pro tempore appointed Mr. PADDOCK a member of the Committee on Agriculture in place of Mr. HARVEY excused. He also appointed Mr. HARVEY a member of the Committee on Public Buildings and Grounds in place of Mr. PADDOCK excused.

## COLUMBIA RAILWAY COMPANY.

Mr. SPENCER. I move that the vote by which the bill (H. R. No. 1271) amendatory of an act to incorporate the Columbia Railway Company of the District of Columbia, approved May 24, 1871, was indefinitely postponed be reconsidered, and that the bill be recommitted to the Committee on the District of Columbia.

The motion was agreed to.

## PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial of the General Assembly of the State of Colorado, in favor of the passage of an act authorizing coinage at the mint at Denver, and praying an appropriation therefor; which was referred to the Committee on Finance.

Mr. ALLISON. I present the petition of the American Society of Civil Engineers, the petition of the Iron and Steel Association, the petition of the Stevens Institute of Technology, and petitions of various scientific associations and colleges, with reference to the commission appointed by an act of Congress for the testing of American iron and steel. The documents accompanying these petitions are of considerable importance. I move that they be referred to the Committee on Appropriations and printed.

The motion was agreed to.

Mr. ALLISON. I move also that extra copies be printed, which motion I ask to have referred to the Committee on Printing, which I believe has under consideration the President's message on the same subject.

Mr. DAVIS. What documents does the Senator desire to have printed?

Mr. ALLISON. Resolutions of scientific associations, colleges, &c.,

Mr. ALLISON. Resolutions of scientific associations, colleges, &c., in relation to the mode of testing iron and steel.

The PRESIDENT pro tempore. The motion to print extra copies will be referred to the Committee on Printing.

Mr. INGALLS presented a memorial of the Kansas State Horticultural Society, praying Congress to adopt some effective means to prevent the destructive invasion of the Rocky Mountain locusts; which was referred to the Committee on Agriculture.

He also presented a petition of citizens of Philadelphia, Pennsylvania, praying the removal of the limitation to arrears of pension; which was ordered to lie on the table.

Mr. KELLY presented a petition of a large number of settlers in the Des Moines Valley, Iowa, praying Congress to redress their grievances in relation to the lands occupied and claimed by them; which was referred to the Committee on Public Lands.

Mr. COCKRELL presented a memorial of the State grange of the State of Missouri, praying an appropriation for the improvement of the navigation of the Mississippi River and its tributaries, so as to insure cheaper rates of transportation of freights from the West to

the East and to the Old World; which was referred to the Select Committee on Transportation Routes to the Seaboard, and ordered to

be printed.

Mr. DAVIS. I present two petitions, one from citizens of the State of West Virginia and another of the same character signed by nearly all the members of the Legislature of West Virginia. As the petitions are very short and relate to pensions, I ask that the one signed by a majority of the Legislature of the State of West Virginia be

read.

The PRESIDENT pro tempore. The petition will be read, if there

be no objection.

The Chief Clerk read as follows:

To the Forty-fourth Congress:

We, the undersigned, do most earnestly urge upon Congress the passage of the act allowing pensioners the amount of arrears to which they would be entitled by a removal from the statutes of the unjust limitation which has debarred many from receiving their just dues, and that they shall be entitled to receive in all cases pensions from date of discharge of the soldier. That a limitation act of the kind in force is unjust, and that the representatives of the people had no right to take advantage of the accidents and incidents which have occurred in many ways to prevent those who have made the most extreme sacrifice for the country from receiving the full measure of justice to which they are equitably entitled.

The petitions were ordered to lie on the table.

Mr. DENNIS presented a petition of citizens of Somerset County, Maryland, praying for the establishment of a post-route from West-over to Heckman's Store, in that State; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. BARNUM presented a petition of citizens of Connecticut, pray ing an amendment of the pension laws, so as to allow arrearages of pensions; which was ordered to lie on the table.

Mr. WHYTE presented a petition of the faculty of St. John's College, Annapolis, Maryland, praying the passage of the bill for the repeal of the import duty on books; which was referred to the Committee on Finance.

He also presented a memorial of the Board of Trade of the city of Baltimore, Maryland, in favor of the repeal of the law imposing Federal taxes on the deposits, circulation, and capital of all banks; which was referred to the Committee on Finance.

#### REPORTS OF COMMITTEES.

Mr. SPENCER. I am directed by the Committee on the District of Columbia, to whom was referred the bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes, to report it back with various amendments, and I ask that the bill, as amended, be printed. I desire to give notice that I shall call up this bill some day in the early part of next week and ask the Senate to pass upon it.

The PRESIDENT pro tempore. The bill, with the amendments, will be printed of course under the rules.

Mr. WRIGHT, from the Committee on Claims to whom was re-

The PRESIDENT pro tempore. The bill, with the amendments, will be printed of course under the rules.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of John D. Foster, praying compensation for his services as colonel of the Twenty-second Regiment Missouri Volunteers from September 1, 1861, to February 19, 1862, submitted an adverse report thereon; which was ordered to be printed; and he moved that the claim be rejected; which motion was agreed to.

Mr. MERRIMON, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1217) to incorporate the Metropolitan Life-Insurance Company of the United States of America, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 1271) amendatory of the act to incorporate the Columbia Railway Company of the District of Columbia, approved May 24, 1871, reported it with an amendment.

Mr. DENNIS, from the Committee on Commerce, to whom was referred the bill (H. R. No. 3163) to authorize the Ocean City Bridge Company to maintain and operate a bridge heretofore erected over and across Sinepuxent Bay, in Worcester County, Maryland, reported it without amendment.

Mr. DORSEY, from the Committee on the District of Columbia, to

Mr. DORSEY, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1126) regulating street paving and repairs in Washington and Georgetown, District of Columbia, reported adverselythereon; and the bill was postponed indefinitely.

# HAYDEN'S SURVEY OF THE TERRITORIES.

Mr. ANTHONY, from the Committee on Printing, to whom was referred a concurrent resolution of the House of Representatives to print extra copies of Professor Hayden's report of geological and geographical survey of the Territories for 1875 and 1876, reported it without amendment; and the resolution was concurred in, as follows:

Resolved by the House of Representatives, (the Senate concurring,) That there be prepared 4,500 copies of Professor Hayden's annual report of the geological and geographical survey of the Territories for 1875 and 1876; 3,000 copies of which shall be for the use of the House of Representatives, 1,000 for the use of the Senate, and 500 copies for the use of the office of the survey.

## BILLS INTRODUCED.

Mr. DAWES asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1236) to authorize and equip an expedition to the arctic seas; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. WHYTE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1237) to remove the political disabilities of

H. H. Lewis, of Baltimore, Maryland; which was read twice by its

Mr. Lewis, of Batchiore, Maryland; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1238) making an appropriation for the expenses of the electoral commission; which was read twice by its title, and referred to the Committee on Appropriations.

Mr. COOPER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1239) to provide for changing and fixing the boundaries of certain property ceded to the Government of the United States by the city of Memphis, Tennessee; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds

Mr. SPENCER. At the request of several clergymen of this city I

ask leave to introduce a bill.

By unanimous consent, leave was granted to introduce a bill (S. No. 1240) to relieve the churches of the District of Columbia and to clear the title of the trustees to such property; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. INGALLS asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1241) granting a pension to Frank A Moriarty, guardian of the minor heirs of Peter Moriarty; which was read twice by its title, and referred to the Committee on Pensions.

by its title, and referred to the Committee on Pensions.

He also asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1242) to amend an act entitled "An act providing for the sale of the Osage ceded lands in Kansas to actual settlers," approved August 11, 1876; which was read twice by its title.

Mr. INGALLS. In presenting this bill I wish to say that it was forwarded to me by Governor Shannon, the attorney for the settlers upon those lands, and I introduce the bill at his request. I move that it be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. HAMLIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1243) to repeal the statute forbidding appointments and promotions in the staff of the Army; which was read twice by its title, and referred to the Committee on Military Affairs.

#### AMENDMENT TO AN APPROPRIATION BILL.

Mr. SARGENT submitted an amendment intended to be proposed by him to the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes: which was referred to the Committee on Appropriations, and ordered to be printed.

#### WILLIAM A. GRAHAM.

Mr. WALLACE. I move that the bill (H. R. No. 431) for the relief of the heirs of William A. Graham be recommitted to the Committee on Patents.

on Patents.

Mr. JOHNSTON. I trust that motion will not prevail. The bill was reported nearly a year ago, and has been on the Calendar that time. It passed the House a year ago.

Mr. WALLACE. I think not.

Mr. JOHNSTON. It passed the House on the 20th of March, 1876. It came here and was referred to the Committee on Patents and reported to the Senate on the 9th of June. The bill was before the committee from the 20th of March to the 19th of June, and the committee had every opportunity to examine it. It has been upon the Calendar from the 20th of June to the present time. To recommit the bill now at this stage of the session of course would defeat it. Parties contesting have had abundant opportunity to do so, not only when the bill was pending in the House, but for three months before the Senate committee and since it has been on the Calendar here. This motion, if agreed to, would undoubtedly defeat the whole measure now at this stage of the session, and I trust it will not prevail. If it is in order to speak to the merits of the case on this motion, I should like to be heard. like to be heard.

like to be heard.

Mr. WALLACE. I only wish to say that parties interested in this patent ask to have a hearing. I did not know that this bill had been so long before the Senate as the Senator from Virginia states. It appears, therefore, that parties contesting are in default, and I of course withdraw the motion.

Mr. WITHERS. I ask the Senator from Pennsylvania who the parties contesting are?

Mr. WALLACE. The vice-president of the American District Telegraph Company, Philadelphia, is interested in this subject. I withdraw the motion to recommit the bill.

The PRESIDENT pro tempore. The motion is withdrawn.

# LANDS IN KLAMATH INDIAN RESERVATION.

Mr. KELLY. I move that the Senate proceed to the consideration of House bill No. 1316, to adjust the claims of the owners of lands

of House bill No. 1316, to adjust the claims of the owners of lands within the limits of the Klamath Indian reservation in the State of Oregon.

The PRESIDENT pro tempore. Is there objection to this motion?

Mr. WRIGHT. Let the bill be reported.

Mr. JOHNSTON. How long will it occupy?

Mr. KELLY. It will occupy, I think, only a short time.

Mr. JOHNSTON. It will take all the morning hour, I fear.

Mr. KELLY. No; I think it will not.

The PRESIDENT pro tempore. The bill has been before the Scnate heretofore, and amended by the Senate. The Secretary will report the bill as it now reads.

The CHIEF CLERK. As amended, the bill reads:

The CHIEF CLERK. As amended, the bill reads:

Be it enacted, de., That the Commissioner of the General Land Office be, and he is hereby, authorized, under the direction of the Secretary of the Interior, to issue scrip for quantities of land not less than one section to the legal owners of the land granted to the State of Oregon by act of Congress approved July 2, 1884, to aid in the construction of a wagon-road from Eugene City to the eastern boundary of the State, authorizing them to select and locate, of the unoccupied and unappropriated public lands of the United States, not mineral, and which are then subject to entry under the homestead or pre-emption laws of the United States, and in tracts not less than one section, as provided for in the United States land laws, and if unsurveyed when taken, then to conform when surveyed to the general system of the United States land surveys, a quantity of land equal in amount to the lands within the limits of said grant embraced in the Klamath Indian reservation designated and set apart by the Commissioner of the General Land Office as lands in place, the quantity of said lands to be ascertained by the Commissioner of the General Land Office. And the said Commissioner shall issue patents for the lands so selected: Provided, That no scrip nor patents shall issue patents for the lands so selected: Provided, That no scrip nor patents shall issue patents for the lands so selected: Provided, That no scrip is sued in pursuance of the provisions of this act, or any act of Congress amendatory or supplemental thereto, shall be located upon other than the public lands lying within the said State of Oregon.

The PRESIDENT pro tempore. Is there objection to this motion?

The PRESIDENT pro tempore. Is there objection to this motion? The Chair hears no objection. Will the Senate proceed to the consideration of the bill?

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill.

Mr. ALLISON. Is there a report accompanying this bill? If so, I should like to hear it read.

Mr. KELLY. The report has already been read and the bill discussed at the last session, when several amendments were adopted by the Senate. The Senator from Iowa will remember that there was quite an elaborate discussion on the subject at the last session, especially by the Senator from Vermont, [Mr. EDMUNDS.] I think it has been fully discussed.

Mr. MERRIMON. Does it appropriate any lands?

Mr. KELLY. It simply gives other lands to the owners of certain lands on which was located the Klamath Indian reservation. The lands on which was located the Klamath Indian reservation. The lands had been conveyed to those owners by patent and the bill provides that they shall reconvey to the United States all the title they have to those lands lying within the Klamath reservation, and then they are to get other lands in lieu of them. If it be desired I shall not object of course to the reading of the report; it is brief.

Mr. ALLISON. I should like to hear the report read.

The PRESIDENT pro tempore. The Chair is informed that there is

no report

Mr. KELLY. There is a House report.

Mr. ALLISON. The Senator from Oregon perhaps can explain it best. As I understand, there was a grant made some years ago to the State of Oregon to build a wagon-road through that State.

Mr. KELLY. Yes, sir.

Mr. ALLISON. This wagon-road as located passed through an In-

dian reservation.

Mr. KELLY. No, sir; it did not. I will explain the bill, if the

Mr. KELLY. No, sir; it did not. I will explain the bill, if the Senator will permit me.

Mr. ALLISON. I should be glad to have an explanation.

Mr. KELLY. I will give a brief statement of the facts as they exist. On the 2d day of July, 1864, Congress granted certain lands to the State of Oregon to aid in the construction of a military wagon-road from Eugene City to the eastern boundary of Oregon. On the 24th day of October, 1864, the State of Oregon conveyed all its rights and interests in those lands to the Oregon Central Military Wagon Road Company. Immediately afterward that company began the construction of this road, which was built from Eugene City to the eastern boundary of the State of Oregon, a distance of four hundred and sixty-one miles, at an expense of probably nearly \$300, hundred and sixty-one miles, at an expense of probably nearly \$300,-000. Afterward land was granted by treaty for an Indian reservation, which took a part and the best portion of these lands. That treaty was dated the 14th of October, 1864. It was ratified on the 2d day of July, 1867, or at least it is reported that the ratification was "advised" at that time; but it was not proclaimed till the 17th of February, 1870. That treaty contains the following article:

This treaty shall bind the contracting parties whenever the same is ratified by the Senate and President of the United States.

Before the ratification this road had been built. The reservation. Before the ratification this road had been built. The reservation, however, was laid upon these lands, and as was likely, it produced difficulty. If the report of the House committee is read, it will be seen that Agent Dyer strongly recommends that Congress grant other lands in lieu of these which were patented to this company. All they ask is simply that they shall have other lands in lieu of them. They have earned all these lands; they have earned them at a very costly price to them. They have paid taxes on them to a large amount; and whatever may be the result, if Congress grant them these lands, they will still be the losers, because the lands they have earned will not pay them for their outlay.

they will still be the losers, because the lands they have earned will not pay them for their outlay.

The Klamath Indian reservation was, as might have been supposed, laid upon the lands that were most valuable. The Indians will not leave them now; and yet the assignees of the gentleman who constructed this road have a perfect title to them, but they do not want to disturb the Indians in them. The bill is equitable and just in every respect, and indeed it will be a breach of faith if the United States begins induced these gentlements are expended their review in States, having induced these gentlemen to expend their money in

this work for the receipt of public lands, shall, after they have earned them and received patents for them, allow an Indian reservation to take them away. It is but just and nothing but justice that they should have these lands in lieu of those taken away. They might go on and try their title by insisting in the courts that possession should be given to them; but they do not want to put the Government to that expense, nor do they desire to dispossess the Indians. This is the substance of the bill. I might elaborate it, but I do not care to take un time.

This is the substance of the bill. I might elaborate it, but I do not care to take up time.

Mr. ALLISON. I want to hear the report read.

The Secretary read the report made by Mr. LAFAYETTE LANE, from the Committee on Public Lands, in the House of Representatives, on the 25th of February, 1876.

Mr. INGALLS. I dislike to interpose any objections to a measure that seems on its face to be purely local in its character; but this bill involves a question of very considerable interest, and may establish a very injurious precedent. It appears from a law passed on the 2d day of July, 1864, that the United States granted "to the State of Oregon, to aid in the construction of a military wagon-road, " \* alternate sections of public land, designated by odd numbers, for three sections in width on each side of said road." The act provided further:

That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatever.

There is an additional provision:

That any and all lands heretofore reserved to the United States by act of Congress or other competent authority be, and the same are, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way granted.

By the treaty of October 14, 1864, the reservation that is now occupied by the Klamath Indians was established. At that time the definite route of location of this wagon-road had not been established, and there had been no definite location of the road so far as the public lands are concerned, no map of withdrawal had been filed. There had been no reservation of any portion of the public domain under this act for the benefit of this corporation. While it is true that this treaty was not proclaimed until a subsequent date, yet it is a fact that by the regulations of the executive department the treaty under which the Klamath Indians now hold this reservation is recognized to have been established on the 14th of October, 1864.

The conveyance by the State of Oregon of its rights under this act to the wagon-road company in question was not made until a date subsequent to that when the treaty was ratified. It is a matter of fact that it was not until a very much later period that there was any work done by the corporation under which they became entitled to

fact that it was not until a very much later period that there was any work done by the corporation under which they became entitled to locate any lands by virtue of this, and meanwhile this reservation had been established in the language of the provise to the bill "by competent authority," that is, by the treaty-making power of the United States Government. Now the question arises whether or not the subsequent act of this wagon-road corporation in constructing their road authorizes them to indemnity or lieu lands in the place of what they would have received in this Indian reservation had not those boundaries been established. I do not know what the amount that the company would have received in the reservation would have been. The entire area of the Klamath reservation is 1,056,000 acres. I therefore assume that the term of the act granting "alternate sections of the public land designated by odd numbers for three sections in width on each side of said road" reserved to this corporation a very considerable amount of the public domain.

The Supreme Court, in a case which was recently before it, in the suit of the United States against the Leavenworth, Lawrence and Galveston, and the Missouri, Kansas and Texas Railroads, has established the proposition that corporations that are endowed with grants of public land do not take within Indian reservations, even when these are subsequently extinguished, that those reservations are in

of public land do not take within Indian reservations, even when these are subsequently extinguished, that those reservations are in no sense whatever public lands of the United States, so as to entitle the companies to receive a grant in them by virtue of an act endowing them with public lands for the purposes specified in this or any other similar act. In this case this is an existing Indian reservation to which the title has not been extinguished. If the company would not be entitled to indemnity lands or to lands within the limits of this reservation if the reservation itself were extinguished, can it he held that we shall say that this corporation shall be entitled to its of this reservation if the reservation itself were extinguished, can it be held that we shall say that this corporation shall be entitled to indemnity lands in an existing Indian reservation whose boundaries were established prior to the date when the grant inured by virtne of the terms of the actitself? It is establishing a very novel proposition, and one that, in view of the great number of Indian reservations through which railroad corporations have run their lines, may be of very considerable importance to this Government hereafter.

Mr. KELLY. I think I can explain the matter to the entire satisfaction of the Senator from Kansas and the Senate. The grant made to the State of Oregon was on the 2d day of July, 1864. It uses the words that are common in land grants to corporations, "that there be, and hereby is, granted to the State of Oregon" a certain quantity of land, and it is a present grant.

Mr. INGALLS. May I interrupt the Senator a moment?

Mr. KELLY. Certainly.

Mr. INGALLS. Does he understand that the terms of that act constitute a present grant of specific tracts of land to the State of Oregon?

stitute a present grant of specific tracts of land to the State of Oregon ?

Mr. KELLY. I will answer thus: it constituted a specific grant of certain lands to the State of Oregon, and when they are definitely located then the title relates back to the time of the grant. That is as I understand the decision of the Supreme Court. It is a present

as I understand the decision of the Supreme Court. It is a present grant to be ascertained thereafter by the actual location of the land. Mr. INGALLS. Will the Senator answer me this question: When the title either of the State of Oregon or of the corporation which is the assignee of the State vests in any specific tract of land along the

route of that road ?

Mr. KELLY. The title to the lands vests in the company at the time of the location of the road. That is the time they become fixed and certain, although the grant relates back to the time of the act of Congress; but that, as I will show, amounts to little or nothing. That is the proposition I contend for.

That is the proposition I contend for.

On the 24th day of October, 1864, as I stated, the lands were granted by the State of Oregon to this company. Ten days before that time a treaty was made with the Klamath Indians. It was not ratified until two years afterward. Whether it was ratified or not I can hardly say because the treaty itself says "ratification advised on the 2d of July, 1866."

Mr. HAMILTON. If the Senator from Oregon will allow me, I will ask him if the ratification of that treaty did not relate back to the making of the treaty?

making of the treaty?

Mr. KELLY. If one relates back, the other relates back. If the location of the road relates back to the date of the grant by Congress, it is possible that this ratification may relate back to the time of the date of the treaty; but I call especial attention to the twelfth article of the treaty, which says:

This treaty shall bind the contracting parties whenever the same is ratified by the Senate and President of the United States.

It bound nobody until it was ratified. Therefore I contend that at the time of ratification these lands had become vested in the company. But if that were not so, if I am even deceived in this, these men built the road in good faith upon the pledge of the United States. The Indians were not located on the land at that time nor for several years after. They were taken on to the reservation long after the road was constructed; and it is simply an act of good faith to give them this land. If they were mistaken, if there was doubt about it is it not right and proper that this matter should be settled about it, is it not right and proper that this matter should be settled amicably and peaceably, and that these gentlemen who have built this road for the benefit of the Government should receive lands else-

where ?

While speaking on this point I would say that the very supplies for these Indians are carried over the road that has been constructed by these men. Everything that is taken there is carried over it. It was a wilderness; it was impossible to get there, and it would be impossible now to get to that reservation and carry the Indian supplies except for the road built by these men. They have justice, and I believe they have law in their favor.

For these reasons I do hope the bill will pass before the morning hour expires.

hour expires.

Mr. SHERMAN. I have a very strong impression that at the last session of Congress the Senator from Vermont [Mr. EDMUNDS] made very decisive opposition to the bill, and made statements which impressive transfer. I am not able now to turn to the debate.

very decisive opposition to the bill, and made statements which impressed me very strongly. I am not able now to turn to the debate.

Mr. KELLY. I can turn the Senator to it.

Mr. SHERMAN. Here is the book. I think that under the circumstances, especially during the morning hour, as this involves a private claim to land for a considerable amount, we ought not to act on it until the Senator from Vermont can be in his seat. Taking up bills in this way and passing them in the morning hour when we are not prepared to point out objections to them, is not safe except as to minor bills of an uncontroverted character.

My friend has just handed me the RECORD with the debate. I see that the Senator from Vermont made a long speech against this bill, and I listened to him at the time and it made a decided impression on my mind; but the facts which control the case I am not prepared

on my mind; but the facts which control the case I am not prepared on my mind; but the facts which control the case I am not prepared to enter into now. I think, therefore, it would be better for the Senator from Oregon to let the bill go over. The attention of the Senate has been called to it now and I ask the attention of Senators to the debate of the last session, which is now before me, on the 19th of July, 1876, when the Senator from Vermont gave very good reasons against the passage of the bill and for the time defeated it, or at least it was put over until the present session. I think my friend from Oregon, as there are but five minutes left, had better let it go over.

over.

Mr. KELLY. I beg the Senate not to do that. Last session, I was going to say it was talked to death but not exactly that, but twice at the expiration of the morning hour this bill went over. It is a measure of very great importance. If I could only have the time of the Senate after the expiration of the morning hour I would not hesitate a moment to let it go over and be discussed fully and fairly by every Senator in the body; but I know what will be the result. The same thing was said before, "let it go over" and it is now said "let it go over." The upshot will be that in the end it will be defeated; in the end it will go over for good and all.

over. I do not want to say a word against it without having the exact facts in my mind refreshed, but I know when the matter was dis-

cussed at the last session I made up my mind very strongly against the bill, and here is a long speech before me containing a great deal of information. As a matter of course I am not prepared to repeat that unless I send it to the Secretary to have it read and I do not want to consume time in doing that. I submit to the Senator under the circumstances that he had better allow the bill to go over unless the

cumstances that he had better allow the bill to go over unless the Senate is willing to extend the morning hour. Then I am perfectly willing to go into the merits.

Mr. KELLY. I would make this suggestion then: I desire to accommodate every Senator, but I do not wish that this bill shall lose its place; and if it be the unanimous consent of the Senate that it shall be taken up to-morrow after the morning hour, so as to give the Senator from Ohio time to examine it, I shall be perfectly satisfied. I want to get a fair consideration of the bill; I never desired anything else; but it must be apparent to every Senator that the session thing else; but it must be apparent to every Senator that the session is fast approaching its close and if I do not insist on it now, necessarily a failure will take place. I certainly cannot be blamed for that. The Senate certainly knows that I have not occupied much of its time in debate, and I do not think it is asking very much if I simply ask the favor of the Senate that it take up this bill to-morrow after the morning hour shall have expired.

The PRESIDENT pro tempore. Is there objection to this sugges-

Mr. INGALLS. I have previously given notice that at the first opportunity after the disposition of the pending order, which I believe is the Pacific Railroad bill, I should feel it to be my duty to ask the consideration of the bill relating to the pensions of the soldiers and sailors of the war of 1812, and the existing limitation upon the pension laws; and I must therefore object to any unanimous understanding, so far as I can do so now, that will interfere with that previous

The PRESIDENT pro tempore. The Senator from Kansas objects.

Mr. KELLY. I shall ask for the consideration of the bill to-morrow morning after the morning business is disposed of, and I hope there

will be no objection to it.

The PRESIDENT pro tempore. The Senator from Oregon gives notice that he will ask for the consideration of the bill to-morrow morning after the morning business is over. The bill will go over.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House insisted upon its amendments to the bill (S. No. 1222) to provide for a deficiency in the appropriations for the public printing and binding for the current fiscal year, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. Henry Waldern of Michigan, Mr. J. L. Vance of Ohio, and Mr. Charles B. Roberts of Maryland managers at the conference on its part.

## ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed

by the President pro tempore:

A bill (S. No. 824) for the relief of Hannah L. Lloyd as executrix and George W. King executor of William Lloyd, deceased.

A bill (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real and other property, and to sell the same at public or private sale, and for other purposes: and purposes; and A bill (H. R. No. 967) authorizing the survey of certain townships

in Michigan and making an appropriation therefor.

## BILL RECOMMITTED.

Mr. STEVENSON. I move that the bill (H. R. No. 3748) to provide for the redemption of real estate sold under judgments and decrees in the courts of the United States be recommitted to the Committee on the Judiciary.

The motion was agreed to.

# TELEGRAPHIC COMMUNICATION WITH EUROPE.

Mr. WHYTE. I ask the Senate to indulge me during the residue of the morning hour in taking up Senate bill No. 1141.

There being no objection, the bill (S. No. 1141) to encourage and promote telegraphic communication between America and Europe was considered as in Committee of the Whole. It authorizes Ferdinand C. Latrobe, William F. Frick, and Robert Garrett, of Maryland, to construct, lay, land, and maintain a line or lines of telegraph, or submarine cables, on the Atlantic coast of the United States of America, to connect the American and European coasts by telegraphic lines. marine canies, on the Atlantic coast of the United States of America, to connect the American and European coasts by telegraphic lines, wires, or submarine cables. At least one cable shall be laid and operating between Europe and the Atlantic coast of the United States within three years; and the present tariff rates of messages are to be reduced to one-third, or one shilling British currency, per word, over the new cable or cables. No amalgamation, union, or sale of cable interests established under the act is to be made to any existing European or other cable companies.

Any telegraphic line or cable laid is to be subject to the following

conditions, stipulations, and reservations:

First. The Government of the United States shall be entitled to exercise and enjoy the same or similar privileges with regard to the control and use of such line or lines, or cable or cables, as there may, by

law; agreement, or otherwise, be exercised and enjoyed by any foreign government whatever.

Secondly. Citizens of the United States shall enjoy the same privi-leges as to the payment of rates for the transmission of messages as are enjoyed by the citizens of the most favored nations.

Thirdly. The transmission of dispatches shall be made in the fol-

Infrdy. The transmission of dispatches shall be made in the following order: First, dispatches of state, under such regulations as may be agreed upon by the governments interested; secondly, dispatches on telegraphic service; and, thirdly, private dispatches.

Fourthly. The lines of any such cables shall be kept open to the public for the daily transmission of market and commercial reports and intelligence, and all messages, dispatches, and communications shall be forwarded in the order in which they are received, except as

Fifthly. Before extending and establishing any such line or lines, or cable or cables, in or over any waters, reefs, islands, shores, and lands within the jurisdiction of the United States, a written acceptance of the terms and conditions imposed by this act shall be filed in

the office of the Secretary of State by the said company.

The PRESIDENT pro tempore. The morning hour has expired.

Mr. WHYTE. I ask the indulgence of the Senate for five minutes to pass this bill.

The PRESIDENT pro tempore. Is there objection? The Chair hears

none.

Let it be subject to a call for the regular order. Mr. WEST.

Mr. WHYTE. Certainly.
Mr. WEST. Very good.
The bill was reported from the Committee on Foreign Relations with amendments.

The first amendment was, in section 2, line 16, after the word "interested," to insert "the rates not to exceed those charged to individ-uals;" so as to make the clause read:

Thirdly. The transmission of dispatches shall be made in the following order: First, dispatches of state, under such regulations as may be agreed upon by the governments interested, the rates not to exceed those charged to individuals; secondly, dispatches on telegraphic service; and, thirdly, private dispatches.

The amendment was agreed to.

The amendment was agreed to.

The next amendment was, in line 23 of section 2, to strike out the word "hereinafter" and insert "hereinbefore."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments

were concurred in.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

# HEIRS OF WILLIAM A. GRAHAM.

The PRESIDENT pro tempore. The unfinished business is Senate

bill No. 984, in relation to the Pacific Railroad acts.

Mr. JOHNSTON. I ask the Senator from Louisiana to allow the regular order to be laid aside informally that I may call up a bill which I do not think will occupy time.

Mr. WEST. If it will meet the convenience of the Senator from Continuous Continuous

necticut, [Mr. EATON,] who I understand desires to address the Senate on the regular order, subject to a call for the regular order, I shall not

object.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Virginia?

Mr. JOHNSTON. I move the consideration of the bill (H. R. No. 431) for the relief of the heirs of William A. Graham.

Mr. BOUTWELL. That bill will give rise to debate, no doubt.

The PRESIDENT pro tempore. Does the Senator from Massachusette object? setts object?

Mr. BOUTWELL. Yes, sir, I object.
The PRESIDENT pro tempore. As it is beyond the morning hour, the Chair will submit the question to the Senate. One objection

will not put it over.

Mr. BOUTWELL. It will give rise to debate inevitably; but I am as willing the bill should be considered now as at any other time. I

as withing the bill should be considered now as at any other time. I will not object to the consideration of the bill.

The PRESIDENT pro tempore. The bill is subject to a call for the regular order. If there be no objection, the bill will be considered as before the Senate as in Committee of the Whole.

The bill was read.

The bill was read.

Mr. WEST. I yielded to the solicitation of the Senator from Virginia to have that bill brought to the attention of the Senate; but I am satisfied from the notice that has been given by the Senator from Massachusetts, and also from the fact that the Senator from Nebraska who is not now in his seat [Mr. PADDOCK] has expressed a desire to be heard on the bill, that it will lead to a prolonged debate; and therefore, although I should be exceedingly glad to oblige the Senator from Virginia, I feel it my duty to call for the regular order.

The PRESIDENT pro tempore. The Senator from Louisiana calls for the regular order, which is the railroad bill.

# PACIFIC RAILROAD ACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,"

approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of the said first-named

Mr. EATON. Mr. President, it is not my purpose to detain the Senate long upon the bill under consideration. There has been a very unnecessary amount of legal learning, in my judgment, thrown into the discussion of this bill. I had supposed that the States of New York, Massachusetts, and Connecticut, together with other States, as well as the legal action of the Government, if I may say so, lead a hown what the paramount law of the Legalature was in cases States, as well as the legal action of the Government, if I may say so, had shown what the paramount law of the Legislature was in cases of this character. The ordinary term which is found in nearly all acts of incorporation reserving the power to alter, amend, or repeal is not an omnipotent governing power in the hands of an assembly, either the Congress of the United States or the Legislature of any State. I had supposed that without a list of authorities such as has been brought before the Senate in the discussion of this question the power was well understood by every intelligent lawyer in the land. That the Congress of the United States to a certain extent has power to amend, no one doubts: that the Congress of the United States for to amend, no one doubts; that the Congress of the United States for good and sufficient reasons has the power to repeal, no one doubts; but there must be a reason, there must be a violation of duty upon the part of the corporation that will warrant action of that character on the part of Congress

I do not propose to go into a legal discussion. So far as that is concerned, the discussion by the distinguished Senators from New York [Mr. CONKLING] and Massachusetts [Mr. BOUTWELL] has closed this matter, in my judgment. I do not propose to go into a legal discussion on that point. But has any contingency arisen that would warrant the action of Congress in this matter? The Congress of the United States have once before undertaken to act in this matter.

United States have once before undertaken to act in this matter. They have undertaken to say that interest should have been paid. The Supreme Court said that Congress was wrong in that respect.

I do not propose, either, to be drawn into a discussion with regard to the propriety of the original legislation on this subject. That is another matter. Whether it was wise or unwise for the Government to enter into this contract, whether the fact of their being a party to and connected with a corporation of this sort was unwise legislation, is something which I am not about to speak of. But we have the thing right before us in this way: Here is a large amount of money, some say eighty, some ninety million dollars, that has been or will have to be paid by the people of the United States. The Judiciary Committee, by the bill which they have offered, undertake to mark out a course by which this money can be saved to the Government and the people. Now, in my judgment, the Judiciary Committee have failed, and will utterly fail, and Congress will utterly fail if they permit that bill to become a law.

In the first place, that bill undertakes to determine what net earn-

In the first place, that bill undertakes to determine what net earnings are. I say that it is not competent for the Congress of the United States to determine a commercial matter of that character. There will be no net earnings that can be touched by the law of the United States if that bill shall become a law. It would be like a contest that there was once in New York; the Senator from New York will remember it well; a good many years ago there was a certain ferry company in New York that when its net earnings amounted to a certain percentage all over that was to take a certain course. It never arrived at that. Why? Because there was boat after boat, steamer after steamer built; their ships were full, there never were any net earnings to exceed the certain percentage, 8 per cent. I think it was a proposed these here. it was; nor would there be here.

it was; nor would there be here.

Now, sir, these railroad companies should be treated properly; and what is proper? Here is a large debt to the United States. Then there is some fifty or sixty millions of dollars of prior indebtedness to that to the United States. That must be paid. The United States occupy the position of second mortgagee in this matter. Now in my judgment what is to be done is as business men to do what we best can, both for the roads and for the Government. My honorable friend from Pennsylvania, [Mr. WALLACE,] in a word or two which he said in favor of the Judiciary Committee bill, stated that he thought it was proper that the Law Committee of this House should determine this matter. I beg leave to differ with him. I am not very clear that the Railroad Committee is the proper committee, although I am a member of it. I am not very clear that the proper committee who should have had this matter in charge is not the Finance Committee of this body. But no matter about that. In my judgment it is clearly of this body. But no matter about that. In my judgment it is clearly any other than the Judiciary Committee. This is a business matter. The Government of the United States has become involved here, wisely or unwisely, to the tune of \$100,000,000. How shall we get out of this difficulty and in what manner? By enacting a law that will cripple these companies? I beg to say that that is not the way. By enacting a law that would induce these companies to throw their property out of their hands? That is not the way; and the Government cannot protect the people by legislation of that character. In my judgment, it would result in injury, and therefore I am opposed

The Railroad Committee had before it a bill offered by the Senator from Georgia, [Mr. GORDON.] I am very frank to say that, although I voted for the bill in committee, it hardly meets my entire commendation; but it is before the Senate. If there are objectionable features in it, those features can be amended. The principle of this bill, in my judgment, is right.

A Senator upon this floor who has made this matter a subject of study says that by the terms of this bill, if the payments were all anticipated and the money due to the United States from the railroad companies was to be paid to-morrow, it would amount to more than 50 per cent. of the amount due the United States. It was suggested here by certain gentlemen, rather by the questions of certain Senators, that there would be an overwhelming loss to the Government by the terms of this bill. My friend, the honorable Senator ernment by the terms of this bill. My friend, the honorable Senator from Colorado, [Mr. Chaffee,] has given this matter a great deal of attention, and I have great confidence in his arithmetic. His opinion is that the Government of the United States, if prepaid to-day, with all the advantages of discount, &c., would receive more than 50 per cent. of the amount of money which it has paid out; and if the Government of the United States has paid out \$100,000,000 for the benefit of these railroad companies and could receive back today \$50,000,000 it would be amply repaid, rather than wait twenty years and take the full amount, for the Government is going on every year semi-annually paying a certain amount of interest.

I submit, therefore, to the Senate that the true principle is to be

found in the bill of the Senator from Georgia, which is not to cripple the roads. I am not an advocate of corporations. I presume had I been a member of this body when the road was chartered the act would not have received my vote. I have no idea that I shall vote for any charter of that character while I am a member of this body. But the faith of the Government has been pledged to these companies. I respect that pledge. I would not be part and parcel to any legislation which tended to bring dishonor upon the Government, and I verily believe that the legislation contemplated by the bill of the Judiciary Committee would be injurious to the character of the Government of the United States. Somebody said it would involve us at once in a lawsuit, expensive, tedious, and doubtless one that in the end would be unsuccessful so far as the Government is concerned. Of course I make this suggestion with great deference when the distinguished lawyers of the Judiciary Committee have aumounced that in their judgment that bill is a bill that will stand the test of the Sutheir judgment that bill is a bill that will stand the test of the Supreme Court of the United States; but still I express my own judgment, and, therefore, I will have no part in this legislation. I think the very worst policy that either men or Government can get into is to buy into lawsuits. I have never known an individual who bought into a lawsuit that did not suffer pecuniarily. I have no doubt that if the Government is forced into a lawsuit it will suffer as we have

the Government is forced into a lawshit it will suner as we have before by being forced into such a suit.

Honesty requires, fairness requires that such legislation should be had as will tend to pay the debt; and it is averred here—and I have no doubt of it, though I have not gone over the figures myself—that this debt will be entirely paid by 1912 by the operation of the bill of the Senator from Georgia if it should become a law. Now I submit to Senators that if this great transaction can be ended in that way, it ought to be adopted. I have heard no Senator who has advocated the bill of the Judiciary Committee who has pretended to give cated the bill of the Judiciary Committee who has pretended to give the date when this payment will be made. No Senator has examined this question with sufficient thoroughness to be able to tell the Senate and the country when there will be an end to this matter by the bill of the Judiciary Committee. If the other bill be imperfect, amend it, but with this we can see an end of this matter in thirty years; and in thirty years, in the opinion of gentlemen who have given this

and in thirty years, in the opinion of gentlemen who have given this subject thorough consideration, the people of the United States will be repaid for the money which they have advanced.

I say again that the legislation of the United States with regard to these corporations should be liberal, fair, and just. It should treat these corporations precisely as we would treat individuals. One would suppose, to listen to the arguments of one distinguished Senator on this floor with regard to this bill, that these companies ought to be punished, because the Supreme Court of the United States has said that the interest was not due until the principal matured. Why punish the companies for the legislation of the United States, if that legislation was improper, unwise, or wrong? That is

we have been told on the floor of the Senate that these corporawe have been told on the hoor of the Senate that these corpora-tions had violated their charters in that they had not made their re-ports as the law demands. That honorable Senator was entirely mistaken in making a charge of that character. When he examines the statutes of the United States he will find, as the distinguished Senator from New York said, the error that he has fallen into; that is to say, Congress has ordered the reports to be made, not to the Sec-retary of the Treasury, but to the Secretary of the Interior and these retary of the Treasury, but to the Secretary of the Interior, and there these reports are filed and are to be found to-day precisely as the law requires. Therefore if that reason formed one of the arguments why legislation of this character should be forced upon these companies, it falls to the earth. That is not a reason any longer, because it is not the fact.

Mr. President, not to detain the Senate longer, I believe the temper of this body is to legislate in such a manner as will protect not only the people of the United States, but this great railroad interest that deserves protection at the hands of the Legislature. Believing as I do that such is the temper of the Senate, such the temper of Congress, I trust that the bill which has been brought before the Senate by the Judiciary Committee will be voted down, and that the bill of the Railroad Committee will be substituted in place thereof; and then, if the principle in that bill is right, as I firmly believe it to be, if

there be any errors in the text of the bill, let those errors be amended, and, in my judgment, the honor of the country will be maintained, the honor of Congress will be maintained, the honor of the people

will be maintained, and justice to the corporations will be had.

Mr. DAWES. Mr. President, I shall detain the Senate but a few moments on this measure, as I desire to say a few words on the principles which govern the vote that I shall give. The attitude of the public and of the Legislature to this enterprise illustrates, I think, public and of the Legislature to this enterprise Hustrates, I tank, almost as much as anything in our history the uncertainty and fickleness in legislation upon important subjects. Those who have here before and during the progress of this work up to this time, and have watched its attitude and the attitude of the public, and legislation toward it, can hardly fail to wonder at the difference between now and then. For a long time the idea of a railroad to the Pacific was treated as a mere fancy, utterly impracticable, and it arrested the and then. For a long time the idea of a railroad to the Pacific was treated as a mere fancy, utterly impracticable, and it arrested the thought of no legislator of practical common sense for year after year. It was only when the war broke out and we began to feel that there was in the topography of the country, as well as in the social institutions of the country, an element of weakness that this project, among others, of binding together the different parts of this country treated the attention of these who were willing to undertake any arrested the attention of those who were willing to undertake any and everything for the accomplishment of that end; and in the progress of the effort to bind together parts of the Union the determina-tion to spare nothing of effort or of treasure or of enterprise to accomplish that end so grew upon the people that it has no parallel in the history of any other nation—the undertaking of such a great en-terprise in time of war, when all the energies of the nation seemed to be taxed to their utmost for the preservation of the peace of the country, peace being the question in the minds of many; but all hastened to the undertaking of this great work.

Then it was that we chartered these companies. Then it was that

we waited one or two years to see if this enterprise could be undertaken upon the terms that were first proposed; and failing in that, determined that this road should be built as a national enterprise, without regard to cost, we undertook a new plan, advertised to the public new terms for the accomplishment of this great work, and we advertised for many months and we presented to capitalists and to engineers new inducements before they could be enlisted in this work. When it was undertaken we watched it with very much the zeal, no, far more, than we do the great enterprise that so enlisted the attention of the Senate yesterday, the opening of the mouths of the Mississippi to free navigation. So we watched every step of this work. We had offered our terms, men had accepted them and had undertaken the work; and as every section of the line became so completed as to entitle them to call upon us for the fulfillment pro tanto of our part of our obligations, we were only too willing to respond and to demonstrate to the parties on the other side how glad we were for the opportunity. So it went on twenty miles, forty miles, one hundred miles, two hundred miles, and we put our hands into the Treasury

without asking any questions.

Then we invited them from the other side to make haste and to see which of these two competing corporations would accomplish this work the soonest, and we told them that all we had offered to them was ready in an open hand to that corporation which should first accomplish this work. We made no complaint; we did not say to these corporations in the middle of their work, "We made an improvident bargain with you." We never stopped to inquire whether it was improvident or not. We urged on the undertakers of this enterprise; we stimulated them to the utmost of our ability in every inprise; we stimulated them to the utmost of our ability in every inducement we could hold out to them; and when the two companies joined hands in 1869 at Ogden and bound together the continent in this iron bond, the whole nation, instead of uttering complaints against these corporations for the manner in which they had executed their part of the contract, instead of charging them with misappropriating the funds with which we had furnished them, with full knowledge of all that it had cost us, the nation and its Legislature united in a public rejoicing that one of the greatest enterprises in history, undertaken in a time of war, had been so rapidly and so completely accomplished.

pletely accomplished.

When we made the offer we knew as well as we know to-day just how much it would cost. No new element of cost has entered into it. We knew the number of miles; we knew the number of thousands of dollars per mile that we had engaged to give these corporations for this work; we knew the number of acres of land which we had donated to them. We knew at each stopping place in the progress of the work that we had just as much power as we have to-day to stop it. We knew then just where every dollar that had come out of the Treasury for this purpose up to that hour had been placed. But we told them to go on and complete another section, and when that was done, with eyes just as wide open as they are to-day, we turned over to them what we had promised in the beginning to them, and then we told them to go on and make haste, and six or seven years before they had obligated themselves to us that they would complete this work they had it so substantially completed that we were enjoying to a great extent the benefits of it. Not until three or four years after that, when we had begun to feel the beneficial effects of it all over the country, was a single whisper of complaint heard in the land that we had entered into an improvident obligation on our part with these roads. But the necessities and the exigencies of a political campaign in 1872 involved these roads in the bitterness of a party conflict, and all at once parties in this country rivaled each other in seeing how far they could go in making war upon one of our own children.

Now, after it is all over, after it is accomplished, after the perform-

ance by these corporations cannot be taken back, after so far as they are concerned there is no retreat, after the fact and after the demonstration, it is discovered on the part of the other contracting party, or it is thought by the other contracting party that they have discovered that they did then make an improvident contract with these corporations. And that is the attitude to-day of the Legislature of this great nation toward this great work; an after-thought; a war got up after the fact, when it is not in their power to retreat; and the study and the effort to-day is not to discover whether this can be done rightfully or not, in the forum of good morals and of fair dealing, but whether we have the power to do it.

The Senator from Iowa [Mr. WRIGHT] yesterday, in discussing another subject, gave us a good lesson:

I do not understand that in this question we have anything to do with the grand-eur of this improvement. I do not understand that we have anything to do with the question as to whether these bonds are above or below par. \* \* \* The ques-tion is: What is a fair construction of this statute!

I do not understand that we have anything to do to-day, any more than yesterday, with the question whether when we made this con-tract we made an improvident one or whether if we had known then what we know now we should not have endeavored to make a better what we know how we should not have endeavored to make a better one; but I understand, in the language of the Senator from Iowa, the question is, what sort of a contract did we make? It is all summed up in a fair and honest paraphrase of this Judiciary Committee's bill in these words: I have entered into some negotiation with you, Mr. President, [Mr. BURNSIDE in the chair,] the result of which is that I hold your note for a thousand dollars to be paid ten years hence. I do not complain, nor do you, that I hold this note franchestly or that I have obtained if they want done and followed. fraudulently or that I have obtained it from you under any false pretenses. You are capable of managing your own affairs and so am I; not so capable as you are, but for the purpose of the illustration as capable as you. We have entered into this contract and you have ven me your note payable ten years hence for a thousand dollars, and I have taken such security as I deemed sufficient. After it is all over, somebody whispers in my ear that that was a very improvident contract for me to make with you, the vicissitudes of ten years are such, the uncertainties are so great that I ought not to have made any such contract with you. What do I propose to do? I propose to write something across the face of that contract. bear in mind, Mr. President, that it is I who propose to do it, who hold this contract in my hand. deut, that it is I who propose to do it, who hold this contract in my hand. I do not propose to invite you into a court of justice that has jurisdiction over you and me and abide the judgment of that court between you and me; but I, holding this contract, propose to write two things over that contract; the first is that you shall pay me interest on that thousand dollars and pay it now, and the Senator from Ohio [Mr. Thurman] and the Senator from Missouri [Mr. Cockrell] and the Senator from Pennsylvania [Mr. Wallace] say that if you do not pay it now and wait until the end of ten years you must pay interest on that interest. That is what I, holding the contract, and thinking that because I have it in my hand I thereby have the power, will ing that because I have it in my hand I thereby have the power, will write across that contract the new stipulation that you shall pay interest on the thousand dollars year by year, and at the end of ten years it shall be compounded. That is the proposition advocated by the Senator from Ohio, sanctioned by the interrogatories of the Senator from Missouri, and involved in the calculation submitted to us here by the Senator from Pennsylvania. And that is not all. Not quite satisfied with the security which I agreed to take—

Mr. COCKRELL. Will the Senator from Massachusetts permit me

Mr. COCKRELL. Will the Senator from Massachusetts permit me to make a little correction there, and also to ask a question?

Mr. DAWES. By and by. If it be just as convenient for the Senator not to mix it up with this, I should prefer it.

Mr. COCKRELL. Certainly.

Mr. DAWES. By and by the Senator shall have the opportunity of asking me questions, and if I forget it I hope he will remind me.

That is the one proposition. The other is that, not being satisfied with my security, I will take 25 per cent. of all you earn in addition to that security year by year and I will put it in my pocket. I will with my security, I will take 25 per cent. of all you earn in addition to that security, year by year, and I will put it in my pocket; I will hold it there. I will not pay myself before it becomes due, because I cannot; the United States Supreme Court says I cannot pay myself before it comes due. But I will take it; I will put it in my pocket; I will keep it in my pocket, year by year, until the end of the ten years, and then I will pass it over into the other pocket, and give you the paper! That is the other proposition; it is all bound up in that. It is not wor'h while for me to discuss the question whether I have the power to do this, holding the paper. The Senator from New York and my colleague have disposed of that so far as my poor, feeble comprehension is concerned; and if I knew I did have the power, there is something back of the power which troubles me dreadfully, that is, whether it would be decent to do it or not. whether it would be decent to do it or not.

The Senator from Pennsylvania admits that the question whether I would have the power to change this contract that you have made with me is a doubtful question; but he says that in this doubt he has submitted the question to the best lawyers in the Judiciary Committee, and they have devised a way by which that can be done, and he has resolved his doubt in favor of doing it. In my opinion, when the question comes up, Mr. President, whether I have the right without your consent to change myself the contract which you and I

made, whether I have the right in the forum of conscience and of decency, I submit to the Senator from Pennsylvania that the ten commandments would be of a great deal more service than the brief commandments would be of a great dear more service than the inter-of a lawyer. Let us put the case to ourselves in our dealings with our fellow-men. Suppose we had induced them to undertake and to accomplish a great work like this upon certain terms, clear and distinct, and though those terms after the fact appear to have been too generous, could we turn our backs upon that contract, and force other terms and other exactions out of the other side? The answer to that question is not to be found exclusively in the opinions of courts, but is to be found in a law higher than the judgments of courts, and which is to govern us whatever they may be. And, sir, the attempt on the part of the Judiciary Committee—I say it with all due respect—to tell tell these companies what was the nature of the agreement with us when they said they would pay 5 per cent. of the agreement with us when they said they would pay 5 per cent. of the net earnings, I think is not justifiable. These parties say to us, "We will go into the highest tribunal of the land, you and we, on equal terms, as everybody else does in a controversy, and we will abide the judgment of the highest court in the land;" and in that condition of affairs the party who says, "I will not go there, but I will say what is the meaning of my own contract," stands condemned before the world; and whether he has the power or not, I do not care.

What do the Judiciary Committee mean when after they could

before the world; and whether he has the power or not, I do not care. What do the Judiciary Committee mean when, after they enact what these railroad laws shall mean, when they enact what shall be done in addition to what they then said was enough to do, then they say we will go into court? And how shall we go into court? When we get into court "it shall be the duty of the court to determine the very right of the matter." I should like to ask the Senator from Missouri what that means; what is the difference between that and any other right of the matter? I appeal to the Senator from Missouri as the last resort in philology. We are to go to "the very right of the matter." When we get into court, after the United States, the party of the first part, have stamped across their own agreement, their own interpretation of the agreement, the judgment of the court is invoked, not in the ordinary way, not to the ordinary extent, and not with the ordithe ordinary way, not to the ordinary extent, and not with the ordinary function of a court; but they are to go some way they would not go if it were not for this law, and that is to go to "the very right of the matter," and they are to go in a queer way, "without regard to matters of form." This whole thing is without form and void, and to matters of form." This whole thing is without form and void, and darkness is on the face of it, as is suggested by my colleague. "Without regard to matters of form, joinder of parties," they are to go to "the very right of the matter," no matter who is a party. He may be a party sufficient to send this court to "the very right of the matter" and bind somebody else. Why, sir, under this I can let myself for that business to parties in the Supreme Court to be for the purposes of each case a party when they are going to "the very right of the matter." But that is not all. "Without any regard to matters of form," without any regard to who are parties, and "without any regard to multifariousness." That is to say, you can try one form of action, and another form of action, and two or three forms of action all put into one crucible and stirred up without regard to who will be affected or what may be the nature of the rights, whether they are in equity or in law, provided only this court get at that which they in equity or in law, provided only this court get at that which they never got at before without the aid of a statute, I suppose, the necessity of a statute being evidenced by the fact that this bill imposes upon them what they could not otherwise do. They can go "to the very right of the matter," no matter who is in court or how he is in court or what is in court, and no matter whether "multifariousness or other matter" be alleged. And that so relieves the Senator from Pennsylvania on this question of doubt, drinking at this fountain of legal lore and forgetting the other fountain to which he ought to have gone first, that he is willing to vote for it. It seems to me that, regardless of that which alone the Judiciary Committee have turned their attention to, namely, the power, he should have drank from that fountain that would have told him what was the right; and, sir, can there be any question upon that point of what it is right for us to do? Can we hope to get around the question by the contrivance that we do not appropriate the money of these companies to the payment of

their debts before the debts are due by the simple contrivance of saying we keep their moneys for them until they are due.

The complaint against the companies and against the bill which is offered as a substitute, raised by the Judiciary Committee, is that, if the bill offered as a substitute should pass, the corporations would be relieved from all obligations thereafter to keep their roads in repair.

(Thereafter) was a first the Livited States have accessed to have "Thereafter" means after the United States have ceased to have an interest. "Thereafter" means when the interest of the United States in these roads is precisely like the relation of the United States to any other railroad in the land. "Thereafter" means precisely when the relations of the United States to these roads are the relations of the United States to the Boston and Albany Railroad, or to the New York Central Railroad; and is it a subject of complaint here in Congress that there is no provision of the laws of the United States by which Congress can compel the New York Central Railroad Company which Congress can compet the New York Central Railroad Company to keep its road in repair? By what process is it that the United States can assert any right over these roads to keep them in repair, when all their obligations toward the United States have ceased and they have completely fulfilled them all? Where does the Senator from Ohio then get ground for any such proposition as that?

Now, sir, the objections which I have to the bill of the Judiciary

Committee are summed up in brief in the very illustration which I Committee are summed up in brief in the very illustration which I have used solely for the purpose of illustration. Whether the substitute is the wisest and the best for the accomplishment of a common purpose—I mean by a common purpose a purpose in which the contracting parties to an existing obligation are to bring about the fulfillment of that obligation in the best and safest and the most just way—I am not prepared to say. The desire of one of the contracting parties is to protect itself against loss and the public from inconvenience. The desire of the others is to fulfill at the earliest possible moment the obligations which it has assumed to the conpossible moment the obligations which it has assumed to the contracting party on the other side. Any policy that arrays the one against the other will either come to naught or will involve the country in an attempt which will be disastrous.

Country in an attempt which will be disastrous.

Therefore, it seems to me that, rather than spend our efforts on discovering some loop-hole through which we can escape from the performance of our obligations on our part precisely as we entered into them, and not as we are disposed now either to interpret them, to make them anew, we should address ourselves to what ought to be the duty of Congress, to co-operate with these parties, so far as the public interests will justify and no further, in providing, if it can be done, a better security for the debt and for the performance of the unexecuted parts of this contract. When that is done, and in counting the dollars and cents at the end it will be found that we have made or lost, the public will have little concern or care, provided they shall be satisfied that we kept our faith, and in keeping it one of the greatest public enterprises in the land was accomplished, and the loss will be trifling compared with what will be gained thereby. But in the main features and purposes of the substitute there is no chance for loss. It is possible for us to obtain perfect security after all the indebtedness to us if we are willing to postpone for a dozen or fifteen years the time to us if we are willing to postpone for a dozen or fifteen years the time when the repayment shall be completed, without loss to us of a penny, without placing upon these companies a single pound of burden not already undertaken, without jeopardizing the public interests in any particular; but securing in 1912 what in 1898 may be due, everything that the nation can by possibility ask for at their bands.

Therefore, sir, I ask, is it not wise for us to take up some such bill as this substitute and perfect it rather than to turn our attention in legislation to running just as near what the Senator from New York calls the border line of our power without regard to the other ques-

ion whether in so doing we keep our faith?

Mr. CHRISTIANCY. Mr. President, I have only taken part in this debate so far as it related to the question of constitutional power proposed to be exercised by the bill reported from the Judiciary Committee and to some objections to the bill reported by the Railroad In fact, but for the absence of the Senator from Ohio Committee. In fact, but for the absence of the Senator from Onio who has the bill from the Judiciary Committee specially in charge and who is at present engaged in another field of action, I should not, probably, have said a word upon this bill, more especially as his arguments do not seem to me to have been answered. I gave my own views the other day upon the question of constitutional power and pointed out some objections to the bill presented by the Railroad Committee. I only propose to show now that the brief argument I made the other day has not been successfully answered as to the question of power to amend, and that no answer has yet been made question of power to amend, and that no answer has yet been made or attempted to the objections I then urged to the bill of the Railroad Committee.

As to the question of the power to amend the railroad acts of 1862 and 1864 so far as the bill from the Judiciary Committee would operand 1864 so far as the bill from the Judiciary Committee would operate to amend them, I endeavored to show that the acts of 1862 and 1864 were, in effect, to be construed since the passage of the act of 1864 as one act, except so far as the power of amendment and repeal was concerned; but that as to this power, the act of 1862 giving but a qualified power and that of 1864 giving an unrestricted power, the latter in effect superseded the qualified provision in the act of 1862 and applied to both acts, rendering both amendable or repealable, according to the discretion; and save of institute of Congress; and that cording to the discretion and sense of justice of Congress; and that this power extended to the alteration, so far as relates to the future, of the terms of the contract created by these acts and their acceptance by the companies. I shall not here repeat but merely refer to that argument.

The only serious attempt to meet that argument has been made by the Senator from Massachusetts, [Mr. BOUTWELL,] and I submit that he has not succeeded in the attempt. He cites (and it is the only case he cited) the case of Holyoke Company vs. Lyman, 15 Wallace, where the question was, as stated in his own language:

Whether a grant having been made to the Holyoke Company to build a dam across the Connecticut River, and there being no provision in the charter that the company should maintain a fish way, the Legislature was competent to compel the company, under the general reservation of power, to construct a fish-way through the dam at Holyoke; and the court held that the power of the Legislature was sufficient for that purpose; but the court did also say that if in the charter there had been a provision that the company should not be required to construct a fish-way through the dam the Legislature would not have been competent to compel them to do it.

I agree fully in that decision. The decision is right and covers the full extent of power which I claim here; but the judge giving the opinion did utter a dictum which related to a question not then before the court; and that was, what would have been the power if another provision had been inserted in the charter or if the charter had been different from what it was? The court had no authority to

decide a question of that kind; it is mere dictum. But, whether a decide a question of that kind; it is mere dictum. But, whether a dictum or not, let us apply that case to the present. There was no provision that this company should maintain a fish-way; yet, as there was no express provision that they should not be required to maintain the fish-way, the Legislature had the power to amend so as to require the company to construct such fish-way. Here the act of Congress did provide that the company should pay within a certain time, but did not declare that they should not be required to create a sinking fund to secure that payment; and therefore, within the very a sinking fund to secure that payment; and therefore, within the very

a sinking fund to secure that payment; and therefore, within the very reasoning of that case—allowing the dictum on which the Senator relies to be a part of the decision, which I deny—Congress has the right to require the company to create that sinking fund, because the act did not declare that they should not be required to do so.

If it be said in reply to this that the requiring the company to make payment in a certain time did, without negative words, imply that they should not be called upon to pay anything before that time, even by way of a sinking fund for security, then I reply that when the Holyoke Company were authorized to build a dam without requiring a fish-way, it was just as clearly implied that they should not be required to construct one. But, sir, while I fully agree in the decision of the court in the Holyoke Company case upon all it decides I reject, as I have a right to reject as wholly unsound, the dictum which says that if there had been in the charter a provision that they should not be required to construct the fish-way, it would not have been competent for the Legislature to require it by an amendment. amendment.

I speak of this dictum with entire freedom, and with a high respect for the court. No court ever insists that the mere dictum of the judge who writes the opinion, upon a point not involved in the case, and, therefore, never argued or considered by the court, is to be treated as law or as a point decided. And no court or judge, much less any of the eminent judges of our Supreme Court, will ever take offense at any criticism upon its mere dicta upon a point not involved

But the Senator from Massachusetts puts one question which he thinks every advocate of the bill of the Judiciary Committee will be obliged to answer in a way to show that Congress has no such power as that attempted to be exercised by this bill. I refer to the Record. The Senator says:

Now if I put one question to those who advocate this bill, I think they will be obliged to so answer it as to show that it is not competent for Congress to pass this bill; and that question is this: When one of these roads had constructed forty miles and the commissioners appointed by the Government had examined it, had approved it, had reported that in every particular it answered to the requirements of the act of Congress, would it then have been competent for Congress to say "We will not issue these bonds; we have got the power to repeal this statute, to amend it, to alter it, and we will not issue these bonds, notwithstanding your part of the agreement has been performed to the very letter?"

To this question I answer just as the Senator from Massachusetts supposes every man must, that it would not be competent. And yet that answer in no way tends to show that Congress has not the power

attempted to be exercised by this bill.

Why would it not be competent to do what the question supposes?
Because, and simply because, in legislation acts do not operate retrospectively but prospectively, not upon the past but upon the future; because the forty miles of road were built on the faith of the law as it then was, which though subject to amendment had not been amended, and though it was a part of the contract that Congress might amend it, it was equally a part of the contract that until they should see fit to amend it it should stand as it was, and the rights of the company and of the Government should be decided by the law as it was. And the right to the bonds and the lands had become vested before Congress saw fit to make any amendment of that contract.

I do not contend and have not contended that the power of amendment extends to divest rights or property already vested before the amendment, nor the rights of third parties accrued on the faith of the act prior to an amendment.

the act prior to an amendment.

Mr. BOUTWELL. If the Senator from Michigan will yield I should like to make an inquiry touching the subject from which the Senator appears to be now passing.

Mr. CHRISTIANCY. No, I have not passed it.

Mr. BOUTWELL. Then I shall put the question.

Mr. CHRISTIANCY. If the Senator will wait until I get through I will answer his question.

Mr. BOUTWELL. Very well.

Mr. CHRISTIANCY. The Senator from Georgia, [Mr. GORDON,] the Senator from Illinois, [Mr. LOGAN,] and the Senator from Massachusetts who last addressed the Senate, [Mr. DAWES,] have been eloquent in their appeals to the honor and good faith of Congress to abide by the contract made with these companies. I believe as firmly as they do in the propriety of abiding by that contract with the utas they do in the propriety of abiding by that contract with the urmost fidelity and good faith, and go as far as they do in adhering with unswerving fidelity to all the \*terms of that contract, and am opposed to the obliteration of any of them. But one of the terms of that contract was, and is, in the act of 1864, that—

Congress may, at any time, alter, amend, or repeal this act.

That is a very important term of that contract.

Mr. DAWES. Does the Senator understand by that that Congress means to say we will be bound by this contract as long us we have a mind to and that we will not any longer.

Mr. CHRISTIANCY. If the Senator will wait until I get through he will find out precisely what I mean. This is the most important and the only provision of that contract by which the Government can

secure the public interest

But the Senator from Georgia, the Senator from Indiana, and the Senator from Louisiana, while they are very earnest in enforcing the stipulations of the contract which operate in favor of the companies—all of which, as I have endeavored to show, are conditional, being subject to amendment—they seem equally earnest and determined that the stipulations in that contract in favor of the Government, and the only one by which the Government can protect it-self, shall be wholly ignored, nullified, and in effect stricken from the contract. And the Senator from Illinois expressly insists that this power of amendment only extends to amendments which shall power of amendment only extends to amendments which shall operate in favor of the companies—giving them greater rights—but not to impose any greater obligations. Now all such amendments as he admits may be made under the power could have been made just as well without as with this reservation of power, and that reservation becomes utterly nonsensical. And this argument of the Senator from Illinois seems to me to treat this power of amendment and these railroad acts as a kind of trap by which it is easy for the Government to get into difficulty, but impossible to get out; by which more and more powers and privileges may continually be granted to the companies, but not one can be taken back—operating upon the principle of the mouse-trap which lets the victim in with seductive facility, but will not let him out or allow the slightest prospect of escape.

of the mouse-trap which lets the victim in with seductive facility, but will not let him out or allow the slightest prospect of escape. So much for this question of power. And now one other point of objection made by the Senator from Louisiana to the bill from the Judiciary Committee which defines "net earnings" to be what is left of the gross earnings after deducting the actual and necessary expenses of operating the roads and keeping them in repair. It is urged that this is not a ground definition of the gross part of the left. that this is not a proper definition of net earnings, but that the interest on the debt of the companies and the amount of all debts overdue should also be deducted from the gross earnings. I must confess that until this claim was gravely put forward here I had supposed that the debts and interest on the debts of a railroad company were entirely little to the amount of the company of the compa distinct from the question of the earnings or net earnings of the road, and that the net earnings of the road over and above running expenses and repairs would, it is true, in the absence of any other appropriation of them, constitute a sum which might be used in re-

appropriation of them, constitute a sum which might be used in reducing its debts and the interest on its debts.

But the question of net earnings, as it seems to me, simply involves the question of earnings, and how much is left after deducting running expenses and repairs and possibly the supply of new rolling-stock. The rest of the debt of the company should, I think, be treated as chargeable to construction account. But whether this be the true construction or not we have in the power of small possible to construction account. construction or not, we have in the power of amendment the power to

I called the attention of the chairman of the Railroad Committee the other day specially to one of the provisions of the bill which I fear may operate as a snare; and I always fear there may be some fear may operate as a snare; and I always fear there may be some snare and must be something wrong in a provision which conveys to my mind no definite idea; and I put certain questions to him (now several days old) to which neither he nor any other advocate of this bill of his committee has yet condescended to give an intelligible answer, at least no answer intelligible to me, which of course may be owing to my own obtuseness or deficient apprehension. The first section provides for a single payment of \$1,000,000 once for all by each of these companies and no annual payment.

I propose now to read the first and second sections of the bill, to repeat my observations upon them, and to repeat the questions I then

I propose now to read the first and second sections of the bill, to repeat my observations upon them, and to repeat the questions I then addressed to the chairman of the Railroad Committee, and which neither he nor any advocate of the bill has yet answered. The first section of the bill provides, in effect, for the payment, not annually but as a gross sum, once for all by the Central Pacific and by the Union Pacific each \$1,000,000 for transportation, which might be due to the company up to the last day of December, 1876.

I will now read the second and part of the third section of the bill.

Mr. PADDOCK. What bill does the Senator refer to ?
Mr. CHRISTIANCY. I refer to the bill reported from the Railroad
Committee. Section 2 of that bill reads as follows:

That the said Central Pacific Railroad Company and the said Union Pacific Railroad Company shall each pay into the Treasury of the United States the sum of \$750,000 per annum, in equal semi-annual installments, on the 1st day of April and October in each year, commencing on the 1st day of October, 1877, either in lawful money or in any bonds or securities of the United States Government, at par, until such sums shall, with interest thereon as hereinafter provided, be sufficient, when added to the other sums to the credit of said sinking funds, to pay off and extinguish the Government bonds advanced as aforesaid, with 6 per cent. interest thereon from their respective dates up to the date when they are so paid and extinguished as aforesaid. Interest on all sums placed to the credit of said sinking funds shall be credited and added thereto semi-annually at the rate of 6 per cent. per annum.

Now, note the proviso:

Provided, however, That if the foregoing provisions shall prove insufficient to extinguish the Government bonds and interest thereon as aforesaid by the 1st day of October, in the year 1912, the semi-annual payments shall be increased to such a sum as will be sufficient for that purpose.

Then follows the first clause of section 3, which is in these words: That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act, and the amendments thereto in relation to the re-imbursement to the Government of the bonds so issued to said corporations.

It was, I think, sufficiently demonstrated by the Senator from Ohio the other day—and his position has not been successfully contradicted—that the annual payments of \$750,000 by each of these companies would not pay the interest due to the Government. Yet section 3, as I suggested the other day, makes the payments required by the first and second sections operate as a payment in full of all obligations of the company on account of the bonds issued to it. The only provision, therefore, as I said the other day, which saves the bill from the charge of making a payment less than the interest oper-ate as payment of both principal and interest is that provision in the second section that-

If the foregoing provisions shall prove insufficient to extinguish the Government bonds and interest by October 1, 1912, the semi-annual payments shall be increased to such sum as will be sufficient for that purpose.

It being evident on the face of the bill that the sum appropriated will not extinguish the debt by 1912, I wish to know what is meant by this proviso and how it is to be enforced. I now repeat the question I once before asked of the chairman of the Railroad Committee, tion I once before asked of the chairman of the Railroad Committee, and which, though asked by another Senator the other day, of the Senator from Georgia, has not yet been answered: When, how, and by whom is it to be ascertained that the sums required by "the foregoing provision" have proved or are to prove insufficient to pay the Government bonds and interest by the day named, October 1, 1912?

Mr. WEST. Mr. President—

The PRESIDING OFFICER, (Mr. MERRIMON in the chair.) Does the Senator from Michigan yield to the Senator from Louisiana?

Mr. CHRISTIANCY. I am very nearly through.

Mr. WEST. I thought the Senator had been putting questions to me all the time.

me all the time.

Mr. CHRISTIANCY. I supposed the Senator would answer after-Mr. CHRISTIANCY. I supposed the Senator would answer afterward. I shall be through in a moment, and then will be glad to hear an answer. It is a question which has troubled me, and on which I shall be glad to receive some light. And how, without something more definite than this, can any one tell when the obligation to make increased semi-annual payments is to commence, and how will it ever be practicable to enforce it? One difficulty arises from the fact that it is evident on the face of the bill that the sum provided is insufficient now. Suppose a dispute arises between the officers of the Government and these companies as to the time when such increased semi-annual payment shall commence and what shall be the amount of it.

of it.

I will ask if the data furnished by the bill do not enable us to make just as good a calculation upon that as they will twenty years hence, and, if so, why not render the whole provision definite by fixing the additional sum which they shall pay and fixing it here in this bill? I ask the Senator to enlighten us upon these questions and explain fully the modus operandi of enforcing so indefinite a provision, and even of practically administering or giving any effect to such a law as this would be. I confess my inability to see just how it is to be done. I have not the slightest reason to doubt that the provision was inserted in entire good faith. But I think it altogether too blind to be blindly supported. Now I shall be very glad to hear an answer to the questions which I put to the Senator from Louisiana.

Mr. WEST. The Senator makes a proposition of his own and then asks me to answer his proposition. He states, first, that it is apparent on the face of this bill that this payment will not be sufficient to liquidate the entire debt at its maturity. I differ with him entirely on that proposition. I cannot answer his question; but, in response to what he says as to who shall determine it and how it shall be determined, I will say that it will certainly be determined by one

sponse to what he says as to who shall determine it and how it shall be determined, I will say that it will certainly be determined by one of the contracting parties, and by agreement unquestionably of the other contracting party, because they entered into that agreement upon those terms. In other words, if this calculation which the Railway Committee have made is not adequate to pay the amount upon a further verification of the arithmetic of the case, and upon such statement as may be made by the Secretary of the Treasury, the additional installments will be due at the very first payment and continued to the final one. I do not think there is any very great intricacy in regard to that point. That is not the question for Senators to consider now. That can be considered subsequently when we are considering that bill. It is amendable in any way that the Senate sees proper, and if there is anything deficient in it, I am sure the committee and I am sure the Senate will be glad to have the Senator's suggestion; but he is departing from the point. He has gone into the details of the question. The principle that the Railway Committee is contending for is that we shall have an adjustment with these companies. When we get that principle before the Senate by a vote upon the substitution, then we can consider the merits of the particular case, but not until then, I should scarcely think.

Mr. BOGY. Mr. President, when this subject was before the Senate a few days ago, I took occasion to explain my views very briefly, and be determined, I will say that it will certainly be determined by one

a few days ago, I took occasion to explain my views very briefly, and a few days ago, I took occasion to explain my views very briefly, and I expressed my willingness to vote for the bill reported from that committee. I am yet disposed to do so, and no doubt will do so; but, at the same time, I am ready and willing to say that the bill does not meet my entire approbation. I have many objections to that bill. It is very cumbrons and, in many particulars, very obscure. It is very possible, also, that it may require from these companies more than they are able to pay and at the same time retain something like a fair amount of receipts for their own legitimate benefit. I see in the bill reported from the Committee on Railroads some very good features. It has the merit of very great Railroads some very good features. It has the merit of very great

simplicity, of very great directness; and, although there are some provisions of that bill to which I object, nevertheless there are some very good things in it. I would myself prefer that the whole subject be postponed beyond this session of Congress, and that a committee from this body be appointed to confer during the recess of Congress with the railroad companies, to ascertain the best way possible how to adjust this matter; what they are able to pay and what it would be right for us to receive.

It is not worth while for us to legislate regardless of the rights of these railroad companies. They are great public institutions. Their proper maintenance as great highways of communication is very important to this entire country. It will not do to cripple them; nor would it be wise for us to destroy the value of the stock of the railroads, nor to do anything which would cripple them. I am afraid that the bill reported from the Committee on the Judiciary is a harsh bill. I am also fearful that it may lead to litigation; that the companies would resist it; yet, upon a fair comparison between the two bills, I shall vote for the bill reported from the Committee on the Judiciary, hoping at the same time that neither bill will be adopted.

One of these roads created by the law starts from the western bor der of my own State, and extends to the city of Denver, in the State of Colorado. That enterprise was urged by some of the very best men in the city of Saint Louis, some of our most enterprising men. Gentlemen were ready to go into the enterprise from a broad spirit of enlightened enterprise, men of wealth, who did not go into it to make money, but who felt it a question of very great interest to connect the State of Missouri with that great western world which was then and is now growing so rapidly into importance. Yet after years of great labor and very large expenditures of money, owing to the course pursued by the Government toward that road, owing to the fact that the Government has, in violation of the law, retained for a long time all the amount which the Government should have paid for the transportation of Government freight, the Kansas Pacific road

for the transportation of Government freight, the Kansas Pacine road has been so crippled that it has gone into the hands of a receiver, and if proper legislation is not soon applied to that road, it may prove that ultimately it will be in great danger of being bankrupt. I desire to preserve that road as I desire to preserve all the other roads.

I therefore think that the best and wisest way to dispose of this subject would be not to legislate at this session of Congress, but to appoint a committee from this body, with authority to sit during the recess of Congress, in order to confer with these railroad companies, with a view of coming to some understanding as to what they are with a view of coming to some understanding as to what they are justly to pay and what amount the Government should justly claim from them. I am perfectly satisfied that an arrangement of that kind could be made. It is certainly to the interest of these roads that this question should be settled. Their stock can have no permanent value as long as this thing is hanging over them all the time. Their bonds are affected, all their assets are affected in value by the matter being the subject of legislation by Congress, and I am perfectly satisfied that they are willing to enter into a fair arrangement with the Government.

I shall vote against the substitute and I shall vote for the bill re I shall vote against the substitute and I shall vote for the bill reported from the Committee on the Judiciary, notwithstanding that bill does not meet my entire approbation by a long way; but I prefer it to the bill reported from the Railroad Committee. I shall vote against the substitute, and I hope that neither bill will be adopted finally at this session, with the hope that this whole subject will be relegated to a committee with ample powers to investigate and to come to some arrangement with these railroad companies and to report to this body at the next session of Congress.

I am reminded by my friend from Colorado [Mr. Teller] of the fact that the Kansas Pacific Railroad has gone into the hands of a receiver, because the Government has withheld from it, and does now withhold, upward of a million dollars justly due that company according to the decision of the Supreme Court of the United States; and these men are crippled by it, and it is doing that section of the

and these men are crippled by it, and it is doing that section of the country a very great injury—Colorado, Missouri, Kansas, and all that vast world that lies back of it.

Mr. LOGAN. The Judiciary Committee bill crushes it still more.
Mr. WEST. I should like to invite the attention of the Senator
from Missouri to the fact that the very circumstance that he has
stated, the bankruptcy of that company, would involve the Government in an irretrievable loss of \$6,300,000, the amount advanced to

that road upon the second mortgage.

Mr. BOGY. That would be the effect if that road should be so crippled as to be prevented from maintaining it in good order. We are impairing the security of the Government, as stated by the Senator from Louisiana, to an amount of upward of \$6,000,000. Under the present law they are required to pay \$350,000, when their receipts are not sufficient now to pay the interest on their bonds and keep the road

in order, and when they have been driven into the hands of a receiver.

Mr. HITCHCOCK. And yet the Senator has just stated that he proposes to vote for the bill which does this thing, which includes the very objection he has stated.

Mr. BOGY. It is Hobson's choice; it is that or worse. I am not

wholly in favor of the bill of the Judicary Committee, because I think it is defective in many particulars. I will not detain the Senate by going into a history of the defects of the Railroad Committee's bill. I believe also there are some good features in the Committee's bill. I believe also there are some good features in that bill, but between the two I prefer the other. I might vote for the bill of the Railroad

Committee, but I have committed myself to the other bill, and I am a democrat and therefore a consistent man. I have already said I would vote for the other bill, and I dislike to change the position which

Mr. HITCHCOCK. I want to call the attention of the Senator from Missouri to the fact that the Railroad Committee, considering the bankrupt condition of the Kansas Pacific Road, did omit to exact from that road any annual payment such as is required of the other road any annual payment such as is required of the other roads which they thought were able to pay. The Judiciary Committee bill insists upon the annual payment of \$350,000 from this road, which is already in the hands of a receiver. Yet the Senator from Missouri proposes to vote for the Judiciary Committee bill in preference to voting for the bill reported from the Railroad Committee.

Mr. BOGY. While I have many objections to the bill of the Committee on the Judiciary, I have still many more objections to the other

Mr. BOUTWELL. Mr. President, the Senator from Michigan [Mr. Christiancy] has this morning made some remarks in reply to observations made by me two or three days ago touching the right of Congress to pass the bill reported by the Judiciary Committee. If the Senator had not ventured to announce an opinion different from that expressed by the Supreme Court, I should certainly not have ventured to entertain an opinion different from the one expressed by him. I think, if he will examine the case of the Holyoke Company vs. Lyman, he will find that the observations of the court, to which I called the attention of the Senate, were not mere dicta. The exact question was raised by the pleadings or by the counsel in the argument of the case, that by implication, and to some extent by the language employed in the charter, the company was relieved from all obligation to construct a fish-way through the dam; and the argument rested upon the fact that by the charter the company had been required to quiet the claims of riparian owners, both above and below the dam for the privilege from the most ancient times that had been enjoyed in the exclusive use of the fisheries upon the shores of the Connecticut River. A very strong argument, as the Senator from Michigan will see, could be based upon the fact that the corporation had been required to quiet, by the payment of money assessed by juries, all the claims of the riparian owners both above and below the dam. The court said that inasmuch as it was not ex-pressly stipulated that the Legislature would not afterward compel the company, at its own cost, to build a fish-way the act was within the discretion of the Legislature. Therefore, I have to say to the Senator from Michigan, if he will examine the case, that I said nothing except what the record of the case shows, and he will find that that exact question was before the court.

The point which I had in view in presenting the case to the Senate has not been exactly appreciated by the Senator from Michigan. It was for the purpose of showing that where in a State the broadest powers of reservation of legislative right to amend, alter, or change charter existed, the Supreme Court found that there were certain

things which the Legislature nevertheless was not competent to do. That was the point to which I called the attention of the Senate.

Mr. BLAINE. What things were they not competent to do?

Mr. BOUTWELL. The record in the case of the Holyoke Company vs. Lyman shows that the court held that if there had been in the charter a stipulation that the company should not be required to build a fish-way, the act of the Legislature requiring them to build a fish-way would have been void, and that in the presence of an act of the Legislature, a general law, which had existed since 1831 and antedated the act of incorporation. It provided that-

Every act of incorporation passed after the 11th day of March, in the year 1831, shall be subject to amendment, alteration, or repeal at the pleasure of the Legisla-

There were words as broad, as comprehensive, as inclusive of power, as could have been employed; yet the court did say in this case, where a corporation was created in the presence of that statute, that there were some things which the Legislature could not do. I have said that the very question to which I called the attention of the Senate was raised and discussed. The court say:

Concede, however, that the power to make such a contract exists, and that it is as boundless as the theory of the respondents assumes it to be, still the court here is of the opinion that the decree of the State court is correct, and that it should be affirmed, as the charters under which the dam in this case was erected and is maintained do not contain any such exemption from the implied obligation to construct fish-ways for the free passage of the fish, nor any provision which prohibits the Legislature from imposing that obligation under the power reserved to amend, alter, or repeal the charter.

Such a charter may doubtless be granted to build a dam across a river whose whole course is within the State granting the franchise, with a provision exempting the corporation from all obligation to construct such fish-way for the free passage of the fish.

That the charter, in view of the fact that it contains no such exemption, is subject to the power reserved to the Legislature by the general law in operation when the charters were granted.—15 Wallace Supreme Court Reports, 3.2, 523.

The chief object, the sufficient object which I had in calling the attention of the Senate to this opinion of the Supreme Court was to show that where the most ample power of amendment, alteration, and repeal is reserved to the Legislature, the courts do hold that there are many things which the Legislature is not competent to do.

I will next ask the attention of the Senate to a consideration of

the question whether this bill does contain, with reference to the Pacific railroad corporations, that exercise of power which it is not competent for Congress to exert. That is the real question before us. The Senator from Michigan has called the attention of the Senate to the question which I put the other day; and he answers it in the affirmative. I now submit to the Senate that that answer is a concession of the case as far as the Senator from Michigan is concerned. I said, suppose the corporation had constructed forcy miles of railroad in every respect answering to the requirements of the law, and that that forty miles had been subjected to the inspection of the authorized that forty miles had been subjected to the inspection of the authorized officers of the Government and accepted, would it then be competent for Congress by law, under this reservation of power to amend the charter, to interpose and say, "Notwithstanding you have done what you were required to do, as far as these forty miles are concerned, we shall neither issue to you the bonds of the United States nor issue patents for the lands;" and the Senator from Michigan says that it would not be competent for Congress to do that. Therefore he has admitted that there are certain things connected with this grant, or this contract between the Government and these corporations, which do not full within the scene of the nower reserved to Congress.

admitted that there are certain things connected with this grant, or this contract between the Government and 'these corporations, which do not fall within the scope of the power reserved to Congress.

Mr. CHRISTIANCY. I do not deny that.

Mr. BOUTWELL. There is a great difference between having denied a thing and admitting it. There are many things we have not denied and yet do not admit; but I am glad to have the admission in reference to this particular contract or charter, that the power of the Government of the United States is limited, notwithstanding the provision in the act of 1864. It being admitted that that power is limited, the question arises, where is the limit, where is the line between those things which legislative power may do and those things which legislative power cannot do? We have found by the admission of the Senator from Michigan one thing which it is not competent for the legislative power to do, and why? The Senator from Michigan says, because it is retrospective legislation.

What is retrospective legislation? It relates to something that has already taken place. Is there any provision of the Constitution that prohibits Congress from legislating in regard to things that have taken place? I know of none. I think the Senator from Michigan would be puzzled to find any limitation upon the legislative power of Congress which has its root in the circumstance that legislation is retrospective. We hold up retrospective legislation as a feature or practice not to be indulged in, and it is a very wise thing to avoid retrospective legislation; but why is it? Not because it is retrospective, but because legislative bodies are tempted to indulge in retrospective legislation for the purpose of touching what cannot be touched by the courts or by what is known as "due process of law." That is the reason of the prejudice, if you may call it a prejudice, or the general sentiment, against retrospective legislation, because for the most part it is never resorted to except to defeat an existing relation legislation. But I submit to the legal judgment of the Senator from Michigan that the real fact why he cannot sustain the proposition which I submitted to him is that it touches a contract. The reason which I submitted to him is that it touches a contract. The reason why we could not say to these companies when they had built forty miles, "You shall not have the bonds," when we had agreed they should have the bonds, is not because it is retrospective legislation, but because it is an act which the Constitution prohibits to a State, it is an act which, by judicial decision and by the general judgment of the people, cannot be indulged in by the country. In one sentence, it touches a contract.

I ask the Senator another question, whether when one of these com-panies had built forty miles or four hundred miles of road, completed it according to the terms of the charter and received bonds and patents for lands along the line of the road according to the quantity constructed, it would have been competent for Congress to step in and say, "We will have nothing more to do with this business; we will not issue bonds or patents for another mile of this road; we exercise our power of alteration, amendment, or repeal, and we end this contract, or this agreement, or this understanding, right here or

Mr. CHRISTIANCY. Does the Senator wish a reply now?
Mr. BOUTWELL. Yes, sir.
Mr. CHRISTIANCY. I have not the slightest difficulty in answering the question to my own satisfaction. I may not succeed in satisfying the Senator from Massachusetts. I will say that this is not the first time that I have said there were many things that could not be done by way of amendatory legislation. In everything which I have said heretofore I have made the exception of property already vested and rights which had already accrued before the amendatory That is precisely the exception which I make now, and it covers the entire case. I will admit that property vested before an amendment cannot be divested by it. The ultimate reason is that which the Senator from Massachusetts has very correctly stated, it would be divesting rights without due process of law. I did not go through the whole process of reasoning when I made my explanation, because I did not suppose it necessary to do so. We do not differ on that grand. When it wish the execution was a suppose it necessary to do so. that ground. When a right has vested under one of these railroad acts, before any amendment has been made to it, it is not a condi-

tional right; but everything which has not yet been done does remain conditional and subject to the exercise of the power of amendment conditional and subject to the exercise of the power of amendment or repeal. They stand there as entirely different powers. There is no semblance between them. This is all the answer that I wish now to make upon that point; but if the Senator will allow me, inasmuch as he has again referred to it, I will state in regard to the case of the Holyoke Company vs. Lyman—

Mr. BOUTWELL. I prefer now to proceed that I have the answer,

as this advances me one step further.

Mr. CHRISTIANCY. I was going to answer—

Mr. BOUTWELL. I would prefer that the Senator should allow me to give direction to the course of debate while I have the floor. The concession made by the Senator enables me to advance one step farther, and with one step more we can cover the whole ground, and then I shall be able to understand the distinction that it will be necessary for him to make between the two propositions which I now submit. He admits that if the road had been constructed agreeably to the charter for a distance less than the whole, and the bonds and patents had been issued as far as required by law, under the power given to Congress in the charters to alter, amend, or repeal the charters, it would not have been competent to stop the work and say that no other bonds or patents should be issued. Now, why?

Mr. CHRISTIANCY. I did not make the statement in that way.
Mr. BOUTWELL. Then I misunderstood the Senator. The ques-

Mr. BOUTWELLE. Then I misunderstood the Senator. The question I asked was whether it would be competent to stop the work. Mr. CHRISTIANCY. I referred to the fact given in the Senator's speech the other day. So far as relates to the power of stopping any future operations, I have no doubt of it; but the legislative power could not undo the past. That is the principle; and now, if the Senator will permit me, what I wish to say in reference to the Holyoke case is simply this.

case is simply this—
Mr. BOUTWELL. I beg the Senator's pardon; I prefer to continue what I have to say. I misunderstood the Senator, then, or he misunderstood my question. He now claims that it would be competent for Congress to stop the work midway, notwithstanding the existence of an agreement, whether binding or not. There was an agreement between Congress, representing the country, and these corporations that, as they went on twenty miles by twenty miles, certain things should be done. It was stipulated that this road under that contract should be built from the waters of the Pacific coest to the waters of should be built from the waters of the Pacific coast to the waters of the Gulf of Mexico. That was either a contract or it was nothing. It was an agreement by the Government, or it was a breath in the air of which nobody could take notice.

Mr. CHRISTIANCY. If the Senator will allow me, the ground

which I take is this: that as to all future rights of the company

which I take is this; that as to all future rights of the company whatever, they are conditional, covered by the power of amendment and repeal, but that the power of amendment and repeal cannot undo the past. That is all.

Mr. BOUTWELL. Well, Mr. President, if that be law, then the old idea that law is the perfection of human reason should be abandoned. If that be law, the idea which has been entertained that there is something ethical in law should be abandoned. Does the Senator from Michigan consider the extent of his proposition, that citizens of the Republic should be engaged by what appeared to be a pledge of the public faith—perhaps it was not, but what appeared to be a pledge of the public faith to invest their capital, expend their labor, consume their years of valuable time in creating this great highway between the seas, the Government of the United States would do what it had undertaken; that all that should pass for nothing, and that the Government of the United States whenever it chose should dissipate, under this power of repeal, all the pledges that it had made to its own citizens? Why, Mr. President, the words at my command fail to express my abhorrence of the morals of that law, whether legislative in its origin or judicial in its interpretation, which would permit a government to induce its citizens to embark their capital in an enterprise of this sort, and then by a power reserved, if it be reserved, annihilate their property, blast their prospects, and send them away desperate. Sir, there is too much morality in government, too much integrity in humanity, too much morals in the origination of law and in its administration, ever to permit in a civilized country such a doctrine to take possession of legislative bodies, of judicial tribunals, and above all, such is my faith in the people, that I am sure it can never take possession of the popular heart of have the least control over the popular judgment.

No, sir, we stand on something firmer than that. If the faith of this country was ever pledged in any particular to any body of men for any purpose, it was pledged to these men in the acts of 1862 and 1864, that if they would do certain things which were set forth in those acts, the Government of this country would respond by doing exactly and according to the terms of the bond what was written in the acts of 1862 and 1864, and I for one will never resort to any special size of the set of t cial interpretations, to any technicalities, to any doubtful proceeding, cial interpretations, to any technicalities, to any doubtful proceeding, in morals or in law to escape. If we have made a contract to our own hurt, let us keep it. The faith of this country is to ourselves inestimable; and if we have any regard for our own interest, as we stand before the world, the first, the chief Republic, the hope of mankind, the elementary principle of which is integrity in public affairs—if we have nothing but that, sixty, seventy, one hundred millions are too paltry to be counted even as the dust in the balance!

I say then or the agreement on the part of the Government, it is

a contract binding, or it is nothing. If it is a contract compelling us to pay when forty miles are completed, it is because it is a contract, and because the conditions of that contract are written in the articles of agreement. There can be no other reason; and it is alike, and equally, and with the same substantial force written in the contract, that if they built this road from the waters of the Atlantic to the waters of the Pacific we would pay; and the violation of faith in one particular is just the same in moral principle, whatever it may be in law, as the violation of public faith in every particular. It stands as a whole, or it has no right to stand at all. It is either paper that we may blot out and hold in the fiery furnace,

is either paper that we may blot out and hold in the fiery furnace, and extinguish the record, or it is written indelibly, and must stand until every feature and provision of it is made a living fact in the performance of the duties enjoined upon us.

What did we agree to do of the forty miles; I do not speak now of the whole? We agreed to give certain bonds; they were to run for a certain time, they were to bear a certain rate of interest; they were to be paid at a specific time, and in a specific way; and all and everything relating to those bonds was set forth in the agreement. If we were bound, when the forty miles were completed, to give the bonds, we were bound to give them of a particular sort; we were bound to observe exactly what was written on those bonds. The bonds for the forty miles do not differ from the rest; they are all in a mass. If we had stopped at the end of the forty miles, I ask The bonds for the forty miles do not differ from the rest; they are all in a mass. If we had stopped at the end of the forty miles, I ask the Senator from Michigan whether we could have changed the condition of the bonds after they were issued? That is what you propose to-day to do in reference not only to the forty miles but in reference to the whole mass that you issued. The Government were to be re-imbursed by these corporations at the end of thirty years; not before, but at the end of thirty years. You say, by this Judiciary Committee bill, that they shall re-imburse you before the forty years or else the bill is of no value. That is what it does say. It changes the terms; it alters the conditions on which the corporations were to re-imburse the Government. That is what it does, or it does nothing. Therefore if we consider only the forty miles, which the Senator from Michigan has asserted we were bound by the contract to accept and recognize and pay for, the proposition in this bill is to change the character of the bonds that were issued for those forty miles, and they are not different from the rest. are not different from the rest.

are not different from the rest.

Mr. President, let us look at this transaction just exactly as it is. We are in an agreement. I do not care whether it is a good bargain or a bad one. I did not help to make it, but I will help to keep it, because it is the bargain of my country. I will not violate it because it is a bad one. I have never done that knowingly in my private business, and I will never do it as a representative of the people of this country; and when I return to private life no man shall ever receive my support who does not keep the faith of his country, whether it be for weal or for woe. We have got nothing better. The Constitution is nothing when the public faith is gone; and all that rests upon it is "like the baseless fabric of a vision" when the public faith is gone; and it is just as much here in this debate and in this bill as it is in the hundreds of millions of dollars of public securities that are held by confiding citizens of our own country, and confiding that are held by confiding citizens of our own country, and confiding subjects of other countries, who have taken our bonds because they believed in our faith.

believed in our faith.

Mr. CHRISTIANCY. Mr. President, the very eloquent speech of the Senator from Massachusetts [Mr. BOUTWELL] would have been very appropriate if any proposition was made before the Senate to do some of the enormous things which he denounces as very immoral, improper, and unjust; but there being no such proposition, the speech must apply to a case when it happens to arise. It has not yet arisen. The question that we have been discussing is one of power simply, a question of constitutional power under the acts relating to these Pacific Railroad companies. The ground which he takes in regard to the reservation of power to amend and repeal on the faith of which the last act was passed obliterates it entirely from these statutes, and makes this obligation, which Congress intended to be conditional and subject to the power of repeal, positive and unconditional, and subject to no power of amendment or repeal. That is his construction.

Now, I admit that under a power of amendment and repeal many unjust things might be done. I adverted to that the other day. But where is the limit of the power of amendment and repeal under such a clause? It is just where you find the limit of a very large number of powers given to Congress, and that is in the good sense and good discretion and sound judgment of Congress; and whenever they undertake to go beyond that, I will endeavor to stand with the Senator from Massachusetts; but as a question of power I submit he is entirely wrong.

When the act of 1864 was passed the company were asking extraor-When the act of 1864 was passed the company were asking extraordinary privileges and extraordinary powers, and they were granted; but they were granted with a provision which said to them, "We will place these powers in your hands and these funds in your hands; we will grant you all these lands; but, at the same time, you must take them subject to our power, at any moment when we deem it necessary for the protection of the public interest, to amend or repeal entirely the act under which you are acting." Every right granted by that act was granted subject to that condition, and is yet subject to it, with the exception which I have already mentioned, that of divesting property or rights already vested, and which depend not upon any

condition, but where they were performed before the amendment was

But I do not mean to detain the Senate further on that point now; I may perhaps refer to it hereafter. As the Senator from Massachusetts has called my attention to the Holyoke case, reported in 15 Wallace, I again reiterate what cannot be denied, that the charter Wallace, I again reiterate what cannot be denied, that the charter then in question before the court contained no provision that the company should not be required to construct a fish-way, and therefore all that the court said upon such a charter was outside of the case and purely dictum, nothing else; and nothing else can be made of it. How can it be anything else than dictum when the court go on and decide what the right would be under a charter which is not before them and which is not in question before them, when there is no such provision in it. Whatever they say on a question of that kind is of no more authority than if any man in the street should say it—none whatever as authority. Such dicta, as every man knows who is acquainted with judicial proceedings, are never argued before the court and are never considered as the questions directly involved in the case are. Courts themselves would be

never argued before the court and are never considered as the questions directly involved in the case are. Courts themselves would be offended if counsel were to cite to them a mere dictum as authority.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Georgia, [Mr. GORDON.]

Mr. SHERMAN. Notwithstanding the Senate has been engaged more or less for a week or two in a debate on this railroad bill, in my judgment the Senate is not at all prepared for this important vote. If this was a vote on some formal amendment, on a proposition which did not involve the fate of the two main measures, I would withhold what little I have to say until that point had been reached. But this vote is the governing vote of this whole controversy. If the amendment offered by the Senator from Georgia is adopted, it defeats the bill reported from the Judiciary Committee and adopts as the text bill reported from the Judiciary Committee and adopts as the text before us, not amendable in committee at least, the bill of the Rail-road Committee as the governing law of the subject; and then, hav-ing defeated the bill reported from the Judiciary Committee, we shall be left in the Senate only to adopt such amendments as the body may

choose to the bill then before it or defeat it.

In my judgment, (and I have been studying this subject as carefully as I can since it has been brought before us,) the Senate is not now prepared for the final vote upon this question. Far from it. The amounts involved are so vast, the delicacy of the position is so great, that, in my judgment, this bill ought not to be voted upon until after the most thorough scrutiny and the most careful examination.

I listened to a good part of the remarks made by the Senator from New York [Mr. Conkling] the other day, and I do not propose to answer them, because he dealt with objections to the bill reported by the Judiciary Committee. I also have some objections to that bill, but I intend to dismiss that bill entirely from consideration and call your attention to the bill now proposed to be substituted in its place; and I appeal to Senators, before they vote to put it before the Senate of the United States as the accepted basis of the settlement with the Pacific Railroads, to examine carefully the details of this bill. My friend from New York did not go into them, if I remember

aright.

I wish to call attention to a few of the salient points of this bill, to show the Senate that it is not now prepared to adopt this proposition in lieu of the Judiciary Committee's proposition. It may be that the report of the Judiciary Committee will not meet the sanction of the Senate. I desire myself to offer amendments to it. It may be that it is too severe on the railroad companies, and that it might break them down, although I think some of the objections on that score are mistaken. So far as the Kansas Pacific Railroad is concerned, about which there has been some conversation, the bill of the Judiciary Committee is better than the bill reported from the Railroad Committee, strange as it may seem, because the bill reported by the Committee, strange as it may seem, because the bill reported by the Judiciary Committee would not apply to the Kansas Pacific Railroad until that road is able to pay the interest on its first-mortgage bonds; and I understand that its bankruptey or insolvency was caused by its failing to pay the interest on the first-mortgage bonds. While the earnings of either of these railroads are not sufficient to pay their operearnings of either of these railroads are not sunicient to pay their operating expenses and the interest on their first-mortgage bonds, the Judiciary Committee bill does not operate at all; but it would require the payment of one-half of the transportation to be paid directly to the companies, leaving the sinking-fund provision of the bill to operate only after there was a surplus over and above paying interest on the first-mortgage bonds.

But the bill reported from the railroad committee deals only with

But the bill reported from the railroad committee deals only with the two principal railroads, and they are after all the railroads to be affected. The Kansas Pacific and, I suppose, the other branch roads are comparatively unimportant. The Central Branch of the Union Pacific Railroad is interested to but a small amount. The whole amount of Government interest in that is \$1,600,000, while in the two main roads it amounts to from \$25,000,000 to \$30,000,000 in each. To be precise, the whole amount of principal of the bonds advanced to the two great railroads is \$55,092,192. Besides that there is due to the United States for interest from these railroads \$21,535,102, making the amount involved in this bill reported to us \$76,627,294, which is the great body of this debt.

Mr. PADDOCK. Now or at the maturity of the bonds?

Mr. SHERMAN. Now, to-day. When the debt matures it will be several times that.

several times that.

Mr. PADDOCK. Is there any debt at all until it matures?

Mr. SHERMAN. I will show you presently that there is a present obligation. Let us look a little further. The annual interest that is now being paid by the United States for the benefit of these two companies, or on its loan of credit to these two companies, is \$3,305,531, making an important element in the expenditures of the United States. The whole interest on the public debt is now about \$100,000,000; and the amount paid to these railroad companies or for their benefit is over 3½ per cent. of the entire interest on the public debt. That is paid now by taxation. This bill, as I will show you, abandons, practically surrenders, all the stipulations in favor of the United States to the railroad companies for the purpose of establishing a sinking fund to pay the debt of the railroad companies. After this bill passes, not one dollar can by any possibility go into the Treasury of the United States to aid us in paying the interest on these bonds, and there is the striking feature, the salient point of the bill. If this bill passes not one dollar of money can go from the treasury of these railroad companies to the United States to aid us in paying the interest on the bonds. The whole of it, all the money that is provided for by this bill, goes into the sinking fund to pay the debts of the railroad companies; and the money which is now confessedly reserved by law to aid the Government of the United States in carrying on the operations of the Government is diverted from the Treasury of the United States to a sinking fund and there applied, with interest at 6 per cent compounded in order to do whatf. To pay a debt of the railroad cent of the United States to a sinking fund and there applied, with interest at 6 per cent compounded in order to do whatf. To pay a debt of the railroad cent of the united States to a sinking fund and there applied, with interest at 6 per cent compounded in order to do whatf. states to a sinking fund and there applied, with interest at 6 per cent. compounded, in order to do what? To pay a debt of the railroad companies. That is the whole of this bill. If this bill passes, the United States gain nothing whatever except a provision for the ultimate payment in 1912 of a portion of this debt by the operation of its own sinking fund, while every stipulation made in favor of the United States by the railroad companies.

If this is so expect the Congress of the United States is not pre-

verted into a stipulation in favor of the railroad companies.

If this is so, surely the Congress of the United States is not prepared for it. We cannot be prepared to surrender a property right of \$77,000,000 to day, which has already created a burden on the people of the United States of \$21,000,000 outlaid and paid, and an annual charge on the Treasury of three and a half millions of dollars, without any stipulation whatever, except a remote one to be re-imbursed a portion of this money in 1912.

Let us look back a little further. If we were dealing with an insolvent corporation, one rule would apply that does not apply now. We are dealing with a powerful corporation, whose revenues probably are greater than those of any railroad corporation in this or any other country in ten years after its road has been completed. If we were dealing alone with the Kansas Pacific or the other branch Pacific Railroads that are practically insolvent, unable to pay their cific Railroads that are practically insolvent, unable to pay their debts, then the rule of settlement with them would be to take what we could get; to take what the railroad companies were able to pay, and settle with them on liberal and honorable terms. I, for one, want to deal with these railroad companies in a very liberal, magnanimous I do not want to treat them in a carping, grinding, harsh way.

I am perfectly willing to make a settlement with them that may be considered liberal on the part of the people of the United States, but I am not prepared to deal with these corporations as if they were unable to pay because their own returns show that they are perfectly able to pay to a large extent, and, in my judgment, these railroad companies are to-day able to pay the entire interest accruing on the bonds issued to them, every dollar of it.

Therefore, Senators must dismiss from their minds the idea that we are dealing with broken-down corporations, that we are about to do a hardship to men who have invested capital in railroads, that we are taking away from them a fair interest on their earnings. Not at all. These railroad companies are able to pay 6 and even 10 per cent. on every dollar of their obligations, according to the sworn statement they have furnished, not only to the Government but to the public at large. The two principal railroad companies are the Union Pacific and the Central Pacific. Take first the Central Pacific, which probably is the more powerful corporation, because its earnings are the largest, and let us see what its actual condition is.

Mr. PADDOCK. If the Senator will allow me, he has made a statement to the Senate that the two together make a line of railroad from the Atlantic to the Pacific coast.

Mr. SHERMAN. We all know that, I think, and a great line, too, a line that can have no competitor for many years to come. I wish to show you that it is a powerful line, and able to pay its debts, and cannot appear before us in the light of an insolvent begging for easier terms. I have in my hand Poor's Manual of Railroads, which is regarded everywhere as authority, and is founded upon the sworn we are taking away from them a fair interest on their earnings. Not

easier terms. I have in my hand Poor's Manual of Railroads, which is regarded everywhere as authority, and is founded upon the sworn statements of the officers of the various companies. I find here, under the head of the Central Pacific Railroad Company, the ordinary tabular statements of its earnings and operating expenses. I find that during the year ending December 31, 1874, the actual earnings of the railroad were \$13,868,952.93; the operating expenses of the road were \$5,401,786. The payment in coin for taxes, interest on bonds, &c., amounted to \$4,104,000. The net earnings, as they are usually classified by railroad men, were \$8,467,186.98. Remember these are the net earnings, after deducting the operating expenses. But it is said that technically, or within the meaning of the railroad laws, these are not net earnings. Let us see. I may say something about that hereafter; but what are the net earnings according to their own admission? From their net earnings they claim to deduct the following

payments in coin: Taxes, \$327,000, which I think is a proper deduction: they ought to be deducted from gross earnings; interest on bonds, \$3,184,350; exchange, discount on currency, \$592,814; making a total of what they claim ought to be deducted from net earnings of \$4,105,194.

Mr. WEST. Now, will the Senator allow me to ask, does he think that deduction is equitable?

that deduction is equitable?

Mr. SHERMAN. I do not think it is equitable, to ascertain the 5

per cent. of net earnings.

Mr. WEST. Does the Senator mean to say that the statements of the company as made there are not equitable in the light of deductions

from their net earnings?

Mr. SHERMAN. I do. I say that the meaning of "net earnings" is the gross earnings, less operating expenses; and when that case is tried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the autried before the Supreme Court I have a confident belief, on the supreme Court I have a confident belief, on the supreme Court I have a confident belief, on the supreme Court I have a confident belief, on the supreme Court I have a confident belief, on the supreme Court I have a confident belief. tried before the Supreme Court I have a confident belief, on the authorities I have examined, that they will so decide. But I am now taking the railroad argument. I think the 5 per cent. of the net earnings of this railroad would be about \$430,000 a year. But take their own construction; they claim that they have the right to deduct from the net earnings the interest on their debt. Take that to be so. Take \$4,104,000 from \$8,467,000 and it leaves \$4,363,000 over and above the expenses that they claim to deduct from the net earnings.

ings.

Mr. WEST. I may not be correct, but as I understand the Senator, he states the gross earnings of that road at \$8,467,186. That is for twelve hundred and sixty odd miles of road, when only two-thirds of that length has been aided by the Government of the United States. Now I ask him in his calculation to deduct one-third from that and he has the basis of \$5,644.791 to go upon.

Mr. SHERMAN. I have no official statement before me; but I wenture to make the assertion, and I think I can find railroad men in

venture to make the assertion, and I think I can find railroad men in my hearing who will bear witness to what I say, that the outside ventures of the Central Pacific Railroad do not pay expenses and do not yield profit, and that the profit is derived from the main line. That is what I have been informed.

Mr. WEST. If the Senator will pardon me, I have an official statement that is different, and I will give it to him.

Mr. SHERMAN. You can do it after a while.

Mr. WEST. There is an official statement from the House of Representatives in their examination that these particular portions of

esentatives in their examination that these particular portions of the road that run laterally from the main stem are very profitable.

the road that run laterally from the main stem are very profitable. I only quote his own authority.

Mr. SHERMAN. It is not my authority. But if it is not so, it is the only railroad in the United States, I think, that can say that. As a rule the side roads, lateral roads, connecting lines, as they are called, are great contributing agencies to the business of the central road; but in themselves, as a simple investment, the receipts and expenditures generally show a deficit; but they make them pay by contributing largely to the general earnings of the main line. Even if there is a small profit, the Senator ought to be able to show exactly how much; the returns of the Central Pacific Railroad Company ought to show exactly how much is derived from the main line and how much from the lateral lines. But I will not go into that

pany ought to show exactly how much is derived from the main line and how much from the lateral lines. But I will not go into that. I take their own figures. Here is a railroad that so far can not only pay the interest on its bonds, its taxes, and its operating expenses, but have a surplus revenue of \$4,300,000 in gold. Is it hardship, is it dealing hardly with this railroad company to say, "Out of this four million of surplus earnings you shall pay a million and a half of dollars for the interest we are bound to pay for your benefit?" Is that hard? Is there any violation of the public faith in that? Is there anything wrong in that? The United States by its credit and its money built these railroads by the enterprise and skill and I may say great adventure, meritorious adventure of men that I would not say great adventure, meritorious adventure of men that I would not wrong to the slightest degree; but now they are in possession of a property which not only pays the interest on their bonds, not only pays their operating expenses with a reasonably fair allowance for wear and tear, but gives four millions of gold surplus; and the Government of the United States is now taxing the people of the United States \$1,670,000 to pay interest on the very bonds and the very money that aided to build this road.

money that aided to build this road.

Mr. President, I say to you that if you surrender the rights of the people of the United States to be re-imbursed this money to railroad corporations that are thus able to pay, it will be a sorrier thing than to vote yourselves a million of dollars back pay; and these railroad companies must either comply with the law or they must show that they are unable to comply with the law before we can yield them anything but what the law demands. They are able to pay, and if I was the owner of the Central Pacific Railroad, this magnificent property the like of which there is none other, I would come forward to-morrow and say, "Thank God, this company, at least, is able to pay the interest on bonds loaned to it when it was important for the national interest as well as its own to complete this road." It is able to do it; it ought to do it; and any bill that surrenders that right so far as the law authorizes it to be enforced will be wrong and will meet with the popular condemnation.

will meet with the popular condemnation.

It may be that the rule adopted by the Judiciary Committee is too hard. I will not stop to reason on that point. It may be that the construction I have given in regard to net earnings is not correct, but I am willing to wait for the judgment of the Supreme Court upon that question before ever I will vote to surrender. This com-

pany is now able to pay and it ought to pay the interest on its bonds; and now when we are called upon to levy taxes, when everybody is feeling the burden of taxation and of diminished income, these railroad companies ought not to call upon us to continue the payment of their interest except either upon an inability on their part to pay or because they have a clear legal right to refuse payment, and upon

either of these grounds they must act.

Mr. CAMERON, of Pennsylvania. If the Senator from Ohio will yield I wish to move an executive session. ["No, no!"] We shall

Mr. WEST. We did that for you yesterday.
Mr. CAMERON, of Pennsylvania. I want it to-day again.
Mr. SHERMAN. I prefer to go on further.
The PRESIDENT pro tempore. The Senator from Ohio declines to

Mr. PADDOCK. I should like to make an inquiry of the Senator from Ohio.

Mr. SHERMAN. Very well.

Mr. PADDOCK. I should like to inquire of the Senator from Ohio if in the light of the decision of the Supreme Court recently rendered there is anything due by these companies in respect to interest or principal until the maturity of the bonds?

Mr. SHERMAN. I will come to that in a moment.
Mr. PADDOCK. I should like to have the Senator come to it im-

Mr. SHERMAN. I am a slow-moving coach; I must take my own

Mr. PADDOCK. No; a very rapid-moving coach.

Mr. SHERMAN. And sometimes a very stubborn one.
Mr. PADDOCK. It is best I think to look at this question exactly

in its practical view, not in its imaginary or speculative view.

Mr. CAMERON, of Pennsylvania. I want to say something on this subject. I cannot say it to-day and I am sure we shall not finish the bill to-day, and I have some executive business of importance to the

country and I desire to make a motion to go into executive session.

Mr. SHERMAN. I will give way to my friend in few minutes.

Mr. CAMERON, of Pennsylvania. Very well.

Mr. SHERMAN. I have spoken of the Central Pacific and shown that it is able to pay. I cannot reach in a hurried manner the obligations of the Government and the rights the Government has under the law, just at present. I cannot oblige my friend from Nebraska just at this moment. I want to take up the Union Pacific and show its condition.

Mr. PADDOCK. Taking up the Union Pacific, I should like to know if there is anything due here, if there is any premise on which the gentleman is making his remarks.

Mr. SHERMAN. I first want to see whether they are able to pay; if they are able to pay, I will then present my bill of particulars.

I find in the same manual to which I have referred that for the same year the gross earnings of the Union Pacific Railroad were \$10,559,880. We find that the expenditures for maintenance of way, \$10,559,880. We find that the expenditures for maintenance of way, fuel, rolling-stock, transportation, and miscellaneous items, were \$4,396,759, leaving a balance of surplus earnings of \$6,163,121, or, less taxes, \$255,555, leaving the net earnings \$5,907,566. There are the net earnings. That is a very handsome income, six million dollars. What has it got to pay out of that? It has got to pay out of that the aggregate interest account for the year, \$3,696,370, of which \$1,632,780 is the amount of the interest on the first-mortgage bonds in gold. They have six millions of surplus revenue, and if you deduct the amount they pay on interest on first-mortgage bonds, they have the amount they pay on interest on first-mortgage bonds, they have \$4,300,000 after paying interest on their first-mortgage bonds. That is a very handsome income.

So I say that these railroads, the Central and the Union Pacific, out of this handsome income, are able to pay the interest on the bonds that the Government of the United States has loaned them. And, sir, we for one will not vote to surrender any claim that we have under the law to these railroad companies, until they pay this interest. The question is not whether we can demand the interest. I say we cannot; the Supreme Court has decided that we cannot demand this interest until the bonds mature; but we have other rights given by these railroad laws as plainly written as anything else. First, we have a right to apply one-half of their transportation account on the payment of this interest, and pro tanto the interest is paid. The returns that I have before me show that the amount that has been realized in this way has been from \$500,000 to \$600,000

Mr. WEST. If you have the figures for that statement let us see them.

Mr. SHERMAN. Do you deny it ?

Mr. WEST. Yes, sir.
Mr. SHERMAN. I have stated it too low; that is all the trouble.
Mr. WEST. So I thought.
Mr. SHERMAN. I will show you that I have stated it too small.
On page 8 of the report of the House committee, the Senator will find exactly what has been paid each year:

From this it appears that the aggregate payments made by the companies to March 1, 1876, by services rendered to the Government, amount to \$6,724,317.92. These services covered the period including 1867, and since, to March 1, 1876.

Nine years; so that in nine years these companies have paid to the Government \$6,724,000, over \$700,000 a year.

Mr. WEST. I thought you spoke of one company. Mr. SHERMAN. No, I speak of the railroad companies.

Mr. WEST. The two of them; yes, sir.
Mr. WEST. Nobody denies that.
Mr. SHERMAN. Now, my friend finds that I have fallen within

Mr. PADDOCK. I should like to inquire of the Senator from Ohio

Mr. PADDOCK. I should like to inquire of the Senator from Ohio what he thinks would have been the approximate cost of this service, which has cost \$6,000,000 to the Government, if the railroads had not been constructed at all. Would it not have been at least four times as much as it is and as it has been by the railroad service?

Mr. SHERMAN. I do not know what it might have cost us if the Indians were all over that country; but I know that by the language of the r.ilroad laws, and they claim to be governed by the law, they have expressly agreed that one-half of this transportation account should be applied on the interest. That is not controverted. The actual fact has shown that this interest account, as against all these railroad companies, is over \$700,000 a year, and as to the two these railroad companies, is over \$700,000 a year, and as to the two principal roads, over half a million. Here, at least, the people of the United States have one stipulation in this law which gives them the benefit of a revenue derived from these railroad companies of be-

tween \$500,000 and \$600,000 a year. We cannot surrender that.

Mr. WEST. We do not by this bill.

Mr. SHERMAN. My friend will see that he surrenders it. That is not all. We have another stipulation here plainly written in the is not all. We have another stipulation here plainly written in the language of the law that 5 per cent of the net earnings of these roads shall be paid on the interest account; and if my construction of the law is correct, \$750,000 this year, part of it in gold, should have been applied to the liquidation of the interest account. I have shown you that the net revenue of the Union Pacific is \$6,000,000; that the net revenue of the Central Pacific is \$3,400,000, and 5 per cent. on these two sums combined would have given us a revenue of a little over \$700,000 that year. Thus, under the terms of the law as it now stands, if not repealed, or given away, or surrendered, we shall have paid to the people of the United States at least \$1,200,000 in money every year to aid us in paying this interest. That is a solemn stipulation. It is true there is some controversy as to the nature of this contract. It has been claimed that the railroads were not completed contract. It has been claimed that the railroads were not completed

at the time the Government insists they were, but I believe they have agreed that they were completed in 1874.

I have said all I desire to say about that. I have no doubt that the fair meaning of the language of this provision of the law is that the very moment these railroads were running as a connecting line through, as a matter of course from that time we ought to have had 5 per cent. of the net earnings, and I can show you a case from a respectable court, which I have read, where the very point was made and has been decided under similar circumstances that the completion of the line of road, where two or three roads meet together, is when a single train of cars may without break run through. Then the 5 per cent. of net earnings should have commenced to run. But that is not material. I am willing to leave that to the Supreme Court. It is admitted on all hands that the road is completed now, and that we are entitled to 5 per cent. of the net earnings. What are net earnings? Plain, simple men know what net earnings are. They are the gross earnings less the operating expenses.

Mr. WEST. On that point I should like to submit a proposition to my friend, as a plain business man, if he will listen to it a moment.

Mr. WEST. A merchant in New York does business to the extent

Mr. WEST. A merchant in New York does business to the extent of two million dollars a year. Annually, at the close of his business, he finds that he has accumulated a gross sale over the gross cost of \$250,000. It has cost him \$100,000 for the expenses of his clerks, his rent, and the incidental expenses of carrying on his business. It has cost him \$100,000 in interest in accommodations from the banks, that he has paid out. What are that gentleman's net profits? Are they \$150,000, or \$50,000?

Mr. SHERMAN. I will not take a supposititious case at all. I will take the actual case before us. It seems to me as plain as any one

Mr. WEST. The supposititions case does not seem to suit you.
Mr. SHERMAN. It is not applicable at all. Here is a railroad that, Mr. SHERMAN. It is not applicable at all. Here is a railroad that, when completed, is to pay 5 per cent. of its net earnings to the United States. It has been completed, section by section, forty miles right along, and at the end of every forty miles it demanded its bonds and received them. When the road was completed through and the lines connected so that trains ran through, the road was practically completed in the sense of the law. It is true that a railroad is never completed. Bridges will wear out and must be rebuilt. There are continual cases of improvement going on; but in the plain sense of plain men the road was completed the very day the cars ran through continuously. But i hat, as I said, is not material now. That question is practically ended, because several years ago, it is admitted on all hands, the railroad was completed. hands, the railroad was completed.

Then as to what are net earnings, that question is now pending before the Supreme Court. I have perfect confidence that the Supreme Court will decide as is right; and I believe, in the light of the decisions I have seen, not going too much into minutia, that they will decide that the net earnings are to be ascertained by taking from the gross earnings the operating expenses. Here is a book containing the

statistics of fifty-seven thousand miles of railway, and upon that simple basis these statements are founded, first, the gross earnings, next the operating expenses, the result the net revenue. Then that revenue may be divided among bondholders, or stockholders, or preferred stockholders, or in any way, but the net earnings are the residuum after the operating expenses are paid. So these practical, sensible, good business men in this vast volume show the way they regard it.

But that must be decided by the Supreme Court. In either constatistics of fifty-seven thousand miles of railway, and upon that sim-

But that must be decided by the Supreme Court. that must be decided by the Supreme Court. In either event there is a large sum of money due, because, as I have shown you, taking from the gross revenues of the Central Pacific the interest on the bonds and every possible expenditure, together with their construction account, there is still a large balance left of many millions of dollars. If the construction I have put on it is correct, then the annual revenue of the Government of the United States from net earnings cannot be less than \$750,000. That amount will be increasing year by year.

earnings cannot be less than \$750,000. That amount will be increasing year by year.

Here are two stipulations of the railroad law that are surrendered, one providing for a revenue of \$500,000 a year, and the other for a revenue of \$750,000; and this revenue of a million and a quarter of dollars is applied, not for the benefit of the railroads, but is paid to the Government of the United States in liquidation of the interest account.

Now, let us go one step further. This bill actually surrenders all our rights to these important stipulations in the railroad contract. I wish here to call the attention of Senators to this bill as I read it.

The third section provides:

That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act and the amendment thereto, in relation to the re-imbursement of the Government of the bonds so issued to said corporations.

If this railroad bill shall pass, the Government has no right whatever to one-half of the earnings for transportation, no right whatever to the 5 per cent. of net proceeds. All these are surrendered. Every stipulation and requirement in the law in favor of the United States

stipulation and requirement in the law in favor of the United States is surrendered by the plain and simple language of this third section. Mr. EATON. I should like to interrupt my friend for one moment. As I understood him, he said that 5 per cent. would be \$750,000. Mr. SHERMAN. On the two railroads.

Mr. EATON. Yes, sir; that would require that the net earnings should be about \$16,000,000.

Mr. SHERMAN. Not so much; \$14,500,000. I have found it here, from their official records; I speak of the two railroads. I will again refer my friend to the figures of the earnings. Here are the gross earnings of the Central Pacific, and I put those upon record so that Senators can find them. This is Poor's Manual. It gives the gross earnings of the Central Pacific alone, \$13,868,000; the operating expenses, \$5,368,000; the net earnings, \$8,467,186. Then the Union Pacific, \$6,163,120. So that I am right. The net earnings of these railroads, according to these tables as tabulated for them in this manual, are, as I said, fourteen and a half millions of dollars. There can be no mistake about it.

These important stipulations are surrendered by the third section

These important stipulations are surrendered by the third section of this bill. I will read it.

That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act and the amendment thereto, in relation to the re-imbursement to the Government of the bonds so issued to said corporations.

Then it provides that the railroad companies shall not be released from their obligations to keep the road in repair; and there is this further stipulation, which is an additional obligation on the Govern-

That all Government freight and transportation west-bound, destined for points between the Missouri River and the Pacific coast and on the Pacific coast, and from said coast, or any point east thereof, cast-bound, shall be sent by the said railroads until the aforesaid claims of the Government on account of bonds advanced to the companies are fully paid and satisfied, whenever such freight can be so transported to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

Here is an additional obligation on the part of the United States that we shall employ these railroads to do all our transportation unless some other mode of transportation comes in and rats under them. Why should the Government bind itself to any corporation, its own creature? As a matter of course we have the right to transport over their road; we have even the right, by the express terms of the law, to fix the compensation we shall pay, because it is much better that Congress should fix that compensation than that an interested board of directors should; but here we make a stipulation, not in favor of the United States but against the United States. What is the corresponding benefit? An annuity of a million and a half of dollars; what for? For the benefit of the railroad companies to pay their own debts. Under the law as it now stands we shall have coming into the Treasury of the United States not less than \$1,200,000 in money to aid us in paying this interest. Under this bill we shall not have one cent; but, on the contrary, the \$1,500,000 stipulated for in the bill does not go into the Treasury of the United States, but goes into what is called a sinking fund, and is there semi-annually compounded at 6 per cent. interest annually. Mr. President, it seems to me monstrous. We surrender an actual revenue in hand of \$1,200,000, yearly increasing, to get a revenue for the benefit of the railroads, from which we can possibly get no benefit whatever until 1912, except that we stipulate to pay 6 per cent compounded

on every dollar of this money until that time when the whole mass of it will be applied in the sinking fund to the payment of the bonds.

Mr. CAMERON, of Pennsylvania. Is the Senator from Ohio through † If not, I am sure he will give way.

Mr. SHERMAN. I will give way if the Senator desires, but I am not through.

not through.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed to the consideration of executive business.

Mr. BOUTWELL. Will the Senator from Pennsylvania allow me to move an amendment to the amendment proposed by the Senator from Georgia, which I have already prepared? It is to strike out in the second line of the third section the words "lieu of" and insert the words "in addition to."

Mr. SHERMAN. That makes a great difference.
Mr. BOUTWELL. And strike out the word "however," in line
5, after the word "provided."
Mr. SHERMAN. That makes all the difference. It makes the

whole animal another horse.

Mr. BOUTWELL. I have already given notice to the chairman of the committee that I should move the amendment.

Mr. SHERMAN. I was not aware of it. I think the amendment

had better be printed.

Mr. BOUTWELL. Very well.

The PRESIDENT pro tempore. The printing will be ordered, unless there be objection.

EXECUTIVE SESSION.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nineteen minutes spent in executive session, the doors were re-opened, and (at four o'clock and thirty minutes p. m.) the Senate took a recess until Saturday, February 10, at ten o'clock a. m.

# HOUSE OF REPRESENTATIVES.

THURSDAY, February 1, 1877. [CALENDAR DAY, February 9.]

AFTER THE RECESS.

The House re-assembled at ten o'clock a. m., Friday, February 9; when, on motion of Mr. New, a further recess was taken until five minutes before twelve o'clock a. m., at which time the House resumed its session.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, announced that the Senate had passed, with amendments in which the concurrence of the House was requested, the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other

SWAMP LANDS.

Mr. STEVENSON, by unanimous consent, presented a joint resolution of the Legislature of the State of Illinois, in regard to Government swamp lands; which was referred to the Committee on Public Lands, and ordered to be printed in the RECORD. It is as follows:

Senate joint resolution No. 11, concerning Government swamp lands.

Senate joint resolution No. 11, concerning Government swamp lands.

Whereas section 2 of the act of Congress approved March 2, 1855, entitled "An act to amend the act approved September 28, 1850, entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," provides that, upon due proof by the agent of the State or States before the Commissioner of the General Land Office that any land was located subsequent to the 22th day of September, 1850, by warrants or scrip, the State or States should be authorized to locate a quantity of like amount upon any of the public land subject to entry at \$1.25 per acre or less;

And whereas said law is inoperative on account of the rules and decisions of the Commissioner of the General Land Office, declaring that said indemnity scrip can only be located upon lands subject to entry in the State of Illinois, and of his refusal to further issue said scrip: Therefore,

Be it resolved, (the senate and house concurring therein.) That the Congress of the United States be requested by act or otherwise to instruct the Commissioner of the General Land Office to issue said scrip and to allow its location upon any of the public lands subject to entry at \$1.25 per acre or less, within or without the State of Illinois, and that he be directed to issue the same in eighty and one hundred and sixty acre tracts.

Andrew Shuman,

ANDREW SHUMAN,
President of the Senate.
JAMES SHAW,
Speaker of the House of Representatives.

Adopted by the senate February 2, A. D., 1877.

JAMES H. PADDOCK,

Concurred in by the house of representatives February 3, 1877.

E. F. DUTTON,

Clerk of the House of Representatives.

I, George H. Harlow, secretary of state of the State of Illinois, do hereby certify that the above is a true copy of a joint resolution of the Thirtieth General Assembly of said State, filed in this office on the 5th day of February, 1877.

In witness whereof I have set my hand and the great seal of State at Springfield this 6th day of February, A. D. 1877.

GEO. H. HARLOW

GEO. H. HARLOW, Secretary of State,

### EXPEDITION TO NORTH POLE.

Mr. O'BRIEN, by unanimous consent, presented a memorial of members of the Corn and Flour Exchange of Baltimore, favoring an appropriation by Congress for Captain Howgate's expedition to the north pole; which was referred to the Committee on Naval Affairs, and ordered to be printed in the RECORD. It is as follows:

To the honorable Senate and House of Representatives of the United States in Congress assembled :

assembled:

Whereas it appears that an expedition to the north polar regions is proposed upon a plan which seems to promise a fair hope of a successful issue, at a cost quite out of proportion to the value of the least probable result;

And whereas it is desirable that no effort should be spared to determine questions in connection with the physical condition of the earth in the interest of commerce, agriculture, and science: Therefore,

Bettresolved, That we, the undersigned members of the Corn and Flour Exchange of Baltimore, heartily approve of the scheme indicated by Captain Henry W. Howgate, now before Congress, and respectfully suggest that the bill now pending be passed, with the appropriation of \$50,000 to defray the cost of the expedition, THOS. W. LEVING & SONS, BARKER & GWATHMEY, SAML TOWNSEND & SON, E. D. BIGELOW & Co., And others.

And others.

Mr. O'BRIEN also, by unanimous consent, presented a memorial of the Merchants' Exchange of Baltimore, praying an appropriation by Congress for Captain Howgate's proposed expedition to the north pole; which was referred to the Committee on Naval Affairs, and ordered to be printed in the RECORD. It is as follows:

To the honorable Senate and House of Representatives of the United States in Congress assembled:

Whereas it appears that an expedition to the arctic regions is proposed upon a plan which seems to promise a fair hope of a successful issue, at a cost quite out of proportion to the value of the least probable result;

And whereas it is desirable that no efforts should be spared to determine questions in connection with the physical condition of the earth in the interest of commerce, agriculture, and science: Therefore,

Be it resolved, That we, the members of the Baltimore Merchants' Exchange, heartily approve of the scheme indicted by Captain H. W. Howgate, now before Congress, and respectfully suggest that the bill now pending be passed, with the appropriation of \$50,000 to defray the cost of the expedition.

JAS. CAREY COALE,
JAMES BRICKHEAD,
H. O. HAUGHTON,
And others.

BALTIMORE, February 7, 1877.

### STOCKBRIDGE AND MUNSEE TRIBE OF INDIANS.

Mr. LYNDE, by unanimous consent, introduced a bill (H. R. No. 4625) to authorize members of the Stockbridge and Munsee tribe of Indians to sue in the courts of the United States; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

## AMENDMENT TO REVISED STATUTES.

Mr. KNOTT, by unanimous consent, introduced a bill (H. R. No. 4626) to amend section 3737 of the Revised Statutes; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

# CLAIMS AGAINST DISTRICT OF COLUMBIA.

Mr. BUCKNER, by unanimous consent, introduced a bill (H. R. No. 4627) to provide for the settlement of certain claims against the District of Columbia, and for other purposes; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

## JOHN M. WARD.

Mr. HARRIS, of Georgia, by unanimous consent, introduced a bill (H. R. No. 4628) for the relief of John M. Ward, postmaster at West Point, in Georgia; which was read a first and second time, referred to the Committee on the Post-Office and Post-Roads, and ordered to be printed.

The SPEAKER. (at twelve o'clock m.) The Chair asks consent that prayer may now be offered.

There was no objection; and prayer was offered by Rev. A. FLORIDUS STEELE, of Washington, District of Columbia.

# CAPTORS OF THE RAM ALBEMARLE.

Mr. WILLIS. I ask unanimous consent to report back favorably, from the Committee on Naval Affairs, for printing and recommitment, the bill (H. R. No. 4370) for the relief of the captors of the ram Albemarle

Mr. CANNON, of Illinois. I object.

## PAY OF JANITOR OF A COMMITTEE-ROOM.

Mr. MacDOUGALL, by unanimous consent, submitted the following resolution; which was read, considered, and adopted:

Resolved. That the Clerk of the House of Representatives be directed to pay to Captain Alvah W. Hicks, out of the contingent fund of the House, the sum of \$40 per month for his services as janitor in charge of the room of the Committee on Military Affairs; said services to be certified by the chairman of said committee.

Mr. MacDOUGALL moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### STEAMBOAT MOLLIE KEATOR.

Mr. DURAND. I ask unanimous consent to report back from the Mr. DURAND. I ask unanimous consent to report back from the Committee on Commerce an act (H. R. No. 1915) to change the name of the steamboat Robert Ross with the recommendation that the amendment of the Senate be concurred in.

The bill, which was read, provides that the Secretary of the Treasury be, and is hereby, authorized to change the name of the steamboat Robert Ross to that of Molke Kretor of Moline.

The amendment of the Senate is as follows: Strike out "Kretor" and insert "Keator.'

Mr. CONGER. I wish the gentleman would state what this steam-

boat is, whether it is a passenger steamboat or not.

Mr. DURAND. I really cannot tell whether it is a passenger boat or not, but I think not. It is a bill which has passed the House and passed the Senate and the amendment merely provides for correcting a mistake made in the name.

Mr. CONGER. I do not remember this bill or when it was passed, but this House has uniformly refused to change the name of passenger steamboats when that fact was announced. If this does change the name of a passenger steamboat and it is time to make objection, as the gentleman is unable to answer the question I have put to him, I must insist on my objection to the consideration of the bill at the

Mr. DURAND. I do not think this is a passenger steamboat. I

have not the report at hand.

Mr. CONGER. If the gentleman will let it pass for the present so I can ascertain whether or not it is a passenger steamboat, it can be again taken up

The SPEAKER. Objection being made, the bill is not before the

### PRINTING DEFICIENCY.

Mr. WALDRON. I am directed by the Committee on Appropriations to move by unanimous consent to take from the Speaker's table the bill (S. No. 1222) to provide for deficiency in the appropriation for public printing and binding for the current fiscal year, and for other purposes, to further insist upon the amendment of the House, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses.

There was no objection, and it was ordered accordingly.

Mr. WALDRON moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER appointed the following as the conferees on the part of the House: Mr. Waldron, Mr. Vance of Ohio, and Mr. Rob-

## DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON. I now demand the regular order of business.

The SPEAKER. The regular order of business is the consideration of the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriation for the fiscal year ending June 30, 1877, for prior years, and for other purposes. When the House took a recess yesterday it was dividing on the amendment adopted in Committee of the Whole on motion of Mr. HANCOCK, covering various claims for deficiencies on which the year and respect to the second of the world of the whole on motion of Mr. HANCOCK, covering various claims

for deficiencies on which the yeas and nays were demanded.

Mr. STONE. I withdraw the demand for the yeas and nays.

The SPEAKER. The demand for the yeas and nays being with-

The STEARER. The demand for the year and hays being withdrawn, the amendment stands rejected.

The bill was then ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

Mr. CANNON, of Illinois. I desire to have the engrossed bill read.

The bill was read.

Mr. WALDRON moved to reconsider the vote by which the bill was ordered to be engrossed and read a third time; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. WALDRON demanded the previous question on the passage of the bill.

the bill.

The previous question was seconded and the main question ordered.
Mr. CANNON, of Illinois. I now move to recommit the bill to the
Committee on Appropriations.
The SPEAKER. That motion is not now in order.
Mr. CANNON, of Illinois. I thought the previous question was expected.

The SPEAKER. It is not.
The House divided; and there were—ayes 118, noes 3; no quorum voting.
The SPEAKER appointed Mr. WALDRON, and Mr. CANNON of Illi-

nois, as tellers.

The House again divided; and there were—ayes 140, noes 1.

So the bill was passed.

Mr. WALDRON moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# MEXICAN INDEMNITY FUND.

Mr. SWANN. Mr. Speaker, I am instructed by the Committee on Foreign Affairs to report back the correspondence between Mr. Fish, Secretary of State, and that committee in reference to the Mexican

indemnity fund, and also a bill for the distribution of that fund, on indemnity fund, and also a bill for the distribution of that fund, on which I propose to take a vote at this time. The Secretary of State is very desirous of getting rid of this money. The bill meets with the approbation of the claimants, who are ready to co-operate with the committee in asking for the immediate distribution of the fund. The bill (H. R. No. 4629) to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868, was read a first and second time.

The bill, which was read, is as follows:

America and the Republic of Mexico, concluded on the 4th day of July, 1868, was read a first and second time.

The bill, which was read, is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Secretary of State is hereby authorized and required, as soon as may be practicable, to transmit to the Secretary of the Treasury a schedule of all the awards of moneys made by the commissioners and ampires under the convention between the United States and the Mexican Republic lie for the adjustment of claims, concluded July 4, 1886, in favor of citizens of the United States against the Mexican Republic, showing the names of the corporations, companies, or private individuals in whose favor such awards were respectively made, and the several and respective amounts of such awards, and also a schedule of all the awards of money made by the said commissioners and the said convention of all the awards of money made by the said commissioners and the said individuals, citizens of the Mexican Republic, against the United States, together with a statement of the balances parable by the Mexican Republic to the United States and the Mexican Republic of April 29, 1876, and also a statement of the bullet of the States pursuant to the provisions of the fourth article of the said convention of July 4, 1868.

Sec. 2. And be if priver enacted, That the Secretary of State be, and he is hereby authorized and required to receive any and all moneys which may be paid by the to time, as the same shall on pursuance of the said conventions, and from the Secretary of the Treasury.

Sec. 3. And be if pretter enacted, That the Secretary of the Treasury is hereby anthorized and required to deposit in the Treasury of the United States all moneys which shall be so transferred and paid over to him in pursuance of the preceding section, and the said moneys, when so transferred, paid over, and deposited, are hereby appropriated by a from the said wards, and the said moneys,

Treasury.

SEC. 7. And be it further enacted, That in the payment of money, in virtue of this act, to any corporation, company, or private individual, the Secretary of the Treasury shall first deduct and retain or make reservation of such sums of money, if any, as may be due to the United States from any corporation, company, or private individual in whose favor awards shall have been made under the said convention.

The SPEAKER. Is there objection to the present consideration of

The SPEAKER. Is there objection to the present consideration of this bill? The Chair hears none.

Mr. SWANN. I would state in explanation of the bill that it is concurred in by the Secretary of State, carefully examined and concurred in by him, concurred in by the claimants under this Mexican treaty, and meets the approbation of the Committee on Foreign Affairs, who have directed me to present it to the House. All the parties interested unite in recommending this bill for the approbation of the House. of the House.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. SWANN moved to reconsider the vote by which the bill was

passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## PRINTING OF TESTIMONY.

Mr. BLACKBURN. I am directed by the select committee charged with investigating the recent election in Louisiana to present and ask the passage of the resolution which I send to the desk.

The Clerk read as follows:

Resolved, That the special committee appointed to investigate the Louisiana election be authorized to have printed for the use of the committee and the House at a private printing-office the residue of the evidence taken by the committee and the subcommittee, at prices not to exceed the Government rates, to be paid out of the contingent fund of the House.

Mr. HALE. I make the point of order that the resolution should be referred to the Committee on Printing.

Mr. BLACKBURN. I desire before yielding the floor to have read a communication from the Public Printer showing that it is impossible to have this work done within the required time at the Public

Printing Office.

The SPEAKER. The communication will be read. Mr. HALE. Meanwhile I reserve points of order. The SPEAKER. The point of order will be reserved.

Mr. HALE. All points of order. The Clerk read as follows:

OFFICE OF THE PUBLIC PRINTER, Washington, February 7, 1877.

OFFICE OF THE PUBLIC PRINTER,
Washington, February 7, 1877.

SIR: In reply to your note of this date asking me to advise you what progress I have made in printing the testimony of subcommittees of McMahox, Meade, and Blackburn, and more particularly when you can rely upon having printed the testimony taken by subcommittee of which you are chairman, (about lifteen hundred pages of print,) I would most respectfully state:

1. Meade's report of testimony is printed complete.

2. Blackburn's is about half finished.

3. McMahox's not yet commenced.

4. As to the testimony in case of your committee, I am informed by the foreman of printing in especial charge of this work that it lost its precedence on the calendar by being withdrawn from the office. The President's message and papers in charge of Mr. Wood's committee have been placed on the calendar in its place, with a promise from the foreman of printing in charge that it shall be continued until completed. Under these circumstances, unless Mr. Wood can be induced to give way, it will not be possible to take the testimony of your committee in hand again before the early part of next week.

It is expedient perhaps that I shall inform you of the present condition of the office, that you may be aware of it. Unless provision is made to day for an appropriation for printing and binding for Congress, the work will all be suspended (except the Recom) to-morrow until such provision is made. I do not regard it safe to myself as a public officer, in view of section 3679 of the Revised Statutes, to contract for labor or material for this class of work after the office closes this evening. In view of these circumstances, it is not possible for me now to inform you when you can rely upon having the testimony taken by your subcommittee printed.

Very respectfully, &c.,

Hon. W. R. Morrison.

A. M. CLAPP, Public Printer.

Hon, W. R. MORRISON.

The SPEAKER. The gentleman from Maine will state his point of order.

Mr. HALE. I make this point of order first-there are several that Mr. HALE. I make this point of order first—there are several that seem to me to be good—that the subject of printing is in the control properly of the Committee on Printing, and that any proposition involving the printing of reports or testimony, must go to that committee, to be reported to the House. That is the first point of order. The SPEAKER. The chair knows of no rule that requires that this resolution shall go to the Committee on Printing.

Mr. HALE. I think if the Chair will refer to the rule in regard to the functions and duties of the Committee on Printing, he will see

the functions and duties of the Committee on Printing, he will see that this resolution must have its first consideration by that commit-

The SPEAKER. The Chair overrules the point of order. There is no rule of the House which would compel the reference of this reso-

no rule of the House which would compel the reference of this resolution to the Committee on Printing.

Mr. HALE. Then I must make the further point that the resolution involves an appropriation of money, and must go to the Committee of the Whole House.

Mr. BLACKBURN. I submit that the provision of the resolution directing payment to be made out of the contingent fund of this House saves it from that point of order.

The SPEAKER. The Chair overrules the point of order, on the ground that the resolution involves no appropriation, but directs, as is constantly done, an expenditure out of the contingent fund of the House, already appropriated.

is constantly done, an expenditure out of the contingent fund of the House, already appropriated.

Mr. WILSON of Iowa. I ask for the reading of the resolution.

The SPEAKER. The resolution will be again read.

Mr. HALE. Before that is done allow me to make the further point of order that the law is distinct and explicit that the printing shall be done by the Public Printer.

The SPEAKER. The Chair sustains the point of order.

Mr. BLACKBURN. Do I understand the Chair to rule that it is not within the power of this House to have any printing done except at the Public Printing Office, when the Public Printer informs the House that it cannot be done?

The SPEAKER. Section 3786 of the Revised Statutes provides as

The SPEAKER. Section 3786 of the Revised Statutes provides as follows:

All printing, binding, and blank books for the Senate or House of Representa-tives and the Executive and Judicial Departments shall be done at the Govern-ment Printing Office, except in cases otherwise provided by law.

If the gentleman from Kentucky will show that this is a case "otherwise provided by law," then the Chair would review his decision. But the Chair knows no law directing the printing to be done

Mr. JENKS. I submit that, as this printing is for the use of a committee, it does not come within the terms of the law. It cannot be alleged that a committee sent to some distant town should be required to remit their testimony or other proceedings to the Public

Printer at Washington, when they need the printing to be done for immediate use. As the law does not therefore apply to this case, the point of order is not well taken and should not be sustained.

The SPEAKER. The Chair will cause the resolution to be again

Mr. BLACKBURN. I desire to modify the resolution by striking out the words "and the House," so that the printing may be for the

use of the committee only.

Mr. HALE. I do not see that that makes any difference as regards the law. The committee is simply an organ of the House. It is a part of the House. Its action is the action of the House through the

or the House. Its action is the action of the House through the committee. I do not think that helps the gentleman in the least.

Mr. BLACKBURN. Well, I rest it on that.

The SPEAKER. The gentleman from Kentucky has the right to modify his resolution. The Clerk will report the resolution as mod-

The Clerk read as follows:

Resolved, That the special committee appointed to investigate the Louisiana election be authorized to have printed for the use of the committee, at a private printing-office, the residue of the evidence taken by the committee and the subcommittee, at a price not to exceed the Government rates, to be paid out of the contingent fund of the House.

Mr. VANCE, of Ohio. I would suggest to the gentleman from Kentucky, [Mr. Blackburn,] the mover of this resolution, that the House and the Senate have appointed a committee of conference on a deficiency bill providing for a sufficient amount of money to carry on the public printing, and that that conference committee will

on the public printing, and that that conference committee will probably meet at once.

Mr. BLACKBURN. I simply desire to say that it must be apparent to the House what the object of the resolution is. It is to have this testimony printed, and with all due respect to the Chair I submit that the resolution, as now reported by the Clerk, is not subject to the objection made. It proposes to print the work of the committee for the use of that committee, and I do not see that the law of the House prevents it in such a case. The committee cannot handle this testimony in manuscript; it is too bulky for them to use it unless it be printed, and all we ask is that it shall be printed for the use of the committee. It seems to me that it is a matter which may be legitimes. committee. It seems to me that it is a matter which may be legitimately paid for out of the contingent fund of the House.

The SPEAKER. The Chair does not understand that the point of

order is made upon the resolution as modified.

order is made upon the resolution as modified.

Mr. HALE. O yes! I renew the point of order on the resolution as modified. I do not wish to discuss it at all. The committee is the organ of the House and a part of it, and I hope that the gentleman from Kentucky will not insist upon this resolution, especially after the statement made by the gentleman from Ohio, [Mr. VANCE.] We know that the subject of the force to be employed in the printing-office and the expenditures for it is now being considered, or will be very soon, by a conference committee, which will judge of what force is necessary. is necessary

Mr. BLACKBURN. If the gentleman does not object to the printing of this testimony, why does he object to its being printed in this

way?
Mr. HALE. The objection is to its being printed by parties outside the Government Printing Office when the law requires it to be printed

at the Government Printing Office.

The SPEAKER. The Chair thinks the law is very clear. The greater includes the less, and if the law controls the House it controls a committee of the House and prevents it from having any printing done except it is done at the Government Printing Office. The Chair

therefore sustains the point of order.

Mr. CONGER. Allow me to read one clause of the Revised Statutes providing what shall be done when the printing at the Government Printing Office is delayed.

Mr. SPRINGER. Does the gentleman appeal from the decision of

The SPEAKER. The Chair has decided the question, but he is desirous to hear anything that gentlemen desire to say upon the subject. Mr. CONGER. I read then section 3757 of the Revised Statutes, which is as follows:

SEC. 3757. The Joint Committee on Public Printing shall have power to adopt such measures as may be deemed necessary to remedy any neglect or delay in the execution of the public printing, but no arrangement entered into by them shall take effect until it has been approved by that House of Congress to which the printing belongs, or by both Houses when the printing delayed relates to the business of both.

Mr. LANDERS, of Indiana. Will the gentleman from Kentucky allow me to ask him a question?

Mr. BLACKBURN. Certainly.

Mr. LANDERS, of Indiana. I desire to know what use the gentleman from Kentuckey wants to make of this evidence.

Mr. BLACKBURN. The gentleman can certainly understand that it is the nursues of the committee to furnish the testimony on which

it is the purpose of the committee to furnish the testimony on which they were engaged six weeks in taking to the House before such time shall arrive as will render it useless to have it printed at all. If it was worth the time spent in taking it and was of any value we propose to give the House and the country the value of it. If done at all it must be done at once, and the delay in the printing on the part of the Public Printer would nullify the work of the subcommittee in Louisiana, which took six weeks.

Mr. LANDERS, of Indiana. I understand then that the purpose of the committee is to give this information to the country, and not to the House

Mr. BLACKBURN. I did not understand that the committee was

not a part of the country.

The SPEAKER. The Chair desires to suggest to the gentleman

not a part of the country.

The SPEAKER. The Chair desires to suggest to the gentleman from Kentucky [Mr. BLACKBURN] that it is competent to move to refer this resolution to Committee on Printing.

Mr. BLACKBURN. With all deference to the Chair I do not see that such a reference would do any good.

Mr. KELLEY. I would suggest that the Public Printer be authorized to hire enough force to do this work.

Mr. TOWNSEND, of New York. I will state that four hundred printers in the Government Printing Office were furloughed yesterday.

Mr. VANCE, of Ohio. As I said a moment since, the two Houses concurred in passing a deficiency appropriation bill of \$350,000 for the Public Printing Office, and they disagree upon an amendment to that bill put upon it by the House, and a conference committee has been appointed, which will probably meet to-day.

Mr. HALE. Is that committee of conference already appointed?

Mr. VANCE, of Ohio. Yes, sir; and in the exercise of his discretion the head of the Government Printing Office need not have removed or furloughed one solitary man from his office.

Mr. KELLEY. I desire to say a word in response to the gentleman

Mr. KELLEY. I desire to say a word in response to the gentleman from Ohio, [Mr. Vance.]

The SPEAKER. The Chair desires to say that there is nothing

before the House.

Subsequently,
Mr. JENKS said: I ask unanimous consent that the resolution submitted a few moments since by the gentleman from Kentucky may be referred to the Committee on Printing.
Mr. CONGER. I object.

### ORDER OF BUSINESS.

Mr. BRIGHT. I move that the House now resolve itself into Committee of the Whole on the Private Calendar, and I ask unanimous consent that to-day's session shall be considered as a legislative day and as objection day.

Several members objected.

Mr. BANNING. I would like to amend the motion of the gentleman from Tennessee, so that the House shall go into Committee of the Whole on the Private Calendar for the consideration of pension

bills only.

The SPEAKER. That would require unanimous consent.

Mr. BRIGHT. I object to that.

The SPEAKER. The rules of the House require that the Committee of the Whole on the Private Calendar shall proceed to consider the consequence on the Calendar in its order.

mittee of the Whole on the Private Calendar shall proceed to consider the business on the Calendar in its order.

Mr. DOUGLAS. I desire to submit a report from the select committee on the Freedman's Bank, which I think is a privileged report. The SPEAKER. The Chair thinks that is not of higher privilege than the motion of the gentleman from Tennessee [Mr. BRIGHT] to suspend the rules and go into Committee of the Whole on the Private Calendar. Calendar.

Mr. CLYMER. Is that motion in order?
The SPEAKER. It is in order.
Mr. CLYMER. This, I understand, is the legislative day of Thursday the 1st day of February.
The SPEAKER. The motion of the gentleman from Tennessee is

The SPEAKER. The motion of the gentleman from Tennessee is in order on any day for general business.

Mr. CLYMER. Does it not require unanimous consent to-day?

The SPEAKER. It does not.

Mr. WHITE. I call for the regular order of business.

The SPEAKER. The regular order is the motion of the gentleman from Tennessee [Mr. BRIGHT] that the rules be suspended and the House now resolve itself into Committee of the Whole on the Private Calendar Calendar.

Mr. COX. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. COX. Will the fact that this is the legislative day of Thursday the 1st of February prevent it from being objection day in Committee of the Whole on the Private Calendar? I know the gentleman from Tennessee can make his motion at this time; but will he have the advantage of this height polyaging day?

The SPEAKER. The Chair recognizes this as being still the legislative day of Thursday the 1st day of February. The Chair recognizes the gentleman from Tennessee [Mr. Bright] to make his motion, because the rule authorizes it to be made this time.

Mr. COX. I understand that; but will the Chair rule that this is chiestical day?

The SPEAKER. The Chair cannot so rule.

Mr. CONGER. As I understand the rule, it is proper to go into Committee of the Whole on the Private Calendar on private-bill day, but

mittee of the Whole on the Private Calendar on private-on day, our not on any other day.

The SPEAKER. The Chair recollects very well that more than once during his experience in this House this very question has come up and been decided as the Chair now decides it; that is, that a motion to suspend the rules and go into Committee of the Whole on the Private Calendar is in order on other days than Friday.

Mr. WILSON, of Iowa. It has been so held by previous Speakers.

Mr. BRIGHT. If it be in order, I will amend my motion so as to include an order of the House that all debate upon any bill in Committee of the Whole be limited to one minute.

The SPEAKER. That would require unanimous consent.

Mr. WHITE. I object to that.

### MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. Grant, his Private Secretary.

### PRIVATE CALENDAR.

The question was then taken upon the motion of Mr. BRIGHT; and upon a division there were-ayes 144, noes 4.

So the motion was agreed to.

Mr. BANNING. Before we go into Committee of the Whole I would like to ask for an order of the House that all debate upon any

The SPEAKER. That requires unanimous consent.

Mr. TOWNSEND, of New York. I object.

The House accordingly resolved itself into Committee of the Whole for the purpose of considering the business upon the Private Calendar, (Mr. Cox in the chair.)
The CHAIRMAN. The Clerk will report the title of the first bill

on the Private Calendar in order at this time.

on the Private Calendar in order at this time.

The Clerk read the following title:
A bill (H. R. No. 255) for the relief of William J. Alexander, of Bloomington, Monroe County, Indiana.

Mr. HEWITT, of New York. Upon what page of the Calendar is the title of that bill to be found?

The CHAIRMAN. In consequence of the failure to print new Calendars there is a limited supply of them, consequently old prints of the Calendar have been obtained, and the bill the title of which has been read will be found on page 9 of the Calendar.

Mr. HEWITT, of New York. If this is not objection day, and I understand that it is not, then it seems to me that the business on the Private Calendar must be taken up in its order, commencing on page 6 of the Calendar and not on page 9.

6 of the Calendar and not on page 9.

Mr. MONROE. We have been over that part of the Calendar be-

fore.

Mr. HEWITT, of New York. I beg pardon. If this is not objection day, then we must commence with the Calendar.

The CHAIRMAN. The Chair sustains the point of order, and the Clerk will report the title of the first bill on the Private Calendar.

Mr. BUCKNER. I desire to suggest that the first bill for consideration at this time is the bill which went over after consideration and will come up now as unfinished business: the bill to confirm certain private land claims in the Territory of New Mexico.

Mr. ELKINS. That is the unfinished business.

The CHAIRMAN. The first bill to be considered to-day in Committee of the Whole is the unfinished business coming over from the last day the Committee of the Whole had under consideration the Private Calendar, not being objection day. It is House bill No. 344, on the sixth page of the Calendar. To that bill there is an amendment pending, and the Clerk will report the bill and amendment. ment pending, and the Clerk will report the bill and amendment.

# PRIVATE LAND CLAIMS IN NEW MEXICO.

The Clerk then read the bill (H. R. No. 344) to confirm certain private land-claims in the Territory of New Mexico, reported from

the Committee on Private Land Claims by Mr. JOYCE, on the 4th day

of February, 1876.

The pending amendment was in section 2, line 4, to strike out the words "United States" and to insert in lieu thereof the words "parties respectively asserting claims to said lands;" so that the section will read :

That the Commissioner of the General Land Office is hereby authorized and directed, without unreasonable delay, to cause the lands embraced in said several claims to be surveyed and platted at the expense of the parties repectively asserting claims to said lands, &c.

Mr. HOLMAN. I think there is pending also a motion to strike out

Mr. HOLMAN. I think there is pending also a motion to strike out
the enacting clause of this bill.
Mr. BUCKNER. The gentleman is mistaken about that.
Mr. HOLMAN. I certainly made such a motion sometime ago.
The CHAIRMAN. The Chair understands that the gentleman from

Indiana [Mr. HOLMAN] has made a motion to strike out the enacting clause of this bill, and that motion takes precedence of the amend-

ment which was pending.

Mr. ELKINS. I do not think the motion to strike out the enacting clause was made on this bill; I think it was on another. The gentleman from Indiana makes that motion on so many bills that he has

probably forgotten.
The CHAIRMAN. The Chair has sent to the Clerk's office to ascer-

tain the fact by the record.

Mr. HOLMAN. I shall have to depend on the remembrance of the Clerk.

Mr. ELKINS. My recollection is that the gentleman offered an

amendment only.

Mr. BUCKNER. Yes, sir; I can state distinctly the amendment the gentleman made. It was that the cost of surveying these lands should be paid by the claimants, and not by the government. No other motion was made.

Mr. HOLMAN. That was the first motion that was made last ses-

Mr. BUCKNER. O, no.

Mr. HOLMAN. O, yes.
The CHAIRMAN. The amendment read by the Clerk a moment ago is the amendment which was offered by the gentleman from Indiana.

Mr. HOLMAN. I wish to inquire when that amendment was

offered; whether at the last session or at this.

The CHAIRMAN. At this session.

Mr. HOLMAN. I think it was offered last session.

Mr. BUCKNER. Yes, the gentleman is right about that.

Mr. HOLMAN. My recollection is that since that time I made the other motion.

other motion.

Mr. BUCKNER. No, sir; it was to another bill.

The CHAIRMAN. The Clerk has gone to the Clerk's office to ascertain the fact from the record. The Committee of the Whole will therefore be patient until the Clerk returns.

Mr. HOLMAN. If the gentleman from Vermont [Mr. JOYCE] is desirous to be heard I will not press my motion.

The CHAIRMAN. The gentleman from Vermont is recognized and will preceed.

and will proceed.

Mr. JOYCE. In accordance with the recommendation of the Commissioner of the General Land-Office I desire to offer some amendments, which I ask the Clerk to read.

The Clerk read as follows:

After the word "the," in line 1 of section 2, strike out the words "Commissioner of the General Land Office" and insert in lieu thereof the words "surveyor-general for the Territory of New Mexico."

Also, in line 3 in said section, after the word "delay," insert the words "under such instructions as may be prescribed by the Commissioner of the General Land

Office." Also, in line 4 of said section, after the word "be," insert the word "accurately."

Also, in line 4 of said section, after the word "be," insert the word "accurately."

Also strike out in said section all the words in lines 5 and 6.

Also amend by inserting as section 3 of said bill the following:

SEC. 3. That it shall be the cuty of the said surveyor-general, when he shall have caused any of the aforesaid claims to be surveyed and a plat to be made thereof, to give notice in each case that the same has been done by a publication once a week for six consecutive weeks in two newspapers, one published in the city of Santa Fé and one published near the land surveyed; and shall retain in his office for public inspection the survey and plat until ninety days from the date of the first publication in Santa Fé shall have expired; and if no objections are made to said survey he shall approve the same and transmit a duplicate of the survey and plat thereof to the Commissioner of the General Land Office for his examination and approval; but if objections are made to said survey within the said ninety days by any party claiming to have an interest in the tract embraced in the survey or in any part thereof, such objections shall be reduced to writing, stating distinctly the interest of the objector, and signed by him or his attorney, and filed with the surveyor-general, together with such proofs as he may produce in support of the objections. At the expiration of said ninety days the surveyor-general shall transmit to the Commissioner of the General Land Office a duplicate of the survey and plat, with the objections and proofs filed with him in support of the survey and plat, with the objections and proofs filed with him in support of the survey and plat, with the objections and proofs filed with him in support of the survey and plat, with the objections and proofs filed with him in support of the survey and plat are approved by the said Commissioner from the surveyor-general of California touching the matters in dicated by him or proofs to be taken thereon, or may direct a new survey and plat are correc

Mr. JOYCE. These amendments are offered in conformity with the recommendations of the Commissioner of the General Land Office,

and with these amendments he recommends the passage of the bill.

Mr. Chairman, my sole and only purpose in taking the floor at this time is to place the matter now under consideration, and the commit-

time is to place the matter now under consideration, and the committee which reported it, in a true and proper position before this House
and the country, and at the same time do what I consider to be but
a simple act of justice to a large class of poor but worthy citizens.

While I do not complain of the abuse which gentlemen have been
pleased to pour out upon the committee, nor of the severe manner in
which its conclusions have been criticised, yet I do desire to call the
attention of the House to what I deem to be the very unusual manner
in which the findings of the committee house commutated manner in which the findings of the committee have been commented upon, and the line of argument pursued by the distinguished gentlemen, Messrs. Holman and Reagan, who have opposed this bill.

I only claim for the Committee on Private Land Claims what I am

I only claim for the Committee on Private Land Claims what I am willing to concede to every committee of this House, common intelligence and honesty of purpose in the discharge of their duties.

I have the fullest confidence in all the committees, and the very highest admiration for the exalted integrity and eminent abilities of every gentleman composing this House, but, sir, if I have read the history of this country, for the past fifteen years, aright, I cannot conscientiously admit that the gentleman from Texas [Mr. REAGAN] embodies all the integrity, knowledge, patriotism, and honor there is in this House. I am willing he should wrap himself up in his share, but more than that we are not bound to admit. In his remarks upon this bill at the last session the gentleman said that "the committee have not examined these titles," that the gentleman who reported the bill "had not examined the records," and that it was clear to his mind "that the committee had not examined these titles or the records connected with them, and that they were unable to state the ords connected with them, and that they were unable to state the facts to the House."

This startling development of ignorance on the part of the committee and just reprimand for gross neglect of duty was followed by the cheering and somewhat egotistical announcement that the learned gentleman himself had given less than three hours' attention to the gentleman himself had given less than three hours' attention to the bill and documents connected with it, and that that little time had been sufficient to satisfy him that the friends of the bill were unable to state to the House the facts as they were then known to him from the little examination he had made.

Mr. Chairman, all I have to say in answer to these statements is that, if they are really true, the wisdom and powers of research of the distinguished member from Texas far surpass his modesty and good

Now, sir, let us test the accuracy as well as the wisdom of the gentleman by the record.

On the 4th of February, 1876, this bill was reported to the House, and in the report the committee set forth the evidence before it, and the grounds and reasons of its decision, in the following clear and emphatic language:

The committee find, after a careful investigation, that each one of the claims or grants sought to be confirmed by this bill has been fully heard, examined, and passed upon by the surveyor-general of said Territory, in compliance with the provisions of the said act of Congress of 1854; and that he has reported in each case that said grants or claims are valid; that the claimants are either the heirs, personal representatives, or purchasers of the original grantees; that the proper and legal muniments of title have been filed, and are now in the proper office; and that, therefore, in his opinion, said private land claims are bona fide, and ought to be confirmed by Congress.

The committee have been influenced to a great extent by the findings and decisions of the surveyor-general, owing to the fact that in the hearing upon each case before him he had all the oral and documentary evidence of title and possession, which we have been unable to obtain, and which we do not now deem important in view of his findings.

Now six Leybouit that this report not only put the House in passes.

Now, sir, I submit that this report not only put the House in possession of all the evidence and facts upon which the committee had acted, together with its decision upon the question, but also fur-

nished sufficient data from which any intelligent man could for him-self arrive at a correct and satisfactory conclusion.

Now, sir, on the 17th of March, this bill came up in Committee of the Whole for consideration, the report was read, and the whole matthe whole for consideration, the report was read, and the whole matter pretty thoroughly discussed by gentlemen upon both sides. In the course of the discussion every fact, every piece of evidence, and every consideration which had been urged before the committee, or which had produced the least effect upon their minds in leading them to a favorable report, were fully stated and commented upon by the gentleman who reported the bill, and a vigorous but unsuccessful attempt made to refute them on the other side. In speaking upon this point, I then said:

We examined all the evidence presented before the surveror-general, in each one of these cases, to see whether, in each case, there was a full hearing and finding, and we based our report mainly upon the fact that these cases had all been adjudicated by that officer.

Now, Mr. Chairman, how can the gentleman from Texas, in the light of this record, stand up here and in a spirit of conceited egotism charge that the committee who had spent days in patient investigation of the subject and had made such a report and statement had not examined the titles or the records connected with these grants, and that they were unable to state the facts to the House, while he arrogates to himself a perfect knowledge of the whole question, gained by a casual inquiry of a few hours?

The gentleman also objects to this bill because too many claims are brought forward at one time, and that thereby members are de-

are brought forward at one time, and that thereby members are denied the opportunity of looking into the facts and ascertaining the history of the claims, the legality of the rights, and the equities of the parties interested in them.

The House will readily observe the desperate straits to which the gentleman is driven for theories upon which to base his captions objections to this bill when it is remembered that each of the fifty-two claims sought to be confirmed by this bill is based upon the very same class of facts and principles of law, and that the bill now under consideration was introduced into the House on the 17th of December, 1875, and has been in the possession of every member since that time. The object of this bill is to confirm certain land claims in the Territory of New Mexico which were granted by Spain and Mexico previous to the treaty of Guadalupe Hidalgo, in 1848.

The country now comprising the Territory of New Mexico was held by Spain by right of discovery from an early period down to the time of the treaty of Cardovo in 1821, when Mexico declared her independence and severed her connection with the mother country. At that time this territory came under the jurisdiction of Mexico, and so remained until the treaty of Guadalupe Hidalgo between the United States and Mexico before referred to.

Thirty-seven of the claims set up in this bill were granted by the Spanish anthorities while Spain held possession of the country, and the remaining fifteen were granted by Mexico after the establishment of her independence.

ment of her independence.

Under the government of Spain these grants of land were made to those who had rendered important and valuable services to the Crown in unlimited quantities, but in 1824, some three years after this territory came into the possession and under the jurisdiction of Mexico, a law was passed by the Mexican Congress, termed a colonization law, providing for the colonization of the territories embraced within the limits of the republic, and declaring that, after that date, no more

than eleven square leagues of the vacant lands should be granted to any one person. Under the provisions of that act the fifteen claims sought to be confirmed by this bill, among a large number of others, were granted by the Mexican authorities, and possession taken under the said grants.

The war between the United States and Mexico was terminated by the treaty of Guadalupe Hidalgo in 1848, by the terms of which the Territory of New Mexico was ceded to the United States, an dfull pos-

ession given under the treaty.

session given under the treaty.

With the acquisition of this Territory, not only its lands, but its people, were transferred to the jurisdiction of the United States, and brought under the control of our laws. It is a well-settled principle of the law of nations that the transfer of territory from one sovereign to another, including the lands of the people who inhabit them, is understood to pass the sovereignty only, and does not interfere with the rights of private property. The people change their allegiance, their relation to their ancient sovereign is dissolved, but their relations to each other and their rights of property remain undisturbed.

But the parties to this treaty were not, however, satisfied to let the rights of their citizens rest merely upon this well-known principle of public law, but inserted clauses recognizing these rights, and providing for their maintenance.

By the eighth article of that treaty it is provided that-

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside or to remove at any time to the Mexican Republic, retaining the property they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

whatever.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

Thus, as well by express treaty stipulation as by force of public law, the United States became bound to take care of and protect all grants of land which had been made under Spanish and Mexican authority, and to confirm the titles to such grants according to their terms and extent to the actual owners in such a manner as to make them safe and available.

In order, therefore, to give full effect to said treaty stipulations, and recognizing the spirit in which they had their origin, Congress, in July, 1854, passed a law providing for the appointment of a surveyorgeneral for New Mexico, and in section 8 of said act defined his duties

in the following language:

In the following language:

That it shall be the duty of the surveyor-general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the Territory to the United States by the treaty of Guadalupe Hidalgo, of 1843, denoting the various grades of title with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the treaty of 1848, between the United States and Mexico; and until the final action of Congress on such claims all lands covered thereby shall be reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act.

A surveyor-general for New Mexico having been duly appointed

surveyor-general for New Mexico having been duly appointed under the provisions of the aforesaid act, on the 21st of August, 1854, the Secretary of the Interior framed and issued to that officer a code

of rules and regulations for his guidance in the discharge of his duties.

After reciting at length section 8 of the said act of 1854, the Secretary thus set forth what he considered was the duty of the surveyorgeneral under the law:

The duty which this enactment devolves upon the surveyor-general is highly important and responsible. He has it in charge to prepare a faithful report of all the land titles in New Mexico which had their origin before the United States succeeded to the sovereignty of the country, and the law contemplates such a report as will enable Congress to make a just and proper discrimination between such as are bona fide and should be confirmed, and such as are fraudulent or otherwise destitute of merit, and ought to be rejected.

He was also instructed upon his arrival at Santa Fé to at once possess himself of all papers and records relating to saidland grants, to arrange and classify them and hold them in a place of security for ref-

He was further instructed to commence his sessions for the trial of said land claims "by giving proper public notice of the same in a newspaper of the largest circulation in the English and Spanish languages. He was to make known his readiness to receive notices and

guages. He was to make known his readiness to receive notices and testimony in support of the land claims of individuals, derived before the change of government."

He was to "require claimants in every case, and give public notice to that effect, to file a written notice setting forth the name of 'present claimant;' name of the 'original claimant;' nature of claim, whether inchoate or perfect; its date; from what authority the original title was derived, with a reference to the evidence of the power and authority under which the granting officer may have acted; quantity claimed; locality, notice, and extent of conflicting claims, if any, with a reference to the documentary evidence and testimony relied upon to establish the claim, and to show a transfer of right from the 'original grantee' to present claimant."

He was also instructed to require of every claimant an authenticated plat of survey, if a survey had been executed, or other evidence, show-ing the precise locality and extent of the tract claimed.

This is indispensable in order to avoid any doubt hereafter in reserving from sale, as contemplated by law, the particular tract or parcel of land for which a claim may be duly filed, or in communicating the title to the same hereafter in the event of a final confirmation.

the title to the same hereafter in the event of a final confirmation.

The effect of this will be not only to save claimants from embarrassments and difficulties inseparable from the presentation and adjudication of claims with indefinite limits, but will promote the welfare of the country generally by furnishing the surveyor-general with evidence of what is claimed as private property under treaty and the act of July 22, 1854, thus enabling him to ascertain what is undisputed public land, and to proceed with the public surveys accordingly, without awaiting the final action of Congress upon the subject.

He was also to take care to guard the public against fraudulent or antedated claims, and to bring the title-papers to the test of the genuine signatures, which he should collect of the granting officers, as well as to the test of the official registers or abstracts which may exist of the titles issued by the granting officers. In all cases, of course, the original title-papers are to be produced, or loss accounted

exist of the titles issued by the granting officers. In all cases, of course, the original title-papers are to be produced, or loss accounted for; and where copies are presented, they must be authenticated; and that his report should also state the precise character of the papers acted upon by him, whether originals or otherwise. Where the claim may be presented by a party as "present claimant" in right of another, he was to be satisfied that the deraignment of title is complete; otherwise, the entry and his decision were to be in favor of the "legal representatives" of the original grantee.

It was made his imperative duty to keep a correct journal of all his official acts, and to subject all papers under suspicion of fraud to

his official acts, and to subject all papers under suspicion of fraud to the severest scrutiny and test, in order to settle correctly the question of their genuineness.

In closing his instructions to the surveyor-general the Secretary of the Interior thus set forth the duty and obligations of this Government with reference to these claims:

It is obligatory on the Government of the United States to deal with the private land titles and the pueblos precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done; to go that far, and no further. This is the principle which you will bear in mind in acting upon these important concerns.

Since the passage of said act of 1854 and the appointment of the surveyor-general, a large number of the citizens of the Territory of New Mexico, claiming lands under Spanish or Mexican grants, have at various times filed their claims, and adduced evidence, oral and documentary, of their titles, in accordance with the provisions of said act, and the rules and instructions of the Secretary of the Interior and Commissioner of the General Land Office. Many of these claims have been duly heard, considered, and reported upon by the surveyorgeneral; and upon such reports Congress has confirmed them to the

In 1860 claims designated by the surveyor-general as numbers 1, 3, 4, 6, 8, 9, 10, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, were by special act confirmed, with a proviso that claim No. 9 should not be confirmed for more than eleven sonare square leagues and claim No. 17 for not more than eleven square leagues, to each of said claimants.

Claim No. 43 was confirmed in 1861; claims numbered 41, 42, 44, 46, and 47 in 1869; and claim designated as number 48 to the extent of eleven square leagues in 1870.

It is worthy of notice, Mr. Chairman, that all the claims thus confirmed by Congress were of precisely the same nature and in exactly the same condition as those embraced in this bill; had all been heard, considered, and reported upon favorably by the surveyor-general, and, with the exceptions I have stated, were all confirmed according to the bounds and extent designated in the grants, and without a previous

survey.

By reference to the report of the surveyor-general we are enabled to see exactly how the hearings before him were conducted and how thoroughly each case was examined and tried. In the first place he assued his notice to all parties concerned to appear before him; then summoned the witness, and when all parties were present and everything was ready, the trial proceeded. The claimant first produced his petition to the surveyor-general for a hearing, which embraced all the facts material to his claim; then the original petition to the Spanish or Mexican governor, praying for the grant; next the decree of the governor, directing the proper officer to examine and report to him most the location of the grant; the grant of the state of the grant o apon the location of the grant; the report of that officer; the grant of the land by the governor; the possession of the land given to the petitioner by the proper officer of the government; the distribution of the land among the petitioners, if more than one; decree of confirmation to each by the governor; the testimony of witnesses as to possession; and, finally, all the evidence of title, both oral and written, by any person interested in the claim.

Now, sir, with all this evidence before him, aided by a personal inspection of all the original papers, I know of no person in all the wide world that could possibly be better qualified to judge of the validity of these titles than the surveyor-general, unless it may be the distinguished gentleman from Texas.

Mr. Chairman, it seems to me, in the light of all the facts to which I

have thus briefly alluded, that unless we assume that the surveyor-

general was a fool or a knave, we must conclude that these land claims have been fully and fairly tried, and that there can be no danger in confirming them without further delay.

In accordance with the law of 1854, these cases have been from time to time laid before Congress by the Secretary of the Interior as they have been tried and reported upon by the surveyor-general, and although we are not bound by the opinions of the Interior Department, it may not be out of place or entirely unprofitable to refer to them. In his report for 1872 the Secretary says:

The Government in deciding upon the validity of these grants always appears to have been actuated by the most liberal principles, as evidenced both in the legislation of Congress and in the decisions of the Supreme Court concerning them. If the grants were incipient and incheate at the date of the change of national sovereignty, under the treaty of Guadalupe Hidalgo, or if acquired in good faith, though imperfect in form, or defective in requisites not absolutely essential, they are recognized and confirmed. The claimant, therefore, under one of these old grants, though he hold in good faith but the color of title, may rely with confidence upon the Government for an equitable and generous consideration of his claim.

And again, in 1875, he calls the attention of Congress to this subject in the following urgent manner:

ject in the following urgent manner:

It is now more than twenty years since the surveyor-general of New Mexico commenced the examination of claims in that Territory, and he has since reported to Congress less than one hundred and fifty claims, though in 1836 he had more than one thousand upon his files, and of the number reported Congress has confirmed but seventy-one. From these data it will be seen that the probable date when the last of these thousand claims in New Mexico alone will be reported on and confirmed is in the far future.

In the mean time the claimants must wait without remedy, and their grants, which would be valuable if the title were completed by a United States confirmation or patent, must remain comparatively worthless, as is all property where the vendor offers for sale an incomplete title and prospective litigation. The settler dares not settle and improve land lest it be subsequently found to be within the limits of some unconfirmed and unsurveyed grant; and the United States, by such delay, not only loses the sale of its land, but, judging from past experience with private land claims in other localities, the development of the resources of that country will create additional incentives for the manufacture of fraudulent title papers, with the view of securing public land therewith. Each year's delay, with the consequent death of living witnesses and loss or destruction of ancient records relating to land, adds to the probabilities that such forged and otherwise fraudulent title papers will pass without detection the scrutiny of the officers whose duty it may become to determine their character.

The acting Commissioner of the General Land Office, in speaking

The acting Commissioner of the General Land Office, in speaking of the claims embraced in this bill, under date of April 17, 1876, says:

The claims embraced in the proposed bill have been reported upon from time to time by the surveyor-general, from November 15, 1870, to December 24, 1874, and transmitted to Congress for action at various times from February 6, 1871, to January 7, 1875, thus running through a period of over five years, and, therefore, as a matter of right to the claimants, and to enable the surveyor-general to cause the surveys thereof to be made, and thus segregate the lands embraced in said claims from the public domain, I would recommend their early consideration by Congress.

It has also been claimed in this discussion that if these grants are confirmed the surveys ought to be at the expense of the claimants. In answer to the palpable injustice of such a proposition I desire to call the attention of the House to the statements of James K. Prondfit, late surveyor-general of New Mexico, upon this subject. In his report upon a number of these private land claims in 1873, he says:

These grants which are genuine and so admitted by our proper authorities are not public domain. They are simply and clearly private property, as much so as any man's farm in the older States. To force the owners to pay for separating them from the public domain is subjecting them to a "charge" which is prohibited by the treaty. The expense of all these surveys which have not been already executed will probably not cost to exceed \$70,000; but be the cost more or less, the stipulations of the treaty ought to be carried out in good faith and the nation's honor maintained. maintained.

win probably not cost exceed a cool of the treaty and the nation's honormaintained.

But setting aside the rights of grant-owners under the treaty, I have no doubt but that as a matter of business management it would be good and economical policy for the Government to make these segregations at its own expense. During over eleven years that the law has stood as now, but six of these grants have been surveyed. This is a p etty good indication of the feeling of the owners, and shows what the fact is, that they are waiting for the Government to return to its former practice, and what was, previous to 1862, admitted on all hands to be its duty under the treaty. From this it would seem to be unimportant to provide any means of adjusting the titles unless at the Same time provision is made for the survey. A mere adjudication will not determine the locus of the land, or its shape and area. A survey is necessary for that purpose.

The Government is far more interested to know where its land lies and how much it has than the grant-owners. The latter usually know very nearly their position, and may sit still in their houses with their muniments of title protected by soleme treaty, and cannot legally be disturbed. At least that is their opinion, and they persistently act upon it. It seems to me that these grants or farms may be compared to lakes in the public domain. When we come to a lake in surveying, what do we do? Why, we meander its banks to ascertain how much land we have, or in other words we run its boundary or exterior lines, which is all that is required in the case of a grant. It is also an undoubted fact that if these grants be not surveyed, and the public surveys are prosecuted with due diligence, many lines will run over unascertained grants, all of which will be a uscless expense, and may be saved by merely running the exterior lines of the grants. The people think, and it seems to me not without reason, that they ought not to be required to do anything different from what would have been required of them b

It is not only for the benefit of the claimants that the land embraced in these grants should be surveyed and segregated from the common domain, but the Government is also deeply interested in having it done at the earliest practicable moment.

Under the provisions of the act of 1854, these lands are reserved

and held from the market until confirmation by Congress and survey by the Interior Department, whereby and in consequence of the un-certain extent of these grants before they are surveyed vast quanti-

ties of the public lands are liable to be, and no doubt are, kept out of the market, and immigration greatly retarded by the refusal of this Government against its own interest to fulfill a solemn treaty obligation. This view of the subject was entertained by the last Congress, and resulted in the repeal of the act of 1862, which provided that the cost and expense of platting and surveying these private land claims should be paid by the claimants. As the law now stands, they are to be paid by the Government as provided by treaty eximplations.

stands, they are to be paid by the Government as provided by treaty stipulations.

The gentleman from Indiana in his remarks upon this bill spoke of these lands as belonging to the United States. This is a mistake. These lands do not now belong to the Government, and never did. At the time of the cession in 1848 these lands belonged to private individuals, and the claimants are as much entitled to them now, by virtue of the terms of that treaty and the force of public law, as they were while Mexico retained jurisdiction of the territory. It is not, therefore, a donation of land by the United States to these claimants, but the performance of a plain and sacred duty, under the solemn compact of Guadalupe Hidalgo, that is demanded by this bill.

If these grants were valid under the laws of Spain and Mexico they ought to be confirmed by this Government to their full extent, irre-

ought to be confirmed by this Government to their full extent, irrespective of any question as to their amount; it was a duty and a bur-den we assumed when we came in possession of that territory, and no factious objections or hair-splitting theories will justify us in denying equal rights and justice to this large class of our citizens

It has been urged here that if these claims are valid and the titles good there is no need of this act of confirmation. In answer to this I would remind the gentleman that these grants were mere concessions on the part of Spain and Mexico to the grantors and ancestors of these claimants, that under our Government they have now a mere inchoate claimants, that under our Government they have now a mere inchoate title, and can have no standing in court until they are armed with a United States patent, which cannot be granted until the grants or concessions are confirmed by Congress and surveyed under the authority of the Department of the Interior.

From data obtained from the General Land Office, the approximate number of acres of land covered by the claims and sought to be confirmed by this bill probably exceeds two and one-quarter millions, and

as near as can be estimated, the number of present claimants will reach, as I am informed, 32,000, so that when the land is properly divided between them it will be a little less than eighty acres to each

The names of all these claimants could not be given in the bill, as

in some instances, as I am informed, these grants embrace whole towns and villages, in which are many hundreds of people.

Another estimate which has been made by parties who claim to have knowledge upon the subject is that the claims sought to be confirmed by this bill cover an area of 1,409,599 acres—that the number of original grantees was 1080, and that the number of people who now claim an interest in these claims, and who now reside upon them, is nearly 39,000.

It is admitted on all hands that it is due to the Government and also to the claimants that these grants be speedily settled in some manuer, and yet no one opposed to this confirmation brings forward any proposition by which it can be accomplished except under the law of 1854.

The gentlemen who oppose this bill claim that the surveyor-general is not a fit person to settle these land titles; that he is not a judicial officer; that there is no power nor efficacy in his decisions and that the whole matter should be tried and determined by a court.

Sir, the law under which that officer has conducted the examina-tion of these land claims and reported them for confirmation has been in operation twenty-two years, thousands of dollars have been spent by the claimants in the preparation and hearing of cases before him, and over seventy of them have been confirmed by Congress without any

serious opposition.

Now, sir, in view of all this, what evidence have we that the decision of a court would be any more satisfactory to these gentlemen than

the opinion of the surveyor-general?

The legal presumption is that that officer is a competent person to discharge the duties of his office and that he has done so honestly and faithfully; and, as a matter of fact, in this case there is no evidence or suspicion even to the contrary. But, sir, it seems to me that these gentlemen are determined to be satisfied with nothing, that they are bound to object and find fault, and that therefore it makes very little difference with them what provokes it or what it is about.

difference with them what provokes it or what it is about.

It has been seriously argued by gentlemen opposed to this bill that there has been no possession under these grants, and that the land is now in the hands of sharpers and speculators.

The report of the surveyor-general, and the papers accompanying it, show conclusively that most of these lands are now claimed by the heirs and personal representatives of the original grantees, and that possession has come down to them in regular order from their ancestors; and instead of the grants being, as has been claimed, "vague and shadowy," they are founded in justice, and are the bona fide claims of poor but honest men.

It has been more than intimated Mr. Chairman deriver this delay.

It has been more than intimated, Mr. Chairman, during this debate that there is some fraud connected with this matter, and gentlemen have said that they were afraid there was some swindle in it. If there is, sir, the committee failed to discover it. Instead of presum-ing that the surveyor-general was a rogue and a knave, we assumed

that he was an honest man, and that he had fairly and in good faith that he was an nonest man, and that he had fairly and in good faith heard and reported upon these claims. We gave full faith and credit to his findings and based our decision mainly upon his report and copies of papers which he has sent up with it. We could not go to New Mexico to inspect all the original papers used before him, and so we accepted as true and correct the certified copies filed by him in the Department of the Interior. There they are, and gentlemen have the same opportunities which the committee had to examine them and decide for themselves; because I wish it distinctly understood. and decide for themselves; because I wish it distinctly understood that the committee reported this bill favorably because they believed that the report of the surveyor-general was a true and honest report, and that the copies of papers sent up by him were true copies. If there is fraud in this simple prayer for confirmation, you can detect it as well as we.

In 1854 you passed a law providing for the settlement of these claims, and informed the people of New Mexico in effect that if they obtained a favorable report upon their claims from the officer you had appointed you would confirm them and settle their titles. Relying upon your promise, trusting in the plighted honor of this great nafrom your promise, crusting in the plighted honor of this great nation, they have in good faith and at great expense, in pursuance of your laws, prepared their cases, appeared before the surveyor-general with all their papers and witnesses, and after a patient investigation of the whole case have satisfied him that their claims are bona fide and ought to be confirmed.

They have fully and honestly performed their part of the contract, and after years of anxious waiting by them it only remains now for

Congress to perform its part.

Something has been said here in reference to the character of the official acts of the surveyor-general in the settlement of these claims. Now, sir, for one I do not and never have claimed that his acts were judicial. On the contrary, I hold that he acts as the agent of the Government in carrying out the provisions of the law of 1854; he does what he is commanded to do by that act and sends a report of his doings to Congress. Congress is not legally bound, the Government is not concluded by his report or his decision, but may repudiate and set aside both and decide the other way. But, sir, I do claim that when he follows the requirements of the law and reports a claim here for confirmation, unless we know or can discover some fraud or irregularity in the proceedings, Congress is morally bound to indorse his report and confirm the claim; and if it cannot confirm them upon his report, it is its duty to provide some other means by which the solemn

promise in this treaty can be fulfilled.

The bill provides that the confirmation of these claims shall merely operate as a relinquishment or quitclaim of all title or claim on the part of the United States to any of the lands embraced in said grants, and shall not in any manner affect the adverse rights of others; the Government shall survey the lands at the expense of the United States in conformity with the law governing the public surveys, and issue patents therefor, no grant bearing date subsequent to August, 1824, to exceed eleven square leagues of land.

Now, Mr. Chairman, I have, I believe, called the attention of the latest over the conformal con

House to every part and portion of the matter embraced in this bill, and attempted to answer every objection urged against its passage. The committee have no feeling or anxiety, and never have had, about this question, only such as is common to every member of the House, and that is, to arrive at a just conclusion and do exact justice between the Government of the United States and these claimants. For that purpose I have labored in committee and have now taken so much of time of the House.

I urge no man, I ask no man to vote for this bill unless he is satisfied that it is all right. I have carefully examined the whole subject and shall vote for it because I can discover no fraud, no irregularities, and no wrong in it, and because it is in fulfillment of a solemn treaty obligation, an act of justice to the people of New Mexico, and because I believe it is right.

I yield the residue of my time to the gentleman from New Mexico,

[Mr. Elkins.]

Mr. Elkins. I would like to inquire how much time I have.

The CHAIRMAN. The gentleman has ten minutes remaining of the hour to which he was entitled.

Mr. ELKINS. I understand that when this bill was last before the House debate was limited to one hour and a half. Am I correct!

The CHAIRMAN. The Chair can find no such record.

Mr. ELKINS. On my own motion, I am sure, that order was made when the bill was last up. It was twice postponed on account of absence of the gentleman from Vermont who has just spoken. I believe the gentleman from Missouri [Mr. Buckner] will remember that such an order was made.

Mr. BUCKNER. I think that is so.
Mr. ELKINS. The chairman of the Committee of Claims [Mr. BRIGHT] will also no doubt recollect it.
Mr. BRIGHT. My recollection does not serve me at all. I shall have to appeal to the record.

have to appeal to the record.

The CHAIRMAN. The Chair will state the history of the bill so far as the Record shows it. It was debated on the 17th of March nearly all afternoon. On the 31st of March it came up and by general consent retained its place on the Calendar. It was again debated on the 9th day of June, 1876. During one of those debates the gentleman from Indiana [Mr. HOLMAN] sought to obtain the floor to make a motion to strike out the enacting clause. The Record shows

he attempted to make that motion but failed to get the floor in order to have the motion properly made:

Mr. Holman. In order to test the sense of the committee on this bill, I move to strike out the enacting clause.

Mr. HANCOCK. I believe I am recognized, and do not yield to the gentleman from Indiana for that purpose.

So the motion was not really entered regularly. One hour and a half seemed to be assigned for the further consideration of this bill for debate. Of that time fifty minutes have been exhausted. The gentleman from Vermont [Mr. Joyce] yields the remaining ten minutes of his hour to the gentleman from New Mexico.

Mr. ELKINS. I think, if I can have the attention of the House in the brief time allowed me, I can make this case plain; and in order to a proper understanding of the question, I ask the section of the law be read which I send to the Clerk's desk, under which the surveyor-general of New Mexico proceeded to adjudicate the claims now sought to be confirmed by this act.

The Clerk read as follows:

SEC. 8. And be it further enacted, That it shall be the duty of the surveyor-general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Gna-lahupe Hidalgo of 1848, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos respectively, and the nature of their titles to the land, such report to be made according to the forms which may be prescibed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper with a view to confirm bona fide grants and give full effect to the treaty of 1848 between the United States and Mexico; and until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the Government and shall not be subject to the donations granted by the previous provisions of this act.

Mr. ELKINS. Now. Mr. Chairman, here is a positive act of Con-

Mr. ELKINS. Now, Mr. Chairman, here is a positive act of Congress, authorizing the mode and manner by which these claims should be adjudicated, passed twenty-three years ago. Some of the claims before Congress have been adjudicated by the surveyor-general as long as eight or ten years ago. I wish to claim, on behalf of the people of New Mexico whose titles are involved, that in the passage of this law they had no voice; the Government, on its own motion, proceeded in its own way to provide means and prescribe rules which the people nolens volens had to obey as the law of the land, and the officers of the Government, in almost an exparte manner, under this law, have adjudicated these claims, while the people themselves have only enjoyed the privilege of presenting them and

their witnesses to prove occupation and possession.

The Government of the United States conferred upon the surveyorgeneral power to ascertain whether the grants were fraudulent and void or proper and valid under the laws of Spain and Mexico. The claims reported in this bill and asked to be confirmed are such, and only such, as had passed the examination of the surveyor-general and have been by him adjudicated in pursuance of law. The surveyorhave been by him adjudicated in pursuance of law. The surveyor-general, for the purpose of carrying out the law, was invested with quasi-judicial functions. He summoned the claimants to come before him with their original grants and muniments of title made by Spain or Mexico and deposit them in the archives of his office. He then, in pursuance of instructions from the General Land Office, fixed a day for the hearing, summoned witnesses who were examined in each case. After examination he rejected or recommended for confirmation, as he saw fit. Of course the claims which have been re-jected are not before Congress, but only such claims as he has approved, recommended for confirmation, and sent forward asking the favorable action of Congress; and the claims determined after investigation to be just and valid are those incorporated in this bill by their appropriate numbers.

I appeal to the House whether it is right or just to impose a law upon the people of New Mexico fixing a certain mode and manner of adjudicating their grants derived from Spain and Mexico, and then, when twenty-five years have passed, refuse to sanction the acts of its officers under that law. In California you conferred this power upon the courts, and the courts have been proceeding for twenty years to adjudicate and confirm these grants, and have adjusted and disposed of as many as four or five hundred. In New Mexico, Congress at its own instance, without consulting the wishes of the people, conferred the power of adjudication upon the surveyor-general; and I regret to say that, owing to its refusal to carry out the law, only forty-nine of these claims have been adjudicated and settled in twenty-three years. This course on the part of Congress has been, and is now, in plain violation of the treaty of Guadalupe Hidalgo, and shows a determined and persistent hostility to these property-holders, who have title from the governments of Spain and Mexico.

Now, gentlemen, what remedy do you propose? You are obliged adjudicating their grants derived from Spain and Mexico, and then,

have title from the governments of Spain and Mexico.

Now, gentlemen, what remedy do you propose? You are obliged by solemn treaty obligations to protect the people in their rights and property and do justice in the premises. You are obliged to recognize the titles of these people to these lands, and what do you propose? Some gentlemen say, "Why, have a court." Well, as far as a court is concerned, I brought a bill into this very House in the Forty-third Congress for that purpose, but the proposition met with no favor on account of the expense, as alleged by some. Some gen-

tlemen propose a commission. That proposition I introduced here in the form of a bill, and it died after being reported by the committee. You refuse to carry out existing law by following the recommendations of the Surveyor-General, which would settle these Spanish and Mexican grants, and not only do this, but refuse to devise or per-

mit any other means or method by which they may be adjudicated.

Now, gentlemen, what are we to do about these claims? What
remedy are these people to have? The titles of New Mexico are in a state of perfect confusion. You do not know, nor can you tell, where the land-grants are or where the public domain is; and the object of this bill is to have the Government determine these ques-It is unjust for the Government to allow the lands to remain in this position; it not only discourages emigration to the Territory, but prevents the settlement of the public lands. It is unjust for the United States not to recognize the titles of these people.

Gentlemen make a mistake who think that this bill grants

lands belonging to the Government of the United States. The title lands belonging to the Government of the United States. The title never was in the Government of the United States. It was in the governments of Spain and New Mexico, which granted the lands according to law to these claimants; and they have been in possession of these lands, some of them for two hundred and fifty years, and most of them for more than one hundred years. The object of this bill is to fix and determine the limits and boundaries of these grants.

Mr. Chairman, the people, as I have said before, have proceeded according to law and done everything you required of them. They have been put to great expense. They have employed lawyers and summoned witnesses at their own expense to prove up their claims.

summoned witnesses, at their own expense, to prove up their claims. They have deposited with the officers of the Government their original titles, as made to them by Spain and Mexico, copies of which, duly certified, together with all the testimony taken in each case, have been before the Committee on Private Land Claims; and the committee unanimously say they should be confirmed. And why gainsay their action? Gentlemen will not take the trouble to look into these grants, nor will they trust the committees and the General Land Office. It is easy to object to anything brought into the House, but if you will take up these claims and the evidence, one by one, as your committee have done, and examine them, you cannot but come to the conclusion that they are proper, just, right, and valid, and ought to be confirmed and the title of the claimants put at rest. No committee of Congress nor any officer of the Government who

has examined them has ever questioned them.

Now, I want to say a word-and I have but a moment remainingas to the extent of these claims. I have a compilation here which nearly corresponds to one made in the Land Office, in answer to a letter from the chairman of the committee. The number of these grants, I believe, sought to be confirmed, is fifty-four. There were ten hundred and eighty original grantees, and the age of the grants averages one hundred years. There are, by computation, now about thirty-nine thousand owners, descendants and purchasers from the original grantees, and there are fifteen towns on these grants, owned by people who hold under the original grantees or their heirs, successors, and assigns. These include some of the largest towns in New Mexico; and, except by the action of Congress, you cannot have the titles adjudicated. Unless there be action by Congress, everything is left in a state of hopeless confusion. Those fifteen towns contain a population of twenty-three thousand people and there are fifteen thousand or state of hopeless contusion. Those fifteen towns contain a population of twenty-three thousand people, and there are fifteen thousand on other portions of these grants, all holding under the original grantees, in some form or shape. The Government refuses to say or permit its surveyor-general to say where the boundaries are. You need not be afraid about your public domain suffering by the passage of this bill. These lands never belonged to you; never. They belonged originally to the governments of Spain and Mexico, who granted them to the people who now ask Congress to simply recognize their rights.

[Here the hammer fell.]

[Here the hammer fell.]

Mr. ELKINS. I ask that I may-be permitted to print, as part of my remarks, the abstract I have referred to.

There was no objection. The abstract is as follows:

Abstract of land grants situate in New Mexico, numbered from 49 to 104 inclusive, showing the number of original grantees, and approximately the number of acres in each grant, dates of grants, &c.

No. of grant.	Title.	Date of grant.	Original grantees.	Approximate a r e a i n acres.	Remarks.
49	Nuestra Señora de la Luz.	1753	12 and heirs.	30, 996	
50	Cañada de los Apa-	1769	1 and heirs.	106, 272	
51	Ojo del Medio	1785	1 and heirs.	3, 840	The state of the s
52	Tract near Santa Fé.	1785	1 and heirs.	5, 980	
53	Cañada de los Ani- mos.	1785	4 and heirs.	40, 000	
54	Cuyamungo	1731	3 and heirs.	5, 000	Town of 400 people
55	Encinas	1841	1 and heirs.	20, 500	
56	Gotera	1830	7 and heirs.	600	
57	Maragua	1840	8 and heirs.	300	
58	Rancho del Rio Grande	{ 1795 } { 1837 }	10 and heirs.	500	
50	Servillos	1198	1 and hoire	600	1275

Abstract of land grants situate in New Mexico, &c .- Continued.

No. of grant.	Title.	Date of grant	Original grantees.	Approximate a r e a in acres.	Remarks.
60	Town of Galisteo	1798	250 and heirs.	800	Town of 600 people now.
61 62	Cebollas Town of Cieneguilla	1846 1795	5 and heirs. 20 and heirs.	900 40, 320	Town of 400 people
63 64	Caja del Rio Mesita de Juana	1742 17e2	1 and heirs. 3 and heirs.	40, 000 69, 120	now.
65	Lopez. Cañon del Rio Tesu-	1752	1 and heirs.	61, 440	Town of 400 people
66	que. San Juan del Naci- miento.	1769	36 and heirs.	40,000	now.
67	San Clemente	1716	1 and heirs.	41,000	Town of 3,000 peo- ple now.
68	Tract near Santa Fé.	1732	1 and heirs.	475	pronow.
69 70	Alamitos Estancia	1840 1845	12 and heirs.	800 49, 500	Was originally
					320,000 acres.
71	Cañon de Chama	1806	25 and heirs.	184, 000	Town of 800 people now.
72	Apache Spring	1842	1 and heirs.	49,000	
73 74	Piedra Lumbre Tract near Santa Fé	1766 1742	1 and heirs. 2 and heirs.	5, 000 1, 300	
75	Sierra Mosca	1846	1 and heirs.	49, 500	Was originally
77	Town of Ojo Cali-	1793	53 and heirs.	92, 160	Town of 1,200 peo- ple now.
78 79	Ojo San Miguel Arroyo de San Lo-	1767 1825	1 and heirs. 1 and heirs.	23, 040 9, 600	
80	renzo. Tract in Santa Fé County.	1699	1 and heirs.	3, 000	
82 83	Tract near Santa Fé Town of Bernalillo	1742 1701	1 and heirs. 1 and others for self.	240, 000 18, 000	Town of 1,500 peo- ple now.
84	Angostura	1745	1 and heirs.	6, 400	Town of 300 people
85	Colony of Doña Ana	1839	68 and heirs.	31, 000	now. Town of 3,500 peo-
86	Bend . Colony of Mesilla	1853	300 and heirs.	21, 000	Town of 4,000 peo- ple now.
87 88	Tract near Santa Fé City of Santa Fé	1806	4 and heirs. 200 and heirs.	2, 000 8, 000	City of 7,000 people
89 90	Talaya (prior to) Colona of Refugio	1731 1852	1 and heirs. 10 and heirs.	34, 560 13, 646	now. Town of 1,000 peo-
91	Town of Alameda	1710	1 and heirs.	10, 000	ple now. Town of 1,500 peo-
92	Town of Jacama	1702	1 and heirs.	200	ple now. Town of 300 people
93	Cañon del Rio	1836	3 and heirs.	200	now.
94 95	Grande. Uña del Gato Town of Cevilleto	1839 1819	2 and heirs. 2 and heirs.	150 10, 000	Town with 1,000
96	Slope of Navajo coun-	1768	4 and heirs.	8,000	people now.
97	Tract in Navajo	1768	3 and heirs.	2,000	
98	Tract of Caballeta Tract in Santa Ana	1768 1767	3 and heirs. 3 and heirs.	2,000 11,000 7,000	
100	County. Tract in Santa Ana	1766	2 and heirs.		
101	County. Tract in Santa Ana County.	1762	1 and heirs	8, 000 500	
102	San Marcos	1754	1 and heirs.		DECEMBER 5
103 104	Santa Ana County Encinol	1769 1768	1 and heirs. 3 and heirs.	200 700	
			-		

\*Time out of mind.

Schedule of towns situate on these grants.

Name of town.	No. of grant.	No. of inhab- itantsnowre- siding in said towns.
Cuyamunge	54	400
Galisteo	60	600
Ceneguilla	62	400
Tesuque	65	400
Chuma	71	800
Ojo Caliente	77	1, 200
Bernalillo	83	1,500
Angostura	84	300
Doña Ana	85	3, 500
Mesilla	86	4,000
City of Santa Fé	88	7,000
RefugioAlameda	90	1,000
	91	1,500
Jacama Cevolleta	92 95	1,000

A total of 15 towns and 23,900 people.

It is estimated that at least 15,000 people reside on the other grants included in the first statement herewith, not mentioned in the schedule of towns, who claim the right to the lands mentioned by descent or through purchase from the original grantees or their heirs.

	Original grantees.	Acres.
From folio No. 1 From folio No. 2 From folio No. 3	304 and heirs 165 and heirs 613 and heirs	215, 588 1, 023, 655 170, 365
Total	1,082 and heirs	1, 409, 599

Approximate number of heirs and descendants of original grantees, 15,500, (a low minimum,) and the total number of acres at 1,409,509, will show an average of 91 acres to each of said heirs.

This schedule shows in towns, 23,900 people.

Residing on grants and not in towns, 15,000 people.

Making about 38,900 people who are now living on these grants, and who are interested in the passage of this bill to forever quiet and set at rest their titles to lands granted to them or their ancestors or acquired through purchase from the original grantees.

lands granted to them or their ancestors or acquired through purchase from the original grantees.

One of said grants, town of Santa Fé, was made time whereof the memory of man runneth not to the contrary.

Five of said grants were made one hundred and seventy-five years ago.

Three of said grants were made one hundred and fifty years ago.

Six of said grants were made one hundred and they years ago.

Eleven of said grants were made one hundred years ago.

Thirteen of said grants were made from seventy-five one hundred years ago.

Fifteen of said grants were made from seventy-five one hundred years ago.

The time since the grants enumerated herein were made will average more than one century.

one century. Mr. ELKINS. I now ask for a vote. I understand it appears from the RECORD that the debate is limited to an hour and a half. The CHAIRMAN. The gentleman will read the RECORD. Mr. ELKINS. I read from the RECORD of January 20, page 7:

Mr. Elkins. I move that all debate in Committee of the Whole on the bill (H. R. No. 344) to confirm certain private land-claims in the Territory of New Mexico be limited to one bour and a half.

The motion was agreed to.

I do not understand that an hour and a half has been occupied in debate.

The CHAIRMAN. Has there been any debate since that order was

made until to-day.

Mr. ELKINS. There has been no debate. The consideration of the Mr. ELKINS. There has been no debate. The consideration of the bill has been put off from time to time on account of the absence of the gentleman from Vermont, [Mr. JOYCE.]

Mr. REAGAN. I understand that there are thirty minutes yet remaining for debate?

The CHAIRMAN. Only one hour has been thus far occupied in debate. A half hour still remains.

Mr. REAGAN addressed the Chair.

Mr. ELKINS. I yield the gentleman from Texas five minutes.

Mr. REAGAN. I do not accept any time from the gentleman. I am on the floor in my own right.

on the floor in my own right.

Mr. ELKINS. I submit that I am on the floor; and I do not see how the gentleman from Texas and I can occupy the same place at the same time

The CHAIRMAN. The gentleman from New Mexico was speaking in the time of the gentleman from Vermont, [Mr. JOYCE.]

Mr. ELKINS. The gentleman from Vermont yielded me the rest

of his time

The CHAIRMAN. The gentleman from Vermont had no more time than one hour altogether. The gentleman from Texas is entitled to the floor

Mr. REAGAN. I do not propose to go into any elaborate argument. I called attention to some features in relation to this bill in its discussion during the last session. I have made no subsequent investigation, and indeed I did not know that the bill was coming up at this time.

I then called attention to the fact that the great body of the people of New Mexico were simple-minded and pastoral people. Perhaps, as the gentleman from New Mexico suggests, they do not know this matter is pending; they may not know that a measure is pending before this House which involves the right of thousands of citizens of New Mexico to their homes. Now, it is said that this bill merely allows a quit-claim title to those people whose titles are defective, and that it protects the adverse rights or claims of persons claiming the same land. I do not undertake to quote the language of the act, but that is the substance of it. If this bill passes, it gives these humble, poor, and pastoral people a title, which was guaranteed to them by the treaty of Guadalupe Hidalgo between the United States and Mexico. It is insisted this morning by the gentleman from Vermont [Mr. Joyce] and by the gentleman from New Mexico that, under the treaty of Guadalupe, the rights of Mexicans were secured. I cannot now go into a history of the matter, but an article was inserted in the treaty which was intended to affect the rights of the claimants under Mexican and Spanish titles. The Senate left that claimants under Mexican and Spanish titles. The Senate left that article out, and left them to claim their rights as they existed when the treaty was made. Now, by this action, their legal rights were secured to them. If they had a title it was secure, and if they had no title, then it was an execution of the provisions of the treaty to

give them a title.

It has been said by the gentleman from New Mexico, and was be-

fore said by the gentleman from Vermont, that these men claimed their lands by titles running back a hundred or two hundred wears. When I spoke upon this subject last session I had to call attention to the testimony of some witnesses, and the gentleman from Vermont, in reviewing my remarks upon that occasion, did not comment upon that portion of my remarks in which I showed from the report that there were men before the commissioners who made this report, who testified to facts from one hundred and four years before this time. I wish the gentleman from Vermont had thought it fit to go back and inquire into the question of longevity and memory of these witnes

I devoted but a brief time to the examination of this question, but I find upon examining the record that it was full of contests over these claims. It is asserted that they have titles from one to two they have titles under the law, no law of Congress can make them better. They are as good as the law can make them.

Mr. BUCKNER. Did not Congress pass a law settling these land

titles in California?

Mr. REAGAN. I am not now going into that question.
Mr. BUCKNER. Did not the treaty of Guadalupe Hidalgo cede
to the United States the whole territory of California, subject to the

rights of private claimants?

Mr. REAGAN. It ceded to the United States the national sovereignty and the right of eminent domain under the treaty, but it did not cede the right of an individual. On the contrary, all the rights of the owners, heirs, and assigns of lands were preserved. Therefore of the owners, heirs, and assigns of lands were preserved. Therefore I come back to the proposition, which nobody can deny or dispute, that if they had titles then they have titles to-day. If they had titles which could be maintained then, they can maintain them now against the United States and the whole world.

Mr ELKINS. If they had titles, and the statement of the gentleman from Texas is true, why did Congress pass the act of 1854?

Mr. BUCKNER. Judah P. Benjamin was the author of that act, and he knew all about these titles.

Mr. BEAGAN. I have great respect for Mr. Benjamin's legal ability.

Mr. REAGAN. I have great respect for Mr. Benjamin's legal ability. Mr. ELKINS. I would like the gentleman, who apparently un-

derstands this question, to answer mine.

Mr. REAGAN. I do not know the particular facts which gave rise to that legislation, but I do know that where there are millions of acres of land involved, there is power brought to bear upon the House sometimes to do very foolish things. It is not citizens of New Mex-ico who asked this act.

ico who asked this act.

Mr. ELKINS. Who was it, then?

Mr. REAGAN. It was those whose titles are disputed and who would monopolize the lands of New Mexico. If they had a title under the treaty, their title is just as good as the law can make it; if not, it is but an effort to extend the treaty so as to give them a gratuity.

Mr. GUNTER. Why did Congress pass the law of 1854 appointing a commission to investigate these titles and report, and why does the Commissioner of the Land Office ask that these claims be confirmed by Congress?

firmed by Congress?

Mr. REAGAN. I have already made an answer to that question, but I will repeat it for the benefit of the gentleman from Arkansas, [Mr. GUNTER.] There have been many occasions, unfortunately, in the history of this country when legislation has been procured from Congress for the benefit only of monopolies and land-grabbers.

Mr. GUNTER. I state to my friend from Texas [Mr. Reagan] that

the same course was pursued in regard to lands acquired from France

and Spain.

Mr. REAGAN. The precedent in the case of land obtained from France and Spain can hardly be invoked, because by the terms of the treaties and by the action of the Government the recognition of the titles of citizens of the territory acquired had much more scope than that given to rights of the Mexicans under the treaty with Mexico.

Mr. GUNTER. Allow me to ask the gentleman one other question. How is it that these parties claiming, if their titles are good, can designate them until they are recognized by Congress and a survey

Mr. REAGAN. That was what I was coming to when the gentleman Mr. REAGAN. That was what I was coming to when the gentleman first interrupted me. If I can understand what force and effect is intended to be obtained by the passage of this law, it relates to the very question which the gentleman has propounded, that is, to the ascertainment of boundaries, to the investiture of titles not according to the due course of law. If these claimants had titles they held them either by prescription or by grant. If they were held by prescription the means of perpetuating the knowledge of the titles was as good in the courts of the country as it is in an ex parte proceeding before the House of Representatives.

If the object be, as I affirm my judgment to be, that it is a part of the object of this bill, upon ex parte proceedings before this House, to enlarge grants, to give enormous lots of land not legitimately embraced in the grants, then I call attention now to a matter to which I called

in the grants, then I call attention now to a matter to which I called attention last session of Congress, that is, that the policy of this Gov-ernment has been to secure homesteads on the public lands to all her citizens, and not to encourage monopolies of vast amounts of the public domain. Why, if the Government's bounty is appealed to, should fifty thousand acres of land be given to a citizen of New Mexico, when to a citizen of any other Territory you give only one hundred and sixty acres of land which would constitute a convenient and reasonable homestead? If I am right in my supposition as to the object and in-

tent of this proposed legislation, then it is an overturning of the settled policy of this Government in the disposition of the public domain. Either that is so, or else it is true that we are proposing here to do a vain thing, a useless thing—to confirm titles which in themselves are perfect according to the law.

Mr. GUNTER. If this commissioner was appointed under an act

of Congress, with judicial power or authority to investigate these claims under the sanction of an oath, and if he did investigate them, and made first his findings and then his report, does not that finding and report stand in the attitude of a judgment, and is not the pre-

Mr. REAGAN. I will not now attempt to go so far as to determine the question whether the action of the commissioner under that law has the force of a judgment. The law did not authorize him to pronounce such a judgment, but directed him to collect facts for the information of Congress.

Mr. GUNTER. The law authorized him to make a finding in the matter as to the justness of the claims, and to report them to the

Commissioner of the General Land Office, which he did.

Mr. BUCKNER. I understand the gentleman from Texas [Mr. Reagan] to say that this is a superfluous thing. I would like to have him tell the House what is the distinction between Congress legislating in regard to the rights of the people of New Mexico and legislating in regard to the rights of the original settlers of Cali-

legislating in regard to the rights of the original settlers of Canfornia.

Mr. REAGAN. My friend cannot expect me to go into that question now in the few minutes which are left me. There are many members in the House who understand the course of legislation upon these matters and the distinction to which I have referred. I will go back to the proposition with which I started, that if these claimants have titles, as it is affirmed they have, then by this bill you cannot make those titles any better. If they did not have titles at the time the treaty was made, then it is not any execution of the provisions of that treaty to give them titles now, but it is simply a donation of the public land in violation of the system which has been adopted and pursued by the Government of the United States.

Mr. BUCKNER I want the gentleman to understand that as a legal proposition I undertake to say that the Congress of the United States has decided that no man, by virtue of the treaty alone, has any rights in these lands, but it is purely a political obligation on the part of the Government to confirm their just claims. In other words, no claimant can go into a court of justice and maintain an action of ejectment by virtue of this treaty alone.

Mr. REAGAN. The Constitution of the United States, the treaties made by the United States, and the acts of Congress, constitute the

made by the United States, and the acts of Congress, constitute the law of the land. The treaty of Guadalupe Hidalgo secured the rights of owners of property in the territory ceded to the United States.

Mr. BUCKNER. And the courts have held that that is only a po-

litical obligation. Mr. REAGAN. Mr. REAGAN. With all respect to the legal knowledge and information of my friend, I must totally dissent from the accuracy of his proposition. Such is not the law; such is not affirmed by any

his proposition. Such is not the law; such is not affirmed by any law-writers, by any judicial decision, or by any public man in the country having knowledge of the subject.

Mr. ELKINS. I must repel the imputation that this is a bill in the interest of monopolists. There are thirty-nine thousand people interested in these grants, and evidence to this effect is before the House, supplied by the surveyor-general of New Mexico and the Land Office. That is a sufficient answer to that point.

I do not know which is worse, the confusion of the gentleman's [Mr. Reagan's] argument, or his absolute want of knowledge of the subject he attempts to discuss. The gentleman does not understand the proposition, neither as to the law nor the facts. I say that this lill is for the nurpose of determining the limit and boundaries of bill is for the purpose of determining the limit and boundaries of these grants. Determined by whom? Not by the claimants, but by the Government through its officers. The bill provides that you shall send your own officers on the ground to fix and determine these limits, and to say that the United States for its part has no right or

limits, and to say that the United States for its part has no right or title in these lands. It does not ask you to grant any lands to anyone, but to define the limits of the grants made by Spain and Mexico. This act does not make any new grant of law to the citizens of New Mexico for 50,000 acres or any other amount. The gentleman's argumentum ad hominem (for that is just what it is) is calculated to deceive the House by leaving the impression that the object of the bill is to give and grant to these people something that they do not already

Mr. REAGAN. O, no. My friend will remember that the bill itself provides that grants may be confirmed to the extent of eleven leagues of land; and that although it is not 50,000 acres is 49,600.

Mr. ELKINS. Does not the gentleman know the difference between confirming a grant already made, relinquishing any supposed right the Government may have, and an absolute grant made in pursuance of law to an individual even before this Government had an existence. These are grants made by the government of Spain or the government of Mexico that formerly owned the land. These grants have been occupied by the grantees or their descendants for periods running from one hundred to two hundred years. The owners now simply ask that the Government of the United States shall, in a formal manner, recognize their grants and fix their boundaries. They do not ask you to give them anything. That is the point which I

desire to emphasize. The surveyor-general declares them to be legal and valid grants. The act of Congress limited him in his jurisdiction and action to grants already made, and not to public land. In 1852, as I have already stated, this power was conferred upon the courts in California, and they adjusted these titles throughout that section of country acquired by the treaty of Guadalupe Hidalgo. But in New Mexico a different rule was devised. An act of Congress provided that the surveyor-general should examine these grants and report the testimony to Congress, so that Congress might act finally in the matter. There has been no proposition to give away one foot of the public lands, and never has been; this idea has only found place in the confused understanding of the gentleman from Texas. Each grant included in this bill was made by the government of Spain or of Mexico, regularly and with all the formality of law. These governments had full power over their public lands, and granted them in large quantities to any one who might settle them. It was by making large donations to individuals and colonies that Spain and Mexico continued to extend their jurisdiction and terri-Spain and Mexico continued to extend their jurisdiction and territory. Land was no object and was granted in what seems to us

Mr. GUNTER. I ask the gentleman whether the Commissioner of the General Land Office has not recently made a report asking, in the interest of the Government as well as the interest of the claimants, that action be taken by Congress?

Mr. ELKINS. Yes, sir; in every annual report for the last ten or fifteen years the Commissioner of the General Land Office has begged the attention of Congress to these grants, has asked that they be confirmed, that some final action be taken on them. In the report for 1871, page 64, he says:

It is most important to the growth and prosperity of these Territories, to which settlement is being rapidly attracted by the extension of railroads, that a separation be made at the earliest possible period between the public lands and those claimed under foreign titles. In this way only can the settler know where to locate safely so as not to intrude on the premises of others. The want of such definitive adjustment of the lines of the public and private lands has already, in one instance brought to notice by the governor of New Mexico, led to armed hostilities between settlers and employés of the grant claimants.

In his report to Congress for 1875 he uses this language-

In his report to Congress for 1875 he uses this language—
During the past four years this office has, by reports and otherwise, repeatedly called the attention of Congress to the defects in the present system of settling these claims; and to these I add my opinion that the present method prescribed for the determination of the validity of these grants is not sufficiently speedy to do justice either to the claimants or settlers or to the United States. Nor does it secure the requisite ability for a proper settlement of such grants; nor does it provide for the settlement of all such claims, the protection of which is guaranteed by treaty.

It is now more than twenty years since the surveyor-general of New Mexico commenced the examination of claims in that Territory, and he has since reported to Congress less than one hundred and fifty claims, though in 1856 he had more than one thousand upon his files, and, of the number reported, Congress has confirmed but seventy-one! From these data it will be seen that the probable date when the last of these thousand claims in New Mexico alone will be reported on and confirmed is in the far future.

In the mean time the claimants must wait without remedy, and their grants, which would be valuable if the title were completed by a United States confirmation or patent, must remain comparatively worthless, as is all property where the vendor offers for sale an incomplete title and prospective litigation. The settler dares not settle and improve land lest it be subsequently found to be within the limits of some unconfirmed and unsurveyed grant; and the United States confirmation of some unconfirmed and unsurveyed grant; and the United States by such delay not only loses the sale of its land, but, judging from past experience with private land claims in other localities, the development of the resources of that country will create additional meentives for the manufacture of frandulent title papers, with the view of securing public land therewith. Each year's delay, with the conseq

This matter must receive attention. As I have already stated, the This matter must receive attention. As I have already stated, the parties interested have gone to large expense; they have employed lawyers and summoned witnesses before the surveyor-general, who has acted upon them and, as the gentleman from Arkansas [Mr. Gunter] has well said, this matter is in a measure res adjudicata. There is not a breath of suspicion against one of these grants; no one intimates or can intimate anything of the kind. The Legislature of New Mexico has memorialized Congress to confirm them.

New Mexico has memorialized Congress to confirm them because the people of the whole Territory are interested in them.

Mr. Chairman, I think that in the short time allotted to me I have made plain these facts: That the Congress of the United States has authorized certain proceedings; that in pursuance of those proceedings these grants have been found and adjudged valid, and forwarded here for the action of Congress; that they have been passed upon and determined in your own way and by your own officers; and now the people ask that you take final action, confirm these grants, and send your own surveyor, not the surveyor of the claimants, to fix their boundaries and segregate them from the public domain. This is in the interest of the Government as well as the claimants, because many of the grant-owners are claiming more land than they are entitled to; they undertake to extend their boundaries farther than they ought to be extended. These boundaries cannot be fixed until Congress comes in and settles the matter definitively. This bill was discussed during the last session of Congress. It has been discussed nearly every Friday during this session that it could come up. Now

let us have some action on it.

If this bill be not passed, the people of New Mexico are without any remedy whatever to adjust their titles. To refuse to pass such a measure as this is an indirect confiscation of their rights. The treaty

of Guadalupe Hidalgo provides that property of this kind shall be respected. But you do not respect it, because you leave the titles in confusion. It is true, they have their old Spanish and Mexican documents giving them title, but they deserve ampler evidence of title to enable them to protect their rights.

to enable them to protect their rights.

The Government of the United States, which has succeeded to the powers of the governments from which these titles are derived, is the only authority that can settle this question.

Gentlemen say "let these parties go into the courts." We want to go into the courts. The people of New Mexico for years have begged you to send these cases to the courts for adjudication. But you have refused to do so. Some gentlemen say they would not trust the courts out there. This I know is a gratuitous insult to worthy officers; but you must trust somebody. In the administration of human affairs you must employ human agents and trust them. Your man affairs you must employ human agents and trust them. Your distrust must stop somewhere. You cannot presume fraud against officers in the discharge of their duties and proceed to found an argu-

officers in the discharge of their duties and proceed to found an argument on that presumption, as the gentleman from Texas does.

The proposition I submit in this case is that you are bound by the action of the surveyor-general, unless it can be shown he has acted fraudulently or made a mistake. Every one of these grants has been made in conformity to law by Spain or Mexico. All that we ask is that you shall fix the extent and limits of the grants so that these people may know where their land is, and so that settlers on the public domain may know where their land is. As the case stands now, a man cannot pre-empt or homestead land in the neighborhood of these grants, because the grant-owners, when their lands have not been grants, because the grant-owners, when their lands have not been adjudicated and surveyed, often claim more than they are entitled to.

This bill is designed to settle this matter beyond any further con-

This bill is designed to settle this matter beyond any further controversy. I ask you to stand by the law passed twenty-three years ago. Do not insist that these people shall longer continue in confusion and chaos in regard to their titles. To do so is unjust; it is a refusal to carry out solemn obligations imposed upon this Government by the treaty of Guadalupe Hidalgo.

Now, Mr. Chairman, I deny that these grants are concentrated in a few hands. They are owned, as I have before stated, (and the statement is confirmed by the Land Office,) by about forty thousand people who have settled all over them.

One other question. This Congress has heretofore approved and confirmed forty grants reported on by the surveyor-general of New Mexico, the same kind of grants, in no wise different.

Mexico, the same kind of grants, in no wise different.

Mr. HOLMAN. 1 now make the motion, which I thought was

already pending, to strike out the enacting clause of this bill.

The CHAIRMAN. That takes precedence of all other motions.

The committee divided; and there were—ayes 90, noes 79.

Mr. BUCKNER demanded tellers.

Tellers were ordered; and Mr. JOYCE and Mr. HOLMAN were appointed.

The committee again divided; and the tellers reported-ayes 70,

So the motion was disagreed to.

The CHAIRMAN. The question recurs on the pending amendments, which will be reported and acted on in their order.

The question first recurred on the amendment in section 2, line 4, strike out "United States" and insert "parties respectively asserting claim to said land;" so it will read:

That the Commissioner of the General Land Office is hereby authorized and directed, without unreasonable delay, to cause the lands embraced in sa'd several claims to be surveyed and platted at the expense of the parties respectively asserting claim to said land.

The committee divided; and there were-ayes 45, noes 69; no quorum voting.
Mr. REAGAN demanded tellers.

Tellers were ordered; and Mr. REAGAN and Mr. BUCKNER were ap-

pointed.

Mr. HOLMAN. I hope this question will be stated again. It is a proposition which, it seems to me, if understood, would neet with the approval of the committee.

Mr. BUCKNER. No debate is in order. I thought the gentleman would withdraw that proposition sometime ago.

The committee divided; and there were—ayes 80, noes 69.

So the motion was agreed to.

Mr. BUCKNER. I give notice that I shall demand the yeas and nays on this amendment in the House.

Mr. EDEN. I move the committee rise.

The committee divided; and there were—ayes 63, noes 115.

So the committee refused to rise.

The question next recurred on the pending amendment.

The question next recurred on the pending amendment.

After the word "the," in line 1 of section 2, strike out the words "Commissioner of General Office" and insert in lieu thereof the words, "surveyor-general for the Territory of New Mexico;" so it will read, "that the surveyor-general for the Territory of New Mexico is hereby authorized and directed," &c.

The averagement was agreed to.

The amendment was agreed to.

The amendment was agreed to.

The next amendment was, in line 3 of section 2, after the word "delay," to insert "under such instructions as may be prescribed by the Commissioner of the General Land Office."

The amendment was agreed to.

The question next recurred on the amendment in line 4, section 2, after the word "be," to insert the word "accurately;" so it will read,

"be accurately surveyed and platted at the expense of the United States."

Mr. JOYCE. That is an amendment recommended by the General Land Office

The amendment was agreed to.

The question next recurred on the amendment to strike out in the second section the words, "and upon the filing and approval of said surveys and plats in his office, patents shall issue for said lands."

The amendment was agreed to.

The question next recurred on the amendment to add the following

SEC. 3. That it shall be the duty of the said surveyor-general, when he shall have caused any of the aforesaid claims to be surveyed and a plat to be made thereof, to give notice in each case that the same has been done by a publication once a week for six consecutive weeks in two newspapers, one published in the City of Santa Fé and one published near the land surveyed; and shall retain in his office for public inspection the survey and plat until ninety days from the date of the first publication in Santa Fé shall have expired; and if no objections are made to said survey, he shall approve the same and transmit a duplicate of the survey and plat thereof to the Commissioner of the General Land Office for his examination and approval; but if objections are made to said survey within the said ninety days by any party claiming to have an interest in the tract embraced in the survey or in any part thereof, such objections shall be reduced to writing, stating distinctly the interest of the objector, and signed by him or his attorney, and filed with the surveyor-general, together with such proofs as he may produce in support of the objections. At the expiration of said ninety days the surveyor-general shall transmit to the Commissioner of the General Land Office a duplicate of the survey and plat, with the objections and proofs filed with him in support of the objections, and also of any proofs produced by the claimant, and filed with him in support of the survey and plat with the objections and proofs filed with him in support of the objections, and also of any proofs produced by the claimant, and filed with him in support of the survey and plat only proofs to be taken thereon, is any direct a new survey and plat are corrected, or a new survey and plat are orrected, or a new survey and

Mr. CONGER. I wish to inquire of the Chair whether debate is

closed.

The CHAIRMAN. Debate is closed under the order of the House. The question being taken on the amendment, the Chairman stated that in his opinion the "ayes" had it.

Mr. CONGER. Do I understand the Chair to say that the five-minute debate has been cut off I do not think that has been done.

Mr. HOLMAN. I suppose the bill is open to the five-minute de-

Mr. CONGER. I made the inquiry of the Chair, wishing to make a remark or two on the amendment before the question was taken on it. The CHAIRMAN. The Chair is informed that these amendments

were pending when the House ordered that debate be limited to one hour and a balf. Mr. CONGER.

That meant general debate.

The CHAIRMAN. The order of the House was that "all debate" be limited to one hour and a half.

Mr. CONGER. Was that done by unanimous consent?

The CHAIRMAN. It was.

Mr. CONGER. I would like to know if that is the record, that the five-minute debate in Committee of the Whole was cut off. I do not think it is in the power of the House to make such an order.

Mr. ELKINS. It was done by order of the House. I have the
RECORD here, showing it.

The CHAIRMAN. The Clerk informs the Chair that no order was

made as to the five-minute debate on the amendments. The gentle-man from Michigan can have his five minutes.

Mr. CONGER. I have not felt it my duty to make any further remarks to-day in opposition to this bill, being content to add nothing to the remarks which I made when the bill was under consideration before. But, sir, here is an amendment which gives to the surveyor-general of New Mexico the power to make surveys, and requires all the residents on these lands to know that a survey is made by finding the notice in a publication—these Mexicans, these illiterate people,

these men that cannot read or write—

Mr. O'BRIEN. I rise to a point of order. The amendment to which the gentleman is now speaking has already been adopted.

The CHAIRMAN. The gentleman from Michigan rose in time to make the point of order that the five-minute debate had not been cut off; and the Chair, without announcing the result of the vote, recognized the gentleman from Michigan to debate the amendment.

recognized the gentleman from Michigan to debate the amendment. The Chair overrules the point of order.

Mr. CONGER. This bill may give to claimants thousands of acres in one body according to their claims, which may embrace twenty or thirty sections of land, upon each of which or some of which may be settlers who have purchased these surveyed lands, and paid for them to the United States, or who may have made them their homesteads and made improvements upon them. That is bad enough, in Heaven's name—to compel citizens of the United States to fight a patent granted by act of Congress against a patent issued some time ago by the Land Office under the regular provisions of law. But this amendment provides the notice that shall be given to these hundreds or thousands of citizens resident on those disputed lands. It shall be a publication in some newspaper in Santa F6 and in some newspaper

nearest to the lands. It may be five hundred miles off. I do not know how many newspapers are published. They are probably not published in every school district in that country. Now the owners of these lands may not be able even to read the notice if it be in the English language.

Mr. REAGAN. A large portion of the people of New Mexico cannot read at all.

not read at all.

Mr. ELKINS. They can read just as well as the gentleman's own onstituents in Texas.

Mr. CONGER. I have heard the voices of these gentlemen ringing

in this Hall for half an hour at a time upon this bill, and I think they

in this Hall for half an hour at a time upon this bill, and I think they may now allow me to have my few minutes.

The provision of this amendment, after the direction that is given for the publication in these papers, is, that unless these owners of lands find out in some way about the survey, and whether it includes their lands or not, it will be considered that they have made no objection, and nothing is founded by objection upon which they can resist the patent covering their land by virtue of this act of Congress. But who is the party provided for by this amendment to receive the objections to the survey, to its accuracy, to its correctness? The surveyor who makes the survey is the recipient of objections to the correctness of his own survey. I venture to say that, according to the ordinary mode of doing business, the surveyor will not run himself to death to find these objectors to contradict the accuracy of his own survey. He is to file these objections. He is to send them his own survey. He is to file these objections. He is to send them up. And more than that, no matter how strong the objections may be, they are made by men who know nothing about the mode of putting them in legal form; but this amendment provides that this surregor shall send with these objections his opinion of them, giving him an opportunity to straugle them at their very birth. If the bill was not bad enough before, as, in all conscience, it seems to me it was, giving great tracts of land and planting town claims upon the homesteads of American citizens without their having the opportunity to have their rights determined except in courts of law, compelling them with their adverse titles to go through all the United States ing them with their adverse titles to go through all the United States courts to save their homes—if it was not bad enough before, this amendment has made it, to the mind of any just man, I venture to

say, absolutely insupportable.

[Here the hammer fell.]

Mr. CONGER. I simply desired those five minutes to express my objections to the amendment, as I have formerly expressed my objections to the bill.

tions to the bill.

Mr. EDEN. As this is a very important amendment I think the committee had better rise, that we may have an opportunity to read and consider it. I move that the committee rise.

The question being taken on the motion of Mr. EDEN that the committee rise, there were—ayes 79, noes 79.

The CHAIRMAN. The Chair votes "ay."

Mr. GUNTER. I call for tellers.

Tellers were ordered: and Mr. GUNTER and Mr. REAGAN were ap-

Tellers were ordered; and Mr. Gunter and Mr. Reagan were appointed.

The committee divided; and the tellers reported—ayes 78, noes 82. So the committee refused to rise.

The question recurred upon agreeing to the amendment; and on a division there were—ayes 20, noes 36.

Mr. REAGAN. No quorum has voted.

Mr. KNOTT. I move that the committee do now rise.

The question was taken; and on a division there were-ayes 78, noes 95

Mr. KNOTT. I call for tellers.

Tellers were ordered; and Mr. JOYCE and Mr. KNOTT were appointed.

The committee again divided; and the tellers reported-ayes 87,

So the motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the Chair, Mr. Cox reported that the Committee of the Whole on the Private Calendar had had under consideration the bill (H. R. No. 344) to confirm certain private land claims in the Territory of New Mexico, and had come to no resolution thereon.

## CENTENNIAL EXHIBITION.

The SPEAKER, by unanimous consent, laid before the House the following message from the President of the United States:

To the Senate and House of Representatives:

To the Senate and House of Representatives:

I transmit herewith the catalogues and report of the board on behalf of the executive departments at the international exhibition of 1876, with their accompanying illustrations.

The labors performed by the members of the board, as evinced by the voluminous mass of information found in the various papers from the officers charged with their preparation, have been in the highest degree commendable; and believing that the publication of these papers will form an interesting memorial of the greatest of international exhibitions, and of the centennial anniversary of the Independence of our country, I recommend that they be printed in a suitable form for distribution and preservation.

The letter of the chairman of the board will give to Congress the history of its organization, the laws and executive orders under which it has acted, and the steps which have been taken to preserve the large and instructive collections made, with a view to their forming a part of a national museum, should Congress make the necessary appropriations for such a desirable object.

U. S. GRANT.

EXECUTIVE MANSION, February 9, 1877.

Mr. CLYMER. I think that message should be referred to the

Committee on Public Buildings and Grounds, and I make that motion. But I now ask for the reading of the memorial accompanying

Mr. FORT. I think it should be referred to the Select Committee

on the Centennial.

Mr. CLYMER. I ask now for the reading of the memorial.

The Clerk read the memorial, as follows:

INTERNATIONAL EXHIBITION, 1876,
OFFICE OF THE BOARD ON BEHALF OF U. S. EXECUTIVE DEPARTMENTS,
No. 1735 F Street, N. W., Washington, D. C., February 6, 1877.

The PRESIDENT of the United States.

Six: I am directed by the board on behalf of United States Executive Departments at the international exhibition of 1876 to submit the following report:

The participation of the Government in the exhibition was preliminarily undertaken by this board in pursuance of the following order, namely:

[Executive order.]

INTERNATIONAL EXHIBITION-1876. By the President of the United States.

By the President of the United States.

Whereas it has been brought to the notice of the President of the United States that, in the international exhibition of arts, manufactures, and products of the soil and mine, to be held in the city of Philadelphia in the year 1876 for the purpose of celebrating the one hundredth anniversary of the Independence of the United States, it is desirable that from the Executive Departments of the Government of the United States, in which there may be articles suitable for the purpose intended, there should appear such articles and materials as will, when presented in a collective exhibition, illustrate the functions and administrative faculties of the Government in time of peace and its resources as a war power, and thereby serve to demonstrate the nature of our institutions and their adaptations to the wants of the people:

ernment in time of peace and its resources as a war power, and thereby serve to demonstrate the nature of our institutions and their adaptations to the wants of the people:

Now, for the purpose of securing a complete and harmonious arrangement of the articles and materials designed to be exhibited from the Executive Departments of the Government, it is ordered that a board, to be composed of one person, to be named by the head of each of the Executive Departments which may have articles and materials to be exhibited, and also of one person to be named in behalf of the Smithsonian Institution, and one to be named in behalf of the Department of Agriculture, be charged with the preparation, arrangement, and safe-keeping of such articles and materials as the heads of the several Departments and the Commissioner of Agriculture and the director of the Smithsonian Institution may respectively deside shall be embraced in the collection; that one of the persons thus named, to be designated by the President, shall be chairman of such board, and that the board appoint from their own number such other officers as they may think necessary; and that the said board, when organized, be authorized, under the direction of the President, to confer with executive officers of the centennial exhibition in relation to such matters connected with the subject as may pertain to the respective Departments having articles and materials on exhibition; and that the names of the persons thus selected by the heads of the several Departments, the Commissioner of Agriculture, and the director of the Smithsonian Institution, shall be submitted to the President, or designation.

By order of the President.

HAMILTON FISH

WASHINGTON, January 23, 1874.

Washington, January 23, 1874.

In accordance with this order the following persons were named by the heads of the several Departments, &c., mentioned in the order, having articles or materials to be exhibited, to compose the board, viz:

By the Secretary of the Treasury, Hon. R. W. Tayler.\*

By the Secretary of War, Colonel S. C. Lyford, United States Army.

By the Secretary of the Navy, Admiral T. A. Jenkins, United States Navy.

By the Secretary of the Interior, John Eaton, esq.

By the Postmaster-General, Dr. Charles F. Macdonald.

By the Department of Agriculture, William Saunders, esq.

By the Smithsonian Institution, Professor S. F. Baird.

Colonel S. C. Lyford was designated by the President to be chairman of the board.

By the Smithsonian Institution, Professor S. F. Baird.

Colonel S. C. Lyford was designated by the President to be chairman of the board.

These appointments were not announced by the Department of State until March 25, 1874, and the first meeting of the board was held April 10, 1874, when it was concluded, after discussion, that each member should have full and exclusive control of the matters pertaining to his particular department, subject to the general advisement of the board, and that immediate steps should be taken to ascertain the amount of space required at the exhibition for the several Departments and the probable cost of the entire undertaking.

During the remainder of the year 1874 the several members of the board matured their plans, comprehending the nature and extent of effective participation, and prepared their estimates of cost. These estimates, which were submitted to Congress on January 8, 1875, aggregated the sum of \$971,000, in which was included an item of \$200,000 for a building at Philadelphia capable of removal to Washington after the close of the exhibition, to be used as a national museum. The wisdom of the board in forecasting at the time the probable demands of the public service after the close of the exhibition in respect to storage facilities for the collections made by it is now confirmed by the demands which it is reluctably compelled to make on Congress for that which it ought in the first instance to provide for.

The appropriations for the purposes of the board were not made until March 3, 1875, and were, in the cases of the War, Navy, and Smithsonian Institutions, only two-thirds of the estimated amounts needed; while in the case of the Interior Department, the appropriation was but little more than half of what was asked for. The appropriations were as follows in the act making appropriations for smithsonian Institution to participate in the international exhibition of 1876, the following sums are hereby appropriated, namely: For the Interior Department, \$115,000; for th

on the part of the Government, the same shall be paid for, pro rata, out of the sums appropriated to the several Departments, the United States commission of food-fishes, and the Treasury and Post-Office Departments excepted, the cost of the building not to exceed \$150.000; and at the close of the exhibition said building shall be sold and the proceeds covered into the Treasury as miscellaneous receipts: And provided further. That the sums hereby appropriated shall cover the entire expense to which the United States Government shall be subjected on account of said exhibition, except the sum appropriated in this act for printing the certificates of stock of said exhibition; and the board on Executive Departments for be forbidden to expend any larger sum than is set down herein for each Department, or to enter into any contract or engagement that shall result in any such increased expenditure; and no money shall be taken by any Department for the purposes of this exhibition as aforesaid from any other appropriations except the one hereby made: And further provided, That of the sum hereby appropriated the sum of \$200,000 shall be immediately available.

On March 9, 1875, the following executive order was issued, namely:

EXECUTIVE MANSION, March 9, 1875.

Executive Massion, March 9, 1875.

In order to carry out the provisions of the fifth section of the act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1876, and for other purposes," approved March 3, 1875, the board heretofore appointed to take charge of the articles and materials to be exhibited by the several Executive Departments, the Smithsonian Institution, and the Agricultural Department, at the International Exhibition of 1876, is hereby continued under the following regulations and distribution of duties, viz: The funds appropriated by the above-named section will be drawn from the Treasury upon the requisition of the chairman of the board, to be disbursed as are other public moneys under the existing laws relating to disbursing officers. An officer of the Army will be detailed by the Secretary of War as disbursing officer of the board.

Each representative of an Executive Department, and the representative of the Smithsonian Institution, of the Agricultural Department, and the United States Commissioner of Food Fishes, will have charge of the matters pertaining to his respective Department, subject to the general advisement of the board; and all bills will be paid by the disbursing officer upon vouchers certified by such representative and countersigned by the chairman of the board.

The disbursing officer will render monthly accounts-current of all advances to and disbursements by him to the First Auditor of the Treasury for audit and extelement in the same manner as are other accounts of disbursing officers of the Government.

Each representative will be held responsible to the head of his respective Department for all public property of the United States furnished by the head of such Department or otherwise coming to his hands for the purposes of the exhibition, and will render proper accounts of the same to such head of Department until the property is returned.

U. S. GRANT, President United States.

and will render proper accounts of the same to such head of Department until the property is returned.

In pursuance of the foregoing order, the Secretary of War, by order dated March 16, 1875, detailed Capitan Joseph S. Comrad, Second United States Infantry, brivet colonel United States, Anny part of the Company of the

<sup>\*</sup>Hon. F. M. Sawyer, Assistant Secretary of the Treasury, was at first appointed to represent the Treasury Department in the board; upon his resignation, Hon. R. W. Taylor, First Comptroller, was appointed in the board in his stead.

by the Quartermaster's Department of the Army. By the system of marking adopted, each packing box was easily stored and reclaimed for reshipping the identical goods at the close of the exhibition. The boxing belonging to all the departments was taker charge of by Captain Rodgers and stored at the Philadelphia depot of the Quartermaster's Department, permission for the use of available warrhousing at the post having been kindly granted by the Scoretary of War, upon the recommendation of the Quartermaster-General. All packages were unloaded directly from the cars into the building, a track having been especially laid for the purpose, and were placed in such positions as were most convenient to the persons in charge of installation in the several departments.

Each department was charged with the freight on its own materials, the freight bills being made out by Captain Rodgers and forwarded through the several representatives in the board to the chairman for payment.

The receipt of articles began at the building about January 1, 1876, and continued until the day of opening. The entire management of the transportation of materials and delivery on the floor of the building was confided to Captain Rodgers, to whose entire efficiency is due the fact that not an accident or delay occurred in the delivery of material properly consigned to him, and to whom is due in great part the promptness with which the Government building was enabled to be formally opened on the great opening day. His efforts have been of the greatest benefit to the board; and the system so successfully introduced and carried out by him has resulted in great savings of the various appropriations.

It was found in the system so successfully introduced and carried out by him has resulted in great savings of the various appropriations.

It was found in the fact has a successfully introduced and carried out by him has resulted in great savings of the various appropriations for the fred out by him has resulted in great savings of the various appropriatio

good and efficient services rendered in guarding the Government property at the exhibition, and in otherwise advancing the interests of the governmental participation.

Between the members and attachés of this board and the president and other officers and members of the United States Centennial Commission, the president and other officers and members of the centennial board of finance, and the director-general and his assistants, the utmost cordiality and harmony prevailed throughout the exhibition; and this opportunity is availed of for placing on record the acknowledgments of this board for the generous assistance and the many acts of personal kindness of which they were the recipients at the hands of the entire exhibition authorities.

The great exhibition was formally closed on November 10, 1876, and the work of removal of the Governmentarticles was immediately begun. On the 17th of November, however, all packing and work of breaking up the collection in the building were stopped, and only such articles as were immediately needed by the Departments here and such as were liable to damage by remaining in the building were authorized to be removed. The reasons for this stoppage were communicated to Congress at the beginning of the present session, in the annual message of the President. As the expense of maintaining the articles at the Government building in Philadelphia until Congress could be able to act on the proposition of establishing a national museum in this city for their reception was found to be greater than the remnants of the appropriations of the board could bear they were, on 18th ultimo ordered to be transported to Washington and be there stored to await the action of Congress. They are now arriving, and are placed in such depositories as can be found available for the purpose.

All the buildings erected on the exhibition grounds by the Government have been sold as required by law. The main building will be delivered to the purchaser on March 1, 1877. The grounds assigned by the Centennial Com

end

end. In conclusion, I beg to submit the conviction that the display made by our Government at the exhibition has had the most beneficial effect in vindicating our claims upon the respect of the nations of the world. Many objects that were shown in the Government display and much of the information that was disseminated would be of intense interest to the great body of people of other countries, whose means did not permit them to incur the expense of a journey to our shores. The great national advantages that will accrue from placing the practical exhibits, which demonstrate more particularly our national wealth and resources and the beneficence of our free institutions, under the observation of the people of Europe, who will assemble at the international exhibition at Paris in 1878, impels me to the recommendation that a suitable appropriation may be requested of Congress, with the view that the Governmental display may be so far reproduced at the Paris exhibition as the changed condition of circumstances and the exigencies of the case may require. may require.

Very respectfully, your obedient servant,

S. C. LYFORD, Chairman of Board.

During the reading of the memorial Mr. BRIGHT said: I move to suspend the further reading of that document.

Mr. CONGER. I object to dispensing with the further reading of . I have become interested in it, and I want to hear the whole

of it.

The SPEAKER. It is the right of the gentleman from Tennessee to move to dispense with the reading, and the House has the right to say whether they will have this paper read or not.

Mr. CONGER. An objection was made to reading a paper the other day, and the Chair decided that it must be read.

The SPEAKER. It is competent for the House to decide the question whether the paper shall be read or not.

Mr. CONGER. I think it must require unanimous consent.

The question was taken on the motion to dispense with the further reading of the memorial; and on a division there were-ayes 129, noes 14

Mr. CONGER. No quorum has voted, and I insist upon a further

The SPEAKER. Then the Chair will order tellers. Tellers were ordered; and Mr. Conger and Mr. Milliken were appointed

The House again divided; and the tellers reported-ayes 138, noes

So the motion was agreed to, and the further reading of the memorial was dispensed with.

The question was then taken on Mr. CLYMER's motion; and it was agreed to; and the message of the President, with the accompanying memorial, was referred to the Committee on Public Buildings and Grounds.

### LOUISIANA ELECTION.

Mr. MORRISON. I am instructed by the select committee to in-Mr. MORRISON. I am instructed by the select committee to investigate the recent election in Louisiana to make the reports which I send to the Clerk's desk: the report of the committee and the report of the subcommittee, together with the testimony; and I ask unanimous consent that it be published in the RECORD. It is somewhat voluminous, and I will not ask that it be read.

Mr. TOWNSEND, of Pennsylvania. I desire to present the report of the minority of the committee and the reports of the minorities of the subcommittees, and I ask that they be printed with the majority report, so that they may go out to the country together.

The SPEAKER. Does the gentleman desire the minority reports printed in the RECORD as well?

printed in the RECORD as well?

Mr. TOWNSEND, of Pennsylvania. I do.

The SPEAKER. The Chair understands the gentleman from Illinois [Mr. MORRISON] to ask that the reports be printed in the RECORD

without reading.
Mr. PAGE. I object to their being printed in the RECORD unless

they are read.

Mr. SPRINGER. Then let them be read.

The Clerk began the reading of the report, but after a few sentences he was interrupted by

Mr. PAGE, who said: I withdraw my call for the reading of the

report.

The SPEAKER. The call for the reading having been withdrawn,

The SPEAKER. The call for the reading having been withdrawn, the two reports will be printed in the RECORD, and also printed in the usual form for the use of the House, if there be no objection.

Mr. JOYCE. And the reports of the subcommittees.

The SPEAKER. The proposition of the gentleman from Pennsylvania [Mr. Townsend] embraces the reports of subcommittees.

There was no objection, and it was ordered accordingly.

Mr. MORRISON. I move to reconsider the vote whereby the House has ordered to be printed in the RECORD and in the usual form for the use of the House the various reports of the select committee and the

use of the House the various reports of the select committee and the subcommittees of the same to investigate the election in Louisiana and I also move that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. JOYCE. I ask unanimous consent to have printed in the RECORD, as a portion of the debates of this House, some remarks I have prepared in connection with the report I made as a member of a subcommittee.

Mr. ROBBINS, of North Carolina, objected, but subsequently with-

drew his objection.

No further objection was made, and leave was accordingly granted. The reports are as follows:

## MAJORITY REPORTS.

The special committee to investigate the recent election, and the action of the returning or canvassing board in the State of Louisiana in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said State for President and Vice-President of the United States, and to a fair understanding thereof by the people, respectfully submit the following report:

That at the late election in Louisiana the number of votes actually cast was 160,964, exceeding by 16,071 the number of votes cast at any previous election in said State, and, in proportion to population, exceeding the aggregate vote of all the States.

Of the votes actually cast for presidential electors, the Tilden electors (K. A. Cross, who had the highest number) had 83,817 votes; the Hayes electors (O. H. Brewster, who had the lowest number) had 76,178, being a democratic majority of

7,639 votes.

Of the votes cast at said election, as shown upon the face of the returns made to and received by the board of returning officers, the Tilden electors (W. A. Seay, who had the highest number) had 80,8.1 votes, and the Hayes electors (Lionel A. Sheldon, who had the lowest number) had 74,426 votes, being a democratic majority of

It has not been, nor will it be, questioned that the eighty-three housand and more of votes so actually cast for said K. A. Cross and other Tilden electors, being a majority, were cast by persons lawfully entitled to vote at said election.

The supervisors of registration and board of returning officers in said State have assumed, under various pretenses, to exclude from the returns and throw out from the count the votes cast at numerous polling-places, numbering, in the aggregate, 13,217 which were cast for the Tilden electors, and 2,412 for the Hayes electors. So it is that a majority of 7,639, received by the democratic electors, has been fabricated and counted into a majority of 3,437 for their opponents, and thus it is attempted to reverse the decision of the people, as made when their ballots were deposited.

Are there any existing facts, tested by the Constitution and laws of the United States and of the State of Louisiana, by which the majority of nearly eight thou-

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sand votes given to one party has been or can be counted into a majority of nearly four thousand for the other, or is this the result of conspiracy and fraud?

To this inquiry your committee has chiefly directed its investigation, has heard witnesses, and taken documentary evidence, herewith reported.

Your committee was divided into subcommittees, as contemplated by the order of its appointment. These subcommittees have inquired into the facts as to the recent election and returns thereof in the parishes and localities where irregularities, frauds, and violence are alleged to have occurred. They were thus enabled to obtain the testimony of witnesses informed as to the facts about which they testified and ascertain to what degree of credit the witnesses testifying were severally entitled.

The subcommittees have reported the facts, ascertained and conclusions arrived.

erally entitled.

The subcommittees have reported the facts ascertained and conclusions arrived at by them. These reports are respectfully submitted as part of this report.

At the inception of the investigation it was directed to make, five members of your committee felt themselves obliged to protest against and deny to the House of Representatives "any jurisdiction to inquire into the late election in Louisiana for the purposes set forth in the resolution appointing this committee." And further they say of the board of returning officers: "This board has performed the duty with which they were charged by the law, and that duty is not merely ministerial, it is in the nature of a judicial proceeding; they have heard testimony, examined evidence, and rendered judgment. That judgment, under the laws of Louisiana, is from the tribunal of last resort, and from it no appeal lies, nor is there anywhere provided either the power or the means of re-examination; it is final and conclusive."

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To this your committee find sufficient answer in the report made to the House by Messrs. Hoar, Wheeler, and Frye upon the condition of the South, in which they say:

"This is an erroneous view, both of the rights and the duties of the people of the United States under the Constitution. They have an interest in the question whether Senators and Kepresentatives for Louisiana, thrust into their seats by illegal means, shall sit in Congress to make laws for them, and whether electors, gaining their office in like manner, shall tarn the scale in the choice of a President of the United States."

The board of returning officers of Louisiana is believed to have exceeded its powers, and exercised arbitrarily, without color of law or basis of fact, extraordinary powers, in such a manner as to change a majority of nearly eight thousand votes given at the polls for the electors of one party to a majority of nearly four thousand for the other. If that "judgment" "is final and conclusive," the assembling of the people at the polls and the deposit of their votes will be henceforth an idle and useless ceremony. The duty of appointing presidential electors can hereafter be performed for Louisiana by four of her citizeus.

Your committee submit that no such power has been conferred upon the board of returning officers by the laws of Louisiana, nor could it be so conferred without destroying that republican form of government which it is the duty of the United States to assure to every State.

The constitution of Louisiana, article 73, vests judicial power in certain enumerated judicial tribunals, of which the board of returning officers is not one. Article 103 provides: "The privilege of free suffrage," to the right and the vote legally active the poll," and with it both th

maintained

Having thus usurped power, it is but natural that it should abuse it, especially in the interests of those to whom it owes its existence. And so in turn we find the Louisiana State government striving to perpetuate federal power in the party which has prostituted it and is again expected to prostitute it in the overthrow of popular government in that State.

To justify themselves in the exercise of usurped power, those who administer the State government claim their administration to have been better than its predecessor. The claim is based upon the alleged reduction of the public debt and taxation. The reduction of the public debt was accomplished by "scaling" off, counting out, 40 per cent. by legislative ensetment. No distinction seems to have been made between that which was and that which was not justly owing in this process of payment by law; and what was professedly done in the interest of the State resulted in making good many bad claims, and greatly to the interest of favorites.

process of payment by law; and what was professedly done in the interest of favorites.

The reduction of taxes with which they credit themselves is the result not of any frugality of administration, but of the falling off of interest upon the 40 per cent. reduction of the debt, and by necessity following upon the wasted and exhausted resources of the people.

Depending wholly for its existence upon the National Government, the State government of Louisiana fluids profit in disorders and the appearance of disorders, because in these the National Government finds its only justification for its unhallowed work in establishing and maintaining the Louisiana usurpation.

Hence we find the same condition of lawlessness, peculation, and insecurity for life and property existing as reported by other committees of Congress.

Finding no redress for wrongs in a government too imbeeile and dishonest to enforce the law, redress is sought too often in its violation. Men naturally despair of legal remedies and the enforcement of law when those whose duty it is to administer and execute the law receive bribes to acquit or for pardon. As an illustration of this fact, your committee call attention to one of the numerous cases proven before it of official dereliction or corruption, or both. David Young, (colored.) State senator of Concordia Parish, whose presence was required at New Orleans at the meeting of the Packard legislature, had stolen or embezzled some \$0.000 of school funds, and had been indicted for the offcuse. The people of the parish, not of his faction, but of both races, not trusting the district attorney, Austin, a creature of Governor Kellogg's, had employed counsel to prosecute Young. When the case was called the district attorney dismissed the prosecution. The counsel retained by the people protested against the action of the district attorney. He produced a dispatch from Governor Kellogg authorizing the dismissal. When Kellogg

was interrogated as to the reason for his action, he produced the letter of Austin, the district attorney, as authority for his dispatch. Young escaped punishment, and voted for Kellogg for United States Senator.

It was shown by the testimony of many colored men that because of official acts such as this, and because their rights were violated without any effort on the part of their pretended friends to right their wrongs, they had, at the recent election, for the first time, voted against the republican party. They believed that whether the failure to execute the law and protect the weak resulted from want of power or of purpose on the part of the republican officials, the necessity for the change was alike urgent.

Long years of misgovernment, such as that which has existed in Louisiana, with the disorder growing out of and following upon the late war, left many reckless and evil-disposed persons in the State, who have little regard for the rights of white and still less for the rights of black men.

With exceptional cases, the better men of the democratic party had been driven away from political affairs, so long in the control of Louisiana republicans, as better men and great lawyers, with exceptional cases, are driven away from criminal courts—the suitors of the one and the participants of the other being, as a rule, of the same class.

Colored republicans being in the main excluded from any considerable power in the official control or direction of affairs, by reason of want of qualification, their allies, chiefly unscrupulous adventurers from the North, are left in the exclusive control and possession of the State and parish governments.

Such was the situation at the inauguration of the last campaign. The old cabal of republicans were nominated for office or left in control of the campaign. No amelioration of past misrule could be expected to result from its success; none was promised.

The better men of the democratic party, inspired by the hope of success which

Such was the situation at the inauguration of the last campaign. The old cabal of republicans were nominated for office or left in control of the campaign. No amelioration of past misrule could be expected to result from its success; none was promised.

The better men of the democratic party, inspired by the hope of success which the misgovernment of their opponents afforded, by the high character for statesmanship of the nominees for President and Vice President, and by that aspiration for good government which all may cherish, took control and direction of the State convention, and afterward the direction of the canvass.

A State ticket was nominated, composed of men of the highest character. In accepting the nomination, Governor Nicholls counseled and advised peace, order, respect for and obedience to law. He gave the most solemn assurances to all the people that all their rights under the Constitution and all its amendments would be sacredly upbeld and maintained, and in this spirit the campaign was conducted.

These assurances were accepted as made in good faith from a man who commands the respect and confidence of the people in a degree which would enable him to enforce compliance. They were accepted as made in good faith, because, whatever else may have been said in crimination of the southern people, they have never been charged with the crime of falsehood. The representatives of those least inclined to accord to them any political virtues have been forced to accord them "the love and habit of truth, which becomes brave men." Colored men testified before your committee that in these assurances of Governor Nicholls was to be found the "first chance ever offered the colored people of Louisiana." Assurances thus given by Governor Nicholls, and the guarantees to be afforded by his success, all implicitly relied upon by men of both races, caused colored men to vote, for the first time, the democratic ticket. The number thus voting is believed to be correctly estimated at not less than 17,000

The republican

Headquarters Republican Party of Louisiana, Rooms Joint Committee on Canvassing and Registration, Mechanics' Institute, September 25, 1876.

Supervisor of Registration, parish of Assumption, Louisiana:

DEAR SIR: It is well known to this committee that, from examination of the census of 1875, the republican vote in your parish is 2,200, and the republican majority

is 900.

You are expected to register and vote the full strength of the republican party in your parish.

Your recognition by the next State administration will depend upon your doing your full duty in the premises, and you will not be held to have done your full duty unless the republican registration in your parish reaches 2,200, and the republican vote is at least 2,100.

vote is at least 2.100.

All local candidates and committees are directed to aid you to the utmost in obtaining the result, and every facility is and will be afforded you; but you must obtain the results called for herein without fail. Once obtained, your recognition will be ample and generous.

Very respectfully, your obedient servant,

D. J. M. A. JEWETT, Secretary.

Here the officers of the law, republicans in Louisiana, are advised, from the source to which they owe their positions, that the census shows number of votes (being, of course, number of colored voters) which must vote the republican ticket; that he, the officer, must see to it that the party gets the full vote and the required majority; that local candidates will help him (the officer) to get the votes and the majorities; that every facility will be afforded him, (the officer) but he must obtain the result called for by the census without fail; that his (the officer) but he secognition by next State administration (Packard's) depends upon his obtaining the demanded republican majorities; and that, "once obtained," his recognition will be "ample and generous."

The same fraudulent purpose disclosed in the claim of excessive colored population and voters, resulting from the fictitious census of 1875, was followed up in the registration. This will be made to appear by reference to the registration or a single parish. In the parish of Orleans, by the republican census of 1875, a white increase in the five years of less than four per cent. For the same time, 50, 436 colored population produces 57,647, an increase of fourteen per cent. With this 57,647 colored population, the republican officials were enabled to register 23,485 colored voters, one voter to every two persons in the city. Of the 23,485 registered, the republicans, with all the election machinery, which they did not scruple to use, could only vote 13,000, less by 10,000 than their colored registration, and thus it is shown that in this parish alone so much (10,000) of the fraudulent excess is

accounted for and established. An examination of the facts as to the country parishes discloses like frandulent estimates and registration.

The entire control and conduct of the election is by the election law saved to the State administration. The governor appoints a supervisor of registration for each parish outside of Orleans and one for each ward of that parish. For the last election many of them were appointed from policemen, custom-house employés, and men of the most disreputable character—so disreputable that even flovernor Kellogg discovned their appointments, and claimed that they were made by Lieu enant-Governor Antoine in Kellogg is absence. Officers of this character were sent from New Orleans to conduct and control the elections in the interior parishes, entering them for the first time as officers to conduct elections, with instructions to register and vote the full strength of the republican party, based upon a frandulent estimate of that strength and with a promise that when they have done this their reward should be "ample and generous."

These supervisors appoint the commissioners to hold the elections, and establish as many, and no more, polling-places than their party interests dictate.

The voter may deposit his ballot at any box in his parish on presentation of his certificate of registration not indorsed voted. All that is necessary to enable the enthusiastic republican in Louisiana to vote a number of times equal to the number of polls of his parish is that the supervisor sent from New Orleans, or, as in some cases, from Mississippi or Alabama, shall furnish an equal number of certificates of registration. There was much voting of this kind at the late election.

The United States marshal appointed and paid out of the United States Treasury eight hundred and forty deputy United States marshals for the parish it has cleated by the property of the parish of the first party and the property of the pace and in the interest of a fair election, if the marshal is to be elieved. The character o

he expended a nominal sum upon the work and appropriated the remainder to his own use.

Kenner, (colored.) another member of the returning board, was indicted for larceny, secured a dismissal of the prosecution after admission of his guilt, and was promptly made a member of the returning board.

Cassanave, (colored.) the fourth member of the board, is too ignorant to be well informed of the nature of the work he was required to do, but exhibited in his testimony such indifference to the obligations of an oath as warrants the conclusion that he would be a willing accomplice in any rascality by which he might profit. The services of a board so composed was invoked to undo the will off the people of Louisiana as declared at the ballot-box. Other committees of Congress have advised us how this board has changed the results of previous elections.

Re-enforced by the presence of a military force greatly angmented for the occasion, and encouraged by the presence of many gentlemen of the North, summoned by the President from his partisans to witness a "fair count," this unfair tribunal entered upon its nefarious work.

The election law of Louisiana provides "that five persons, to be selected from all political parties, shall constitute the board of returning officera," and that vacancies in the board shall be filled by the residue of its members. One vacancy existed, the four members being all republicans. At the inception of the canvas of votes, counsel representing candidates of the democratic party asked that this vacancy might be filled with a member of that party; which lawful and reasonable request was refused.

The wittersing committees a selected by the President heaving refused to committees of the count. was refused.

was refused.

The witnessing committee so selected by the President having refused to co-operate with a committee of their political opponents in an effort to have the vacancy in said board filled and in other efforts to see that the board of canvassers made a fair count of the vote actually cast, the United States marshal sent the following disparch to the administration United States Senator of Louisiana:

NEW ORLEANS, November 17, 1876.

Hon. J. R. WEST, Washington, D. C .:

Louisiana is safe. Our northern friends stand firmly by us. The returning board will hold its own.

With all the members, clerks, and employés of the board of the same political party, the refusal of the board to fill the vacancy, thereby denying to "all parties" a representation as the law provides, the conclusion is inevitable that the board of returning officers entered upon the canvass and compilation with a fraudulent purpose, which a political opponent on the board might detect.

The board entered upon its duty of canvassing and compiling the vote with a purpose to change the result of the election in Louisiana by throwing out a sufficient number of parishes and polls for that purpose. Previous to its first meeting, the following dispatch passed over the wires from the atorney of the board:

NEW ORLEANS, November 16, 1876.

NEW ORLEANS, November 16, 1876.

Hon. J. R. WEST, Washington, D. C.:

Returns to date leave us majority, throwing out five parishes.

During the session of the returning board witnesses exceeding the number of three hundred were summoned to New Orleans by the United States marshal, at a cost of \$10,800 for witness fees, paid by the United States. Witnesses testifying were generally unknown to the officers by whom the oath was administered to them, nor was their identity proven to such officers. The affidavits and other testimony were prepared by United States soldiers and Government employés detailed for the purpose by the direction of Ex-United States Marshal Packard, and republican capididate for governor. Testimony of this character thus obtained was made the alleged basis of the action of the returning board.

The board made rulings and changed them from time to time, denying the democratic counsel a reasonable opportunity to present their case. It increased the vote of the Hayes electors in Natchitoches Parish on the return of the United States supervisor, and rejected the return of the United States supervisor, and rejected the return of the United States supervisor of Grant Parish, which parish gave the Tilieu electors a majority. It sent for the boxes and increased the Hayes vote in Concordia Parish. It refused to count the vote or send for boxes in New Orleads, where the Tilden electors had majorities, and where republican supervisors excluded polls from their compiled statements. It refused to allow proof offered that what purported to be the compiled statements. It refused to allow proof offered that what purported to be the compiled statement and return from East Baton Ronge Parish was fabricated and fraudulent, and the president of the board reproved the counsel for making the offer of proof.

The rejection of the five parishes against which its judgment had been predetermined being insufficient to change the result in the State, it rendered judgment against parts of eighteen others with the same facility as against the five first determined upon for rejection. Of the parishes and polls rejected every one gave the Tildeu electors a majority. Of the parishes and polls rejected every one gave the Tildeu electors a majorities.

The members of the returning board, on oath, severally declared before your committee that they did not know the result for and counted in against protests, all gave Hayes electors majorities.

The members of the returns made to them, nor how the canvass and compilation made by them affected the result. And though they severally testified falsely to the contrary, the result of their pretended canvass and compilation was determined upon by them and made known to their political accomplices three days before their pretended compilation was completed.

On the 3d of December United States Ma

NEW ORLEANS, December 3, 1876.

Hon. J. R. WEST, Washington, D. C .:

Democratic boast entire fallacy. Have northern friends on way North. Answer elegram of this morning; also, have Senate anticipate House on sending committee to investigate outrages. Have seen Wells, who says: "Board will return Hayes are. Have no fear."

telegram of this morning; also, have Senate anticipate House on sending committee to investigate outrages. Have seen Wells, who says: "Board will return Hayes sure. Have no fear."

J. R. G. PITKIN.

Inspection of the records and returns of the election having been denied to your committee, it is not fully advised by what alteration or destruction of records and returns changes in the result of the election may have been effected. But it is shown, by the testimony of one of the election may have been effected. But it is shown, by the testimony of one of the election may have been effected. But it is shown, by the testimony of one of the election may have been effected. But it is shown, by the testimony of one of the election may have been effected. But it is shown, by the testimony of the others but two votes each; that other fraudulent changes of the votes affecting the result in said parish were made; and that, by the direction of the president of said board, some of the papers pertaining to returns of said parish were destroyed, others defaced by crasures and changed, and still others fabricated.

This testimony is confirmed by the fact that 178 votes were, in fact, given by the board to the Hayes electors, which they did not receive; by the action of two persons, a member of the legislature and a district attorney, surrendering the offices to which the board had elected them, by fictitions and fraudulent compilation; by the absence from the copy of returns from said parish, furnished your committee by said board, of certain papers pertaining thereto; by testimony establishing the fact that no such persons as Sam'l (his x) Collins and Tom (his x) Brown, upon whose afflavits two polls of said parish, as alleged to have been rejected, reside in said parish, as alleged in such afflavits two persons, and afflavits twe have been rejected, reside in said parish, as alleged in such a

nave we discovered a new mode or carrying elections and discovering the popular will.

In the consideration of this question of intimidation of voters in Louisiana your committee apply to this unfortunate State the same principles which would be recognized in any other State. If in any State which has been free from the evils with which Louisiana has been afflicted such a case was presented as that of East Feliciana, we would not for an instant entertain the assumption that the body of the voters therein should be deprived of their voice under any allegation of intimidation when it was clear that the party to be benefited by the suppression of the vote had by systematic organization, counsel to the intelligent, and instruction to the ignorant, kept the minority from the polls with fraudulent intent.

It is not denied that upon proper proof of the procurement of a majority by intimidation, the interests of society and the State, as well as the decisions of the courts, require that such election shall be setaside or that the party or person guilty of the act should not profit by the fraud. But no justly-constituted tribunal will admit of mere vague allegations in setting forth a charge of intimidation as the controlling canse in a voter's absence from the polls. Even the law in Louisiana requires that intimidation, to be ground for rejecting votes, shall be officially reported in due season, &c.

Where universal suffrage prevails, and is to prevail, the power to vote is coupled with the duty of voting. In the exercise of this high privilege each voter will gnard his right jealously, assert it fearlessly, and not surrender it except when compelled by irresistible force.

But mere apprehension of danger, fear of personal safety, or timidity will not excuse a freeman from the duty of exercising his prerogative, nor furnish cause for setting aside an election to be carried by such default. The measure of force or intimidation, which, by the rules in the earlier cases, would justify absence from the polls as a ground for contest, was defined in the contested election between the delegates from Michigan Territory. The report of the House committee says: "The committee will not inquire whether persons have been prevented from voting by fear, nor will they examine into cases which have prevented a candidate from receiving the highest number of votes." (Biddle and Richards ss. Wing, Contested Elections from 1789 to 1824, pags 504.) Again: "To invalidate an election for intimidation at the polls, there must be such a display of force as would intimidate men of ordinary firmness." (Harrison rs. Davis, 2 Congressional Election Cases, page 341; Bruce vs. Loan, ibid., 482.)

There is no pretense that there was in this parish of East Feliciana, or any other, any display of force at the polls. The fact that there was no riot or bloodshed in any locality, no force, intimidation, or violence in any parish in Louisiana where both parties voted, gives strong presumption that there was no valid excuse for the republican voters in absenting themselves from the polls, but that they were purposely kept away to subserve partisan ends. This act being their own, and the voters not being deterred from voting by actual apprehension, but by frandulent collusion and failure on their own part to assert their right to vote, they should not profit by it. The vote of East Feliciana as polled should stand as a rebuke to the subterfuge by

report the ground of intimidation, under color of laws enacted for such a contingency.

Your committee conceive that the means by which the large number of colored votes were secured for the democratic ticket at the late election were not such as can be rightfully or legally characterized as intimidation. They were, when stripped of the false presentation made of them by the knavery of those who are to profit by the success of their scheme, no more than such as are resorted to in all the cities and States of this Union at every election in which large public interest is elicited.

stripped of the false presentation made of them by the knavery of those who are to profit by the success of their scheme, no more than such as are resorted to in all the cities and States of this Union at every election in which large public interest is elicited.

The very first element of the organization of voters into parties consists in the assertion of each that it will better promote the security and prosperity of the people than any other. Few men form their political alliances upon mere above the people than any other. Few men form their political alliances upon mere above the people, especially the more dependent, act with one party or the other as they think its principles or policy will best subserve their welfare. In the wealthiest and most law-abiding communities in the older States it is a well-known fact that capital has a preponderating influence in directing the political sentiment. Not that voters are bought outright, but that the employer is always more or less dictatorial toward the employed, and, when the issue of a pending election is vital to their interests, they leave untried no element of persuasion short of force which will secure the votes of employés.

Intimidations, from a gentle hint to a positive announcement that no one voting against the ticket favored by the employer will be retained in his service, are too often used to control votes. The local political influence of contractors for public works, mill-owners, mining proprietors, and all men employing large numbers of voters, is estimated by the number of men employed by them, extending even to the Government work-shops, navy-yards, &c.

With the alternative of a discharge from s-rvice, the laborer with a family to support finds it to his interest to cast his vote for the party sustained by his employer, and if this were regarded as such intimidation as would annul an election, but few would ever stand the test of regularity—not one the test of the Louisiana returning beard, unless it gave a republican majority.

These are evi

trary, there is no people more inclined to the cultivation of possess and for profit.

The increase of white population brought with it corresponding increase in the number of blacks, who, prior to the war, were either brought from the older slave States by those who held them to service, or were taken from the border States, where slave labor had become less profitable. Some of the blacks thus imported were criminals, who, in lieu of punishment for crimes less than murder, were sold in the far South. Hence it should create no surprise that there have been many crimes and excesses committed on the part of the blacks.

When the late war began the population of Louisiana was nearly equally divided

between the races. The white race had absolute control of the black, and were in

between the races. The white race had absolute control of the black, and were in turn looked to for protection and support. The sudden emancipation of so large an element, long inured to slavery, and suprepared for rational freedom, operated with severity not only upon their impoverished former owners, to whom they had been both labor and capital, but with great hardship upon the blacks themselves. Accustomed to have their wants supplied by others, they were suddenly thrown upon their own resources, and, without education or capital, they became at once the prey of unscripulous adventurers and the victims of all the ills incident to so great a revolution in their condition. Their former owner retained generally the landed estate; but without capital he was not prepared at the close of the war to plant profitably.

With the enancipation and enfranchisement of the colored man, and the disfranchisement of his former master, a field was presented for outrage under the form of law, which was soon occupied by men who sought the State only for the purpose of temporary plunder. These were aided in some instances by southern men of influence, who were tempted to dishonor by the greed of wealth. The blacks, by adroit arguments addressed to their passions or their fears, were led to ounfile in the sincerity of their new friends; were taught to avoid and sever relations with their former masters, and led to hope and bolieve that under the guidance of these disinterested counselors they would soon become landed proprietors without labor, receive educations without study, and be admitted into social as well as civil and political equality with the whites. For some years they blindly followed the dictation of their guides. They voted en massa as directed, but saw in the progress of time that while their leaders were amassing wealth and rioting in illootton gains, they were keeping pace in poverty with their former masters. To these in all matters of real concern for their welfare they could alone look for bearing the proper t

any organized acuton for which the democratic party in Louisiana can be ned responsible.

Men accustomed to the regulations of a peaceful and well-ordered community must not apply here tests which would govern in their own locality; and, especially in weighing the alleged evidences of lawlessness as connected with the election, must bear in mind the lamentably unsettled condition of the State from long maladmin-

weighing the alleged evidences of lawlessness as connected with the election, must bear in mind the lamentably unsettled condition of the State from long maladministration of its laws.

Such was the laxity of the law's administration that throughout the State judicial tribunals became a mockery. The violation of law incurred no penalty; the law gave no guarantee for the security of life or property. Murderers and thieves were in large numbers permitted to go unpunished. In many instances where the punishment was decreed the pardon of the executive turned loose the criminals. No effort seems to have been made to suppress disorders. Upon these the men in power chiefly depended for their continuance in office. Testimony heard by the committee establishes the fact that prominent republicans considered the killing of a black man in Louisiana as equivalent to fifty thousand dollars of a campaign fund for the party; hence the absence of effort to secure peace and good government upon the part of a partisan judiciary and a foreign executive, whose induction into office was described as the embodiment of the most glaring political frauds. Every homicide in which a colored man chanced to be the victim was seized upon with avidity, telegraphed over the North, and reckoned a substantial addition to their party strength.

In such a condition of affairs the natural and inevitable result was that the citizens, especially property-holders, felt the necessity of organizing for mutual protection. Hence the vigilance committees, regulators, and other like organizations that have at different portions of the State. That these organizations had ever any political complexion was due to the fact that whenever any criminal became the object of punishment by them he would naturally seek the protection of Louisiana republicans, and claim to be the victim of political persecution.

To these organizations alone could the citizen look for protection to person or

any criminal became the object of punishment by them he would naturally seek the protection of Louisiana republicans, and claim to be the victim of political persecution.

To these organizations alone could the citizen look for protection to person or property, or the suppression of crime. It is not to be denied that such organizations, springing from dire necessity and existing outside of law, too often aggravated the evils they were designed to correct. There are, doubtless, many instances in which their conduct cannot be defended; yet the testimony affords convincing proof of the patience, endurance, and heroism of this people. Denied, practically, all voice in the conduct of their own affairs; robbed of even the semblance of self-government; subjected for a time to the harsh usage of a military ruler, and that domination only exchanged for the more humiliating array of the wretched adventurer who came among them to feed upon their misfortune, they have borne the most oppressive rates of taxation and the most thorough practice of official peculation and plunder. They have been forced to witness the subordination of intelligence to ignorance, of virtue to vice, and of fair dealing to frand. All this they have seen done under the forms and in the name of the law. Shall we wonder that a proud people, thus goaded and outraged, should become thoroughly aroused to the necessity of freeing themselves from the grasp of those who have been upheld in oppressing by their exactions and cursing by their presence the people of Louisiana.

It does not appear from the testimony that the armed organization was inteaded for any notitical purpose or their membership confined to any notitical purpose or their membership confined to any notitical purpose or their membership confined to any notitical party.

It does not appear from the testimony that the armed organization was intended for any political purpose, or their membership confined to any political party.

Property-holders and good citizens generally furnished the members. Gen. J. R. Brooke, one of the principal republican witnesses, testified that the "regulators" included nearly the whole white population, and all of the most reputable. Not only were republicans often members of these bands, but in many instances the captains or chief officers. We have, for illustration, the case of Furnace Martin, member of the Packard legislature, a republican declared elected by the returning board against the returns showing the election of his opponent by a majority of several hundred. The testimony taken in the presence of this person, and not contradicted by him, established the fact that he was the chief officer of the regulators not only of his parish but of a district of country embracing three parishes. Nor were the acts of violence heralded to the country confined to any political or ganization, as shown in the case of Pierce C. Butler, a leading republican in the parish of East Feliciana, who is proven to have shot twenty-three men, some of them fatally.

Finally, we submit that if violence and intimidation are to be held to be grounds for excluding votes in Louisiana, the republican party should be held to an accountability for the instances without number, as developed by testimony, in which it was practiced by them against the inoffensive colored men, whose only crime was unwillingness to submit to the dictation of their leaders. Not only were democratic colored clubs broken up and forcibly dispersed, but social proscription was brought to bear, marital relations were sacrificed, the rights of baptism and communion denied, colored men corralled in cattle-pens by the hundred, marched to the polls by armed guards, and forced to vote the open republican ticket; churches burned because the pastors refused to preach Louisiana republicanism from their pulpits; personal chastisement inflicted until democracy was adjured by the unfortunate victims, and murders out ight perpetrated for no other reason than the making of

reason than the making of democratic speeches. That exceptional acts of violence may be found chargeable to the democratic organization we shall not undertake to party is not at least equally guilty, while for that condition of asciety which rendered resort to such means possible we submit that that organization is wholly responsible.

In the late canvass the policies pursued by the two parties were essentially different. The republicans do not appear to have made any strenous efforts to believed on the part of all of them because of their love of order, but for productil reasons also, knowing that any violence or disturbance would be selzed upon as a pretext for reversing the action of the people at the polis, did connect they only hope to succeed. The interests of the republican party lay in the directive of the production of the people at the polis, did connect they only hope to succeed. The interests of the republican party lay in the directive of the production of the people at the polis, did connect to the means to be employed.

The law in pursuance of which the board of returning officers assumed to change the result of the election for presidential electors, as shown by the returns made to and received by said board, is found in Laws of Louisiana, act No. 98 of "Sice. 2. Re of further menced. de., This five persons, to be elected by the Senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the returns of all elections in the State, and of the election and the returns of the election of the return of the election of the return of the election of the return of the elect

in which, during the time of registration or revision of registration, or on any day of ance, bribery or corrupt influences, at any place within said parish, or at or near any oll or voting place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery or corrupt influences and the commissioners of election, if such violence, ward, city, or town, it shall be the day of the commissioners of election, if such violence, trainidation and supervision of registration, to make in duplicate, and under oath, a clear and one of the parish, if they occur during the time of registration or revision of registration, to make in duplicate, and under oath, a clear and riot, tumult, acts of violence, inclimation and disturbance, bribery or corrupt influences, in preventing a fair, free, peaceable, and full registration or revision of registration, to make in duplicate, and under oath by three respectively of the parish, it was a supervision of registration of the parish. We have an extraction of the parish in the parish of the parish in the land of the parish in the control of the parish of

By section 26 it is necessary that such "statement" should specify the time when the incident complained of in the statement transpired, whether on the day of election or on a day preceding the election, and if so, on what day; that it should be a clear and specify statement of "all the facts relating" to the acts complained of, and specify "the number of qualified electors deterred" by such transaction from registering or voting. It is also required that this statement should be "corroborated under oath by three respectable witnesses, qualified electors of the parish," and that a copy of said statement should be so annexed to the "returns of elections by paste, wax, or some adhesive substance, that the same can be kept together." If any one of the required specifications is omitted from the statement, it is the emission of a material fact upon which jurisdiction depends, and without which jurisdiction cannot be exercised; and any order, judgment, mandate, or counting out made under such circumstances would be a nullity. In such case it is not necessary to go behind the record and impeach it by outside facts. The record impeaches itself on its face and proclaims its own invalidity. Neither would we in such a case undertake to examine into the facts upon which judgment had been founded to determine whether that judgment was correct or erroneous, because we would be arrested at the first step of our progress by the evidence furnished on the face of the record, showing that it was no record under the law, and that the judgment was no judgment, because rendered without jurisdiction in the premises.

In the case of the board of returning officers there were no statements or protests at all, as required by said sections 3, 26, and 43 of said act, sent up to the returning board from the various parishes and polls. The board therefore had no right under the laws of Louisiana to throw out or count out the polls and votes they have thrown out and counted out, and their action in that behalf is without suthority of law, a

in law, even had any of the electors on said ticket been elected by the people, as they were not.

The filling of such vacancies was without authority of law, and conferred no right upon Brewster or Levissee to vote for President and Vice President of the United States.

Your committee made only such investigation or inquiry into the election and canvass of votes for State officers in Louisiana as was incidental to the inquiry as to the general fairness of the election in said State and the result thereof.

The testimony taken discloses the fact that, by both the votes actually cast and the votes as forwarded to and received by the board of returning officers, Nicholls was elected governor of Louisiana by a majority approximating majorities received by the Tilden electors; and, freed from the conditions growing out of the presidential contest, he would be accepted as the duly-elected governor of Louisiana by the almost universal acclaim of her people.

Your committee therefore report the following resolution, and recommend its adoption:

Your committee therefore report the following resolution, and recommend the adoption:

Resolved, That the democratic electors received a majority of the votes actually and legally cast at the recent election in Louisiana; that the pretended canvass and compilation of the vote for electors by the board of returning officers was without authority of law, fraudulent, and void; and that the vote of that State cannot be counted for Messrs. Hayes and Wheeler without the confirmation and approval of the illegal and fraudulent action of said returning board.

WM. R. MORRISON, Chairman.

G. A. JENKS.

JOHN A. MCMAHON.

JO. C. S. BLACKBURN.

J. D. NEW.

E. R. MEADE.

JNO. F. HOUSE.

J. PHELPS.

MILES ROSS.

MILES ROSS. GEORGE M. BEEBE.

## MAJORITY REPORTS OF SUBCOMMITTEES.

To the Hon. WILLAM R. Morrison,

Ohoirman of the Special Committee appointed under a resolution of the Heuse
of Representatives to investigate the questions connected with the recent election
in the State of Louisiana:

The undersigned, a subcommittee to whom was referred the consideration of the parishes of Iberia, La Fayette, La Fourche, Livingston, Plaquemines, Saint Landry, and Tangipahoa, submit the following report, together with the accompanying testimony applicable to the same, being all the testimony taken with reference to said parishes.

JO. C. S. BLACKBURN, Chairman of the Subcommittee, J. PHELPS.

WASHINGTON, January 23, 1877.

## PARISH OF IBERIA.

In this parish, poll 4 was excluded by the returning board without protest, and upon a mere memorandum by the supervisor, a republican, made upon his returns to the board that at this poll the commissioners of election did not indorse on the registration certificate of each man as he voted the words and figures "Voted November 7, 1876." The memorandum was not sworn to by him, nor corroborated by the eath of any citizen. This is much the strongest democratic poll in the parish, and the only one excluded, and at the late election 333 votes were cast at it, of which only 11 were by republicans. The misconduct or neglect of the commissioners was noticed and complained of between nine and ten o'clock in the morning, at which time more than 100 persons had probably voted, and they then commenced and afterward continued to make the proper indorsement on the certificates, but all the votes were excluded. The colored republicans living in the vicinity of that poll were instructed before the election to vote at other polls, and nearly all complied. No question was made but that the voting was fair and the count accurate, and no claim that the ballots found in the box did not truly represent and honestly express the free opinions and choice of the electors.

The provision requiring the commissioners of election at each poll to indorse, in the manner above mentioned, the certificate of each person voting, is merely directory, and designed as one of several checks prescribed by law upon frandulent voting. Another, and equally effectual, check is the taking and prescrving a list of the names of all the persons who vote, the aggregate of which should correspond in number with the ballots in the box. It is presumed the law in this respect was complied with, and it will hardly be contended that, under the ctroumstances, the returning board could properly deprive a large number of electors of their votes for no neglect or fault of their own, and for a cause arising entirely from the wrongful act or omission of commissioners appointed by the supervisor.

There was no violence or intimidation practiced by democrats during the canvass, registration, or election, but there was whipping and other violence committed on colored democrats by colored republicans. Some colored men voted the democratic ticket, and many others who would have freely done so were prevented. About two years since a colored man was murdered for making democratic speeches, and about eighteen months since a colored minister's church was burned because he refused to preach republicanism.

The registration in this parish was greatly swollen by the addition of fraudulent names, and the vote at the late election was considerably in excess of the total registration of 1874. The parish has been heretofore generally democratic by a small majority, and if poll 4 had been counted the republican majority, as promulgated by the returning board, would still have been nearly 200; a result which cannot be satisfactorily accounted for upon existing facts, except upon the theory that a considerable number of votes was improperly cast under an illegal registration.

PARISH OF LA FAYETTE.

In this parish, polls 1 and 2 were not included by the supervisor in his statement

satisfactorily accounted for upon existing facts, except upon the theory that a considerable number of votes was improperly cast under an illegal registration.

PARISH OF LA FATETEE.

In this parish, pells 1 and 2 were not included by the supervisor in his statement to the returning board. Pell 3 was returned by him, but excluded by the board, on the alleged ground of intimidation. But seven republicans voted at those three polls, and the democratic majority cast at them was 511. The small number of republican votes is explained by the fact that the republican voters who usually attended those polls are nearly all colored, and were, for some unexplained reason, advised by their party managers to go to other polls.

The supervisor of the parish is J. A. Veazey, a republican. He is a creele, and understands the Euglish language imperfectly. The commissioners of election whom he appointed at those polls were all democrats, because he could find no republicans in the wards in which they were located competent to discharge the duties. He was himself unable to properly compile and make up his returns, and procured a very intelligent and respectable gentleman, by the name of Clegg, an attorney and democrat, to do it for him. In this compilation he ordered all the polls in the parish to be included, and stated to Mr. Clegg at the time that he knew of no fraud, intimidation, or violence in the parish, and that he believed the registration and election had been free, fair, full, and peaceable. He then intended to deliver that compilation to the returning board without protest or objection, but was subsequently advised and induced, by leading men in his party, to suppressit and make another, omitting polls I and 2, and to protest against their allowance on the ground of intimidation. Another compilation was prepared for him by the supervisor of a neighboring parish, which did not contain those polls, and which, with his protest and several accompanying the report of Senator Siterman and had never declared that he bad; tha

## PARISH OF LA FOURCHE.

In this parish, polls 2 and 10 were not compiled by the supervisor, and are not included in his statement to the returning board, and consequently were not counted. No box for poll 1 was furnished by the sheriff, and therefore the vote at poll 2 was largely increased. Two of the three commissioners were colored republicans, the other a democrat. The democratic commissioner was unfamiliar with the English language, and one of the republicans could neither read nor write, consequently all the writing required to carry on the election at that poll devolved on one commissioner. He worked faithfully, with such assistance as the others could render, but was unable to count the votes, make up the returns, and deliver them to the supervisor at the parish seat, twenty-five miles distant, within twenty-four hours after the closing of the poll. The commissioners arrived at the count-house about nine o'clock in the evening, but could not find the supervisor until the next morning, when they gave him the returns at an early hour. He returning board because the commissioners had not delivered them in season.

The law, in its requirement that the commissioners of election for each poll shall deliver the returns to the parish supervisor within twenty-four hours after the closing of the poll at 6 o'clock in the evening of the day of the election, is simply declaratory. This is sometimes a physical impossibility, because, in some instances, the polling places are nearly fifty miles distant from the parish seat, to which there is no public conveyance. In many other cases the returns were not delivered in time, and the returning board, with knowledge of the fact, allowed the votes. A supervisor has no right, under the law, to omit in his compilation any polls returned to him, and if he does os his conduct is arbitrary and unlawful. The number of votes cast at this poll was 242, and the majority for the democratic ticket was 38.

At poll 10 the commissioners were all republicans, but were unaccustomed to

was 38.

At poll 10 the commissioners were all republicans, but were unaccustomed to clerical work, and allowed one O'Sullivan, a democratic United States supervisor, to conduct the election. The irregularities at the poll were so many and great as to vitiate the election. No return of the poll was made to the supervisor, and he did right in omitting it in his compilation. The democratic majority was 127. The loss of the poll is chargeable to the inefficiency and incompetency of the commissioners, and the supervisor is justly censurable for appointing such palpably unqualified officials to discharge an important public duty.

The supervisor of the parish was M. A. Ledet, a republican, who was appointed to succeed A. Pavella, also a republican, who was requested by the republican parish committee to resign after he had partially completed the registration, for the alleged reason that they suspected he would be untrue to the interests of the party. After his appointment Ledet declared he would so register the parish as to carry it for the republicans, regardless of what the real vote should be, and that the consideration of his doing it was the expectation of the appointment of parish tax collector. He first located fifteen of the twenty-two polls at negro quarters, off the public road, so as to give an advantage to the colored voters, and changed them subsequently only at the urgent remonstrance of the democratic committee, and one poll casting 86 votes, all by colored republicans, was not, in fact, changed. At two-thirds of the polls in the parish the commissioners were all republicans, and many of them members of the republican parish and campaign committees; all active partisans and some of them candidates. In two instances, prominent democrats, who employed a large number of colored laborers, were appointed commissioners at polls ifteen and twenty-five miles from their residences, though other polls were located near where they resided; and, although he nominally appointed one democratic commissioner out of three at each poll, he did it in most instances in such a manner as to insure their declination to serve, and the substitution of republicans in their places.

In making up the registration many names of persons who had become non-residents, others of those who had died, and still others of minors and convicts, were retained or placed upon the list, by which it was fraudulently cularged. The supervisor was requested by the democratic committee to erase those names, and refused, and 74 republican votes were illegally cast on them, and twenty-two other republicans voted twice under such fraudulent registration. His character for

### PARISH OF LIVINGSTON.

In this parish polls 2, 3, 4, and 8, all unanimously democratic on the national and State tickets, and giving in the aggregate 378 votes, were excluded by the returning board, with no protest from the supervisor, who is a republican, and solely on testimony, alleging fraud and intimidation, taken by the procurement of James M. Davidson some time after the supervisor had made his return. Davidson made the principal affidavit, which was filled with false and perjured statements, and his reputation for veracity was thoroughly impeached. Those who were induced to become witnesses were summoned to New Orleans, and exparts affidavits were first given in the office of the collector and a United States commissioner, in the custom-house building, which were written out by the clerks and employes in those offices. Some of them were re-examined several days afterward at the same rooms, upon direct and cross interrogatories, and their answers written down by the same person or class of persons who wrote their affidavits, which appear on pages 483 to 510, inclusive, in the document accompanying the report to the President by Senator Sherman and others. Messrs. Simms, Rogers, Bailey, and McIntyre, who, next to Davidson, were the persons who made the principal affidavits, were examined by the committee, and stated that their affidavits and testimony, as published in that document, were materially different from what was read, or pretended to be read, to them, and was a material misrepresentation of the facts and of their testimony as they gave it; and the declaration of Hoover, another affinat, was proved to the same effect. In addition to this, the specific material statements contained in all the affidavits were generally distinctly disproved or substantially explained away, and many of them by the testimony of the supervisor himself.

There had been considerable violence and disturbance in the parish for several months preceding the election, but it was wholly disconnected from politics, and indiscriminately directed again

sometimes even in hanging, though such extreme cases were few and exceptional, unless for very flagrant cause.

There were also sundry other acts of unjustifiable mischief by young men and boys, which could be traced to no particular cause; one instance of which was firing several shots in the evening against a colored church while a prayer-meeting was being held, one of which shots passed through the wall of the building and seriously disturbed the congregation.

While this violence does not seem to have had any political origin or object, it tended to and did produce a feeling of uneasiness and alarm in the minds of some of the colored people, who were apprehensive of trouble, with no intelligent understanding how or why it was to happen, and it doubtless deterred some of them from voting. There was, in fact, during the canvass, with the exception of a few anonymous notices to republicans not to hold political meetings, no fraud, violence, or intimidation of a political character; and the registration and election were substantially free, fair, full, and peaceable; and the votes cast at those polls were excluded by means of perjured and perverted-testimony used before the returning board.

excluded by means of perjured and perverted-testimony used before the returning board.

The votes at all the excluded polls were properly counted, voting lists, tally-sheets, and duplicates properly made, registration certificates properly indorsed at time of voting, commissioners duly appointed and sworn, returns duly attested, boxes legally scaled and delivered in time to the clerk of the court, with the exception that at poll 8, which was held in the open air, the box was removed at the close of the voting, on account of the cold and wind, and the difficulty of keeping a light burning, to the nearest comfortable and convenient shelter, which was some two hundred and fifty yards distant, where the votes were accurately counted. The supervisor had no office at the parish seat, as the law requires, and was not there in person, and had no clerk there to receive the returns; and the commissioners from all the polls in the parish were for that reason unable to deliver the returns until the evening of the second day after the election; but the supervisor then received them without protest or objection, and they were not excluded by the returning board for any informality.

At some of the polls a considerable number of colored men freely voted the democratic ticket.

PARISH OF PLAQUEMINES.

## PARISH OF PLAQUEMINES.

The supervisor of this parish was R. P. Edgeworth, a republican. He was not a resident of the parish, and was therefore illegally appointed. O'Donnell, one of his clerks, was also a non-resident, and the republican candidate for parish clerk, and declared elected, but is ineligible for the same reason. Edgeworth is a man of very bad character, and has been indicted for forgery, and was, at a former election, charged with fraudulent practices. By his revision of the parish registration the colored voters number 2,446, an addition to the colored registration of the year 1874 of nearly 600. There has been some increase of the colored laboring population by the enlarged developmen of the sugar-planting interest, but nothing to justify so large an increase in the registration, admitting that of 1874 to have been correct, which was not the case. In the revision of 1872 and the new registration of 1874 the number of colored voters enrolled was greatly in excess of the trae number, and several hundred fraudulent certificates were issued and voted on in the interest of the republican party, a large part of which were outstanding and in the possession of a republican candidate for a parish office in the late election, and many of these fraudulent names were retained by Edgeworth on the register. The parish

is one hundred miles in length, and during the period of registration the supervisor spent most of his time in the north part, where the colored voters mostly reside, and gave the white voters, who reside mainly in the south part, unequal and insufficient facilities to ascertain whether they were enrolled, and to obtain new certificates if necessary, and many were in that way deprived of the opportunity

insincent iscilities to accessing, and many were in that way deprived of the opportunity to vote.

The location of some polling places was changed without notice, after being established by him, and of the establishment and location of the Rockville and Oakville polls no notice was given.

At a poll in ward 3 all the commissioners were republicans and negroes, and at the close of the polls the box was removed on account of the cold, and from the fact that no fire could be made where it was held, to a building owned by the father of the republican candidate for clerk of the court, and the votes were there counted. Three hundred and ninety-eight votes were found in the box, of which 377 were for the republican ticket. From 100 to 130 of the republican tickets lay in the bottom of the box, clean and smooth, and neatly folded, all of which had been frandulently deposited, and the number of votes counted was many more than that marked upon the printed parish list. No voting list was kept, and there was nothing by which the accuracy of the count could be verified. The return was written by D. A. Thibaut, republican candidate for clerk of the court, and not by the commissioners.

At the Rockville poll all the commissioners were republicans and negroes, and

written by D. A. Thibaut, republican candidate for clerk of the court, and not by the commissioners.

At the Rockville poll all the commissioners were republicans and negroes, and no voting list was kept. One hundred and fourteen votes were counted from the box, of which 108 were for the republican ticket. There were not more than 30 votes legally cast at that poll.

At a poll in ward 9 no voting list was made and kept, and the box was removed before counting of the votes. Two hundred and twenty-seven votes were cast, of which 180 were for the republican ticket and 47 for the democratic. Seven republican votes were illegally counted, which had been cast by persons whose names were not on the register.

There were several other polls at which the commissioners were all republicans, and some of the commissioners in the parish were candidates.

The supervisor, with knowledge of the foregoing informalities, included the returns from all the before-mentioned polls in bis statement to the returning board, without protest and without communicating to the board notice of such informalities.

A protest by other persons was subsequently, and within legal time, as interpreted by the returning board in other cases favorable to the republican party, duly filed with the board, specifying the foregoing and other frauds, irregularities, and intimidation, which were substantiated by the sworn statements of eighteen respectable citizens of the parish, several of whom are republicans. The board disregarded the protest and evidence, and allowed all the votes returned by the supervisor. In many cases in other parishes they rejected democratic polls for similar, and sometimes for much less essential, informalities.

Some colored men in the parish voted the democratic ticket, and many others wished and intended to do so, but were deterred by fear. There were several colored republican constables and deputy United States marshals wearing the badges of official authority at every polling place in the parish, and particularly at those w

### PARISH OF SAINT LANDRY.

where the most of the colored votes were cast.

PARISH OF SAINT LANDRY.

In this parish, poll 9 was excluded by the returning board upon two ex parte afflicavits charging intimidation. There was a democratic majority of 52 votes at that poll, which is about the majority declared by the returning board for Nash, the republican candidate for Congress in the district of which the parish of Saint Landry forms a part. The evidence is uncontradicted and conclusive that there was no intimidation or violence practiced by democrats upon republicans in that parish at or before the election. The registration and election were entirely free, full, fair, and peaceable, and the affidavits upon which the poll was excluded were absolutely unwarranted and false.

There was intimidation and violence practiced at the Opelousas poll, the residence of Thomas C. Anderson, a member of the returning board, during the canvass, by colored republicans, upon a democratic colored canvasser, who was assaulted, his life threatened, and he was driven from the parish for addressing democratic meetings. At that poll, on the day of election, over one hundred colored men were brought into town in a body by republican partisans and candidates, shut up in a cattle-pen belonging to one of those candidates, and marched to the poll in squads by a guard of white republicans, and made to vote the full republican ticket. Many of them, if left to their free choice and action, would have voted a part of the local democratic ticket, and a few of them the democratic national and State tickets.

There were decided irregularities and informalities at these strong republican polls in the parish. At poll No. 10 no list of voters was taken; at No. 11 the commissioners of election were not sworn until after the voting was finished; and at No. 22 the commissioners were arrested without cause, and the voting for several hours suspended. It also appeared that the boxes from none of the polls in the parish were returned by the commissioners to the clerk of the court w

## PARISH OF TANGIPAHOA.

In this parish, poll 3 was excluded by the returning board, and poll 10 was not compiled by the supervisor. At poll 3, 76 votes were cast, all for the democratic ticket; and at poll 10, 59 votes were east, of which 43 were for the democratic and 16 for the republican ticket. These polls appear to have been excluded upon three affidavits, alleging intimidation, accompanying a protest by the supervisor, who is a republican. Two of the affidavits are entirely ex parte, and the other substantially so.

None of the witnesses made answer to the material cross-interrogatories which were filed, or if they did, their answers were not written down and made part of their testimony; or if they were, they are suppressed or omitted in the document accompanying the report of Senator Sherman and his associates to the President, in which, on pages 551 to 554, inclusive, the testimony before the returning board with reference to this parish is found. Conrad Simpson, one of the witnesses, is thoroughly discredited before this committee. Sandy Banks, another, is strongly contradicted; and Oran M. Kincher, the other, was summoned before the committee, and did not obey the summons; and he was also substantially contradicted.

Some cases of whipping and other violence had occurred in the parish prior to the election, and it is possible some of it may have been for political intimidation; but those acts were generally, if not always, committed by a vigilance association organized for the purpose of ridding the parish of criminals and outlaws, and with no political object.

The canvass, registration, and election were substantially free fair, foll, and peaceable, with no intimidation or violence which essentially interfered with the freedom or safety of the electors, or that would reasonably justify the exclusion of any poll.

## RECAPITULATION.

In no case in which a protest was filed by the supervisor in any of the several parishes included in this report was he law with reference to the filing of protests complied with, and none of them were regularly and legally before the board under the provisions of section 26 of the election law of the State of Louisiana regulating that subject.

The member of the subcommittee representing the minority summoned — itnesses to rebut the testimony offered by the majority, but introduced only — . Of those introduced by him who had given affidavits used before the returning oard, every one positively testified that their affidavits, as published in the Sher-

man report, alleging intimidation, materially misstated their actual test	imon	y.
Parish of Iberia: Poll 4 excluded by returning board; democratic majority		322
Parish of La Fayette: Polls 1 and 2 not compiled by the supervisor; poll 3 compiled, but excludy returning board; democratic majority at those polls		511
Parish of La Fourche: Poll 2 not compiled by supervisor; democratic majority Poll 10 not returned by commissioners; democratic majority Fraudulent republican votes.	38 127 96	001
Parish of Livingston:		261
Polls 2, 3, 4, and 8 excluded by returning board; democratic majority in Parish of Plaquemines:	all.	378
Rockville poll; fraudulent republican votes	78 115 7	
	-	200
Parish of Saint Landry: Poll 9 excluded by returning board; democratic majority Parish of Tangipahoa:		82
Poll 10 not compiled by supervisor; democratic majority		*
Poll 3 excluded by returning board; democratic majority	76	103
Total Democratic votes withheld by supervisors and excluded by returning board. Fraudulent republican votes.	1,561	1, 857
Total		1, 857

I do not concur in the above report, either as to matters of fact alleged to have been proven, or as to conclusions. A proper and fair report cannot be made without careful examination of the testimony, which is now in the hands of the printer and not accessible. I shall, therefore, reserve the right to embody my views of the law and the testimony in the general report to be filed by the committee.

S. A. HURLBUT.

Report to the whole committee by the subcommittee to which was referred the investiga-tion of the Louisiana election in the fifth congressional district of that State, com-prising, among others, the parishes of Ouachita, Morehouse, Richland.

To Hon. WILLIAM R. MORRISON, Chairman Louisiana Committee:

Your subcommittee, charged with the conduct of the investigation of the election of electors of President and Vice-President of the United States in the fifth congressional district of Louisiana, comprising the parishes of Onachita, Morehouse, Richland, Claiborne, Caldwell, Franklin, Concordia, Tensas, Madison, Carroll, Union, Catahoula, Lincoln, and Jackson, beg leave, respectfully, to report as follows:

Union, Catahoula, Lincoln, and Jackson, beg leave, respectfully, to report as follows:

The investigation was commenced on the 22d day of December. About 157 witnesses were examined, a correct report of whose testimony is herewith returned. The examination of witnesses was confined to the following parishes: Ouachita, Morehouse, Richland, Caldwell, and Calaborne, because of the inability of your subcommittee to procure the attendance of witnesses during the short session held at Monroe. The parish of Concordia was withdrawn from their jurisdiction by subsequent order from the Hon. WM. R. Morrison, chairman of the committee.

Your subcommittee found that in no instance had the supervisor of registration failed to count, in his consolidated statement, the returns sent him by the commissioners of election, and whatever losses either party may have sustained in the final canvass and compilation of the vote for electors are due solely to the action of the returning board. The following polls were rejected and not counted in that compilation by the returning board in the parishes of Ouachita, Morehouse, Richland, Claiborne, Caldwell, Franklin, and Catahoula:

Ouachita: Polls 1, 3, 8, 9, 10, 11, and 12, being all the boxes excepting four established at Monroe, the county seat. Morehouse: Polls 1, 2, 3, 5, 6, 7, and 8. Richland: Polls 1, 3, 4, and 5. Claiborne: Poll 3. Caldwell: Poll 11. Franklin: Poll 2. Catahoula: Polls 5 and 15. The vote for electors at these various polls thus rejected—solely upon the ground of intimidation of the voters, except in Catahoula—was as follows:

							Pre	esid	enti	ial e	elec	tors					
Polls.	Parishes.	W. P. Kellogg.	J. H. Borch.	Peter Joseph.	L. A. Sheldon.	Morris Marks.	A. B. Levissee.	O. H. Brewster.	Oscar Jeffrion.	John McEnery.	R.C. Wickliffe.	L. St. Martin.	F. Poché.	A. De Blanc.	W. A. Seay.	R. G. Cobb.	K. A. Goss.
1 1 2 3 5 6 7 8 1 3 8 9 10 11 12 1 3 4 5 5 5	Caldwell Morehouse do	74 101 4 4 140 39 34 33 11 2 31 2 75 67 15 8	3 11 2 31 2  2 75 66 15	4 140 39 37 33 11 2 31 2 75 67	4 4 140 39 36 33 11 2 31 2 75 67	11 2 31 2 75 67	4 140 39 37 33 11 2 31 2 75 67	4 4 140 39 37 33 11 2 31 2 75 67	4 4 140 39 37 33 111 2 31 2 75 67 15	174 69 25 260 203 97 148 340 345 206 96 70 159 301 202 151 245	174 69 25 269 203 97 149 340 345 207 96 70 159 303 208 151 245	174 69 25 269 203 96 149 345 207 96 70 159 301 208 151 245	174 69 25 269 203 96 149 340 345 207 96 70 159 302 208 151 245	174 69 25 269 203 96 149 340 345 207 96 70 159 302 208 151 245	69 25 269 203 96 149 340 345 207 96 70 159 302 208 151 245	174 69 25 269 203 96 149 340 345 207 96 70 159 302 208 151 245 172	174 699 253 269 203 96 146 349 205 97 70 159 30a 208 151 245

Franklin—Hayes electors, 28, Tilden electors, 74.
 Claiborne—Hayes electors, nothing; Tilden electors, 184.

LOSSES BY RETURNING BOARD. The votes lost by the respective parties were as follows

Parishes.	Hayes electors.	Tilden electors.	Net loss.
Ouachita Morchouse Richland Clailorne Catahoula Franklin Caldwell	48 355 157 000 20 28 74	1, 517 983 770 184 97 74 141	1, 469 630 613 184 77 46 67
	682	3, 771	3, 089

It will thus be seen that the Hayes electors lost in this congressional district but 682 votes by the action of the returning board, while the Tilden electors were deprived of 3,771, being a net loss to them of 3,089 votes.

Your subcommittee, by the order of the whole committee to submit its report in advance of the printing of the testimony, and within the period of several days, cannot furnish an abstract of the testimony of each person, or perform is duty as satisfactorily as it would desire. This by way of explanation, and not of complaint. CLAIBORNE PARISH.

We will first consider the parish of Claiborne. In this parish the returning board threw out poll No. 3 on the supervisor's consolidated statement, which gave the Tilden electors 184 votes and none for the Hayes electors, on the ground of

We will first consider the parish of Claiborne. In this parish the returning board threw out poll No. 3 on the supervisor's consolidated statement, which gave the Tilden electors 184 votes and none for the Hayes electors, on the ground of intimidation.

We have certified copies of the consolidated statement of the supervisor of registration, and the statement of votes sent up to him by the commissioners of election for that poll, furnished us by the returning board.

The supervisor of registration, J. E. Scott, did not make or forward, in connection with his return to the returning board, any statement whatever in regard to registration or election under section 26 of the laws of Louisiana pertaining to elections, nor did the commissioners of election at poll 3 make or forward any such statement to him.

The consolidated statement of Claiborne Parish was received by mail at New Orleans by the clerk of the returning board on the 14th day of November, 1876, (see printed testimony taken by the whole committee at New Orleans, volume 1, pages 34, 25; and in the meeting of the board November 18, 1876, it was announced by the clerk, publicly, that Claiborne was one of the parishes from which the returns had been received. (See memorial of McDonald and others, Senate Miscellaneous Document No. 14, page 13.)

Among the papers furnished your subcommittee by the returning board, upon the call of the committee, we find a paper entitled "Report of the State register of voters for the parish of Claiborne, State of Louisiana," which is signed and sworn to by "Capt. J. E. Scott" before United States Commissioner Woolfley, in the city of New Orleans, on the 24th day of November.

In this réport he speaks of intimidation during the period of registration and during the election, and annexes thereto an exparte affidavit signed by Larkin Bryant, Jack Charles, and four others, (see Sherman memorial, Senate Executive Document No. 2, page 536,) to the effect that 250 colored men were prevented from voting at the Haynesville box (poll

"General Anderson. Let us take up Catahoula. Is there any contest in that

parish?

"The CLERK. No, sir.

"President Wells. Bring it in. In Claiborne, I understand, there is a contest.

"Judge Palmer. How do you determine whether there is a contest or not in a

President Wells. It is filed and sent with the returns in some instances. They

"President Wells. It is filed and sent with the returns in some instances. They come in two packages sometimes.
"Governor Palake. Can you tell in every instance?
"Governor Wells. Not unless the returns are accompanied by a protest."
How any fair officer could have ordered Claiborne Parish to be passed because of a contest, or what right in law there was to pass it, when no paper whatever contesting was then filed, and when no paper contesting the returns was filed until four days after, and no paper or protest had in any way accompanied the returns, we are at a loss to understand.

In this connection, before considering the proof submitted to the returning board, we desire to call attention to the law of Louisiana in regard to the rejection of boxes or polling places.

Section 26 of the election laws defines the duties of the parish supervisor of registration and the commissioners of election.

Section 3 defines the duties and powers of the returning board. It reads as follows:

Section 2 of the election laws defines the atties of the parish supervisor of registration and the commissioners of election.

Section 3 defines the duties and powers of the returning board. It reads as follows:
"Sec. 3. They [the returning officers] shall compile first the statements from all polls or voting places at which there shall have been a fair, free, and peaceable election. Whenever, from any poll or voting place, there shall be received the statement of any supervisor of registration or commissioner of election in form as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tunult, acts of violence, intimidation, armed disturbance, bribery, or corrupt infinences, which prevented or tended to prevent a fair, free, and peaceable vote of all the qualified electors entitled to vote at such poll or voting place, such returning officers shall not canvass, count, or compile the statements of votes from such polls or voting places until the statements from all other polls or voting places shall have been canvassed and compiled.

"The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt infinences at any such poll or voting place; and if, from the evidence of such statement, they shall be convinced that such riot, tumult, acts of violence, intimidation armed disturbance, bribery, or corrupt infinences did not materially interfere with the purity and freedom of the election at such poll or voting place, or did not pre vent a sufficient number of qualified voters thereat from registering or voting to materially change the results of the election, then, and not otherwise, said return-

ing officers shall canvass and compile the vote of such poll or voting place with those previously carvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers.

"If, after such examination, the said returning officers shall be convinced that

those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it is shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. Here such examination, the said returning officers shall be convinced that said into tumula, eats of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such pollor voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting place; \*Provided\*. That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning officers, upon making application within the time allowed for the forwarding of the returns of said election.

"Sec. 26. That in any parish, precinct, ward, city, or town in which, during the time of registration or revision of registration, or on any day of election, there shall be any riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences at any place within said parish, or at or near any poll or voting place, or place of registration or revision of registration, which riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences shall prevent or tend to provent a fair, free, peaceable, and full vote of all the qualified electors of said parish, precinct, ward, city, or town, it shall be the duty of the course of the supervisor of registration, to make in duplicate, and under oath, a clear and full statement of all the facts relating thereto, and of the effect produced by such riot, tumult, acts of violence, intimidation and disturbance, bribery, or corrupt influences in preventing a fair, free, peaceable, and full regis

8. The statements of the commissioners of election and of the supervisor of registration, with all affidavits accompanying them, are not evidence, but caveats, as it were, against the returns, without which the board cannot hear testimony.

Applying these rules to the proceedings of the board as to Claiborne Parish, we find:

Applying these rules to the proceedings of the board cannot hear testimony.

Applying these rules to the proceedings of the board as to Claiborne Parish, we find:

1. That the alleged acts of violence at the Haynesville box (the only one rejected) on election day were not stated or certified to by any commissioners of election.

2. That the supervisor of registration included this poll in his consolidated statement, and forwarded and delivered his returns to the returning board on the 14th day of November, 1876, without any protest by himself or any commissioners of election against this poll or any other poll.

3. That when Claiborne Parish was called for canvass and compilation on the meeting of the board on the 20th day of November, 1876, and when it should have been compiled, there being no contest or protest whatever, the board refused to compile, but permitted the returns to remain unopened until the supervisor of registration arrived in New Orleans, and on the 24th day of November filed a so-called protest with ex parte affidavits.

4. That the board acted unfairly, illegally, and without jurisdiction in rejecting the 184 votes for the Tilden electors.

Your subcommittee did not procure the testimony from Haynesville which it desired, having left the district before it could be procured, the place being remote from Monroe, and difficult of access; but from the testimony of three prominent citizens of Claiborne Parish—H. C. Mitchell, N. F. Alcock, and John Young—taken when they passed through Monroe on their way to New Orleans, your subcommittee is disposed to believe that the so-called affidavits of Larkin Bryant, Jack Charles, and others (all of whom sign their names with a +) is untrue in fact, and possibly a manufactured paper.

The total vote at that box has rarely exceeded 200; it is a white settlement; the republican vote there has generally been about 25, if that, and the colored vote has uniformly concentrated itself at Homer. There were 11 boxes at the late election in Claiborne Parish, had neve

CALDWELL PARISH.

We pass to Caldwell Parish. Poll 1 was rejected by the returning board on the ground of intimidation.

Upon the call of the committee for all papers concerning this parish, your subministee has been furnished with the following:

1. The consolidated statement.

2. The returns by the commissioners of election.

3. The statement of Philip Robinson as to intimidation.

This is all that was before the board, as the Sherman memorial will show.

Upon the testimony of Philip Robinson alone the board rejected poll 1, which are—

Hayes electors. 74
Tilden electors 141

There was no protest or statement whatever upon the consolidated returns by the supervisor of registration, or by him at any time, in regard to registration or election at any poll in this parish, nor did any of the commissioners of election at any poll, at any time, forward or make any statement whatever against the elec-

election at any poll in this parish, nor did any of the commissioners of election at any poll, at any time, forward or make any statement whatever against the election.

The board acted solely on the testimony of Philip Robinson, taken upon interrogatories on the 1st day of December, 18:6.

In doing so, they acted contrary to law and without jurisdiction. Their conduct is so extraordinary in this instance as to justify any imputation upon their honesty, and to deprive their findings of any presumption of fairness in cases where more doubt might arise.

But your subcommittee was not satisfied with the legal objections to their action. They summoned before them seven witnesses—Horace Farrand, Simon Kedley, Gabe Marble, Tony Harris, Moses Bates, Emile Girod, and Cyrus Field—whoutterly disprove all the statements made by Philip Robinson. They show, further, that he was a worthless negro politician, seeking office habitually, and then under indictment for stealing a hog—the hog having been found in his possession. He had been twice tried by a jury, escaping conviction by a hanging of the jury by one or more of his colored friends who were on the jury.

The Tilden electors laid before the returning board for consideration the affidavits of forty-four colored men who voted at poll 1 for them, and who testified that they voted freely, without intimidation, and that no violence or intimidation was used.

used. We are of the opinion that the board acted without law, without jurisdiction, and in bad faith in rejecting this poll.

FRANKLIN PARISH.

In this parish the returning board rejected the votes cast at poll 2. The votes Hayes electors. 28 Tilden electors. 74

Net loss...... 46 We have been furnished with all the papers submitted to the returning board.

We have been luringues.

They are—

1. Consolidated statement of supervisor.

2. Statements of commissioners of election.

3. Testimony of five or six witnesses.

Your subcommittee took no testimony. The vote was so small that your subcommittee did not feel justified in the expense that would have been incurred by the delay, &c., that would have been necessary.

But the board acted contrary to law and without jurisdiction in rejecting this parish, because—

The supervisor of registration at no time made any statement against the fair-

parism, because—

1. The supervisor of registration at no time made any statement against the fairness of the registration or of the election.

2. None of the commissioners made or forwarded to any person any statement against the election held in the parish.

We conclude that the vote should have been counted, and was rejected without

CATAHOULA PARISH.

In this parish the returning board struck from the consolidated statement of the supervisor of the parish polls C 5 and 15, voting as follows:

	Hayes.	Tilden.
Poll C 5	8 12	36 61
Total	20	97 77

The reasons assigned will be found in the memorandum of General Anderson, one of the board, submitted to the whole committee at New Orleans, (see testimony, volume 1, page 46.) and are as follows:

Poll C 5. Reject; no poll-list; no list of voters; no tally-sheets; and the returns of the commissioners of election signed by only one commissioner.

Poll 15. Count out Harrisonburgh; no poll-list, tally-sheets, or list of voters.

In the papers farnished us by the returning board there are none whatever bearing upon these two polls, except the returns of the commissioners of elections.

The copy of the return for poll C 5 appears to be signed by only one commissioner. We have been refused inspection of the original papers. The board took no testimony whatever, and acted upon papers as forwarded, so far as these polls were concerned. As the supervisor of registration included these two polls in his consolidated statement, it seems to us that the returning board did not act fairly in rejecting them without calling for proof. The voice of the people should not be lost from the mere inadvertences or refusals of officers in the performance of their duty, especially when all the machinery is in the hands of one party. Your committee took no testimony, the parish being remote and not easily reached, the stage of water in the Ouachita River being very low.

# RICHLAND PARISH.

In this parish the returning board rejected from the count polls 1, 3, 4, and 5, voting for the electors about as follows:

	Hayes.	Tilden.
Poll 1	00 75 67 15	202 151 245 172
Net loss to Tilden	157	770 613

The supervisor of registration, J. F. Kelly, took to New Orleans, in person, the statements of votes and his consolidated return, and delivered them, without protest or statement against the registration or election by himself or any commissioner of election, to the returning board on the 13th day of November, 1876. (See volume I. printed testimony, page 24.)

After he had delivered his returns and papers without protest, he met F. A. Woolfley, United States supervisor, who gave him \$150 in money to use, on his return home, in sending down reliable republicans to the returning board as witnesses against the election. On his return home he was twice sent for by subpena to appear in New Orleans. Upon the second subpæna he went down. On this second visit he filed his report, or statement. November 30, 1876, as the record shows, (see Executive Document No.2, Senate, page 460, alleging intimidation during registration and acts of violence on election day at poll 3 and poll 5.

His protest was expressly made on report to him, and not of personal knowledge. No commissioner of election made any statement against any poll in connection with his return to the supervisor. But on the 22d day of November Cabriel Roberts, a commissioner of election, made an affidavit, supported by the three affidavits required by law, against poll 5.

The above facts as to Kelly's action appear from his own testimony taken before your subcommittee at Monroe and from the copies in our possession furnished by the returning board.

The testimony upon which the returning board acted, as proof of intimidation, with he feat and the content of the supervisor.

the returning board.

The testimony upon which the returning board acted, as proof of intimidation, will be found in Senate Executive Document No. 2, from page 459 to page 481.

This testimony alleges, in general terms, that armed and organized men rode the parish, intimidating colored people. But few acts of a specific nature are alleged therein. The chief specific acts alleged are:

First. That Wash McGee, a leading colored republican, was driven from home. Second. That there was an armed body of democrats at poll 5, who deterred about seventy or one hundred colored men from voting; among them one Cyrus Landrum.

Third. That a book was kept at some polls in which the names of men voting the republican ticket were entered.

Third. That a book was kept at some poils in which the hames of inch voting the republican ticket were entered.

Fourth. That some men were threatened with discharge if they voted the republican ticket.

The testimony produced before the returning bourd was given (on behalf of the republican party) chiefly by candidates for office.

The testimony produced before the returning board on behalf of the Tilden electors will be found in Senate Miscellaneous Document No. 14, from page 927 to page 527

Among the papers thus submitted will be found a certified copy of an indictment against James F. Kelly, (supervisor of registration.) Josiah H. Nettles, and James M. Calloway, and others, (Kelly, Nettles, and Calloway being witnesses for the Hayes electors, charging them with being accessory before the fact to the murder of P. B. Stern by one Henry Eddins. (See Miscellaneous Document 14, page 931.)

The testimony produced before the board on behalf of the Tilden electors contains the affidavits of several hundred colored men, who swear that they voted the democratic ticket freely, without compulsion, and of their own choice. The testimony on behalf of the Hayes electors does not contain the affidavit of a single person who voted the democratic ticket upon compulsion, or was prevented from voting the republican ticket by intimidation.

The testimony of Jeff. Perkins, on behalf of the Hayes electors, (Senate Executive Document No. 2, pages 463, 464.) is overthrown by his subsequent statement, upon examination into the facts by himself, to be found in Senate Miscellaneous Document No. 14, page 936.

The testimony of Jeff. Perkins, on behalf of the Hayes electors, (Senate Executive Decument No. 2, pages 463, 464,) is overthrown by his subsequent streament, upon examination into the facts by himself, to be found in Senate Miscellaneous Document No. 14 page 398.

Your subcommittee took the testimony of a large number of witnesses, residents of Richland Pari-h, most of them respectable citizens, and many of them colored men. Their names are as follows:

C. H. Moore, A. Dyson, Fortune Moulton, Wesley Ellison, Benjamin Holland, II. F. Vickars, Andrew Hracey, Jesse-Jones, Friday McIntosh, Abraham Jenkins, Woodson Watley, Lewis Morris, B. P. Freeman, H. P. Wells, John Bishop, Edwin Ervin, Leopold Rosenfeld, Gabriel Roberts, F. Hatch, Henry Hosgood, Samuel Harper, J. A. Hunter, B. O. Edwards, J. A. Yarborough, O. T. Smith, A. B. Cooper, J. F. Kelly, Pleasant Bowsman, William N. Potts, and Wash McGee.

All these witnesses appeared before us, and were subjected to cross-examination on behalf of both political parties. Their testimony was unanimous, so faras their knowledge extended; and they all concurred in the declaration that Richland Parish had been peaceable and quiet for more than six months before the election; that there had not been a single case of homicide or assault and battery growing out of politics; that there were no armed organized bands of white men or democrats; that there were no disturbances or intimidation during registration or on election day, except what occurred on election day at politive, (Redmonth) precinct.) which will be alluded to in detail hereafter; that the election was fair, peaceable, quiet, and a proper expression of the will of the people. And many of those testifying were colored men, who gave their reasons for voting the democratic ticket; for deserting the republican party.

1. The testimony of Wash McGee developed the fact that he knew the men who visited his house after night, firing under it; hey were of both parties and both races of people, and his own testimony was that

3. The proof as to the discharge of voters was not sufficiently distinct, as presented to the returning board, nor of a character, in the opinion of your subcommittee, to call for contradictory testimony. No witnesses were offered on behalf of the Hayes electors on this point. And your subcommittee are of opinion that if individual cases of that kind existed, the remedy was rather in the prosecution of the parties, if the law so permits, than the rejection of the legal votes of a parish or polling place.

Your subcommittee, upon a review of the law and the facts, has come to this conclusion:

clusion:

1. That the returning board had no jurisdiction of a judicial character over Richland to canvass and reject the polls rejected.

2. That its duties were only ministerial.

3. That there was no intimidation, no armed disturbance, no riot, tumult, &c., at any time during registration, revision of registration, or the election.

4. That the whole vote of Richland Parish should have been counted as cast for the Hayes and Tilden electors.

5. And that the testimony in regard to the Redmonth poll, already alluded to, demonstrated that the facts had been grossly perverted before the returning board, the testimony having been fabricated by some persons to suit the necessities of the occasion.

### MOREHOUSE PARISH.

We now come to Morebouse Parish, a parish having an excess of colored over white voters, and known to the public at large before the election as one of the "bull-dozed parishes." Upon the allegation of "general intimidation" the following polls were rejected by the returning board:

Polls.	Hayes.	Tilden.
Poll 1 Poll 2 Poll 3 Poll 5 Poll 6 Poll 7 Poll 8	100 4 4 140 39 37 33	174 69 25 269 203 96 149
Total	357	985 357
Net loss Tilden		628

The results in this parish were protested by the supervisor of registration, F. M. Grant, by affidavit made in New Orleans on the 18th day of November, 1876. (See Executive Document, Senate, No. 2, page 441.)

But no statements or protests by any commissioners of election were forwarded to him, or by him forwarded to the returning board.

The following are the reasons assigned in his statement or protest:
1st. That W. L. Richmond, republican candidate for sheriff, was waited upon about 2d day of November, 1876, and advised to leave a democratic meeting at Oak Ridge, as he was informed.

2d. That many colored voters had told him they had been warned by the democratic party not to vote the republican ticket.

3d. That it was frequently reported to him that numerous bands of armed men were patrolling the parish and buk-dozing.

4th. That it was reported to him that at poll 8, in said parish, on election day, one of the commissioners of election took a ticket from a republican colored man, with remarks which deterred other colored men at such poll from voting.

5th. That at a republican meeting at Bastrop, at which he was present, "an effort was made to break down the republican speaking by constant and ill-natured interruptions."

with remarks which deterred other colored men at such poll from voting.

Sth. That at a republican meeting at Bastrop, at which he was present, "an effort was made to break down the republican speaking by constant and ill-natured interruptions."

This comprises everything in his protest.

The testimony in support of the Hayes electors will be found in Senate Executive Document No. 2, pages 422 to 458.

Your subcommittee has carefully read this testimony several times. The bulk of it consists of affidavits, in which the witnesses recite at second hand things they neither saw nor heard; and your subcommittee is of the opinion that even without the rebutting testimony submitted to the returning board on behalf of the Tilden electors there was not sufficient testimony to justify the rejection of the parish in the wholesale manner of the board.

The testimony of Dow Hundley, William Archer, Randolphus Randall, Andrew Ross, William L. Richmond, who give testimony as to specific acts of bull-dozing upon Hundley, Archer, and Kennedy, before the returning board, all show that these acts took place in ward 10; that the democrats held a meeting and denounced the same, promising protection to the colored people; that bull-dozing ceased; and that the election in ward 10 was free, fair, and peaceable.

There is a marked want of definite proof of specific acts, but numerous witnesses testify to numerous things told them by other persons.

There is a marked want of definite proof of specific acts, but numerous witnesses testify to numerous things told them by other persons.

There is a proof that the meeting at Bastrop was interrupted, as stated by Supervisor Grant; but such interruptions are not unusual in Louisiana, even in the ough language proved, and did not break up or scatter the meetings. The testimony before the returning board, of Thomas Mason and Edward Butler, was gross and wanton perversion of the truth, as the Ouachita testimony will slow. If they were present on the occasion they refer to, they were part of a mo

to work for the democratic disacts.

vailing!

Only one republican is shown to have been killed, and by a person entirely unknown. It will be observed that the supervisor of registration does not refer to this murder as a political one, or as producing intimidation.

This republican leader, Law, was a desperado of very bad character, morally and otherwise, and had previously killed his man.

¹In the brief time allowed for the making of this report, it is impossible to go into details at greater length.

The Tilden electors presented before the returning board a mass of testimony to rebut the case of the Hayes electors.

It will be found in Senate Miscellaneous Document No. 14, pages 705 to 757. This testimony is perfectly overwhelming. Much of it is ex parte, but in this it resembles the testimony of the other side. Indeed, the record of the proceedings of the returning board will show that the board examined not a dozen witnesses orally during its whole session, and these were chiefly confined to Ouachita Parish. But your subcommittee, sitting in Monree, called before it, for oral examination and cross-examination, the following persons, residents of Morehouse Parish. R. A. Folke, Robert Eckles, C. C. Davenport, Julian Polk, J. G. Sandidge, Frank Yanghan, B. F. Furniss, Robert H. Ward, James Williams, Mack Chapell, Smith Gray, Henry Ratcliffe, Lasker Bass, C. Newton, E. N. Conner, B. V. McDonald, Stephen Reese, Harry Wells, Nicholas Bailey, David Todd, Lewis B. Stark, Frank Brigham, A. Heffner, George Speaker, John Stegg, J. T. Dorsey, William Daniels, Henry A. Scates, Robert Duncan, J. C. Cooper, Garrett Richards, Howard Burrell, Fred, McNeal, and Anderson Scott—thirty-four in all; most of them, as appeared to your subcommittee, persons of standing in the community, and many of them colored.

Their testimony is unanimous to the point that there was no armed organization, no bull-dozing, no intimidation, no violence, no disturbance during registration or on election-day, and the result in Morehouse was a fair, full, and free expression of the will of the people. No witnesses were examined or presented for examination to your subcommittee to testify to the contrary.

These witnesses not only denied all statements of violence, intimidation, &c., as to the colored people, but gave the reasons given by the other colored men of Northern Louisiana:

1. In the first place, the republican State ticket was

making a change. They were the same reasons given by the other colored men of Northern Louisiana:

1. In the first place, the republican State ticket was exceedingly unpopular and distasteful to the republican leaders.

2. There was very great dissatisfaction with the republican parish ticket among the better classes. The candidate for sheriff—Richmond, one of the chief witnesses before the returning board—did not stand well. He had been removed from office, as sheriff, but a short time before, by a judge of the court, of his own political party, for incompetency, and two indictments for extortion in office were pending against him at the time of his renomina ion by the republican convention.

3. The candidate for clerk of the court was a mulatto, by the name of Hunter, who was under indictment, also, for stealing the rope or cord belonging to the room of the grangers. (See testimony of B. V. McDonald.)

4. There was very great scandal in connection with the school fund. The public schools had been closed for a long time. The colored people were deprived of education for their children. And about all the funds had been lost by deposit with a failing house in New Orleans. The character of the teachers was not good under republican parish rule. They had been selected more for partisan purposes than for the benefit of the children. This was the reason why, in several instances, teachers were interfered with. One colored man, Lusker Bass, heretofore a republican, gives us some interesting details. He says, in substance, as follows:

"I wanted a school in my settlement; had been promised one for more than a year; finally spent seventy dollars myself in getting a house for it; they sent me a little teacher about April 1, 1876; I would have whipped him myself but for the law; he staid about two months, and then vanished; the school funds were out, and we couldn't get a school any longer."

Lusker Bass did not vote. Said that he would have voted the democratic State and national ticket, and as he pleased for parish off

His testimony was corroborated in the main by other colored witnesses.

5. The affairs of the parish had been very badly administered. Parish paper was down to twenty-five and thirty cents on the dollar. This paper is issued to jurors and witnesses at its face value. Colored men constitute the large majority of the juries, and are concerned in most of the litigation. They were compelled to take this paper at its face.

6. The white people, all of whom except the office-holders were democrats, took very great interest in the election. The planters took unusual interest on account of the high rate of taxation, which has been enormous under republican rule. They represented to the colored men that republican rule was ruining them; that the interests of white and black were identical; that what influenced the fortunes of the planter affected the laborer on the plantation. The planter, by reason of his superior intelligence and his position, undoubtedly had very great influence in producing the result.

7. The times in Northern Louisiana have been undoubtedly very hard, and money

rior intelligence and his position, undoubtedly had very great influence in producing the result.

7. The times in Northern Louisiana have been undoubtedly very hard, and money very scarce. There are very few white republicans in any of the northern parishes. The white men have used the bard times, and very successfully, as an argument against the party in power.

8. All these things and many more were urged upon the colored men with a promise by the white men to produce better times, to have longer schools, higher wages, lower taxes, and better feeling, if the colored people would vote with them just this time. If affairs did not go better in the future they could drop the party.

Your subcommittee would refer to extracts from the testimony, if it was conflicting. The witnesses being unanimous in their opinions, we refer to all the testimony that has been given by them. The testimony of Julian Polk, J. G. Sandidge, Harry Brigham, and David Todd—all planters or professional men—is especially referred to in connection with the Ouachita testimony as explanatory of the shooting of Andrew McLeod, who certainly had no right to complain of his fate. They also explain the only occasion on which armed men were out in the parish.

the shorting of Andrew McLeod, who certainly had no right to complain of his fate. They also explain the only occasion on which armed men were out in the parish.

They and other white men were following down into Ouachita Parish a large band of colored men who were moving into it, under arms, with the avowed purpose of buruing Monroe, as has been herotofore stated, because of orders received from that point. None but the guilty few were intimidated by this appearance in arms, and none but the leaders fled. They call it, "Driven away."

Attention is called to the fact that in Morehouse Parish United States soldiers were stationed at three different points on election-day and in the immediate vicinity of the polls. One detachment was at Bastrop, one at Oak Ridge, and one at another point. Reference is made to this fact, not for the purpose of here condemning it, but in connection with the charges of intimidation. These troops had been in the parish for some time. They were there, as was generally understood, in the interest of the republican party.

Attention is called to the fact that at poll 1 the republican vote was 100 and the democratic vote 174. This was rejected. At poll 5 the republicans polled 149 and the democratic vote votes. This was rejected. It is difficult to understand or to measure the extent and the nature of the intimidation that permits so many colored men to vote at a poll and debars others. We are inclined to the opinion that it does not exist in any formidable degree. We further believe that it is the creation of the professional office-seeker, who is disappointed in his hold upon place.

After a survey of all the testimony taken before your subcommittee, we are compelled to come to the conclusion that the returning board, in rejecting Morehouse Parish, only carried out the pre-arranged plan of a political party, which had announced the parish as a "bull-dozed parish" prior to the election. The testimony before it did not justify its action. It was overwhelmingly in favor of the Tilden elec

parties, convinces us that Morehouse should have been counted for the Tilden elect-

OUACHITA PARISH.

We come next to the consideration of Ouachita Parish, in canvassing which the returning board threw out all the polls in the parish except four boxes, all located in the town of Monroe, being polls 4, 5, 6, and 7. There was no election at poll 2, the box not having arrived there. The following polls were rejected by the returning board:

	Hayes.	Tilden.
Poll 1	11	340
Poll 3 Poll 8 Poll 9	11 2 31 2	345 206 96
Poll 10	2	70 159 301
Total	48	1, 517 48
Net loss to Tilden		1, 469

The supervisor, M. J. Grady, filed his duplicate copy of returns, as consolidated by him, on the 11th day of November, 1876, with Julius Ennemoser, clerk of the district court of Ouachita Parish; on which day, as will appear by a certified copy of his consolidated return furnished your subcommittee by the returning board, he made oath to the accuracy of his consolidated return. On the same day, the clerk of said court certified, upon comparison, to their correctness as compared with the statement of votes returned by the commissioners of election.

On the same copy of his consolidated return we find the following:

STATE OF LOUISIANA, Parish of Ouachita:

Parish of Ouachita:

I, George W. Pierce, United States supervisor of election for the parish of Ouachita, in the fifth congressional district, duly commissioned by the Hon. R. A. Hill, in the circuit court of the United States for the fifth circuit and the district of Louisiana, do hereby certify that this consolidated statement of the votes polled in the parish of Ouachita at the general election held November 7, 1876, for presidential electors and Representative in Congress, and for State, parish, and other officers, is correct and true, and I do further certify and declare that the said election and the canvass of said votes was truthful, fair, free, and peaceable.

G. W. PIERCE,

United States Supervisor.

Just below the above is the following statement:

The above certificate of G. W. Pierce, United States democratic supervisor of election for Ouachita Parish, was indorsed thereon after this consolidated statement was completed and sworn to by me, and after the same was certified to by the clerk of the district court as correct.

M. J. GRADY, Supervisor of Registration, Parish of Quachita.

The only other indorsement on said copy so furnished your subcommittee is as follows, in the column of remarks:

"N. B.—In the foregoing consolidated statement poll No. 2 is left blank from the fact that the ballot-box, poll-book, and necessary stationery did not reach the foregoing place, and hence there are no returns from said poll. See copy of statement and return of the commissioners of election appointed for polling-place No. 2, hereto annexed."

There are no other indorsements on said consolidated statement

going place, and hence there are no returns from said poll. See copy of statement and return of the commissioners of election appointed for polling-place No. 2, hereto annexed."

There are no other indorsements on said consolidated statement, nor any references to any other statements, protests, &c.

We refer to these matters because a protest by M. J. Grady, supervisor, was filed or made out in the city of New Orleans some days afterward—on the 21st day of November, 1876. (See Senate Executive Document No. 2, page 365.)

No copy of this had been filed in the Ouachita Parish court or the clerk's office up to November 20, 1876. (See Senate Executive Document No. 2, page 365.)

Under section 43 of the election law of Louisiana it is made the duty of the supervisor within twenty-four hours to consolidate the returns and to forward them, &c., immediately after receipt of the statements.

The returns from Ouachita appear to have been received by the board on the 24th day of November, 1876, many days after the returning board had commenced its sessions, thus depriving the Tilden electors of any definite information as to the charges made against the various polling places, and preventing them from early preparation to meet the same. The returns were not opened in the session of the board until the 25th day of November. On the 29th day of November, 1876, the court adjourned the hearing of testimony; and, except for consultation in private, closed its session on the 2d day of December.

Monroe is distant three hundred miles from New Orleans, and not less than three days would be requisite for the Tilden electors or their agents to reach Monroe and return to New Orleans. No time whatever was given for preparation; no notice, by filing in the clerk's office the copy of the statement of the supervisor and his office-holding friends.

In illustration of the partisan feeling of Governor Wells, the leading and controlling spirit of the returning board, we quote from the stenographic report of the proceedings of the board at

"Mr. McGloin. You have given the whole day to the republican party."
"Governor Wells. We will not do it positively; we cannot hold night sessions;
"Mr. McGloin. You have given the whole day to the republican party."
"Governor Wells. We will give you a whole day if you have as good a case on your part." (See Senate Miscellaneous Document No. 14, page 113.)

The next day the board heard the testimony of Charles Tidwell and J. T. Swan, and would permit the oral examination of no other witnesses, many of whom were present to testify in regard to Ouachita Parish. To intimidate some of the witnesses who were in New Orleans, and prevent the attendance of others, the republican managers caused the arrest of some of them upon pretense of being fugitives from justice.

The protest of the supervisor, filed November 24, 1876, contains the following points:

1. That acts of tumult, violence, &c., during registration and revision of registration, prevented a fair, free, and full vote.

2. That Harmon Bell, going to poll 1, was stopped, and prevented from acting as one of the commissioners of election.

- 3. That poll 2 had no election, because the constable carrying the box, &c., was
- shot on the road.

  4. He siluded to the affidavits of Ray, McCloe, Bell, Hill, Hamlet, "and others," 4. He alluded to the annuavity of the state of the state
- Republican majority.....

In 1876 the registration was as follows, which we give, remarking that registra

Registration in 1876— Colored	
Colored majority	1,329

ing the two days preceding the election.

Other parties allude to the shooting of the following persons as evidence of intimidation:

12. James Jackson, on his wagon of wood.

13. Henry Burrell, Spencer Dickerson, William Lewis, and Hawkins Jones, all of whom were shot or shot at by one Hathaway.

Other persons allude to the disturbance of the republican meeting at Grady's school house, at which point insulting language was used by a colored democrat to a colored republican orator.

Your subcommittee has been careful to select everything charged of consequence to the case, in order to state the testimony taken in regard to it, in so far as they were able to go into detail.

The Tilden electors presented a great mass of testimony to the returning board, which is embodied in the memorial of Senater McDonald and others; and in this were included 473 affidavits by colored men that they had freely, voluntarily, and without intimidation voted the democratic ticket. These affidavits although exparte, were received by the board, Omachita-being made an exceptional parish as to exparte testimony, even after the board for the second or third time had changed its rule on this subject; and the statements of these colored witnesses were corroborated by very many white men.

Your subcommittee, in making this report, can take into consideration only such testimony as was taken before them at Monroe; not having convenient access to whatever testimony may have been taken by the general committee or any other subcommittee in New Orleans.

No witnesses were tendered at Monroe on behalf of the Hayes electors, the reason assigned being that they were in New Orleans attending upon the Senate committee upon the same question.

Your subcommittee is of opinion that if any such general intimidation existed in Onachita Parish as was aileged and claimed by the Hayes electors, there might have been found other persons of character and standing to testify—white and colored—than the few who went to the city of New Orleans. The claim that witn

serve notice: st. The supervisor of registration does not aver that the registration was not l. The total population of the parish, by the partisan census of 1875, was as

Colored persons.					
	13.3				

On which basis the total registration was, according to Grady's protest, 3.375 voters, or about one voter to every four persons. It is very evident from this, if Mr. Grady's registration was honest, that all the alleged intimidation did not deter any single person from registering. It rather, if anything, increased it beyond the usual proportions.

2d. It is equally clear, because it was conclusively proved by overwhelming testimony, that on the day of the election there was no disturbance, no violence, no tumult, no intimidation. And among the papers are no protests or statements against any box or polling place by any of the commissioners of election. The supervisor himself makes no statement against any polling place upon that grownd. We will now determine, as far as we can, whether political matters entered into any of the outrages or disturbances hereinbefore recited, and to what extent.

1. The killing of James Jackson, found dead on his load of wood, had no connection with politics. Family disturbances alone seemed to have caused his assassination. We found no witness who had any other opinion. Jackson was a quiet person, whose politics, if he had any, were unknown; and was an obscure person, whose death could be of no service or significance in a political way.

2. The shooting of George Shelton had no political significance, and none was attached to it. The testimony taken by us was not very full upon this case. But

an examination of his own affidavit, filed before the returning board, is conclusive upon this point. In it he speaks of various sets of intimidation practiced, but upon this point. In it he speaks of various sets of intimidation practiced, but on surfagren to other people's affidavits, but not in his own. (See Senate Excentive Document No. 2, page 402.)

3. Your subcommittee heard no testimony about the killing of Fred. Bynum, as alined to. The witnesses did not a cen to know him. We have no report to make the property of the property

motives; and your committee tands and the politics
7. Andrew McLeod was another colored man who was a leader in the march upon Monroe, aircady aluded to, instigated by the worst class of radical leaders, after the death of Dr. Dinkgrave. Andrew McLeod was wounded while in command of thirty or more armed colored men, who had wantonly, and without provocation, fired upon Colonel Sandidge, Frank Brigham, Julian Polk, and David Toold again.

cation, fired upon Colonel Sandidge, Frank Brigham, Julian Polk, and David Todd, esq.

After Dr. Dinkgrave was killed, certain leaders sent word to the colored people to come to Monroe, the war had begun. Many from Morehouse Parish were made to believe that they must go. Some of the white men of Morehouse followed into Onachita Parish, to see that no harm came from the invasion. The four gentlemen above named were of the party. Arriving in Ouachita Parish, they found that peace had been accomplished without the discharge of a gun; and they were on their way home, each person taking his own road. These four white persons, on their return, were fired into from the road-side by about twenty or thirty negroes, armed with double-barreled guns, who were fired into in return. McLecd was wounded. Your subcommittee have only to state the facts in this case as proved by every witness before 'hem to warrant the common verdict that he was served according to his merit. The testimony of Colonel Sandidge, Julian Polk, Frank Brigham, and of David Todd, esq., a member of the bar of Bastrop, is particularly referred to. This is not the kind of intimidation referred to in the election law of Louisiana; at least your subcommittee cannot recognize it as such.

S. The killing of Dr. B. F. Dinkgrave was also investigated by your subcommittee, though not to the extent that would be necessary in a judicial investigation. Dinkgrave was an active republican, but was otherwise favorably regarded by the leading democrats of Monroe, with some of whom he was upon very friendly terms. He was murdered in the afternoon, August 30, 1876, upon one of the streets of Monroe running along the river bank, by a person upon borseback, who was unknown to him and to the person who was with him at the time. The assassin was within thirty yards when he fired. He field immediately, was pursued by the sheriff and a posse of the rille clubs mult the trace was lost. Dinkgrave lived the person who had shot him. He so stated to F. P. Stubbs, esq., his neighbor and friend. The assassin was met in his flight by Mr. Briard, who did not recognize the more for the assassin was met in his flight by Mr. Briard, who did not recognize he more for the assassin of the person yadening to conclusion as to the motive for the assassination. When the assassin or his accomplices are not known, he motive another satisfactorily assigned. There was some testimony by a policeman and a member of the city council, to whom the policeman had reported, tending to show the presence in Monroe at that time of a stranger, mounted upon a fleet horse, supposed to be a Winherly, from Texas. Several years before to the dector's supposed interference in some family affairs. The family was said to be desperate and revengeful. The testimony showed very clearly that at one interference in apprehensive of assassination from some of its members. There was proof showing a serious difficulty between the doctor and a Mr. Adams, whom the doctor had been apprehensive of assassination from some of its members. There was proof showing a serious difficulty between the doctor and a Mr. Adams, whom the doctor had been apprehensive of assassination from some of its members. There was proof showing a serious difficulty between the doctor and a Mr.

lican party in the parish. But the testimony shows that long before he was killed about 1.000 colored men had joined the democratic clubs. (See the testimony of Col. F. P. Stubbs.)

The testimony upon these points is very full and very voluminous. It is substantially unanimous. The patrolling of the parish that is spoken of by some of the witnesses before the returning board occurred immediately after the foregoing occurrences, an apprehension existing in the minds of the white people that another trouble might arise. This patrolling was done by only a few men, and lasted but several nights. Out of this has grown the story of the parish being patrolled in the interest of the democratic party. It was a precautionary measure, rendered necessary by the state of society in which these people lived. The white people living upon the island where the patrolling chiefly took place, are in the proportion of only 1 to 10 as compared with the colored people; and their duty to their wives and daughters, as well as to themselves, compelled them to be vigilant.

The large number of armed men—grossly exaggerated as to number in the testimony before the board—assembled at Mouroe on the 1st or 2d day of September last, were brought there by the uprising alluded to. And the testimony shows that the fears of the white people were not groundless. But a few nights before, colored people had assembled about ten miles below, and had fired into the houses of prominent and respectable white citizens, causing them and their families to flee to Monroe for protection. These persons had given no provocation whatever, and had no prominence as politicians. Such conduct upon the part of the colored people was the natural result of the course pursued by some of their reckless leaders. The few white republicans in the parish—not more than thirty in number in all—did all in their power, with a very few exceptions, to array the colored people against the white people. The white people were denounced as "rebels," as former "slave-holders," as the

That the killing of Dr. Dinkgrave, murderous and outrageous as it was, had no material effect upon the election is demonstrated by the fact that the great mass of the colored converts to the democratic party had joined the democratic clubs three weeks before, and at a time when Mr. Hall, a strong republican witness before the returning board, says there was perfect quiet in the whole parish. (Senate Executive Document No. 2, page —.)

PINKSTON CASE.

9. We proceed to investigate the killing of Henry Pinkston, of Merriman Rhodes, the whipping and raping of Cora Williams, and the shooting of Eliza Pinkston and the murder of the child one year old.

We treat these all together, for the claim in the testimony before the returning board is that they were all perpetrated upon the same night and by the same persons—Captain Theobald, George Phillips, Walter Logan, Dr. Yonge, &c., and Cora Williams says that the party left her house and went toward Pinkston's, in which direction she afterward heard firing.

These stories, so far as the names of the perpetrators are concerned, depend solely upon the testimony of Cora Williams and Eliza Pinkston. They reside, says the testimony, about four miles apart.

Your subcommittee, after a full examination of witnesses, extending over three days, is of the opinion that the attempt to give a political complexion to any one of the outrages referred to was a gross and scandalous political conspiracy, disgraceful to all who had any connection with it, whether by indorsement, sympathy, or otherwise.

ful to all who had any connection with it, whether by indersemen, sympathy, or otherwise.

Henry Pinkston was killed during the night of Saturday preceding the election. Ten or twelve days afterward, his wife's child was found in a pond of water near by. And Merriman Rhodes was found dead, George Tatum, an intimidated voter, stating in his testimony before the returning board where he was found, and that his assassins were unknown.

Before proceeding to the examination of this case in detail, we desire to call attention to the fact that Eliza Pinkston's affidavit, as furnished by the returning board—found in Senate Executive Document No. 2, page 417—was prepared in New Orleans, and sworn to before Mr. Woolfley, United States commissioner, on the 21d day of December. The date is important. The return of the supervisor of registration was made to the board on the 24th day of November, and opened in open session on the 25th day of November. Among the papers found inside of the returns so opened on the 25th, was the following:

New Orleans, November 23, 1876.

C. S. Abell, Secretary Returning Board:

C. S. Abell, Scoretary Returning Board:
Inclosed please find affidavit of Eliza Pinkston, which I received too late to file with my returns. Please see that it is brought in with the other evidence filed with my returns.

Respectfully,

M. J. GRADY, Supervisor of Registration.

Respectfully,

(See Senate Miscellaneous Document No. 14, page 153, "Stenographic report of the proceedings of the board.")

The dates are important for several reasons. Your subcommittee took testimony showing that at Monros, Eliza Pinkston had made an affidavit before J. H. Dinkgrave, in which she charged the outrages referred to upon other persons. That affidavit, sent up by Grady to the board as stated in the above letter, was suppressed, and another one substituted; Eliza having been sent for in the meant time to come to New Orleans. Such conduct on the part of the returning board, when taken in connection with their other acts, confirms the opinion that they are taken in connection with their other acts, confirms the opinion that they are to have been received by the board on the 34th. This was so stated publicly.

Yet the letter of the supervisor, on the 33d of November, aludes to his returns as already filed; "November 21, 1 received the affidavit of Eliza Pinkston too late to file with my returns."

To proceed with the facts: The principal parties charged by Cora Williams were Captain Theobald, George Phillips, Walter Logan, and Dr. Kennedy; and the chief ones named by Eliza Pinkston were Dr. Yonge, Captain Theobald, Walter Logan, and George Phillips. The circumstances detailed by each are of a character to forbid any mere mistakes of person. If these persons did not perpetrate the crimes, Cora Williams and Eliza Pinkston are great lars.

Cora Williams and Eliza Pinkston are great lars.

Ora Williams and Eliza Pinkston are great lars.

The young men charged by her and Cora Williams with the commission of the nutrages in question all proved alibies of the most unqualified denial to the whole story. On the head.

The young men charged by her and Cora Williams with the commission of the most unqualified denial to the whole story. And your subcommittee in person, and gave the most unqualified denial to the whole story. And your subcommittee in person, and gave the most unqualified denial to the whole story

this miserable prostitute, has become a saint in the political calendar of the republican party of Louisiana! Upon these points we refer to the testimony of Fred. McNeil. Garrett Richards. Robert Eccles, R. A. Folke, C. C. Davenport, Frank Vaughan, Wm. Rhodes, W. A. Bumpers, E. A. Dawking, C. W. Tidwell, Alex. Williams, Alice Bunkley, Cyrena Harrison, Judge Ruffin, J. N. Head, Jno. B. Simms, and J. P. Montgomery.

Your subcommittee are of opinion that Henry Pinkston was killed by one Brooks, a colored man, with whom he had had, but a short time previous, a desperate encounter. There was considerable testimony pointing in that direction. Pinkston was an inoffensive man, and well liked. In 1874 he voted the conservative licket. This was proved by the commissioner who received his ballot: and on the Friday before his death he informed the same gentleman that he had always voted with the white people, and intended to do so again.

The person with whom Brooks worked at the time of Pinkston's death appeared before your subcommittee, and testified that his pistols—a six shooter and a Deringer—were taken out of his chest, to which Brooks had access, the Saturday evening of the murder, and were returned on Monday morning, all discharged. He then dismissed Brooks from his employment. (See testimony of W. A. Gustine.)

### FORMATION OF RIFLE CLUBS.

FORMATION OF RIFLE CLURS.

10. Much stress was laid upon the formation of rifle clubs in Ouachita Parish. There were five or six clubs of this character, numbering about 175 active members in all, and having exactly 103 guns—67 breech-loaders and 36 common muzzle-loaders. As a general rule, said all the witnesses, the men in them were the best men in the parish. The reasons for their organization, and their whole history, will be found in the testimony of their chief, Dr. J. S. Aby, of Monroe. They rarely were out with their arms. They were out on the occasion of the uprising after the murder of Dr. Dinkgrave; a few were out on the order of the sheriff to follow the murderer; about thirty were out when Hathaway was arrested by them; and they were under arms for a day or so prior to the election; this was all.

infer the murder of Dr. Dinkgrave; a few were out on the order of the sheriff to follow the murderer; about thirty were out when Hathaway was arrested by them; and they were under arms for a day or so prior to the election; this was all.

The members of the clubs attended several republican meetings, but not with their guns. If they had side-arms, as is the custom, say the witnesses, with both white and black in that country, they were generally concealed in the usual manner. On one occasion a disturbance arose, but it was quickly ended.

While the existence of these clubs may have impressed the colored republicans with the power and strength of the white element if any armed conflict should arise between the races, there was no proof offered before your subcommittee showing any intimidation, violence, threats, or improper interference by them with the rights of the colored people, except one or two individual instances, that will be alluded to hereafter. Whether Ben. James was shot by some members, or, if so, under what circumstances, did not appear before us.

There was proof of great intolerance toward colored democrats by colored republicans. Several cases of severe beating had occurred. Colored men were afraid to join the democratic party in consequence. They so stated when the campaign opened. An excited campaign was expected. It had been heretofore conducted upon the color line, and promise to be heated in the same direction if the leaders could succeed. To protect colored democrats, and numbers, it was said, who wanted to become democrats, and to preserve peace, good order, and insure protection to their families, the rifle clubs were formed. And, so far as the testimony shows, these purposes were never deviated from. When they were under arms, it was a precautionary wiceautionary wiceautionary wiceautionary of the superior of the continuous control on which their action interfered with the colored men. members of the republican party, was when they picketed the roads leading to Monroe for the two days

Borden.

In two instances, persons were stopped by individual pickets, who were either unarmed or were going out from Mouroe.

Your subcommittee cannot go more into detail, and must be contented to refer to the testimony taken and he-ewith returned; and proceed to general statements referring in part as well to Morehouse as to Ouachita Parish.

The argument used against the count of the vote as cast in Ouachita, as well as in Morehouse, is chiefly the great change in the vote of the parish. And the argument used against the outside wards in Ouachita Parish is the small republican vote cast—in some cases none. But in Ouachita the programme was, as in Claiborne, to concentrate at Monroe. The vote cast at Monroe was 1,093; a village of 2,000 people. Of this vote, the republicans received 745, and the democrats only 348. The vote as cast in Ouachita was:

Democratic	793
Democratic majority	1,072
This vote was the largest cast for several years. This vote, as compiled by the returning board, after rejecting all but the M	ouroe

Republican majority.....

Figures become somewhat valuable in this connection.

The registration of 1876 shows the following number of white persons entitled to vote: 1,023. Of these nearly 1,000 are democratic, and at this election it is safe to say every one voted. There had always been in the parish about 100 or more democratic colored men, (see Stubbs's testimony.) making the democratic strength about 1,100 without changes from the republican party. But the testimony of a

very large number of colored men—leading men among their people—shows that a very great change had taken place among the colored people from the arguments that are usual among the laboring men, and this not only in Ouachita, but in all Northern Louisiana.

Northern Louisiana.

We quote now from the republican census of 1875 some few instructive figures upon this point, illustrating the truth of this proposition.

Jackson Parish, with 1,752 colored population, gave only 23 votes for the Hayes electors in the late election.

Union Parish, with a colored population of 4,667, gave the Hayes electors only

Other Parish, with a colored population of 3,597, gave the Hayes electors only

Jackson Parish, with 1,25 colored population, gave only 23 votes for the Hayes electors in the late election.

Union Parish, with a colored population of 4,657, gave the Hayes electors only 31 cotes.

Yet in every one of these three parishes—lying in Northern Louislava and adjoining Quachina—it is conceded that the election and everything pertaining to it was free, fair, peaceably the was free, fair, peaceably the was the conceded that the election and everything pertaining to it was free, fair, peaceably the was the fair of Morchouse.

In Claiborne, in which only one poll was contested, there is a colored population of 7, 802; yet the vote for Hayes was only 432.

In Familia, in which only one poll was contested, there is a colored population of 7, 802; yet the vote for Hayes was only 129.

These fluores are exceedingly instructive, and compel us to believe that the changes which took place in Morchouse, Ouachita, and Richland, but particularly in Morchouse and Quachita, were the result chiefly, if not entirely, of other causes than the smallfestation. The 473 colored men who gave their affidavits for use before the returning board, that each one had voluntarily voted the democratic ticket, were surely not all intimidated men. And it is significant that in all the testimony submitted upon behalf of the Hayes electors to the returning board there can be found but sixtee excercise of the elective franchises. Your subcommittee hald before it a large number of colored men who had always voted the republican ticket. Their testimony was very clear not only that they had not been intimidated, but that intimidation had not been used. They gave unany reasons for the change in the colored of the colored men who had always voted the republicant icket. Their testimony was very clear not only that they had not been intimidated, but that intimidation had not been used. They gave unany reasons for the change accomplication of the properties of the colored properties of the colo

ers into political crimes, and published as part of a plan to intimidate the colored voter.

It has occurred to your subcommittee as strange that, with all the machinery of the law, as well as of the election, in their hands in the parishes of Morehouse and Ouachita, no steps have been taken by the republican office-holders to arrest or to punish any of the persons named as offenders against the law before the returning board.

In support of the foregoing statements, your subcommittee refer to the testimony taken by them. There is no contrary voice in the whole record. The testimony is unanimous. The witnesses were of all races, colors, religions, occupations, and parties. They were generally men that seemed to your subcommittee to be entitled to credit. And, in the absence of any contradictory testimony, we are compelled to come to the following conclusion:

1. That a very great change took place in the colored vote of Northern Louisiana and of the parish of Ouachita for reasons already stated.

2. That while the white people and democrats of Ouachita took pains to impress the colored people with their strength and power, no acts of intimidation or political violence were proved which materially influenced the vote in the late election.

Several noted cotton and hog thieves, like Randall Driver, Bryant Simms, and others, may have been whipped; but if they were republicans, their politics had nothing to do with the punishment.

3. That the republicans of Ouachita, as shown by the testimony, endeavored to provoke the democrats to acts of violence to justify the anticipated action of the returning board, public notice having been given in advance, after the colored men had joined the democratic party, that Ouachita would be ruled out as a "bull-dozed" parish.

4. That the democrats, becoming aware very early in the campaign that they would carry the parish, took unusual pains to avoid all acts of violence, tunuit, intimidation, &c., for fear of the anticipated action of the returning board.

5. That the returning board made an indiscriminate onslaught upon the polls in the parish, rejecting not less than two where the republican vote was as large as it had ever been, and where the voters had always or nearly always voted the democratic ticket, and were almost exclusively white.

6. That the returning board counted the four boxes in Monroe, where by secret pre-arrangement they had concentrated their whole vote, when the proofs of intimidation and of violence were as conclusive of intimidation in the town of Monroe as at any other point. The picketing of the roads, if it produced any effect, provented the vote at Monroe from being as fall as it would have otherwise been.

7. That by retaining imangers changed a democratic majority of 1,073 in the parish to a cepublican mangers changed a democratic majority of 1,073 in the parish to a cepublican majority of 307, thus saving their parish officers, and materially contributing to the assistance of the Hayes electors.

8. That by this action the democratic party was allowed the benefit of all their vote actually cast but 48. If the 600 alleged intimidated voters had all voted the republican tisk, was at least 1,000; and the republicans received the benefit of all their vote actually cast but 48. If the 6

JOHN A. McMAHON. MILES ROSS.

JANUARY 31, 1877.

# No. 1 .- EXHIBIT A.

Vote of parishes as cast by the people and as compiled by the returning board.

		eturned by ors of regis-	Vote promulgated by returning board.					
Parishes.	Vote as ca		Vote as counted by turning board.					
	Kellogg.	McEnery.	Kellogg.	McEnery.				
Caldwell	285 2, 432	631 592	211 2, 433	480 592				
Cataboula	820	907	802	810				
Claiborne	433	1,577	432	1, 393				
Concordia	2, 523	307	2, 523	307				
Franklin	129	789	101	715				
Jackson	23 2, 521	364 332	23 2,584	460 345				
Morehouse	783	1, 371	427	399				
Lincoln	331	1,064	331	1,064				
Ouachita	793	1, 865	745	348				
Richland	277	963	120	193				
Tensas	3, 207	464	3, 207	464				
Union	94	1, 465	94	1, 465				

Minutes of congressional subcommittee of the House, appointed to investigate the late presidential election in the fifth congressional district of Louisiana.

## FIRST DAY'S SESSION.

MONROE, LA., December 23, 1876.

Pursuant to the appointment made by Hon. W. R. Morrison, chairman of the House committee to investigate the late election in Louisiana, the subcommittee, composed of Hon. J. A. McMahon, chairman, and Hon. Miles Ross and Hon. W. W. Craro, met this day in Keller's Hall, in this city, and organized. C. E. Whitney, esq., was appointed secretary, and J. W. Polk, esq., sergeant-at-arms, of the committee, and thereupon the hearing of witnessess was commenced.

After the examination of the witnesses whose testimony is appended to these minutes, the committee adjourned until Monday, December 25, at 10 o'clock.

C. E. WHITNEY.

### SECOND DAY'S SESSION.

MONROE, December 25, 1876.

Pursuant to adjournment, the subcommittee met at their hall. Present, Hon J. A. McMahon, chairman, and Hon. M. Ross and Hon. W. W. Crapo.

After hearing the testimony of the witnesses whose evidence is appended hereto, the committee adjourned until Tuesday, December 26, 1876, at \$\partial \phi^2\toleq k\$ a. m.

C. E. WHITNEY,

THIRD DAY'S SESSION.

MONROE, December 26, 1876. Pursuant to adjournment, the subcommittee met at their hall. Present, Hon. J. A. McMahox, chairman, and Hon. M. Ross and Hon. W. W. Crapo.

After the hearing of the witnesses whose testimony is appended hereto, the committee adjourned until Wednesday, December 27, 1876, at 1½ o'clock a. m.

C. E. WHIINEY,

Secretary.

### FOURTH DAY'S SESSION.

MONROE, LA., December 27, 1876.

Pursuant to adjournment, the subcommittee met at their hall. Present, Hon. J. A. McMarox, chairman, and Hon. M. Ross and Hon. W. W. Crapo.

After hearing the witnesses whose testimony is appended hereto, the committee adjourned until Thursday, December 23, at 9½ a. m.

C. E. WHITNEY, Secretary.

### FIFTH DAY'S SESSION.

MONRUE, LA., December 28, 1876.

Pursuant to adjournment, the subcommittee met at their hall. Present, Hon. J. A. McMahox, chairman, and Hon. M. Ross and Hon. W. W. Craro.

After hearing the witnesses whose testimony is appended hereto, the committee adjourned until Friday, December 23, at 9 o'clock a. m.

C. E. WHITNEY, Secretary.

SIXTH DAY'S SESSION.
MONROE, December 29, 1876. Pursuant to adjournment, the subcommittee met at their hall. Present, Hon. J.

A. McMahox, chairman, and Hon. M. Ross and Hon. W. W. Crapo.

After hearing the witnesses whose testimony is appended hereto, the committee adjourned until Saturday, December 30, 1876, at 9 o'clock a. m.

C. E. WHITNEY.

### SEVENTH DAY'S SESSION.

MONROE, LA., December 30, 1876.

Pursuant to adjournment, the subcommittee met at their hall. Present, Hon. J. A. McMahox, and Hon. M. Ross and Hon. W. Crapo.

After hearing the witnesses whose testimony is appended hereto, the chairman called for executive session, and the session was closed.

C. E. WHITNEY, Secretary.

## EXECUTIVE SESSION.

MONROE, December 30, 1876.

At the opening of executive session, the chairman stated that the examination as to the parishes of Caldwell, Morebouse, Ouachita, Richland, and Concordia had been concluded, and that the committee as to these parishes was ready to hear testimony on behalf of the Hayes and Wheeler electors. Thereupon Hon. Mr. Caro gave the following notice:

Mr. Caro gives notice to the subcommittee that he desires to examine witnesses who are now in New Orleans, and who are expected to be there the coming week, and that he will make the request for the examination of witnesses after his return to New Orleans; that the proposed examination relates to the election in the various parishes which this subcommittee has under consideration.

The chairman made the inquiry of Mr. Caro whether he had any witnesses whom he desired to call at the city of Monroe, and whom he desired to examine while sitting here.

whom he desired to can't the city of Monroe, and whom he desired to examine while sitting here.

In response thereto, Mr. Crapo said that he had no witnesses at present in Monroe, the parties he desired to examine being in New Orleans in attendance under subpensa from the Senate committee, where he believed they were likely to be detained for a week.

ros, the parties he desired to examine being in New Orleans in attendance under subpens from the Senate committee, where he believed they were likely to be detained for a week.

The chairman responded to Mr. Crapo, and inquired whether he had asubpens issued for any of these witnesses to appear before the subcommittee of the House. Mr. Crapo answered that none had been issued that he was aware of. The chairman then asked Mr. Crapo shether he desired to come back to Monroe at the expiration of one week to take the testimony on behalf of the Hayes and Wheeler electors.

Mr. Crapo stated that he did not personally desire to return to Monroe, and he further believed that the public interest in this examination would be promoted by taking the testimony in New Orleans, and he inquired of the chairman and of Mr. Ross if they desired to return to Monroe at the expiration of the current week to finish taking testimony.

Mr. Ross responded, "Yes, sir."

The chairman said that he did not desire to return; that the loss of time of one week would delay the investigation and the publication of the testimony, and also the making of the report of the subcommittee to the whole committee, and thereby prevent the whole committee from making its report to the House of Representatives in proper time for the consideration of the matters covered by the resolution under which the committee was appointed; that this subcommittee is ready to proceed with the examination of such witnesses as may be presented on the formal proper time for the consideration of the matters covered by the resolution under which the committee was appointed; that this subcommittee is ready to proceed with the examination of such witnesses on as may be presented on the parishes of Richland, Morehouse, and Onachita specially, should proceed with the examination of all the witnesses on either side to explain or contradict testimony that may be given.

The chairman further wished to notify Mr. Crapo officially, as he had done previously in private, that the subcomm

The chairman stated that he was unwilling to adjourn the committee to New Orleans; and, Mr. Ross concurring therein, the motion to adjourn to New Orleans was lost.

The chairman, Mr. McMahon, then renewed the offer to take testimony at Mon-

The Charles of the Committee then adjourned to meet in Washington City on the day of the assembling of the whole committee, the vote standing—yea Ross, nay, Charo; and, there being a tie vote, the chairman voted yea; and the committee adjourned.

C. E. WHITNEY,

Secretary Subcommittee.

### J. A. McMahon, Chairman,

### RECENT ELECTION IN LOUISIANA.

Report to the whole committee by majority of subcommittee, consisting of Messrs. J. D. New, George M. Beebe, and Charles H. Joyce.

Mr. New, chairman of the subcommittee, submits the following report to Hon. VILLIAM R. MORRISON, chairman, &c.:

The subcommittee of which the subscribers hereto constitute a majority report

as follows:

This committee was assigned the parishes of West Baton Rouge, East Baton Rouge, West Feliciana, and East Feliciana.

### EAST BATON ROUGE.

It is necessary to a full understanding of the location and numbering of the polling places in this parish to give the number of the wards and the polls established in each. There are twelve wards. Wards 1 and 2 embrace the city of Baton Rouge, and each of these wards had two polling places. In ward 1 the polling-places are designated on the consolidated return of the supervisor of registration as polls 1 and 2. In ward 2, that the same numbers may not be repeated, the polls are numbered 3 and 4. Poll 1 was at the court-house; 2 at Murphy's school-house; 3 at the tengine-house, and 4 at Free Market Hall.

The other ten wards had one polling place each, and, on account of there being four polls in wards 1 and 2, the poll in ward 3 is poll No. 5; in ward 4, No. 6; in ward 5, No. 7; in ward 6, No. 8, &c.

The following table gives the votes actually cast at the fourteen different polls for electors:

	Polls.														
Electors.	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	Total
REPUBLICAN.								-				-			
Kellogg	22	294	190	509 509	6	7	92	12	8	305 305	163	4	3	6	1, 62
Joseph Sheldon Marks	22	293 293	195 195	509 509 509	6	- 6	91 91	12	8	305 305 305	163 163	4		6	1, 62 1, 62
Levissee	22	293	195	509 509 509	6	6 6	91	12 12 12	8	305 305 305	163	4	3 3	6 6	1, 62 1, 62 1, 62
DEMOCRATIC.		16			V.							y,			
McEnery	6	189	215	276 276	172	373	179	64	177	34	82	162	165 163	144	2, 23
St. Martin	-6	189	215	276 276 276	172	373	179	64	177	34 34 34	82	162	165 165 165	144	2, 23
Seay	6	189 189	215 215	276 276	172 172	373 373	179 179	64 64	177 177	34	82 82	162 162	$\frac{165}{165}$	144 144	2, 23
Cross	6	189	215	276	172	374	179	64	177	34	82	162	165	144	2, 239

Under the election law of Louisiana persons are permitted to vote at any polling

Under the election law of Louisiana persons are permitted to vote at any polling place in the parish.

F. A. Clover, the supervisor of registration for this parish, disregarded and discarded the votes cast at polls 1, 5, 6, 7, 8, 9, and 13; the six last named representing, as will be remembered, 3, 4, 5, 6, 7, and 11, poll 1 being the court-house poll in the city of Baton Rouge. The polls omitted by the supervisor cast 150 votes for Hayes and 1,136 for Tilden. Upon the vote as cast at all the polls, the majority for Hayes is 374, and by omitting also polls 12 and 14, thrown out by the returning board, the majority for Hayes will be 636.

Whether the result thus obtained and declared is fair and to be respected must depend upon what the powers of the returning board and supervisor of registration are, and whether upon the law and facts those powers were excised lawfully and without fraud. It is not proposed here to refer to the law except where the commentary upon facts seems to make it unavoidable.

By reference to sections 2, 3, and 43 of the Louisiana election law, it will be found that the returning board is required to canvass the vote from the statements of the commissioners of the election. These statements are the "lists" and papers which by section 43 the commissioners are required to keep and make out upon the close of the polls.

Section 43 makes it the duty of the supervisor of registration within twenty-four hours after he receives from the commissioners all the returning board all "the originals received by him" from the commissioners. What statement or papers other than the originals already named is the supervisor authorized or required by law to forward with this consolidated return to the returning board?

If, "during the time of registration or revision of registration," there shall be any riot, tunult, acts of violence, intimidation or disturbance, bribery or corrupt influences at any place in the parish, at or near the places of registration or revision of registration or all the facts relat

all the facts relating thereto, corroborated under oath by three respectable citizens, qualified electors of the parish. One of these duplicates they must give to the supervisor of registration, and by him must be sent with his consolidated return to the returning board; the other duplicate must be delivered to the clerk of the district court for the use of the district attorney.

The supervisor of registration has no statement or report to make to the returning board upon the subject of riots, tumults, intimidation, &c., unless these occurred during registration or revision of registration, and prevented, or tended to prevent, a fair, free, peaceable, and full registration or election. He is not empowered to the period of registration and revision of registration. He is not empowered to make any statement or report as to intimidation, &c., occurring on the day of the election unless the commissioners have filed such statement with him, in which event he must forward the same to the returning board with his consolidated return.

election unless the commissioners have filed such statement with him, in which event he must forward the same to the returning board with his consolidated return.

The statement which the supervisor may make is limited to the period of which he would be expected to have the most definite knowledge. The same is true as to the commissioners of election. Thus the returning board would have before it, with the consolidated return and statements of commissioners of the votes cast, the complaints, so to speak, of supervisors of registration and commissioners of election as to matters about which they respectively would be best informed, in each case sworn to and corroborated under oath by three respectable citizens, qualified voters of the parish. That this is the plain and obvious meaning and only construction to be given to the law cannot be doubted.

The returning board has no power except such as is given by statute, and acquires no jurisdiction as to intimidation, &c., occurring during registration or revision of registration, or on election day, except upon statements filed as already named.

Nothing can be more clear than that the supervisor of registration is not invested with the right to pass upon the regularity or sufficiency of the papers made out by the commissioners of election. He is a ministerial officer, and can have no powers except such as are conferred by statute.

On the consolidated statement of votes made out and filed by the supervisor are certain remarks, not upon the subject of intimidation, riots, &c., but giving his reasons for not returning with his consolidated return the votes cast at polls 1, 5, 6, 7, 8, 9, and 13. He says that the statement of votes, written records, tally-sheets, &c., brought to him from those polls are illegal, informal, &c. His vicws upon the subject of whether these polls should be counted were wholly immaterial, innsmuch as the law had not attached enough importance to his opinions to call for their expression.

The following answer by the supervisor of registrat

pression.

The following answer by the supervisor of registration to questions asked him before the committee at New Orleans will throw some light upon the kind of material he is composed of:

By Mr. JENKS:

By Mr. Jenes.

Question. Now come back and answer my question. Did you not exclude from your consolidated statement a number of polls in that parish of East Baton Rouge? Answer. I did not exclude from my consolidated statement the votes cast at any polls returned according to law.

Q. Did you exclude from your consolidated statement the polls returned by the commissioners of election, whether according to law or not?

A. I don't recollect. Let me refresh my memory for a few minutes.
Q. State whether you did not exclude from your consolidated statement certain polls returned to you by the commissioners of election.

A. I did not exclude from my report any returns made in accordance with law.
Q. Did you exclude any made not in accordance with law, as you judged the law?

A. I did not exclude from my consolidated statement the result of the election at any polling-place made in accordance with the law.
Q. Did you not exclude from your consolidated statement returns of several polling-places in the parish of East Baton Rougeas returned to you by the commissioners of election?

A. That is going a little outside, I think. I did not include in my consolidated statement the returns from any polling precinct not made in accordance with law.
Q. Did you exclude any, whether made in accordance with law or not, that were returned by the commissioners?

A. I understand I have answered that question. I did not include in my statement the returns from any polling places Nos. 5, 6, 7, 8, 9, and 13 in the parish of East Baton Rouge?

A. Lexhuded those not made in accordance with law.

East Baton Rouge ?

A. I excluded those not made in accordance with law.

A. I excluded those not made in accordance with law.

The papers used and made out by the commissioners of election as to votes cast, &c., at the polls rejected by the supervisor, were not returned to the board. These papers should have been examined by the board without regard to the supervisor's opinion oraction. While this parish was being considered by the board, efforts were repeatedly made by authorized representatives of the democratic party to have those papers produced. The board flatly refused to do this, declaring that they would not go behind the report made to them by the supervisor; that they intended to be governed entirely by his return as to those polls, and that all reports from the commissioners of election must come to them through the supervisor. Finally, after the strongest pressure, the board permitted two out of seven of the ballot-boxes representing the seven polls rejected by the supervisor to be opened and contents inspected, General Anderson, one of the board, participating in the examination. The boxes opened were those belonging to polls 6 and 8. They are called in Sherman's report boxes 4 and 6, because they were the boxes used in those wards.

wards.

Before speaking of the contents of these two boxes we wish to say that under the old law the practice was to make the returns to the sheriff, who would lock them up for safe keeping in the box and afterward take them out for compilation.

From force of habit, imperfect knowledge of the present law, or design, the papers required to be used by the commissioners of election were put into the boxes and locked up.

From force of habit, imperfect knowledge of the present law, or design, the papers required to be used by the commissioners of election were put into the boxes and locked up.

Box 8, that is the box used in ward 6, when opened, was found by General Anderson to contain the tally-sheets, statement of votes, and poll-list, and the vote was found to be 12 for Hayes and 64 for Tilden. It is not pretended that there was found the slightest irregularity in the papers relating to this poll; and yet it was not counted by the board.

Box 6, that is the box used in the fourth ward, was opened by General Anderson, and the only irregularity found was that the statement of votes cast was not signed by the commissioners. The tally-sheets were signed, and it appeared therefrom that Tilden received 373 votes and Hayes 7. The statement of votes cast was the least important paper, for without it, the accuracy of the tally-sheets could be tested by the ballots. The board refused to count these votes. It will be seen that it was of the utmost importance to examine the papers and ballots of all the seven polls discarded by the supervisor, so that it might be known by the board what appeared therefrom. The law is well settled that very little attention should ordinarily be paid to mere irregularities in the proceedings of election officers which do not affect the merits of the case.

The supervisor's consolidated return purports to have been made out and sworn to at Baton Ronge, before the clerk of the district court, on the 11th of November. He swears that he went to New Orleans with his return on the 11th or 12th of November, and that he did not file the same with the clerk of the returning board until ten or twelve days thereafter. After arriving at New Orleans he swore to what is termed in Sherman's report his protest.

The law requires that his protest or statement upon the subject of intimidation, &c., shall be 'annexed to his consolidated return by paste, wax, or some adhesive

substance," and that his return shall be forwarded by mail within twenty-four hours after he has received returns from the several polls. The law further provides that his return (consolidated) and the statements of votes cast, &c., prepared and used by the commissioners of election, are by him "to be inclosed in an envelope of strong paper or cloth, securely scaled." He did not forward his return by mail, but took it to New Orleans in person, and did not file it for ten or twelve days thereafter. We do not believe that his protest was filed with the returning board at the time of the filing of his consolidated return. We think this will appear from the proceedings of the board as set out in the Sherman report, as also from the testimony of Clover. He swears upon this point before the committee at New Orleans as follows:

## By Mr. JENKS:

Q. I ask you plainly if you filed a protest under section 26 of the election law with your consolidated statement?

A. I don't think I filed anything with those papers, except those under the head

or remarks.

Q. You know what I mean by a protest under section 26 of the election law?

A. Well, I will look at it; I have it here, [witness examining the law;] I don't think that I made a statement, any such statement, the one contemplated by this law, with my returns.

Q. Did you send such a statement to the board after you made your returns?

A. I don't recollect having done it; I testified, however; my testimony is on file.

Q. It does not make any difference; we are taking your testimony is one file.

A. No, sir; I don't think they did in writing?

A. No, sir; I don't think they did in writing.

Q. Did they make any returns to you of any such threats or violence under oath to you as supervisor of registration?

A. No, sir; they made none; for the reason that many of them were very badly frightened; were too badly frightened to think of it.

By Mr. Berber.

By Mr. BEEBE:

By Mr. Berbe:

Q. Was any statement made to you or to the returning board corroborated by three witnesses under the section of the law requiring that process?

A. I think there was, if that is what you have reference to. I don't know whether that accompanied the consolidated statement or not; I did not read the section all through; I will read it again. [Witness refers to the law.] I made such a statement as this, but I do not recollect positively whether it was included with my return to the board or not. Now that you call my attention in reference to the three witnesses reminds me that such a statement was made; now by whom I don't say; now I don't know whether it accompanied my report; I don't know that it did; I recollect now making such a statement?

Q. To whom did you make such a statement.

Q. I do not ask you what your duty was; I ask you plainly to whom did you make it?

A. Il don't know.

A. I don't know.

Q. Did the commissioners make any such statement in writing and under oath?

A. I don't know, sir. No, I think not.

By Mr. JENKS:

Q. On reflection you think you did return a statement or protest to the returning board in regard to threats, violence, and intimidation?

A. I don't recollect. I think I did make such a statement.
Q. And that you returned it to the returning board?

A. I don't recollect whether it was included in my statement. I don't know how

begund in regard to threats, violence, and intimidation?

A. I don't recollect. I think I did make such a statement.

Q. And tha's you returned it to the returning board?

A. I don't recollect whether it was included in my statement. I don't know how it did go.

His power as a ministerial officer to file a protest ceased whenever he parted with the custody of his consolidated return.

The supervisor, in his protests, gives the names of three persons said to be maltreated. The first, William Payne, colored, he says was killed "shortly before or during registration." He does not say that Payne was a republican or that politics had anything to do with it. The second person named is Isadore Herron, colored, who, he says, was dragged by the neck with a rope until he was nearly dead, says Herron was a republican, but does not say that the act was committed because he was a republican. Herron filed an affidavit before the returning board, and does not charge that politics was in any manner involved. He says it occurred in February, 1876, which was long before registration began, and at a time when there was no political excitement in the parish. The fact is that at that time lynching of persons guilty of stealing hogs, cattle, and cotton in the seed was of very frequent occurrence; often very summary and very severe. The third and last person named is one Alexander Gilbert, said by the supervisor to be a prominent colored republican. Those seeking to do Gilbert some bodily harm, not finding him at home, are said to have put a rope around Mrs. Gilbert's neck, with the threat that if she did not disclose where her husband was she should be hung. This is the statement of the supervisor. He does not enlighten us as to the cause of this unlawful conduct, nor how it affected, if at all, the matter of Mr. Gilbert's registration. It is a fact of some significance that Gilbert was at that time having trouble with his own party, and was taken off the republican ticket as a candidate for representative. It is also not to be lost

There is a complaint or statement as to poll 2 in ward 2, which is poll 4 as known and numbered on the supervisor's consolidated return. Also, as to polls 5, 6, 7, 8, 9, 11, 12, 13, and 14, as numbered on the supervisor's return, as heretofore explained. All of these statements purport to be corroborated by three witnesses, except those relating to poll 6, ward 4; poll 9, ward 7; and poll 11, ward 9. In all respects all of said statements are insufficient in substance and in form, and conferred no jurisdiction on the board to inquire into any of the matters which by law could be lawfully stated therein.

B. V. Baranco is the republican commissioner who makes complaint, as aforesaid, to poll 4. He swears there was general intimidation at that poll, &c. Notwithstanding Mr. Baranco's formidable statement, the board did not throw it out. It gave Hayes a majority of 233. Lieutenant Gerlach, Third United States Infantry, stationed at Baton Rouge, testified before this subcommittee that this man Baranco called him aside and said, "We fixed them; we got them tally-sheets and papers locked up in the boxes where they've got big democratic majorities, and they can't count them now."

anco called him aside and said, "We fixed them; we got them tally-sheets and ppers locked up in the boxes where they've got big democratic majorities, and they can't count them now."

Can it be that the failure to throw out poll 4 was in any degree due to the fact that Hayes had a majority there?

Was poll 10, in ward 8, retained for any such reason? There Hayes had a majority of 271. They threw out poll 6, where Hayes received 7 votes and Tilden 373, although the commissioner's statement was not corroborated by three witnesses. The same is true of poll 9, where Hayes got 8 votes and Tilden 177. They retained poll 11. Whether that was because the complaint of the commissioner was not corroborated by three witnesses, or because at that poll Hayes had a majority of 81, the board alone can with certainty know.

If there was so much intimidation on the day of the election, and colored men were coerced into voting the democratic ticket against their will, it seems most remarkable that but one of these commissioners mentions the name of a colored man who voted againsthis will. John McVeltz, a commissioner in ward 10, poll 12, names one Cooper, a colored man, as having voted against his will. The testimony of Cooper was not taken before the board, notwithstanding the fact that Mr. McVeltz had furnished the name of so valuable a witness.

Leroy Price (colored) made affidavit before the board that he went to poll 1, in the city of Baton Rouge, early in the morning, and waited until 3 o'clock p. m. without being able to vote, the democrats having possession of the poll and keeping all republicans from voting. This story is a little too much for average human credulity, for there were only 23 votes cast at that poll, and Hayes got 22 out of the 23.

credulity, for there were only 23 votes east at that poll, and Hayes got 22 out of the 23.

POLL 5.

Joseph Williams, republican, is the commissioner who makes complaint as to poll 5 in ward 3. First, he says that while on his way to the poll that morning he met two men on horseback, who said, "Come on; we are waiting for you;" says the two men then turned back and fired off their pistols; says that when he got to the polls those men took the ballot-box away from him; that he remonstrated, and they gave it back to him; that they took charge of the poll, saying they "did not care for the 4-d negro ofieer nor the soldiers that had charge of the poll, and they were going to run it," &c.

One Jacob Shields also made affidavit before the returning board that he was acting as a United States deputy marshal at that poll. That the democrats said they did not recognize any d-d-d negro officer, that it was a democratic ward, and they intended to carry it. That they had the negroes the way they wanted them, and that if they did not vote their way they would not be found alive on Wednesday morning. That they were inside the room, and had a dozen bottles of whisky sitting by the ballot-box. That they drove him away, &c. V. M. Lange, colored, was the other republican commissioner. Mr. Lange is a man of sound sense and of unquestioned character. He was a member of the constitutional convention in 1867-83 and of the Legislature in 1863; was the most active and influential colored republican in the parish, and made speeches in several of the wards during the last canvass, and was well received and well treated wherever he went by white and black. He contradicts most positively the statements of Williams and Shields. Says that Shields walked into the room about the time they were clearing it up preparatory to voting. The commissioners requested Shields to step outside, who exclamed. "Do you know who I am I" They told him they did not know who is was, but that they wishedhim to step outside. Shields then said, "By God, I know my

By Mr. NEW:

Question. Of course you participated in making up the returns at that poll as one of the commissioners?

Answer. I was one of the commissioners, Jos. Williams was one, and Mr. Ed.

Answer. I was one of the commissioners, Jos. Williams was one, and Mr. Ed. Davis.

Q. You may state whether the poll-list, tally-sheets, statement of persons voted for, &c.—whether they were regularly conducted.

A. We complied with the instructions all the way through of the supervisor of registration; we furnished the boxes that the law required us to do, and we furnished Mr. Davis, representing the democratic party, with a tilly-sheet and statement, and we also kept one as republican commissioners. There was no stone left unturned.

Q. Do you know that these papers were returned to the supervisor of registration?

tion?

A. Mr. Williams came in that morning with me as commissioner, and he himself had the tally-sheet and statement turned over to Mr. Clover, and I think, if I am not mistaken, as soon as I had a conversation with him, that he turned over the tally-sheet to Mr. Clover, but the statement closed—no, it was the original—Mr. Clover refused to take it. At least, he told him he was not ready for it. He told him he would take it in a few minutes. I saw Mr. Williams three or four days afterward, and he told me Mr. Clover had not consented to take the original. That is the sheet that was to be sworn to before the close of the poll. I think it is the "original" that they call it.

- Q. Did you have any conversation with Clover yourself about that paper ?
  A. Yes, sir.
  Q. Did he give any reason why he did not take it?
  A. No, sir. He asked me who had the tally-sheet; who had the original.
  Im Mr. Williams, as he was the ticket-receiver; that Mr. Williams was the him Mr. innissioner.

  You may state whether at the close of the poll you counted the vote.

  Yes, sir.
- Yes, sir.

  Before you counted it, did you make out the list of the persons that voted?

  Yes, sir; persons voted for, and all complete.

  Did you state the number of votes received by each?

  Yes, sir.

  Did you state the number of ballots contained in the box?

- Yes, sir.
  Were any ballots rejected?
  No, sir.
  So there was no statement to make as to that?
  No, sir.
  State whether you made out two of those lists.
- We made three.
- Triplicates † Duplicate and triplicate. Were they sworn to and signed †

- Q. By each of you?
  A. Yes, sir.
  Q. By each of you?
  A. Yes, sir.
  Q. By whom were you sworn?
  A. Mr. T. R. Brady. He is a gentlemen who is justice of the peace in the third ward. Our instructions were from Mr. Clover that we could get any ci izen.
  Q. You offered one of these with the papers to the supervisor of registration, Clover?
- Q. You offered one of the Clover?
  A. Yes, sir.
  Q. One of the triplicate sheets sworn to be refused to take?
  A. Yes, sir; that is what I understood from Mr. Williams.
  Q. He refused in your presence?
  A. Mr. Williams told me that he refused to take them. I saw Mr. Clover, and be gave me no reason for refusing to take them.
  Q. (By Mr. Beebe.) Did he admit that he had refused?
  A. No, sir.

  The you mean that you spoke to him about it?

- Q. (By Mr. BEEBE.) Die he admit that he had reduced?

  A. No, sir.
  Q. (By Judge New.) Do you mean that you spoke to him about it?
  A. Yes, sir; he told me that he would see Mr. Williams.
  Q. Did you mention to him when you approached him the matter of his having refused to take the sheet that you speak of?
  A. No, sir; the question came up in this way: I asked him had Mr. Williams delivered it to him. He told me that he would see Mr. Williams
  Q. He did not state whether Mr. Williams had offered it or delivered it to him?
  A. Mr. Williams told me that he had refused. I am satisfied that he had that in
- his possession.

  Q. Do you know whether one of these triplicate sheets was filed with the clerk of the district court?

  A. I could not say. Mr. Davis and I drew a receipt for the box and set down the votes cast at that precinct, and I gave the receipt to Mr. Ed. Davis.

  POLL 6.

- the votes cast at that precinct, and I gave the receipt to Mr. Ed. Davis.

  POLL 6.

  J. L. Lapierre is the republican commissioner, who complains as to poll 6, in ward 4. His statement was not corrob orated by three witnesses, and was, therefore, as well as for other reasons, wholly insufficient. His statement is as follows as to the day of the election:

  J. L. Lapierre, sworn and examined, says:
  I reside in the first ward of the city of Baton Rouge. I was one of the three commissioners of election appointed to attend at poll No. I, in the fourth ward. I arrived at poll on the morning of the 7th day of November, 1876, a few minutes before six o'clock a. m. My duty as commissioner of election was to keep a written record of all persons voting at said poll. I kept this list until the closing of the polls. After the polls were closed, at six o'clock p. m., I began to keep the tally sheets, or lists. I progressed until about ten o'clock p. m., when I became so exhausted for the want of proper sustenance that I could proceed no further. I had received no food during the day, and was so completely overcome that I had to stop work. At this time there were some unauthorized persons inside of the poll who assumed to continue and complete my work at the tally-sheets during a period of five hours, when I recovered, and assumed and completed the work began by me. When the tally-sheets were completed, the original written records, tally-sheets, and poll-book, or lists, were locked up and sealed in the ballot-box. I insisted upon taking the tally-sheets and written records into my possession, intending to bring them to the city of Baton Rouge and deliver them to the supervisor of re\_istration, as required by law, but an outsider said that these original papers should be sealed up in the ballot-box. These unauthorized persons insisted that I should not take them to twen. I was sworn by the supervisor of registration to bring these returns to town.

  Inside of the poll, on the day of election, I was offered liquor, and refused i

- in the ballot-box. These unauthorized persons insisted that I should not take them to town. I was sworn by the supervisor of registration to bring these returns to town.

  Inside of the poll, on the day of election, I was offered liquor, and refused it. I believe that in the building where the poll was located there was liquor. I saw one man under the influence of liquor myself. The reason I did not bring the tally-sheets to town was because I could not convince these people that the records should be intrusted to me.

  It will be rembered that the box for this poll is one of the boxes which, after much entreaty, was opened by the beard.

  It will be seen from Lapierre's statement that when the original papers were completed they were locked up in the box. He says that some unauthorized person insisted that he should not be permitted to take charge of the papers; that they should be locked up in the box. He says also, "The reason I did not bring the tally-sheets to town was because I could not convince these people that the records should be intrusted to me." It seems that the papers were locked up in the box and taken to the supervisor well guarded by "thirty-five or forty horse-men." Lapierre was not "exhausted," but leading the advance.

  Alonzo Woods, democrat, and Gustave Le Blane, colored republican, were the other commissioners. Woods sewears there was no intimidation, and that he gave out republican tickets himself. Le Blane swears that everything was quiet, and that there was no trouble at all; that there was no disorderly conduct or ugly behavior on the part of anybody. That all had an opportunity of voting, and that he saw no interference and heard no complaint. (See his testimony on page 68) That the exhausted state into which Mr. Lapierre fell, and that his place was filled for a time by another, not sworn, but called by one of the officers of the election, will not make the election void is very clear from the authorities.

  But to cap the elimax as to this poll. Mr. Lapierre himself appeared and testi

- H. F. Billups, republican, is the commissioner who complains as to poll 7, (Port Hudson), ward 5. His complaint as to the day of election is as follows:

  I, H. F. Billups, was a commissioner of election at this poll. I was at Port Hudson at four o'clock in the morning. West Woodside, the democratic commissioner, at about five o'clock, procured a house to hold the election at. He said that there was no use putting up stakes to keep the people from crowding the poll, and that my instructions to do so were not worth a dann.

  About nine o'clock in the morning there were about fifty democrats marched about thirty colored men in line to the polls and handed them the democratic ticket, and stood there and guarded them until they had voted; they would not allow them to get republican tickets. They fold the United States marshal that they would have him arrested if he did not stop distributing republican tickets. They did not allow any republicans to vote till about three or four o'clock. They crowled the room while the count was going on, and outsiders kept tally-sheets, and made the republican commissioner correct his by theirs.

  I have heard many reports of republicans being bull-dozed, and there was great fear and apprehension among the republican people.

  I have seen bands of masked men armed with guns and pistols riding around in the night at the hour of twelve o'clock; and I know that the colored people are in fear of their lives on account of these men, and I have been told by colored men that they voted the democratic ticket to save their lives.

  We have already called attention to the fact that four colored republicans made affidavit before the board that they voted the republican ticket at that poll without molestation. There were 92 republican votes cast at that poll; nearly, if not quite, all must have been colored. We now submit the affidavit of A. H. Levi, esq. This affidavit was furnished to the returning board while it was entertaining and considering as evidence exparte affidavits:

- STATE OF LOUISIANA,
  Parish of East Baton Rouge:
- Parish of East Baton Rouge:

  Personally came and appeared before me, the undersigned authority, a justice of the peace in and for said parish and State, holding in the first ward, city of Baton Rouge, A. Levi, now residing in said city, who, on eath, does deposes and says that he is a colored man, raised in the State of Massachusetts, where he was admitted as an attorney at law; that for the last two years he has been following his profession in the parish and city of Baton Rouge. Avers that at the election for State and national officers held on the 7th day of November, 1876, this present month and year, he was a United States supervisor of election for the fifth ward of said parish; that he was present when the voting began, and remained until the last ballot was counted by the commissioners; that he saw no threats, acts of violence, or intimidation used by either political party for the purpose of preventing or obstructing any person, either white or black, from exercising the right of suffrage as they thought best. The voting was done by both parties in a quiet and orderly manner. There was a feeling of kindness manifested by both white and black, democrats and republicans. I am and have always been a pronounced republican; alwocated, publicly and privately, the election of the national and State republican it cket, and so voted on the day of the election. Was appointed a United States supervisor in the interest of the republican party.

  A. H. LEVI.
- A. H. LEVI.

  Sworn to and subscribed before me officially this the 20th day of November, A.

  D. 1876.
  - F. W. NEPHLER, Justice of the Peace.

- Oliver McKitrick, republican commissioner, makes the following allegation as to what occurred on the day of the election at poll 8, ward 6:
- "That on the day of the election at poil 8, ward 6:

  "That on the day of election, at and near the said poll, there were menaces, threats, violence, and other acts of intimidation used which tended to prevent and did prevent a fair, free, and peaceable full vote of all the qualified electors of said parish. The facts relating thereto are as follows: I have had many colored men tell me they had to vote the democratic ticket or they would be compelled to leave the parish. Every colored man who voted democratic was given a guarantee against the bull-dozers, who they were to show it to if they came to see them. They would not give this guarantee to any colored man until they saw him vote the democratic ticket."
- not give this guarantee to any colored man until they saw him vote the democratic ticket."

  It is difficult to tell whether "the facts relating thereto," which the commissioner undertakes to give, came under his personal observation or not on the day of election; nor is it at all clear that he means to be understood as swearing that anything of that kind occurred at that poll. Especially is this in doubt when it is observed that the introductory sentence is the stereotyped phraseology with which almost every one commences, those words being intended to cover the law. A. Williams, colored republican, swears that he visited this ward, and saw nothing that could interfere with a fair registration and vote. He also swears that the election throughout the parish was quiet. He is the business manager of the Grand Era, the republican paper of that parish.

  Mortimer Price, a colored man, seventy-five years old, who voted at this poll, swears that all was quiet so far as he could see. Says that he knows of "no threats before the election nor dissatisfaction afterward." Says he is a republican, but does "not follow party discipline." That he voted the democratic ticket, believing that good would follow. William Martin was the democratic commissioner at this poll. He swears that the election passed off in good order, and was in all respects fair. Says, also, that he attended a republican meeting in this ward, and that it was held without difficulty or disorder. Unless Mr. Martin is to be discredited because he is white and votes the democratic ticket, his testimony cannot be disregarded. We invite particular attention to the testimony of Tony Foster, colored, of this ward, page 111. (See, also, testimony by Peter Williams, colored, page 97.)

# POLL 9.

- J. P. Furlow, one of the republican commissioners for poll 9, ward 7, makes the following statement of what took place at that poll on the day of the election:

  1, J. P. Furlow, was a commissioner of election on the 7th of Novembor, 1876, at poll No. 1, ward 7, parish of East Baton Ronge.

  On my way to the poll at which I was stationed I was halted by an armed body of democrats—about eight or ton in the body. They interrogated us; then let us pass. When we got to the poll there was an armed body of democrats—about twenty-five—who surrounded the poll. By the time the poll opened they had increased their number to upward of fifty. When we were ready to open the poll one Andrew Booth and one H. Harelson, both democrats, said that our poll-list was a damned radical trick, and they were not going to have the voting conducted according to it or to my instructions, and when I told them they were my guide and I must obey them, he said if we tried it we would have hell right there, as they were going to run things to suit themselves; but after a while we compromised the affair and I opened the poll. Out of what is usually a republican majority of from 75 to 100 there was but 8 republican votes cast, and 5 of them were the commissioners, mar shals, and constables. I had conversation with many colored men on that day, and they told me although they wanted to vote the republican ricket, yet that if they did they had been threatened with death or bodily harm. They said also that they would have staid at home, but were told that they must come out and vote the democratic ticket or they would be regulated. The democrats would bring colored men up to the polls, look at their registration papers, give them a democratic ticket, and turn them over to their master of ceremonies, who conducted him to the box and

made him deposit his ticket, then passhim over to another democrat, who gave him a certificate against the bull-dozers. All colored men were made to vote an open democratic ticket, and the master of ceremonies then called out his name and number, and he got his certificate against the regulators.

All day the democrats drank whisky and whooped and hallooed around the outside of the poll, and thus terrorized and drove away all republican voters.

W. H. Patterson, the other republican commissioner for this poll, swears that it was quiet there, and that he saw no intimidation or unfair treatment of the colored voters. Mr. Patterson gives the following account of the men Furlow says he met: "I was ahead with Mr. Furlow—I was in the buggy and he was on horse-back—and some man hallooed, 'Hallo!' I think, three times. Furlow answered back, 'Hallo it is.' They stopped then, and I got off a little piece, and they came up and asked where I was bound. I said, 'Going down to the polls.' They said, 'Are you commissioners?' Furlow said, 'Yos.' And they said, 'All right; go ahead.''' He also swears that he did not see these men at the polls.

Jackson Hamilton (colored) testified as follows about this poll and ward:

By Mr. New:

### By Mr. NEW:

By Mr. New:

Question. What is your age?
Answer. Fifty-two the 7th of October last.
Q. Where do you live—what ward?
A. Seventh ward, in this parish.
Q. How long have you lived in this parish?
A. I lived here about thirty-five or thirty-six years, more or less.
Q. Are you pretty well acquainted in your ward?
A. I am. I ought to be pretty well acquainted.
Q. How long have you lived in the seventh ward?
A. All the time, except when I went to New Orleans or to Port Hudson to get something. Outside of that I always lived right here.
Q. What is your polities? What ticket did you vote at the last election?
A. Democrat ticket.
Q. You are a minister of the gospel, are you not?
A. Yee, sir.

something. Outside of that I always lived right here.

Q. What is your polities? What ticket did you vote at the last election?

A. Democrat ticket.

Q. You are a minister of the gospel, are you not?

A. Yes, sir.

Q. You may state whether you voted the democratic ticket of your own free will and choice.

A. Well, I voted it of my own free will and mind; I wasn't forced by nobody. I voted it because I thought it was best to do it, and I done it with all my heart. No mistake about that.

Q. State whether there were other colored men who voted the democratic ticket in your ward or not.

A. Yes, sir; several hundred.

Q. Can you name any of them?

A. Well, there was Harvey Scott, and Edmund Henry, and others; I don't recollect all the names.

A. Well, there was harvey scott, and Edmund Henry, and others; I don't recollect all the names.

Q. How many colored men, in your judgment, voted the democratic ticket in your ward? What would be your estimate of the number?

A. Well, I was at the poll from sun-up, and I seen about fifty or sixty. I believe all voted the democratic ticket except eight that didn't vote it. They all voted

all voted the democratic ticket except eight this data.

Q. Was there a Tilden and Hendricks club in your ward?

A. No, sir; I don't know if there was. There was a party of men come there and spoke there. I didn't see them. I don't know.

Q. I ask you if there was a Tilden and Hendricks club organized in your ward which colored men joined?

A. Yes sir.

Which colored men joined?

A. Yes, sir.
Q. Were you a member of that club?
A. I was.
Q. State whether you were an officer of that club.
A. Yes, sir, vice-president.
Q. How many colored members were there in that club? Give your best recollection.

Q. How many colored members were there in that club? Give your best recollection.

A. I believe there was sixty-five or seventy. Mr. Ed. Burnett has got the number; he is the secretary.

Q. Was the majority of the club colored men?

A. Yes, sir. At first there wasn't but thirty or forty colored men. I don't know how many white gentlemen belonged to it.

Q. Do you know whether the colored men who joined that club did so of their own free will and choice?

A. Yes, sir; they did; that is according to the conversations I had with them.

Q. Do you know, or did you hear, of any intimidation, or any threats, or any means of any kind used by the white men in order to get the colored men to join their club?

A. No, sir; not any; not a word was said except to do as we like; the word was for the colored people to come in and join of his own free will and mind.

Q. Did you attend any republican speaking?

A. Yes, sir; one.

Q. Where was that?

A. On Mr. Forman's plantation, at his residence, in the yard; that was on a Sunday.

A. Yes, sir; one.
Q. Where was that?
A. On Mr. Forman's plantation, at his residence, in the yard; that was on a Sunday.
Q. You state that was a republican meeting?
A. Yes, sir; they had it in the yard.
Q. Who spoke there; do you recollect?
A. I don't know, sir; there was some black and white men spoke there.
Q. Were there any democrats present?
A. Yes, sir; outside the fence; they didn't go in there; the republicans was inside the fence. I was on the fence, sitting there; I didn't have nothing to see, but I was right there; yes, sir.
Q. On the day of election did you give out tickets to men who wanted to vote?
A. I didn't have but two.
Q. Did you see any colored men there distributing tickets to voters?
A. No, sir; there was one man, I believe. One man give me a ticket; that was a republican ticket, and he said that was the right ticket, and to put it in the ballot-box,
Q. Who gave you the other ticket?
A. He is here. I disremember his name. This man that gave me that radical ticket was Mr. McMahon. When he told me to put it in the box. I was the third man voted.
Q. Do you know, from the talk you had with your colored friends, what reasons they assigned for voting the democratic ticket this time; I mean when you were alone, outside of the hearing of white men?
A. Yes, sir; I talked to one.
Q. What did he say?
A. Well, that the colored men ought to have a change. Harvey Scott said that we was all poor men, and the times was bad, and he thought a change would be for the better; that it was better to try the democratis than keep on like we'd been doing and go to starvation. I was determined to have a change if my vote had anything to do with it.
Q. Did you hear other colored men speak in that way when not in the hearing of white men?
A. Yes, sir; I heard men talk when they was coming along on the road jogging along and in the grog-shop; they all pretty much said that they must have a change, and they was going to try the democrats and see if they would do better. Some few said that it wouldn't make a change.

By Mr. JOYCE:

By Mr. JOYCE:

Q. How long have you lived there in that ward?
A. I am fifty-two years old, and I came here when I was fifteen years old; you can count it yourself.
Q. You are pretty well acquainted all over the parish?
A. Yes, sir.
Q. Have you ever been out of the parish?
A. Yes, sir.; I have been over to West Baton Rouge Parish.
Q. When you went out to preach, you electioneered some?
A. Yes, sir.
Q. You believe that politics and religion go together?
A. No, sir; I don't believe that. I don't believe they mixes up, but I am constrained to do something or other.
Q. Who are the leading democrats in your ward? I mean colored.
A. Harvey Scott is one, Edmund Harris, and me.
Q. Who are the leading white democrats in your ward?
A. Mr. Ed. Burnet, Samuel Halsom. I can't tell you much about the white men because I can't get close to them. They talks for themselves.
Q. You can't talk to white men?
A. I can talk to them, but I don't.
Q. When you joined that Tilden and Hendricks club there was not many members?
A. No, sir; there was about three or four.

A. I can talk to them, but I don't.
Q. When you joined that Tilden and Hendricks club there was not many members?
A. No, sir; there was about three or four.
Q. And you were vice-president, and I suppose there was a president and secretary. Were they colored?
A. Yes, sir.
Q. Who was the President?
A. Sam. Harrison.
Q. Did you make any political speeches during the campaign?
A. Only two; poor ones at that.
Q. Where was that?
A. Near Mr. Charles's store, in the doctor's garden.
Q. You did not cast many republican votes in your ward?
A. No, sir.
Q. How many?
A. Eight, I believe; I don't know how many.
Q. You do not mean to cast any at the next election?
A. Not if I can help it.
Q. You do not know anything as to what influences were brought to bear upon the colored people generally to join these Tilden clubs?
A. No, sir.
Q. You say nobody attempted to influence you in any way?
A. No, sir; never did.
Q. Nobody ever said anything to you about it?
A. No, sir; I was satisfied.
Q. Who came to you and importuned you to join the club?
A. No one; I was going around the colored club, and Harvey Scott said, "Let's get together and do something." So we got together, a few of us, and we elected Sam. Harrison president. We didn't know exactly how to go about it, because we is colored men and we didn't have no education, and we thought we'd call on the white gentlemen to help us.
Q. Did you see any acts of violence toward colored republicans because they were republicans?
A. I didn't see it; I heard it.

By Judge New:

By Judge NEW :

Q. You say because they were republicans?
A. I heard there was some intimidated; some was beat; but I didn't believe it.
I can't tell anything about other people.
Q. Had you no other reason assigned for this?
A. Than for being republicans?
Q. Yes.
A. Well, it was for stealing hogs and beeves.
Q. Did you see anything about it?
A. I seen that, and I was willing to join the democrats to take down that stealing.

See testimony of Alfred Nelson and David Jones, colored republicans, as to this poll and ward, pages 52 and 34. See also pages 41 and 82.

The statement of this commissioner, it will be remembered, is not corroborated by three witnesses.

Joseph M. Henry, republican commissioner for poll 11, in ward 9, says that "the election at said poll was reasonably fair, free, and peaceable." This ward gave Hayes a majority of 81.

John McVeltz, republican commissioner for poll 12, ward 10, makes the following statement. We quote from it all that relates to the day of the election. After the usual introduction, he says:

"I, John McVeltz, was a commissioner of election on the 7th day of November, 1876, at poll 1, ward 10, parish of East Baton Rouge; when the hour for opening the poll came the democratis appointed four men, who acted as democratic, on their own responsibility, to act as commissioners; the republicans had two. Mr. Morgan, of the democratic commissioners, then marched a large democratic club, took charge of about fifty or seventy-five colored men, told them they must vote the democratic ticket; marched them to the polls, handed them democratic tickets, and made them vote them; marched them to a democrat, who gave them each a safe-conduct against the regulators; they did not allow any republican tickets to be distributed or voted; there was but four republican tickets voted, and they were cast by the commissioners and marshals. I talked to many colored men; they said they were republicans, and wanted to vote the republican tickets, but that they had been told that if they did they would be killed; one colored man especially. Cooper, said he had a crop there which would be taken away from him and he killed unless he voted the democratic ticket; after he voted and got his certificate against the regulators, while speaking to me, he began to cry and tear up the paper the democrate gave him, and said he only voted the ticket to save his life; many others told me the same thing; there was no republican allowed to come to that poll to vote; and the democrate poenly said that unless they carried that poll the bull-dozing had but just commenced, for they were determined the damned radicals should not have the parish. When we went to count the votes the tally-sheets were all kept by the democrate, and when morning came they crarsed them, as they said they had made some mistake.

"My poll ought to have gone at least 150 majority for th

and when morning came they erased them, as they said they had made some mistake.

"My poll ought to have gone at least 150 majority for the republicans, and would, had the colored men been allowed to vote as they wanted to.

"The democratic called off the names of some colored men who went to town to vote, and say that unless they vote the democratic ticket they would fix him, the son of a bitch; the democratic commissioner took the box after the election; the supervisor told me to take charge of the box, but the democrats said it was their box, and they were going to do as they pleased with it; they made me sign the tally-list that was fixed up.

"My poll was ten miles from town, and there being no republicans but us four officers, the democrats forced us to do as they said, and told us unless we did they would give us hell. Two democrats voted whose names were not on the poll-list;

they brought an affidavit from a justice of the peace that they were entitled to vote, and we were compelled to take their ticket. Ulover, in the remarks indorsed on his consolidated return, makes no allusion to this poll. If McVeltz was "made to sign the tally-list that was fixed up," is it not a little remarkable that he did not so inform the supervisor? It is evident that he did not, for Clover would have been only too glad of such an opportunity to throw out this poll.

We have carefully inspected each affidavit filed by the republicans before the returning board, and have been able to find but one which can be said to corroborate McVeltz as to what occurred on the day of the election at his poll. The affidavit to which we refer contains this language: "I know that there was not a free, fair, and peaceable election in the tenth ward on the 7th of November last, and that colored men and republicans did not dare to have a republican ticket or to give one to others." It is impossible to tell from this language whether he was present or not. He does notsay he was, and does not mention any particular occurrence or act committed.

Frank Everson, (colored,) of this ward, swore that he talked among his colored neighbors about voting the democratic ticket. We quote from him as follows:

Question. In what ward do you live?
Answer. Tenth ward.
Q. How long have you lived there?
A. This year makes eleven years.
Q. Have you lived anywhere clee in the parish?
A. I lived twenty-two years at Mr. McCabe's.
Q. Are you well acquainted in the ward where you live?
A. Yes, sir,
Q. Do you know most of the colored people there?
A. Yes, sir; pretty much.

Q. Have you lived anywhere else in the parish?
A. I lived twenty-two years at Mr. McCabe's.
Q. Are you well acquainted in the ward where you live?
A. Yes, sir,
Q. Do you know most of the colored people there?
A. Yes, sir; pretty much.
Q. How did you vote at the last election?
A. Democratic tirket.
Q. How did you vote before?
A. Radical ticket.
Q. Did you talk with any of your neighbors and friends about voting the democratic ticket, and did they talk to you?
A. Yes, sir.
Q. How did you talk with each other? What did you say?
A. Yes, sir.
Q. How did you talk with each other? What did you say?
A. We just studied over the whole thing, and saw exactly how we were treated in this last election; and it grieved me right smart. I had little children growing up. I didn't see no way and no how that I could get along at all. I talked it over with my colored friends, and then I went to my white friends and advised with them, and asked them what was the matter that we didn't have schools. They said they didn't know. I said "Something looks wrong. It looks like we were all going to destruction. I work hard and have taxes to pay, and think my children ought to have some of it." I talked with some colored people and said, "What do you think of it?" They said, "We cannot do anything but come together and see if we cannot put in a better government, and then may be probably we will have better times, and have schools to educate our children."
Q. Did any of these men who talked in that way belong to the democratic club in your ward?
A. Yes, sir.

Q. Did any of these men who taked in that way belong to the democratic club in your ward?

A. Yes, sir.
Q. Did you belong to that club?
A. Yes, sir.
Q. Did you join the club of your own free will?
A. Yes, sir, we talked over the thing long before the election.
Q. Was it your own opinion and conviction that you ought to vote the democratic ticket?

A. Yes, sir, we talked over the thing long before the election.

Q. Was it your own opinion and conviction that you ought to vote the democratic ticket?

A. That was my opinion, because I talked to them long before the election—some of my colored friends—and we all advised and looked into that thing. Some didn't look into it. I don't suppose they had knowledge to look and see how their children were going. I looked into it and saw that my children were going to destruction. In place of playing and romping, I wanted them to go to school. In a little while they would be in the field, and then they would be too big. I wanted them to go now, while they can attend to it, and put their minds to it.

Q. You say this thing has been thought of and talked of by you for a good while?

A. Yes sir.

A. Yes, sir.
Q. How long ago did you get to thinking and talking about this to your colored friends?
A. We have been talking about it—it has been a right smart while—since the last

A. We have been tanking about 17—18 has been a right-stank election.
Q. That is, within the last four years?
A. Yes, sir.
Q. Have you talked with any old men of your color?
A. Yes, sir; Brother Winfrey. I talked with my brother, and we talked the thing

A. Yes, sir; Brother Winfrey. I talked withmy brother, and we talked the thing over.
Q. You speak of them as brothers in the church?
A. Yes, sir; we talked the thing over, and I would go to some of my old white friends, and advise with them. We considered into the matter.
Q. A good many of you colored people were getting pretty hot over this thing of not having any schools?
A. Yes, sir; I was. I fought on that thing last August before this election; I fought on it on account of my children, and I thought that I would keep fighting and see how it would be. I wanted my children educated. We have to pay taxes, and I wanted my children to have their rights.
Q. How old a man are you?
A. I was born in 1824.
Q. These colored men that belonged to the club that you belonged to, did they talk and act as though they wanted to vote the democratic ticket?
A. Yes, sir.
Q. Do you know of any case in your ward, or anywhere else in the parish, where it was pretended by a colored man that he had joined a democratic club or had voted the democratic ticket because he was afraid to do otherwise?
A. I never heard of it.
Other colored witnesses testified to the same effect. (See testimony of Edward Taylor and Simeon Williams, on page 120.) Williams gives his opinion of the cause of Jerry Myers being lynched. (See also on this subject the testimony of Alfred Peun, page 103, &c.) This is one of the wards in which A. V. Lange says he made republican speeches.

FOLL 13,

Cyrus Strother and James Casby, the republican commissioners for the poll 13, in ward 11, gave separate statements. That of Strother as to day of election is as

follows:

"That on the said day of election, at and near the poll, there was intimidation and threats used to colored men which tended to prevent, and did prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish. The facts relating thereto are as follows:

"They opened the poll on the morning of election at six o'clock, and that everything progressed smoothly until about the hour of eleven o'clock a. m., when a man from the parish of Livingston, who was not a citizen of the parish of East Baton Rouge, attempted to vote at a poll where he was a commissioner. Upon being

refused the right to vote, the democratic supervisor insisted that the man's vote should be received notwithstanding he had not a certificate entitling him to do so. He says that upon his refusing to receive the man's vote the crowd outside the polling place began to make violent demonstrations, and that he felt insecure in his position as a commissioner, and was in fear of bodily harm. He says that the life of a colored republican in East Baton Ronge is very insecure, and that he has known colored men to have been whipped on account of being republicans, and that he is afraid to return to the parish for fear of bodily harm.

"The colored men were brought to the polls by white democrats, who held the registration-papers of the colored men in their hands and compelled them to vote an open democratic ticket, and compelled the white men around the poll to stand back until the colored men had voted the democratic ticket, and did not deliver to the colored men their registration-certificates until they were ready to deposit their votes. Persons presented themselves (white democrats) and demanded the right to vote on written affidavits, and we were compelled to receive their ballots against our protests through fear of bodily harm.

"The original written record of votes cast at the polls having been lost or mislaid, the crowd insisted on me signing what purported to be a duplicate copy of the written record of votes, but I refused to do so, because I knew it was not correct."

That of Casby is as follows:

"I, James Casby, was a commissioner of election at this poll. On the morning of the election the democrats formed outside of the poll, and as each colored man came up they asked him for his registration-paper, and then handed him a democratic ticket, and walked with him to the box, handed in his registration-paper, and made the voter hand in a democratic ticket. They did not allow any republican tickets to be shown or distributed, and there were but three voted at that poll, and they were cast by the two republican

regulators; out those who due not have this sare-conduct were tout that they would be visited some night.

Strother says that, the original record of votes cast at these polls having been lost or mislaid, the crowd insisted on him signing what purported to be a duplicate copy of the written record of votes, and that he refused to do so, because he knew that it was not correct. Casby says that at night, when counting the tickets, the democratis crowded in and filled the room, and made the republican commissioner conform his tally-sheet to that made out by a democratic by-stander, and that himself and the other republican commissioner both refused to sign the tally-sheet. Says he took them to the clerk of the parish. Says the original records were afterward lost or carried away by some person. That then the democrats wanted them to swear to a list made out by them, which they refused to do.

The returning board, with the statement of Casby before it, made no effort to find out what had become of those papers. At this precinct Tilden's majority was 192. We believe that if the majority had been the other way, the original papers would not have been lost or mislaid, and that if they had been, the board would have used every diligence to find them. W. E. Atkinson was the democratic commissioner at this poll. His testimony is as follows:

By Judge New.

By Judge NEW:

By Judge New:

Question. Did you act as a commissioner at the last election?

Answer. I did.
Q. In what ward?
A. Eleventh ward, poll 13.
Q. On behalf of what party did you act?
A. The democratic party.
Q. Who were the other commissioners?
A. James Casby and Silas Strother.
Q. You may state, sir, as to whether the law was complied with as to the poll-ist, tally-sheet, and account of persons voted for, and in other respects.
A. Yes, sir; it was carried out completely to the instructions we received.
Q. After the close of the poll, what was done with the papers?
A. The tally-sheets were made there.
Q. The instructions were received from whom?
A. F. A. Clover.
Q. After the polls were closed, what did you do?
A. The ballots were counted and tally-sheets made out.
Q. Was there a list made out of persons that had voted?
A. Yes, sir.

Q. Did you have a statement of the votes received by each candidate †
A. Yes, sir; a statement of votes was made out, according to the instructions, at
the head of the tally-sheets.

the head of the tally-sheets.

Q. Did you make out a statement of the ballots in the box?

A. Yes, sir.

Q. Now, these statements of votes that were made out, state if they were made out in duplicate or not.

A. From the instructions we received, there was one original and one duplicate

Copy.

Q. What was done with those duplicates after they were made out?

A. They were brought to the clerk's office.

Q. Who took them there?

A. Ourselves, the comissioners; I bring one tally-sheet and James Casby the

A. Ourselves, the tere?

A. Ourselves, the comissioners; I bring one tally-sheet and James Casby the other.

Q. Did all three of the commissioners go to the clerk's office?

A. You mean when we made out those papers? Yes, sir; and Cyrus Strother brought the poll-list.

Q. What took place when you got there; did you see Mr. Clover?

A. I brought in the papers here at the office.

Q. To whom?

A. I brought them to Mr. Clover in the clerk's office, and handed him the original.

Q. Of each paper?

A. No, sir; there was an original copy, two tally-sheets, made out one by each party, and a duplicate copy was handed to the clerk of the court; but the tally-list couldn't be found.

Q. Where was the tally-list?

A. I saw it in the possession of Cyrus Strother up to five minutes of Mr. Clover demanding the tally-list.

Q. Where did you last see it?

A. In the court-room, in the possession of Mr. Cyrus Strother, in his side-pocket, sticking out right here.

Q. Did Clover ask for it?

Q. Did Clover ask for it?
A. Yes, sir.
Q. What reply was made to him, if any?
A. The reply was made, "I throwed it down on the table."
Q. Who said that?
A. Cyrus Strother. He said, "I threw it down here on the table."
Q. What reply did Clover make to that, if any?
A. I don't exactly remember his words.
Q. Was anything more said by Strother than that?
A. Yes, sir.
Q. What else did he say?
A. I asked him, just before we came in with the papers, where the tally-list was and he said, "I have got it here," at the same time showing it to me in his side-pocket of his coat. I asked him the question because I was anxious to keep the papers together.
Q. Did you see him throw any papers down on the table in the clerk's office?
A. No, sir; I did not.
Q. Were you with him all the time after he told you he had the tally-list in his side-pocket and up to the time he said he threw it down on the table?
A. Yes, sir; I was.
Q. Were you in his immediate presence?
A. Yes, sir.
Q. Let me understand you well. You say it was the tally-list or poll-list?
A. I mean poll-list.
Q. What conversation took place, if any, between Strother and Clover after Strother had made the remark that he had thrown the paper down on the table?
A. Mr. Clover didn't pay any attention to him.
Q. Do you recollect any conversation that took place between them upon that subject after the remark was made by Strother?
A. No, sir; I don't.
Q. Was that paper found?
A. I never saw it again. I don't know.

A. 1 never saw it again. I don't know.

By Mr. GAINEY:

Q. Were you commissioner in the eleventh ward on the day of the election ?
A. Yes, sir.
Q. You were the democratic commissioner there ?
A. Yes, sir.
Q. And Mr. James Casby and Cyrus Strother were the republican commissioners?
A. Yes, sir.
Q. Were you present at the poll throughout the day?
A. Yes, sir.
Q. All the time?
A. Yes, sir.
Q. Until the vote was tallied?
A. Yes, sir.

A. Yes, sir.
Q. All the time?
A. Yes, sir.
Q. Until the vote was tallied?
A. Yes, sir.
Q. Do you know of any persons voting at that poll without registration-papers?
A. No, sir.
Q. Was there any person who presented an affidavit there who voted thereon?
A. There was one person tried to vote on an affidavit, but the republican commissioners refused him.
Q. Where did he live?
A. He lived in the eleventh ward, in this parish.
Q. Did you come back with the ballot-boxes to the court-house here?
A. I did.
Q. With the tally-sheets and poll-list locked up in that box?
A. No, sir; they were not locked up in the box.
Q. Who carried them?
A. I carried one and James Casby carried the other.
Q. What did you carry?
A. Tally-sheets, one of them.
Q. And I understand you to say Strother carried the poll-list?
A. Yes, sir.
Q. What became of that poll-list?
A. I can't tell you what became of it; the last time I saw it it was in the possession of the republican commissioner, Mr. Strother.
Q. When did you see it last?
A. Within five minutes of the time Mr. Clover called for the papers.
Q. That was where?
A. In the clerk's office.
Q. Did the republican commissioner hand that poll-list to the supervisor?
A. He did.
Q. What was his answer?
A. "I threw it on the table among those papers;" that was the answer of the commissioner.
O. Do you belong to any secret political organization in this parish?

A. He did.
Q. What was his answer?
A. "I threw it on the table among those papers;" that was the answer of the commissioner.
Q. Do you belong to any secret political organization in this parish?
A. I don't.
Q. Have you heard of any organization existing here known as "bull-dozers" or "regulators?"
A. No, sir; I have not.
Q. Do you not know, from report and otherwise, that a great many colored men have been hung, shot, and otherwise maltreated in this parish by these regulators and bull-dozers?
A. Not a great many. I have heard of three or four instances, but I didn't hear it was done by these parties.
Q. Who did you hear it was done by?
A. Some unknown persons; none were designated.
Q. How did you ascertain it was done by unknown persons?
A. It was so reported in the neighborhood.
Q. What was the report in the neighborhood? Wasn't it that the bull-dozers had done it?
A. No; it was said to have been done by unknown persons.
Q. Now have not you heard your neighbors say that these outrages upon these colored people had been perpetrated by bull-dozers, or regulators?
A. Well, I think I have in one or two instances.
Q. Do you not know that a great many of the colored people throughout the parish were very much intimidated by these parties of bull-dozers?
A. No, sir; I on't know any such a thing.
Q. Do you know of any colored men being brought to the polls to vote the democratic teket by white men?
A. No, sir; not at the poll I was at.
Q. Did the colored men voting at your poll vote the democratic ticket openly?
A. Yes, sir.
Q. How did the republican colored men vote? Did they vote their ticket openly?
A. Yes, sir, to an not.
Q. You say you are not a bull-dozer?
A. No, sir I don't.
There can be but little doubt that the papers relating to this poll were purposely "lost or carried eway."

There can be but little doubt that the papers relating to this poll were purposely "lost or carried eway."

Henry Raymond is the republican commissioner who complains of poll 14, ward 12:

"That on the said day of election, at or near the said poll, there were threats' menaces, violences, and other acts of intimidation, which tended to prevent, and did prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish. The facts relating thereto are as follows: It was not safe for a colored man to vote the republican ticket. He heard that a large democratic meeting had been held the night before the election to force colored men to vote their ticket, and to make them do so or leave the country, and if they refused to leave that they must stand the consequences. The republicans of East Baton Rouge were generally afraid, in dread of their lives and of bodily harm from the democrats. He says that he is afraid to return to the parish for fear of bodily harm on account of his politics, he being a republican. He says that the majority of colored men in the parish were forced to join the democratic clubs and vote the democratic ticket."

The utter want of specific statement as to what transpired on the day of the election will be observed.

A.V. Lange swears that he made a republican speech in this ward. He says: "We fired, I suppose, about four or five cannon, calling the people to assemble, notifying them. We took them on surprise, and we fired cannon, and the people immediately gathered the moment that they heard the cannon."

He says there were democrats present, and they paid particular attention to the speeches and made no disturbance. He says that himself and the other speakers were cheered by the republicans when they concluded. He says that this meeting was held to rally the republicans of that ward to attend a republican barbecue to be held in Baton Rouge.

(See testimony of Rev. R. F. Patterson, Presbyterian clergyman from the North, as to this ward and the parish generally, page 49.)

The first democratic conservative club in the parish was organized in this ward. It contained ninety se Henry Raymond is the republican commissioner who complains of poll 14, ward 12:

STATE OF LOUISIANA, Parish of East Baton Rouge:

Parish of East Baton Rouge:

Before me, Charles E. Doyle, a justice of the peace, duly commissioned and qualified in and for the second ward, parish and State aforesaid, personally came and appeared W. L. Larimore, P. A. Klinepeter, D. A. Roberts, George Hill, Jr., J. H. Werners, G. Babin, L. T. David, Peter St. Romain, O. Sicard, W. T. Larimore, George Garig, William Sharp, J. A. Stokes, W. Z. Riley, David Zehner, A. Tibadeaux, A. W. Stearns, G. A. Klinepeter, Patrick Kellehar, Rev. R. F. Patterson, D. H. Penny, Thomas E. County, who, being duly sworn, depose and say they were present and voted at the election, poll No. 1, ward 12, in this parish, on the 7th of November, 1876, the day of the late general election in this State. The election was quiet and peaceable. There was no disturbance whatever, no violence and no intimidation of voters to induce them to vote the democratic ticket; all voted as they desired, and without hinderance.

W. J. Sharp, George Garig, G. A. Klinepeter, P. A. Klienpeter, W. Z. Wiley, D. H. Penny, L. T. David, Thomas E. County, Patrick Kellahar, (his x mark), G. Babin, J. A. Stokes, D. A. Robertson, G. W. Hill, J. J. H. Weiners, R. F. Patterson, David Zehner, Charles A. Roberts, Peter St. Romain, O. Sicard, W. T. Larimore, W. L. Larimore.

CHARLES E. DOYLE, the above-named justice of the peace, testified as follows:

By Judge NEW:

By Judge New:

Question. In what ward do you live?

Answer. The second ward.
Q. Is that in this city?

A. Yes, sir.
Q. You are a magistrate, are you not?

A. Yes, sir.
Q. Did you attend at any voting-places the day of election in this city?
A. I voted in the second ward. I was around at all polls in the town here.
Q. State how the election went off.
A. Peaceably and quietly, as far as I saw, sir, at each poll here in town.
Q. Have any complaints been filed with you or made before you on account of any difficulties on the day of election?
A. Not any, sir.
Q. During the period of registration, say between the 28th of August and the 28th of October, what was the state and condition of the city and parish, so far as known to you, as to a quiet and orderly state of things?

A. It was very quiet so far as I know. I was in the house most of the time. I have been sick for a long time. I didn't hear of any difficulties that I can remember.

ber.
Q. You have no recollection of any complaints made to you, or during that

period!

A. I know that there has been none made to me directly.

Q. What do you know on the subject of colored men voting the republican or democratic ticket of their own free will, or on account of intimidation, or what upon the subject do you know?

A. I have been called upon to make affidavits from republicans and democrats, colored men, and they all testified that they all went to the poll and voted without intimidation: no trouble whatever.

Q. Were these affidavits made before you for the purpose of being used at New Orleans?

A. Some were printed blanks and some were written out; some I wrote out. Those for the republicans—we had no blank form for them—about as many republicans as there were democrats.

Q. They testified before you that they voted the republican ticket of their own free will and without any intimidation?

A. Yes, sir.

Q. And affidavits of like import as to the democratic ticket were made by colored democrats?

mocrats! A. Yes, sir; so they said. This was outside of the parish, and the same in

O. About how many such affidavits were made before you?
A. As far as I can recollect, there may have been some three hundred, probably about three hundred.
Q. Mostly from the country?
A. Yes, sir.
Q. About equally divided as to polities?
A. Yes, sir; very near. I think there was two or three more democratic affidavits than there was republicans.
Q. You have been confined to the house so that you have not been circulating through the parish?
A. Just got out previous to the election—about a week or so.
Q. What is your polities?
A. Republican, sir.
We find, upon examination, that over three hundred citizens of this parish made

We find, upon examination, that over three hundred citizens of this parish made affidavit before the returning board that the election was in all respects fair, free, and without intimidation. More than half of these affidavits were made by colored voters. Lieutenant William Gerlach's sworn statement was furnished to the returning board. Lieutenant Gerlach favored the election of Hayes. His statement before the board was as follows:

BATON ROUGE, November 16, 1876.

Hon. L. PASTERESKI, Mayor, Dr. J. W. DUPERE, Oldy:

GENTIZENT: In compliance with your request of this morning. I take pleasure for turnish you the folliwing account of my personal observations of the namer in the votes has been conducted since.

I was present on the morning of election day when a report was made to my commissioners at the Marphy school-house poll, and I accompanied him to a conference between leaders of both political parties. It away and bear witness to the fact that the representatives of the democratic party did all in their power to make a fair archival to the property of the conference of the conference of the political parties. It away and bear witness to the fact that the representatives of the democratic party did all in their power to make a fair archival place, to investigate a report made by one Skieldag, colored, who stated that be representatives of the democratic party did all in their power to make a fair archival place, to investigate a report made by one Skieldag, colored, who stated that be placed to the property of the state of the place of the control of the colored place of the colored p

United States officer is sufficient protection against any violence, in performing any duty, such as assisting a marshal in making an arrest or the like.

I have above given simply a statement of what I saw myself. I have purposely avoided making any remarks on the conduct of the officers sent here to conduct the election, although it appeared strange to me that they should be on the most intimate terms with leaders and candidates for office on the republican side, and consult with them often in the course of their official labors. The following facts should, however, be well known:

While on duty at the court-house, I was approached in a very confidential man ner by one Baranco, colored, who had, if my memory is correct, acted in some capacity at the engine-house poll, and who claims to be a deenty United States marshal. He informed me that they (the radicals) had fixed the democrats by locking uptally-sheets and other papers in the ballot-boxes in places where a democratic majority was cast. I was also informed later by Mr. Clover that he had completed his returns so far as he could under instructions, excepting some remarks he kept in his head, which he would add after he got safely in the city, (New Orleans).

That the statement I have here made may be correctly judged, I will state that I have never been an active partisan of any political party. I have been in the United States Army continuously since 1856, and a reference to my testimony given before a congressional committee in New Orleans in 1875, with a letter published in the appendix to their report, will show that I have always pleaded for the rights of the negro.

Going back a short time when the canvass was in full blast, I attended a democratic meeting held here, followed by a barbeene. I there noticed that the negroes were fully impressed with the arguments there advocated; that they liked and believed the promises made to them regarding schools and other privileges. I have been assured by several negroes that they voted the democratic ticket b

Second Lieutenant Fifth Infantry, United States Army.

Sworn to and subscribed before-

F. A. NEPHLER, Justice of the Peace.

We call attention again to the anxiety of Sage and Shields for an excuse to throw out this poll.

See also the testimony of Gerlach before this subcommittee, page 23. Also see Lieutenant Holmes's testimony before the House committee at New Orleans. There were a kttle over five hundred colored members of democratic-conservative clubs in this parish. In every club colored members of democratic-conservative clubs in this parish. In every club colored members of democratic-conservative clubs in this parish. In every club colored members of democratic-conservative clubs in this parish. In every club colored members of democratic-conservative clubs in this parish. In every club colored members of democratic voters not only cast their ballots in good faith, but did it with enthusiasm.

We refer to the testimony of Zebulon Lange and Edward Plunket, both colored, on pages 113 and 114, as giving an intelligent account of how the colored democratic and how the canvass was conducted with reference to the colored people, men from other sections of the country, most of whom had been unappreciated at home, notwith-standing their loud protestations of devotion to the Union, went among the colored people asking and receiving office at their hands. Those men were not only thus placed in office without the consent of the white race, but, discovering that the latter must in the very nature of things soon exercise a large influence over the colored people, they devoted themselves exclusively to the work of keeping in office and their colored constituency organized for united work at the ballot box. The result was that these office-holders had no other interest in the country than to procure office, and it was so manifest even to them that no distant day would find the negro with his eyes open, that it made the scramble intense and bitter for place, each one fearing that the harvest would be gone before he would be provided for. The courts were presided over by strangers, in many cases without either capacity or character. As illust

By Mr. Bebee:

By Mr. Bebee:

Q. Who was the parish judge preceding the time of election?

A. Judge Davis was, until three or four months, when Governor Kellogg appointed a man named Shorter.

Q. Was Davis's conduct satisfactory to these men?

A. I know that it was not.

Q. Did they urge any objections?

A. Yes, sir; there was a good deal of objection urged against Mr. Davis while he was here. He was not a candidate at the last election. While he was sitting as judge there was a good deal of objection was?

A. As to his moral character, he was not at all recognized by any decent man. That was one objection against him. Another objection was, that nobody considered him at all learned in the law—he was not fit for the place. His judgments were biased and founded mostly on prejudice.

Q. Did he hold more than one office?

A. Yes, sir; he was parish judge, member of the police jury, chairman of the finance committee, and as chairman of the finance committee has proved his own bills against the parish and had them paid. He was an internal-revenue officer, and connected with the school board.

Q. Did he hold these offices at the time?

A. Yes, sir; all at the same time.

Q. Did you ever hear any objection to his official conduct as a member of the police jury?

A. Yes, sir; there was a good deal of opposition to him. I was at that time attorney for the parish, and I know of a good many acts and tried to prevent them, to the best of my ability. I know there was a good deal of opposition to him—several of his acts.

Q. Did you ever hear anything with reference to his public conduct as a member of the police jury?

A. Yes, sir. In the first place he was parish jud

ish, and none of them never owned a cent in the parish. The president of the jury didn't own a cent; they run the expenses of \$3,700.

Q. How long had Judge Davis been judge ?

A. He was elected two terms.
Q. You say from \$2,600 to \$3,700 ?

A. Yes, sir; I have a memorandum here—no; the parish expenses were \$20,700. I made a mistake; it was \$20,700 before Judge Davis and Underwood took charge. When they took charge they increased it to \$37,500.
Q. Your statement of \$2,600 should have been \$20,700 under the old police jury, to \$37,500 under the new ?

A. Yes, sir.

A. Yes, sir.

Q. How long had Judge Davis been a resident of this parish before he became parish judge 1

A. I don't know that he had resided here at all. He came here and was a clerk in the internal-revenue department, and never gave up his position; he was a clerk

in the internal-revenue department, and never gave up his position; he was a clerk until he left here.

Q. How long after he came before he became parish judge †
A. I think the first election after he arrived here. I think so; I am not positive. I may be mistaken, but I think so.

Q. Do I understand you to say that there was objection made to him by the voters, white and black, especially by voters who had been colored republicans, on account of his moral character?

A. Yes, sir; I heard several. I can name one, because I recollect the circumstances attending this more than anything else. I had known him all my life as a boy. I heard that somebody had shot at the judge. I heard that it was a man by the name of Polect. The next morning I met him and asked him if he had shot at the judge. He said, "No; I have not shot at him; but, the son of a bitch, I ought to have done it;" and then he told me that the judge had taken his wife from him.

Q. How?

the judge. He said, "No; I have not shot at him; but, the son of a bitch, I ought to have done it;" and then he told me that the judge had taken his wife from him.

Q. How?

A. To live with her.

Q. Was he a married man himself?

A. He was, sir.

Q. Was that all you heard about it?

A. I heard afterward—there was a lady who lived adjoining Judge Davis, and who rented the property to Judge Davis. She is now living in Nashville, Tennessee. I boarded at her house, and I heard her state a conversation that she had with Mrs. Davis. That is all the information I have with reference to Judge Davis and his family affairs.

Q. This man that said he ought to have shot at him, was he a white man or a colored man?

A. A colored man.

- Q. This man that said he ought to have shot at him, was he a white man or a colored man?

  A. A colored man.

  Q. Was this alleged conduct on the part of Judge Davis with reference to this man's wife a matter of current notoricty through the parish?

  A. Yes, sir; everybody in the parish knew who came to town and talked with the people. It was publicly known in the town of Baton Rouge; everybody knew it, I suppose.

  Q. Was his own wife living with him at the time?

  A. She was part of the time with him, and he sent her away. She came back in September of last year; she came back immediately after the difficulty in New Orleans. She was near Cincinnati, and when she heard of the difficulty, without saying to anybody at all, she got aboard the boat and came to Baton Rouge and landed in the night, and when she came to the house—she got a man to go with her—she arrived at the house and found the judge in his dishabille with this negro woman; this woman I have spoken of. A few days after that, if I am not mistaken it was the day afterward, she took morphine and attempted to kill herself.

  Q. Was that a matter generally talked of in the place?

  A. I believe everybody knew it. It was no secret at all.

  Q. What became of this colored woman?

  A. She was of with the judge.

  Q. Did her husband and herself live together afterward?

  A. No, sir; there was a divorce suit filed by one of the members of the bar—I think Mr. Greves—I think he was the member of the bar that filed the suit.

  Q. For divorce as between the colored man and his wife?

  A. Yes, sir, to be tried before Judge Davis.

  Q. Was it tried?

  A. No, sir. I didn't pay any attention to it.

  Q. Was any other matter talked of in the community about the judge's conduct with women other than his wife?

  A. This negro woman she had a sister, and she gave birth to a child, and everybody understood it also as being a child of Judge Davis. As to whether this was so I am not prepared to say.

  Q. Did members of the republican party criticise this conduct?

  A. Yes, sir.

By Judge NEW:

- By Judge New:

  Q. The woman who had the child was a sister of the colored woman?

  A. Yes, sir; own sister, sir.

  Q. Was there alleged misconduct on the part of other parish officers than those you have named?

  A. To make it brief, there was in every case that I know of here, every officer that I know of; there was always some charge made against him for misconduct in their offices; some were grievous and some were not. The clerk of the court, who was a candidate for re-election; he would get on the boat and go to New Or-leans and stay four or five weeks, sometimes six or eight weeks, and there would be many things that we would have to do, and we would have to wait. I recollect in my own professional business I had to wait to send a deed to Indiana.

  Q. Have there been schools through the parish for the accommodation of the white and colored people?

  A. Wherever I have been, in every ward, with the exception of two or three wards, I heard complaints all the time that they had no schools.

  Q. Did the colored people attribute the responsibility and blame to the republican party?

party !
A. Entirely.

By Mr. GAINEY:

By Mr. Gainey:

Q. You have a most remarkable memory, Mr. Buckner?

A. Not particularly.

Judge New. Mr. Gainey, that remark was entirely uncalled for. Confine yourself to the examination of the witness.

Mr. Gainey, that remark as a basis for my question. How long after Mr. Davis came into this city before this charge alleged against him of stopping with this colored woman took place?

A. That I could not tell distinctly; I could state to you, though, that this colored woman lived in the same yard where Judge Davis had his office. The judge's residence was right here on this street, and the colored woman had a room right back of Judge Davis's office. That is the time that she was living with her husband. I heard, a year before this became public, I heard that Judge Davis was living with this woman; kept her, were the words that they used.

Q. How long had he been living in this community before you heard any reports of that character?

Q. How long had he been living in this community before you heard any reports of that character?

A. I don't know. The truth is I didn't know Judge Davis at all until he came

into public life. He may have been clerk for some time without my knowing it. I think, if my memory serves me, that it was about a year and a half after he came here that this occurrence happened.

Q. After Judge Davis's arrival here, and before these reports were scattered about him, was he ever received in society at all?

A. Well, sir, I was boarding, and Judge Davis's wife used to go over to my landlady's. I never spoke to her; nor did I ever visit Judge Davis, except on business. I heard this landlady speak of her as being an excellent lady, and the neighbors gave her that name.

gave her that name.
Q. Did you ever hear of her being out as other ladies are usually?
A. I never heard of her being invited. I know that she did go to different gentlemen's houses. I think she visited a gentleman who is now in the room—his family. I think the ladies called on her. I am not a married man and don't know much about those things.

temen's houses. I think she visited a gentleman who is now in the room—his family. I think the laddes called on her. I am not a married man and don't know much about those things.

A large proportion of the parochial offices, such as clerk of the court, sheriff tax-collector, police jurors, &c., were held by colored men, most of whom of necessity were wholly unfitted for those positions. Can it be wondered at that the white people became dissatisfied and asked such men to resign! Would a northern community have been more tolerant!

About the time this state of things had become as bad as it could be, a new element or cause of disorder made its appearance. The stealing of hogs, cattle, cotton in the seed, &c., became very frequent in all the parishes embraced in this report. The defiance and boldness of the guilty parties were such as to provoke to the last degree those who sustained losses. The stealing of cotton in the seed—that is, before it had been ginned—was carried on so extensively that small stores were established by unscrupulous men at various points in the parishes for its purchase. For a time, the courts and law-officers were appealed to for redress. It was impossible, in most cases, to obtain conviction. The juries would generally be composed, in part at least, of persons in sympathy with the offenders. The belief became prevalent among those who were the sufferers that the courts and officers thereof winked at the packing of juries in the interest of these evil-doers. It was while the public mind was thus agitated and incensed that the parish judge and some other officers in this parish were requested to resign, and did resign in 1875.

In the latter part of the year 1874, the people most interested determined that their property should no longer be taken by persons having no right thereto. Companies called regulators or bull-dozers were formed, and thereafter, until early in the year 1876, they made themselves active in lynching those then engaged in stealing, or who had been guilty of it. These

whatever. The democratic candidates for electors fairly received a majority of 612 in this parish.

WEST FELICIANA.

The registration in this parish was commenced, conducted, and completed, and the revision thereof made, without any challenge or complaint by the supervisor or any other officer or person, and the inquiry, so far as this parish is concerned, is therefore limited to the period subsequent to the revision of the registration. All the preliminary provisions prescribed by the laws of the State governing the conduct of elections appear to have been observed, except that the polls for two wards, the eighth and twelfth, were not established within the territorial limits thereof, and the commissioners appointed to hold the election for those wards opened and conducted the polls at the parish site, some twelve or fitteen miles distant from the usual voting-place in the eighth, and about nine miles from that in the twelfth ward. The law provides that there shall be at least one poll for each ward, and the supervisor saw fit to construe this provision as requiring only the establishment of a poll for the ward, at his option, at any place in the parish, either within or without the ward limits. This construction of the law we regard as clearly violative of its true intent and meaning. As the consequence of this, there were four polls established within half a mile of each other. Three were held at the courthouse, for the first, eighth, and twelfth wards,) and one, (for the ninth ward,) at Bayou Sara, a few rods distant from the other three, while the voters residing in the eighth and twelfth were compelled to travel long distances to voting-places outside of their respective wards. Notwithstanding this irregularity, the polls for both these wards were counted and compiled by the returning board.

The vote as returned for the eighth ward poll was 146 republican and none democratic. The return for the twelfth ward was republican, 213; democratic, 1. With the exception of this action, the supervisor seems to hav

SAMURL J. POWELL sworn by the chairman.

Guestion. What is your ago?

Q. Where do you reside?

A. I reside in Saint Franciscillo.

Q. How how play by the clear of the control of the cont

dozing" was in punishment of stealing. Both colored and white republicans concurred in this statement.

The testimony of Brevet Major Bascom and Lieutenants Jamar and Fornance, of the United States Army, who were stationed in the parish; the postmaster at Saint Francisville; James Wells and Charles Spencer, northern men and soldiers of the Union Army during the rebellion; Thomas T. Moore, a republican and northern man; District Judge Hewes; C. J. Howell, clerk of the district court, and others, fully corroborates that of some fifty or sixty colored democratis residing in various parts of the parish in this regard. Leading republicans were conspicuously identified with these organizations and their deeds, and it was entirely an after-thought with them to utilize the actions of the regulators for political-intimidation capital.

The supervisor of registration, in his so-called protest, assigns as ground therefor, as to ward 2, "intimidation," and by way of specification asserts that Dr. William Ball, white democrat, discharged five men from his plantation for refusing to sign a pledge to vote the democratic ticket. He does not give the names of the discharged men, nor does he name the witnessesto prove his statement. Dr. Ball died since the election, and before the subcommittee reached the parish. His manager and others testified that no men had been discharged from the plantation; that about thirty were employed, some of whom voted the republican and some the democratic ticket. Not one of the five men claimed to have been discharged were produced or sworn in support of the protest, and yet upon this filmsy and unsupported pretext the returning board, rejected the nutle of the parish. His manager produced or sworn is support and the protest, and yet upon this filmsy and unsupported pretext the returning board. He protest, and yet upon this filmsy and unsupported pretext the returning board and the protest is also on the ground of intimidation. The specification is that "the United States supervisor and republican

he as squarely charged intimidation upon the republicans. Such was the testimony upon which this ward was thrown out. Its vote was democratic 322, republican 1.

The "protest" as to the ninth ward went only to a certain number of the votes, and was not made on any ground contemplated by the law; still it was thrown out entire. Vote, 123 democratic and 2 republican.

In the ninth and tenth wards, it will be observed but 3 republican votes were cast as against 445 democratic. In view of the fact that under the law an elector could vote anywhere in the parish, this raises no presumption of fraud or intimidation. A reference to the certified returns will show that at the poll for the eighth ward 146 republican and no democratic votes were cast. In the eleventh ward the vote was republican 171, democratic 8. In the twelfth ward it was 213 republican, democratic 1. These wards, where large numbers of republicans and few or no democrats voted, were all counted, while, where the reverse was the case, they were in every instance thrown out. The democrats residing in the eighth and twelfth wards, instead of going from nine to fourteen miles to the court-house where the polls for their wards were established, voted at the tenth-ward poll, which was much nearer and more convenient. Thus the vote at this poll represented the democratic vote of the three wards, and in rejecting it the returning board disfranchised the 322 democratic voters thereof, while the republican votes cast at the polls at the court-house for the eighth and twelfth wards, numbering 359, were counted. At the tenth-ward poll one republican voted. At the poll for the eighth ward not democratic vote was cast, while at that for the twelfth but one democrat voted. Jesse Dunbar, the only republican who voted at the tenth ward, the only republican who voted at the tenth ward to you lave?

A. In what twent did you vote?

A. In what ward do you live?

A. In what ward did you vote?

A. In very staid there any longer than the time it took me to shove my ticket in

the box, and I were there, did they know you.

Q. Those who were there, did they know you.

A. Yes, sir.

Q. Did any one find fault with you about it?

A. No, sir.

Q. Were you maltreated in any way on account of that?

A. No, sir.

Q. Was it known in your neighborhood, before you voted, and after you voted, that you were a republican?

A. Yes, sir.

A. Yes, sir.
Q. Who were you working for?
A. Mr. Tom Davis, on Mr. Doherty's place.
Q. What party does he belong to?
A. Democratic party.
Q. Were there other colored men working for him?

Yes, sir.
Who are you working for now?
I am staying on the same place.
Did Mr. Davis know how you voted?

Yes, sir. He did not turn you off because you voted the republican ticket?

No, sir. Did he complain about it to you?

No, sir.
Have you met with him since?
Xes, sir; I was at his house this morning.
How did he treat you?

Just as before.

How did he treat you before?

Just as he would anybody else.

Do you know of any colored men who were scared into voting the democratic

Q. How did he treat you before?
A. Just as he would anybody else.
Q. Do you know of any colored men who were scared into voting the democratic ticket?
A. No, sir; I didn't have no talk; I only told them I was going with the republicans, and I didn't want to have nothing to do with the democratic ticket.
Q. Did the men voting the democratic ticket do so of their own free will?
A. Yes, sir; they had it up there, and they said that was the ticket they was going to vote. I only seen them; I never tarried there long.
In addition to the foregoing a number of others who voted at the poll in this ward testified to the perfect fairness with which the election was conducted. Neither of the two republican commissioners made any protest or statement of intimidation or other unlawful conduct. But it was necessary, in order to carry the parish, for the republicans to throw out this vote—a necessity which, with the returning board, "knew no law."
The poll for the ninth ward was held at Bayou Sara, about half a mile from the court-house in Saint Francisville, where the three polls for the first, eighth, and twelfth wards were held. The absurdity of the charge of intimidation at this poll is apparent in view of the fact that the Federal troops under Captain Bascom were stationed at Bayou Sara, and within about a quarter of a mile from where the election was held. And, too, let it be borne in mind, that if, in deflance of the troops, there had been intimidation, the voters had only to go a few rods to the court-bouse where the polls for wards 8 and 12 were held, at which 359 republican votes were cast and only 1 democratic. In regard to these polls the evidence clearly indicates a pre-arranged plot to have the republicans vote at polls 8 and 12 for the purpose of rejecting all the democratic votes cast in the ninth and tenth wards. By this seheme 444 democratic votes were rejected, involving only the loss of 4 republican votes.

A large amount of testimony was taken as to what causes operated upon the minds of colored voters to

scheme 444 democratic votes were rejected, involving only the loss of 4 republican votes.

A large amount of testimony was taken as to what causes operated upon the minds of colored voters to induce them to change and vote with the democrats. They gave as reasons that their school moneys had been stolen or not applied to maintaining schools; that the local affairs of the parish had been badly managed; that they had lost confidence in the republican leaders; that bad government had brought on hard times; that they believed their interests were to act with the resident property-holding whites, &c. It was also developed that, by co-operating with them and associating in club organizations, public parades, meetings, &c., the whites won their confidence and secured their support. Clubs were formed in each ward. Colored men were made officers, invited to speak, and sent out to canvass for the party and organize other clubs, &c. By these means there were established some twelve or fifteen clubs with a colored membership aggregating nearly or quite one thousand voters. Colored members and officers of these clubs were before the subcommittee and fully established the fact that the colored voters voluntarily, cheerfully, and enthusiastically supported the democratic-conservative party. With the large accessions thus secured, the white residents of the parish were confident of success, and, so far from having any motive to interfere with the lawful course of the canvass, were most deeply interested in having the election pass off without any cause or pretext for challenging its fairness or questioning its result.

Much testimony was also taken with regard to homicides and various other out-

off without any cause or protect the suit.

Much testimony was also taken with regard to homicides and various other outrages committed in the parish and alleged to have been on account of politics. By reference to the testimony of the coroner and others it will be seen that nearly thirty homicides have occurred in the parish since April, 1875. The following is a detail of the cases given from the coroner's record, with extracts and memoranda made by him:

Detail of cases from coroner's record.

Name.	Date.	Race.	Verdict of jury.
James O. Long Margave Dawson William Welsh	Apr. 4, 1875 May 6, 1875 May 24, 1875	White Coloreddo	Accidental drowning. Heart disease.
James Lilage	July 19, 1875 July 23, 1875	do	Steamboat accident; scalded. Gunshot wound by the hand of Henry Hamilton, colored.
Adam Gairs Stephen Jones	Sept. 13, 1875 Oct. 10, 1875	do	Heart disease. Gunshot wound by the hands of
Mile Waltors	Nov. 8, 1875 Dec. 8, 1875	do	Charles Beck, colored. Burned during a fit of epilepsy. Gunshot wound at the hands of
Fort Williams	Dec. 13, —	do	a party or parties unknown. Gunshot wound by the hands
Unknown	Jan. 1, 1876 Jan. 17, 1876	White	of Luke Morgan, colored. Accidental drowning. Knife wounds by the hands of
William Garden	Jan. 21, 1876	Time	Henry Griffin, colored. Gunshot wound in the hands of
Joseph Williams	Feb. 1, 1876 Feb. —, 1876	do	Isaac Washington, colored. Apoplexy. Gunshot wound in the hands of
1			George Wallace, colored; ac- cidental.
Unknown Lotta Morgan Nelson Stewart	Feb. 10, 1876 Feb. 11, 1876 Feb. 20, 1876	White Colored . do	Accidental drowning. Accidental fall, breaking neck. Pistol-shot wound at the hands of Joe Brazel, colored.
Nancy Williams M. H. White	Feb. 24, — Apr. 12, 1876	White	Apoplexy. Gunshot wound at the hands
Ruffin Jones	Apr. 19, 1876 May 13, 1876	Colored . White	of Ephraim Smith, colored. Accidental drowning. Gunshot wound in the hands of a party of unknown ne
Edward Robinson	May 19, 1876	Colored .	Gunshot wounds at the hands of Charles Jackson, colored.
Major Hamilton Willis Nellunes	May 21, 1876 May 22, 1876		Accidental drowning. Gunshot wounds by the hands of Israel and Jeff Chase, col- ored.

Detail of	cases from	coroner's	record-Continued.
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Name.	Date.	Race.	Verdict of jury.
Willis Forrester	May 22, 1876	White	Accidental fall from a horse.
Washington Williams.	June 6, 1876	Colored .	Gunshot wounds in the hands of Sterling Shaffer, colored.
Sterling Shaffer	June 6, 1876	do	Gunshot wound in the hands of Washington Williams, colored.
Edmund Smith William Worrel	June 10, 1876	do	Accidental drowning.
Gilbert Carter	June 17, — July 12, 1876	White Colored .	Do. Gurshot wound at the hands of a party or parties un- known.
Clem Fenderson	July 27, 1876	do	Gunshot wound at the hands of a person unknown while trying to escape from the constable at Bayou Sara.
Mathew Edwards	July 31,	White	Apoplexy.
M. A. Jones	Aug. 1, 1876	Colored .	Gunshot wound by the hands of Nathan Pitman, colored.
Ephraim Armstrong	Aug. 10, —	do	Gunshot wounds at the hands of party unknown.
Isaac Mitchell	Sept. 27,	do	Owing to the fact that the wit- nesses have been bribed or persuaded to absent them- selves, and being obstructed by the sheriff in compelling their attendance, we must re- turn a verdict: gunshot wound at the hands of a party or parties unknown.
August Preacher	Sept. 29, —	do	Accidental drowning.
T. C. West	Nov. 6,	White	Gunshot wound at the hands of a party or parties unknown.
Mahala Hogan	Sept. 6, 1876	Colored .	Heart disease.
George McKern Unknown	Sept. 9, 1876	White	Railroad accident.
Unknown Fritz Steiger	Nov. 25, — Oct. 2, 1875	White	Accidental drowning. Congestive chill.
Jack Raymond	Nov. 1,	Colored .	Accidental drowning.
Dora Ford	June 17, 1875	do	Heart disease.
Clementine Allen Mrs. Tadlock	Aug. 20, 1876 Aug. 25, 1876	White	Was kicked by a horse. Apoplexy.

21110214 1	10MATION
Heart disease	White, killed by parties unknown 1

Dated West Feliciana, November 28, 1876.

L. S. McCRINDELL, Coroner.

Dated West Feliciana, November 28, 1876.

L. S. McCRINDELL, Coroner.

It is impracticable to review all the testimony taken bearing on each of these cases, but brief attention may be given to a few that have been most conspicuously paraded as having had political significance. The case of the killing of Gilbert Carter has received perhaps more publicity than any other, and the evidence taken by the subcommittee with reference to it has been as full as opportunity and circumstances admitted. The facts, as established by the testimony of Major Bascom, Lieutenant Jamar, Ben Clark, Nace Johnson, and ethers, show that Gilbert Carter was the mover and leader in a plot to organize a club of colored men sworn to kill certain white persons and the women and children of their families, and to burn their houses, capture wagons loaded with provisions, &c. One of the members revealed the plot to one of the white men whose life was to be taken. He, with others, went to major Bascom, in command of the Federal troops, and requested that a Federal officer be sent with them to bear testimony as to their proceedings, they being then organized to surprise the colored club at a night rendezvous fixed for its meeting. Lieutenant Jamar was permitted to go, upon the assurance that it was intended only to arrest the leaders and turn them over to the proper legal authorities. The party went, but the negroes, having become alarmed, did not rendezvous as they had agreed; and the whites then separated, a part of them, with Lieutenant Jamar, returning. The other portion of the party, however, went to the cabins of Carter and Vessels, the alleged leaders, and arrested them. Vessels escaped, but Carter in attempting to escape (as his captors claim) was shot and killed. The next day Vessels gave himself up and made a full confession of the plot. Other members also, on examinations before Major Bascom, in command of the United States troops, to whom full confession of the plot. Other members also, on examinations before hajor Bascom, in command

By Mr. BEBE:

Q. Do you know anything of an alleged conspiracy in the parish for the purpose of killing any of the whites; did you ever hear of anything of the kind?

A. I did; the date I cannot fix just now. My first notification of it was two of the citizens coming to me and stating that they had heard of such an organization, and bringing to me a colored man who claimed to have attended the meeting. There was to be another meeting on Wednesday night following. I think it was, and they were going to see if they could surprise the meeting, and I, at their request, so that they could have an outside party as a witness if there was any occasion, I sent Lieutenant Jamar out with them.

Q. Do you remember the name of the colored man whom they brought with them?

A. His name was Ben Clark.
Q. Was he the only colored man you examined in reference to it?
A. No, sir; I examined three or four afterward—Isaac Vessels. There were three or four that I examined and talked with; took them off to one side in a room

alone, and I forwarded their statements, the substance of them, at least, to department headquarters.

alone, and I forwarded their statements, and successful and the statements and the statements.

Q. You say you examined these parties aside from others; were there any whites present when you examined them?

A. No, sir; nobody but myself and the witness.

Q. Were they assured of safety by you?

A. They were. I was careful to tell each man that if he had an object in telling the story that it would be of no use, because the thing would not be used there and not be known. I tried to persuade them if they were telling a false story to give me the secret. They were all very frank and very free in their statement.

By Judge New:

By Judge New:

Q. Do you remember whether one of the colored men was named Nace Johnson 

A. Yes, sir; I summoned one or two others, whose statements I took no notice
of, because they didn't attend the meeting, but they had heard of it from the others.
Q. In the examination you made, were colored men free from intimidation, or
fear, or constraint of any kind?

A. They apparently were. I endeavored to find out if there was anything of the
kind. Their manner did not indicate it. They came in and were around town
alone. They were sent for after the gentlemen found me, and they came in freely,
one at a time, and talked very freely.

The facts with reference to the killing of Isaac Mitchell, as proven before the

one at a time, and talked very freely.

The facts with reference to the killing of Isaac Mitchell, as proven before the coroner's jury, and as shown by the testimony herewith submitted, most positively negative the charge that it was in any sense on account of politics. The only witness whose testimony could positively fix the guilt upon the perpetrator of the murder was the wife of the murdered man, and she, with others whom it was thought could throw light upon the deed, were spirited away by the assistance of leading republicans, and, when finally followed by the process of the coroner to New Orleans, were released by the republican authorities at that place. Whatever the cause of or motive for this murder, it certainly was not for any political purpose in aid of the democratic-conservative party. The testimony of the coroner is as follows:

The next case is Isaac Mitchell, the increase

purpose in aid of the democratic-conservative party. The testimony of the coroner is as follows:

The next case is Isaac Mitchell; the inquest was kept open from September 26 to October 6. I went out there on the 27th—that was Friday, I think—and on my way out I met Mr. E. L. Weber's carriage coming out, and in his carriage there was two colored women. I went on to the place which was owned by Mrs. Weber, and I took measures to obtain witnesses. There was two persons I found there who didn't seem to know anything about it, and I was informed that the witnesses who had seen it had gone to town; that was Amy Mitchell and Lea Green, they had gone to town. I asked when they would be back, and they said they didn't know, and I was unable to take testimony that day. I adjourned the inquest to the following day, which was Saturday, and left word for them to come and give their testimony. I never was under the necessity of subpensing witnesses. I left word for them to come to Bayon Sara. In the evening, when I came back home, I went to Mr. Weber and asked him what right he had to take witnesses away; he said he didn't take them away. I said, "They were in your carriage, for I saw them." He said, "I loaned my carriage, it is true, but I don't know to whom." I asked him if he was in the habit of lending his carriage to people he didn't know, and he said some one asked him for the carriage and he told him to take it. He added, "I don't charge my memory with such things." I then said to Mr. Weber that it was a very unnatural thing for a wife to leave her husband after being killed, and I would like him to explain why she went off in his carriage. He said, "I don't know; maybe they wanted to go to town to do some shopping, buy some trimmings." He supposed they went to town for that purpose. At first he pretended that he didn't know they had gone to town. I afterward learned they did come back to attend the funeral.

The following day they didn't make their apppearance, and on Saturday evening.

supposed they went to town for that purpose. At first he pretended that he didn't know they had gone to town. I then asked him if they had come back, and he said he didn't know. I afterward learned they did come back to attend the funeral.

The following day they didn't make their apppearance, and on Saturday evening, they same day, I was informed that they wouldn't attend because they hadn't been subpensed. I immediately issued subpense and put them in the hands of one of the jurymen to serve on these parties. The subpensa were served, and Lea Green made her appearance, but Amy Mitchell and Julius Green didn't make their appearance at all; so I took the testimony of Lea Green and adjourned the inquest over to Monday. Then I put the subpensa in the hands of the sheriff himself, and he made return that he couldn't find Amy Mitchell or Julius Green, and consequently I was unable to take their testimony that day. I didn't hear anything more of them, I think, until the 17th of October, when I heard that Julius Green was over the river and Amy Mitchell was in New Orleans at a hotel called the Conti Verandah, on Contistreet. I went to Dr. Kaufman, the sheriff, and told him I had been unable to get the witnesses, that he had my subpensas and couldn't serve them; but if he would give me a depaty sheriff I thought I could have them served. He appeared to be willing, and he gave me an order on the clerk of the court to swear in Mr. Spencer as deputy sheriff to serve my paper. I sent Mr. Spencer to New Orleans, and he went to this house and saw the parties, Amy Mitchell, Lea Green, and another party, which I afterward learned was Thomas Stewart. He served the subpensa on Amy Mitchell and Stewart. Amy Mitchell said she wouldn't come unless the person brought her there told her to go, when this man Stewart spoke up and remarked, "Weber isn't coming here any more." She then said, "He will be down Thursday." Thomas Stewart and he would come to Bayou Sara, but he didn't. Mr. Spencer right back to New Orleans, when he arrived t

e was arraid of, and he said, "I didn't know nothing to tell, and I disc of staying."

Q. You say that Amy Mitchell has been in New Orleans ever since?

A. I don't know that positively.

Q. Has she been in the parish since then?

A. No, sir.

Q. Has sno been in the parish since then?
A. No, sir.
Q. Where is Lea Green?
A. She is here; she gave her testimony. I had to subposa her regularly; she refused the verbal summons.
Q. Do you remember what her testimony was on the subject?

A. Yes, sir; she said, as near as I can remember, that she was on her way to church when she heard shooting in front of her, about a half a mile ahead, in the same house, it seemed to her, or the next house to Mitchell. When she heard the shooting she ran back to Mr. Smith's quarters, where they had a church, and she met Julius Green, who asked her if she was hurt and who had been firing. She said no, and the next day she went to the place and spoke to Amy Mitchell, and asked her who killed her husband, and she said she didn't know who they were.

A. Is that the substand and she said she didn't know who they were.

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A. Is that the substand Amy and the said she didn't know who they were the said there was nobody at the house except Amy Mitchell.

The killing of Ephrain Armstrong is another case that was made to figure before the returning board as an outrage perpetrated by white democrata for a political object; but the evidence conclusively shows that Armstrong was a democrat, and thoroughly known as such throughout the section in which he lived. (See the teatmony of William Gardner, Henry West, both colored, and others.) The testimony of the coroner who held the inquest colored and others.) The testimony of the coroner who held the inquest and the said the said the article that the may who killed Armstrong oray of the parish, and the said in the article that the man who killed Armstrong oray of the parish, and the said in the article that the man who killed Armstrong roue and parish, and the horse was seen at Dr. Leonard's. I summoned Mr. Weber, and he wouldn't find out. From the circumstantial evidence, my impression was this: that this man Armstrong w

There are eight wards in this parish. Whole vote cast for presidential electors, 1,736, all of which were for the democratic electors.

We here insert a certified tabular statement of the votes cast for electors, by wards,

in this parish:

Statement of votes cast in the election precincts of the parish of East Feliciana, Louisiana, for electors of President and Vice-President of the United States, at the general election held November 7, 1876, under the provisions of "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved November 20, 1872, and the amendments thereto.

Number of polls.	John McEnery.	R. C. Wickliffe.	L. St. Martin.	F. Poche.	A. De Blanc.	W.A. Seay.	R. G. Cobb.	K. A. Cross.
1	235 92	235 92	235 92	235 92	235 92	235 92	235 92	235 92
3	397	398	398	398	398	398	398	397
4	135	135	135	135	135	135	135	134
5	474	474	474	474	474	474	474	473
0	124	124	124	124	124	124	124	124
7	161	161	161	161	161	161	161	161
8	118	118	118	118	118	118	118	118
Total	1, 736	1, 737	1, 737	1, 737	1,737	1, 737	1, 737	1, 734

STATE OF LOUISIANA, Parish of East Feliciana:

Parish of East Feticiana:

I hereby certify the above and foregoing to be a true and correct compilation of all the statements of votes for electors of President and Vice-President of the United States at the election precincts of the parish of East Feliciana, at the general election held November 7, 1876, under the provisions of "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved November 20, 1872, and the amendments thereto, rendered to the clerk of the court by the commissioners of election, on file in this office; that no affidavits of riots, tumults, acts of violence, intimidation, disturbance, bribery, or corrupt influences were attached

to said statements of votes, or presented for filing in said office, and no protest of the supervisor of registration was filed or offered to be filed in connection with said statements of votes at any time in said office under section 26 of the aforesaid act of the Legislature of the State of Louisiana.

Given under my official signature of office the 9th day of January, A. D. 1877.

[SEAL.]

Deputy Olerk Fifth Judicial District Court,
State of Louisiana, Parish of East Feliciana.

[SEAL-]

CHARLES KILBOURNE,

Deputy Olerk Fifth Judicial District Court,

State of Louisiana, Parish of Bast Feliciana.

The consolidated return of James E. Anderson, supervisor of registration, showing the vote as above, was filed with the returning board November 13 without remarks. No protest, or paper purporting to be a protest, was filed by him with the board until November 23, which was received by the board in a separate package. He does not allege in his protest that anything occurred during the period for registration or revision of registration to prevent a fair and full registration. He was absent from the parish during the last nineteen days of the period fixed by law for registration or revision for registration to prevent a fair and full registration. He was absent from the parish during the last nineteen days of the period fixed by law for registration or revision for the insecurity of his life; that an attempt was made to take his life. He returned before the election, not in time to renew registration, but in time to renew registration. The proof shows that it was and is the better opinion of those who investigated the alleged attempt to take his life that he did the shooting himself. Capitain Benjamin H. Rogers, of the United States Army, Colonel Frank Powers, and J. P. Mony-han, the two former republicans and the latter a democrata and sheriff of the parish, gave the subject a careful investigation. Capitain Regers swears that he never could rully satisfy himself whether Anderson was shot at or not; says that if it had been any other man than Anderson he might not have been so much in doubt, but asys, "I could not believe him under oath, in any way, shape, or form." He was a manual proper to the subject to the control

By Mr. NEW:

By Mr. New:

Question. You say you voted the democratic parish ticket, but you felt no particular zeal. How am I to understand you?

Answer. I mean what I say. I felt no particular zeal for a republican parish ticket. I voted very heartily for the candidates on the parish ticket because I was interested.

Q. Did you feel any considerable zeal for the democratic parish ticket?

A. Yes, sir; that is what I say.

Q. You did not vote the democratic parish ticket, then, because there was no republican ticket?

A. No, sir; they were the men of my choice. They were the men I had selected before the ticket was made up.

Q. You would not have voted a republican parish ticket if it had not had those names upon it?

names upon it!

A. If I had been making a republican parish ticket I would have put those same

ames upon it.

The democratic parish ticket being thus supported by leading white republicans colored men were easily persuaded to give it their support. The result was that no republican parish ticket was nominated. This gave the democratic ticket, parish, State, and national, a strong send-off early in the canvass. The testimony clearly discloses the fact that there are quite a number of colored men in this parish who have always been democrats. In the past, there have been frequent and serious dissensions among the republicans, and the colored republicans have been very frequently voting a mixed ticket. It appears from the concurrent testimony of witnesses of both colors and both parties that there has been an increasing and loud complaint among the colored people about official corruption generally, but more especially about high taxes and misappropriation of the school funds. These had become and are such crying evils that every witness, colored and white, tells the same story, and tells it with such look and emphasis as to leave no doubt that his feelings are intense on these subjects.

The democrats were not slow to discover the situation, and they went to work with a determination to win. Places were appointed for public speaking in every neighborhood. Democratic-conservative clubs were formed in every ward, and the

original colored democrats were among the most active. They were posted and put forward. They, in fact, constituted the advance—organizing clubs and making speeches at the club meetings and elsewhere. They devoted their time almost exclusively to the work. Old-fashioned barbecues were gotten up, addressed by speakers of both races. The colored people turned out in large numbers. At the close of the canvass there were democratic-conservative clubs in every ward, the colored membership numbering in the aggregate eight hundred and sixty-three. The republicans seemed to have lost all hope early in the canvass. It may be that some colored men, upon going to the polls and finding no republican tickets, fell in with the current, thus swelling the democratic vote, who would have voted the republican ticket if their leaders had provided one.

It was proven that Anderson admitted upon several occasions that the election was fair, and he congratulated democrats upon their victory.

The canvass was conducted in the most orderly manner.

In this connection, we wish to call attention to the testimony of Mr. J. W. Mann, a most estimable gentleman, and recognized as one of the best citizens in this parish. Mr. Mann is a large planter near Port Hudson.

By Judge NEW:

By Judge New:

Question. Where do you reside?
Answer. About four miles from Port Hudson.
Q. How long have you lived there?
A. Seven years.
Q. Are you a native of this State?
A. No, sir.
Q. Of what State?
A. Massachusetts.
Q. Were you in the first ward most of the time during the late campaign?
A. All of the time.
Q. You may state the condition that society was in during the period of registration, say from the 28th of August until the registration was completed, or so much of the registration as was done up to the time of the election.
A. As far as I know it was quiet and peaceable.
Q. What are your politics?
A. I am a republican.
Q. Did you vote on the day of the election?
A. Yes, sir.
Q. How did the election go off?
A. I went off very quietly.
Q. Are you acquainted with some of the colored people in the ward?
A. I am acquainted with some that are near me on plantations. I am not extensively acquainted.
Q. Do you know whether any of those that you are acquainted with belonged to democratic clubs?
A. No, sir; I could not say certain of any.
Q. Do you know whether any of those known to you voted the democratic citcket?
A. Yes, sir.
Q. You may state whether, during the canvass, you talked with any of them, or heard them express themselves as to the reason why they were going to vote the democratic ticket—how they talked about it; have you heard any expressions from them?
A. They thought that they could get a better government and more security unterestive them?

democratic ticket—how they talked about it; have you heard any expressions from them?

A. They thought that they could get a better government and more security under Nicholls's administration, provided he was elected—those that I talked with.

Q. You may state whether they made complaints about the State government that they had.

A. They did, sir.

Q. Do you remember whether the matter of the misappropriation of the school fund was talked of, or the failure to have schools?

A. That was one grievance.

Q. Anything else that they mentioned as a grievance you may state.

A. Well, they didn't think that they were secure enough in their rights.

Q. In what respect?

A. Sometimes for stealing they were molested not by law—when they were caught stealing, or something of the kind.

Q. They did not like the idea of being summarily dealt with; is that it?

A. Yes, sir.

Q. Now you may give to the committee your opinion whether, from what you saw among the colored men of your acquaintance who voted the democratic ticket in the ward—whether they did it of their own free will, and voted because they wanted to make a change.

A. Those that I know did vote it I thought voted it from their own free will.

Q. Is it not a fact that several colored men of that ward who had been active in politics before as republicans were very active this time as democrats?

A. I don't think there was any very active as democrats. I know some used their infinence that way.

Q. Do you know Henry Rivers?

A. Yes, sir.

Q. How was it with him as to activity?

A. The most activity I saw him do was on election day, distributing votes.

Q. Did he act like a man who was in earnest?

A. I didn't see much of him. I saw him doing it—going to his friends with them.

Q. Your politics were known to the colored people who were acquainted with

Your politics were known to the colored people who were acquainted with

Q. Yes, sir.
Q. Were any of them in your employment?
A. Yes, sir, I employed about thirty or thirty-five.
Q. Did you hear any complaints from any of those in your employ of intimidation or threats, politically?
A. I did in one case. I can describe it and you can judge.
Q. Tell what it was.
A. There was one man on my place that was accused; he and some others were getting up a club and resisting those democratic freedmen who were joining democratic clubs. They would do something to them for joining democratic clubs. That was the report that came to me. They were told that they had not better come and attend this democratic meeting. One of them lived with me, and came and asked me about it. I told them that they should not make such remarks as that, but if they were asked to attend a democratic meeting it was no more than right that they should do so. That is the fullest extent of any intimidation that I know of.

right that they should do so. That is the fullest extent of any intimidation that I know of.

Q. That is the only thing said to you by any colored men in the ward who was making any sort of complaint at all?

A. That is the only one that complained to me.

Q. Some of these men who were working for you had been working for you for a considerable period?

A. Some had been working for me for seven years—ever since I have been here.

Q. Did some of these men vote the democratic ticket?

A. One did, I know.

Q. Did he ever make any complaint of any intimidation or threat?

A. No, sir; and he was very free to talk to me; I think he would, if there had been anything said to him.

Q. Did he ever tell you that he had heard of any threats or intimidation toward other colored persons?

A. No, sir.
Q. Now, you may state whether, in your opinion, if republicans had desired to vote in that ward on the day of election—whether, from your knowledge of the condition that the ward had been in during the campaign, and from the way that the election did go off, and whatever facts you may predicate an opinion on—whether they could have voted peaceably and without interference?

A. I think they could.
Q. Do you know of any preconcerted arrangement or purpose on the part of republicans to have no ticket in the field that day?

A. No, sir; I do not.
Q. Had you any knowledge or information before the day of election that there would not be republican tickets?

A. No, sir; I was looking for one on the day of election, and I didn't find any.
Q. Do you know whether other republicans than yourself—whether there were colored republicans who went away without voting?

A. Yes, sir; there was. I met some of my men returning.
Q. Did they give you some reason why they were returning without voting?
A. Yes, sir.
Q. What was that?
A. They didn't find the right kind of tickets at the polls. They didn't say what kind.
Q. You knew them to be republicans, though?

Q. You knew them to be republicans, though?
A. Yes, sir.
Q. Do you know, or did you hear, in your ward of any difficulties between whites and colored men, in which it was claimed or alleged that politics had anything to do with it?

do with it?

A. No, sir; I don't know of any.

Q. Have any such cases in your ward come to your knowledge or information?

A. No, sir; I should think it would come to my knowledge.

Q. If there had been you think you would have heard of it?

A. Yes, sir; I should think so.

Q. There are white democrats in that ward who employ colored labor, do they not?

not?
A. Yes, sir.
Q. Have you heard of any colored men being turned off by their employers on account of not having voted the democratic ticket?
A. No, sir.
Q. Nor on account of refusing to vote the democratic ticket?
A. No, sir.
Q. Nothing of the kind?
A. No, sir.
Q. Have you known any colored men to be turned off since the election by their employers on account of having failed to attend the election and vote the democratic ticket?
A. No, sir.

oratic ticket?

A. No, sir.

Q. You have known no change in your ward in that respect either before or since the election?

A. No, sir.

Q. Is it not a fact that democrats in your ward, both before and since the election, have employed colored labor without regard to the politics of the men?

A. Yes, sir; I know that they do.

Q. You do that still, do you not?

A. Yes, sir.

Q. Although you are a republican?

A. Yes, sir.

By Mr. JOYCE: Did you vote at the last election?

Q. Da you work at the has election?
A. Yes, sir.
Q. What ticket did you vote?
A. I voted the democratic State ticket, and I voted for Hayes and Wheeler for resident and Vice-President.
Q. Do you reside in this parish?

You

A. Yes, sir.
Q. Did you vote for Hayes and Wheeler; did you vote a ticket with the names of the republican electors for the State on it?
A. No, sir; I could not find the electors. I didn't know them and could not find them. of the republican electors for the State on it?

A. No, sir; I could not find the electors. I didn't know them and could not find them.

Q. So you put in a vote with Hayes's and Wheeler's names on it?

A. Yes, sir.

Q. Of course that didn't amount to anything?

A. Yes, sir; I knew it did not.

Q. Aside from that you voted the democratic ticket?

A. Yes, sir.

Q. Has there been any republican club in your ward?

A. Yes, sir; there has been.

Q. When?

A. I think there was in 1874 and 1872; every year, I think, but this.

Q. Did you belong?

A. No, sir; I never belonged to it.

Q. Never belonged to any one of them?

A. No, sir.

Q. Has there been any republican club in the ward this year?

A. I think not.

Q. Do you know whether there was or not?

A. I think not.

Q. Do you know whether there was or not?

A. No; I don't know.

Q. Why didn't you go to work and get up one?

A. I am not a politician, and don't follow that business at all.

Q. What do you call a politician?

A. Any one who would get up a club and be active in it, I would call a politician.

Q. Is not that the duty of every man?

A. No, sir; I don't think it is.

Q. Can you give any reason in the world, except the one you have given, why you didn't go to work and get up a club in your ward?

A. Republicanism is not popular here. That is one thing.

By Judge NEW:

Q. Would you have apprehended any personal violence to yourself, or injury to your property in that ward, if you had attempted to organize a republican club? Do you think you would have been mistreated by the democrats of the ward if you had attempted it?

A. I hardly think I would.

Q. It was not from any apprehension of the kind that you did not do it?

A. No, sir; I never did it.

Q. Now, when you say that the republican party is not very popular, I will ask you whether it is not a fact that in your ward there has been a great change among the colored people upon that subject, as expressed at the late election?

A. Yes, sir; there has a great many voted the democratic ticket that used to vote the republican ticket. I suppose there was, because very few of the colored people voted the democratic ticket before.

Q. Did you attend any republican meetings anywhere in the parish?

A. No, sir.

Your committee investigated with great thoroughness the unlawful acts, lynchings, killings, &c., which are noted in the protest of the supervisor and affidavits and answers filed before the returning board. It is impossible to embrace within any reasonable compass a critical and detailed account of all that is alleged and the testimony taken before this subcommittee. The following are the leading cases, and comprise nearly all:

The name of Thomas H. Jenks figures more prominently before the returning board as a witness against the white people of this parish than that of any other person. He says that Jerry Norman, colored, was shot at church by a band of regulators in August, 1875. The proof is that he was shot by one Eugene Thompson, white, at whom Norman had fired the day before, the ball entering a sack of meal upon which Thompson was sitting. It was an old fend, not involving politics, and the killing was not done at church, nor in the presence of but one person, a colored man, who testified before the committee. He also says that Dr. Wood passed sentence of death on two colored girls, and that the sentence was executed by one hundred armed men. The proof is that a party of colored men were in the act of hanging these girls because they believed them to be guilty of stealing some clothing from a colored family, and Dr. Wood, hearing of it for the first time, hastened to the spot and saved their lives.

Jenks says further:

"On the 7th day of November, instant, I visited the fifth, seventh, and eighth polls in said parish, heard the democratic till the colored people that there were no republican tickets, and that they must vote the democratic ticket or not vote at all. This was openly said, and notroinus."

William Kneeland swears that he went with Jenks to those polls, and that the latter said that everything was going on quietly; also says that Jenks expressed no surprise that there were no republican tickets. (See page 435.)

L. B. Rheaves swears that he saw Jenks at the eighth poll in company with Kne

election went off right.
D. J. Wedge swears as follows:

By Judge NEW:

D. J. Wedge swears as follows:

By Judge New:

Question. Are you acquainted with Thomas H. Jenks?

Answer. Yes, sir; I have known him since 1868; I believe fifteen years, I reckon.

Q. You may state whether you met with him during the last canvass in this town.

A. I met him here. He came here and sent up to my house for me. I was at home. I think it was Friday.

Q. State what interview you had with him.

A. The day before I received a dispatch from Colonel Patton, stating that he had been appointed United States deputy marshal, and he was passing by here, and that he would make a favorable report if things were right. I knew his politics to be republican. I knew that he had been acting with the republican party ever since he had been a voter, and I felt a little suspicious of him. However, I went to the hotel to him. He told me that he had just seen Colonel Patton, and that he was sent up here by Colonel Patton, and his object in coming up here was to make a favorable report for the democratic party. About that time Captain Rogers and Lieutenant Davies came into the parlor, and said, "Sh—sh—I would not have these men to hear us talking together for anything in the world. I don't want them to hear any conversation that I have with you;" and we walked out of the gallery of the hotel, out of the way and hearing. He said that he knew the election would be perfectly quiet and all right, but he thought I had better go over to the printing-office and have some republican tickets printed. He says, "It will look better." I told him that I could not work on both sides, and if he wanted anything of the kind he would have to do it. It was not my business to put a republican ticket in the field, but he could use his own judgment about it. The next day I saw him. That is all that was said on that subject. He staid there until election day, and I was with him on that morning. Captain Rogers came to me and said that he did not believe that the man was a United States marshal; that he was a fraud. I wentup to Mr. Jenks and exa

port.
Q. Is that the last you saw of Mr. Jenks?
A. No, sir; he went to Baton Ronge, and I went down in the carriage with him.
We slept in the same room all night, and I took breakfast with him the next morning. He was waiting for a boat.
Q. Who else went to Baton Ronge with the same party?
A. Mr. Anderson and Mr. Jones. Mr. Jones drove the carriage.
Q. That is the gentlemen who testified yesterday about going down?
A. Yes, sir; that is the one.
Q. Is there anything else you know upon that subject?
A. That is all.

Joseph Jones testified as follows:

By Judge NEW:

Question. Are you acquainted with Thomas H. Jenks? Answer. I am, sir. Q. Do you know whether he was in the parish on the day of election? A. He was, sir; I took him to Baton Rouge, I think the next day, on his way to

A. He was, sir; I took him to Baton Rouge, I think the next day, on his way to New Orleans.

Q. Did he have anything to say upon the subject of election in your presence? A. Yee, sir.

Q. What did he say?

A. Mr. J. E. Anderson was the supervisor of registration for this parish and Mr. Thomas H. Jenks was deputy United States marshal. I took them down in a carriage, on their way to New Orleans; Mr. Jenks taunted Mr. Anderson and laughed at him, and told him he was afraid "we were gone up." That is the expression that he used. Mr. Anderson says, "No, never mind, that is all right," and put it off, and didn't like to talk about the election to Mr. Jenks. When we got to Baton Rouge he still taunted him, and said, "If everything goes on all over the State as it has in East Feliciana, we are gone up." Anderson remarked that he didn't care a damn about this parish; all he wanted was for Hayes to be President; and they talked over the fairness of the election, and both told me, coming down in the carriage, and after we got to Baton Rouge, that they had never seen a more peaceable, fairer, or more quiet election in any country. They repeated it several times, and it was a joke. Mr. Jenks took occasion to ridicule Mr. Anderson.

Mr. Jenks was well known to the tax-payers of this parish of both colors. T. A.

Mr. Jenks was well known to the tax-payers of this parish of both colors. T. A. Moore testified of him as follows;

By Judge NEW:

By Judge New:

Question. You live here?
Answer. Yes, sir; practice law.
Q. How long have you lived here?
A. Since 1867.
Q. What is your occupation?
A. I am a lawyer.
Q. Were you acquainted with Thomas H. Jenks?
A. I was.
Q. Did he ever live here?
A. Yes, sir; he came here as a tax-collector. He came here in May or June, I think, as tax-collector under appointment from Governor Warmoth, and he remained until, I think, in April, 1871; somewhere in the neighborhood of two years.
Q. Do you know whether he got into any legal troubles as tax-collector?
A. There were some rumors around that he was a defaulter, and a few days afterward he disappeared, and then it was found that he was a defaulter to the State and parish of \$20,000 in the suit of James Graham, auditor, for the benefit of the State and of the parish jury for the benefit of the parish; also criminal proceedings against him.

terward he disappeared, and then it was found that he was a cirather to the state and parish of \$20,000 in the suit of James Graham, auditor, for the benefit of the State and of the parish jury for the benefit of the parish; also criminal proceedings against him.

Q. Were there any judgments rendered?

A. Yes, sir; one at the suit of the State, under the name of James Graham, auditor, for the benefit of the State of Louisiana, against Thomas H. Jenks, judgment for \$10,322.22; and the case of the police jury against Thomas H. Jenks, judgment was rendered for \$10,072.56, I think.

Q. What were the dates of these judgments?

A. The judgment in the case of the State was the 14th of January, 1872, and I think on the same day in favor of the parish.

Jared W. Harrell (white) says be was cursed for being a damnednigger-loving radical, by men who came to his house armed with shot-guns, and threatened to hang him. Says, also, that they stripped his servant woman and whipped her almost to death. The proof is, that he was and had been for a long time living in open and notorious adultery with this colored servant woman. It had become the standard and stereotyped scandal of the community, and his own wife had sent word to some young men of the neighborhood that she wanted their intimacy broken up. They did not need a second invitation. Harrell had always been a democrat, and nothing to the contrary was ever heard until his affidavit was filed before the returning board.

Henry Smith, (colored,) ex-sheriff, says that Colonel Hardy, of Clinton, said to him in July, 1875, that it was the intention to get rid of him, Rea, and other redical officials.

G. J. Reily, son of Rev. John A. Reily, says that on the evening of a democratic barbecne held at Clinton, a large body of white men rode by his father's house and threatened to kill a colored man named Charles Wilson; saying that if they could get rid of him they would be able to control the rest of the colored men on the place, and make them vote the democratic tieket. Mr. Reil

ing to secure Wilson's co-operation in order to obtain the votes of the other colored men.

It was in proof that this Mr. G. J. Reily had been active in the work of flogging colored men for stealing.

Ezekiel Glover (colored) says that on the Saturday night before the election he was whipped by some white men for distributing republican papers. It is in proof that afterward, in the presence of Captain Rogers, Mr. Wedge, and others, he said that he did not know why he was whipped, but that politics had nothing to do with it. One witness swore that he heard Glover was whipped for killing another man's hog. Henry Johnson (colored) says that Captain Lanier, democratic candidate for clerk, said that no torture would be worse than would be received by any one who voted the republican ticket. Captain Lanier swore that he never gave expression to any such sentiment, in public or in private.

The same man says that S. A. Norwood said to him that there would be but one ticket in the field in that parish, and that the democratic ticket. Joseph A. Norwood, an active democrat, is no doubt here meant, for there is no such man as S. A. Norwood in the parish. Joseph A. Norwood swears that he never made such a declaration to Henry Johnson or any other person.

William Alexander (colored) says that on the day of the election he was met by Joseph A. Norwood, who handed him a democratic ticket and told him he must go up to the poll and vote it. Norwood swears that Alexander asked him for a ticket, and he gave him one, at the same time telling him that there was no other kind, and that Alexander replied that that was the kind he wanted.

Alexander Smith (colored) says that Colonel Hardy made a speech in which he said that if the colored men did not vote the democratic ticket, the bull dozing and killing would go on for forty years. Colonel Hardy swears that what he said was this: "That disorder would continue to prevail under this government we had, and that we would have to look for a good governor to get order and peace; that we

and that if that government was continued there would be no peace or order in the parish."

Alonzo Brooks (colored) says he was told by Fred Woods that if the colored men did not vote the democratic ticket they would be killed after the election, and that no colored or white republicans would be allowed to remain in the parish. Mr. Woods swears he never said anything of the kind. This is the Dr. Woods who saved the lives of the two colored girls.

Alexander Pool (colored) says that on the day of the election he was met by Mr. John A. White, who gave him a democratic ticket and told him to go up and vote it, which he did, fearing for his life.

Mr. Pool swore before this subcommittee that he had never voted a straight-out republican ticket in his life, but he did upon one occasion vote a straight democratic ticket; that he always votes for the men he believes to be the best fitted for the office, and that he knows of a great many other colored men who have been in the habit of doing the same thing; swore that "the election before the last was a mighty split ticket;" swore that he voted the democratic ticket at the late election, and in so voting voted his own honest sentiments and convictions.

Edgar A. Rigby (colored) says that he was told by Lewis C. Moore that they intended to kill every d——d radical leader in the parish. Moore swears that he never made any such declaration.

Rigby further says:

"When I was up there about four or five weeks ago, I saw a man, Aaron Robinson, who had been a republican leader, but was then a democrat; he told me not to stay there; that it was not safe for me to do so. He said that he had been forced to join the democratic party and make speeches for them, to save himself and many others, so that they could live there in peace. That he made the democratic speeches as light as possible, and he would tell people whom he could trust, after these meetings, that they must come there to protect themselves from harm, but that he hoped that before election they would have protection and

Aaron Robinson here referred to was, as has been already stated, one of the colored democratic leaders and speakers in this parish. He positively denies Rigsby's statement, as follows:

By Judge Naw:

Question. Are you acquainted with Edgar A. Rigsby?

Answer. Yes, sir.
Q. In what part of the parish does he live?

A. He don't live in the parish at all.
Q. Where does he live?

A. In New Orleans, I reckon.
Q. Where did he live during the campaign?

A. In New Orleans—I suppose so; he was there the last I heard of him; I saw him down there.
Q. "Was he up here during the campaign at all? Did you see him last summer or fall?

A. Yes, sir: I think I saw him once during the campaign.

Q. Was he up here during the campaign at all? Did you see him last summer or fall?

A. Yes, sir; I think I saw him once during the campaign.
Q. Where at?
A. In town, here, sir.
Q. Did you tell him not to stay here; that it was unsafe for him to do so?
A. I did not, sir.
Q. Did you give him to understand that it would be unsafe for him to remain in this parish and that he had better leave?
A. I did not.
Q. Did you state to him that you had been forced to join a democratic club and make speeches for them?
A. I did not.
Q. Did you say that you had been forced to join the democratic club and make speeches for them?
A. I did not.
Q. Did you say that you had been forced to join the democratic party and make speeches for them to save yourself and many others, so that you could live in peace?
A. I did not.
Q. Did you say that you had been forced to join the democratic party and make speeches for them to save yourself and many others, so that you could live in peace?
A. I did not.
Q. Did you say that you had been forced to join the democratic party and make speeches for them to save yourself and many others, so that you could live in peace?
A. I did not.

speeches for peace?

A. I did not.
Q. Did you ever utter any such sentiment?
A. I never told any living man that.
Q. Did you ever say anything to him that had any such meaning?
A. No, sir; not to my knowledge.
Q. Did you ever say to him that you made democratic speeches as light as possible, and that you would tell people whom they could trust after these meetings—after the meeting at which you spoke?
A. No, sir.
Q. Did you say to him that you told people whom you trusted that they must go there to protect themselves from harm?
A. No, sir.

there to protect themselves from harm?

A. No, sir.
Q. Did you tell him that you told the people that you hoped before the election they would have protection to enable them to vote as they pleased?

A. No, sir.
Q. Did you say to him that if the colored men had half a chance, even with the bad fix that they were in, they would carry the parish by seven or eight hundred for the republican party?

A. No, sir.
Q. Or by any majority?

A. No, sir.
Q. Did you say to him that the colored voters did not get any protection, and they had to vote the democratic ticket or not vote at all?

A. No, sir, be asked me what I thought about the colored people voting the democratic ticket, and I told him that I believed a majority of them had come to the conclusion that it was just as good to vote the democratic ticket, or better than to vote the republican ticket. That is what I said to him.

See page 271 for an account of a murderous assault made by republicans upon

the republican ticket. That is what I said to him.

See page 371 for an account of a murderous assault made by republicans upon Mr. Robinson just after election.

Wesley Smith, colored, says he voted the democratic ticket at Clinton, and is certain he would have been killed if he had not voted it. The Rev. John A. Reiley swears that he is certain that five hundred republican tickets could have been voted there without any danger. Smith says the democrats at the Clinton polls were all armed with pistols. He testified before this subcommittee, and then swore that he did not see a pistol exhibited. He says that he was not permitted to put his ticket in the box himself, but swears that the usual practice has always been for one of the commissioners of election to receive the ticket and put it in the box. He admits that he did not indicate that he wished to put it in himself. Why he was so anxious to deposit the ballot in the box when he was voting it against his will he does not explain. He says that persons came from Wilkinson County, Mississippi, and assisted the democrats of East Feliciana in intimidating the colored republican voters, and raiding through the parish. He now swears that he never heard of anything of that kind, and that this was put into the affidavit without his knowledge. Says that John Butler, one of the commissioners of election, ordered him to open his ticket. This is shown by the testimony of Mr. Butler to be without the shadow of truth. Butler testified as follows:

By Judge Naw:

By Judge NEW:

By Judge New:

Question. Where do you live?

Answer. I live in town.

Q. Is there any John Butler living in this town?

A. No, sir.

Q. Do you know of any other John Butler living in this ward?

A. No, sir.

Q. Did you hear Wesley Smith testify a few evenings since?

A. I did.

Q. Are you the gentleman who was sitting to his left, and to whom he pointed when he spoke of John Butler?

A. Yes, sir.; I am the one.

Q. Were you a commissioner in the last election in this ward?

A. No, sir.; I was not.

Q. Did you state to Wesley Smith, on election day, in this ward, when he was at the polls—did you tell him to open the ticket so and come right around me here?

A. I don't recollect seeing him on that day. I have tried to study it up since that day, since he pointed me out.

Q. Did you use that language to any one?

A. No, sir.; I didn't say that thing to any one. I used a portion of it.

Q. What did you say?

A. I was standing in front of the box. The commissioners asked me to assist them, so as to facilitate matters and get through quicker. I did say to several of them to open their register papers and they could go and vote faster. They came in on my right and passed out on my left.

Q. Did you tell any one to open their tickets?

A. No, sir.

Q. It was the registering papers?

Q. Did you hear any of the commissioners of election make any such remark to him or any other person?

A. No, sir; I did not.

Q. Did you say to him or any other person, "Open your ticket, and take the ticket in one hand and the registering paper in the other, and pass right around me?"

A. No, sir; I did not.
Q. Did you hear any of the commissioners make use of any such language?
A. No, sir; I did not.
Smith further says that colored republicans were whipped and killed repeatedly during the last canvass. He now swears that he never heard of any one being either whipped or killed during the canvass. He swears that the affidavit was read to him, and he has no recollection of anything of that kind being in it. Says he could not have made such a statement to the party who wrote the affidavit, "because I (he) never heard of any killed on that account."

Upon the subject of persons being whipped, the following questions were propounded to this witness and answers given.

By Judge New.

By Judge NEW:

By Judge New:

Q. Do you know of any colored men having been whipped on account of their political opinions, of your own personal knowledge?

A. No, sir; I don't know of it myself.

Q. Well, do you know of any facts or circumstances or the surroundings to any praticular case of whipping which makes you believe that the whipping took place on account of the politics of the man who was whipped?

L. No; I don't know of any man being—really, to tell you the truth, being whipped about his political opinions. They have been whipped for stealing.

Q. They were whipped for stealing?

A. Yes, sir.

Q. Did you make any complaint of that at the time?

A. No; I did not make any complaint, because I didn't care anything about it.

Q. Is it not a fact that there has been a good deal of whipping in this parish on account of stealing?

A. Yes, sir.

Q. Is that the fact?

A. Yes, sir.

A. Yes, sir.
Q. Is that the fact \(^1\)
A. Yes, sir.
Q. If this man that you heard of being whipped was whipped on account of stealing, why did you attach any importance to that and put it in this affidavit \(^1\)
A. That question was not asked me in that respect, whether a man was whipped about stealing or his political opinions or not.
Q. You say in this affidavit, "I know that Henry Lawson, Charles Williams, Allen Meyer, Austin Sloan, and Dangerfield Sloan, all colored men and voters, were whipped."
A. But about what \(^1\)
Q. If you did not believe they were whipped on account of their political opinions, why didn't you tell him so\(^1\)
A. He didn't ask me.
Q. Why didn't you say to him, "But these men were not whipped on account of politics\(^1\)
A. I didn't think that was the fact, why didn't you put that in your affidavit\(^1\)
A. I didn't think that was for me to correct. I didn't know he wanted to find out what they were whipped about.
Q. He would not have known they were whipped if you had not told him.
A. He asked me if I knew of any man being whipped in the ward or in the parish, and of course I told him.
It will be found, upon examination of the testimony, that Smith's statements as

and of course I told him.

It will be found, upon examination of the testimony, that Smith's statements as to what he heard Captain Fuqua, Mr. Kernan, and others say is fully met by the evidence of those involved.

Aaron McKenzie, before the returning board, made affidavit to the following:

"That the employer of affiant, Henry Clay East, told him that the report had been circulated in town that affiant had made a complaint that he had been whipped, and that the bull-dozers threatened to visit affiant for circulating said report; but that be (affiant's employer) had got said bull-dozers to defer their visit on condition that he would get affiant to promise not to mention to any one the circumstances of his whipping." whipping.

Mr. East, as to this, testifies as follows:

By Judge NEW:

By Judge New:
Question. In what ward do you live?
Answer. The eighth ward.
Q. State if you are acquainted with Aaron McKenzie. He is a colored man?
A. Yes, sir; he lived on my place last year.
Q. State whether you ever said to him that a report had been circulated in town that he had made a complaint that he had been whipped, and that the bull-dozers had threatened to visit him for circulating the report, but that you had got the bull-dozers to defer their visit on condition that you would get him to promise not to mention any circumstances of his whipping.
A. I did not.
Q. Did you ever say anything to him that was substantially that?
A. I never did.
Q. Did you have any conversation with him on the subject of his whipping?
A. He was up at my house the next morning after he had been whipped. He came up and told me that he had got whipped the night before. I asked him what he was whipped for, and he said because he had not been at work. There was a rumor that he was accused of stealing. I was sick at the time, affilicted with the rheumatism.

rheumatism.
Q. You had no conversation of this kind with him ?
A. No, sir.

George T. Norwood made affidavit before the returning board to the following: "Deponent says that on the day a public meeting was held in Clinton, during the recent political campaign, he heard a white man named J. W. Robbins threaten a colored man that he would find out the name of every negro who voted the republican ticket and make him smell hell after the election."

Mr. Robbins swears as follows:

Py Judge New:

Question. What ward do you live in?

Answer. The sixth ward.

Q. Are you acquainted with George T. Norwood?

A. Yes, sir.

Q. Do you remember to have said at any time during the late campaign, or at any time, to George T. Norwood or any other person, at the town of Clinton or elsewhere, that you would find out the name of every colored man that would vote the republican ticket and "make them smell hell after the election?"

A. No, sir; I did not say so.

Q. Did you ever say anything that was in substance that?

A. No, sir.

Q. Your name is J. M. Robbins?

A. It is.

Q. Is there any such man, to your knowledge, it is.

A. It is.
Q. Is there any such man, to your knowledge, in the parish as J. W. Robbins ?
A. No, sir.
Q. Are you the only one of the mame of J. M. Robbins ?
A. Yes, sir.

By Mr. JOYCE:

Q. What ticket did you vote?
A. Democratic ticket.
There were no whippings at any time in this parish on account of politics, and during the canvass there were but two of which we could hear of any kind; one

the case of Ezekiel Glover, already spoken of, and the other Ananias Richardson, who entered the storchouse of Rev. John A. Reiley, and, without permission, helped himself to meat out of the pork barrel. All persons having property, without regard to party, were, it seems, foraged upon alike.

John Marston testified as follows:

"Mr. Parson Reiley told me that he had lost most of his crop of 1874, and a good deal of the crop of 1875, by negroes stealing it, and that the regulators had saved his crop of 1876. This is the conversation I had with Mr. Reiley a short while ago. He was very much in favor of the regulators."

Rev. John A. Reiley was chairman of one of these lynching organizations, and assisted in organizing it. (See page 411.) White men were regulated and run out of the parish for stealing. Joseph A. Norwood tells of one Robinson thus driven off because he had stolen hogs from a colored man, and of one Brown compelled to leave the parish by the regulators on account of stealing cattle from a colored man. As a further specimen of the utter recklessness with which allidavis were prepared to order for use before the returning board, we invite attention to that of James Law, colored. In his affidavit he says: "I have heard of many instances of colored men in said parish having been whipped and shot for attending republican meetings."

When examined before this subcommittee he said he did not become of the test of the test of the resulting that having been whipped and shot for attending republican

Can meetings."

When examined before this subcommittee he said he did not know of but one republican meeting being held in the parish, and had heard of but one case where blows were struck, and of no case where a colored man was shot for attending re-

publican meetings.

The following testimony by Law shows how anxious he was to sustain the affidavit which he had made before the returning board:

By Judge New:

Question. Take the year of 1875. Can you state any case in that parish where a colored man was shot on account of having attended a republican meeting; if so, who was it?

was it?

Answer. What we understand—we understand a man to be a republican when he attends a republican meeting and votes the republican ticket.

Q. State any one in the year 1875, in that parish, who was shot on account of having attended a republican meeting.

A. I know of the sheriff, Henry Smith; he is a republican, and attended republican meetings all the time, and figured conspicuously.

Q. What republican meeting did he attend on account of which he was shot in the year 1875.

oan meetings and Q. What republican meeting did he attend on account very year 1875?

A. There was no republican meetings in 1875.
Q. What republican meeting at any time prior to 1875 was Henry Smith shot for attending?

They were shot because they were republicans.

Name republican meeting at any time prior to 1875 was Henry Smith shot for attending!

A. They were shot because they were republicans.

Q. You do not know of his being shot on account of his having attended a republican meeting at a republican.

Q. Why did you state in your affidavit that it was on account of having attended a republican meetings that republicans were shot!

A. Yell, not outside of his being a republican.

Q. Why did you state in your affidavit that it was on account of having attended republican meetings that republicans were shot!

A. I just told you that that was an error.

Q. This, then, is not true!

A. That portion is not true. That is an error that crept in.

It would seem from the following answer to an interrogatory propounded to Thomas D. Carnly before the returning board, that Law had seriously thought of casting his fortunes with the democratic party:

"Answer of Thomas D. Carnly.

"To interrogatory I. James Law had a conversation with witness during the recent campaign. Witness asked him if he would join the democratic party. Law replied, 'They will not receive me.' Witness replied, 'You are responsible for it, because you sold out both parties at the previous election.' Witness knows that at least twenty leading colored democrats told him that if Law joined their club they would quit the party; they had no confidence in him. This was said to me as presidend of the third ward club."

Law shot a colored man a few years since at Port Hudson, in a political campaign. Law was a botter at that time from the regular republican organization.

called him out of his house and told him they had heard that he was a radical, and that he must leave the parish within ten days, that in the fall of 1875 the same men came to his house and took therefrom "his three young children by a colored woman, whom affiant was living with," and notified him that he must leave the parish. The proof, by the brother-in-law of Sparkman and others, is, that he was living in adultery with the colored woman, and had

STATE OF LOUISIANA, Parish of East Feliciana:

Personally appeared before me, the undersigned authority, Catherine Mathews, colored, who, being duly sworn, doth depose and say: About one week ago, or more, she was in the townof Baton Rouge, on a visit to her sister, the wife of John Gair; that while there a young colored man by the name of John George, who form for the person of the

she used said poison as directed, and that she is sorry for what she has done; that she committed the act because John George told her that Gair and Ray wanted

her to do it. Sworn to this 11th day of October, 1875.

CATHERINE MATHEWS.

(Written in her own handwriting.)

Sworn to and subscribed before me this 11th day of October, 1875, and signed,
T. B. LYONS,

Parish Judge.

T. B. LYONS,

Parish Judge.

Warrants were sued out for John George and John Gair. The deputy sheriff, with a posse, went to Baton Rouge, where George was supposed to be, and where Gair was then living. They failed to find George, but arrested Gair on the 12th day of October, 1876, and on their way with him to Clinton, just after entering East Feliciana Parish, the party of men referred to, about sundown, undisguised, made their appearance, overpowered and disarmed the deputy sheriff and his posse, and shot Gair, the latter protesting that he was innocent. That the deputy sheriff and his party acted in good faith, and were in no way in collusion with the men who killed Gair, is very clear from the testimony. That evening, Babe Matthews, who in the mean time had been in custody, was hung to a tree in the court-house yard at Clinton, at about nine o'clock. We used every possible industry to learn the names of the guilty parties, and obtained a large number, but not all. Gair had for a time was the leader of his race in that parish. He was a man of violent temper, and had become very odious to the white people of the parish. Before removing to Baton Rouge he had lost his rank and influence in a great degree among his people, on account of party divisions and his defeat for office. He drank to excess at times, and was at such times often demonstrative and violent in his conduct. Upon one occasion, not long prior to leaving the parish, the town of Clinton was in quarantine because of yellow fever. Gair had been away, and upon his return forced himself by the guards, and upon entering the town talked with great bitterness, making threats that he would burn the town.

Upon another occasion, when defeated for the Legislature on account of a division in the republican party, he again threatened to burn the town of Clinton. Whether Gair was guilty of procuring the poisoning of Dr. Saunders, we do not know. That he was believed to be guilty, we do not doubt. A chemical analysis was made of the contents of the stomach by p

We do not believe that the killing of Gair was because of his being a republican. He had removed from the parish of East Feliciana, and he was killed at a time when there was no evidence of his ever having had any personal difficulty growing out of politics with any white man. There is no evidence that Gair had been in the parish after his removal.

A few colored men in this parish testified that they voted the democratic ticket, not because they preferred its success but for the reason that they apprehended some sort of evil would befall them if they did not. We believe from the evidence that they could have voted a republican ticket with entire safety. It may be that in the absence of such a ticket some colored republicans were prevailed upon, against their own inclinations, to vote the democratic ticket. It is not difficult to see how this might be true in any community where one party had abandoned the field at the beginning, and when the other was therefore having it all its own way. It would not be remarkable if under such circumstances some votes were secured by the prevailing party against the secret desire and choice of persons voting.

In this connection we wish to call attention to the fact that Captain Rogers, of the United States Army, a republican, stationed in this parish, gives it as his best indigment that about two-thirds of the colored vote, if minifluenced by others, would be cast for the republican party. The registered democratic vote is placed in Sherman's report at 1,004, and the republican vote at 2,127. Subtract from the latter number two-thirds of the same, and there would remain 709 colored vote which would be democratic. This added to the democratic ore gistered vote would make 1,713 votes, which is within 23 votes of the number cast for the democratic electors. It will be seen, therefore, that the democratic vote is not any larger than it would be entitled to on a full vote. This cannot be denied, for in addition to the 1,736 votes cast for the democratic candidates, there were a s

at Thompson's Creek, in Trees', takilled by Adam Anderson, colored, on January 21, 1875.

Infant child, colored, drowned in a cistern by a young nurse, colored, on the plantation of Thomas McKown, on the 30th of April, 1875.

Infant child of Miss Martha Jackson, on the plantation of B. Kent, on the 23d day of June, 1875, by canse unknown.

Manrice Jackson, found dead about one-quarter of a mile from the Clinton and Port Hudson road, about sixteen miles from Clinton.

Charles Rogers, colored, by wound in the forchead, received from unknown parties, near Clinton.

Scott J. Worthy, death caused by the kick of a mule on the 10th of November, 1874. Robert Thompson, colored infant, on the Pond place, on the 20th October, 1874, accidental smothering by his mother.

Charlotte Crosby, colored, in the town of Clinton, on May 16, 1874, of heart disease.

A. B. Kent; cause, suicide, on January 2, 1874.

Hezekiah Wilson, colored, on the 27th day of December, 1874, killed by a pistolball from the hands of Irene Harrison, colored, accidentally discharged.

Joshua Butler, colored, and Joseph Perry, colored, killed on the night of January 15, 1875, by pistol-ball, by one Lawson Blount.

George Washington, colored, killed on the Robinson plantation, on the night of the 9th of September, 1876, by gunshot in the hands of some person unknown. John Gair, October, 1875.

Catharine Mathews, 1875.

What has been said about the causes of disorders in East Baton Rouge and West Feliciana parishes applies to this as well. Over one thousand affidavits from this parish were filed before the returning board, from both white and colored, declaring the election to have been fair and without intimidation.

We close our report as to this parish by quoting from the testimony of J. G. Kilburn, who was elected judge.

Judge Kilburn was upon the ticket so warmly commended by Rev. John A. Reiley.

Judge Kilburn's testimony is as follows:

CLINTON, LOUISIANA, January 9, 1877.

By Judge NEW:

Question. What is your profession ?

By Judge New:

Question. What is your profession?

Answer. A lawyer.

Q. How long have you lived in this parish?

A. Since 1857.

Q. What do you know of the expulsion, so to speak, of Gair, Ray, and Smith?

Ray and Smith, I believe, were sheriffs at one time. I would like you to give us, as clearly as you can, a brief statement of what you know about the conduct of those three men; what you know, and so on, without any further questions upon the conductase citizens and office-holders.

Q. Take the case of John Gair. Under what circumstances did he leave the parish? I have made use of the word expulsion; I do not know whether he was expelled or not; I do not know how that may have been. What have you to say of the circumstances under which he left the parish?

A. Immediately before he left the parish here were a number of men arrested here in different paris of the parish on the charge of assantiand battery and brought carried to the magistrates of their own wards, but they were brought to this town for crimes that they were said to have perpetrated in other parts of the parish, and over which the justice of the peace in the ward had jurisdiction. It was generally thought, it was understood here, that they had been brought bere to make fees for the justice of the peace here at that time, and that Ray and Gair were in with him for that purpose. It was an extraordinary proceeding to bring people here on those charges. Those were the only cases of criminals being tried in this city for crimes having been committed out in the different parts of the parish. The own of the parish had found the charge against them, so that he could make fees. They claimed that Ray and Smith and Gair were in with him for that purpose. It was an extraordinary proceeding to bring people here on turned the country of the parish that the parish that the parish can be made to the parish the parish that the parish that the parish that the parish that the parish can be parished that the parish that the parish that the parish that the parish th

A. It is names were bad. They would get drink and riot and carry on in the lost outrageous manner.

Q. What was Ray's age at the time he figured here?

A. Twenty-eight or twenty-nine years; about the same age as Gair.

Q. And Smith; how old was he?

A. I knew him as a boy belonging to Colonel Fugur; I think twenty-six or twentyeight years. Q. What have you to say as to the matter of the late canvass in this parish of

Q. What have you to say as to the matter of the late canvass in this parish of the election?

A. In the late canvass there was first a primary election held for candidates before the white people of the persons who wished to be candidates. I think there were some nine hundred votes cast at that primary election. Every white men and a great many colored men were very anxious that law and order should be fully restored and that all violations of the law should be settled according to law. That was the general desire expressed. Men who wished to be elected to office were compelled to have the necessary qualifications to make them proficient in carrying out the objects of their offices. They wanted to see all this bull-dozing and so on stopped, and that all crimes should be punished by the law; we should have courts established and men elected to offices who would punish offenses proven to have been committed. There was a general condemnation of the late state of affairs and disorder expressed by both white and black. The primary election was held for candidates for office, and all who desired to vote voted at that election. There were some few colored men, but principally white men voted; nine hundred, I believe, in all. And I know that all men elected by that primary election were conservative men, men who would see that all offenses were settled by law. Then we commenced the canvass; and it seemed to me that every man in the whole community became at once a politician and seemed to think it was important to carry the election and elect those men. We had barbecues and political speaking, and used all means publicly and privately to induce white and black to come with us and vote for the

men nominated at that time. I don't think that those meetings, one of which was held here while General Nicholls was here and a barbecue here and at Jackson, was in any way disturbed. The speeches were all conservative. General Nicholls's arguments and those of other speakers were addressed to both white and black; and their advice was for the people to be quiet and orderly, and to elect their men to office, so that all this disorder, which forced as it were the people to take the law in their own hands on account of the incompetency of the officers, should be storpped, and that all offenses should be punished in accordance with law. Those speeches were made over and over again. We dwelt largely upon our future prosperity to guard against that condition of affairs. And General Nicholls promised to the negroes schools, and that they should have small taxes to pay, and that no man should have any taxes to pay over what was reasonable. There were illustrations of many cases of the present taxation amounting almost to confiscation of a man's property, and many of the colored men were sufferers; and, after realizing their position, they became very eloquent and enthusiastic in their support of the democrats; and, in fact, a great many of them in their speeches advocated the very points initiated by the white canvassers. I did not attend very many public meetings myself, but I heard of them; and at those I did attend I saw no threats or intimidation; in fact, everything was very conciliatory.

Q. State what interest the colored men of property and infinence in the parish seemed to take in the canvass, and the effort they made to establish the new order of things spoken of.

A. Every colored man I know of who had property in the community was as anxious as I was or anybody else; at least, seemed to be desirous of restoring that state of affairs, and have good order and good government.

Q. Is it not the idea the colored people of the parish, and the white people, too, had become tired and disgusted with the condition

black.

Q. What would you estimate the colored attendance at that barbecue?

A. Fully fifteen hundred. I would place it at that.

Q. State whether the entire parish was represented by the colored people.

A. It was. They came in with their clubs, mostly on horseback, some on foot. It was the largest congregation I have seen.

Q. State whether families of them came.

A. Yes; women and children. There was a general gathering of white and black.

- Q. State whether there was a large attendance of women and children with
- them

Q. State whether there was a large attendance of women and children with them.

A. I think so. I saw a great many. Everybody was invited to come.

Q. Is there anything else you wish to state?

A. Well, I heard a witness on the stand speak; I think it was Mr. Norwood. He was questioned as to some men who were made to leave the parish on account of some talk before the election—white men. I happen to know one of the paries, having acted as attorney for him. Some time before the election, three white men, two named Robertson and one named Wilkins, were charged with the killing of a colored man charged with stealing hogs. They were arrested and brought before the parish judge. Judge Lions acquitted them for want of evidence. The killing was committed by Robertson and Wilkins when they attempted to arrest Wilkins, charged with hog stealing. One of the Robertsons was re-arrested and remained in jail; and one of the family of Robertson brought a note addressed to Robertson, which they said was left at their house one night, which I read. It was to the effect that Robertson and Wilkins must leave the parish or they would be punished. This was signed, "Headquarters of the regulators." I don't know who they were. Robertson was at large on bond not to leave the parish bortoe his trial came on, on the hog-stealing question. The other Robertson and Williams were sent to the penitentiary for one year for stealing the logs. From the colored men I came dhat the other Robertson and Williams were democrats, and voted at the primary election as democrats. I merely speak of that case because I happened to know it. I know of no case of intimidation or violence to any man, and of no threatening of violence on account of politics. I know I and my friends, and I know a large number in this community, were extremely anxious that law and order should be restored and all charges and offenses should be punished by the law only.

WEST BATON ROUGE.

WEST BATON ROUGE

We did not examine witness as to West Baton Rouge Parish, there having been no change made by the returning board in the vote there cast. The following tables give the votes cast for presidential electors at the several polls in that parish :

Statement of votes, poll No. 1, parish of West Baton Rouge

Statement of votes cast at poll No. 1, election precinct of the parish of West Baton Rouge, for electors of President and Vice-President of the United States, members of Congress, State and parish officers, for senators and representatives, and for and against certain proposed amendments to the constitution of the State of Louisiana, at the general election held November 7, 1876, under the provisions of an act to regulate the conduct and to maintain the freedom and purity of elections, &c., approved November 20, 1872, and the amendments thereto. (The names of all candidates, except for electors, are omitted in the statement below, by order of the committee, as the same would be a useless incumbrance of the record.)

Names of persons voted for.	For office of—	No. of votes.
Samuel J. Tilden	For President	43 43 43
Louis St. Martin Félix P. Poché Alcibiade De Blanc William A. Seay	First district	43 43 43 43

Statement of votes, poll No. 1, parish of West Baton Rouge.-Continued.

Names of persons voted for.	For office of—	No. of votes.
R. G. Cobb R. A. Cross Rutherford B. Hayes William A. Wheeler William P. Kellogg J. H. Burch. Oscar Joffrion	Fifth district Sixth district For President For Vice-President For president starge do For sixth district	43 43 2 2 2 2

Number of ballots in the box, 45. STATE OF LOUISIANA, Parish of West Baton Rouge:

Parish of West Baton Rouge:

Personally appeared before me, the undersigned authority, Alfred Courtade, Hubert Hebert, and Robert Brown, duly appointed and qualified commissioners of election for poll No. 1, election precinct of the parish of West Baton Rouge, for the general election held November 7, 1876, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have counted the said ballots so received in the ballot-box at said poll in all things according to law; and that the foregoing is a true and correct statement of the votes cast at the said poll on the said day,

ALF. COURTADE,

HUBERT HEBERT,

ROBERT BROWN,

Commissioners of Election, Poll No. 1, Parish of West Baton Rouge.

Sworn to and subscribed before me this 8th day of November, 1876.

[L. S.]

Supervisor of Registration, Parish of West Baton Rouge.

CLERK'S OFFICE, WEST BATON ROUGE.

A true copy :

T. LANDRY, Clerk.

Statement of votes, poll No. 2, parish of West Baton Rouge.

Statement of votes, poil No. 2, parish of West Baton Rouge.

Statement of votes cast at poll No. 2, election precinct of the parish of West Baton Rouge, for electors of President and Vice-President of the United States, members of Congress, State and parish officers, for senators and representatives, and for and against certain proposed amendments to the constitution of the State of Louisiana, at the general election held November 7, 1876, under the provisions of an act to regulate the conduct and to maintain the freedom and purity of elections, &c., approved November 20, 1872, and the amendments thereto. (The names of candidates, except for electors, omitted in statement below; deemed unnecessary, for reason already stated.)

Names of persons voted for.	For office of—	No. of
R. B. Hayes. Wm. A. Wheeler. Wm. P. Kellogg. J. H. Burch	President	19 19 19
Peter Joseph L. A. Sheldon Morris Marks A. B. Levissee	First district. Second district. Third district. Fourth district	18 18 17 18
O. H. Brewster Oscar Joffrion Samuel J. Tilden	Fifth district	18 19 18
Phomas H. Hendricks	Vice-President Presidential electors do First district	18 18 18
Félix P. Poché Alcibiade De Blanc W. A. Seay	Second district. Third district Fourth district.	18
K. A. Cross omitted entirely by R. G. Cobb	oversight.) Fifth district	18

"K. A. Cross received 181 votes. The omission to give it in the above table was by the clerk of the court in copying the statement filed with him by the commis-

oners." Number of ballots in the box, three hundred and seventy-seven, (377.) Number of ballots rejected, one, (1.) Reasons for rejection of ballots: One ballot rejected on account of being blank.

STATE OF LOUISIANA, Parish of West Baton Rouge:

Personally appeared before me, the undersigned authority, William I. Woodruff, N. E. Leroy, and L. C. Arthidore, duly appointed and qualified commissioners of election for poll No. 2, election-precinct of the parish of West Baton Rouge, for the general election held November 7, 1876, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have counted the said ballots so received in the ballot-box at said poll in all things according to law; and that the foregoing is a true and correct statement of the votes cast at the said poll on the said day.

WM. I. WOODELUFE

wm. I. WOODRUFF, N. E. LEROY, L. C. ARTHIDORE, Commissioners of Election, Poll No. 2, Parish of West Baton Rouge. Sworn to and subscribed before me this 8th day of November, 1876.
[L. S.]

Supervisor of Registration, Parish of West Baton Rouge.

CLERK'S OFFICE, WEST BATON ROUGE, November 14, 1876.

A true copy:

T. LANDRY. Clerk.

Statement of votes, poll No. 3, parish of West Baton Rouge. Statement of votes cast at poll No. 3, election precinct of the parish of West Baton Rouge, for electors of President and Vice-President of the United States, members of Congress, State and parish officers, for senators and representatives, and for and against certain proposed amendments to the constitution of the State of Louisiana, at the general election held November 7, 1876, under the provisions of an act to regulate the conduct and to maintain the freedom and purity of elections, &c., approved November 20, 1876, and the amendments thereto. (The names of all candidates, except for electors, are omitted in the statement below as unnecessary, for reason already stated.)

Names of persons voted for.	For office of—	No. of votes.
Ratherford B. Hayes William A. Wheeler. Samuel J. Tilden Thomas A. Hendricks William P. Kellogg J. H. Birch Peter Joseph L. W. Sheldon. Morris Marks A. B. Levissé O. H. Brewster Oscar Joffrion. John McEnery. Robert C. Wickliffe. Louis Saint Martin Félix P. Poché. Alcibiade De Blanc. W. A. Seay. R. G. Cobb. K. A. Cross.	President of United States.  President of United States.  President of United States.  Vice-President of the United States.  Vice-President of the United States.  Elector at large.  do.  Elector, first district.  Elector, second district.  Elector, fourth district.  Elector, fifth district.  Elector, sixth district.  Elector, sixth district.  Elector, first district.  Elector, fourth district.  Elector, fourth district.  Elector, fifth district.  Elector, sixth district.  Elector, sixth district.	392 392 118 118 393 10 10 10 10 393 120 120 120 120 120 120 120 120 120

Number of ballots in the box, 513. Number of ballots rejected. 1. Reasons for rejection of ballot: One ballot rejected on account of being "Court citation as witness."

STATE OF LOUISIA NA, Parish of West Baton Rouge

Personally appeared before me, the undersigned authority, Charles E. Morrison, Gustave Dubroca, and George Matthews, duly appointed and qualified commissioners of election for poll No. 1, election precinct of the parish of ——, for the general election held November 7, 1876, who, being duly sworm, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have counted the said ballots so received in the ballot-box at said poll in all things according to law; and that the foregoing is a true and correct statement of the votes cast at the said poll on the said day.

CHAS E. MORRISON

CHAS. E. MORRISON,
G. DUBROCA,
GEORGE MATTHEWS,
Commissioners of Election, Poll No. 3, Parish of West Baton Roug

Sworn to and subscribed before me this 8th day of November, 1876.

L. F. BAUGNON,
Supervisor of Registration, Parish of West Baton Roug CLERK'S OFFICE, WEST BATON ROUGE, November 14, 1876.

A true copy:

T. LANDRY, Clerk.

Statement of votes, poll No. 4, parish of West Baton Rouge.

Statement of votes cast at poll No. 4, election precinct of the parish of West Baton Rouge, for electors of President and Vice-President of the United States, members of Congress, State and parish officers, for senators and representatives, and for and against certain proposed amendments to the constitution of the State of Louisiana, at the general election held November 7, 1876, under the provisions of an act to regulate the conduct and to maintain the freedom and purity of elections, &c., approved November 20, 1872, and the amendments thereto. (The names of candidates, except for electors, are omitted in statement below as unnecessary, for reason already given.)

Names of persons voted for.	For office of—	No. of votes.
William P. Kellogg	At large, presidential elector	
J. H. Burch	do	
John McHenry	do	2
Robert C. Wickliffe	do	2
Peter Joseph Lionel Sheldon	First district	
Morris Marks	Third district.	
A. B. Levissé	Fourth district.	
O. H. Brewster	Fifth district.	
Oscar Joffrien	Sixth district	
Louis Saint Martin	First district	2
Félix P. Poché	Second district	2
Alcibiade De Blanc	Third district	2
W. A. Seay		2 2
R. G. Cobb	Fifth district	2
K. A. Cross	Sixth district	2

Number of ballots in the box, 32,

STATE OF LOUISIANA, Parish of West Baton Rouge :

Personally appeared before me, the undersigned authority, William Harrison, Robert Cade, and Stephen Vancourt, duly appointed and qualified commissioners of election for poll No. —, election-precinct of the parish of West Baton Rouge, for the general election held November 7, 1876, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have counted the said ballots so received in the ballot-box at said poll in all things according to law; and that the foregoing is a true and correct statement of the votes cast at the said poll on the said day.

R. CADE

R. CADE,
STEPHEN COURT,
WILLIAM HARRISON,
Commissioners of Election, Poll No. 4, Parish of West Baton Rouge.

Sworn to and subscribed before me this 8th day of November, 1876.
[L. F. BAUGNON,
Supervisor of Registration, Parish of West Baton Rouge.

A true copy of the original as filed in my office. November 14, A. D. 1876,

T. LANDRY, Clerk Court.

Statement of votes, poll No. 5, parish of West Baton Rouge.

Statement of votes, poll No. 5, parish of West Baton Rouge.

Statement votes cast at poll No. 5, election precinct of the parish of West Baton Rouge, for electors of President and Vice-President of the United States, members of Congress, State and parish officers, for senators and representatives, and for and against certain proposed amendments to the constitution of the State of Louisians, at the general election held November 7, 1876, under the provisions of "An act to regulate the conduct and to maintain the freedom and purity of elections," &c., approved November 20, 1872, and the amendments thereto. (The names of candidates, except for elector, are omitted in statement below as unnecessary, for reason already given.)

Names of persons voted for.	For office of—	No. of
William P. Kellogg J. H. Burch John McEnery	At large, presidential electordodo	31 31 7
Robert C. Wickliffe. Peter Joseph Lionel A. Sheldon Morris Mark A. B. Levisee O. H. Brewster	do First district Second district Third district Fourth district Fifth district	7 7
Oscar Joffrion. Louis St. Martin. Felix P. Poché. Alcibiade De Blane. William A. Seay.	Sixth district First district Second district Third district. Fourth district.	31
R. G. Cobb K. A. Cross	Fifth district	77

Number of ballots in the box, 389.

STATE OF LOUISIANA

Parish of

Personally appeared before me, the undersigned anthority, J. O. Molaison, Richard Douse, and Angustin Leclercq, duly appointed and qualified commissioners of election for poll No. 5, election-precinct of the parish of ——, for the general election held November 7, 1876, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have counted the said ballots so received in the ballot-box at said poll in all things according to law, and that the foregoing is a true and correct statement of the votes cast at the said poll on the said day.

ust at the said poll on the said day.

J. O. MOLAISON,
RICHARD DOUSE,
AUG. LECLERCO,
Commissioners of Election, Poll No. 5, Parish of West Baton Rouge.

Sworn to and subscribed before me this 8th day of November, 1876.

[L. S.]

Supervisor of Registration, Parish of West Baton Rouge.

CLERK'S OFFICE, WEST BATON ROUGE, November 14, 1876.

A true copy.

T. LANDRY. Clerk.

All of which is respectfully submitted.

J. D. NEW, GEORGE M. BEEBE, Majority of Subcommittee.

Report to the whole committee of the subcommittee to which was referred the investiga-tion of the Louisiana election in the Shreveport or fourth congressional district of that State.

Mr. E. R. MEADE, from the subcommittee appointed for the Shreveport or fourth congressional district of Louisiana, submitted the following report:

To the Hon. WILLIAM R. MORRISON, Chairman, &c. :

The subcommittee appointed for the Shreveport or fourth congressional district

The subcommittee appointed for the Shreveport or fourth congressional district of Louisiana reports:
That said district comprises the parishes of Bienville, Bossier, Caddo, De Soto, Natchitoches, Red River, Winn, Sabine, Rapides, Vernon, and Grant.
That changes were made by the returning board in the vote of Webster, Bossier, De Soto, Vernon, and Natchitoches Parishes, and the vote in Grant Parish was entirely rejected.
The question involved in Grant Parish has been examined by your committee in New Orleans, so, therefore, this subcommittee presents the result of its labors and investigations in the five parishes of Webster, Bossier, De Soto, Vernon, and Natchitoches, which were visited by your committee, or the immediate vicinity thereof.

Before leaving New Orleans we diligently endeavored to obtain from the return-

Natchitoches, which were visited by your committee, or the immediate vicinity thereof.

Before leaving New Orleans we diligently endeavored to obtain from the returning board copies of papers on which they had predicated their action respecting the polls in this district. For this purpose we delayed eight days, and although it was pretended that sixteen clerks were engaged in this particular service, yet the amount of incomplete work actually performed could have been done by an expert copyist in less than twenty-four hours. As further delay by us was impracticable we therefore commenced our labors under some disadvantages in lack of the official returning-board data.

It has been understood by this committee that an inquiry into the various questions of law, constitutional and statutory, will be considered in general committee; we therefore, except by incidental and necessary reference, omit such inquiry in this report, confining our attention so far as possible to the facts elicited.

One hundred and ninety-eight wittesses were examined, and a much larger number was subpœnaed. As many of these witnesses, we ascertained, would but accumulate the evidence already taken by us there, their testimony was omitted for want of sufficient time, and also from our desire to reduce our reported testimony to as comprehensive a size as possible. The testimony taken is herewith reported in fall.

WEBSTER.

In this parish polls 1 and 5 were rejected for the alleged reason that the tally-sheets were not footed at the polling places, but at the parish-seat of Minden, and also, that at each of these polls the regular commissioners were aided in their duties, in the case of poll 1 by a person not named, and at poll 5 by a Mr. Goodwill. No protest or objections were made by any commissioner of election, and the supervisor of registration makes no protest respecting registration or revision of registration, while the protest as to election filed bears date of verification November 13, at Shreveport.

The vote at these polls was as follows:

The vote at these pons was as follows:	Rep.	Dem.
Poll 1		
Poll 5	121	- 251

No suggestion of fraud or unfairness anywhere appears, nor were any charges of intimidation made with respect to these polls, or to the parish generally. The Hon. A. B. George, a State senator holding over, representing the twentieth district, including this parish, testified before this committee that he was present on election-day at poll 5, and that everything there was conducted fairly and properly—he himself saw the tally-sheets; that the supervisor of registration of the parish was present, as well as all the commissioners of the election for that poll, viz, Fort, Webb, and Dr. Harper; that Webb was incompetent to act as such commissioner, and Dr. Harper not in condition, so that Alfred Goodwill was asked to assist in making up the tally, there being five democrats and five republicans present as witnesses; that the election throughout the parish was remarkably quiet; that there was no intimidation, no force, and no bribery, so far as the knowledge of witness extended.

T. B. Neal, a prominent merchant in the parish, testified that the election at poll 1 was peaceable, and that on the counting of the votes one of the commissioners. Commissioner Lewis, was taken sick, and John A Colbert, United States supervisor, was sworn in in his place, and assisted in making out the tally-sheets, and that the count was entirely fair, and the election peaceable and without disturbance; that the fairness of the election at this poll, as well as poll 5, has never been questioned by any one, and that the returns made to the supervisor of registration were also without question.

F. M. Turner, clerk of the district court, produced the original returns as filed with him by the commissioners of election of the various polls in the parish.

The returns from poll 1 were all in due form, signed by all the commissioners, before Morrow, supervisor of registration, and no protest or remarks accompanied the same.

At poll 5 also the returns were made out by the commissioners of election, and

the same.

At poll 5 also the returns were made out by the commissioners of election, and sworn to before the supervisor of registration. No protest accompanied the returns of this poll, or remarks of any kind. The supervisor of registration, the clerk also testified, had never filed with him any protest respecting the recent election, and to the best of his or their knowledge, the election was full and fair, and that the supervisor of registration had expressed himself to him that such was the case.

was the case.

Witnesses further testified that at poll 4 the returns were only signed by one commissioner, and never had been signed by any one else. This was a republican

Bowling Webb, republican, a commissioner of election at poll 5, stated that Goodwill acted for the commissioners, at their request, in the presence of all parties; that he saw all that was done, and that it was fairly and honestly performed; that Commissioner Fort kept a tally-sheet.

Goodwill himself testified as to the part he took in the counting of the votes at poll 5 at the request of the commissioners, and that he performed the service fairly and honestly and to the best of his ability. Goodwill's general character is indorsed by a large number of citizens of the parish.

R. C. Drew canvased the parish, and was at box 5, where the conduct of the election and canvass of votes was entirely fair.

J. A. Colbert, the United States supervisor at poll 1, testified that he took Lewis's place as commissioner when the latter became sick; that he was duly sworn and installed into office, and that everything at this poll was fair, peaceable, and honest.

Respecting the general condition of the parish, W. H. Bury testified that there as no intimidation of any kind, except of radical negroes toward democratic ne-

At poll 4 several parties, other than the commissioners, handled the ballots; James F. Taylor canvassed the parish; and that, during the period of registration and the day of election, it was entirely peaceable, and everything was conducted fairly, and, as he termed it, squarely. He was United States supervisor of election, and was cognizant of Goodwill having acted at poll 5 at the request of all

parties.

Referring to Silverstein, who had made an affidavit for use by the returning board, which appears in the Sherman report, witness stated that he was a man of bad character, and who had been impeached in their courts. R. C. Drow also testified to the bad character of Silverstein.

W. W. Carlos was the democratic candidate for the Legislature, and canvassed the parish previous and up to the day of election; that the election was a peaceable and quiet one.

His own majority, he had heard, was 5 or 8, but he had been counted out by the returning board.

A. L. Lewis, who was the clerk for the supervisor of registration, testified to the tally-sheets and ballot-boxes having been handed over to the clerk in due form.

Nolan Lewis, a constable at poli 1, testified that the election was fair and peaceable.

McDonald also impeached Silverstein in the general reputation of the lat-

McDonald also impeached Silverstein in the general reputation of the latter, and speech of people respecting him.

Elijah Powell, Methodist presiding elder; Calvert Simmons, preacher; Dave Morton, O. Barrow, P. Johnson, Charles Harris, Thomas Patterson, and Levi Morrow, all colored men, testified to having voted the democratic ticket; that the registration and election were peaceable and fair, and that they voted the democratic ticket freely and voluntarily.

On the other hand, the minority committee produced but two witnesses, to wit, Isaac Silverstein, above referred to, and Basel Prince, a colored republican, who both attended a democratic torch-light procession at Minden. They both hurrahed for Hayes. During the proceedings, by some remarkable coincidence, both got hit about the same time by some one in the crowd, whom they did not distinctly identify, and this appears to have been the substance of the intimidation they were cognizant of in that parish.

BOSSIER.

In this parish polls Nos. 1 and 3 were rejected by the returning board. These polls are commonly distinguished as Atkins Landing and Red Land respectively. A protest accompanies the consolidated return of the supervisor of registration in the case of Atkins Landing, on the ground that none of the commissioners came with the box to the supervisor, and tonly one tally-sheet was compiled. Other irregularities are in a general way charged. At the Red Land box the protest charges gross frauds; that three democratic commissioners officiated, and that the republicans were denied admittance to the room during the counting of the votes. Both of these polls were largely democratic, and all the others in the parish appear to have had a republican majority. The change produced by the rejection of these polls is shown by the following statement:

	Rep. electors.	Dem. electors
Poll 1	. 49	108
Poll 3	. 29	172

Your committee deemed it important that a very thorough investigation should be had respecting these polls, and especially as on visiting their neighborhood we found it asserted that no foundation whatever existed in point of fact for the action of the returning board in throwing out the same.

Henry W. Ogden, a gentleman of prominence in the parish and chairman of the democratic parish committee, was called as a witness and testified that he had made protest to the supervisor of registration against the receipt of votes from the five polls numbered 1, 2, 4, 5, and 8, all upon the alleged grounds that the returns had not been delivered in the time contemplated by the statute; and in the case of poll 2, that the same had only been signed by two of the commissioners of

election. He said there was a democratic majority at Atkins, but thought it his

election. He said there was a democratic majority at Atkins, but thought it his duty to protest.

At poll only two commissioners had signed the returns, and one was the parish judge, holding office by Governor Kellogg's appointment. This parish judge had said to witness that is mattered not how the election wont, the republicans would count it in. The judge's name was Fort, and he had kept the ballot-box of his when the votes were counted once ballots were counted out of the box than there were voters on the list—200 votes appearing, and only 508 voters to correspond when the votes were counted once ballots were counted out of the box than there were voters on the list—200 votes appearing, and only 508 voters to correspond with the same. Witness had called the attent ion of the supervisor of registration to this doscrepancy, with the same result as in the preceding instance.

The republican candidate for clerk of the district court was one of the commission of the commi

# NATCHITOCHES.

# VOTES REJECTED.

Although the secret proceedings of the State returning board have not been fully ascertained, it is understood that the votes of wards 5 and 6 of this parish were thrown out in the canvass on the ground of intimidation. That the effect of such action may be seen, the following statement is made showing the actual vote of each of the two wards:

	Rep.	Dem.
Ward 5 gave for electors	. 2	150 193
Both wards	. 7	343
Democratic majority in the two wards		336

The testimony shows that no protest was made by the commissioners of election or supervisor of registration, or either of them, at the time or in the manner, or at any time or manner, as is required by the law of Louisiana, to authorize or empower the returning board to reject these votes.

(See testimony of F. W. Freeman and T. L. Matley, commissioners of election, ward 5; of A. H. Basto, commissioner of election, ward 6; and of John La Place and T. J. Bolt, parish clerks of registration.)

The report of the open proceedings of the returning board, published by the visiting committee, also shows that the returns from this parish, when opened by the board and passed to the clerk for compilation, were not accompanied by any pro-

Before considering the testimony in its general scope and effect, there are several particulars brought out or alluded to in it which the committee think it pertinent to notice in their relation to the purposes of this inquiry.

### VIOLENCE AND MURDER.

The testimony of Mr. E. A. Breda, republican, coroner, treasurer, and police juror of the parish, discloses a lamentable condition of affairs exisiting there as regards lawlessness, violence, and bloodshed. Numerous cases of capital crime have occurred in the parish, and, except in two or three instances, have gone unpunished. Circumstances could hardly be stated showing a more lax administration of law, and calling more loudly for change and reform of government. But in all this dark picture, the responsibility of which must rest upon those who have had control of the State for the last few years, but a single outrage, as shown by the testimony of Coroner Breda, was attributable to political causes, and that the sequel to a long newspaper quarrel between two editors, which became a bitter personal feud, leading to a challenge to a duel, and finally culminating in a street encounter and the killing of one of the antagonists. Neither in point of time nor as regards their several causes could any of these affairs have had connection with or influence upon the election of 1876 in the parish, and especially in the wards in question.

### THE WHITE CAMELIA, ETC.

The witness, Mr. Breda, also testified to a democratic organization, existing in 1868, of which he was a member, called "The White Camelias," the objects of which he considered, after a time, so objectionable that he abandoned it, and, after a long probation, in 1872 joined the republican party, (not for naught it would

As finally stated by him, after long cross-examination, and as fully explained by Mr. David Pearson in his testimony, the object of the order seems to have been to organize a white men's party, to operate by ordinary party methods, and maintain the government in the hands and control of white men. It existed but a short time, and was dissolved years ago; and whatever its character or the object of its introduction into the testimony, could have had no influence upon recent elections, nor relevancy to the subject of present inquiry.

Mr. Breda also speaks of threats of violence to himself and other prominent republicans. These appear to have been mere rumors, at second or third hands, to which he attached but little importance. (The matter of the desperado Horton will be noticed in another place.) The greatest discomfort his party relations brought upon him seems to have been the loss of accustomed prominence and enjoyment at barbecues, after joining the republicans. He does not allege any hinderance or molestation in the free exercise of his political rights; nor anything affecting the late election in wards 5 and 6.

### TAX ASSOCIATION AND SHOT-GUNS

TAX ASSOCIATION AND SHOT-GUNS.

In 1874 a tax association, as it was called, was formed in the parish, and embraced in its membership leading men of both parties and races. It had no connection with party or party politics, but had for its object to protect its members and the people from spoliation, to which they were subjected under the name and form of taxation.

Mr. Isaac Ezenac, one of the republican witnesses, speaks in rambling terms of an organization, in 1874, which rode about the country armed with shot-guns and pistols. He states neither object nor action, except the riding about; but seems to attempt to connect the movement with the tax association, and that with hostility to republicans, as a party effort. All the testimony on the subject controverts that idea, and Mr. Pearson in his testimony explains the occasion and character of the shot-gun raid. Rumors got abroad that a body of negroes were arming and about to attack the town. The country people armed, mounted, and rode in to protect their parish capital and friends. As soon as they found that the reports were unfounded they returned to their homes, without harm or attempted injury to any one. In any view, this all had nothing to do with the election of 1876 in wards 5 and 6, which Mr. Ezenac even says was fair, peaceable, and free from intimidation.

# THE MAYORALTY CONTEST.

The testimony of Mr. T. A. Simmons, one of the witnesses introduced on the part of the republicans, discloses a contest over the office of mayor of Natchitoches and the other municipal offices. It shows the lamentable condition the State government has been in, both as to its legislative and executive proceedings, as affecting the interests of localities; but does not appear to have been strictly a party contest, as between republicans and democrats, or to have had any special bearing upon the late election in the parish, more particularly the remote wards 5 and 6, as it affected only the city and not the parish at large.

# THE MEETING AT CAMPTI.

Rayford Blunt, a colored man from South Carolina, and republican candidate in the Natchitoches district for the office of State senator, held a meeting at Campti some days before the late election, which he alleges was broken up by the interference of one Hynes or Hymes, a democrat. On the other hand, it was asserted that Blunt broke up his own meeting without cause, so as to have plausible grounds for alleging intimidation. The facts seem to have been that while Mr. Blunt was speaking, Hynes, from the outskirts of the crowd, interrupted him, more or less rudely, by asking him questions, which brought on a short wordy altercation, whereupon Blunt declared the meeting broken up and left. No violence was used nor hostile demonstration made. Whatever the object, there does not appear to have been any necessity for abandoning the meeting; and, in any view, it is not seen how the transaction could have influenced the election, occurring in other localities several days afterward, or the voters in any way.

(See testimony of David Boult, republican candidate for sheriff at the last election; Henry McCarty, republican; —— Summers, (colored,) republican, and W. H. Jack, democrat.)

NEGRO DEMOCRATS. The testimony of the colored witnesses examined furnishes full and conclusive answer, as matter of fact, to the argument or inference that because many negroes voted the democratic ticket, they must necessarily have been coerced or have done so under intimidation.

MADISON JONES (colored) examined by Mr. MEADE:

Question. Where do you reside? Answer. I stays with Mr. Macey, here in Natchitoches; about a mile out of

Q. What ticket did you vote the last election?
A. The democratic. Have voted that for the last two years. Before that voted the republican ticket.
Q. How did you come to change?

\*If any protests have been made for the purpose of affecting the vote of either ward 5 or 6, they have been illegally and surreptitiously smuggled in, and only exhibits in the secret sessions of the returning board.

A. I thought that the country was going down, and I was with the people of the South, and they was the men that I had to look to for my support, and that is the reason I changed and went over to them.

By Mr. DANFORD:

By Mr. Danford:

Q. You changed because you believed your interests were with the people here?

A. Yes, sir.

Q. Well, were you of opinion that your property and your person would be in greater safety if the democrats were in power than if the republicans were?

A. Yes, sir.

Q. Well, are you a farmer?

A. Yes, sir. I work a little crop every year.

Q. Whose land do you work it on?

A. On Mr. Macey's this last year again.

Q. Well, what kind of laws have you had here, and how have they been enforced in this parish the last few years?

A. Well, sir, as far as I know, they have been enforced pretty bad.

Q. And you concluded to change, that you might have better laws?

A. Yes, sir; some way or other.

George Duncan, (colored,) aged sixty-three years, examined by Mr. House:

Have lived here in the town of Natchitoches thirty-five years; voted here at the last election the democratic ticket; have voted the democratic ticket since 1871; prior to that voted the republican ticket.

Question. State what caused you to change your political feelings.

Answer. The action of the republican party didn't exactly suit me with regard to some of their proceedings, and I concluded I would try the other side; I thought it my duty to do so; I was not under promise from the other side, for I have never been promised anything from any political party.

Q. What do you think of the state of the government—the republican State government?

A. It has been in a very bad condition in our section of the country. From what I have seen, from my little observation, it has been carried on very badly

what I have seen, from my little observation, it has been carried on here?
Q. How has it been carried on here?
A. There has been no law or order, in the first place. It seems that the officers that has been in power don't execute the laws as they should have done; for what reason, I cannot say,

JOHN NILES (colored) examined by Mr. House:

JOHN NILES (colored) examined by Mr. HOUSE:
Live in ward 5; voted at the last election; voted the democratic ticket just this
time; before voted the radical ticket.
Question. What made you change?
Answer. I thought I would change over to see how the other side would do.
Q. Anybody force you to vote the democratic ticket?
A. Not at all; they told me I could vote any way I wanted to, but they had much
rather I would vote the other side if I voted; I said I would vote just the way my
mind led me when I got there, and my mind led me to vote democratic, and I done so.

ISAAC SMITH (colored) examined by Mr. MEADE:

ISAAC SMITH (colored) examined by Mr. MEADE:
Question. Did you vote at the last election?
Answer. Yes, sir; the democratic ticket.
Q. Who told you to?
A. I told myself.
Q. Have you always voted the democratic ticket?
A. No, sir; have voted the republican ticket.
Q. How came you to change your political affiliation?
A. Because there was such a confusion in it nobody could follow them, and there was such tremendous taxes; and I thought I would change party for a change.
(See further the testimony of this witness at length, the testimony of C. Crockett, (colored,) and others.)

THE OUTLAW HORTON.

THE OUTLAW HORTON.

Some time after the election in November last, a drunken desperado named Horton came to the city of Natchitoches from Texas, and was reported to have given out that his business was to kill negroes and radicals, and to have threatened the lives of several leading republicans. These reports, in various forms of rumor, have doubtless farnished the foundation for many of the alleged threats of violence, detailed on hearsay and without specification as to time, which have been used to give color to the charge of intimidation as applied to the conduct of the late political campaign in this parish, although they all transpired after its close. The career of Horton was happily brief, and ended in his killing, instead of negroes and radicals, an estimable and prominente titizen, Mr. Garzia, a democrat, who was protecting a negro from violence at his hands, and wounding another citizen, also a democrat; he (Horton) being shot and killed by a party of citizens endeavoring to capture him against his armed resistance. (See testimony of Messrs. Breda, Simmons, Isenac, and Pearson.)

NEGRO TENANTS EVICTED.

It was attempted to be shown on the part of the republicans that three colored republicans were turned out of houses occupied by them, after the election, for having voted the republican ticket; probably that intimidation before the election might be inferred. The testimony of Joseph Ross, one of these tenants, does not show that the question of voting entered at all into the transaction with him one way or the other. The cases of Jack Culpepper and Joseph Worsley, as sworn to by them, are fully explained, and the allegation rebutted by the testimony of H. McKenner and W. H. Jack, respectively. Neither of these cases occurred in ward 5 or 6, and in neither were any threats or interference before the election pretended.

(See testimony of five above named witnesses)

(See testimony of five above-named witnesses.)

# THE COMMITTEE'S CONCLUSIONS.

The testimony of the witnesses examined, with very few exceptions, was candidly and intelligently given, and, as a whole, fails to show any improper influence or practice regarding the conduct of the campaign on the part of the democrats; but, on the centrary, clearly shows that they acted throughout upon a line of policy adopted and pursued to preclude the possibility of any ground for again throwing out the votes of any of the polls of the parish. They designed to prevent, if possible, any act or occurrence that could give the least excuse, under the law or otherwise, for rejecting their votes; and it is matter of surprise that, in a district where the criminal laws have been so feebly administered, or rather almost totally unexecuted, they attained so complete success.

Mr. R. E. Burke, an intelligent merchant, a resident of the parish for over thirty years, a member of the democratic executive committee, and of the democratic campaign committee of the parish, stated, in his testimony, the policy adopted by his party for the campaign as follows:

"They [the democrats] were perfectly determined here to have a fair, free, and peaceable election, and in no case should intimidation be exercised on the part of any person toward any man, nor should any democrat intimidate or improperly influence any man, but we would use all proper and fair means, canvass the parish, make speeches, and give barbecues, as usual. It was our policy to avoid even the semblance of intimidation, and we not only adopted that policy but we carried it out. We knew we had a returning board in the State, who, upon the charge of intimidation and violence, threw out whole parishes, as we had experienced in our State. It became necessary not to give them the least excuse, but to make so clear

a case that no honest republican but what must see it was a fair election, and therefore we became more cautious, probably, than any community at the North would have been, because we knew that the semblance of intimidation would throw out our parish, and we determined no such thing should happen."

Mr. W. H. Jack and Mr. David Pearson, prominent lawyers and democratic leaders in the parish, corroborated this statement, and the testimony shows that the purpose intended was completely attained. Not only was there no intimidation or improper influence proved, but the campaign and the election, both as to registration and voting, was shown to have been absolutely fair, free, peaceable, and in all respects properly conducted. And while this is true as to the parish generally, it is especially so as to the rejected wards 5 and 6. Against the entire fairness and freedom of the campaign in those wards on the part of the democratic and of the election as there conducted, not the shadow of a shade of proof exists in the testimony taken before the committee nor in any other quarter. The reasons for the rejection of their votes must be sought in the figures showing the democratic majority given by them.

The action of the returning board, as to these two polls, disfranchised 343 legal voters, and annihilated, without cause or excuse, and to subserve a purpose entirely indefensible, the democratic majority of 336 given in the two wards.

Extracts from testimony.

Extracts from testimony.

The two parish clerks of registration examined by the committee, Messrs, John La Place ad T. J. Bolt, testified substantially that they attended the registration in all parts of the parish; that is was fair, quiet, and peaceable; there was no intimidation; that they talked with the supervisor of registration, who expressed himself pleased with the manner in which the election had passed; said it had been fair, and that he made no protest. (See their testimony at length.)

R. W. FREEMAN, commissioner of election, ward 5, examined by Mr. HOUSE:

R. W. FREEMAN, commissioner of election, ward 5, examined by Mr. House:
Question. What sort of an election had you there?
Answer. Thoroughly fair, as far as I could judge; peaceable; no disturbance.
Q. Anybody interfered with in their right to vote?
A. None that I heard of.
Q. White and colored people allowed to vote as they liked?
A. Yes, sir; and they all mingled and came up together.
Q. Was there any intimidation that you witnessed that day?
A. None that I witnessed.

T. L. Motley, commissioner, same ward, by Mr. House:

T. L. Motley, commissioner, same ward, by Mr. House:
Question. Who was the republican commissioner there?
Answer. Mr. Ezenac.
Q. Did he say anything about the election?
A. That it was quiet as he ever witnessed. Signed the returns with the other commissioners. Heard no complaint on his part.
Q. Do you know of any intimidation up there practiced?
A. None at all.
Q. How was it during registration?
A. All peaceful, sir.
Q. Do you know of any intimidation in ward 5 of the colored voters?
A. No, sir; I have heard no complaint about it; don't know of any men being interfered with, white or colored, in ward 5 in their right to vote as they pleased. Silas Crump, bailiff, ward 5:

Attended the election from early in the morning till the votes were counted. It was quiet and peaceable. No disturbance, Did not see anybody interfere with any one in their right to vote.

A. H. Bristow, republican commissioner of election, ward 6, (in substance:)
The election was fair and peaceable—carried on fair and square. Offered to
make affidavit to that effect. Signed the returns with the other commissioners
without any protest or objection.

A. V. Carter, United States supervisor and commissioner of election, ward 6:

Was at the election from half past nine in the morning all through. Did not know of any republicans being prevented from voting. Had no trouble. Is a peaceable neighborhood. Quiet reigned. There is a perfectly good feeling between the white and colored people up there.

Z. Washburn:

Live in ward 5. Was there at the election. Saw no disorder at all. Everybody voted as they pleased, white and colored. Everything was peaceable and quiet during the registration as far as I know. Heard nothing to the contrary. The colored republicans voted the ticket openly; held it up and showed it when they voted it. I remember seeing a colored man with republican tickets in his hand electioneering openly for his side that day; held them out to most of the colored men. His name was Charley Connelly.

Charles Crockett, colored:

Charles Crockett, colored:

Live in ward 6. Voted there at last election. Election peaceable and quiet. Nobody interfered with at all while I was there. Everybody allowed to vote as they pleased during the time I was there. I voted the democratic ticket. Other colored fellow-citizens and acquaintances voted the democratic ticket. They said they done it freely. I never seed any one force them to vote.

Q. Was there in the parish such a condition of things as to compel the colored people to vote the democratic ticket, and were they afraid to vote the republican ticket?

A. No, sir; there was not anything like that.

(And see the whole body of the testimony, the above being only a small portion of that relating to the two rejected wards.)

(And see the whole body of the testimony, the above being only a small portion of that relating to the two rejected wards.)

In closing this branch of their report, the committee direct attention to the testimony of A. H. Basto, a republican witness, who acted as one of the commissioners of election in ward 6, and afterward went to New Orleans and made an ex parte deposition, which was appended to the Sherman report, and contains, we believe, the most important item of so-called proof accompanying that memorable document relating to either of the two rejected wards in Natchitoches Parish.

In that deposition the witness is made to say, in reference to this parish:
"Since 1874 a system of intimidation has been inaugurated by the democrats against the republicans, which was continued during the last registration and since, and that there is a sense of insecurity and a feeling of apprehension existing among republicans that prevents them from expressing their will at the ballot-box, causing many to vote the democratic ticket and many others not to vote at all; that it is matter of public notoriety that the republican leaders have been openly threatened with the loss of their lives, and the consequence of this and other threats deterred many republicans from exercising the right of suffrago; that at the poll in ward 6, where he was, only five republican votes were polled; whereas, if a free, fair, and full election could have been had, there would not have been less than thirty or forty republican votes at said poll," &c.

Upon his full and open examination before this committee the witness aid, substantially, as to much of his deposition as published by the Sherman committee, either that he did not make the statements therein set forth, or that they were nutrue, or were given, not upon knowledge, but upon the merest rumor. And as to that part relating to ward 6, where he attended and acted as one of the commissioners of election, he swears emphatically, "I did not hear that read. I did not say so;" that the electi

that he knew of no intimidation; that he offered to make an affidavit to that effect at the close of the poll; and that he signed the returns with the other commissioners, without protest or objection.

The committee will not follow at greater length the testimony of this witness, as illustrating the character of his New Orleans deposition; but they call special attention to it in that connection. It should be read carefully and in full by any one desirous of arriving at correct conclusions on the important questions involved. It shows how falsehood and fraud have been evoked and bugbears manufactured to distract the attention and affright the soler sense of the nation; how vast clouds of wrong and intimidation have been made to hang, dark and portentous, in the distance, which, when approached and examined, vanish at the touch of truth like mist before the sunbeam. It discloses, too, some of the means and workings of a wicked and shameless conspiracy to cheat or rob the people, by any means of fraud or force, of their highest right—that to choose their chief executive servants by the majority of their rightful and honest votes.

### DE SOTO PARISH.

The investigation in this parish was directed chiefly to the polls thrown out by

Polls.	Hayes and Wheeler electors.	Tilden and Hen- dricks electors.
Poll No. 1 Poll No. 3 Poll No. 5 Poll No. 7	49 53 69 10	210 125 153 150 54
Total	181	692

It will thus be seen that in the five excluded polls the republican presidential ticket received 181 votes, and the democratic presidential ticket received 692 votes, making a democratic majority of 511 at the said five polls. The ground on which this vote was excluded by the board is left, more or less, to conjecture, as the board deliberated in secret session, and have never given to the people of Louisiana or the country the reasons for their action or the process by which they reached their conclusions in throwing out or refusing to count votes which were cast by the citizens of the State in the last presidential election. Among the papers, copies of which were furnished the committee by the returning board, relating to this parish are two sworn statements or protests made by C. L. Ferguson, supervisor of registration for said parish, one dated November 17, 1876, which seems to have been made at Shreveport, Caddo Parish, Louisiana, and the other dated November 25, 1876, which seems to have been made in the city of New Orleans.

Under the election law of Louisiana which creates the returning board, and from which it derives its powers, if, "during the time of registration or revision of registration," there should be any riot, tunnult, acts of violence, intimidation, disturbance, bribery, or corrupt influences at any place within the parish, which prevented or tended to prevent a full, fair, and free registration, it is made the duty of the supervisor of registration to make in duplicate, under oath, a clear and full statement of all the facts relating thereto, and the effect produced thereby, in preventing a fair and peaceable registration, and this statement must be corroborated under oath by three respectable citizens, who are qualified electors of the parish. One of these statements is to be annexed by the supervisor of registration to his returns of elections by paste, wax, or some adhesive substance, that the same may be kept together and sent with the returns to the returning board, together with the

the supervisor's sworn statement or protest. (See act No. 98, 1872, sections 26 and 43.)

Whenever the returning board receives such sworn statement from the supervisor of registration or disturbances, riots, &c., during the period of registration or revision of registration, or from the commissioners of election, of like improper conduct on the day of election, if they are of opinion from the evidence of such statement from the supervisor of registration that the case merits investigation, they shall examine further testimony, and if they are convinced after such examination that such a state of things existed in the parish as prevented a sufficient number of persons from registering to materially change the result of the election, then they are to exclude the vote where such improper influences existed from the returns. If the sworn statement is made by the commissioners of election as to such violence, &c., on the day of election, they shall proceed in all respects to investigate the same, as in case of the sworn statement of the supervisor of registration; and if they are of opinion, after such investigation, that a sufficient number of persons were prevented from voting, or voted corruptly, to materially change the result of the election, they are to exclude from the count the vote of the poll where the same occurred. (See act No. 98, 1872, section 3.)

It will thus be seen that the right or power of the returning board to enter into any investigation whatever of the validity of any votes cast at an election depends on the receipt of a sworn statement made out by the supervisor or the commissioners of election, as the case may be, in the manner prescribed by law. Without such sworn statement, they cannot proceed one inch in the direction. It is the basis, a sine qua non, of their jurisdiction in the premises.

As has been seen, the supervisor of registration is authorized by law to file his sworn statement or protest only as to what took place on the day of election are empowered to file their protest only

poll in the parish on the day of election, and cannot, therefore, be supposed to know what takes place at each poll, nor are the commissioners of election presumed to know what takes place in the entire parish during the period of registration; but each is supposed to know what occurs under his observation while engaged in the field of duty to which the law assigns him, and hence, if any of the improper things mentioned in the statute takes place within the territory which the law appoints him to guard, it is made his duty to communicate the same under coath to the proper authorities.

There was not a protest or sworn statement made by the commissioners of election as to anything improper at any poll in the parish on the day of election. The returning board therefore had no right or power to throw out a single vote in the parish for anything that may have occurred on the day of election. The returning board therefore had no right or power to throw out a single vote in the parish for anything that may have occurred on the day of election. The returning board therefore had no right or power to throw out a single vote in the parish for anything that may have occurred on the day of election. The returning board therefore had no right or power to throw out a single vote in the parish for anything that had had read to a sufficient number of persons from registering to materially change the result of the election.

In the sworn statement made by Furguson, after he reached New Orleans, to wit, on the 25th of November, he says that there was ageneral system of intimidation prevailing in De Soto Parish during the period of registration, and that he feared and had reason to believe he was in danger of assassination during the whole time; that there was one place in the parish—Logansport—to which he was a fraid to go to register voters. It is a noteworthy fact that in the sworn statement or protest made at Shreveport, on his way to New Orleans, to wit, on the 17th November, the fear and danger of assassination while perfor

absence of any protest from the commissioners of election, how would the case then stand.

It is shown by the testimony of W. C. Reynolds, the clerk, that Furguson filed no sworn statement or protest whatever in his office, as the law requires should be done. This requirement of the law cannot be dispensed with. He must file a copy of his protest with the clerk, so that the people of the parish may know that their election is to be assailed before the returning board and the ground upon which it is to be attacked, and no better illustration of the necessity of such a requirement of the law can be found than is furnished by the facts proven in this case. Furguson, before leaving the parish for Shreveport and New Orleans, where his protest seems to have been made, told various persons in the parish that it was as fair and peaceable an election as he had ever witnessed in his life, and in order to satisfy the people of the parish (who had felt the heavy hand of the returning board upon them in former elections) that there was no objection or complaint on his part, he made a sworn statement to that effect before the clerk of the court and left it in the parish. The first intimation that the people of the parish had that any protest had been filed by Furguson was on the 26th or 27th of November, when Mr. Sutherlin, one of the leading citizens of the parish, who was in New Orleans, heard of the protest, and procured a copy of it. It was then about time for the returning board to act, and the citizens of the parish had, therefore, no time for proteinity to meet the charges against their election or to refute them. Judgment by default was taken against them without any service of process ever having been made upon them, or witbout their having had a day in court. There is no court in the world that would not, without hesitation, annul any judgment so obtained, even against the humblest citizen for the smallest sum. But waiving this point also, how do the facts of the case stand?

Your subcommittee went to Mansfield Sta

# Poll No. 1 .- Keatchie.

Furguson swears in reference to this poll that he is credibly informed that bribery and other corrupt influences were used by the democrats to obtain votes; that threats of violence, bodily harm, loss of property, discharge from employment, and other illegal means were constantly used by white democrats of the parish to influence voters or to deter them from voting.

An ex parte affidavit of one Peter Coleman was placed before the returning board to the effect that he cropped on shares with Mr. Shaw; that Shaw, just before the election, tore up his registration papers and drove him off from his place, and would not allow him to return to gather his crops.

Philip Stark, whose evidence was taken by the committee, swears in an affidavit before the returning board, and also in his testimony before the committee, that he was living with William Carlton, and just before the election Carlton discharged him because he was a republican, and would not let him have his portion of the crop.

crop.

Major Blackshear makes an affidavit to go before the returning board to the effect that Mr. Gatlin, on whose land he lived, threatened colored men that they could

not live on his place if they voted the republican ticket; that at poll 1, Keatchie, the democrats were favored and allowed to vote without delay, while the republicans were hindered and obstructed in voting; that he, Blackshear, voted the republican ticket, and Gatlin drove him off under a threat to kill him if he remained; that republican negroes were openly threatened at poll 1 if they voted the republican ticket.

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not live on his place if they voted the republican ticket; that at poll I, Keatchie, the democrate were favored and allowed to vote without delay, while the republican ticket, and Gatlin drove tim of under a threat to kill, him if he remained; that ticket, and negroes were openly threatened at poll I if they voted the republican ticket, and callentine, a white man, also makes an expart affiliarit to the effect that the white democratis publicly threatened to drive the colored men from their homes if they voted the republican ticket; that under those threats as many as seventy of the property of the

# Poll 3 .- Grand Cane

Furguson, in his protest, says, in reference to this poll, that on the day of election large numbers of republican colored voters were forcibly and by threats of pecuniary and bodily harm forced and driven from the polls to the number of as least 109, and were thus prevented from voting the republican ticket. There it no evidence before the committee to sustain this charge, but, on the contrary, the evidence showing its falsity is abundant. One D. S. Tyler, colored, made an exparte affidavit before the returning board that 150 colored voters were driven away from poll 3, and not allowed to vote, and that one Prude kicked and threatened Peter Johnson, a colored voter. Robert Murphy swears that he knows D. S. Tyler, and that he was not at the election at poll 3 at all during any part of the day; that his statement about Prude kicking Johnson is wholly untrue; that nothing of that sort occurred during the day; that there were only two men by the name of Prude there, and they were both commissioners of election, and engaged during the day in their duties; says there was not a single colored man driven from the polls; says some went voluntarily to Mansfield, saying they thought they could vote sooner there, owing to the crowd at poll 3; all could have voted there, and those that went away were in no wise threatened, but went away in good humor and of their own accord, thinking they could vote sooner in Mansfield; everything was peaceable, quiet, and fair; no threat, no intimidation, or disturbance of any kind during the whole day; no colored men discharged after election for voting republican ticket, and no colored men forced to vote democratic ticket. Tyler once lived

with witness; witness taught him to read; he is a tricky fellow; would not believe him on oath.

A 1 Leak was present and voted at poll 3. The election was quiet, peaceable, and fair; no threats or intimidation. Furguson's protest read to witness, and he denied the truth of it in toto. Not a colored man was threatened or driven away or denied the right to vo'e during the entire day. All were encouraged to vote, both white and black. Witness was present the entire day. Fifteen men were appointed to keep order, and not a cross word was spoken during the entire day by black or white. When the polls opened the colored people were given the privilege of voting first. There were 45 colored votes polled before a single white man voted. The colored men crowded each other so that they could not vote with any order, and some of them in consequence swore they would go to Mansfield; this was because they were crowding each other at the box and not in consequence of any threat or intimidation by white democra's. All could easily have voted if they had been patient. There was plenty of time for every one to vote. Witness says that on Sunday night after the election he had a conversation with Furguson, the supervisor of registration, in which he stated to witness that the election in De Soto Parish was the fairest he had ever seen held. The whites are in a majority at this poll, and it is a democratic poll and has so gone in former elections.

Ralph Walker (colored) testified that he voted the republicant ticket the would see if he couldn't find some law to get him off his farm. The colored man did not vote. Numbers of colored men voted the republicant ticket the would see if he couldn't find some law to get him off his farm. The colored man did not vote. Numbers of colored men voted the republicant ticket there, and all could have done so, without let or hinderance; no threats, no disturbance of any kind; had a quiet and peaceable time.

Luke Hogan (colored) toted the democratic ticket of his own accord; thinks it best for t

### Poll 5 .- Fortsen's Church.

Furguson states, in his protest as to this poll, that it was not opened until 9 o'clock; that when it was opened the white democrats crowded around, and would not let colored republicans vote until all the white men had voted; that threats and intimidations were constantly, violently, and persistently used during the entire day by white democrats toward colored republicans to deter them from voting the ticket of their choice.

Campbell, who was a commissioner of election at poll 5, swears that Furguson's starements are all wholly untrue; that the polls were opened about six o'cl. ck in the morning; that the white men did not crowd around the polls and prevent colored men from voting; that, in point of fact, the colored men voted first; says the vacancy in the commissioners was filled by the first man that came, who was a democrat, as the time had arrived for opening the polls—there was no republican who could read or write to fill the place; says there were no threats, intimidation, or violence of any kind—the election was fair, peaceable, and quiet, and Furguson's whole statement on this point is untrue. The affidavits of ticorge Hall and Jack Edwards were read to witness; he says the statements therein contained are wholly untrue; says the box was placed in full view of voters; denies that twelve or thirteen colored men were illegally deprived of the right to vote; says some four or five who had not proper papers were not allowed to vote. The witness denies, in short, the entire statement contained in said affidavits.

Floyd Nobles (colored)—sometimes called Bose Nobles—says he voted the republicant its contained in said affidavits.

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Who we will be statement of election at poll 5. Furguson's statement was read to him; h

# Poll 7 .- Dewlett's Spring.

Furguson, in his protest, says, in reference to this poll, that during the day of election the poll was surrounded by armed men, who constantly told colored men if they voted the republican ticket they would have to leave the parish; that those who did vote the republican ticket had their names taken down, and were told they were marked men, and that, in consequence, many colored men were deterred from voting as they desired.

Samuel Thigpen testified that he was United States supervisor of election at poll 7; was there all day, and it was the most peaceable and quiet election he ever saw; no armed men; no threats; no disturbance of any kind, and no complaint from any quarter of any such thing. There were no armed men nor anything like intimidation during the whole day. The commissioners were very strict in keeping order. Colored men voted—some republican, some democratic ticket—just as they wished, without any interference.

Albert Flores (colored) was constable at poll 7; was there all day; no armed men; no intimidation or threats, but everything peaceable and quiet; no one was interfered with.

H. K. Davis testified that he was a commissioner of election at poll 7. There were no armed men, and no disturbance or intimidation of any kind; all was fair, peaceable, and quiet. Furguson, the supervisor, boarded at the witness's house a while during the registration. He made no complaint of any one interfering with him, and no one did interfere with him.

Q. T. Howard testified that he was also a commissioner at poll 7. He fully corroborates H. K. Davis. Furguson's statement was read to witness; he pronounced it wholly false.

There is no excuse for disfranchising the 160 voters at this poll.

Poll 8 .- Logansport.

Furguson says in his protest, in reference to this poll, that it was surrounded during the day by armed men; that colored voters were driven away by force of arms from the polls, and that no one was allowed to vote the republican tichet at said poll during the day; that liquor was epenly and constantly used around the polls during the day; that liquor was epenly and constantly used around the polls during the day; that liquor was epenly and constantly used around the polls during the day; that a majority around the polls were drunk, and the grossest acts of violence were onenly threatened against republican voters who at tempted to approach the polls, and they were thus deterred from voting.

A. M. Garrett testified that he was a commissioner of election at polls, Logansport. He denies most emphatically the whole of Furguson's statement; says there was no violence; no one was threatened or driven from the polls; that all who offered to vote, white and colored, did so; there were no armed men around the polls, and no persons intoxicated. Witness is the only merchant in the place, and the only person who has liquor for sale there, and he sold none during the day; the crowd was sober and orderly, and there was no intimidation, disorder, or disturbance of any kind. The election was fair, free, and peaceable.

R. M. Nash testifies that he was present at this poll at the last election. There were no armed men there, no drunken men, no intimidation, no threatening; it was the most quiet election witness ever saw; it was perfectly fair and peaceable. The poll has always gone democratic.

There is no evidence before the committee that furnishes a decent pretext for excluding this poll. Fifty-four votes were cast at this poll, which should be counted. The colored republicans of this ward voted at poll 1, as explained by the testimony of Coulter and Henderson, heretofore referred to. Upon the whole, the committee conclude that all the votes excluded by the returning board in De Soto Parish were illegally and improperly th

VERNON.

This subcommittee left New Orleans before any public information had been received as to any votes having been thrown out or changed in this parish by the returning board. Indeed, the chairman of this committee received from Mr. Anderson, one of the returning board, a statement, which he now retains, in the handwriting of said Anderson, showing, among other things, that no changes whatever had been made by the returning board in the original returns received from this parish of Vernon. It may be added that this statement was made out in the presence of Mr. Wells, president of said board. This parish is remote from public thoroughfares, and most inaccessible of any in the State. A rumor to the effect that certain changes had in fact been made in the returns from this parish by the returning board induced your committee to send for, among others, the clerk of the district court of that parish, the supervisor of registration, as well as the clerk of the supervisor of registration. Of course the committee, being entirely in the dark as to what steps had really been taken by the returning board, had to proceed in a most general way with the investigation here, and especially so as the people of the parish apparently had not the slightest suspicion of any grounds of compilant which might be alleged against them to justify the alteration or rejection of votes at any poll.

parish apparently had not the slightest suspicion of any grounds of complaint which might be alleged against them to justify the alteration or rejection of votes at any poll.

Thomas Franklin, supervisor of registration, a venerable gentleman, testified that he made out compiled statements in duplicate, one of which he furnished the returning board, and the other the clerk of the court, and that he made no protest whatever, and that no protests or remarks, criticisms or objections, were made by the commissioners of the election at the several polls in the parish. He has spent a life-time there, and is well acquainted with the people of the parish, and testified that throughout the registration and the election everything was peaceable, and that no intimidation or bribery was thought of, and that it was impossible to oppress a 'y colored republicans, for the reason that there were none in the parish, that only two republican votes were cast in the parish for the electoral ticket, and that they were deposited at poll 8, while 617 were cast for the democratic electoral ticket. There were about seventy-five or eighty colored voters in the parish who lived on terms of substantial equality with the whites, and had always voted, since their enfranchisement, the democratic ticket. The witness also testified that the consolidated statement produced by the clerk is the duplicate, and an exact one, of the one sent to the returning board, and that he swore to the same before the deputy clerk of the parish.

John Franklin, a clerk to Thomas Franklin, supervisor, had assisted the latter in making up the compiled statement last fall. There were only two republican votes on the electoral ticket in that parish. Was not aware that it had ever occurred before that republican votes had been cast there. The election was entirely peaceable and quiet. That the vote has always been democratic, whites and blacks voting one way.

Isaac O. Winfrey, clerk to the district court of Vernon Parish, produced the returns of the commissioners of

clectoral ticket; and that no informalities appeared on the returns of the commissioners of election.

After these witnesses from Vernon Parish had returned to their homes, this committee received through the general committee at New Orleans copies of three affidavits, purporting to have been filed with the returning board some time about the 14th day of November, 1876, signed respectively by Sam Collins, Tom Brown, and Sam Carter, each with his mark, and claiming that an undue influence or intimidation had been practiced toward colored republicans at polls 1, 7, and 10 in this parish.

dation had been practiced toward colored republicans at polls 1, 7, and 10 in this parish.

Each of these affiants disclaimed being a registered voter of the parish. Sam Carter admits to have been a resident of Saint Augustine, in the State of Texas. The other two claim they are residents only of the parish of Vernon, without specifying any particular poll or ward.

Your committee have since the receipt of these affidavits diligently endeavored to obtain information respecting the makers of the same, but without avail, and the suspicion is obtained that they have no actual existence.

The affidavits referred to purport to have been made before D. J. N. A. Jewett, the United States commissioner at New Orleans. They were made apparently three days before the returns from Vernon were received at New Orleans, having been made on the 14th. and the returns received on the 17th.

Commissioner Jewett, upon being examined by the committee at New Orleans, testified that he had no recollection whatever of ever having heard of either of the affiants; and Wells, of the returning board, stated also before said committee that he did not know the affiants, and furthermore did not know who presented the affidavits to the board. It is on such flimsy pretense as this that the returning board absolutely transferred one hundred and seventy-nine votes cast for the democratic candidates over to, and in favor of, the republican candidates, making a difference altogether of three hundred and fifty-eight votes in favor of the republican ticket, to wit:

altogether of three numero and may eight to wit:

Poll 1: 116 democratic transferred to 116 republican.
Poll 10: 37 democratic transferred to 26 republican.
Poll 10: 37 democratic transferred to 37 republican.
Taking altogether the circumstances relating to this parish, the conclusion is irresistible that a fraud which admits of no excuse or palliation whatever was premeditatively perpetrated by the returning board in the change it made.

That such change was not necessary for the purpose of deciding the question of presidential electors is apparent; but we find that certain members of the Legislature, and other local officers, could only be declared elected by the assistance of this change or transposition.

### IN CONCLUSION.

This committee respectfully submits the following memorandum of findings, based upon the law of Louisiana:

The will of the people was fairly expressed at the ballot-box in all the precincts, as exhibited in original returns, to wit:

And the state of t	Hayes electors.							
Precincts.	Kellogg.	Barch.	Joseph.	Sheldon.	Marks.	Levisee.	Brewster.	Joffrion.
Bossier, poll 1 Bossier, poll 3 De Soto, poll 1. De Soto, poll 3 De Soto, poll 3 De Soto, poll 5 De Soto, poll 7	49 29 49 53 69 10	49 29 49 43 69 10	49 29 49 53 69 10	49 20 49 53 69 10	49 29 49 53 69 10	49 29 49 53 69 10	49 29 49 53 69 10	49 29 49 53 69 10
De Sote, poll 8	2 5	2 5	2 5	2 5	2 5	5	2 5	2 5
Vernon, poll 10. Webster, poll 1. Webster, poll 5.	73 121							
Totals	460	460	460	460	460	460	460	460
			T	ilden e	elector	8.		
Precincts.	McEnery.	Wickliffe.	St. Martin.	Poehe.	De Blanc.	Seay.	Cobb.	Cross.
Bossier, poll 1 Bossier, poll 3 De Soto, poll 3 De Soto, poll 3 De Soto, poll 5 De Soto, poll 5 De Soto, poll 7 De Soto, poll 8 Natchitoches, poll 5 Natchitoches, poll 6 Vernon, poll 1 Vernon, poll 1 Vernon, poll 10 Webster, poll 5 Webster, poll 5	108 172 210 125 153 150 54 150 193 116 26 37 185 251	108 172 210 125 153 150 54 150 193 116 26 37 185 251	108 172 210 125 153 150 54 150 193 116 25 37 185 251	108 172 210 125 153 150 54 150 193 116 26 37 185 251	108 172 210 125 153 150 54 150 193 116 26 37 185 251	108 172 210 125 153 150 54 150 193 116 26 37 135 251	108 172 210 125 153 150 54 150 193 116 26 37 185 251	108 172 210 125 153 150 54 150 193 116 26 37 185 251

That wherein technical irregularities occurred (and in no case were irregularities more than technical in their character) they were only respecting declaratory portions of election laws, and not of themselves ground for the extraordinary action of the returning board in rejecting entire polls.

That such action of the returning board, as well as the conduct of supervisors of registration, (when entering protests,) taken in connection with corroboratory circumstances produced before this committee, exhibit such bias and unfairness as to

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justify the judgment that they, in concert with others of their party association, had entered into a conspiracy to deprive the people of Louisiana of their just rights of representation in the State and nation.

Respectfully submitted.

To the Hon. WILLIAM R. MORRISON, Chairman of the House Special Committee on the Louisiana Election:

To the Hon. William R. Morrison,

Chairman of the House Special Committee on the Louisiana Election:

The subcommittee appointed to investigate the subject-matter of the resolution of the House of Representatives, at New Oreans, respectfully report:

That in the parish of Orleans the statements of commissioners of election at three polls were not embraced in the consolidated statements of supervisors of registration, which are required by law to be returned to the returning board, to wit:

Poll 6, in the second ward, at which 83 votes were cast for the republican presidential electors; and 250 votes for the democratic presidential electors; and Poll 3, in the seventh ward, at which 160 votes were cast for the republican presidential electors; and 413 for the democratic electors, amounting, in the aggregate, to 1,233 votes in the city of New Orleans alone, thrown out by the supervisors in violation of law and upon the most trivial pretexts.

At the first-named poll the commissioners certify that the election was free, fair, and peaceable. In their statement it was uncertain whether De Blano, one of the democratic electors, had received 249 or 247 votes, but by reference to the swear tally list which accompanied the statement it was found to be 249.

This slight uncertainty, resulting from the similarity of structure of the figures 9 and 7, is the principal pretense upon which the supervisor assumed arbitrarily to disfranchise 333 legal voters; and the returning board, although the matter was brought to their attention, failed to include them in their official compilation.

The third poll in the seventh warn was excluded by the supervisor from his consolidated statement on the ground that the commissioners' statements and accompanying papers were not handed in within twenty-four hours after the closing of the polls. Our investigation as to this matter clicited the following facts:

One Moore was supervisor of registration for this ward. He was also a candidate on the republican ticket for the legislature. On the

cept the one alleged; and the returning board publicly announced, through its president, that the failure to return within twenty-four hours was not sufficient ground for refusing a poll, yet in their secret compilation this poll was not included.

Poll 2, in the eleventh ward, was also excluded by the supervisor, and not compiled by the returning board. It was known this poll would give a large demo-cratic majority, as in its vicinity many of the leading business men lived, and much of the wealth of the city was found. At the close of the poll all the officers of election made affidavit that the election was fair, peaceful, and orderly, and all signed and swore to the correctness of the taily sheets. They then proceeded to make out the statement of votes, which was fully completed by and in the presence and under the direction of all the commissioners, without complaint or difficulty, except that the republican commissioners, Hearsey and Kempton, from time to time desired to suspend and delay the count, while the democratic commissioners is accounted for by one of the witnesses, Lawrence King, who states that he heard Judge Dibble, assistant at torney, general, and candidate for Congress, instruct the republican commissioners of election, on the night before the election, to detain the voting at white polls and to count the back of town polls (where the colored republicans generally voted) as fast as possible, and that his instructions were fully carried out by Herrsey and Kempton.

After the statement had been fully compiled and agreed upon by the commissioners, they proceeded to the office of the supervisor of registration, one Lewis Backers, with whom the republican commissioners conferred a short time, after which they refused to swear to the statement of votes. The stement was then a reason for not completing the poll that he believed the returns had been tampered with, and he signed them through four and intimidation. Kempton is a fugitive from justice, and is fully contradicted, both by his own signatur

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kept open for more than from three to five months in the year, and teachers to whom sufficient salaries were paid were allowed to subtlet the schools and employ received. As a consequence, persons utterfy disgualified were generally placed in charge of them. The ischool officers of the parishes, appointed by a contral State board under he outfool frepublican publiclasm, were, in many cases, unscrupations. In this connection, we direct attention to the case of David Young, treasure of the parish of Concordia, who add been indirected for the embergiance of over thirty heading colored people of the parish to assist in his prosecution, and, after full examination of the case, they became satisfied of his guilt. When the case was called the protest of the private counsel, and, when he was asked for an explanation, he produced as his authority a telegram from Governor Kellog directing it. Young was a State senater, and it was believed by any according to the private of the

ppon by the returning board, as a pretext for excluding the pell at which it occurred. They, therefore took extraordinary pains to represe every species of disordinary to the person of the person of

republican party produced some disturbance, and at one poll in the parish of Madison, where the ballot-box was stolen, there was no violence or irregularity sufficient to make a basis for any complaint of commissioners of riots or intimidation. There had been no disturbances before the election to interfere with the registration or revision of registration, and there were no protests filed, except in the cases above mentioned, with the clerks of the district courts. By some means a number of supervisors of registration instead of mailing their returns within twenty-fourhours, as required by law, were induced to retain them in their possession and carry them in person to New Orleans. And after the result of the election was known they there prepared protests, and filed them with the returning board, in relation to outrages which never occurred. These so-called protests were not filed with the clerks of the courts, and were not, therefore, in accordance with law. In one instance, that of East Baton Ronge, the supervisor neglected to enter his remarks, as the law directs, upon his consolidated statement when he swore to it and filed it with the clerk. Upon his arrival in the city he attempted to repair his negligence by interpolating his comments after the jurat, thus giving to them the apparent force of a sworn statement.

The manner in which the testimony to sustain these protests was gotten up is sufficient to discredit them. They were prepared in New Orleans under the supervision and direction of one J. B. Harris, at the request of Packard, the republican candidate for governor.

vision and direction of one J. B. Harris, at the request of Packard, the republican candidate for governor.

O. B. Morgan, a witness before your subcommittee, testified that he was present in the custom-house when affidavits were made, and knew of an instance where answers to cross-interrogatories were struck out by order of Harris, and other answers put in. This was in the case of Mr. Simms, of Livingston Parish. Harris said the answers wouldn't do, and then the interlineations were made; the alterations gave it a different character. That Mr. Simms, in his original affidavit, said nothing in regard to intimidation of negroes, and that White's house was burned for the killing of cattle or beef-stealing; that he was present when Vrisenski made his affidavit; that Mr. Weber, supervisor of West Feliciana, questioned him, and the answers didn't seem to suit Weber, and heard Webersay afterward to let it alone that way and they could fix it afterward; that he heard Kellogg ask Drury, of Assumption, as to the prospects there; Drury told him that the democrats would probably carry it, whereupon Kellogg told him he had better have his affidavits ready, then.

Not only were these affidavits given a false coloring, amounting often to an entire perversion of meaning, but the persons making or pretending to make them were not generally known, and their identity not proven to the officers administering the oath. In the examination of F. A. Woolfey, a United States commissioner, who administered the oath in most of the cases, instances were cited from the Sherman report of affidavits sworn to before him, and he frankly admitted that he did not know the persons who made them, and he frankly admitted that he did not know the persons who made them, and he reakly admitted that he did not know the persons who made them, and he reakly admitted that he

Another subject to which we directed our inquiries was the relative white and black population and registration of the State. An erroneous impression has prevailed in regard to this matter, based upon a State census of 1875, which was proven by evidence and statistical facts to be incorrect. It was further shown that the number of colored voters claimed to have been compiled from official sources was, in fact, unofficial, grossly excessive, and prepared by one D. I. M. A. Jewett, a local partisan, for party purposes. We invite special attention to the evidence of Professor S. E. Chaillé, M. D., and Major E. A. Burke, who have given to this subject a careful investigation, and whose conclusions, in our opinion, will be found to be correct.

W. R. MORRISON, G. A. JENKS.

# MINORITY REPORT.

MINORITY REPORT.

The undersigned, a minority of the committee to inquire into the recent election in Louisiana, beg leave to report the following as the result to which they have come from their examination of the subject committed to them:

The history of Louisiana since reconstruction is that of a struggle on the part of a majority of the lawful voters, acting under all the known forms of law, against secret organizations acting in known violation of law, by force, violence, and intimidation, halting at no enormity of crime, shrinking from no deliberate cruelty, and avowing with sufficient plainness of speech, and by still more significant acts, their determination to suppress the existing majority, and to substitute the rule of violence and force in the place of peaceful submission to the will of that majority.

The original outbreak and development of this criminal conspiracy occurred in 1868, under the malign auspices of an organization known as Knights of the White Camelia. Their history and modes of operation are fully detailed in the report of the committee appointed in 1868 by the Legislature of Louisiana, and also by the report of what is known as the Stevenson committee of the House of Representatives of the United States in 1869.

From both these sources it is apparent that this society had its ritual, constitution, and purposes; that it was secret and oath-bound; that it was limited in its membership to persons sympathizing with its evil purpose; that it was military in organization, demanded implicit and blind obedience from its members, and had branches in nearly all of the parishes in Louisians.

It further appears from the report of the Stephenson committee that this secret political organization fulfilled its purpose by creating a general and wide-spread ierror throughout the State agreed, by resolutions and by club organizations, to proscribe such persons as chose to vote against the democratic ticket by refusing to such persons employment and countenance in business.

It further appears fro

or, 1868. In the parish of Saint Landry, commencing on the 28th of September and extend-og over more than three days, in which more than three hundred colored people

In the parish of Bossier, between the 20th and 30th of September, a similar masacre, including among its victims nearly an equal number.

In the parish of Caddo, in the month of October, more than forty colored people rere killed.

were killed.

In the parish of Jefferson, in the same month, an equal number.

In the parish of Saint Bernard, in the same month, more than one hundred persons were killed under circumstances of peculiar atrocity.

In the parish of Orleans, two attacks were made upon republican processions in the public streets, and about sixty persons were killed.

In the parish of Saint Mary's, in the same month, the sheriff and parish judge, both republicans, were assassinated in their own houses by a force of armed men. Other similar demonstrations were made in other parishes, amounting in all to

thirty-five, as fully appears by the evidence in the said legislative and congressional reports.

Certainly not less than one thousand persons lost their lives during September, October, and November, 1863, by murders committed for political purposes.

The effect of the work done by this criminal league is best shown by the annexed table.

Parishes.	Republican registered vote, 1868.	Republican vote, 1868.
Orleans Avoyelles Avoyelles East Baton Rouge Bienville Bossier Caddo Calcasien Caldwell Catahoula Claiborne De Soto East Feliciana West Feliciana West Feliciana Franklin Jackson Jefferson La Fayette Morehouse Sabine Saint Helena Saint Landry Saint Helena Saint Tammany Union Vermillion Vermillion Washington Wainn Vinn	15, 005 1, 233 2, 825 940 1, 938 2, 894 198 435 861 1, 656 1, 674 1, 665 1, 674 1, 685 1, 339 331 671 3, 569 671 3, 605 1, 665 661 1, 665 661 1, 665 1, 665 1, 665 243	276 520 1, 247 1 1 1 1 9 28 8 150 2 None. 644 1, 146 None. None. 1 1 136 None. 1 1 1 1 None. None. 43
	47, 923	5, 360

Thus it is shown as clearly as it is possible for human evidence to show that 47,923 republican votes honestly registered (for all men admit that the registration of 1868 was honest) and which had been solidly and fairly cast for the republican candidate for governor in the spring of 1868, when the election was undisturbed, had by November dwindled down to 5,360.

In nine of the above parishes, with a republican vote in the spring of 1868 of 11,604, only 19 were cast for U. S. Grant for President.

In seven of the above parishes, in which in the spring of 1868 there was a republican vote of 7,233, not one vote was cast for U. S. Grant for President.

When we remember that in 1868 the colored voters were not pretended to be divided, and that General Grant had then, as indeed he has now, the strongest personal hold upon their faith and regard, this extraordinary result establishes beyond the possibility of question the domination of an irresistible fear, and that fear brought about solely by the causes above cited.

Still further to establish this conclusion we submit the following table.

The first column shows the vote of the same twenty-cight parishes in 1870, by which it appears that, notwithstanding the effect of the barbarous crimes of 1868 had not wholly disappeared, yet those parishes which in November, 1868, were only permitted to give 5.360 votes for General Grant, did, in 1870, cast for Graham, republican candidate for auditor, 35,010 votes.

The second column shows that these same parishes in 1872 did in fact cast for Kellogg, republican candidate for governor, 36,666 votes.

The third column shows that these same parishes less three of them, thrown out, or no returns received, in 1874 did cast for Dubuclet, for treasurer, 33,518 votes.

Parishes.	Republican vote in 1870.	Republican vote in 1872.	Republican vote in 1874.
Orleans	17, 454	14, 043	14, 062
Avoyelles	1, 823	1, 8-5	1, 426
East Baton Rouge	2, 440	2, 459	2 543
Bienville	93	428	Thrown out.
Bossier	732	1, 159	1, 677
Caddo	1, 319	1, 238	1, 343
Calcasieu	3	96	6
Caldwell	340	369	400
Catahoula	459	878	736
Claiborne	523	942	659
De Soto	1,632	1,022	No returns.
East Feliciana	1, 273	1,690	1,688
West Feliciana	1, 174	1,309	1, 358
Franklin	226	2.8	114
Jacksonville	301	610	37
Jefferson	2,011	1, 732	1,650
La Fayette	145	482	530
Morehouse	516	1, 262	1.017
Sabine	432	62	2
Saint Bernard	377	469	607
Saint Helena	435	541	536
Saint Landry	304	1,890	1,634
Saint Martin	525	718	704
Saint Tammany	433	112	581
Union	351	489	432
Vermillion	127	228	228
Washington	81	176	125
Winn	81	109	Thrown out.
Total	35, 010	36, 666	33, 518

So much for the history of the Knights of the White Camelia and their allies, and the malign and disastrous effect produced by these criminal political organizations in 1868. We pass over the election of 1872, in which the displays of force were casual and sporadic, not general and epidemic.

The next outbreak of violentinterference with the freedom of elections and with authorized government occurred in 1874. Not now under the old name of Knights of the White Camelia, but under the bolder assertion by name and title of the "White League".

authorized government occurred in 1874. Not now under the old name of knights of the White League."

The White League, commanded by Fred. N. Ogden, was and is an association consisting entirely of white men, all democrats, and all united for the express purpose of assert ng the supremacy of the white race in political matters and in the charge of government. They are adroitly organized into clubs, whose open and printed constitution is on its face legitimate. But that constitution when dissected shows what its inner purpose is. Certain officers of a civil character are name, all innocent and harmless, but the constitution also provides for the appointment of "such other officers as the president of the club may think proper." and such officers when appointed are to be obeyed and respected, and each member takes an oath to render full obedience to such officers.

Under this clause each of these clubs has a complete military organization; every able-bodied member is regularly enrolled by companies, battalions, brigades, and divisions; all the parapheronalia of staff departments exist; and the whole force, by a system of private signals known only to the initiated, can be paraded, handled, and thrown into order of battle on short notice.

In the testimony taken by Messrs. FOSTER and PHELER, of the House committee, these facts sufficiently appear. The same report contains the congratulatory order of Ogden, chief of the White League, and his official report of the battle of 14th September, 1874, under his assumed and pretended title of major-general of State militia.

From these orders the constitution of the White League as a military political belock is westfest for the constitution of the White League as a military political belock in westfest for the constitution of the White League as a military political belock in westfest for the constitution of the White League as a military political belock in westfest for the constitution of the White League as a military political colors.

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Body is manifest, for he names the White League as a military political militia.

Body is manifest, for he names the White League organization, and returns them thanks for their gallantry and courage.

The pretense set up by Mr. Ogden in his testimony that the organization was intended only to defend the white people of New Orleans from danger from the blacks is shown to be shallow and dishonest from the known fact that of the 190,000 population of the city 150,000 are white and not exceeding 40,000 colored, and we will not insult the high reputation for courage of the white clizens of New Orleans by supposing that they suffer under intimidation, when they have in their favor such overwhelming odds of numbers, and with almost sole possession of proper arms. The White League in September, 1874, extended to nearly all the parishes in the State, and acted secretly and solidly as a branch of the democratic party. Three witnesses from country parishes before our committee acknowledged themselves members, and gave as their reason for joining the League that they were in the State, and acted secretly and solidly as a branch of the democratic party. Three witnesses from country parishes before our committee acknowledged themselves members, and gave as their reason for joining the League that they were the service of the schief, Ogden, appeared in heavy force and fighting order on the streets of New Orleans.

Mr. Ogden gives as their excuse that they paraded to secure the delivery of arms which they had purchased and which were threatened with capture by the police. But in the lightof all the facts the pretense is notoriously untrue. This was made the occasion, but it was not the purpose, of

and managers.

It was believed by those who were committed to the idea of white supremacy that the democratic party and its managers would pardon, if not appland, any means taken by them to annul the colored republican majority and to override or control the real choice of the majority, by substituting by fraud or force the will of the

the real choice of the majority, by substituting by fraud or force the will of the minority.

But it was necessary to keep up some sort of appearance of fairness, and hence an effort was made by democratic candidates and democratic canvassers to conciliate, to cajole, or to buy up the colored vote. Barbecues were prepared at which they took places, by contractand arrangement, white and black alternately. Colored orators, nearly all worn-out and dishonored hacks, who had failed to win or to keep position in the republican ranks, were hired to try and create public sentiment among the negroes in favor of the democratic ticket. Clubs in the democratic interest were formed and colored men entreated, hired, or compelled to join. But behind all this apparently fair machinery of election lay the reserve of force.

By secret circular issued by the chairman of the democratic state committee it was directed that the democrats should move as far as possible in masses; should exhibit their strength, cohesion, and discipline on all possible occasions, so as to impress the mind of the colored voter with a sense of their power and union.

Organizations by different names sprang up in certain parishes, all armed, all secret, all threatening to the general peace and to individual security.

Rifie clubs, coal-oil clans, regulators, and other such titles were hints not to be denied of possible violence; nor were the peaceable colored republicans long left to guess or hesitate over the hints thus first afforded.

A gloomy and perilous certainty developed itself, cruel persecutions commenced; men were chased like beasts, pounced upon at night at home, beaten like dogs with lashes and stripes, shot to death without provocation, hung at the will of these midnight maranders, burned out of honse and home by these prowling emissaries of political faction—all manner of conceivable wrong, all manner of imaginable cruelty, perpetrated on behalf of a party which claims reform as its motto.

Nothing was changed but the local venue of this organized brutality. The methods were the same as before; the wrong-doers of the same stripe; the transparent excuses the same.

cruelty, perpetrated on behalf of a party which claims reform as its motto.

Nothing was changed but the local venue of this organized brutality. The methods were the same as before; the wrong-doers of the same stripe; the transparent excuses the same.

Whatever just fault may have been found with the republican State government of Louisiana—and the main complaint was that the laws were not executed—surely no man can claim that the way to cure a condition of lawlessness was to organize the breakers of law into a compact conspiracy.

This were indeed to "cast out devils by Beelzebub, the prince of the devils."

The democracy of Louisiana claim that the education, the brains, and the wealth of the State are distinctly on their side.

If this be so, (and there is some reason for the assertion,) then in a government depending for its execution upon the people themselves, in courts, grand and petty juries, the failure to suppress violence and wrong in any locality is simply their own fault; nor could any of these lawless organizations have stood for one day had the white democracy of the State heartily joined the white republicans and the colored republicans in putting them down.

All the testimony taken by all the committees in Louisiana, both of the House and the Senate, concur that these maranders and night-riders were white men and were democrates.

The sufferers by these wrong-doings were republicans; the aim was to dishearten and dismay the republican vote, so that the machinery for the object sought and the object itself were the invention and the aim of the democratic partisans in that State in the late election.

Relying then, as they had a right to rely, upon the effect already produced by the outrages of 1868, 1872, and 1874 upon the general vote of the State and upon the parishes which had been specially cursed by this flagrant wrong, it appears to have been selected principally in that portion of the State which contains the largest colored vote, and is at the same time conveniently near to parishes con

Registration of 1868.	Vote of 1870.	Vote of 1872.	Vote of 1874.	Registration of 1876.	Vote of 1868.	Vote of 1876.
2, 835 940 435 1, 659 1, 674 1, 689 579 659 1, 313 1, 483	2, 440 93 340 523 1, 273 1, 174 226 656 371 516 1, 299 †	2, 459 428 369 942 1, 696 1, 309 268 779 610 1, 262 1, 441 218	2,546 400 659 1,688 1,358 114 37 1,017 1,694 146 439	3, 552 612 616 1, 334 2, 127 2, 218 439 608 314 1, 830 2, 167 885	1, 247 1 28 2 644 1, 136 † † † 1 832 † 1	1, 651 2:55 2:82 4:27 1 7:60 1:29 3:23 3:3 5:47 7:81 2:52 87
263 243	81 81	176 109	125	250 112	43	163
	2, 835 940 435 1, 659 1, 674 1, 689 579 659 1, 313 1, 483 661 263	2,835 2,440 940 93 435 340 1,659 523 1,674 1,973 1,689 1,174 579 296 650 301 1,313 516 1,483 1,299 1,483 1,299 1,661 351 263 81 243 81	2, 535 2, 440 2, 459 940 93 428 435 340 369 1, 659 523 942 1, 674 1, 273 1, 696 1, 689 1, 174 1, 309 579 226 263 51 610 1, 313 516 1, 262 1, 463 1, 299 1, 441 † † 218 661 351 489 263 81 176 243 81 109	2,835 2,440 2,459 2,546 940 93 428 435 340 369 400 1,659 523 942 659 1,674 1,973 1,696 1,698 1,689 1,174 1,309 1,358 579 226 268 114 656 779 659 201 610 37 1,313 516 1,262 1,017 1,483 1,299 1,441 1,694 1,483 1,299 1,441 1,694 1,483 1,298 1,441 1,694 1,483 1,298 1,441 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694 1,483 1,298 1,411 1,694	2,835 2,440 2,459 2,546 3,552 940 93 428	2,835 2,440 2,459 2,546 3,552 1,247 940 93 428 * 612 1 435 340 369 400 516 28 1,659 523 942 659 1,334 2 1,689 1,174 1,309 1,358 2,218 1,136 579 286 268 114 439 † 1,689 311 610 37 314 † 1,313 516 1,292 1,017 1,830 1 1,483 1,299 1,441 1,694 2,167 832 † 1,483 1,299 1,441 1,694 2,167 832 † 1,483 1,298 1,441 1,694 2,167 832 † 1,661 351 489 432 762 1 263 81 176 125 250 † 243 81 109 * 112 43

The \* denotes thrown out for violence; the † denotes parish not then organized.

The disparity between the number of votes in years when comparative peace prevailed and when intimidation is alleged is simply enormous, and can be accounted for on no fair principle other than that this extraordinary change was brought about by a reign of terror.

Taking into consideration the further fact, proven by the official census, that the total number of white voters in the State is 84.167 and the total colored 101,102, and that by the concurrent testimony of all the witnesses the colored vote is in mass republican, while the white vote is certainly divided, it is impossible to see on what ground the democracy should venture to chaim Louisiana on a fair and free vote.

Your committee do not desire to leave this historical part of their report without stating that from the time of the Mechanics' Institute massacre in 1966 to the present the course of the democracy in asserting itself in that State has been marked all the way down by the defiance of all laws, human and divine, by steady and unflinching resort to violence, murder, and armed revolution, and that the present pretension of Mr. Nicholls to be governor of Louisiana has, in the presence and under the observation of members of this committee, been lifted into position by the same unlawful organization of the White League companies of the city of New Orleans were called into service by that very name and title, were officered by the same men as in 1874, and paraded for battle as they did then.

More than two thousand men answerea to the summons and fell into line of battle with the promptness and accuracy which only drill and experience in arms can give. They were thoroughly and completely armed; were in possession of two pieces of artillery, well manned and under good officers, and their display of effective force was altogether too strong and their purpose too determined to justify

resistance on the part of the ordinary police or any other force at the disposal of the lawful authorities of the State.

Thus they captured police stations, halls of the courts, the State armory, and placed the Legislature in an actual state of siege in the State-house. They ousted the supreme court and other judges and put in the appointees of Nicholls; they established their own police, and created the difficult position of a double government, not on paper only, but asserting its rights by force.

And thus we find to-day in this unhappy State the culmination of all the forcible and violent proceedings since 1855 in the usurpation of Nicholls of the governorship without any warrant of law or any legal declaration of election, and that usurpation completed in possession and supported in fact by irregular, illegal, and revolutionary force.

Intionary force.

The official report of Lieutenant-General P. H. Sheridan shows that from 1865 to the date of that report not less than three thousand political murders had occurred in Louisiana, and the record since that time swells up the aggregate of crime and

in Louisiana, and the record since that time swells up the aggregate of crime and violence to appalling proportions.

This development, sorrowful as it is, is to be referred, like all other displays of continuous evil passions, not to temporary and local causes, but to some deep-seated principle pervading a large portion of society.

In the judgment of your committees the moving cause to all this deplorable cruclety is in the deliberate and settled determination of the white people, acting in the name of democracy, not to permit the exercise of political power by the blacks in proportion to their legal vote and numerical strength.

All classes of society are fully impregnated with this idea. The very best most cautions, and most humane express it freely, and denounce the laws and constitutional amendments which give to this inferior and lately enslaved race dominion and position in office, by force of numbers, over them and their property.

A large number again, even of the educated whites, look upon negro citizenship as a badge of humiliation, and a dishonor inflicted upon them by a conquering people as a punishment for the part they took in the rebellion.

Another large body of whites, uneducated, find free negro labor in constant and damaging competition with their own, and have a personal hatred because of their nearness in social relations to this class and the constant collisions of interest.

So violence is the natural result; it is the short, sharp, and sudden method resorted to to overthrow in fact a system repugnant to their pride, prejudice, and passion.

Another large body of whites, uneducated, find free negro labor in constant and amanging competition with their own, and have a personal harted because of their movies more is the natural result; it is the short, map, and sudden method resorted to to overthrow in fact a system repugnant to their pride, prejudice, and passion.

Couple this with the greed for office, for the fat pickings reputed to be attached to offices in Louisiana, and the anxiety common enough everywhere, but most energed there, to live easily and affacently at the public expense instead of recognitive common enough everywhere, but most energed there, to live easily and affacently at the public expense instead of recognitive common enough everywhere, but most operate all the chastly machinery by which the so-called democracy of that unpupy State destroy the freedom of elections and substitute the reign of arms for the reign of law.

But your committee do not choose to leave this part of the case without showing that the peculiar retaires of the election laws of this State are simply the natural Laws always redict the condition of the society for which they are made, and laws for the prevention and punishment of crime necessarily imply the existence of such crime; and thus the special features of the Louisiana statutes to prevent and punish intimidation and violence at elections are the most conclusive evidence of the existence of the evil sought to be corrected.

Or the existence of the evil sought to be corrected.

Or limity, in communities where general education prevails, the details of elections begin in the lunit of political power—in the township, precinct, or smallest legal subdivison.

Judges or commissioners of elections are appointed in such communities, as a rule, legal stations when made are local and confined to small and limited districts—generally to single voting precincts is required, and thus the general knowledge and general education of all the neighborhood is brought to bear to preserve both the purity of registrations wh

The official authority common to inspectors of election, or judges or commissioners, as they are denominated inother States, prevailed also in Louisiana until 1870. These officers were there known as judges or inspectors of elections, and possessed the power of making returns, which power rested, first, on their official authority to receive votes, and then to count them, under which they necessarily exercised the semi-judicial authority or discretion to accept or reject votes, as they deemed them legal or illegal, under certain restraints or limitations prescribed by law.

Further, their returns of election, or rather their official certificates of the result of the voting, which technically are called their returns, became by law prima facie evidence of election.

In consequence of the violent, cruel, and murderous proceedings in the State in 1868, as heretofore detailed, an entirely new system was inaugurated in 1870.

The material features are these: The commissioners of election presiding over the several polls were deprived of both the function and the duty of making final and official counts of the votes, and thus reduced to a mere elerical function. They were also deprived of the power of making any declaration, certificate of election, or return of election vesting any prima facie rights, and simply confined to a statement of votes received and computed. All judicial or semi-judicial power or discretion in them was abrogated, and they no longer gave any sort of certificate of election to any one, not even to a justice or constable in their own ward. They were simply clerks and computers, with no power of decision.

The second great feature was to reduce the number of returning officers to five for the whole State, and to invest them solely with the functions and duties of returning officers, and to embody in that board the whole returning power of the State which had been taken from the parish and precinct officers.

The whole duty of ascertaining and making the final and official count was exclusively

therein.

This law of 1870, act No. 100 of 1870, approved March 16, 1870, although modified by act No. 98 of 1872, has not materially been changed, and is of force now.

The attention of the public has been much drawn of late to this act and to the proceedings held under it. There is nothing in any of the other States entirely analogous to it; and its purpose, mode of operation, and effect have been greatly misconceived.

The Louisiana returning board is not at all like the canvassing boards of the other States.

In all the other States returns of elections deciding who is elected and giving.

The Louisiana returning board is not at all like the canvassing boards of the other States.

In all the other States returns of elections deciding who is elected, and giving certificates of election which are prima facie evidence, all these are done by local officers, exercising something more than clerical and ministerial powers; and the State board of canvassers merely perform the duty of compiling all statements of votes, legal in form, forwarded by the local election tribunals.

In Louisiana the only returns of elections known to the law which confer any prima facie title come from the returning board, and, as has been shown before, the lower election officers perform merely clerical and ministerial functions and act as intermediaries to pass forward to the board all the acts done from the deposit of the vote until the tinal count and determination by the board, as the only returning officers for the State.

But it is alleged that the power to reject polls for intimidation, &c., is contrary to republican institutions, and, as some s.y, unconstitutional. This assertion deserves examination. What is an election? It is the free, uncontrolled choice of the voter. The word itself imports freedom of choice.

The vote is worthless unless deposited by the voter of his own free will and choice.

The vote is worthless unless deposited by the voter of his own free will and choice.

If the act of voting is done under controlling duress of any kind, it is not the act of the voter, but that of the party controlling him.

The history of the struggle for a secret ballot in England and in this country is the history of a truggle on behalf of the weak and dependent to escape by this contrivance the dominion over their wills of the strong and the wealthy.

If so much effort has been used in times past to save the voter by the secrecy of the ballot from the duress of his landlord or employer, shall no effort be made to save him from the terror which brutal violence or fear of death must exercise over his freedom of will and liberty of choice?

When it was notorious that in 1868 whole parishes in Louisiana had been forcibly revolutionized by wholesale and reckless violence, and the elections held therein were mere mockeries, lacking in every essential attribute of an election properly so called, was it not wise to devise some remedy for a state of things that struck directly at the root of free institutions, nullified the will of the majority, and gave the prize of political success to the men of the party who cared least for the holiness of life, and who forced their way to power by the rope, the whip, and the bullet?

The Legislature of Louisiana, knowing all the fearful facts, did devise a remedy, and they did well in so doing.

Their legislation is to be defended, because it is in strict conformity to the theory of free elections and according to the rules of the common law of liberty.

All authorities in England and America agree that violence and force used at an election to affect the result render such election null and void.

Standing on that great principle, the Legislature said, in substance, to the violent men of the State, "If you use force and violence, terror and intimidation, to impair the freedom of an election, you shall not reap the fruits of your wrong-doing, but the whole poll thus tainted wit

and free exercise of that power is to break down the very foundation of the Republic.

Now the Legislature might have deposited this high duty of annulling elections impaired by the causes cited in the local election officers. They did not, and they acted wisely, for these officers themselves were too near the scene of these excesses not to be affected by them, and would have been constrained to a large extent by the local intimidation.

Thus local returning officers in polls and parishes would have been overborne and overcome by the very intimidation which they themselves would have been called upon to condemn, and whose results they would be required to defeat.

So the Legislature took the right way, by removing all power of making returns from local officers and vesting the whole in five citizens as the sole returning officers of the State, whose place of meeting was to be at the capital city of the State, removed from these malign influences, free from apprehension, and free to decide fairly and justly in the premises.

And what, after all, do they decide! Not whether votes given at a poll are to be counted or not, but the far higher question whether the votes reported to them as such are votes or not; whether there was such freedom of choice as is necessary to constitute a vote.

They have power to determine whether the election was nullified by acts of violence and intimidation, and if the proof shows that such was the fact, by all law in all free countries that pretended election was a nullity.

This is the purpose, intent, and aim of the laws of 1870 and 1872 establishing the returning board and constituting them the only returning officers of the State under the constitution.

It is, however, said that this power is dangerous. So is all power; in whomsoever vested, there always is and always will be risk of abuse. But the power is infinitely better than the state of things which preceded it in 1868 and which called it into being. Regular power, exercised under law by known officers, subject to punishment for its abuse, is infinitely safer than mob law; than the will of masses of maranding night-riders; than florgings, hangings, brutality, and murder inflieted by secret associations for political purposes, in darkness, in fantastic disguises, bringing all law, human and divine, to the low measure of their infuriated passion, or the still lower one of cool, deliberate calculation of political effect to be produced by repeated crimes.

All good men of all parties at the time conceded the law to be necessary and wise, and afterward, when the democratic party held control of the Legislature, they themselves indorsed it by not attempting its repeal.

The law was a necessity of the situation, and the situation, bad as it was and is, was not brought about by the republicans, but by evil-disposed men working under the name of the democracy and who have brought shame and disgrace number of the term was the state of the law of elections in Louisiana in November 1876.

der the name of the democracy and who have brought shame and disgrace upon the name.

This then was the state of the law of elections in Louisiana, in November, 1876, when the last election was held.

The minority of this committee filed their protest at an early day against any attempt on the part of the House of Representatives, or its committee, to go behind the returns of the returning officers of Louisiana on the presidential election, and they respectfully refer to that protest, and stand by the principles then asserted.

But as the majority of the committee believed themselves empowered so to do, the undersigned propose to give a brief statement of what they found and observed.

It would seem as if the long and black catalogue of crimes committed against human liberty and human life in the ten years from 1866 to 1876 ought to have had effect enough to break down, dispirit, dishearten, and destroy the republican organization in Louisiana: that blood enough of innocent men had been shed to deliver the State over into the hands of the opposition; that the colored population, naturally timid and largely dependent for means of labor and life upon the whites, would have given way to these repeated and unpunished assaults upon their persons and their political rights.

But so deeply ingrained into this people is the sentiment that they owe freedom and civil and political rights to the republican party that all these deadly assaults have to a large extent failed of their purpose. Even the more severe trial of faith in the confessed unworthiness and treachery of some who were once leading republicans has not materially lessened their faith in the party of freedom and human rights.

In the contessed unworthiness and treachery of some who were once leading republicians has not materially lessened their faith in the party of freedom and human rights.

The testimony taken by this committee is full of evidence of this great fact. Some thirty or forty colored men have been sworn as witnesses to prove threats and violence offered by other colored men to them for abandoning the republican organization, and they and all other witnesses agree that the solid mass of the colored voters believe that it is treason to their race to vote the democratic ticket.

One of these new converts to democracy, in pleading with a friend to follow him, asks. "What have the republicans done for you!" To which comes the prompt and natural answer, "Didn't they take the bull-whip off of me!" It is beyond any doubt that neither bribery, nor interest, nor soft words, nor condescension, nor proof of misrule by local officers, nor even violence, can shake the deep-rooted love of the liberated black man for the party whose greatest achievement was universal emancipation and universal citizenship.

They may compel him by terror to vote a democratic ticket; they may compel him for self-interest combined to join a democratic club; they may frighten him from the polls and prevent his voting, but he knows and they know that the instant he is let alone, the moment he load of fear is taken off, the moment he dare stand up in his own right and his own strength, free to think, free to act, and free to choose, that moment he stands ready and willing to vote the republicant ticket.

For the negro, although unlearned, is no fool. His powers of legic may not be sufficiently but his knewner; a good. The institut of self-preservation combines to the politicated but his emoner; a good. The institut of self-preservation combines and the publicant of the former was good. The institute of self-preservation combines and the publicant of the former was good. The property of the former of the former was another of the property in good. The proper

know that the instant he is let alone, the moment the load of fear is taken off, the moment he dare stand up in his own right and his own strength, free to thick, free to act, and free to choose, that moment he stands ready and willing to vote the republican ticket.

For the negro, although unlearned, is no fool. His powers of logic may not be cultivated, but his memory is good. The instinct of self-preservation combines with gratitude to hold him steady, and thus the fact comes that in this State of Louisiana, no withstanding the horrors and cruelties of the years past, notwithstanding the organized and systematic violence of the last summer, more than seventy-five thousand voters in large proportion colored men, had strength and opportunity to vote the republican ticket, while at least fifteen thousand more were prevented from so doing by intimidation and terror. And it is an argument in justification of his general capacity for the performance of political duties that the colored man has stood so firmly by the principles of the republican party and adhered so strongly to the republican organization, in the face of so long-combined and so merciless assaults made upon him for daring to exercise his political rights in that direction.

Every one must know that the effects of these several years of persecution and oppression are not and cannot be temporary. They have a cumulative power, which gains in force and intensity by each repetition, and the violences of 1876 recall and are enforced by the memories of similar occurrences in past years.

Hence no fair judgment can be made of the effect upon the popular mind of the events of the late election that does not give full weight to all that has preceded it. The undersigned found the whole atmosphere of Louisiana pervaled by intimidation; they found it active in giving defiant energy to the one party, and a tone of subjection, apology, and want of positive manhood and self-assertion to the other. They found a professed inability on the part of republicans, black a

ernor Kellogg when the secret order of these men would not have overthrown his authority in the city and in most of the country parishes unless be were sustained by the power of the United States troops.

All this terrible array was constantly before the eyes of the republicans of Louisiana, and shadowed all of them, white and black, with a vague and fearful apprehension, and thus deadened the courage, cramped the energies, and hindered the successful organization of the republican party.

On their side they had nothing but the guarantees of law with no physical force to sustain it, and the bitter experience of past years had shown them how slight a barrier this was to the grasping greediness or fierce and malignant passion of their adversaries.

and, and shadowed all of them, white and black, with a vague and faceful appearance heasion, and thus deadened the course, cranged the energies, and bindered the successful organization of the republican party.

So austain it, and the litter experience of past years had shown them how eligible to sustain it, and the litter experience of past years had shown them how eligible a larger this was to the grasping greediness or flerce and malignant passion of their adversaries.

Then early in May there was developed for the first time a singular feedency among the white democrats in many parishes toward the formation of ride clubs, and the more singular fact that these, with scarcely an exception, were formed in democratic and the state of the state of the campaign and the state of the state o

people seem to consider this horrible state of society, and how this most wretched display of greed and avarice, of crime and lust of power, so slightly affects the conscience of the nation.

One-hundredth, nay, one-thousandth of the horrors inflicted in Louisiana if perpetrated in any Northern State would be overwhelmed with such an avalanche of popular indignation, that no man, however remotely connected with it, could for a moment endure the scorn, contempt, and hatred of an aroused people.

But is the grossness of the crime against law and order, of the outrage upon the fundamental rights of the citizen, any less in Louisiana than in New York or Ohio? Is the poor and uncellucated negro of the South any less entitled to his rights under the Constitution; any less entitled to enjoy the privileges guaranteed by that instrument, than the white citizens, native or adopted, of any portion of the country?

In the poor and uncellucated negro of the South any less entitled to his rights under the Constitution; any less entitled to enjoy the privileges guaranteed by that instrument, than the white citizens, native or adopted, of any portion of the country?

Nay, is it not the fact that the very weakness and defenselessness of the subject of the wrong appeals all the more strongly to the sympathy and the sense of right of thinking people?

Or does the "chivalry" which thus oppresses the weak and tramples on the lowly think that it enhances its claim to respect by the selection of these unresisting people to be their victims?

There is no danger of such wholesale crime being committed where men will resist, and where the conscience of the people around them will justify and sustain such resistance. But in Louisiana and the entire South the colored people do not resist, seem incapable of organization, and unfortunately the conscience of the people among whom they live sustains the gross oppression, though some may profess regret for the extent to which it may be carried.

There are some men in the democratic ranks in Louisiana who did during the campaign oppose these violent outrages, but, as always happens where mobs bear rule, the movement of the mass is governed and controlled by the worst and most dangerous elements in it; and, as yet, of all the men who condemn the course taken, there are none who do not eagerly seize the fruits of the wrongful act.

There can be no doubt whatever from the testimony that in very many of the parishes of the State the mass of voters were very largely controlled by the existing apprehension of evil to come to them, and that such apprehension of was well founded, first, on the memory of late events of violence and bloodshed, and, secondly, on the actual developments of the campaign in threats of danger, in threats of loss of employment, in threats of pecuniary loss, in threats of personal violence for opinion's sake, in actual brutal treatment of men and women, in degrading and unusua

This has been decided in Louisiana before Judge Hawkins on a petition for mandamus filed by Mr. Zacharie, the very able counsel of the democratic commit-tee, and so satisfactory was the decision that no appeal was taken by that gentle-

man.

But it must not be supposed that the laws of Louisiana do not give prompt and searching remedy for any delinquency on the part of supervisors of election, for it has been correctly decided by Judge Beattie in the La Fourche district court that any person claiming office and averring that the supervisors have improperly withheld evidence in the form of election matter from the returning board shall have the writ of mandamus in its most summary form commanding such delinquent supervisor or commissioner of election to forward at once to the returning board all such papers, to be compiled, determined, and acted upon by said board.

Thus the right of the individual is saved; but if no party interested chooses to take the initiative and compel action by the intermediary election officers, the board can only consider and act upon the papers and statements actually sent forward by such intermediary election officers, and this the undersigned believe to be the law of the case in all the States of this Union in similar cases.

It appears then that there were regularly forwarded to the returning board election statements from all the parishes of the State except Grant Parish, in which the supervisor left the parish before election and the pretended election was held by unauthorized persons.

The total number of votes received by the board appears to have been, for—

John McEnery. William P. Kellogg	80, 515 76, 717
Majority for McEnery	3, 798

For convenience the figures throughout are given by the two first-named electors on the respective tickets.

fused to compile—	and re-
For McEnery For Kellogg	10, 280 1, 763
Excess of democratic votes rejected.  Deduct original democratic majority	8, 517 3, 798
Republican majority From this should be deducted error in Vernon Parish	4, 719 178
	4 591

This amount is the republican majority in the State of Louisiana by the official and final count and determination of the only returning officers known to the constitution and laws of that State, and such count and certificate is by the law of that State final, so as to give a prima facte title to office, which can only be impeached by a judicial trial in which the interest of parties litigant can be determined; and judicial trial is the only mode known to the law in which the ballots, returns, defects

of the polls, defects in election, and other matters going to the absolute verity of the election, can be brought into question and determined.

Until that is done, no tribunal whatever can divest the persons declared elected of the right to office given prima facile by the declaration of the returning beard. The result above mentioned, by which 10,250 democratic and 1,763 republican votes were thrown out, is arrived at, according to the tables furnished by the board, by rejecting sixty-nine polls in twenty-two parishes.

In nearly all of these polls the rejection was based upon the ground of intimidation and violence, and in some few upon clear and palpable wrong-doing by the officers charged with the election.

East Feliciana is an example of the first class; which parish, although notorical and intimidation as to cast on republican paish, was so overridden by violence and intimidation as to cast on republican refine.

Grant Parish is an example of the second class, where no legal or authorized officer took any part in the election.

The evidence on which the board based its action is in the form of affidavits and depositions, and some oral evidence taken by consent.

The undersigned have not seen nor examined all of this evidence, nor has the whole of it at any time been before the committee, but a very large part of it is already in print in the report of Hon. John Sherman and others. (Senate Excentive Document No. 1.)

The general tenor of the evidence before the board is such as was to be expected from the history of Louisiana as heretofore detailed, and corroborates the hippression made upon us by our own experience and observation of the widely diffused influence of fear caused by acts of intimidation.

While there are Isolated instances in which we from our point of view might be observers, based upon slight knowledge of the people and the situation, and the responsible action in judicial form of high olicers selected and sworn to perform one of the most important official duties.

The testimony taken

questions in the most objectionable form, and on matters not in any way before the committee.

It is certain that there is nothing so likely to be unfair as a congressional committee raised to investigate a political question, especially when the members put themselves constantly on record as having sunk judicial responsibility and assumed the position of partisan attorneys. It is a bad state of affairs when the attorney and the judge are one and the same.

To a fair mind it would seem that the only inquiry should be, what was the testimony before the board, and whether such testimony warranted such finding as they

mony before the board, and whether such testimony warranted such finding as they made.

And yet, after all the labor of the committee, there is no record of the evidence except so far as we find it second hand in the Sherman report.

It is not fair nor just to attempt to set aside the verdict of a jury on the ground that it was contrary to evidence, and then attempt to sustain such motion, not by comments on the evidence actually before the jury, but by offering a mass of matter that never was before them at all.

No court would tolerate such action. And yet this is precisely the thing to which the majority of the committee have devoted their time and labor.

Thousands of pages of so-called evidence, good, bad, and indifferent, legitimate and illegitimate, are piled up to attempt to show that no such state of things existed, and to overbalance the actual testimony on which the board did ground their action. But supposing all this newly discovered, or rather newly inverted, testimony to be true, and to overbalance the testimony in before the board, does any rule of law or equity hold the board responsible for what they never saw nor heard?

The undersigned do not by any means admit that the facts stated before the board and on which they acted have been to any considerable extent disproved, but on the contrary express their firm conviction that so far as the general charge of intimidation is concerned, it is fully supported and strengthened by the examinations made in Louisiana by this committee.

There were very many parishes in the State in which, as it appears from the testimory in the Sherman report, clear and distinct specific charges of cruelty and violence, with names of parties and dates, were directly made.

From the time when this evidence was before the returning board, known and read by the visiting committees, and copies taken by the able democratic local committees, until the close of our investigations in Louisiana, there was ample time to meet and answer these specific charges. There were very few instances in which this was attempted. General evidence was introduced that the election at the polls was free and fair, but very rarely did they venture to meet and deny the specific charges.

was free and fair, but very rarely did they venture to meet and deny the specific charges.

The attempt was made before both the House and Senate committees in the Pinkston case, and the testimony will show with what success.

The whole attempt has been, not to contradict the fact of fear and apprehension, nor even the mass of specific cases of cruelty, but to show that the colored people ought not to have been intimidated, and to prove this by white democrats and some republicans who swore that they themselves were not intimidated.

In some parishes it has been attempted to show by evidence that these violent organizations were conservators of the peace, or vigilance committees to punish crime, but in nearly all the cases the sufferers were colored men and republicans; and it is undeniable that the colored voters generally did believe that such violent acts were political in purpose and intended to frighten them, and so believing they felt the pressure, and either voted under compulsion or were deterred from voting at all.

In closing up this brief review of the mass of material collected by the committee under the name of evidence, it is proper for the undersigned to state that no opportunity or time has been afforded them to give any critical examination to the same, that the evidence is not yet printed, and that the enormous amount of written matter cannot be even looked through, much less weighed and considered.

Certain great principles which should have controlled the action of the committee, according to the views of the undersigned, have been overridden and thrown aside, and are of such great importance and force that they require at least explicit statement, if not full clue idation.

And, first, we affirm that the whole duty and power of the appointment of presidential electors is, by the plain words and necessary intendment of the Constitution, removed from the control or possible interference of any part of the National Government or of the whole united.

Neither the executive nor the legislative branches have any authority, supervision, or control of the mode by which the several States appoint, or of the scrutiny of votes, when popular election is selected as the mode of appointment. In this respect the electors of President and Vice-President are State officers.

The question can only be whether or not they, the electors, are constituted in the manner provided for by the Legislature of the State.

In the particular instance before us of Louisiana, an inspection of the laws of said State shows that by section 1400 of the revised laws of said State it is provided as follows:

"In every year in which an election shall be held for electors of President and Vice-President of the United States, such election shall be held on the Tuesday next after the first Monday in the month of November, in accordance with an act of Congress of the United States approved January 23, 1845, entitled 'An act to establish a uniform time for holding elections for electors of President and Vice-President in all the States of the Union' and su

This section is part of the election law of 1868, and was incorporated in the revised statutes approved March 14, 1870, and remains to-day unrepealed and in force.

At the time when said section 1410 was originally enacted, commissioners of elections and supervisors of parishes were returning officers, and were not deprived of that power until the passage of act No. 100. of March 16, 1870, amended by the act No. 98, of 1872, by which, as before stated, the duties and powers of returning officers were vested in the five members of the returning board.

By the same revised statutes of 1870, pages 551, 552, the same rules as to elections of presidential electors were repeated verbatim in section 1823.

Sections 2824, 2825, and 2826 provide for the qualifications of electors and the mode of voting, and the last section, 2826, for the mode of canvassing. We quote section 2826 in full:

"SEC. 2826. Immediately after the receipt of a return from each parish, or on the fourth Monday in November, if the returns shall not sooner arrive, the governor, in presence of the secretary of state, the attorney-general, a district judge of the district in which the seat of government may be established, or any two of them, shall examine the returns and ascertain therefrom the persons who have been duly elected electors."—Revised Statutes, page 552.

It will be observed that the election papers forwarded from the parishes are detendined force of that word

It will be further observed that the canvassing board are not described in the law as returning officers, but are simply directed to examine the returns and ascertain the result.

But among the changes made in the acts of 1870 and 1872, it is enacted by section 2 of act of 1872, No. 9s, "that five persons, to be elected by the senate from all political parties, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum and have power to make the returns of all elections."

"Within ten days after the closing of the election said re

"Within ten days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the commissioners of election and make returns of the election to the secretary of state. They shall continue in session until such returns shall have been compiled."

"The returns of the elections thus made and promulgated shall be prima facie evidence in all courts of justice and before all civil officers, until set aside after a contest, according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected." Section 3 of the same law gives the power of refusing to canvass or compile statements of elections and of excluding from their returns, in cases where intimidation, riot, tumults, violence, armed disturbance, or bribery and corrupt influences are proven to the satisfaction of said returning officers.

Thus it will appear conclusively that Louisiana, under the power conferred by the Constitution on the States, has assumed jurisdiction over the mode and manner of electing presidential electors, and has by her Legislature declared:

First. That such electors shall be appointed by election.

Second. That such elections shall be part of the general elections of the State, and held and conducted in the manner and form provided by law for general State elections.

Second. That such elections shall be part of the general elections of the State, and held and conducted in the manner and form provided by law for general State elections.

Third. That the board of returning officers shall be the returning officers for all elections in the State, and have power to make returns for all elections.

Fourth. That such returns so made by them and promulgated shall be prima facie evidence until set aside by judgment of a court on a trial of the right of some person by them declared to be elected to office.

And this law has received the construction and the approval of the supreme court of the State.

In the case of Collin vs. Knoblock, Louisiana Annual Reports, page 263, the supreme court, Taliaferro, J., delivering the opinion, say:

"The returns made by a legal State board, and officially promulgated by that board as the general returning officers for the State at large, constitute the basis upon which the governor is authorized to issue commissions. These returns, by the statute of 16 March, 1870, are made prima facie evidence in all courts of justice and before all civil officers until set aside, after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected."

Again in the same case the c. art say:

"The act of 1870, No. 100, approved March 16, 1870, is the general law under which the elections held at the general election in November, 1872, were conducted, and which controlled, as to the formalities of revising and compiling the returns from every part of the State, and the making and promulgating the final report."

Again, in the same volume of the reports, in the case of Bonner vs. Lynch, p. 267, the supreme courts say:

"But it is said that the returns are only prima facie proof of the result of an election. That is true. The question, however, as to the election of officers is a political department may have authorized them to exercise jurisdiction. If there were no statute aut

the returns of the supervisors of elections, examine the right of voters to vote, and, in short, the courts would become in regard to such cases mere offices for counting, reporting, and compiling election-returns." \* " "Having no power to revise the action of the board of returning officers, we have nothing to do with the reasons or grounds upon which they arrived at their conclusions."

In another case in the same volume of reports the court decides that the act of 1872, No. 98, does not destroy the board of returning officers by its repealing clause, but merely modifies the form of appointment.—State ex rel. Attorney-General vs. Wharton, pages 10 and 11.

The highest tribunal known to the constitution of Louisiana, a tribunal whose decisions on State law must be followed by the Supreme Court of the United States, has thus affirmed and sustained the powers and rights of the returning board, has affirmed the right of the Legislature to create it and invest it with its powers, and sustained its action.

The control of the State of Louisiana over the subject under the Constitution is as exclusive as that of New York or any other State, and both the acts of her Legislature and the decisions of her courts are as complete in authority as those of any other State.

The supreme court of the State denies its power to revise the proceedings of the board, or to inquire into the reasons or grounds on which they arrived at their conclusions.

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When this committee assembled in New Orleans on the 11th day of December, the whole business of determination of presidential electors had for some days been concluded.

The governor of the State, admitted to be each by all parties, elected in 1972 or the suprement of the state, and the suprement of the state of the suprement of the state of the suprement of the state of the suprement of the

Minority report of S. A. Hurlbut, one of the members of the subcommittee of which Hon.

J. S. Blackburn was chairman.

The undersigned begs leave to state that he differs wholly with the apparent decision of the subcommittee by which they assume jurisliction to inquire into the actual state of the polls in the parishes ordered to be examined by them.

Under the law of Louisiana the commissioners of election at the several polls, and the compiling officer, known as supervisors of parishes, have no right or authority to scrutinize or decide upon any question either of form or of substance in regard to elections. Their function is simply clerical and ministerial, and the whole power which they possess is to receive and tabulate the result of elections, and forward all papers and evidences of election which either of them receive to the board of returning officers for the State for scrutiny and final decision.

Under the same laws and the decision of the supreme court, title to office and the right to be commissioned depend solely upon the action of said board, which action must be a condition-precedent to any lawful title to any office in the State.

Such action can only be reviewed, changed, modified, or reversed by a judicial proceeding in coarts properly so called, upon a regular contest in form of law, as prescribed by the statutes of the State, in the case of parish and district officers, or by the action of one of the branches of the general assembly in the case of representatives and senators in the State legislature, or by both houses on a count for governor and lieutenant-governor.

No provision is made by law specifically for any contest for presidential electors, because, in all probability, the case had not been foreseen, and because of the very short and ephemeral tenure of the office.

Thus, in the conception of the undersigued, the action of the cuturing board and of the governor based thereon is absolutely final and conclusive.

Again, the undersigned does not acknowledge, but specially denies, that the subcommittee is or can be in any respect a court, having either jurisdiction of the subcommittee is or can be in any respect a court, having either jurisdiction of the subcommittee is or five to a curious and interested public items of intelligence in the form of the opinions of a certain number of gentlemen, with no legal validity and no known a

money.

As, however, the majority of the subcommittee have dignified this matter by a solemn report, and have deliberately attempted to open up the action of Louisiana under her own laws, and attempt to reverse the same, a decent respect for his associates on the subcommittee requires the undersigned briefly to follow their statement.

The pretended evidence is so voluminous and so vague that it cannot be fairly dissected and followed, nor has it in fact been printed so as to be accessible.

We examined, or pretended to examine, the parishes of Iberia, La Fayette, La Fourche, Livingston, Plaquemines, Saint Landry, and Tangipahoa.

I am of opinion that poll No. 4 was properly excluded. All the commissioners were democrats and white men, and failed to comply with an important and mandatory provision of law. They did not write or stamp across the certificates of registry the word "voted," so as to prevent the use of such certificates at other polls in the parish, or even at the same poll.

The returning board took this view of the case, and rejected the poll. If my opinion or that of any outsider is of any value in this matter, which I deny, then I give the weight of such opinion in favor of the action of the board.

There is no other evidence of any sort that has any materiality as to this parish, except the universal fact common to the whole State, that the colored people looked upon any of their number who voted the democratic ticket as a traitor to their race; and if my opinion on this question is to be given, I concur with that general sentiment.

# LA FAYETTE.

The returning board struck out poll No. 2 on evidence which will appear on pages 524 to 535 of the Sherman report. It is to be noticed that this evidence before the board was not in any manner contradicted before them, and although a vast mass of hearsay is now put in before our subcommittee, yet no one man has been brought forward to contradict the specific allegations of violence, &c, made in the evidence actually before the board.

# LA FOURCHE.

Under my view of the law it was the duty of the supervisor to compile and send forward poll No. 2. From error in judgment, or some other cause, he did not, and it never came before the returning board for adjudication. This fault may be ground for legal proceedings against the supervisor, but not for quarrel with the board. For if anything be certain in the election system of Louisiana, it is that the board have no power to compele a supervisor to send forward any report, or to complete and furnish a partial report withheld by him.

Poll No. 10, under the testimony, never came into the hands of the supervisor, and the evidence is clear that no proper election was held, and that no legal report was made or received by the supervisor.

The residue of the pretended evidence taken in this parish is wholly worthless for judicial inquiry, and the committee were merely made use of as a convenience for the exhibition of private malice.

# LIVINGSTON.

LIVINGSTON.

Polls 2, 3, 4, and 8 were excluded by the returning board upon evidence printed in the Sherman report, pages 483 to 510, on ground of intimidation.

This evidence has been very severely attacked. Yet, on a calm consideration of the whole result, many very material facts charged in the evidence before the board are fully sustained.

The killings, burnings, whippings, are distinctly proven.

Firing at night upon Christian people assembled for worship, repeated attacks on houses, threats of ill usage, general knowledge of mysterious bodies of armed men riding by night over the parish, and executing their own wicked will; all these are abundantly proven.

It is further clearly in evidence that the republican voters did, in fact, consider that these wrongs and violences were designed to intimidate them; and it is shown by all the witnesses, especially by Simms and Bailey, that they were uneasy, disturbed, intimidated, and hindered in the expression of their political sentiments. uneasy, disturbed, intimidated, and hindered in the expression of the sentiments.

I cannot detect any informality of any account in the polls rejected.

# PLAQUEMINES.

This parish, so far as I can learn, was not protested by the democracy except for local officers, and the unsupported protest appears to have been correctly ruled out by the board. The parish is acknowledged to have been always and to be very heavily republican. There is an increase in registration of voters from 1874 to 1876 of 600. But this is accounted for in the evidence by the large increase of sugar cultivation, and the employment of men from New Orleans and elsewhere as laborers, whose families remained outside of the parish.

Plaquemines has been very notorious in history from the time of the enormous frauds committed by Slidell, in 1844, and the scandalous cauvass between Sypher and Lawrence in 1872.

The registration of 1874, it is conceded, was fair, and the registration of 1876 was merely supplemental to that.

There seems no reason to doubt that the full vote of the parish would give results substantially as declared by the board, and the work of attack on this parish seems one of pure supererogation.

### SAINT LANDRY.

Poll No. 9 was excluded by the board. I am not in possession of the evidence upon which this was done, and am wholly unable to say whether it was from legal defects in the statement of commissioners from action or neglect of the supervisor, or from any other cause. In the absence of any evidence, I presume that the action of the board was within the law. No protest was made by the democratic managers, or any one else, to this action, and, so far as I know, no contest before the board.

board.

Much evidence was taken by the subcommittee as to colored voters being penned up at Opelousas; but all the witnesses who know anything swear that these 100 or more colored voters were nearly unanimously republican on the national ticket, and that the scramble for their votes was solely for inferior and local offi-

### TANGIPAHOA.

The evidence before the board on intimidation in this parish appears in the Sherman report, pages 551 to 554.

All the testimony before us substantiates the facts alleged in the affidavit of O. M. Kinchen, on page 551 of the Sherman report. He is proven to be a good man, and of good repute, and his positive statement of facts stands uncontradicted, and, in fact, supported by the other evidence.

Simson was fully discredited, and no importance is attached by me to his statements.

Ments.

I have thus followed the line taken by the majority and given my views and opinions, not because the views and opinions of any of us are of any legal import and value, but that both sides might be represented in somewhat fair proportion in contributions to the current chronicles of the times.

S. A. HURLBUT.

The undersigned, a member of the subcommittee charged with the investigation of the election in the various parishes composing the fifth congressional district of Louisiana, not agreeing to the report made to Hon. WILLIAM R. MORRISON, chairman, by Messrs. McMahon and Ross, presents the following as his views:

Upon the vote of the parish of Catahoula no testimony was taken by the subcommittee. Two polls were thrown out. These polls gave 20 votes for the Hayes electors and 97 votes for the Tilden electors. The reasons given for this action by the returning board are that there were no poll-lists, no tally-sheets, or lists of voters, and that the returns were not properly signed. In the absence of any evidence contradicting this statement, the returns were so defective in form and execution that they were properly rejected. There was a failure on the part of the local officers to comply with the proper and necessary formalities of law by which these returns could be legally recognized.

No testimony was taken by the subcommittee in respect to the election in Franklin Parish.

One poll in this parish (No. 2) was thrown out by the returning board. The water

to comply with the proper and necessary formalities of law by which these returns could be legally recognized.

No testimony was taken by the subcommittee in respect to the election in Frank-lin Parish.

One poll in this parish (No. 2) was thrown out by the returning board. The vote of this poll was, for the Hayes electors, 25; for the Tilden electors, 74.

The supervisor of registration of this parish, W. H. McVey, on the 24th day of intimidation during the registration which did prevent a fair, free, and full election; and he stated facts within his own knowledge and facts communicated to him by resident voters, showing that there was a condition of terror in some portions of the parish. This sworn statement of the supervisor was supported by the evidence before the returning board of Henry White, Gabriel Hill, and Orange Gardner. Two of these witnesses testify that they were present at the Oakland poll No. 2, and that within their knowledge fifty or sixty colored men cast their votes for the republican ticket, whereas only twenty-eight were counted. Without discussing here any legal questions raised by the majority of the subcommittee, this evidence, uncontroverted, justified the returning board in throwing out the vote of this poll.

In Claiborne Parish one poll, (No. 3.) known as Hayesville, was thrown out by the returning board. The number of votes at this poll was 184, all of which were for the Tilden electors. It is objected by the majority of the committee that the alleged acts of violence and intimidation and corrupt influences were not stated or certified by any commissioner of the election of this polling-place. This is undoubtedly true, but it must also be borne in mind that all of the commissioners at this poll were democrate. It appears in this case that the supervisor arrived in New Orleans on the 34th of November, 1876, and then filed a protest, with the exparts affidavits of six legal voters, who swove that with violent threats of personni attacks, they were deterred from voting, and that with

subcommittee were in the parishes of Ouachita, Morehouse, and Richland. The number of votes excluded was as follows:

Parishes.	Hayes electors.	Tilden electors.	Difference.
Ouachita		1, 517 985 770	1, 469 630 613
Total difference.			2, 719

These parishes form one of the so-called "bull-dozed" districts of Louisiana. They are contiguous in territory, and similar in population and business pursuits, and all of them have a large preponderance of colored over white voters.

The principal work of your subcommittee was confined to the above-named three parishes. A large number of witnesses were examined at Monroe, the shiretown of Onachita. But this examination was exclusively the testimony offered in behalf of the Tilden electors, was under the auspices and guidance of the local democratic leaders surrounded solely by democratic influences, and in a locality where bitter partisanship had, as was alleged, committed the grossest crimes for the purpose of controlling the ballot-box. At the conclusion of this democratic testimony, the undersigned desired to continue the examination with evidence in behalf of the Hayes electors, and that the same be done at New Orleans, where the witnesses then were, and where the committee expected to return. This request was denied. In order that full justice may be done to all parties, and the circumstances fairly stated, a copy of the record of the subcommittee is here given.

### EXECUTIVE SESSION.

At the opening of executive session the chairman stated that the examination as to the parishes of Caldwell, Morehouse, Ouachita, Richland, and Concordia had been concluded, and that the committee as to these parishes was ready to hear testimony on behalf of the Hayes and Wheeler electors. Thereupon Hon. William W. Craro gave the following notice:

"Mr Craro gives notice to the subcommittee that he desires to examine witnesses who are now in New Orleans and who are expected to be there the coming week, and that he will make the request for the examination of witnesses after his return to New Orleans; that the proposed examination relates to the election in various parishes which this subcommittee has under consideration."

The Chairman made the inquiry of Mr. Crapo whether any witnesses he desired to call are at the city of Monroe, and whom he desired to examine while sitting here.

here.

In response thereto Mr. Crapo said that he had no witnesses at present in Monroc, the parties he desired to examine being in New Orleans in attendance under
subpensa from the Senate committee, where he believed they were likely to be
detained for a week.

The Charman responded to Mr. Crapo, and inquired whether he had had subpensa issued for any of these witnesses to appear before the subcommittee of the

House.

Mr. Crapo answered that none had been issued that he was aware of.

The CHAIRMAN then asked Mr. CRAPO whether he desired to come back to Monroe at the expiration of one week to take the testimony on behalf of the Hayes and Wheeler electors.

Wheeler electors.

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Mr. Crapo stated that he did not personally desire to return to Monroe, and he further believed that the public interest in this examination would be promoted by taking the testimony in New Orleans, and he inquired of the chairman and of Mr. Ross if they desired to return to Monroe at the expiration of the current week to finish taking the testimony.

Mr. Ross responded, "Yes, sir."

The Chairman said that he did not desire to return; that the loss of time of one week would delay the investigation and the publication of the testimony, and also the making of report of the subcommittee to the whole committee, and thereby prevent the whole committee from making its report to the House of Representatives in proper time for the consideration of the matters covered by the resolution under which the examination of such witnesses as may be presented on the Monday following, or, if not ready then, on Tuesday, the examination to proceed from day to day until finished; that the examination of all the witnesses on either side relating to the parishes of Richland, Morehouse, and Ouachita specially should proceed in the immediate neighborhood of those parishes convenient for all testimony for either side, to enable either party to produce readily and specially witnesses to explain or contradict testimony that may be given.

The Chairman further wished to notify Mr. Crapo officially, as he had done previously in private, that the subcommittee, would hold no session in New Orleans, and that the chair was confident that no other subcommittee sitting in New Orleans, and that the chair was confident that no other subcommittee sitting in New Orleans, and that the chair was confident that no other subcommittee sitting in New Orleans, and that the chair was confident that no other subcommittee sitting in New Orleans, and that the chair was confident that no other subcommittee sitting in New Orleans, and that the chair was retrieved to the committee would be ready to proceed with the examination of his witnesse

Orleans; and,
Mr. Ross concurring therein, the motion to adjourn to New Orleans was lost.
The CHAIRMAN (Mr. McMahon) then renewed the offer to take testimony at

Morroe.

Mr. Crapo declined to proceed.

On motion of Mr. Ross, the subcommittee then adjourned to meet in Washington City on the day of the assembling of the whole committee;

The vote standing yea, Ross; nay, Crapo; and there being a tie vote, the chairman voted yea, and the committee adjourned.

C. E. WHITNEY,

C. E. WHITNEY, Secretary Subcommitte

The testimony taken by this subcommittee closed Saturday night, December 30, 1876, and was followed by the executive session, as above stated. The next day the members of the committee left Monroe, but could not reach New Orleans until Wednesday. Upon the preceding day, Tucsday, a request was made by one

griber open the last the committee to the committee of the Homes, openen being present, that the committee to the committee of the Homes, openen being present, that the committee of the special being tricket, as to the election in the above and other parishes, might be had in New Orleans, no Tribs was decisively the vote of the majority members of the committee. This subcommittee having adjourned to meet at Washington, and the full present of the committee. This subcommittee having adjourned to meet at Washington, and the full present of the committee. This subcommittee stessimony was the control to the manner and place of taking the testimony. Notice was any personal discentively included in the exceeder of that right. My present and right to control the manner and place of taking the testimony. The report of the majority of this subcommittee stessimony. The report of the majority of this subcommittee states that the testimony and Wneeler electors, and to negative any presumption that the case as a researched by the democratic managers of those parishes might not be met with counter testimony. The report of the majority of this subcommittee states that the testimony that no statement in contradiction of this testimony was attainable, or that there was an entire acquiescence in the opinions and deelarations made to the committee by these democratic witnesses, such inference would be erromous. The testimony of violeace, threats, intimidation, and corrupt influences as shown in the evidence before the returning beart, printed in Senate executive document of the election in these parishes, must concede that a condition of affairs existed on calculated to secure "a fair, fron, and peaceable registration and election."

The evidence, even as taken by this subcommittee, disclosse that the democratic of the election in these parishes, must concede that a condition of affairs existed on calculated to secure "a fair, fron, and peaceable registration and election."

The evidence, even as taken by this subcommittee, discl

To the Hon. WILLIAM R. MORRISON,
Chairman of the House Special Committee on the Louisiana Election:
The undersigned, one of the subcommittee to investigate the matter of the Louisiana election, under the resolution of the House of Representatives, at New Orleans, not being able to agree to the report of the majority of the subcommittee, begs leave to submit this minority report.
That subcommittee sat in New Orleans for about five weeks and took testimony concerning the conduct of the election in the parish of Orleans, and extended their inquiries also as to the situation of affairs throughout certain disturbed portions of the State.
There was a vast amount of contradictory testimony presented before the subcommittee, and the positive and direct contradiction of witnesses rendered it im-

possible in many cases to come to an accurate conclusion as to circumstances and

possible in many cases to come to an accurate conclusion as to circumstances and events.

Their testimony was evidently very much warped by their political prejudices and personal feelings, making it difficult for the subcommittee to reach the truth. The war of the rebellion had made the white class of Louisian poor by the operations of the armies that overran the State, and by the emancipation of the slaves. The amendments to the Constitution gave to the former slaves equal civil and political rights with their former masters. They folt that the republican party had released them from bondage, and hence, when their political rights were assured, they exerted them in favor of those whom they had esteemed as benefactors.

The white race, on the other hand, felt but little sympathy with those whom they had formerly dealt in as chattels or commanded as serfs, and who were now using the elective franchise against them.

Out of these anta-onisms bitter feelings arose, which culminated in riots, murders, and massacres of colored people by the whites. In the months of September, October, and November, 1868, massacres occurred in the parishes of Saint Landry, Bossier, Caddo, Jefferson, Saint Bernard, and Saint Mary, in which one thousand colored persons are estimated to have been killed. These disturbances produced a general feel ng of intimitation and insecurity among the colored race, and had the effect of preventing great numbers of colored voters from attending the polis and exercising their political rights at the fall elections of that year, and to secure to them the opportanity of a fair and poaceable vote, and to obtain for all classes an honest election, the election law as substantially now existing was enacted.

It is proper to say that it is a law that gives greater and more stringent powers to its officers than can be found in most of the election laws of the other States; but it arose out of an abnormal condition of things that existed nowhere else in the Union.

It is proper to say that it is a law that gives greater anomals as extingual powers to the officers than can be found in most of the election laws of the other States, the officers of an abnormal condition of things that existed nowhere else in the University of the state of the state of the state of the things that existed nowhere else in the University of the state of the state

that they greatly outnumber you. Such meetings would convince them of their error."

The young and restless democracy were not slow at taking the hint, and mounted rifle clubs were formed in many parishes, especially in those which had given a large republican vote. It was shown by credible witnesses of high character that in the parishes of East and West Feliciana, Ouachita, and Morehouse there had arisen from these rifle clubs, which assumed to be mere regulators for the protection of property, many disturbances, whippings, hangings, shootings, and murders, which caused great intimidation among the colored voters, and deterred them from going to the poils. The testimony of Attorney General Hunt, of General John R. Brooke, of the United States Army, of Judge George P. Davis, and many others, is to the point and conclusive.

Judge Davis was a republican, and the democrats of his parish, not liking his political tenets, held a public meeting and requested him to resign. He understood this as a threat against his personal security and left the parish, as did G. T. Beauregard, another parish officer, who had a similar request served on him by the same meeting. They deemed their lives in danger if they remained.

The testimony laid before the Senate committee on this point of intimidation is very ample, and discloses a system of violence and terrorism practiced by democrats on colored republicans that shocks humanity.

The returning board, sworn to "carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election," gave in evidence before the full committee their reasons for the rejection of the votes of the excluded polls, which will be found in the testimony, and which rejection they claim was strictly according to law. It is true that the statements of some of the supervisors were made in New Orleans, and not in their parishes; but inasmuch as the duty of forwarding the consolidated returns to the returning board within twenty-four hours after the electio

lence and disturbance or intimidation as may have taken place, is merely directory, it would not be a valid objection to such a return that it was made after twenty-four hours, and its statement made in New Orleans. The reason given by some of the supervisors for taking their returns to New Orleans, and making their protests or statements of intimidation in their parishes, was that if they had done it there their lives would have been in jeopardy.

It was estimated by some of the witnesses that if the election had been a full, free, and peaceable election, such as the election law contemplates, there would have been a republican majority of from fifteen to twenty thousand, one of them placing it at a still higher figure.

A ceusus of the State was taken in 1875, from which it appeared that there were registered 207,622 voters, of whom 115,262 were colored and 92,354 were whites, making 22,914 majority of colored voters. How this calculation was arrived at will be found in the testimony of D. J. M. A. Jewett, who made it from the census returns.

returns.

To rebut this statement, a democratic statistician and computer, Professor S. E. Chaillé, A. B., A. M., M. D., professor in the medical department University of Louisiana, &c., &c., was called, who made an extended calculation, by which he endeavored to demonstrate that the census, as seen from a democratic stand-point, was exceedingly incorrect, especially as to the numerical excess of the negro population. Yet the census remains, and unless we believe that the census-takers were very reckless or very corrupt, it must still remain as the official statement of that

very reckless or very corrupt, it must still remain as the official statement of that excess.

It is claimed that the negro voters have changed extensively from the republican to the democratic side, and to prove that claim witnesses were produced to show that negroes attended democratic meetings and participated in the proceedings. On the other side, however, witnesses testified that they were told by some of that class of negroes that they had been forced to hide in the woods for personal safety, and that they attended such meetings for the sake of peace and quiet, and to avoid being maltreated, and not because they believed in the principles of the democratic party. They were democratic badges, but said privately that their hearts were still republican.

A few in New Orleans were produced, who stated that they had joined the democrats, but the detestation with which such were held was shown in the fact that they were ridiculed and abused by their former friends. They were produced to show that colored democrats were "bull-dozed," but their production only manifested this, that the great mass of the colored people were attached to the republican party and hated those who, in joining the democracy, they say, "had sold their race." The witnesses proved too much.

What few colored recruits were obtained for the democratic party were got by democratic leaders adroitly calling their attention to the fact that, in two or three instances, the treasurer of the school fund had embezzied the money of the school district; that the Freedman's Bank had failed; that taxes were high and times were hard.

It is nuferturetely too true that in two or three school districts the funds were

democratic leaders adroitly calling their attention to the fact that, in two or three instances, the treasurer of the school fund had embezzled the money of the school district; that the Freedman's Bank had failed; that taxes were high and times were hard.

It is unfortunately too true that in two or three school districts the funds were not amonged as they should have been, and that the proper school facilities were not afforded.

In Concordia Parish, one David Young had failed to account for all the money intrusted to his hands. An indictment was found against him for embezzlement, But that there were circumstances in his case that made it not so dark as democratic orators painted it is evidenced in this, that the district attorney entered a nolle prosequi in his case, Governor Kellogg having suggested that it might be done if the evidence before the attorney was not such as would warrant a conviction, and if the ends of justice would be promoted thereby.

Considerable prominence was given in the testimony to what was called "the sewing machine circular." The republican party believed that large numbers of persons, especially democrats, were fraudulently registered in New Orleans, and to ascertain the truth thereof they directed a circular concerning sewing machines to those persons whom they suspected of being fraudulently registered. They were sent through the mail, and if the persons to whom they were addressed were not to be found resident at the place of their registration where the circulars were addressed, the circulars were returned to the post-office, and thence to the republican committee, from which they emanated. They were then taken by two persons, as witnesses, to the place where the persons addressed were said to reside; and, if they were not found there, then they were delivered over to the proper officer, who issued his warrant for their arrest. By this means over 11,000 warrants were issued, and 3,362 colored and 7,738 whites were stricken from the registration books were pervented from bein

tion of the real and personal property in the State, except in the case of war or invasion.

Laws pledging a certain amount of taxes for the payment of principal and interest have been passed; the creditors of the State have agreed to exchange their old bonds and unbonded claims for new consolidated bonds at sixty cents on the dollar, so that when the progressing consolidation of the debt is completed, the whole debt of the State will not be over \$12,000,000, and cannot exceed \$15,000,000 before the year 1914.

When Kellogar's administration came into power, the State debt was \$24,000,000; but by the funding process, and some payments to a limited extent out of the revenues, it has been reduced to the figures above stated. State taxation was then twenty-one and a half mills on the dollar, with an equal or even greater amount in some parishes for parish purposes. In New Orleans the taxation then for all purposes was fifty-one and a half mills; this year it is twenty-nine and a half mills on the dollar, with an equal or even greater amount in State total expenditures for State purposes from 1809 to 1872, inclusive, were \$11,622,005, while the total expenditures during the four years of Kellogg's administration were \$7,412,180.

These figures show that Louisiana under republican rule is rapidly advancing to an increased prosperity.

Her soil in most of the parishes is good, her climate propitious, her productions varied and valuable, and all that is wanted to render her extremely wealthy is industry among her people and an orderly observance of law.

There is, however, too great a disposition in the white race to endeavor to ob-

tain a desired end through the intervention of force, rather than by peaceful means. The result is that courts and juries cannot enforce the law where men prefer to obtain a purpose or redress a wrong by their own personal action, rather than by the peaceful process of the law. So strong is the disposition to use the strong arm, whether to obtain a right or redress an injury, that the greater part of the white race of the State goes armed.

A signal instance of this disposition is shown in the fact, that while the committee was holding its sittings in New Orleans, what is called the democratic Nicholls government, that had no certificates of election from the returning efficers, refusing to abide by the decision of the returning board against them, with the armed hand took possession of the courts and onsted the legal occupants of the bench, seized the police stations plundered the State arsenal, and assumed possession of the offices of the government.

So long as questions of right to office are to be decided by the bayoner rather than by the ballot, society will be disturbed and business cannot prosper.

The returning board swore that it would make a true and correct return of the election, and although the evidence has shown some errors and omissions in its action, yet the undersigned believes that, after making the necessary corrections in the compilation, the majority of votes cast for presidential electors was cast for those of the republican party.

The law presupposes that officers sworn to do their duty have done it faithfully and to the best of their ability, and as the election law of Louisiana makes the returning board of that State the compilers and canvassers of its election returns without appeal, it becomes all good citizens to abide by the law, and if the law is defective in its terms or oppressive in its workings, it is within the power and province of the Legislature to repeal it and substitute a better one in its place; but while it remains on the statute-book, the peace, happiness, and pros

Views of the minority of the subcommittee composed of Messrs. New, Bebee, and Joyce to which was referred the investigation of the Louisiana election in the parishes of East and West Baton Rouge and East and West Feliciana, in that State.

Mr. Charles H. Joyce, the minority of the subcommittee to which was referred the investigation of the Louisiana election in the parishes of East and West Baton Rouge and East and West Feliciana, submits the following report:

The subcommittee of which I was a member has completed its labors, having taken the testimony of about three hundred witnesses in the parishes of East Baton Rouge and East and West Feliciana, and some six or seven in the city of New Orleans.

The subcommittee of which I was a member has completed its labors, having taken the testimony of about three hundred witnesses in the parishes of East Baton Rouge and East and West Feliciana, and some six or seven in the city of New Orleans.

The object and purpose of the investigation, as I understood it, was to ascertain and report whether the vote, in either or all of those three parishes, had been materially changed at the late election by the intimilating or corrupt indimencing of a control of the subcommittee; and, while I was convinced and perfectly satisfied, from the outset, that the interrogatories put to the witnesses were objectionably leading, each one clearly suggesting the answer, and not in any manner calculated to elicit the truth, yet I refrained from interposing any objections at the time, choosing rather to meet and discuss that question when the whole testimony, interrogatories, and answers, shall be submitted to the House. subcommittee tending to contradict the admixtriation and some other witnesses, which were used before the State returning board at New Orleans, and also tending to impeach the character of said affaints for truth and veracity, touching the matter of intimidation during the registration of voters, and also on the day of election. Most of this class of testimony comes from very bitter democratic partisians and politicians or from defeated and disappointed candidates for office, and can therefore, in my judgment, have very little weight, in the history to the contradicted and shown to have made statements or admissions in some respects inconsistent with the sworn affidavit they after they are contradicted and shown to have made statements or admissions in some respects inconsistent with the sworn affidavit they after they after ward made, how can that affect or in any manner neutralize the great mass of positive evidence coming from witnesses which the majority of the subcomittee put upon the stand, showing that there was violence and intimidation and that the statements in

netwo, hear, nor feel can only asy so. On questions of outrage, dead bodies, sears, wounds, invitalls, and erlpyle set contraining witnesses.

"When fifty men testify that they did notsee a certain thing, and fifty more of the season of the common sense. One man who saw and swears of the contraining witnesses.

"When fifty men testify that they did notsee a certain thing, and fifty more of the season of the common sense. One man who saw and swears but the contraining the co

reature who was in every way qualified to aid them in the execution of their murderous purpose.

Babe Matthews, a colored girl, about eighteen or nineteen years old, was a sisterin-law of John Gair, and was, at that time, October, 1875, living in the family of one Dr. Saunders, in the said parish of East Feliciana.

On a certain day, this Dr. Saunders pretended that he had been poisoned, and that Babe Matthews had committed the deed.

On this false and malicious statement of Dr. Saunders the poor colored girl was immediately taken into custody by some of the friends of Saunders, and, if rumor is true, and I have no doubt of it myself, submitted to a system of torture which at last compelled her—to save her own life—to sign a confession which the counsel for Saunders had prepared.

This protended confession was to the effect that she had some time before been to Baton Rouge, where John Gair then lived, and while there one John George had given her some poison and told her to poison Dr. Saunders, as he and Gair had fixed it all up. That after she had returned from Baton Rouge to Saunders's house she put the arsenic in the water-dipper and put the dipper in the water-pail, and Saunders swore that he drank out of it and was poisoned.

It will be noticed that no pretense is made, in this pretended confession or anywhere else, that the girl ever stated that Gair had spoken to her about the poison that he and Gair had fixed it up.

Now, upon this statement, forced from that poor, timid, ignorant, colored girl, under the most inhuman and cruel tortures, wishout one scintilla of evidence to

connect John Gair with the transaction, Deputy Sheriff Woodward, with a posse of six or seven men, is started for Baton Rouge to arrest Gair and bring him to Cliuton. Woodward and his posse go to Baton Rouge, arrest Gair, a telegram announces the time when they leave with their victim for Clinton, Dr. Saunders gives the word, and in a twinkling from seventy-five to one hundred armed and mounted desperadoes come together and proceed toward Baton Rouge to meet the sheriff and execute the orders of the league.

At a proper time and in a proper place they meet the sheriff and his posse, go through the farce of disarming them, and then take possession of their victum, while the miserable treachery and collusion of the sheriff is disclosed by two of the murderers, who ride up to him saying that they "report to him." They have now in their possession the man who has so bravely borne the standard they hate and marshaled the clans they despise, and with curses and execrations they bind him to a tree, and with hellish glee riddle bim with bullets, while he calls upon Godto have mercy upon his soul and protect his wife and little ones at home.

They have killed Gair, but democracy cannot breathe free until the last vestige of evidence against his murderers is blotted out, and the blood of Babe Matthews cries to day from the ground against Joseph A. Norwood and his bloodtirsty crew.

Now, in order to justify all this crime and wickedness, which they are compelled to admit, and avoid the conclusion that it was done for political purposes, Dr. Saunders cames before the committee and swears he was poisoned, and Dr. Langworthy swears that he subjected some of the water that Mrs. Saunders gave him to a chemical test, and discovered the presence of arsenic.

But on cross-examination it was shown that Dr. Langworthy was totally ignorant of every principle of chemistry under which he pretended to have made the test, and that he did not know where the water came from upon which he had tried his experiments.

worthy swears that he subjected some of the water that Mrs. Saunders gave him.

But on cross examination it was shown that Dr. Langworthy was totally ignorant of every principle of chemistry under which he pretended to have made the test, and that he did not know where the water came from upon which he had tried his experiments, could have informed the committee where the water came from which she gave to Dr. Langworthy, but for some reason unknown to me she was not called as a witness.

In addition to this, the evidence shows that Dr. Saunders uses intoxicating liquors to excess, and has for the past ten or fifteen years, and would be very likely.

I only desire to add that in my opinion the attempt to prove that Saunders was poisoned was a miserable failure, and leaves the impression at thousand times stronger upon the mind than before, that John Gair was foully murdered, not because he was a suspected of advising the poisoning of Dr. Saunders, but because he was a suspected of advising the poisoning of Dr. Saunders, but because he was a republican, and for no other reason.

The effect of it upon their minds was electric and tremendom.

The effect of it upon their minds was electric and tremendom.

The art he handwriting upon the wall comprehented and messood by them as to the dictates of democracy or share his fate.

That act, alone, of democratic violence, designed by one party and understood by the other, as it was, to higher and intimidate the colored people in those three parishes, would have been sufficient of itself, without the scores of others which when the colored people in those three parishes, would have been sufficient of itself, without the scores of others which when the color of the party is the store of the colored people in those three parishes, would have been sufficient of itself, without the scores of others which when the colored people in those three parishes, would have been sufficient to excite the most intense alarm and virtue them all not the democratic close, when the colored peop

from the bench, shot the sheriff, compelled the police-jurors to resign, and broke up the courts, giving as a pretended reason that it was because the judge had charged a petit jury in a manner not agreeable to the mob, but really because the judges and officers of the court were all republicans.

The majority of the committee must have been aware, when they arrived in New Orleans from Washington, that most of the witnesses which the republican members of the committee would desire to call were then in exile in that city from their homes in the parishes, and that their testimony could not be obtained unless it was taken there.

It must also have been well known to the majority of the committee that these republicans, both white and colored, who remained at their homes, would not dare to come before the committee in said parishes and testify, for fear of violence and bodily harm from white democrats who would be present and hear them testify; and they must also have known that the colored men who had been forced to join democratic clubs and vote the democratic ticket would not dare to testify in the presence of these men that they had done so through fear or in consequence of any intimidation.

republicans, both white and colored, who remained at their homes, would not dare to come before the committee in said parishes and testify, for fear of violence and bodily harm from white democrats who would be present and hear them testify; and their must also have known that the colored men who had been forced to join and their must also have known that the colored men who had been forced to join and their must also have known that they had done so through fear or in consequence of any intimidation.

Armed and guided by this knowledge and information, and in pursuance, as I have reason to believe, of a preconcerted plan, the first step was to divide the committee of the committee of the particles of the particles of the committee of the particles where the witnesses would be confronted and such and the particles and taken testimony at East Baton Ronge and West Feliciana, and closed the hearings at these points, under the belief, on my part, that I should be allowed to take testimony in relation to these particles in the city of New Orleans, the committee any one of the subcommittees pertaining to the parishes allotted to them respectively for investigation.

This arbitrary and, as I deem it, unjust act was accomplished by the majority of the committee against the earnest protest and votes of the republican members. I must be a subcommittee and the particles are also any one of the subcommittees are also any one of the majority of the subcommittee allowed in that parish, very few of whom appeared before the subcommittee, the others them being in New Orleans.

When the majority of the subcommittee adjourn from that place to New Orleans, the majority of the subcommittee allowed me to take the testimony at Clinton, I then franished, whose testimony I deemed important in this investigation, who resided in said parishes, but were then in New Orleans and did not dare to return to their homes. This motion was voted down by the majority of the subcommittee, but they permitted me to call any witness in New Orleans whon

CLINTON, LOUISIANA, January 4, 1877.

BENJAMIN H. ROGERS, captain Thirteenth United States Infantry, sworn by the

By Judge NEW:

By Judge New:

Question How long have you been stationed here?—Answer. Since the middle of July, last year, 1876—about the 18th of the month.

Q. State whether you were here continuously from the time you came here until after the election.—A. I was, continuously, with the exception of being absent at Baton Rouge for three days at two different times.

Q. State whether you were about over the parish any during the canvass.—A. I was riding about over the parish a great deal—mostly all over the parish.

Q. State whether the campaign was quiet in the parish or not.—A. I only know of two cases of violence that I thought was on account of politics.

Q. Will you state those !—A. One was the beating of a colored man for attending a republican meeting here.

I don't know his name. I didn't make any note, as I turned him immediately over to the civil authorities, and he made an affidavit before a justice of the peace.

Q. Do you know the names of any parties who were arrested !—A. Skipwith and others, living near Shady Grove. They came in and said to me, five or six, that they had slept in the woods all night; that they were threatened with a whipping because they came and they went ack. A day or two after one of them came back badly beaten over the head. They had been sitting up with a corps—one of the brithers. There was two or three in the affair. They drove them out of the house, and beat one very bad with a pistol. He came in and made a complaint, and I took him before the civil authorities, and he made affidavit and the parties were arrested.

Q. Was there any trial!—A. I don't know.

What there any trial!—A. I don't know.

Q. Was there are trial with a pistol. He came in and had a was about all the defense.

Q. Did you speak to him about it!—A. No, sir.

Q. Did you speak to him about it!—A. No, sir.

Q. You shat no conversation with him on the subject!—A. No, sir, not at all.

Q. What was the other case!—A. It was a colored man by the name of Zeke Glover; think that is his name; he was a badly whipped. Be stated to me that he was whipp

By Mr. JOYCE:

Q. You say you came here last July !—A. On the 18th or 19th of July, I forget which.
Q. Now will you state what you heard in regard to the colored people being intimidated in this parish, with reference to voting !—A. I heard before I came here that the darkies were completely cowed, and that they did not dare to hold any republican meetings, and that they were being forced to join democratic clubs and would be compelled to vote the democratic ticket whether they wished or not. That I heard before I came here.

Q. Where were you stationed before you came here !—A. East Baton Rouge Barracks, Louisiana.

Q. What was the first you heard or learned after you came in regard to the same matter !—A. The first I heard or learned was colored men coming to me and asking what they should do; that they were being forced to join democratic clubs. I asked them if they joined of their own free will, and they said they were forced. I asked how they were forced. They said they were told that if they did not join they would have to quit the country or be whipped. I suppose some twenty or thirty different colored men told me that. I asked them why they didn't make affidavits, and they said they were afraid. I never could get any colored man to make an affidavit except that one who was beat over the head with a pistol. That is the only one that I could ever get to make an affidavit.

Q. You may state whether that continued; whether these colored men continued to come to you with these complaints down to the time of the election.—A. Down to the very day. I staid at the barracks with my company, and there was at least thirty came to me that day. I will say thirty, as near as I can recollect. They came in squads, stating that they were afraid to vote; that they wanted to vote the republican ticket, and that they had been told that if they did they would have to leave the parish. I advised them to go home and not vote at all. They said that they were afraid to do that; they had been told that if they did they would have

whether you rode through the parish a good deal.—A. Pretty nearly over the whole.
Q. State whether, when you were out, you took pains to question colored men in regard to the voting.—A. I talked with them a great many times; talked with colored men from nearly all parts of the parish.
Q. What did you learn from them !—A. I learned from all of them that they felt as though they were obliged to vote the democratic ticket for their own safety. That was the general tenor of all their statements.
Q. State whether you have talked to them, and whether any of them have talked to you, since the election,—A. No, sir; there has been but very few that I have seen since the election, except a few who came to me and told me that they were obliged to sign an affidavit certifying that they voted the democratic ticket of their own free will. They said that if they had not signed it they would be turned out; parties rode up to their houses and put the affidavits before them, and they said that they signed it for fear of bodily harm.
Q. When you first came here, when did you first learn there were bodies of armed men riding through the parish intimidating colored people!—A. The only statement made to me about bodies of armed men was the night before the election.
Q. Did you hear anything about an organization called the regulators!—A. I have heard of them before I came here. I think they were disbanded shortly after I came. There was a piece in the paper to that effect; that they considered themselves disbanded, and any acts of violence hereafter should not be laid to the regulators, as they were disbanded. That was some time about the 1st of Angust, I think.
Q. These two cases of personal violence hat you have spoken of, after the investigation that you had made in regard to it, had you any doubt in your mind but what it arose from political motives on the part of the men who injured them?—A. I had very little doubt of it.
Q. From all that you have seen and learned in regard to the colored people of this parish, what do you say

Q. That was before you came !-A. Yes, sir.

JOHN A. REILEY, called by Mr. JOYCE, sworn by the chairman.

By Mr. Joyce:

Question. What is your age ?—Answer I am sixty years of age.

Q. State whether you are a minister of the gospel.—A. I am, sir; a regular minister of the gospel, connected with the Presbyterian Church of the Presbytery of New Jersey. I have been performing voluntary missionary work in this State for the last ten years.

Q. Where do you reside ?—A. I reside ten miles from here.

Q. In this parish ?—A. Yes, sir.

Q. Where did you come from ?—A. I came from Blairstown, N. J.

Q. You may state, if you please, whether you know of your own knowledge, or whether it has come to you by report from others, any facts in regard to the intimidation of colored people in regard to their voting. State all you know about it.—A. Of my own knowledge directly, I have not been present when any persons have been intimidated. Persons have come to me and have told me that threats had been made to them. Men on my place have come and said that they felt masfe in their houses, and that their houses were entered into by men, and they wanted to move inside my yard for protection.

Q. How many colored men did you usually have on your place ?—A. Men, properly, there were perhaps twenty. About a little rising of twenty men.

Q. Were these the colored men that came to you and made these reports ?—A. Yes, sir.

O. A cainst whom were the complaints made ?—A. Well, unknown parties.

Q. Were these the colored men that came to you and made these reports?—A. Yes, sir.
Q. Against whom were the complaints made?—A. Well, unknown parties.
Q. Against whom were the complaints made?—A. Well, unknown parties.
Q. State whether they said what the object of the visits of these men was to their houses?—A. They did not state. This one man that came as a representative character—that is, he spoke for the rest, and I would not accede to his proposition—he said this: "There is hardly a man could sleep on this place at night." He went away. I don't know whether I answered your question.
Q. My question was, what object these men had in visiting the houses of these colored men in the night-time. Did they make any statement to you as to the object!—A. No, sir, no statement was made. It was presumed. When I understood the case, on one particular time, there was a political meeting—a democratio meeting—held a short distance from this man's house; and two of this man's sonsin-law were there. They had been stopping in the neighborhood. They were stopping at this man's house; they were stopping with this man, and there was a raid made on the house, and one of these men was shot, and the other! was told; I know one was shot, because I saw his wound; he was in my yard, and the other, they had a rope around him; he got away.

Q. That was the night of that political meeting?—A. The same night of the meeting.

O. After the meeting !—A. Yes sin, I was that however their land.

Q. That was the night of that political meeting?—A. The same night of the meeting.

Q. After the meeting?—A. Yes, sir. I must state, however, that I don't think those connected directly with the meeting, (that is not my impression,) that they had anything to do with this matter at all, but they came the same night. Perhaps those parties had been at the meeting; but there are two classes of persons that attend such places, men who make speeches; and, so far as I have heard, their speeches have not been of an intimidating character, so far as I have heard, their speeches have not been of an intimidating character, so far as I have heard them; I heard them here, however, only, but I have not heard of any speeches reported of that character. But there are on the outside persons who come after and do this work; at least that was the case that night. I don't know anybody who knew who they were.

Q. When did this happen that you have related, about this man being shot!—A. That was two or three weeks before the election.

Q. During the last canvass?—A. Yes, sir.

Q. Do you remember where the meeting was held?—A. Yes, sir.

Q. Now, you may state whether any other complaints were made to you by colored men with regard to being intimidated.—A. One man came to me and told me that he was going to leave the place. I asked him why; and he said, "I think more of my life than I do of my crop. I want you to gather my crop, sell it, and keep an account. I will be back in two or three months." He said that, "My life is threatened." I tried to persuade him that it was not so. He said, "You may think so; but don't you know this man out here was killed, and this man out here was killed? Don't you know how they took me out of my bed and whipped me last winter? No; I am going to leave." He did leave. He remained away two months. He owned his own team, and he made large crops.

Q. When was it that those men you have mentioned came to you and made these complaints? About what time was it?—A. A couple of weeks before the electior Q. You m

Q. Did they volunteer to give those statements to you?—A. One did volunteer to tell me that he was waited upon by two men, and he was told unless he voted the democratic ticket he certaily would be punished, and one of them told him he was captain himself of the bull-dozers, and that he would see to it after the election.

Q. When did he say these men stated that to him?—A. A week or two before the election; a short time before.

Q. Do you think of any other instances?—A. Well, those persons have come to me off the place. There is a negro settlement about three miles below me, and most of them went and settled there from my place; bought lands and teams that they had made on my place, and goods. They settled there. That settlement was very much disturbed. They were working for nobody, but were supposed to be proprietors. They came to me one night very much excited, but that was at a time when I felt there was no cause whatever for it. I told them there was no cause; that "Nobody in the world will disturb you now; you need not think of such a thing; go home and sleep quietly in your beds; the election is over, and there are no persons going to interfere with you." They went home. They had proposed—they asked me if they could not come up on my place. This was after the election. Before the election I know only what they told me. They had not slept in their beds for weeks; even women told me that they had to lay between logs out from their houses. Now, they were frightened; that they could not say as to who was responsible for it; that I don't know.

Q. What did they say they were frightened about? What did they say frightened them !—A. I can only state what I have heard. They were told unless they voted the democratic ticket they would have to leave their homes. They were told so repeatedly.

O. State whether that was a short time before the election —A. No. sir. Not.

encd them [—A. I can only state what I have heard. They were told unless they voted the democratic ticket they would have to leave their homes. They were told so repeatedly.

Q. State whether that was a short time before the election.—A. No, sir. Not long before the election, one of those men living down there, who left on that account, said his life was in danger, and left the country, and was gone fully two months, and his family did not hear from him; he never wrote. They wrote and never received any answer from him. Their letters came usually into my box. I inquired over and over again for the letters, but never saw any. This man left and went into Bolivar County, Mississippi. He came back about two weeks ago. Now, I don't know whether polities had any connection with it. I heard his name in connection with it, because the old gentleman who sold them the land, only two or three days before his death told him, "Isaac, I guess you had better vote the democratic ticket."

Q. This old gentleman told that colored man so !—A. Yes, sir; and then Isaac said, "Need I vote at all!" And Mr. Lee (this old gentleman) said, "No, you need not vote at all." Some one present said, "He shall vote, or leave here."

Q. This man said so to Isaac !—A. Yes, sir.

Q. And Isaac left !—A. Yes, sir; he was the one who left. He was gone a couple of months. He just returned within the last two or three weeks.

Q. If there are any other instances which have come to your knowledge—people that have been intimidated—you may state.—A. Well, one man told me he had voted the democratic ticket, not because he wanted to, but because he was compelled to.

O. State how was that.—A. Said he. "I and all the other colored people on the

Q. State how was that.—A. Said he, "I and all the other colored people on the place of Mrs. Brown, we always voted the republican ticket. They held meetings, but we did not go to those meetings at all. None of us went to any of the meetings, and the night before the election men came and said, 'You know to morrow is election, and you are expected to be there,' and all of us said that we felt we ought to go, and we would have to go; and, perhaps, we thought if we did not vote we could not stay here, because they had told us so." The men were informed that they had to vote, or they could not live on the place. His language was, "Unless you go and vote the democratic ticket you must leave this place." I am positive now this was the night before the election. They said, "We all went and voted the democratic ticket."

Q. You may state whether you said anything to him in record to what he takes the takes the color.

democratic ticket."

Q. You may state whether you said anything to him in regard to what he told you.—A. I asked him if he knew who these persons were, and he said they were strangers to him. He said, "You are Mr. Reiley; that's the reason I speak to you." I said, "I understand why you tell me the story which you would not tell a democrat; you would not tell a democrat that story, would you?" Well, he stopped a little and he said, "Mr. Hardisty asked me why I voted the democratic ticket. I did not want to tell him as I told you, that is so; I did not want to tell him as I told you, but I told him I voted because the rest did."

Q. Now, sir, you may state when you had this conversation with that colored man.—A. It was this morning.

Q. This very morning!—A. Yes, sir; I asked him his name, and he said, Fizor Reiley.

Q. Now, sir, you may state when you had this conversation with that colored man.—A. It was this morning.
Q. This very morning!—A. Yes, sir; I asked him his name, and he said, Fizor Reiley.
Q. Did he tell you where he lived!—A. Yes, sir; Mrs. Brown's place.
Q. Well, sir, are there any other instances that occur to your mind, Mr. Reiley, of where you have heard complaints from these people!—A. Well, I met a man with an ox-team about three weeks ago; he had formerly lived on my place. I had not seen him for years, and at first I did not know him. I think he lived in the eighth ward. He related to me the old story of being compelled to vote the democratic ticket. That is about all. He spoke about their raids, and he likened it unto a sage-grass field on fire. Perhaps he colored the story a little; I don't know; that is the story he told me.
Q. Any other one that you know of?—A. Simply in regard to the last canvass I suppose you want to obtain testimony?
Q. Yes, sir.—A. There was one man on my place that voted. I never asked him why he voted. I never asked him one question. I saw him afterward and I was told he voted. The rest never told me one word before or after the election. Only one said, "We all knew that if you wanted us to vote you would have told us so. But you did not say anything to us. There has been so much disturbance, so we staid at home." There was not but one of the hands that was at the election at all; that was near the polls. I was commissioner at this place. I saw some negroes, two of them, as I went to dinner to Mansker's, as I was going right across, who stated to me, "Mr. Reiley"—I was recording the names of voters; they told me—"you see we voted the democratic ticket, but we want to tell you weld not want to do it of our own free will."
Q. Were these colored men?—A. Yes, sir; colored men. That is what they told me voluntarily. The first thing they said to me as to their way of voting—indeed it looked like an apology. I, of course, felt no interest in the questions; I voted my-self; the paris

republican party.
Q. You may state now, Mr. Reiley, unless you think of some instances where you have had talk with colored people where they have complained to you—I will ask you another question.—A. Well, I don't know of any others occurring at this

time.

Q. You may state how it has been in your ward and the wards of this parish generally in the previous elections of 1872 and 1874 in regard to forming republican clubs and holding republican meetings?—A. There were republican clubs in the different wards, but not being a politician myself, and taking no stock in them, I never encourage republican clubs in my place; in fact, discourage it. I did not have any taste in that direction. They had clubs at the upper end of the ward. I may say of the men on my place one voted, but scarcely ever attended political meetings. They had a majority in each ward of the parish in 1872 and 1874. There were republican clubs organized and republican meetings held through this year.

Q. How was it in this last canvass? To you know whether there was a republican club in the whole parish or not?—A. I don't think so.

Q. Do you know of any republican meetings being held; if so, how many?—A.

I never heard but once. One was held when Mr. Packard was here, the only one I have heard of until I heard of one in the court-house here that had been held. I heard of it day before yesterday, but I spoke to a number in regard to them, and they said they never heard of that many at all.

Q. The only one you heard of, in fact, was the one held here when Mr. Packard spoke?—A. Yes, sir.

Q. Did you attend very many?—A. Yes, sir.

Q. What was the spirit manifested by the outside crowd that day where the speaking was going on?—A. It was not pleasant at all.

Q. Please describe it.—A. Mr. Packard was interrupted with questions. He was asked questions. He begged of them to let him proceed. He treated the matter with a great deal of pleasantry, and stated, "If you do not let me speak I will make a failure; and, my friends, Nicholls would not like it if he was speaking here;" and with such things as that would pass it off. The interruption was repeated by some parties on the outside, with kind of jeers, and such words as "Will you let me ask you a question?" And so on.

Q. State whether any spirit was manifested, in language or otherwise, by any of these outsiders.—A. Well, I could see the parties who were on the stand felt scary, and they were glad to get away. They intenled to go to Jackson that night but the effect of themeeting here put that entirely out of the question—out of their line.

Q. The demonstration was such that they were alarmed for their personal safety?—A. Yes, sir.

Q. Mr. Reiley, you may state, from what you know, and all you know, all you know or heard about these killings or whippings that took place?—A. I only heard of them. There were whippings; perhaps for different causes. Some were really whipped for stealing; one man—to be sure it is a little over the line in Baton Rouge; I sold him, myself, a lot of fifty acres. I gave him the contract, the article of agreement, to go and occupy it. He got permission from me to occupy the house and to build some additions to it. He took possession of it; w

he came to buy that land he stated that he had half a dozen to buy the rest of the tract.

Q. Did you know of any other case? Did you ever hear of any other case of killing or whipping in this parish? I mean within a year or a year and a half past.—Well, within a year and a half, perhaps, yes. There was the killing of John Gair and a colored girl, his sister-in-law. I know nothing of the facts; I happened to be in the road next morning and heard it.

Q. Do you know whether you heard of any whippings?—A. Well, yes, I have heard of several being whipped, but for what causes I have not heard; I don't know. I know at this time, so far as I have heard, in my immediate vicinity I have not heard of any whippings that had any political bearing or consequences. It was threats simply. I did not hear of any whipping; no, I will recall that. On a plantation two miles below, the plantation of my son-in-law, there came a party one night and took one of his men out of bed, whipped him very severely, and told him if he wished to remain to notify certain men on my place, such and such men on that neighbor's place, that unless they all left they would be served in the same manner. They gave them their choice, to leave or be whipped.

Q. What was that for? Was it stated?—A. It was not stated.

Q. He was to notify certain men on your plantation?—A. Yes, sir; and men on different plantations, that they must all clear out or be whipped.

Q. Now, do you know of any theory of your own why there were not republican clubs organized or meetings held in this parish during the last campaign?—A. I have a theory.

Q. Let us hear what it is.—A. My theory is that there was manifested a determination, a desperate determination, on the part of the democratic party to carry this election—to carry it anyhow. That sentiment was prominent from week to week—that the republicans had had their time; that their time was up; now that they were driven out of the parish, that there should be no more of the same kind here again.

Q. In the campaign the same

week—that the republicans had had their time; that their time was up; now that they were driven out of the parish, that there should be no more of the same kind here again.

Q. In the campaign the same sentiment was spoken!—A. Yes, sir. I do not believe anybody would have been safe on that account to have canvassed the State against the democrats. I asked a neighbor—a very strong democrat—I asked him if I had been a politician and started out wi'h A. B. C. and D. if we could have got through without sacrifice of life. He said he did not believe we could. I don't think it was possible. On election-day, however, I must say, I never saw so quiet and peaceable an election. I could have voted five hundred republican tickets if the tickets had been here. But there was no hope of carrying on a canvass, as it was believed it was not safe. It was not because the republican party did not want to carry the election, but because they saw no hope under the circumstances of accomplishing anything; the pressure was too great.

Q. So that you think it was not even safe for any man to have gone about canvassing for the republican party in this parish or to organize republican clubs!—A. I am very positive of that in my mind that it could not have been safe.

Q. You may state whether a great many leading republicans have been driven out of this parish since this last canvass.—A. Yes, sir; they were all colored republican office-holders.

Q. Owing to this last canvass?—A. This last canvass only commenced in the middle of last summer. I don't know that they were driven out since then. They had begun in the summer before with the recorder and sheriff and a member of the Legislature, an ex-member of the Legislature not in office; they had all gone, and those left of the republicans in office I think resigned. I would like to be posted in regard to them. I know some of the members of the police juty resigned. Why they resigned I would like somebody to tell me. I know one that did. I saw his resignation published in the Patriot-Democra

pleased.

Q. You may state, if you please, in regard to the several republicans voting for democrats at the elections prior to the last.—A. I don't know that I can remember; but there was a gentleman that was voted for for member of the assembly, one for sheriff, and parish judge, who were democrats, were elected in this parish when this parish was largely republican. There has been a great deal said about that.

Q. I wish you would explain, Mr. Reiley, if you please, if I understand the state of the case, what was this attempt which was made, and you say was successful—A. There was, years before, an attempt to make a compromise, to have compromise between the parties, it being stated that the republicans had a majority, yet the democrats, it was felt, were entitled to some representation in the parish, and the proposition was made this last year, the election of 1874, that the republicans should concede to them the parish judge. They said, "Let us have the parish judge."

should concede to them the parish Jacgo.

Q. What was his name, if you recollect?—A. Lyons, and a member of the assembly—Legislature.

Q. What was his name?—A. William H. Pipes; both very excellent men. They were placed on the republican ticket by the previous arrangement made. That is my understanding of the thing. I voted one of those tickets. I was voting for Judge Lyons and my friend Pipes. There was a gentleman nominated for sheriff; I cannot recall his name.

Q. Captain Fuqua, that was elected sheriff. Do you know anything about that ?—
A. He was a democrat; said to be.
Q. Elected sheriff?—A. Yes, sir; I don't know when; my memory don't serve me.
Q. When did you first begin to hear of any secret armed organization in this parish? State if you remember.—A. Well, the first, I think, that I heard of it was in the summer of 1875. I think so.
Q. Did you ever hear anything about what they called them, the White Leagne or the Regulators!—A. I don't know really by what name they went, whether White Leagne or what. I don't know what they called themselves. We generally called them Regulators.
Q. Did you ever hear anything of that organization in connection with political matters, in connection with intimidation of voters, either in a body or in squads?—A. No, sir; I don't think that they were so when they operated at all. I don't think that they were so when they operated at all. I don't think that that were so when they operated at all. I don't think that not midation, so far as it was practiced at all, was done publicly, either by reading or holding political meetings. I don't think that it was done in that way; at least I have no knowledge of it. I think what was done was done at home. Thus, if I had wanted to intimidate, I could easily have intimidated them, my men, to vote. I believe it was done at home generally.
Q. That was the way it was mainly done?—A. I think the.
Q. What is your opinion as to whether these men came here, and as to whether these men who would come here and testify—do you think that they have been intimidated or affected contrary to their will !—A. I think they are to a great extent under intimidation. I have no doubt they are, because they are easily frightened anyway, just as that man I met this morning!—A. Yes, sir.
Q. Is it not your opinion that at the present time the colored people of this State, as far as you have any acquaintance, are completely owed and terrorized by white politicians !—A. Well, sir, they are politically.

New Orleans, Janu

NEW ORLEANS, January 11, 1877.

JAMES DE GREY sworn by the chairman.

By Mr. JOYCE:

By Mr. Joyce:

Question. State your age and where you reside.—Answer. My age is thirty-six. I reside in Clinton, East Feliciana, La.

Q. You may state whether you know of your own personal knowledge, or whether you heard by report or information, as to any acts of intimidation or violence against colored people and colored voters in East Feliciana to interfere with their right of suffrage during the last campaign in that parish. Give instances and names as far as you can.—A. To commence back I would have to go back over one year, where an instance occurred that, in my opinion, brought forth intimidation in that parish. There was the case of John Gair, Robert Ray, (member of the Legislature at the time.) T. M. J. Clark, (recorder of the parish) and one or two others; there was Sam Chapman, that had to leave the parish on account of their safety. That occurred in July, 1875. Perhaps it would be better for me to go back a few months further, and state how these things came about. At one time there was a report in a certain neighborhood in the parish that is called Possum Corner of an alleged uprising of the colored people. This uprising, as I know and as I believe, was for the protection of one man who was president of a club.

Q. What club!—A. Of a republican club in that section of the parish, the fourth ward. He became alarmed from reports that he had heard of a threatened whipping that he was to receive—five hundred lashes. His name was Lewis Jones. When this became known among his friends, several of them flocked to him to prevent thus occurrence. The white people in the neighborhood became very much alarmed, and especially women and children, &c., and were very much alarmed; and I have every reason to believe that a great many of the white nem were alarmed. The matter was adjusted and no blood shed. Lewis Jones—at the May term of court of 1876 there was a true bill found by the grand Jury. This occurred in 1875, this uprising. In 1876, at the May term of court, five six, perhaps, would follow them up, and th

By Judge NEW:

What occurred on July 23, 1876?—A. This statement and kind of street broil. The statement by Ray?—A. Yes, sir. Let me see whether it was 1875 or It is 1875; this was in 1875.

By Mr. JOYCE:

By Mr. Joyce:

Q. This matter before the term of court was made in 1875 instead of 1876?—A. Yes, sir. I was in the town of Jackson. I was tax-collector of the parish, and was in town that day assessing the town of Jackson. When I came home that night, after dark, there was a great deal of excitement both among the white people and colored people, and it was told me what was said and what had been done during the day. There was a committee that waited on Ray and asked him if he had made such a statement. Ray denied that he had made such a statement. It was reported by these two men who had said that they had overheard Ray make this statement, that one of the parties said that he would go to Ray's house and bring him out to make a statement on a stand in the court-house. This party went as far as Ray's gate, so I was told, to call Ray out. Ray would not come out of his house. There were several parties, a great many parties on the street—white men—and Ray feared to come out. This was on Saturday night, probably about nine o'clock. Ray was hiding in another house from his own. He had to leave his house. Ho was afraid and I went to him and told him there was no trouble; everything had quieted down, and he could go home with safety. During that evening I saw probably three or four or five parties walking around with guns in town, but didn't pay any particular attention to it. Ray believed that his house was guarded, was surrounded so that he could not get out. This was Saturday night, as I have stated. Sunday morning or Sunday before noon I went down town and went into Ray's house. This matter was discussed in his house, and so on, and everything seemed to be at peace, no trouble or difficulty, no strangers in town or anything of that kind; but about twelve o'clock I saw parties walking around through town with

their guns and saw men on horseback leaving town and going out. There was one or two colored men told me to keep off the streets. From one square I saw a colored man, Henry Smith, the sheriff at the time. He motioned to me with his hand to keep back. I didn't know what he meant by it, but I went home. I live on the outskirts of the town. I went home between three and four o'clock in the evening, probably four o'clock in the evening. I was informed that the white people were coming from all directions in the parish to the town.

By Judge NEW:

probably four o'clock in the evening. I was informed that the white people were coming from all directions in the parish to the town.

By Judge New:

Q. This was on Sunday evening!—A. Yes, sir. It was reported that the colored men were marching on the town to burn the town down and to kill, &c. It appears from a statement made by a white man living a mile and a half from the town of Clinton, that he had seen on his place, or near his place, fifteen or sixteen men under arms—colored men. They were lying down or sitting down with their arms there. They were questioned what they were there for and they would not make any statement whatever. This man came to town and reported or caused this alarm. Sunday night, I don't know what time, Gair and Ray and Clark left. The next morning I was told that they had left the town during the night. I came to town early on Monday morning. I say early—eight o'clock—after going to my breakfast, and the streets were thronged. From all directions there were armed men riding on horseback and some on foot, all over town. I stopped where there was a small group. I was not so long there before I heard my name mentioned. My name was mentioned in connection with this uprising, and I knew of this thing, &c. It was not long before I became engaged in this conversation, and I denied this thing. I didn't know of any uprising; had no knowledge of any uprising. I was charged with being seen talking with John Gair, and talking with Henry Smith, the sheriff, and holding private conversations, &c., and that I was have known of this uprising. Colonel D. C. Hardie was the spokesman of this crowd. He told me that they believed, and I took from that that the people believed that I was instrumental in bringing this thing about; that I knew that the colored people were uprising to burn the town of Clinton, and kill, &c.; and that I was charged with knowing these facts, &c.; and that if there was any difficulty between the colored people and white people, that I wand the colored people were uprising to b

Q. What I want you to do is just simply to state whether you know, of your own knowledge, or whether you heard by report, of any cases of intimidation of white people against colored people of that parish in regard to their voting. State it just as brief as you can.—A. I am going to say this: When I came to New Orleans and recommended a certain white man, a prominent leader of that parish—when I returned to the parish I was not in the town of Clinton one hour when a committee waited on me and asked me what I had gone to New Orleans for and for what purpose, and when I had stated my purpose one gentleman told me that I must not have anything to do with that or my life would not be worth anything. That was on a certain day.

pose, and when I had stated my purpose one gentleman told me that I must not have anything to do with that or my life would not be worth anything. That was on a certain day.

Q. Who was the man ?—A. D. C. Hardie. Probably it was the next day. I won't sav positively whether it was the second day or third day afterward. Colonel Hardie and Dr. Hall were a committee that waited on me again and told me most distinctly and positively that I must not have anything to do with politics. I must not make any recommendation, either radical or democratic. I must take no part whatever, or if I did my life would not be worth the snap of his finger. I wish to say this: They represented themselves to me as coming to me as my friends in this matter.

Q. Was there any other attempt to frighten yon?—A. It ran along for a week or two. They said in connection with that, they told me, "You have been making officers and unmaking them for the last ten years, and you must stop it."

Q. Who told you that !—A. D. C. Hardie.

Q. Were there any other threats used toward you?—A. This matter ran along for a week or so, and there was a committee come.

Q. Another committee!—A. One of the gentlemen, Colonel Hardie—he was one of the committee to make—they came to me to make a recommendation for sheriff, and there was three names submitted to me to take my choice out of the three names to recommend for sheriff. I recommended T. L. East, a good man. I telegraphed that night to Governor Kellogg for him to be appointed sheriff. He was not appointed sheriff. The matter ran along a few days. I will say that Captain Joseph A. Norwood was recommended.

Q. What I want you to state is if there have been any threats used against you by anybody except what you have mentioned.—A. I mention that and other threats that I have heard since by other parties.

Q. State them.—A. When I stated there was resolutions read—when the chairman of the meeting read "responsible for all future troubles"—I heard afterward that a gentleman made the remark that the gentleman wh

body would have said, him " Q. What do you know about colored men being intimidated in that parish? State the instances that you know...A. I know several men who have been whipped—one man by the name of Charles Wilson who was whipped, and a man

by the name of Will Chaney; he was hung nearly dead, and let down again. A man by the name of Monroe Meyers.

Q. What was done to Monroe Meyers?—A. He was whipped. It was so reported that he was whipped; that they took him out and threatened to hang him, &c. Dangerfield Sloan was whipped. A man by the name of Lawson, on Miss Lou Lane's place—her carriage-driver. There were two men whipped on Capt. Joe Norwood's place; I don't know their names. There was some man on Major Mundy's place. There was a man whipped on Mrs. Silliman's place.

Q. Do you think of any other? Were these men colored men?—A. Yes, sir; all of them.

man whipped on Mrs. Silliman's place.

Q. Do you think of any other? Were these men colored men?—A. Yes, sir; all of them.

Q. Have you continued to reside in Clinton since the election?—A. Yes, sir with the exception of the time I have been in New Orleans.

Q. What do you know about any republican tickets being sent into the parish of East Feliciana?—A. I don't know whether there was any sent there or not.

Q. Did you receive any?—A. No, sir; I did not.

By Mr. BEEBE:

- Q. What is your occupation?—A. Well, sir, for the past year I have been deputy terk in the tax-collector's office. I have a small plantation in connection with
- that.
  Q. How many acres is your plantation?—A. Three hundred and forty-five acres.
  Q. How long have you lived in the parish of East Feliciana?—A. I went to that parish in the year of 1886.
  Q. You have resided there since then?—A. Yes, sir.
  Q. What was Jones indicted for ?—A. I cannot tell you what heading he was brought under. I cannot say what it was.
  Q. Who was the man you recommended for sheriff in that parish?—A. T. L.

Q. Who was the man you recommended for sheriff in that parish?—A. T. L. East.
Q. Is he the only democrat you over recommended for sheriff?—A. No, sir; I recommended ademocrat after that—Dr. J. T. Monoham, the present sheriff of that parish, or was up to the time of the election.
Q. Was it in consequence of recommending East and Monoham that Colonel Hardie waited on you?—A. No, sir; it was in consequence of the recommendation of E. H. Lipperman.
Q. Did you recommend Lipperman for sheriff?—A. I did.
Q. When?—A. That was in 1875.
Q. A white man or a black man?—A. A white man.
Q. Where did he live?—A. In the first ward; about six miles from Port Hudsen. He owned a large plantation there.
Q. Were you present at that meeting when those resolutions were passed?—A. No, sir; I was taken out of the crowd and taken away.
Q. You were not present?—A. No, sir.
Q. How many were present at that meeting?—A. I sappose on that day there was three or four hundred men.
Q. You did not hear Stone say what you reported that he said?—A. No, sir; I was told it by outside parties.
Q. Do you know the Rev. Mr. Riley, of that parish?—A. I do.
Q. Did you ever see or hear of any colored men being whipped on his place?—A. Yes, sir; I know of one man being whipped on his place and one shot.
By Mr. Joyce: By Mr. JOYCE:

Q. Do you know who by ?-A. No, sir, I do not.

By Mr. BEBEE:

Q. These cases of whipping and lawlessness you state from hearsay !-- A. Yes, from hearsay.

By Judge NEW:

Q. You were back in Feliciana during the canvass ?—A. I was there during the whole time.

whole time.

Q. And up to the time of election ?—A. Yes, sir; and voted at the election.

Q. You were not mistreated any way yourself during the canvass or on the day of election ?—A. No, sir; not on the day of election.

Q. Have you been there since the election ?—A. Yes, sir.

Q. You met with Colonel Hardie and Stone and other critizens ?—A. Stone and I don't speak. I met Colonel Hardie. He came in the office and transacted business in the office.

Q. You were not molested or mistreated in any way when you went back ?—A. I have only been here eight or nine days. I left the parish to come down here.

Q. I want to know whether you have been back to the parish since the election ?

—A. I didn't leave until seven or eight days ago; I came to New Orleans and went back. I came down here to make a return.

Q. Have you always voted the republican ticket ?—A. Always, sir.

By Mr. JOYCE:

By Mr. JOYCE:

Q. There was no republican club in that parish during this last canvass !—A. No sir; we could not organize a republican club.

Q. Was there more than one republican meeting held there !—A. There was only one republican meeting held there, and that was when Mr. Packard and party were up there. That was in the town of Clinton.

Q. State whether it would have been safe for a man to have gone through that parish organizing republican clubs and holding republican meetings, in your opinion.—A. No, sir; I don't think it would have been safe.

Q. Do you know of any effort having been made to organize a club !—A. In only one inst enc.

Q. Where was that !—A. There was a colored man by the name of Alonzo Brooks. He said that he was going to organize, but for some reason he did not.

Q. Do you know of any other effort being made !—A. No, sir.

Q. Do you know of Alonzo Brooks having got together any of his republican friends with a view to the organization of a club !—A. There was at one meeting, where Judge Lyons, I think, was, and Mr. McVey. They were on the democratic side, and Alonzo Brooks came up; I think it was in the town of Clinton. He said he would try to organize are publican club, but it never came off.

Q. You don't know that he made an effort to organize it !—A. He told me that he didn't dare to do it.

Q. You say that he told you that he didn't dare to do it !—A. Yes, sir.

By Mr. Beebe:

By Mr. BEEBE :

Q. Did you ever hear that any republican tickets were sent to that parish?—A. No. sir; I wish to say this, that there were certain statements made by Major Wedge in Clinton. It is not my name, but I took it for my name; it was James Grabam, as stated in the dispatch. I think it must have been intended for me. He said that I told him that it was a part of the programme to not have republican tickets. I don't think at any time I ever told Major Wedge any such thing at all.

By Judge NEW:

Q. Did you know before the election there would be no republican tickets in that parish?—A. No, sir; I didn't know. I was down herein NewOrleans three weeks before the election, and I know that Kellogg and Packard urged me to do all I could, and, if nothing more, to carry one box. I told them that there could not be anything done in that parish.

Q. You made no efforts yourself to have republican tickets in your parish !—A. No, sir; I didn't try to do it. I told Major Wedge in one conversation, "I even said we will put you on as parish jndge and give you the State senator." He said that it could not be done; he would not accept the position, and could not run on the republican ticket even if he was put on as parish judge. In the conversation I told him, "You have carried this thing too far, and you won't succeed in it as well as you think; you have carried this bull-dozing arrangement too far."

Q. Did you mean by that to say that the democratic vote of the parish would be thrown out!—A. No, sir.

Q. What did you mean !—A. I meant that they would not give the republicans any chance to put any republican tickets in the field.

Q. Do you know that the democrats of that parish were anxious that there should be republican tickets in the parish !—A. Yes, sir; I think so; Probably three or four days or weeks before the election, when they knew it was impossible.

Q. Do you not believe that if republican tickets had been in that parish they could have been safely voted at Clinton and at other points in the parish on the day of election !—A. I don't believe that could have been done.

Q. You don't believe that it could have been done!—A. They might have voted fifty or one hundred in the parish. The thing was so fixed that they could not have got a republican vote.

Q. If fifty or one hundred could not have voted in the parish, what reason can you give why five hundred could not have voted in the parish !—A. The best reason why; because there was such intimidation carried on in that parish right along for a year before that time.

James Law (colored) sworn by the chairman.

a year before that time.

James Law (colored) sworn by the chairman.

By Mr. Joves:

Onestion. How old are you 1-Answer. About twenty-six.

Where do you reside 1-A. Jackson, Louisians.

and have been here for the last month or so, my home, but I am in New Orleans, and have been here for the last month or so.

Q Why are you stopping here in New Orleans 1-A. There was such a reign of terror existing in the parish of East Feliciana on account of politics that, I being a republican, I was afraid that if I had staid there I might have been killed, merchant there, and have kept store there for the last three or four years.

Q. You may state, in the first place, if you know of your own knowledge of any acts of intimidation of any white democratic that parish, either yourself or any other colored man-if you called your own white the democratic that in the parish of the your own knowledge of any acts of intimidation of any white democratic shall be in the young of the colored man in the last of the parish of the your own knowledge of any acts of intimidation of any white democratic shall be in the young of the leading eithers they only the young of the leading eithers they have a surfage-shop in Jackson, and I know of colored man being notified by white men to join the club.

Q. Give the names of persons as far as you can.—A. I remember Thomas Cook, a colored man; he has a carriage-shop in Jackson, and was advised by one of the leading eithers there. Dr. Zond, a white man.

Be a piece of friendly advice to councet himself with the democratic club, and came to my atore and tool in the political shall be active to the parish. I was a price of friendly advice to councet himself with the democratic club, and came to my atore and tool inc, the eventy and the proposed to grave of Thomas Caney, an intimate friend of mine, and one who has always heretoforeacted with me in politics on the republicant side. He joined the democratic club, and came to my atore and tool inc, the even the proposed to grave and the politics of the par

put down his name as president of the parish committee. When Charley Mathews got there Colonel Powers was in company with Mr. Porter. He had been to Rive the Colonel Powers and handed him the credentials. He said Mr. Powers and handed him the credentials. He said Mr. Powers and handed him the credentials. He said Mr. Powers and handed him the credentials. He said Mr. Powers and handed him the credentials. He said Mr. Powers and handed him the credentials. He said Mr. Powers asked what he meant by those papers.

Q. Was Poyner a white man —A. Yes, sir, the saw white man and a democrat. He had with Colonel Powers as at accelerate the did that to keep him from forcing the properties of the property of the property of the powers and the parts have the property of the papers. He that with the parts had the pa

make my meat and bread off of them. He says, "You understand me; I am a republican, but we have not any protection. I am not secure in being a republican; and my month." And he says, "I have connected myself with them." He says, "You see we always expected protection up there. We expected every day that and my month." And he says, "I have connected myself with them." He says, "You see we always expected protection up there. We expected every day that one of the protection of

was going to do, and I told them that I was not going to have anything to do with politics, and was not going to vote.

Q. Why were not you I—A. I was afraid. I am attempting to convey that idea into your mind now. I was absolutely afraid. I was elected in 1872 to the Legislature in that parish by the republicans; beat the democratic candidate in 1872. In 1874 I was a candidate and was defeated. There was a division in the republican party, and I was defeated.

### By Judge New:

By Judge New:

Q. By whom ?—A. By Ray, a republican. Mr. Pipes ran as a democrat. It was a swap. In my end of the parish my friends would vote for Pipes and Law rather than vote for the other wing of the republican party. The animosity was so great in the other end, where Gair lived, over in Clinton, they would vote—make a swap for Gair for the senate and Pipes for the Legislature. They would make that swap rather than vote for the other wing of the republican party. By that means they divided us, and Pipes was elected to the Legislature.

Q. Would it have been safe for a republican to have gone through that parish holding republican meetings ?—A. I rode over from Clinton with Mr. McCleman, a prominent democrat, in July, 1876, in a buggy, and he said, "that the republican party is dead in this parish," and he said, "I understand that Packard has announced in the paper that he would be here on the 15th of September. My God! if I was in his shoes I would not come to this parish. If he comes here I bet he will never get out."

Q. What was your opinion as to the result of the election of that parish of East Felicians if the colored people had been left free to vote as they pleased?—A. My dear sir, they would have elected the republican ticket by a large majority. There is eight colored men that voted the democratic ticket. We always counted on about eight that we knew would vote the democratic ticket. They were under the influence of democrats in the parish. They were employed by democrats, and they used their influence over them, and took them to the polls. Some would take them in their buggies. Some are old, feeble men, and they took them right on to the polls and voted them, and put them in a buggy and carried them back home; that is, these democrats would. Outside of that there is not a democrat in the parish. That is my honest conviction.

Q. What do you know about any republican votes having been sent to that par-

manache or democrates in the parish. They were employed by democrates, and they used their influence over them, and took them to the polis. Some would take them in their buggles. Some are oil, feeble men, and they took them right on to the fine their sources. Some are oil, feeble men, and they took them right on to the fine their buggles. Some are oil, feeble men, and they took them right on to the fine their sources. The sources are the sources are the sources and the sources are the sources. The sources are the sources. As a source are the sources ar

# By Judge NEW:

- Q. How many colored votes, in your opinion, did Mr. Pipes get for the Legislature when he was elected !—A. Mr. Pipes got the solid white vote, which is about 800, I think—800 and some odd; I don't knew exactly how many he got.

  Q. How many colored votes do you think that he got!—A. I think he got about 400.
- 400.
  Q. You say that at the Packard meeting at Clinton Mr. Reiley was afraid to preside ?—A. Yes, sir.
  Q. You were not afraid ?—A. Well, I thought I would risk it.
  Q. You did preside ?—A. Yes, sir.
  Q. You were not disturbed while presiding ?—A. I was not disturbed, but the speakers were.

- Q. Were you disturbed on your way home? Was any personal disrespect shown to you?—A. No, sir; I jumped on my horse—
  Q. Answer the question whether any personal disrespect was shown to you.—A. I didn't give anybody an opportunity.
  Q. Was any personal harm done to you?—A. No, sir.
  Q. You say that you would not have been afraid to vote the republican ticket on the day of election?—A. No, sir.
  Q. Do you mean to say that if you had offered to vote in East Feliciana on the day of election that you believe that you would have been injured?—A. Yes, sir.
  Q. How do you account for the fact that two or three republican votes were cast in that parish on the day of election and the persons who voted were not harmed for it?—A. I can account for it this way, that some man picked up a democratic ticket and wrote a republican's name on it and voted.
  Q. That is your opinion?—A. That is my private opinion.
  Q. Do you know such to have been the fact?—A. I don't know such to have been the fact.
- the fact.

  Q. If those who voted the republican ticket and made use of no strategy for the purpose of deceiving others, how do you account for the fact that they were not harmed? If those who voted the republican ticket voted it without any disguise, and without employing any strategy to conceal the fact, how do you account for it that they were not harmed?—A. I account for it in this way: the object of the democrats was to carry the election. If they carry the election, one or two votes against them didn't hurt.

  Q. Why do you believe then you would have been hurt if you had voted?—A. I suppose if I had attempted to vote the republican ticket and the balance of the colored people saw me they would have attempted to vote it, and it would have brought on a fass.

  Q. Suppose there had been no other colored people voted the republican ticket.
- against them didn't burt.

  Q. Why do you believe then you would have been hurt if you had voted!—A. I suppose if I had attempted to vote the republican ticket and the balance of the colored people saw me they would have attempted to vote it, and it would have brought on a fuss.

  It is not a fuss.

  It is not been no other colored people voted the republican ticket at the poll where you voted, do you think you would have been harmed for voting it? Suppose you had gone to the poll in East Feliciana and voted the republican ticket, and there had been no other republican ticket voted at that poll but yours, do you believe that you would have been harmed!—A. Well, I believe this: I believe that the democratic party held me responsible individually for any attempt on my part, to have put a republican ticket in the field, or to have voted the republican ticket and the fact that my voting the republican ticket would develop a preconcerted plan to have more republican tickets.

  Q. Will you be kind enough and polite enough to answer my question? I ask play voted they on believe if you had gone to one of the polls in East Feliciana and to the property of the polls in East Feliciana and ticket!—A. Yes, sir; I do.

  Q. You say that Governor Kellogg was determined that there should be an election held in East Feliciana. That is your statement!—A. That is my conclusion?

  Q. Can you tell how it happened, if he was so determined the vae an election held in East Felicians, that there were not republican tickets in the field in that parish to be voted!—A. Please state your question again.

  Q. Can you tell how it happened, if he was so determined the have an election held in East Felicians, that there were not republican tickets in the field in that parish to be voted!—A. Please state your question again.

  Q. Can you tell how it happened, if he was so determined the have an election held in East Felicians, that there were no republican tickets in the field in that parish to be voted!—A. Please state your question again.

  Q. Can you

- self.
  Q. You knew its contents when you signed it !—A. Yes, sir.
  Q. You say, "I have heard of many instances of colored men in said parish having been whipped and shot for attending republican meetings." State the many cases that you have heard of where colored men were shot in that parish for attending republican meetings in the parish.—A. The plural is a mistake.
  Q. Well, meeting.—A. That is correct.

Q. State the many cases where men were shot for attending a meeting?—A. I had reference to that particular case. I did not mean shot, but shot at. I suppose that is a typographical error.

Q. State the many cases you have heard of men being whipped all over the parish. First confine yourself to the many cases where men were shot.—A. I told you that I have reference to that particular case.

Q. You do not then pretend to known of any other instance than that?—A. Not for attending a meeting in 1876.

Q. Now state any case of which you thought or referred to where a colored man was whipped on account of having attended a republican meeting.—A. This man Nelson that I have referred to.

Q. You say that he was whipped on account of having attended the meeting?—A. Yes sir.

Q. How do you know that he was whipped on that account?—A. Because I heard him say so. He said because he attended the meeting he was whipped.

Q. What was his given name?—A. I don't know his given name.

Q. What part of the parish does he reside in?—A. Near Jackson.

Q. Where did he say that he was whipped!—A. About two miles from Jackson.

Q. Why where did he say that he was whipped!—A. About two miles from Jackson.

Q. How long after the meeting?—A. I think it was about three weeks.

Q. Hold you parser hear of any other searce of his believe thinged?

McCuen.

Q. How long after the meeting \$\frac{1}{2}\$—A. I think it was about three weeks.

Q. Did you never hear of any other cause of his being whipped \$\frac{1}{2}\$—A. No, sir.

Q. You said a while ago that you could not remember of any other case than the one where they were sitting up with the corpse connected with this meeting \$\frac{1}{2}\$—A. So far as any effort of shooting was concerned.

Q. Take the year of 1875. Can you state any case in that parish where a colored man was shot on account of having attended a republican meeting; if so, who was it \$\frac{1}{2}\$—A. What we understand—we understand a man to be a republican when he attends a republican meeting and votes the republican itcket.

Q. State any one in the year 1875, in that parish, who was shot on account of having attended a republican meeting \$\frac{1}{2}\$—A. I know of the sheriff, Henry Smith; he is a republican and attended republican meetings all the time, and figured conspicuously.

Q. What republican meeting did he attend an account of which he was a did to the parish the part of the parish that parish the parish that the part of the parish that parish that parish the parish that parish

a republican an attended republican meetings at the time, and guite conspicuously.

Q. What republican meeting did he attend on account of which he was shot in the year 1875 !—A. There was no republican meeting in 1875.

Q. What republican meeting at any time prior to 1875 was Henry Smith shot for attending !—A. They were shot because they were republicans.

Q. You don't know of his being shot on account of having attended a republican meeting !—A. Well, not outside of his being a republican.

Q. Why did you state in your affidavit that it was on account of having attended republican meetings that republicans were shot !—A. I just told you that that was an error.

an error. Q. This, then, is not true ?—A. That portion is not true. That is an error that

an error.

Q. This, then, is not true \$\frac{1}{2}\$—A. That portion is not true. That is an error that crept in.

Q. How many colored men have you known to have been killed on account of political reasons in the parish of East Feliciana since the 17th day of November, 1875 \cdot\ Name them.—A. I think there has been some. There was several.

Q. Name one since the 17th day of November, 1875, killed in the parish of East Feliciana for political reasons \$\frac{1}{2}\$—A. I didn't make that in the affidavit.

Q. You just state, if you can, whether you remember one that you are willing to swear to was killed in the parish of East Feliciana since the 17th day of November, 1875, for political reasons—a colored man—A. We understand there that every man—every man who has been killed in that parish since the 25th day of 1875—was killed for political reasons. This murder of a colored man by John Jackson—I cannot think of the colored man's name—was always understood to be done for political reasons.

Q. When was he killed \$\frac{1}{2}\$—A. Last year.

Q. What time in the year \$\frac{1}{2}\$ Do you mean 1875 \$\frac{1}{2}\$—A. No, sir; 1876.

Q. Who killed him \$\frac{1}{2}\$—A. John Jackson.

Q. Who did he kill \$\frac{1}{2}\$—A. A man living on John Stone's place. I cannot think of his name.

A. Who did he kill \$\frac{1}{2}\$—A. A man living on John Stone's place.

his name.
Q. Was that in 1876 or 1875?—A. In 1876.
Q. How do you know that that was for political reasons?—A. That is my under-

Q. How do you know that that was for political reasons?—A. That is my understanding.
Q. What did you hear that makes you believe he was killed for political reasons?—A. The terrorism as carried on by the democrats as to republicanism.
Q. State some specific fact, or some specific information, relating to that particular killing that came to your ears, on account of which you concluded and now conclude that he was killed for political reasons.—A. I cannot state anything more than the fact of his being a republican.
Q. That is all the reason you can give?—A. Yes, sir. I heard he was a very active politician, and for that reason he incurred the dislike of this man John Jackson.
Q. That is all the information you have upon that subject, on account of which you thought he was killed for political reasons!—A. Yes, sir.
Q. State any other, will you, since the 17th of November, 1875, where a colored man was killed in that parish for political reasons!—A. It was my belief there was another man, but I cannot remember his name.
Q. I would like very much to have his name.—A. I would like to think of his name.
Q. In what part of the parish did he live?—A. In the eastern part of the parish.
Q. By whom was he killed?—A. By a man by the name of Thompson.
Q. What was Thompson's first name!—A. I cannot think of it.
Q. Killed in 1876?—A. Yes, sir.
Q. You cannot tell the colored man's name?—A. I cannot think of the colored man's name.
O. What rearticulars did you ever hear about that killing?—A. I power hear laws.

Q. Killed in 1876?—A. Yes, sir.
Q. You cannot tell the colored man's name?—A. I cannot think of the colored man's name.
Q. What particulars did you ever hear about that killing?—A. I never heard any particulars, save that he was killed.
Q. You heard one was a democrat and the other a republican?—A. Yes, sir.
Q. The man was a colored man and a republican?—A. Yes, sir.
Q. And the man who killed him was a white man and a democrat?—A. Yes, sir.
Q. You never have heard the particulars of the killing?—A. No further than that.
Q. You never have learned anything about what was said between the parties or by the parties to each other, or any of the immediate circumstances or surroundings connected with the killing?—A. I understood that the gentleman had a crowd of white men with him, and this colored man was coming from church. This white man met him and shot him, and he said: "The damned radical insulted him, but he would never insult any other white man."
Q. Do you know whether the man who killed the man was named Eugene Thompson?—A. I don't know.
Q. Didn't you hear Eugene Thompson was shot at by the colored man whom he killed very shortly before?—A. No, sir.
Q. You never heard that i—A. No, sir.
Q. You never heard that a shot was fired by the man killed, the shot entering the very sack of meal Thompson was sitting on?—A. No, sir.
Q. These particulars are new to you and unheard-of by you before?—A. Yes, sir, new to me and unheard-of before.
Q. Name another, if you please, killed for political reasons since the 17th day of November, 1875.—A. I gave it as my impression. I know of a colored man who was killed down—that was in the southeast portion of the parish, but I cannot think of the man's name who killed him.

Q. Do you know whether he was white or black ?—A. The man was black; the man that killed him was a white man.
Q. Do you know what that was for ?—A. I cannot say. I can give you my opin-

ion.
Q. Is it your opinion that every time a white man kills a black man, that he kills him because of his politics !—A. No, sir.
Q. Is not this true, that if you in any case should hear of a colored man being killed by a white man, and should not hear some particular reason for it, would you not conclude at once that he was killed for political reasons !—A. No, sir.
Q. You would not !—A. No, sir.
Q. Take the case you were last referring to; what do you know about that case !—A. I know nothing of my own experience.
Q. What information did you get that led you to believe that he was killed for political reasons !—A. I have been informed that he was killed by a white man.
Q. By a white man or white men !—A. By a white man.
Q. For what reason !—A. I had no other reason save the fact that they differed in politics.

Q. For what reason !—A. I had no other reason save the fact that they differed in politics.
Q. Was that given to you as a reason?—A. That is the only reason I ever heard.
Q. By whom was it given to you!—A. It was general report.
Q. None of the circumstances were named!—A. No, sir.
Q. No particulars at all!—A. No, sir. I hear of killing that has been done up there, that there has never been any investigation.
Q. I suppose you have heard in your life of the killing of a man when you did hear of the circumstances connected with it at the same time!—A. Yos, sir.
Q. Is it not true that when you heard of a killing you always heard of the circumstances attending and surrounding the killing!—A. Yes, sir.
Q. Will you name another case!—A. I cannot name another.
Q. You state in your affidavit filed before the returning board that no less than thirty colored people were killed in East Feliciana during the last twelve months for political reasons, and this affidavit is sworn to by you November 17, 1876. Now give us these thirty persons, if you can.—A. I cannot name thirty persons.

Now give us these thirty persons, if you can.—A. I cannot name thirty persons.

Q. Why did you state that not less than thirty persons were killed?—A. My mind is not like that book. I cannot keep every word down. You must give me time to explain. I know of killing that was done in the night-time. I know of crowds of white men. I have seen them meet and go off in the evening and come back in the morning, and when they would come back I would hear of some colored man being killed.

Q. Give us some of these cases?—A. I remember the murder of Isaac Mitchell, Q. Was that in East Feliciana?—A. No, sir; West Feliciana. This crowd went from East Feliciana.

Q. Confine yourself to East Feliciana.—A. I remember—I could not name the man—it got to be such a current thing—almost every day.

Q. Give us some of them.—A. I never paid much attention to it. Somebody would come in and say, "There was a negro killed out here last night." I remember a man that was killed down in the southern portion of the parish of East Feliciana, on the line of the second and third wards.

Q. What was the name, if you can remember?—A. I cannot think of the man's name right now.

Q. Give us the name of the man who killed him, if you remember.—A. I don't know the man who killed him. He was killed by these crowds, as was supposed.

Q. What was T.—A. Fighteen hundred and seventy six.—last year.

Q. What year !—A. Eighteen hundred and seventy-six—last year.
Q. What year !—A. Eighteen hundred and seventy-six—last year.
Q. What did you learn about the cause of his being killed !—A. I never heard

Q. What year !—A. Eighteen hundred and seventy-six—last year.
Q. What did you learn about the cause of his being killed !—A. I never heard any cause.
Q. You don't remember any reason that was given at the time for their being killed !—A. No, sir; saving the general opinion.
Q. Did you hear any opinion of that kind expressed by any particular person that you can remember !—A. I heard it expressed by everybody; by every colored man.
Q. Did you hear white men express that opinion !—A. None except they were republican white men. I have spoken to colored republicans—I remember having a conversation with Colonel Powers, and he said this: I said, "What are you going to do! This killing is going on in this parish. What are we going to do about getting up a republican ticket?" And he says, "My God, you cannot get up any republican ticket here."
Q. Give me some other case, if you remember.—A. I cannot give you a distinct case. You want me to give you names.
Q. Narrate the case. If you remember the name, state it.—A. You asked me about men being shot for political reasons in East Feliciana. I remember of Marshal Keyer.
Q. What year?—A. Eighteen hundred and seventy-six.
Q. How do you know he was shot for political reasons?—A. That was my understanding; that was the general rumor.
Q. Did you ever hear of any of the special circumstances that surrounded the killing!—A. I did not, except that I understood that the sheoting was done by a man by the name of Pemble.
Q. What tircumstances did you learn about it as to whether they had a quarrel or trouble?—A. I understood there was some difference between them.
Q. Did you ever hear what the difference between them !—A. Yes, sir; I heard there was some difference between them !—A. Yes, sir; i heard there was some difference between them !—A. Yes, sir; is the call the sum of the properties of the white people defied the sheriff.
Q. You did hear there was some difference between them was a political difference.!—A. I he are that the difference to the white people defied the sheriff.

Q. You have stated that you heard that this man who was killed by Pemble—A. He was not killed.
Q. You have stated that you heard that this man who was killed by Pemble—A. He was not killed.
Q. Shot —A. Yes, sir.
Q. You heard that there was a difference between them. State whether you can now state what you heard that difference was.—A. No, sir; I cannot.
Q. Then you don't pretend to say that the difference you heard between them—A. Well, no, sir; I can't say that positively.
Q. Give us another case.—A. I cannot remember any other case.
Q. Have you stated all the cases you now remember?—A. All the cases I can remember at this time.
Q. Why did you fix the number thirty?—A. I gave it as my knowledge. I kept up more closely with them at that time, but I have been in other business since I have been here, and I have not paid much attention to it.
Q. Has not your memory been refreshed by having filed this affidavit and by answering the interrogatories?—A. That has been some time ago.
Q. It was in November. Would not that refresh your memory?—A. Yes, sir; if I should look over the affidavit and apply my mind to it, I should recollect now.

Q. You have stated some five or six cases which occurred in 1875 and 1876 on account of political reasons. Why did you fix the number at thirty !—A. Because I am pretty certain that I am not mistaken.
Q. You believe now that since November 17, 1875, there has been as many as thirty colored persons killed in the parish of East Feliciana for political reasons !—A. Yes, sir; I do.
Q. Who was it that you said attempted to burn your store !—A. I didn't state who it was

Q. Have you ever been informed who did it !-A. Will you expect me to give you

a name?
Q. Yes, sir; it is your duty to state what you know.—A. You will expect me; you won't compel me?
Q. It is your duty.—A. I don't wish to jeopardize my life, but should I give the names of parties here and I went back to East Feliciana, I might be killed for it.
Q. Were you ever told who the parties were? Did any person say who burned your store?—A. Yes, sir.
Q. By whom were you told?—A. This was told me in private.
Q. By whom were you told? —A. This was told me in private.
Q. Did he ever tell you that more than one did it?—A. Yes, sir; more than one.
Q. Did he give their names?—A. Yes, sir.
Q. Whose names did he give?—A. I refuse to give the names.
Q. You refuse to answer the question!—A. I refuse to give the names of those parties.

Q. You say your store was saturated with coal-oil !—A. Yes, sir. Q. How do you know that fact !—A. I saw and smelt the coal-oil the next morn-

Q. You say your store was saturated with coal-oil !—A. Yes, sir.
Q. How do you know that fact!—A. I saw and smelt the coal-oil the next morning.
Q. Was your store burned down !—A. No, sir.
Q. It was not burned down !—A. No, sir.
Q. To what extent was it burned!—A. All the front door was burned black.
Q. What time in the night did it happen!—A. My clerk told me it was about midnight.
Q. Did he see it!—A. Yes, sir.
Q. How did he happen to see it! Where was he staying!—A. The oil was poured on the door and he was inside all the time, and some of it ran inside and it made such a fuss that it waked him up. He slept in the store.
Q. Did you learn that the burning was attempted by white or colored persons!—A. White persons.
Q. Had you any trouble with your family or kindred that caused you at the time to suppose that some of them did it and caused you to so express yourself as to those persons!—A. No, sir. I had some trouble just before that, but I didn't suspicion that it was done by them.
Q. Did you ever express such an opinion afterward!—A. No, sir; I don't remember of ever expressing an opinion of that kind. In fact, I know that I never expressed an opinion of that kind.

By Mr. Beebe:

By Mr. BEEBE:

Q. You say there were two occasions when your store was set on fire !—A. That was the same night.
Q. Twice the same night !—A. Yes, sir.
Q. Was it the same parties each time !—A. That was the information that I re-

Q. Twice the same night ?—A. Yes, sir.
Q. Was it the same parties each time?—A. That was the information that I received, sir.
Q. You say you had some difficulty with some members of your family?—A. Before that.
Q. How long before ?—A. It had not been a great while before.
Q. Can you give us an approximate idea of how long before ?—A. Yes, sir.
Q. Well, how long before ?—A. Two months or two and a half.
Q. Had you any difficulty with any parties, relatives or others—any altercation, two and a half months before ?—A. Yes, sir.
Q. Who ?—A. I had a fuss with a gentleman there. He was no kin to me.
Q. Who ?—A. I had a fuss with a gentleman there. He was no kin to me.
Q. Who to colored ?—A. A. colored man.
Q. A democrat or a republican ?—A. A democrat, but he was dead.
Q. Who built your store—the building; who constructed it ?—A. One man by the name of Bohelia.
Q. Who owns the building ?—A. I own it.
Q. Did you own it at that time ?—A. Yes, sir.
Q. Was it insured ?—A. Not a dollar, sir.
Q. You spoke of a doctor giving you some advice, or giving some advice to a colored man, a friend of yours, to join the democratic club. You didn't hear the doctor give the colored friend that advice, did you ?—A. No, sir; the colored man told me so.
Q. You spoke of a convention called to meet at Point Coupee by Mr. Weber.—A. Yes, sir.

e so, Q. You spoke of a convention called to meet at Point Coupee by Mr. Weber.

Q. You spoke of a convention cannot be all the summer, a while before the election.
Q. Eighteen hundred and seventy-six?—A. Yes, sir.
Q. For the purpose of nominating candidates to be voted for in the parish?—A.

Yes, sir.

Q. Who were the candidates !—A. Mr. Weber was a candidate, and some other gentleman; I don't remember of another candidate being in the field. There were several men spoken of, but I don't believe there was any other name presented before the convention. Captain De Grey was.

Q. De Grey was a candidate !—A. It was said that he was a candidate. His name was presented before the convention. I did not hear of his being a candidate before.

Q. You spoke of what one J. Goten told you that the mayor, Mr. Hazzard, had said. Did you ever speak to the mayor about it !—A. No, sir; I never discussed politics with him.

Q. How many men were engaged in the whipping of Nelson !—A. To my knowledge, there was two; so they informed me.

Q. Who were they !—A. This was in the evening, when the democrats were returning from the Nicholls meeting in Clinton.

Q. Who were the men !—A. He told me that it was John W. Smith and John McCuen.

McCuen.

Q. How many attended the meeting addressed by Packard and others at Clinton?—A. I suppose there was about three hundred colored people and two hundred and fifty white people.

Q. How long had you known Frank Crilly?—A. I have known him ten or fifteen years.

years.

Q. How did he come to tell you who these men were that set your store on fire ?—
A. Well, he told me, to satisfy me, that it was done for political reasons?

Q. Was he a white man and a democrat?—A. Yes, sir.

Q. He told you that the others who did it were white men and democrats?—A. Yes, sir; he told me their names, and I knew they were white men and democrats.

Q. Did he enjoin you to secrecy?—A. Yes, sir.

Q. On what account?—A. Because if it was known that he told me who it was done by he would be afraid of the men himself.

Q. Your clerk also told you who they were?—A. No, sir; he did not know who they were

Q. Your elera also compute which such they were.
Q. Did not you state that they spoke to him?—A. He spoke to them. He was inside of the store and they were outside.
Q. How many of them were there?—A. He didn't say how many there were; he simply gave me the names of some of the parties.

Q. Who put the fire out !—A. My clerk.
Q. How long was it after the first time that it was the second time fired !—A. Well, he said that they fired it and he put the fire out, and went back and was standing up in the store, and he heard the oil flowing on the front of the house. They had a can and were putting the oil on the front of the house, and he said that he heard it and spoke to them, and they ran off.
Q. They did not set it on fire the second time !—A. No, sir; they didn't put fire to it.

O. They did not set it on fire the second time !—A. No, sir; they didn't put fire to it.

Q. Did anybody else see these men except this man, Frank Crilly?—A. Not to my knowledge. He prevented them from firing the store the second time.

Q. What time of night was it?—A. It was about midnight.

Q. You say that there was a division of the republican party in 1874?—A. Yes, sir.

Q. Who headed the different parties?—A. I headed one and John Gair the other.

Q. Were you identified with Weber?—A. Yes, sir.

Q. Which was the regular organization of the republican party, the Weber or the Gair division?—A. The Gair division was the regular organization.

Q. Then you headed the organization which was not the regular organization?—A. Yes, sir.

Q. What is the largest republican majority ever polled in the parish of East Feliciana?—A. I think it is a thousand, or something about a thousand.

Q. Was that on a full vote?—A. Yes, sir; a full vote.

Q. How many white democrats are there in the parish, do you state; about eight hundred?—A. Yes, sir; probably eight hundred.

Q. Now, in the questions which Judge New propounded, you stated about one man, Thompson, having killed a man. Was he a colored man?—A. Yes, sir.

Q. Who told you that Thompson killed him?—A. I was told by several different men I can name.

Q. Any one who saw it?—A. Yes, sir.

Q. Who told you who saw it?—A. A man by the name of John Austin.

Q. Is he a white man or a colored man?—A. A colored man.

Q. What did he tell you?—A. He told me that he shot him, and there was a great crowd not far from him when he shot him; a crowd of white men.

Q. Where was it?—A. It was on the road coming from church.

Q. Did you ever hear of his shooting a colored man?—A. Yes, sir.

Q. Since the election did you hear of his shooting one?—A. Yes, sir.

Q. Did you ever hear of his shooting any one before the election?—A. Yes, sir.

Q. Did you ever hear of his shooting a cooled man.—A. Yes, sir; I heard it since the election did you hear of his shooting one?—A. Yes, sir; I heard it since the election?—A. Yes, sir, Q. A colored man?—A. No, sir; a white man.
Q. Didn't you hear of his shooting a man in the leg in a drug-store in Jackson?—A. No, sir; I heard of him shooting a man before a drug-store and killing him.
Q. Where did the ball hit him?—A. In the abdomen.
Q. Did you never hear of his shooting a man and hitting him in the leg in Jackson?—A. Yes, sir.
Q. Was he white or colored?—A. A white man.
Q. Did you ever hear of his shooting any other colored man other than the one you spoke of since the election?—A. No, sir; I don't remember.
The witness then stated as follows:
The man that done the firing and put the oil on the store, Mr. Crilly told me, was a man by the name of Richard Harbor, who lives in the town of Jackson, and James Stratton.
Q. Both white men and both democrats?—A. Yes, sir; they were the two men that they seen at the work.

George T. Norwood, sworn by the chairman.

George T. Norwood, sworn by the chairman,

George T. Norwood, sworn by the chairman.

By Mr. Joyce:

Question. What is your age !—Answer. Twenty-nine.

Q. You may state where you lived there!—A. I live in East Feliciana Parish, four miles north of Clinton.

Q. How long have you lived there!—A. Well, sir, I have lived there all my life. I lived in Texas a year and a half. That has been three years ago. With that exception, I have lived there all my life.

Q. You may state whether you know of your own knowledge, or from information that you have received from others, whether the colored people of that parish have been intimidated by white democrats.—A. Well, sir, it is my opinion that it is so, and I can only give you facts that I have heard.

Q. You may state all you know about it, or what you have heard in regard to that subject, running back, say, for the last year and a half or two years.—A. Well, sir, I could tell you my version of the whole matter. It commenced about two years ago. The Lewis Jones affair was the first that I heard of, and I think that was seized upon by certain men who claimed to be leaders of the democratic party in East Feliciana as a pretext to carry the election this last year just gone. The Lewis Jones affair, as I understood it, came about in this way: There was a man by the name of W. R. Skipwith who had been on an expedition with some parties to Bayou Sara after Weber. On his way back—I think he was a little drunk—and on the road he met up with some negroes, and they asked him, I think, the question, what was the matter; how this thing came up; and he made the remark to them that if such men as Weber and Lewis Jones were taken out and hit five hundred lashes, that would settle it all. That is my understanding of what Skipwith said, a I suppose they added to it a little, and told Lewis Jones that Skipwith said he was going to take him and hit him, and I think he, perhaps, had pickets out on the road and stopped people. He gathered a big crowd around him. The first Leard a man by the name of Pemble and Thomas J. Hunt came to m

to sit down. One or two jumped at him; I believe Powers struck him with his saber, and Billy Nash was about to shoot him, and one man had to sit down on him to keep Nash from shooting him. There were witnesses there who went right over to the negro camp and created some sit. After a while they got matters adjusted. Some gentlemen went over into Lewis Jones's camp, and they fixed up matters. After that I never went out, except on one occasion, and that was on the day that John Gair was killed, because I did not feel disposed to get into trouble. I did go to Clinton on the day that John Gair was run away. I rode in to see what was the trouble.

to the negro comp and created some site. After a which they got matters adjusted. Some gentlemen went over into Lewis Jones's camp, and they fixed up matters. After that I never went out, except no more occasion, and they fixed up matters. After that I never went out, except no more occasion, and they fixed up matters. After that I never went out, except no more occasion, and they fixed up matters. After that I never went out, except no more option was in regard to the effect of these kind of gatherings.—A. They exaperated the white people. Judge Dewing, at the next term of court, I think, charged the grand jury, so I termed—I think I read the charge—he charged the grand jury pretty strongly in regard to the entry the next the next term of court, I think, charged the pentil jury a little differently from what he charge—he charged the pentil jury a little differently from what he charged the grand jury, and the pettil jury a sequited him. That excited went to the pettil jury, it is not to the pettil jury, it is not to the pettil jury a sequited him. That excited went is not to the pettil jury and the pettil jury as pettil the lim. That excited went is not to the pettil jury and the pettil jury as pettil the lim. That excited went is not to the pettil jury as pettil the lim. That excited went is not to the pettil jury as pettil the lim. That excited went is not to the pettil jury as pettil the lim. That excited the pettil jury as pettil the lim. That excited went is not to the pettil jury as pettil pettil jury. I have a pettil jury as pettil pettil jury as pettil jury as pettil pettil jury as pet

Q. What do you think—is it your opinion that a republican would have been safe during the late campaign to have gone through the parish of East Feliciana organizing republican clubs and holding republican meetings!—A. I have no doubt in the world about it. I think they would be in very great danger. In fact I would not like to have risked it.

Q. Living as long as you have, and knowing as much as you do about the people, you say you would not have risked your life to do any such thing?—A. No, sir; and I am a little uneasy about risking my life to go back there now.

Q. You have always been a democrat?—A. I never voted any other ticket. I voted for Tilden and Nicholls at the last election, and never voted any other ticket. Q. What, in your opinion, would have been the result in that parish if the colored people had been left free to vote as they pleased !—A. I believe they would have voted almost to a man. I think the party was a unit in the last election, but were affected by this maltreatment that they had received. I believe I told a great many people there—at least told neighbors around—that if they left the negroes alone in the last election of this State, if they could wipe out their record, if the democratic party could have wiped out their record for the last two years in Louisiana and other Southern States, that they would have carried the State without any trouble—carry it to a certain degree. They could who made terms or dictated their own terms, I believe, in our parish.

Q. You have no doubt but if these men had been left to vote as they pleased in this parish that the parish would have gone republican?—A. Yes, sir; I believe so without any doubt. I believe they are more of a unit to-day, if they could vote freely and fairly, than they ever were before.

Q. State whether, in your opinion, there are two classes of democrats in this parish; that is, a class of men who are above this class of thing and would not tolerate them, and would not countenance them, and, on the other side, a set of desperate m

kind.

Q. Your idea is, in this parish, to say nothing about anywhere else, that the bad element of the democratic party have control instead of the conservative, better element?—A. Yes, sir; I think they have taken control. I don't think they are in a majority. It did not prove so at the primary election. The issue at the primary election was the "bull-dozer" and the "anti-bull-dozer" ticket. That was the issue. That was in the primary election held on the 18th of July. The anti-bull-dozer ficket was carried. It footed up about 145 majority. I think Charlie McVey beat Cross 145. Dr. Perkins beat his opponents. He had two opponents, and he doubled both of them together.

Q. Your idea is that, although the conservative, the better element, of the party is in the majority in the parish, yet that this other element carries it by force !—A. Yes, sir.

Yes, sir.
Q. By a strong hand !—A. Yes, sir.
Q. Did the colored men take any part in that primary election !—A. No, str; not even those who voted the democratic ticket all the while. They were not allowed to vote, as I understand it.
Q. Do you know why they didn't vote !—A. I suppose the reason was that if they allowed them to vote they might come in and name a man that they didn't want. That would have been equivalent to allowing them to vote fairly.

By Mr. BEEBE:

By Mr. BEEBE:

Q. You say that they did not even allow those colored men who had always voted the democratic ticket—didn't allow them to vote at the primary election?—A. No, sir; no colored man voted at the primary election.

Q. Were there colored men who had always voted the democratic ticket.—A. Yes, sir; several.

Q. How many?—A. Several. I can get you the names of them easily if you want them. There are several of them.

Q. How many are there in the parish who have always voted the democratic ticket?—A. Probably a dozen.

Q. What is the number of colored votes in the parish?—A. I think eighteen hundred or two thousand; I won't be positive about that.

Q. What is your present occupation?—A. I am a farmer, four miles north of Clinton.

Q. What is your present occupation ?—A. I am a farmer, four miles north of Clinton.
Q. Is that the only occupation you have ?—A. That is all I have.
Q. When were you in the parish of East Feliciana last ?—A. I left there Wednesday, and came down on the boat.
Q. You came down, did you, on the boat ?—A. Yes, sir.
Q. Do you know George J. Reily ?—A. Yes, sir.
Q. Did you come down with us on the boat ?—A. No, sir.
Q. Were you served with a subpena in Feliciana to appear before this committee !—A. I was served with a subpena to appear before the Senate committee -at least the sergeant-at-arms leftit at the house. I rather dodged to keep out of the way, to keep from coming. I was informed, as I had seen the subpena, I was bound to come.
Q. If you had received a subpena to appear before this committee, would you have attended !—A. Yes, sir.
Q. Would you have testified !—A. Yes, sir; I would have testified.
Q. Would you have testified as you have here now !—A. Yes, sir.
Q. Would you have felt that you were in any more danger there in testifying than here !—A. I would.
Q. Will you explain why you are in more danger in testifying there than you would be in testifying to the same facts here!—A. For this reason: I don't know that I will go back yet; I rather think it doubtful. I am going to stay here until I find out how the land lays.
Q. Who are you afraid of ?—A. I don't know that I am afraid of anybody. I am not afraid of any one.
Q. I do not mean to impugn your personal courage; but through whom do you apprehend interference !—A. From a set of men that belong to the democratic party.
Q. Will you name some of them !—A. I would not like to do that, because I don't

apprehend interference:—A. Then a consider the party.

Q. Will you name some of them?—A. I would not like to do that, because I don't know. I don't know that I am afraid of any one man.

Q. Have you in your mind the name of any one man from whom you would apprehend personal violence on account of your having testified to your understanding of the truth as it affects that parish?—A. I don't know that I have any one man. I have heard that they cursed and abused me around pretty extensively.

Q. Who has?—A. A man by the name of Lewis More.

Q. Who told you?—A. My brother told me. He was told so by a young man in Clinton.

Clinton.

Q. They didn't hear him say this ?—A. I understood that he cursed me, and they went to him and asked him, and he denied it.

Q. Where does he live ?—A. In Clinton.

Q. How old is he?—A. He is about my age, I guess. He cannot be so old—twenty-six or twenty-seven years old.

Q. Were you in the parish during the period of registration ?—A. I was.

Q. Was the registration conducted free ly and peaceably ?—A. The registration, so far as I know, was conducted peaceably and freely.

Q. Was there any disturbance on election day at any of the polls ?—A. Not that I know of.

Q. Was it, so far as you know or have heard, a pea ceable and quiet election ?—A. It was the day of election.

Q. You say there are two classes of people, a conservative class and a class whom

you regard as embodying what is known as the intimidating element there?—A. Yes, sir.

Q. You stated, also, that the conservative class, so you distinguished them, outnumber the other class?—A. Yes, sir.

Q. In what proportion do you suppose the two parties exist?—A. I don't know. I told you as near as I could—Mr. McVey's elect a majority over Cross; the line was not strictly drawn, because the conservative class did not want to make the issue, because it might have lost them votes. Mr. McVey got a majority over Cross of about 145.

Q. Speaking from your knowledge of the people—and you have quite an intimate knowledge of the people—from that stand-point of the eight or nine hundred voters, how many of them do you suppose deprecated the action of the other class?—A. I suppose at least one-half, perhaps a little more than one-half—the only way that I can judge of the matter—that was simply an opinion. The only means that I have of judging was in regard to this primary election.

Q. You believe that of the whites of this parish, from your knowledge of those that live in the parish, that one-half or thereabout would resort to acts of lawlessness for the purpose of coereing or intimidating colored voters?—A. That is my opinion, sir. I know of a great many who was opposed to it. Mr. Kernan was opposed to it at the outset, and I expect he is to-day, if the truth was known.

Q. You say that you don't believe that you would have been safe in attempting to organize republican clubs in that parish?—A. I don't think republicans would have been safe.

Q. Have you in your mind any man or men whom you can give the name of who would have intered them?—A. I think that the leaders that had control of the class.

have been safe.

Q. Have you in your mind any man or men whom you can give the name of who would have injured them?—A. I think that the leaders that had control of the democratic organization on the last election would have injured them; in fact, I heard it all over the parish.

Q. Who are the leaders?—A. K. A. Cross, I think, is the head center.

Q. Do you think he would have countenanced any injury of colored men?—A.

Yes, sir. Q. Who else?—A. I den't know but what Dr. Sanders was a leader. He a great bull-dozer; Joe Jones was another great bull-dozer; Captain Joe Norw was another.

was another.

Q. What act of violence did you ever know Cross to commit in that direction?—
A. As I said a little while ago, I don't know of any act of violence.
Q. Do you know of any act of violence ever having been committed by any of these men that you have named?—A. I have heard that they killed John Gair.
Q. Who did you hear killed John Gair? Did you hear that Cross was one of the parties?—A. I heard it asserted and heard it denied. I have heard both ways. I don't know whether he did or not.
Q. Will you be kind enough to name any other act of violence perpetrated by any of these men you have named?—A. As I stated, I don't know of any. I simply heard.

on the content of asserted and heard it denied. I have heard both ways. I don't know whether he did or not.

Q. Will you be kind enough to name any other act of violence perpetrated by any of these men you have named !-A. A. S I stated, I don't know of any. I simply heard.

Q. Do you know of an attempt having been made to organize republican clubs in that parish during the canvass !-A. I know Alonzo Brooks and his father had a republican meeting a short while before the election, and I know it created quite a six around there.

G. Do you know of an attempt having been made to organize republican clubs in that parish during the canvass !-A. I know Alonzo Brooks and his father had a stix around there.

G. When you say that they commenced two years ago I acted with the demicration of the commenced this system of intimidation, whipping, &c., do you speak from personal knowledge or from rumor !-A. I don't speak from personal knowledge of from rumor !-A. I don't speak from personal knowledge about any of it. I never saw them whip anybody.

Q. Did any democrats of recognized position in the party ever intimate to you, two years ago, that they proposed to resort to this system of whilpping for the purposed to resort to this system of whilpping for the purpose of the property of the

ber for what—whether he went to a republican meeting or would not join a democratic club. He said that the man ran off.

Q. Did you ever hear of any colored man being whipped in which either of the Reilys participated?—A. I have heard some men say that George Reily was a bull-dozer himself.

Q. When you say that these men are bull-dozers, do you know it from any knowledge you possess of your own of their participating in it?—A. No, sir; I don't know anything about it. I was not a bull-dozer.

Q. You did go out on one or two occasions?—A. I went out when the negroes were plundering the whites; that was the first report that came out. I found that there was no truth in it, and I went back home.

Q. How long were you out?—A. Perhaps five or six hours. It might have been twelve bours. I left home about twelve or one o'clock, and got back home the next evening.

Q. How far was this Camp Jones from Clinton?—A. I think it was, perhaps, ten or twelve miles.

Q. How large a company of whites were there with you?—A. There was three hundred, I reckon.

Q. Who was in command of them?—A. Colonel Powers, I think, was the chief commander. They elected officers, and first elected Mr. Reily.

Q. Who was this judge whom you say charged the grand jury with reference to that matter?—A. Judge Dewing.

Q. What was he politically?—A. I think he is a republican.

Q. White or colored?—A. A white man.

By Mr. Joyce:

Q. Do you know anything about how the vote stood in East Feliciana in 1874!—
A. The republican party was split. Mr. Pipes was a member of the Legislature, elected by the democrate.
Q. Do you remember whether this was the way the vote stood: democratic, 847; republican, 1,688!—A. Yes, sir; it may have been that way; I don't recollect at all

q. Do you remember what the number of registered voters was in 1876; whether it was white men 1,004, colored 2,127, or about that proportion !—A. I think that is about it; I am not certain; I would not testify to the facts of it because I don't know, although I was clerk for a short while on the board of registration, but I could not keep the figures. I don't remember now; that is about it.

WILLIAM S. DAVIES sworn by the chairman.

By Mr. JOYCE:

WILLAM S. DAVIES sworn by the chairman.

By Mr. JOYCE:

Question. You belong to the United States Army !—Ans wer. Yes, sir; the Thirteenth Infantry; second lieutenant.

Q. State your age.—A. Twenty-seven.

Q. State whether you were stationed at any time in the parish of East Feliciana.—A. I was there from about July 18 to November 13, 1876, or about that time.

Q. You may state what you know in regard to the condition of the affairs of that parish during the registration and election, the feeling of the white and black people there, and whether the fact came to your knowledge that there was any intimidation of colored voters by white democrats. State all you know about it. If there were any specific instances brought to your attention state them.—A. All If there were any specific instances brought to your attention state them.—A. All If there were any specific instances brought to your attention state them.—A. All If there were any specific instances brought to you to to as they pleased, and when I would ask them if affairs were quiet in the parish, they would say that they were straid to vote as they pleased, and when I would ask them if affairs were quiet in the parish, they would say that they were not; that they were afraid to vote as they pleased, and when I would ask them if affairs were quiet in the parish, they would say that they were not; that they were straid to vote accept they voted the democratic ticket. No intimidation was brought directly to my notice, but I know of such cases having occurred from what Captain Rogers told me of two cases that were brought before his notice, he being the commanding officer.

Q. You were there under him !—A. Tes, sir; I did; short distances.

Q. State whether you took pains to talk with the colored people.—A. From Baton Rouge I went to Clinton by land; I was ordered to go. Every other plantation that I would come to I would hast and ask if they felt safe and secure; the answer would be that they did not. I was in command of a mounted detachment.

Q. You she whethe

publican papers by the postmaster, and he had distributed them among the colored people out in the country; that is the reason that was assigned.

Q. From what you saw and know of the condition of affairs in that parish, would it have been safe for a republican to have gone in there and organized republican clubs, do you think?—A. I would not have done it myself without my uniform.

Q. You think your uniform was all that protected you?—A. Of course I would not have done it either way, because I had nothing to say on either side. I mean if I was a citizen.

Q. How do you think it would have been if a man should have gone there and

Q. How do you think it would have been if a man should have gone there and held republican meetings; do you think he could have done that safely; canvass, as we call it—gone there and made republican speeches !—A. No, sir; I do not think he could, safely, with the same license that would be given the other side, because I think that would be called incendiarism—stirring up the negroes, or something of that kind.

By Mr. Beebe:

Q What State did you enter the Army from !—A. I am a graduate of the Military Academy.

Q. From what State were you appointed !—A. California.

Q. Were you a resident of California at that time !—A. Yes, sir.

Q. You made an affidavit before the returning board, did you not !—A. Yes, sir.

Q. Are you familiar now from memory with the substance of this affidavit !—A. No, sir; I have not seen it since you made it !—A. No, sir.

Q. Did Captain Rogers investigate the case of the negro who was whipped and about whom he told you!—A. Yes, sir; I think he did.

Q. Did he tell you that the negro was whipped because he had read some republican papers before he investigated it or afterward !—A. He simply told me that the negro was whipped on that account.

Q. When did he tell you that !—A. After he had seen the man.

Q. Was that the negro's statement, or was it the result of the investigation !—A. That I don't know. He just mentioned it to me at the time. It was something that I had nothing to do with.

Q. Did you mingle among the white people in that parish !—A. Yes, sir.

Q. Did you hear them complain about pifering and depredations of their stock, crops, and so forth !—A. Yes, sir.

Q. Is it your opinion that there was such depredations committed !—A. I think there have been, in some cases; yes, sir. I don't think it justified the extreme measures that were taken.

Q. Did you have any difficulty with any colored men yourself, in the parish, personally !—A. No, sir.

Q. Did you have any angry talk with any colored person !—A. Yes, sir.

Q. Where did that occur !—A. It occurred at a saloon in Jackson.

Q. Whil' you state who?—A. I forget his first name; I think his name was Robinson.
Q. Where did that occur?—A. It occurred at a saloon in Jackson.
Q. Was his name Aaron Robinson?—A. Yes, sir.
Q. Do you know what he was politically?—A. I think he was a democrat.
Q. Did you threaten to shoot him at any time?—A. Yes, sir.
Q. In order to be fair to you, make any statement in reference to the matter you wish.—A. We all happened to be in the saloon together. I had come down to find Captain Rogers. While standing in there some altercation arose between this Aaron Robinson and parties in the saloon. This Aaron Robinson drew a revolver. I didn't see him do it, but he drew a revolver and fired at Captain De Gray, and hit him in the head—in the scalp. At the time that the shot was fired, Captain De Gray and Aaron Robinson had gone into another room. I heard the shot and jumped into the other room, and saw Captain De Gray covered with blood. In the excitement of the moment I drew a revolver and said that I would kill the man, but put up my pistol and went home with Captain Rogers. There was nothing political in it at all.
Q. Was that the only occasion in which you had any altercation with Robinson?—A. Yes, sir; I didn't know him iy sight. I would not know him now.
Q. Did you know anything about what brought on the difficulty between Robinson and De Gray?—A. No. sir; I did not. The difficulty was first with Colonel Powers and Aaron Robinson.
Q. In your presence?—A. Something that I didn't see.
Q. You don't know how the altercation came about?—A. I don't know how it started. I don't know, because my back was turned to the parties. The first that I saw of the thing was when I was standing off a little distance, and this man Robinson was standing by the counter. Then they went in the other room, and the shots were fired.
Q. Did he go in the other room before De Gray did ?—A. That I don't know.
Q. Did he go in the other room before De Gray did ?—A. That I don't know.

the shots were fired.

Q. Did he go in the other room before De Gray did ?—A. That I don't know.

Q. Did he go in the other room before ?—A. I don't know.

Q. Did you arrest Robinson ?—A. No, sir; I had no right to arrest any one.

Q. Were not you in the parish for the purpose of preventing disturbances ?—A.

Yes, sir; the command was.

Q. But you felt that you had no right to act except upon an order ?—A. Yes, sir.

Q. Were you on duty at the time ?—A. No, sir; I was in citizen's dress—just come in from a ride.

### E. A. RIGLEY (colored) sworn by the chairman.

By Mr. JOYCE:

Question. You may state your age and residence.—Answer I am thirty years old.

Question. You may state your age and residence.—Answer I am thirty years old.

Q. Where do you reside?—A. I am residing now, at present, in New Orleans.

Q. Where did you formerly reside?—A. In the parish of East Feliciana on the 28th, if I am not mistaken, as near as I can recollect, of 1875, but I have been back in the parish several times since.

Q. Why did you leave there, if you please?—A. I have lived in the parish all my life, with the exception of from that time, and about three years and six months I was in the United States Army; then I returned home, and I have lived there up to this time.

Q. Why did you leave there, if you had any reason?—A. As I consider, I had very good reasons to leave. I was in fear of my life, and protection to myself.

Q. And came to New Orleans?—A. Yes, sir; came to New Orleans.

Q. State whether your life had been threatened.—A. I had been threatened in a good many instances, which made me believe it was not safe for me to be there.

Q. You may state what office you held in that parish at that time.—A. I have been deputy sheriff there from 1872 to 1874, deputy sheriff two years. I was elected as constable of the fifth ward, and then elected deputy sheriff two part in politics as a republican.—A. I was considered one of the leaders. I was the last secretary of the fifth ward, and and and active part in behalf of the republican party.

Q. State whether you undertook to organize a republican club; if so, what was

the fifth-ward club, and always have taken an active part in denal; of the republican party.

Q. State whether you undertook to organize a republican club; if so, what was said or done to you about it ?—A. I was told frankly out—

Q. State in the first place whether you attempted to organize a club?—A. No, sir; I did not in the second ward. That has been here lately, just before the election.

Q. Go on in your own way, then.—A. The commence of this trouble—there was a great deal of excitement through the country. I suppose you have been going over the Lewis Jones affair a good deal. I will commence there.

Q. State whether you have been back up there since that time to do anything; if so, what, and what did you learn?—A. I left the parish for this cause, that my brother-in-law. John Gair, had been murdered a short time before I left, and my sister-in-law, called Babe Matthews, was hung also. I was told by parties there that myself nor no other republican leader in that parish would be allowed to organize a republican club in that parish; that the white folks had made up their minds to carry that parish by all hazards. I was told in that connection by several parties that they intended to run every republican leader out of that parish.

Q. Who were these men? Give their names —A. I can give names of several that I have heard make these remarks. I heard from John Brown; B. M. G. Brown is his name. He is an old man; the old man and his son. I heard Lewis Moore state so on two different occasions. He was not talking to me then, but he made it in the post-office. He was talking to other parties, and said that they intended to run every damned radical leader out of the parish, or kill the last man here. I heard Captain Joseph A. Norwood say that they intended to carry it. I could not stay there, and let the parish go on that way, without taking some part in trying to show the people the way to vote, and doing what I could on behalf of the republican party, and I left the parish.

Q. You may state whether you were threatened, yourself?—A. Yes, sir; I was visited and threatened twice. One time when I was threatened there was a party came to my house disguised and questioned me a good many questions. Just after the row started in the parish, some way or other, it seemed as if they were trying to find out what I knew about it. If I did know, I would not have told them; but I knew nothing about it, and told them so. They told me that I had better look out for myself.

Q. Did you know them?—A. I recognized them before I left.

I knew nothing about it, and told them so. They told me that I had better look out for myself.

Q. Did you know them?—A. I recognized them before I left.
Q. Give their names.—A. David I. Norwood and John Heath, I think, were the two men. They came to my house disguised in Federal uniform, playing themselves off as Federal officers. Then, at another time, about a month after—Q. Who is this David I. Norwood? Is he the son of Joseph A. Norwood?—A. Yes, sir. Then, at another time, there was a crowd came up there. I don't know who these were. They were disguised, and I could not recognize them. They were armed with revolvers and shot-guns.
Q. Do you know whether they were white men?—A. Yes, sir; they were white men; the language was that of white men. I knew there was no colored men in the parish who could use language like they did because I am personally acquainted in that parish, know very nearly every one. They told me just like this: that if they heard of me organizing or attempting to have anything to do with the republicans of that parish, that it would not be worth—nobody would know what would become of me—they would not know what would become of me. I was led to believe at different times that I could not stay there. I came to town and visited town. I was abused on the road and several other places by Bob Pemble and Alick Skipwith.

Q. What did they say to you?—A. I had always been a peaceable kind of a man, and excepted.

at different times that I could not stay there. I came to town and visited town. I was abused on the road and several other places by Bob Pemble and Alick Skipwith.

Q. What did they say to you?—A. I had always been a peaceable kind of a man, and everybody gives me that name. I was in Horton's, and they were in there. They raised some diagurbance, and some of them allowed that they were going to give me a hell of a whipping, and every one who had anything to do with the republican party, and then gave me notice to prepare myself. I left town, and I have never seen them since.

Q. Did you see Allen Myers after he was whipped !—A. Yes, sir; he had to leave the parish and went back.

Q. Do you know who whipped him?—A. No, sir; I do not.

Q. Dvou know who whipped some time after that. I saw them in July, I believe.

Q. What did they tell you about what they were whipped for?—A. Anstin told me that he was whipped because—some time just before I left the parish.—I hardly know how to come at that—he was whipped because he had made a speech at a republican meeting. At that time they were attempting to raise a company to defend themselves.

Q. Did they say that these men told them so?—A. Yes, sir; six or eight men whipped them; they told me that.

Q. You may state whether you went to the parish last October, and what your object was in going.—A. I went in October some time. I don't recollect the day, but the latter part of October some time. I went there at the solicitation of Mr. Kellogg and others. I went there and staid in the parish a week secretly, from one place to another, among the prominent men in that party, and I found it was a matter of impossibility to organize any lub in that parish; and knowing the danger in which I stood—at that time the register had been run off; it was said that he was shot at. I don't know whether it was true or not, but that is the impression among the colored people generally, that he was shot at, and they advised me to go away from the parish; that they could not organize without t

I heard that.

Q. State whether H. B. Vaughn said anything to you. If so, what?—A. Yes, sir; I went to several plantations, and they told me that they could not hold any talk with me; that they were even afraid to be seen talking to any man that had influence in the parish. In the first ward the head men were Bob McClennan and John W. Smith, and they were looked to be leaders in that section of the country. These men, all they had to do was to send their parties out and the thing would be done.

John W. Smith, and they were looked to be leaders in that section of the country. These men, all they had to do was to send their parties out and the thing would be done.

Q. Were Smith and McClennan democrats !—A. Yes, sir.

Q. White men !—A. Yes, sir. I had a great deal of conversation, and found that it was not safe to come back. I came back with the intention of going right back. I met Mr. H. B. Vaughn; he has always been a good man to me, and always when I catch him I talk to him and get what I can out of him, because what he says I generally believe it more or less. He told me, "You had better stay away from that parish. What do you want there anyhow? You have got your business arranged in other people's hands. We have got no use for you fellows up there until after the election, and then you may come back. We have got no use for you damned fellows up here. We are going to carry that parish by a thousand majority. The negroes are afraid, and we are going to keep them so." I took him at his word, because I always trusted him.

Q. State whether you were visited at your house.—A. Yes, sir; twice. I testified about that. Some time before that they came—before the registrar was run off; when I got there I found him driven off. I thought there might be something in it. I always made it a point to talk to this man. I had a conversation, I think, on the Governor Allen, talking over a good many things, and he advised me to go away from there.

Q. Do you remember whether anybody said to you that they had nothing against you personally?—A. Yes, sir; I have been told that personally—only my radical opinion—that is all they have got against any colored man, that I know of. In our section of the country the excuse that they gave is this cotton-stealing. There is nothing about that. I don't believe there is a case on record where a man has been brought up for stealing cotton, but there has been several killed and lynched.

Q. What did they say to you about colored men and white republicans holding office in that parish?—A. They didn't talk much to me, only that they were determined the negroes should not hold office. They said they wanted to put men identified with the country, and who is an bonest man and a gentleman. I always liked the gentleman principle, and tried to follow it.

Q. Have you ever seen, yourself, any colored men who have been shot or whipped?—A. I have seen two shot.

Q. Give their names.—A. I recollect one of their names. I recollect both if I can bring them to memory. One was a boy about nineteen years old.

Q. Do you know who it was that shot the boy?—A. He was shot on the Liberty road, inside the corporation line John Jackson, I think it was said—I didn't see him—and Peter Green. Another man on the road out east from Clinton, by the name of Jerry Norman. He was shot by a man named Thompson.

Q. You may state whether any of the colored people of that parish ever made any complaint to you that they were intimidated or interfered with by the democrats.—A. A great many times.

Q. Can you give the names i—A. While I was up here I had a great many visit me.

Q. Can you give the names?—A. While I was up here I had a great many visit me.

Q. Can you give the names of any of those colored men who entered these complaints? What I want is to have you to give me the names of these colored men who have made complaints to you.—A. Primus Gilmore, he told me that he would never have voted the democratic ticket if he had his own choice; A aron Robinson, John Harmon, Andrew Perkins, Jim Williams, Mage Flemming, Isaac Selby, Daniel Berryhill, Alonzo George—it is so many I don't recollect.

Q. They all complained to you!—A. Yes, sir; while I was up there.

Q. That they were intimidated!—A. Yes, sir; they didn't know what intimidation; they said that they were afraid of their lives. They didn't know what intimidation was particularly, but if they voted the republican ticket they were afraid they could not live there. If they had had any protection, they would have done it.

Q. Do you know the fact that many colored republicans were polliged to leave the parish and come to New Orleans, and have never gone back!—A. Yes, sir; as I was going to state, I have been back there since, but I was not able to stay there. There is Mr. Smith, T. M. J. Clark, Willis Worsham, ——Sloan. Mr. Law—I think he was afraid to stay there and vote himself; John Gair. There is so many of them. There is over a hundred or more down here; I see them every day or two: Anthony Jackson, Alonzo Brooks, and others. They would not stay there to vote. They told me that they had to vote the democratic ticket or else they could not vote at all, and they proposed not to vote the democratic ticket, and they came off.

Q. Will you tell me what is your opinion as to whether a man cou'd have gone through that parish safely organizing republican clubs and holding republican meetings!—A. I speak emphatically not.

Q. I mean during the last canvass.—A. That is what I am speaking of—1876. No, sir; they could not.

Q. What do you think the result of the election would have been in that parish of East Feliciana if the colored pe

#### By Mr. BEEBE:

Q. How many colored men voted the democratic ticket there?—A. There is about six or eight there. I think the change of a President would have changed one or two of those votes.

Q. When were you back in the parish of East Feliciana the last time?—A. I think the latter part of August some time.

Q. You have not been there since the election at all?—A. No, sir; I have seen a great many persons since the election, though.

Q. When you went back the last time, was that the time you went to organize the republican party!—A. Yes, sir; I went there for that express purpose.

Q. Where did you go from?—A. From here.

Q. How did you go from?—A. On the steamer Pargoud.

Q. Where did you land?—A. Port Hudson.

Q. Did you stay long at Port Hudson!—A. Not over an hour and a half in the town.

Q. Did you stay long at Port Hudson!—A. Not over an hour and a half in the town.

Q. What time of day was it when you landed!—A. I think between seven and eight o'clock in the morning.

Q. What place did you visit after leaving Port Hudson!—A. After I left Port Hudson I went to Barry's. I staid with the colored people there, and talked with a good many of them, and then I went on.

Q. Where did you go from there!—A. I went from there to Ed. Somes's plantation.

Q. How far from Port Hudson?—A. In the way I went, I think about two miles. I walked there.
Q. How long did you stay there?—A. I staid on that place an hour or two, or two

Q. How long did you stay there?

On Talking to the colored people?—A. Yes, sir.

Q. Talking to the colored people?—A. To the Leperman plantation. I staid there until after two o'clock.

Q. Then from there where did you go to?—A. To Henry Lee's, on the Leperman plantation—way up through. It is a large plantation.

Q. Where did you go from there?—A. I went over to McNeally's plantation. It was night—about dark. night—about dark.

Where did you go after dark!—A. I went to George's house and to my own

- Q. Where did you go save place.
  Q. There you staid all night?—A. Yes, sir.
  Q. Where did you next go, on the next day?—A. I came to town.
  Q. What town?—A. Clinton.
  Q. What time of day did you get to Clinton?—A. Saturday evening about dark.
  Q. How long did you stay in Clinton?—A. I staid there, on the edge of town, a day and a half.
  Q. Where did you go from Clinton?—A. Out through the eastern portion of the narish.
- parish.

  Q. How did you travel through the parish?—A. I traveled at nights.
  Q. Both night and day?—A. Yes, sir; I went through the fields in the day-time.
  Q. Did you see any white people?—A. On Saturday night I met a gang of white men armed with guns of some kind; I didn't see what kind. I was going up the road, and I met them right on the road, and I stopped and they passed by.
  Q. Did they say anything to you?—A. They didn't see me.
  Q. Was it after dark?—A. Yes, sir.
  Q. Who were they?—A. I could not recognize them.
  Q. Is that what you meant by saying that they went through secretly?—A. I went secretly to most of the white people.
  Q. You saw no white people except those that you saw that night?—A. I saw some, but they cidn't speak to me, or I to them.

- Q. Where did you see Aaron Robinson?—A. At the house, there in Clinton. Q. Was it then that he told you about his voting the democratic ticket?—A. Yes,
- Who else was present when he told you !-A. Yes, sir; several persons; four

Q. Who else was present when he told you !—A. Yes, sir; several persons; four or tive.

Q. Name them.—A. John Harmon, Primus Gilmore, Aleck Poole, Andrew Perkins, Aaron Taylor.

Q. Any white person present !—A. No sir; several women.

Q. Was this statement made by Aaron in a loud tone, so that they could all hear !—A. I was said to myself, Andrew Perkins, John Harmon, and Dock Layer.

Q. Is he a physician, or is that simply his name !—A. I didn't say doctor; I said Dock.

Q. Is he a physician !—A. No, sir.

Q. Do you think colored people would be afraid to come before this committee at Clinton and state that they were intimidated !—A. I think so; a great many.

Q. Do you think they would all be afraid !—A. No, sir; I think some men has got courage to do it.

Q. Do you think there would be any danger from their doing so !—A. I think there would.

Q. You think Aaron Robinson is not very courageous !—A. Aaron ! You don't

there would.

Q You think Aaron Robinson is not very courageous?—A. Aaron? You don't know him; he works every kind of way; he always keeps on the side that he thinks is going to carry him through safe. When the republican party seems likely to get along all right, he is with that party, and when the democratic party seems the most likely, he is with that party, and when the democratic party seems the most likely, he is with that party.

Q. You think that he is disposed to go with the party that is going to win?—A. I would not trust him, anyway, not in that respect.

Q You trusted him when he told you that he was afraid?—A. I mean in this way: if he sees that he is going to be in danger in some way—if the democrats threaten him, and he sees that the people are in danger, and that he can do them some good, he will do it; but if the republican party gets in power he is with the republicans again, where he belongs. That is what I mean about it. I know he is not in good faith with the democrats.

Q. You think that he would have courage enough to say if he wanted to vote?—A. Yes, sir.

Q. Are you and he pretty good friends?—A. Very good.

A. Yes, sir.
Q. Are you and he pretty good friends ?—A. Very good.
Q. Do you believe that he would deny under oath if he told you anything of this kind ?—A. No, sir; I do not.
Q. Do you believe if under oath he would either decline to answer or state that he did tell you so ?—A. Yes, sir; if he did not, I would be there and tell him that

he did.

Q. You would believe what he said about it under oath !—A. Yes, sir.

Q. Did you ever hold any office in that parish !—A. I have.

Q. What office!—A. I was elected constable of the fifth ward, and then I was appointed deputy sheriff under Ray during the time that he was sheriff, and then on the police-jury.

Q. Are those all the offices that you held!—A. I have been inspector of weights and measures different times.

Q. How much of the time during the last three years have you held office!—A. This was in 1872 that I was inspector of weights and measures; in the last two years I have not held any. My time expired in 1874.

Q. Have you held any office in connection with the public schools?—A. No, sir.

Q. Have you ever been a teacher!—A. No, sir.

Q. Did you have public schools generally through the parish?—A. Yes, sir.

Q. How much of the time!—A. I think from four to five months during the year.

year.

Q. Every year!—A. Every year.
Q. You have heard no complaint among the colored people!—A. Yes, sir; I will tell you why, if you give me time.
Q. What complaints did they make!—A. The complaints were made because they could not get a school on every plantation in the different wards.
Q. Did they expect a school on every plantation!—A. Yes, sir; they seemed to expect so, by being told so by the white people.
Q. Has there been a difference in the republican party, as among themselves, politically!—A. Only at one time.
Q. When you went up to the parish of East Feliciana, did any one pay you any money to pay your expenses!—A. I borrowed some money to go up on.
Q. Whom did you borrow some money from!—A. Mr. Nash.
Q. Of anybody else!—A. No, sir; I borrowed \$6 to pay my way up there. That is all I got.

Q. Whom did you borrow some money.

Q. Whom did you borrow some money.

Q. Of anybody else?—A. No, sir; I borrowed \$6 to pay my way applied is all I got.

Q. What is your present occupation?—A. Well, I am doing first one thing and then another. I have been running a farm. I have not been doing anything much, a superply.

then another. I have been running a narm. I have not been using anything much, particularly.

Q. Have you received any money, or any pay, from the republican party or any member of it #-A. They always look out for their friends, generally.

Q. You are a friend of theirs !-A. I am a republican, I hope, sir.

MONROE MEYERS (colored) sworn by the chairman.

By Mr. JOYCE:

By Mr. JOYCE:

Question. You may give your age and residence.—Answer. As near as I can give it, I am about going on fifty-two, ever since six weeks before Christmas.

Q. Where do you reside?—A. I live up there opposite Clinton.

Q. You live in East Feliciana Parish?—A. Yes, sir.

Q. How long have you been in New Orleans?—A. I have been here ever since Tuesday evening.

Q. Last Tuesday evening?—A. Yes, sir.

Q. How long have you lived there in that parish?—A. I reckon I have lived there near about thirty years or forty.

Q. What ticket have you voted?—A. I have voted the republican ticket ever since, until this last election.

Q. You may state whether you have been interfered with by anybody in regard to your voting.—A. I was taken out from my house one night on account of it. They told me that I was a radical president of the republican party—of a club—and I told them I was; and they told me, had it broke up. I told them I wouldn't have anything more to do with it if they didn't do anything to me. They questioned me.

anything more to do with it if they didn't do anything to me. They questioned me.

Q. They told you you had got to quit it?—A. Yes, sir.

Q. When was that?—A. It was last winter; I think it was in the winter.

Q. What time was it?—A. Last winter, I think it was—last spring or wister; well, it was somewhere along in the winter, I cannot tell exactly when.

Q. When they told you that you must quit it what did you tell them?—A. I told them that I would.

Q. Was that the reason why they didn't do anything to you?—A. Yes, sir. I had some white friends in the bunch—my young masters, they used to be. They caught up with them, and said that I was ignorant, and didn't know nothing, and I was pushed into it, and they would not wish for them to hurt me, and to allow me another chance, and probably that I would come out and leave them.

Q. How many mea was there that came to your house?—A. I don't know, but I can tell you as near as I can. There was near about thirty or forty.

Q. Were they on horseback?—A. Yes, sir.

Q. Were they white men?—A. Yes, sir.

Q. Did you know any of them?—A. Yes, sir.

Q. You may give the names of those that you know.—A. Massa William Doty, Aleck Doty, Timothy Rogers, Dr. Pharis, Gipy Dunn, and John Benton.
Q. What did you say that they inquired of you, if you were president of the republican club!—A. They said that I was president of the republican party, or the republican lend. As you have got to quit. We have dropped them down, and we will have no more;" and said he, "You have got to quit. We have dropped them down, and we will have no more;" and said he, "Now, you come and go with us, and leave them, and if you will say that you are going to go with us we will never come to your house any more;" and they never; they have never disturbed me.
Q. Did you tell them that you would!—A. Yes, sir.
Q. Did you go and join their club!—A. Yes, sir.; I did.
Q. They never troubled you after that!—A. No, sir; they never troubled me after that.
Q. When was this club that you were president of!—A. Well I was president.

Q. When was this club that you were president of !—A. Well, I was president for eight years, I think.
Q. That was the club in 1872 and 1874—those elections !—A. Yes, sir; I was pres-

Q. When was this club that you were president of !—A. Well, I was president for eight years, I think.

Q. That was the club in 1872 and 1874—those elections?—A. Yes, sir; I was president of them.

Q. Let me inquire if anybody else disturbed you or said anything to you in regard to your voting except these men that you have stated !—A. No. sir; no more than they said—the time that they had the meeting and they had my name signed. I didn't want my name signed, because I didn't know anything about it; I didn't know what I was going into.

Q. What meeting was that !—A. A democratic meeting. They had my name down as president of my club. I told them that I did not wish my name to be down there, because I did not know what I was doing. They said they had put it down, and says they, "You must let it stand there." I never said anything more then, but went home. I understood that they said that I had to join them anyhow. I didn't hear any of them say so. I will tell you the fact. There was a colored lady that lived close by, and she visited a white lady, and she told the colored lady to tell me to either join them or leave the country. I didn't think I had done anything to leave the country for, so I went and joined them.

Q. Why did you join the club and vote the democratic ticket?—A. I thought it would be best for me to do it; I wanted to live comfortably and happy, and I wanted to lay down in peace and get up in peace. I had a family, and I wanted I maintain them.

Q. State whether you were afraid if you did not join their club and vote their ticket that they would harm you in any way.—A. Yes, sir; that is what I feared. I did not want to be harmed any more, and went and voted the ticket on that account, for I had rather do that than always be in trouble; so I went and assisted them.

O. Do you know of other colored men that were interfered with!—A. I cannot

- account, for I had rather do that than always be in trouble; so I went and assisted them.

  Q. Do you know of other colored men that were interfered with!—A. I cannot tell you that I know of any that were interfered with, but I heard that they were interfered with. I never seen it. I could tell you that I heard of the interfering.

  Q. Give us their names, and state what you heard and who they are.—A. I heard that Thomas Flaker—that is not in my neighborhood; that is over on the river a piece—I heard that they whipped him, but I cannot tell what about. He lived in Saint Helena Parish. I heard that he had went and stole a harrow, and that was what they whipped him about. I tell you what I heard.

  Q. Do you know him?—A. Yes, sir; I knew him.

  Q. Do you know what his politics were?—A. Yes, sir.

  Q. What was he?—A. He was a radical, or a republican.

  Q. Do you know who whipped him!—A. No, sir; I do not. It was on the other side of the river, and I don't know.

  Q. Who was the other man that you heard about, if he was a man that lived in your parish? If he was not, I don't care about inquiring about it.—A. There was no other man in my parish whipped.

By Mr. BEEBE:

Q. Where did you vote at the last election !-A. I voted at Clear Creek, at the

Q. Where did you vote at the last election?—A. I voted at Clear Creek, at the school-house.
Q. Do you know what ward it was in?—A. The eighth ward.
Q. You have always voted the republican ticket?—A. Yes, sir.
Q. Did you ever vote for any democrats at all before this last time?—A. Ye, sir.
Q. You were president of a republican club up until last election?—A. Yes, sir.
Q. When did the people come to your house?—A. They came there—as near as I can tell you, it has been so long—I think it was last winter or spring. It was after Christmas or before; I don't know which.
Q. You mean a year ago?—A. Yes, sir.
Q. Did they talk to you about anything else but politics?—A. Yes, sir; they talked—they told me about cotton.
Q. What was it?—A. They asked, did I know who bought cotton from Mr. Kent. I told them that I did not. They asked if I bought any, and I told them no, that I did not. They asked, "Did a man by the name of Thompson buy any?" I told them, "No, sir; he did not." He said, "Don't you know of anybodyelse?" I knew of one man, Lewis Cavelier. He said he didn't buy it from Mr. Kent; he bought it from Si Holmes. He got through picking cotton, and he told them boys to go to the field and scrape cotton, and get what they could. I suppose they went and got it. bought it from Si Holmes. He got through picking cotton, and he told them boys to go to the field and scrape cotton, and get what they could. I suppose they went and got it.

Q. Did they talk to you about this for the purpose of finding out who had stolen cotton?—A. Yes, sir; they said that was what they were hunting.

Q. Did they accuse you, or charge you, with having taken any at all?—A. No, sir; they just asked me did I.

Q. They asked you did you take any?—A. Yes, sir.

Q. Were these men whom you named a little time ago your old master's people—Doty?—A. Yes, sir; William and Alcek Doty were all that were with them. Massa Henry would have been there, but he was sick.

Q. There were no colored people with them?—A. No, sir; there was no colored men with them but me. I was with them.

Q. Did you ever tell any of the colored people that you didn't want to vote the democratic ticket?—A. Yes, sir.

Q. Who did you tell?—A. That I could hardly tell.

Q. You told a good many?—A. I told all around me, and everywhere, that I didn't want to vote the democratic ticket, because I never had voted it, but rather than be disturbed I would vote it.

Q. Have they talked to you any time since that time that they came to your house!—A. Yes, sir.

Q. When was this club meeting held that you were speaking of?—A. I declare I cannot tell you what time.

Q. Who was it that put your name down as president of the democratic club?—A. Mr. John Robbins, I think, was the one that put my name down.

Q. Did John Robbins tell you that he would put your name down, and you must let it stand?—A. Yes, sir.

Q. Did they say that they would do anything to you if you did not?—A. They gaid, "It is down there, and you must let it stay there." I told them that I didn't care about it being there.

Q. Did you go there and serve as president of the club?—A. I went there twice—the time they put my name down, and then once since.

Q. Have you heard of any other colored people who put their names down because they were afraid?—A. Yes, sir, Charlie Johnson, h

Q. Who did you think would have hurt you ?-A. I don't know; the bunch might

e hurt me.

You are afraid of the heap?—A. Yes, sir.

How did you come to be down here at New Orleans?—A. They sent for me.

Who did?—A. I don't know, sir; the marshal came to me—he sent a sheriff

Q. How did you come to be down here at New Orleans?—A. They sent for me. Q. Who did?—A. I don't know, sir; the marshal came to me—he sent a sheriff out to me.

Q. Did you know that you were subpeaned up in Clinton by this committee when we were up there?—A. No, sir.

Q. Are you going back when you get through?—A. Yes, sir; I am going to try. Q. Do you think they will hurt you because you have told what you think is the truth?—A. Yes, sir, they might; but I will go and try.

Q. Do you know Aaron Robinson!—A. Yes, sir.

Q. Did he make democratic speeches?—A. Yes, sir.

Q. Did he make democratic speeches?—A. Yes, sir.

Q. Did he ever talk with you about voting the democratic ticket?—A. No, sir. I never heard him speak, but my boys said that they heard his canvass. I never heard him speak at all; in fact, I was never to none of their speeches. I never heard none of the black people speak. I went to a democratic speaking.

Q. You were subpœnaed by the marshal to go before the Senate committee. Have you been before that committee?—A. Yes, sir.

Q. Has any one talked to you about what you have testified to?—A. Yes, sir.

Q. Who?—A. I don't know him—the republican man in the other house; I don't know what his name was.

Q. Was he a member of that committee?—A. Yes, sir.

Q. Was he a member of that committee?—A. Yes, sir.

Q. Have any others?—A. No, sir; no soul has spoke to me about what I was to testify or nothing.

Q. Have you had any conversation with Mr. Law since you came down here?—A. No, sir; not much. I have not talked as much with him as with the other boy, Rigsby.

Q. Did you talk with Rigsby about testifying here?—A. Yes, sir; I was there while he was talking.

Q. Did you talk was while he was talking.

AARON MCKENZIE (colored) sworn by the chairman.

By Mr. JOYCE:

Question. How old are you?-Answer. Something like thirty-eight or thirtyyears old.
Where do you reside !—A. Up on Beaver Creek, fifteen miles the other side

Question. How old are you!—Answer. Something like thirty-eight or thirty-nine years old.

Q. Where do you reside!—A. Up on Beaver Creek, fifteen miles the other side of Clinton.

Q. What parish!—A. East Feliciana.
Q. How long have you lived there!—A. I was birthed there.
Q. Born and bred up there?—A. Yes, sir; come all the way along up there.
Q. What ticket did you vote!—A. The last time I voted the democratic ticket, but all the time up to the present I have voted the radical ticket.
Q. You have voted the radical ticket up to the last election!—A. Yes, sir,
Q. You may state if anything happened to you just before the election; this last election.—A. Yes, sir; there was a great deal happened to me.
Q. Go and state.—A. Tuesday night, one week before the election, they had a speech up there.
Q. Who had this speech?—A. Asron Robinson and John Skipwith, I believe.
Q. Democratic?—A. Yes, sir. They asked if I was going down, and I told them I didn't know; at least I concluded I would go down and listen at them. I went down and listened at them, and some of them got talking. I didn't pay much attention to the speech any way. Some boys keep bothering me there, and I says, "I cannot hear the speaking if it is a mile off, or four mile." He made me mad. I thought then that they were throwing out some words to make me mad. They came that night to my house and called me.
Q. Who came!—A. I don't know; some unknown party—some party which gave it to me pretty well when they caught me. They came and called me out. As I opened the door they said—one grabbed me by one hand and one by the other, and they carried me out. Well, I walked on a piece with them, and said I, "What has I done that you want to abuse me?" "Never mind, God damn you; I will show you how to talk." "What have I done? Do you want to whip me about politics?" I saked. "Do you want to whip me about politics?" I saked. "Do you want to whip me about politics?" I saked. "Do you want to whip me about politics?" I saked. "Do you want to whip me about politics?" I saked.

in that way until they just worried me out. As I wheeled and run by one I wheeled right over a log, and they just covered me, and they gave me a good beating.

Q. What did they whip you with!—A. Sticks and switches. One part was switches, and after the switch wore out it was a stick. They whipped me and carried me'to a yellow-jacket's nest and laid me down on it, and they let them sting me too a pleuty.

Q. How many men were there!—A. There was four came to my house and then there was four or five came to the woods.

Q. They took you into the woods!—A. Yes, sir.

Q. Were they white men!—A. Yes, sir.

Q. Did you know any of them!—A. No, sir; they were parties I didn't know; if they had been any around our settlement they would not have done it.

Q. What did they tell you as to why they were whipping you!—A. They would not give me any reason. I asked them for what they were whipping me, and they said, "My big toe;" that was all the satisfaction that they would give me.

Q. They would not tell you what they whipped you for!—A. No, sir; I had the opinion when I asked the question if they were not whipping me about politics; that was my opinion; I asked the question to find out if it was, and they said, "No, God damn you; you should not vote if you wanted to vote."

Q. What did they say about voting the democratic ticket!—A. They said one thing to me; they said to me, "You expect to vote on the day of election?" I didn't know whether I did or not; that is all they said to me

Q. When did they say that—when did that take place!—A. That was three months before election.

Q. Was that the same night that they whipped you?—A. No, sir; they abused me mightily, and I went to Mr. East the next morning, and be done up my wounds, I laid down on the bed and he called for things to put on me.

A. Did they ask you to join the democratic club or say anything about it?—A. No, sir; they came to me that night and asked if I was going to hear the speaking; I said I didn't know, "I may go and I may not." They came I might join co not, just as I pleased; they said everybody to their notion; it was a terrible thing to me.

Q. Did you say that you had not much to do with politics!—A. I told them, I says, "I have never had much to do with politics and never had much interest myself about it;" which I didn't. They said to me that night, "God damn you, don't you report this in Clinton to-morrow morning." I told them "No, sir; I was not going to."

Q. What did Mr. East say to you about it, if they suspected that you had circulated the story in town!—A. He said that it was wrong, and that if he had known it they should not have done it, but that he had no idea that it should have been done, or he would have sent out and had it stopped. He didn't like that any man should do any such thing.

Q. What did he say, if anything, about his keeping these fellows from coming back to you, by saying you capht not to tell who whipped you! What did he say about that any time to you?—A. He asked me, "If anybody whips you, you have a right to tell who whips you if you know who done it. You have no right to tell alie about it; because you are here, a laborer for me, and now they stop my labor going on, and if you know who it was you can tell."

Q. Did he tell you that these fellows had head at that you had told!—A. No, sir; he didn't tell me that, if my memory telis me right.

Q. How badly did they whip you!—A. They cut me some four, five, or six hundred lashes.

Q. Lay you up?—A. Yes, sir; three weeks or more.

Q. Did you hear of other colored men being whipped!—A. Yes, sir. There was

Q. How badly did they whip you !—A. They cut me some four, five, or six hundred lashes.
Q. Lay you up!—A. Yes, sir; three weeks or more.
Q. Did you hear of other colored men being whipped!—A. Yes, sir. There was Zeek Glover; he was whipped there; he was the one that reported me.
Q. He came to town and reported that you had been whipped?—A. Yes, sir; they whipped him three or four days before.
Q. Did you hear of any other colored man who had been whipped?—A. Yes, sir; I heard of some that had been whipped, but I didn't know who it was or where. I didn't like to talk that that I didn't know.
Q. Did any colored man tell you that he was afraid to vote the democratic ticket?—A. They said so; that they wanted to vote, and they didn't know hardly what to do about voting.
Q. Wanted to vote what?—A. They wanted to vote the republican ticket. They said that they wanted to vote, but they didn't know hardly what to do.
Q. Did they tell you why?—A. No, sir; I didn't ask them, because I was afraid to sak them; I was afraid to ask any questions at all.
Q. What do you suppose that these men whipped you for?—A. I think, in my view, that they whipped me about politics, and I asked them two or three times, and they said, "No; you should not vote if you wanted to." I said, "If you want to vote I will vote. I will do anything that will keep you from whipping me." They said, "No; you should not vote if you wanted to." I said, "If you want to vote you sha'n't vote." I said, "If you want to whe you sha'n't vote." I said, "If you want all along. I didn't know what they were going to do with me.
Q. How far did they take you away from the house?—A. About three or four hundred yards.
Q. Were you a man of family?—A. Yes, sir.
Q. Was it in the night time?—A. Yes, sir.
Q. Was it in the night time?—A. Yes, sir.
Q. Was it in the night time?—A. Yes, sir.
Q. Was to the repulse of the proper was a repulse of

#### By Mr. BEEBE:

By Mr. BEEBE:

Q. You were laid up about three weeks!—A. Yes, sir; about three weeks.
Q. Didn't yen go out of the house during that time?—A. I could hobble about a little, and then for a month I was not able to do any werk.
Q. How soon did you get out of the house after they whipped you?—A. I got up the next morning and came up to the house,
Q. Up to Mr. East!—A. Yes, sir.
Q. How far was that from where you live?—A. One hundred and fifty yards.
Q. Has anybody told any stories about your taking any cotton, or stock, or anything of that kind?—A. No, sir; every body knows blamed well that I don't steal.
Q. Nobody reported that you did?—A. No, sir.
Q. Mr. East didn't know anything about this?—A. No, sir.
Q. You say they were not men in the neighborhood?—A. No, sir; if it had been they would not have whipped me.
Q. Do you know who they were?—A. No, sir.
Q. Did you know whom any of them were?—A. No, sir; I never joined a club at all.
I only voted on the day of election, and went on back home.
Q. Didn't you belong to any club at all?—A. No, sir; I didn't join it.
Q. Was there anything said that night by any of these men accusing you of taking anything?—A. No, sir.
Q. They didn't accuse you of taking any cotton or hogs from anybody?—A. I will tell you; that is what I have come to. Well, it has struck my remembrance what they said when they turned off—that I would not pick cotton. I said if I dd pick cotton, I says, one of them is right here picking every day. He knows if I did pick cotton. They said, 'You won't pick cotton.' I said, 'Yes, I do.''
Q. Who was it that spoke to you three or four months before the election about voting?—A. Mr. Doty was going along, and he says, "Ben.'' I says, "Sir.'' "Are you going to vote, but I would vote some way or other. It don't make any difference which way you vote, but I would vote some way or other. It don't make any difference which way you vote, but I would vote some way or other. Ye didn't hob at me about voting, one way or the other.

one way or the other.

Q. Did you ever talk with Mr. East about your reporting this whipping?—A. Yes, sir.

one way or the other.

Q. Did you ever talk with Mr. East about your reporting this whipping?—A. Yes, sir.

Q. Did Mr. East tell you that it had been reported in Clinton that you had been whipped—that you had been up there telling about being whipped?—A. Yes, sir; he went to town and came back, and was telling his wife. He said somebody had gone to town and reported a lie about Aaron McKenzie coming up to the house and I putting some staff on his hands.

Q. When was that?—A. After I was whipped—about two weeks after I was whipped, or three. He was telling his wife about it.

Q. Did you hear him?—A. Yes, sir; he was telling it, and I was up in the house. Q. These men didn't say anything about polities—they didn't want you to vote?—A. Yes, sir; they said I should not vote if I wanted to.

Q. Do you recelled thow matters went when they were registering voters there?—A. Yes, sir; I remember the time when they first came to register—they had gone through it before I knew it.

Q. Didn't you get registered?—A. No, sir.

Q. How did you vote?—A. I voted straight along so.

Q. Without being registered?—A. No, sir.

Q. You were not registered?—A. No, sir.

Q. You were not registered?—A. No, sir.

Q. Did you yote in the ball-dozer's box or the regular box?—A. Yes, sir; I reckon so. It must have been in that box. I reckon. In fact, I didn't take any notice in what box I voted, because I went down and put my ticket in, and went back home. It was cold, and I could not stand the weather. The wind blew against my face right smart all the time and ch'tied me.

Q. You came down to the election in New Orleans!—A. Yes, sir.

Q. Who did you come down here with?—A. I came down with Marshal Larkin.

Q. Where did you go after you came down?-A. He carried me to the custom

o.

Did you go to make an affidavit there?—A. Yes, sir.

Who wrote the affidavit?—A. I disremember what them men's names was.

Who paid you for coming down?—A. I think Mr. Steele was the man who

Q. Who paid you for coming down?—A. I think Mr. Steele was the man who paid me.
Q. How much did he pay you?—A. The first time he gave me twenty and some odd dellars, I think.
Q. Who paid your fare down on the boat?—A. Mr. Larkin paid it. I paid it back.
Q. You paid it yourself?—A. Yes, sir.
Q. How long did you stay down here?—A. I staid down here a week and a half.
Q. Did they read over what was in that affidavit before you signed it?—A. Well, I don't know, sir.
Q. You don't remember that?—A. No, sir.
Q. You had signed the paper before that, hadn't you?—A. No, sir.
Q. You had signed the paper before that, hadn't you?—A. No, sir.
Q. Yau had signed the paper before that, hadn't you?—A. No, sir.
Q. Yes, sir.—A. I know where you are getting to now. Mr. Poole came to me and asked me—he says, "Aaron McKenzie—that is your name?" I said, "Yes, sir." "I have got a paper, and I am going around to see if there is any intimidation." He says, "Do you know of any?" I dain't know what in the name of God he meant by that, and I told him, "No, sir." And he wrote it down; and I never took hold of the pen with my hand, and he didn't ask me to. I was putting cotton in the gin, and he didn't ask me to do it. I went on about my business, and he didn't ask to take hold of the pen.
Q. Was here anything paid —A. There was nothing paid me.
Q. Was there anything paid —A. There was nothing paid me.
Q. Was there anything paid —A. There was nothing; and I ain't going to get nothing, I reckon.
Q. Have you anything for that?—A. No, sir.
Q. He never gave you anything?—A. No, sir; nothing; and I ain't going to get nothing, I reckon.
Q. Have you testified before the other committee, or is this the first time?—A. This is the first time I have been in this house.
Q. You went before some others?—A. Yes, sir; twice at the custom-house.
Q. This last time you were down here?—A. Yes, sir.

#### E. A. Rigsny recalled at his own request.

The Witness. There is something that I said about the republican party taking care of their friends. I work about at one thing and another. I have not got any money. I meet one of my friends, and I ask them to loan me a dollar or two, and I pay that back. That is what I meant to say. I didn't finish.

Q. Have you talked with any one about making this correction?—A. No, sir,
Q. Didn't you speak to any one in the room?—A. No, sir; I thought of it my-self.

Q. Whom have you worked for ?—A. I have worked on the levee, Q. Whom have you worked for on the levee ?—A. I have worked for Mr. McGin-

Q. Whom have you worked for on the levee?—A. I have worked for Mr. McGinnis.
Q. What is bis politics?—A. There is no politics about him.
Q. Whom else have you worked for?—A. I don't recollect the gentleman's name.
Q. I mean since you came down here.—A. I have not worked for anybody.
Q. You have not been paid anything by any republican for work?—A. No, sir.
Q. You have not received any compensation from any republican for labor?—A.
No, sir; I have been on no list or nothing.
Q. Where you worked has been for others?—A. Yes, sir; that is what I meant.

Q. Where you worked has been for others —A. Yes, sir; that is what I meant, This testimony establishes beyond all question the fact of intimidation in all three of these parishes, and virtually settles all the questions involved in this investigation as to them.

In addition to this positive evidence of intimidation from witnesses which I was permitted to call, we have the admissions of a large number of witnesses, from each of the three parishes, called by the majority of the subcommittee, drawn out on cross-examination, which fully corroborate all the facts sworn to.

Not having the testimony before me I am compelled in this case, also, to rely upon minutes which I took during the examination, and my memory, for the statements of these witnesses.

Judge Hirghes testifies that colored men have been intimidated to some extent. Thomas T. More says that regulating may have run into political matters.

Nelson Ball says he saw 100 mounted and armed men in one of said parishes in October, 1876.

Nelson Ball says he saw 100 mounted and armed men in one of said particles. Jobn Haley swears that he heard that bodies of armed men passed through the parish the Sunday night before the election.

Littleton Jones heard of the presence of regulators in the parish; that they had attacked Senator Weber, and tried to kill him while crossing the river.

Major Wedge says that he knows that armed white men rode through the sixth ward of his parish.

Alex. Pool testifies that colored men told him they should vote the democratic ticket, but they would not if it was not for certain men whom they feared.

Wm. King says he knew Willis Wisham; that in July, 1876, four or five men came to his cabin and inquired for him; that they were armed with pistols, and ho was frightened. These men said Willis had been talking about the Gair and Matthews matter, and told King to tell him when he came back that he had better get out of there.

came to his cabin and inquired for him; that they were armed with pistols, and he was frightened. These men said Willis had been talking about the Gair and Mathews matter, and told King to tell him when he came back that he had better get out of there.

Wm. Hansberry swears that one Maxwell, a white democrat, told him that he could not vote the democratic ticket and live there; that he would be cleaned out. He says he was afraid and went and joined the democratic club and voted the democratic ticket, as he was ordered to do.

Henry Matthews says he heard that bodies of armed white men were riding through the parish during the canvass.

John Sensley says that he heard that it was said at a democratic meeting the night before the election that the colored men must vote one way or the other or they could not live in that country.

He says he believes that many of the colored men did not vote as they wished to; that many of them would have voted the republican ticket if they had been allowed to.

Josiah Johnson testifies that he voted the democratic ticket against his will; that Anthony Wilson, a white democrat, told him the night belove the election that if he did not get out and vote the next day the head and fout boards of his coffin would be nailed the next night. "I had intended to vote the republican ticket before that."

He also says that squads of armed men rode about the parish; that they stopped at his house and told him he must come out to the democratic meeting; this was in the night-time, after he had gone to bed.

He says that he thought if he did not go to election and vote the democratic ticket he would certainly be harmed.

Solomon Jefferson swears that he heard a speaker at a democratic meeting s y that unless the colored men voted the democratic ticket they would have to suffer the consequences; that if colored men did not vote with the white democrats they would find out that there had never been any bull-dozing such as there would be after the election.

W. A. Cane says that he did take the nam after the election.

W. A. Cane says that he did take the names of the colored men who voted the republican ticket on election day.

Austin Williams says that he was told that if he did not vote the democratic ticket he could not live in the parish.

J. P. Monahan admits that he told Henry Smith, when he came back to Clinton, that his life would not be safe if he staid there.

Isaac Butler says that he heard that the bull-dozers were riding around the parish whipping and beating colored men.

Dan Wisham testifies that he had always voted the republican ticket, and should have done so at the last election, only that he did not want to be bothered. Anthony Wilson swears that he did not vote the democratic ticket of his owa free will. He says that white democrats came to his house in the night-time, after he and his family bad gone to bed, and threatened him because he had been organizing republican clubs. They told him they were bull-dozers, and that he must join their club and vote the democratic ticket. They also visited other colored men the same night, whom they threatened in the same way. I told a white democrat about it, and he said the white people were determined to change the government, and were going to make the colored people help them.

Nathan Morgan testifies that one white democratic told him that if he did not vote the democratic ticket or the white people would hurt me.

Bruce Pipes says that more or less of the colored men voted the democratic ticket because they were frightened; he understood that if they did not vote that ticket because they were frightened; he understood that if they did not vote that ticket they would be killed or hurt. He also says that he did not vote that ticket or will.

J. W. Mann testifies that he did not get up a republican club because republi-

own will.

J. W. Mann testifies that he did not get up a republican club because republicanism was not popular in that ward.

Henry Brookhart swears that regulators were around down to last summer; heard that colored republicans were killed. Knew Watson; his store was burned and he shot at. Julius Green, an active republican, was shot at on his way home from

church.

Alex. Robbins admits that he rode around with fifteen or twenty other armed men in night-time down to September, 1876; that they took colored men out of their beds; that they practiced this all through the summer and fall of 1876.

Leon Jastrumski says, "I heard of bodies of armed men, called regulators, who traveled through the country last fall and in the early part of the winter."

J. W. Dupree swears that he heard of an organization of men who were in the habit of going about the parish committing acts of violence upon colored people.

V. M. Lange testifies that he has heard of colored men being killed in that parish on account of their politics.

L. C. Morris says he has heard of bodies of armed men riding through the parish in the night, and that the colored people were intimidated thereby; that these men had shot Myers and his son, and committed other acts of violence.

E. D. Wood says he has heard within the past year that bodies of armed white me were riding through the parish in the night-time, committing depredations upon colored men.

men were riding through the parish in the night-time, committing depredations upon colored men.

A. H. Levy says he has heard the reports of violence upon colored people by white democrats for some time past. The colored people all have the impression that there is intimidation, and that it is carried on by white democrats. He says he saw a man only a week before who told him that he was forcibly taken from his house, and a rope put around his neck, and whipped, and told to leave the parish, and that he left. He further states that this man is a republican, as all the colored people naturally are when left free, and that he was roped because he was a republican. The effect of these acts of violence has been to hinder a fair expression of their opinion at the ballot-box. He says he knows, from report and otherwise, that many colored men were compelled to vote the democratic clubs to save their property and lives. The colored men had all been sufficiently cowed and intimidated before the day of election.

Jackson Hamilton says he heard of acts of violence to colored men because they were republicans.

and join democratic clubs to save their property and lives. The colored men had all been sufficiently cowed and intimidated before the day of election.

Jackson Hamilton says he heard of acts of violence to colored men because they were republicans.

Mortimer Price swears that it is his opinion that many of the colored men voted the democratic ticket because they were frightened to it.

These colored men are weak-uinded and timid. They had families, and did not know but what they would be hung, and so they thought if they joined the democratic party they would get along.

Charles J. Verbois says he had heard of the bull-dozers, and that they were riding around the parish a few months before the election.

Gustave Le Blanc swears that there was considerable bull-dozing done in the parish; that the general complaint among the colored people was that they were afraid of them. The colored people are republicans when left to their own judgment, but a good many were airaid to vote as they wished.

Some of the colored men were scared by these bull-dozing stories. They are timid. The stories had an effect upon their minds.

The state of the public mind among the white democracy in those three parishes upon political matters, and the safety with which republicans could have advocated their principles and exercised the elective franchise, is well illustrated by the answer given by a white democratic witness, called by the majority of the subcommittee, to a question put by the chairman, in which he said that it would be safe enough for a republican to come there to live "if he behaved himself;" and when inquired of what he meant by that, he replied that a republican would be safe to come there to live "if he behaved himself;" and when inquired of what he meant by that, he replied that a republican in order to say that the desperate and reckless manner in which they testified I have never seen equaled, and I only put it in the mildest form when I say that no man who is not blinded by prejudice, or willfully obstinate throu

evidence of James Law, which shows that why there were none was occase heman could be found in that parish bold and reckless enough to receive and distribute them.

In closing this branch of my report I desire to state that I have attended closely and earnestly to the work we have had in hand, and have endeavored, to the utmost of my power, to divest my mind of all partisan or political bias, and, as far as possible, considerately and candidly weigh the evidence, as it now occurs to me, which has been allowed to be taken under the rule established by the committee, and to arrive at the truth; and, after a careful investigation and mature reflection upon the whole case, I am forced to the conviction, and do therefore report, that as far as relates to the said three parishes of East Baton Ronge and East and West Feliciana, the following facts will be found, from the testimony, proved beyond question or reasonable doubt:

1. The organization and existence in said parishes, as early as the spring or sumer of 1875, of bodies of armed and mounted white men, called the White League, or Regulators, with complete regimental and company organizations.

2. That these bodies of men were in the habit of riding through said parishes in the night-time, whipping, shooting, hanging, and driving off colored republicans.

3. That the colored people, being naturally timid and easily frightened, were intimidated by these acts of violence from voting the republican ticket, and forced to join democratic clubs and vote the democratic ticket.

4. That in the last political canvass the democratic party was desperate, and was determined to carry the election at all hazards, as will be seen by confidential circulars issued from headquarters; to accomplish which a certaix element in the party did not hesitate to resort to any measures to secure the colored vote, with-

out which they knew they could not succeed, as the colored men in Louisiana, when left free, are almost unanimously republican.

5. That the alleged original and ostensible object and purpose of the White League, or Regulators, was to break up thieving and the destruction of property; but the testimony shows that when they were fully organized they were manipulated by the leaders, changed into democratic clubs, pledged to vote the democratic telekt, kept in working order and on duty down to the very time of the election, and made to do the work they were originally designed to, and that was, by terror and acts of violence, to control the colored vote.

6. That these bodies of armed men were seen at different points in said parishes during the spring and summer of 1876, in squads of from five to one hundred, all mounted, and armed with rifles, shot-guns, and pistols.

7. That the white democrats shot John Gair, Gilbert Carter, Isaac Mitchel, and scores of other prominent republicans, for political reasons, and whipped and drove away most of those they did not shoot or hang.

8. That a large portion of the white people in said parishes have no proper appreciation of the value of human life, and believe that the only way to manage the colored voter is with a bludgeon in one hand and a pistol in the other.

9. That at one poll, at least, in one of said parishes, on the day of election, every colored man who voted the democratic ticket was furnished with a passport or safe-conduct which showed that they had voted the democratic ticket, and that they were to be protected against the White League, the Regulators, or any other body of armed white democrates.

10. That in every political campaign, until the last, republican clubs had been organized said kept up in every ward in said parishes, but during the last canvasi not a republican. Club was organized in either parish, and only one republican meeting was held in each parish, and these were attended with great peril both to the speakers and the republicans who were

cause of the homicide was a personal difficulty, it has failed, but has generally disclosed the fact that the murderer was a white democrat, and the victim a colored republican.

14. That from July 24, 1875, to December 24, 1876, twenty-four murders were committed in the parish of West Feliciana, twenty of the victims being colored, while in the parishes of East Baton Rouge, where Morgan, the coroner, was notified not to hold any more inquests, and East Feliciana, there were nearly an equal number during the same time, many of which could be traced directly to political causes, and that being the most reasonable apology for most of them.

15. That on one occasion a large body of these democratic White Leaguers or Regulators entered the office of Judge Dula, parish judge in West Feliciana, and, with violent language and threats of personal injury, demanded his resignation, on some false pretense, but really because he was a republican.

16. That the same, or another body of armed men of like character, entered the court-house in Saint Francisville, in the same parish, when the court was in ession, and in a threatening and violent manner broke up and dispersed the court, and then compelled the immediate resignation of all the republican members of the police jury.

Every man engaged in these lawless outrages upon law and order was a white democrat, and each man they drove out of office was a republican, and yet these men say it had no political significance.

17. That men supposed to belong to the same marauding party made an attack upon Senator Weber and attempted to shoot him in his own house; and not succeeding in this, afterward waylaid him and attempted to kill him while crossing the river on his way to his home at Saint Francisville.

18. That a large body of armed white democratas, supposed to be a portion of the same organization, under the lead of Joseph A. Norwood, lieutenaut-colonel of the White League in the parish of East Feliciana and chairman of the democration, while the court was in session, drov

Dewing does not dare to go back there to attempt to exercise the functions of his office.

19. That on the 11th of July, 1876, a body of armed men took Gilbert Carter, a bright, respectable colored man, and an active and earnest republican, out of his bed and house in the night-time, and when he attempted to escape from their tortures, they shot him to death at his own door, in the presence of his wife and children, who upon their knees, in an agony of grief, implored them to spare his life.

20. That they also killed Issac Mitchel and Ephraim Armstrong, two other colored republicans, in the same way, and attempted to murder Julius Green, another active colored republican, while on his way home from church with his wife, on a Sabbath afternoon. That on the night of the 27th of May, 1876, the white democrats attempted to assassinate W. G. Lane, a prominent republican and candidate for the legislature, at the Harney House, in the city of Baton Rouge, because he was a republican and had been the prime mover and principal actor in a republican convention which had been held there on that day.

21. That they tied John Gair, one of the most intelligent and bravest of the colored leaders in the State of Louisiana, to a tree, and shot him to death, and hung his sister-in-law, Babe Mathews, to a tree in the court-house yard at Clinton.

22. That, in addition to these cold-blooded murders, they have, during the past two years, whipped and beaten scores of colored republicans, for which no pessible reason can be assigned except that they were republicans, and that they refused to join the democratic clubs or vote that ticket.

23. That nearly every leading republican how white and colored, residing in said three parishes, has been driven away from his home by the threats and acts of white democrats, and are now exiles in New Orleans and other places, and dare not return for fear of being killed.

24. That no republican in either of said parishes has dared to come before this subcommittee, for fear of losing his life or hi

do so.

25. That it is very apparent, from the testimony as taken, that the majority of the subcommittee have been generally very careful, in this investigation, not to put upon the stand those who have been personally engaged in these acts of violence and murder, as shown by the testimony which was used before the State returning board at New Orleans.

26. That during our whole investigation there has seemed to be a studied effort on the part of the majority of the subcommittee, as will be seen on reference to

the testimony, to so frame every question as to clearly and plainly suggest to each witness the answer to be given, the effect of which has been, as I think, unintentional, of course, on the part of the majority of the subcommittee, to cover up and justify all these acts of murder and violence, and thus to bolster up and strengthen the democratic theory, instead of getting at the real truth and inwardness of the conduct of the white democracy during the late campaign in Louisiana.

27. That nearly every negro put upon the stand, except some few who had always voted the democratic ticket, has plainly shown by his manner that he was testifying under compulsion, and that he does not go back upon those in whose presence he was testifying, or refuse to testify to what he had been told.

They all told the same story, in very nearly the same language, which indicates very clearly the perfect system to which this intimidation has been reduced, and the complete and utter subjection of the colored people in said parishes.

28. That a great many of the colored men who have testified before us have been forced to admit that they joined democratic clubs and voted that ticket against their will, and because they were given to understand, in various ways, that unless they did so they would be murdered, whipped, or driven from the parish.

that unless they did so they would be murdered, whipped, or driven from the parish.

29. The testimony, I think, also shows most conclusively that, although it was given out in 1875, when the White League or Regulators were organized in these parishes, that they were to break up thieving and lawlessness, yet it was then intended and designed that they should be used in the then approaching political campaign, and that during the fall and winter of 1875, and the spring and summer of 1876, they were used for that purpose, in consequence of which the colored people were so perfectly frightened and cowed by the murders and acts of violence committed by these armed democratic bands, that when the canvass commenced they had only to say to the colored men that they had better join the democratic clubs and vote that ticket, and they knew at once that such an admonition meant compliance or death.

The republican vote in these three parishes in previous years is worthy of consideration as bearing upon the matter under investigation.

The republican vote, as appears by the official register, was in 1868:

The republican vote, as appears by the		
East Baton Rouge. East Feliciana. West Feliciana.		1,674
In the presidential election that year, G		
East Baton Rouge East Feliciana		1,247
West Feliciana		
The republican vote was in-		
1870.	1872.	
East Baton Rouge       2, 440         East Feliciana       1, 273         West Feliciana       1, 174	East Baton Rouge	1,690
1874.	1876.	
East Baton Rouge       2,546         East Feliciana       1,688         West Feliciana       1,358	East Feliciana	1
The official registration of voters in 187	6 was:	
WHITE.   1,801   East Baton Rouge   1,801   East Feliciana   1,004   West Feliciana   406	East Feliciana	2, 127
The democratic vote in 1876 was:		
East Baton Rouge		1,740

The foregoing figures prove beyond the shadow of a doubt that every democratic vote in those parishes should have been excluded from the count. Witnesses may be mistaken or falsify, but the legitimate inference to be drawn from these figures is veritable and conclusive.

I also append to this report copies of the protests made by the supervisors of registration in those three parishes, showing that the law has therein been complied with.

These several protests were backed up and supported before the return of the several protests.

These several protests were backed up and supported before the returning board by a vast number of affidavits which may be referred to.

# Protest of F. A. Clover, supervisor of registration for the parish of East Baton Rouge.

### STATE OF LOUISIANA, Parish of Orleans:

Protest of F. A. Clover, supervisor of registration for the parish of East Baton Rouge.

State of Louisiana, Parish of Orleans:

F. A. Clover, being duly sworn, states that he was appointed supervisor of registration in and for the parish of East Baton Rouge, in the State of Louisiana, during the time of registration and revision of registration held last preceding and preparatory to the last election, held the 7th day of November, 1876; that as such supervisor of registration, he conducted said registration and revision of registration from the 28th day of Angust to the 28th day of October, 1876, inclusive; that during the said time of registration and revision of registration there were riot, tumult, acts of violence, intimidation, and bribery, and corrupt influences at and near the several places of registration and revision of registration in said parish, which said riot and tumult, acts of violence, intimidation, disturbance, and corrupt influences did tend to prevent, and did prevent, a fair, free, peaceable, and full vote of all the qualified electors of said parish; that the facts relating thereto are as follows: During said period of registration it came to my knowledge in my official capacity that a large number of the qualified electors of said parish (colored men) were forced to join democratic clubs and told if they did not vote the democratic ticket they would be "bull-dozed," or "regulated," by which words I understood to be meant armed bands of men visiting said voters, and by whipplegs, shootings, or other violence, putting them in fear of their lives and forcing them to fies their homes.

That some time near or during registration, a colored man named William Y. Payne, a qualified elector of said parish, was visited at his house in the night by an armed band of white men, who took him from under his bed, put a rope or a mule, and dragged him to death.

That a short time before or during said period of registration, a colored man named Isidore Herron, a qualified elector of said parish, a justi

During said period of registration, it came to my knowledge, in my official capacity, that bands of white men patrolled the roads of said parish almost nightly on horseback; this for the purpose of striking terror into the minds of the colored people, thereby preventing them from voting the republican ticket.

At a short time before or during registration it came to my knowledge, in my official capacity, that in several instances armed bands of white men had visited the houses of colored republicans and voters, and taking them from their houses and whipped them; this for the purpose of striking terror into the minds of the colored people, and causing them to be in fear of their lives and persons should they vote the republican ticket.

That a short time before or during said period of registration there came to my knowledge, in my official capacity, several instances of white men having shot at and wounded colored republicans; this for the purpose of striking terror into their minds, and preventing them from freely and peaceably exercising their right to vote.

and wounded colored republicans; this for the purpose of striking terror into their minds, and preventing them from freely and peaceably exercising their right to vote.

That during said period it has come to my knowledge, in my official capacity, that republican meetings were interfered with and disturbed by arned bands of white men, with threats of violence, abuse, oaths, cursing, and by following the republican speakers and threatening them in a violent manner; that by such disturbance and violence the peace of the republican meetings was disturbed, republicans were prevented from attending, and were driven away from said meetings. That during said registration large numbers of colored voters were induced by fraud and false representations to deposit their registration papers for safe-keeping with white democrats, and did so deposit them; that this was done for the purpose of depriving said colored voters of their votes, and also for the purpose of causing said papers to be illegally used and fraudulently voted upon by parties other than the rightful voters.

That during said registration the colored republican voters of one of the largest sections of said parish, to wit, that at and about the town of Port Hudson, where it has been customary to have a voting-poll, at which about 500 voters have usually voted, and a republican majority of about 500, or more, requested me not to establish a voting poll at said town, and gave as their reason therefor that they would not be allowed to vote the republican ticket at that poll, but would be forced by threats and violence to vote the democratic ticket.

That during the whole period of registration and revision of registration there existed in said parish a continued state of fear, dread, intimidation, and terrorism; that this terrorism was caused by the facts above recited and other similar ones, of which proof can be given; that there was a general feeling of insecurity among republicans in their lives and property; that republicans dared not, as everal times durin

Supervisor of Registration for the Parish of East Baton Rouge, State of Louisiana. Sworn to and subscribed before me, at New Orleans, La., this 18th day of Novem-

Protest of James E. Anderson, supervisor of registration for the parish of East Feliciana.

# STATE OF LOUISIANA, Parish of East Feliciana\*

James E. Anderson, superviror of registration for the parish of East Feliciana, under oath declares and states that he was a supervisor of registration in and for the said parish of East Feliciana during the registration or revision of registration held preceding the general election which was held on the 7th day of November, 1876, and that he was present in said parish during the time of said registration or revision of registration, and of the said election, with the exception of a period of about ninet een days, in the months of October and November, during which last-named period he was unable to remain in said parish and to exercise his functions as supervisor therein by reason of the insecurity of his life.

That prior to such absence he had been assaulted within said parish, and an attempt was made to destroy his life; that said assault and attempt to take his life were made in the night-time, by parties to him unknown; that he has every reason to believe that said attempt and assault was made for the purpose of intimidating and preventing him from the free and proper discharge of his official duties as said supervisor; that he finally returned to said parish on the 1st day of November, 1876, under the assurance given in New Orleans to himself and to the governor of the State that his life and personal safety should be protected from further danger; that during the time of registration or revision of registration aforesaid there were in said parish riot, tumult, acts of violence, intimidation, and disturbance, and corrupt influences at places within said parish, at or near the places of registration or revision of registration, which riot, tumult, acts of violence, intimidation, and disturbance and corrupt influences and corrupt influences did tend to prevent and did prevent a fair, free, peaceable, and full vote of all the qualified electors of said parish; that by reason of said riot, tumult, acts of violence, intimidation, and disturbance and corrupt influences the election held in said parish on the

death.

That bodies of armed men were reported to me as having often ridden about the country during the said period of registration, and having harassed, intimic ated, maltreated, whipped, and sometimes shot such voters; that qualified voters colored persons, known to be republicans, were in frequent cases during said period of registration harassed and maltreated by gangs of masked men, and by them whipped, on account of their refusal to promise to vote the democratic ticket in said election; that in the month of October, a short time prior to said election, an attempt was made to assassinate him, the said supervisor.

That on Sanday night preceding the election Lieut. W. S. Davis of the Thirteenth United States Infantry was fired upon by some parties in ambush in said parish; that the above-recited acts had the effect to intimidate and put in fear of bodily harm and of death the republican voters of said parish.

That, in consequence thereof, a belief became general among such voters that to vote for any but the democratic candidates would put in jeopardy their personal safety and their lives, and that of their families, or drive them to the necessity of flight from the parish; that this conspiracy and concerted system of intimidation was so effectual, that although, in a fair and free election, there would have been, as he is informed and believes, a large majority for the republican candidates, there was not a single voter in said parish who was not so intimidated that he did not dare to vote for a republican candidate, except one vote cast for the republican candidate for lleutenant-governor and two votes for Hayes and Wheeler, although not for the republican electoral ticket.

That the number of qualified electors of said parish who were deterred by such riot, tumult, acts of violence, intimidation, and disturbance, and corrupt influences from voting as aforesaid were about eighteen hundred in number.

That the number of qualified electors who were deterred by such riot, tumult, acts of violence, intimidation, and disturbance, and corrupt influences, from voting for the republican candidates, and who were coerced thereby to vote for the democratic candidates were, as nearly as can be estimated, about four hundred.

And affiant further states that he did not affix the foregoing statement of riot, intimidation, &c., to his returns of the election at the time of mailing them, because he would have been in danger of his life to have done so at that time.

Supervisor of Registration, Parish of East Feliciana,

Parish of Orleans, 28:

STATE OF LOUISIANA, Parish of Orleans, ss:

Sworn to and subscribed before me this 10th day of November, A. D. 1876. HUGH J. CAMPBELL, Judge Fourth District Court for the Parish of Orleans.

Protest of D. A. Weber, supervisor of registration for the parish of West Feliciana.

Protest of D. A. Weber, supervisor of registration for the parish of West Feliciana.

Personally came and appeared before me, the undersigned authority, D. A. Weber, who, being duly sworn, doth depose and say that he resided in the parish of West Feliciana and State of Louisiana; that he is supervisor of election for said parish; that from the 15th day of August, A. D. 1876, to the 7th day of November of the same year, and during the time of registration and revision of registration, parties armed with the most improved repeating fire-arms passed to and fro throughout the said parish of West Feliciana, sometimes inviting colored men and to enforce their compliance with such invitation or demands, sometimes committing acts of violence, intimidation, and disturbance, all of which said acts did prevent and tend to prevent a fair, free, peaceable, and full vote of all the qualified electors of said parish and deter the electors of said parish, to the number of eight hundred, from voting at the said election on the 7th day of November, A. D. 1876, in accordance and wishes of said electors.

D. A. WEBER, Supervisor of Registration.

D A. WEBER, Supervisor of Registration.

Subscribed and sworn to before me this 15th day of November, 1876.

JNO. P. SOUTHWORTH,

Commissioner United States Circuit Court, District of Louisiana.

The conclusion, therefore, to which I am irresistibly led, after a long and laborious investigation, and a careful consideration of the whole case is, that at the commencement of the campaign the democrats determined to carry the State. That for this purpose they selected the parishes which had given the largest republican majorities in 1874, where they would have the most to gain and the less to lose in case they were thrown out by the State returning board; that in those parishes they carried on a system of violence and terrorism that paralyzed every republican and gave them the complete control of the colored vote, so that those who could not be forced to vote the democratic ticket were kept away from the polls, and I therefore find that, had the colored people in those three parishes been left free to vote as they pleased, the republican majority would have reached at least fifteen hundred or two thousand upon the most liberal count for the democratic ticket.

All which is respectfully submitted.

CHARLES H. JOYCE.

CHARLES H. JOYCE.

DEFICIENCY FOR GOVERNMENT PRINTING.

Mr. WALDRON submitted a conference report; which was read, as follows:

as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill of the Senate No. 1222, to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, having met, after full and free conference have been unable to agree.

HENRY WALDRON,
JOHN L. VANCE,
CHARLES B. ROBERTS,
Managers on the part of the House.

WILLIAM WINDOM,
JOHN SHERMAN,
WILLIAM A. WALLACE,
Managers on the part of the Senate.

The report was received and the committee discharged. Mr. WALDRON. I move that the House further insist upon its amendments and request another conference.

The motion was agreed to.

ORDER OF BUSINESS.

Mr. SAYLER. I move that the House now take a recess until to-morrow morning at ten o'clock, and I ask unanimous consent that there be an understanding that a further recess be then taken till five minutes before twelve o'clock.

Mr. RUSK. I object to any such understanding.

The motion of Mr. SAYLER was then agreed to; and accordingly (at four o'clock and thirty-five minutes p. m.) the House took a recess until to-morrow morning at ten o'clock

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Memorial of the Legislative Assembly of Dakota Territory, for the vacating of the Indian reservation set apart by order of the President of the United States, November 28, 1876, to the Committee on Indian Affairs.

Also, memorial of the Legislative Assembly of Dakota Territory, for the right of way over the public domain to a railroad and telegraph

line from Fort Abraham Lincoln to the Little Missouri River, to the

Committee on Railways and Canals.

By Mr. BAKER, of Indiana: Three petitions, signed respectively by Charles F. Howk and 36 others, of Mongo; W. C. Glasgow and 65 others, of La Grange; Levi E. Miller and 12 others, of Kosciusko, Indiana, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads

and Post-Roads.

By Mr. BANNING: Five petitions, signed respectively by P. Powell & Son, Gibson & Co., H. M. Merrill & Co., and others; Joseph R. Peebles' Sons, F. Helfferich & Sons, James L. Haven & Co., and others; E. T. Carson & Co., Julius J. Bantlin, T. T. Brown & Co., and others; Lewis Livingston, Fort, Sadler & Bailey, and others; one by Bloom & Herzog, Louis Stix & Co., J. N. Doniplan & Co., and others, all importers of Cincinnati, Ohio, that the law regulating import duties on goods purchased in Europe be so modified as to permit the use of safes or express trunks for the transportation of imported goods in quantities less than a car-load, and upon their arrival at the point of destination the same to be opened, the goods inspected, appraised, and duties paid thereon, as is now provided in case of sealed cars containing imported goods, to the Committee of Ways and Means.

By Mr. BELL: The petition of George B. Chandler and others, for

By Mr. BELL: The petition of George B. Chandler and others, for the repeal of the bank tax laws, to the same committee.

By Mr. BLAIR: The petition of John M. Brackett and others, of New Hampshire, of similar import, to the same committee.

By Mr. CABELL: The petition of citizens of Franklin County,

Virginia, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads

By Mr. CATE: The petition of J. C. Mayfield and others, of Portage County, Wisconsin, of similar import, to the same committee.

By Mr. CAULFIELD: The petition of citizens of Illinois, of sim-

ilar import, to the same committee.

By Mr. CUTLER: The petition of citizens of Parsippany, New

Jersey, of similar import, to the same committee.

By Mr. DAVY: The petition of citizens of Rochester, New York, against the passage of the bill (H. R. No. 796) extending letterspatent for buckles to Sheldon S. Hartshorn, to the Committee on Patents.

Patents.

By Mr. DOBBINS: The petition of citizens of New Jersey, against the passage of the bill (S. No. 1056) concerning commerce and navigation, and the regulation of steam-vessels and sailing-vessels, to the Committee on Commerce.

By Mr. FOSTER: Two petitions, one from importers of Toledo, the other from importers of Cleveland, Ohio, that the law regulating import duties on goods purchased in Europe be so modified as to permit the use of safes or express trunks for the transportation of imported goods in quantities less than a car-load, and upon their arrival at the point of destination the same to be opened, the goods inspected, appraised, and duties paid thereon, as is now provided in case of sealed cars containing imported goods, to the Committee of Ways and Means. Ways and Means.

By Mr. HATCHER: The petition of citizens of Saint François County, Missouri, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Post-Office and Post-Roads.

By Mr. HATHORN: The petition of Almira A. Knapp, for a pension, to the Committee on Invalid Pensions.

By Mr. KASSON: The petition of L. A. Thomas, M. C. Woodruff, and others, for Government aid for a branch of the Pacific Railroad from Sioux City westward, to the Committee on the Pacific Railroad.

By Mr. LANE: The petition of T. B. Willard, Alex. Simon, and F. S. Matteson, for an appropriation of \$100,000 for the improvement of the mouth of Coquille River, Oregon, to the Committee on Commerce.

By Mr. LAPHAM: The petition of citizens of New York, that pensioners be paid from the date of their discharge, to the Committee on Invalid Pensions.

Invalid Pensions

By Mr. LEAVENWORTH: The petition of E. B. Judson and 51 others, of Onondaga County, New York, for the repeal of the banktax laws, to the Committee of Ways and Means.

By Mr. MUTCHLER: The petition of C. A. Rittenhouse, for a pen-

sion, to the Committee on Invalid Pensions.

By Mr. NEAL: The petition of S. E. Carey and 52 others, citizens of Brown County, Ohio, for a post-route from Ash Bridge to Fincastle, Brown County, Ohio, to the Committee on the Post-Office and Post-Roads.

By Mr. SPRINGER: Joint resolutions of the Legislature of Illinois, memorializing Congress in reference to certain land scrip, to the Committee on Public Lands.

By Mr. STENGER: The petition of citizens of Port Royal, Juniata County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Mercersburgh, Franklin County, Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. STRAIT: The petitions of citizens of Minnesota, that pensioners be paid from the date of their discharge, to the Committee

on Invalid Pensions.

By Mr. VANCE, of North Carolina: Resolutions of the General Assembly of North Carolina, favoring the bill for a joint commission to settle the electoral vote, to the committee on counting the electoral vote for President and Vice-President of the United States.

Also, a paper relating to the establishment of a post-route from Casher's Valley to Franklin, North Carolina, to the Committee on the Post-Office and Post-Roads.

By Mr. WALDRON: The petition of J. J. Judge and 44 other printers, employés at the Government Printing Office, and asking that

ers, employés at the Government Printing Office, and asking that their pay may not be reduced, to the Committee on Appropriations. Also, the petition of T. E. Wing, W. H. Boyd, and other business men of Monroe, Michigan, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WELLS, of Missouri: The petition of citizens of Saint Louis, Missouri, against the passage of the bill (H. R. No. 796) extending letters-patent for buckles to Sheldon S. Hartshorn, to the Committee on Patents.

By Mr. WHITING: The petition of Henry Fruitt, S. A. Wood, and 70 other business men of Chillicothe, Illinois, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WHLUS: The petition of Montgomery Brothers and 200

By Mr. WILLIS: The petition of Montgomery Brothers and 200 others, of New York, for the repeal of war taxes on banks, bankers, and banking institutions, to the same committee.

Also, the petition of Charles Hath and 100 others, of New York, of

similar import, to the same committee.

Also, the petition of Richard Arnold and 250 others, of New York,

of similar import, to the same committee.

Also, the petition of John D. Creimmens and others, of New York, of similar import, to the same committee.

Also, the petition of D. C. Hayes and 100 others, of New York, of

similar import, to the same committee.

Also, the petition of Henry Steers and 100 others, of New York, of similar import, to the same committee.

Also, the petition of Limbert & Co., of New York, of similar im-

Also, the petition of J. De Motte Smith and 100 others, of New York, of similar import, to the same committee.

Also, the petition of George Cabot Ward, of New York, of similar

import, to the same committee. Also, the petition of J. Squier, of New York, of similar import, to

the same committee. Also, the petition of Samuel H. Fox and Austin B. French, of New

York, of similar import, to the same committee.

Also, the petition of R. Morris and 50 others, of New York, of similar import, to the same committee.

Also, the petition of W. Quimby and others, of New York, of simi-

lar import, to the same committee.

By Mr. WILSON, of West Virginia: The petition of C. C. Zinn and others, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

#### IN SENATE.

# SATURDAY, February 10, 1877-10 a.m.

The recess having expired, the Senate resumed its session.

#### ELECTORAL VOTE OF FLORIDA.

The PRESIDENT pro tempore. The Chair lays before the Senate a communication from the president of the commission, which will be

The Secretary read as follows:

WASHINGTON, D. C., February 9, 1877.

Washington, D. C., February 9, 1877.

Sm: I am directed by the electoral commission to inform the Senate that it has considered and decided upon the matters submitted to it under the act of Congress concerning the same, touching the electoral votes from the State of Florida, and herewith by direction of said commission I transmit to you the said decision in writing, signed by the members agreeing therein, to be read at the meeting of the two Houses according to said act. All the certificates and papers sent to the commission by the President of the Senate are herewith returned.

NATHAN CLIFFORD,

President of the Commission.

Hon, THOMAS W. FERRY,
President of the Senate.

Mr. BOUTWELL. There are so few Senators in attendance that I ask a call of the Senate.

The PRESIDENT pro tempore. The Secretary will call the roll.
The Secretary called the roll, and after some little delay, twentyseven Senators having answered to their names,
Mr. BOUTWELL. As the subject presented to the Senate is of a
good deal of importance and as there may not be a quorum here even
at twelve o'clock, I move that the Sergeant-at-Arms be directed to
notify absent Senators and request their attendance.

The motion was agreed to

The motion was agreed to.

The PRESIDENT pro tempore. The Sergeant-at-Arms will execute the order of the Senate.

# FORTIFICATION APPROPRIATION BILL.

The PRESIDENT pro tempore. If there be no objection, the Chair will appoint as the committee of conference on the bill (H. R. No. 4188) making appropriations for fortifications and for other works of

defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, the Senator from Minuesota, Mr. WINDOM, the Senator from Illinois, Mr. LOGAN, and the Senator

Mr. WINDOM, the Senator from Illinois, Mr. Logan, and the Senator from West Virginia, Mr. Davis.

Mr. Davis. While I do not object to the appointment of the committee by the Chair, I submit to the Chair whether there was not a distinct understanding on all sides that no business whatever, not even a call of the Senate, should take place between the hours of ten and twelve o'clock until further notice was given in regular session.

Mr. ALLISON. Until the report of the commission came in.

Mr. Davis. There was no such reservation, according to my recollection. I submit, however, without any further question that I

Mr. DAVIS. There was no such reservation, according to my recollection. I submit, however, without any further question that I thought that was the rule.

The PRESIDENT pro tempore. The Chair thinks that was the unanimous understanding pending the action of the commission generally, though not specifically. The Senator is correct in his statement that it was the understanding that there was nothing to be done between ten and twelve pending the sitting of the commission. Inasmuch as notice had been received, it was thought the Senate should be full; and for that reason the Chair entertained the motion to request the attendance of absent Senators, and the Chair asked unanimous consent of the Senate to appoint a conference committee that mous consent of the Senate to appoint a conference committee that

the business of the Senate might move on.

Mr. DAVIS. I hope the Chair will not understand that I attribute

Mr. DAVIS. I hope the Chair will not understand that I attribute to bad faith anything whatever that has been done this morning. I merely wanted to submit to the Chair the general fact.

The PRESIDENT pro tempore. The Senator is correct. Does the Senator object to the appointment of the committee of conference? Mr. DAVIS. No, sir; certainly not. I purposely avoided making an objection to it; I think it is altogether in place; but my object in rising was rather to apologize for Senators, if there was any apology necessary, for not being here. When the Senator from Massachusetts moved to request the attendance of absent Senators I did not object to it although I thought it was not carrying out in perfect faith our to it, although I thought it was not carrying out in perfect faith our understanding

understanding.

The PRESIDENT pro tempore. If there be no objection, the committee will stand as appointed.

After a further delay, and Mr. Kernan having appeared in the Chamber, making twenty-eight Senators present,

Mr. BOUTWELL, (at ten o'clock and twenty-seven minutes a. m.)

With the understanding that the House has taken a recess, and the object of my motion having been to make sure of a quorum at twelve clock I may at that the presentings under the call he superaded in o'clock, I move that the proceedings under the call be suspended in order that the Senate may take a recess until twelve.

Mr. DAVIS. I would ask whether the Sergeant-at-Arms has not already gone out to execute the order of the Senate?

Mr. BOUTWELL. That will make no difference. The notice to Senators will go on, undoubtedly, in the mean time.

Mr. DAVIS. What am I to understand has been the action of the

House ?

The PRESIDENT pro tempore. The House has taken a recess until five minutes to twelve; and the Senator from Massachusetts moves that further proceedings under the call of the Senate be sus-

Mr. BOUTWELL. And that we'then take a recess.
Mr. DAVIS. Until twelve o'clock?
Mr. BOUTWELL. Yes, sir.
The PRESIDENT pro tempore. The question is on the motion of the Senator from Massachusetts that proceedings under the call be suspended.

The motion was agreed to.

Mr. BOUTWELL. I move that the Senate take a recess until

twelve o'clock.

The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock m.

The Senate re-assembled at twelve o'clock m.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Friday, February 9, was read and approved.

### COUNTING OF ELECTORAL VOTE.

Mr. HAMLIN. Mr. President, the Senate having been informed that the Commission to decide the contested electoral votes for President and Vice-President have arrived at a decision upon the case of Florida, I move that the Secretary be directed to notify the House that the Senate is now ready to meet with that body for the purpose of proceeding in the canvass of the presidential vote.

The motion was agreed to.
The PRESIDENT pro tempore. The Secretary will execute the order of the Senate.

Mr. BOUTWELL. Mr. President, if it is not out of time, I desire to present resolutions adopted by the Legislature of Massachusetts—Mr. EDMUNDS. It is not in order.

The PRESIDENT pro tempore. No legislative business is in order.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and prior years, and for other purposes; and

A bill (H. R. No. 4629) to provide for the distribution of the awards made under the convention between the United States of America

and the republic of Mexico, concluded on the 4th day of July, A. D. 1868.

The message also announced that the House had passed the following resolution:

Resolved, That the Clerk of the House notify the Senate that the House of Representatives will be prepared to meet the Senate in the Hall of the House at one o'clock p. m. this day to proceed with the further count of the electoral vote for President and Vice-President.

Mr. CAMERON, of Pennsylvania. I move that the Senate take a recess until five minutes to one o'clock.

Mr. EDMUNDS. We cannot take a recess, in my opinion, under the law, until the two Houses meet. The statute says that after the report of the commission the two Houses shall again immediately meet; and I submit that nothing can be done, not even a recess taken, until that meeting is accomplished.

Mr. CAMERON, of Pennsylvania. I always give way to the Sena-

tor from Vermont

The PRESIDENT pro tempore. The Chair decided before that no legislative business is in order.

The PRESIDENT pro tempore, (at twelve o'clock and fifty-seven minutes p. m.) The House of Representatives has given notice to the Senate that it is ready to receive it at one o'clock to continue the counting of the electoral vote. It is now three minutes to one. If it be the pleasure of the Senate it will now repair to the Hall of the House of Representatives.

The Senate accordingly proceeded to the Hall of the House of Rep-

resentatives.

The Senate returned to its Chamber at one o'clock and twenty-two minutes p. m., when the President pro tempore resumed the chair and called the Senate to order.

#### ELECTORAL VOTE OF FLORIDA

The PRESIDENT pro tempore. The President of the Senate having submitted to the joint meeting of the two Houses of Congress the decision of the electoral commission and the same having been read, a member of the House of Representatives from New York submitted in writing objection thereto upon which the Houses separated. The President of the Senate now lays before the Senate the original objection thus submitted, which will now be read.

The Secretary read as follows:

An objection is interposed by the undersigned Senators and Representatives to the decision made by the commission constituted by the act entitled "An act to provide for and regulate the counting of the vote for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," as to the true and lawful electoral vote of Florida, upon the following

provide for and regulate the counting of the vote for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," as to the true and lawful electoral vote of Florida, upon the following grounds:

First. For that the decision determines that the vote cast by Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long, as electors of President and Vice-President of the United States in and for or on behalf of the State of Florida, is the true and lawful electoral vote of said State, when, in truth and in fact, the vote cast by Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock is the true and lawful vote of said State.

Second. For that said commission refused to receive competent and material evidence tending to prove that Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long were not appointed electors in the manner prescribed by the Legislature of the State of Florida, but were designated as electors by the returning board of said State corruptly and fraudulently, in disregard of law and with the intent to defeat the will of the people expressed in the choice of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock, who were legally and regularly appointed electors by the State of Florida, in the manner directed by the Legislature thereof.

Third. For that the decision aforesaid was founded upon the resolution and order of said commission previously made, as follows:

"Ordered, That no evidence will be received or considered by the commission which was not submitted to the joint convention of the two Houses by the President of the Senate with the different certificates, except such as relates to the eligibility of F. C. Humphreys, one of the electors."

Fifth. For that said decision excludes all the evidence taken by the two Houses of Congress and by the committed by the persons whose certificates are taken as proof of the due appointment of electors.

Fifth. For that

phreys, William H. Holden, and Thomas W. Long as electors for President and Vice-President would be a violation of the Constitution of the United States.

CHS. W. JONES, Florida,
HENRY COOPER, of Tennessee,
FRANCIS KERNAN, of New York,
ELI SAULSBURY, Delaware,
J. E. MCDONALD, Indiana,
W. H. BARNUM, Connecticut,
On the part of the Senate. On the part of the Senate.

J. PROCTOR KNOTT,
DAVID DUDLEY FIELD, of New York,
W. S. HOLMAN, of Indiana,
J. R. TUCKER,
CHARLES P. THOMPSON,
G. A. JENKS, of Pennsylvania,
J. J. FINLEY,
MILTON SAYLER,
E. JNO. ELLIS,
W. R. MORRISON,
ABRAM S. HEWITT,
WILLIAM M. SPRINGER,
On the part of the House.

On the part of the House.

The PRESIDENT pro tempore. Will the Senate sustain the objection just read t

Mr. SAULSBURY. I suggest whether these objections ought not to be taken up seriatim, rather than ask us to pass upon them as a

The PRESIDENT pro tempore. The Chair will state the question again: Will the Senate sustain the objection?

Mr. SHERMAN. As this is a matter of proper form, I was rather disposed to wait to hear from some member of the commission; but it seems to me the proper form would be to put the question in this way: Shall the decision of the commission stand, notwithstanding

it seems to me the proper form would be to put the question in this way: Shall the decision of the commission stand, notwithstanding the objections made thereto? or something of that kind. I submit that is the proper form: Shall the decision of the commission stand, notwithstanding the objection made thereto?

Mr. STEVENSON. I should prefer that this paper should be printed and that the Senate should take a recess until Monday. ["No!" No!"] Gentlemen may say "no." They can vote as they please, but I must express my opinion as to the propriety of the case. This is a very important subject. Other Senators may have had an insight into this judgment; I have not. I have just heard it read, and I am unwilling, at least without an order of the Senate, to take the vote now until it has been printed and considered.

I gather from the report of the commission that all the evidence taken by both Houses of Congress has been excluded; whether rightfully excluded I am not now prepared to say, because I have not listened to all this argument and I have not had time to examine it. I am quite sure that we shall lose nothing by this motion. I think it a very proper one. I think it in accordance with the usage of the Senate. It can lead to no unnecessary delay; and my experience since I have been in this Chamber has been that no important paper has ever been brought to the consideration of the Senate without being first printed and considered; and surely, sir, no more important paper than that has ever come within the confines of this Chamber, none more important in its results—not individually; I put that on the table as compared with the more important questions which are broached in the report and upon which I intend to say nothing until I have considered it fully and examined it. I do not make the motion for delay; but to afford time for consideration I move that the Senate take a recess until Monday morning. but to afford time for consideration I move that the Senate take

but to afford time for consideration I move that the Schate take a recess until Monday morning.

The PRESIDENT pro tempore. The Schator from Kentucky moves that the Schate take a recess until Monday at ten o'clock.

Mr. STEVENSON. And that the papers be printed.

The PRESIDENT pro tempore. The Chair cannot entertain the modification of the motion. If the Schator from Kentucky confines the motion to a recess, the Chair will put it.

Mr. STEVENSON. I stated when I rose that the object was to have the documents printed. That was what I stated. The very ob-

have the documents printed. That was what I stated. The very object of the motion was that these papers might be printed.

Mr. MERRIMON. If it is in order, I should like to have the section of the statute bearing on this motion read.

The PRESIDENT pro tempore. The Secretary will read the parts

referred to.

The Secretary read sections 4 and 5 of the act of January 29, 1877.

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

debate.

Sec. 5. That at such joint meeting of the two Houses, seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall upon the right of the the Senators; for the tellers, Secretary of the Senate, and Clerk of the Houses of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House act beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon. And while any

question is being considered by said commission, either House may proceed with its legislative or other business.

The PRESIDENT pro tempore. The Senator from Kentucky has moved a recess until Monday at ten o'clock.

Mr. STEVENSON. As the Chair misunderstood me, I will with-

draw the motion for a recess and move that this paper be printed.

The PRESIDENT pro tempore. The Senator from Kentucky moves that the objection which has been read be printed.

Mr. KERNAN. And also the decision of the commission I trust will be printed. We have only heard that read.

The PRESIDENT pro tempore. The Chair understands the motion to be to print both papers, if the Senator from Kentucky accepts the modification.

Mr. STEVENSON. Yes, sir.
Mr. McMILLAN. Will the effect of that motion be to prevent the action of the Senate at once upon the question before it?
The PRESIDENT pro tempore. That would require a separate motion. The motion is that the decision and the objection be printed.

The motion is that the decision and the objection be printed.

The question being put, a division was called for.

Mr. STEVENSON. I call for the yeas and nays.

Mr. CONKLING. I imagine that there is no objection to the printing.

Mr. CAMERON, of Pennsylvania. Certainly there is no objection to the printing unless it interferes with our action. It seems to me if we agree to print it, we must wait until it is printed, and then we shall be here over Sunday. I think the better way is to just vote down the motion to print.

shall be here over Sunday. I think the better way is to just vote down the motion to print.

Mr. SHERMAN. I suggest to the Senator from Kentucky that this will be printed sooner in the Record than it can possibly be printed in any other way; and we shall have a copy of the document by having it printed in the Record, as a matter of course, in the ordinary way. I have no objection to adopting the order to print; but as a matter of course we shall not see it in print in document form for several days. We know that the Printing Office is suspended, but the Record goes on. It will be printed in the Record quicker than in any other way.

In any other way.

The PRESIDENT pro tempore. The Chair is advised that nothing is being printed at the Printing Office except the RECORD, on account of the condition of the appropriation. The Chair will put the ques-

tion on the motion.

Mr. LOGAN. This will go into the RECORD, I suppose, it having been read.

been read.

The PRESIDENT pro tempore. It will go into the Record.

Mr. LOGAN. Therefore, we shall have it printed sooner in that way than by an order to print.

Mr. STEVENSON. I do not desire any delay; I only want to see, as I said, this report printed. As it will appear in the Record in the morning, I move now that the Senate take a recess until Monday

morning.

The PRESIDENT pro tempore. The question on the printing has

not been decided.

Mr. STEVENSON. I withdraw that motion.

The PRESIDENT pro tempore.. The Senator from Kentucky moves a recess until Monday at ten o'clock.

Mr. MORRILL. I inquire what the effect would be of taking a recess? Will the two hours which have been allotted under the law for debate have expired at the time, so that no debate can then take

The PRESIDENT pro tempore. They will not have run.
Mr. LOGAN and Mr. PATTERSON. Let us have the debate now.
The PRESIDENT pro tempore. There would be two hours' debate

Mr. MERRIMON. The decision of the commission has not been read in the Senate, and I submit that it ought to be read in the Senate, so that it shall go along, in its proper place, with these exceptions.

Mr. SARGENT. It will be printed in the RECORD of the House

The PRESIDENT pro tempore. The decision, the Chair will inform the Senate, is being copied for the use of the House.

Mr. MERRIMON. I do not care to have it read here, but let it appear in the record of the Senate proceedings.

The PRESIDENT pro tempore. The Chair hears no objection to the suggestion, and it will so appear. The question is on the motion of the Senator from Kentucky that the Senate take a recess until ten chales a Merchen.

o'clock on Monday.

Mr. McDONALD. I call for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 26, nays 44; as follows:

YEAS—Messrs. Bailey, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—26.

NAYS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christianey, Clayton, Conkling, Conover, Cragin, Dawes, Edmunds, Ferry, Frelingthuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalis, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Sargent, Sharon, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—44.

ABSENT—Messrs. Dennis, Dorsey, Gordon, Jones of Nevada, and Thurman—5.

So the motion was not agreed to. Mr. WHYTE. I offer the following order:

Ordered, That the Senate do not concur in the decision made by the commission

created under the act approved January 29, 1877, but that the votes cast by Wilkinson Call, Robert Bullock, James Ernest Yonge, and Robert B. Hilton, as electors for the State of Florida, are the true and lawful votes of that State for President and Vice-President of the United States, and should be counted as the electoral votes of the State of Florida.

Mr. HAMLIN. I move to strike out the word "not" before the word "concur" in the resolution of the Senator from Maryland, and to strike out the names of the electors there named and insert the names of the electors decided by the commission to be the lawful electors of the State.

The PRESIDENT pro tempore. The Senator from Maine proposes a modification, which the Secretary will report, and then it will be read as proposed. The Chair will state in the mean while that the Senator from Ohio [Mr. SHERMAN] has submitted a resolution which

will have priority.

Mr. SHERMAN. I am not at all tenacious about the form. I think the resolution now submitted is entirely too full. I ask that the paper

the resolution now submitted is entirely too full. I ask that the paper which I sent to the desk be read.

Mr. BLAINE. It ought to be an affirmative resolution.

The PRESIDENT pro tempore. The Chair does not understand the Senator from Maryland to offer his resolution as an amendment to that submitted by the Senator from Ohio.

Mr. WHYTE. I was not aware that there was a resolution pend-

The PRESIDENT pro tempore. The Secretary will report the resolution submitted by the Senator from Ohio.

The Secretary read as follows:

Resolved, That the decision of the commission should, in the judgment of the enate, stand in full force, notwithstanding the objections thereto.

Mr. SARGENT. "Notwithstanding the objections made thereto,"

I suggest to the Senator from Ohio.

Mr. SHERMAN. Very well.

Mr. BLAINE. The resolution offered by the Senator from Ohio being affirmative it would necessarily take precedence, would it not,

The PRESIDENT pro tempore. The Chair stated that it has prior-

ity in point of time.

Mr. SHERMAN. At the suggestion of the Senator from New York I will modify the language so as to make the resolution conform to the parliamentary practice of the two Houses:

That the decision of the commission stand as the judgment of the Senate.

The PRESIDENT pro tempore. The Senator from Ohio modifies his resolutions.

Mr. ALLISON. Let me suggest to the Senator from Ohio that he use the language of the law:

That the counting of the votes shall proceed in conformity with that decision.

The language of the law is that "the counting of the votes shall proceed in conformity therewith" unless both Houses overrule it.

Mr. SHERMAN. I think I am using the parliamentary language adopted, not only in this country but in England, by which the Sentence of the country but in England by the country but in will say that the decision of the commission is approved and stands as the judgment of the Senate, notwithstanding the objections thereto.

The PRESIDENT pro tempore. The Secretary will report the resolution.

The Secretary read as follows:

Resolved, That the decision of the commission should, in the judgment of the Senate, stand in full force, notwithstanding the objections made thereto.

Senate, stand in full force, notwithstanding the objections made thereto.

Mr. SHERMAN. No. Send it to me and I will modify it.

Mr. WRIGHT. While the Senator from Ohio is preparing his resolution I have a resolution drawn that I will submit for reservation. The PRESIDENT pro tempore. The Chair will hear it.

Mr. WRIGHT. As the writing is such that others perhaps cannot read it, I will read it myself if I can get the attention of the Senate. The resolution which I submit is as follows:

That the objections made and stated to the decision of the electoral commission in determining which was the true and lawful vote of the State of Florida be, and the same are, each and every of them, overruled; and that said electoral vote of said State known and designated in the report of said commission as certificate No. 1, and each of said votes, should be counted as the true and lawful vote said State, anything in said objections to the contrary notwithstanding; and that the decision of said electoral commission be, and the same is hereby, confirmed and adopted.

Mr. WHYTE. The law itself ratifies the decision of the tribunal to whom we have submitted these questions and that decision stands to whom we have submitted these questions and that decision stands under the very law itself, unless by an order we overrule it. Therefore I offered an order overruling that decision and declaring that Wilkinson Call, Robert Bullock, James Ernest Yonge, and Robert B. Hilton were the true electors. There is no necessity whatever for any order confirming the decision of the commission. It stands, unless it is reversed. By the very language of the law itself it shall remain as the decision of the two Houses, unless "the two Houses whell appropriate conversion" ordering otherwise."

shall separately concur in ordering otherwise."

Mr. SHERMAN. The resolution as I now present it is in the lan-

guage of parliamentary law:

Resolved, That the decision of the commission upon the electoral votes of the State of Florida stand as the judgment of the Senate, the objections made thereto to the contrary notwithstanding.

The PRESIDENT pro tempore. The Senator from Ohio modifies his resolution, which will be read by the Secretary.

The Secretary read the resolution.

The PRESIDENT pro tempore. The Secretary will report the proposition of the Senator from Maryland.

Mr. WHYTE. I offer mine as a substitute for that of the Senator

from Ohio.

The PRESIDENT pro tempore. Striking out all after the word "resolved?"

Mr. WHYTE. Striking out all that, and substituting the word "ordered" for "resolved."

The PRESIDENT pro tempore. The Secretary will report the amend-

The Secretary read as follows:

Ordered, That the Senate do not concur in the decision made by the commission created under the act approved January 29, 1877; but that the votes cast by Wilkinson Call, Robert Bullock, James Ernest Yonge, and Robert B. Hilton, as electors for the State of Florida, are the true and lawful votes of that State for President and Vice-President of the United States and should be counted as the electoral votes of the State of Florida.

votes of the State of Florida.

The PRESIDENT pro tempore. The question is on the substitute offered by the Senator from Maryland.

Mr. BOUTWELL. I should like to ask the Chair to state to the Senate again the question which was proposed by the Chair before these propositions were presented. I recollect that the Chair stated to the Senate the question upon his own motion before any propositions were submitted, and I should like to hear what that was.

The PRESIDENT pro tempore. The Chair stated the question to be, Shall the objection submitted be sustained by the Senate?

Mr. BOUTWELL. I think that is the proper question to be submitted to the Senate. Inasmuch as the decision of the commission stands unless it is overruled by the concurrent action of the two Houses, I think that the manner in which the question was first put to the Senate by the President of the Senate is the true manner of presenting the question to the Senate.

presenting the question to the Senate.

Mr. BLAINE. I think so most decidedly.

Mr. BOUTWELL. I think that instead of entertaining these propositions we should allow the President of the Senate to put the question as he originally proposed it, because the decision stands unless

tion as he originally proposed it, because the decision stands unless it is reversed.

Mr. PADDOCK. And all other propositions are superfluous.

Mr. CONKLING. How did the Chair propose it?

Mr. BOUTWELL. "Will the Senate sustain the objection?"

Mr. MERRIMON. I beg to submit that these numerous propositions to settle the character of the order that ought to be entered here and the various proposed amendments to them show that we ought to have time for reflection and to prepare a proper order to be entered.

entered.

Mr. SHERMAN. This is a mere matter of form.

Mr. MERRIMON. Still we do not agree about it. There is great diversity on both sides of the Chamber on that very subject. Then there is another thing. Under the statute each Senator has a right to express his approval of or dissent from the judgment of the commission; and it is apparent that there is little opportunity to express such approval or dissent without some time in which to prepare to do so. If we are going on and are not to have this opportunity, I do not believe we shall facilitate business one moment by it. I desire to have the decision of the commission read, so that we may at least

have the decision of the commission read, so that we may at least know what they decided.

Mr. SARGENT. I inquire for information if the two hours are now running and have not been for some twenty minutes. If Senators desire to debate the merits of this matter, I submit that the time ought not to be wasted in this way.

Mr. MERRIMON. I submit that the two hours are not running, because the question on which we are to vote is not yet presented.

Mr. SARGENT. The main question must be taken within two hours.

Mr. MERRIMON. I submit as a point of order that the question on which the Senate is to vote is not settled, and the two hours do

on which the Senate is to vote is not settled, and the two hours do not begin to run until it is settled and submitted to the Senate.

The PRESIDENT pro tempore. The Chair will now submit the several propositions as to the form in which the question is to be taken is put to the Senate. As the Senator from Massachusetts has alluded to the form submitted by the Chair, the Secretary will report it and then the proposition of the Senator from Ohio [Mr. Sherman] and the Senator from Maryland, [Mr. Whyte,] as proposed to be modified by the Senator from Maine [Mr. Hamlin] and then by the Senator from Iowa [Mr. Whyte,]

the Senator from Maine [Mr. Hamlin] and then by the Senator from Iowa, [Mr. Wright.]

Mr. HAMLIN. I want to submit my own as an original proposition. The PRESIDENT pro tempore. Then that will be the third in order. The Secretary will report the proposition submitted by the Chair.

The SECRETARY. "Shall the objection submitted to the decision of the commission be sustained by the Senate?"

The PRESIDENT pro tempore. The proposition of the Senator from Ohio [Mr. Sherman] will now be read.

The Secretary read as follows:

Resolved, That the decision of the commission upon the electoral vote of the State of Florida stand as the judgment of the Senate, the objections made thereto, to the contrary notwithstanding.

The PRESIDENT pro tempore. The Senator from Maryland [Mr. Whyte] proposes to amend this by striking it all out and inserting what will be read.

The Secretary read as follows:

Ordered, That the Senate do not concur in the decision made by the commission created by the act approved January 29, 1877, but that the votes cast by Wilkinson Call, Robert Bullock, James Ernest Yonge, and Robert B. Hilton, as electors for the State of Florida, are the true and lawful votes of that State for President and Vice-President of the United States, and should be counted as the electoral votes of the State of Florida.

The PRESIDENT pro tempore. The Senator from Maine submits—Mr. HAMLIN. I withdraw any motion to modify, but my proposition can be read as a resolution.

The Secretary read as follows:

Resolved, That the vote of the State of Florida should be counted for Rutherford B. Hayes for President and William A. Wheeler for Vice-President, as determined by the electoral commission.

The PRESIDENT pro tempore. The Senator from Iowa [Mr. WRIGHT] submitted a proposition; which will be read. The Secretary read as follows:

Ordered, That the objections made and stated to the decision of the electoral commission in determining which was the true and lawful vote of the State of Florida, be, and the same are, each and every of them, overruled, and that said electoral vote of said State known and designuted in the report of said Commission as "certificate No. 1," and each of said votes, should be counted as the true and lawful vote of said State, anything in said objections to the contrary notwithstanding, and that the decision of said electoral commission be, and the same is hereby, confirmed and adorted.

Mr. ALCORN. I desire to contribute my mite toward arriving at a correct manner of disposing of this question. I will read what I would propose:

Resolved. That it is the sense of the Senate that the objections filed in the joint convention of the two Houses touching the electoral vote of Florida be, and the same are, overruled, and that the decision of the commission as declared in the presence of the two Houses be, and the same is hereby, confirmed.

The PRESIDENT pro tempore. How shall the Chair submit the propositions? In their order of time?

Mr. PADDOCK. I should like to have the proposition the Chair

first stated reported again.

The Secretary read as follows:

Shall the objections submitted to the decision of the commission be sustained by the Senate?

The PRESIDENT pro tempore. Shall the vote be taken on this proposition?

Mr. WHYTE. Do not the rules of order prevail at this time?
The PRESIDENT pro tempore. There being different propositions and statements, the Chair asked whether they should be taken in order of time. If the Senator objects, certainly the Chair will with-

order of time. If the Senator objects, certainly the Chair will withdraw his suggestion.

Mr. WHYTE. Ido object. I want to have a vote taken on my proposition, as it is entitled to precedence.

The PRESIDENT pro tempore. The Chair will withdraw the proposition made by the Chair, and submit the proposition made by the Senator from Ohio as being a proposition by a Senator in his seat.

Mr. MERRIMON. I ask for the reading of the decision of the

The PRESIDENT pro tempore. The Senator from North Carolina asked for the reading of the decision of the commission, and there being no objection the Secretary will read it.

ELECTORAL COMMISSION,
Washington, D. O., February 9, A. D. 1877.

To the President of the Senate of the United States, presiding in the meeting of the two Houses of Congress under the act of Congress entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, A. D. 1877:

The electoral commission mention 1.

1877," approved January 29, A. D. 1877:

The electoral commission mentioned in the said act, having received certain certificates and papers purporting to be certificates, and papers accompanying the same, of the electoral votes from the State of Florida, and the objections thereto, submitted to it under the said act, now report that it has duly considered the same pursuant to said act and has decided and does hereby decide that the votes of Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long, named in the certificate of M. L. Stearns, governor of the said State, which votes are certified by said persons, as appears by the certificate submitted to the commission as aforesaid, and marked "number one" by said commission, and herewith returned, are the votes provided for by the Constitution of the United States, and that the same are lawfully to be counted as therein certified, namely:

Four (4) votes for Rutherford B. Hayes, of the State of Ohio, for President; and Four (4) votes for William A. Wheeler, of the State of New York, for Vice-President.

dent.

The commission also has decided and hereby decides and reports that the four persons first before named were duly appointed electors in and by said State of

persons first before named were duly appointed electors in and by said State of Florida.

The ground of this decision, stated briefly as required by said act, is as follows: That it is not competent, under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence aliunds the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Florida on, and according to, the determination and declaration of their appointment by the board of State canvassers of said State prior to the time required for the performance of their duties had been appointed electors or by counter-proof to show that they had not, and that all proceedings of the courts or acts of the Legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

As to the objection made to the eligibility of Mr. Humphreys, the commission is of opinion that, without reference to the question of the effect of the vote of an ineligible elector, the evidence does not show that he held the office of shipping commissioner on the day when the electors were appointed.

The commission has also decided and does hereby decide and report that, as a consequence of the foregoing and upon the grounds before stated, neither of the papers purporting to be certificates of the electoral votes of said State of Florida

numbered two (2) and three (3) by the commission, and herewith returned, are the certificates or the votes provided for by the Constitution of the United States and that they ought not be counted as such.

Done at Washington the day and year first above written.

SAMUEL F. MILLER,

W. STRONG,

JOSEPH P. BRADLEY

GEO. F. EDMUNDS,

O. P. MOETON,

FRED'K T. FRELINGHUYSEN,

JAMES A. GARFIELD,

GEORGE F. HOAR,

Commissioners.

The PRESIDENT pro tempore. The Secretary will report the proposition of the Senator from Ohio, [Mr. SHERMAN.]

The Secretary read as follows:

Resolved, That the decision of the commission upon the electoral vote of the State of Florida stand as the judgment of the Senate, the objections made thereto to the contrary notwithstanding.

The PRESIDENT pro tempore. The Senator from Maryland [Mr. WHYTE] moves an amendment to strike out all of this resolution, including the word "resolved," and insert what will be read:

The Secretary read as follows:

Ordered, That the Senate do not concur in the decision made by the commission created by the act approved January 29, 1877, but that the votes cast by Wilkinson Call, Robert Bullock, James Ernest Yonge, and Robert B. Hilton, as electors of the State of Florida, are the true and lawful votes of that State for President and Vice-President of the United States, and should be counted as the electoral votes of the State of Florida.

Mr. WHYTE. I ask for the yeas and nays on that amendment.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

all the roll.

Mr. EDMUNDS, (when his name was called.) My friend the Sentor from Ohio, [Mr. THURMAN,] who has with myself considered this matter in the commission, and with whom I do not agree, is absent from the Senate on account of sickness; and under the circumstances, knowing that he would vote in favor of the proposition of the Senator from Maryland, as I should vote against it, I withhold

Mr. NORWOOD, (when Mr. GORDON's name was called.) I rise to say that my colleague [Mr. GORDON] is confined to his room by sick-

Mr. DAVIS, (when Mr. Thurman's name was called.) The Senator from Ohio, [Mr. Thurman,] as has been stated by the Senator from Vermont, is confined to his room by sickness.

The roll-call having been concluded, the result was announced—yeas 26, nays 45; as follows:

yeas 26, nays 45; as follows:

YEAS—Messrs. Bailey, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon. Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—26.

NAYS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Piennsylvania, Cameron of Wisconsin, Chaffee, Christianoy, Clayton, Conkling, Conover, Cragin, Dawes, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Sargent, Sharon, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—45.

ABSENT—Messrs. Dennis, Edmunds, Gordon, and Thurman—4.

So the amendment was rejected.

So the amendment was rejected. The question recurs on the resolu-

So the amendment was rejected.

The PRESIDENT pro tempore. The question recurs on the resolution of the Senator from Ohio, [Mr. Sherman.]

Mr. PADDOCK. I offer as a substitute for all the propositions submitted the order put by the President, and which ought to be the first order made. That I consider to be the best and most precise statement of the case that can be made. It is—

Ordered, That the objections submitted to the decision of the commission be not sustained by the Senate.

Mr. HAMLIN. If that is offered as a substitute for all these propo-

sitions, I suppose we vote on that after we vote on the others.

The PRESIDENT pro tempore. Does the Senator from Nebraska offer it as a substitute for all, or as an amendment to the proposition of the Senator from Ohio? of the Senator from Ohio?

Mr. PADDOCK. As an amendment.
Mr. HAMLIN. He offered it as a substitute. I will, then, move to amend the resolution now pending by striking out all after the word "that" and inserting the proposition which I made.

The PRESIDENT pro tempore. The Senator from Nebraska offering a substitute, the Senator from Maine moves to amend the text

ing a substitute, the Senator from Maine moves to amend the text of the original resolution.

Mr. WHYTE. Is it necessary to do more now than order a message to be sent to notify the House that we are ready to proceed with the count? A refusal by the Senate to order otherwise has left the decision of the commission stand as the judgment of both Houses.

The PRESIDENT pro tempore. That vote was on the amendment submitted by the Senator from Maryland to a proposition which the Senate has not yet voted on. The question now is on the resolution of the Senator from Ohio, the Senate having rejected the amendment of the Senator from Maryland. To that a substitute is proposed by the Senator from Nebraska, pending which the Senator from Maine offers an amendment to the text.

Mr. HAMLIN. I want to say just a word to the Senate in relation

Mr. HAMLIN. I want to say just a word to the Senate in relation to the amendment which I have offered. I understand the language of the statute to be that if we take no action here, the decision of the to the amendment which I have offered. I understand the language | Resolved, That the vote of the State of Florida should be counted for Rutherford of the statute to be that if we take no action here, the decision of the B. Hayes for President and William A. Wheeler for Vice-President, as determined commission will stand; but you will note in the phraseology of the by the electoral commission.

resolution which I have adopted, that we affirm directly the decision made by the commission. The proposition now before the Senate is one which merely negatives the objections that were offered in joint one which merely negatives the objections that were offered in joint meeting. That would negatively affirm the decision of the commission. But it is more in accordance with my feeling and my judgment to vote directly an affirmation of that decision, and that carries also with it a negative of the objections raised in the meeting of the two Houses. I feel as one Senator that I am willing to indorse it affirmatively, and I think we ought to do so. It goes to the country with great strength if we can give a universal support, an affirmative support to the decision at which the commission has arrived, rather than merely negative the objections in the House and give only a negative merely negative the objections in the House and give only a nega-tive support to this opinion of the commission. For that reason I have offered the amendment in that way. I think there is something in it.

Mr. SHERMAN. I will ask to have the proposition of the Senator from Maine read again. I certainly do not want to waste time about the form of words, but as I understand his proposition and mine they are the same. If my friend thinks his the better form, I am perfectly

willing to accept it.

The PRESIDENT pro tempore. The proposition of the Senator from Maine will be read.

The Secretary read as follows:

That the vote of the State of Florida should be counted for Rutherford B. Hayes for President and William A. Wheeler for Vice-President, as determined by the electoral commission.

Mr. SHERMAN. That would suit me very well. I rather think the other is the parliamentary phrase of language; but if my friend thinks his language better, I will vote for it with pleasure.

The PRESIDENT pro tempore. Does the Senator from Ohio with-

draw his resolution.

Mr. SHERMAN. No; let us vote this in.

The PRESIDENT pro tempore. The Senator from Maine moves an amendment to the resolution of the Senator from Ohio. The question is on the amendment.

Mr. SHERMAN. I shall vote for it.

Mr. SAULSBURY called for the yeas and nays, and they were or-

Mr. WRIGHT. Let the amendment be again reported.

The PRESIDENT pro tempore. The amendment will be read.

The CHIEF CLERK. The amendment is to strike out all after the word "resolved" and insert:

That the vote of the State of Florida should be counted for Rutherford B. Hayes for President and William A. Wheeler for Vice-President, as determined by the electoral commission.

Mr. EDMUNDS. Read the original for which that is offered. The Secretary read Mr. Sherman's resolution, as follows:

Resolved, That the decision of the commission on the electoral vote of the State of Florida stand as the judgment of the Senate, the objections made thereto to the contrary notwithstanding.

Mr. WRIGHT. I would suggest to my friend from Maine, and I think that perhaps would make it acceptable—I do not know but that it is to the Senator from Ohio now—that he add to his proposed amendment the words: "Anything in the objections urged thereto, to the contrary notwithstanding." That is affirmative and negative both.

Mr. HAMLIN. We do negative the objections by passing this affirmative vote. That is clear.

Mr. SARGENT. The form in which this matter is proposed by the Senator from Ohio is plain and simple. Everybody understands it. There is not the slightest buncombe in it. It is merely in compliance

with the parliamentary rule. I trust it will be adopted.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Maine, upon which the yeas and nays have been

ordered.

The question being taken by yeas and nays, resulted—yeas 43, nays 25; as follows:

25; as follows:
YEAS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Claytor., Conkling, Conover, Cragin, Dawes, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalis, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Sharon, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—43.

NAYS—Messrs. Bailey, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Eaton, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—25.

ABSENT—Messrs. Bruce, Dennis, Edmunds, Goldthwaite, Gordon, Sargent, and Thurman—7.

So the amendment was agreed to.

The PRESIDENT pro tempore. The question recurs on the resolution of the Senator from Ohio as amended, to which the Senator from

Nebraska offered a substitute.

Mr. PADDOCK. I withdraw my proposition.

The PRESIDENT pro tempore. The question recurs on the resolution of the Senator from Ohio as amended.

Mr. SHERMAN and Mr. CAMERON of Pennsylvania. Let it be

read.

The Chief Clerk read as follows:

Mr. McMILLAN. I move to amend the resolution by striking out all after "that" and inserting:

The objection to the report of the electoral commission under the act approved January 29, 1877, be overruled and that the decision of the commission be concurred in.

Jannary 29, 1877, be overruled and that the decision of the commission be concurred in.

Mr. SHERMAN. There is still some little question of phraseology about this matter. There is a common desire to come at the same result, and I ask the Senator from Maine if he will not omit from the resolution the personal references there and adopt the phraseology that I now submit. It is a mere matter of taste, not of substance.

The PRESIDENT pro tempore. The Secretary will first read the proposition of the Senator from Minnesota.

Mr. HAMLIN. Pardon me for a word before that. There were several propositions read; some of them did not affirm the action of the electoral commission. I wanted to do it; and when I offered the resolution which I did, it was clearly and distinctly within my mind that the resolution offered by the Senator from Ohio did not do it. In looking at the language, however, I find that it does precisely what I wished to do; and it adds also a negative to the objections raised in the two Houses when they were in convention or when they were assembled together; and, therefore, it would have been entirely acceptable to me. I offered my proposition under a misapprehension. The Senator's resolution is precisely in effect what mine is. Mine, it is true, states the names of the individuals, which perhaps is not in as good taste as the language offered by the Senator from Ohio. I therefore hope on the whole that the resolution offered by the Senator from Ohio will be adopted. It meets my approval.

Mr. SARGENT. Then move a reconsideration.

Mr. HAMLIN. I move to reconsider the vote adopting my amendment.

The PRESIDENT pro tempore. The Senator from Maine moves to

Mr. HAMLIN. I move to reconsider the vote adopting my amendment.

The PRESIDENT pro tempore. The Senator from Maine moves to reconsider the vote adopting his amendment.

The motion was agreed to.

Mr. HAMLIN. I now withdraw my amendment.

The PRESIDENT pro tempore. If there be no objection, the amendment may be withdrawn. The Chair hears no objection. The question was on the resolution of the Senator from Ohio, pending which the Senator from Minnesota has submitted an amendment.

Mr. HAMLIN. He will withdraw that.

Mr. MCMILLAN. I withdraw it.

The PRESIDENT pro tempore. The resolution of the Senator from Ohio will be read.

Ohio will be read.

The Secretary read as follows:

Resolved, That the decision of the commission upon the electoral vote of the State of Florida stand as the judgment of the Senate, the objections made thereto, to the contrary notwithstanding.

The PRESIDENT pro tempore. The question is on agreeing to this

Mr. WHYTE called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 44, nays 24; as follows:

and being taken, resulted—yeas 44, nays 24; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christianey, Clayton, Conkling, Conover, Cragin, Dawes, Dorsey, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Sargent, Sharon, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—44.

NAYS—Messrs. Bailey, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Hereford, Johnston, Jones of Florida, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—24.

ABSENT—Messrs. Dennis, Edmunds, Gordon, Jones of Nevada, Kelly, and Thurman—7.

So the resolution was agreed to.

Mr. SARGENT. I move that the House of Representatives be notified that the Senate has come to a determination of the matter submitted and is ready to meet with the House in joint convention.

The motion was agreed to.
The PRESIDENT pro tempore. The Secretary will execute the

order of the Senate.

Mr. SARGENT. Is any business in order?

The PRESIDENT pro tempore. It is not.

Mr. MITCHELL. I ask consent to make an explanation.

The PRESIDENT pro tempore. The Chair hears no objection.

### PERSONAL EXPLANATION.

Mr. MITCHELL. Mr. President, I have read a statement in the Star of last evening purporting to contain the points of the report of the Committee on Privileges and Elections in preparation by myself in relation to the Oregon electoral vote. As that statement made at this time would have a tendency to place me in rather a false position, I desire to say that the duty of the preparation of that report was assigned to myself by the subcommittee. The report is almost completed so far as I am concerned individually, but it has never been submitted as yet to the subcommittee, much less to the general Committee on Privileges and Elections. As a matter of course it would be entirely improper that I should make any statement to anybody as to the points of the report, and I have not done so. I may have stated, unquestionably I have, at various times, my individual opinion upon the points involved in that controversy; but I have never intimated to any reporter of the press or any other person, as I now remember, anything contained in the report, so far as it has been prepared.

I make this statement in justice to myself and in justice to the committee. The report is about ready to be submitted to the subcommittee, after which it will be submitted to the general committee, and, if agreed to, it will then be given to the press.

RECESS.

The PRESIDENT pro tempore, (at two o'clock and fifty-seven minutes p. m.) The Chair is advised that the House of Representatives has taken a recess until Monday at ten o'clock.

Mr. SHERMAN. I suppose that on Monday at ten o'clock our meeting will be with the expectation that we shall proceed at once with a full Senate, and with that understanding I shall move that the Senate take a recess until that time.

The PRESIDENT pro tempore. No legislative business can be transacted.

Mr. SHERMAN. There has been an understanding that there shall be nothing done each day between ten and twelve. That understanding I do not wish applied to our action on Monday.

The PRESIDENT pro tempore. There cannot be any legislative

The PRESIDENT pro tempore. There cannot be any legislative business transacted.

Mr. SHERMAN. But we ought to be prepared at ten o'clock to proceed with the business of the count.

Mr. CONKLING. I wish to make a suggestion to the Senator from Ohio. I understand the recess of the House has been taken without debate upon the matter before the House. The House has two hours to debate it. As we can do no legislative business under the rule, is it worth while to come here at ten o'clock and wait inevitably for two hours doing pothing?

rule, is it worth while to come here at ten o'clock and wait inevitably for two hours doing nothing?

Mr. INGALLS. Is it certain that the House will debate two hours? Mr. SHERMAN. I think we had better be here at any rate.

Mr. CONKLING. No, it is not certain that the House will debate two hours; but it is quite certain the House will vote, and we know as a fact that it takes about forty minutes to call the roll of yeas and nays in the House. I repeat that inasmuch as we can do no business here under the common understanding, I question whether it is worth while to hasten here at ten o'clock in order that inevitably we may sit and do nothing, sitting in idleness for an hour or two.

Mr. SHERMAN. The understanding that we were to do no business between ten and twelve related to a condition of things that is not likely to occur on Monday. It seems to me we had better come here at ten o'clock, and at least be prepared to transact any business and have a quorum of the Senate here for that purpose. Therefore I feel it my duty to give notice that our understanding by common consent shall not apply to Monday, but that we shall be here at ten o'clock to proceed with the count.

The PRESIDENT pro tempore. What is the proposition of the Senator from Ohio?

ator from Ohio?

The PRESIDENT pro tempore. What is the proposition of the Senator from Ohio?

Mr. SHERMAN. I shall, so far as one person can, dissent from the common understanding about not doing anything between ten and twelve o'clock; and I give notice, so far as I am concerned, that I will not consider myself bound by that agreement on Monday next., Under the circumstances I think we had better have a quorum here, at least to receive any messages from the House, if any are sent.

Mr. CONKLING. May I inquire of the Chair whether under the ruling of the Chair, on Monday morning, before the House has disposed of the objections to the count of the votes of Florida, legislative business will be in order in the Senate?

The PRESIDENT pro tempore. It will not be.

Mr. SHERMAN. The Senator will understand that I do not propose to get a quorum here for legislative business.

Mr. WRIGHT. I would supplement what the Senator from Ohio said by adding that we can have no knowledge that the House will take five minutes in determining the question, and I think that we ought to be here promptly at ten o'clock, so as to be prepared to advise them that we are ready to proceed with the count.

Mr. CONKLING. We have advised them already.

Mr. WRIGHT. At least we should be here prepared to enter on the work.

the work.

The PRESIDENT pro tempore. The Chair will state to the Senator from Iowa that the House has been duly informed of the fact that the Senate has determined upon the objections to the vote of Florida.

Mr. WRIGHT. I understand so; but on Monday morning it may be that the House will be quite prepared to proceed at once with the count, and we can then advise them that we shall be prepared to

meet them.

The PRESIDENT pro tempore. The Senator from Ohio moves that

the Senate take a recess until ten o'clock Monday forenoon.

The motion was agreed to; and (at three o'clock p. m.) the Senate took a recess until ten o'clock a. m., Monday, February 12.

## HOUSE OF REPRESENTATIVES.

### THURSDAY, February 1, 1877.

[CALENDAR DAY, February 10.]

The recess having expired, the House re-assembled, and was called to order by the Speaker at ten o'clock a.m., (Saturday, February 10.), Mr. CLYMER. I move that the House take a recess until five minutes before twelve o'clock.

The motion was agreed to; and accordingly (at ten o'clock and one minute a. m.) the House took a recess until cleven o'clock and fiftyfive minutes a. m.

#### AFTER THE RECESS.

The recess having expired, the House re-assembled at eleven o'clock and fifty-five minutes a. m.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, informed the House that the Senate had agreed to the resolution of the House to print the annual report of Professor Hayden of the geological and geographical surveys of the Territories for 1875 and 1876.

The message further announced that the Senate had passed and requested the concurrence of the House in a bill of the following title.

A bill (S. No. 1141) to encourage and promote telegraphic communication between America and Europe.

The message further announced that the Senate insisted upon its amendments disagreed to by the House to the bill (H. R. No. 4188) making appropriations for fortifications and other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, asked a conference upon the disagreeing votes of the two Houses thereon, and had appointed as managers of the conference on the part of the Senate Mr. Windom, Mr. Logan,

#### CENTENNIAL EXHIBITION.

Mr. HOPKINS. On yesterday a message was received from the President transmitting the catalogues and report of the board on behalf of the Executive Departments at the international exhibition of 1876. By inadvertence that message with the accompanying report was referred to the Committee on Public Buildings and Grounds. It has no possible connection with buildings and grounds, and I therefore ask consent that the reference be changed to the Committee on Printing.

There was no objection, and it was so ordered.

#### THOMAS H. HALSEY.

Mr. JOYCE. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee of Claims Senate bill No. 912, for the relief of Thomas H. Halsey, paymaster United States

There was no objection, and the bill was accordingly taken from the Speaker's table, read a first and second time, and referred to the Committee of Claims, not to be brought back by a motion to recon-

### GLENWOOD CEMETERY.

Mr. STEVENSON submitted a report from the committee of conference; which was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood cemetery, having met, after a full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

as follows:

That the House recede from its disagreement to the Senate amendments and agree to the same with amendments as follows:

In line 15 strike out the word "two" and insert "three;" in line 15 strike out the word "two".

In line 26 of said amendments, after the word "held," insert the words "in the city of Washington;" in line 28, after the word "trustees," strike out all the words down to and including the word "meeting," in line 31, and insert the words "elected by the lot-proprietors; "in line 40, after the word "elected," insert the words "on the first Monday in June of every year;" in line 57 strike out the words "of Glenwood Cemetery," and in line 59, after the word "mean," insert the words "and shall signify." And the Senate agree to the same.

A. E. STEVENSON,

Me agree to the same.
A. E. STEVENSON,
G. W. HENDEE.

Managers on the part of the House.

JOHN SHERMAN,
F. M. COCKRELL, Managers on the part of the Senate.

The report was adopted.

Mr. STEVENSON moved to reconsider the vote by which the reort was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### PRAYER.

The SPEAKER, (at twelve o'clock, m.) The Chair asks consent that the Chaplain may now offer prayer.

There being no objection, prayer was offered by the Chaplain, Rev. I. L. TOWNSEND.

#### ELECTORAL COMMISSION-VOTE OF FLORIDA.

The SPEAKER. The Chair desires for the information of the House to lay before it a communication, which will be read.

The Clerk read as follows:

WASHINGTON, D. C., February 9, 1877.

SIR: I am directed by the electoral commission to inform the House of Representatives that it has considered and decided upon the matters submitted to it under the act of Congress concerning the same, touching the electoral votes from the State of Florida, and has transmitted said decision to the President of the Senate, to be read at the meeting of the two Houses according to said act.

NATHAN CLIFFORD,

President of the Commission.

Hon. SAMUEL J. RANDALL, Speaker of the House of Representatives.

Mr. SAYLER. I move that the Clerk of the House be directed to inform the Senate that the House will be prepared at one o'clock this

day to receive them in joint session for the purpose of proceding further in reference to counting the electoral vote.

Mr. HALE. I suggest that the gentleman modify his motion so as to provide for notifying the Senate that the House is now ready to receive them; because I am informed that the Senate is now in ses-

sion and ready to come over at any time; so that by providing for a joint meeting at once we may save time.

Mr. SAYLER. I prefer the resolution as I have offered it. There are some matters pending which require attention. Besides that a number of members are not now here. I think one o'clock is a better

Mr. HALE. Then I will submit an amendment.

The SPEAKER. The Chair will entertain a motion to amend.

Mr. HALE. I offer as an amendment to the motion of the gentleman from Ohio the following:

Resolved. That the Clerk of the House notify the Senate that the House of Representatives is now in session and ready to meet the Senate in the Hall for further proceedings under the provisions of the act to provide for and regulate the counting of votes for President and Vice-President.

Mr. SAYLER. I call the previous question on my motion and the amendment thereto.

amendment thereto.

Mr. WILSON, of Iowa. Will not the gentleman yield to me one minute before he calls the previous question?

Several MEMBERS. Regular order?

Mr. SAYLER. I think there is no necessity for discussion. I insist on the call for the previous question.

The previous question was seconded.

Mr. WILSON, of Iowa. I rise to a point of order. I feel impelled to do it. I submit that under the law we are constructively at all times ready to receive the Senate for this business; and if we now establish a precedent of fixing a time we might under that precedent. establish a precedent of fixing a time, we might under that precedent undertake to fix a time entirely beyond the convenience of the other parties who, under the law, participate in this business; and thus we may directly violate the act under which we are proceeding. I think

may directly violate the act under which we are proceeding. I think my friend from Ohio must see that.

The SPEAKER. Does the gentleman insist on the point of order? Mr. WILSON, of Iowa. Yes, sir. I would like to have the Chair rule whether, if we have the right to delay the meeting until one o'clock, we would not have as much right to delay it for ten hours.

Mr. KASSON. Will the Chair before making his decision allow me to quote the language of the act? After providing for the decision of the commission, of which the House through the Speaker has been notified, the act, in line 89, page 6 of our print, proceeds: "where-upon the two Houses shall again meet," evidently implying that it is to be done immediately upon receiving notification of the decision. I say that in support of the point of order made by my colleague from Iowa.

Mr. WILSON, of Iowa. It would amount practically to a repeal of

Mr. WILSON, of Iowa. It would amount practically to a repeal of that act by putting this off to one o'clock, and I suppose my friend from Ohio does not mean that.

Mr. HALE. Perhaps the gentleman from Ohio would on consideration accept the amendment which I have made. We cannot gain anything by extending the time for the fragment of an hour.

The SPEAKER. The Chair would desire to say in reply to the gentleman from Iowa that if we repeal this act in this instance then we repealed it the other day when a similar motion was made. But the Chair thinks there is nothing in the act which would not allow a recess for a reasonable time during the session to-day.

Mr. HALE. There is no necessity we should take a recess. We are ready to meet in joint session at this time; why, then, postpone it until one o'clock?

Mr. WILSON, of Iowa. The scope of the act is that the joint meeting shall take place as soon as notification arrives that the commission have reached a decision.

The SPEAKER. The Chair will endeavor to follow the exact words

Mr. SAYLER. There is no danger in fixing the hour for joint meeting at one o'clock, and besides it will accommodate a number of gen-

The previous question was seconded and the main question ordered.
The question recurred on Mr. Hale's amendment.
The House divided; and there were—ayes 90, noes 120.
Mr. HALE. I will not at the present time call the yeas and nays, but give notice on any subsequent attempt at delay I will do so.
The SPEAKER. That is not the privilege of the gentleman.
Mr. SPRINGER. We accept service of notice without any further

formality. The question next recurred on Mr. SAYLER's motion; which was

agreed to.

Mr. SAYLER moved to reconsider the vote by which the motion was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### THE LATE ADMIRAL CHARLES WILKES.

Mr. WARD. Mr. Speaker, I ask by unanimous consent the bill (S. No. 993) for the relief of Admiral Charles Wilkes be taken from the Speaker's table and put upon its passage at this time.

There was no objection; and the bill was read a first and second time. It directs the proper accounting officers of the Treasury Department to credit Admiral Charles Wilkes, now on the retired list of the Navy, with the sum of \$350, being the amount paid by Paymaster Hosford to Paymaster Tolfree on account of mess-bill, and which was repaid to Paymaster Hosford, but not taken up in his account.

Mr. WARD. I move to amend the bill by inserting, before the word "Admiral," the words "the late," and striking out the words "now on the retired list of the Navy." These amendments are rendered necessary by the recent death of Admiral Wilkes.

dered necessary by the recent death of Admiral Wilkes.

The amendments were agreed to.
The bill, as amended, was ordered to a third reading; and it was

Mr. WARD moved to amend the title by inserting the words "the late" before the word "Admiral;" so it will read: "For the relief of the late Admiral Charles Wilkes."

The amendment to the title was agreed to.

Mr. WARD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

#### CAPTORS OF THE RAM ALBEMARLE.

Mr. WILLIS, by unanimous consent, from the Committee on Naval Affairs, reported back a bill (H. R. No. 4370) for the relief of the captors of the ram Albemarle; which, with the accompanying report, was ordered to be printed and recommitted.

Mr. WILSON, of Iowa. Not to be brought back on a motion to re-

The SPEAKER. That is the understanding.

#### INTERNAL-REVENUE OFFICERS AND AGENTS.

Mr. WOOD, of New York, by unanimous consent, from the Committee of Ways and Means, reported a bill (H. R. No. 4630) to amend the laws relating to internal-revenue officers and agents; which was read a first and second time, ordered to be printed, and recommitted.

The SPEAKER. Not to come back on a motion to reconsider.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. GORHAM, its Secretary, announced that he had been directed to inform the House of Representa tives that the president of the electoral commission had notified the Senate that the commission had arrived at a decision of the questions submitted to them in relation to the electoral votes of Florida, and that the Senate was now ready to meet the House for the purpose of laying before the two Houses the report of the said decision.

# WILLIAM T. MALSTER.

Mr. THOMAS, from the Committee of Ways and Means, reported a bill (H. R. No. 4631) for the relief of William T. Malster, of Baltimore, Maryland; which was read a first and second time.

Mr. THOMAS. I ask unanimous consent to have the bill now put

upon its passage.

Mr. HOLMAN. Let the bill be reported.

The bill was read.

Mr. WILSON, of Iowa. I think that bill ought to go to the Committee of the Whole.

The SPEAKER. Unanimous consent is necessary for its present consideration.

Mr. HOLMAN. I shall have to object.

The SPEAKER. The report is in order from the Committee of Ways and Means for committal, but not for immediate action.

Mr. HOLMAN. I object.

The bill was recommitted to the Committee of Ways and Means, and

ordered to be printed.

### CYRUS WILSON.

Mr. FORT, by unanimous consent, introduced a bill (H. R. No. 4632) granting a pension to Cyrus Wilson, late a private of Company L, Seventeenth Regiment Illinois Volunteer Cavalry; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

### MIRIAM V. KINNEY.

Mr. FORT also, by unanimous consent, introduced a bill (H. R. No. 4633) granting a pension to Miriam V. Kinney; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### CATTARAUGUS AND ALLEGANY INDIAN RESERVATIONS.

Mr. SEELYE. I ask unanimous consent to report back from the Committee on Indian Affairs the bill (H. R. No. 4257) to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875,
and ask that it be now put upon its passage.

Mr. FORT. I desire to reserve points of order on the bill.
The bill was read.

The SPEAKER. Is there objection to the present consideration of the bill?

Objection was made.

Mr. SEELYE. If the gentleman who makes objection will waive

it for a single moment until I give a word of explanation I think he will not insist on his objection.

The SPEAKER. Objection has been made to the present consider-

ation of the bill.

Mr. SEELYE. This is legislation which it is quite indispensable to make, and against which I think there will be no objection from any quarter. The bill has the unanimous approval of the Committee on Indian Affairs after very careful consideration. The Allegany reservation, occupying a strip of land of about forty miles long by a mile and a half in breadth—

The SPEAKER. The Chair thinks that objection cuts off debate.

Mr. SEELYE. I understood the objection to be withdrawn.

The SPEAKER. The Chair does not so understand.

Mr. SEELYE. I understood the objection to be withdrawn.
The SPEAKER. The Chair does not so understand.
Mr. SEELYE. Did not the gentleman from Indiana [Mr. Holman]
withdraw the objection?
Mr. HOLMAN. I did not make the objection; I rose for another
purpose. The objection I should have made, if I had made one, would
have been to the application of the \$15,000 appropriated in the last
session of Congress. I must object to that feature of the bill; but I
have no objection to the survey being made.
Mr. SEELYE. That appropriation was made two years ago. There
is no objection, then, I understand, to the present consideration of this
bill.

Mr. HOLMAN. I object to that feature of the bill.
Mr. SEELYE. The gentleman can offer an amendment upon that
point if he chooses.

The SPEAKER. The gentleman from Indiana makes an objection which is equivalent to an objection to the present consideration of the

Mr. SEELYE. I do not understand that he objects to the consid-

Mr. HOLMAN. O, yes; I shall have to insist on my objection. That appropriation should never have been made, and I object to applying

The SPEAKER. The gentleman cannot make a qualified objection.

Mr. SEELYE. If the gentleman from Indiana desires to offer an

Mr. RELLIE. If the gentleman from Indiana desires to oner an amendment, I am willing to admit it.

Mr. HOLMAN. I insist on my objection.

The SPEAKER. Objection being made, the bill is not before the

### TELEGRAPHIC COMMUNICATION WITH EUROPE.

On motion of Mr. O'BRIEN, by unanimous consent, the bill (S. No. 1141) to encourage and promote telegraphic communication between America and Europe was taken from the Speaker's table, read a first and second time, ordered to be printed, and referred to the Committee on Foreign Affairs; not to be brought back on a motion to recon-

# AMASA J. FINCH.

On motion of Mr. RUSK, by unanimous consent, the bill (S. No. 1152) granting a pension to Amasa J. Finch was taken from the Speaker's table, read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

# TRANSPORTATION OF IMPORTED MERCHANDISE.

Mr. BURCHARD, of Illinois, from the Committee of Ways and Means, reported a bill (H. R. No. 4634) to amend the statutes relative to the transportation of imported merchandise; which was read a first and second time, recommitted to the Committee of Ways and Means, and ordered to be printed.

## INDIAN APPROPRIATION BILL.

Mr. WELLS, of Missouri. I move that the bill (H. R. No. 4452) making appropriation for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1878, and for other purposes, with amendments by the Senate, be taken from the Speaker's table; and that the House non-concur in the Senate amendments, and self for a committee of conference.

ask for a committee of conference.

The motion was agreed to.

Mr. WELLS, of Missouri, moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# RIO HONDO CLAIMS.

Mr. LEVY, by unanimous consent, introduced a bill (H. R. No. 4625) to confirm certain Rio Hondo claims to Pedro and Vital Flores; which was read a first and second time, referred to the Committee on Land Claims, and ordered to be printed.

#### WILLIAM MAJORS.

Mr. WALLING, by unanimous consent, introduced a bill (H. R. No. 4636) granting a pension to William Majors, a soldier of the war of 1812; which was read a first and second time, referred to the Committee on Revolutionary Pensions, and ordered to be printed.

#### ARCTIC EXPLORATIONS.

Mr. SAYLER. I ask unanimous consent to present a memorial from the Cincinnati Society of Natural History, in favor of authorizing a new arctic exploration, and as it is brief I ask that it be referred to the Committee on Naval Affairs and printed in the RECORD. No objection was made, and it was so ordered.

The memorial is as follows:

The memorial is as follows:

To the Senators and Members of the Forty-fourth Congress:

The Cincinnati Society of Natural History respectfully represents to the honorable Senators and Members of the Forty-fourth Congress the importance of further and more successful arctic exploration. In all the various branches of science are found important problems which can be definitely settled in the polar regions only. The geography of that region is undecided. Hydrography and meteorology, two branches of science in which the United States are already pre-eminent, and a more complete and thorough knowledge of which is imperatively demanded by the ever-enlarging interests of science and of commerce, can nowhere be definitely settled but in the arctic zone. The laws of gravity are still uncertain and can be decided in the vicinity of the north pole only. Mineralogy, geology, and all the branches of natural history still largely depend upon a thorough exploration of the polar regions.

of natural history still largely depend upon gions.

This society, therefore, in the interest of science and for the honor of our country, respectfully recommends favorable legislation on the subject of polar exploration, and convinced that colonization is the most practicable way of conducting an expedition of this nature, recommend the passage of the bill to authorize and equip an expedition to the arctic seas, now in the hands of the Committee on Naval Affairs.

The above memorial was unanimously adopted at a full meeting of the Cincinnati Society of Natural History, held Tuesday evening, February 6, 1877.

J. F. JUDGE, Recording Secretary.

CINCINNATI, OHIO, February 7, 1877.

TELEGRAPHIC COMMUNICATION BETWEEN EUROPE AND AMERICA.

Mr. WARREN, by unanimous consent, introduced a bill (H. R. No. 4637) to aid in the establishment of cheap telegraphic communication between America and Europe, and to secure to the Government free transmission of its messages for twenty years; which was read a first and second time, referred to the Committee on Foreign Affairs, and ordered to be printed.

#### MRS. M. H. SARGENT.

Mr. WARREN also, by unanimous consent, introduced a bill (H. R. No. 4638) for the relief of Mrs. M. H. Sargent, of Cambridge, Massachusetts; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

### DISTRICT COURT IN NEBRASKA.

Mr. CROUNSE. I ask unanimous consent to take from the Speaker's table and put upon its passage at this time the bill (S. No. 1139) to change the time of holding the October term of the United States district court for the district of Nebraska.

I will say that there is no objection to this bill from any quarter. No objection was made, and the bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fall term of the United States district court for the district of Nebraska shall hereafter be held on the second Monday in November in each year, instead of the "Wednesday after the second Tuesday in October" as now provided by law.

The bill was ordered to a third reading; and it was accordingly

read the third time, and passed.

Mr. CROUNSE moved to reconsider the vote by which the bill was assed; and also moved that the motion to recnosider be laid on the

The latter motion was agreed to.

### CHANGE OF REFERENCE.

Mr. BRIGHT, by unanimous consent, from the Committee of Claims, reported back the bill (H. R. No. 4523) for the relief of James Whitehead, and moved that the committee be discharged from the further consideration of the same and that it be referred to the Committee on War Claims.

The motion was agreed to.

# MILITARY ACADEMY APPROPRIATION BILL.

Mr. CLYMER. I move that the House insist on its non-concurrence in the amendments of the Senate to the Military Academy appropriation bill for the ensuing fiscal year, and that the request of the Senate for a conference committee on the disagreeing votes of the two Houses be concurred in.

The motion was agreed to.

Mr. CLYMER. I move to reconsider the vote last taken; and also move that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. CLYMER. I now move that the bill with the amendments of the Senate be printed.

The motion was agreed to.

The motion was agreed to.

### SIOUX INDIANS.

I ask unanimous consent to take from the Speaker's Mr. BOONE. table, for consideration at this time, the bill (S. No. 1185) to ratify an agreement with certain bands of Sioux Indians, and also with a number of the Arapahoes and Cheyenne Indians, with a view of putting

the bill was read.

Mr. HOLMAN. I have no objection to a day being set apart for the consideration of this bill, but I think that time should be allowed

to enable the members of the House to examine its provisions.

The SPEAKER. Does the gentleman object to its present consid-

Mr. MILLS. I do; but I am willing that a day shall be set for its consideration.

Mr. BOONE. I will then ask that it be made the special order for Monday at one o'clock.

Mr. MILLS. I have no objection to that at all.

The SPEAKER. The Chair thinks that motion is not in order.

Mr. BOONE. Cannot it be done by unanimous consent?

The SPEAKER. The Chair thinks not.

Mr. HOLMAN. Let it be made the special order after the naval appropriation bill is disposed of, and let the case be heard then.

Mr. WILSON, of Iowa. I object to any special order being made.

Mr. BOONE. I ask consent that this bill may be printed for the

use of the House.

There was no objection, and it was so ordered.

### JOHN A. DARLING.

Mr. TERRY. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee on Military Affairs Senate bill No. 1202, for the relief of John A. Darling.

There was no objection; and the bill was accordingly taken from the Speaker's table, read a first and second time, and referred to the Committee on Military Affairs, not to be brought back on a motion to

### C. G. FREUDENBURG.

Mr. BANNING. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee on Military Affairs

Senate bill No. 189, placing the name of C. G. Freudenburg upon the retired list, United States Army.

There was no objection; and the bill was accordingly taken from the Speaker's table, read a first and second time, and referred to the Committee on Military Affairs, not to be brought back on a motion to reconsider.

#### DANIEL MIDDOUGH.

Mr. HENDERSON, by unanimous consent, introduced a bill (H. R. No. 4639) granting a pension to Daniel Middough; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### TIMOTHY BAKER.

Mr. BRADLEY, by unanimous consent, from the Committee of Claims, reported as a substitute for House bill No. 305 a bill (H. R. No. 4640) for the relief of Timothy Baker, of Saint John's, Michigan; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

#### HENRY L. JAMES.

Mr. BRADLEY also, from the same committee, reported a bill (H. R. No. 4641) for the relief of Henry L. James, of Williamsburgh, Massachusetts; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

#### E. B. HEAD.

Mr. BRADLEY also, from the same committee, reported as a substitute for House bill No. 862 a bill (H. R. No. 4642) for the relief of E. B. Head, postmaster at Harrodsburgh, Kentucky; which was read a a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

#### JOHN H. WISDOM.

Mr. BRADLEY also, from the same committee, reported back, with an amendment the bill (H. R. No. 441) to compensate John H. Wisdom for carrying the United States mails; which was referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be printed.

### SIMON M. PRESTON.

Mr. BRADLEY also, from the same committee, reported back adversely the bill (H. R. No. 1159) for the relief of Simon M. Preston, late collector of internal revenue for the first district of Mississippi.

Mr. LYNCH. I ask that that bill be referred to the Committee of the Whole on the Private Calendar.

The SPEAKER. That is the right of the gentleman.

The bill was accordingly referred to the Committee of the Whole on the Private Calendar, and the accompanying report ordered to be private.

#### HEARTT, WAITE & DODGE.

Mr. BRADLEY also, from the same committee, reported back adadversely the bill (H. R. No. 908) for the relief of Heartt, Waite & Dodge, of Chicago, Illinois; which was laid upon the table, and the accom-panying report ordered to be printed.

#### CHARLES M. BRIGGS.

Mr. DURHAM, by unanimous consent, introduced a bill (H. R. No. 4643) permitting the executor of Charles M. Briggs to sue in the courts of the United States; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.
Mr. PAGE. I move that the House now take a recess until one o'clock p. m., in order that the officers of the House may have an opportunity to arrange seats for Senators in the joint meeting of the

two Houses.

The motion was agreed to and accordingly (at twelve o'clock and fifty-six minutes p. m.) the House took a recess until one o'clock p. m.

#### COUNTING THE ELECTORAL VOTE.

The recess having expired, the Speaker called the House to order at one o'clock p. m., when the Doorkeeper announced the Senate of the United States.

The Senate entered the Hall, preceded by its Sergeant-at-Arms and headed by its President pro tempore and its Secretary, the members and officers of the House rising to receive them.

In accordance with the law seats had been provided as follows:

In accordance with the law seats had been provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; for the Senators, in the body of the Hall upon the right of the Presiding Officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform.

The PRESIDENT pro tempore of the Senate took his seat as Presiding Officer of the joint convention of the two Houses, the Speaker of the House occupying a chair upon his left.

ing Officer of the joint convention of the two Houses, the Speaker of the House occupying a chair upon his left.

The PRESIDING OFFICER. The joint meeting of Congress for counting the electoral vote resumes its session. The two Houses, having separated pending the submission to the commission of objections to the certificates from the State of Florida, have re-assembled to hear and to coincide or otherwise with the decision of that tribunal, which, by a majority of the commission, in writing and signed by the members agreeing therein, will now be read by the Secretary of the Senate and be entered in the Journal of each House.

The Secretary of the Senate read as follows:

The Secretary of the Senate read as follows:

\*\*Rectangle of the Senate of the United States, presiding in the meeting of the two Houses of Congress under the act of Congress entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, A. D. 1877.

The electoral commission mentioned in the said act, having received certain certificates and papers purporting to be certificates, and papers accompanying the same, of the electoral votes from the State of Florida, and the objections thereto submitted to it under the said act, now report that it has duly considered the same pursuant to said act and has decided and does hereby decide that the votes of Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long, named in the certificate of M. L. Stearns, governor of the said State, which votes are certified by said persons, as appears by the certificate submitted to the commission as aforesaid, and marked "number one" by said Commission, and herewith returned, are the votes for William A. Wheeler, of the State of Ohio, for President; and Four (4) votes for Rutherford B. Hayes, of the State of New York, for Vice-President.

The commission also has decided and herely and reports that the tour.

The commission also has decided, and hereby decides and reports that the four persons first before named were duly appointed electors in and by said State of Florida.

The commission also has decided, and hereby decides and reports that the four persons first before named were duly appointed electors in and by said State of Florida.

The ground of this decision, stated briefly as required by said act, is as follows:
That it is not competent, under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence aliunde the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Florida on, and according to, the determination and declaration of their appointment by the board of State canvassers of said State prior to the time required for the performance of their duties had been appointed electors or by counter-proof to show that they had not, and that all proceedings of the courts or acts of the Legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

As to the objection made to the eligibility of Mr. Humphreys, the commission is of opinion that, without reference to the question of the effect of the vote of an ineligible elector, the evidence does not show that he held the office of shipping commissioner on the day when the electors were appointed.

The commission has also decided and does hereby decide and report that, as a consequence of the foregoing and upon the grounds before stated, neither of the papers purporting to be certificates of the electoral votes of said State of Florida numbered two (2) and three (3) by the commission, and herewith returned, are the certificates or the votes provided for by the Constitution of the United States and that they ought not be counted as such.

Done at Washington the day and year first above written.

SAMUEL F. MILLER, W. STRONG, FERED'K T. FRELINGHUYSEN, JAMES A. GARFIELD, GEORGE F. HOAR, Commissioners.

The PRESIDING OFFICER. Are there objections to this decision? Mr. FIELD. I submit an objection to the decision and report just read.

The PRESIDING OFFICER. The member from New York [Mr. FIELD] submits an objection to the decision; which will be read by the Clerk of the House.

Mr. Adams, Clerk of the House, read as follows:

An objection is interposed by the undersigned Senators and Representatives to the decision made by the commission constituted by the act entitled "An act to provide for and regulate the counting of the vote for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," as to the true and lawful electoral vote of Florida, upon the following

A. D. 1877," as to the true and invarious that the vote cast by Charles H. Pearce, First. For that the decision determines that the vote cast by Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long, as electors of President and Vice-President of the United States in and for or on behalf of the State of Florida, is the true and lawful electoral vote of said State, when, in truth and in fact, the vote cast by Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock is the true and lawful vote of said State.

Second. For that said commission refused to receive competent and material

evidence tending to prove that Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long were not appointed electors in the manner prescribed by the Legislature of the State of Florida, but were designated as electors by the returning board of said State corruptly and fraudulently, in disregard of law and with the intent to defeat the will of the people expressed in the choice of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock, who were legally and regularly appointed electors by the State of Florida, in the manner directed by the Legislature thereof.

Third. For that the decision aforesaid was founded upon the resolution and order of said commission previously made, as follows:

"Ordered, That no evidence will be received or considered by the commission which was not submitted to the joint convention of the two Houses by the President of the Senate with the different certificates, except such as relates to the eligibility of F. C. Humphreys, one of the electors."

Fourth. For that said decision excludes all the evidence taken by the two Houses of Congress and by the committees of each House concerning the frauds, errors, and irregularities committed by the persons whose certificates are taken as proof of the due appointment of electors.

Fifth. For that said decision excludes all evidence tending to prove that the certificate of — Stearns, governor, as also that of the board of State canvassers, was procured or given in pursanace of a fraudulent and corrupt conspiracy to cheat the State of Florida out of its rightful choice of electors and to substitute therefor those who had not been chosen or appointed electors by said State in the manner directed by the Legislature thereof.

Sixth. For that said commission refused to recognize the right of the courts of the State of Florida to review and reverse the judgment of the returning board or board of State canvassers rendered through fraud and without jurisdiction, and rejected and refused to consider the action of said c

On the part of the Senate.

J. PROCTOR KNOTT,
DAVID DUDLEY FIELD, of New York,
W. S. HOLMAN, of Indiana,
J. R. TUCKER,
CHARLES P. THOMPSON,
G. A. JENKS, of Pennsylvania,
J. J. FINLEY,
MILTON SAYLER,
E. JNO. ELLIS,
W. R. MORRISON,
ABRAM S. HEWITT,
WILLIAM M. SPRINGER,
On the part of the House.

The PRESIDING OFFICER. Has the member from New York, who submitted this objection, a duplicate, so that each House may

have a copy?

Mr. FIELD sent to the Clerk's desk a copy of the objections.

The PRESIDING OFFICER. Are there further objections to the decision? [A pause.] If there be none, the Senate will retire to its Chamber, that the Houses respectively may consider and determine the objection.

The Senate then withdrew.

Mr. LYNDE. I move the House take a recess until Monday morn-

ing.

Mr. HALE. I raise a point of order on that.

The SPEAKER. The gentleman will state his point of order.

Mr. HALE. It is that under the act providing for the counting of the votes for President and Vice-President the House has nothing to do but go on at once and consider the objections which have been

do but go on at once and consider the objections which have been taken to the decision of the commission.

The SPEAKER. The gentleman from Maine will please indicate what part of the act he refers to.

Mr. SPRINGER. I desire to call the attention of the Chair—

The SPEAKER. The Chair will recognize the gentleman from Illinois later; he desires now to hear the point of order raised by the gentleman from Maine, [Mr. HALE.]

Mr. HALE. The section upon which my point is made is section 4 of the act.

But first let me call the attention of the Chair to a part of section 3, which provides that whenever a decision is made by the commission it shall be reported with its reasons to the Houses, "whereupon"—showing that the whole purpose and scope of the law is to provide for immediate action at every stage—"whereupon the two Houses shall again meet and such decision shall be read and entered Houses shall again meet and such decision shall be read and entered in the Journal of each House, and the counting of the vote shall proceed in conformity therewith"—shall proceed in conformity therewith unless upon objection made thereto in writing by at least five Senators and five members of the House, &c. The intention fundamentally is here shown that the count "shall proceed" unless under the provision of the act something else intervenes. Now what is that? That is the objection provided by the act of five objectors on the part of the Senate and the House, and when that shall be received, the Houses shall separate. Then section 4—after section 2 has provided for this intervening matter, which is the only thing that can interrupt the counting of the votes—goes on to declare the order to be pursued when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission. Mark you, Mr. Speaker, the business is confined strictly to the purposes for which the Houses have separated, and the president of the joint meeting of the two Houses has just declared what that purpose is, namely, to consider and determine upon the objections raised in the joint session. We separated for no other purpose; we are here for no other purpose, and when we found ourselves in separate session we had two hours only to arrive at a determination upon the one question before us and must proceed at once to consider it and settle it in that time. No man upon this can speak more than it and settle it in that time. No man upon this can speak more than ten minutes, and the question must be put at the end of the debate.

If the framers of this bill did not by these provisions mean to set-tle clearly and determinately that the count should proceed at once, that no other business should intervene, that nothing could interrupt it but an objection, and that when the session closed or the two it but an objection, and that when the session closed or the two Houses separated they were to meet for a specific purpose to be at once acted on, it is difficult to see how they fixed upon the language used. We are here under that provision. We are here in the House for the purpose of considering such objection as has been raised in the joint session. We are here under the language of the statute which declares the count shall proceed; and I appeal to the Chair, this being the evident purpose of the law, this being in the regular order of its proceeding, that we ought to go on and consider its objection, not to overrule this point of order, which tests to a certain extent the efficiency of this bill which, so far as we are concerned upon this side of the House, was not forced into enactment.

Mr. SPRINGER. Mr. Speaker, I send up to the Clerk's desk, and ask to have read, a portion of section 5 of the act under which the two Houses are now operating.

two Houses are now operating. The Clerk read as follows:

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

Mr. SPRINGER. I submit, Mr. Speaker, this portion of section 5, which has just been read by the Clerk, was framed to meet exactly the contingency in which this House now finds itself; and it is a strange coincidence, this is Saturday, and the very terms provided there exclude Sunday, which makes this motion to take a recess until Monday morning at ten o'clock in order. I further submit it is not unreasonable this House should take this short recess in order to determine whether we will overrule this judgment, when the commission have had nearly ten days to consider whether they would make this judgment.

Mr. McCRARY. The clause of the act which the gentleman from Illinois has had read at the Clerk's desk, so far from supporting his position, is entirely conclusive against it as I understand it. It pro-

vides:

And no recess shall be taken unless a question shall have arisen in regard to the counting any such votes or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided to direct a recess, &c.

Now, Mr. Speaker, a question did arise at the last meeting of the joint convention, and in pursuance of the power given by this very clause of the act a recess was ordered and several subsequent recesses have been ordered. The power to take a recess under that provision of the act has now been exhausted. We have resorted to the means which the act provides for determining what is the constitutional vote of this State, and we have now reached again the point where we are to proceed under the Constitution to count the vote; and when in that state the act clearly means that we shall take no recess until we have counted all the votes that we can count, objections to them

having been considered and reported upon.

But, sir, I make another point. I submit to the House that independently of this act of Congress, in view of the imperative provision of the Constitution itself, under which we are proceeding, the House can take no recess at this time. The Constitution provides that when the votes are opened in the presence of the two Houses they "shall then be counted." From the necessity of the case, we had to call a halt, and take measures to determine which of three certificates from the State was the vote of the State of Florida. We could only justify the delay which we have already had under the Constitution upon a plea of necessity; for the Constitution expressly declares that "the vote shall then be counted." But we have taken the steps required by the act. We have sought the opinion of this commission. We have received their report. We have exhausted our power to delay the proceedings by taking a recess; and we are now at a point when the Constitution imperatively commands that the vote shall be counted.

I submit, therefore, that, whether we look at the act itself or whether we look at the Constitution, we are bound to proceed as fast and as far as it is possible for us to proceed, without any further

Mr. KASSON. There is an interpretation of the meaning of the act made in the very report of the committee to which I find appended the signature of the gentleman from Illinois [Mr. Springer] who last spoke. I beg to remind the House of the concluding words of the report of the committee that prepared the bill. They say:

In conclusion, we respectfully beg leave to impress upon Congress the necessity of a speedy termination upon this subject. It is impossible to estimate the material loss that the country daily sustains from the existing state of uncertainty. It directly and powerfully tends to unsettle and paralyze business, to weaken public and private credit, and to create apprehensions in the minds of the people, that disturb the peaceful tenor of their ways and mar their happiness.

The spirit of the bill, sir, is indicated in the report of the commit-The spirit of the bill, sir, is indicated in the report of the committee, a committee that was able to carry with them upon the principles of that report a large majority of this House; and the essential principle of that report is that, in the question of determining who is the Chief Magistrate of this country, there should be no delay and no possibility of doubt left to embarrass the public mind, which the two Houses could avoid by the passage of an extraordinary act. Now the question is presented, shall we unnecessarily take a recess postponing further action for two days? We all know the Constitution says that when the votes are opened they "shall then be counted;" and we have given the construction to that that they are to be counted on the very day that they are opened; and that construction has

and we have given the construction to that that they are to be counted on the very day that they are opened; and that construction has force to-day so far that now we are legislatively in the day of Thursday the 1st day of February. It is useless, Mr. Speaker, to disguise the fact that if the majority of this House take a recess to-day until Monday unnecessarily, instead of going on with the count, the public agitation will be increased tenfold. The people will ask the reason why we are suspending the processes provided for by the Constitution and the law, and postponing action, and continuing doubt for two days unnecessarily. And when they make that inquiry, it will be followed by another: Does the majority of the House of Representatives intend to prevent the completion of the presidential count?

Mr. SPRINGER. No, sir.

Mr. KASSON. Right or wrong, that question will be asked from the Atlantic Ocean to the Pacific Ocean to-morrow morning if this action is taken now. It is evident to us all that objections may be made from time to time and delay may be necessarily caused, but certainly the reasons given for this delay are entirely inadequate. While this commission have been considering these questions, the members of this House and the Senate have been considering them. There is no justification whatever for delay to consider this decision, when the principles upon which it rests have been under discussion in this House even before the commission was organized.

Under these circumstances I submit to the patriotism of the House

of Representatives, to the interest it has in preserving the peace and restoring the prosperity of the country, that they at least interpose no unnecessary delay in those processes to which the whole country is looking for solving a difficult question.

Mr. SPRINGER. I desire to ask the gentleman from Iowa whether he voted for this bill on which he is invoking the patriotic consideration of Proventations.

tion of the House of Representatives?

Mr. KASSON. I did not; but the majority of this House did, alleging their own patriotism and uniting in the report from which I

leging their own patriotism and uniting in the report from which I have read this extract.

Mr. SAVAGE. Is debate in order?

The SPEAKER. The Chair thinks that the debate should be confined to the point of order.

Mr. KASSON. I am speaking with the view of getting the attention of the House to the spirit of the bill as well as the mere language of the report of the committee.

The spirit of the bill is to insure speedy action, and it is a question worthy the consideration of the Speaker, if there be any doubt about the matter whether he should not solve that doubt in the spirit and intent of the bill.

intent of the bill.

Mr. WARREN. The gentleman from Iowa [Mr. Kasson] who last addressed the House directed his argument rather to the question whether a recess would be desirable or proper than to the question whether it would be admissible. The gentleman from Iowa [Mr. McCrary] who preceded him made two objections to the right of the House at this time to take a recess. The first was that a recess cannot be taken because the contingency provided for in the law upon which a recess could have been taken has expired. The language is:

And no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

Now, sir, the gentleman says that a question has arisen; that it has been committed to the tribunal; that the tribunal has passed upon it; that the question is settled, and that there is no longer any right upon the part of the House to take a recess. Now, the gentleman himself voted for and defended this bill. The whole theory upon which the act was justified was that the final decision upon any question raised as to who were the electors in any State rested with the two Houses and that this tribunal was an advisory beard.

the two Houses, and that this tribunal was an advisory board.

We attached a certain weight to their decision, making it prima facie evidence, and binding ourselves not to reject their conclusions except by concurrent vote of the two Houses. But to say that any

question has been settled simply by the report of the commission is clearly not authorized by the language of the act.

The second point made by the gentleman is a broader one. He puts it on constitutional grounds; that the counting of the votes once commenced must proceed without interruption to the end. The objection means this or it means nothing. The only comment I have to make upon his argument on that point is that if the gentleman from Iowa is correct, then I do not know how he found it within his power, as a Representative, under the terms of the Constitution, to vote for a bill which provides for a recess in a contingency which has arisen and still exists and pending which contingency this motion arisen and still exists, and pending which contingency this motion was made

Mr. HOSKINS. I have no doubt that the Speaker of the House desires to arrive at a just decision under this law upon the point of order now pending, and I rise more especially to call the attention of the Speaker of the House to the last clause of the fifth section of the bill,

which I will read :

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

Now the recess here spoken of very clearly is the recess while these questions are under consideration by the joint commission, and no recess shall be taken except when there is a question arising and that question is under consideration by the joint commission. The language of the act is:

And while any question is being considered by said commission, either House may proceed with its legislative or other business.

It was clearly, it seems to me, the intention of this law to provide that no recess should be taken except while the two Houses shall be temporarily dissolved and the joint commission is in session. When the joint commission makes its report to the House there is no pro-vision of law for a recess until another case shall have arisen upon the electoral vote of a certain State, and shall have been referred to

the joint commission.

I submit then to the Chair that the law, both in its spirit and letter contemplates no recess whatever, except while the joint commission is in session on matters that have been referred to it. It therefore seems to me clear that the point of order ought to be sustained.

Mr. HOOKER. An objection has been made to the motion offered by my friend from Wisconsin [Mr. LYNDE] by some gentlemen on the oppposite side, that it is in violation of that provision of the Constitution which provides that, when there is an assemblage of the two Houses for the purpose of counting the electoral votes for President and Vice-President, the vote shall "then be counted." It will be found by reference to the first section of this bill that it provides for the manner in which the two Houses shall separate and consider the vote where there is but one return, and that section provides as follows:

where there is but one return, and that section provides as follows:

Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of the two Houses. When the two Houses have voted, they shall immediately again meet, and the Presiding Officer shall then announce the decision of the question submitted.

It will be observed, Mr. Speaker, that even in cases where there are two returns from a State, but a single return, there is no provision of the law which prevents either House from taking a recess, and I think there is no reasonable construction of the Constitution which would imply that there is any imperative necessity for the House making a decision upon a contested case upon the same day on which

the two Houses separate.

When you come to the second provision of the law which provides for the commission, it has been well stated by my distinguished friend from Massachusetts [Mr. Warren] that this bill recommended itself to this House primarily because it reserved in the second clause of the bill the power to five Representatives of this House and five Senators of the other House to present their objections in writing to the consideration and adoption of the report of the commission. The bill then goes on to provide that the two Houses shall separate when the objections have thus been presented, as they have been presented this morning by the gentleman from New York, [Mr. FIELD,] properly signed according to the terms of the bill. And the act then proceeds to provide that at least two hours shall be given to discussion upon those objections. It has been well said by the gentleman from Illinois [Mr. Springer] that, inasmuch as the consideration of this grave question of the electoral vote of Florida has occupied the time of the joint commission for ten days, it is not unreasonable that this House should have some little time to deliberate in reference to it.

Now in reference to the power of the House to take a recess, under to this House primarily because it reserved in the second clause of

Now in reference to the power of the House to take a recess, under the second section of the bill, I take it for granted that the argument just made by the gentleman from New York [Mr. Hoskins] cannot apply, for the simple reason that the power to take a recess pending the consideration of an objection made to the finding of the commission is as emphatic as if objection was simply made to the counting of the vote of a State from which but a single return has been made.

If an objection be made to a single return, it must be considered by the House, it must be discussed by the House, and it must be deliberated upon by the House. It is unreasonable to suppose that this re-cess cannot be taken when the two Houses separate to consider an ob-jection to the judgment of the commission, when the commission has occupied so much time in its consideration.

The fifth section of the act has been referred to as giving the power to the House to take a recess. It has been said by the gentleman from New York [Mr. Hoskins] that that section applies alone to the question of the power of the House to take a recess pending the consideration of objections to the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we will not the electoral vote of a State, which we wil tion had been made before the commission had convened. I find no such restriction even in the language or in the context of the act. On the contrary, the powers to take a recess must be emphatic with reference to the one case as to the other. It is not confined to the case in which a matter is being considered by the Commission, but it is a general power, where an electoral vote is objected to, for either House to take a recess not beyond ten o'clock of the next day, Sunday ex-

Therefore, if we now take a recess until ten o'clock on Monday morning, we will be taking a recess under the provisions of the act. I think the objection to the power of the House to take a recess at this time is not good, whether you look to the first section of the act regarding single returns or to the second section of the act when dual returns are being considered.

Mr. WILSON, of Iowa. We met in joint meeting on the first day of this month to count the electoral votes for President and Vice-

President. If no question had arisen, such as has been referred to this commission, we could not have taken a recess at all; we must have continued in joint session and gone on from day to day until all the States were disposed of.

Provision is made in the electoral-commission act to the effect that when we come to the point where we cannot go on in joint meeting, the commission having received possession of some of the papers, then by the latter clause of section 5 of the act we are allowed to proceed with legislative business, and while doing so we can take a recess. Section 4 of this bill should have come in after section 5, because it brings us down to the place where we now are in the counting of these electoral votes; that is, after a matter has been referred to the commission and the commission has made their report upon it to the two Houses in joint session, and objection is made to the report of the commission. The spirit of the act must be that the act of one House cannot defeat its provisions; that no act of either House can interfere with the convenience of the joint meeting of We shut our doors against the Senate by taking a recess and prevent the work of the commission under the act. The Senate may prevent the work of the commission under the act. The Senate may find it convenient to do the same at some future time and the good faith that should exist between the two Houses in determining the great question thereby destroyed. The principle that should control in taking a recess while both Houses are considering questions relative to the count should at least be by concurrent action; otherwise the convenience of one is the plea for dangerous delay.

The two Houses have now separated to consider and decide upon

The two Houses have now separated to consider and decide upon the objections that have been made to the report of the joint commis-

The words of the act are these:

That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission—

That is where we now are-

or other questions arising under this act-

Now here comes the privilege as well as the mandate under the

each Senator and Representative may speak to such objection or question ten minutes—

Until two hours are consumed, when the main question shall be

That is the only thing in order. We have, therefore, since we met on the 1st day of February, been acting under the first, second, third, and fifth sections of this act until to-day; and now we are acting

under the fourth section of the act.

Leaving out of section 4 the permission to debate, and we have a duty imposed upon us in these words:

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, \* \* \* t shall be the duty of each House to put the main question.

Even with the power to debate, the main question is to be put at the end of two hours, and no recess is under these circumstances provided for.

It is now in order, and nothing else is in order, to proceed to debate for two hours, if gentlemen see fit to do so, the objection which has been made to the report of the commission; and at the end of the two hours a vote must be taken, and then the two Houses come together again. Any other interpretation will nullify the act under which we are proceeding, and will be revolution against that act, as well as against the Constitution, that certainly requires the votes of State the country without recess or adjournment when it has a State to be counted without recess or adjournment when it has been determined what are the votes of a State, as has been in this case. The act must be interpreted so as to carry itself into effect.

Mr. JONES, of Kentucky. It seems to me there is no lawyer in

this House, and no one with a discriminating mind, if I may so speak without disrepect, who after a minute and careful examination of this act can doubt for a single moment that the motion for a recess now pending is in order. The word "recess" does not apply to the joint meeting in any respect whatever. The joint meeting of the two

Houses cannot take a recess.

But the act provides that when a certain event occurs, when an objection is made and the two Houses have separated, then the two Houses may take a recess; but the word "recess" is applied exclusively to the two Houses. The act provides that when a count may be objected to or any other objection is made, for whatever purpose, and the two Houses separate, then either House may take a recess, but the two Houses in joint meeting cannot take a recess.

Now here is the very contingency contemplated by the act, in which we may take a recess. Here is a vote objected to. And if it was any other objection what is the language of the act?

And no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

Now we have a perfect right to take a recess at this moment before we go into the consideration of the objection made. I admit that after the House goes into consideration of the objection there is a provision requiring that debate be limited to two hours in tenminute speeches. But it seems to me there is no doubt whatever as to the admissibility of the motion now made.

Mr. BANKS. I desire to ask the Chair to consider whether or not section 5, to which gentlemen on the other side have referred, operates in point of fact upon the condition of the House at this moment in its present situation with regard to the business which has been intrusted to it. The House is now in that position in which, in accordance with the uniform practice heretofore, under that provision of the Constitution which made it the imperative duty of the Presi-dent of the Senate to open the certificates at an appointed time and declared that the votes should then be counted.

In the course of seventy-six years, from 1789 to 1865, more than three-quarters of a century, I do not think there can be found a single instance where the point having been reached at which the Constitution required that the votes should "then be counted" in the presence of the two Houses that a recess has been directed or proposed. It has been the invariable practice, so far as I remember, that at the point of time I have specified when the Constitution required them to be counted they have been counted. I do not suggest any theory as to whose duty it might have been to perform this work, but only to assert that without recess, adjournment, delay, or proposition of delay, the votes have then been counted.

We have now reached this exact point of time when the Constitu-tion requires that the electoral votes given at the presidential elec-1876 shall be counted.

All the proceedings preliminary to this final result have been completed.

The certificates have been opened, and in pursuance of a law enacted to meet the difficulties presented in this case, disputed ques tions of law and fact have been referred to a committee composed of Representatives, Senators, and judges of the Supreme Court. They have been considered and debated by this tribunal for eight days; they have, with the aid of the ablest counsel the country affords, been brought to a final decision, which has been reported to the Senate and House in pursuance of the provisions of the law, namely, that the votes of certain electors from the State of Florida for President and Vice-President should be counted. We are here to count those votes. It is true that if certain formal objections are made in the manner prescribed by the law, the Houses may separate, and there may be debate for two hours. But nevertheless, at the conclusion of this debate, the command of the Constitution and of the law is peremptory that the votes shall then be counted.

Let me ask the attention of the Speaker to the provision of the statute, section 5, which has been read by the honorable gentleman from Illinois, and other gentlemen, as justifying the proposition for a

Such joint meeting [of the Senate and House] shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House, not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

"In which case!" These are the words that control the House in regard to a recess. That is, after the joint meeting shall have been terminated by the submission of all disputed questions to the electoral commission for consideration and final determination, and the two Houses shall have separated, then it shall be in order for either House to take a recess not beyond the hour of ten o'clock the next day, or to "proceed with its legislative or other business"—

in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon; and while any question is being considered by said commission either House may proceed with its legislative or other business.

sidered by the electoral commission. Its labors in that regard are finished. Its final and conclusive report, so far as that tribunal is concerned, has been entered upon our Journal and is now before the House. The provisions of section 5 of the act, as to the right to difinished. House. The provisions of section 5 of the act, as to the right to direct a recess, are not applicable to the House at this moment and in its present condition. The House cannot now "proceed with its legislative or other business;" neither can it now, in accordance with any provision of the law, "direct a recess." It has but one power and one duty, and that is to consider the report of the commission, and count or reject the electoral vote of the State of Florida.

The gentleman from New York has stated correctly the ground upon which this motion should be ruled out of order. It is that the experience of the state of the ground upon which this motion should be ruled out of order. It is that the

opportunity and time appointed for a recess have been exercised and exhausted. The power has been exercised, not only by the joint convention, but by the two Houses, for nearly eight days; since Thursday of last week. There is no other opportunity or right for the exer-

of last week. There is no other opportunity or right for the exercise of this dilatory power.

Now the provision of the Constitution is imperative that "the votes shall be counted." This provision in regard to the recess is applicable to another stage of this business; and the motion for a re-

plicable to another stage of this business; and the motion for a recess is not admissible now, and ought not to be entertained.

I must ask the Speaker to consider this proposition: If we may now take a recess until next Monday at ten o'clock, then on Monday at ten o'clock we can take a recess until Tuesday at the same hour, and so on, if a majority of the House should favor the proposition, until the 4th of March. Thus an imperative constitutional duty devolved upon the two Houses may be defeated. The Chair must take the responsibility of deciding that this most important duty—the most important that ever rested upon the House of Representatives, which is to be performed under the command of the Constitution at this moment, without postponement, adjournment, or delay—can be deferred. ment, without postponement, adjournment, or delay—can be deferred, without any reason assigned of necessity or expediency, until Monday next at ten o'clock, and from that time until the next at the same hour, and so on for the remainder of this session, and until the authority of Congress shall expire. I trust that the Chair will not make this decision, nor involve the House in such conflict with an imperative and solony constitutional data.

decision, nor involve the House in such conflict with an imperative and solemn constitutional duty.

Mr. SAYLER. Will the gentleman allow me to ask him a question.

Mr. BANKS. Yes, sir.

Mr. SAYLER. Will the gentleman be kind enough to state the interpretation he gives to the words "or otherwise under this act" in the next to the last clause of the fifth section?

Mr. BANKS. In what line is it?

Mr. BANKS. In what line is it? Mr. SAYLER. I will read the clause:

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this

Now let me state what I mean by the point I raise. My idea is that the first clause refers directly to the counting of the votes in the commission or in the joint session of the two Houses. Then the only question that would lead to a recess would be a difference of opinion in regard to the counting of the votes. But the words "or otherwise under this act" seem to refer to the very case now before us: the taking of a recess in a session of either House separately when the only question that can arise under this act arises as it does to-day; that is, a difference of opinion as to the judgment of the commission in is, a difference of opinion as to the judgment of the commission in reference to the counting of the vote of a State. I ask the gentleman's

reference to the counting of the vote of a State. I ask the gentleman's attention to that question.

Mr. BANKS. My answer to the suggestion of the gentleman from Ohio is very simple and plain. Whatever meaning may be put upon these words to which he has referred, "or otherwise under this act"—whatever those words mean, and whatever act they may refer to, they refer to that which has taken place in the joint convention of the two Houses. In the joint convention a recess may be taken and when a disagreement occurs, on the vote of a State or otherwise.

Mr. SAYLER. I ask whether the House in joint session can take a

Mr. SAYLER. I ask whether the House in joint session can take a recess at all?

Mr. BANKS. This refers to a recess or a separation of the two Houses and the suspension of its labors by the joint convention as

has been done to day and heretofore.

Mr. JONES, of Kentucky. The joint convention did not take a recess, but the two Houses separated. The joint convention cannot

Mr. BANKS. That part upon which we stand is in a subsequent paragraph. "In which case"—those words control the action of the House—"in which case," that is, after the two Houses shall separate for one reason or another under this act. In that case it shall be competent for either House acting separately in the manner hereinbefore provided to take a recess of such House not beyond the next day at ten o'clock. Now we have gone past that. The joint convention has met. The joint convention has taken a recess.

Mr. SAYLER. Now what does the gentleman mean by the joint convention having taken a recess to-day?

day, or to "proceed with its legislative or other business"—

which case it shall be competent for either House, acting separately, in the same hereinbefore provided, to direct a recess of such House not beyond the axt day, Sunday excepted, at the hour of ten o'clock in the forenoon; and while average of the state of the second commission either House may proceed it its legislative or other business.

We are not now in that condition. No question is now being con-

or Senate begins the session de novo, but it is to be a meeting in pursuance of the order under which we met on Thursday of last week,

or senate begins the session ae noro, but it is to be a meeting in pursuance of the order under which we met on Thursday of last week, eight days ago.

Mr. SAYLER. Let me ask the gentleman a question.

Mr. BANKS. Let me state this again, for it is upon this point the whole question hangs. When this joint meeting has been suspended and the commission has met to consider the questions referred to it, then, "in that case," it is competent for the House to take a recess until ten o'clock the next day, and from day to day until its report has been made. Now, the report of the joint commission has been made. All that the commission and the joint convention of the two Houses can do has been done. They have made a report; the report is that the vote of the State of Florida is to be counted, and the Constitution puts its solemn command upon the House to count that vote now. There is no opportunity for recess or for adjournment, either under the law or under the Constitution, under which the law is professedly made; and for seventy-five years, Mr. Speaker, there never was a proposition for a recess after the certificate had been opened by the President of the Senate and submitted to the tellers of the House and Senate to be counted.

I except from this general declaration as to time the practice of the two Houses under the reconstruction acts, where the joint rule of the two Houses allowed a separation of the two Houses to decide for themselves in their own way upon the merits of the questions referred to them. In those cases with secreely an execution, the question was

two Houses allowed a separation of the two Houses to decide for themselves in their own way upon the merits of the questions referred to them. In those cases, with scarcely an exception, the question was whether a State was in fact a State or not, whether a State whose vote was to be counted was a State of the Union. Although there were some circumstances which would imply that a different question was considered under this rule from 1865 in regard to the reconstructed States, yet when you consider them carefully and closely every objection will be found, with scarcely a single exception, to have rested on the question whether the State purporting to give a vote was or on the question whether the State purporting to give a vote was or

on the question whether the State purporting to give a vote was or was not a State in the Union.

Mr. HARTRIDGE. Mr. Speaker, it makes no difference to this House to-day whether or not during the last seventy-five years there has or has not been a recess taken during the counting of the electoral votes. Why, sir, during the period of the last seventy-five years the emergency which is upon us, and the condition of things which surrounds us now, never have existed. This Congress never before has been acting under and by virtue of a law similar to that under which we are acting now. We have adopted a law to cover a peculiar condition of affairs and a peculiar state of the electoral votes, and under the phraseology of that law we must act and by virtue of that law we must act. The two Houses, by legislative process, and the Executive, by his affirmative signature, have impressed this act with the sign of constitutionality, and until it is declared unconstitutional by any judicial proceeding properly invoked, and the decision of a proper tribunal, the objection of the gentleman from New York cannot apply to our proceedings. We are acting under this law as if it were constitutional, understanding that it is constitutional, and we must act solely under its provisions.

were constitutional, understanding that it is constitutional, and we must act solely under its provisions.

Now, sir, this law is imperative that so long as the joint assembly is proceeding with the counting of the electoral votes there shall be no recess. That is imperative. But this law also declares that when there shall arise an obstacle to impede the progress, to stop the further pursuit of the counting, then there may be a recess. For what happens then? The joint assembly is not dissolved, but the two Houses separate and retire to their respective halls, and then what happens? In the event of the objection being made of such a nature and in such a shape, when the return is dual in its form, that it must be submitted to the commission, there is no doubt, gentlemen say, that either House separately may take a recess. But, sir, there is another objection which may be made, an objection not to be submitted to the joint commission because it is an objection to the single return of the electoral vote of a State. That objection is to be submitted to the two Houses respectively in their separate capacities. Why, then, cannot they take a recess? This is the language of the act:

No recess shall be taken unless a question shall have arisen in regard to counting

No recess shall be taken unless a question shall have arisen in regard to counting any such votes.

When we have separated, as we do to-day, to decide upon the counting of a single return, we could take a recess. There is no doubt about that. But the law does not stop there. It says:

Now what means "or otherwise?" We are objecting to the return made by the commission. The commission has brought in a declara-tion that the vote of Florida shall be counted. We have objected to their decision, to their judgment, and we come under the words "or otherwise." Even if it should be said that it is not an objection to

otherwise." Even it it should be said that it is not an objection to the counting of the vote, it is an objection to proceeding further on the decision or judgment of the commission.

Now, sir, when we separate for that purpose, what does section 4 say may happen showing what action shall be or may be taken in just such a case as this, a case where we object to the decision or judgment of this high commission? Section 4 provides that—

When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act—

then debate may ensue limited to two hours. But shall it be said that that does not come under the head "or otherwise" when we have

the right to a recess? Why, sir, suppose that this decision had been sent in at a quarter of twelve o'clock to-night instead of at a quarter past one o'clock to-day—I admit that a legislative day may be continued into Sunday—but would gentlemen on the other side say that we should be held to take action at once during the Sabbath upon the decision of the commission?

I think it would be admitted that we could take a recess from a quarter to twelve o'clock on Saturday night till Monday morning. And if we can take a recess at a quarter to twelve o'clock on Saturday, what is there to prevent us from taking a recess from half past

two o'clock on Saturday?

It seems clear to my mind that we are acting under the provisions of this law alone, and that the law gives the power to take a recess in either of two cases: either when an objection is made to counting a vote or otherwise; contemplating, as the section does, that that "otherwise" includes the objection to the decision or report of the commission; the position in which we now are.

Mr. HOAR. Will the Chair allow me to make a remark on this question of order?

The SPEAKER. Does the gentleman from New York [Mr. Cox] yield to the gentleman from Massachusetts?

Mr. COX Yor win

Mr. COX. Yes, sir.

The SPEAKER. The Chair desires to state that he has allowed a good deal of latitude to this debate because of the magnitude of the question involved. He thinks, however, that the discussion should be confined exclusively to the question of the point of order.

Mr. HOAR. I had not purposed to take any part whatever in the discussion which should arise upon the report of the commission. It seemed to me that it would be indelicate; and I believe that is the opinion of my associates in the House on both sides who have been placed on the commission by the House. I suppose, however, that there is no impropriety in my making a suggestion upon this question of order, as I had the honor also, as well as the gentleman from Illinois, [Mr. Springer,] to have something to do with the framing of

I should regret very much the delay even of a day in proceeding to execute this law, for reasons which I need not state, but which I suppose the whole country shares. But the question before the House now is in regard to the right to take one single recess not beyond the next day, Sunday excepted, at the hour of ten o'clock, on the arising of a question. It seems to me that right is secured to the House by the bill; that when the case has gone to the commission on the objection of a member of the Senate and a member of the House, and the commission has made its report and then five members of the the commission has made its report, and then five members of the Senate and and five members of the House unite in a new objection to that report, the question being on the acceptance or rejection of the report, that that presents a question and the only question which can arise before the counting of the vote of Florida; and that, there-fore, by the strict letter of the law the right arose to take this single recess provided for.

It is eaked if way more that the

It is asked if you may take this one recess, may you not take a recess again and on from day to day, and so take recess after recess until the expiration of the Congress. Well now, in the first place, that question implies the possibility of an act of personal and party and political dishonor, which for one I am not prepared to believe possible in any political party of which I have had the good fortune

and political dishonor, which for one I am not prepared to beheve possible in any political party of which I have had the good fortune to be a member.

Mr. BANKS. I desire to ask my colleague a question.

Mr. HOAR. I do not desire my colleague to ask me a question until I have got through with the statement I am now making. Now, Mr. Speaker, the answer to that proposition is, as I have said, that if you were to believe such an act of public dishonor possible, which no man here certainly does, the answer to that is, that the bill clearly limits this power to a recess. The law I know declares that the House shall not adjourn and the Constitution so provides, but that it shall be in constant session. And that when any question arises a recess may be taken upon the question to the next day. Certainly no man will pretend that that law permits a recess from day to day forever. It is a recess provided for by the law and on the arrival of the next day there are to be two hours allowed for debate and then the question must be taken on the main question pending before each House.

Now I will allow my colleague to ask me a question.

Mr. BANKS. I do not desire to ask a question, but I want to state that the rules of the House prohibit a member from attributing motives to any member or members of the House. What I said did not impeach the motives of any member.

Mr. HOAR. I did not refer to my colleague at all.

impeach the motives of any member.

Mr. HOAR. I did not refer to my colleague at all.

Mr. BANKS. Allow me a moment. My colleague, in his remarks, intimated that the statement that this motion for recess could be repeated from day to day until the close of the session implied dishonorable motives to those who sustained it. I made no such implication at all; I spoke of the power of the House; it was my right to speak of its power. I merely stated that it was in the power of the House to do this, and I made no implication upon the motives of my fellow-members. Therefore my colleague had no right to use the language which he did.

Mr. HOAR. I did not even hear my colleague. I was out of the House when he spoke, if he did speak, and I have not alluded in any remark that I have made to anything that fell from his lips in any

form, shape, or manner. [Laughter.] I was absent from the House

when he spoke.

Mr. BANKS. Then the gentleman should have made that state-

Mr. BANKS. Then the gentleman should have made that statement when he was first upon the floor.

Mr. HOAR. I did not know that I was alluding to any argument that had been made on the floor of the House. I said that the argument had been made outside that if you could take one recess you could take twenty, and so defeat the count of the votes for President and Vice-President; that act involved first an act of public dishonor and then a violation of the law. But I did not know that any gentleman on the floor had suggested any such argument.

Mr. COX. The question of order upon a recess is not debatable under our rules. A recess amounts simply to a withdrawal for a short time, as our rules say, from the ordinary business that is progressing. Gentlemen, however, upon the other side of the House have departed from a question of the recess to debate other matters, and some intimations were made, I will not say by whom, but I will say that the sensibilities of the gentleman from Maine [Mr. HALE] seem to point out to him that this side of the House might not receive the conclusions of the joint commission in good faith. No man on that side of the House and no man in the country is authorized to say that the gentlemen on this side of the House who helped to frame this bill and voted for it are not equally with gentlemen on both sides of the and voted for it are not equally with gentlemen on both sides of the House as prompt to accept the situation to-day as the most distinguished and thoroughly honest members on the other side of the House. No such intimation should have been made.

A recess is indispensable, and is admissible under the fourth section of the bill for the purpose of considering the return made by the joint commission and the objection made thereto. But look at the terms of the bill. Nothing could be clearer, and it is hardly

worth while to elaborate it:

Such joint meeting shall not be dissolved until the electoral votes are all counted and the result declared.

This bill and the action of the House under it show that there has been no intent and no object to dissolve the joint meeting. I read

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

Where a question arises upon the report of the electoral commission it is to be debated here for two hours on the question of counting the vote. My colleague [Mr. HOSKINS] made the point that the debate must take place immediately, and he laid emphasis on it. But here comes the substance of the whole matter, "or otherwise under this act." What does that mean? Where does it come from? Why, it comes from the twenty-second joint rule, a portion of which I will

And no recess shall be taken unless a question shall have arisen in regard to counting any of such votes; in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess not beyond the next day at the hour of one o'clock p. m.

Evidently this portion of the bill was copied from the twenty-second joint rule. In addition to the language of the rule the words "or otherwise under this act" are inserted.

Now what do the words "or otherwise" mean? I have here Worcester's Dictionary, which ought to be authority on the other side, because I have heard gentlemen on the other side quote the words from it. What does "otherwise" mean? It means "in a different manner;

it. What does "otherwise" mean! It means "in a different manner; in another way; by other causes; in other respects; not the same; not this; not these; different; not these, but the contrary."

Now let us read this act in connection with the explanation of these words from the dictionary. "No recess shall be taken unless a question shall have arisen in regard to counting any such votes or otherwise"—that is, not the same sort of a question—"under this act." In another way, under this act, to be sure, but not with reference to counting the votes. By other causes, under this act all the time, but in a different way than in regard to counting the votes. In other respects, the very opposite, not the same question; under this act all the time, but not in reference to counting the electoral vote. "Otherwise" is a word of large and comprehensive meaning. Whenever any sort of question comes up under this act and the joint meeting separates, this House has the right to take a recess.

Now, if gentlemen would stand by this act, let them stand by the power of the House under it in all respects. There comes honor; there comes integrity; there comes a fair count, a fair consideration of these objections made, and not objections made on the instant,

of these objections made, and not objections made on the instant, without a recess and without consideration.

The SPEAKER. The Chair, in ruling upon the point of order raised by the gentleman from Maine, [Mr. HALE,] desires to say that he does not think that the third section of the act, which reads "while the two Houses shall be in meeting, as provided in this act, no debate shall be allowed, and no question shall be put by the presiding officer, except to either House on a motion to withdraw; and he shall have power to preserve order," has any pertinency to the question now before the House, although alluded to by the gentleman

from Maine.

Mr. HALE. The Chair will allow me, for a moment, to interrupt him; I did not allude to section 3 of the bill, but to section 2.

The SPEAKER. Then the Chair will pass from that. The gentleman from New York [Mr. Hoskins] alluded to that portion of section 5 which reads:

Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared.

The Chair thinks that portion of the act has no pertinency what-

ever to the question now before the House.

The portion of the act to which the Chair desires first to direct the attention of the House is embraced in section 4, which reads as follows:

That when the two Houses separate to decide upon the objection that may have been made to the counting of an electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

Under that directory clause of the act, the Chair thinks that at no later time than the time when the motion was made would such motion to take a recess have been in order. That is to say, if the debate had been entered upon, then the clause of the law last quoted is clear and distinct that a vote shall be taken.

The Chair would also direct attention to that portion of section 5

which reads as follows:

And no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next day, Sunday excepted, at the hour of ten o'clock in the forenoon.

It is the fact that this is the first time when a question has arisen such as is alluded to and spoken of in that clause of the act. such as is alluded to and spoken of in that clause of the act. The question having arisen now for the first time, the Chair thinks it is competent for this House, if in their judgment it shall be expedient, to now take a recess, but only until the next day at ten o'clock in the forenoon, Sunday excepted.

Mr. HALE. Then the Chair overrules my point of order.

The SPEAKER. The Chair overrules the point of order.

Mr. HALE. I respectfully beg leave to appeal from the decision of the Chair.

the Chair.

Mr. COX. I move to lay the appeal upon the table.

The motion to lay on the table was agreed to; upon a division—

ayes 156, noes 76.

The SPEAKER. The question recurs upon the motion of the gentleman from Wisconsin [Mr. LYNDE] that the House now take a retleman from Wisconsin [Mr. LYNDE] that the House now take a recess until ten o'clock Monday morning, upon which motion the main question has been ordered.

Mr. KASSON. Is it in order to move an amendment as to the time to which the recess shall be taken?

The SPEAKER. The main question has been ordered, and no amendment is now in order.

Mr. HALE. Upon the motion for a recess Leall for the year and

Mr. HALE. Upon the motion for a recess I call for the yeas and

The yeas and nays were ordered.

The question was taken; and there were—yeas 162, nays 107, not voting 21; as follows:

The question was taken; and there were—yeas 162, nays 107, not voting 21; as follows:

YEAS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, ir., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cuttler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzlel, Hatcher, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, Neal, New, O'Brien, Odell, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Schiecher, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, Jeren N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—162.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon, Carr, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Do

So the motion for a recess was adopted.

During the roll-call the following announcements were made:

Mr. A. S. WILLIAMS. My colleague, Mr. DURAND, is detained from
the House on account of sickness.

Mr. SAMPSON. My colleague, Mr. McDill, is absent on account

of illness.

During the roll-call a message from the Senate, by Mr. Gorham, its Secretary, announced that the Senate had agreed to the following resolution:

Resolved, That the decision of the commission upon the electoral vote of the State of Florida stand as the judgment of the Senate, the objections made thereto, to the contrary notwithstanding.

The message also notified the House that the Senate was now ready for President and Vice-President.

Mr. LYNDE. Before the vote is announced I ask that by unanimous consent the Clerk of the House be instructed to inform the

Senate in response to their message—

The SPEAKER. The Chair will take the responsibility of directing the Clerk to notify the Senate of the result of this vote.

The result of the vote was then announced as before stated; and

accordingly (at two o'clock and fifty-five minutes p. m.) the House took a recess until Monday next at ten o'clock a. m.

### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. ATKINS: A paper relating to the establishment of a postroute from Pyburn's Bluff, in Hardin County, Tennessee, to Iuka, Mississippi, to the Committee on the Post-Office and Post-Roads.

By Mr. CAULFIELD: Joint resolutions of the Illinois Legislature, relating to the swamp-land scrip, to the Committee on Public Lands.

By Mr. DOUGLAS: The petition of the mayor and council of Fredericksburgh, Virginia, for aid for the improvement of the navigation of the Rappahannock River, to the Committee on Commerce.

By Mr. DURHAM: The petition of 52 citizens of Garrard County, Kentucky, for cheap telegraphy, to the Committee on the Post-Office

Kentucky, for cheap telegraphy, to the Committee on the Post-Office and Post Roads.

and Post Roads.

By Mr. EAMES: The petition of Mary Welsh, of Johnston, Rhode Island, for a pension, to the Committee on Invalid Pensions.

By Mr. GOODE: The petition of Frederick Lange and 103 other citizens of Neosho County, Kansas, that pensioners be granted arrears of pension from the date of their discharge, to the same committee.

By Mr. HEWITT, of New York: The petition of Hannah Allen, of New York City, for the removal of her political disabilities, to the Committee on the Judiciary.

By Mr. LEAVENWORTH: The petition of Giles Everson and 42 other citizens of Onondaga, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. MORRISON: Three petitions, signed respectively by James W. Graham and others, B. B. Fleming and others, J. M. Greene-baum and others, citizens of Illinois, of similar import, to the same committee. committee.

By Mr. PACKER: The petition of Benjamin Heffner and others, citizens of Northumberland County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. ROBBINS, of Pennsylvania: The petition of 40 workingmen of Philadelphia, that Congress provide a fund to encourage such

citizens to emigrate and settle on the public lands, to the Committee on Education and Labor.

By Mr. SPARKS: The petition of citizens of Washington County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

and Post-Roads.

By Mr. WHITEHOUSE: Four petitions, signed respectively by Thomas L. Davis and 93 other citizens of Poughkeepsie, New York; J. W. Kinstead and 34 other citizens of Saugerties, New York; W. A. Davies and 38 other citizens of Poughkeepsie, New York; A. Fowler and 11 other citizens of Poughkeepsie, New York, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WILLARD: The petition of R. H. Stanton and other citizens of Barry County, Michigan, that a pension be granted William Brotherton, a soldier of the war of 1812, to the Committee on Revolutionary Pensions.

By Mr. WILLIAMS, of Wisconsin, Th.

By Mr. WILLIAMS, of Wisconsin: The petition of N. B. Burtch and 62 other citizens of White Water, Wisconsin, that pensioners be granted arrears of pension from the date of their discharge, to the Committee on Invalid Pensions.

### IN SENATE.

# MONDAY, February 12, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Sen-

ate resumes its session.

Mr. WINDOM. I should like to present a joint resolution of the Legislature of Minnesota, but I suppose it is not in order at this time.

The PRESIDENT pro tempore. No legislative business is in order. Mr. DAVIS. I understood the ruling of the Chair on Saturday to be that no legislative business whatever is in order pending the count of the electoral vote.

The PRESIDENT pro tempore. The Senator from West Virginia is correct

Mr. DAVIS. My object in making the inquiry was on account of a petition which I wished to present if business was in order.

The PRESIDENT pro tempore. The Chair denies himself that privilege, and is compelled to deny the Senator from West Virginia, as he has already denied the Senator from Minnesota.

Mr. SHERMAN. I suppose it would not be in order even to take recess under the law.

The PRESIDENT pro tempore. It would not be in order.

Mr. SHERMAN. I so understand it.

Mr. DAVIS. Would it not be in order to move a recess until to-

morrow or any hour to-day?

The PRESIDENT pro tempore. It would not, except upon a question raised in joint meeting, and the question there raised has been disposed of. The Senate availed itself of that on Saturday and took disposed of. The Senate availed itself of that on Saturday and too a recess until to-day.

Mr. DAVIS. Of course I reserve any question on that decision.

have a different impression; but it is not worth while now to dis-

Mr. CAMERON, of Pennsylvania, (at twelve o'clock and fifty minutes p. m.) There seems to be a quorum here now, and there is a small bill on the Calendar which will not occupy more than two or three minutes, and which justice requires to be passed at once. It is the bill (S. No. 481) for the relief of Israel Yount, who during and after the battle of Gettysburgh, opened his house to the wounded and who suffered great losses. The bill only contemplates giving the poor man \$1,200 and I wish the Senate would now take up the bill. It

can only take two or three minutes.

The PRESIDING OFFICER, (Mr. CHAFFEE in the chair.) The Chair has ruled that no legislative business is in order.

Mr. CAMERON, of Pennsylvania. I would like to know why

that is.

(The PRESIDENT pro tempore resumed the chair.)

Mr. CAMERON, of Pennsylvania. I renew my motion. I cannot see why we should differ in our proceedings to-day from what we have done on other days. This is a bill which is a mere act of justice to a poor man, and it provides for paying him a very small sum for very great services. It has passed through the Committee on Claims, and I believe received their unanimous approbation. The bill is to give Israel Yount, who kept a hotel at Gettysburgh, \$1,200 for opening his house during the battle and taking in the people of the South and the people of the North, and feeding and taking care of them until the troops of the Government were able to take them out. It is only \$1,200; and I cannot see that there can be any rule to prevent us from \$1,200; and I cannot see that there can be any rule to prevent us from taking up that bill now. I ask the Senate to consider the bill by nnanimous consent

The PRESIDENT pro tempore. Legislative business is not in

order.

Mr. CAMERON, of Pennsylvania. Why? The PRESIDENT pro tempore. No legislative business can be entertained at this time.

Mr. CAMERON, of Pennsylvania. Then I give notice that I shall renew my motion every day until this deserving man is paid.

The PRESIDENT pro tempore. The Chair will be pleased to hear the Senator at any time.

At two o'clock and twenty minutes p. m. Mr. George M. Adams,

Clerk of the House of Representatives, appeared below the bar of the Senate and said:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House has passed the following order:

Ordered, That the counting of the electoral votes from the State of Florida shall not proceed in conformity with the decision of the electoral commission, but that the votes of Wilkinson Call, James B. Yonge, Robert B. Hilton, and Robert Bullock be counted as the votes from the State of Florida for President and Vice-President of the United States.

Ordered, That the Clerk inform the Senate of the action of the House; and that the House is now ready to meet the Senate in the Hall.

The PRESIDENT pro tempore. The message having been received, the Senate will now repair to the Hall of the House of Representa-

The Senate accordingly proceeded to the Hall of the House of Rep-

resentatives.

The Senate returned to its Chamber at four o'clock and thirty-five minutes p. m.; when the President pro tempore resumed the chair and called the Senate to order.

# BILL RECOMMITTED.

Mr. LOGAN. I move that the bill (S. No. 527) for the relief of Major Nicholas Vedder, paymaster United States Army, with the accompanying papers, be recommitted to the Committee on Claims.

The motion was agreed to.

### RECUSANT WITNESS-CONRAD N. JORDAN.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed to the consideration of executive business.

Mr. MITCHELL. I appeal to the Senator from Pennsylvania to give way to me a moment. I desire to introduce a resolution in relation to a witness who is in contempt.

Mr. CAMERON, of Pennsylvania. If that can be done without interfering with my motion, I will yield.

Mr. MITCHELL. I thank the Senator from Pennsylvania. I am instructed by the Committee on Privileges and Elections to offer the following resolution, and ask its present consideration:

Whereas Conrad N. Jordan, cashier of the Third National Bank, New York, was, on the 7th day of February, 1877, at ten o'clock a. m., duly served with a subpana duces tecum issued by the Senate Committee on Privileges and Elections, commanding him to appear before such committee on the 8th day of the present month to then and there testify in reference to subject-matters under consideration by said committee, being matters relating to the controversy concerning the electoral votes for President and Vice-President, and to bring with him a full and exact statement of the accounts as shown by the books of said Third National Bank, of Samuel J. Tilden, William T. Pelton, and Abram S. Hewrit, from the 1st day of June, 1876, to the 6th day of February, 1877;

And whereas said Conrad N. Jordan has refused to respond to such subpena, has failed to appear before said committee as required by said subpena, or to produce such statement of accounts as required: Therefore,

\*Resolved,\* That an attachment issue forthwith, directed to the Sergeant-at-Arms of the Senate, commanding him to bring said Conrad N. Jordan forthwith to the bar of the Senate to answer for contempt of a process of this body.

\*Mr. SALU SRUPY L. Object to the consideration of the resolution.

Mr. SAULSBURY. I object to the consideration of the resolution this afternoon. It is not reported by the unanimous consent of the Committee on Privileges and Elections. There are matters connected with the subject of the resolution which require at least some explanation that time now will not permit. I move, therefore, that the

The PRESIDENT pro tempore. Objection being made to the present consideration of the resolution, it goes over one day. Is there

objection to the motion to print?

Mr. MITCHELL. I ask that it be printed in the RECORD.

Mr. SARGENT. The fact that the Printing Office is suspended would delay the printing of this document otherwise than in the RECORD. I should like to have Senators understand that by ordering the printing of the resolution it is not understood that this resolution shall be postponed until the printing of it in document form.

The PRESIDENT pro tempore. The resolution will be printed in

the RECORD.

#### BUSINESS BETWEEN TEN AND TWELVE O'CLOCK.

Mr. WEST. I should like to inquire from the Chair whether it is the understanding, when the Senate shall meet after the recess at ten o'clock to-morrow morning, that business shall then be conducted as has been customary heretofore during the proceedings of the count of the electoral votes?

The PRESIDENT pro tempore. The Chair thinks there is no understanding now since the decision of the commission on the case submitted to it.

Mr. WEST. Then, there being no understanding, I move that when the Senate take a recess until ten o'clock to-morrow, it assemble at that hour with the understanding that there shall be no legislative business transacted prior to twelve o'clock of the day.

The PRESIDENT pro tempore. Shall that be the understanding, that no business shall be transacted from ten o'clock to twelve o'colck

while the commission is sitting on the present case of Louisiana? The Chair hears no objection; and that will be the understanding.

Mr. WEST. Until further notice.

The PRESIDENT pro tempore. That is the understanding, during the sitting on the Louisiana case or until further order.

Mr. INGALLS. Until further order.

The PRESIDENT pro tempore. That will be subject to the control of the Senate during the sitting of the commission.

Mr. MORRILL and others. Until further order.

Mr. WEST. Until further ordered by the Senate.
The PRESIDENT pro tempore. The Chair has so stated.
Mr. DAVIS. Until further ordered after twelve o'clock on any day.

The PRESIDENT pro tempore. So the Chair will understand, that any motion to change the order of to-day must be made after twelve o'clock for any subsequent time. The Senator from Pennsylvania moves that the Senate proceed to the consideration of executive

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were re-opened, and (at four o'clock and forty minutes p. m.) the Senate took a recess until to-morrow, February 13, at ten o'clock a. m.

# HOUSE OF REPRESENTATIVES.

THURSDAY, February 1, 1877.

CALENDAR DAY, February 12.7

AFTER THE RECESS.

The House resumed its session at ten o'clock a. m. Monday, February 12, 1877.

ORDER OF BUSINESS.

Mr. McCRARY. I believe the regular order is the discussion of the report of the electoral commission; and I rise for the purpose of opening debate on that question.

Mr. CLYMER. I do not wish to interfere with the remarks of the gentleman from Iowa, [Mr. McCrary,] but it is apparent that there is no quorum present, and I am quite certain that a very large num-

ber of gentlemen on this side of the House, who are now absent, are anxious to hear the gentleman from Iowa and others who may speak this morning

Mr. McCRARY. I prefer, of course, to be heard by a full House; but I do not think we ought to waste any time, and if I am in order

The SPEAKER. The gentleman from Pennsylvania [Mr. CLYMER] raises the point of order that there is no quorum present.

Mr. McCRARY. I think it is not necessary that there should be a quorum in order to proceed with debate.

The SPEAKER. The House is not a House without a quorum.

Mr. HALE. But, Mr. Speaker, how can the question of a quorum be raised or tested when a gentleman is on the floor for the purpose of debate? The understanding, I suppose, on Saturday, when we took a recess, was that this matter would come up necessarily in regular order, and having come up.

order, and having come up—

The SPEAKER. The Chair thinks that it does come up.

Mr. HALE. And the gentleman from Iowa being on the floor, if he chooses to go on, how does the question as to a quorum arise until a

chooses to go on, how does the question as to a quorum arise until a vote is taken or some business done?

Mr. CLYMER. I take it that it is competent for any member at any time to raise the question of the want of a quorum.

Mr. WILSON, of Iowa. I rise to a point of order. Has my colleague been recognized?

The SPEAKER. The gentleman from Iowa stated that he rose to debate, but the gentleman from Iowa has not the floor for that purpose. The gentleman from New York [Mr. Field] who presented the objection to the decision of the electoral commission would be recognized by the Chair.

recognized by the Chair.

Mr. WILSON, of Iowa. I am well satisfied that there is a quorum in and about the Hall, and that if the question is not raised a quorum in mediately if there be not one now. I think we have never determined that a quorum is not present unless its absence be

The SPEAKER. A call of the House would settle that.

Mr. WILSON, of Iowa. I think there is no need of that.

The SPEAKER. The Chair recognizes the gentleman from New York [Mr. FIELD] who presented the objection as having control of the floor. The gentleman from Iowa [Mr. McCrary] has no right to rise and open debate on that objection that the Chair is aware of. But the Chair thinks that there is no difficulty about this matter. If there is not a quorum present now he thinks there will be a quorum within a few minutes.

Mr. WILSON, of Iowa. I believe there is a quorum now within

and about the Hall.

Mr. BANKS. I would suggest that there be a call of the House. Mr. O'BRIEN. Is it in order to move to take a recess for half an hour?

The SPEAKER. The Chair thinks not.

Mr. CLYMER. I only desire that when this question is discussed there should be at least a quorum present.

Mr. HOLMAN. To dispose of this difficulty at once, I move that there be a call of the House.

there be a call of the House.

The SPEAKER. The better way, the Chair thinks, to avoid the question of another recess is that there be a call of the House, and after a quorum is secured the debate can then be proceeded with.

Mr. WILSON, of Iowa. If that motion be entertained the Chair will see the difficulty we will run into at once. At any time when a gentleman is on the floor, another member who thinks there is not a quorum can move a call of the House. Now, I submit we have no rule requiring the Speaker to estimate by his eye whether a quorum is present or not. We have always acted on what was the previous vote of the House. of the House

The SPEAKER. The gentleman is mistaken. Under the rules, the Speaker has that power to determine whether there is a quorum

Mr. WILSON, of Iowa. The Speaker must have a fine eye if he can determine now whether there is a quorum present or not.

Mr. SAVAGE. I call the attention of the Chair to the statement on this point in the Digest, at page 194:

Whenever, during business, it is observed that a quorum is not present, any member may call for the House to be counted, and, being found deficient, business is suspended.

Mr. WILSON, of Iowa. That is a different case altogether. There is a difference between a call of the House and a counting of the House

Mr. HOLMAN. There is nothing in the law under which we are acting that dispenses with the necessity of a quorum for the transaction of this business.

Mr. COX. That law does not abolish the House of Representa-

Mr. HOLMAN. I move that there be a call of the House.
Mr. BANKS. I think that is the proper course.
Mr. McCRARY. I suggest, at the request of several gentlemen, that we agree by unanimous consent that the debate shall begin at half past ten o'clock, and business in the mean time be suspended.
Mr. CLYMER. I think there will be no objection to that.
The SPEAKER. The Chair desires to state that there is no purpose on the part of any gentleman, so far as he knows, to delay debate on this question.

Mr. CLYMER. For my part, I disclaim any such purpose. What

I suggested was in kindness to the gentleman from Iowa, [Mr. Mc-Crary,] that his remarks might be heard by a full House.

The SPEAKER. But, if it is desired that the presence of a quorum should be determined, that can be done by a call of the House. The Chair did not entertain the motion of the gentleman from Maryland [Mr. O'BRIEN] to take another recess, for reasons which must be ap-

Mr. BANKS. There is no imputation on the motives of anybody. I have no objection to the debate going on now, but in the absence of a quorum we cannot proceed except by unanimous consent of the House. If the Speaker asks for that unanimous consent, I for one

House. If the Speaker asks for that unanimous consent, I for one have no objection.

Mr. HALE. Does the gentleman from Massachusetts say that debate cannot go on except by unanimous consent?

Mr. BANKS. I say that it cannot go on, except by unanimous consent, in the absence of a quorum. If any member states that a quorum is not present the Speaker counts the House, as he is bound to do, and if a quorum is found not to be present, business is suspended and a motion for a call of the House may then be made.

Mr. HALE. Can that call for the House to be counted be made even when a gentleman is on the floor?

Mr. BANKS. Yes; at any moment. If the House gives its consent, the debate may go on without the question being raised.

Mr. BANKS. 1es, at any moment. If the House gives its consent, the debate may go on without the question being raised.

Mr. McCRARY. I think an arrangement may be made. I understand there is no objection on the other side, and certainly there is none on this side, to the proposition that by unanimous consent the House take a recess until half past ten.

Mr. HALE. Not take a recess. I object to that. I will not consent that a recess shall be taken even by unanimous consent.

Mr. McCRARY. The proposition is that by unanimous consent the debate shall begin at half past ten.

Mr. HALE. No business to be transacted in the mean time.

Mr. LAWRENCE. With no objection to the vote being taken at the end of the true bourse.

the end of the two hours.

the end of the two nours.

Mr. HOLMAN. I insist on my motion.

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] moves that there be a call of the House.

Mr. BANKS. I ask that the request for unanimous consent be sub-

mitted to the House.

The SPEAKER. The gentleman from Iowa [Mr. McCrary] asks unanimous consent of the House that the commencement of the discussion upon the pending question be waived until half past ten.

Mr. HALE. No business to be done meanwhile?

The SPEAKER. No business to be done in the mean time. Mr. O'BRIEN. I would suggest eleven o'clock.

Several MEMBERS. Half past ten.

The SPEAKER. Is there objection to the proposition?

Mr. HOLMAN. I presume there is no objection to the proposition that, by unanimous consent, there be a recess until half past ten.

Mr. HALE. Not a recess. That we shall be here in a condition of suspended animation.

Mr. HOLMAN. Very well.

There being no further objection, the House (at ten minutes past

The SPEAKER. It is now half past ten o'clock and the Chair recognizes the gentleman from New York.

Mr. FIELD. Mr. Speaker, for the purpose of bringing the matter Mr. FIELD. Mr. Speaker, for the purpose of bringing the matter in due form before the House, I offer this resolution; and before it is read allow me to say it is understood that each side of the House shall have its hour and that the gentlemen who desire to speak will arrange the time among themselves.

The Clerk read as follows:

Ordered. That the counting of the electoral to tes from the State of Florida shal not proceed in conformity with the decision of the electoral commission, but that the votes of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock be counted as the votes from the State of Florida for President and Vice-President of the United States.

Mr. KNOTT. I offer the following as a substitute:

Mr. HALE rose.

The SPEAKER. Does the gentleman from New York yield to the gentleman from Kentucky?

Mr. HALE. My understanding was—
Mr. FIELD. For what purpose does the gentleman rise?
Mr. KNOTT. I wish to offer a substitute.
Mr. HALE. It was the understanding that an amendment should be offered from this side.
The SPEAKER. The Chair understanded that a result in the speakers.

The SPEAKER. The Chair understands that amendments are to be offered as far as they can by consent.

be offered as far as they can by consent.

Mr. HALE. It was on that point I wish to call the attention of the Chair. By arrangement with the gentleman from New York I was to be permitted to offer an amendment.

The SPEAKER. The gentleman was to be recognized,
Mr. HALE. The understanding was the gentleman from New York should allow amendment to be offered from this side. It seems fitting

to me that such an amendment should be recognized first, so both sides should be represented.

The SPEAKER. The Chair was advised that the gentleman from Kentucky was to be recognized.

Mr. HALE. I appeal to the Chair whether it is not proper my

amendment should first be received?

The SPEAKER. The Chair has no wish about the matter. If the gentleman from New York yields to the gentleman from Maine first,

wery well.

Mr. FIELD. It is a mere matter of order, as both gentlemen will have the opportunity to offer amendments.

Mr. HALE. I appeal to the Chair whether this side should not offer its amendment.

The SPEAKER. The Chair was advised he was to recognize the gentleman from Kentucky first, and then the gentleman from Maine; but if the gentleman from New York wishes to act differently, very

Mr. FIELD. No; let it go as it is.
Mr. HALE. I wish to offer an amendment merely to change the

Mr. KNOTT. I believe I have the floor to offer a substitute. Mr. BANKS. Whoever is to offer an amendment on this side ought

to have the floor for that purpose.

The SPEAKER. The Chair will rule that the mere offering will

ot add any debate to the two hours allowed under the law.

Mr. BANKS. Debate ought to be allowed to proceed now.

Mr. HALE. My amendment is simply to perfect the resolution, which I think would be fairly in order as I presume the amendment

which I think would be fairly in order as I presume the amendment of the gentleman from Kentucky is in the nature of a substitute.

Mr. KNCTT. I rise to a parliamentary inquiry. Should the gentleman from New York yield to the gentleman from Maine, could I then offer my resolution as a substitute for the original and amendment? The SPEAKER. Undoubtedly.

Mr. KNOTT. Then let the gentleman from Maine offer his, and I will offer mine as a substitute for the bill.

The SPEAKER. The Chair desires to say, if he understands the amendment proposed to be offered by the gentleman from Maine, it is more pertinent to have it first; but the Chair was advised the floor was to be yielded to the gentleman from Kentucky, and consequently was to be yielded to the gentleman from Kentucky, and consequently recognized him.

Mr. HALE. I did not know that. I move now to amend the order by striking out the word "not" and all after the word "commission," and if the Clerk will read the order as amended, members will see it simply presents the side of the negative against that of the gentleman from New York.

The SPEAKER. The original proposition of the gentleman from New York has been read, and the Clerk will now read the amendment of the gentleman from Maine.

The Clerk read as follows:

Amend, so it will read as follows:

Ordered, That the counting of the electoral votes from the State of Florida shall proceed in conformity with the decision of the electoral commission.

Mr. KNOTT. I offer the following as a substitute for the original proposition and amendment.

The Clerk read as follows:

Mr. KNO11. 1 offer the following as a substitute for the original proposition and amendment.

The Clerk read as follows:

Whereas it is provided in the act of Congress entitled "An act to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877, that the commission thereby constituted should in reference to the vote of any State referred to it in pursuance thereof decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may thereon take into view such petitions, depositions, and other papers, if any, as shall by the Constitution and now existing laws be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the grounds thereof, and signed by the members of said commission agreeing therein;

And whereas when said commission had under consideration the case of the State of Florida evidence competent and pertinent to show that Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long, the persons named in the paper known as "certificate No. 1," had not been appointed as electors by the said State of Florida in the manner directed by the Legislature thereof was offered before said commission;

And whereas upon objection made thereto said commission did decide and determine that no evidence would be received or considered by said commission which was not submitted to the two Houses in joint convention by the President of the Senate with the several certificates;

And whereas said "certificate No. 1" contains no evidence whatever, and makes no allusion whatever to any evidence, determination, or precedent judgment or decision of any board of State canvassers or tribunal as the basis thereof, showing or tending to show that the said four persons named therein had be

the votes provided for by the Constitution of the United States, and should be counted as therein certified, has said in substance that said persons were those whose appointment as electors was regularly certified by the governor of the State of Florida on and according to determination and declaration of their appointment by the board of cancassers of said State.

Now, therefore, in order that said commission may have an opportunity to correct in manifest inconsistency therein and to explain how and in what manner it ascertained that the certificate of M. L. Stearns, as governor of the State of Florida, was on and according to any determination and declaration of any board of canvassers of said State:

Be it resolved. That the decision of said commission, and the grounds thereof, be, and the same are hereby, remanded and recommitted to said commission with the request that the same be so corrected or explained to this House, and that said commission be further requested to furnish in detail the true reasons of its decision, that this House may be enlightened as to the course it ought to pursue in the discharge of its duties in respect of the vote of the State of Florida under the Constitution of the United States and the act of Congress above referred to, and that in the mean time the votes of Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long shall not be counted.

Mr. HALE. I raise the point of order upon that resolution. The SPEAKER. The Chair desires to state the manner in which at the end of the two hours the vote will be taken upon the propositions pending. The first vote will be upon the amendment of the gentleman from Maine, [Mr. Hale,] it being an amendment to perfect the original matter, the question will then be upon the substitute of the gentleman from Kentucky, [Mr. KNOTT,] and then upon the resolution offered by the gentleman from New York, [Mr. FIELD.]

Mr. HALE. I raised the point of order upon the substitute of the entleman from Kentucky. Perhaps the Chair did not hear me. gentleman from Kentucky. Perhaps the Chair did not hear me.

The SPEAKER. The gentleman from Maine [Mr. Hale] will state

his point of order.

Mr. HALE. It is this, that under the electoral-commission law, under which we are now proceeding, it is the imperative duty of the House, at the end of the two hours' debate, to vote upon the main question, and which is, in the language of the statute, "that the vote shall proceed in conformity therewith," as found in section 2, and that there is no provision or hint in the electoral bill that after the commission has reported to the two Houses anything can be sent back to that commission. The commission only intervenes to settle and determine questions of the electoral count in a particular State, and its decision makes the law, and the count proceeds in conformity therewith, and the electoral votes are counted for the one candidate or the other, unless the Houses shall separately concur in ordering oth-erwise, that is, in ordering that the decision of the commission is overruled; and I submit that nothing in the shape of delay, in what-ever form it may be presented, the House having taken a recess up to this time and under the ruling that one recess could be taken,

to this time and under the ruling that one recess could be taken, nothing can now arrest the wheels of this proceeding.

Mr. WILSON, of Iowa. There is another point to which I wish to call the attention of the Chair, and it is that this commission is not a standing committee of the House, or a select committee of the House, or the Committee of the Whole of the House, and that we can refer nothing to it. It would require concurrent action to refer anything to that commission. The Chair will recollect that he made a ruling much this point relating to referring the silver bill so called ruling upon this point relating to referring the silver bill, so called,

to a commission.

Mr. WOOD, of New York. I desire to say a word on the point of order raised by the gentleman from Maine, [Mr. Hale,] and without expressing any opinion in the affirmative or negative in respect to the substitute offered by the gentleman from Kentucky, [Mr. KNOTT,] I apprehend that there is nothing in the original law that was intended to deprive this House of the right of free expression of opinion. While I concede, as it has been stated by that gentleman, that we have but two hours for debate, I do not concede that that debate is limited in its character or range, or that so long as we do conclude to accept or reject the decision of the electoral commission on any question, I do not concede that we have not the right to express our opinion upon any question pertinent to the matter under consideration before the House.

Mr. HALE. Let me ask the gentleman if it is not expressing an opinion when a vote is taken directly on the resolution whether the decision of the commission shall be overruled or shall stand?

Mr. WOOD, of New York. The law directs us to do that. And

the intimation of the gentleman from Maine, [Mr. HALE,] and also of the gentleman from Iowa, [Mr. Wilson,] that there is any disposition on this side of the House to delay action or to interpose any factious opposition to any decision that this grand electoral commission may arrive at, is entirely gratuitous and unwarranted by anything that has so far occurred.

Mr. HALE. Has anything been said this morning intimating anything of the kind? I am not aware of it.

Mr. WOOD, of New York. The gentleman himself has just spoken of delay, and on Saturday last he intimated that there evidently was a disposition on the part of this side of the House to delay action. Now I assure that gentleman that there is no such thing. But while we are ready to act in good faith and to carry out in all respects this law and the results that may be arrived at under it, yet at the same time we demand the right to have a free expression of opinion, and the right on the part of this House to place upon record what is its judgment in reference to the action of this grand electoral commission.

Mr. HALE. I was only referring to the delay involved in the proposition. I did not mean to intimate, I do not believe, that the ma-

jority on that side of the House will vote to adopt the resolution even if it shall be admitted. But certainly I had the right to claim that the proposition itself involved delay, because it carried delay with it in terms, and that is all there is of it. I do not say that that intention extends beyond the mind of the gentleman from Kentucky, [Mr.

extends beyond the mind of the gentleman from Kentucky, [Mr. KNOTT,] but I do say that delay is embodied in the resolution with all the force that language can give it, whether the gentleman from New York assents to it or otherwise.

Mr. WOOD, of New York. I would have preferred that this discussion and the propositions submitted to the House should have been confined simply to the affirmative or the negative of the proposition as submitted by the gentleman from Maine, [Mr. HALE.] Individually I should have preferred to have had the isolated issue presented for debate and determination. But I deny the right of that gentleman to intimate that because any gentleman upon this side of the House seeks this mode of expressing his individual opinion, and sends to the desk a substitute or amendment, that action is intended for delay, because that is an imputation upon the gentleman to for delay, because that is an imputation upon the gentleman to whom it may be addressed. With these remarks I trust that the question of order raised by the gentleman from Maine will not be sus-

The SPEAKER. The Chair desires the gentleman from Maine [Mr. Hale] to again state his point of order, and to refer the Chair to the particular portions of the law upon which he relies as excluding the proposition of the gentleman from Kentucky, [Mr. KNOTT.]

Mr. HALE. The sections of the law, those that carry with them the force of the law against delay, and that declare what the two Houses can do, I believe are sections 2 and 4.

The SPEAKER. Will the gentleman from Maine be kind enough

to read the clauses of each section upon which he relies?

Mr. HALE. Beginning with the word "whereupon," in section 2. That section, after referring to the decision of the commission that shall be presented to the two Houses, goes on to provide:

Whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise; in which case such concurrent order shall

Then section 4 provides as follows:

That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

My point of order is that but one question can be put, and that is the question contained in the resolution or order submitted by the gentleman from New York as perfected by the amendment offered by myself, which is the one single question that can be submitted to the Houses; that is, that the counting shall proceed or not proceed in con-

formity with the decision of the commission.

Under this bill there is no power of recommittal by the House. It is specifically provided under this bill that nothing can be sent to the commission except by the two Houses; and once sent to the commission and returned by that commission with its decision, we can do nothing but vote "yes" or "no" upon the question of the count proceeding in accordance with the decision of the commission. No authority is given to this House to send anything to this commission. Nothing can be sent to the commission except in the method provided by the law, upon objection made in the manner provided by the law. Upon that I am willing to take the ruling of the Chair, upon the point of order which I have raised, that this House alone can send nothing

to the commission.

Mr. KNOTT. The act under which this commission is organized requires that it shall submit its decision in writing, and that it shall state briefly the grounds upon which such decision may be based. The commission proceeding under that act have decided that the persons named in a paper designated in their decision as "certificate marked No. 1" were entitled to cast the electoral vote for Florida because their appointment was regularly certified by the governor of Florida upon and according to the determination and declaration of the board of canvassers of that State. There is their decision; and the board of canvassers of that State. There is their decision; and there is the reason given by them for it. I have this morning examined "certificate marked No. 1," and I find that it not only contains no evidence whatever that there ever was a canvass of the votes of Florida, but makes no allusion to any evidence showing that the votes of Florida ever were canvassed. Moreover the only evidence offered before that commission that the votes cast for electors in Florida were ever canvassed by any board whatever is contained in certificate No. 3, which was ruled out by the commission.

Now we have here a decision resting upon a certificate that affords no evidence at all. Thus the commission is involved in an inconsistno evacence at an. Thus the commission is involved in an inconsistency which justice to it requires it shall have an opportunity to explain, if an explanation can by any possibility be made. This is but justice to the commission itself; and I apprehend that nothing in the law precludes this House, with the concurrence of the Senate, from remitting these papers to that commission in order that it may give a satisfactory explanation and that it may not impair its reputation in bistory. in history.

Mr. HALE. Let me ask the gentleman, following out the suggestion of the Chair, to put his finger on that portion of the law which gives one House the right to send anything to the commission.

Mr. KNOTT. I do not yield to the gentleman. We all love to hear him talk; and he seldom rises to address the House; but I cannot yield to him on this occasion.

I say that the facts to which I have imperfectly adverted, but which are specifically set out in the preamble to my resolution, demand imperatively at our hands that this commission shall have an opportunity to explain the glaring and palpable inconsistency in its decision; and I submit that there is nothing in the law that prevents this House, with the concurrence of the Senate, from remanding that decision to the commission in order that it may have an opportunity

The SPEAKER. The Chair would suggest to the gentleman from Kentucky that he confine himself to the discussion of the point of or-

Mr. KNOTT. I am endeavoring to do so, if the Speaker please. The resolution provides not only that the matter be remanded to the commission for its revision and correction, but that in the mean time the votes shall not be counted. It is a matter of justice to this House and to the Senate, as well as to the commission itself, that this commission should give a detailed statement of the true reasons upon which this important decision, the most important ever rendered by human tribunal, was made.

The SPEAKER. Does the gentleman from Massachusetts wish to speak to the point of order?

Mr. BANKS. I do.

Mr. SEELYE. May I make a single inquiry? I wish to know

whether this discussion is to come out of the two hours appropriated

to general discussion on the question?

The SPEAKER. It does not.

Mr. KASSON. Will the Chair allow me to say that it has been Mr. KASSON. Will the Chair allow me to say that it has been ruled elsewhere that all this discussion counts as a part of the time allowed for the discussion under the provisions of the act?

The SPEAKER. The Chair has nothing to do with any ruling

Mr. EDEN. I object to the gentleman's reference to proceedings at the other end of the Capitol.

Mr. BANKS. Mr. Speaker, I do not think that the discussion of this question of order can come out of the time allowed under the law; it proceeds only by general consent, and can be closed at the suggestion of any member. I ask leave to say a few words on the point of order.

This resolution of the gentleman from Kentucky [Mr. KNOTT] is clearly not in order. The act under which we are proceeding requires that the counting of the votes of the State of Florida shall proceed in conformity with the decision of the electoral commission, unless objection shall be made. Objection has been made, and by five Senators and eight Representatives, and every member of the House is entitled to an affirmative or negative vote upon the question whether in the presence of this objection the votes from Florida shall be counted in accordance with the report of the commission. We are entitled to an affirmative or a negative vote upon that single and simple proposition embodied in the law. Now the amendment of the gentleman from Kentucky moves us off in divers ways upon divers matters, so that no member can vote upon the direct question which arises under the law upon the decision of the commission and the ob-

In the first place the resolution proposes that the decision of the electoral commission shall be "remanded and recommitted" to the tribunal that made it. The House has not authority or power to give that order. It proposes that the decision shall be "corrected and explained." Such a proposition cannot be adopted by this House. explained." Such a proposition cannot be adopted by this House. It is not quite respectful to the commission to propose it. The resolution proposes that the commission shall "give reasons in detail for their decision, in order that this House may be enlightened." Sir, that commission has a supplied to the commission of the commission

that commission has no constitutional, moral, or mental power to give "reasons in detail" for any such purpose as that.

And it is ordered further that "in the mean time the said votes shall not be counted." That is clearly in direct conflict with the law, and deprives every member of this House of that which is his constitutional right to give an effective or negative vector of the second. tutional right to give, an affirmative or negative vote on the report of the decision of the electoral commission, notwithstanding the objec-tions which have been presented by the honorable gentleman from

New York

The SPEAKER. The gentleman from Maine will give his attention. Mr. BANKS. I am not yet through. Allow me to say if this decision is "remanded and recommitted" it will possibly be returned to the House as not conferring authority on the commission to reverse or review, once promulgated and reported to the Senate and House, its

obeisance to a public statute.

Mr. SAVAGE. Let me ask the gentleman from Massachusetts a question. I desire to know if the law does not provide that the vote shall be counted in accordance with this decision of the commission. unless the two Houses separately agree in ordering otherwise. Suppose they agree in remitting it back to the commission by concurrence of the two Houses, would not that be agreeing in ordering otherwise.

Mr. BANKS. That does not give an opportunity by affirmative or negative vote to pass upon the decision of the commission or the objections thereto. "To order otherwise" must be upon an order in jections thereto. "To order otherwise" must be upon an order in concurrence of the two Houses to negative the decision of the commission.

Mr. SAVAGE. But would not the remission of the decision of the electoral commission, as suggested by the gentleman from Kentucky, be separately agreeing in ordering otherwise than in counting the vote?

Mr. BANKS. It is not, in my opinion, in accordance with the law. It is not a vote on this proposition submitted to us. We have a right to an affirmative or a negative vote on the decision of the commission in the presence of the objections offered by the honorable gen-

Mr. WOOD, of New York.

I should like to remind the gentleman from Massachusetts he confounds a constitutional with a moral right. There is nothing in this law nor is there anything in the power of both Houses of Congress to deprive, under the Constitution of the United States, a member of this House from the expression of an opinion and the giving of a vote. And, as I understand, when we voted to pass this bill we parted with no constitutional right.

While I agree with the gentleman, I think under this law we are in honor bound to settle, and settle forthwith, within two hours any determination this electoral commission may reach on any question referred to it, yet I deny there is anything in the law or the rules of this House that will take a member off his feet if the Speaker accords him the floor. And we have the right to present our opinion by any positive proposition, and it is for the House to dispose of it when thus presented. We cannot deprive a Representative of the people upon this sented. We cannot deprive a Representative of the people upon this floor of his constitutional right to a vote or action on any proposition

before the House Mr. BANKS. In answer to the inquiry of the gentleman from New York it is a constitutional not a moral right merely to vote affirmatively or negatively directly upon the decision of the electoral commission. It is a constitutional right for each member to have an affirmative or negative vote upon the decision of the commission; that is, whether, with due consideration of the objections made there-to, the votes shall be counted in conformity with the decision of that to, the votes shall be counted in conformity with the decision of that commission. That is fixed by law. The gentleman from New York, as was his right, makes objection; and we have the right to pass upon the proposition in the affirmative or negative, each member of the House to vote "ay" or "no." Now the gentleman from Kentucky moves the House off by platoons upon other inquiries, elaborate in their statement, incomprehensible to the House in the manner in which they are presented here, not because they are not clearly expressed but because we have not time, critically and proporty to study them; moves us off from the entral question which is erly, to study them; moves us off from the actual question which is before the House to the consideration of numerous other questions which we do not and cannot satisfactorily consider. They are not and cannot even be printed; and that is, whether these votes shall be counted in conformity with the decision of the electoral commission in the presence of the objections made thereto. It moves us off

from that. Mr. KNOTT.

Mr. KNOTT. Let me ask the gentleman a question.
Mr. BURCHARD, of Illinois. I should like to ask a question of the

gentleman from New York.

The SPEAKER. The gentleman from Kentucky desires to ask a question of the gentleman from Massachusetts before he takes his

The question which I would respectfully ask the gen tleman from Massachusetts is this: Suppose the commission itself ascertained it had made a manifest error in its decision before action had been taken by the House, would or would he not deny the right to ask the decision be remitted to it for correction or reversion?

Mr. BANKS. If the commission sends a communication to this House that it withdraws the decision it has made, then I agree further proceedings should be suspended. They have made no such decision; and we cannot remand or recommit their decision to them for

revision. Mr. KNOTT.

Mr. KNOTT. Let me ask the gentleman another question.
Mr. BURCHARD, of Illinois. Mr. Speaker, the gentleman yields
to me to suggest to the gentleman from New York this proposition is not an expression of opinion by the House, but it proposes an order of the House to refer papers before the House to a commission not authorized under the rules of this House to receive any such papers. These papers went under law from the joint meeting, and the Speaker decided it was not in order to refer a bill to an outside commission created by law. Hence, under the rules of this House, there would be no authority to refer these papers to the commission. The certificates and papers referred to them went under the law, and not under the rules of this House.

Mr. WOOD, of New York. I would say to the gentleman from Illinois that there are no rules of the House applicable to this special and particular case. This is a law—a law unto itself. We are now confronted with this question, how under the electoral bill to dispose of an action upon the part of the electoral commission. The law says that we shall after two hours' discussion determine. Now this is preliminary to that discussion, and has reference to the mode of expression of opinion. When we come to vote, if we can be permitted to vote upon the proposition of the gentleman from Kentucky, then we

will come to an action; but as preliminary to the action on the part of the House the mere sending up to the Speaker's table an amendment, a substitute, or anything that is proper in form, pertinent to the proposition, is nothing but an individual expression of opinion on the part of the gentleman who offers the substitute. And I hold that if under the rules I am permitted to offer an amendment or substitute pertinent to the proposition I am not out of order in doing it. But if the House shall sanction an improper action, that is an entirely different matter. I submit that there are no rules that guide us or control us in reference to a question of this peculiar character.

The SPEAKER. The gentleman from Maine [Mr. Hale] in making his point of order refers the Chair to two portions of the law; a

part of the second section which he read, as follows:

Whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the vote shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern.

And the whole of the fourth section, as follows:

SEC. 4. That when the two Houses separate to decide upon an objection, that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

That portion of the law read which really relates to the question of order raised by the gentleman from Maine, it occurs to the Chair, is embraced in the following clause:

But after such debate shall have lasted two hours it shall be the duty of each House to put the main question without further debate.

Upon the question involved in that point of order the Chair will presently rule. But in stating that proposition another point of order has cropped out. In fact, the gentleman from Iowa [Mr. WILSON] indicates his purpose to raise the point of order whether it is competent for this House, either under the law or under the rules of the House, to commit to an outside commission what is embraced in the proposition of the gentleman from Kentucky. The Chair there-fore desires in a measure to consider this subject in its two aspects; because of course the gentleman from Iowa, as soon as the point of order of the gentleman from Maine shall have been decided, will im-mediately be entitled to raise his point of order. The language of the law is:

It shall be the duty of each House to put the main question without further de-

The Chair thinks that the amendment or substitute of the gentleman from Kentucky could not be excluded under that language. The main question in law and in parliamentary proceedings embraces all questions upon which the previous question can be seconded and the main question ordered; and in any proceeding in this House, therefore, it would be competent for the main question to embrace, first, the original proposition, next, an amendment to the original proposition to perfect the matter of it, and third, a substitute for both. The Chair overrules that point of order. The Chair will now, so as to bring it wilson] to make the douse, recognize the gentleman from Iowa [Mr. Wilson] to make the other point of order.

Mr. HALE. If the Chair please, I stated that as part of my point

The SPEAKER. The gentleman from Maine stated it as a part of

his argument. Mr. HALE. Mr. HALE. I stated that the law gave this House no right to send anything to the commission, and I called upon the gentleman from Kentucky to point out anything in the law which gave that right.

The SPEAKER. The Chair will rule on that. The Chair has already stated that the other point of order had cropped out in the re-

ready stated that the other point of order had cropped out in the remarks of the gentleman from Maine. The gentleman from Iowa is now recognized to make the other point of order.

Mr. WILSON, of Iowa. I do not wish to occupy any of the time of the House in support of that point of order. I think if the reference might possibly be made under this act, it would at least take the concurrent action of both Houses.

The SPEAKER. The Chair is unable to find anything in the law which powerly a recommittal of the question back to the commission.

which permits a recommittal of the question back to the commission. Nay, more; the Chair continues to hold as it has been intimated he heretofore ruled, that it is not competent for one House to refer ll or any matter to an outside commission. The Chair therefore

a bill or any matter to an outside commission. The Chair therefore sustains the point of order taken by the gentleman from Iowa.

Several members called for the regular order.

Mr. FIELD. I yield to the gentleman from Iowa, [Mr. McCrary.]

Mr. McCrary. Mr. Speaker, the decision of the commission embraces of which the braces several important points, upon the correctness of which the two Houses are now to decide. That these propositions are eminently sound and fully supported, both by reason and authority, seems to me entirely clear. The first point decided is that the two Houses of Congress, in the exercise of their power to count the votes for Presi-dent and Vice-President, cannot go into an inquiry as to the number of votes cast at the polls for the electors in the several States. In other words, it is held that the decision of that question is left to the proper authority in the States, and that when that authority has can-vassed the votes, declared and adjudged the result, and certified the

election of their electors in due form, that is the appointment of the electors required by the Constitution of the United States. This is in accordance with the important precedent established by the electin accordance with the important precedent established by the elect-oral bill of 1800, which, after thorough and exhaustive discussion, passed both Houses of Congress and was only lost by a failure to agree upon the form of a single provision. That bill created a "grand committee," to whom were to be referred questions arising upon the count of the electoral votes of the States; but it was carefully pro-vided, both by the Senate and House bill, that no inquiry should be made as to the number of votes cast for the electors at the polls, that being regarded by all the statesmen of that day as a matter within the exclusive control of the States. The House bill of 1800 drafted, reported, and advocated by John Marshall, afterward Chief-Justice of the United States, embodied the views of that great constitutional lawyer upon this question. After providing for the grand committee, it defined their jurisdiction in these words:

And the persons thus chosen shall form a joint committee and shall have power to examine into all disputes relative to the election of President and Vice-President of the United States, other than such—

Mark the words-

other than such as might relate to the number of votes by which the electors may have been appointed.

This legislation was proposed and supported by the men who took part in the formation and adoption of the Constitution, and the suggestion of power in Congress to review and reverse the action of the State in the appointment of electors was never once made. If made

it would have excited only astonishment.

The ruling of the commission is also abundantly supported by the most cogent reasons. To have ruled otherwise would have been to assert a jurisdiction to inquire into and overturn the action of all the States in the appointment of their electors and institute here pro-States in the appointment of their electors and institute here proceedings in the nature of suits in quo warranto to try the title to his office of every one of the persons appointed as such. What clause of the Constitution confers such a jurisdiction upon the two Houses? Their power in the premises is all conferred by the words of the Constitution, "and the votes shall then be counted." The commission has decided, and I think upon the soundest reason, that these words confer no judicial power whatever. They describe, and very aptly describe, a ministerial duty only. The words of the Constitution are the last words that would have been chosen by which to confer that impense power and vast jurisdiction which have lately for the first immense power and vast jurisdiction which have lately, for the first time, been claimed for the two Houses. The impossibility of exercising this jurisdiction is a strong argument against its existence. How can the two Houses of Congress entertain and try a suit to determine the title of electors to their offices? If it can be done in one case it can be done in all, and Congress may have brought before it three hundred and sixty-nine contests over elections for electors with witnesses, numbered by hundreds in each, all to be determined within the brief interval between the meeting of Congress in December and the counting of the votes in February. It is plain that to establish this doctrine is, in effect, to give the election of President and Vice-President into the hands of Congress and to take it out of the control of the States, where the Constitution places it. The commission has therefore very properly, as I think, decided that the record of the final canvass and decision and declaration of the result, made by the proper State authority, is final and conclusive, and that when this record is presented, duly authenticated and accompanied by the return required by law and the Constitution, there is but one thing that can be done, and that is to obey the mandate of the Constitution, which is that "the votes shall then be counted."

The commission has decided one other point of importance, namely, nesses, numbered by hundreds in each, all to be determined within

The commission has decided one other point of importance, namely, that the appointment of electors made by the State prior to the time when they are to meet and vote for President and Vice-President is final, and cannot be set aside by subsequent State action after the votes have been cast and the return thereof has been duly made to the President of the Senate. This decision rests upon the following,

among other grounds:

1. For reasons of great public importance it is provided by the Constitution that the electors shall meet in all the States upon the same day and east their votes, and Congress is authorized by the Constitu-tion to fix the day for such meeting, which was done by the act of 1792. The great wisdom and importance of this provision are apparent. Its purpose is to prevent the very mischief which has been attempted in Florida. It was to prohibit a State from withholding its vote until it is seen how it will affect the result, and from changing its vote after it has been once cast, in order to change a result. And above all, it must be apparent that the Constitution cannot be so construed as to allow a new State administration, upon coming into power, to proceed to set aside and reverse the action of the State government completed under a previous administration, in the matter of appointing presi-dential electors and casting and returning the vote of the State for

President and Vice-President.

2. If proceedings, either by the State Legislature or the State courts, had in the latter part of January, can be allowed to set aside the constitutional action of the State in this respect had in December, it must result, not only in a violation of the constitutional requirement that the votes of all the States shall be cast on the same day, but must also lead to the most serious consequences in the future. If a judgment of an inferior court in Florida, rendered on the 27th of Jan-

uary, can annul the vote of that State cast on the 6th of December, uary, can annul the vote of that State cast on the 6th of December, it follows that similar judgments in any or all the other States may be certified to the President of the Senate and must govern the count. In New York, I believe, there are more than thirty judges possessing jurisdiction in cases of quo warranto. Can any one of them, after the presidential election is over, transfer the thirty-five votes of that State from one candidate to another? Who can fail to see that such a doctrine would result in confusion, disaster, and ruin? If by an ex post facto judgment in one State one party should secure an advantage, by a similar movement in another State a corresponding advantage would be sought for the other party. We should encounter the very evil which our fathers sought to prevent, and instead of counting the votes cast by the States at the time and in the manner prescribed by the cast by the States at the time and in the manner prescribed by the Constitution and law, it would become necessary to count the judgments in quo warranto rendered in the various States and certified up to the President of the Senate. The only safe, sound, and constitutional rule is that adopted by the commission, to wit, that the decision made by the proper State authority upon the claims of candidates for the office of elector prior to the time fixed by the Constitution and law for electing the President and Vice-President is not subject to review, and must stand as final. The power of Congress is to count—not to set aside—duly certified votes of the States.

Mr. FIELD. I yield to the gentleman from Virginia, [Mr. Tucker.]
Mr. Tucker. In the remarks that I shall submit I do not propose to criticise, much less to censure, the action of any member of the

commission. But I propose, in doing my duty as a member of this House on the question now before it, to criticise with respect the judgment of the commission.

By the law under which this commission acts, each member takes an oath to render a judgment "agreeably to the Constitution and the laws." The commission is bound to observe the Constitution in mak-

ing up its decision.

The law then provides that the commission shall "decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State."

In the report which the commission has made, it declares:

The commission is of opinion that, without reference to the question of the effect of the vote of an ineligible elector, Mr. Humphreys was not a Federal officer on the day of election.

Now, does the commission mean by this to intimate or to decide that the ineligibility of an elector is to have no effect upon the validity of his vote?

Let me examine this point for a moment.

If a disqualified elector be chosen, is he an elector at all, or can he vote? By the Constitution, State judges are bound by it, anything in the constitution and laws of the State to the contrary. The laws of a State repugnant to it are therefore held null and void. If such a law be void, can the act of the Government or of a returning board have a better fate? Every act or law of a State repugnant to the Constitution is and must be void. For if it be held valid, then the Constitution is nullified. And if it is void for such repugnance, are we to treat it as if valid and make an act which violates of

equivalent effect to one which conforms to the Constitution?

The reasoning of Marshall, Chief-Justice, in Marbury vs. Madison, on the effect of an unconstitutional law, is applicable to the ministerial and executive acts of the State with even greater force than to the laws of the State. He says:

If an act of the Legislature, repugnant to the Constitution is void, does it, not-withstanding its invalidity bind the courts and oblige them to give it effect; or in other words, though it be not law, does it constitute a rule as operative as if it was

Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our Government is entirely void, is yet in practice

completely obligatory. It is prescribing limits, and declaring that those limits may be passed at pleasure.

From the obligation taken by each member of the commission, from the duties prescribed in the law creating it, and from the operative force of the Constitution as the supreme law of the land, I declare, therefore, the imperative duty of the commission to deny to a disqualified elector the power to vote as such for President.

But there is another question to which I desire to call the attention

of the House, which is of more importance, and that is as to the decision upon the main inquiry; and I must state it very briefly.

The State appoints the electors and the Legislature directs the manner of appointment. There are, therefore, in all this, two functions: the elective or appointing function and the determinant function.

The determinant rower is a State must not by any illegal or frauds. The determinant power in a State must not by any illegal or fraudu-lent means usurp the elective function. If it transcends its legal authority or fraudulently changes the results of an election, it assumes the elective function and quits the realm of its merely determining authority. It does not decide whom others have elected, but it decides to elect by its own will. Such illegal or frandulent act is void. In Florida the board is the creature of law, must act under it, and

not above it. It is subject to law. It may exercise its powers within the limits prescribed by the law, but not beyond them; within these its acts are valid; beyond them they are void.

Nor can it decide finally on the extent of its own powers. Though

some of its powers may be quasi-judicial, it belongs to the executive, not the judicial, department. The limits of its power must be subject to the supervisory control of the judiciary in cases arising under its action. This is the nature of judicial power. If the board could execute its powers and judge of their extent finally, it would unite executive and judicial powers.

The legislative department prescribes the general rule of civil conduct; the executive administers it in the private cases for which it was designed; and the judicial defines its terms, applies it to the case and makes the execution conform to the precept of the law. The judiciary must see that the execution does not pass beyond the meaning of the law—that the executive act realizes the legislative conception-but no more.

In the case already cited Judge Marshall says:

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret the rule.

The point I make is this: The board had the primary right to can-as. The extent and nature of its action, and whether final and conclusive or not was not, for it to determine, but was for the Florida

courts to decide, and for them alone and finally to decide.

The Supreme Court of the United States has from the earliest period to the latest case in the last report held that the interpretation of a State statute by the supreme court of the State is binding upon courts elsewhere and upon the Supreme Court itself. It will not intrude its opinion in opposition to that of the supreme court of the State.

If this be so, a fortiori, these two Houses and the commission created to act with their respective and united powers must be bound to defer to the decision of a State court upon a State statute; to the judgment of a Florida court upon a Florida statute.

The supreme court of Florida, in the late case of The State of Florida

The supreme court of Florida, in the late case of The State of Florida ex rel. Drew vs. The Board of Canvassers, has defined the meaning of the statute creating this board and the extent of its powers. It has corrected the board's canvass, by which it elected Stearns, and compelled it by mandamus to decide in favor of the election of Drew. It plants itself upon its previous decisions, and is clear and emphatic in denying the claim of the board to do in that case what it has dear in the case of the electors. It quotes a present from itself. has done in the case of the electors. I quote a passage from its elaborate decision:

phatie in denying the claim of the board to do in that case what it has done in the case of the electors. I quote a passage from its elaborate decision:

Westcott, J., delivered the opinion of the court.

The view that the board of State canvassers is a tribunal having power strictly indicial, such as is involved in the determination of the legality of a particular vote or election, cannot be sustained. The constitution of this State (article 3), and section 1 of article 6) provides that "the powers of the government of the State of Florida shall be divided into three departments: legislative, executive, and judicial; and no person properly belonging to one of the departments shall exercise any functions appertaining to either of the others, except in those cases expressly provided for by this constitution."

"The judicial power of the State shall be vested in a supreme court, circuit court, county courts, and justices of the peace."

All of the acts which this board can do under the statute must be based upon the returns; and while in some cases the officers composing the board may, like all ministerial officers of similar character, exclude what purports to be a return for irregularity, still everything they are authorized to do is limited to what is sanctioned by authentic and true returns before them. Their final act and determination must be such as appears from and is shown by the returns from the several counties to be correct. They have no general power to issue subpensa, to summon parties, to compel the attendance of witnesses, to grant a trial by jury, or do any act but determine and declare who has been elected as shown by the returns. They are authorized to enter no judgment, and their power is limited by the extrems. They are authorized to enter no judgment, and their power is limited by the extension of a right after notice, according to the general law of the land as to the rights of parties, but it is a declaration of a conclusion limited and restricted by the letter of the sentil as a shown by

beyond the power of this board. As to the words "irregular, false, and fraudulent," in this connection, their definition is not required by the questions raised by the pleadings in this case.

These respondents have not alleged that they have before them any return "so irregular, false, or fraudulent" that they are unable to determine the actual vote cast in any county, as shown by the returns; and nothing can be clearer than that the counting of returns sufficiently regular to ascertain the whole number of votes given and signing a certificate are merely ministerial acts. Under these pleadings the genuineness and regularity of the particular returns in question here are admitted. We will say, however, that the clear effect of this clause in the statute is that a return of the character named shall not be included in the determination and declaration of the board; and that it has power to determine the bona fide character of the returns dehors their face. It is not within the power of this board to refuse to count some of the votes embraced in a return and to count others embraced therein. They must count the whole of the return or must reject it in toto. We will also say that the powers here conferred are ministerial powers. It is true that in some respects these powers are something more than simple counting or computing, but they are powers which necessarily appertain to the discharge of every ministerial duty of this character. Their existence is no obstacle to the control of such officers by mandamus from a court having jurisdiction of the subject-matter.

In defining the duties of a board of State canvassers where there was no like clause to this in the act defining their powers, this court in 13 Florida, 73, said.

"Their duties and functions are mainly ministerial, but are quasi judicial so far as it is their duty to determine whether the papers received by them and purporting to be returns were in fact such, were genuine, intelligible, and substantial authenticated as required by law." The power to asc

In the circuit court for Leon County that court, on a quo warranto proceeding of The State of Florida ex rel. Call and Others (Tilden electors) vs. Humphreys and Others, (Hayes electors,) begun December 6, 1876, (before the Hayes electors voted,) rendered a judgment which I quote in full:

#### Information in the nature of quo warranto.

Information in the nature of quo warranto.

And now, on this 25th day of January, 1877, came the parties by their attorneys, and the court having fully considered what should be its findings and judgment herein, finds that respondents did not, as shown upon the face of the returns of the election held on the 7th day of November, A. D. 1876, transmitted to the secretary of state from the several counties, and did not, in fact, (as shown by the proof produced herein,) receive the highest number of votes cast at said election for electors of President and Vice-President of the United States, for the State of Florida; but that the relators did, as shown by said returns upon their face, and did, in fact, as shown by the proof produced herein, receive the highest number of votes cast at said election for such electors. It is therefore considered and adjudged that said respondents, Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long were not nor was any one or them elected, chosen, or appointed, or entitled to be declared elected, chosen, or appointed as such electors or elector; and that the said respondents were not, upon the said 6th day of December or at any other time, entitl 3 to assume or exercise any of the powers and functions of such electors or elector, but that they were upon the said day and data mere usurpers, and that all and singular their acts and doings as such were and are illegal, null, and void.

And it is further considered and adjudged that the said relators, Robert Bullock, Robert B. Hilton, Wilkinson Call, and James E. Yonge, all and singular were at said election duly elected, chosen, and appointed as such electors, and to have and receive certificates thereof; and upon the said day and date, and at all times since, to exercise and perform all and singular the powers and duties of such electors, and to have and receive certificates thereof; and upon the said day and date, and at all times since, to exercise and perform all and singular the powers and duties of suc

Now the question is, is the judgment of this commission right that no evidence shall be introduced before it to prove that the act of this canvassing board and of the executive department of Florida was absolutely null and void because contrary to law? Are we to be precluded from inquiring whether the board has fraudulently and illegally acted by an actual usurpation of the elective function vested by law in the people instead of a mere exercise of its determinant function under the law of the State, as interpreted by its own courts? Now I say that upon a question of this kind the whole organism of

Now I say that upon a question of this kind the whole organism of the State must speak its voice; but the commission seems to say that the only organisms that shall speak for the State is that of the canvassing board and of the executive. We say that the State must speak not only through them, but through the ultimate determinant authority of the judiciary, which has defined the extent of the powers of the canvassing board. We must respect the authority of the State expressing its will through its whole organism, and not merely regard the acts of the board and of its executive, which are themselves subject to the judicial authority. We cannot strike off the judicial head of State authority and bow to the mutilated trunk of the board and the executive. We must defer to the whole authority of the State. We must hear its full-toned voice, and submit to it.

What is it? Its Legislature, its judiciary have set at naught and

What is it? Its Legislature, its judiciary have set at naught and annulled the acts of the board. Florida, through its State organism, has declared the act of the board giving the election to the Hayes' electors a nullity, and the act of the electors in voting in the name of Florida on the 6th of December, 1876, a usurpation, and that act "illegal, null, and void."

But it is said the judgment in the quo warranto case had nothing to operate on, as the electors had voted prior to its rendition, on the 25th of January, 1877.

of January, 1877.

In answer:

1. Concede it; this tribunal or these Houses must decide on the question of right of these electors to vote. Suppose by their action,

non obstante, the pendency of the quo warranto proceedings, they put themselves beyond the reach of preventive power of the court. In other words, suppose in the face of Florida's demand, "By what warrant" you assume to act, the parties defiantly dare to use the prerogative of the States; shall the two Houses give effect to the usurpation,

ative of the States; shall the two Houses give effect to the usurpation, adjudged to be such by the Florida court, because the usurpers' act was done in the teeth of its procedure and judicial remedy was thereby defeated? Shall we award to their usurpation a triumph against the sovereign voice of the State, adjuding them convict of usurpation?

2. But the judgment in quo warranto is to seize the franchise in manibus regis—into the hands of the king—Salk., 374; Comyn's Dg., title Quo Warranto, ch. 5.

Now, the vote cast by electors and by them certified is not effectual until opened and counted. The act of voting on December 6, 1876, by them was inchoate. It now claims to be made consummate. In the interval the inchoate act is declared to be usurpation by the court of Florida. Shall we make the inchoate usurpation consummate by our judgment? mate by our judgment?

The quo warranto proceeding is in nomine regis - in the name of Florida. The Constitution gives to Florida the power to appoint electors. The elective function is in the State. These electors assume to speak her Through her judiciary Florida forbids it. Their title she has

adjudged void.

Now shall we give a validity to their title, which Florida declares void?

3. But it is said the acts of a de facto officer are valid. True as to private parties, as to the mass of the public generally, in order to the furtherance of the rights of private parties and of justice.

But this is never held as to any political act or against the de jure sovereign. (See United States vs. Insurance Companies, 22 Wall.,

99, and cases there cited.)

In these cases all acts of the confederate government or of the governments of the States of the confederacy, relating to the private rights and relations of citizens, were held valid, but all exercise of power, when against the authority of the de jure government, was held utterly null and void. This doctrine bears striking analogy to the case under consideration.

Besides, the right of no officer having a colorable title can be disputed by a denial of his title collaterally. It must be assailed by the sovereign whose power he usurps. Hence, while his acts may avail as to private parties, because done in the name and under color of the authority of the sovereign, they can never stand against the arraign-

authority of the sovereign, they can never stand against the arraignment and judgment of the sovereign power.

[Here the hammer fell.]

Mr. TUCKER. I ask leave to print some further remarks.

No objection was made.

Mr. PAGE. I desire to give notice that I shall object to any remarks being printed in the RECORD on this subject in the future which are not delivered on the floor.

Mr. TUCKER. I insist that I had permission before the gentleman

Mr. PAGE. I do not object to the gentleman's printing additional remarks, because the same privilege has been accorded to a gentleman on the other side of the House.

The SPEAKER pro tempore, (Mr. COCHRANE.) Unanimous consent was given to the gentleman from Virginia to print additional remarks, and the same permission was accorded to the gentleman from Iowa, [Mr. McCrary.]

Mr. TUCKER. Now, what does the commission decide? It holds

Mr. TUCKER. Now, what does the commission decide? It holds that neither the Houses nor the commission shall bear any voice from Florida but through its board and its governor. Before these omnipotent usurpers the Legislature of Florida and its judiciary are powerless. The trio of its board and the bass-notes of its executive must less. The trio of its board and the bass-notes of its executive must drown the acclaim of its Legislature and the solemn voice from the judgment-seat of the State. Her Legislature and judiciary are naught. When the board and the governor speak let her Legislature and her judges keep silence before them! Whatever illegality or fraud the board or governor commit must triumph over all other departments of the State government. The State judiciary should not, and we cannot intrude inquiry into their supreme, conclusive, and final determinations. minations.

Justice is said to be blind. This commission claims that we and its members are deaf as well as blind. Having eyes, we see not and cannot see, and ears, we hear not and cannot hear, the illegality and fraud that shock the sight and hearing of forty millions of people. It seems to me this conclusion is plainly unsound. It puts fraud at a premium, fair dealing at a discount.

Therefore, we may proclaim it from the house-tops that through all the ranks of social life, in all departments of human affairs, public the ranks of social life, in all departments of human affairs, public and private, the rewards of success in all, as the highest offered to American ambition, are to be won by those who can best organize fraud and most surely screen it from inquiry by the Federal and the State authority. Upon such principles the entries for the presidential race of 1880 will be for the worst jockeys, and not for honorable gentlemen. He who can best cheat will best succeed, and the people will mourn because the vilest men will be exalted to rule the country. Then may we tear down the Goddess of Liberty from the Dome of our Capitol and elevate Fraud in her place as the patron saint or rather the tutelary divinity of the American Republic.

Let us, the Representatives of the people of the States, whose vic-

tory by a majority of a quarter of a million of freemen is to be reversed by the fraud of a trio in Florida and a quartette in Louisiana, stand our ground, and if we may not avail by our vote in this House to re-

our ground, and if we may not avail by our vote in this House to reverse, we may yet utter our solemn protest against the successful achievements of wrong over the rights of an outraged people.

Let it not be thought that victories thus won will bring joy to the victor. The wreath upon his brow will wither before the breath of public indignation; the flowers will fade along his pathway, and tangled thorns will obstruct and impede his progress. The fraud of the agent taints the title of his principal, whether he directs it or not. Since Eve plucked and Adam ate of the forbidden tree, the taker of the fruit of fraud has ever been held the full partaker in its guilt. The wearer of presidential robes obtained by such means may win a fleeting renown, but history will herd him with its pretenders to right and its usurpers of popular liberty; his glory will be turned into shame and his fame will be immortal infamy.

In the closing moments of the convention of 1787, Mr. Madison relates that Dr. Franklin (referring to a painting of the sun behind the

lates that Dr. Franklin (referring to a painting of the sun behind the chair of the President) said :-

I have often in the course of the session, and the viscisitudes of my hopes and fears as to its issue, looked at that picture behind the President without being able to tell whether it was rising or setting; but now at length I have the happiness to know that it is a rising and not a setting sun.

Shall we, ninety years after the great philosopher first saw the sun of constitutional liberty above the American horizon, be doomed to see it go down under a cloud of impenetrable fraud? May the God of our Fathers forbid such a destiny for this federative Republic

of great and growing Commonwealths!

Mr. BANKS. Mr. Speaker, it is one of the highest privileges I have had, as a member of the House, to give my vote in support of the decision and report of the electoral commission. It will, in my opinion, be the foundation of that change in the fundamental law of the country, constitutional and statutory, now made imperatively necessary by conflicting and irreconcilable opinion in regard to the proper method of counting the electoral votes for President and

the proper method of counting the electoral votes for President and Vice-President. In the few moments that are allowed me for the expression of my opinion, I shall reply very briefly to the suggestions made by the gentleman from Virginia, [Mr. Tucker.]

And, first, in regard to the ineligibility of electors.

In the case of Humphreys, according to the decision of the electoral commission and according to the facts in the case, there was no substantial pretense of ineligibility. He had been an officer of the United States. He had resigned his office. His resignation had been accepted. Now nuless it he a fact that a commission from the United accepted. Now unless it be a fact that a commission from the United States once accepted and held incapacitates a man forever after from being an elector for President and Vice-President, then Humphreys was absolutely and entirely free from any political disqualification to take, hold, and execute that office in the late presidential election in

Florida.

But I go further than this. In the Constitution and laws of the United States there are some twenty specifications made in regard to the appointment of electors of President and Vice-President. There are three hundred and sixty-nine electors, and if there are twenty specific conditions upon the fulfillment of which the validity of the appointment depends then there are more than seven thousand points appointment depends then there are more than seven thousand points of qualification upon the failure of any one of which conditions, if the argument upon the other side be good, the House of Representatives can annul the appointment of an elector and upon its own judgment as to the invalidity of the appointment take the election of President into its own hands. That, sir, is a result never contemplated by the law, and it is not, ought not to be applied to this case. If we add to these specific conditions of election imposed by the Constitution and laws of the United States those of the thirty-eight separate States, it will increase the specific qualifications so many thousand more, upon the failure of any one of which an elector would be disqualified, that it would be impossible ever to effect a valid election of President by the votes of the people I do not hesitate to state it as my opinion and the basis of my vote on the question of the eligibility of the elector in Florida whose appointment is disputed, that the doctrine here asserted cannot be maintained upon any just principle of conhere asserted cannot be maintained upon any just principle of constitutional law nor without defeating the operation of the especial

feature of our system of government.

I do not question or deny the assumption that the people are bound to know the law because the law is made so that they can know it; but to make the case good upon the argument now advanced they are not only bound to know the law but to anticipate and inform themselves upon every fact that can exist in connection with the choice of electors and upon what the validity of the choice will depend. It will be impossible for the people to make themselves acquainted with every fact connected with the election of an elector and his qualifications for that office. They cannot upon any principle of law or justice be held responsible for the failure of information which, in many cases, it will be out of their power to obtain; and, in the absence of fraud, no election can be or will be held invalid for such reason or upon such grounds as are asserted in regard to the case of Humphreys

Let me state briefly an incident of the late civil war. During the war, in one of the four great States of the Union an active, vigorous, and able man held the office of adjutant-general. He was possessed of all the secrets of the Government; he had the most intimate and confidential intercourse with the President, with the Cabinet, with the

commanders of the Army and Navy, and with the executive officers commanders of the Army and Navy, and with the executive omeers of the principal State governments. He knew everything that was going on. When the war closed business called him to a foreign country, and he now holds a seat in the British Parliament as a native-born subject of the British Empire. Now, it would have been an offense in him, it would have been an offense in any portion of the people of a State, to have allowed him to hold this position under these circumstances if they had known the facts to be as I state them. But no one knew them and no one had the means of knowing But no one knew them, and no one had the means of knowing them. If he had been chosen an elector under these circumstances, who can say that that fact, unknown to everybody but himself, would so far have incapacitated him from holding that office as to defeat the will of the people in a presidential election and elevate to that high office a candidate against whom a majority of their votes

might have been given?

If the people use due diligence to get such information as is in their power, and it shall be found in a matter of this kind that a man fails in some one of the many qualifications prescribed by law and is therein some one of the many qualifications prescribed by law and is therefore ineligible, the people are not to be deprived of their votes, nor of their voice in the organization of the Government which they have chosen. This is a principle which has been recognized by the House of Representatives, and never questioned, so far as I know. Where a condition is attached by the statute to the election of public officers, as Representative in Congress for instance, and the State elects a Representative in violation of that statute, the House in every case has yielded its assumed right to control that election and has submitted to the decision of the State in the election. And so it would be in to the decision of the State in the election. And so it would be in

In the election of Senators and Representatives the condition pre-In the election of Senators and Representatives the condition prescribed by the Constitution as to age is often disregarded so far as the period of election is concerned, "and a member-elect of either body is admitted whenever he reaches the age required by the Constitution." The act of 1845, so much cited in this discussion, which required the appointment of presidential electors on the same day in every State of the Union, also provided that the Representatives to Congress from each should be chosen by the separate congressional districts and not upon a general State ticket as they had before been elected. The State of New Hampshire disregarded and disobeyed the law, electing as before all her Representatives to this House upon a general ticket for the entire State, and they were received upon a general ticket for the entire State, and they were received here, rightly received, as if they had been elected in accordance with the law. And this principle, in the absence of fraud, must be applied to electors of President and Vice-President; and when the State has chosen its electors, and their duty has been executed as it was in-tended by the State it should be, and their votes deposited, it will be too late for Congress to set it aside as invalid and void.

We come in this discussion upon the very essence of the Constitution. The question is in what manner the powers of the Constitution shall be executed, and the answer is by the election of President and Vice-President. In framing the Constitution there were three important objects kept constantly in view on the part of the convention and of the people. It was to elect a President in such a way as, first, to avoid tumult and disorder; second, to suppress cabal, intrigue, and corruption; and third, a chief object was to avoid the danger arising from the disposition on the part of foreign powers to control this Government. These objects are set forth in the sixty-eighth trol this Government. These objects are set forth in the sixty-eighth number of the Federalist as showing that the convention that framed number of the rederaist as showing that the convention that framed the Constitution took the greatest care and exerted the highest possible degree of prudence and circumspection to avoid these dangers. They found what they thought to be the safety of the Government in the appointment of electors. They did not make the appointment of a President to depend upon pre-existing bodies of men who might be tampered with before hand to prostitute their votes, but they referred it in the first instance to the immediate act of the people, to be exerted in the choice of these persons, these electors, "for the temporary and sole purpose" of making the appointment of President and Vice-President. President.

President.

We have in this statement the best possible exposition of the nature and character of the office of presidential elector. It is a temporary office. When the elector has voted, his office and his duty and his functions are exhausted. No court of a State and no court of the United States can change that act. It is executed, it is completed, the elector exists no longer, and there is no power to change his official act from what it was and is to what some of ms might think it. cial act from what it was and is to what some of us might think it should be. Whatever the State may choose to do in regard to the appointment or the action of electors it must do before he deposits appointment or the action of electors it must do before he deposits his ballot and certifies his act to the President of the Senate, in accordance with the provisions of the Constitution. When his act comes within the scope prescribed by the Constitution the State and the people have parted with their power. The vote, in the language so often repeated, "must then be counted." It cannot then be changed from one candidate to another or annulled so as to confer upon another tribunal the election of President and Vice-President. Let me state an incident that happened among men who were parties to the organization of the Government, under the Constitutions.

parties to the organization of the Government under the Constitution, illustrating the impossibility of changing an executive or ministerial act of a public officer. Samuel Adams, of Massachusetts, whose statue was lately placed in the old Hall of the Capitol, a man whose name carries with it weight, and whose virtue and integrity constitute a part of the history and the glory of this country, when gov-

ernor of the State of Massachusetts was called upon to approve or disapprove an act of the Legislature to provide for filling a vacancy in the office of presidential electors. He signed the bill; and the very day, possibly the very hour, in which he placed his signature to that bill, he followed it to the office of the secretary of state, where that bill, he followed it to the office of the secretary of state, where it had been sent to be afterward transmitted to the senate, in which body the bill originated, and erased his name from the bill. But the senate of Massachusetts held that he had no power to erase his name, that the act had been done. If there were at any time authority of or discretion in him to consider and decide it had been exhausted when he signed his name, and there was no power to reverse it. The senate and house of representatives, elected with him upon the same ticket, held that he had no rewrite withdraw his name from the hill effer. held that he had no power to withdraw his name from the bill after it had been once written. And when he recorded the passage of an act repealing the statute they refused their assent to its passage. How much greater is the necessity and justice of the recognition of this principle of government, that when an act is done it is done, where so much depends upon the completion of the act of the people, and where the question arises, not between officers of the same State, but between the authorities and the people of the States and the Federal Government.

So neither these electors nor any court in Florida, nor any subsequent Legislature, nor any political party, still less any defeated candidate, has the right or even the shadow of a power to reverse the decision of the people as expressed in and by the official and final act of their electors

[Here the hammer fell.] The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. FIELD obtained the floor and said: I yield ten minutes to the gentleman from Illinois, [Mr. SPRINGER.]

Mr. SPRINGER. I oppose the counting of the vote of Florida in accordance with the decision of the electoral commission, for the reason that the commission, in the course of its deliberations on this subject, adopted an order to this effect:

Ordered, That no evidence will be received or considered by the commission which was not submitted to the joint convention of the two Houses by the President of the Senate with the different certificates, except such as relates to the eligibility of F. C. Humphreys, one of the electors.

This order excluded evidence which would have conclusively shown that a majority of the legal votes actually cast and canvassed by the returning board in the State of Florida were in favor of the Tilden electors, and not in favor of the electors certified by the commission. The case of Florida has been stated most clearly and ably by Mr. Charles O'Conor, of counsel for the Tilden electors, in his argument before the electoral commission; and therefore I quote his remark in reference to it. He said:

So, then, in this case of rivalry between these two sets of electors it appears to me that we present the best legal title. That we have the moral right is the common sentiment of all mankind. It will be the judgment of posterity. There lives not a man, so far as I know, upon the face of this earth who, having the faculty of blushing, could look an honest man in the face and assert that the Hayes electors were truly elected. The whole question, therefore, is whether, in what has taken place, there has been such an observance of form as is totally fatal to justice and beyond the reach of any curative process of any description.

It is a conceded fact that the people of Florida have not in truth appointed the electors certified by the decision of this commission. A Procrustean rule was adopted which prohibited them from consid-A Procrustean rule was adopted which prohibited them from considering the allegations of fraud that were made in the objections laid before them by this House, and which could have been proven beyond all question if they had heard evidence in the case. Surely this is the most remarkable decision ever pronounced by any tribunal in this or any other country; a decision which renders it utterly impossible to defeat the wicked fruits of fraud and conspiracy even if this fraud and conspiracy result in the election of the Chief Magistrate of this people. The objectors of the two Houses charged before the commission and offered to prove by competent testimony that the pretended Hayes people. The objectors of the two Houses charged before the commission and offered to prove by competent testimony that the pretended Hayes electors were never appointed by the people of Florida; that the pretended certificate of their election signed by Governor Stearns was in all respects untrue, and was corruptly procured and made in pursuance of a fraudulent conspiracy to assert and set up fictitious and unreal votes for President and Vice-President and thereby to deceive the proper authorities of this Union; that the State of Florida, by all its departments of government, legislative, judicial, and executive, had repudiated the authority of these pretended electors and pronounced them usurpers and declared all their acts null and void. By excluding this evidence the commission have decided in effect that if excluding this evidence the commission have decided in effect that if all the allegations of the objectors be true it would not change their

I oppose, further, the counting of the vote of Florida in conformity with this decision for the reason that to do so would be giving our sanction to the legal proposition laid down by the commission as the basis of their judgment. The commission, as a proposition of law,

That it is not competent, under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence aliunde the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Florida on, and according to, the determination and declaration of their appointment by the board of State canvassers of said State prior to the time required for the performance of their duties had been appointed electors or by counter-proof to show that they had not, and that all proceedings of the courts or acts of the Legislature

or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

on the prescribed day are madmissible for any such purpose.

This proposition differs materially from the first order adopted by the commission, and to which I have already referred. By the first order we were led to believe that all the papers laid before the joint convention by the President of the Senate, with the different certificates, would be regarded as evidence, and due weight would be given to them. But it seems they only proceeded to consider the papers opened by the President of the Senate in so far as they related to the certificates of Governor Stearns and the Hayes electors, and excluded all evidence which, if considered as they resolved to do in the first order, would have shown by the face of the returns submitted with the third certificate that the Hayes electors were not elected. They decided that they would not consider the facts before elected. They decided that they would not consider the facts before them, but ruled them out as appears by this portion of their decision:

And that all proceedings of the courts or acts of the Legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

What purpose? Inadmissible to show that the pretended electors were never elected; that they were usurpers and the mere creatures of fraud and conspiracy!

or traid and conspiracy:
So that this House and the country are informed that there is no power in Congress to correct this fraud, that there is no power in the State of Florida to correct it, even by the concurrent action of all the departments of the government; but that we are to stand power-

less in the presence of it, and recognize it, and make it a living reality.

Further, this decision is not the law. If you will turn to Cushing's work on the Law and Practice of Legislative Assemblies, you will find the law thus laid down on page 72:

SEC. 195. It is the invariable practice, therefore, with us, to allow the authority and qualifications of returning officers to be inquired into.

And also this rule:

Sec. 197. If returning officers act in so illegal or arbitrary a manner as to injure the freedom of election, the whole proceedings will be void.

Further, it has been decided by the Supreme Court of the United States, in 15 Peters's Reports, that—

Fraud will vitiate any, even the most solemn transactions; and any asserted title founded upon it is utterly void.

Any title founded upon fraud is utterly void. This rule applies as well to the title to the presidential office as to that to a piece of prop-

But the court, in the same case, further hold:

In the solemn treaties between nations it can never be presumed that either state intends to provide the means of perpetrating or protecting frauds; but all the provisions are to be construed as intended to be applied to bona fide transactions.

That is the law as laid down by the Supreme Court of the United States in the Amistad case, in 15 Peters, page 520.

But there are other authorities applicable to this case. The honorable gentleman from Iowa, [Mr. McCrary,] in his Treaties on the American Law of Elections has laid down the law thus:

American Law of Elections has laid down the law thus:

It is undoubtedly the policy of the law not to throw too many obstacles in the way of investigating the correctness and bona fides of election returns. On this point the court in Reed vs. Kneass, 2 Parsons, 554, very justly observe:

"The true policy to maintain and perperuate the vote by ballot is found in jeal-ously guarding its purity, in placing no fine-drawn metaphysical obstructions in the way of testing election returns charged as false and fraudulent, and in assuring to the people by a jealous, vigilant, and determined investigation of election frauds that there is a saving spirit in the public tribunals charged with such investigation, ready to do them justice if their suffrages have been tampered with by fraud or misapprehended through error."—McCrary on American Law of Elections, pages 382, 383.)

This is the law of elections laid down by the honorable gentleman from Iowa [Mr. McCrary] in his own book as the law unto us. Yet by the decision we have before us we are confronted with "fine-drawn metaphysical obstructions" in the presence of a gigantic fraud, and are informed that there is no power to correct it either in Congress

are informed that there is no power to correct it either in Congress or in the States themselves.

But, further, I regret that this decision has come here by the significant vote of 8 to 7. I regret this the more because it is contrary to the spirit of the electoral law and disappoints the expectation of those who framed it. It was fondly hoped that this law would be carried out in a spirit of patriotism and justice, and not in a spirit of partisanship. The honorable gentleman from Massachusetts [Mr. Hoan] in supporting this bill said:

But it is charged that this commission is in the end to be made up of seven men.

But it is charged that this commission is in the end to be made up of seven men who of course will decide for one party, and seven men who of course will decide for the other, and who must call in an umpire by lot and that therefore you are in substance and effect putting the decision of this whole matter upon chance. If this be true, never was a fact so humiliating to the Republic expressed since it was inaugurated. Of the members of our National Assembly, wisest and best selected for the gravest judicial duty ever imposed upon man, under the constraint of this solemn oath can there be found in all this Sodom not ten, not one to obey any other mandate but that of party?

This decision answers, "No, not one." But the honorable gentleman especially repelled the imputation that the Supreme Court would be actuated by any partisan bias. He said:

But I especially repudiate this imputation when it rests upon those members of the commission who are to come from the Supreme Court. It is true there is a possibility of bias arising from old political opinions even there, and this, however minute, the bill seeks to place in exact equilibrium. But this small inclination, if any, will in my judgment be overweighted a hundred-fold by the bias pressing them to preserve the dignity, honor, and weight of their judicial office before their countrymen and before posterity. They will not consent by a party division to have

themselves or their court go down in history as incapable of the judicial function in the presence of the disturbing elements of partisan desire for power, in regard to the greatest cause ever brought into judgment.

I confess, Mr. Speaker, that I was much impressed by these eloquent words of the gentleman from Massachusetts, so much so that in the remarks submitted by me the evening following on the same bill I remarks stometted by me the evening following on the same off is stated that an appeal from the Louisiana returning board to this commission was like stepping from a diminutive mole-hill to the sublime heights of Mont Blanc. But it seems that in this I was mistaken, and that the mountain heights from which we expected a decision in this case were, like the mountains spoken of by the poet and referred to by a distinguished Senator elsewhere—

Evermore Tumbling into seas without a shore.

[Here the hammer fell.]

Mr. FIELD. I yield now for ten minutes to the gentleman from

Mr. FIELD. I yield now for ten minutes to the gentleman from Maine, [Mr. FRYE.]

Mr. FRYE. Mr. Speaker, that which impresses me more than anything else, and has impressed me for the last month, is the unblushing effrontery with which charges of "gigantic fraud" are made against the republican party of this country. [Cries from the democratic side, "Ah!"] Four times the gentleman from Illinois [Mr. Springer,] in his speech charged "gigantic fraud." Out of the eight objections filed by the gentleman from New York [Mr. Firld] to the acceptance of the report of this commission four of them charge fraud against the republican party. To use the language of one of them, "fraudulently and corruptly cheating the honest voters of Florida out of the electoral vote of that State." And when I go into the Supreme Court room from this floor I find there the gentlemen arguing "fraudulently and corruptly cheating the honest voters of Florida out of the electoral vote of that State." And when I go into the Supreme Court room from this floor I find there the gentlemen arguing on the democratic side rolling the word "fraud" on their tongues like a sweet morsel. When I come back into the House I find a great committee organized and appointed to hunt up the fraud of the republican party, and under the lead of the distinguished gentleman from New York throwing out the drag-net, bringing in telegrams and letters, unexplained, throwing out the drag-net, bringing in disreputable witnesses and allowing no opportunity up to a certain time for the refutation of these witnesses, all pointing at what the gentleman from Illinois calls in his speech "the gigantic frauds of the republican party." publican party."

publican party."

And then there comes the cry that the republican party interposes and places the law between those frauds and God's pure sunlight so they can be obscured from the people of the land; that we dare not open the door for investigation; that we dare not take evidence in the cases of Florida and Louisiana. I say to the gentlemen that there is no republican on this side of the House who would not court investigation into the frauds of Florida and the frauds of the State of Louisiana. I court it into the frauds of the city of New York; I court it into the frauds of New Haven, Bridgeport, and Hartford, in Connecticnt, by which the democratic party this year stole the electoral vote of that State; I court it into the State of Indiana, where, under their laws requiring no registration whatever, they imported voters from the great cuiring no registration whatever, they imported voters from the great State of Kentucky, thus gaining and counting the electoral vote of that State for Tilden. Ay, by which one of the democratic counties in Southern Indiana cast more democratic majority than there were males twenty-one years of age living within the county. The republican party fear no examination and testimony, and I would like to

Mr. LANDERS, of Indiana, rose.

Mr. FRYE. I decline to yield to the gentleman from Indiana. I desire to know of the gentlemen on the other side what is the evidence of our stealing the vote of Florida? Where do you find it? Turn to Senate report 611, page 414, and you will find Attorney-General Cocke, one of the pure, undefiled democrats of the South; you will find McLinn, secretary of state; you will find Dr. Cowgill, comptroller of the State, sitting as canvassers of the State of Florida to determine under the judicial authority which they had by the law who had received the electoral vote of that State. And on page 415 you will find a protest filed against allowing Attorney-General Cocke to sit there in the capacity of judge. Why? Because he had sent a telegram as follows: telegram as follows:

The returns of county managers of election are not yet in. The board of State officers, of which I as attorney-general am one, does not meet until thirty-five days after the election, and you may rest assured that Tilden has carried the State, and Drew is elected. I do not think the radicals can cheat the democrats out of this State.

WM. ARCHER COCKE.

And because he signed that dispatch a protest was entered; but when he assured the board of canvassers that he would act under his oath, and under the knowledge of the law which he had, they permitted that democrat to sit as a judge of the election in Florida.

And now I call your attention to the canvass of Hamilton County, in the State of Florida—

Mr. SOUTHARD. I will ask whether Drew is not elected, and now

Mr. FRYE. I do not yield to anybody. And you will find on page 25 of Mr. WOODBURN'S report in the CONGRESSIONAL RECORD that this Attorney-General Cocke, a democrat, joined with the republicans in throwing out precincts in the county of Hamilton which if counted would have given the democratic party 138 majority. Now you only claim 90, counting every democratic vote cast in that State, not ex-

cluding anybody; and you know the attorney-general decided against you by a majority of over 60. Turn to Monroe County and you will find he was asked his opinion as a lawyer by Dr. Cowgill, and replied emphatically-

Under the law, sir, those precincts must be thrown out.

And he voted to throw out precincts in Monroe County, with the two republicans, which, if they had been counted, would have given 342 majority for the Tilden electors. Where, then, comes the "steal" of the electoral vote of Florida? By your own democratic authority acting under his oath of office, and acting deliberately, we have a majority for Hayes of nearly 400 votes in that State. I know this weak man, Attorney-General Cocke, left the office of the canvassing acting under his oath of omce, and acting deliberately, we have a majority for Hayes of nearly 400 votes in that State. I know this weak man, Attorney-General Cocke, left the office of the canvassing board at three o'clock in the morning, went to his own office, there met Manton Marble, and F. Perry Smith of Illinois, and a dozen other faithful democrats. What took place I know not. But I presume they threatened, and bull-dozed, and entreated, and promised. They took him up into a high mountain and said to him, "All the possessions of the earth shall be yours, Attorney-General Cocke, if you will but be faithful to the democratic party and Samuel J. Tilden." He was convicted. He was converted. He at once commenced doing works meet for repentance, went back to the canvassing board, asked to change his vote on Monroe County—

Mr. CLYMER. Will my friend allow me to interrupt him—
Mr. FRYE. No, sir. He did not ask to change his vote in Hamilton County, but he asked to change it on Monroe County, which, if that had been allowed, would have left a majority for Hayes and Wheeler in the State of Florida of over 50 votes.

[Here the hammer fell.]

Mr. FIELD. I yield to the gentleman from Ohio, [Mr. Hurd.]

Mr. HURD. I do not rise, Mr. Speaker, to criticise the action of the commission in reporting their judgment to this House nor to complain of the result as it may affect the presidential candidate of my choice, but as a member of the legal profession and a member of this House to enter my protest against the novel, anomalous, and dangerous doctrine upon which this decision rests.

When the President of the Senate submitted to the two Houses the certificates from the State of Florida, certificate No. I was objected to on the ground that it had been procured through fraud and as a result of a conspiracy entered into between the members of the returning board, the electors named in the certificate, the governor of the State, and others to the objectors unknown. This objection was referred to the commission. Evidence was te

whatever.

whatever.

I protest most solemnly and earnestly against this judgment. As has been frequently said, fraud vitiates everything. It poisons the sources of all jurisdiction. It taints the blood of every body-politic which it infects. It avoids every deed; it cancels every obligation, annuls every contract, revokes every award, repeals every law, reverses every judgment. Every tribunal, however organized, is bound to treat as a nullity every fraudulent transaction, however it comes before it, whether directly impeached in an independent proceeding or whether it comes under its notice collaterally. The judgment of the highest judicial tribunal may be treated as of no effect by the humblest court if fraud has precured it. humblest court if fraud has procured it.

As stated by a distinguished writer:

It matters not whether the judgment impugned has been pronounced by an inferior or by the highest court of the land; but in all cases alike it is competent for every court, whether superior or inferior, to treat as a nullity, any judgment that can be clearly shown to have been obtained by manifest fraud.

Why is it claimed that there is an exception to this universal rule why is it claimed that there is an exception to this universal rule in the case of the returning board of Florida? What sanctity surrounds that tribunal that shall enable fraud to do its perfect work, without hindrance, behind its authority? Why is it that it alone, of all the tribunals on the face of the earth, can render judgment charged to be tainted with fraud which can bind courts and Congresses, commissions and peoples? If this exception is to prevail it is because either of the constitution of the returning board or of this commission, or of the subject-matter referred to it for decision.

There is nothing in the constitution of this returning board that allows this principle to be established. The highest judicial tribunal of Florida has decided that the duties of the returning board are purely ministerial. It takes the returns, counts the votes, aggregates the result; and whatever fraud may do anywhere else, no person has the result; and whatever fraud may do anywhere else, no person has ever been found bold enough to say that a candidate for office can profit by the fraud of the canvassers of his election or that officers can fraudulently thwart the will of the people. But even if you say that the authority of this board, as claimed, is judicial, then I maintain it is a court of limited jurisdiction. Its judgment can have no more sanctity than the judgment of the supreme court of Florida. That court has unlimited jurisdiction subject to its constitution. This is the ultimate appellate tribunal of that State, and every judgment it renders may be impeached for fraud.

it renders may be impeached for fraud.

If this be true, how much more can the judgment of this inferior subordinate returning tribunal, constituted by a statute for the performance of a particular specific duty, be impeached for the same cause. The constitution of the commission does not authorize this exception, as the language of the law expressly declares that it was

created for the purpose of determining the true and lawful electoral vote of a State. It cannot be said that the commission can determine that vote when it refuses to receive evidence to show that the vote is false and unlawful. Under the Constitution this commission was organized to assist in counting the vote, and in counting the vote the first thing is to ascertain the vote, and in ascertaining the vote you must first distinguish between the true and the false returns, and in doing that testimony must be heard; for it is the only method by which the fraud and falsity of returns objected to can be exposed. There is nothing in the nature or subject-matter of this inquiry that requires this exception; it relates to the election of a President. The duties and interests of forty millions of people depend upon it. The hopes and fears of all who love free institutions throughout the world hang upon it. Can it be said, that while fraud may vitiate the humblest act of the most subordinate tribunal in the most trifling cause, fraud shall be sacred and protected here in this the greatest cause of all time? Nor will it do to say the State of Florida has acted in the matter and that therefore the fraud cannot be inquired into. No matmatter and that therefore the fraud cannot be inquired into. No matter how perfect the sovereignty, no matter how solemn the ceremonies under which a fraud is perpetrated, it is void, and courts must so declare it, and States and returning boards cannot escape the inexorable force of this rule. Moreover the State of Florida by its highest judicial tribunal has decided that the vote cast by those named in certificate No. 1 was the vote of usurpers.

The courts of a State are part of its governmental machinery. The people vote, the returning board counts, the judiciary determines. Every contract made, every act done within the limits of the State is upon the implied condition that it shall meet with the approval of the courts in a case properly brought. The validity of all official acts depends upon the judicial finding. Not until the judiciary has spoken, if objection be made, is the true will of the State known, and when it has spoken every other voice is a false one. has declared its will, not through a returning board, but through its courts. Her courts, without objection by the defeated, have reversed the action of the returning board, and given her a governor, a Legislature, and State officers. Why shall her voice be stifled as

a Legislature, and State officers. Why shall her voice be stifled as to electors. Florida is indeed unfortunate if its will cannot be truly announced in choosing a President. Fraud has stolen her greatest offices; it has installed itself in her highest places. Congress cannot relieve. Commissions cannot interfere. She is powerless to help herself. Who, then, shall deliver her from the body of this death?

Mr. Speaker, a decision reached with the charges of fraud uninvestigated will not be satisfactory to the American people. It has been believed by millions that the certificates given to electors in certain southern States were procured through fraud. The whole country has been excited for months upon this question. The commission was accepted by the people because it was supposed that this question would be determined by it; but if evidence of fraud is to be excluded, the questions as to which the people have differed cannot be decided. No result thus reached will be accepted. It cannot bring the peace and quiet to the country we all so much desire, and he who assumes the duties of the presidential office with a title obscured by fraud, which, while charged, no one is permitted to prove, will be regarded which, while charged, no one is permitted to prove, will be regarded

as a usurper by the vast majority of the American people.

[Applause on the floor and in the galleries.]

Mr. FIELD. I yield to the gentleman from Iowa [Mr. Kasson] for

Mr. KASSON. I wish to say that I do not understand that under Mr. RASSON. I wish to say that I do not inderstant this law either of us have a right to dispose of the floor for an hour. I am now recognized by courtesy simply to designate the order of speaking during the second hour, which belongs to the minority, as the gentleman from New York has done during the first hour. I yield ten minutes, or as much of that time as he needs, to the gentleman from

Indiana, [Mr. Carr.]

The SPEAKER pro tempore. The gentleman from New York [Mr. Field] controls the floor, and yields ten minutes to the gentleman

Mr. KASSON. How does the gentleman from New York control the floor for two hours, or for anything more than ten minutes, to

which he is entitled?

Mr. FIELD. It is all the result of an arrangement made before the gentlemen from Iowa [Mr. KASSON] came into the House. It was agreed that certain gentlemen should be called on on behalf of both sides of the House, and called on by me, but I do not desire to do it

Mr. KASSON. I was not aware of that. I wanted only to disclaim any right to parcel out the floor in my own behalf.

The SPEAKER pro tempore. Gentlemen upon both sides of the House

The SPEAKER pro tempore. Gentlemen upon both sides of the House have been recognized in their order.

Mr. KASSON. O, there has been no disorder in the assignment of the floor, only I disclaim the right to dispose of it on my own part. I yield the ten minutes to which I am entitled to the gentleman from Indiana, [Mr. CARR.]

Mr. CARR. Mr. Speaker, I have no hesitancy in saying that the electoral commission in refusing to receive any other evidence as to the genuineness of electoral votes than that presented in the certificate of the governor of a State, have sought to establish a destructive principle, and in this particular, for a partisan purpose, have ignored the duty to inquire into the facts, which was plainly imposed upon both these Houses, and through them upon their comimposed upon both these Houses, and through them upon their com-

missioners, by the Constitution. I have further no hesitancy in saying my convictions are that under the palpable facts behind the governor's certificate the vote of the State of Florida should have been returned for Tilden and Hendricks. But, sir, at the same time I hold that the democratic majority of this House have no moral right to complain that this commission have rendered a partisan decision in reporting the four electoral votes of Florida for Hayes and Wheeler. reporting the four electoral votes of Florida for Hayes and Wheeler. While I assert that this decision is contrary to the facts and contrary to the will of a large majority of the people of the United States, yet I as boldly assert that the wrong is chargeable to a cause further back than the commission. The wrong rests upon the shoulders of those who established this partisan tribunal. When the democratic majority of this House adopted this law with the full knowledge that a majority of the commission would be republican, governed by republican instincts, controlled by republican interests, warped by republican biases, and moved by republican motives, they deliberately abandoned every claim which the democratic masses asserted to a control of our national affairs.

The commissioners have done no more nor less than what could or should have been expected or required of them. You erected a polit-

The commissioners have done no more nor less than what could or should have been expected or required of them. You erected a political tribunal, invested it with political attributes, and gave them political questions to determine, which they have settled from a political stand-point. Being republicans, they believed the republican candidate for the Presidency was and ought to be elected. In making their declaration they have been true and faithful to their political sentiments, education, and associates. No legal wrong can attach to them for this. But when you as democrats deliberately put such power, over such questions, in the hands of a tribunal so constituted, you committed a hold and daring wrong to your pretended political convictions, and a bold and daring wrong to your pretended political convictions, and assuredly, to your political associates, whose political sentiments and rights you betrayed and abandoned to your political adversaries.

I rise to remind the democratic majority that in common decency

your votes on this measure have estopped you from indulging in even one word of criticism against the decision of that tribunal. Sirs, it one word or criticism against the decision of that tribunal. Sirs, it is your own offspring; you brought it into being, you gave it life and power, and you and you alone are responsible for the result. It is no excuse for you to assert that you did not anticipate such a result, that you expected higher and better things from your fondling. You had no more right to expect a tribunal so constituted to produce a

had no more right to expect a tribunal so constituted to produce a different result than to expect a thorn-bush to bring forth figs. Nor will so weak an apology save you from the just condemnations which your betrayed and outraged constituency will forever heap upon your treacherous heads. [Laughter and applause.]

No, sirs, the wrong, the great and burning outrage lies at your hands, and your hands alone. Nor will the democratic people be slow in ascertaining the true source of their discomfiture and defeat. It may subserve your purpose for a brief time to attempt to shield yourselves under the cover of hollow denunciations of your tribunal, as the cry of "stop thief" for a moment may delude the officers of the law; but when the mad populace shall have vented their unmerited anger upon this tribunal for a brief hour it will seek the true object of its just indignation, and the blame will at last lie where it properly belongs.

true object of its just indignation, and the blame will at last he where it properly belongs.

The few only who had the moral courage to stand here upon this floor, and, amid the derision and contumely of the democratic majority, dared to warn you of the inevitable results of that day's work have a moral right to complain of the end of this day's labor; but, sirs, while they have deep regrets as to the action of the commission, they have deep and bitter denunciations and condemnations to heap upon the heads of those who, claiming to be leaders of the great democratic party in this trying hour of its existence, have proven themselves either incommetent from ignorance or unworthy for baser reasons. either incompetent from ignorance or unworthy for baser reasons.

[Renewed laughter and applause.]

Here, then, in the name of the democracy of the whole country, I absolve that commission from all charges, save it may be that of an absolve that commission from an energies, save it may be that of an honest mistake; and in the name of the same great power I denounce the majority of this House as being responsible for the wrong, and recreant, ignorantly or corruptly recreant, to the confidence which has been imposed in them, and faithless to the trusts confided in them.

Deen imposed in them, and faithless to the trusts confided in them. [Applause.]

Mr. KASSON. I am advised that the gentleman from Massachusetts [Mr. Thompson] will next speak.

The SPEAKER pro tempore. The Chair intended to recognize the gentleman from Massachusetts [Mr. Thompson] as the next to speak.

Mr. THOMPSON. Mr. Speaker, I oppose the adoption of the finding of the electoral commission in relation to the vote of Florida for the recent that that finding is not in accordance with the first but the finding is not in accordance with the first but the f the reason that that finding is not in accordance with the fact, but declares a falsehood to be the truth. It says that the Hayes electors were duly appointed by the State of Florida when in truth and in fact the Tilden electors were so appointed, the Hayes electors being appointed by the board of State canvassers, and not by the legal voters of the State. The State of Florida and the whole country are pre-pared to prove this fact, have offered to prove it, but the commission

has refused them an opportunity to prove it.

The finding of the commission amounts simply to this: that a majority of the board of State canvassers of Florida have declared the Hayes electors elected. This the people of the United States have known for more than two months and they did not need an electoral commission to inform them of it. The people believe that the declaration made by that board is false and they have relied, as this House

has relied, upon this commission to inquire into the situation and declare, after a full and careful examination, the real fact. The country demands that the truth of the statement of that board shall be inquired into by this commission. This House has inquired into that fact and the evidence taken by it shows beyond all fair controversy that the Tilden electors were elected. The House has copies of the returns from every county in the State, certified by the chairman of that board, clearly showing that result. That evidence the House took for the purpose of setting the question as to which set of electors were elected. It has offered it to the commission, but the commission were elected. It has offered it to the commission, but the commission declares that question of fact to be whelly immaterial. A lie told by the returning board the commission regard as binding as the truth, a fraud committed by that board as having all the elements of an honest act. The position assumed by the commission is: if, through the foulest corruption and the grossest bribery, the State board of canvassers have declared the Hayes electors regularly appointed and elected, although they may not have received a single vote and the Tilden electors may have received every vote in the State, these falsely rilden electors may have received every vote in the State, these falsely declared elected are in law the regularly and duly appointed electors, and no power exists in the State of Florida or in the United States to prevent the votes cast by electors so certified from being

What a spectacle we shall present to the civilized world, confess ing that, under our system of government, which we claim to be a model in excellence, the Government, although it can raise armies and navies to defend itself from foreign invasion and domestic violence, is helpless before internal fraud and corruption; that the known and admitted fraud of two men can usurp the Government, and the people are not only powerless to resist the fraud but are bound when it is initiated to use the Army and Navy and all the resources of the Government to put into execution the fraud and to

accept usurpers as their lawful rulers.

If it were shown that R. B. Hayes bribed the board of canvassers to make the declaration and certificate which they did, a false certificate, there is no power, we are told by the commission, to prevent him from getting those votes, and the two Houses of Congress must count the votes, declare him elected, inaugurate him, and, there be-ing no power to impeach him for an offense committed before his inauguration, we must accept him as a constitutionally elected President and continue him in office as such. A statement of the proposition is all that is needed to show its falsity. But we are asked to sanction such a principle. The certificate of the canvassing board is known to be false. It has been declared by the supreme court of Florida to be false. That court adjudged its certificate to be false, made at the same time upon the same principles, declaring Marcellus L. Stearns duly elected governor of Florida. The court told them their statement was false and demanded of them the truth; they told their statement was false and demanded of them the truth; they told part of the truth, said that their certificate giving a majority of over four hundred votes for Stearns was false, and that, instead of his having four hundred majority, Drew had a majority; and he, Drew, is now governor of Florida by virtue of that majority. That false canvass then made, the commission says, is a correct canvass, although the board has been compelled to admit it to be false and it is in fact

The commission had only to read the record from which the State board of canvassers made their declaration to learn that their declaration was false. But I may be told that the board has exercised quasijudicial powers. My answer is that the record shows they did not reject a single vote, precinct, or county for any lawful cause. Their own record shows that there was nothing to change in any single instance the face of the certificate as made by the county canvassing boards, and that the only duty the State board had to perform was to certify the vote as it appeared upon the face of the returns. The certificate is just as false as if it had said the Hayes electors received 90,000 votes and the Tilden electors 100,000 votes, and we declare the Hayes electors elected. The commission would find just as properly the Hayes electors elected under that certificate as under the one they have. They being declared elected the declaration cannot be controverted however false; this is the finding of the commission. This commission has declared that there is no power through the forms of law, State or national, to resist a fraud and prevent usurpation, and consequently that the only constitutional mode of resisting fraud and usurpation is by revolution. I know the people of this country are not prepared to sanction such a proposition as this, and shall we their representatives sanction it?

It is a plain proposition of law that when an offer is made to prove a fact and the evidence is decided to be immaterial, the fact is admitted to be true in its broadest sense and fullest significance; so this commission have by their action admitted that the most wicked conspiracy did exist alleged to have been entered into by the Hayes electors and M. L. Stearns and other persons, to the objectors unknown, to deprive the people of the State of Florida of the right to appoint electors and deprive the Tilden electors of their right to said office, and to assert and set up fictitious and unreal votes for President and Vice-President, and thereby deceive the proper authorities of this Union; and that a paper purporting to be a certificate signed by M. L. Stearns as governor of said State of the appointment of the Hayes electors was and is in all respects untrue and was corruptly procured. The commission say that these facts are in no wise material to the investigation they are to make. I cannot accede to such a proposition as this, and therefore I am opposed to ratifying the find-

ing of the commission; and I further most earnestly object to the ratification of the finding of that commission for the reason that it

has utterly refused to hear the question submitted to it.

The question submitted to that commission is not which set of electors are indorsed by the board of State canvassers; that as I have before stated, has been known to the whole country for more than two months; but the question submitted is which were, as a matter of fact, elected. This country is not to be ruled by returning boards. It will acknowledge no persons as duly elected but those who have a majority or plurality of the legal votes. The country demands that it be made known who were elected electors for the State of Florida without regard to the false and fraudulent declarations of returning This commission has been charged with the duty of making that fact known. But it has refused to make the examination neces sary to determine the question. How can this House, with any resary to determine the question. How can this House, with any regard for its duty to the country, approve of such a course of proceedings? This House is in duty bound to return to the commission its finding, with an earnest request that the question submitted to the commission be heard, and if it refuses to hear and determine the question submitted to it, it will be the duty of this House to do all in its power to vacate that commission.

This House ought not to submit another question to this commission until after it has heard and determined the Florida case according to the fair intent and meaning of the submission. It most assur-

ing to the fair intent and meaning of the submission. It most assuredly ought not to ratify the action of that commission as reported.

Mr. DUNNELL. Mr. Speaker, the commencement of this session of Congress witnessed a new phase in national legislation. For the first time in the history of the Government, the dominant party in this House proposed something wholly new, something wholly strange. The power behind the throne, which had first manifested itself at Saint Louis, demanded of the majority of this House that an attempt should at once be made to overturn the decision of the people of Florida, Louisiana, and of South Carolina, as made at the election on the 7th of November last. The honorable gentleman from New York, [Mr. HEWITT,] the chairman of the national democratic committee, early on the first day of the session, proposed that a committee from this House should start out toward Florida, another committee to-ward South Carolina, and another committee toward Louisiana, for the purpose of overturning, if possible, the will of the people as ex-pressed in those States in favor of Hayes rather than Tilden as Pres-

These committees were appointed, and I feel compelled here to indulge myself in this statement, that if the other committees acted with an eye as single to the purpose of their creation as did the committee to Florida, then I venture to say that nothing was left unsaid, nothing was left untried, on their part, to prejudice the American people against the expressed will of the States. On the part of the majority of the committee to Florida there was pre-eminently but one majority of the committee to Florida there was pre-eminently but one single object in view, and that was to do anything and everything in the interest of the Tilden electors. We of the minority, in our simplicity supposed that, at the very beginning, there would be placed before us as a committee, the affidavits, the evidence, and the testimony upon which the returning board of Florida had acted; for we were called upon and directed to report to Congress the action of the returning board. How were we to judge of that action, whether it was just or unjust, legal or otherwise, unless we were to have the affidavits and all other evidence upon which that board had acted? But the majority of the committee said no, not an affidavit, not a scrap of paper, not a piece of testimony shall come before this committee that went before the canvassing board of Florida; not a ray of light that struck the canvassing board shall strike this committee; not one particle of evidence that that board had, shall this committee know anything about. And they voted down the resolution that we in our simplicity had presented as lying at the very beginning and threshold of an honest investigation. And, from the beginning to the end, not one particle of evidence that went before the canvassing board did we have. board did we have.

There was left over at Tallahassee from the raid made by democratic There was left over at Tallahassee from the raid made by democratic politicians from the city of New York a certain democratic politician. He was found there as a part of the debris of that grand raid upon the canvassing board, made by the democracy of New York and other portions of the country. This democratic Tilden attorney was caught up and made the secretary of this investigating committee. He had papers; he had affidavits; he had telegrams; but they were only to be read, only to be examined by the democratic portion of this committee; they were never once seen or looked upon by the minority.

Mr. THOMPSON. Will the gentleman—
Mr. DUNNELL. No, sir; I was voted down in Florida by the majority of this committee, and I propose now to have my ten minutes.

Mr. THOMPSON. They took the original certificates from the State of Florida.

Mr. DUNNELL. I do not yield. No one was more surprised than I, to read or hear the report of the majority of that committee. When the grand announcement was made that the State of Florida had as clearly gone for Tilden as Massachusetts had gone for Hayes, then I

returning board, untouched and unaffected by any decision of the supreme court of Florida. The gentleman from Massachusetts says that they counted in Drew for governor. They were authorized to recanvass for governor, but not for electors. But even if they had recanvassed for electors on the same basis that they recanvassed for governor, then the State went for Hayes by a majority of 211. And there it stands, first by the returning board and then by the decision of the supreme court of that State, if that decision had ordered a recanvass of the electoral vote.

A democratic Legislature came into power on the 2d of January. A democratic Legislature came into power on the 2d of January. Does the gentleman from Massachusetts [Mr. Thompson] suppose that any commission made up of intelligent men would let in the action of a democratic Legislature, born out of due time, without any earthly connection with this canvass? It is not a matter of surprise. The gentleman from Ohio [Mr. Hurd] said that it was supposed that this bigh electoral commission would go behind the certificates and down to the polls. Did any man on that side of the House ever claim, when this bill was under consideration, that any such thing would be done? No; no man here can claim that any tribunal that mortals can create, could ever go down to the polls in all the States of the can create, could ever go down to the polls in all the States of the

can create, could ever go down to the polls in all the States of the country.

Mr. Speaker, I wish to make one point here. They talk of gigantic frauds. They talk in their report of "Archer No. 2." They relied for their proof upon one Mr. Fleming; he and he alone was their sheet-anchor. Let me say here that every democratic witness upon the stand, no matter if he had perjured himself like Green R. Moore or Floyd Dukes, was a paragon of virtue; and every republican witness was a liar because he was a republican. How turns out this Mr. Fleming, the only witness upon whom they rest in Archer No. 2, and upon whose testimony they claim 219 fraudulent votes?

[Here the hammer fell.]

Mr. WALKER, of Virginia. Mr. Speaker, I was not aware until this discussion began that I should have the opportunity of addressing the House upon this question. My remarks will therefore be rather desultory.

rather desultory.

I desire to say at the outset that I was one of those democrats who supported this electoral bill in good faith; and I say to my friend from Indiana [Mr. CARR] that it will take more than him or the few who voted with him against this measure to read the majority of this House out of the democratic party. We voted for that measure; and it was to my mind one of the grandest and loftiest evidences of democratic faith in the honesty of mankind. And if it so be that this commission has not risen to the full height of the great occasion, if so be that this commission has not decided in accordance with what so be that this commission has not decided in accordance with what we believe to be law and precedent and right, we have the satisfaction of knowing that we at least have done our duty and made the grandest effort possible for us to make to settle this great question according to law and according to right.

Sir, I am also one of those who do not agree with the decision of this commission. I am rejoiced that these objections were presented here, because I want the Democratic party in this House by their votes to enter their solemn protest against this consummation of outrageous wrong under mere legal fictions.

We are establishing precedents here. This electoral bill is a great precedent for our successors to follow; and that very bill provides that each House, after the report of the commission shall have been made, shall decide whether they will abide by it or not. I would not

that each House, after the report of the commission shall have been made, shall decide whether they will abide by it or not. I would not have supported this bill, I would not have voted for it, if it had removed entirely from the control of Congress this question. We called in these gentlemen as an advisory board. They have advised us of their conclusions; and I say to you gentlemen here to-day, I believe their conclusions are wrong, and I believe the great body of the people will so decide and so hold for all time to come.

What, sir! Are the people of a great State to be disfranchised, their voices hushed into silence by the mere fraud and theft of a few men who happen to be called a returning loant? Yet the decision of

men who happen to be called a returning board? Yet the decision of this commission precludes utterly in this case, and if it is to stand as law prohibits forever any inquiry beyond the simple certificate of

law prohibits forever any inquiry beyond the simple certificate of the governor of a State.

Mr. Speaker, I hope that this House will by its vote to-day show to the country that it does not agree with that principle. I hope it will show that it stands ready to-day to face the real facts in every case as they may arise. This evidence is shut out. Gentlemen say that we have been crying fraud and that they have been ready to meet us upon that cry. How have you met us? By skulking behind the merest legal fictions. If you believe that Hayes carried the State of Florida or the State of Louisiana, why do you not like men, come up and say, "Let us investigate these facts and determine whom the people of these States honestly desired to elect?"

Mr. Speaker, I rose simply to express my hope that the House would to-day sustain these objections. If they are sustained also by the Senate, then of course the vote falls. But if the Senate sustains the decision of the commission, then of course the vote will have to be counted, and the wrong will receive the sanction which will damn the party profiting by it.

I yield the remainder of my time to my friend from North Carolina, [Mr. ROBBINS.]

Mr. ROBBINS.]

Mr. ROBBINS.]

Mr. ROBBINS, of North Carolina. Mr. Speaker, I shall vote against concurring in this decision of the commission because it was not reached and rendered on that lofty plane of equity and candor upon which the country expected the tribunal to act when it was created.

When this great plan for settling the pending dispute as to the Presidency was devised and adopted, this House and the country and the world expected that the question would be considered and decided upon the broadest principles of truth and right, and not upon legal quibbles. I am proud of the position of my party in this crisis. We go before the electoral commission and say, "If we have the Presidency upon the merits of the case, give it to us, but not otherwise." The other party go there and say in substance through their counsel, "No matter how fraudulent, no matter how false, if there is any legal technicality upon which you can give us the Presidency, then we want the Presidency adjudged to us without inquiring as to what was the true voice of the people." The world will take notice of the difference in the moral attitude of these two parties in this great controversy. One asks that it be decided upon the very right and truth of the matter; the other says, "Give us success by any dodge truth of the matter; the other says, "Give us success by any dodge

retth of the matter; the other says, "crive us success by any dodge necessary to win."

A great man once said that he would rather be right than be President. I would rather see my party do right than win the Presidency. If the victory should finally be awarded to our adversaries by the system of special pleading together with the refusal to look at the bottom facts, which has led to this decision in the Florida case, I say "Take the Presidency and welcome. We scorn to have it on such terms." The man who shall consent to receive that exalted office under such a decision and the members of the commission who shall give that a decision and the members of the commission who shall give that decision upon such principles will write themselves down in history so deeply disgraced that the hand of resurrection can never reach them to restore them again to the respect of mankind. And the party which accepts victory by such means will find its cup of fancied triumph contains only the bitternesss and poison of ultimate ruin and

eternal dishonor.

Sir, this crisis will always be distinguished by some extraordinary features. The first is the unparalleled villainy of the conspiracy that brought the country into this difficulty; the next is the sublime spirit of moderation, conservatism, and magnanimity by which a peaceable way was devised to get the country out of the difficulty; and I did trust that this spirit would be responded to and further and I did trust that this spirit would be responded to and further illustrated by the commission itself showing that it could meet this issue on the high patriotic basis of equity and impartiality. I trust that they will yet do it. I have not yet lost hope in the success which our good cause deserves; nor have I yet withdrawn all faith in the commissioners. Under the great responsibility which rests upon them and with the eyes of the world and of posterity looking at them, I shall not believe until it is done that they will finally decide this great upon the paragraph and the believe until it. decide this case upon the narrow and technical grounds upon which

they seem as yet to be standing.

I hope the voice of this House to-day, emphatically pronouncing its non-concurrence in their judgment on the Florida case, may be heard and received by them as an earnest call to the commission for the sake of liberty and country to rise to the grandeur of the occasion and decide the Presidency so that the conscience of the country and mankind will be satisfied with the decision. To do this they must look at everything which history will look at in making up its final verdict on this case and on the actors in this great crisis. Let them inquire into the facts. Let them search for truth as for hid treasure. Let them expose fraud, and annul every result founded on fraud. Thus only can they satisfy public opinion, preserve the good name of our institutions, and give genuine contentment to the

Mr. HOPKINS. I believe there is one minute left of the time of the gentleman from Virginia, and he yields that one minute of his time to me so I may have a paper read to show how much truth and justice there is in the complaint of the gentleman from Minnesota that he was precluded from getting at the truth.

Mr. PAGE. I object to the reading of any paper. The law does not contemplate any remarks not delivered printed in the RECORD.

Mr. HOPKINS. I will read it myself if the gentleman insists on objecting.

The SPEAKER pro tempore, (Mr. Cochrane in the chair.) The Chair overrules the point of order.

The Clerk proceeded to read—

Mr. PAGE, (interrupting.) I insist on my point of order.

Mr. BANKS. Is it the right of any member to have a paper read?

If it is read as part of his speech then I do not object.

The SPEAKER pro tempore. The gentleman asked the paper be read as part of his remarks, and it is now being so read by the Clerk. The Clerk will proceed. The Clerk will proceed.

Mr. BANKS. If it is his speech I do not object.

The Clerk read as follows:

Record of witnesses summoned before congressional committee. House of Representatives, in Florida.

Number of witnesses summoned by minority.  Number of witnesses summoned by the majority	447 327
	774
The minority summoning 120 more witnesses than majority.	
Number of witnesses sworn—minority. Number of witnesses sworn—majority.	209 183
Total	392

	Number of witnesses appearing—minority	
	Total	
1	Forty-four more witnesses summoned appearing for the minority.  Number of witnesses not found—minority  Number of witnesses failing to appear—minority  Number of witnesses failing to appear—minority  Number of witnesses failing to appear—minority	43 19 81 21
	WILLIAM DICKSON, Deputy Sergeant-at-Arms	

[Here the hammer fell.]
Mr. KASSON. Mr. Speaker, in the largeness of debate which we are accustomed to allow in this House I think on the part of both sides on this occasion the debate has wandered somewhat, I may say rather widely, from the precise point involved in the questions submitted to the House.

Under the act of Congress this commission has made its report. Objections have been filed to that report, and on those objections this House is required to act. There is no evidence before the House upon which it has jurisdiction to act in the case of Florida. The question presented is purely a question of law so far as it invites our judgment and that question is, has this commission in making the order, based upon the reasons reported, gone contrary to the Constitution and laws of the land? If so, they ought to be overruled; if not, of course this

Now, sir, in that condition of the question it is said that an offer was made to prove certain allegations of fraud or error in the proceedings of the popular election. Grant the offer was made, and the question, of course, is then raised of the admissibility of the evidence under the Constitution and laws. But upon that slight hinge gentlemen come before the House and ask us to proceed at once to discontinuous and the companies of the state of of t cuss the true canvass of Florida. If the commission is right, this House has no jurisdictiction to recanvass the popular votes of Florida. If the commission was wrong, then gentlemen may possibly argue that the House has the right to discuss the original election, although I should still deny that the true canvass would change the result in the case of electors or that they could judicially determine the rights of electors

Sir, I say to the gentlemen who declare we are relying on legal fictions to elect a President of the United States that this whole Constitution is a legal fiction if the position taken by the majority of this commission is incorrect. Unless gentlemen can point me to some clause or phrase in that Constitution that gives us power to revise the action of State governments in the canvass of their votes for electors, then I affirm that the attempt to do it is necessarily a usur-

pation of authority by the House.

Now, sir, upon this unconstitutional assumption of right they come before us with unproved charges of fraud which they claim vitiates before us with unproved charges of fraud which they claim vitiates the election. My honorable friend from Ohio, [Mr. HURD,] to whom we always listen with so much interest, declared that fraud vitiates everything. I must take direct and pointed issue with him on that declaration, even where fraud does exist. If a bill, for example, passes this House by a majority of one vote, and upon trial afterward by the House the man who casts it is unseated because he is shown to have been elected by bribery or fraud, your law still stands; your law cannot be impeached; the courts of the country have decided it over and over again.

your law cannot be impeached; the courts of the country have decided it over and over again.

So you turn, repeatedly, members from their seats on this floor who have voted on all the questions that come before this House; and, whatever the ground of unseating the members, every act that they have done stands valid in the eye of the law. So of many other public officers. It is, therefore, Mr. Speaker, incorrect and against the law to say that fraud vitiates everything. It does not have the effect of vitiating a public and completed act like that in question. So much

vitiating a public and completed.

for that allegation.

But they say: "If we had been allowed to prove certain things, we would have shown, in Florida, that the returning board acted corruptly and carried out a conspiracy." I regret even to turn in this debate to these conflicting statements of fact. Mr. Speaker, it is immitted that we can agree on the disputed facts. When your without the confliction of the debate to these conflicting statements of fact. Mr. Speaker, it is impossible that we can agree on the disputed facts. When your witnesses are nearly half and half swearing to different statements, when your judges decide differently, what is the use of coming before this House and making these charges and counter-charges? What would be the use on this question of my reminding the gentlemen who make these charges that the evidence of corruption is on the other side; that money has been passed from New York to Oregon; that offers of money were made in Florida, as sworn to by some witnesses, and that offers of money were also made in New Orleans, as sworn to by other witnesses, to corrupt republican electors or republican officers? I have kept all that out of the debate before the commission, and I have no desire to throw it in here beyond the simple point that in have no desire to throw it in here beyond the simple point that in that way I desire gentlemen to recognize the utter futility of assuming for granted the charges of fraud that are made and hurled from one side of the House to the other, and of which we have no judicial proof, and about most of which the evidence is absolutely conflict-

ing.

There is one point, however, upon which the evidence is not conflicting. It is this: The supreme court upon application being made ordered a recanvass by this same returning board upon a different

rule of law from that first adopted. In that recanvass which the court made applicable to the votes for Drew, the same principles were applied to the election of the electors and the return made by the board to the supreme court, contained the result as applied to the presidential electors and to the State officers alike. This recanvass on rules settled by the supreme court elected by about two hundred majority the Hayes electors, as it also elected Drew on the democratic State ticket. They moved to strike out the electoral recanvass from the return as not within the order of the court. It was so done. But the fact remains that the very principles applied to the recanvass which elected Drew and the democratic ticket also elected the republican presidential ticket.

Now, then, I beg with these statements to call again the attention of the House to the simple question whether this commission, embracing the majority of the judicial element upon it, have decided against the Constitution and the law, when they declined to go back of the election record made by the State. We affirm they have decided in strict accordance with the Constitution and the law: first, because in the Constitution you have not a single clause giving power to the National Congress to touch the action of the State authority behind National Congress to touch the action of the State authority behind the organization of the electoral board; secondly, because by this same Constitution, under its executive clauses, you find no grant of power to examine into those facts; thirdly, because under its legislative clauses you find no possible power to go behind and examine into the action of the State authorities prior to the time the electoral college is constituted; and, lastly, because the trial of right to an office is a judicial act, and the Constitution by its third article positively affirms the whole judicial power of the United States to be vested in the Supreme Court and inferior courts to be organized by Congress. Nobody pretends that we have organized this commission as an inferior court under the Constitution. Consequently there is no judicial power in Congress or in this commission. As a result of no judicial power in Congress or in this commission. As a result of that, it is evident that they cannot try a judicial question. It is a hybrid organization made up from the judicial and legislative branches of the Government to do an executive act; and from neither of those branches can Congress derive judicial power which it either can use or delegate in this case; and it is impossible, without a usurpation, that this commission or the House itself should attempt to try a question of title to the electoral office, because the trial is judicial in its nature and requires the consideration of unofficial evidence not provided for by Constitution or statute.

Here the hammer fell. 7

Mr. FIELD. Mr. Speaker, scarcely had the election taken place in November when the President invited representatives of the republi-can party to visit the disputed States of the South for the purpose of witnessing the canvass of the votes, declaring as he did it that no President could afford to be elected by fraud. When Congress met in December, acting in the same spirit, it sent committees of investigation into the same States to ascertain the truth. The States have been ransacked, hosts of witnesses have been examined, and piles of evidence have been laid upon our tables. Now, of a sudden, it is discovered that the invitation of the President was an act of superfluous folly, and that his messengers and the committees of the two Houses went on a fool's errand.

went on a loors errand.

This discovery is made by republicans. There is not a democrat in either House of Congress who does not disown and reject it. It is now to be seen whether the republicans disown or accept it. We shall soon know whether the republican party has so far forgotten the brave words and heroic deeds of its earlier days as to cry, "Evil, be thou my good," and seek to install a falsehood in the Chief Magistracy of the land.

The electoral commission which you have constituted to solve the doubts and relieve the consciences of the people has gravely resolved, first, that no evidence can be received beyond the certificates and papers submitted to the two Houses by the President of the Senate.

And, second, that of these certificates and papers none can be con-

And, second, that of these certificates and papers none can be considered which bears record of any act done after the casting of the votes by the electors. This decision means nothing less than that the certificate of the governor of the State, in accordance with the determination of the State canvassers, is conclusive, unless before the electoral vote is cast the State rectifies the certificate. The qualification, I was about to say, is a mockery. We know that there is scarcely a State in the Union where the canvass is completed until within a few days of the meeting of the electors. We know moreover that in the State of Florida the canvassers completed their canvass at three o'clock in the morning, and that the electors voted at twelve o'clock of the same day. Upon the theory of the commission, unless the State of Florida, within those nine hours, acting through its various departments, aroused itself and rejected the determination of the canvassing ments, aroused itself and rejected the determination of the canvassing board, there is no power to do it in the State or in Congress. The doctrine of the commission, if I interpret it aright, amounts to this: that if the general commanding in Florida had upon the morning of the 6th of December marched a corporal's guard into the State-house, told off four of his soldiers, and forced the State canvassers to certify to their election and the governor to superadd his certificate, there would then have been no power in the land to prevent the votes of these soldiers from being counted as the electoral vote of Florida. We are here called upon to say whether in the solemn judgment of this House this is the law of the land. Let me show you some of its consequences. We offered to prove

fraud; we were denied the right to do so. We offered to show that the pretended appointment of the Hayes electors was corruptly made. This was refused. But the truth cannot all be concealed. One of the persons certified by the commission to be a lawful elector of the State of Florida is Charles H. Pearce. There is a record of him from the reports of the supreme court of the State which shows him from the reports of the supreme court of the State which shows him to be a convicted felon. In the fourteenth volume of these reports I find the case of The State of Florida against Pearce. The indictment set forth "that Charles H. Pearce, colored, a minister of the gospel and a senator representing the eighth district in the senate of the State of Florida," on the 4th of February, 1870, during the pendency before the house of assembly of a resolution to impeach the governor of high crimes and misdemeanors with the intent of feloniously influencing the vote of a member, offered and promised him \$500. He was convicted by a jury, and upon his appeal to the supreme court of the State the judgment and sentence were affirmed. That man, a pardoned convict, gave the one vote which will elect Mr. Hayes, if elected at all, to the presidential office.

Mr. Speaker, the decision of this commission, as I view it, is entitled to no respect. It is as unsound in morals as it is unfounded in

Mr. Speaker, the decision of this commission, as I view it, is entitled to no respect. It is as unsound in morals as it is unfounded in law, and mischievous in its consequences. The spectacle of successful villainy is corrupting in proportion to the extent of the theater on which it is displayed and the prizes which it wins. The prize of the Presidency has never yet been won by fraud. If it is thus won now, the spectacle will be more injurious to our good name and more corrupting to our people than all the peculation, robbery, and frauds of all our history. [Applause.]

The SPEAKER. The question now is first upon the amendment offered by the gentleman from Maine [Mr. Hale] to the resolution of the gentleman from New York, [Mr. Field.] The resolution of the gentleman from New York will first be read, and then the amendment of the gentleman from Maine.

of the gentleman from Maine.

The Clerk read Mr. FIELD's resolution, as follows:

Ordered. That the counting of the electoral vote from the State of Florida shall not proceed in conformity with the decision of the electoral commission, but that the votes of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock be counted as the votes from the State of Florida for President and Vice-President of the United States.

Mr. Hale's amendment was then read, as follows:

Strike out the word "not," and also strike out all after the word "commission," to the end; so that it will read:

Ordered, That the counting of the electoral vote from the State of Florida shall proceed in conformity with the decision of the electoral commission.

Mr. HOSKINS and Mr. BANKS called for the yeas and nays upon agreeing to the amendment.

The yeas and nays were ordered.

The question was taken; and there were—yeas 103, nays 167, not voting 20; as follows:

The question was taken; and there were—yeas 103, nays 167, not voting 20; as follows:

YEAS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Hays, Hendee, Henderson, Hoar, Hoskins, Hubbell, Hunter, Hurbut, Hyman, Joyee, Kasson, Kelley, Kimball, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, Robinson, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Stowell, Strait, Thornburgh, Washington Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whitehouse, Whiting, Willard, Andrew Williams, Charles G. Williams, Williams, B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—103.

NAYS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clarke, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, G

So the amendment was not agreed to.
During the roll-call the following announcements were made:
Mr. WILLIAMS, of Michigan. My colleague, Mr. Durand, is absent on account of sickness. If present he would vote "no."
Mr. LORD. I desire to say that upon this question I am paired with my colleague, Mr. LAPHAM. If he were present he would vote "ay" and I should vote "no."
Mr. CLYMER. I desire to say that my colleague, Mr. STANTON, is detained from the House by reason of sickness. Were he present he would vote "no."

would vote "no.

Mr. WALKER, of New York. I desire to state that my colleague, Mr. TOWNEND, is absent and that I am paired with him. If he were present he should vote "ay" and I should vote "no."

Mr. RAINEY. My colleague, Mr. Hoge, is absent on account of a death in his family. If present he would vote "ay."

Mr. WILLIAMS, of Alabama. I ask unanimous consent to have printed in the Record as a portion of the debates of this House

ome remarks which I have prepared upon this subject.

Mr. SAMPSON. I object.

Mr. GARFIELD. I hope objection will not be made.

Mr. FRYE. It is against the spirit of the law entirely to print as

debates what was not said.

The question recurred upon the order submitted by Mr. Field, upon which the yeas and nays were ordered.

The question was taken; and there were—yeas 168, noes 103, not

voting 19; as follows:

The question was taken; and there were—yeas 168, noes 103, not voting 19; as follows:

YEAS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, Jr., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Barchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Ezbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Ganse, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Meade, Metcalfe, Millse, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Schleicher, Sheakley, Singleton, Stemons, William E. Smith, Southard, Sparks, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Wance, Robert B. Vance, Waddell, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Watren, Watterson, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, Jere N. Williams, Willia, Wilshire, Benjamin Wilson, Fornando Wood, Yeates, and Young—168.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon, Casson, Caswell, Chitenden, Conger, Crape, Cronse, Danf

So the order was adopted.

During the call of the roll the following announcements were

Mr. LORD. I desire to state that I am paired with my colleague, Mr. Lapham, who is absent; if present he would vote "no," and I would vote "ay."

would vote "ay."

Mr. CLYMER. My colleague, Mr. Stanton, is absent on account of sickness; if here he would vote "ay."

Mr. WALKER, of New York. I am paired with my colleague from New York, Mr. Townsend; if present he would vote "no," and I would vote "ay."

Mr. DUNNELL. My colleague, Mr. King, is absent on account of

Mr. FINLEY. As one of the Representatives from the State of Florida, I ask unanimous consent to have printed in the RECORD as a portion of the debates of this House some remarks which I would

have made if opportunity had been accorded me.

Mr. BANKS. I desire to say that if the gentleman from Florida [Mr. Finley] asks permission to print remarks upon the method of conducting the electoral count, not upon proceedings under the law, there would be no objection. But there is objection to printing in the RECORD remarks not made in the House upon the question now be-RECORD remarks not made in the House upon the question now before the House, because the law restricts the debate to two hours and each speech to ten minutes. If any one is allowed to print in the RECORD remarks not made here, that would be a violation of the law. But the gentleman can have printed remarks upon the subject of the election in Florida.

Mr. PAGE. I object.

Mr. KELLEY. I understand that the gentleman has that right under the laws.

der the leave already given.

Mr. FIELD submitted the following; which was read, considered,

and adopted:

Ordered, That the Clerk inform the Senate of the action of this House, and that the House is now ready to meet the Senate in this Hall.

The SPEAKER. The Chair desires to suggest that the four front rows of seats on the right of the Chair be reserved for the use of the

Mr. HOLMAN. I ask unanimous consent that business may be suspended for five or ten minutes, for the purpose of enabling the officers of the House to prepare the seats for the Senators. There was no objection.

At two o'clock and twenty minutes p. m. the House was called to order by the Speaker, and at two o'clock and twenty-five minutes p. m. the Doorkeeper announced the Senate of the United States.

m. the Doorkeeper announced the Senate of the United States.

The Senate entered the Hall, preceded by its Sergeant-at-Arms and headed by its President pro tempore and its Secretary, the members and officers of the House rising to receive them; and the Senators, tellers, Secretary of the Senate, Clerk of the House of Representatives, and officers of the two Houses took the seats provided for them.

The PRESIDING OFFICER. The joint meeting of Congress resumes its session. The two Houses separately have considered and determined the objection submitted by the member from the State of New York [Mr. FIELD] to the decision of the commission upon the certificates from the State of Florida. The Secretary of the Senate will now read the decision of the Senate.

The Secretary of the Senate read the following:

The Secretary of the Senate read the following:

Resolved. That the decision of the commission upon the electoral vote of the State of Florida stand as the judgment of the Senate, the objection made thereto to the contrary notwithstanding.

The PRESIDING OFFICER. The Clerk of the House will now read the decision of the House.

The Clerk [Mr. Pettit] read as follows:

Ordered. That the counting of the electoral votes from the State of Florida shall now proceed in conformity with the decision of the electoral commission; but that the votes of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullek be counted as the votes from the State of Florida for President and Vice-President of the United States.

The PRESIDING OFFICER. The two Houses not concurring in ordering otherwise, the decision of the commission will stand unreversed, and the counting will now proceed in conformity with the decision of the commission. The tellers will announce the vote of the State of Florida.

the State of Florida.

Mr. ALLISON, (one of the tellers.) The State of Florida gives four votes for Rutherford B. Hayes, of Ohio, for President, and four votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The Chair having opened the certificate of the State of Georgia, the tellers will read the same in the presence and hearing of the two Houses. A corresponding certificate received by mail is also handed to the tellers.

Mr. COOK (one of the tellers) read in full the certificate of the electoral vote of the State of Georgia.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Georgia? [A payed.] There being none, the vote of

of the State of Georgia? [A pause.] There being none, the vote of that State will be counted. The tellers will announce the vote.

Mr. STONE, (one of the tellers.) The State of Georgia casts 11 votes for Samuel J. Tilden, of New York, for President of the United States,

and 11 votes for Thomas A. Hendricks, of the State of Indiana, for

and II votes for Thomas A. Hendricks, of the State of Indiana, for Vice-President.

The PRESIDING OFFICER. The Chair having opened the certificate from the State of Illinois, one of the tellers will read the same in the presence and hearing of the two Houses. A corresponding certificate received by mail is also handed to the tellers. Senator ALLISON (one of the tellers) read the certificate of the electoral vote of the State of Illinois.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Illinois? If none, the vote will be counted. The tellers will announce the vote of that State.

Senator ALLISON, (one of the tellers.) In the State of Illinois 21 votes were cast for Rutherford B. Hayes, of Ohio, for President, and 21 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The certificate of the State of Indiana having been opened, one of the tellers will read the same in the presence and hearing of the two Houses. The Chair hands to the tellers the corresponding certificate received by mail.

Mr. STONE (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Indiana? There being none, the vote of that State will be counted. The tellers will announce the vote of Indiana.

State will be counted. The tellers will announce the vote of Indiana.

Mr. STONE, (one of the tellers.) The State of Indiana casts 15 votes for Samuel J. Tilden, of the State of New York, for President of the United States, and 15 votes for Thomas A. Hendricks, of Indiana, for Vice-President of the United States.

The PRESIDING OFFICER. Having opened the certificate from the State of Iowa, the Chair directs the reading of the same by the tellers in the hearing and presence of the two Houses. A corresponding certificate, received by mail, is also submitted to the tellers. Senator ALLISON (one of the tellers) read the certificate of the State of Iowa? If there be none, the vote of that State will be counted. The teller will announce the vote of Iowa. Senator ALLISON, (one of the tellers.) The State of Iowa casts 11 votes for Rutherford B. Hayes, of Ohio, for President, and 11 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The certificate from the State of Kansas having been opened it will now be read by one of the tellers. A corresponding one received by mail is also submitted.

Senator INGALLS (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate from the State of Kansas? If there be none, the vote of that State will be counted. The teller will announce the vote.

Senator INGALLS, (one of the tellers.) The State of Kansas casts 5 votes for Rutherford B. Hayes, of Ohio, for President of the United States, and 5 votes for William A. Wheeler, of New York, for Vice-

President.

The PRESIDING OFFICER. Having opened the certificate from the State of Kentucky, received by messenger, the Chair hands the same to the tellers to be read in the presence and hearing of the two Houses. A corresponding certificate, received by mail, is also delivered to the tellers.

Mr. COOK (one of the tellers) read the certificate.

Mr. COOK (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate from the State of Kentucky? If there be none, the vote of that State will be counted. It will be announced by the teller.

Mr. COOK, (one of the tellers.) The State of Kentucky casts 12 votes for Samuel J. Tilden, of New York, for President, and 12 votes for Thomas A. Hendricks, of Indiana, for Vice-President.

The PRESIDING OFFICER. The Chair opens a certificate from the State of Louisiana received by mail, no corresponding one by messenger. One of the tellers will read the same in the hearing and

the State of Louisiana received by mail, no corresponding one by messenger. One of the tellers will read the same in the hearing and presence of the two Houses.

Senator ALLISON (one of the tellers) read a certificate of William P. Kellogg, as governor of the State of Louisiana, to the election of certain electors, and the certificate of those electors that they had met and cast 8 votes for Rutherford B. Hayes, of Ohio, for President of the United States, and 8 votes for William A. Wheeler, of New York, for Vice-President.

York, for Vice-President.

The PRESIDING OFFICER. Having opened a certificate received by messenger from the same State the Chair hands it to the tellers, to be read in the presence and hearing of the two Houses. A corresponding one received by mail is also handed to the tellers.

Mr. STONE (one of the tellers) read a certificate, signed by John McEnery, as governor of the State of Louisiana, to the election of certain electors and the certificate of those electors that they had met

McEnery, as governor of the State of Louisiana, to the election of certain electors, and the certificate of those electors that they had met and cast 8 votes for Samuel J. Tilden, of New York, for President, and 8 votes for Thomas A. Hendricks, of Indiana, for Vice-President.

The PRESIDING OFFICER. The Chair having opened another certificate from the State of Louisiana, received by messenger, one of the tellers will read the same in the presence and hearing of the two Houses. A corresponding certificate received by mail is also handed to the tallers.

Senator INGALLS (one of the tellers) read a certificate of William P. Kellogg, as governor of the State of Louisiana, to the election of certain electors, and an accompanying certificate of the electors that they had met and cast 8 votes for Rutherford B. Hayes, of Ohio, for President, and 8 votes for William A. Wheeler, of New York, for Vice-President

The PRESIDING OFFICER. The Chair having opened another certificate received by mail from the State of Louisiana—no corre-

sponding one by messenger—it will be read in the presence and hearing of the two Houses.

Mr. STONE (one of the tellers) proceeded to read a paper signed "John Smith, bull-dozed governor of Louisiana," purporting to give "the proceedings of the college of electors" at New Orleans, December 6, 1876.

Senator SARGENT, (when the certificate had been thus far read.) It is obvious that this certificate is not bona fide. I doubt whether

anybody desires its reading.

The PRESIDING OFFICER. It is the duty of the Chair to submit all papers coming into his hands and purporting to be certificates. He has opened and presented this in compliance with his duty. Is

there objection to this paper being suppressed?

Senator BLAINE. Read it.

Mr. STONE (one of the tellers) resumed the reading of the paper, but was interrupted by

Senator McDONALD, who said: Do I understand that this was

received by messenger? The PRESIDING OFFICER. The Chair on opening it stated that it was received by mail, without a corresponding one by mes-

senger.

Mr. McDONALD. It seems to me very clear that this is not a certificate of any votes cast, and that we are not compelled to listen to it.

The PRESIDING OFFICER. The teller will read the indorsement upon the envelope, which designates it as containing an electoral vote and so explicitly that the Chair had no discretion in respect of laying the paper before the two Houses.

Mr. STONE (one of the tellers) read as follows:

To the Vice-President of the United States, Washington, D. O:

Vote of electoral college of the State of Louisiana for President and Vice-Presi-

The PRESIDING OFFICER. The teller will proceed with the

reading. The reading was resumed, but was interrupted by Mr. HOAR, who said: I desire to inquire if the Chair has held that

it is not in order by unanimous consent to dispense with the reading of this paper.

The PRESIDING OFFICER. The Chair asked unanimous consent

the Chair to direct that the reading proceed.

Mr. HOAR. I hope unanimous consent will be given to dispensing with the reading, unless some gentleman rises in his place to object.

The PRESIDING OFFICER, Is there objection?
Mr. MILLS. This is a burlesque and I object.
The PRESIDING OFFICER. Objection being made, the reading will proceed.

The reading of the paper was then concluded.

The PRESIDING OFFICER. This closes the reading of the certificates from the State of Louisiana. Are there objections to the cer-

inicates from the State of Louisiana. Are there objections to the certificates which have been read?

Senator McDONALD. On behalf of the Senators and Representatives whose names are subscribed hereto, I submit the following objections to the counting of the electoral vote of the State of Louisiana as cast for Hayes and Wheeler.

The PRESIDING OFFICER. The objections to counting the vote will be read by the Secretary of the Senate.

will be read by the Secretary of the Senate.

Mr. Gorham, Secretary of the Senate, read as follows:

The undersigned Senators and members of the House of Representatives of the United States object to the lists of names of the electors made and certified by William P. Kellogg, claiming to be but who was not the lawful governor of the State of Louisiana, and to the electoral votes of said State signed by W. P. Kellogg, J. H. Burch, Peter Joseph, L. A. Sheldon, Morris Marks, A. B. Levissee, O. H. Brewster, Oscar Joffrion, being the two several certificates the first and third presented by the President of the Senate to the two Houses of Congress in joint convention, for the reasons following:

Because on the 7th day of November, 1876, there was no law, joint resolution, or other act of the Legislature of the State of Louisiana in force directing the manner in which electors for said State should be appointed.

Because if any law existed in the State of Louisiana on the 7th day of November, 1876, directing the manner of the appointment of electors it was an act of the Legislature which directed that electors should be appointed by the people of the State in their primary capacity at an election to be held on a day certain, at particular places, and in a certain way; and the people of the State in accordance with the legislative direction exercised the powers vested in them at an election held in said State November 7, 1876, in pursuance of said act and of the laws of the United States, and appointed John McEnery, R. C. Wickliffe, L. St. Martin, F. P. Poché, A. De Blanc, W. A. Seay, R. G. Cobb, and K. A. Cross to be electors by a majority for each of six thousand and upwards of all the votes cast by qualified voters for electors at said election, and said electors received a certificate of their due appointment as such electors from John McEnery, who was then the rightful and lawful governor of said State, under the seal thereof, and thereupon the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross became and were vested with the exclusive authority of electors for the State of Louisiana, and no other person or persons had or could have such authority or power, nor was it within the legal power of any State or Federal officer or any other person to revoke the power bestowed on the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross, or to appoint other electors in their stead, or to impair their title to the office to which the people had appointed them.

Because the said Kellogg, Burch, Joseph, Sheldon, Marks, Levissee, Brewster, and Joffrion were not, nor was either of them, duly appointed an elector by the State of Louisiana, in the manner directed by the constitution and laws of said State and of the United States, and the lists of names of electors made and certified by the said William P. Kellogg, claiming to be, but not being, governor of said State, were false in fact and fraudulently made and certified by said Kellogg, with full knowledge at the time that the said Kellogg, Burch, Joseph, Sheldon, Marks, Levissee, Brewster, and Joffrion were not duly appointed electors by the qualified voters of said State, and without any examination of the returns of the votes cast for electors, as required by the laws of the State.

Because the pretended canvass of the returns of said election for electors of President and Vice-President by J. Madison Wells, T. C. Anderson, G. Casanave, and Louis Kenner, as returning officers of said election, was without jurisdiction and void, for these reasons:

First. The statutes of Louisiana, under which said persons claimed to have been appointed returning officers and to have derived their authority, gave them no jurisdiction to make the returns or to canvass or compile the statements of votes cast for electors of President and Vice-President.

Secondly. Said statutes, if construed as conferring such jurisdiction, give the returning officers power to appoint the electors, and are void as in conflict with the Constitution, which requires that electors shall be appointed by the State.

Thirdly, Said statutes, in so far as they attempt to confer judicial power and to give to the returning officers authority in their discretion to exclude the statements of votes and to punish innocent persons without trial by depriving them of their legal right of suffrage, are in conflict with the constitution of the State of Louisiana, and are anti-republican and in conflict with the Constitution of the United States, in so far as they refer it to the discretion of the returning officers to determine who are appointed electors.

Fourthly, If said Louisiana statutes should be held valid, they conferred no jurisdiction on said Wells, Anderson, Casanave, and Kenner, as a board of returning officers, to make the returns of said election or to canvass and compile the statements of votes made by the commissioners of said election, for the reason that they constituted but four of the five persons to whom the law conflict hose duties; that they were all of the same political party; and that there was a vacancy in said board of returning officers which the said Wells, Anderson, Casanave, and Kenner failed and refused to fill as required by law.

Fifthly. Said board of returning officers had no jurisdiction to exercise judicial

the returns.

Sixthly. Said returning officers, with a full knowledge that a true and correct compilation of the official statements of votes legally cast November 7, 1876, for presidential electors in the State of Louisiana, showed the following result, to wit:

	Votes.
John McEnery	83, 723
R. C. Wickliffe	83, 859
L. St. Martin.	83, 650
F. P. Poché	
A. De Blanc	83, 633

W. A. Seav.	83, 812
R. G. Cobb	83, 530
K. A. Cross	83, 603
W. P. Kellogg	77, 174
J. H. Burch	77, 162
Peter Joseph	
L. A. Sheldon.	74, 902
Morris Marks	75, 240
A. B. Levissé	75, 395
O. H. Brewster	75, 479
Oscar Joffrion	75, 618

And that said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross were duly and lawfully elected electors, illegally and fraudulently changed, altered, and rejected the statements of votes made by the commissioners of election and the returns of supervisors of registration, and declared the following to be the state of the poll, to wit:

John McEnery	8
R. C. Wickliffe 70, 50	9
L. St. Martin. 70. 55.	3
F. Poché	
A. De Blanc	
W. A. Seay	
R. G. Cobb. 70, 49	
K. A. Cross	
W. P. Kellogg	
J. H. Burch 75, 12	
Peter Joseph. 74,01	
L. A. Sheldon. 74,02	
0. H. Brewster	
Oscar Joffrion	6

The said returning officers thereupon falsely and fraudulently certified that said Kellogg, Burch, Joseph, Sheldon, Marsh, Levissé, Brewster, and Joffrion were duly elected electors; when the fact was that, omitting the statements of votes illegally withheld by supervisors, those before the returning officers which it was their duty to, but which they did not, canvass and compile showed majorities for McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross, ranging from 3.459 to 6,405.

5. That said returning officers before making any declaration of the vote for electors offered for a money consideration to certify and declare the due election of the persons who, according to the face of the returns, received a majority of the votes and were duly and properly elected. Failing to find a purchaser, they falsely, corruptly, and fraudulently certified and declared the minority candidates elected, after having first applied for a reward for so doing. Wherefore the undersigned object to the certificate or declaration of the election of electors made by said board of returning officers as utterly void by reason of the fraud and corruption of said board of returning officers in thus corruptly offering said certificates for sale.

The undersigned especially object to counting the vote cast by the said A. B. Levissé for the reason that the State of Louisiana was forbidden by the Constitution of the United States to appoint the said A. B. Levissé an elector, because he was at the time of the appointment of the electors in said State, to wit, on the 7th day of November, 1876, and for a number of days previous and subsequent thereto, holding an office of trust or profit under the United States, to wit, the office of commissioner of the United States circuit court for the district of Louisiana, and his subsequent appointment by the other electors was not only without authority of law, and void, but it was knowingly and fraudulently made for an illegal and fraudulent purpose.

The undersigned especially object to counting the vote cast by the said O. H. Browster for the reason that the State of Louisiana was forbidden by the Constitution of the United States to appoint the said Browster an elector because he was at the time of the appointment of electors of said State, to wit, the 7th day of November, A. D. 1876, and for a number of days previous and subsequent thereto, holding an office of trust or profit under the United States, to wit, the office of surveyor-general of the land office for the land district of the State of Louisiana, and any subsequent appointment of the said Browster as an elector by the other electors was not only without warrant of law and void, but was made knowingly and fraudulently for an illegal and fraudulent purpose.

The undersigned object and insist that under no circumstances can more than six of the eight electoral votes cast in Louisiana for Rutherford B. Hayes and William A. Wheeler be counted, for the reason that at least two of the persons casting such votes, to wit. A. B. Levissé and O. H. Brewster, were not appointed electors by said State; and they further object especially to the vote given and cast by William P. Kellogg, one of the pretended electors of said State of Louisiana, because the certificate executed by himself as governor of that State is void as to him and creates no presumption and is no evidence in his own favor that he was duly appointed such elector, and there is no other evidence whatever of his having been appointed an elector of said State. And they further object to the said Kellogg that by the constitution of Louisiana he was not entitled to hold both offices, but was disqualified therefrom, and that on the day of casting the vote aforesaid, and on the day of the election for electors, and after those days, he continued to act as governor of the State, and that his vote as elector is null and void.

### VIII.

Because the certified lists of the names of the said Kellogg, Burch, Joseph, Sheldon, Mark. Levissé, Brewster, and Joffrion as the duly appointed electors for the State of Louisiana by W. P. Kellogg, claiming to be, but who was not, governor of said State, were falsely, fraudulently, and corruptly made and issued as a part of a conspiracy between the said Kellogg and the said returning officers Wells, Anderson, Casanave, and Kenner, and other persons, to cheat and defraud the said McHenry, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross of the offices to which they had been duly appointed as aforesaid, and to defraud the State of Louisiana of her right to vote for President and Vice-President according to her own wish as legally expressed by the vote of the people at the election aforesaid.

said.

For which reason the list of names of the said Kellogg, Burch, Joseph, Sheldon, Mark, Levissé, Brewster, and Joffrion as electors, and the votes cast by them are utterly void; in support of which reasons the undersigned refer to the Constitution and laws of the United States and of the State of Louisiana, and among other to the evidence taken at the present session of Congress by the Committee and sub-committees on Privileges and Elections of the Senate, the select committee and the sub-committees of the House of Representatives on the recent election in the State of

Luisiana, and the committee of the House of Representatives on the powers, privileges, and duties of the House of Representatives in counting the electoral vote, together with papers accompanying said evidence.

ELI SAULSBURY, J. E. McDONALD, J. W. STEVENSON, L. V. BOGY,

DAVID DUDLEY FIELD, G. A. JENKS,
R. L. GIBSON,
JOHN R. TUCKER,
W. M. LEVY.
E. JOHN ELLIS,
WM. R. MORRISON,

Representatives.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana †
Mr. GIBSON. I have the honor to offer objections to the certifi-

Mr. GIBSON. I have the honor to offer objections to the certificates of the electoral vote of the State of Louisiana signed by William Pitt Kellogg on behalf of the State of Louisiana.

The PRESIDING OFFICER. While the objection is being sent to the desk, the Chair will order the last paper read by the tellers, purporting to be a certificate from the State of Louisiana, to be suppressed from the record of these proceedings, if there be no objection. There was no objection, and it was so ordered.

The PRESIDING OFFICER. The Clerk of the House will read the objections presented by the member from the State of Louisiana.

the objections presented by the member from the State of Louisiana, [Mr. GIBSON.]

The Clerk of the House read as follows:

The undersigned, Senators and members of the House of Representatives of the United States, object to the certificates and electoral votes of the State of Louisiana signed by William P. Kellogg, J. H. Burch, Peter Joseph, L. A. Sheldon, Morris Mark, A. B. Levissé, O. H. Brewster, and Oscar Joffrion, for the following reasons: First. The government of the State of Louisiana as administered at and prior to the 7th day of November, 1876, and until this time was and is not republican in form.

to the 7th day of November, 1876, and until this time was and is not republican in form.

Second. If the government of the State of Louisiana was and is republican in form, there was no canvass of the votes of the State made on which the certificates of election of the above-named alleged electors were issued.

Third. Any alleged canvass of votes on which the certificates of election of said alleged electors are claimed to be founded was an act of usurpation, was fraudulent and void.

Fourth. The votes cast, in the electoral college of said State, by Oscar Joffrion.

alleged electors are claimed to be founded was an act of usurpation, was fraudulent and void.

Fourth. The votes cast in the electoral college of said State by Oscar Joffrion, William P. Kellogg, J. H. Burch, Morris Marks, are not electoral votes, for that the said Oscar Joffrion, William P. Kellogg, J. H. Burch, and Morris Marks are and were ineligible by the laws of Louisiana, and were disqualified; for by the constitution of the State of Louisiana, section 117, it is provided that no person shall hold or exercise at the same time more than one office of trust or profit, except that of justice of the peace or notary public; whereas on and prior to the 7th day of November, 1876, and until after the 6th day of December, 1876, W. P. Kellogg was acting de facto governor of said State; Oscar Joffrion was supervisor of registration for the parish of Pointe Coupée, in said State; Morris Marks was a district attorney for one of the districts of said State and candidate for district judge, and was elected at said election; and J. H. Burch was a member of the senate of said State, also a member of the board of control of the State pentientiary, administrator of the deaf and dumb asylum, both salaried officers, and treasurer of the school board of the parish of East Baton Rouge.

Fifth. In addition thereto, said Oscar Joffrion was specially disqualified by the thirteenth section of the act of the Legislature of said State, dated 24th day of July, 1874, which provides that no supervisor of registration shall be eligible for any office at any election when said supervisor of registration shall be eligible for any office at any election when said supervisor of registration in Louisiana, also the testimony taken before the special committee of the House of Representatives to investigate the election in Louisiana, also the testimony taken before the committee of Privileges and Elections of the Senate.

ELI SAULSBURY, J. E. McDONALD,

ELI SAULSBURY, J. E. MCDONALD, FRANCIS KERNAN, Senators.

G. A. JENKS,
J. R. TUCKER,
R. L. GIBSON,
DAVID DUDLEY FIELD,
W. M. LEVY,
E. JNO. ELLIS,
Representatives.

The PRESIDING OFFICER. Are there further objections to the Mr. WOOD, of New York. I present, on behalf of the Senators and Representatives who have signed it, a further objection.

The PRESIDING OFFICER. The objection submitted will be read

y the Clerk of the House. The Clerk of the House read the objection, as follows:

The undersigned Senators and Representatives object to the counting of the vote of O. H. Brewster, A. B. Levissee, W. P. Kellogg, Oscar Joffrian, Peter Joseph, J. H. Burch, L. A. Sheldon, and Morris Marks as electors for the State of Louisiana, for the reason that the said persons were not appointed electors by the State of Louisiana in the manner directed by its Legislature.

M. I. SOUTHARD.

M. I. SOUTHARD,
Representative from the State of Ohio.
CHAS. E. HOOKER, of Mississippi.
R. A. DE BOLT, of Missouri.
R. P. BLAND, of Missouri.
JNO. W. STEVENSON, of Kentucky.
WM. PINCKNEY WHYTE, of Maryland.
FERNANDO WOOD,
Representative from the State of New York.
ERASTUS WELLS,
Representative of Missouri.
A. G. EGBERT,
Representative of Pennsylvania.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana ?

Senator HOWE. I submit some concise objections to counting the vote certified here by John McEnery and his associates.

The PRESIDING OFFICER. The objections will be read by the

Secretary of the Senate.

The Secretary of the Senate read the objections, as follows:

The undersigned respectfully object to the counting of any vote for President and Vice-President of the United States given or purporting to have been given by John McEnery or R. C. Wickliffe, or of either of them, for the reason that there is no evidence whatever that either of said persons has been appointed an elector of said State in such manner as the Legislature thereof has directed; and for the further reason that there is evidence conclusive in law that neither of said persons has been appointed to be an elector for the State of Louisiana in such manner as the Legislature thereof has directed.

They respectfully object to the reading the recording or the acknowledging of

has directed.

They respectfully object to the reading, the recording, or the acknowledging of any commission or license or certificate of appointment or of anthentication signed or purporting to be signed by John McEnery as governor of the State of Louisiana, for the reason that there is no evidence that John McEnery is now or ever was at any time during the year 1876 governor of the State of Louisiana, and for the further reason that there is conclusive evidence that W. P. Kellogg was during the whole of the year 1876 and for several years prior thereto governor of that State; was recognized as such by the judicial and legislative departments of the government of that State and by every department of the Government of the United States.

T. O. HOWE.
R. J. OGLESBY.
JOHN SHERMAN.
J. R. WEST.
S. A. HURLBUT.
W. TOWNSEND.
CHAS. H. JOYCE.
L. DANFORD.
W. W. CRAPO.
EUGENE HALE.
WM. LAWRENCE.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana? If there be no further objections, all the certificates from that State, and the papers accompanying the same, together with the objections thereto, will now be submitted to the electoral commission for its judgment and decision. The Senate will now retire to their Chamber.

Accordingly (at four o'clock and thirty-four minutes p. m.) the Senate withdrew.

#### ORDER OF BUSINESS DURING ELECTORAL COUNT.

Mr. COX. I rise to a privileged report. I am directed by the Committee on Rules to report back the bill introduced by the gentleman from Iowa, [Mr. Wilson,] being House bill No. 4562, to amend the act in relation to the counting of the votes for President and Vice-President, and the decision of questions thereon. I am instructed by the committee to offer a simple resolution as a substitute for this bill

Mr. CONGER. Before debate commences upon this report I desire to raise a point of order, that this bill was not referred to the Committee on the Rules, but to the Committee on the Judiciary.

The SPEAKER. The bill was referred to the Committee on the

The SPEAKER. The gentleman from New York, from the Committee on the Rules, reports back with a substitute the bill introduced by the gentleman from Iowa [Mr. Wilson] to amend the act in re-lation to counting the electoral votes.

Mr. COX. This bill was referred to the Committee on the Rules,

Mr. COX. This bill was referred to the Committee on the Rules, not to the Committee on the Judiciary, as the gentleman from Michigan [Mr. CONGER] seems to have supposed. It was my resolution which was sent to the Judiciary Committee.

Mr. CONGER. I find that I was mistaken.

Mr. COX. My reason for again offering this resolution is—

Mr. WILSON, of Iowa. Mr. Speaker, I want to reserve any point of order on this proposition as being opposed to the electoral law. The gentleman from New York, as I understand, reports back a bill.

Mr. COX. I report back the bill of the gentleman, with a substitute in the nature of a resolution

Mr. COX. Treport back the bill of the gentleman, with a substitute in the nature of a resolution.

Mr. WILSON, of Iowa. O, that cannot be done. In the first place, the gentleman has not been authorized to report it back.

Mr. COX. Then I will modify my proposition by merely reporting the resolution from the committee, as they have charge of this sub

the resolution from the committee, as they have charge of this subject. The effect is about the same.

Mr. WILSON, of Iowa. I desire to reserve any points of order until we hear what the gentleman's proposition is.

Mr. COX. I was about to say—and I ask attention, for I shall not be very long—that the proper transaction of the business of the House requires that every fresh day should give us all the advantages of that day under the rules. We have but seventeen working days remaining in this session. We have two hundred and forty-one bills on the Private Calendar. We have fifty public bills undisposed of. We have thirty bills which have been made special orders on motions to reconsider. Of the twelve general appropriation bills, only one has become a law; eleven are undisposed of between the two Houses, being liable to come up at any time upon reports of conference combeing liable to come up at any time upon reports of conference committees, &c. We have two outside deficiency bills: one in relation to the public printing and the other in regard to the contingent fund of the House. We have the Mississippi levee bill. We have a bill to pay the interest on the bonds of the District of Columbia. All this

business is to be done within the next seventeen days, while at the same time the work of counting the electoral vote must proceed.

This matter was fully discussed the other day. The Judiciary Committee have reported on the subject, and their report, which will be found on page 18 of the RECORD of February 9, declares that—

They are of opinion that the adoption of the resolution would materially aid in carrying out the manifest intent of the provision in that act that while any question is being considered by said commission either House may proceed with its legislative or other business, in order to do which each House may make whatever rules and regulations, consistent with the Constitution, which it may think proper. They would therefore recommend the adoption of the resolution.

It will thus be seen that this proposition has the sanction of the Committee on the Judiciary as well as the Committee on Rules; and I hope that in the interest of the public business it will have the sanction of the House. I call the previous question on the adoption of the

resolution.

Mr. WILSON, of Iowa. Let it be read first.

The SPEAKER. The resolution will be read, the gentleman from Iowa having reserved all points of order.
The Clerk read as follows:

Resolved. That the rules of the House be, and are hereby, so amended that pending the count of the electoral vote and when the House is not required to be engaged therein, it shall on assembling each calendar day after recess from the preceding day proceed at and after twelve o'clock m. with its business as though the legislative day had expired by adjournment.

Mr. WILSON, of Iowa. I should like to say a word or two on this subject.

The SPEAKER. The gentleman from New York demands the pre-

vious question.

Mr. WILSON, of Iowa. I wish to suggest one or two words in connection with this matter.

The SPEAKER. The Chair will hear the gentleman from Iowa, if

there be no objection.

Mr. WILSON, of Iowa. We think on this side, Mr. Speaker, that it requires an act to interpret the provisions of another act. The electoral bill found us with a certain code of rules and stopped the operation of those rules. I introduced a bill for the purpose of getting

operation of those rules. I introduced a bill for the purpose of getting us over the difficulty into which we were put in the work of the House. I think, as my colleagues on this side many of them think, it requires an act to change the operations of the electoral-commission bill. For that reason I have been compelled to raise this question of order against the introduction of the rule just reported by the gentleman from New York, which is calculated, in my judgment, to change the operations of law.

Mr. BURCHARD, of Illinois. I desire to suggest to the gentleman from New York that the law in section 5 provides that while any question is being considered by said commission either House may proceed with its legislative or other business. Now, if I read the resolution of the gentleman from New York rightly, it provides while the electoral count is proceeding, and it seems to me it would not be within the meaning of the provision of the law to proceed with business only while the question is referred to the commission. I trust if the scope of the resolution is more than that, the gentleman will make a modification. I ask the resolution be again read.

The SPEAKER. Does the gentleman from Iowa insist on his point of order?

of order?

Mr. WILSON, of Iowa. I should like to have the ruling of the Chair upon the point.

The SPEAKER. The Chair really does not think it is a point of

order.

Mr. WILSON, of Iowa. In a few words, what is the ruling of the Chair? Can a rule of this House amend a law passed by both Houses and signed by the President? My belief is that it cannot. Does the Chair hold otherwise?

The SPEAKER. The Chair, while he does not think it is a point

Mr. HOOKER. It is an argument.

The SPEAKER. The Chair holds it is not a point of order, because it is the construction of a law, and he has nothing to do with the construction of the law. The Chair will express it as his opinion that he would feel governed, and be compelled to be governed, by the committee and this House as expressed in the adoption of the rule. The Judiciary Committee is charged with the construction of the law in a measure.

Mr. WILSON, of Iowa. I do not suppose there will be any serious objection to the resolution presented by the gentleman from New York, if it is understood that in no way, shape, or manner shall it interfere with the counting of the votes for President and Vice-President.

Mr. COX. That is the intent and very meaning of the resolution. Mr. WILSON, of Iowa. Then will the gentleman from New York allow me to make this modification?

Mr. COX. Read it.

Mr. WILSON, of Iowa. That this shall not be interpreted as interfering in any way with the counting of the votes for President and Vice-President, or interfering with the report of the joint commission, or the meeting of the two Houses in joint session.

The SPEAKER. The Chair would suggest as an additional modification the insertion of the words "when such meetings are necession."

sary."

Mr. WILSON, of Iowa. Of course if the gentleman from New York accepts this as a modification of his resolution, there will I think be

no objection to its adoption.

Mr. COX. The rule would supersede the necessity for that, but out of abundant caution, and to save debate, I will accept that proviso if the gentleman will withdraw his opposition.

The SPEAKER. The Chair then understands that the gentleman from New York accepts it as a modification of his resolution.

Mr. COX. Certainly; and now I demand a vote.

Mr. WILSON, of Iowa. I now ask that the resolution be read as modified.

The Clerk read as follows:

Resolved. That the rules of the House be, and are hereby, so amended that, pending the count of the electoral vote, and when the House is not required to be engaged thereon, it shall assemble on each calendar day after recess from the preceding day, proceed at and after twelve o'clock meridian with its business, as though the legislative day had expired by adjournment; and this rule shall not be interpreted as interfering in any way with the counting of the votes for President and Vice-President, nor as interfering with the report of the joint commission, nor the meeting of the two Houses in joint session.

Mr. COX. I now demand the previous question on the adoption of the resolution as modified.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution was adopted.

Mr. COX moved to reconsider the vote just taken; and also moved

that the motion to reconsider be laid on the table.

The latter motion was agreed to.
Mr. COX. Mr. Speaker, I now move the House take a recess until half past seven o'clock this evening.

Mr. HOOKER. And I move to amend that motion, that the House take a recess until ten o'clock to-morrow.

Mr. HOOKER's motion was agreed to; and the motion, as amended, was then adopted.

And then (at eight minutes to five o'clock p. m.) the House took a recess until ten o'clock to-morrow.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Memorial of the Legislature of Colorado, asking for the grant of arid lands for irrigation purposes, to the Committee

on Public Lands.

By Mr. ANDERSON: Joint resolutions of the Legislature of Illinois, memorializing Congress in reference to certain land scrip, to the same

By Mr. BUCKNER: The petition of citizens of the District of Columbia, for an appropriation for the schools of the District, to the Committee on Appropriations.

By Mr. BURCHARD, of Wisconsin? Memorial of the Legislature

of Wisconsin, asking an appropriation for the completion of the Sturgeon Bay and Lake Michigan Canal, to the Committee on Com-

By Mr. CANNON, of Utah: The petition of Silas Hillman and 35 other citizens of Cannon, Utah, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. DE BOLT: The petition of George W. Mason and others, for a law allowing arrears of pension, to the Committee on Invalid

Also, the petitions of Harrison Hatfield, Josiah Utley, and William Becket, privates in Company F, First Cavalry, Missouri State Militia for compensation for horses lost in the United States service, to the

Committee on War Claims.

By Mr. DOUGLAS: The petition of Louis Kruger, for compensation for property taken by the United States Army, to the same committee.

By Mr. EGBERT: The petition of citizens of Corry, Pennsylvania, for a law granting arrears of pension, to the Committee on Invalid

By Mr. FAULKNER: The petition of citizens of West Virginia, for cheap telegraphy, to the Committee on the Post-Office and Post-

By Mr. FINLEY: Papers relating to the establishment of post-routes from Hawkinsville to Fort Mason, and from Volusia to Fort

Mason, Florida, to the same committee.

By Mr. FORT: The petition of Joseph Langeler and 160 other citizens of Papineau, Illinois, for cheap telegraphy, to the same com-

By Mr. FRYE: The petition of William Carpenter and others, of

similar import, to the same committee.

By Mr. HANCOCK: The petition of W. F. Hudson and others, for a post-route from San Saba to Brady City and Menardville, Texas, to the same committee.

By Mr. LEAVENWORTH: The petition of Nathan T. Graves and

By Mr. LEAVENWORTH: The petition of Nathan T. Graves and 56 other citizens of Onondaga County, New York, for the repeal of the bank-tax law, to the Committee of Ways and Means.

By Mr. LE MOYNE: The petition of citizens of Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LUTTRELL: The petition of A. J. Bryant and others, of San Francisco, communicated by telegraph, that if any subsidy be granted for mail service between the United States and China that it be applicable alike to the Pacific Mail Steamship Company and

U. S. GRANT.

the Occidental and Oriental Steamship Company, to the same com-

By Mr. MAGOON: Memorial of the Chamber of Commerce of Milwaukee, Wisconsin, for a treaty of reciprocity with Canada, to the Committee on Foreign Affairs.

By Mr. OLIVER: The petition of R. B. Dardo and other citizens

of Iowa, for cheap telegraphy, to the Committee on the Post-Office

and Post-Roads.

By Mr. PHILIPS, of Missouri: Memorial of citizens of Missouri, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. PHILLIPS, of Kansas: The petition of citizens of Kansas, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. PIERCE: Resolutions of the Boston Board of Trade, for the repeal of the bank-tax laws, to the Committee of Ways and

Means.

By Mr. JAMES B. REILLY: The petition of citizens of Schuylkill County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. STRAIT: Memorial of the Legislature of Minnesota for an extension of the grant of the Hastings and Dakota Railway, to the Committee on Public Lands.

Also, joint resolutions of the Legislature of Minnesota requesting the Senators and Representatives from that State to use their efforts to secure pensions to the soldiers of the Mexican war, to the Committee on Invalid Pensions.

Also, the petition of George W. Vaight and others, that pensioners be paid from the date of their discharge from the Army, to the same committee.

Also, memorial from the Legislature of Minnesota, for an appropriation for the improvement of the navigation of the Red River of the North, to the Committee on Commerce.

By Mr. WAIT: The petition of the Phænix National Bank of Hartford, Connecticut, and 8 other national banks in said city, for the repeal of the bank-tax laws, to the Committee of Ways and

By Mr. WALDRON: The petition of M. L. Noyes, and 51 other citizens of Chelsea, Michigan, of similar import, to the same commit-

By Mr. WALKER, of New York: The petition of citizens of New York, of similar import, to the same committee.

By Mr. WARD: The petition of Mary Wilkes, widow of the late Admiral Charles Wilkes, for a pension of \$50 per month, to the Com-

Admiral Charles Wilkes, for a pension of \$50 per month, to the Committee on Invalid Pensions.

By Mr. WHITEHOUSE: The petition of Samuel W. Lawrence and others, executors of William F. Garner, to change the name of the yacht Mohawk to that of Queen, to the Committee on Commerce.

By Mr. WIGGINTON: Papers relating to the survey of the Rancho Rio de Santa Clara, California, to the Committee on Public Lands.

By Mr. WILLARD: The petition of Byron Church and 21 others, of Calhoun County, Michigan, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

### IN SENATE.

### TUESDAY, February 13, 1877-10 a.m.

The Senate resumed its session.

Mr. DORSEY. I move that the Senate take a further recess until twelve o'clock.

The motion was agreed to; and the Senate accordingly took a re-

The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock.

The Senate re-assembled at twelve o'clock.

Prayer by Rev. Jesse B. Thomas, D. D., of Brooklyn, New York.

The PRESIDENT pro tempore. The recess having expired, the Senate will come to order. The Secretary will read the Journal of yesterday.

The Journal of the proceedings of Monday, February 12, was read

and approved.

HOUSE BILLS REFERRED.

The bill (H. R. No. 4629) to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868, was read twice by its title, and referred to the Committee on the Judiciary.

The bill (H. R. No. 4559) making appropriations to supply deficiencies in the empropriations for the fixed was adding June 20, 1877, and

cies in the appropriations for the fiscal year ending June 30, 1877, and prior years, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

### STATUE OF LIBERTY IN NEW YORK HARBOR.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States; which was referred to the Committee on Foreign Relations:

To the Senate and House of Representatives:

The accompanying memorial is transmitted to Congress at the request of a com-

mittee, composed of many distinguished citizens of New York, recently appointed to co-operate with a generous body of French citizens who design to erect in the harbor of New York a colossal statue of "Liberty enlightening the world." Very little is asked of us to do, and I hope that the wishes of the memorialists may receive your very favorable consideration.

EXECUTIVE MANSION. February 9, 1877.

# REPORT ON CENTENNIAL EXHIBITION.

The PRESIDENT pro tempore also laid before the Senate the following message from the President of the United States; which was referred to the Committee on Public Buildings and Grounds:

To the Senate and House of Representatives :

To the Senate and House of Representatives:

I transmit herewith the catalogues and report of the board on behalf of the Executive Departments at the international exhibition of 1876, with their accompanying illustrations.

The labors performed by the members of the board, as evinced by the voluminous mass of information found in the various papers from the officers charged with their preparation have been in the highest degree commendable; and believing that the publication of these papers will form an interesting memorial of the greatest of international exhibitions, and of the centennial anniversary of the Independence of our country, I recommend that they be printed in a suitable form for distribution and preservation.

The letter of the chairman of the board will give to Congress the history of its organization, the laws and executive orders under which it has acted, and the steps which have been taken to preserve the large and instructive collections made, with a view to their forming a part of a national museum should Congress make the necessary appropriations for such a desirable object.

U. S. GRANT.

EXECUTIVE MANSION, February 9, 1877.

### EXECUTIVE COMMUNICATIONS.

The PRESIDENT pro tempore laid before the Senate a letter of the Attorney-General, transmitting a full and perfect copy of his letter of instructions to the marshals of the United States dated September

of instructions to the marshals of the United States dated September 4, 1876; which was referred to the Committee on the Judiciary, and ordered to be printed.

He also laid before the Senate a letter of the Secretary of the Interior, transmitting a statement of the Osage ceded lands sold by the Leavenworth, Lawrence and Galveston Railroad Company prior to the 25th February, 1870; which was referred to the Committee on Public Lands, and ordered to be printed.

#### CREDENTIALS.

Mr. PATTERSON presented the credentials of David T. Corbin, elected by the Legislature of the State of South Carolina a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

#### PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented the petition of W. E. Comer and 22 other vessel-owners of Detroit, Michigan, praying for an appropriation by Congress for a light-house at Little Traverse, Michigan; which was referred to the Committee on Commerce.

He also presented a petition of the Board of Trade of Detroit, Michigan, praying the repeal of the bankrupt act; which was referred to the Committee on the Judiciary.

He also presented the memorial of the General Assembly of Colorado, praying for a grant of lands in aid of irrigation and reclamation of waste lands in said State; which was referred to the Committee on Public Lands.

Public Lands.

He also presented the petition of W. E. Parker and 57 others, of Emmet County, Michigan, praying for an appropriation by Congress for a light-house at the entrance of Little Traverse Harbor, Michigan;

which was referred to the Committee on Commerce.

Mr. LOGAN presented a joint resolution of the Legislature of Illinois, which was read and referred to the Committee on Patents as

Whereas the patent laws of the United States have been so devised and construed as to shield and protect great and oppressive monopolies, and to encourage gigantic speculations for the benefit of a few at the expense of the people, while they are totally inadequate to secure to inventors adequate compensation for their invention: Therefore,

Resolved by the house of representatives, (the senate concurring herein.) That the Senators from this State in Congress are instructen and the Representative are requested to use their earnest efforts to secure such amendments to said laws as will provide—

First. That any person may use any patented invention upon executing a bond, in such sum and with such security as the circuit court of the United States for the district in which such use is to be made shall direct and approve, conditioned that he will pay to the owners of such inventions a proper license fee for the use of the same; which bond shall be filed in the office of the clerk of said court.

Second. That in all cases the measure of the license fee shall be such sum as will give the inventor reasonable compensation for his time, labor, ingennity, and expense, which sum shall in no case exceed the fee fixed for such use in contracts made by the inventor or owner; and such license fee shall be the measure of damages in all action and proceedings for the infringment of patents, and no other recovery for damages or profits shall be allowed.

Sneaker of the House of Representatives.

JAMES SHAW, Speaker of the House of Representatives. ANDREW SHUMAN,

Mr. LOGAN presented a joint resolution of the Legislature of Illinois, in reference to swamp lands; which was referred to the Committee on Public Lands, and ordered to be printed in the RECORD, as follows:

Senate joint resolution No. 11, concerning Government swamp lands.

Whereas section 2 of the act of Congress approved March 2, 1855, entitled "An act to amend the act approved September 23, 1850, entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," pro-

vides that, upon due proof by the agent of the State or States before the Commissioner of the General Land Office that any land was located subsequent to the 28th day of September, 1850, by warrants or scrip, the State or States should be authorized to locate a quantity of like amount upon any of the public land subject to entry at \$1.25 per acre or less;

And whereas said law is inoperative on account of the rules and decisions of the Commissioner of the General Land Office, declaring that said indemnity scrip can only be located upon lands subject to entry in the State of Illinois, and of his refusal to further issue said scrip: Therefore,

Be it resolved, (the senate and house concurring therein,) That the Congress of the United States be requested by act or otherwise to instruct the Commissioner of the General Land Office to issue said scrip and to allow its location upon any of the public lands subject to entry at \$1.25 per acre or less, within or without the State or Illinois, and that he be directed to issue the same in eighty and one hundred and sixty acre tracts.

And Price of the Commissioner of the Congress of the States or Illinois, and that he be directed to issue the same in eighty and one hundred and sixty acre tracts.

ANDREW SHUMAN, President of the Senate,

JAMES SHAW, Speaker of the House of Representatives.

Adopted by the senate February 2, A. D. 1877.

JAMES H. PADDOCK, Secretary of the Senate.

Concurred in by the house of representatives February 3, 1877.

E. F. DUTTON, Clerk of the Honse of Representatives,

Clerk of the Honse of Representatives.

I, George H. Harlow, secretary of state of the State of Illinois, do hereby certify that the above is a true copy of a joint resolution of the thirtieth General Assembly of said State, filed in this office on the 5th day of February, 1877.

In witness whereof I have set my hand and the great seal of state at Springfield this 6th day of February, A. D. 1877.

[SEAL.]

GEO. H. HARLOW, Secretary of State.

Mr. BOUTWELL presented a resolution of the Legislature of Massachusetts, expressing approval of the plan reported by the joint committee of Congress for counting the electoral votes for President and Vice-President; which was referred to the Committee on the Judiciary, and ordered to be printed, as follows:

Resolution relating to the counting of the electoral vote

1. Resolved, That the senate and bouse of representatives of Massachusetts hereby express their approval of the plan reported by the joint committee of the two Honses of Congress for the counting of the electoral votes for President and Vice President of the United States.

2. Resolved, That it is desirable that an amendment to the Constitution should be proposed by Congress, clearly prescribing the mode of counting the electoral votes, to the end that this nation may be under a government of laws and not of men.

Notes, to the end that this fatton may be there a government of laws and not of men.

3. Resolved, That his excellency the governor be requested to transmit a copy of these resolutions to each of our Senators and Representatives in Congress.

Mr. JOHNSTON presented a petition of the mayor and common council of the city of Fredericksburgh, Virginia, praying an appropriation for the improvement of the navigation of the Rappahannock River; which was referred to the Committee on Commerce.

Mr. KERNAN presented a memorial of Charles A. McLeod and others of Troy, New York, and a memorial of Walter A. Wood and others of Hornit Falls, New York, remonstrating against the passage of the bill (H. R. No. 3370) limiting the recovery of damages for the infringement of patents; which was referred to the Committee on Patents. Patents.

He also presented a petition of Norman Pearl and others, praying the passage of the act allowing pensioners to receive arrears of pen-sion from the date of their discharge; which was ordered to lie on

Mr. EATON presented a resolution of the New Haven Chamber of Commerce, approving Captain Howgate's plan for the location of a colony far northward in the arctic regions for the successful exploration of those regions and for the discovery of the north pole, and praying an appropriation of \$50,000 to carry out the same; which was referred to the Committee on Commerce.

Mr. WINDOM. I present a memorial of the Legislature of Minne sota, asking for an appropriation by Congress for a survey of the Saint Croix and Saint Louis Rivers, with a view to opening a line of navi-gation by that route between the great wheat-fields of the North-west and the lakes. Among other facts stated in the memorial are

the following:

The benefits which the Government would derive from the improvement thus contemplated in shortening the distance for the transportation of Government troops and supplies for the Northwestern States, via Lake Superior, Saint Mary's River, and Lake Michigau, more than six hundred miles, thus saving an enormous annual expenditure to the Government, which would soon far exceed the amount required to connect the said waters by canal.

Mr. President, I move that the memorial be referred to the Com-Mr. President, I move that the memorial be referred to the Committee on Commerce, and beg to commend it to the careful consideration of that committee. It is believed that the route indicated by the memorialists will be one of great practical value in furnishing an outlet for the products of the vast fertile country lying west of the lakes. All that is now asked is that a sufficient sum be appropriated to survey the route. The expense will be very small in proportion to the value of the information that may be obtained.

The memorial was referred to the Committee on Commerce.

Mr. SPENCER presented the petition of David Hartzogr of Bar-

Mr. SPENCER presented the petition of David Hartzogg, of Barbour County, Alabama, a soldier of the war of 1812, praying to be allowed a pension; which was referred to the Committee on Pen-

Mr. CLAYTON presented a resolution of the board of trustees of the Arkansas Institution for the Education of the Blind, praying the Senators and Representatives from Arkansas to use their influence for the passage of some measure which will give governmental aid for the

instruction of the blind, and praying an appropriation by the Government to aid the American Printing-House for the Blind at Louisernment to aid the American Printing-House for the Blind at Louisville in printing books in raised letters and in manufacturing school
apparatus for the blind; which was referred to the Committee on
Education and Labor.

Mr. CHRISTIANCY. I present resolutions of the Detroit Board
of Trade, praying for the repeal of the bankrupt law. As the resolutions are very brief and express my own views in regard to the necessity of the repeal I ask that they be read.

The PRESIDENT pro tempore. They will be read, if there be no objection. The Chair hears none.

The Chief Clerk read as follows:

jection. The Chair hears none. The Chief Clerk read as follows:

To the honorable the Senate and House of Representatives of the United States in Con-gress assembled;

At a meeting of the directors of the Board of Trade of Detroit, held this day, the following preamble and resolutions were adopted:

"Whereas it is the experience of the manufacturers of this city that the operation of the present bankrupt act is detrimental to the business interests of the country; that it gives immunity in a vast majority of cases to those who become bankrupt through dishonest motives, and that its continued existence is a constant menace to legitimate business: Therefore,

"Be it resolved by the Board of Trade of Detroit, That we respectfully petition the Congress of the United States to repeal said act.

"Resolved, That in asking the repeal the board acts from a belief in the necessity of immediate relief from the provisions of the present law, and in the hope that Congress can, commencing de now, perfect a law which shall better protect the rights of creditors while providing for the relief of the honestly unfortunate."

Very respectfully,

WM. Y. RUMNEY, Secretary.

WM. Y. RUMNEY, Secretary.

DETROIT, MICHIGAN, February 8, 1877.

The resolutions were referred to the Committee on the Judiciary. The resolutions were referred to the Committee on the Judiciary.

Mr. INGALLS presented a petition of citizens of Nebraska and Kansas, praying for the governmental purchase and control of the telegraph business of the country; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CAMERON, of Wisconsin, presented a memorial of the Legislature of the State of Wisconsin, praying for an appropriation to aid in the completion of the Sturgeon Bay and Lake Michigan ship-canal and harbor, and to extend the time for the completion thereof; which was referred to the Committee on Commerce.

Mr. CAMERON, of Pennsylvania, presented the petition of Anna B. Gardner, of York, Pennsylvania, widow of a soldier of the war of 1812, praying to be allowed a pension; which was referred to the Committee on Pensions.

Committee on Pensions.

He also presented additional papers in the case of James B. Treadwell, praying to be allowed a pension; which were referred to the Committee on Pensions.

Mr. BURNSIDE presented the memorial of Charles T. Holloway and others, remonstrating against the passage of House bill No. 431, for the relief of the heirs of William A. Graham; which was referred to the Committee on Patents.

Mr. HITCHCOCK presented a petition of citizens of Nebraska, praying an amendment of the pension laws so as to allow arrears of pensions; which was ordered to lie on the table.

He also presented a petition of citizens of Nebraska, praying that the telegraph business may be transferred to the superintendence of

the Post-Office Department and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. OGLESBY presented a petition of citizens of Christian County, Illinois, praying, on behalf of Daniel B. Smith and his wife, an increase of the pension allowed them on account of the services of their son, late of Company I, Twelfth Indiana Volunteers, during the late war; which was referred to the Committee on Pensions.

He also presented a resolution of the General Assembly of the State of Illinois in favor of the passage of an act instructing the Commission.

of Illinois, in favor of the passage of an act instructing the Commissioner of the General Land Office to issue swamp-land scrip and to allow its location upon any of the public lands subject to entry at \$1.25 per acre or less, within or without the State of Illinois, and that

he be directed to issue the same in eighty and one hundred and sixty acre tracts; which was referred to the Committee on Public Lands.

Mr. GOLDTHWAITE presented a petition of H. C. Wood, J. M.
Toner, and J. R. Chadwick, physicians, in favor of the printing of the catalogue of the National Medical Library, located in Washington, District of Columbia; which was referred to the Committee on the

Library.

### REPORTS OF COMMITTEES.

Mr. CLAYTON, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1133) to correct an appointment in the Pay Department of the Army, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of Martha G. Vaughn and Louisa Jackman, praying to be allowed compensation for services rendered during the war of the rebellion, submitted a report thereon accompanied by a bill (S. No. 1244) for the relief of Mrs. Martha G. Vaughn and Mrs. Louisa Jackman.

The bill was read twice by its title, and the report was ordered to

The bill was read twice by its title, and the report was ordered to

be printed.

Mr. CLAYTON also, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1186) for the relief of Charles H. Moseley, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, to whom

was referred the bill (H. R. No. 3574) for the relief of Marshal P. Thatcher, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 1165) for the relief of Henry G. Healy, submitted an adverse report thereon; which was ordered to be printed, and the bill was restreated indefinitely.

report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of Elias B. Bell, of Hillsdale County, Michigan, praying for the correction of his record as a soldier by removing the charge of desertion therefrom, submitted an adverse report thereon; which was ordered to be printed.

ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 838) for the relief of William C. Spencer, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the petition of citizens of Kausas on behalf of David Allen, late a private in Company F, Fifth Regiment, Kansas Cavalry, praying the correction of his Army record by the removal of the charge of desertion therefrom, submitted an adverse report thereon; which was ordered to be printed.

to be printed.

Mr. LOGAN, from the Committee on Military Affairs, to whom was referred the bill (H. R. No. 4198) to authorize the President to restore Thomas J. Spencer to his former rank in the Army, reported it with

an amendment.

an amendment.

Mr. WRIGHT, from the Committee on the Judiciary, to whom was referred the bill (H. R. No. 3464) for the relief of Ella Long, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the Committee on Claims, to whom was referred the bill (S. No. 961) for the relief of J. A. Stevenson, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the Committee on the Judiciary, to whom was referred the bill (H. R. No. 4476) to provide for the appointment of an official short-hand reporter for the United States courts in and for the district of California, reported it with an amendment.

He also, from the same committee, to whom was referred the bill (S. No. 1097) to provide for the appointment of an official short-hand

(S. No. 1097) to provide for the appointment of an official short-hand reporter for the circuit court of the United States in and for the district of California, reported adversely thereon; and the bill was postponed indefinitely.

REUBEN DAVIS.

Mr. WRIGHT. I am also directed by the Committee on the Judiciary, to whom was referred the bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi, to report it without amendment.

without amendment.

This bill passed both Houses at the last Congress. It has passed the House of Representatives at this session, but by reason of the inability of the Committee on the Judiciary to meet during this session, it has not received attention until this time. I am advised by the Senator from Mississippi upon my right [Mr. Bruce] that, for reasons personal to himself, he would like very much if the Senate would take up this bill and dispose of it this morning. The delay has been from no fault of his; but some persons, as I understand, have entertained the opinion that he has purposely witheld action upon it. The delay has been by reason of the inability of the Committee on the Judiciary to meet. It is the usual bill for removing the disabilities of persons. I ask for the present consideration of this bill at the request of the Senator from Mississippi.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed, two-thirds of the Senators present voting in favor thereof.

THE LEGISLATIVE DAY.

Mr. HAMLIN. I am directed by the Committee on Rules, to whom was referred a resolution submitted by the Senator from Massachusetts [Mr. Boutwell] on the 7th instant, in relation to what shall be considered a legislative day, to report it back with amendments. It is desirable that the resolution should pass at this time to avoid the confusion which now exists in the manner of keeping the Journals. I ask that it may be read, and I hope it will receive the consideration of the Senate now.

The PRESIDENT pro tempore. The resolution will be reported for

information.

The CHIEF CLERK. It is proposed to amend the resolution so as to make it read as follows:

Resolved by the Senate, (the House of Representatives concurring.) That during the sessions of the commission appointed under the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, each calendar day when legislative business shall have been transacted, shall by each House when in session, be considered a day for legislative purposes, and the Journals of the two Houses shall be so kept and dated.

The resolution was considered by unanimous consent, and agreed to

The resolution was considered by unanimous consent, and agreed to.

AMENDMENT OF RULES.

Mr. HAMLIN. I am directed by the Committee on Rules, to whom

was referred the resolution submitted by the Senator from Kansas [Mr. Ingalls] on the 26th of January, 1877, to report it with an amendment. I think it will take but a moment, and I ask its consideration by the Senate at this time.

The PRESIDENT pro tempore. The resolution will be reported, and

the amendment also.

The CHIEF CLERK. The resolution is as follows:

Resolved, That Rule 43 be so amended as to read, after the word "arrangement," in line 13, as follows:

Motions to adjourn, to take a recess, to proceed to executive business, and to lay on the table, shall be decided without debate.

The amendment is to strike out the period at the end of the last word, "debate," and insert a semicolon, and add the following: but when a question is not pending a motion to adjourn to a day certain, or that, when the Senate adjourn, it shall be to a day certain, or to take a recess, shall be debatable.

Mr. SAULSBURY. This is a rule, as I understand, to govern the action of Senators and the deliberations of this body. I ask whether it is proper to take up the resolution in a hurry and pass it; and whether it had not better lie upon our desks for a day or two in order that we may see what it is. We ought not to bind ourselves by rules until we have duly weighed and considered what those rules are.

Mr. HAMLIN. I have no objection to the resolution going over that Senators may consider it.

Mr. SAULSBURY. I do not think it ought to be considered now. The PRESIDENT pro tempore. The resolution will lie over. Mr. SAULSBURY. This is a rule, as I understand, to govern the

REPORT ON CHINESE IMMIGRATION.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution to print extra copies of the report of the Joint Select Committee on Chinese Immigration, have instructed me to report it with a substitute and ask its present consideration.

The resolution was considered by unanimous consent and agreed

to, as follows:

Resolved by the Senate, (the House of Representatives concurring), That there be printed 5,000 additional copies of the report of the Joint Special Committee on Chinese Immigration, with accompanying testimony, of which 1,500 copies shall be for the use of the Senate and 3,500 copies shall be for the use of the House of Rep resentatives

### RIVER AND HARBOR BILLS.

Mr. MERRIMON. The Committee on Rules, to whom was referred a resolution proposing an additional rule referring all bills making appropriations for the improvement of the rivers and harbors to the Committee on Commerce with certain instructions in relation to the same, have instructed me to report it back, accompanied by a substitute for the proposed rule, and to recommend that it be adopted. I will ask that the substitute reported be printed in the RECORD; and I give notice that I shall ask the Senate to consider it to-morrow.

The resolution, as reported from the Committee on Rules, was ordered to be printed in the RECORD, as follows:

Amend Rule 27 by adding at the end thereof the following:
; and all bills providing appropriations for the improvement of rivers and barbors, and all amendments thereto, shall be referred by the Committee on Commerce to the Secretary of War, who shall make inquiry and report upon the extent, expediency of, and necessity for the proposed improvements; and such report shall be made a part of the report of the committee to the Senate.

### RAILROAD LANDS IN KANSAS.

RAILROAD LANDS IN KANSAS.

Mr. HARVEY. I am directed by the Committee on Public Lands, to whom was referred the bill (S. No. 1122) to secure the rights of settlers upon certain railroad lands, and to repeal the first five sections of an act entitled "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River," approved July 25, 1866, to report it with an amendment in the nature of a substitute, and recommend its passage. I ask for the present consideration of the bill.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. CLAYTON. If it leads to no debate I shall have no objection. Mr. HARVEY. I think it will lead to no debate.

Mr. CLAYTON. I reserve the right to object in case it leads to debate.

Mr. MORRILL. Let it be read for information.

The PRESIDENT pro tempore. The bill will be read for informa-

The Chief Clerk read the bill.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. MORRILL. I do not rise to object, but it really seems to me that the bill embraces too many important provisions to be considered in the morning hour. I doubt not that the bill is a proper one or it would not have been reported from the Committee on Public

Lands, and yet it embraces a great many questions that it seems to me can hardly be considered fully in the morning hour.

Mr. HARVEY. If the Senator from Vermont will permit me I will state that the substitute reported from the committee has not yet been read, and I think it obviates the objection that occurs to the Senator from Vermont. If he will listen to the reading of the substitute recommended by the committee I think he will not object to the bill

Mr. MORRILL. It seems to me it is too large a bill for the morning hour and embraces too many points.

Mr. HARVEY. It is but a brief bill, and I hope the Senator will permit the substitute to be read.

Mr. MORRILL. I have no objection to the substitute being read. The Chief Clerk read the amendment reported from the Committee on Public Lands, to strike out all of the bill after the enacting clause and in lieu thereof to insert the following:

clause and in lieu thereof to insert the following:

That sections 1, 2, 3, 4, and 5 of the act entitled "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River," approved July 25, 1866, be, and the same are hereby, repealed.

Sec. 2. That the Secretary of the Interior is hereby instructed to issue no more patents to said railroad company for the lands withdrawn from market in consequence of the enactment of the sections of said act hereby repealed, and to withhold from delivery any patents not yet delivered for the same.

Sec. 3. That upon said Kansas and Neosho Valley Railroad Company, its successor or successors or assigns, filing with the Secretary of the Interior its acceptance of the terms, conditions, and impositions of this act, as hereinafter provided, and its execution and delivery of the deeds hereinafter specified, all of said lands so withdrawn and undisposed of shall be restored to market by proclamation of the President of the United States and opened to settlement and purchase under the homestead laws of the United States only.

Sec. 4. That said railroad company, its successor or assigns, shall reconvey, by deed or deeds duly executed, all unsold lands patented to it, in pursuance of the sections hereby repealed, and shall pay into the Treasury of the United States the proceeds of all such lands sold and conveyed prior to the passage of this act; and that if said company shall have any uncompleted contracts for the sale of any portion of such lands, the same shall be forthwith canceled, if the contracting party or parties consent thereto in writing filed with the Secretary of the Interior; and if any portion of the purchase-money has been paid thereon, the same shall be refunded to the contracting party or parties.

Sec. 5. That the acceptance of said company, or its successor or assigns, of the terms, conditions, and impositions of this act shall be signified in writing, under the corporate seal of said co

Mr. MERRIMON. I do not like to object to the bill of the Senator from Kansas, but it really seems to me that the bill is too serious to pass in the morning hour. It involves important considerations and

Mr. INGALLS. Will the Senator permit me to make a brief statement before entering a formal objection.

Mr. MERRIMON. Yes, sir.

Mr. INGALLS. The act of 1866 to which this bill refers granted to the State of Kansas certain lands in aid of certain railroad corpora-The beneficiary named in this bill obtained under that grant tions. The beneficiary named in this bill obtained under that grant about thirty thousand acres of land. A certain portion of this land has been selected, a certain part has been sold; but a great portion remains unselected. The company propose to relinquish absolutely to the Government every acre of land that they received under that grant, on which they themselves have paid about \$11,000 in taxes, for which they ask nothing to be refunded, but that these lands may be restored to the public domain, to be entered in accordance with the homestead and pre-emption laws governing the disposition of the the homestead and pre-emption laws governing the disposition of the public lands. That is all there is of it.

Mr. MERRIMON. What consideration is there?

Mr. INGALLS. Absolutely none.

Mr. MERRIMON. There is no consideration moving the railroad

company to surrender this vast number of acres of land?

ompany to surrender this vast number of acres of land?

Mr. INGALLS. The railroad company have become satisfied that
in consequence of the antagonism and opposition of the people living
on those lands that the settlement of the country is retarded and that
their local business is prevented from assuming the large proportion
that it would reach if these lands were sold to people under the homestead and pre-emption laws of the United States. They, therefore,
propose simply to relinquish absolutely to the Government every acre of these lands, and there certainly can be no objection whatever to it. There is no other question involved. There are no interests at stake which can be affected. The statement that I make is absolutely correct so far as the purpose of the bill is concerned.

The PRESIDENT pro tempore. Is there objection to the consideration of the bill? The Chair hears none and the bill is before the Senate as in Committee of the Whole. The question is on the

amendment of the committee.

Mr. MORRILL. May I ask the Senator from Kansas whether there was not an obligation on the part of the road to perform certain duties in relation to the transportation of troops and other things which it is proposed that the United States shall now relinquish?

Mr. INGALL'S. There is no proposition of that kind whatever; there is nothing whatever said. There is no claim made upon the Government for any services which have heretofore been rendered or that shall hereafter be rendered. The corporation has become satisthat shall hereafter be rendered. The corporation has become satisfied that their interests will be best subserved by relinquishing this land grant. There is no appropriation required. There is nothing in the bill that looks toward any expenditure of money by the United States Government.

Mr. MERRIMON. I beg to ask the Senator from Kansas how the substitute differs from the original bill? I notice from a reading of the original bill that it provides for the payment of certain moneys to this expression?

to this company?

Mr. HARVEY. If the Senator from North Carolina will permit me to explain, I will state that the original Senate bill as introduced did

provide for the payment of about \$12,000, but the substitute does not so provide. The substitute merely provides for the acceptance by the railroad company of the conditions of the bill, and makes no provision for any such claim. If the bill becomes a law and the relinquishment is accepted by the Government, no such appropriation can be made. can be made.

Mr. MERRIMON. I understand the Senator then to say that the

bill appropriates no money at all ?

Mr. INGALLS. None.

Mr. MERRIMON. Does it relinquish the company from any obligation due to the Government?

Mr. INGALLS. From none. The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in. The bill was ordered to be engrossed for a third reading, read the third time, and passed.

### JUNIUS J. TURNER-VETO MESSAGE.

Mr. LOGAN. The Committee on Military Affairs, to whom was referred the bill (S. No. 561) for the relief of Major Junius J. Turner, have directed me to report it favorably. That bill is one which was vetoed by the President, and afterward, on examination, he sent a letter with the papers stating that his veto was by a misapprehension, and withdrawing his objection as far as he could do so. Now, I suppose it is not important that the bill should be put on its passage now; but it can be taken up at one time as at any other time. The report is that the bill pass notwithstanding the objections of the President.

The PRESIDENT pro tempore. The bill will go to the Calendar. BILLS INTRODUCED.

Mr. ALCORN (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1245) for the relief of the estate of George H. Lee, late of Lowndes County, Mississippi, deceased; which was read twice by its title, and referred to the Committee on Claims.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S No. 1246) for the relief of the estate of U.S. Boon, late of Hinds County, Mississippi, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. SPENCER (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1247) empowering the commissioners of the District of Columbia to buy and sell real estate; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. CONOVER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1248) to amend an act entitled "An act granting the right of way through the public lands to the Jackson-ville and Saint Augustine Railroad Company," approved June 7, 1872; which was read twice by its title, and referred to the Committee on Railroads.

Mr. TELLER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1249) granting the right of way through the public lands to the Golden, Georgetown and Central Railroad Company; which was read twice by its title, and referred to the Committee on Public Lands.

EXPENDITURES OF THE STATE DEPARTMENT.

Mr. SARGENT. I offer the following resolution, and ask for its present consideration:

Resolved. That the President be, and he hereby is, requested, if not incompatible with the public interest, to transmit to the Senate a statement of the appropriations and expenditures, civil and miscellaneous, of the Department of State, from the 4th of March, 1789, to June 30, 1876; and also a statement of appropriations and expenditures on account of foreign intercourse for the same period.

The statements referred to in the resolution are already prepared. They contain a great deal of valuable information which Congress should have.

The resolution was considered by unanimous consent, and agreed to. DIGEST ON INTERNATIONAL LAW.

Mr. ANTHONY submitted the following resolution; which was referred to the Committee on Printing:

Resolved by the Senate, (the House of Representatives concurring,) That of a digest of the opinions of the Attorneys-General, and of the decisions of the Federal courts, with reference to international law and kindred subjects, prepared at the Department of State, there be printed, in addition to the usual number, 500 copies for the use of the Senate, 1,500 copies for the use of the House of Representatives, and 1,000 copies for the use of the Department of State.

### AMENDMENTS TO APPROPRIATION BILLS.

Mr. MORRILL, from the Committee on Public Buildings and Grounds, reported an amendment to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

ordered to be printed.

He also submitted an amendment intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. MITCHELL, from the Committee on Privileges and Elections, submitted an amendment intended to be proposed to the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and prior years, and for other purposes; which was referred to the Committee on Appropriations, and ordered to be printed.

#### BILL RECOMMITTED.

Mr. JOHNSTON. Senate bill (S. No. 1103) for the relief of the heirs or legal representatives of Francois Cazeau was referred to the Committee on Revolutionary Claims and an adverse report was made. Parties interested have requested me to have the bill recommitted. I have obtained permission from the chairman of the committee [Mr. STEVENSON] and the Senator from Iowa, [Mr. WRIGHT,] who made the report to move that the bill be recommitted to the Committee on Revolutionary Claims. I make that motion.

The motion was agreed to.

#### LANDS IN KANSAS.

Mr. ALLISON. I submit the following report from a committee of conference:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas, having met, after full and free conference, have agreed to recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 1.

That the House recede from its disagreement to the amendments numbered 2 and 3, and agree to the same.

W. B. ALLISON.

W. B. ALLISON,
A. S. PADDOCK,
I. V. BOGY.

Managers on the part of the Senate. A. M. SCALES, J. H. SEELYE, Managers on the part of the House.

The report was concurred in.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. ADAMS, its Clerk, announced that the House had concurred in the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery.

The message also announced that the House had passed the bill (S.

No. 993) for the relief of Admiral Charles Wilkes, with amendments; in which it requested the concurrence of the Senate.

The message further announced that the House had passed the fol-

A bill (S. No. 1139) to change the time of holding the October term of the United States district court for the district of Nebraska; and A bill (S. No. 1141) to encourage and promote telegraphic commu-

nication between America and Europe.

#### GLENWOOD CEMETERY.

Mr. COCKRELL. I ask that the report of the committee of conference just sent from the House be taken up and acted upon.

The PRESIDENT pro tempore. If there be no objection the Chair will lay the conference report before the Senate.

The Chief Clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery, having met, after a full and free conference, have agreed to recommend and do recommend to their respective Houses

ference, have agreed to recommend and do recommend to their respective reasons follows:

That the House recede from its disagreement to the Senate amendments and agree to the same with amendments as follows:

In line 15 strike out the word "two" and insert "three;" in line 15 strike out the word "three" and insert "two."

In line 26 of said amendments, after the word "held," insert the words "in the city of Washington;" in line 28, after the word "trustees," strike out all the words down to and including the word "meeting," in line 31, and insert the words "elected by the lot-proprietors;" in line 40, after the word "elected," insert the words "on the first Monday in June of every year;" in line 57 strike out the words "of Glenwood Cemetery," and in line 59, after the word "mean," insert the words "and shall signify."

And the Senate agree to the same.

JOHN SHERMAN, F. M. COCKRELL,

Managers on the part of the Senate.

A. E. STEVENSON,

A. E. STEVENSON, G. W. HENDEE, on the part of the House. Managers

The report was concurred in.

### RECUSANT WITNESS-CONRAD N. JORDAN.

Mr. MITCHELL. I move that the Senate proceed to the consideration of the resolution submitted by me yesterday in relation to the recusant witness Conrad N. Jordan.

Mr. CAMERON, of Pennsylvania. I have a little bill which I de-

sire to have passed.

Mr. MITCHELL. This is a privileged matter and I think it will not take long.

The motion was agreed to; and the Senate proceeded to consider the following resolution reported by Mr. MITCHELL, from the Com-mittee on Privileges and Elections, February 12:

Whereas Conrad N. Jordan, cashier of the Third National Bank, New York, was, on the 7th day of February, 1877, at ten o'clock a. m., duly served with a subperna duces tecum issued by the Senate Committee on Privileges and Elections, commanding him to appear before such committee on the 8th day of the present month to then and there testify in reference to subject-matters under consideration by said committee, being matters relating to the controversy concerning the electoral votes for President and Vice-President, and to bring with him a full and exact statement of the accounts as shown, by the books of said Third National Bank, of Samuel J. Tilden, William T. Pelton, and ABRAM S. HEWITT, from the 1st day of June, 1876, to the 6th day of February, 1877:

And whereas said Conrad N. Jordan has refused to respond to such subpeana, has

failed to appear before said committee as required by said subpœna, or to produce such statement of accounts as required: Therefore,

\*Resolved\*, That an attachment issue forthwith, directed to the Sergeant-at-Arms of the Senate, commanding him to bring said Conrad N. Jordan forthwith to the bar of the Senate to answer for contempt of a process of this body.

Mr. SAULSBURY. Mr. President, this resolution asks an attachment against a certain party alleged to have been subpœnaed to appear before a subcommittee of the Committee on Privileges and Elections. The resolution cites that the party was duly served with a subpæna duces tecum issued by the Senate Committee on Privileges and Elections. That recitation is not, I apprehend, true in fact. It is true, as I am informed, that a subpœna went out signed by the chairman of that committee; but the records of the committee disclose the fact that no committee was in session at the time that the subpœna was ordered and issued. I am informed that the records of the committee disclose the fact that no committee was in session at the time that the subpœna was ordered and issued. I am informed that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that the records of the committee disclose the fact that no committee was in session at the time that the subpæna was ordered and issued. mittee do not show that there was any meeting of the committee or any meeting of a subcommittee at the time of the issuance of such subpena, but that it was done upon the suggestion of a single member of that committee. Those I understand to be the facts in the case. ber of that committee. Those I understand to be the facts in the case. The Committee on Privileges and Elections, therefore, have never ordered the subpœna to issue which is referred to in the resolution, as I understood. I do not know whether it has been the custom for a single member of a committee to order at his pleasure a subpæna duces stecum for a person to produce any paper, or not. I know not what has been the habit or custom in that committee, or in any other committee; but I apprehend that when a summons is issued it ought invariably to be by action of the committee that orders it to be issued, and that it ought not to rest with every member of a committee at his mere pleasure and option to cause a subpena to issue under the authority of a committee. Therefore I think we ought to pause when we are asked to issue an attachment to produce at the bar of the Senate a witness in response to such a summons. We ought to inquire whether this summons has issued improvidently or not, and if it has so issued, then we ought not to pass a resolution to bring to the bar of the Senate any man, because I hold he is not in contempt of the Senate ate if he disregards a summons which has not been properly issued, but which has been improvidently issued by the mere direction of one member of the committee. I understand this to be the case.

If, therefore, I had no other objection to this resolution than that

If, therefore, I had no other objection to this resolution than that the subpœna was not properly issued, that, to my mind, would be sufficient to control my vote upon the resolution. But I have objections to the resolution of another character. A subpœna duces tecum is proposed to be served upon Conrad N. Jordan, cashier of the Third National Bank of New York, commanding him "to bring with him the books of the said Third National Bank showing the accounts of Samuel J. Tilden, William T. Pelton, and Abram S. Hewitt, from the 1st day of June, 1876, to the 6th day of February, 1877." I think it would be going a great way for the Senate of the United States, however high its authority, to require the president of a bank or the cashier of a bank to bring before a committee of this body the private accounts of persons dealing with that bank.

The PRESIDENT pro tempore. The morning hour has expired.

Mr. MITCHELL. I ask consent that this matter be allowed to proceed until we reach a conclusion, as it is certainly a privileged question.

Mr. WEST. Let the Chair first lay before the Senate the unfinished

### PACIFIC RAILROAD ACTS.

The PRESIDENT pro tempore. The morning hour having expired, the unfinished business, being the bill (8. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1832, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, is before the Senate as in Committee of the Whole. The Senator from Oregon moves—

Mr. WEST. O. no.

Whole. The Senator from Oregon moves—
Mr. WEST. O, no.
The PRESIDENT pro tempore. What is the motion?
Mr. MITCHELL. I ask the bill to be laid aside informally subject to call by the chairman of the committee.
Mr. SAULSBURY. If a mere informal postponement of the regular order is proposed, it is I think objectionable. This resolution is a grave matter. When it is proposed to arrest a man and bring him to the bar of the Senate it is a matter that ought not to be considered hastily. If it is proposed to have a mere informal postponement of the regular order, I think it would be better to let the resolution go over. over

Mr. MITCHELL. I cannot consent to let this matter go over at this time

The PRESIDENT pro tempore. It can only be considered by unanimous consent unless the Senator from Oregon moves to postpone the

Mr. MITCHELL. I move to postpone the present and all prior orders for the purpose of proceeding with the consideration of the

The PRESIDENT pro tempore. The question is on the motion of the Senator from Oregon.

Mr. WEST. I inquire what the parliamentary effect would be

upon the unfinished business which is now before the Senate by the adoption of any such order?

The PRESIDENT pro tempore. It would be displaced.
Mr. WEST. I scarcely can consent to that.

The PRESIDENT pro tempore. It would be displaced if done by a vote of the Senate.

Mr. MITCHELL. I will state for the information of the Senator in charge of the railroad bill that it is scarcely possible that the resolution will take up any considerable length of time. It certainly cannot, it seems to me, and I hope he will make no objection to this course. The Senator will see that this is an important matter; that this witness is in contempt according to the resolution submitted, and

this witness is in contempt according to the resolution submitted, and certainly action ought to be taken, and that at once.

Mr. WEST. I am quite well aware that action upon this case is much more imperative, perhaps, at the present time than any action upon the bill in regard to railroads or the sinking fund, and I would willingly give way temporarily for such time as might insure the action which the Senator desires; but in doing so the bill that is now under consideration would so lose its place as to have no preference over any other measure at the conclusion of the consideration of the resolution. If that could be assured I would give way as long as resolution. If that could be assured, I would give way as long as necessary to accomplish the Senator's purpose; but I can get no such assurance as that.

assurance as that.

Mr. WRIGHT. The Senator from Oregon suggests truly, and we all appreciate the importance of action upon this matter, a matter that is in the way of the transaction of business. If the Senator from Oregon insists upon his motion, I suggest that it be carried, with the understanding that he will make the motion to take up this railroad bill immediately at its conclusion and that it be understood that it have preference participating the regular order be laid. that is to have preference notwithstanding the regular order be laid

aside by a motion.

Mr. WEST. I have no objection to that.

Mr. WRIGHT. If that can be the understanding there will be no

difficulty.

The PRESIDENT pro tempore. Is there objection to this understanding

Mr. COOPER. I object.
The PRESIDENT pro tempore. The Senator from Tennessee objects.
Mr. WEST. Very well. We will take our chances with the railroad

The PRESIDENT pro tempore. The Senator from Oregon moves to postpone the present and all prior orders for the purpose of proceeding with the resolution relating to the recusant witness.

The question being taken, there were, on a division—ayes 28, noes

8; no quorum voting.

Mr. MITCHELL. If there is no quorum, I ask for the yeas and nays.

The PRESIDENT pro tempore. The yeas and nays are demanded,

no quorum appearing.

The yeas and nays were ordered.

Mr. CAMERON, of Pennsylvania. On this subject I am paired with my colleague, [Mr. WALLACE.] He would vote "nay" and I would vote "ver". vote "yea.

The question being taken by yeas and nays, resulted-yeas 35, nays

14; as follows:

YEAS—Messrs. Alcorn, Allison. Anthony, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cragin, Dawes, Dorsey, Ferry, Hamlin, Harvey, Hitchcock, Ingalls, Jones of Nevada, McMillan, Mitchell, Morrill, Oglesby, Paddock, Patterson, Sargent, Sharon, Spencer, Teller, Wadleigh, West, Windom, and Wright—35.

NAYS—Messrs. Bailey, Cockrell, Cooper, Eaton, Goldthwaite, Johnston, Jones of Florida, Kelly, Kernan, McCreery, Maxey, Merrimon, Norwood, and Saulsbury—14.

bury-14.

ABSENT—Messrs. Barnum, Bayard, Bogy, Cameron of Peunsylvania, Conkling, Conover, Davis, Dennis, Edmunds, Frelinghuysen, Gordon, Hamilton, Hereford, Howe, Logan, McDonald, Morton, Randolph, Rausem, Robertson, Sherman, Stevenson, Thurman, Wallace, Whyte, and Withers—26.

So the motion was agreed to.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that, the committee of conference on the disagreeing votes of the two Houses on the bill (S. No. 1222) to provide for deficiency in the appropriation for the public printing and binding for the current fiscal year, having reported that, having met, after full and free conference, they were unable to agree, it was

Resolved. That the House further insist upon its amendments to the said bill disagreed to by the Senate and ask a further conference on the disagreeing votes of the two Houses thereon, and that Mr. Henny Walden of Michigan, Mr. John D.C. Arkins of Tennessee, and Mr. Jacob Turney of Pennsylvania be the managers at the same on its part

The message also announced that the House had insisted upon its disagreement to the amendments of the Senate to the bill (H. R. No. for the fiscal year ending June 30, 1878, and for other purposes, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. Hiester Clymer

of the two Houses thereon, and had appointed Mr. HIESTER CLYMER of Pennsylvania, Mr. James H. Blount of Georgia, and Mr. Eugene Hale of Maine managers at the same on its part.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various In-

dian tribes, for the year ending June 30, 1878, and for other purposes asked a conference on the disagreeing votes of the two Houses thereon, and had appointed Mr. Erastus Wells of Missouri, Mr. William S. Holman of Indiana, and Mr. Charles Foster of Ohio managers at the same on its part.

#### GOVERNMENT PRINTING OFFICE.

The Senate proceeded to consider the amendments of the House of Representatives to the bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, disagreed to by the Senate and further insisted upon by the House.

On motion of Mr. WINDOM.

Resolved. That the Senate insist upon its disagreement to the amendments of the House of Representatives to the said bill and agree to the further conference asked by the House on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the Presi-

The PRESIDENT pro tempore appointed Mr. SARGENT, Mr. DORSEY, and Mr. MERRIMON.

### INDIAN APPROPRIATION BILL.

The Senate proceeded to consider its amendments to the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes, disagreed to by the House of Representatives.

On motion of Mr. ALLISON, it was

Resolved. That the Senate insist upon its amendments to the said bill disagreed by the House of Representatives and agree to the conference asked by the ouse on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, That the conferees on the part of the Senate be appointed by the President pro tempor

The PRESIDENT pro tempore appointed Mr. Allison, Mr. Windom, and Mr. Bogy.

#### RECUSANT WITNESS-CONRAD N. JORDAN.

The Senate resumed the consideration of the following resolution. reported from the Committee on Privileges and Elections by Mr. MITCHELL, February 12:

MITCHELL, February 12:

Whereas Conrad N. Jordan, cashier of the Third National Bank, New York, was, on the 7th day of February, 1877, at ten o'clock a. m., duly served with a subpana duces tecum issued by the Senate Committee on Privileges and Elections, commanding him to appear before such committee on the 8th day of the present month, to then and there testify in reference to subject-matters under consideration by said' committee, being matters relating to the controversy concerning the electoral votes for President and Viee-President, and to bring with him a full and exact statement of the accounts, as shown by the books of said Third National Bank, of Samnel J. Tilden, William T. Pelton, and Abram S. Hewitt, from the 1st day of June, 1876, to the 6th day of February, 1871;

And whereas said Conrad N. Jordan has refused to respond to such subpoma, has failed to appear before said committee as required by said subpoma, or to produce such statement of accounts as required: Therefore,

Resolved, That an attachment issue forthwith, directed to the Sergeant-at-Arms of the Senate, commanding him to bring said Conrad N. Jordan forthwith to the bar of the Senate to answer for contempt of a process of this body.

The PRESIDENT pro tempore. The question is on agreeing to the

The PRESIDENT pro tempore. The question is on agreeing to the

Mr. SAULSBURY. I desire to inquire of the Senator from Oregon who has charge of the resolution whether the information which I have in reference to the issue of the subpœna and which I have ex-

maye in reference to the issue of the subpenia and which I have expressed is correct or not, for I always desire to be correct.

Mr. MITCHELL. Mr. President, I am willing to answer any proper question put to me by the Senator from Delaware or by any other Senator; but I do not think I ought to be drawn into the discussion of a question here that is in my judgment neither proper nor rele-It appears that the subpœna was issued by order of the Comvant. It appears that the subpona was issued by order of the Committee on Privileges and Elections, and it is immaterial to inquire whether it was issued at the instance of this particular Senator or that particular Senator. It is enough for the Senate to know, and that the record shows, that a subpona was issued by order of the Committee on Privileges and Elections, signed by the chairman of the Committee on Privileges and Elections and directed to the Sergeant-at-Arms of the Senate, commanding him to subpona Conrad N. Jordan, and that that authorize regular on its face, issued as it states on its and that that subpœna, regular on its face, issued as it states on its face by order of the committee, signed by the chairman of the committee, was at ten o'clock on the forenoon of the 7th day of the presmittee, was at ten o'clock on the forenoon of the 7th day of the present month duly and regularly served on Conrad N. Jordan, cashier of the Third National Bank of New York, commanding him to appear before the committee on the 8th day of the present month. It furthermore appears that, even had there been a question at any time in regard to the formality of the issuance of the subpena, by a vote of that committee the acting chairman has been instructed to present for the consideration of the Senate the resolution now before it.

The honorable Senator from Delaware on yesterday and again today has seen proper to refer to what took place in the committee, and

day has seen proper to refer to what took place in the committee, and he even went so far as to state on yesterday that the resolution now pending before the committee was not directed by the whole of the committee, a matter which I hardly think he had authority to state. But conceding that it was proper to state it, I beg to say that the vote by which the acting chairman of that committee was authorized to present this resolution for the consideration of the Senate was a

unanimous vote, that there was not a dissenting vote in the com-

Mr. SARGENT. At a full meeting.

Mr. MITCHELL. There was no vote against the resolution, and, as suggested by the Senator from California, it was a full meeting of the committee. The honorable Senator from Delaware also stated to-day, if I gathered his remarks rightly, that this subpena was issued by a subcommittee. In this he is mistaken. The subpena, as appears from the record now in my hands, is a subpena issued by order of the committee and concludes as follows: of the committee, and concludes as follows:

And concludes as follows:

Hereof fail not as you will answer your default under the pains and penalties as may be in such cases provided.

To John R. French, Sergeant-at-Arms of the Senate of the United States, to serve and return.

Given under my hand by order of the committee, the sixth day of February, in the year of our Lord one thousand eight hundred and seventy, seven.

O. P. MORTON,

Chairman of the Committee on Privileges and Elections.

Mr. COOPER. I wish to inquire of the Senator from Oregon if he wishes to be understood as saying that this resolution now before the Senate was reported by a unanimous vote of the committee and that all the members of the committee were present.

Mr. MTCHELL. I undertake to say this—
Mr. COOPER. That all of the members of the committee were

Mr. MITCHELL. No, sir; I have not said so, nor I do not mean to say so; but I do mean to say it was not at a meeting of any subcommittee, but at a meeting of the Committee on Privileges and Elections, the whole committee. What I mean to say is that it was a meeting regularly called, and that at that meeting there were present a matrix appears of the whole committee and as my friend from regularly called, and that at that meeting there were present a majority, a quorum, of the whole committee, and, as my friend from Delaware [Mr. Saulsbury] has undertaken to refer to what took place in committee, I take the liberty of saying that upon the vote authorizing the acting chairman of the committee to report this resolution to the Senate, there was no dissenting voice. The honorable Senator from Delaware and the honorable Senator from Tennessee [Mr. COOPER] were both present, as I remember.

Mr. COOPER. The Senator from Oregon is mistaken. I was not

Mr. MITCHELL. I beg pardon then. The Senator from Delaware,

I am very certain, was present.

Mr. SAULSBURY. I am very certain the Senator from Delaware was not present, but came in after the resolution had passed. I was informed of it afterward, when the vote had been taken.

Mr. MITCHELL. If I am wrong, of course I stand corrected. I am always willing to be corrected if I am wrong, but I will state that there was a quorum of the full committee there, that democrats as well as republicans were there, and that on the vote authorizing the

well as republicans were there, and that on the vote authorizing the acting chairman of the committee to present this resolution to the Senate there was no dissenting vote. If the Senator says he was not there, of course I stand corrected so far as that is concerned.

Mr. President, I must confess to some surprise that an objection should be interposed here against the adoption of this resolution. What are the facts? A committee of this body, the Committee on Privileges and Elections, instructed by a vote of the Senate on the very first or second day of the present session to inquire into the matter of presidential electors and also by a special resolution conferring ter of presidential electors, and also by a special resolution conferring upon that committee power, and directing them specially, to inquire into the matter of the electoral controversy in the State of Oregon, has proceeded with that inquiry, has taken testimony, a mass, of it; and before concluding its inquiry it issues a subpœna, directed to the Sergeant-at Arms, commanding him to summon a witness to attend before the committee at a day certain, in order to testify in relation to certain things, the subject-matter of which is under investigation by that committee. That subpæna is duly served upon the witness and that witness treats that service and that process with contempt, never so much as offering either to the committee, to the Sergeant-at-Arms who served the process, or to the Senate any kind of excuse for his failure. Upon his failure to appear the committee that issued the process, by a unanimous vote of a quorum, directs its acting chairman to present that matter to the Senate, and upon being presented to the Senate we are met with an objection, with a protest, by the honorable Senator from Delaware. Why? What is the objection, aside from the intimation given that this subpona was improvidently issued, and which objection is answered by the subpæna itself, by the record before the Senate?

It appears from this resolution that this subpœna was a subpæna and, so far as the disbursements are concerned, to whom disbursements, and, so far as the disbursements are concerned, to whom disbursements, and, so far as the disbursements are concerned, to whom disbursed and for what purpose, of Samuel J. Tilden, W. T. Pelton, and Mr. HEWITT, the chairman of the national democratic committee. In view of the testimony already taken in reference to the use of money in Oregon, is that not a proper inquiry? Will my democratic friends say that

We have been told from the time the late presidential campaign was inaugurated that the democratic party was a reform party. It is heralded all over the land to-day, from one end to the other, by dem-

ocratic Representatives and democratic investigation committees, that all the frauds that have been perpetrated in connection with the re-cent presidential election have been perpetrated by the republican party, by the republican managers, and that the democratic party, the democratic managers, and democratic candidates were the pure persons, standing out pure and undefiled before the nation and the world; that they ought not to be charged with any improper action, with any improper use of money in connection with the elections or in

with any improper use of money in connection with the elections or in connection with electoral controversies going on in the States of Louisiana, Florida, Oregon, and South Carolina.

The investigation has shown already, in reference to the electoral controversy in Oregon, that no less than \$15,380 in money was placed to the credit of a banking firm in Salem, Oregon, Ladd & Bush, all for the purpose of being used, as testified to by a leading democrat from Oregon, Mr. Asahel Bush, in connection with the controversy going on in that State between Watts, the republican candidate, and Cronin, the democratic candidate. It appears from the testimony already taken that the sum of \$8,000 in money was, on the 1st day of December last, deposited by one Erwin Davis with Kountze Brothers, bankers, No. 12 Wall street, to the credit of one J. N. H. Patrick; and it further appears from that same testimony that under the direcit further appears from that same testimony that under the direction of the political managers in the State of New York, W. T. Pelton and others, this same J. N. H. Patrick, who resides at Omaha, Nebraska, was employed to proceed to the State of Oregon there to look after the electoral vote. It further appears that he did proceed to the State of Oregon, that dispatches were forwarded to the gov-ernor of the State shortly after he left Omaha, stating to the governor that a man had been sent to see him and to delay action until he arrived, and telling the governor of that State when he would arrive; arrived, and telling the governor of that state when he would arrive; and that he did arrive there in Oregon on the 27th of November; that there he held a secret conference with the leading managers of the party in that State; and that it was there stipulated that certain moneys should be paid to certain parties, \$3,000 in gold coin to one firm, ostensibly as lawyers, to argue the case, but in fact for the purpose of influencing the columns of the leading newspaper in the State; one member of the firm, W. Lair Hill, being the editor of that paper. And the very purpose and object, as appears from the testimony, in the case of the employment of the firm, was in order that any action taken by Governor Grover in the premises might not meet with the indignation that otherwise might fall upon it and upon him from the people of that State in case the columns of this leading so-called

maignation that otherwise might tail upon that the tail upon the people of that State in case the columns of this leading so-called republican newspaper were not toned down to a tacit acquiescence in such action as the governor might take in pursuance of this scheme. And not only that, Mr. President, but it appears that this man Patrick, after having fixed up matters in Oregon, returned to San Francisco, and on the 6th day of December—the very day on which the electoral vote was cast in Oregon—draws his check in favor of Wells, Fargo & Co., on Kountze Brothers, No. 12 Wall street, New York, for the sum of \$3,000, the amount deposited in the bank of Kountze Brothers by this man Erwin Davis; that he sells that draft to Wells, Fargo & Co. for its gold value, being \$7,380; that he deposited that amount in the Loudon and San Francisco Bank of San Francisco, to the credit of—whom? To the credit of Ladd & Bush, bankers, Salem, Oregon; and to be used, as the witnesses state, in connection with this electoral controversy in Oregon. Not only so, but it further appears that on the 6th day of December, 1876, at the instance of W. T. Pelton, \$8,000 was telegraphed through the banking firm of Martin & Runyon, Wall street, New York, to Ladd & Bush, Salem, Oregon, to be used in this same identical controversy in regard to the electoral vote.

Now, then, these developments having been made, conclusively showing at least very directly if not cancellasively showing that all

Now, then, these developments having been made, conclusively showing, at least very directly if not conclusively showing, that all this money so put up was raised for this purpose in Oregon and came directly from the head of the great democratic party in this nation to-day. It appears, furthermore, that the \$3,000 furnished by Martin & Runyon was manipulated through this identical man Conrad tin & Runyon was manipulated through this identical man Conrad N. Jordan, the cashier of the Third National Bank, New York; that he furnished the money at the instance of Pelton, which enabled Martin & Runyon to place it to the credit of Ladd & Bush, of Salem, Oregon, on the 6th day of December last. Not only so, but it appears from the testimony that the capital of the Third National Bank is \$1,000,000; that Samuel J. Tilden is one of the directors of that bank, and that Samuel J. Tilden owns \$68,000 of the \$1,000,000 of stock in the bank.

With these developments, showing that this conspiracy in relation

With these developments, showing that this conspiracy in relation to the Oregon electoral vote had its origin at the very headquarters of the democratic party in New York City, the committee thought it was no more than right under the circumstances that we should call upon Mr. Jordan to produce the bank accounts of Mr. Tilden, of Mr. Pelton, and of Mr. Hewitt. Therefore the subpœna was issued and served, and the process of the Senate has been treated with contempt. If these accounts are all right, if there has been no improper use If these accounts are all right, if there has been no improper use of money by these head managers, and if the accounts will show nothing of the kind, why the objection? Why did Conrad N. Jordan refuse to obey the process of this body, or why do our democratic friends on the other side of this Chamber object to this resolution compelling him to obey the process of this body? That is what I want to know. Is there any reason or excuse why a witness duly subpænaed by one of the committees of the Senate to attend before that committee to give testimony in reference to a matter properly before the committee

and under consideration by that committee should not be compelled to obey the process that has been issued? I want to know by a yea and nay vote of the Senate whether there is any Senator who is willing to place himself upon record against the right and the duty of the Senate of the United States compelling obedience to its own process.

Mr. KERNAN. Mr. President, as one of the members of this body and as one of the members of the committee I desire to inquire as to

the laws regulating a subpeena, and whether in point of fact we can arrest this man and bring him here. I may not have the privilege of saying whether the question was raised in committee or that this matter came out whether it was sufficient to authorize the arrest of a man for disobeying the process when a single member of the committee for disobeying the process when a single member of the committee had taken upon himself the responsibility, without consulting the committee at all, to issue a subpœna. It may very well be that the recital in the resolution, with the injunction upon the members of the committee not to say anything about it, would answer the purpose; but surely when the man is arrested he will have a right to know whether this was a legally authorized subpœna or not. I desire to know it for that purpose as well as to guide my action now because to know it for that purpose as well as to guide my action now, because I think, if he or anybody else would have a right to inquire by calling upon the members of the committee, or even the chairman of the sub committee who presents the resolution, that he would not be able to show whether this subpœna was ever known to any members of this committee except one person until the time when this resolution was brought in. That is the only point I desire to have settled. I have thought that it was not a very wise practice that a member of a committee should have the power on his own motion to subpœna a person and then call on the committee to enforce the subpæna afterward when they had never previously known anything about it. That question, I suppose, would arise in this case. I suppose it would turn out from what occurred in committee that this was not a subpena properly issued, and that he would not be compelled to obey, knowing all the facts

I should hardly have risen to say this much, although I desire to have that question settled and settled with the facts fairly stated as they exist, but the Senator who presented the resolution took occathey exist, but the Senator who presented the resolution took occasion to go into the testimony somewhat, as brought out in the investigations of the committee before the proofs are closed and before we have, by very many pages, the evidence printed, and he states that certain things appear, that fifteen thousand and odd dollars was placed to the credit of Ladd & Bush, of Salem, and he insinuated that it was with a view to a corrupt use of that money.

Now I ask the attention of the Senate, in justice to men who have no hearing here and to men who cannot have access to this testimony, for it is not all yet printed and the proof is not even closed, while I state just what there is about this matter, and I appeal to the chair.

state just what there is about this matter, and I appeal to the chairman of the subcommittee to know if I do not state the matter fairly and truly in reference to those who are absent.

These are the facts, I think, in brief as developed by the committee: that soon after the ineligibility of Mr. Watts was discovered in Oregon and promulgated through the press, as appears by the testimony of Mr. Bellinger and Mr. Kelly, men called by the committee, they had a consultation in reference to the effect of this ineligibility. They had a consultation in reference to the effect of this ineligibility. They satisfied themselves that Mr. Watts was ineligible; that he was not entitled to a certificate, not being a duly elected elector, for the Constitution said that he was not eligible to be appointed an elector in so many words. Thereupon, as the evidence discloses, Mr. Bellinger and others consulted together. Mr. Bellinger was called before the committee. I vouch for his character, and I think the Senator from Oregon will. Mr. Bellinger stated that they thought there might be suits brought by their political opponents, by mandamus or otherwise, to compel the governor to give Watts a certificate. They thought that they themselves might want to bring suit in the courts of Orethat they themselves might want to bring suit in the courts of Oregon with reference to enforcing what they claimed to be the law. Upon that consultation, held along toward the latter part of Novem-Upon that consultation, held along toward the latter part of November, inasmuch as they expected litigation in the courts of Oregon, and I only state what the witnesses said, and as these suits would appear before, I doubt not, an honest judge but a republican judge, they thought it advisable in prosecuting or defending litigation about this matter that they should employ a leading firm in Portland, as they stated, known as Hill, Durham & Thompson, a republican firm. Negotiations were had with that firm. Mr. Bellinger testified that the firm wanted a fee of \$5,000 to be retained to prosecute or defend in regard to this electoral vote in the courts of Oregon. Finally they consented to receive a retainer fee of \$3,000, and for that sum they agreed to act as counsel in prosecuting or defending litigation growing out of this question. Thereupon, as Mr. Bellinger testified, they began to cast around to see how they could raise this amount of money. They found that while some men would subscribe they had not the They found that while some men would subscribe they had not the means to pay the fee, and it was suggested that the national commit-tee ought to bear the expense of the investigation.

I am endeavoring to state, not in the words of the witnesses, but to give the very substance of the investigation before the committee without any words of my own. Mr. Patrick arrived there. He had been sent out by Mr. Miller, of Omaha, a member of the national committee. These gentlemen consulted him and said they had made this arrangement to retain this firm. Mr. Patrick approved it. They talked with him in reference to raising a fund to defray the expenses of that retainer and this litigation. They testified that they thought they ought to have assurances from the national committee that if they entered into this litigation they would be indemnified against

the necessary and proper expenses to the amount of \$10,000. They testified that they telegraphed to W. T. Pelton if they could rely upon receiving that amount, and that they got a flat refusal. There had been another telegram, as testified by Patrick, in cipher, but which in been another telegram, as testified by Patrick, in cipher, but which in English was indorsed by Senator Kelly, stating the fact that they had engaged to employ this firm; that they only wanted what would be necessary for the purpose of this litigation, and would return all that was over the legitimate expenses of this matter in trying to enforce what they believed to be the law; and they then received in answer to the telegram which Mr. Kelly endorsed assurances that the national committee would in some form or other indemnify them to the amount of \$8,000, they having stated that they would return all that was not used for the purpose of litigation. The evidence shows that Patrick, being a man of property and means, kept a banking account with Kountze Brothers, of New York. There was deposited by a Mr. Erwin Davis, who the proof shows was a partner of Patrick in New York, to the order of Patrick with Kountze Brothers on the 1st day of December \$8,000. Mr. Patrick left Portland by the steamer on the morning of the 2d, and when the telegram came that the amount was there, there was nobody to draw it; and inasmuch as they wanted to secure this fund, inasmuch as Patrick could not use the money which had been deposited to his credit by Davis for that purpose, there was an effort made to put \$8,000 to the credit of Ladd & Bush, bankers at Salem, through the firm of Martin & Runyon and Charles Dimon. I ask attention to this fact in order that it may be the national committee would in some form or other indemnify them Charles Dimon. I ask attention to this fact in order that it may be seen whether there ever was \$15,000 or any such sum attempted to be used or in fact at the disposal of anybody there. This deposit was made with Martin & Runyon on the 6th of December.

made with Martin & Runyon on the 6th of December.

Now, mark what had been done before that time. Mr. Kelly, who sits in this Cnamber, and Mr. Bellinger, the chairman of the democratic state committee, and other responsible men of Portland and Salem, having been assured by Patrick that they should be indemnified to the amount of \$3,000, gave their note to Ladd & Bush. They made their note at thirty days to Ladd & Bush, if I recollect the time, for \$3,000. Ladd & Bush said they would advance on that note what was needed for this purpose, and did advance \$3,000 on the note for the purpose of paying to this firm of lawyers at Portland what was paid to them. Ladd & Bush also advanced \$200 to send to a distant part of the State for Mr. Laswell, one of the democratic electors, they not being sure which would be the highest on the ticket, and wanting them all to be there.

So much for that. That happened on the 6th. The money in New York with Martin & Runyon was telegraphed on the 6th to the credit of Ladd & Bush. Was that money ever brought into the account? Listen a moment. On the morning of the 6th Patrick reached San Francisco. He there learned by telegrams that money had been deposited to his credit with Kountze Brothers, his bankers, in New York. Thereupon, as the proof is shown by another witness, Griswold, he drew his check on Kountze Brothers for \$3,000 and went to Wells & Fargo's Express Company, who knew him, in company with this gentleman and they gave him its worth in company with

wold, he drew his check on Kountze Brothers for \$3,000 and went to Wells & Fargo's Express Company, who knew him, in company with this gentleman, and they gave him its worth in coin, being \$7,380. On that day, the 6th of December, he caused to be telegraphed to Ladd & Bush, Salem, that there was deposited \$7,380 to the credit of Ladd & Bush in the London and San Francisco Bank, San Francisco, by him. There is one fund of \$3,000 talked about by the Senator. The evidence shows, and I call the Senator's attention to it for that much is printed at page 296, what became of the other \$8,000 which made up the \$16,000 in currency or something over \$15,000 in gold. I read from the testimony of Mr. Bush, the banker, whom the committee brought from Salem to testify, and it had been testified to before by Mr. Martin and by Mr. Runyon and by Dimon. The \$8,000 deposited with Martin & Runyon to be used there was sent back to them on the 11th of December. Ladd & Bush telegraphed Dimon on the 9th that they would return the \$8,000 that had been deposited. On the 9th Ladd & Bush had been informed that the \$8,000 was turned into the account at San Francisco to their credit for the purturned into the account at San Francisco to their credit for the purpose which these parties wanted to use it for. Mr. Bush, whose evidence is before me, says in these words, and it was proved before that in testimony taken at an earlier day from Martin and Runyon, that Mr. Dimon returned to them the check for \$7,997.25, being the \$8,000 less the cost of the telegrams that he paid, and that ended that transaction.

Mr. MITCHELL. If the Senator will allow me, admitting all that to be true, it does not contradict anything I have said; and if the

swears in this language:

Question. Was this \$8,000 that was placed to your credit in New York by Dimon starmed or retained by you?

Answer. By Runyon & Martin?

Q. By Runyon & Martin.

A. It was returned to Runyon & Martin.

Q. So that you did not use in any way the \$8,000 that Runyon & Martin deposited?

A. No, sir; it was returned to them.

Q. You telegraphed Dimon to return it to them, did you not?

A. Yes, sir.

That telegram is in evidence, but I cannot turn to it without an index now.

Q. You did not receive, then, as I understand you, to retain, any funds from Dimon for this purpose at all ?

A. No, sir.

Q. Nor from Runyon & Martin either † A. No, sir. Q. Neither one nor the other † A. No air

Q. Neither one nor the other?
A. No, sir.
Q. You directed Dimon to return the money to Runyon?
A. Yes, sir.
Q. So that all you have had by way of funds or security for funds about this transaction was what was deposited in the London and San Francisco Bank at San Francisco and this note—

Being the one I referred to-

that these gentlemen gave you?

A. Yes, sir; no other.

Q. And those you hold? The note and the funds are to your credit there, and that is all the funds you have had claimed to be in any way at your disposal for this business in Oregon?

A. Yes, sir.

Q. The note was left with you before you received any advice of the deposit at San Francisco, was it not?

A. Yes, sir.

Q. How long before the Kelly note?

A. I should say two or three days.

Therefore, here is one of these funds of \$8,000 that figure in this evidence and which in the early part of it was proved to have been returned, and proved also by Bush later to have been returned. He proved that he directed it to be returned, because all that was wanted

there was \$8,000.

Now a word about the note. It is true Mr. Bellinger swears that he understands that the fund at San Francisco was to make good from the national committee what they had really raised on their note, and the parties who deposited the funds at San Francisco say to him that there is no claim upon that fund at all. In the face of this statement and the statement of the Senator rrom Oregon in reference to this evidence, as he and I have heard it given all through, is there any pretense that the people in Oregon ever wanted any more than a fund of \$8,000 to indemnify for this litigation, or that the committee in New York ever consented to give any more? They got \$8,000 on the check or draft which Patrick drew on his bankers, Kountze Brothers, and the moment that was placed to the credit of Ladd & Bush the other \$8,000 placed to their credit by Martin & Runyon with Dimon was returned, as Dimon swears he drew his check on his bank and handed it to Martin & Runyon and they collected it; and that ended the transaction.

I think that is all that any fair-minded man will see in this transaction when he gets this evidence together and looks at it all through, looking at it if you please with a suspicious mind. Any one will find that that was all that the Oregon people wanted, and will find that that that was all that the Oregon people wanted, and will find that the witnesses swear there never was a word, hint, or suggestion about using money for any purpose except for these expenses, and they never did use any except the \$3,000 when those suits were commenced for the employment of a law firm and \$200 for the payment of the expenses of Laswell, which made \$3,200, except the \$3,000 paid to Cronin. What does that show ?

It appears that after Cronin was made messenger-and they all swear there had been no suggestion before—the question came up, in the way they expressed themselves, about his expenses; that there would be duplicate returns here and the Government could not pay would be duplicate returns here and the Government could not pay both; and I believe has not practically paid either, as the matter is still undetermined. They said they ought to pay his expenses. They spoke about it, and he said if they paid him anything they must pay him \$3,000; that he had to leave litigation and other business, and that he should have that amount if anything, as stated, or otherwise he would stay at home, or something of that kind; and they did agree to pay him \$3,000 out of this fund which was deposited. Then they got Ladd & Bush to advance them \$3,000 more. They all swear that no other penny was ever used; that they never intended to use any other money; and that there was no suggestion that they would need any such sum for the purpose of litigation after his appointment; that such sum for the purpose of litigation after his appointment; that they would need any such sum for the purpose of litigation after his appointment; that they felt they ought to pay it and did pay it, and they did not expect that the national committee would object to that.

I make this brief statement, and I do not ask Senators to take it upon my say so. When they get this evidence and read it, they will see that there was not a word or intimation that they would ever use any money for any correct purpose; that they simply got the \$8,000.

use any money for any corrupt purpose; that they simply got the \$8,000 with the promise to return what was not used for legitimate purposes; and that there was never any suggestion that they were to use it for

and that there was never any suggestion that they were to use it for any improper purpose.

At San Francisco, as the evidence shows, there were able men who sent up briefs showing, as they thought the law to be, that Cronin was elected and that the other man was not. Telegrams went from this side. Mr. Hoadly's opinion was sent. Authorities were telegraphed to the governor from this side. I say, and I say it with pleasure, that when this is all scrutinized, it will turn out that whether Governor Grover, as appears by his evidence given on the stand, was in error or not about the law, he intended to do and did do, as he swears, what he then thought was the law and what he still thinks is the law. He may be in error; I say nothing about that; but instead of there being any bribery, any corrupt intent, any intent to do anything, it will appear by the proof that the only idea was if Cronin were by the laws of Oregon entitled to that certificate he should have it, and if they were satisfied that he should have it they desired to

Mr. President, I have said this much, stepping in the Chamber with no idea to discuss the Oregon case and with no intent in what I

have said to give more than the facts derived from the evidence. There never was but one sum used, and there was this negotiation about two sums by telegraph because the one could not be used after Patrick left Portland, and he told them that he would indemnify them the amount they had expended for counsel and litigation. The moment it was telegraphed that he had realized on that fund in San Francisco and placed its value in coin, \$7,380, to the credit of Ladd & Bush, the other money was returned to this firm of Martin & Run-

As to the idea that Mr. Tilden's bank account will show anything wrong I have not the slightest belief or suspicion. I have throughout this investigation, so far as I could as a minority man, aided in opening every door to see if there was corruption anywhere. The opening every door to see if there was corruption anywhere. The committee have examined Mr. Bellinger, the Senator from Oregon, [Mr. Kelly,] and the men who made this transaction. Bellinger testifies frankly that, Mr. Patrick having said that he would indemnify them the moment they learned that this fund was deposited in San Francisco to the credit of Ladd & Bush, which as they understood was to pay the advance on their note, and so Ladd & Bush understood it, this note was executed. If their understanding is right, Mr. Bellinger, Mr. Kelly, and those gentlemen will not be out of nocket, as they ought not to be, for the expenses in a matter which of pocket, as they ought not to be, for the expenses in a matter which the national committee should properly take charge of, not to bribe anybody, not to influence anybody by money or anything of that kind, but to litigate a legal question in which they believed they were right and which they desired to litigate in the courts of Oregon, if there should be any necessity for doing so. That is all that was used or thought of being used. That is all the money they ever had any control of or that was ever got for this purpose.

I thought I should say this much because the charge and insinua-

I thought I should say this much because the charge and insinuation go out without the evidence yet being promulgated, and I say again I state my judgment, after scrutinizing the evidence, that the most uncharitable man who will scrutinize it will say that all the money they ever got or that they were to get, whether raised in the State or from the national committee, was with the idea that they should use it for no purpose except to maintain what they believed were their legal rights in the courts of Oregon.

Mr. MITCHELL. Mr. President, I did not intend to be drawn into any discussion at this time in regard to the question as to just how much money was used in the State of Oregon with reference to this electoral matter.

electoral matter.

Mr. KERNAN. Will my friend allow me a moment?
Mr. MITCHELL. The Senator would not allow me to interrupt I was only to ask the Senator if he did not mention

Mr. KERNAN. I was only to ask the Senator if he did not mention that they spent \$15,000.

Mr. MITCHELL. I will come to that. I said over \$15,000 had Mr. MITCHELL. I will come to that. I said over \$15,000 had been placed to the credit of parties in Oregon. I shall repeat it. I should have said nothing in fact in reference to this matter now had it not been that I felt I was compelled to do it in answer to the opposition made by the Senator from Delaware to the passage of this resolution. As I said in what I did say, I did not undertake to go into the question fully as to how much money had been used improperly or otherwise in the State of Oregon in connection with this matter or as to all the persons who had received money improperly or otherwise in connection with the matter. I did, however, take or otherwise in connection with the matter. I did, however, take occasion to say, as a justification for the issuance of this subpoena by the Committee on Privileges and Elections calling upon Mr. Jordan for these accounts, that it had been testified to by a leading democrat of Oregon that over \$15,000 in money had been put up at different points and in different banks for the purpose of being used in conmeetion with this matter.

Mr. KELLY. I should like to know what witness testified that.

Mr. MITCHELL. I will answer my colleague that one Asahel Bush, a banker of Salem, Oregon, and a leading democrat, as my colleague will admit, testified as I shall read.

Mr. KELLY. On what page?

Mr. MITCHELL. On page 291 of the printed testimony, from

which I now read:

By Mr. KERNAN:

By Mr. Kernan:

Question. Do you remember whom the \$3,000 check was payable to? Was it payable to this firm of lawyers?

Answer. I think it was payable to Senator Kelly, but I am not certain. [To Senator Kelly.] Was it payable to you?

Mr. Kelly.] Was it payable to you?

Mr. Kelly. No; to Hill, Durham & Thompson.

The Witness. It was payable to Hill, Durham & Thompson.

Q. (By Mr. Kernan.) Your check on Ladd & Tilton there?

A. Yes, sir.

By Mr. MITCHELL:

By Mr. MITCHELL:
Q. What date was that check drawn; do you know!
A. I do not.
Mr. Kelly. The 6th.
The Witness. It was on the 6th.
Q. (By Mr. Mitchell.) What other checks were drawn!
A. We drew for \$3,000 in favor of Bellinger, if I do not mistake the use of the cipher; \$2.800 was drawn, and \$200 was afterward added.
Q. Did you deliver that money to Mr. Bellinger!
A. I telegraphed it to him—to Ladd & Tilton. I telegraphed him \$2,800. I supposed it was \$3,000; but I had used the wrong word in the cipher. Afterward \$200 was placed there to his credit.

By Mr. Kernay.

By Mr. KERNAN:

Q. You sent \$2,800 by mistake ! A. Yes, sir.

By Mr. MITCHELL:

And now I call the attention of my colleague, as these are answers made by this witness in his presence:

Q. Then, as I understand you, there was \$16,000 in all, or nearly that, placed to your credit on or about the 6th of December—\$3,000 in New York, and seven thousand and some odd hundreds in the London and San Francisco Bank, (limited.) at San Francisco ?

A. Yes; a little more than \$15,000.
Q. And you were advised, or understood, that each of these amounts was for use in some way in reference to the Oregon matter—about attorneys, or something?

A. Well, all I understood about it was from Mr. Bellinger—yes.

That is what I referred to in my opening statement that it appeared from the testimony in this case that over \$15,000 had been placed to the credit of Ladd & Bush at different points to be used in connection with this matter.

Mr. KELLY rose.
Mr. MITCHELL. I will state before my colleague interrupts me, because I do not wish to misrepresent anybody and I am not going to do that, in response to what has been stated by the Senator from New York, [Mr. Kernan,] that it does appear from the testimony of Bush and of Runyon that the one eight-thousand-dollar amount sent through Martin & Runyon was afterward telegraphed back. That is all true so far as that is concerned, but that does not conflict with the statement I made in the first place and which I repeat upon the authority of the testimony of Asahel Bush, that for the purpose of meeting expenses whether proper or improper in the State of Oregon in connection with this matter there was at one time as much as

\$15,000 up at different points.

Mr. KERNAN. The Senator will pardon me. I rose merely because I omitted to state that on the 9th as soon as they knew it they directed one \$8,000 to be handed back and it was handed back.

Mr. MITCHELL. As I said in the remarks I made before, I do not undertake to state just how much money was used in Oregon and to whom paid. I did refer to the fact that \$3,000 was paid to the firm of Hill, Durham & Thompson and that the testimony shows as I believe it does conclusively that that amount never would have been paid to that firm had it not been for the fact that one member of the firm, Mr. Hill, is the editor of the leading republican paper so-called of that State and that the expectation of the democratic managers in paying that amount to these lawyers as testified to by Sena-tor Kelly, Bellinger, and others, was that the tone of that paper would be modified into an acquiescence if not an open defense of whatever might be done by Governor Grover in reference to this matthat I did not undertake to state all the different places where money had been distributed in connection with this Oregon electoral controversy, I omitted to state that which he has supplied, namely, that \$3,000 in gold coin of this amount had been paid to the democratic elector E. A. Cronin, paid to him ostensibly to cover his expenses to Washington and back when the fact is that \$600 would have more than covered all his expenses to Washington and return. What is the use in discussing this matter to say that there was no improper use of money in Oregon? Here is a dispatch for instance to Mr. Patrick from this same man, Davis, who deposited \$8,000 to the credit of Patrick on the 1st day of December with Kountze Brothers, No. 12 Wall street, in which he says by telegraph to Mr. Patrick as follows:

NEW YORK, November 27, 1876.

J. N. H. PATRICK :

Secure your point at all hazards; communicate with me immediately, giving prospects.

What is the use of saying that money was not improperly used when the very man who put up \$3,000 to be used in connection with the controversy telegraphs to the man who had been sent out to carry into execution the scheme and manipulate the matter "to secure his point at all hazards; to communicate with him immediately, giving prospects?" In addition to all that it, is conceded upon this floor that the democratic elector, Mr. Cronin, received of this money so raised the sum of \$3,000 in gold coin, and furthermore it appears from the testimony conclusively, and is not denied, that Mr. Cronin for some considerable time after the election, and after this question as to the eligibility of Watts had been raised and discussed in Oregon, declared repeatedly and publicly that he would not accept a certificate if Goverrepeatency and publicly that he would not accept a certificate it covernor Grover should issue one to him; that he had been defeated at
the polls by a majority of nearly eleven hundred, and that he would
not accept or act under any certificate that Governor Grover might
see proper to issue; and when it appears furthermore by that same
testimony that when this man Patrick arrived in Oregon he sought
through the democratic managers there an interview with Mr. Cronin
and that there and then he told Mr. Cronin that it was an important
matter to be an elector and to east the vote for President and Vice. matter to be an elector and to cast the vote for President and Vice-President; that he, Patrick, had understood that he, Cronin, had said resident; that he, Patrick, had understood that he, Cronin, had said he would not act under a certificate provided Governor Grover should issue him one, and that Patrick then volunteered to state to Mr. Cronin that if Mr. Tilden was elected President of the United States he would give Cronin anything in his power to give.

This is Mr. Cronin's own testimony. It appears from Mr. Cronin's statement, it is true, that Mr. Patrick suggested to him that he understood he had stated he would not act under this certificate and Cronin said that he had so stated repeatedly: but he had changed his mind

said that he had so stated repeatedly; but he had changed his mind

and said that he would act; and after all this had taken place then Mr. Cronin did accept the certificate of Governor Grover and did act upon that certificate in organizing or attempting to organize an Then, after that had all been done, he again, acelectoral college. cording to the testimony, threw himself back upon his dignity and upon his reserved rights as an individual, as a man, as a messenger, and as a democrat, and said that he would not move one peg toward carrying the vote to the President of the Senate unless he was paid carrying the vote to the President of the Senate unless he was paid not only his necessary and actual expenses in proceeding to Washington and returning, but the sum of \$3,000 in gold coin, and that when in telegraphing the \$3,000 in gold coin from Salem to Portland the day before Mr. Cronin was to leave to proceed to Washington the right word in the cipher dispatch was not used by Mr. Bush, and Mr. Bellinger, instead of being authorized to draw from Ladd & Tilton, in Portland Oragon the sum of \$3,000 in gold coin was only author. in Portland, Oregon, the sum of \$3,000 in gold coin, was only authorized to draw \$2,800, even then, when that amount in gold coin had been raised, Mr. Cronin, this man who cast the vote upon which the democracy expect to wrest from the majority of the people of the State of Oregon their rights, declined to carry the vote to Washing-State of Oregon their rights, declined to carry the vote to Washington unless the remaining \$200 were raised, and then a note was given to Ladd & Tilton for the remaining \$200. The balance of the amount being thus raised by a note, he was paid the \$3,000 in gold coin, and placing the amount in his pocket, he then, and not until then, proceeded to Washington to carry the electoral vote:

Does my friend from New York, in the face of these conceded facts, say that he money was improvedly used in connection with the electors.

say that no money was improperly used in connection with the elect-oral controversy in Oregon? I submit the facts to the consideration of a candid Senate and the candid people of this nation.

But as I said, Mr. President, I do not want to go into an investiga-tion of this matter now. It will be time enough to argue these mat-ters when all the testimony is before the Senate and when the report of the committee comes before this body. I have only been drawn at this time into saying as much as I have said by the unlooked-for, the unexpected opposition made to the adoption of this resolution by Senators on the other side of this Chamber. The simple question now before the Senate is this: Shall the Senate of the United States insist upon its right and upon its duty to enforce obedience to its own proc-That is the question before the Senate, the only question before us. And having said this much, I submit the question and hope we may get an early vote upon the resolution.

Mr. ALCORN. Mr. President, whether the Senate may see proper

to permit this discussion to go on I know not. If it is the will of the Senate that it shall go forward I am sure I have no objection; but I rise to call the attention of the Senate to the question before this body and to state the fact that the discussion is altogether irrelevant, in my judgment. I think my honorable friend from Oregon is himself responsible for this discussion, irrelevant as it is, in the case before the Scnate.

Mr. MITCHELL. The Senator from Mississippi, of course, is enti-

Mr. ALCORN. Certainly I am entitled to my opinion. I know that; and it is only my opinion that I propose to express.

Mr. MITCHELL. I certainly do not want the Senator to express

Mr. ALCORN. The only question before the Senate is whether the Senate shall issue an attachment against this defaulting witness. It is argued on one side that the subpæna which the witness has disavowed or to which he has failed to respond was not properly issued.

Mr. MITCHELL. Is there any evidence of that fact, I would inquire of the Senator from Mississippi?

Mr. ALCORN. I care not whether there is any evidence of it or

ot. It is not the time to inquire into that matter.

Mr. MITCHELL. That is what I think.

Mr. ALCORN. The subpœna was issued under the authority of this body, by the chairman of a Senate committee, and the question whether properly issued is one not to be decided by the witness nor is it one now to be adjudicated upon by the Senate. To the witness the process was served with the authority of this body. The question to him was not as to whether he knew anything or as to whether tion to him was not as to whether he knew anything or as to whether he did not know anything. It was for him to obey that subpœna, and when he has failed to obey the subpœna and the process is brought back by the Sergeant-at-Arms, the question then is whether the Senate will vindicate its authority or not. It is not as to any testimony that may have been taken before this committee, it is not as to any question that may have been discussed heretofore, not as to as to any question that may have been discussed herectoric, not as to the relevancy or irrelevancy of the witness's testimony, but the question is whether the Senate will vindicate the authority of this body in having that witness brought before it for the contempt un-der which he stands from the fact of his not having responded to the subpæna.

The Senator from Oregon [Mr. MITCHELL] went forward to examine The Senator from Oregon [Mr. MITCHELL] went forward to examine into the merits of this case. He introduced collateral testimony here and went all over the ground of the charge and denial in regard to the electoral vote of the State of Oregon. The Senator from New York [Mr. KERNAN] comes forward and denies this, and then the Senator from Oregon [Mr. KELLY] stands up ready to enter his protest against the declaration upon the part of his colleague. I contend that the proof is not all in, that the witness whom the Senator from Oregon has subpænaed is not here, and until he is here and has testified the proof in this case is not before the body. The only question before the Senate is whether the Senate will issue an attachment against this defaulting witness. I care not what he knows or what he does not know.

But what I arose for is that I may not by implication be brought by my vote to be considered as being either for or against one side or the other, that question not being before this body. I care not as to the merits of the case. My only inquiry is this: Is the witness in contempt of this body? The record shows that he is, and to vindicate this body I shall vote to have him brought here to answer for his

Mr. MITCHELL. I agree fully with the Senator from Mississippi Mr. MITCHELL. I agree fully with the Senator from Mississippi except in the statement that I am responsible for all that has been said aliunde the true issue before the Senate. I felt that I was justified in saying what I did in answer to the objections made to the adoption of the resolution.

Mr. KELLY. Mr. President, this discussion has certainly departed very widely from the resolution which was introduced by my colleague.

I must confess that I was not a little surprised when I entered the I must confess that I was not a little surprised when I entered the Senate Chamber and found my colleague making a very bitter assault upon the democratic party in Oregon. I had no reason to expect that such a question would arise in a discussion of this kind; but it can hardly be expected that I shall sit here and quietly listen and not repel such accusations. While I admit that there is a most singular departure from the ordinary course of debate, while I admit that there is a wide departure from discussing the resolution, yet who is responsible for this discussion? Certainly my colleague is. If he had contented himself with simply advacating the adontion of the resolution I should himself with simply advocating the adoption of the resolution, I should not have had a word to say. I might have denied the propriety at least of adopting it in the sweeping form in which it is drawn, that this witness shall be compelled to bring here the books of a bank to show all the transactions of Mr. Tilden and what took place during the canvass. I trust the Senate will be far from compelling this witness to produce everything that has taken place during this canvass and every account that he may have had with that bank without indicating that it is expected to prove a certain account or a certain

payment. It must be designated in some particular way.

As I said before, I am not going to discuss that matter, and I would not now say a word about it but for this accusation. I shall now go into the full details of this transaction and show that my colleague has perverted the testimony. I will not say that he has willfully perverted it, but he is certainly blinded to the testimony that was taken before him as chairman of a subcommittee. Before I came into the Senate at the present session, he had made a most bitter assault upon the governor of Oregon. Before he ever received one iota of testimony in regard to it he prejudged the case. He had decided everything in advance, and then after introducing the resolution to submit this question to the Committee on Privileges and Elections, after making a most vituperative assault upon the governor, without a particle of evidence, my colleague by some means got himself placed upon the Committee on Privileges and Elections to investigate this matter which he had prejudged before. As to the taste of that proceeding, I leave the Senate to judge. My colleague was placed upon that committee. He was not only placed upon the committee, but he became the chairman of the subcommittee to investigate the elect-

oral vote of Oregon.

Mr. MITCHELL. I submit tomy colleague whether I have not been a member of the Committee on Privileges and Elections since I took my seat in the Senate, with the exception of a very few days, that I my seat in the Senate, with the exception of a very few days, that I was dropped simply because the Senater from California [Mr. SAR-GENT] took my place to go to Florida.

Mr. KELLY. Certainly my colleague was not put upon the committee at the commencement of this session.

Mr. MITCHELL. I beg pardon, I was placed on the committee at the commencement of this session, but I resigned from the committee some time after the session supergreated and then was placed heal.

some time after the session commenced and then was placed back upon the committee again. These are the facts.

Mr. KELLY. Very good; it makes no difference. I know that the Senator from Indiana [Mr. MORTON] had him placed upon the

Mr. MITCHELL. I do not know what right my colleague has to say that the Senator from Indiana had me placed upon the committee. I was placed there by the President of the Senate, not by the

Senator from Indiana.

Mr. KELLY. I will then state it as it truly occurred. The Senator from Indiana whose seat is before me suggested that another member be put upon the Committee on Privileges and Elections and suggested my colleague as the proper person to be put upon that committee, and the President of the Senate appointed him. He was placed upon that committee and he was placed upon it to sit upon the ques-

upon that committee and he was placed upon it to sit upon the question that he had prejudged.

Mr. MITCHELL. I think my colleague is wrong about that. I do not think the Senator from Indiana made any such suggestion as that I should be placed upon the committee. I am satisfied the RECORD will show that he did not.

Mr. KELLY. My colleague can certainly correct me at the close of my remarks without interrupting me as I go along.

Mr. MITCHELL. I do not wish to interrupt you.

Mr. KELLY. I know that to be the course of procedure by which my colleague was placed upon the committee. I thought it was a most singular thing that he should accept the place at that time,

when he knew himself that he had prejudged the case. when he knew himself that he had prejudged the case. In my judgment he could not render an impartial decision upon the testimony. He became the chairman, as I said a while ago, of the subcommittee which has investigated this whole matter. He knows the testimony; he knows every particle of testimony that was presented to that committee from the time that it examined the first witness in relation to the Oregon vote down to the present hour; and here I must confess my utter astonishment that my colleague knowing this should make the statement that he has made to-day in the Senate.

Mr. MITCHELL. Will my colleague allow me one moment?

Mr. MITCHELL. Will my colleague allow me one moment?

Mr. KELLY. I certainly will if I have mistaken you.

Mr. MITCHELL. Will my colleague point to a single solitary sentence uttered by me in this debate in reference to the testimony taken

in that controversy, which is not correct? If he can and will point it out I shall stand corrected, but I insist that I have not.

Mr. KELLY. I was proceeding to do that, and if my colleague will only allow me I think I can satisfy him as I can certainly satisfy the Senate that he has done so. I will now commence and detail the the Senate that he has done so. I will now commence and detail the proceedings in this conspiracy as it is termed on the part of the democracy. Let us see what it is. The republican party in Oregon had placed upon their electoral ticket a gentleman by the name of John W. Watts, who was a Federal office-holder. He was a postmaster at the time. The Constitution of the United States says that no person holding an office of profit or trust under the United States shall be appointed an elector. He was placed upon the ticket; he was voted for, and I admit he received a majority of the votes cast. I never denied, and no person in Oregon ever pretended to deny, that so far as the count went Watts received a majority of the votes. That a popular vote can make a man eligible, who is disqualified by the a popular vote can make a man engible, who is disquathed by the Constitution; that the State of Oregon can appoint an elector that the Constitution declares shall not be appointed, it seems to me, is a fallacy. I say that Watts was not eligible; he could not be chosen, and because the democracy in Oregon chose to contest his right, their action is denominated and denounced as a conspiracy. You might as well say that because the democratic party or those connected with it are at this present moment contesting the counting of a vote that is covered all over with fraud in Louisiana there is a conspiracy on the covered all over with fraud in Louisiana there is a conspiracy on the part of the democratic party to count out Mr. Hayes. Have they not a perfect right to contest? Have they not a right to employ counsel in that tribunal? Do you expect that the gentlemen who have been discussing important questions of law before the electoral commission from the commencement are doing so without any fee or reward on either side, republican or democratic? No, sir; no Senator here believes that is true; yet my colleague would denominate such conduct on the part of the democrats in Oregon a conspiracy.

Mr. MITCHELL. The difference is just this, if my colleague—
Mr. KELLY. I hope my colleague will allow me to go on.

The PRESIDING OFFICER, (Mr. MERRIMON in the chair.) The Senator refuses to yield to his colleague.

Mr. KELLY. I return now to what took place in Oregon. A number of gentlemen there believed that Watts was not eligible for the

ber of gentlemen there believed that Watts was not eligible for the electoral certificate; that there would be a violation of the Constitution if he received it, and, as my colleague said here, therefore they "conspired" against the interests of the country. I took my part in that transaction there, and I never denied it or pretended to deny it. that transaction there, and I never defied it or pretended to deny it. I took a part in this proceeding because I believed it was right. I believed the Constitution of the United States should be enforced. I believed that a man who has no right to be elected and who could not be chosen without a violation of that instrument should not be permitted to have the certificate. I have said so from the time I knew that Watts was a postmaster. I have said that he was not entitled to cast the vote of that State and I say so now. If that tribunal which is to pass upon this question decide otherwise, I shall believe that they are certainly greatly mistaken.

As I said, a number of gentlemen got together in the State of Ore-

believe that they are certainly greatly mistaken.

As I said, a number of gentlemen got together in the State of Oregon and devised, as best they could, some means to prevent this usurpation—because Watts would have been a usurper if he had claimed the right to cast the vote of Oregon when the Constitution of the United States said he should not do so—a number of gentlemen met together for the purpose of preventing this usurpation of the right of an elector by one who could not be chosen. Necessarily we supposed that proceedings would take place in the courts of justice to prevent it; that probably a mandamus would be issued to prevent a count of the vote for Mr. Cronin, who, we believed, would be entitled to that certificate in case the other gentleman was not. We supposed that the mandamus would probably be issued at the instance of the republican gentlemen on that side, and that we would require counsel to defend against it. Whatever proceedings at law would be brought in the courts would have to be brought before a gentleman who is a member of the republican party, the circuit judge gentleman who is a member of the republican party, the circuit judge of the district in which Salem is situated; a gentleman of distinguished legal ability; a gentleman who is above reproach. I refer to Judge Boyce. We expected that legal proceedings would be commenced before him.

Is there anything unreasonable when a party or a number of genthemen expect that a suit will be brought, in selecting counsel in whom the court have confidence, in whom the country have confidence, in whose integrity and ability every person in the community has confidence? The firm that was employed, Messrs. Hill, Durham & Thompson, was a republican firm. Some with whom I acted believed they

would have more influence with the circuit judge simply because of their ability and of their republican principles than any democratic firm could have. That was the reason they were employed. Whether it was right or not to select a republican firm, I leave to every person here. I presume there is no one in the Senate who will gainsay the right to employ any man by the democratic party, whether he be a republican or whether he be a democrat. There is nothing improper in employing counsel, and if they exacted a large fee from us for that service and we chose to pay it, whose business is it? Is it to be denounced as a corrupt act because these lawyers were paid \$3,000 for attending to a most important case, or what was supposed to be a most impor-tant case, which would be pending before the circuit judge, and tak-ing an appeal to the supreme court and prosecuting it there—because all that was in contemplation, and this firm was employed in that way? I leave it to the Senate to say whether it is or not. I can see no corruption in it. I agreed that it should be done.

Mr. MITCHELL. Will the Senator allow me to ask him a ques-

Mr. KELLY. Certainly.

Mr. MITCHELL. I inquire of my colleague if one consideration, one ingredient, in the employment of that firm was not the fact that Mr. Hill, one of the members of the firm, was the editor of a leading republican paper, so called, in the State, and if my colleague in his testimony did not testify as follows:

Question. What was said at that time ?

The time that the employment was made of this firm of Hill, Durham & Thompson.

Answer. Mr. Hill said, "That is what you want us to do?" I said, "Yes." I will say here that I had in my own mind, but I did not communicate it to him, that I hoped the paper which he conducted would not be so severe against the democrats. That was my own opinion, but when he said to me, as Mr. Bellinger will remember, "Is that all?" I said "Yes." Although I wished to make it still something more, I said, "Yes." After all the agreement was made I said to Mr. Hill, "I think you have been unnecessarily severe on us democrats in the paper, and I hope you will not be so hereafter." This was after the agreement was all made.

Q. At the same conversation though?

A. O, yes; perhaps half an hour after.

Q. In Hill and Durham's office?

A. Yes, sir.

Q. Now, colonel, I want to ask you if the fact that Mr. W. Lare Hill was the editor of the Oregonian did not have some little inducence on your mind in consenting to pay the firm of Hill, Durham & Thompson \$3,000 for their services as attorneys in this case?

A. I must confess, as I said, that I hoped it would be so; but I had not the courage to ask it.

Mr. KELLY. Yes, sir; that is all, as I believe, that took place. My colleague has asked whether it was not the principal consideration that one of the members of this firm was the editor of the leading republican journal of the State. I will answer no, it was not the principal consideration. The principal consideration with me, indeed I might say the only or at least the main consideration, in making the contract, was on account of the judge before whom the legal proceedings would be commenced, because at that time we had no idea that the case would come before the governor for his consideration, but we believed that the legal proceedings would be commenced by the republican party to compel the counting of the votes for Mr. Watts, and by the law of Oregon they would have to be commenced in the district where Salem is, and in that district a republican is judge. As I said before, he is a worthy gentleman, above suspicion judge. As I said before, he is a worthy gentleman, above suspicion and above reproach, a man of intelligence; but we believed that every human being is more or less influenced by his party associations. It

human being is more or less influenced by his party associations. It may be unintentional, but still there will creep over him influences, and we could not tell how it would be. We believed that a republican firm in whom we knew this judge had confidence would have more influence than any democratic firm would have. For that reason we employed this firm. That was the principal reason with every man who talked about the employment of this firm.

I must confess, as I said in my testimony, that I was somewhat adverse to the employment of the firm because I thought the fee was a very large one. This was my own opinion; but I yielded to others who thought it was more important that we should have that firm and pay the large fee of \$3,000. I yielded my judgment to them, and the firm was employed. As I said, we had talked it over about Mr. Hill being the editor of the leading republican journal, and that that might have some influence. I said in my testimony that it had certain weight with me; but it was not a part and parcel of our agreement. When we made the agreement it was stipulated that they should do certain legal services for us, that is, that they should prosshould do certain legal services for us, that is, that they should prosecute all suits that should be brought by the democrats and defend against those who might prosecute suits against the democrats, and that they should attend to them in the appellate court as well. This was the agreement, and the sole agreement. It is true, as I said, that some time after the agreement was made I hoped Mr. Hill would be less severe in the journal he edited. It was a kind of casual remark. I hardly expected anything to be said about it; but Mr. Hill distinctly then and there stated that he could not and would not change the tone of that journal of which he was the editor without the consent of the proprietors; and, that if it became necessary, he would discontinue any connection with it in order to presente this suit. discontinue any connection with it in order to prosecute this suit. now say here that the tone of that journal, so far as anything was said or done in it, was afterward just as severe as it had been before.

It was as bitter against the democratic party as it had been before this agreement took place.
Mr. MITCHELL. It never was very bitter.

Mr. KELLY. Its tone was not changed by any employment that we made. We employed the firm for the reason that I have stated. The next consideration was, how should we raise money for this purpose, and at that time Mr. Patrick came there; we told him of embarrassment and that we had difficulty in raising money, and could not do it without sending to different parts of the State or asking different portions of the country to contribute to make up the large sum which we expected to pay for this employment of the law-yers. It was suggested to Mr. Patrick that, as this was a matter in which the whole democratic party was interested, it would be nothing but fair that the democratic national committee should see that this money was paid. He expressed himself in such a way as to indicate that he thought it was right, and that we should not bear this burden. The telegram to his banker to send \$8,000 was put in evidence. We wanted \$10,000, but could not get it; and we finally agreed that we would telegraph for \$8,000, and this was done. Eight agreed that we would telegraph for \$2,000, and this was done. Fight thousand dollars were placed to our credit with Kountze Brothers but we could never realize it; we could not get the money to pay the attorneys whom we had agreed to pay. Then we telegraphed several times back and forth that we could not use the money. We telegraphed to Mr. Patrick, who was in San Francisco, that we could not realize on it, and he sent up some seven thousand and odd dollars, the proceeds of \$8,000 which he had in New York, which had been telegraphed to us before. He sent the proceeds of that to the

been telegraphed to us before. He sent the proceeds of that to banking firm of Ladd & Bush.

And here, Mr. President, let me say that that is every cent that we ever had there. My colleague certainly knows that fact. It was anticipated, however, by simply drawing a promissory note, signed by myself and a number of other gentlemen, made payable to Ladd & Bush. We drew \$3,200 upon that sum, but my colleague knows very well that Mr. Bush stated that that sum was to be replaced by the money that was sent by Mr. Patrick from San Francisco. He knows that fact and every member of the committee knows it. While you may say there was nominally \$15,000 there, yet actually the one was to replace the other. We did not expect to repay this sum of money that we were using. We had been assured by Mr. Patrick that he would do everything he could to see that the democratic national comwould do everything he could to see that the democratic national committee in New York should refund the money to us and that we should not be at any loss. But we had to anticipate that sum and we gave our own notes for the purpose of realizing the money, and that is all that there is of it. We got it from the city of San Francisco; and \$3,000 was paid, as I have said, to this firm of lawyers in pursuance of a contract that we made; \$200 of it was paid to defray the expense of sending a messenger some three hundred miles to bring down Mr. Laswell, who was on the democratic ticket as one of our candidates for elector. At that time we were not certain whether he would not be the highest on our ticket instead of Mr. Cronin, and so we sent an express messenger for him and paid \$200 for that. The other \$3,000 was paid to Mr. Cronin.

Whether Mr. Cronin ought or ought not to have charged us so much is a matter of taste with him; I think he did wrong. There was no agreement made to pay him until after the electoral vote was cast. The agreement made to pay him until after the electoral vote was cast. The evidence shows clearly and conclusively that this was the case, and that Mr. Cronin then said that he had no money; that he could not leave; that he had an important case to argue in the supreme court of Oregon the following week and if absent he would be the loser of a large sum of money. I do not remember exactly the amount, but it was certainly several thousand dollars that he expected to realize in that case; and he did not like to leave the State at that time. He, however, agreed to leave, but demanded \$3,000, and it was paid to him ont of this fund. As I said before, it is a question of taste with Mr. Cronin whether he should have demanded so large a sum or not. There were gentlemen there with me who thought it was wrong: There were gentlemen there with me who thought it was wrong; that he exacted too much. But where is the corruption in paying a man his expenses here, even though the demand made be exorbitant? If he was paid for doing that which it was his bounden duty to do, as an elector chosen by the people of Oregon—because I believe he was chosen according to law, not by a majority of the votes, I admit, but in my judgment legally chosen as one of the electors of the State of Oregon, and if it be decided otherwise I shall be mistaken; I must confess I shall not believe it will be decided otherwise until that august tribunal that is to pass upon it shall give its judgment—I ask is there corruption in making such a payment?

Mr. President, this is all the money that was paid. The witnesses who have testified, the men who know all about it, say that the \$3,000 paid to the firm of Hill, Durham & Thompson, the \$200 paid for the expenses of Mr. Laswell, and the \$3,000 paid to Mr. Cronin was all the money that was ever paid; and I defy my colleague or any other person who knows anything about this transaction to show that there was any other money paid. I am satisfied there was not; so far as I am concerned, I know there was not; and I am satisfied beyond the shadow of a doubt that no other money than that was paid. If this can be called a corruption fund, if this was a corrupt bargain, then there is corruption; but I can see nothing of corruption; but I tion in it. I believe it was right and proper. I believe, as I said before, that the fee we paid our lawyers was a high one; I believe that the sum paid to Mr. Cronin was more than he should have demanded; but that it was improper to pay the money, that there was a conspiracy to wrong anybody, that there was anything illegal in it, no man, in my judgment, can for a moment believe.

My colleague knows the fact too, that all the money we expected

to receive, but which we did not receive, because it did not come in to receive, but which we did not receive, because it did not come in time from Kountze Brothers, or from Dimon, was returned to them. That my colleague knows. My colleague knows further that the only money we got was from San Francisco and that that was \$8,000 in currency, which, reduced to coin, would make about seven thousand three hundred and odd dollars. My colleague knows further that after that sum of \$6,200 was paid, the balance was remitted to the order of Mr. Patrick himself; and that was the end of the whole transaction. Six thousand two hundred dollars for that contest in Organa. tion. Six thousand two hundred dollars for that contest in Oregon;

tion. Six thousand two hundred dollars for that contest in Oregon; I leave it to the just judgment of the Senate and to every Senator here whether there was any improper use of that money; and that is the whole transaction from beginning to end.

So far as concerns the note that was given by myself and a number of other gentlemen to anticipate the money we were to get, anticipating it in order to pay this fee, we are not out anything; we never expected to pay it. It was simply anticipating the money that we were to receive from other sources. So Mr. Bush has said, so Mr. Bellinger has said, and so every one who has testified in relation to it has said, that the money that was raised on our note was simply anticipatory; it was simply anticipating what we expected to receive from either the national committee in New York or from Mr. Patrick in San Francisco. Mr. Patrick had pledged himself virtually to see that it was paid in case the democratic national committee would not pay it; and that, doubtless, was one reason why he sent the money to us from San Francisco.

to us from San Francisco.

All this was done on the 6th day of December. These several telegrams from New York were sent, the money was telegraphed, on or about the 6th day of December, and on the same day it came from San Francisco; but, two days before this, on the 4th of December, we San Francisco; but, two days before this, on the 4th of December, we had anticipated it by raising a portion of the money on our own note; and the note is simply canceled now by the payment of the sum by Mr. Patrick. So far as the note being in the custody of Mr. Bush is concerned, I have simply to say that it is there yet. Mr. Bush says he does not look to us for it; he does not expect anything from us for it; neither do we expect to pay one cent for it. And that is the "\$15,000" that my colleague thinks is a fund to corrupt the courts and the people of Oregon!

Mr. MITCHELL. I simply quoted from the testimony of Mr. Bush. He said there was \$15,000.

Mr. KELLY. Let me call your attention to that testimony. Mr. MITCHELL. I refer to page 291.

Mr. MITCHELL. I refer to page 291.

Mr. KELLY. Here is the examination of Mr. Bush, when he was

Question. Having received the telegram, and finding an interest, as you supposed, against Mr. Watts, you, of your motion, telegraphed to see if they could help you to get funds?

Answer. Yes, sir.

Q. And to get funds for the purpose anticipated of retaining these lawyers?

Q. Was this \$8,000 that was placed to your credit in New York by Dimon returned or retained by you?

A. By Runyon & Martin.
Q. By Runyon & Martin.
A. It was returned to Runyon & Martin.

So much for that.

Q. So that you did not use in any way the \$5,000 that Runyon & Martin deposited?

Q. So that you did not use in any way the \$8,000 that Runyon & Martin deposited?

A. No, sir; it was returned to them.
Q. You telegraphed Dimon to return it to them, did you not?
A. Yes, sir.
Q. You did not receive, then, as I understand you, to retain, any funds from Dimon for this purpose at all?
A. No, sir.
Q. Nor from Runyon & Martin either?
A. No, sir.
Q. Neither one nor the other?
A. No, sir.
Q. You directed Dimon to return the money to Runyon?
A. Yes, sir.
Q. So that all you have had by way of funds or security for funds about this transaction was what was deposited in the London and San Francisco Bank at San Francisco and this note that these gentlemen gave you?
A. Yes, sir, no other.
Q. And those you hold? The note and the funds are to your credit there, and that is all the funds you have had claimed to be in any way at your disposal for this business in Oregon?
A. Yes, sir.
Q. The note was left with you before you received any advice of the deposit at San Francisco, was it not?
A. Yes, sir.
I call the attention of the Senate to the fact that this was the note

I call the attention of the Senate to the fact that this was the note for \$8,000 signed by myself and a number of other democrats.

A. I should say two or three days, but I do not know. I cannot be positive about hat. I suppose Colonel Kelly has the means of fixing the date.

The Witness. So it was.

That is all I call the attention of the Senate to at the present time. So Mr. Bush, upon whom they rely to prove that \$15,000 was used in Oregon, says it was not so. He says it is true that he had a note for \$8,000 signed by certain democrats in Oregon, and he some two days afterward received seven thousand three hundred and odd dol-

lars from San Francisco. He says further that the money received from San Francisco was to liquidate and discharge the note, as it un-

questionably was.

Now, I ask how do you make \$15,000 out of that, when the one was a mere collateral, when the giving of the note was simply to enable us to receive the money in advance of the time at which it would be telegraphed? And yet my colleague says it was a corruption fund. It certainly behooves my colleague to have some evidence before he makes such grave charges against gentlemen—and I leave out my-self—who are in every way as worthy of respect as himself. It is incumbent upon him that he should at least prove by some respect-able witness that more than this sum was used. He has not done it, and he cannot do it. My colleague should not make such charges against any one; he should not make such insinuations against any one without having some evidence of the fact which he avers and some evidence to contradict the plain statement of Mr. Bush, which is an answer to everything my colleague has said.

Certainly, it seems to me, after having taken the testimony of the witnesses, he owes it to himself to exculpate those men whom he charges with corruption and conspiracy to deprive the people of Oregon of their right to their electoral vote. Have they not a right to their own judgment as well as he has to his judgment? Who gives him the right to judge others and to judge every man in Oregon? Because men differ about a question of great importance, not only to the State but to the right to great the results of the state but to the result the State, but to the nation at large, because they hold different views the State, but to the nation at large, because they hold different views from himself, has he aright to get up in the Senate and arraign them with aiding in corruption, with devising means to defraud the State of its electoral vote? There are certainly as good lawyers as he who believe that Mr. Watts was not elected; there are certainly all over the country men just as able as is my colleague who believe that Mr. Cronin was the lawfully chosen person to cast the electoral vote of the State; and yet, because of this difference, we are to be denounced here in the Senate as scoundrels, as villains, and as corruptionists.

I think my colleague owes it to himself to disayon the charges ha

I think my colleague owes it to himself to disavow the charges he has made and which are of so grave a character. I certainly would not make any accusation against members of the party to which he belongs, if they believed sincerely, if they believed honestly, that any democrat was trying to usurp an office to which he had no right; would not charge my colleague with corruption because he attempted to prevent that usurpation; and I repel, and repel with some warmth, any accusation against my fellow-democrats in Oregon who honestly believed that they were doing their duty, and believe it now, and who are supported in this belief by many of the most eminent legal minds in the United States.

I did not intend to be led into this discussion. As I said in the outset, it was apart from anything I had expected; but we are dragged set, it was apart from anything I had expected; but we are dragged into it by the insinuations made by my colleague, charges of corruption made here, which we were bound to repel and which we could not do otherwise than repel in the manner we have done. I mean the Senator from New York [Mr. Kernan] and myself. That Senator is a member of the Committee on Privileges and Elections, and knows everything of this testimony, knows all the testimony than has been taken, and is more familiar with it than I am. He has made a statement which corroborates my own in every partic-

I do not care to say anything now on the point as to whether the resolution should be adopted; I leave that to be discussed hereafter, when we shall have disposed of this matter that is altogether foreign

and extraneous to it.

Mr. MITCHELL. Mr. President, I shall engage the attention of the Senate but a very few minutes longer, and would say nothing further were it not for the rather bitter remarks of my colleague in attempting evidently to place me in the situation of misrepresenting testimony and of misrepresenting facts in reference to this matter.

My colleague says that a great many good lawyers in this country, as good and better lawyers than myself, hold to the opinion that Mr. as good and better lawyers than myself, not to the opinion that are Watts was not eligible as an elector. That may be. I was not discussing that question. I was not talking about that at all. But if that is so, if this action of Governor Grover was so in accordance with law, then why the necessity for all this money, for all this manipu-

lation, for all these telegraphic dispatches?

lation, for all these telegraphic dispatches?

I scarcely think that my colleague has any right, under all the evidence adduced in this case, to make accusations against me. I hardly think that he is justified, under the testimony in this case, in insinuating or charging that I have sought to place the democrats of Oregon or any member of the democratic party in that State in a false position when, according to the testimony taken in this case, when according to my colleague's own testimony, it appears that the question was one of law to be passed upon by the governor of the State; when, according to his statement and according to the opinion of many eminent lawyers in the country, the law was with the governor; and when it appears further, from the testimony in the case, that every democratic lawyer in Oregon stood ready and willing to present the case before either the governor or any of the judicial tribunals in any aspect that the case might take, without any fee or hope of reward whatever; and when after all that, in addition to having all the democratic lawyers in the State ready to present the case in all its details and bearings before the governor or before the courts, all its details and bearings before the governor or before the courts, they had actually employed the republican firm of Hill, Durham & Thompson for the sum of \$3,000.

Having all the democratic lawyers in the State and this firm of republican lawyers, then my colleague and other democratic managers in Oregon sat down and telegraphed to the leading democratic managers in New York that they wanted \$10,000 telegraphed to Oregon. For what purpose I ask my colleague. Why did they ask for \$10,000 to be telegraphed to Oregon to be used in connection with this controvers. troversy? Simply to pay lawyers, when, according to the testimony in the volume before me, every democratic lawyer in the State stood ready to argue the case, to present and submit it before either the governor or the courts; and, in addition to that they had secured the services of Hill, Durham, and Thompson, three republican lawyers, for the sum of \$3,000. Why, I ask my colleague, did they telegraph for \$7,000 more? That is an inquiry, I submit, that my colleague did not satisfactorily answer when he was a witness on the stand; that is an inquiry that Mr. Bellinger, the chairman of the democratic State central committee of Oregon, did not satisfactorily answer when he was on the stand.

Then am I to be accused by my colleague of making false insinuations and false charges against the democratic party and the democratic managers in Oregon, because I call attention to the facts as testified to by witnesses! I apprehend not, Mr. President. I apprehend that I am not to be placed in any false position by any charge preferred by my colleague that I am making insinuations or charges that the contract in the contract is the contract to the contract that I am making insinuations or charges are contracted to the contracted to that are not justified by the evidence, when the evidence lies before the Senate on the desks of its members. I do not wish to place any member of the desseron the members. I do not wish to place any member of the democratic party of Oregon in any false position; I do not wish to make, nor will I make, against a member of the democratic party in Oregon any charges I do not believe to be fully sustained and borne out by the sworn testimony in the case.

Far be it from me to say a word here that would place my colleague in any false position or that would intimate that he had acted improperly. So far as that is concerned, I did not say anything of the kind. What I did say was that, according to the testimony of a leading democrat of Oregon, over \$15,000 was placed at different points in different banks, for the purpose, as testified to by him, of meeting expenses in connection with this electoral controversy in Oregon. I frankly stated, before my colleague rose, that so far as a part of that money, \$8,000, was concerned it was, according to the testimony of Mr. Bush and others, refunded and telegraphed back. I stated nothing in connection with this matter that is no thorne out

by the sworn testimony of witnesses.

Mr. President, having said this much, I will dismiss this whole proceeding at this time. It was the farthest from my intention when I came into the Senate this morning to say a single word in regard to this testimony. I know that to a certain extent it is foreign to the real issue before the Senate. I have only been drawn into saying as much as I have said from the fact that unlooked-for opposition to the adoption of this resolution has come from the other side of the

Chamber. I hope we may now have a vote on the pending resolution.

Mr. SAULSBURY. Mr. President—

Mr. KELLY. Will you allow me to say a few words?

The PRESIDENT pro tempore. Does the Senator from Delaware yield to the Senator from Oregon?

Mr. SAULSBURY. Yes, sir.

Mr. KELLY. I wish, before the Senator from Delaware takes the

floor, to reply very briefly to what my colleague has last stated to the Senate. My colleague puts a question: Why did we telegraph for the \$7,000 in San Francisco when we had already \$8,000 deposited in New York ?

Mr. MITCHELL. No; that is not the question exactly. I will state the question, if my colleague will allow me. According to the testimony of my colleague, and of Mr. Bellinger and other leading democrats of Oregon, the democratic lawyers of Oregon had volunteered to present this controversy to the courts or before the governor; and it was the understanding of all parties that no charge was to be made, but that they would argue it just as my colleague argued the case, without charge, as he stated in his testimony, that he did it out of patriotism, because he thought his view of it was right, and all that sort of thing. In addition to that, they had secured softer lawyers, are republican firm, to whom they were obligated to pay \$3,000. It is claimed that the only reason why they wanted money at all was to pay lawyers, and to meet any other little expenses, such as bringing Laswell down. Now having all the democratic lawyers and this republican firm at an expense of \$3,000, why then did they tolegraph for \$10,000? What did they want the other \$7,000 for?

Mr. KELLY. I think I now understand the question. My colleague asks me why, when we had every democratic lawyer in Oregon ready to assist us, we wanted \$10,000. Let me say to my colleague that we telegraphed for the money before we knew that any democratic lawyer would assist us. The telegram was sent by Mr. Patrick when he first came there, the day after I went there. We did not when he first came there, the day after I went there. We did not know who would assist us; we did not know how much money we should really need; we had not then employed the firm of Hill, Durham & Thompson. We telegraphed for \$10,000, a round sum. We expected we should need a great or at least a considerable portion of it for counsel fees and other expenses. We could not tell for what we might want it. We knew that we had to send to a distant part of the State for a messenger; we knew we should have necessarily other expenses attending the matter.

The understanding, as every witness has testified, was that if we

did not need the money it would be returned. As has been testified by Mr. Bellinger and others that a flat refusal came from the democratic national committee; they said that they could not furnish it. Finally they agreed to furnish \$8,000, which we knew would be in currency. We knew that our fee to Mr. Hill was payable in coin, as all transactions are payable in coin in that State unless otherwise expressed. We had not then any concert of action among the democratic lawyers; we did not know who would assist us or how much might be charged for the assistance rendered.

Mr. MITCHELL. One word.

Mr. KELLY. I beg my colleague to reserve his reply until I have concluded.

Mr. MITCHELL. Very well.

Mr. KELLY. We telegraphed for the \$8,000, and it was placed with a certain banking house—Kountze Brothers, I believe, is the name—by Mr. Patrick. They were his bankers. We could not use that money for the simple reason that the firm of Martin & Runyon had no communication with any banking-house in Salem or in Oregon, and it could not be used until the draft was sent out to Oregon; which would take about ten days or two weeks altogether to make it available. Hence there was an effort made to have that money placed with Charles Dimon, who was the agent of the banking firm of Ladd & Bush, of Salem; but it could not be done, or it was not done until the 6th day of December, long after the time that we wanted to use it. My colleague knows that fact.

Then he asks, having \$8,000 deposited in New York, why did we want \$8,000 or the equivalent in coin of that amount in currency from San Francisco † I answer, for the very good reason, as all the witnesses stated to my colleague, that the \$8,000 we had in New York amounted to nothing, because it could not be used.

Mr. MITCHELL. My colleague misunderstands me. The question

I asked was simply this—

The PRESIDENT pro tempore. Does the Senator from Oregon yield to his colleague?

Mr. KELLY. Yes, sir. Let my colleague go on.
Mr. MITCHELL. Your expenses all told in Oregon, according to
your own testimony, were \$3,000. Why, then, did you telegraph for

Mr. KELLY. I tell my colleague, as I did before, that we had not

Mr. KELLY. I tell my colleague, as I did before, that we had not then employed anybody, we had not employed any lawyers.

Mr. MITCHELL. Mr. Bellinger says you had.

Mr. KELLY. No; I beg pardon of my colleague; Mr. Bellinger says no such thing. Neither Mr. Bellinger nor any other person says that when we first telegraphed for this money we had employed any lawyers. We learned afterward that we could get any number of democratic lawyers to assist us without any fee; but when we telegraphed for that money we had made no bargain with any one.

Mr. MITCHELL rose

Mr. KELLY. My colleague can answer me when I conclude, without continually interrupting me.

Mr. MITCHELL. The Senator does not wish to make a misstate-

ment.

Mr. KELLY. Not at all.

Mr. MITCHELL. He is certainly mistaken.

Mr. SAULSBURY. I yielded the floor to the Senator from Oregon,

[Mr. KELLY.] I certainly should not have extended that courtesy if I supposed that I was yielding the floor to everybody in the Chamber.

Mr. KELLY. I beg the honorable Senator from Delaware to understand that it is not my desire that these interruptions should take

place; but I cannot avoid answering when interrogated.

Mr. MITCHELL. Mr. President, I do not wish to interrupt my

colleague, but he certainly does not desire to misstate the testimony. Now I will read from the testimony of Mr. Bellinger to show that my colleague is entirely mistaken.

Mr. KELLY. Well, what is it? Mr. MITCHELL. I will read it:

By Mr. MITCHELL:

Question. What else did you agree upon at this meeting?

Mr. SAULSBURY. Will the Senator from Oregon allow me one

Mr. MITCHELL. Yes, sir.

Mr. SAULSBURY. I desire to say that I have been requested to go to another part of the Capitol. I have been which and I express go to another part of the Capitol. I have been waiting here to get an opportunity to make some remarks on this subject; and I express the hope that the vote will not be reached this evening as I desire to express some opinions up on this question. I have not, I believe, during this whole session engaged the attention of the Senate ten minutes, having been all the time occupied in other duties. I desire, however, to be heard on this question before the final vote is taken, and it is impossible for me to be heard now.

Mr. MITCHELL. So far as I am concerned, I should like to accommodate the Senator from Delaware, and I will not engage the attention of the Senate two minutes longer, but I hope the vote will be taken to-night and I shall insist upon that.

I will read now from the testimony.
Mr. KERNAN. From what page are you reading?
Mr. MITCHELL. Page 304.

Question. What else did you agree upon at this meeting?

Mr. KELLY. To what meeting does that refer?

Mr. MITCHELL. That is the meeting between yourself and Mr. Bellinger at the time the firm was employed.

By Mr. MITCHELL:

Q. What else did you agree upon at this meeting?
A. That was all that was agreed upon.
Q. All that was agreed upon, then, was that you should employ the firm of Hill,
Durham & Thompson?
A. That was the only business done.
Q. Was there anything said about the money, how you should raise it?
A. Yes, sir; I had attempted before Mr. Patrick's arrival to raise money. I had
talked with leading democrats to know the amount that probably could be raised.
Several had agreed to contribute in various sums. In that way I had ascertained
that it would be very difficult to raise the amount of money that we thought we
needed. I had a conversation with Mr. Griswold, who was going to San Francisco.
I desired him to see, when he arrived in San Francisco, if money could not be raised
there. Mr. Griswold represented himself as being largely interested, a man who
had a great many bets pending, and he said he would be willing to contribute himself.

self.
Q. He had bet on Tilden?
A. He had bet on Tilden I informed Mr. Patrick of these things. Mr. Patrick said he thought the national committee would help us out. I then telegraphed, or got Mr. Patrick to do so, a statement of our condition. I do not know but what I prepared the telegram myself. I am not positive about this, but we telegraphed that we desired a certain amount of money.
Q. To whom was that telegram sent?
A. I think it was to Mr. Pelton.
Q. Colonel W. T. Pelton, was it?
A. I think it was. There were telegrams sent to different persons. I think one was sent to this party in Omaha, whom Mr. Patrick represented as having suggested to him the advisability of his coming to Oregon.
Q. What was sent to him?
A. I do not remember the language of the telegram, but that was the effect of it.

Q. What? A. That we desired \$10,000 to defray the expenses of this contest.

By Mr. KERNAN:

Q. That was sent to whom ? A. Such a dispatch was sent to Mr. Miller.

By Mr. MITCHELL:

Was that before or after you had agreed with Hill, Durham & Thompson?

Q. Was that before or after you had agreed with A.A. That was after.
Q. You had the firm of Hill, Durham & Thompson employed, and you had agreed to pay them \$3,000. You had Mr. Williams's partner, who volunteered to assist you, so that you had four lawyers employed for the \$3,000. What did you want with the other \$7,000?

Mr. KELLY. What four lawyers?
Mr. MITCHELL. Hill, Durham & Thompson, and Mr. Williams's partner, Mr. Thayer.

A. I thought probably we might desire to employ other attorneys. As I have stated to you, I did intend to employ the firm of Whaley & Fecheimer. I did not know what other expenses might arise and be necessary in the course of the con-

know what other expenses might arise and be necessary in the course of the contest.

Q. Had you employed Judge Strong at that time?

A. I had not. I will say that we did not expect to pay democratic attorneys anything. We expected them to volunteer their services.

Q. Did you pay them anything?

A. We did not.

Q. You had all the democratic attorneys that you wanted, then, without a dollar of money?

A. Yes, sir.

Q. You did not have to pay them anything?

A. No, sir.

Q. You did not expect to pay them anything?

A. I did not expect they would want anything.

Q. They would do it out of pure patriotism?

A. Yes, sir, we thought they ought to do it for nothing.

Q. And you had Hill, Durham & Thompson, a leading republican firm, secured for \$3,000?

A. Yes, sir.

Q. After that was all done, you telegraphed to Pelton and Miller, wanting to know if \$10,000 could be raised?

A. Yes, sir.

Q. Can you explain what you expected to do or how you expected to use the remaining \$7,000?

That is the question I put to my colleague.

That is the question I put to my colleague.

A. I might partially explain that. I had prior to this time telegraphed to The Dalles, to parties there, requesting them to send a special messenger to Canyon City, in Grant County, for Mr. Laswell, a candidate on the democratic ticket for elector, stating to those persons that I would pay the expenses. I had no means of knowing what the expenses would be.

Q. Sending a messenger up there would cost about how much?

A. We finally paid \$200, but that was much less than we expected.

Q. Very well; what else? Was there any other expense that you knew of?

A. There was no other expense especially further, but we did not know what expense might be necessary in the course of the contest.

Mr. KERNAN. I want to read to my friend the testimony immediately following what he has read:

Q. What answer did you get from Mr. Pelton? A. The answer was a flat refusal.

Mr. MITCHELL. The Senator from New York certainly will not contend-

Mr. KERNAN. O, no! I find no fault.
Mr. MITCHELL. The money was afterward sent.
Mr. KELLY. That is exactly just as I stated it to be. I stated—
and my colleague will remember this—that that conversation took

any lawyers at that time. It is true that in the portion of the evidence read by my colleague Mr. Bellinger said they expected they could get democratic lawyers; that Mr. Williams had offered his services, but that he was the only one who offered to give his services at all. There was really no one employed. There was an expectation that some would volunteer their services through patriotism, as my

that some would volunteer their services through patriotism, as my colleague has suggested; but after all there was no employment made until after this telegram for the \$10,000 was sent. The telegram, as the evidence shows, was a flat refusal.

After several telegrams we learned that \$8,000 was deposited in the city of New York, which was of no more value to us than if it had been deposited at the north pole, so far as our immediate wants were concerned; it was wholly unavailable. We had to pay our attorneys according to promise, according to pledge, according to agreement. As I said, it became necessary to try to get the money elsewhere. We did not telegraph at all for the money from San Francisco, but it was sent without any request whatever, as the whole evidence will show, by Mr. Patrick, who had left Portland on the 2d day of December, and three or four days afterward reached San Francisco. Finding that we could not realize quite all the money which he thought we ought to have, he sent it up from San Francisco. Was he thought we ought to have, he sent it up from San Francisco. Was there anything wrong in trying to get the money from several sources? We found we could not get it elsewhere, and we had to raise it ourselves at last, in anticipation of what we would get from

the national committee or from Mr. Patrick. This is the sum and

the national committee or from Mr. Patrick. This is the sum and substance of the whole proceeding.

My colleague knows well, he is satisfied and must be satisfied from the evidence in the case, if he judges from that, that only \$6,200 was used. He knows that what was sent besides that amount was returned. We have shown that we needed that much. We anticipated that, in case the decision should eventually be in our favor, we would have to bear the expense of the elector or messenger who would be sent to Washington. We would necessarily have to bear his expenses. These things were manifest to us all, and we thought it was nothing but right if the national committee expected, as they did, and as every democrat expected, that we should attend to this business in Oregon and do what we could to secure the rejection of a usurping candidate who had no right whatever to cast the votes. I say when every democrat expected us to do this we thought it was say when every democrat expected us to do this we thought it was nothing but right that we should receive the funds which were required to be paid, and that the committee in New York should adthey should pay the whole of it, and we believe so now.

We have expended, as I said, \$6,200, and we have returned the balance; and that is all that can be made out of this Oregon muddle, as

it is called. The Oregon muddle shows that we have conducted this business as economically as we could, as justly as we could, and that we have simply discharged a duty which every democrat owes to the party, to see that the Constitution shall not be trampled upon by an office-holder when he wants to foist himself into the electoral college and to hold two offices in his greed of office, and when he shall re-

office-holder when he wants to foist himself into the electoral college and to hold two offices in his greed of office, and when he shall refuse to surrender or resign the one that he is holding and grab for another. We were determined that that spirit, at least among office-holders seeking to be electors, should be put down in Oregon, even though we had some expense to bear. I have shown how we accomplished that object, and I think it was just and right and proper.

My colleague said that democratic lawyers were ready to assist in the argument of this case before the governor. Of course they were. If we had anticipated what did take place, that the whole argument would be made before the governor, the firm of Hill, Durham & Thompson never would have been employed. As I said before, the reason of employing the firm was because we anticipated these proceedings to be before a republican judge who had the utmost confidence in the ability of that firm. If we erred in employing a republican firm to argue before a republican judge, then we should bear the censure. I do not think we did. We had a right to select our counsel and to employ whom we pleased; and we did; and we paid them for it honestly and fairly. We did not cheat them out of their fee, even after we found out that their services were not needed before the tribunal where we expected they would be required. We did not deprive them of their fees because the service was not rendered. We paid them honestly as honest men would, and we expected the money to be refunded, as it will be refunded from the money deposited by Mr. Patrick in the bank at San Francisco.

Mr. SAULSBURY. Mr. President, I do not desire to detain the Senate for any length of time. I concur with the Senator from Mississippi, [Mr. Alcorn,] that the real question before the Senate, whether the attachment by the resolution shall issue or not, is the question that is really brought to the attention of the Senate by the resolution. It

attachment by the resolution shall issue or not, is the question that is really brought to the attention of the Senate by the resolution. It was that question alone which I proposed to discuss for a few moments this morning when I was cut off by the expiration of the morning hour. Subsequently the Senator from Oregon [Mr. MITCHELL] obtained the floor and introduced a discussion which has occupied the Mr. KELLY. The money was afterward sent.

Mr. KELLY. That is exactly just as I stated it to be. I stated—
and my colleague will remember this—that that conversation took
place on the evening I got to Portland.

The firm of Hill, Durham & Thompson was employed conditionally, if we could raise the money. The agreement was made afterward. I was there, and as Mr. Bellinger says we had not employed MITCHELL] has introduced, and they have demonstrated clearly to my mind, and I think clearly to the country, that so far as the action of the democracy is concerned, it was perfectly legitimate, and the charges that have been framed of attempts to corrupt and bribe a judge or an executive officer charged with ascertaining who was elected, falls harmless at their feet.

elected, falls harmless at their feet.

But I do not propose to enter into that discussion. I desire to call the attention of the Senate back to the proper question now before us, and that is whether the resolution offered providing that a certain gentleman in the city of New York, the cashier of a certain bank there, shall be brought to the bar of the Senate to answer for contempt. That is the question.

I am sorry that the Senator from Oregon who introduced the resolution did not respond to the inquiry which I had the honor this morning to make of the Senator, whether certain information was true or was not true. He did not deign to answer the question but evaded it, for to say that the subpœna which had issued was signed by the chairman of the committee is not a full answer to the interrogatory. I knew that a subpœna had gone forth bearing the imby the chairman of the committee is not a full answer to the interrogatory. I knew that a subpena had gone forth bearing the impress of the Committee on Privileges and Elections, signed by its chairman. I knew that without being informed by the Senator from Oregon. That was not the inquiry which I made. The inquiry was whether that subpena had issued improvidently, whether it had been ordered by the committee in fact, or whether it had been issued upon the request of a member of that committee at a time when the committee was not in session. I hold that this is a pertinent inquiry.

I do not concur in the opinion expressed by the Senator from Mississippi, that, ascertaining that a subpena has been issued bearing the authority of the committee, we are precluded from inquiring into its legality. This whole proceeding of application for an attachment for contempt is a question addressed to the discretion of the

ment for contempt is a question addressed to the discretion of the ment for contempt is a question addressed to the discretion of the Senate. All applications of this kind addressed to courts are addressed to the discretion of the court, and if the court should ascertain upon a full inquiry that a process or subpena has issued improvidently and irregularly, no court in this land, high or low, with a condition of facts before it of that character, would attempt to issue an attachment for a contempt of the authority of the court.

Is it not a proper inquiry for the Senate of the United States before it assumes the high prerogative of bringing a witness to the bar of the Senate, even the humblest in the land, to know whether there has been in fact a contempt of the authority of this body? It was to ascertain that fact that I addressed my inquiry to the Senator from Oregon this morning. He was in possession of knowledge upon that point which he has not deigned to lay before the Senate.

point which he has not deigned to lay before the Senate.

point which he has not deigned to lay before the Senate.

Is the Senate to be asked to issue its mandate to bring to the bar of the Senate any citizen of this land upon the mere application of a single member of a committee, without any authority whatever? We would in my opinion humble ourselves—I will not use the word "disgrace"—in the eyes of the American people if we should exert our authority and deprive of his liberty and bring to the bar of the Senate any citizen of the land, whether he be white or black, whether he be high or low, unless he is in fact in contempt of the authority of this holy.

If my information is correct, I say that I know of no power in the Senate to punish the party whose arrest is sought to be effected by this resolution unless he is in contempt; and if my information is correct then he is not in contempt of the Senate or of any lawfully and properly constituted committee of the Senate. That is the point I want to bring to the attention of the Senate and it was to that point that I directed my inquiry to the Senator from Oregon this morning. Yet we have not had information upon that point. I remorning. Yet we have not had information upon that point. I repeat that I am informed that such is the fact that this subpœna was issued improvidently. I did not cast any blame upon the Senator from Oregon in bringing this resolution to the attention of the Senate; I did not say that he was not authorized to bring the resolution here for the consideration of the Senate; I did not even criticise the action of any member of the committee in ordering the subpæna; I simply of any member of the committee in ordering the subpœna; I simply called attention to the point in order that the Senate might be in possession of the proper information before it votes upon this resolution. What does the resolution propose? It proposes, I say again, to arrest a citizen of this land, to deprive him of his liberty, and to bring him to the bar of the Senate.

Mr. MITCHELL. May I interrupt the Senator?

Mr. SAULSBURY. No, sir, if the Senator from Oregon will please. The PRESIDING OFFICE, (Mr. WRIGHT in the chair.) The Senator from Delaware declines to yield.

Mr. SAULSBURY. I have not trespassed upon the time of the Senate ten minutas during this session and to my certain knowledge.

Senate ten minutas during this session and to my certain knowledge the Senator from Oregon has been heard about as much as any other Senator

Mr. MITCHELL. The Senator said that I did not answer the

Mr. MITCHELL. The Senator said that I did not answer the question and I wanted to reply.

Mr. SAULSBURY. This proceeding contemplates the arrest of a citizen of this country, the deprivation of his liberty, the imputation upon his character of disobeying a process of this body. It is no slight thing to cast suspicion upon even the humblest man. Is it no slight thing to arrest and bring to the bar of the Senate and deprive of his liberty any citizen of this broad land? I know within recent slight thing to cast suspicion upon even the humblest man. Is it no slight thing to arrest and bring to the bar of the Senate and deprive of his liberty any citizen of this broad land? I know within recent years there has been a practice too often indulged in of arresting men without authority or warrant of law, and their incarceration is likely larger to the last less in Elonia and Louisiana.

Mr. WEST. We have heard from Florida.

Mr. SAULSBURY. We do not, however, on our side of the Chamber desire to enter into these discussions. I should not have alluded to any of these things in this discussion had it not been for the resulting boards in Florida and Louisiana.

sometimes in prisons and in dungeons has sometimes taken place, without the proper foundation for the arrest having been laid; but trust the American people are returning to their sober senses and that liberty which we have boasted of as our heritage, that liberty which is the birthright of every American citizen, will not be further trampled upon, and that therefore this high body will not lay the

trampled upon, and that therefore this high body will not lay the example before the country of ordering the arrest of any man without sufficient cause having first been laid before the Senate.

The resolution goes further. It not only proposes to arrest and deprive of his liberty an American citizen, but it proposes to investigate the private affairs of a citizen of this country. It proposes to drag before the people of this country, before a committee of this body, and as a consequence to be published in all the papers of this land, the accounts of a banking institution in the State of New York. Those institutions have a right to be protected. Certainly they have rights institutions have a right to be protected. Certainly they have rights

the accounts of a banking institution in the State of New York. Those institutions have a right to be protected. Certainly they have rights not to be invaded with impunity. Every person knows if the accounts of the banks of this country are to be spread before the land men will be cautious how they deal with them. The resolution proposes to investigate into the private affairs of people of this country, to inquire into the bank account of Samuel J. Tilden, Mr. Hewitt, and Mr. Pelton. I speak not because it is the account of these men; and yet they are men high in the estimation of the people of this country, especially one of them, who has, as I believe, received the approval of the majority of the American people and is justly entitled to the executive office for the next four years after the 4th of March. Mr. MITCHELL. Will my friend allow me a moment?

Mr. SAULSBURY. Excuse me; I shall be as courteous as the circumstances will allow me. Now, it is proposed to drag the private accounts of Samuel J. Tilden here, and for what? Upon any facts alleged? No, upon the mere suspicion in the fertile imagination of some Senator of this body, and not upon the authority of any committee of the body. Are the private affairs of men to be investigated unless there is some proof made that those private accounts will disclose something pertinent to the public interest? There has been no allegation on the part of any man, by affidavit or otherwise, that the accounts of Samuel J. Tilden, or of Mr. Hewitt, or of Mr. Pelton will disclose any corruption or anything affecting the presidential election. It may indeed rest in the mind of the Senator from Orewill disclose any corruption or anything affecting the presidential election. It may indeed rest in the mind of the Senator from Oregon or in the minds of other parties that these gentlemen, high in public esteem, have done that which is improper, and their curiosity may prompt them to ask for a process of this kind. Still I apprehend that in the judgment of the American people their reputations will not be tarnished and they will still live in the memory of the American people and go down to history as the honored sons of our Republic.

Mr. President, I do not intend to enter into a discussion in reference to the condition of affairs in Oregon. That question has occupied much of the attention of the Senate of late, but I have no objection to gentlemen on proper occasions entering into a discussion of that question. I shall not on this occasion, however, enter into any remarks in reference to the electoral vote of Oregon whatever, but I must be allowed to say that, when the Senator from Oregon attempts to impute to those who oppose the adoption of this resolution tempts to impute to those who oppose the adoption of this resolution a purpose to prevent the disclosures which may be made by an answer to the subpoena, he is entirely mistaken. Let everything be brought to public light, emblazon it upon your banners, and throw it broadcast before the American people; let every fact be known if you desire it to be known, but I may say to the Senator from Oregon that it ill becomes that Senator or any member of his party to east imputations of corruption upon the democracy when to-day it is known as a fact that the public employes of this Government have been taxed by the managers of the republican party and have contributed to by the managers of the republican party and have contributed to the republican funds. I do not know that it is true, but the papers publish the fact that even the Executive of this nation contributed for some political purpose out of the \$50,000 which you gave him by your act. The President being the head of his party he was called upon I suppose to contribute. Perhaps I should have done the same thing if I had had the honor of filling the same high place which he

But the Senator from Oregon ought not to cast these imputations upon the democratic party, not only upon the ground that his own party is guilty of raising funds to carry elections, but while he speaks of Mr. Cronin as a man who attempts to exercise the office of elector has he forgotten that there sits in one of the chambers of this Capitol a commission investigating into the rights of certain parties from the State of Louisiana who have been returned by a returning board notoriously corrupt? Does the Senator's party not back up the pretensions of these men who would cast the vote of the people of Louisiana in violation of right and by fraud practiced by that returning board, whose vote it is claimed shall determine who will be the Executive of this land for the next four years? Let me say to the Senator when he begins to make imputations against the democratic party with upholding frauds when no man that I have heard on this floor is attempting to insist upon fraud, let him be careful at least lest he may hear something of the action of the returning

marks of the Senator from Oregon. My only purpose this morning was to call the attention of the Senate to the fact that it was reported, was to call the attention of the Senate to the fact that it was reported, and as I believe truly, that the subpœna which issued for this gentleman was issued improvidently, and that being the fact brought to the attention of the Senate, it is a question which the Senate ought to consider, whether they will now back that subpœna by issuing an attachment to the party who is alleged to be in contempt. Certainly, I repeat again, upon such a state of facts before any court in this broad land there is no court which would not at once refuse an attachment.

Mr. MITCHELL. Now, will the Senator allow me one question?

Does the Senator from Delaware hold that where a subpæna is issued, regular on its face, by the chairman, if you please, of one of the committees of the Senate, and that subpœna is regularly served upon a witness, that witness is not in contempt in refusing to respond to it? Will the Senator answer that question.

Mr. SAULSBURY. I say again, with a similar state of facts before any court in reference to this subpæna duces tecum, and that court would not, being in possession of all the facts of the case, issue its attachment. I certainly would not if I were a judge presiding in a court.

Mr. MITCHELL. I want the question, and will take no further

Mr. McCREERY. I move that the Senate take a recess until ten o'clock to-morrow

Mr. MITCHELL. I call for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 18, nays 33; as follows:

YEAS—Messrs. Bailey, Bogy, Booth, Cockrell, Cooper, Dennis, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Ransom, and Saulsbury—18.

NAYS—Messrs. Alcorn, Allison, Anthony, Blaine, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cragin, Dawes, Dorsey, Ferry, Harvey, Hitchcock, Ingalls, Logan, McMillan, Mitchell, Morrill, Oglesby, Paddock, Patterson, Sargent, Spencer, Teller, Wadleigh, West, Windom, and Wright—33.

ABSENT—Messrs. Barnum, Bayard, Conkling, Conover, Davis, Eaton, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Hamilton, Hamlin, Howe, Jones of Nevada, Morton, Randolph, Robertson, Sharon, Sherman, Stevenson, Thurman, Wallace, Whyte, and Withers—24.

So the motion was not agreed to.
The PRESIDING OFFICER, (Mr. WRIGHT.) The question is on

the adoption of the resolution.

Mr. MITCHELL. The yeas and nays were ordered on this question, I believe, some time ago.

The PRESIDING OFFICER. The Chair is advised that they have

not been ordered.

Mr. MITCHELL. All right; I do not insist on them. The resolution was adopted.

### PACIFIC RAILROAD ACTS.

Mr. WEST. I move now to take up Senate bill 984, reported by the Judiciary Committee, on the subject of the sinking fund of the Pacific Railroads

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of the said first-named act

Mr. ROBERTSON. I move that the Senate proceed to the consideration of executive business.

### BILL RECOMMITTED.

Mr. OGLESBY. I ask the Senator to allow me to have a matter of

Mr. OGLESBY. I ask the Senator to allow me to have a matter of form attended to.

Mr. ROBERTSON. I withdraw my motion.

Mr. OGLESBY. I move that House bill No. 2382, granting the right of way to the Hot Springs Railroad Company over the Hot Springs reservation, in the State of Arkansas, which came back to the Senate from the Committee on Public Lands with the recommendation that it pass as amended by that committee, be now recommitted to the Committee on Public Lands.

Mr. ALLISON. I should like to ask the Senator from Illinois what is the object of the recommittal?

Mr. OGLESBY. The object of recommitting the bill to the Committee on Public Lands is to consider it in connection with another bill now pending before that committee on the same subject.

bill now pending before that committee on the same subject.

The motion was agreed to.

### EXECUTIVE SESSION.

Mr. ROBERTSON. I renew my motion.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session, the doors were re-opened, and (at four o'clock and fifteen minutes p. m.) the Senate took a recess until to-morrow, Wednesday, February 15, at ten o'clock a. m.

## HOUSE OF REPRESENTATIVES.

Monday, February 12, 1877.

[CALENDAR DAY, February 13.]

AFTER THE RECESS.

The House resumed its session at ten o'clock a. m. Tuesday, February 13, 1877.

ORDER OF BUSINESS.

Mr. HOLMAN. It is manifest there is no quorum present. I move that a recess be taken till five minutes to twelve o'clock.

Mr. JOHN REILLY. I think the recess should not be taken. We might as well have the Journal read.

The SPEAKER. That would be in order. This is in fact the legis-

The SPEAKER. That would be in order. This is in fact the legislative day of Monday.

Mr. YOUNG. There are a great many measures which might be attended to this morning. I think there will be a quorum present soon, and I hope a recess will not be taken.

The SPEAKER. The first business in order to-day would be the reading of the Journal of the proceedings of the 1st February.

Mr. HALE. Might it not be agreed that after the reading of the Journal a recess be taken till five minutes to twelve o'clock?

Mr. HOLMAN. There will be no quorum here before twelve o'clock.

o'clock.

The SPEAKER. If the gentleman from Indiana raises the point that a quorum is not present, the Chair is bound to take cognizance of that. But the Chair would suggest that if that point be not pressed

the Journal may be read.

Mr. WILSON, of Iowa. I think the Journal might be read.

The SPEAKER. After the reading of the Journal there would be

Mr. HOLMAN. I have no objection to the reading of the Journal, but object to any business when there is not a quorum of members present. I understand that the Chair rules that we are now in the

legislative day of Monday.

Mr. WILSON, of Iowa. I do not want any suspension of the rules this morning; but I presume that would be prevented by there being a morning hour after the reading of the Journal.

The SPEAKER. The Chair believes that the time when a motion

to suspend the rules might be entertained can hardly be reached this morning. The reading of the Journal would probably occupy a long time; one hour at least. The Chair thinks the Journal might as well be read now as that the time after twelve o'clock should be consumed in reading it. And after the reading of the Journal there would be a morning hour before any suspension of the rules could be reached.

Mr. WILSON, of Iowa. That is my idea about it.

Mr. CLYMER. I desire to ask the Chair when the legislative day

Mr. CLYMER. 1 desire to of Monday expires.

The SPEAKER. At twelve o'clock.

Mr. HALE. Was the language of the resolution adopted yesterday such as to make it take effect immediately.

The SPEAKER. The Chair thinks the resolution took effect immediately on its passage. The Clerk will read the resolution.

Resolved, That the rules of the House be, and are hereby, so amended that, pending the count of the electoral vote, and when the House is not required to be engaged thereon, it shall assemble on each calendar day after recess from the preceding day, proceed at and after twelve o'clock m, with its business, as though the legislative day had expired by adjournment; and this rule shall not be interpreted as interfering in any way with the counting of the votes for President and Vice-President, nor as interfering with the report of the joint commission, nor the meeting of the two Houses in joint session.

The SPEAKER. The Chair is of opinion that the effect of that change of rule was immediate; but that the business at twelve o'clock as mentioned in the resolution could not then be brought up because of the proceedings under the law in relation to the count of the electoral But the gentleman from Indiana [Mr. HOLMAN] raises the

vote. But the gentleman from Indiana [Mr. Holman] raises the question of a quorum.

Mr. HOLMAN. On reflection I will not insist on that, but call for the reading of the Journal.

Mr. HALE. With the understanding that nothing shall interrupt it and that then the morning hour will begin.

The SPEAKER. The way to secure that there shall not be interruption is for the gentleman from Maine to stay in his seat and object if preserves.

ject if necessary.

Mr. HOLMAN. I do not think it is necessary to have any understanding. I call for the reading of the Journal.

Mr. HALE. I do not know that the reading of the Journal is ever interrupted by any business unless some one rises to correct it.

The SPEAKER. The motion is frequently made—the Chair does not think it ought ever to be made—to dispense with the reading of the Journal the Journal.

Mr. WILSON, of Iowa. I will remain in my seat, as the Chair suggested that the gentleman from Maine should do, and will see that the reading of the Journal is not interrupted.

Mr. BURCHARD, of Illinois. Other members will do so also.

The SPEAKER. The Journal will now be read.

The Clerk proceeded to read the Journal of the legislative day of

Thursday, February 1, and the subsequent calendar day, and concluded the reading at eleven o'clock and fifty minutes a. m. The Journal was approved.

### APPOINTMENT OF CONFERENCE COMMITTEES.

The SPEAKER. The Chair announces as managers on the part of the House of the conference on the disagreeing votes of the two Houses on the printing deficiency appropriation bill (S. No. 1222) Mr. Waldron, Mr. Atkins, and Mr. Turney.

The Chair also appoints as managers on the part of the House of the conference on the disagreeing votes of the two Houses on the Indian appropriation bill (H. R. No. 4452) Mr. Wells of Missouri, Mr.

Holman, and Mr. Foster.

The Chair also appoints as managers on the part of the House of the conference on the disagreeing votes of the two Houses on the Military Academy appropriation bill (H. R. No. 4306) Mr. Clymer, Mr. Blount, and Mr. Hale.

### COMMITTEE ON REAL-ESTATE POOL.

The SPEAKER. The Chair also announces the appointment, to fill a vacancy, of Mr. J. L. Vance of Ohio, in place of Mr. B. B. Lewis of Alabama, as a member of the Real-Estate Pool and Jay Cooke Indebtedness Committee.

### LEAVE OF ABSENCE.

By unanimous consent, leave of absence was given as follows: To Mr. LAPHAM, until the 19th instant on account of important

business.

To Mr. Douglas, for six days from Wednesday next.

To Mr. James B. Reilly, for four days.

### JENKINS A. FITZGERALD.

The SPEAKER, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on the bill (H. R. No. 4287) for the relief of Jenkins A. Fitzgerald; which was referred to the Committee on Military

#### OBSTRUCTIONS IN THE POTOMAC RIVER.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, relative to the removal of obstructions in the Georgetown and Virginia channel of the Potomac River; which was referred to the Committee on Commerce.

#### R. F. BERNARD.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on the bill (H. R. No. 4219) for the relief of Captain R. F. Bernard; which was referred to the Committee on Military Affairs.

### WILLIAM WINTERS AND FRANCIS ST. CLARE.

The SPEAKER also, by unanimous consent, laid before the House a letter from the Secretary of War, relative to the gratuitous issue of clothing to William Winters and Francis St. Clare, privates in the Fifth Cavalry; which was referred to the Committee on Military

### LEAVE TO PRINT.

Mr. WILLIAMS, of Alabama. I ask unanimous consent to have printed in the CONGRESSIONAL RECORD as a part of the debates some

remarks touching the subject which was under consideration yester-day in relation to the Florida election.

Mr. WILSON, of Iowa. I believe that was objected to yesterday.

The SPEAKER. The Chair understands that the objection is with-

drawn.

Mr. SAMPSON. No, sir; I object to the printing of any speeches in the RECORD upon these subjects.

### INTERNAL IMPROVEMENTS IN MISSISSIPPI.

Mr. WELLS, of Mississippi, by unanimous consent, presented a memorial of the Legislature of Mississippi in relation to internal improvements in said State, and asked that the same be printed in the RECORD and referred to the Committee on Commerce.

There was no objection, and it was so ordered.

### The memorial is as follows:

### A memorial to the Congress of the United States.

A memorial to the Congress of the United States.

Whereas there now exists a large and growing trade at the port of Pascagoula, in this State, in lumber, spars, and timber, there having cleared from that port, from the year 1872 to 1876 inclusive, five hundred and five vessels for ports in the United States, Europe, United Kingdom, Argentine Republic, Spanish, British, and French West Indies, of a total tonnage of 137,909 tons burden, carrying 120,000 feet of lumber, valued at about \$15,000,000, inclusive of a large amount shipped to New Orleans and other domestic ports within the Gulf of Mexico;

And whereas there are large forests of yellow-pine timber in the southern portion of this State capable of increasing the commerce of the country and the wealth of the State, and thereby the revenue of the same;

And whereas there are a number of streams running through those forests, to wit, Dog, Chickasaha, and Leaf Rivers, Black, Red, Bouic, Tallahala, and Bognehoma Creeks, and numerous other smaller streams, the combined length of which is over twelve hundred miles;

And whereas these streams all converge, forming the Pascagoula River, which river enters the Mississippi Sound at the port of Pascagoula;

And whereas there is a bar at the mouth of said river, which greatly impedes the commerce of the port of Pascagoula;

And whereas the deepening of the water at the mouth of said river would greatly increase the commerce of the port and the revenues of the State and of the United States;

And whereas an engineer of the General Government appointed for the nurvees.

States ;
And whereas an engineer of the General Government, appointed for the purpose

has made a survey of the work necessary to be done and estimated the cost of it: Therefore,

Be it resolved by the Legislature of the State of Mississippi, That our Senators in Congress be instructed and our Representatives be requested to use all honorable means to secure an appropriation from the Government of the United States to deepen the water at the mouth of Pascagoula River, a work greatly desired and needed by the citizens of the State.

Resolved, second, That the secretary of state be instructed to forward certified copies of these resolutions to our Senators and Representatives in Congress.

Approved February 7, 1877.

OFFICE OF SECRETARY OF STATE,

Office of Secretary of State, Jackson, Mississippi.

I, James Hill, secretary of state, do certify the memorial to the Congress of the United States hereto attached is a true and correct copy of the original now on file in this office.

Given under my hand, and the great seal of the State of Mississippi hereunto affixed, this 7th day of February, 1877.

[SEAL.]

JAMES HILL, Secretary of State.

### GOVERNMENT PROPERTY IN MEMPHIS, TENNESSEE.

Mr. YOUNG. I move to suspend the rules to enable me to report back from the Committee on Public Buildings and Grounds the bill (H. R. No. 4576) to provide for changing and fixing the boundaries of certain property ceded to the Government of the United States by the city of Memphis, Tennessee.

Mr. WILSON, of Iowa. I make the point of order that the motion to suspend the rules is not in order, as there has been no morning bour.

The SPEAKER. But the gentleman from Tennessee can ask unanimous consent to report the bill.

Mr. YOUNG. That is my request.

The Clerk read the bill, as follows:

Mr. YOUNG. That is my request.

The Clerk read the bill, as follows:

Whereas the corporate authorities of the city of Memphis, in the State of Tennessee, are desirous, in order to render the same more eligible and suitable for the purpose intended, of enlarging, changing, and fixing in more definite terms the boundaries of the lot of land heretofore given and granted by the said corporate authorities to the Government of the United States for a site upon which to erect a custom-house, post-office, bonded warehouse, and United States district and circuit court rooms, in the said city of Memphis, and which said lot of land was accepted by the Government of the United States under and by virtue of an act of Congress approved March 1, 1876, entitled "An act to provide for the further building of a custom-house, post-office, bonded warehouse, and United States district and circuit court rooms, in the city of Memphis, Tennessee," and upon which said building is now being creeted, in pursuance of the act of Congress aforesaid; and the Secretary of the Treasury being of the opinion that such enlargement and change in the boundaries of said lot of ground would greatly increase its value to the Government, make it more suitable for the location of a public building, and in no way interfere with the work already done in the construction of the custom-house, post-office, &c., aforesaid, nor increase the cost thereof: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the following described property or lot of land in the city of Memphis and State of Tennessee, namely, beginning at a point where the west line of Front street intersects the north line of the first alley south of Madison street, to a stake; thence westward at right angles to Front street, and with the south line of the first alley south of Madison street, to a stake; thence westward at right angles to Front street, and with the south line of the first alley south of Madison street,

Sec. 3. That so much of the act of Congress approved March 1, 1876, entitled "An act to further provide for the building of a custom-house, post-office, bonded warehouse, and United States court-rooms in the city of Memphis, Tennessee," as authorizes and directs the Secretary of the Treasury to sell certain property therein mentioned be, and the same is hereby, repealed.

Mr. WILSON, of Iowa. I understand that the committee recommend the passage of this bill, and I have no objection to it.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. YOUNG moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The latter motion was agreed to.

Mr. CLYMER, (at eleven o'clock and fifty-nine minutes a. m.) I
move that the House now take a recess until twelve o'clock to-morrow. The motion was agreed to.

And the House accordingly took a recess until twelve o'clock m.

### HOUSE OF REPRESENTATIVES.

### TUESDAY, February 13, 1877.

The House re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

Mr. HOPKINS. I call for the regular order, but I am willing to

yield to gentlemen who desire to introduce bills and resolutions for

#### DUTY ON LICORICE-PASTE, ETC.

Mr. WOOD, of New York, by unanimous consent, introduced a bill (H. R. No. 4644) to reduce the duty on licorice-paste and licorice in rolls in use in the manufacture of tobacco; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

#### IRRIGATING CANALS IN COLORADO.

Mr. BELFORD, by unanimous consent, presented a memorial of the Legislature of the State of Colorado, asking for a grant of wild lands in the State of Colorado to aid in the construction of irrigating canals, which was referred to the Committee on Public Lands.

#### UNITED STATES MINT AT DENVER.

Mr. BELFORD also, by unanimous consent, presented a memorial of the Legislature of the State of Colorado, praying Congress for the passage of an act authorizing coinage at the mint at Denver, in said State; which was referred to the Committee on Appropriations.

### REPORT OF THE COMMISSIONER OF FISH AND FISHERIES.

Mr. WELLS, of Missouri, by unanimous consent, submitted the following concurrent resolution; which was read and referred to the Committee on Printing:

Resolved, (the Senate concurring.) That of the Report of the United States Commissioner of Fish and Fisheries for the years 1873–74 and 1874–75 in one volume there be printed from the stereotyped plates 5,000 copies, of which 3,000 shall be for the use of the House of Representatives, 1,000 for the use of the Senate, and 1,000 for the use of the commissioner of fish and fisheries.

#### NATHAN JOHNSON.

Mr. DAVIS, by unanimous consent, from the Committee on Revolutionary Pensions, reported a bill (H. R. No. 4645) authorizing and requiring the Secretary of the Interior to restore the name of Nathan Johnson, a private of Captain S. L. Williams's Kentucky Militia, to the roll of pensioners for the war of 1812; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar and with the accommanying report ordered to be printed. Calendar, and, with the accompanying report, ordered to be printed.

### SOLDIERS OF THE WAR OF 1812.

Mr. DAVIS also, by unanimous consent, from the same committee reported back, with the recommendation that it do not pass, the bill (H. R. No. 1515) for the relief of certain officers, soldiers, and sailors of the war of 1812; and the same was laid upon the table, and the report ordered to be printed.

### NAVAL APPROPRIATION BILL.

Mr. BLOUNT. I desire to give notice that on the first opportunity I will ask the House to proceed to the consideration of the naval appropriation bill. And in the mean time I ask unanimous consent that the bill may be printed in the RECORD.

There was no objection, and it was so ordered. The bill is as follows:

The bill is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the naval service of the Government for the year ending June 30, 1878, and for other purposes:

For pay of commissioned and warrant officers at sea, on shore, on special service, and of those on the retired list and unemployed, and for the actual expenses of officers traveling under orders, and for pay of the petty officers, scamen, ordinary seamen, landsmen, and boys, including men of the engineers' force, and for the Coast Survey service, seven thousand live hundred men, \$6, 250,000.

For contingent expenses of the Navy Department, namely: For rent and furniture of buildings and offices not in navy-yards; expenses of courts-martial and courts of inquiry, boards of investigation, examining boards, with clerks' and witnesses' fees, and traveling expenses and costs; stationery and recording; expenses of purchasing-paymasters' offices at the various cities, including clerks, furniture, fuel, stationery, and incidental expenses; newspapers and advertising; foreign postage; telegraphing, foreign and domestic; copying; mail and express wagons and livery and express fees and freight; all books for the use of the Navy; experts' fees and cost of suits; commissions, warrants, diplomas, and discharges; relief of vessels in distress and pilotage; recovery of valuables from shipwrecks; quarantine expenses; care and transportation of the dead; reports, professional investigation, and information from abroad; and all other emergencies and extraordinary expenses arising at home or abroad, but impossible to be anticipated or classified, \$0,000.

For the civil establishments of the several navy-yards, \$85,000.

### BUREAU OF NAVIGATION.

BUREAU OF NAVIGATION.

For foreign and local pilotage and towage of ships of war, \$45,000.

For services and materials in correcting compasses on board ship and for adjusting and testing compasses on shore, \$3,000.

For nautical and astronomical instruments, nautical books, maps, charts, and sailing directions, and repairs of nautical instruments for ships of war, \$9,000.

For books for libraries for ships of war, \$3,000.

For navy signals and apparatus, namely, signal-lights, lanterns, rockets, including running-lights, drawings, and engravings for signal-books, \$6,000.

For compass-fittings, including binnacles, tripods, and other appendages of ships' compasses, \$3,000.

For lanterns and lamps, and their appendages, for general use on board ship, including those for the cabin, ward-room, and steerage, for the holds and spirit-room, for decks and quartermasters' use, \$5,000.

For bunting and other materials for flags, and making and repairing flags of all kinds, \$5,000.

kinds, \$5,000.

For oil for ships of war other than that used for the engineer department, candles when used as a substitute for oil in binnacles, running-lights, for chimneys and wick and soap used in navigation department, \$16,000.

For stationery for commanders and navigators of vessels of war and for use of courts-martial, \$2,000.

For musical instruments and music for vessels of war, \$1,000.

For steering-signals and indicators, and for speaking-tubes and gongs, for signal, communication on board vessels of war, \$2,000.

For contingent expenses of the Bureau of Navigation, namely: For freight and transportation of navigation materials; postage and telegraphing; advertising for proposals; packing-boxes and materials, and all other contingent expenses, \$3,000.

For drawing, engraving, and printing and photolithographing charts, orrecting old plates, preparing and publishing sailing directions, and other hydrographic information, and for making charts, including those of the Pacific coast, \$50,000.

For fuel, lights, and office-furniture; care of building and other labor; purchase of books for library, drawing-materials, and other stationery; postage, freight, and other contingent expenses, \$5,000.

For rent and repair of building, \$2,800.

For expenses of Naval Observatory, namely:

For pay of three assistants, at \$1,500 cach, \$4,500; and one clerk, at \$1,600.

For wages of one instrument-maker, one messenger, three watchmen, and one porter; for keeping grounds in order and repairs to buildings; for fuel, light, and office-furniture, and for stationery, purchase of books for library, chemicals for batteries, and freight, and all other contingent expenses, \$1,000.

For reducing and transcribing astronomical observations upon sheets for publication, \$2,200.

For continuing theory and tables of the moon's motion, \$1,200.

For reducing and transcribing astronomical observations upon sheets for publication, \$2,200.

For continuing theory and tables of the moon's motion, \$1,200.

For expenses of Nautical Almanac:

For pay of computers and clerk for compiling and preparing for publication the American Ephemeris and Nautical Almanac, \$15,000.

For rent, fuel, labor, stationery, boxes, expresses, and miscellaneous items, \$1,500.

For continuance of work on new planets discovered by American astronomers, \$3,000.

#### BUREAU OF ORDNANCE.

BUREAU OF ORDNANCE.

For fuel, tools, and materials of all kinds necessary in carrying on the mechanical branches of the Ordnance Department at the several navy-yards, magazines, and stations, \$50,000.

For labor at all the navy-yards, magazines, and stations in fitting ships for sea and in preserving ordnance material, \$125,000.

For necessary repairs to ordnance buildings, magazines, gun-parks, boats, lighters, wharves, machinery, and other necessaries of the like character, \$10,000.

For miscellaneous items, namely, for freight to foreign and home stations, advertising and auctioneers' fees, cartage and express charges, repairs to fire-engines, gas and water pipes, gas and water tax at magazines, toll, ferriage, foreign postage, and telegrams, \$5,000.

For the torpedo corps: For the purchase and manufacture and preservation of gunpowder, nitro-glycerine, and gun-cotton, \$6,000.

For instruction in electricity, electrical apparatus, galvanic batteries, and insulated wire, \$5,000.

For purchase of copper, iron, wood, and other materials and apparatus and machinery necessary for the manufacture of torpedoes, and for work on the same, \$15,000.

For labor, including chemist, pyrotechnist, electrician, one foreman machinist.

\$15,000.

For labor, including chemist, pyrotechnist, electrician, one foreman machinist, and one writer, \$10,000.

For repairs to buildings and wharves, and material and labor for sea-wall, \$2,000.

For contingent expenses of the ordnance service of the Navy, \$1,000.

### BUREAU OF EQUIPMENT AND RECRUITING.

For equipment of vessels: For coal for steamers' and ships' use, including expenses of transportation; storage, labor, hemp, wire, and other materials for the manufacture of rope; hides, cordage, canvas, leather; iron for manufacture of; cables, anchors, and galleys; condensing and boat-detaching apparatus; cables, anchors, furniture, hose, bake-ovens, and cooking-stoves; life-rafts for monitors; heating-apparatus for receiving-ships; and for the payment of labor in equipping vessels, and manufacture of articles in the several navy-yards, \$700,000.

For contingent expenses of the Bureau of Equipment and Recruiting, namely: For expenses of recruiting and fitting up receiving-ships, freight and transportation of stores, transportation of enlisted men, printing, advertising, telegraphing, books and models, stationery, express charges, internal alterations, fixtures, and appliances in equipment buildings at navy-yards, foreign postage, car-tickets, ferriage, and ice, apprehension of deserters, assistance to vessels in distress, continuous-service certificates and good-conduct badges for enlisted men, including purchase of school-books for training-ships, \$40,000.

### BUREAU OF YARDS AND DOCKS.

BUREAU OF YARDS AND DOCKS.

For general maintenance of yards and docks, namely: For freight and transportation of materials and stores; printing, stationery, and advertising, including the commandant's office; books, models, maps, and drawing; purchase and repair of fire-engines, machinery, and patent-rights to use the same; repairs on steam-engines, machinery, and patent-rights to use the same; repairs on steam-engines, and attendance on the same; purchase and maintenance of oxen and horses, and driving teams, carts, and timber-wheels for use in the navy-yards, and tools, and repairs of the same; postage and telegrams; furniture for Government houses, and offices in the navy-yards; coal and other fuel; candles, oil, and gas; cleaning and clearing up yards, and care of public buildings; attendance on fires; lights; fire-engines and apparatus; incidental labor at navy-yards; water-tax, and for toll and ferriages; pay of the watchmen in the navy-yards; and for awnings and packing-boxes, \$440,000.

For contingent expenses that may arise at navy-yards and stations, \$20,000.

At the Naval Asylum, Philadelphia, Pennsylvania: For superintendent, \$600; steward, \$480; matron, \$360; cook, \$240; assistant cook, \$168; chief laundress, \$192; three laundresses, at \$168 each; six laborers, at \$240 each; sixable-keeper and driver, \$360; master-at-arms, \$480; corporal, \$300; barber, \$360; carpenter, \$450; furnaces, grates, and ranges, \$300; vater-rent and gas, \$1,800; increase of library and car-tickets, \$250; furniture and repairing of the same, \$500; cemetery and burial expenses, head-stones and digging graves, \$330; repairs and preservation, \$1,000; and for support of beneficiaries, \$40,000; in all, \$52,973; which sum shall be paid out of the income from the naval pension fund.

### BUREAU OF MEDICINE AND SURGERY.

For support of the medical department, for surgeons' necessaries for vessels in commission, navy-yards, naval stations, Marine Corps, and Coast Survey, \$30,000. For necessary repairs of naval laboratory, hospitals, and appendages, including roads, wharves, out-houses, steam-heating apparatus, side-walks, fences, garden and farms, cemeteries, furniture, head-marks for graves, \$10,000. For the civil establishment at the several naval hospitals-and naval laboratory; For the maintenance of the several naval hospitals and naval laboratory, \$25,000. For contingent expenses of the bureau: For freight on medical stores, transportation of insane patients to the Government hospital, advertising, telegraphing, purchase of books, expenses attending the naval medical board of examiners, purchase and repair of wagons, harness, purchase and feed of horses, cows, trees, garden-tools, and seeds, \$15,000.

BUREAU OF PROVISIONS AND CLOTHING.

For provisions for the officers, seamen, and marines, \$930,000.

For purchase of water for ships, \$25,000.

For contingent expenses: For freight and charges on shipments; candles and fuel; books and blanks; stationery; telegrams; advertising; postage, telegrams, and

express charges; and yeomans stores, incidental labor not chargeable to other appropriations, \$35,000.BUREAU OF CONSTRUCTION AND REPAIR.

For preservation of vessels on the stocks and in ordinary; purchase of materials and stores of all kinds; labor in navy-yards and on foreign stations; preservation of materials; purchase of tools; wear, tear, and repair of vessels afloat, and for general care and protection of the Navy in the line of construction and repair; incidental expenses, namely, advertising and foreign postages, \$1,500,000.

#### BUREAU OF STEAM ENGINEERING.

For repairs and preservation of boilers and machinery on naval vessels: For fitting, repairs, and preservation of machinery and tools in the several navy-yards for labor in navy-yards and stations not included above, and incidental expenses and for purchase and preservation of oils, coals, metals, and all materials and stores \$800,000.

ANYAL ACADEMY.

For pay of professors and others: For two professors, (heads of departments,) namely, one of drawing and one of modern languages, at \$2,500 each, \$5,000; three professors, namely, one of physics, (assistant.) one of chemistry, and one of Spanish, at \$2,200 each; seven assistant professors, namely, four of French, two of English studies, history and laws, and one of drawing, at \$1,500 each; sword-master, at \$1,500, and two assistants at \$1,000; check; to feeligh studies, history and laws, and one of drawing, at \$1,500 each; sword-master, at \$1,300; and assistant librarian, at \$1,400; three clerks to superintendent, at \$1,300; and assistant librarian, at \$1,400; three clerks to superintendent, at \$1,000; one nessonger to superintendent, \$600; one encommandant of cadets, \$1,000; one elerk to paymaster, \$1,000; one apothecary, \$750; one mess-man, \$288; one cook, \$325.50; one messenger to superintendent, \$600; one encorrent, \$292.50; one seaman in the department of seamaship, one seaman in the department of seamaship.

That cadet-midshipmen, during such period of their course of instruction as they shall be at sea in other than practice ships, shall each receive as annual pay not exceeding \$530.

Pay of watchmen and others: Captain of the watch, at \$2.50 per day, \$912.50; four watchmen, at \$2.25 per day, \$3,252; foreman of the gas and steam-heating works of neadenny, one at \$3.50, one as \$3.30 and seam sheating works of neadenny, one at \$3.50, one as \$3.5

### MARINE CORPS.

For pay of officers of the Marine Corps, and for pay of non commissioned officers, musicians, privates, and others of the corps, and for transportation of officers traveling without troops, and for payments to discharged soldiers for clothing undrawn, \$619,825.

\$619.825.
For provisions, \$88,330.
For clothing, \$40,000.
For fuel, \$25,000.
For military stores, namely: For pay of mechanics, repair of arms, purchase of accouterments, ordnance-stores, flags, drums, fifes, and other instruments, \$5,000.
For transportation of troops and for expenses of recruiting, \$5,000.
For repairs of barracks, and rent of offices where there are no public buildings, \$2,000.

For repairs of barracks, and rent of omces where there are no public buildings, \$5,000. For forage for publi chorses and horses belonging to field and staff officers, \$5,000. For cent of quarters for officers where there are no public buildings, \$16,000. For contingencies, namely: Freight; ferriage; tol; cartage; wharfage; purchase and repair of boats; labor; burial of deceased marines; stationery; telegraphing; apprehension of deserters; oil, candles, gas; repairs of gas and water fixtures; water-rent; barrack furniture; furniture for officers' quarters; bed-sacks; wrapping-paper; oil-cloth; crash; rope; twine; spades; ahovels; axes; picks; carpenters' tools; repairs to fire-engines; purchase and repair of engine-hose; purchase of lumber for benches, mess-tables, bunks; purchase and repair of hand-carts and wheel-barrows; scavengering; purchase and repair of galleys, cooking-stoves, ranges, stoves where there are no grates; gravel for parade-grounds; repair of pumps; brushes; brooms; buckets; paving; and for other purposes, \$20,000.

Total sum recommended by this bill, \$12,487,524.40.

### TELEGRAPHIC COMMUNICATION BETWEEN AMERICA AND EUROPE.

Mr. HEWITT, of New York. By direction of the Committee on Foreign Affairs, I ask unanimous consent to report back, with a favorable recommendation, Senate bill No. 1141, to encourage and protect telegraphic communication between America and Europe, and to ask that it be considered by the House at this time.

Mr. HOPKINS. Will that interfere with the regular order?

The SPEAKER. The gentleman from New York asks unanimous consent that it be considered at this time. If that consent be given, it will take no time that might otherwise be consumed by the regular

it will take up time that might otherwise be consumed by the regular order, nothing more.

Mr. HEWITT, of New York. It is a short bill, and I think there will be no objection to it.

The bill was read, as follows:

will be no objection to it.

The bill was read, as follows:

Be it enacted, &c., That Ferdinand C. Latrobe, William F. Frick, and Robert Garrett, of Maryland, shall have the right to construct, lay, land, and maintain a line or lines of telegraph, or submarine cables, on the Atlantic coast of the United States of America, to connect the American and European coasts by telegraphic lines, wires, or submarine cables: Provided, That at least one cable shall be laid and operating between Europe and the Atlantic coast of the United States within three years from the approval of this act; and the at present tariff rates of messages shall be reduced to one-third, or one shilling British currency, per word, over said new cable or cables: And provided, That no amalgamation, union, or sale of cable interests established under this act shall be made to any existing European or other cable companies.

Sec. 2. That any telegraphic line or cable laid be subject to the following conditions, stipulations, and reservations, to wit:

First. The Government of the United States shall be entitled to exercise and enjoy the same or similar privileges with regard to the control and use of such line or lines, or cable or cables, as there may, by law, agreement, of otherwise, be exercised and enjoyed by any foreign government whatever.

Secondly. Citizens of the United States shall enjoy the same privileges as to the payment of rates for the transmission of messages as are enjoyed by the citizens of the most favored nations.

Thirdly. The transmission of dispatches shall be made in the following order: First, dispatches of state, under such regulations as may be agreed upon by the governments interested, the rates not to exceed those charged to individuals; secondly, dispatches on telegraphic service; and, thirdly, private dispatches.

Fourthly. The transmission of may such cables shall be kept open to the public for the daily transmission of market and commercial reports and intelligence, and all messages, dispatches, and communications

posed by this act shall be filed in the once of the secretary of State by the said company.

SEC. 3. That nothing in this act shall be construed to limit the United States in granting to other persons or companies similar privileges herein contained.

SEC. 4. That the right to alter, amend, or repeal this act at any time is hereby reserved to Congress.

Mr. CONGER. I would like to inquire of the gentleman from New York [Mr. Hewitt] if this bill does not authorize the laying of cables up and down the line of the entire American coast?

Mr. HEWITT, of New York. I do not so understand it; the bill, limits the right to lay telegraphic cables between Europe and the United States.

United States.

Mr. CONGER. If I understood the reading of the bill correctly, there is a provision that relates to the laying of cables "in or over any waters, reefs, islands, shores, and lands within the jurisdiction of the United States."

Mr. HEWITT, of New York. That is qualified by the terms of the original grant. There is no provision authorizing the laying of cables along the coast; but if there was, I can see no harm in opening as wide as possible the gates for telegraphic communication between the United States and all the world.

Mr. CONGER. Does the gentleman know whether that is the object of the bill; that is, to lay coastwise lines of cables?

Mr. HEWITT, of New York. The bill is a Senate bill, and passed that body unanimously. I have examined it very carefully to see if it is properly guarded, and I find that it is. I will say to the gentleman that I am in favor of a general bill, if we can get one through, giving everybody the privilege of laying telegraphic lines anywhere they may see fit.

they may see fit.

Mr. CONGER. But this bill proposes to give this right to a close

orporation.
Mr. HEWITT, of New York. There is a clause at the end of the bill which provides that it shall not be a close corporation.
Mr. CONGER. A clause that reserves the right to the United States to grant the same privileges to others?
Mr. HEWITT, of New York. Yes; that the same privileges may be

granted to others as this bill grants to the corporators.

Mr. CONGER. And I think there is a provision at the end of the bill reserving the right to Congress to alter, repeal, or amend this

Mr. HEWITT, of New York. Certainly; the bill is very closely

Mr. HEWITT, of New York. Certainly; the bill is very closely guarded.

Mr. HOLMAN. I wish to inquire of the gentleman from New York [Mr. Hewitt] whether this bill contains the same provision that was incorporated in the Pacific telegraph bill of the last session, providing that the rights conferred by this bill should not be construed to prevent the United States from granting similar rights to other parties?

Mr. HEWITT, of New York. There is an express provision to that effect. And I desire to say that if this line of telegraph cable shall be laid it will reduce the rates of telegraphing to Europe to one-third of the present rates.

of the present rates.

Mr. HOLMAN. All I desire is to avoid a monopoly in telegraphing.

The bill was then ordered to be read a third time; and it was

Mr. HEWITT, of New York, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## GEORGE A. ARMES.

Mr. GLOVER. I ask unanimous consent that the Committee of the Whole on the Private Calendar be discharged from the further consideration of House bill No. 620, to authorize the President to

restore George A. Armes to his former rank in the Army, and that the bill be now put upon its passage. Mr. SAMPSON. I object.

#### MARY WELSH.

Mr. EAMES, by unanimous consent, introduced a bill (H. R. No. 4646) granting a pension to Mary Welsh; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ORDER OF BUSINESS.

I call for the regular order.

The SPEAKER. The regular order being called for, the House will now resume the consideration of the report of the select committee on the election in Florida, which was made a special order immediately. ately after the next reading of the Journal subsequent to the making

of the order.
Mr. SEELYE. I ask the gentleman from Kansas [Mr. Goodin] to withdraw his call for the regular order until I can report a bill from the Committee on Indian Affairs which it is necessary should be

passed at once, and to which I think there will be no objection.

Mr. GOODIN. I will not insist upon the call for the regular order.

#### SENECA NATION OF NEW YORK INDIANS.

Mr. SEELYE. I ask consent to report for consideration at this time from the Committee on Indian Affairs House bill No. 4257, to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875.

I desire to state that I am instructed by the committee to report an amendment to the bill, to strike out the last section, the one to which on Saturday last the gentleman from Indiana [Mr. Holman] objected. It is a bill that can cause no discussion, and it is quite important that the should be passed at an early day.

The SPEAKER. The bill will be read.

The bill was read, as follows:

The bill was read, as follows:

Be it enacted, &c., That at the expiration of the leases as provided for by the act of which this is an amendment the Scaeca Nation of New York Indians shall be entitled to the possession of said lands, except those parts thereof laid out, and to be laid out, and designated as streets, which shall be for the public use of the villages in which they are respectively located.

Sec. 2. That the boundaries of tracts or lots leased within the limits of villages upon the Allegany reservation indicated with black lines upon the maps, now on file, prepared by the commissioners who were appointed by the President to execute the provisions of the act of Congress entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875, which are in conformity with the understanding of the parties to said leases, and are so occupied and claimed by the lessees, shall be held to be the boundaries of such leased tracts or lots, and the area embraced within such boundaries, so indicated in black ink, shall be held to be the land to be occupied and used by the lessees under their present leases, and in the renewal of the same, instead of the boundaries indicated in red ink, and the areas included within the same, which are in accordance with the descriptions in the leases, but not in accordance with the understanding of the parties.

in red ink, and the areas included within the same, which are in accordance with the descriptions in the leases, but not in accordance with the understanding of the parties.

Sec. 3. That in any case when the parties cannot agree upon the conditions in regard to the renewal of a lease and the amount of rent to be paid, then the concilors of said Seneca Indians and the other party shall each appoint a disinterested person as arbitrator; and if these two cannot agree, the United States agent for said Seneca Indians shall act as umpire, and his decision shall be final: Provided, That in leasing said lands, no rent shall be paid for more than one year in advance, and that any renewal of a lease shall not be executed more than three months prior to the expiration of the existing lease.

Sec. 4. That whenever two-thirds of the men and two-thirds of the women over twenty-one years of age on either or both of the Cattarangus and Allegany reservations shall request the same in writing, duly witnessed, the Secretary of the Interior shall cause these reservations, or either of them, to be subdivided and allotted to those entitled to said lands, in as nearly equal proportions as may be, having reference to the value of the same, in such manner as he may deem proper; and such allottees shall be entitled to the use and occupancy of their respective allotments, without, however, the power of alienation, except to an Indian, and not until ten years after said allotment is made; and the Secretary of the Interior is authorized to have certificates issued to the said allottees expressing this condition.

Sec. 5. That the Secretary of the Interior shall appoint three commissioners, who shall have the boundaries of the Cattarangus Indian reservation surveyed, and have the same marked with permanent monuments; and the plats and field-notes of the survey of the said boundary shall be made in triplicate, and, after approval by the General Land Office, one copy shall be filed in that office, one copy in the clerk's office of Cattarangu

Mr. SEELYE. It is the last section of the bill to which the gentle-man from Indiana has objected and which I am directed to omit in reporting the bill.

Mr. HÖLMAN. That section proposes to re-appropriate the unex-

pended balance.

The SPEAKER. Is there objection to the consideration of the

Mr. HOLMAN. One other point. The appropriation of that \$15,000 grew out of the direction of the Government to have that survey made. It is a liability which has been created on part of the Government and for that reason \$15,000 was appropriated. Now I wish to ascertain from the gentleman from Massachusetts whether there is any other provision in the bill directing further survey to be made?

Mr. SEELYE. There is no provision with this section omitted.

This section 5 of the bill did provide for the further survey of Cattaraugus reservation. But omitting this there is no provision for any new survey

The House will have to strike that section out.

The SPEAKER. Is there any objection to the present consideration of the bill?

There was no objection.

The SPEAKER. The bill is now before the House and the first

question is on the motion to strike out the fifth section.

Mr. SEELYE. I can explain the bill to the House in a moment, and then I think there will be no objection to it. This Allegany reservation is a strip of land about forty miles long by a mile and a half or two miles wide, owned by the Seneca Nation, which has been leased in portions to certain parties in a very irregular way, and in order to make those leases effectual Congress passed a law two years ago appointing a commission for the survey of the reservation. This bill simply provides that the survey thus made shall be recognized as the authority to which appeal shall be made in subsequent leases. I ask for the passage of the bill as amended, striking out the fifth section.

The SPEAKER. The question is first on the amendment to strike

out the fifth section.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed

Mr. SEELYE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### RECENT ELECTION IN THE STATE OF FLORIDA.

Mr. HOPKINS. As the regular order has been demanded by several gentlemen, I now take the floor for the purpose of proceeding with the consideration of the regular order of business, which is the report of the select committee on the recent election in the State of

Florida.

Mr. WILSON, of Iowa. What is the question before the House?

The SPEAKER. The report of the select committee on the Flor-

Mr. WILSON, of Iowa. What is it proposed to do with it?

The SPEAKER. The resolution reported from the committee will be read.

The Clerk read as follows:

Resolved, That at the election held on November 7, A. D. 1876, in the State of Florida, Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock were fairly and duly chosen as presidential electors, and that this is shown by the face of the returns and fully substantiated by the evidence of the actual votes cast; and that the said electors having, on the first Wednesday of December, A. D. 1876, cast their votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, they are the legal votes of the State of Florida and must be counted as such.

Mr. WILSON, of Iowa. What is the intention of the gentleman relative to the time to be allowed in debate to The SPEAKER. The Chair is not advised.

Mr. WILSON, of Iowa. Perhaps the gentleman will be good enough

The SPEAKER. The gentleman from Iowa wants to know what time the gentleman from Pennsylvania desires as to debate.

Mr. HOPKINS. I do not propose any limit. Gentlemen can take as much latitude as they desire.

Mr. WILSON, or Iowa. We do not want any latitude; we do not want to be bothered with funeral orations.

Mr. CONGER. Is it in order to raise the question of consideration? The SPEAKER. No, sir; the Chair will read from the Journal:

On motion of Mr. HOPKINS, by unanimous consent, Ordered, That the consideration of the report of the select committee on the re-cent election in the State of Florida shall be resumed immediately after the reading of the Journal when the same is next read.

Mr. WILSON, of Iowa. There is no doubt but that this is in order, but what we wish to get at is this: We agreed to amend the rules last night because it was absolutely necessary to get at the business of the House. If there is a proposition to have debate on this matter already disposed of by the electoral commission, we want to know it. If the gentleman wants an hour we will not say anything.

The SPEAKER. At the end of the hour the gentleman can make

the motion to postpone.

Mr. WILSON, of Iowa. We want to know whether the other side will be heard. It has always been done—always an amicable agreement is made in such matters.

Mr. HOPKINS. I have not been able to hear a word the gentle-

Mr. HOPKINS. I have not been able to hear a land and man has said.

Mr. WILSON, of Iowa. Does the gentleman propose to give this side an opportunity to debate?

Mr. HOPKINS. So far as I am concerned, unquestionably, but I

Mr. HOPKINS. So far as I am concerned, unquestionably, but I have no control over giving time for debate.

The SPEAKER. The gentleman will be recognized as controlling the demand for the previous question.

Mr. HOPKINS. I propose to withdraw the demand I made for the previous question; and if gentlemen desire a limit on that side let them name it, and we will assent to it.

Mr. KASSON. I shall be glad, before the gentleman opens on the subject, to know whether he proposes to occupy an hour or to take up very much time in debate in reference to a subject, when the debate yesterday covered the same ground, or merely desires that the

bate yesterday covered the same ground, or merely desires that the committee shall be heard on the subject.

Mr. HOPKINS. I do not think that the question under consideration yesterday was the one which is proposed to be discussed to-day. The time yesterday was occupied in discussing the legal aspect of the case. We think that it is now time that the House and the people should understand something of the facts.

Mr. KASSON. I asked the question with reference to the conclusion of the report simply, the resolution, which is substantially the same resolution acted on yesterday. In view of the pressure of business, I think there might be a common understanding that the least time possible with fairness to both sides might be consumed in this time possible with fairness to both sides might be consumed in this

The SPEAKER. The gentleman from Pennsylvania is entitled to one hour. The Chair would then recognize some gentleman in opposition to the report for one hour, after which the floor would revert to some friend of the resolution for another hour. Between the hours the House can of course make such disposition of the question as it

may deem fit.
Mr. HOPKINS. Mr. HOPKINS. The gentleman from Iowa [Mr. Kasson] and all other gentlemen will remember that when this report was presented to the House the majority sought to have it acted on without adding a single word of comment. But since that time we have seen the extraordinary spectacle of a tribunal created to ascertain the facts refusing to investigate; and we have also seen a report signed by the minority of this committee containing testimony which was never taken by the committee, containing a misrepresentation of facts, containing reflections upon the majority of the committee which are utterly unwarranted. In view of this, I have withdrawn my motion for the previous question; and I think there should be some latitude

of discussion.

The SPEAKER. The gentleman from Pennsylvania is entitled to the floor, and will either proceed or yield.

Mr. HOPKINS. I propose to proceed as soon as there is order.

Mr. HALE. Let me ask the gentleman one question before he goes

goes on.

The SPEAKER. The gentleman from Pennsylvania is recognized.

Mr. HOPKINS. Mr. Speaker, to declare and count the electoral votes of the State of Florida for Samuel J. Tilden would end the votes of the State of Florida for Samuel J. Tilden would end the presidential controversy. This fact was realized on the day after the election as soon as the voice of the different States had been heard. And immediately the telegraphic mandate flashed from the representative of the opposition, "Hold the State for Hayes!" It was not a question of justice or right, but simply and purely one of force. "Troops and money" without limit were promised, and the imperative order was to be enforced at all hazards. Thenceforth until the present hour all of the majesty of power, all of the appliances of wealth, all of the ingenuity and skill of intellect, and all of the devices of the reckless and unsermulous have been actively and cease. vices of the reckless and unscrupulous have been actively and cease-lessly at work to accomplish that purpose. The ultimate success or failure of all these agencies will soon be known. If

Bertram's right and Bertram's might Shall meet,

he record of the attempted wrong will alone remain as a dark and shameful chapter in American history. But if that chapter shall record the success of the great conspiracy, only one more will be needed to recite the speedy decay of popular government. An election carried by force or fraud or an election subverted by force or fraud is a mockery of the people's will and a stab at the very vitals

of the Republic.

of the Republic.

The great tribunal, the Delphic oracle now sitting in the chamber of the Supreme Court, might have declared what was the true and honest vote of the people of Florida; but they preferred to reach a conclusion hemmed in by technicalities and forms. Whatever may be said of the wisdom and justice of their decision under the law, it is conclusive upon all unless reversed by the two Houses of Congress. I do not propose to invade their jurisdiction nor to intrude upon their meditations, but to discuss briefly some of the details of evidence which they refused to consider, for the information of those who are more anxious to know for whom the votes were cast than for whom they shall be counted. they shall be counted.

There was but a single certificate or return sent up to the secretary of state from each of the counties in Florida, except from the county of Baker. From Baker County there were three returns. Two of them, however, were signed by the same officers and contained precisely the same result. To determine which of these is the true and legal return will be to decide the presidential contest so far as "the face of the returns" will do it. This great question is thus compressed

into a very narrow compass.

The total vote of the State, exclusive of Baker County, was— For the Hayes electors...... For the Tilden electors.....

One of the certificates referred to was signed by E. W. Driggers, county judge, A. A. Allen, sheriff, and William Green, justice of the peace. The other two were signed by Martin J. Coxe, elerk of the circuit and county courts, and John Dounan, justice of the peace.

The different results produced by accepting and adopting each of these returns will be apparent at a glance.

Adopting Coxe's return the result would be—

Tilden electors exclusive of Baker County Tilden electors in Baker County	24, 201 238	
Total for Tilden electors  Hayes electors exclusive of Baker County  Hayes electors in Baker County	24, 206	24, 439
Total for Hayes electors		24, 349
Majority for Tilden electors		90
Or adopting Drigger's return the result would be— Hayes electors exclusive of Baker County Hayes electors in Baker County	24, 206 130	
Total for Hayes electors Tilden electors exclusive of Baker County Tilden electors in Baker County	24, 201 89	24, 336 24, 290
Majority for Hayes electors		46

Upon what a slender thread hang issues so momentous! If the voice of the people of Florida is to be potential in settling the greatest political contest of the age, and if that voice can be heard only as it speaks through official certificates, how all-important is it that we should catch the true sound and not be deceived by a dangerous, even a fatal, mimicry!

Which of these certificates or returns is true, and which is false? Which is legal, and which illegal? The election law of the State of Florida provides as follows:

SEC. 24. On the sixth day after any election, or sooner, if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of said clerk and take to their assistance a justice of the peace of the county, (and in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place,) and shall publicly proceed to canvass the votes given for the several officers and persons, as shown by the returns on file in the office of such clerk or judge, and shall then make and sign duplicate certificates, containing in words and figures, written at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given for such office, and the number of votes given to each person for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the secretary of state and the other to the governor of the State.

It will be observed that the judge and the clerk are of equal rank and power under the law.

In case of the absence, sickness, or other disability-

And in that case only-

of the county judge or clerk, the sheriff shall act in his place.

Unless the contingency provided for shall arise, the sheriff has no more right to participate than any other citizen, and his interference to the exclusion of the judge or clerk is unwarranted and illegal. Hence it must appear affirmatively upon any return signed by the

Hence it must appear affirmatively upon any return signed by the sheriff, that the contingency did arise which made it lawful for him to act. In the case of Baker County there was no such evidence. There was no reason or excuse for the sheriff's presence as a canvasser set forth upon the certificate. But, on the contrary, the very fact that the clerk made and certified to a canvass proved that there was neither "absence, sickness, or other disability" upon his part.

It is equally certain that the certificate signed by Driggers was never recorded as required by the act. There was an evident conflict or rivalry, judging from the returns alone, between the judge and the clerk; and inasmuch as the clerk is the recording officer and in charge of the "book to be kept by him for that purpose," it cannot be supposed that he would record the certificate of a canvass he had not participated in and which was in direct conflict with the one he be supposed that he would record the certificate of a canvass he had not participated in and which was in direct conflict with the one he had aided in making. "Such certificate shall be recorded," and "one of such duplicates shall be immediately transmitted by mail to the secretary of state," &c. It is the same certificate which the clerk records which the law recognizes as the valid one. So that the Driggers certificate lacks all of the essentials of legality. It has the brand of illegitimacy stamped upon its face.

This was brought home to the knowledge of the State canvassers by the indorsement upon the clerk's certificate which was transmitted to them. This indorsement, which was suppressed by the secre-

ted to them. This indorsement, which was suppressed by the secretary of state in the copy which he certified as correct and true, was as follows:

STATE OF FLORIDA,

Baker County:

I certify that the within is a true copy of the canvass made by board of county canvassers of an election held on the 7th day of November, A. D. 1876, at which presidential electors, governor, and lieutenant governor of Florida, members of Congress, assemblymen, and constables were voted for, and which is now on file and of record in my office.

M. J. COXE.

M. J. COXE, Clerk of Circuit Court, Baker County.

STATE OF FLORIDA,

Baker County:

I certify that I have no knowledge of any canvass of the votes cast at the election held on the 7th day of November, 1876, for presidential electors, State and county officers, and member of Congress in the county of Baker, made by the county judge and sheriff of said county of Baker, or either of them, or by any board of canvassers of which either county judge and sheriff, or either, were members. That no

record or evidence of any such canvass appears in my office, and that if any such canvass was made, I was not notified thereof nor invited to take any part therein.

M. J. COXE,

Clerk of Circuit Court, Baker County.

On the other hand, the Coxe certificate is signed by a majority of the legal board without the unexplained intrusion of any one else. In addition to this, it is accompanied with a statement of the absence and refusal of the judge to co-operate with him, and the subsequent refusal of the sheriff, thus rendering it impossible to secure a full board.

board.

I insist, Mr. Speaker, that, if we limit our investigation to the returns and certificates on file in the office of the secretary of state, we are bound to regard the Coxe return as the legal one. If I desired to reach a conclusion favorable to the democratic candidates without regard to justice or law, I would concur in the proposition that a certificate signed only by the clerk and justice of the peace is irregular and void, and would demand that this principle be applied to the certificate from Duval County. The returns from that county show that the Tilden electors received 1,437 votes and the Hayes electors received 2,367 votes. That certificate is signed by the clerk and insections. certificate from Duval County. The returns from that county show that the Tilden electors received 1,437 votes and the Hayes electors received 2,367 votes. That certificate is signed by the clerk and justice only, and if for that reason it is to be set aside the democratic majority in the State will be greatly increased. In point of fact, the Duval County certificate is entitled to less credit than the Coxe certificate from Baker County, because the latter one shows the simple refusal of the judge to act, while the one from Duval County shows that the judge was present during the canvass and refused to sign the certificate, thus branding it with far more suspicion than his mere absence from the canvass. It certainly cannot be contended that the presence of the judge protesting against the action of the clerk and justice can give more efficacy to the proceedings than his refusal to meet with them. In both cases the majority of the board made the canvass and signed the certificates without the co-operation of the judge, and both are valid or neither is. I believe that both should be accepted, and I am not tempted to advocate a different doctrine by the prospect of a party advantage to be gained thereby. In popular elections the will of the people is supreme, and is not to be thwarted by the mere irregularities of those through whom that will is expressed. The voice of an entire county is not to be stifled by any technical informalities of its board of canvassers. In each of these cases the voice gave no uncertain sound, and must be heeded.

It thus appears, Mr. Speaker, from the full and authentic returns from all of the counties of Florida, that the Tilden electors were duly chosen. "The face of the returns" declares it. And if we go behind the certificates to ascertain their verity, if we go down and read the ballots as they passed from the voters' hands the same result is declared with the additional emphasis of an increased majority. I do not propose now to discuss the abstract question of the power of Congre

by another tribunal, and one from which there is no appear except to the supreme majesty of the American people, in whose judgment there is no unrighteousness. But by direction of this House a committee was sent to Florida "to investigate the recent election therein" and "to report all the facts essential to an honest return of the votes received by the electors of said State for President and Vice-President of the United States, and to a fair understanding thereof by the people." It is to that august tribunal I address myself. Whatever may be the legal determination of the question, "the people" want to know the facts. They may have to submit to the inauguration and to the authority of a Chief Magistrate not chosen by them, but they have a right to know the means by which they were defrauded of their votes, that they may forever execrate the base assassins of popular will.

Then let us push aside the paper returns which interpose between us and the full truth; let us go down among the orange-groves, forests, and everglades of Florida and learn how the election was held, for whom the votes were cast, and how faithless and dishonest offi-

or whom the votes were cast, and now fatthess and dishonest officers made false counts and forged returns in their desperate attempts to "hold the State for Hayes."

We have considered Baker County upon the comparative authenticity, or rather legality, of the two returns, uninfluenced by any extraneous evidence. But look for one moment at the circumstances under which each was made and the basis upon which each one rests, and the sturdiest parties of any potential death as to which is the type. and the sturdiest partisan can no longer doubt as to which is the true and which the false.

There are but four election precincts in the county. The number of votes polled at each precinct, as proved by the several returns and by the ballots still in the boxes, was as follows:

Precincts.	Tilden electors.	Hayes electors.
Darbyville	65 84 57 32	130
Total	238	143

Majority for Tilden electors, 95.

This result was declared and known on the night of the election. No one questioned its correctness; no one attempted to impeach or impair it until party necessity demanded desperate resorts. No one even now pretends to deny the correctness of those returns, nor to deny the honesty and legality of the votes except as to the insignificant and immaterial number of 8 votes. Let this fact be kept steadily in mind while we see the inception of the plot by which this small county in a remote State was, by a false return, to be made to override and annul the will of a large majority of the American people. The result of the presidential election was known on November 8; and then telegrams flew thick and fast between the conspirators who sought to overturn that result. Up to that time the sparsely settled county of Baker had but one justice of the peace; and although he had been appointed by Governor Stearns he was not deemed weak or wicked enough to serve the purpose then in hand. Accordingly William Green was commissioned on November 10. He qualified on Saturday, the 11th, and was prepared on Monday, the 13th, to justify the selection made by his patron. On Monday night he, with the county judge and sheriff, stole into the office of the clerk, rifled the public records, made a sham canvass of the precinct returns, and deliberately certified a shameful lie to the State authorities. No language can paint the transaction blacker or make the participants more infamous and odious than the sworn explanation of one of the trio. Andrew A. Allen, the sheriff of the county, being under examination, said: This result was declared and known on the night of the election. under examination, said:

of one of the tho. Andrew A. Allen, the sherin of the county, being under examination, said:

Question. What did you do then?
Answer. We just made the return, throwing away two precincts in the county.
Q. What two precincts in the county did you throw away?
A. One was Darbyville precinct and the other was Johnsville precinct.
Q. Which did you throw away first?
A. The Johnsville precinct.
Q. And then you threw away the Darbyville precinct?
A. Yes, sir.
Q. Did you have any witnesses at all before you?
A. None at all.
Q. Did you have anything before you except the returns?
A. No, sir.
Q. Why did you throw away Johnsville precinct?
A. No, sir.
Q. Why did you throw away Johnsville precinct?
A. No, sir.
Q. Did you have any evidence before you to that effect?
A. No, sir; there was only his statement.
Q. You did not have a particle of evidence before you?
A. No, sir.
Q. You believed that one party had been intimidated and prevented from voting?
A. Yes, sir.
Q. And therefore you threw out the Johnsville precinct?
A. Yes, sir.
Q. Was there any other reason for throwing it out?
A. No, sir.
Q. None whatever?
A. No, sir.
Q. None whatever?
A. No, sir.
Q. Non next threw out the Darbyville precinct?
A. Yes, sir.
Q. You next threw out the Darbyville precinct?
A. Yes, sir.
Q. For what reason did you do so?
A. We believed that there were some illegal votes cast there.
Q. Did you have any evidence before you at all?
A. No, sir.
Q. Not a particle?
A. No, sir.
Q. Not a particle?
A. No, sir.
Q. But you had an impression that some illegal votes were cast there?
A. No, sir.
Q. Rot you had an impression that some illegal votes were cast there?
A. Rot you have any evidence before you at all?
A. No, sir.
Q. Rot you have any evidence before you at all?
A. No, sir.
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A. No, sir.
Q. Rot you had an impression that some illegal votes were cast there?

Q. Did you have any evidence before you at all?
A. No, sir.
Q. Not a particle?
A. No, sir.
Q. But you had an impression that some illegal votes were cast there?
A. Yes, sir.
Q. You had no proof of it all?
A. No, sir.
Q. How many illegal votes did you have an impression were cast there?
A. About 7, I think, as well as I can recollect.
Q. Therefore you threw out the precinct without any evidence at all?
A. Yes, sir.
Q. Then you made up your returns?
A. Yes, sir.
Q. Who wrote those returns?
A. I did.
Q. You wrote them yourself?
A. Yes, sir.
Q. And the judge signed them?
A. Yes, sir.
Q. Mr. Green signed them also, did he?
A. Yes, sir.
Q. Mr. Green signed them also, did he?
A. Yes, sir.
Q. Then you made up your also, did he?
A. Yes, sir.
Q. Mr. Green signed them also, did he?

A. Yes, sir. Q. Then you made return to the secretary of state that you had canvassed the ote?

ofe?
A. Yes, sir.
Q. And also sent one to the governor that you had canvassed the vote?
A. Yes, sir.
Q. How long were you in the clerk's office there?
A. I do not remember the time, not a great while, though; it was quite a short

me.
Q. Did anybody come in while you were there?
A. No, sir.
Q. Where did you find Mr. Green?
A. He was with us; we all went into the office together.

By Mr. WOODBURN:

Q. How long before you and the judge and the justice of the peace made the canass did you ascertain that a count had been made on the same day by other pares—by the clerk and somebody else?

A. I knew the fact; I was present; I knew they were canvassing the votes.

Q. How did you know that one man was intimidated at Johnsville precinct?

A. Well, we just heard it rumored around at the time.

By Mr. HOPKINS:

Q. Did you say that you had not the registration-list before you on the night you hade the canvass !
A. We had not.
Q. Name the seven men whom you thought were illegal voters.

A. I cannot.
Q. Did the judge give their names or did he just tell you that there were seven there that he thought had no right to vote?

A. He then told me that there were seven there that he thought had no right to vote.

O. Do you know when Green was appointed justice of the peace? A. I do not. He was appointed about the time of the election, but what date I

do not know.

Q. Do not you know that he was not appointed until after the election?

A. No, sir.

Q. Did you have anything to do with procuring his appointment?

A. Not a thing; he was appointed before I knew it.

Q. The first time you ever knew him to be a justice of the peace was when you got him on the 13th to make the canvas?

A. Yes, sir; that is the first knowledge I had of his being a justice of the peace.

If anything can add to the infamy of this transaction it must be the fact that the county canvassers, under the law, have no right or authority to throw out a single vote upon any pretext whatever. Their entire duty and power are "to canvass the votes given for the several officers and persons as shown by the returns on file in the office of such clerk or judge, and shall then make and sign duplicate certificates containing in words and figures, written at full length, the whole number of votes given for each office," &c.

And it is upon the certificate of this incomplete, illegal, surreptitious canvass that the republican party would rest their title to the grandest office in the world! No wonder that the judge, conscience-smitten as he was, fled from the service of a subpena. The chief manipulator of the fraud could not face the evidence of his guilt.

The repeated refusal of the judge and of the sheriff to meet with the clerk and canvass the returns; their subsequent secret canvass under the cover of night in connection with a justice newly made for the purpose, and their proceedings when thus met, mark the willful If anything can add to the infamy of this transaction it must be

the purpose, and their proceedings when thus met, mark the willful

purpose of the conspiracy.

Remember further, that on November 10, before this plot was hatched, this same judge sent a written notice to the clerk and Justice hatched, this same judge sent a written notice to the clerk and Justice Dorman to meet him on the 13th at twelve o'clock to make the canvass. The clerk and Justice Dorman promptly appeared at the appointed hour. The judge, after refusing to act with the very men whom he had invited to meet him, and after persuading the sheriff also to refuse, quietly permitted a majority of the board which he had formed to proceed and complete their work, and then with a full knowledge that they had made the canvass, and after expressing satisfaction with the canvass as thus made, stealthily sought to destroy it. And this is a fair type of Florida officials under the Stearns administration, and an illustration of the processes by which they sought to "hold the State for Hayes." to "hold the State for Hayes."

It was conclusively proved and cannot-be controverted, indeed no attempt has been made to refute it, that the precinct returnsthat is, the nearest approach we have yet made to the direct expression of the voters—show a decisive majority for the Tilden electors. Of course it follows that the county returns, which are but an aggregation of the precinct returns, show the same result.

But, with the masses of the people, the great controlling questions are yet behind. Are the precinct returns an honest record of legal votes actually cast? If not, what is the true result after the ballots

Conceding that party spirit is equally strong in the followers of both political banners; conceding that intemperate zeal might urge some of either party to the commission of illegal acts to accomplish the purpose so much at heart, it cannot be denied that in Florida the opportunities were all with the republicans. Under the laws of that State there is no such thing as local self-government. The judges and clerks of courts, the justices of the peace and county commissioners, the sheriffs and superintendents of schools, the tax assessors and collectors throughout the entire State are appointed by the governor. The inspectors of elections are selected by the county commissioners, and they also have the power to designate the number and location of voting-places. They may make few or many, at convenient or inconvenient places, as may suit their party interests. The voters are not required to deposit their ballots at or near their homes within the precinct where they are known, but may vote at any polling-place in the county where they live. All of this machinery is admirably calculated, whether designed or not, to perpetuate the success of the party holding this immense patronage and power. Nothing less than a general uprising of the people in peace-ful revolution could have driven the republican party from its strong-hold in that State. But that revolution came. Armed with no ful revolution could have driven the republican party from its stronghold in that State. But that revolution came. Armed with no
weapon but the ballot, inspired by the suffering and oppression and
plunder of many years, the people of Florida wrought out their own
deliverance, and that against fearful and desperate odds.

I have shown, Mr. Speaker, that the opportunities for committing
frauds were with the republican office-holders. I have also shown
how diligently those in Baker County improved their time. If we look
farther we shall see the manifestation and the fruits of equal zeal unrestrained by any code civil or divine.

restrained by any code, civil or divine.

restrained by any code, civil or divine.

The commissioners of Alachua County appointed a white republi can, (Green R. Moore,) and a colored republican, (R. H. Black,) as two of the inspectors of the election to be held at Archer Precinct No. 2. Both of these men had intelligence and education. To give a color of fairness, and yet not to thwart the plan, they appointed a colored democrat, (Floyd Dukes,) who could neither read nor write. The board was completed by sending down from the county seat, a dis-

tance of thirteen miles, a remarkably bright, shrewd, and unscrupulous colored republican, (Thomas H. Vance,) to act as clerk. The frauds of prior years had sharpened the wits and awakened the enfrauds of prior years had sharpened the wits and awakened the energy of the citizens of Archer. They selected their leading merchant, (Samuel T. Fleming,) a gentleman of extensive acquaintance, to stand at the window and watch the voting. From the opening until the the closing of the polls, he remained there, taking down the name of every voter as he handed in his ballot. Another well known citizen, Samuel C. Tucker, copied the rusult from the tally-sheet as soon as it was completed and the vote announced. This was produced and verified, and showed that the Tilden electors received 136 votes, and the Hayes electors 180 votes. Green R. Moore and Floyd Dukes, two of the inspectors, testified that the result was so declared on the night of the election. George R. Blitch, an inspector at Poll No. 1, held in the same building, and with only a partial partition between, testified that the same result was announced to him by one of the inspectors at No. 2, as soon as the canvass was completed. This total vote differed but very little from the number of names on Fleming's list, and the discrepancy may be accounted for by the fact that a few persons voted very little from the number of names on Fleming's list, and the discrepancy may be accounted for by the fact that a few persons voted from the inside of the house whose names he did not get. Still, suspicious of trickery upon the part of those in charge of the ballot-box, it was urged that both boxes, Nos. 1 and 2, be placed together, and both sets of officers stand guard through the night. This was refused, and Black and Vance took box No. 2 to Black's house, where they and two republican deputy marshals kept it until the next day. The box was of soft pine, and when produced before the committee of the House could be opened with two fingers and without a key. Despite the facility with which it could be tampered with; despite the suspicious custody in which it was kept, the prior safeguards were such as to justify the expectations of the honest voters that there would be an honest return. No wonder they were amazed and indignant when the returns were opened by the county canvassers, and the certificate declared that the Tilden electors had received 136 votes, but that the vote for the Hayes electors had grown in six short days from 180 to 399! This was the response from Archer to the imperative command to "Hold the State for Hayes,"

Theirs not to reason why, Theirs but to do or die;

and with as much recklessness of personal safety as the heroes of Balaklava they obeyed orders, although "jails in front of them opened

and yawned."

Here were the returns, in due form, bearing the names of all the election officers, and who so unreasonable as to deny their conclusiveness, who so bold as to question their genuineness? It is true the names of the inspectors are all in the same handwriting! It is true freen R. Moore has sworn that his signature is a forgery! It is true the certificates are not upon the official blanks furnished by the county clerk! It is true that they contain an utterly false statement of the vote! But what of all that? Who dare disturb the sanctity of the returns?

Nothing could more strongly illustrate the absurdity of the posi-tion that returns of an election must be taken as conclusive of anything than the facts disclosed relative to the one under discussion. Here was a forged return, certifying to a fraudulent vote, made by perjured officers, and yet we are asked to give it the full force and effect of a pure and infallible judgment!

But the perpetrators of this fraud did attempt to rebut the proofs

But the perpetrators of this fraud did attempt to rebut the proofs of their guilt, and how? By producing the tally-sheet? No, they had lost that. By producing the poll-list? No, that had been stolen. By an exhibition of the ballots? Alas, the box contains but 215 republican tickets, instead of 399 as returned, and of these just 180, the true vote announced on election night, had the marks of having been strung; and the testimony of all the officers showed that all the tickets were strung as soon as the canvass was completed.

Of two or three hundred persons standing around the building when the result of the election was announced, just one was found willing to swear that Black "announced 535; that was all that I could hear. I could not hear any more than that." and this man David Brown, a deputy marshal, was flatly contradicted by the man who stood bedeputy marshal, was fiatly contradicted by the man who stood beside him and by an indorsement upon his own commission used at the election, showing the total vote to have been 316. One other witness who was inside the building at box No. 1, testified, "I heard the announcement made, 500;" and he was not sustained by any evidence on either side. And this contradictory and contradicted evidence, and this alone, is relied on to support Black and Vance in their wicked attempt to defraud the people of that precinct.

They who will deliberately commit a crime like that will not falter at anything necessary to make the fraud effective. We have seen how the original purpose to cheat the voters hatched an ugly broad of kindred

anything necessary to make the traudemetive. We have seen how the original purpose to cheat the voters hatched an ugly brood of kindred villainies. The fraud was followed by forgery and was both preceded and succeeded by perjury; perjury in violating the oath taken at the opening of the polls and perjury, thrice repeated, before the board of State canvassers and before the committees of Congress. Bribery was also invoked. This base and mean temptation to a poor Bribery was also invoked. This base and mean temptation to a poor man's needs, this cowardly and infamous appeal to suffering and want, was repelled by Floyd Dukes, indigent and unlettered though he was. His white associate on the election board, unwilling to swear falsely, but eager for gain, signed a paper contradicting his evidence.

The testimony discloses all of the circumstances under which he was coerced, tempted, and betrayed into signing a paper which he knew, and at the time pronounced, to be false. His testimony on that point is as follows:

By the CHAIRMAN:

Question. Do you remember what the contents of the paper was that you signed at Captain Dennis's ?

Answer. I do not. It was read over to me, but I don't remember now what it

Was.

Q. What was your objection to swearing to it?

A. Because I didn't think it was right; I didn't think it was truth, and I didn't want to swear to it. I told them at the same time that I didn't feel like perjuring myself.

By Mr. DUNNELL:

Q. But you signed that same paper and took \$100 for it, did you? A. Yes, sir; I signed the paper.

By Mr. HOPKINS:

Q. After you told them that, did they still want you to sign it? A. Yes, sir.

And yet this paper, covered all over with infamy, is boldly called an affidavit by those who well know its origin and history. The man who signed the jurat—and thus aided in imposing this sham affidavit upon the country—the man who embodies in himself the offices of deputy clerk, deputy register, assemblyman, and county judge, swears that Moore said, "I cannot take that affidavit;" and he replied, "Sir, I shall not ask you to take it." But after an hour's intercession and negotiation he said, "I can swear to it;" but, adds this model of a Florida judge, "He didn't stand up and hold up his hand." Indignation and disgust at the manipulations by which this signature was purchased give way to amazement that gentlemen upon this was purchased give way to amazement that gentlemen upon this floor should ask rational and honest men to give this paper credence as against this same man's unbought and solemn oath, corroborated,

too, by abundant evidence.

as against this same man's unbought and solemn oath, corroborated, too, by abundant evidence.

This same Judge Cessna, who so prostituted his office as to certify a falsehood in the interest of his party, was the custodian of one of the duplicate returns from each of the precincts. The one produced by the clerk having been shown to be a forgery, it became of the utmost importance to see and compare the one which Judge Cessna had. That, if produced, would establish and confirm, or would bring confusion and destruction to the testimony of Green R. Moore. But it could not be found. The judge could not account for its mysterious disappearance. All of the others were in his safe; but the only one needed was not there. Day after day he searched, or pretended to search for it, until its absence grew more and more suspicious. At last, when about to hurry from the town, he left with the county clerk a paper which he represented as the one left with him by the election officers at Archer precinct No. 2. This document had every indication of having been freshly and hastily prepared. The mucilage between the sheets was scarcely dry; the name of one of the inspectors was misspelled; the slip containing the vote for presidential electors covered a portion of the names of the election board, showing conclusively that it had been attached after the return was made out; and the signatures of the inspectors were all in the same handout; and the signatures of the inspectors were all in the same hand-

out; and the signatures of the inspectors were all in the same hand-writing. This also was repudiated as a forgery by Green R. Moore; and thus the last hope of imposing this complex fraud upon the people was crushed out under the very eyes of its perpetrators.

The testimony brought out a number of incidental facts showing the utter uncrupulousness and untruthfulness of those concerned in this most disgraceful and criminal transaction. I will weary the patience and moral sense of this House by a single additional reference. Vance, the clerk at the election, swore stoutly and roundly that he went down from Gainesborough to Archer on the night before the election purely and solely on private business without any that he went down from Gainesborough to Archer on the night before the election purely and solely on private business, without any intention or expectation of remaining, much less of taking part in the election; that he was persuaded to act and was sworn at Archer on the morning of the election. But the county clerk, a reputable member of the same political party, testified that Vance appeared before him on November 6, stated that he was going to Archer for the express purpose of acting as clerk, asked to be sworn as such, and then and there did take and subscribe to the oath, which oath the county clerk produced before the committee, leaving Vance in his pitiable and naked perjury to the scorn of all his neighbors and to the pangs which insvitably follow the failures of crime. Success in guilt may blunt the conscience, but disappointment always brings remorse.

The same character of fraud was practiced in Leon County, under the special direction and participation of Joseph Bowes, a superintendent of instruction—heaven save the mark! This Bowes was a favored office-holder under Stearns, and needed but a hint to do his share of the infamy necessary to "hold the State for Hayes." He selected his confrères, one of whom came from another county to serve,

share of the infamy necessary to "hold the State for Hayes." He selected his confrères, one of whom came from another county to serve, and none of whom lived in the precinct where they acted. All were republicans of the Stearns type. Bowes, with a colored associate, camped on the ground the night before the election, armed with the ballot-box and republican tickets. In order to give the thing a good send off, seventy-two of these tickets were put in the box before the polls were opened and seventy-two names of persons in remote parts of the county, taken promiscuously from the registration-list, were appended to the poll-list to stand sponsor for these fatherless ballots. A republican member of the investigating committee, while in Florida, overwhelmed by the proof, was constrained to declare that "Bowes

was a bungler in his fraud;" for it was shown that forty-eight of the seventy-two whose names were inserted on this poll-list had voted elsewhere, and twenty-four of them appeared in person before the committee and denounced the misuse of their names and swore that they had not been at that precinct on election day.

Of course this "virtuous Joseph," this instructor of youth, this intimate friend of the governor, this zealous partisan would not hesitate to follow his fraud with perjury. But it was a most singular and significant fact that not one of the other election officers corroborated or sustained him. To see how flipmently this fellow swears.

orated or sustained him. To see how flippantly this fellow swears, look at his testimony:

By the CHAIRMAN:

By the CHARMAN:

Question. And why didn't you wait a few moments until he arrived?

Answer. On the morning of the election?

Q. In the morning; yes, sir.

A. Because I wanted to open the polls at the time prescribed by law.

Q. You knew he was the only democrat on the board, did you not?

A. Yes.

Q. Why could you not have waited there for a few minutes, say four or five, to let him get there?

A. Because in all probability I was afraid if I did not open the polls at the time prescribed by law we would have had a pile of democratic affidavits saying the polls were not opened at the proper time.

Q. So you now say that the reason why you did not wait for him was to get rid of democratic affidavits?

A. Because the law required them to open at that time.

Q. Answer the question. I say the reason you now give is that you were afraid, at the time, there would be a pile of democratic affidavits.

A. I say it might have been.

Q. You say it might have been. I ask you, was that the reason that operated on your mind?

A. No, sir.

Q. Now you say it is a fact that you supposed there would be a pile of democratic affidavits put in if the poll was not opened at the right time?

A. Yes, sir.

Q. Don't you know whether you did or not?

A. I don't know that I did.

Q. Don't you know whether you did or not?

A. No, I have no consciousness of saying anything of the kind.

By Mr. HOPKINS:

By Mr. HOPKINS:

O. Dou't you know whether you did or not?

A. No; I have no consciousness of saying anything of the kind.

By Mr. HOFKINS:

O. Where did you get supper on that evening?

A. We took some provisions with us.

O. Where did you eat your supper?

In the school-house.

O. Did you also eat your breakfast there?

A. colored man.

O. In what precinet did Lawrence Booth live?

A. colored man.

O. In what precinet did Lawrence Booth live?

A. the lives down here across the railroad.

O. In what precinet does of Mr. Pappy's precinct.

A. Well, they call them polling places.

O. I am using your own expression.

A. Well, they call them that. There is no such thing as "precinct."

O. In what precinct does he live?

A. Tallahassee.

O. Does he live in the Richardson school-house precinct?

A. No, sir.

O. Neither do you?

A. No, sir.

O. Welle see some thive?

A. No, sir.

O. Have lose Dent live?

A. No, sir.

O. Have lose Dent live?

A. No, sir.

O. Have you any impression as to where he lives?

A. No, sir.

O. Have you any impression as to where he lives?

A. No, sir.

O. Doy u know where he lives?

A. No, sir.

O. Doy u know at all or have you any idea of where he lives?

A. No, sir.

O. Doy on know where he lives?

A. Yes, sir.

O. Doy on the ballot-box with you all night?

A. Yes, sir.

O. At what time did you get there?

A. Yes, sir.

O. Have is a negro, you say?

A. He is a colored man; yes.

O. Is ald, "an office-holder."

A. That's an office-holder.?

A. That's an office-holder.?

A. That's an office-holder. I guess.

Where is Saint Mark's?

A. About twenty miles below here.

O. Is a different direction of this precinct of which you have been speaking?

A. Ho is a colored man; yes.

O. Is a different direction of this precinct of which you have been speaking?

A. He is a colored man the is boatman down there. He is registered in this county: his family reside here.

O. Ho has it sainly "I don't know where they live.

O. The he is not even a citizen of this county?

A. The that of boatman.

A. No, Sir.

O. Do you know

And these are the instrumentalities and processes by which the attempt was made to "hold the State for Hayes," which attempt has proved successful by the solemn judgment of a tribunal sworn to "impartially examine and consider all questions submitted to it," but which shut its eyes and refused to "examine and consider" the most vital of all questions—whether the vote of an entire Commonwealth can be stolen, sold, and delivered by a handful of bold and desperate

A bolder and more sweeping scheme was concocted by which an entire county was to be disfranchised. The clerk of the circuit court entire county was to be disfranchised. The clerk of the circuit court of Manatee County resigned, locked up his records, and moved away about six weeks before the election. No successor was appointed, and for three months no marriage licences could issue, no deeds could be recorded, no legal processes could be issued, and all for the manifest purpose of depriving the people of that county of an opportunity to register, and to prevent the election officers from procuring copies of the regitration-list, and if possible to prevent the election from being

In view of the facts already stated, as gleaned from the testimony taken, it need surprise no one that many persons disfranchised for crime, many minors and non-residents were procured or permitted to vote the republican ticket, nor that the jail of Duval County was opened on election day and its prisoners marched to the polls to do duty in the same behalf. The great body of the republican party will condemn these wrongs earnestly and indignantly, and only those who would apologize for or seek to cover them deserve to share the ignominy. I do not deny that there are persons in the democratic party who with like opportunities and under the same temptations might have proved equally guilty. I but state the facts revealed by the testimony and call upon all honest men, of whatever name or creed, to denounce all of these acts of infamy; and I especially call upon pure and upright republicans to refuse to accept a victory won at such a fearful sacrifice and stained with so much crime. In view of the facts already stated, as gleaned from the testimony

apon pure and upright republicans to refuse to accept a victory won at such a fearful sacrifice and stained with so much crime.

The board of State canvassers of Florida deserve tenfold more execration than the subordinate officials whom we have already considered, because of the greater shame which attaches to the violation of a higher trust. These men, finding that the frauds in the counties were not sufficient to "hold the State for Hayes," won for themselves everlasting infamy by their proceedings, which are now historic. In gross violation of the law, which they knew well, they refused to count the votes from Manatee County and from certain precincts in Monroe Hamilton and Jackson Counties. No frauds or intimida-Monroe, Hamilton, and Jackson Counties. No frauds or intimida-tion had been proved or alleged; not a single witness was found who denied the entire legality and regularity of the election at those places; no one denied or doubted the correctness of the returns; but who denied the entire legality and regularity of the election at those places; no one denied or doubted the correctness of the returns; but the State canvassers searched for and seized upon the veriest technicalities to throw out those precincts and trample upon the free will of their voters. When the supreme court checked them in their law-lessness and lashed them into some sense of duty, they counted those they had previously rejected; but in their mad zeal for party they then threw out others which they had previously pronounced to be true and valid. In this extremity they took up and adopted the false and illegal certificate from Baker County, which at first they had discarded as too bald a cheat, and they excluded Clay County because there was appended to the certificate the statement that at one precinct "there was no evidence of the inspectors of the election of said precinct being sworn, but the clerk was. The vote of said precinct was as follows, which we did not count in our returns: Presidential electors received as follows: Tilden electors, 29 votes; Hayes electors, 6 votes. When they felt free to run riot through the returns they chose to destroy, the State board made a show of justice by taking in this precinct which the county canvassers had omitted and including the entire county in their canvass. Afterward they made this appended statement as to one precinct the weak pretext for excluding the whole county. Could impudent assurance go further? Could downright, reckless, and indecent defiance of law and right more boldly display itself? Again the rod of judicial authority was laid upon their backs, and they were compelled to withdraw that pretended canvass for presidential electors.

Mr. Speaker, I do not propose to discuss the unfair and unworthy intimations, the misstatements of fact, and the necessarily weak argument contained in the report of the minority of the committee. All of that will receive due consideration and deserved exposure at the hands of the gentleman from Massachusetts, [Mr. T

There are other points in the Florida election which I should like to discuss; but I have already occupied my full share of time. I can only call attention to the facts that the supreme court of the State, composed of republican judges, by a unanimous decision held that the canvass which gave the State to Hayes was wholly illegal and void; that a circuit court of the State decided that the Tilden electors were duly chosen; that the Hayes electors were mere pretend-

ers and usurpers without the color of title or authority; that the State Legislature passed an act to procure a legal canvass of the votes and that canvass duly made and certified showed that the State had been carried by Tilden, and the result was declared and established by another act; that one of the gentlemen selected by the President to visit Florida in the interests of the republican party and witness the counting of the votes and examine into the truth and justice of the matter ing of the votes and examine into the truth and justice of the matter has had the moral heroism to pronounce against his party. In these days of subserviency to party, and in these times of high party passion, it was a grand and noble thing for General Barlow, in the midst of the angry clamor, to speak out, clear and bold and strong, the calm words of honesty and truth. How high he towers above the despicable clique who would have their candidate climb into the Chief Magistracy of this great nation by the loathsome ladder of fraud, bribery, forgery, and perjury! Not a man on the great tribunal but would resent with fiery scorn any suggestion that he had aided to manacle a State and put a nadlock on her mouth while one with her store in sign State and put a padlock on her mouth while one with her stolen insignia spoke a falsehood in her name. Yet their decision has that effect or none.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks; announced that the Senate had adopted the following resolutions; in which the concurrence of the House was requested:

which the concurrence of the House was requested:

Resolved by the Senate, (the House of Representatives concurring,) That during the sessions of the commission appointed under the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, each calendar day when legislative business shall have been transacted shall by each House when in session be considered a day for legislative purposes; and the Journals of the two Houses shall be so kept and dated.

Resolved by the Senate, (the House of Representatives concurring,) That there be printed 5,000 additional copies of the report of the joint special committee on Chinese immigration, with accompanying testimony, of which 1,500 copies shall be for the use of the Senate and 3,500 copies for the use of the House of Representatives.

The measure also appropried that the Senate had record without

The message also announced that the Senate had passed without

amendment the bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi.

The message also announced that the Senate had passed a bill of the following title; in which the concurrence of the House was

the following title; in which the concurrence of the House was requested:

An act (S. No. 1122) to secure the rights of settlers upon certain railroad lands and to repeal the first five sections of an act entitled "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River," approved July 25, 1866.

The message further announced that the Senate had agreed to reports of committees of conference on bills of the following titles:

A bill (H. R. No. 1984) to provide for the sale of certain lands in

A bill (H. R. No. 1984) to provide for the sale of certain lands in

Kansas; and
A bill (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery.

### MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. SNIFFEN, his Private Secretary, who also informed the House that the President had approved and signed a bill of the House of the following title:

An act (H. R. No. 4284) authorizing the commissioners of the Freedman's Savings and Trust Company to buy in certain real estate and other property and to sell the same at public or private sale, and for other purposes.

other purposes

The message further informed the House that bills of the following titles were received by the President on the 30th day of January, 1877, and not having been returned by him to the House within the ten days prescribed by the Constitution had become laws without his signature:

An act (H. R. No. 3038) granting a pension to Almon F. Mills, late private Company K, Twenty-ninth Regiment Ohio Volunteers;
An act (H. R. No. 3511) granting increased pension to Thomas G.

Kingsley; and
An act (H. R. No. 3575) granting a pension to Eliza A. Blaze, widow
of Abner T. Blaze, late a private in Company C, Thirteenth Indiana
Cavalry Volunteers.

The House resumed the consideration of the report of the select

ommittee upon the late election in the State of Florida.

Mr. DUNNELL. Mr. Speaker, I had supposed that the debate upon the Florida question had been ended. I did not anticipate that the House would seek to take action again after the decision of the electoral would seek to take action again after the decision of the electoral tribunal. Just here, sir, I enter my protest against the designation which the gentleman from Pennsylvania [Mr. Hopkins] gives to the tribunal to which this House and the Senate have submitted very serious and vital questions. He pronounces it a "Delphic oracle." That commission is composed of fifteen eminently honorable men. If gentlemen on the other side are not present, as the priests, to dictate the responses of the oracle, they must not find fault with them. The honorable gentleman himself gave his vote for its creation. I did did not give my vote for its creation; and yet I propose to stand by it, whether it shall give us Tilden or Hayes for President. The two Houses of Congress committed themselves to an honest acquiescence in the decision of that tribunal. We have here brought up again to-day the question of Florida. I replied yesterday in the ten minutes that were allowed me as to the manner in which the investigation was made in Florida by the committee sent into that State. I characterized the action of the committee as partial and one-sided. I pronounced it opposed to a full investigation; and I asked gentlemen to read the fourth page of the report, wherein is recorded the vote of that committee denying to the minority a sight of any of the papers upon which the canvassing board acted. The gentleman from Pennsylvania, as if to make a reply to my charge, had read, after the ten minutes had passed, a statement of witnesses. I never pronounced the word "witness" in all I had to say; and his statement of witnesses had nothing to do with what I had said as to the investigation in that State. I made this one, single, grand charge: That the majority refused the evidence upon which the canvassing board acted. I made it then, I make it now. The record shows that my charge was justly made and is fully sustained by the evidence.

Very soon in his remaks to-day, the gentleman strikes Baker County. I shall leave to the gentleman from Nevada, [Mr. WOODBURN,] who was with me upon the minority, a fuller answer than I will attempt tomake. Wherefore did not the canvassing board count Baker County in the second canvass? Did the supreme court find fault with that canvassing board? Not a particle of fault does it find. The recanvass was in precise harmony with the decision of the supreme court. The supreme court of Florida answers well the purpose of the gentleman at one time, but answers it not at all at another time. Baker and Clay Counties were left out in the second canvass by a strict compliance with the findings of the supreme court and with the decision of that court. I do not propose, however, to dwell upon this matter, but, as I have said, leave it to my friend, the gentleman from Navada.

At once we are informed about a precinct called Archer No. 2, in Alachua County. Now, sir, I desire to speak of this precinct, Archer No. 2; and when I am compelled to dwell upon Archer No. 2, I am reminded that there is besides Archer No. 2, Waldo precinct, that this committee avoided and passed by. I am reminded also of Archer No. 1, which this committee dared not approach and did not approach; I am reminded of another precinct in this county which this investigating committee did not attempt to investigate, where democratic frauds bristled, notoriously known, read of all men in that region of country, but they were avoided and not investigated. From the time that we struck Florida, till we left it, not for once were the minority asked whither shall we go; how long shall we tarry; where shall we investigate; what shall we do? Notonce were we asked where can we discover democratic frauds? We went and came as the majority voted, and not as the minority desired.

Now as to this Archer No. 2 in Alachua County. What of it? There was a ballot there. There were four officers. The vote was taken. A less republican majority was cast there than had been in previous years. Three hundred and ninety-nine for Hayes and 180 for Tilden. But nothing was said then and there as to the votes. The ballot-box was brought to Gainesville and in due time declared to

Now as to this Archer No. 2 in Alachua County. What of it? There was a ballot there. There were four officers. The vote was taken. A less republican majority was cast there than had been in previous years. Three hundred and ninety-nine for Hayes and 180 for Tilden. But nothing was said then and there as to the votes. The ballot-box was brought to Gainesville and in due time declared to have been broken open. The returns from that precinct were signed by the four officers; and Mr. Green R. Moore, one of the officers, admitted on the stand that he authorized Vance or Black, two of the other officers, to sign his name to one of the returns. The returns were made out, brought to the county seat, and when counted, the vote was declared. There were votes taken from the ballot-box. But what was the evidence of a just vote? The return from the precinct as made out and returned.

The officers of the election, Vance and Black, and unimpeached, come upon the stand and swear that the returned vote was the true vote. Four or five voters standing outside when the vote was declared swear that that was the declared vote. Now what is in the history of this case? This man Green R. Moore, in whose honor and integrity my friend, the chairman of the committee, would not trust the value of a coat—he knows that man and read him as he is able to read men by his large acquaintance with them—this man Green R. Moore says he authorized the signing of his name to one of the returns. By and by one Judge Dawkins inveigled him and the other officer, Floyd Dukes, into his office and got them to swear they had not signed the returns, and further that a different vote was the true one. In a few days these same men took back all that. They swear and testify that they signed the Dawkins affidavit under fear of bodily injury; and then again to complete their infamy, with the third oath upon them, they swear that the vote was not as declared and returned.

Now all this time, Mr. Speaker, the evidence upon which the canvassing board acted in this precinct, was locked up in the office of the secretary of state. We desired to know just what the evidence was upon which the canvassing board proceeded in Archer No. 2. We were not allowed to know what that testimony was. We had not seen the affidavits, but the majority of the committee saw as many of them as they desired, because they had a secretary surcharged with affidavits and telegrams and evidence to which we were not allowed to have access.

The double swearing of these two officers of the election, had put the democracy in a dilemma in their attempt to break down this precinct. They must find somebody who was willing to swear that he stood at the ballot-box and took the name of every man that voted there that

day. They found one Samuel Y. Fleming to do that work. He swears that he was present all day and took the name of every man who voted. That was supposed to meet the emergency. The minority were unable to disprove the statement and the pretension of Fleming; but the Senate committee had it in its power to secure witnesses, and it summoned all the men to be then found who voted at that precinct. This evidence shows that there are 104 republicans who voted at that precinct whose names were not on this Fleming list; and not a dozen men could be found in that entire precinct who would come forward and swear that they voted the democratic ticket. As verily as I believe in my existence, I believe all that there was of fraud in Archer No. 2 was democratic fraud in its inception, democratic fraud in every respect from beginning to end. That is the finding of the Senate committee, and no reply can be made to it. I here say, Mr. Speaker, that this attempt to prove republican frauds in Alachua County, in Archer precinct No. 2, is the most unsuccessful attempt that was ever known. Here are the regular returns. Here are the two inspectors, Vance and Black, who signed them, and the other two officers, Moore and Dukes, admitting that they authorized the signing of their names. Still the democratic party of that county proposed to break it down. They go to work to break down this return by swearing two of the men who signed this return, while to this day their testimony is on record that they authorized either Black or Vance to sign it.

I have alluded to other precincts in that county, and I ask the attention of the House to the statement which I find in the report of the Senate committee in relation to this testimony of Mr. Fleming:

An analysis of the names of persons who swore before us that they voted the republican ticket at this poll shows that 217 of those voters only are on Fleming's lists; that 104 republican voters escaped his notice entirely, and the names of those that he further confesses to have voted there cover the republican voters that the committee did not have time to call before them, readily making up their vote to the full claim of 399, and leaving no room for a claim of 136 democratic votes.

This at once undermines the only prop upon which the majority rest in the support of the vote of this precinct, as they declare it to have been.

have been.

But I shall be unable to dwell longer upon this precinct, for I desire now to call the attention of the House to other precincts which came under the review of the committee. I ask at tention to the evidence that has been produced in regard to Jasper precinct, in Hamilton County. I said yesterday that every witness that swore in behalf of the democratic side was, in the estimation of the majority, a paragon of virtue, and that every republican witness that we produced was at once discredited and attempts made to break down his testimony. Take Jasper precinct, and without this vote their claim that the electoral vote of that State went for Tilden wholly falls to the ground. In Jasper precinct, there were 183 republican votes and 321 democratic votes. The gentleman from Pennsylvania [Mr. HOPKINS] a moment ago said that we had all the machinery in the hands of the republicans. How was it in Jasper precinct? There were upon the election board three democrats and one republican officer.

republican officer.

Let me advert to this precinct and the proceedings there. The poll is opened; the vote went on; the poll is closed, and what then? A more shameful intermeddling with the ballot-box and the counting of a vote, was never witnessed in America. But 50 votes had been taken out of the ballot-box before a democratic lawyer, by the name of Blackwell, steps up and takes hold of the ballot-box and counts out the ballots. He reads and folds up the ballots and passes them to an inspector for awhile. Then after Mr. Blackwell had thus intermeddled with the count, he stepped one side, and another democratic lawyer by the name of Reynolds comes forward and begins to perform the work of reading off the ballots, and Mr. Blackwell begins to keep the tally-sheet. So that, here we have the counting and tallying of the ballots done by two democrats and unsworn outsiders.

Mr. Reynolds counts for a while and then steps aside. Forthwith one Patterson, another democrat, comes in and begins to count out the votes. He is a son of the democratic candidate for State senator. This young Patterson becomes the counter and Reynolds takes the

Mr. Reynolds counts for a while and then steps aside. Forthwith one Patterson, another democrat, comes in and begins to count out the votes. He is a son of the democratic candidate for State senator. This young Patterson becomes the counter and Reynolds takes the place of Blackwell at the tallying-sheet. Before he gets through, one Ancrum, another democratic outsider, helps keep the tally. Here we have four men engaged in the canvass: four outsiders and all democrats as counters and tally-sheet-keepers, and the men legally there to take charge of the ballot-box out of the way and the whole control of the ballot-box passed into the hands of democrats, and from the beginning until they closed at four o'clock in the morning, there were five outside democrats counting and tallying, while the real officers of the precinct were lost sight of and were substantially ignored. But now let us see what was done. They adjourned at four o'clock in the morning. Mark you, there were no split tickets in the ballot-box, and yet they occupied from sundown until four o'clock in the morning counting out 500 votes. At four o'clock they adjourned without proclaiming the ballot, without making out their return, in violation of the law, and they adjourned and went home. What became of the ballot-box? It was taken to a bar-room, it was put on the counter, unguarded and unprotected. The owner of the bar went from his bar to a distant house to sleep and left the ballot-box on the counter. But who slept in that room? Not an officer, not a man sworn to take care of the ballot-box; but a man by the name of Bell who was a candidate for the Legislature, and a young man by the

name of Duncan, the nephew of another democratic candidate on the ticket running that day. There was the ballot-box at a notoriously open bar-room, unprotected and unguarded.

But this is not all. The next day these men came back again. They

But this is not all. The next day these men came back again. They came back for what? They make a recount and make returns. Who made out the returns? This man Reynolds, this democratic lawyer that did the counting, and these other democrats that kept the tally-sheets and assisted in the counting, all turned up in the last scene of the drama

Reynolds returns and comes back to help make out the returns, and when he gets them partly made out, there appears one Henry J. Stewart, another democratic lawyer. He enters for the purpose of finishing up the job. Not one officer of the precinct touched the returns. Democratic outsiders made the counting, kept the tally-sheets, and made the returns, and when Fryar and Smithson, two of the officers, came in to sign them, the returns were not so much as read over to them. They were invited in and signed they knew not what. Now, this was all lovely, this was all regular, this was all in harmony with the law, and a very nice report has been made by the majority of the committee that while there might have been somewhat of irregularities yet the vote of that precinct should be counted. We ought to remember that the canvassing board unanimously voted to throw out the vote of this precinct and that there was no hesitancy on the part of the board to do so. They threw it out as wholly and entirely fraudulent.

I will now refer to another precinct in this county, the precinct Reynolds returns and comes back to help make out the returns,

I will now refer to another precinct in this county, the precinct of White Springs. What do we find here? The election, for aught I know, was a fair one. Yet what is true in regard to it? When the I know, was a fair one. Yet what is true in regard to it? When the officers made out their returns to the county canvassing board, they returned no vote for presidential electors. But on the 13th of November, when the county canvassing board began to prepare their returns for the secretary of state, it was discovered that there was no return of votes for presidential electors in the White Springs precinct. Then, six or seven days after the election, this local board made a supplemental return.

We hold that when the officers of the local board of the local board of the local board. I know, was a fair one. Yet what is true in regard to it?

We hold that when the officers of the local board made their return We hold that when the officers of the local board made their return on the night of the 7th of November, they at once ceased to be such officers. They were utterly unable to take up afterward the work that they had partially performed at that time. But they met and made a new and supplemental return, and the county canvassing board let it in. The State canvassing board threw it out, and justly so. The local board had failed to do a duty that devolved upon it at a given time, and, having dissolved as a local board of officers, they were unable to make that supplemental return.

I shall now call attention for a moment to Leon County. I was

I shall now call attention for a moment to Leon County. I was I shall now call attention for a moment to Leon County. I was aware that the majority of the committee would lay great stress upon Leon County. Early in the investigation, there was evidently in the minds of the majority a prejudice, bitter and unrelenting, against one Mr. Bowles who was a witness. The majority assumed at once that he had acted fraudulently on the day of the election.

There were 72 small ballots found in the ballot-box, and the majority of the committee assumed that Mr. Bowles put them in. Now that is a clear assumption—not a particle of evidence to sustain it. There were witnesses who swore that these small tickets were distributed and cast as other tickets were cast.

When the minority of the committee undertook to ask Mr. Bowes where these small ballots came from, the majority would not allow him to tell. The fact was, and which we tried to show, these small ballots were put out to prevent democratic frauds upon the colored

ballots were put out to prevent democratic frauds upon the colored voters. After the republicans had printed their ballots upon a small piece of paper, a boy in the Sentinel office was bought up, and then the democrats began to print small ballots of precisely the same size. We desired to show that, but the committee would not allow us to do so. Some of these small ballots were out in circulation and for use. Some of them were thrown into that box, legitimately and

But it is said that they proved that there were on the registration-But it is said that they proved that there were on the registration-list as having voted there, the names of twenty-four men who as they say voted somewhere else. Let me ask the House to consider the weakness of the position assumed by the majority. Here were found eight men by the name of Henry Smith. It is a notorious fact, well known all through the Southern States, that colored men, many of them, change their names annually. More than that, it must be remembered that men go from one precinct into another precinct to vote.

bered that men go from one precinct into another precinct to vote. They may vote in any precinct in the county.

There is nothing more inconclusive than the testimony upon which the majority rely. But admitting the conclusiveness of the testimony to the fullest extent of the claim, it simply proves 24 apparent repeaters in a vote of 4,000. Now you may go into any county in the country where there are 4,000 votes thrown, and you will find that apparently, with a registration-list as large as that, there is as much repeating as is here shown. When there are 500 less votes thrown than there are names upon the registration-list, it shows that the election there must have been an eminently pure one; for the majority of the committee will not claim that the colored men are inclined to repeat. clined to repeat.

I omitted to state one other fact in relation to Alachua. We desired, as far as possible, to account for the apparent mismanagement of the ballot-box in Alachua. When the ballots were counted in that

precinct, it was of course at a time of very great excitement. When the grand jury of that county was in session, with a republican judge upon the bench, it was charged to investigate into the election in precinct Archer No. 2.

They made a searching investigation. What was their finding? That the election in that precinct was fair and legal; in every sense a proper one and in keeping with the law. When we desired to prove that, the majority said, "No, we will have no presentment furnished us; we will have no finding of a grand jury." Although that grand jury examined the ballot-box, examined the registration-list, the polllist, and five witnesses, yet that fact of record, the democratic majority would not allow us to show. The record shows that we made the attempt to have the presentment of the grand jury of that county

jority would not allow us to show. The record shows that we made the attempt to have the presentment of the grand jury of that county made a part of our testimony.

These gentlemen tell us that there were gigantic frauds in Florida. They tell us that this State went for Tilden as much as Massachusetts went for Hayes. Still, in this county, they avoid Waldo precinct; they avoid Archer precinct No. 1; they avoid Columbia County; they dodge Orange County; and they examine but one or two of the places where notoriously it was declared that frauds had been committed.

mitted.

mitted.

They now attempt to call the high commission but a "Delphic oracle" because this defective, this sham exhibit, does not go before it as evidence. There is not a tribunal in the world that would accept the report of the majority as evidence. I do not claim that the report of the minority should be taken as evidence. It was not evidence. It was an investigation with the whole power in the hands of the respective headled for a right handled for the respective headled for a right handled for the respective headled for the r majority, handled for an end, handled for a purpose, handled solely

majority, handled for an end, handled for a purpose, handled solely for the accomplishment of that purpose.

I desire now to refer, only in a few words, to the county of Manatee, which gave a democratic majority of 236. Here is a democratic majority of 157 in Jasper and a democratic majority of 25 in Whitespring. The majority are not satisfied with getting the vote of Jasper; they are not satisfied with getting the vote of Monroe, a democratic majority vote of 342 obtained in open violation of law, the counting of the votes being adjourned to another precinct when the law declares that the vote shall be canvassed and counted where it is cast and without adjournment. That vote of 342 was thrown out by the decision of the entire canvassing board, Attorney-General Cocke concurring. Not satisfied with these accretions to the demo-

Cocke concurring. Not satisfied with these accretions to the democratic column, they want and claim and insist upon Manatee.

Now what about Manatee County? If the vote of that county can be counted for Hayes or for Tilden in the State of Florida you might as well go into the State of Georgia and take out any county and add its vote to the vote of Florida. Here there was an utter absence of anything approaching a compliance with the law. There was no notice of the election; there was no designation of the voting-precincts. So Mr. Graham swore.

No matter what certain new and recently discovered written testing.

No matter what certain new and recently discovered written testimony has been dragged into this case within the last week, this man Graham swears that there was no designation of voting-places; and yet the vote is counted in this county. The only notice that was given in this county was that Judge Graham went about the county given in this county was that Judge Graham went about the county holding democratic meetings. At those meetings he said, "Gentlemen, let us come out and vote"—not at the precincts that had been designated by law, but simply to come out and vote. There were eleven precincts. There was voting done in nine. In seven of these precincts not a republican vote was cast; in one but 1 vote; and in another but 22. The county was carried by a vote of 262 for Tilden and 26 for Hayes, giving 236 majority for Tilden. The election from beginning to end was wholly within the control and direction of one single democratic manipulator, and he was the sole witness before the single democratic manipulator, and he was the sole witness before the committee. It is notorious throughout the length and breadth of that State, that the election in that county was regarded by 50 per cent. of the people as a farce, a fraud, an attempt to defraud the republican voters of that county.

The majority charge there was a conspiracy. There is no evidence of a conspiracy. The old clerk resigned and a new man was promptly appointed. The State officers waited a sufficient length of time to appointed. The State officers waited a sumcent length of time to receive notice of his acceptance and qualification. It must be remembered that this county is hundreds of miles from Tallahassee, and the modes of reaching it are few and slow. The newly appointed clerk came to Graham and attempted to qualify. There is no evidence in the case that there was any attempt made to get a designation of voting-precinets. There was no attempt made to show they approached the democratic member of the board of commissioners to ask him to interfere to secure a designation of voting-places in that county.

I ask the members of this House to read the testimony of this man

Graham, and it will be evident that the vote in this county ought not to be counted, but ought in all sairness and justice to be thrown

ont.

Now, Mr. Speaker, in closing let me say this: I have criticised the action of the majority in the investigation in Florida. With nothing of personal or unkind feeling toward any member of the majority, I do declare to this House and the country that this committee, by the action of the majority in all its movements and in all its efforts, sought the end decreed to it before it left this House. An investigation that is but partial, taking in one precinct out of four in the renowned county of Alachua, striking only those precincts where the discovery of republican fraud might be thought possible, avoiding

each and every county and precinct where there were declared democratic frauds, does not furnish evidence for a court. Such an investigation cannot give to the report of the committee, making it, the character of evidence. Such a report hardly justifies the honorable gentleman from Pennsylvania [Mr. HOPKINS] in characterizing the tribunal now passing upon the great and momentous questions of the hour, a Delphic oracle, because forsooth it did not let in as evidence the majority report of the House committee which went down to Florida. He seems to think that if only this report could have gone in as evidence the responses would have been music to the democratic ear and the tribunal have become a success. My time has excratic ear and the tribunal have become a success. My time has expired and I close my remarks. Mr. PURMAN took the floor.

Mr. DUNNELL. I did not yield any portion of my time and I suppose the gentleman who will follow has an hour in his own right.

The SPEAKER pro tempore, (Mr. HARRIS, of Virginia, in the chair.)

Certainly

Mr. SEELYE. I should like to inquire if any time is assigned in limitation of this debate?

The SPEAKER pro tempore. Not at all.

Mr. SEELYE. I move the time for debate expire with the close of the gentleman's remarks, one hour hence.

Mr. BUCKNER. That cannot be done.
Mr. SEELYE. Or two hours, if it is desired the other side shall be heard. I think there is important business to come before the House.
Mr. BUCKNER. Each member of the committee has an hour un-

der the rule.

The SPEAKER pro tempore. The motion of the gentleman from Massachusetts is out of order, as the gentleman from Florida is entitled to the floor.

Mr. BUCKNER. I demand the regular order.

Mr. HOPKINS. This makes two speeches, one after the other on the other side.

The SPEAKER pro tempore. The gentleman from Florida has the

The SPEAKEK pro tempore. The general results of man when floor and will proceed.

Mr. PURMAN. Mr. Speaker, there are times in the life of man when silence under painful circumstances is a synonym for caution, and duty undischarged may pass as only individual dereliction; but there come exigencies in the life of representatives, whether upon this floor or in other bodies, when silence is a crime and duty unfulfilled may be treason to conscience, constituency, and country

Before proceeding to consider the subject which would no longer brook silence nor permit me further to remain in an undutiful atti-tude upon this floor, I solicit the indulgence of the House while briefly calling attention to a certain class of men by whose labors and bravery the republican party in the South was first ushered into organized ex-

istence

At the close of the war these men exchanged the uniform of the soldier for the garb of the peaceful citizen and cast their lot in the States their valor had saved to the Union.

With energy and brains and often with capital, they embarked in various employments and pursuits, seeking that reward and respect which never fail to come to the honorable and enterprising citizen. Ties of friendship, of marriage, of success in business, and of permanent investments fixed many of this class so that they became indissolubly linked with the fortunes or misfortunes of the communities and States in which their destiny was now cast.

I refer to that class of heroic men commonly but erroneously called carpet-baggers." Butthis opprobrious epithet only came into polit-"carpet-baggers." But this opprobrious epithet only came into political parlance after the adoption, by a republican Congress, of a civil and political reconstruction policy for the South and which for a time seemed likely to fail for lack of proper agency to execute it. As is well known the soul of this policy was the legal recognition and enforcement of the political equality of the colored race. Against this scheme of reconstruction the hostility and prejudices of the whites in the South at once arrayed themselves, and with such a degree of intolerance that to be even friendly to the scheme was enough to call down a visitation of the severest ostracism.

down a visitation of the severest ostracism.

The colored race, whose rights in the reconstruction measures were the bone of contention, were entirely unable, from want of knowledge and experience, to carry into operation so vast a system. At this important juncture in the political history of the South the northernborn men, as a class, stepped out to the front, took hold of the machinery of reconstruction, and carried into successful execution what, without their directions and carried into successful execution what, without their directions and carried into successful execution what, without their direct agency, might have been the thwarted and discarded policy of a republican Congress. Then were opened the vials of a pent-up wrath upon the heads of this class of men, and since then our language has been exhausted by one political party for words of objurgation and epithet to apply to them. But, uninfluenced by all this unjust opposition, States were reconstructed on new and improved constitutions, and the statutes abounded with the wholesome and progressive laws born of a republican dispensation.

A better, more enlightened, and prosperous era the State of Florida never saw than that which is distinguished as her eight years of experience under the rule of the republican party. Starting out under a sound and enlightened constitution in 1868, the chief glory of which consists in the guarantee of the equality of all human rights, the liberal fostering of the industry of labor, and the safety secured to capital and its creations, our State has floated on a continuous stream of prosperity from that year to this, unprecedented in any former period

of her history. When the republican party assumed possession of the government of Florida in 1868 the sum of \$1.50 was found in the State treasury and the public credit on her State bonds was down to twenty treasury and the public credit on her State bonds was down to twenty cents on the dollar, while less than two months ago, when the State government again changed hands and passed under the control of the democracy, the retiring republican officer turned over \$145,000 cash in the treasury and with it a credit on State bonds of ninety-five cents on the dollar. In 1868 there was not enough money in the State treasury to buy matches for one school-house. Now there are common schools established in every county and \$30,000 cash belonging to the school fund was lately turned over by the republican to the democratic treasurer. cratic treasurer.

From January, 1875, to the present date the records of our land of-fices show that our public lands in Florida have been taken up by actual settlers at the average rate of 22,520 acres per month, thus

actual settlers at the average rate of 22,520 acres per month, thus showing that the immigration to and development of our State are not surpassed by any State in the Union.

With a bonded debt of only \$1,161,700, and a floating debt not exceeding \$150,000, and with a steady stream of population and prosperity flowing into our State, started under republican auspices and unceasing, while our 20,000,000 acres of public domain offer homes in the most beautiful and productive climate in the world to the homeless throughout the world, Florida may well be pointed to with pride as a grand demonstration of what the best genius of the carpet-baggers accomplished in the science and practice of government.

baggers accomplished in the science and practice of government.

The republican party, ever since its organization in the late slaveholding States, has depended principally upon the activity and heroism of northern-born men for its continued cohesion and victories,
although such men as Ex-Secretary Bristow, Senator Alcorn, Judge
Settle, and many others are notable exceptions, and to whom I refer
with admiration and pleasure

with admiration and pleasure.

It was not a spirit of aggrandizement on the part of these northern men that placed them into the leadership of the party in most of their respective States; but their leadership came as a matter of necessity, both at the organization of the party and to keep it from being routed and dissolved under the political onslaughts of the democracy.

Faithfully and bravely these men have stood at the head of the party and led the republican cohorts from one field of victory to another, and many of them, brave souls, fell as martyrs in the hour of their triumph. And here let me remark to my northern colleagues that it meant something more to be a republican in the South than simply an intellectual difference of judgment upon politics between yourself and your neighbor.

It meant ostracism in society, in business, defamation of character, ersecution, and often martyrdom; and those heroic men who endured all these trials for opinion's sake and to hold up an alliance in the South with the great republican party in the North for purposes of national party achievements, deserved, if not a crown of glory here, at least the meed of praise and a chivalric defense against the calumnies of

political enemies.

The democratic party never slumbers in devising political attacks and heaping odium upon opponents, and so severe a storm of defa-mation was raised a few years ago on southern republican leaders that even our friends and allies in the North fell back in unfriendly cowardice, and many republican newspapers dropped their disposi-tion and armor for defense and but faintly mouned out apologies. The republican party in the South received many stabs in the house of its friends. The idiosyncrasies of the colored legislators were of its friends. The idiosyncrasies of the colored legislators were made the subjects of burlesque in republican papers; stale democratic insinuations against the characters of republican leaders were revamped in fresh letters from the pens of peripatetic correspondents, and in this manner, through a series of years, our party in the South lost much in dignity and reputation, and consequently in strength and numbers

In the election of 1874 the republican party was ruthlessly defeated in the State of Mississippi through the cowardly policy of republican leaders in Washington, who feared that the extension of protection to the colored voters in Mississippi would have the effect of defeating the republican ticket in several States in the North.

The President, through the selfish entreaties of northern politicians, not statesmen, faltered for once in the energetic exercise of his political administration, though history will truthfully record that no President ident ever preserved so independent an attitude and yet at the same time served his country and party so well. The consequent result in Mississippi is well known—the triumph of intimidation, and the per-

petual overthrow of our party in that large republican State.

It is lamentable to think that protection in the South and success in the North at the same election within the republican party, are in-

in the North at the same election within the republican party, are incompatible in terms and in fact, and that one must be sacrificed for the benefit of the other. But the conflict was less in fact than in self-ish fear, and Mississippi was offered up as the first victim to that fratricidal "new departure" within the ranks of the republican party which set up for its creed that "a solid South will make a solid North." The unjust and impolitic treatment at the hands of a republican Senate of Hon. Mr. Pinchback, a leading representative of his race and party who was as legally elected to the United States Senate from Louisiana as Governor Kellogg was elected to the governorship of that State, and as legally as any presidential electors were lately elected in that State, was another one of those party blunders or selfish policies the evil effects of which were confined not alone to

Louisiana, but permeated and weakened the morale and reliant spirit

of our party everywhere in the South.

When the presidential campaign of 1876 commenced the republican party in the Southern States buckled on its armor and entered the field hand in hand with its northern ally, I mean the northern wing of the republican party, determined to do valiant battle for its candidates and principles.

But everywhere in the South we labored under some disadvantages and discouragements, more particularly under a really depressing spirit caused by the determined front of the democracy everywhere, who now carried upon their banners the prestige of their victory in

To counteract the silent power of this prestige it became necessary to put forth renewed exertions and to evoke renewed enthusiasm, and in the creation of these new auxiliaries we in part succeeded, though unaided by our ally in the North, to whom we appealed in vain for a few public speakers and from whom we could obtain not one dollar of assistance to help defray the legitimate expenses of a presidential campaign.

It is singular to contemplate how much in achievement and in rascality is expected from southern republicans in national elections, and yet how studiously they are unaided in their campaign emergencies and ignored in the hour of victory and possession. [Ap-

plause. 1

Can any one answer the political conundrum why it is that repubican speakers will eloquently vibrate from Maine to Indiana and from New Hampshire to Maryland, and yet never put a foot across the Potomac River to help us in the Southern States fight the same great battles for principle and country?

Can any one explain to the satisfaction of a southern republican can any one explain to the satisfaction of a southern republican why money was collected from office-holders in the South and then why not one dollar was contributed by any of our national committees for campaign purposes in Florida? Is it any wonder, sir, that the republican party has been growing weaker and weaker each year in the South, and all for want of fostering care and encouragement from our national party functionaries? Is it any wonder that both our leaders and masses are filled with disgust and demoralization when before the election and daying the contribute of the con when before the election and during the campaign they were compelled to hear the proposition gravely propounded whether a "solid South" should not be encouraged and be permitted as the safest issue upon which to rally or fire a "solid North," and upon which sectional excitement—that Red Sea of trouble in which so many of our countries. trymen were swallowed up in civil war—our candidate should ride in triumph into the White House?

Yes; ask your fellow-republicans in the South to calmly commit political suicide; ask the colored voters to suspend their exercise of

suffrage and calmly accept the consequences of a democratic government; ask these encouraging favors before the campaign has advanced far enough to scatter your paper calculations and leave only blank wonderment in their places, and then if we decline, more in sorrow than in anger, refuse to send us either speakers or assistance, sorrow than in anger, reruse to send us either speakers or assistance, look indifferently or not at all upon a brave band, struggling single-handed against a well-organized and relentless political foe, but wage a useless war against impregnable democratic fortifications in New York and Indiana, and then, on the day after the election, nervously ask yourself what is the result of this haphazard campaign, and the

ask yourself what is the result or this naphazard campaign, and the result is logical defeat by the people.

And this, Mr. Speaker, brings me now to the gravamen of my remarks upon the subject which I now take occasion to present to the reflection of my countrymen who believe that the purity and exactness of the ballot are the first foundations upon which to rear and preserve the liberty and stability of our free institutions.

I waited impatiently for the special committee on Florida to submit the report of their investigation to this House, and again I looked forward with that reasonable expectation that the electoral commis-

forward with that reasonable expectation that the electoral commission would decide to admit evidence sufficient at least to satisfy the country as to which electors were really elected by the people of Florida, but I find now the appropriate opportunity to state from my own knowledge the true condition of the presidential vote in my State, concerning which so much is involved in misunderstanding and controversy

The republican party in our State, with all its dissensions healed and with the whole machinery of the State government in its hands, went into the last campaign determined to win if our own resources and efforts, coupled with the most heroic devotion on the part of our voters, could achieve such an end.

Free speech and free locomotion were enjoyed to the fullest extent by the speakers and managers of both sides, and at no time during the campaign or from any portion of the State came up any cry of intimidation, with one or two minor exceptions. It was, without exception, the most peaceful election ever held in the State, and not one case of violence or disturbance on election day has come to my

It seemed the peculiar privilege of the republicans to win under all these advantageous circumstances, but it is a fact, sir, which I cannot stand upon this floor and deny, and which every man, woman and child in my State knows, that Florida was lost by the republican party in the late election, and that the democratic governor and the Tilden electors were truly elected. [Applause on the floor and in the galleries.]

I make this declaration now under the most solemn sense of public duty and from an irresistible feeling of obligation to the people of my State, who have a right to expect that, however partisan their Representative may be in his political faith, he should at least on questions of public fact be an honest man. But, sir, I would not be understood in making this declaration as laying claim to any unusual amount of honesty or conscience, but I only assert my knowledge of

I love the principles of the republican party, and for their sake have been singed by the fires of martyrdom, and I believe in the ultimate triumph of its regenerating mission, but I cannot return to my State and look my constituency in the face if, standing upon this floor and in the presence of the American people, anxious and entitled to know the whole truth concerning this dangerous presidential issue, I should shrink from the responsibility of doing justice to my State, and defending her honest political victory against the willful perversion of a bold, dishonest, and unscrupulous State canvassing board.

[Applause.]
Should my democratic colleague in this House introduce a resolution here declaring that the St. John's River had its rise in the southern portion of our State, flowed northward for hundreds of miles and emptied its waters into the Atlantic Ocean, I would be compelled to support the affirmation of the resolution for the reason that I would support the affirmation of the resolution for the reason that I would know the statement to be true, being personally acquainted with the geography of that country. Therefore for like reason am I compelled to give assent to any declarations which have been or may be made upon this floor that the Tilden electors were truly elected in Florida, and that only by "ways that are dark," and tricks that in this case have not proved to be vain, were these electors, and a majority of the people of the United States, defrauded out of their fair and lawful victory. But facts plainly expressed carry with them their own just weight, while jugglery performed with a number of facts only increases the task of explanation, without changing their character or relative weight. character or relative weight.

The election law of the State of Florida declares specifically as

SEC. 27. The person who shall receive the highest number of votes cast for any office shall be elected to such office.

It is not essential in this connection to inquire whether presidential electors are State or United States officers, for the fact that such electors were voted for at our late general election brings them within

the provision of this act.

The ascertainment of the number of votes cast, and for what persons as candidates for the several offices, can only be made from the precinct and county returns, the latter being required by law to be made by the county clerk, county judge, and a justice of the peace on the sixth day after any election, or sooner if all the returns are in, and contain only the result of a ministerial canvass or enumeration of the property of the peace of the p tion of all the votes actually east in the county. In the absence of either the clerk or the judge, the sheriff shall be called in to help make the canvass, and the result, in the form of duplicate certificates signed by the canvassers, shall then be sent, one certificate to the secretary of state and one to the governor. These certificates, in which according to law all figures must be written out in full, constitute the papers or county returns from which the State board of canvassers must ascertain and declare who received the highest number of votes cast, and therefore who is elected.

On the thirty-fifth day after the election the State board of can-vassers met in pursuance of the following law:

vassers met in pursuance of the following law:

SEC. 4. On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state pursuant to notice to be given by the secretary of state and form a board of state canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. If any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers. The said board shall make and sign a certificate, containing in words written at full length the whole number of votes given for each office, the number of votes given for each person for each office, and for member of the Legislature, and therein declare the result, which certificate shall be recorded in the softee of the secretary of state in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government.

And on the 6th day of December, 1876, the board completed its

And on the 6th day of December, 1876, the board completed its canvass, and declared the republican governor to be elected by a majority of 458, and the Hayes electors by a majority of 930. In arriving at this majority the board, I may here state, attempted and did unlawfully exercise judicial powers by hearing of evidence and passing of judgments upon the validity and invalidity of precinct

From the face of all the county returns the vote in the State stood:
For Tilden electors, 24,439, and for Hayes electors, 24,349; giving Tilden a majority of 90.

But now comes the jugglery. From Baker County two returns were sent up, one signed by the clerk and a justice of the peace, (the judge

and sheriff refusing to join in the canvass,) and which was the legal and correct return, giving the Tilden electors a majority of 95; while the other return was signed by the judge, sheriff, and a justice, and by throwing out two precincts, without even alleged cause or warrant of law, they returned a republican majority of 41. That a conspiracy existed to defraud the county out of its true majority was very evident to all observers, and only to make a prima facie case for the purpose of deceiving the country did the board of canvassers temporarily set up this fraudulent return, and which they in the real canvass unanimously rejected. By this manipulation a prima facie showing was made of 42 majority in favor of Hayes, and as such it was heralded over the country.

over the country.

After the canvass had progressed in other counties, and after a free use of the unlawful judicial ax, with which whole democratic pre-cincts were chopped out and others trimmed off until plenty of safe margin was made for the republican candidates to stand upon, the board counted the correct return from Baker County and repudiated

the one so plausibly used in making up the prima facie case.

From the county of Clay there was but one return and in due and regular form, but with the return came a certificate that at precinct No. 8 29 votes were cast for the Tilden electors and 6 votes for Hayes, and which were not included in the return, as it appeared that the inspectors of said poll were not sworn. The democratic majority in this county was 185, including precinct No. 8, and the board so counted it at their completion of the canvass on December 6, or the first canvass. On the 13th of December proceedings were commenced before the supreme court of our State praying that a writ might issue com-pelling the board to meet and recanvass from the face of the returns on file in the office of the secretary of state. Such writ of mandamus was issued December 22, commanding the board to recanvass and perform purely a ministerial duty, unless any returns were found so "false, fraudulent, or irregular" that the true vote could not be determined, in which case the power to reject the whole return of a county was inherent in the board by virtue of the authority creating it.

Justice Wescott, delivering the opinion of the court, said

Justice Wescott, delivering the opinion of the court, said:

The view that the board of State canvassers is a tribunal having power strictly judicial, such as is involved in the determination of the legality of a particular vote or election, cannot be sustained.

All of the acts which this board can do under the statute must be based upon the returns; and while in some cases the officers composing the board may, like all ministerial officers of similar character, exclude what purports to be a return for irregularity, still everything they are authorized to do is limited to what is sanctioned by authentic and true returns before them. Their final act and determination must be such as appears from and is shown by the returns from the several counties to be correct. They have no general power to issue subpenas, to summon parties, to compel the attendance of witnesses, to grant a trial by jury, or to do any act but determine and declare who has been elected as shown by the returns. They are authorized to enter no judgment, and their power is limited by the express words of the statute which gives them being to the signing of a certificate containing the whole number of votes given for each person for each office, and therein declaring the result as shown by the returns.

The duty to count these returns has been enforced by mandamus so repeatedly in the courts of the several States of the Union that the power of the courts in this respect has long since ceased to be an open question. Mr. Justice Smith, in the very celebrated case of The Attorney-General ex ret. Bashford as. Barstow, (4 Wis., S13,) when speaking of the powers of the board of State canvassers, after reciting their power to "determine" the result of an election from the returns, says: "These are not judicial but purely ministerial acts." We must, therefore, decide that the general nature of the power given by the statute is ministerial, and that to the extent that any strictly and purely judicial power is granted, such power cannot exist.

This brings

says: "These are not judicial but purely ministerial acts." We must, incretore, decide that the general nature of the power given by the statute is ministerial, and that to the extent that any strictly and purely judicial power is granted, such power cannot exist.

This brings us to the consideration of the only remaining general question as to the powers of the board under the statute.

While the general powers of the board are thus limited to and by the returns, still as to these returns the statute provides that, "if any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the locard shall be unable to determine the true vote for any officer or member, they shall so certify and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvasers." The words true vote here indicate the vote actually cast, as distinct from the legal vote. This follows, first, from the clear general duty of the canvassers, which is to ascertain and certify the "votes given" for each person for each office, and, second, because to determine whether a vote cast is a legal vote is beyond the power of this board. As to the words "irregular, false, and fraudulent" in this connection, their definition is not required by the questions raised by the pleadings in this case.

These respondents have not alleged that they have before them any return "so irregular, false, or fraudulent" that they are unable to determine the actual vote cast in any county, as shown by the returns; and nothing can be clearer than that the counting of returns sufficiently regular returns in question here are admitted. We will say, however, that the clear effect of this clause in the statute is that a return of the character named shall not be included in the determination and declaration of the board; and that it has power to determin

By the order of the supreme court, based upon the opinion I have cited, the board of canvassers was directed to recanvass the vote according to the actual returns on file in the office of the secretary of state, and in obedience thereto the board met on the 27th of December last, and, actuated by a desire to promote a partisan triumph at the expense of truth and justice, they ignored and reversed their ac-

tion of the 6th of December at the first canvass, thereby giving the Hayes electors a majority of 41 in Baker County and throwing out the whole vote of Clay County, in which Tilden had a majority of 187. No justification or defense can be offered for their action in either case. It was a bold, defiant, unscrupulous effort to reverse the honest judgment of the people of Florida on the presidential issue, and which cannot be defended here or elsewhere. By this second canvass it was declared that the democratic candidate for governor received 195 majority, while the Hayes electors still held a majority of 206. Your committee in pursuing their investigation discovered that a fraud had been committed at Archer precinct No. 2, in the county of Alachna, whereby 219 votes were fraudulently counted as having been cast for the republican electors. The fraud was easy of discovery, as its existence was a matter of general belief among men of all parties, yet it was attempted to cover it over by convenient affidavits so that its naked deformity might not shock the sensibilities of the board of canvassers. I know, sir, that it was not an imaginary but

board of canvassers. I know, sir, that it was not an imaginary but a real fraud that was committed at this precinct, and I violate no

personal confidence in making this declaration.

I know further that Comptroller Cowgill, a member of the board, was personally consulted upon the fact of this fraud having been committed, and that he gave his assurance that if it were plausibly covered up before the case came before them for adjudication, it should suffer no scrutiny or discount at his hands.

As this fraud was perpetrated in the second congressional district, I take pleasure in saying in this connection that I do not believe the honorable republican candidate for Congress in that district had the remotest knowledge of its commission.

Purging the vote of Alachua County of this well-known fraud, the

Tilden electors would have been elected by over 300 majority.

The board should have rejected the entire vote of Alachua as false and fraudulent, in consequence of the perpetration of this fraud; and as democratic frauds were undoubtedly committed in the county of Jackson, as will appear to an unbiased mind in reading the testi-

of Jackson, as will appear to an unbiased mind in reading the testimony taken by the committee, these two counties, Alachua and Jackson, should have both been thrown out for the same reason, and in the exercise of a power and duty incumbent upon the board. By this just and lawful proceeding the vote in the State would have stood 709 majority in favor of the Tilden electors. Viewed in any manner, whether in the light of law or fact, we cannot escape the truth that the democratic party really elected their presidential electors in the State of Florida. This is no longer any question of doubt among the people in our State, who hold our republican supreme court in high esteem for learning and integrity, and whose decision. court in high esteem for learning and integrity, and whose decision they accept with confidence and acquiescence, although contrary to the hopes and interests of the republican party in our State.

The democratic governor-elect, Mr. Drew, was peacefully inaugurated at Tallahassee on the 2d day of January last, and I thank God and the good people of our State that Florida does not present the and the good people of our state that Florida does not present the alarming spectacle of two rival governments upon her soil, both claiming to represent the sovereign will of the people. No one can see the future misfortunes that may befall the States of South Caro-lina and Louisiana in consequence of their dual governments, though it is my opinion that whether Governor Hayes or Governor Tilden will succeed to the Presidency, in neither event will the republican claimants be able to maintain their authority, whether rightfully entitled or not. The pressure will be too great, both upon them and upon the President, and the policy of a republican Administration necessarily will be to secure peace and reconciliation at the price of

any concessions involving the rights of southern republicans.

But whatever the future may have in store for the devoted republicans in the South, and however mournful to view our noble politi-Heaven that when the gloom of our defeat passes away and the morning sunshine from the east comes to light up the flowery lills and valleys of our State that the light and warmth of our republican principles will be mingled with that sunshine and descend in universal blessings upon all our people irrespective of race or condition, whether dwelling amid their fragrant orange groves or among the snowy fields of cotton. Lawfully and peacefully the defeated governor handed over the government of our State to his democratic successor, who, I am confident, will never raise iconoclastic hands against the free and impartial institutions established by the republican party, and under which our State has enjoyed an era of progress and development unequaled in the annals of her past.

and development unequaled in the annals of her past.

But, sir, my Juty does not end here with my declaration in favor of the truthfulness of the election in our State, nor with my expressions of confidence in the good judgment and intentions of the democracy now in possession of our State government. No, the mission of republicanism is not yet ended in the South; for much good is yet to be done among that portion of our population who received their freedom and enfranchisement at the hands of our party.

Implicitly these people relied upon the sacredness of their cause, and most devotedly under all manner of inconceivable hardships have they maintained their fealty to party and principle. As if the waves of the Red Sea had swept over them; came the intelligence of democratic success. They have hung their harps upon the willows in

or the field sea had swept over them; came the intengence of demo-cratic success. They have hung their harps upon the willows in silent apprehension of the unknown future. But it is my sincere con-viction that these worst fears are groundless; for good and industrious citizens as they have proven themselves, no wise party or government

can fail to promote their true progress and elevation for the general welfare of the State itself. All is not lost while the spirit of manhood remains, and an undying determination to strive for that mental, material, and moral improvement upon which after all the usefulness and respectability of all citizens must rest. While in the majority I devoted my best days and energies to the advancement and amelioration of this people for their own happiness and for the public benefit of the State, so now when in the minority I will remain and continue these labors with redoubled devotion, believing that out of the duties of philanthropy and patriotism springs a joy for reward unknown amid the mad struggles for office. As a voluntary sentinel, overlooking the constitution and authorities of our State, I shall sound the alarm at the first encroachment upon the rights and welfare of the people, and upon each return of the elections only the friends of equal rights and privileges will find themselves re-enforced by a faithful ally

mow watchful as a minority. [Applause.]

Mr. WOODBURN. Mr. Speaker, after listening to the remarkmade by the distinguished gentleman from Pennsylvania [Mr. Hop-kins] and after hearing the speech of the gentleman from Massachus setts, [Mr. Thompson,] chairman of the Florida investigating committee, on Saturday last, as well as speeches delivered by other gentlemen on that side of the House, I am forced to the conclusion that the democratic mind is imbued with the idea that the final declarathe democrate mind is imoded with the idea that the final declara-tion made by the State canvassing board of Florida on the 6th day of last December is false in fact as well as in law. That charge has been again reiterated by the gentleman who last addressed this House, [Mr. Purman.] I noticed as among the objections interposed on Saturday to the decision of the high joint commission that evidence was brought before that tribunal to prove the truth of that charge, but it was rejected. I say, if any such evidence ever existed, it never came through the agency of any investigating committee into the possession of this House, and it was never discovered in the office of the secretary of state at Tallahassee, the capital of the

The gentleman who last addressed this House characterized the members of this canvassing board as a bold, unscrupulous, and dis-honest set. I leave it to the members of the majority of the investigating committee whether the two gentlemen composing the majority of that board are not as conscientious and intelligent as any they met with in the State of Florida. I would like to call on them to state if in every attribute that adorns mankind they do not compare favor-ably with the gentleman who just spoke or with any other member on this floor.

The other member of that board was the democratic attorney-general. There is no pretense made by any democrat that he was un-scrupulous. His praises have been sounded throughout the land by all the democratic organs of the country. If that canvassing board perpetrated a fraud the attorney-general must have known it. If the canvassing was made contrary to law the attorney-general never announced the fact to the country. The gentleman from Florida [Mr. Purman] says the board exercised judicial powers. I admit it. Why? Because relying on the legal opinion of the democratic attorney-general the majority of that board believed they had the unquestioned right to exercise those powers, a right never doubted before, under the laws of that State. The gentleman now complains about the exercise of that right. Isay that when he was canvassed into this House as a Congressman by that same canvassing board, it was done in precisely the same manner as the convass was made for the Hayes electors.

He cannot dispute that fact.

The result, Mr. Speaker, of that canvass was 925 majority for the Hayes electors. That canvass was made in the precise manner pointed out by the attorney-general. That majority never was affected or disturbed by any subsequent decision of the supreme court of the State of Florida. The minutes of that canvassing board will show that instead of perpetrating fraud and corruption its members consulted the democratic attorney-general in many cases of contest; and not only that, they allowed democratic lawyers, prominent men from every part of this country, to appear before that tribunal, to offer testimony,

and to make legal argumen's.

I now call the attention of the House to this fact that, at the very time and in the precise manner in which the 925 majority for the Hayes electors was arrived at, that canvassing board, now alleged to be reeking with fraud and corruption, canvassed into existence and power a democratic Legislature, now in session, exercising all the functions pertaining to legislative bodies without opposition or complaint. Is there any democrat on the floor of this Honse who will contend that that Legislature is a de facto, and not a de jure, body, in the face of the decisions which are uniform that the final declaration of a conversion board wash as writer in Elevido. of a canvassing board, such as exists in Florida, is unappealable, un-

reviewable, and irreversible?

As the gentleman from Florida [Mr. Purman] has stated they did make a second count. How? It was made by an order of the supreme court based on a decision rendered in the case of George F. Drew against The State Canvassing Board, on the ground that the canvassing board exceeded its jurisdiction, or, as the gentleman from Florida said, exercised judicial powers. The order of that supreme court pointed out the precise maxner of making the second canvass. In obedience to that order the canvassing board again made a count for the electors in the precise way is which they counted Mr. Drew into power: and the result was a majority of 211 for the Haves Drew into power; and the result was a majority of 211 for the Hayes

electors. Is there any man who disputes that fact? I ask the gentleman from Florida who makes the bold and bald charge of fraud and corruption against the men constituting this returning board: and corruption against the men constituting this returning count. Is that not true? That portion of the canvass was presented with the count for Mr. Drew to the supreme court; but they struck it out on the ground that Mr. Drew was the only party to any proceeding instituted in that court. But the fact remains, and all the ranting of my friends on the other side or elsewhere can never obliterate or

obscure it.

But it is claimed that in arriving at the result of 211 majority for the Hayes electors the canvassing board struck out the return from one county, Clay County. I admit it. They were forced to do it by order of the supreme court; and had they not done so in counting for Mr. Drew, they would have been held by the supreme court to have been in contempt. Why did they reject that return? Because the decision of the supreme court gave them full authority to reject every return from any county in Florida which was so irregular on its face that the true vote could not be ascertained therefrom. Is the return from Clay County so irregular that no man can ascertain the return from Clay County so irregular that no man can ascertain the true vote from that county? If there are those who doubt about that point, I cite them to the return, an exact copy of which is set out in the minority report. And I respectfully challenge any man on the floor of this House to tell me from an examination of that return how many votes the Tilden electors received and how many votes the Hayes electors received in that county; the irregularity was so patent that they were compelled to exclude that return; and as I said before, they would have been in contempt of the order of the supreme court if they had not done so.

But it is claimed further that, in addition to throwing out that return from Clay County, the canvassing board counted an improper or false return from Baker County. I say that that proposition cannot be maintained. There are three returns from Baker County. But take that one of them which is most favorable to the democratic interest and count in addition every return from the State of Florida terest and count in addition every return from the State of Florida that is regular on its face, and without the rejection or throwing out of one fraudulent vote the lowest Hayes elector has a clear majority. It only requires a simple sum in addition to reach that result. And, if that be true, where is the foundation for those sweeping allegations of fraud and corruption made by the gentleman who last addressed you against the returning board? The return that was counted in the second canvass for Mr. Drew from Baker County was the one that was prima facie regular on its face. It was signed by the three officers required by the laws of the State of Florida to make a return. The return claimed by the democrats to be the true one was only signed by two officers, a county clerk and a justice of the

But, further, the law of the State requires that the county canvass ing board must be composed of three persons and not of two. The evidence before this committee shows that the canvass upon which this return is based was signed only by a clerk and a justice of the peace and was only made by two persons, which was contrary to the law of the State of Florida, and no valid return can be based on such a canvass. The other return was signed by the proper officers, and the proper number of officials as required by law made that canvass. I admit that the return signed by the clerk and the justice of the peace, claiming to be a true return of the vote of this precinct, is more favorable to the Tilden electors than is the other one, but I submit this question: If under the decision of the supreme court the canvassing board did not have the right, was it not bound to take that return which showed upon its face that it was the only regular return from Baker County? That return was counted for Drew in strict obedience to the mandate of the supreme court. To those gentlemen who think that the legal and honest vote of the State of Florida was who think that the legal and honest vote of the State of Florida was cast for the Tilden electors, I would say if the commission had decided to go behind the State returns and take evidence, the republican party had nothing to fear from Florida even if they had decided to probe to the very bottom of the polls. And here I assert that any gentleman on this floor who will take the pains to analyze and consider the evidence upon which the conclusions of the majority of the committee on the Florida election are based will agree with me in saying that the greater portion of that testimony is utterly incompetent and inadmissible in any court of justice whatever. But, as my friend from Pennsylvania has told you, they insist in their report in counting the vote of Manatee County for Tilden because the prein counting the vote of Manatee County for Tilden because the pretended return from that county based on what might be justly termed

a farce is regular on its face.

The testimony of the only witnesses who appeared before the committee was the county judge of Manatee, a democrat. He was introduced by themselves, he was not brought there at the request of the minority of the committee; and his evidence shows this state of facts: There was no registration in Manatee County, as required by law; there were no certified copies of the official lists of the registration in Manatee County. tion at each polling-precinct, as required by law. There were no polltion at each polling-precinct, as required by law. There were no polling-precincts designated and no notice of any designation of the polling-places, as required by law. There never was an inspector of election in any precinct appointed by the legally constituted authority, the county commissioners. But, in the language of their own witness, they were self-created and swore each other as to their qualifications. Now, was there any republican on any of these election boards? You tell us that all the election machinery of Florida was controlled by republicans, and that if any fraud was committed it must have been committed by the republicans. Was there a single republican official at any of the polls in Manatee County? Not one. What was the character of the notice given? Why, the testimony of the democratic county judge shows that the only sort of notice ever given was at two mass-meetings held by the democratic candidates for presidential electors. No notice was ever given to a single republican. Mr. Graham swears that 288 votes were east, out of eight hundred of a voting population. He tells us, too, that half of the voters did not come to the polls, because they thought there was no clerk. And it is in evidence before the State canvassing boards that 50 per cent. of the voters of that county kept away from the polls, regarding the election as a mere farce.

regarding the election as a mere farce.

Now I submit to any democratic lawyer on the floor of the House if the right to a seat of a member of this body had to be determined upon the vote of Manatee County could that member retain his seat in case of a contest by a return based upon such facts about which there is no dispute? Yet they give 262 votes to the Tilden electors in that county and 26 to the electors on the republican ticket. And I say here that it is the solemn impression of every intelligent republican in the State of Florida that not one single republican vote was ever cast in that county. They did give us 26, for what purpose is known only to the men who made that county return. On which side, then, is the fraud? If there were any fraud it was perpetrated by the other side in that county, and it is useless for the majority to say that there was a couspiracy on the part of the republicans to defeat the Tilden electors in that county, because no clerk was appointed to fill the vacancy which existed by the governor of the State.

other side in that county, and it is useless for the majority to say that there was a conspiracy on the part of the republicans to defeat the Tilden electors in that county, because no clerk was appointed to fill the vacancy which existed by the governor of the State.

The testimony given by their own witness shows that as soon as the clerk of Manatee County resigned, which was five weeks before the election, his place was instantly filled by the republican governor of the State of Florida. And further it is shown by the evidence of the democratic county judge, Graham, that he saw the bond of the clerk and that the clerk took the oath of office before him. And still they say that it was owing to the conduct of the republican governor, Stearns, that the forms of law were not complied with in that county.

clerk and that the clerk took the oath of office before him. And still they say that it was owing to the conduct of the republican governor, Stearns, that the forms of law were not complied with in that county. What is the law applicable to that case? The other side contend that the return is regular and must be received. But they must know that all the legal decisions are uniform upon this point; that where legislative enactments require notice to be given of the time and place of the holding of elections, and require registration as a prerequisite to the right of voting, those requirements go to the very substance of the election, are mandatory and not directory, and a non-compliance with them vitiates the election. There is no doubt of the truth of this legal proposition. If that be true, how as a lawyer can the chairman of the committee or any other member of the majority of the committee claim that that return ought to be counted for the Tilden electors, when there was no notice of election, no designation of polling-precincts, no registration, and no inspectors appointed for the polls as required by law?

Now take the county of Jackson, which affords another illustration of the falsity of the charge that the election machinery of the State

Now take the county of Jackson, which affords another illustration of the falsity of the charge that the election machinery of the State of Florida was manipulated by the republicans. There is not a precinct in Jackson County at which the board of inspectors and clerks was not composed of three democrats and one republican. Furthermore, although under the law of Florida every county official outside of constable is appointed by the governor, there is in Jackson County not one republican county officer, although they were all appointed by Stearns, the republican governor.

Take the precinct of Friendship Church in that county. At that

Take the precinct of Friendship Church in that county. At that precinct the democratic board of inspectors kindly gave to the republican party 44 votes and to the democratic party 145 votes. The evidence in that case shows that the only republican inspector of the board was delegated in the morning to go to the window and receive the tickets from the voters as they passed them up. The sill of that window was six and one-half feet from the ground. But it did not please the democratic officers of the board to have this republican officer handle the tickets. He was ordered down from the window and told to go and take charge of the registration-list. And contrary to law an outsider named Mozely was put in his place to receive the tickets from the voters at the window.

But that is not all. When this intruder Mozely took the tickets

But that is not all. When this intruder Mozely took the tickets he passed them back to another democrat, an inspector who stood between the ballot-box and the window, and the ballot-box was in such a place that no voter from the opening to the closing of the polls ever knew what became of the ballot that he passed in at the window.

window.

There is no controversy about the truth of these statements. They are admitted by every democratic officer on the election board; they all tell you the same thing, and they say that, notwithstanding, it was a fair election.

When the polls were closed they took the ballot-box two miles distant to the house of a democratic supervisor. They went into a bedroom, took the ballots out of the box, and after counting 40 votes one of the democratic inspectors put his hand in his vest pocket and took out some votes which he said had been counted before the ballot-box was taken from the poll.

was taken from the poll.

They then adjourned in direct violation of the law, which provides that the votes shall be counted at the place where they were cast, and without adjournment. They went to supper after making this

partial count, leaving the ballot-box unguarded and unsealed. After coming back from supper they went in and counted the balance of the votes, and made out a return giving to the republicans 44 votes and to the democrats 145. The ballots were never replaced in the box, but were strewn about the floor in the bed-room of the house of the democratic supervisor.

The majority of the committee attempted to show that the colored men who voted at that poll were liable to be deceived by spurious tickets that were printed and circulated on the day of election. The republican ticket had a flag at the head of it, but the democratic ticket had no flag or device of any kind upon it. A spurious ticket was published, with a flag at the head of it, above the names of Rutherford B. Hayes and William A. Wheeler, and then followed the names of the democratic electors and the democratic county officers. It was a good ruse, well calculated to deceive ignorant and illiterate colored men. But it did not succeed. I placed on the stand a democratic inspector of election just before we left Jackson County, who testified that no bogus ticket was ever found in that ballot-box when they counted the votes. There were sixty-six colored men who came upon the stand, and each and every one of them swore that he voted the straight republican ticket—the ticket that had the flag upon it. And no democrat living in the vicinity of that precinct ever claimed that there were more than two colored democrats who voted at Friendship Church. One of them came before our committee and testified. He was then in the employment of one of the democratic officers of election, and he swore that he voted the democratic ticket. At that very time I had in my pocket a copy of an affidavit to which his name was appended, in which he swore that at Friendship Church on the day of election he did vote the republican ticket. That was before any inducement was ever held out to him, before he was in the employment of the democratic supervisor.

Now, I ask democrats, if what I state be true, (and I defy contradiction, because the testimony is uniform, there being no discrepancy between that of the republicans and that of the democrats,) can you count the 145 majority for the Tilden electors? The democrats say that we can purge that poll. How? By adding the 44 republican votes to the 145 democratic votes and from the aggregate deducting the difference between the 44 republican votes and the number of colored men whom I put on the stand and who swore that they voted the republican ticket. I say that it is impossible to purge this poll; and I am surprised that any man dignified with the name of a lawyer should come forward and state in a report or otherwise that a poll can be purged in that way when such a state of facts as I have referred to has been developed. Why, sir, there is only one disposition in law that you can make of this poll under the facts. That the republican candidates were defrauded—to what extent we do not know—is clearly shown; but the irregularities were so gross, and the fraud so glaringly perpetrated, that every lawyer must know on reading the testimony that the entire poll must be rejected. You cannot ascertain the true vote there. No man can tell how many votes the Tilden electors received, or how many votes the Hayes electors received. Therefore I say that the poll ought to be rejected.

There was another poll in Jackson County called Port Jackson. There the majority of the board was composed of democrats; and when the polls opened one of the democratic officers in charge proclaimed to all the colored men present that any colored man who had ever been charged with crime, not convicted, would not be permitted to cast his ballot at that poll on that day. After that proclamation was made, two colored men came up and offered their votes. They were republican votes; and after the inspector had taken the ballots from them the officers of the election held a consultation and decided that those votes should not be received for the reason that the men had been suspected or accused of the commission of crime. One of those men said, "I have never been convicted of any crime in the State of Florida or elsewhere. I was once arrested for shooting a dog; but when the case was tried in a petty court I paid my lawyer a small fee and the case was thrown out." He asked to be sworn to the truth of his assertion; but they refused his request, and returned to him and the other republican voter their ballots.

Then four colored men came up and presented 4 republican votes. After the tickets were received another consultation was had; and again the inspectors came to the conclusion not to receive the votes for the reason, as they said, that the names of the voters could not be found on the registration-list. The colored men said, "We are registered;" and they gave the name of the officer before whom they had taken the oath as required by the registration law. As a matter of fact it turned out that their names were on the registration-list, and they had been registered by the officer whom they named. Still those votes were rejected. In other words, the democratic board of inspectors at Port Jackson precinct laid down the rule that nobody could vote there unless they saw proper to permit him to do so, regardless of his legal qualifications as a voter.

Another precinct in that county is called Campbellton. The ma-

Another precinct in that county is called Campbellton. The majority of the board there was composed of democrats. The testimony shows that so numerous were the colored and the white voters around the polls at the time it opened, eight o'clock in the morning, that the leading men of both parties entered into an arrangement by which it was agreed that the white men should vote the first hour in the morning and the colored men the next hour, and thus alternate until the closing of the polls. Most of the white vote was polled there in

The colored men took up every minute of their two ng during the morning. The testimony shows that in the morning. hours in voting during the morning. The testimony shows that in the forenoon the white vote was nearly all polled, and that seventy-six colored men cast their ballots in the afternoon. The return gives but seventy-seven republican votes—just one more than the number of colored men who cast their ballots in the afternoon. Now, it is not of colored men who cast their ballots in the afternoon. Now, it is not claimed by any democrat in Jackson County that more than fifteen colored men voted the democratic ticket at Campbellton precinct. The evidence of John McKenney, a democratic lawyer and candidate for the Legislature, who lives in that vicinity and is acquainted with the colored people and knows their political complexion, shows that there were not more than fifteen colored men who voted the democratic ticket that day. Now, if that be true, I ask the majority what became of the colored vote cast during the two hours in the morning? That yote remains unaccounted for. It is utterly imposmorning? That vote remains unaccounted for. It is utterly impossible to come to any other conclusion than that a fraud was perpetrated at that poll by the democratic board of inspectors.

Now, I admit that there was one colored witness that the majority impeached or believed that they had impeached. This was the witness that the witness the witness that the wit

ness Crump Bowie, whose testimony it was deemed important to disprove. Three or four prominent citizens of the town of Mariana did come forward and swear that this man was not to be believed on oath, on the ground that his character for truth and veracity was not good. He had testified that during the recess at noon the ballot-box was contrary to law removed from the place where it was during the formoon into an adjoining store; that he sat on the steps of the storedoor, the ballot-box being abandoned out of the possession of the officer of the election and unsealed; that he heard the sound of footsteps within and voices speaking in a low tone. That was the dangerous part of his testimony which it was necessary to get rid of.

I do not know whether that man swore to the truth or not. But

there is this much truth about his statement, that the ballot-box was removed into an adjoining store during the recess at twelve o'clock, and contrary to law it was left ungnarded, unprotected, and unsealed. Affidavits were filed before the canvassing board showing one hundred and thirty-two men voted the republican ticket at this

We have in Jackson County those evidences of fraud at various precincts, and besides, I ought to state, in other precincts in this county, although the witnesses were subpœnaed by the democratic deputy sergeant at-arms, still they refused to obey the subpœna issued at my instance, and therefore I was precluded from making as thorough an examination into the conduct of the election in Jackson County as I ought to have done as a member of the minority of the committee.

In reference to the return from the county of Hamilton, every man must admit who reads the testimony and knows the law governing the holding of elections that it should be rejected in counting for the Hayes or Tilden electors or any other candidate for office.

The testimony shows that at the largest precinct the votes were not counted by the officers of election, but by entire strangers, one of whom was the nephew of the democratic candidate for the State senate and who was successful at that election. Is there any security for the purity of elections if you allow four men of one political party, one of them the nephew of a candidate for office, to count the vote and keep the tally as at Jasper precinct? Not only that; when they came to make the returns they had a democratic lawyer ready for their purpose, who made them out and had them signed by the inspectors without reading the contents.

More than that; the testimony shows the republican officer, the

when one of the board, was negligent in the performance of his duty. When one of those outsiders would take the vote from the ballot-box and read off the name he would fold it up, hand it to Smithson, the republican, who, in his supreme simplicity, never looked at the name on the ticket but put it folded into another box.

Contrary, to law they adjourned and carried the ballot-box several miles distant and placed it on a counter in a bar-room kept by a democratic inspector, who left it without any guard and went to sleep a hundred feet distant with another man. But two men did sleep in the bar-room where the ballot-box was, and they were candidates for office. The officer at nine o'clock the next morning took the box back to the place of voting, and then the democratic lawyer made out the return, the contents not known to any but himself. And now they come here with a majority report and say Jasper precinct must be counted for the Tilden electors!

counted for the Tilden electors!

But what does the democratic attorney-general of Florida, whose integrity as a man and ability as a lawyer have been so often commended by democratic organs, say when he came before the canvass-ing board, of which he was a member, in relation to Hamilton County ? Although I am a member of the democratic party, the frauds here in Hamilton County are so glaring that the return therefrom must be rejected.

Now I submit to you gentlemen who are charging fraud, can you Now I submit to you gentlemen who are charging frand, can you do otherwise than indorse the action of the democratic attorney-general in advocating the propriety of excluding the return from Jasper precinct, based as it is upon gross irregularity and fraud?

The minority of the committee concluded that the return from White Springs precinct, in Hamilton County, ought not to be counted for the Tilden electors, on the following ground?

The evidence shows the board of inspectors omitted in making out the return to insert therein the number of votes cast for the Hayes

and Tilden electors. The return was duly signed and transmitted to the county seat of Hamilton County. Six days after the election the omission was discovered. When it was discovered a leading democrat gathered together the officers of the board, brought them at twelve o'clock at night to the county seat, and had them make out what was called a supplemental return.

We contend—the minority—as matter of law that the board of in-spectors having been dissolved after the returns had been signed and

spectors having been dissolved after the returns had been signed and transmitted with the other papers to the county seat of Hamilton County, all their subsequent acts were null and void.

In reference to Jefferson County I have but a few words to say. That is a county that gave over 1,900 majority for the Hayes electors. Every precinct in that county where there was a suspicion of fraud was most thoroughly investigated. There I am free to say the majority of the election officers was republican. But I say that in no county in this country polling so many votes were fewer fraudulent votes discovered. And I say upon the testimony that there is not a basis for believing that ten men in that country voted the renot a basis for believing that ten men in that county voted the renot a basis for believing that ten men in that county voted the republican ticket unlawfully on election day. The majority claim, as they do in Duval County, according to the remarks of the gentleman from Pennsylvania, [Mr. HOPKINS,] that the republican officials ought to be censured because they voted convicts. Why, sir, a majority of the men charged with being convicted of crime in Jefferson County were only convicted of petty larceny, some of them being only fined a dollar and costs of court. Yet the majority of the committee say they are disfranchised for that reason. The language of the statute of Florida in relation to disconsilination on the ground of conviction of Florida in relation to disqualification on the ground of conviction is that when any man is convicted of perjury, bribery, felony, lar-ceny, or other infamous crimes he shall be disfranchised. Certainly no man on the floor of this House will hold petty larceny to be an infamous crime or a felony, as under the laws of the State of Florida it is only punishable by fine or imprisonment in the county jail. Felonies or infamous crimes are punishable with death or by imprisonment within the penitentiary of the State.

But they say that in Duval County the republicans voted a number of men confined in the county jail, and they cast damaging re-flections upon the republican officials of that county for so doing, Why did not the gentleman from Pennsylvania tell you, in commentwhy did not the genteman from remnsylvania terryon, incomment-ing upon that matter of Duval County, that these men who voted were disqualified and illegal voters? Every man confined in that jail was a legal voter. Out of sixteen there were thirteen men who were only awaiting trial and were not convicted; and there were three men convicted, but not sentenced. Is there any man on the floor of this House who will say that a verdict of a jury without the pronouncement of a sentence thereon disqualifies a man from voting? Certainly not. It is the judgment of the court that creates the disability, and not the mere verdict of the jury. Therefore every man who cast his vote on the day of election who was imprisoned in the county jail of Duval County cast his ballot lawfully, for he was a legal and qualified voter, and they do not claim the contrary in the majority report.

legal and qualified voter, and they do not claim the contrary in the majority report.

Now, in reference to Jefferson County they claim there that a large number of men voted the republican ticket illegally because their names appeared on the clerk's list at each poll and they did not appear on the registration-list. But the testimony on which that is based is entitled to little or no consideration. Why, sir, they placed upon the stand a man named Botts, the secretary of a democratic club, who swore he kept a private check-list at poll No. 8, and that at least twenty men on his check-list had voted there whose names vere not on the registration-list, and he was one of the most zealous and active democrats that I saw in Jefferson County. On a careful examination of the registration-list it showed that this man Botts was, to say the least, mistaken. More than half of the number of names of men which he swore were on his list and had voted illegally did appear on the registration list. But if a man voted at that poll did appear on the registration list. But if a man voted at that poll did appear on the registration list. But if a man voted at that poll whose name, for instance, was Fernandez, and he, Botts, should take it down as Hernandez, being deceived by the sound of the name, of course it was not the same man according to his testimony, because the name on the registration-list did not appear on his check-list. Now that is the sort of testimony practically relied upon to prove fraud at all those polls. And I say again that, if any democratic lawyer on the floor of the House has any desire to examine the testimony upon which the conclusions of the majority are reached, he will in my judgment come to the conclusion that the greater part will, in my judgment, come to the conclusion that the greater part of that testimony in relation to republican frauds is based upon tes-timony totally inadmissible either before the House of Representa-

timony totally inadmissible either before the House of Representa-tives or any court of justice in the country.

Why, sir, to show you the character of the evidence taken by the majority, there was a long time consumed in taking evidence in rela-tion to a census taken by an executive committee of the democratic party for the purpose, I presume, of comparing the registration-list with the census list, in order to ascertain if there was an excess with the census list, in order to ascertain if there was an excess of names illegally placed on that registration-list. Now I submit to the other side of the House, is testimony competent in relation to a census taken by order of the executive committee of the democratic party? The law of Florida provides that the only way the census can be taken is by the assessors of each county, and that was the way the census was made. That was the only legal census. But the democrats of this committee believe that another census, taken illegally by men without authority, is more legal than the one required by law. With these remarks, Mr. Speaker, I leave the question.

Mr. DE BOLT. Mr. Speaker, I had not intended to take part in this discussion, and had it not been for the most extraordinary speech made by the gentleman who has just taken his seat, I would not have attempted to make any remarks whatever. I shall devote the most of my time to the counties of Jackson and Jefferson, as under an agreement with the chairman of the committee I am to occupy the floor but a short time. but a short time.

One remark of the gentleman from Nevada, that a large amount of the testimony taken by this committee is not entitled to respect or even to be called evidence and would not be admissible in any court in the land, requires an answer. How he comes to that conclusion I must admit I am not able to conceive. The committee went to Florida with full power to summon before it witnesses. They did it, and those witnesses were examined and cross-examined as is usual in courts of justice. Why their statements made under such circumstances should not be taken as evidence I am unable to see. Do gentlemen conclude that ex parte affidavits taken by order of the returning board of the State of Florida should be accepted as evidence rather than the testimony of witnesses who are examined and cross-exthan the testimony of witnesses who are examined and cross-examined? These exparte affidavits were taken when the military were present. They were sent there for that purpose. They marched the colored voters up in platoons of six to sign these affidavits that had been written in Tallahassee. Deny that if you can. I speak from the record. These same colored men, when they were put upon the stand and the inquiry was made whether or not they had made the affidavits, each and every one of them said "No." But upon further examination upon asking them whether they had been to a certain affidavits, each and every one of them said "No." But upon further examination, upon asking them whether they had been to a certain place where these soldiers had congregated and signed a paper, they said "O, yes," they had signed a paper. They were then asked "Did you know what it was you signed?" The answer was "No." They were then asked "Was the paper read to you?" Again the answer was "No." The next question, "Was it written in your presence?" and the answer was, uniformly, "I saw no writing done there." They were asked "What kind of a written paper was it?" and the response was "It was a long list of names." The next question was "Did you sign your own name?" The answer was "No, I merely touched the pen." That is the kind of testimony that the minority of the committee would have us rely on instanting they had been to a certain place with the minority of the committee would have us rely on instanting they had been to a certain place where they had been to a certain place wh

pen." That is the kind of testimony that the minority of the committee would have us rely on instead of the evidence of witnesses brought up and examined as they are in a court of justice.

But I shall pass from that question to the election in Jackson County, and especially to Friendship Church precinct. The report of the majority of the committee fully states the fact that at that precinct the ballot-box was placed out of sight of the voters at the time of the voting. The laws of Florida require that it should be placed in view of the voter. Admitting this irregularity, must the whole poll be set aside simply because the voters could not see the tallot-box, everything else connected with the election being fair? The evidence everything else connected with the election being fair? The evidence of Edmond Hayes, the republican colored inspector at that precinct, and by the way one of the most intelligent colored men that I met in the State of Florida, was that everything was fair, that every ballot received was placed in the box, that everything was done fairly and honestly. We have also the testimony of Henry Long, the republican United States inspector at that poll, who swears to the same thing, as do all the democratic officers of the election. It is true that when the polls were closed and the officers commenced their canvass of the votes they canvassed only 4 votes, and then because the house in which the poll was held was new and onen, with no windows house in which the poll was held was new and open, with no windows, no table, no light, nothing to eat, and no paper upon which to make their returns, all of which is sworn to by Edmond Hayes and others, they went to Mozley's, two miles away, to complete the canvass; and they further swear that the reason why they did not stop short of they further swear that the reason why they did not stop short of Mozley's was because those who lived nearer were very poor and could not afford any convenience to count the ballots or furnish the paper on which to make the return; that they could not even furnish light. They went to Mozley's in order to secure the necessary conveniences, first locking the box, Henry Long, a republican, carrying the key, and placing the box in a buggy with Edmond Hayes, a republican, and Dr. Bryan, a democrat. There were eight or ten by-standers present when they started with the box, five of whom followed to Mozley's. When the gentleman from Nevada says that nobody knows anything about this counting except the officers of the election, he is anything about this counting except the officers of the election, he is far from the truth. If gentlemen will read upon page 297 of the record they will there find the names of the men who accompanied

record they will there find the names of the men who accompanied the officers, and not only that but these men went there and witnessed the canvass. The law of Florida requires that the canvass shall be public. All the inspectors swear that it was public and that these men passed in and out of the room where it took place at their pleasure. There were found in the box 189 ballots, 145 of which were democratic and 44 republican. All the inspectors signed the return; but when it became known that the State was very close, then troops were called for, were sent into that county, and these negroes marched up in squads of half a dozen at a time to sign the affidavits. Those affidavits were taken before the returning board of the State, and my friends of the minority, who make so much complaint of having no opportunity to see the affidavits, had those very affidavits in their pockets and had the opportunity of examining them. I assert what I know to be the fact. They examined the affidavits in relation to the vote in Jackson County, and I know that the gentleman who has just taken his seat remarked in his speech that he examined the

affidavit of the colored man Crump Bowie who swore that he had voted the democratic ticket, thus admitting he had in his possession the affidavits and contradicting the statement that they could not see them. Out of his own mouth let him stand condemned.

Now, I ask, will gentlemen of the minority claim that the return from Friendship Church precinct should be excluded from the count simply because of these irregularities, when there is no fraud either actual or apparent proven upon the part of the officers, and all of them swore it was a fair election? When you come to examine the matter I admit that sixty-three colored men came up and swore that they voted the republican ticket at that precinct. Now what is to be done? Throw out the whole return? Count but the 63 votes? Is that fair? Would it not rather appear to the mind of every honest-thinking man that those colored men were mistaken as to the ballot they voted? Not one of them could read, or perhaps but one or two; with that exception none of them could read. All the way they knew that it was a republican ticket was simply because it had they knew that it was a republican ticket was simply because it had

they knew that it was a republican ticket was simply because it had a flag on it. Many of them voted the flag.

The law concerning elections, as laid down in all of the books by all of the courts is something like this: that wherever a poll can be purged of illegal votes, or the true vote ascertained with reasonable certainty, it is the duty of the tribunal trying the case to ascertain the true vote and give it effect. Now, apply that rule to this precinct, and what is our duty under the law? It is to take the 63 resubblications were from the total of 150 percent. publican votes from the total of 189 votes cast, which would give the

democrats 126 votes.

In that connection I want to take up the matter of Jefferson County and show to this House and to the country how consistent, O, how very consistent the minority of this committee are in their adjudicavery consistent the minority of this committee are in their adjudication of these cases. At poll No. 1 in Jefferson County, the morning after the election and after the votes had been counted, 10 democratic votes were found in the ballot-box. The return shows but 5 democratic votes and 570 republican votes. Ten men came up and swear that they voted the democratic ticket at this poll; not one of them is contradicted. Fortunately after the ballots had been counted they were placed back in the box and kept overnight. There is no provision of law in the State of Florida for the preservation of the ballots after they have been counted; they can be thrown to the four winds. But fortunately in this precinct after they had been canvassed they were replaced in the ballot-box, and in the morning after the election 10 democratic ballots were found in the box, showing that there had been a miscount. All swear that the voting was fair and honest. and honest.

How were the ballots canvassed? They were spread out on a table and counted off in packages of 25, then doubled and the clerk would tally one for every package of 50 votes. The canvass of 575 votes was made in less than two hours, thus showing that from the rapid and careless manner in which the count was made the mistake

occurred.

occurred.

Now what shall we do with this return? Apply the rule which my friends on the minority want to apply to Friendship Church? Or shall we not rather count 565 votes for the republicans, and 10 votes for the democrats? The majority say they will apply the same rule to that precinct they propose to apply to Friendship Church. They will claim 10 democratic votes and will give to the republicans 565 votes. That is fair, reasonable, and just, and is in harmony with the law governing such cases, as declared by the courts of the country. Let us pursue this subject a little further. When you come to poll No. 8, Jefferson County, you will find from the evidence that the ballotbox was concealed so that the voter could not see it at the time of voting. When we come to count the ballots and compare them with the number of names on the clerk's list we find that there were 514

the number of names on the clerk's list we find that there were 514 names on the clerk's list and only 504 ballots and two cotton receipts, making in all 506 pieces of paper in the box.

Mr. WOODBURN. Will the gentleman allow me to ask him a

question ?

Mr. DE BOLT. I believe nobody interrupted you to ask a question.
Mr. WOODBURN. I was willing to be interrupted.
Mr. DE BOLT. Very well; I will yield.
Mr. WOODBURN. Does not the testimony in relation to the poll No. 1 of Jefferson County show the fact that on the day succeeding the election 10 democratic votes were found in the ballot-box instead of 5, and was not the ballot-box in the mean time in an exposed place?

Mr. DE BOLT. I only referred to that as a corroborative circum-

If the gentleman had listened he would have heard me say that there was no law in Florida providing for the preservation of the ballots after they were counted. But ten men came up and swore the ballots after they were counted. But ten men came up and swore that they voted the democratic ticket. And to corroborate their statement I said that ten democratic votes were found in the ballot-box the next morning. That is what I said, and I say so now. I do not claim that ten democratic votes should be counted simply because that number was found in the box the next morning. But I said that that circumstance corroborated the testimony of the ten men who swore that they voted the democratic ticket. Of those ten men nine were white, and three or four of them were lawyers, and all of them understood what they were doing. And they all swore that they voted at that precinct and voted the democratic ticket. The republican clerk had possession of the ballot-box all the time after the close of the polls and after the count was made until the next morning. next morning.

Now, in regard to the ballot-box at poll No. 8. That was concealed from the view of the voters at the time of voting. No one could see what became of his ballot. When they came to compare the number of ballots in the box with the names upon the list, they found that there were 504 ballots and two cotton receipts in the box, and there were 514 names on the clerk's list. It is called poll-list by some; one section of the law calls it the clerk's list and another the some; one section of the law calls it the clerk's list and another the poll-list. It is the list of the names of the voters written down by the clerk when the voter's name is announced by the inspector who receives his ballot. Five witnesses agree precisely as to the number of ballots found in the box. They counted them over five times. Four democrats, who were present at the time of counting, say that the result came out 504 tickets and two cotton receipts every time. When they came to open and canvass them, they found two double tickets, or tickets folded together; and the republicans counted even them, though the law required that they should both be destroyed. Counting those two double tickets, there were 506 ballots in the box. The colored supervisor said that he believed the first count was 504; the second count he did not recollect; the third count got up to 506 and 508 and finally 510, and the last time they got it up to 512. Smythe, the republican inspector, says it was 504 the first time, but that it increased each count thereafter until it reached 512. If they had kept on until this time, I have no doubt Hayes would have carried the State by a large majority. by a large majority

by a large majority.

But they wanted to make the number of ballots in the box agree with the number of names on the clerk's list. Smythe, the man who did the writing, found that he lacked 6 votes, and he said he was going to tack on 6. He was asked, "How are you going to add them? How many are you going to give to the democrats and how many the republicans?" "O," says he, "I will fix that." When the canvass was completed and the returns made out he added 6; making

the return show 493 republican ballots instead of 487, the number in

This is proven by the evidence of five witnesses, two of whom were disinterested by standers and lookers-on. Smythe is the only man who denies it. Anderson, one of the inspectors who signed the report, said that he was old and could not see very well; that he did not said that he was old and could not see very well; that he did not have his spectacles with him; that he thought the return contained the figures 485 or he would not have signed it, but that it was not read to him. Dr. Bryan, Saunders, and Turnbull swear to the same; several others of those standing around swear to the same state of facts. But when the return is opened by the county canvaşsers, it contains 493 republican votes, so as to make the vote agree with the number of names on the clerk's list.

Now this was a hold and decime found when the county can be a contained to the contained to the contained to the contain

Now this was a bold and daring fraud upon the part of Smythe. But we do not ask the throwing out of the whole poll, although there were but 19 democratic ballots returned to 493 republican. Twenty-three men come up and swear that they voted the democratic ticket at that precinet. But, notwithstanding all these irregularities, together that precinct. But, notwithstanding all these irregularities, together with the frauds committed by Smythe, the majority did not even ask the throwing out of the poll. Although the addition made by Smythe falsified the returns and was done with a corrupt purpose of forcing the number of ballots to agree with the number of names on the clerk's list, yet the number added is definitely stated by the witnesses to be 6, and deducting this number, with the double tickets, and the 4 additional democratic votes proven, together with the 19 democratic votes returned, from the whole number of ballots in the bex, then adding the 4 democratic votes proven to the 19 returned, we ascertain

adding the 4 democratic votes proven to the 19 returned, we ascertain the true result of the election at this precinct.

This is fair. But apply the rule that my friend from Nevada wants to apply to Friendship church, and the republicans will lose 493 votes, while the democrats will save 23, because we proved them. But we desire to do justice in this matter. Yes, as my friend from Minnesota says, we went to Florida for a purpose. I admit it; but it was for the purpose of ascertaining and reporting the facts in connection with the election in that State; not, as the report and speeches of the minority would indicate their purpose. Ic over up fraud to nection with the election in that State; not, as the report and speeches of the minority would indicate their purpose, to cover up fraud, to misstate the facts, to apply one rule to one precinct and a different rule to another, thereby forcing a majority for their party. Mr. Speaker, apply the rule adopted by the minority in regard to Friendship church to all three of those precincts where a similar state of facts exists, and the democratic party will gain over a thousand votes, as I will more fully show before I close.

Now let us return to Campbellton precinct, Jackson County, and notice the evidence of Crump Bowie.

The gentlemen of the minority rely upon the testimony of one Crump Bowie, a colored witness, to establish the fact that the ballot-box was tampered with during the dinner-hour. I here cite his testimony on that point, which is a fair sample of his evidence on other points, and leave the question of its credibility to the House and the country.

By Mr. WOODBURN:

Question. When they were away at dinner did you hear any noise?
Answer. Yes, sir; I heard some noise when they were gone to dinner.
Q. What did you hear?
A. I heard somebody walking about in the room, and I heard somebody whispering in there when they were gone to dinner.

Cross-examined by Mr. DE BOLT:

Q. Was there a collection of colored men around the door or window at which the voting took place?

A. Yes, sir; there was a heap of them around there.

Q. Were they laughing and talking during the dinner-hour?

A. Yes, sir; they had a regular hurrah around there during the dinner-hour; some were patting and dancing; some were laughing; some were whistling; some played a few verses.

Q. From where you were sitting how far was it to the window or door at which the voting took place?

A. It was about four and a half fact to the window.

It was about four and a half feet to the window and two and a half feet from

Q. They were making considerable noise?

A. Some were and some were not. I wasn't paying much attention, because I didn't notice the band that was around there.

This witness claims to have been sitting within seven feet of the door or window at which the ballots were received, with a large number of colored persons collected there, laughing, talking, patting, dancing, whistling, a band playing, and, as he says. a "regular hurrah," and amid all this noise and confusion he could hear whispering of persons in the room where the ballot-box was left. In addition to this a number of reputable witnesses testify to his bad character for truth

was surprised that he did not think of what he stated while the case was under investigation. When his man Gaston was on the stand, was under investigation. When his man Gaston was on the stand, my friend became convinced that those men were perjuring themselves. He so stated at the time; he thereupon abandoned the further prosecution of the case, withdrew all objections, and ordered the sergeant-at-arms to discharge his witnesses. In support of this declaration, I send to the Clerk's desk to be read a statement made by a gentleman of the highest honor who was present and who was not one of the members of the committee conducting the investigation.

The Clerk read as follows:

House of Representatives, Washington, D. C., February 10, 1877.

Washington, D. C., February 10, 1817.

Dear Sir: On December 29, 1876, when your committee were investigating the conduct of the election in Jackson County, Florida, there were over one hundred and twenty witnesses present at Mariana, in obedience to summons issued by direction of Hon. William Woodburs, all of whom were colored men, residents of the county, and said to have voted at Campbellton precinct. Mr. Woodburs placed upon the witness stand one James Gaston, and examined him as to the action of the election officers at Campbellton precinct, and particularly as to the statement of one Crump Bowie, concerning alleged manipulations of the ballots. During the cross-examination of Gaston by Mr. Walling, Mr. Woodburs interrupted with the following remark: "Mr. Chairman, I do not propose to pursue the examination into Campbellton any further, and will not rest my case upon the testimony of a perjurer. If my party expect this of me they are mistaken. Either one or the other of these two niggers have lied. I abandon the examination into Campbellton precinct and ask that all the witnesses from that point be discharged." Whereupon the witnesses were discharged and paid.

I am, sir, very respectfully yours,

WILLIAM DICKSON, Deputy Sergeant-at-Arms.

Hon. R. A. De Bolt, Ohairman Subcommittee Florida Election.

Mr. DE BOLT. In connection with that and in further support of my remarks, I now hold in my hand a certified list of witnesses who were present from that precinct. At the time the gentleman from Nevada, the minority member of the committee, made the remarks which have just been read at the Clerk's desk he had one hundred and eight witnesses present; that is the number certified by the Sergeantat-Arms. We had seven. Why did he not call his witnesses and examine them? It was because he became convinced that those men were lying to him. But in his report he writes up Campbelly and the server has been as the server of the writes up Cambbelly and the server has been men were lying to him. But in his report he writes up Cambbelly and the server has been men were lying to him. were lying to him. But in his report he writes up Campbellton precinct. He does not dare to say in his speech or in his report that that evidence was true, because he knew to the contrary; but he says, "If it was true, what became of the seventy-six ballots?" It was during his examination of Gaston, one of those seventy-six men who he claims voted in the afternoon, that he became convinced that his colored brethren were lying to him. Yet the gentlemen of the minority both certify to it and ask the country to receive it as an established fact, when their own statements made at the time show conclusively they did not believe it themselves. They did not have the hardihood to base their statements in their report on the testimony before this committee, but adopted a report written for them, or copied by them, from a report of a committee sent from the other end of the Capitol whose evidence was taken in secret and not entitled

A MEMBER. Who?

Mr. DE BOLT. O, they know very well who it is. If the gentlemen really believed that one hundred and thirty-three colored men had voted the republican ticket at this precinct, I ask them in all candor why it was they did not swear and examine them? They had one hundred and eight of them present but abandoned the case and

ordered their discharge.

I will say in reply to the gentleman from Minnesota, [Mr. Dunnell,] who made the bald assertion that we had in our possession all those affidavits, all the evidence, all those telegrams before the returning board, that I never saw one of them. On the contrary, they were ing locard, that I never saw one of them. On the contrary, they were in the hands of the friend of the gentleman from Minnesota, McLin, or in the hands of his other friend, Cowgill. You had the privilege of consulting them at your pleasure. We could not do it. I never saw one of them. Your friend and brother member of the committee while in Jackson County had copies or the original affidavits in his pocket and would not show them to us.

Mr. THOMPSON. He had the originals.
Mr. DE BOLT. Yes, sir; he had the originals, my friend on the left says. Talk about evidence being concealed! You cannot say

you were ever prevented from subpænaing a single witness; you cannot say you asked to go anywhere to investigate that you were refused. I wait for reply.

Mr. DUNNELL. I will say this to the honorable gentleman, the minority never made a motion that was not voted down.

Mr. DE BOLT. I say you never asked to go anywhere—I repeat it and I challenge you for a denial—you never asked to go anywhere that you were refused.

Mr. DUNNELL. I have made my reply.

Mr. DE BOLT. I say you never suggested, you never asked to subpæna a witness but the subpæna went out. Yes, sir, in every case; yet they come here and raise the whining cry they could not have the

pcena a witness but the subpcena went out. Yes, sir, in every case; yet they come here and raise the whining cry they could not have the evidence they desired. [Laughter.]

Mr. DUNNELL. I wish to say one word.

Mr. DE BOLT. No, I do not propose to be interrupted. I asked the gentleman for reply and he refused.

I must say I was led to believe after these occurrences in Florida and the statements made since our return by the minority member of

and the statements made since our return by the inthorty member of the committee outside of the House—I say I was induced to believe not one word would be said against the counting of Campbellton precinct, Jackson County. I merely referred to it in the report, and I will read the language I used:

Your committee examined into the manner of conducting the election at this precinct and found everything fair. This f. irness was so apparent that the republican member of the subcommittee making the examination waived all objection to its being counted as returned.

I was in hope I would be able to see to-day the reporter who accompanied the committee and was present at the time; but I learn he is out of the city, or else he would have signed the paper which was read at the Clerk's desk, signed by the deputy sergeant-at-arms.

Now, Mr. Speaker, admitting all the irregularities of which I have spoken, and there are many others that other gentlemen have canvassed, yet by purging the polls of all fraudulent and illegal votes ascertained to have been cast, then counting the vote as any court would have counted it upon the testimony, and we find the Tilden electors received 543 majority. But apply the doctrine contended for by the minority of the committee and reject Friendship Church, Jackson County, polls No. 1 and No. 8 in Jefferson County, poll No. 13 in Leon County, and Archer precinct No. 2 in Alachua County, and the Tilden electors have 1,600 majority.

The majority of the committee, however, felt that they were to act fairly in this matter; to ascertain the facts and make a report of the legal votes cast at the election as justice and equity would dictate, and by so doing the Tilden electors would have 543 majority in the State.

Mr. Speaker, a word in regard to Manatee County. My friends of

Mr. Speaker, a word in regard to Manatee County. My friends of Mr. Speaker, a word in regard to Manatee County. My friends of the minority asserted emphatically that Judge Graham while on the stand, said the election precincts had not been established by the county commissioners. They stated that not a single inspector had been appointed by the county commissioners previous to the election, as the law required. Judge Graham said right the reverse; that the polling-places were established; that the officers of election were appointed by the county commissioners. You will find that in his testimony, and I dare you to contradict it.

I will read from his testimony as it appears in the RECORD:

Question. Did the county commissioners of Manatee County create or designate Question. Did the county commissioners of Manates County create or desivoting-places?

Answer. Yes, sir,
Q. Were the inspectors appointed by the county commissioners?
A. Yes, sir.
Q. Was the notice of the election given according to the laws of Florida?
A. Yes, sir.
Q. By whom was the notice given?
A. By the county commissioners.
Q. What office do you hold?
A. County judge.

Further than that, the evening before we left Jacksonville, Florida, not wishing to be detained longer, it was positively agreed and understood between all the members of the committee that a certified copy of the record of the county commissioners of Manatee County when received should go in and be made a part of our record. That certificate reached the hands of the chairman Saturday last, if I remember correctly, and shows conclusively that polling places and inspectors of elections were designated and appointed by the county commissioners as the law direct. A meeting the accommissioners as the law direct. tors of elections were designated and appointed by the county commissioners as the law directs. A meeting of the committee was at once called for Monday morning at nine and a half o'clock; and what was the action of the gentleman when we came together? How did he redeem his pleged word? When the certified copy of the record was presented the gentleman from Minnesota voted to reject it, notwith-standing the positive agreement he had entered into before leaving Florida. That shows what those gentlemen went to Florida for. They went for a purpose. He voted against receiving this certificate from Manatee thereby violating a positive agreement.

Now, Mr. Speaker, it is conceded by every fair-minded man, it is conceded by every republican I have found in Florida with whom I conversed on the subject, that on the face of the returns Tilden has 90 majority in the State.

90 majority in the State.

You heard it stated by one republican here to-day on the floor, and we could mention many others with whom we have conversed that substantiate that statement. But, say the republicans, just as my friend from Nevada and my friend from Minnesota, admitting the

fraud you cannot go behind it and inquire into it. I say that not only the action of the members of this committee but the action of the joint high commission for the first time in the history of the world, has established the monstrous doctrine that where fraud is charged upon one side and admitted on the other you cannot inquire into it. I say it is a monstrous doctrine. The republicans admit the fraud, but shield themselves behind the action of the corrupt returning board of Florida.

board of Florida.

The supreme court construes the statute that the returning board had no judicial authority; they had no right to take testimony. So the supreme court of Florida has decided. But here is the hole the minority want to creep out at. Let me show you how small it is. They say that the electors were not parties to that suit. I admit it. What was in controversy? Why, sir, the construction of the statute under which that board was acting. That alone was before the court, no matter who brought it there. Their construction was all the same, was final; and their construction of that statute settles the powers of the beard not only as to Governor Drew but as to the electors; while the board not only as to Governor Drew but as to the electors; while they were not known in that suit, the construction of the statute if it applied to Drew and to Stearns applied as well to the electors. That whole canvass was declared null and void; and then they state in their decision that the board shall count Baker, shall count Manatee, shall

count Clay, shall count Monroe, and Jackson. They name those counties especially.

Now they get round it by saying, "O, the electors were not parties to the suit." But before those electors acted, before they cast their ballots, before they met, the writ of quo warranto was served on their ballots, before they met, the writ of quo varranto was served on them, and jurisdiction of their persons was obtained by the service of the writ. It is true, as stated by my friend on my right on yesterday, the gentleman from New York, [Mr. FIELD,] the board completed their canvass at three o'clock in the morning, and at twelve o'clock those electors were to assemble and cast their vote. Now, because the supreme court did not assemble from distant parts of the State, because they did not convene try the case, and render final State, because they did not convene, try the case, and render final judgment before the electors met and cast their vote, because the court did not do all this in nine hours, it is decided by the commission, and the report of the minority committee is to the same effect, that they were functus officio—they had discharged their duty, and you cannot inquire into frauds admitted. Why, sir, the court had jurisdiction of their persons before they acted, obtained it by the service

of the writ, and when jurisdiction is once acquired the court retains it until final judgment is rendered. Every lawyer can tell you that.

And I might add further, that every act of the party pertaining to the subject-matter in controversy, performed by the person over whom jurisdiction has been acquired between the service of the writ and the rendering of final judgment, is more or less affected by such final action.

Mr. Speaker, I fear that I am trespassing on the time of another.

Mr. THOMPSON rose.

Mr. THOMPSON rose.

Mr. THOMPSON. I will yield to the gentleman from Michigan [Mr. CONGER] for a suggestion after I make a motion. I move the

[Mr. Conger] for a suggestion after I make a motion. I move the previous question on the adoption of the resolution.

Mr. DUNNELL. Let me inquire of the gentleman from Massachusetts if it is intended to have a vote to-night?

Mr. CONGER. I have talked with the gentleman from Pennsylvania [Mr. Hopkins] in regard to that and it was proposed that the vote should be taken some time to-morrow, at one o'clock or two o'clock, when there is a full House, the previous question being ordered to-night, unless there be some objection to that, of which I am not aware. I suppose that arrangement will give satisfaction. am not aware. I suppose that arrangement will give satisfaction.

Mr. FOSTER. It seems to me that these funeral ceremonies ought

Mr. HOLMAN. It is important that this matter should be disposed of to-night. To-morrow morning, at the earliest possible moment, the Committee on Appropriations will seek to obtain the consent of the House to go into Committee of the Whole on the naval appropriation bill.

Mr. CONGER. When the House meets at ten o'clock after recess?
Mr. HOLMAN. At the earliest moment after the meeting of the

House to-morrow

The SPEAKER. It is competent for the House to agree by unanimous consent that the hour for closing debate on the pending report shall commence to-morrow at one o'clock. That would bring the vote at two o'clock

Mr. CONGER. It is proposed, as I understand, to finish the debate to-night and to take the vote at one o'clock to-morrow.

The SPEAKER. The Chair did not understand that that was the

arrangement

Mr. WILSON, of Iowa. The previous question may be seconded now and the main question ordered, and then the final disposition of the report can be allowed to go over until to-morrow.

Mr. CONGER. I think after the seconding of the previous question the debate should be finished to-night.

Mr. HOLMAN. I hope there will be no objection to disposing of this matter to-night. The gentleman having charge of the naval appropriation bill will move at the earliest moment to-morrow that the House go into Committee of the Whole, to proceed with the consideration of that bill. In the position of the business of this House.

and considering the importance of proceeding with that bill as soon as it is printed—and it will be printed to-morrow in the CONGRESS-IONAL RECORD—I hope the gentleman from Massachusetts [Mr. THOMPSON] will consent to finish this question to-night.

Mr. THOMPSON. I do not consent to that. The hour is now too

late to allow the question to be disposed of to-night. I insist on my demand for the previous question.

The previous question was seconded and the main question ordered.

Mr. THOMPSON moved to reconsider the vote by which the main question was ordered; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. BRIGHT. I now ask the gentleman from Massachusetts [Mr. Thompson] to yield for a motion to take a recess until to-morrow at ten o'clock with the understanding that a further recess will then be taken till five minutes to twelve o'clock.

#### ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills reported that the committee had examined and found duly enrolled

bills of the following titles; when the Speaker signed the same:
An act (S. No. 1139) to change the time of holding the October term
of the United States district court for the district of Nebraska; and An act (S. No. 1141) to encourage and promote telegraphic communication between America and Europe.

#### LEAVE TO PRINT.

The SPEAKER. The Chair is informed that the objection made this morning to the printing in the CONGRESSIONAL RECORD of certain remarks by the gentleman from Alabama [Mr. WILLIAMS] has been withdrawn by the gentleman from Iowa, [Mr. SAMPSON,] who made the objection. Is there further objection? The Chair hears none, and the leave is granted. [See Appendix.]

#### ORDER OF BUSINESS.

Mr. HOLMAN. I rise to a parliamentary inquiry: If the House takes a recess now until ten o'clock to-morrow, what will be the posi-

Mr. CONGER. I ask that my proposition be stated to the House.
The SPEAKER. The Chair will hear the gentleman from Michigan after the gentleman from Indiana has concluded.
Mr. HOLMAN. The pending measure being under the operation of the previous question, will a vote upon that measure be reached necessarily at the expiration of one hour after the meeting of the

The SPEAKER. The gentleman from Massachusetts [Mr. Thompson] will have one hour to close the debate, after which the vote will be taken, so that the vote will have to be taken to-morrow at eleven o'clock

Mr. WADDELL. I would inquire of the Chair whether under the

Mr. WADDELL. I would inquire of the Chair whether under the resolution adopted by the House yesterday any ordinary business can be taken up before twelve o'clock?

The SPEAKER. A recess to the next day continues the session of the day, so that there will be to-morrow two hours of this day from ten o'clock until twelve, and then the recess will be taken, which, in ordinary times, would be an adjournment. But by reason of the electoral bill, under which the House is compelled to take only a recess, the business of Wednesday will begin at twelve o'clock, so far as the business of the House is concerned.

Mr. COX. I desire to ask the House, by unanimous consent, to take up a concurrent resolution of the Senate, now upon the Speaker's table, and pass it, which will save us from any of these quan-

er's table, and pass it, which will save us from any of these quan-

The concurrent resolution of the Senate was read for information, as follows:

Resolved by the Senate, (the House of Representatives concurring.) That during the sessions of the commission appointed under the act to provide and regulate the counting of the vote for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, each calendar day when legislative business shall have been transacted shall by each House, when in session, be considered a day for legislative purposes and the Journals of the two Houses shall be so kept and dated.

There being no objection, the concurrent resolution of the Senate was taken from the Speaker's table, and concurred in.

Mr. COX moved to reconsider the vote by which the concurrent resolution was taken from the Speaker's table and concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# COMMITTEE OF CONFERENCE.

The SPEAKER announced as the members of the committee of conference on the part of the House on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H. R. No. 4188, being the fortification bill, Mr. EUGENE HALE of Maine, Mr. OTHO R. SINGLETON of Mississippi, and Mr. HIESTER CLYMER of Pennsyl-

# COLOSSAL STATUE OF LIBERTY.

The SPEAKER, by unanimous consent, laid before the House the following message from the President of the United States: To the Senate and House of Representatives:

The accompanying memorial is transmitted to Congress at the request of a committee, composed of many distinguished citizens of New York, recently appointed

to co-operate with a generous body of French citizens who design to erect in the harbor of New York a colossal statue of "Liberty enlightening the world." Very little is asked of us to do, and I hope that the wishes of the memorialists may receiv-your very favorable consideration.

U. S. GRANT.

EXECUTIVE MANSION, February 9, 1877.

Mr. HEWITT, of New York. I now ask for the reading of the memorial accompanying the message; it is very brief.

The Clerk read the memorial, as follows:

To ULYSSES S. GRANT, President of the United States:

President of the United States:

The undersigned, a general committee appointed at a meeting of citizens of New York to co-operate with a generous body of French citizens who design to erect in the harbor of this city a colossal statue of "Liberty enlightening the world," respectfully request your concurrence. They have been informed of your sympathy in the patriotic purpose, and they desire that you would present the project to Congress in such way and manner as may seem most fitting to you. They would suggest, however, that if consistent with your sense of duty, they would be very much gratified if you would consent to transmit the inclosed memorial to both Houses of Congress. ouses of Congress. Dated New York, February 1, 1877.

wated New York, February 1, 19
WM. M. EVARTS.
E. D. MORGAN.
WM. C. BRYANT.
HENRY F. SPAULDING.
CLARK BELL.
F. R. COUDERT.
ANSON PHELPS STOKES.
RICHARD BUTLER.
JOHN T. DENNY.
WILLIAM H. WICKHAM.

THEODORE WESTON.
SAMUEL P. AVERY.
PARKE GODWIN.
J. SEAVER PAGE.
WORTHINGTON WHITTREDGE.
THEODORE ROOSEVELT.
JOHN JAY.
JAMES W. PINCHOT.
WM. H. APPLETON.
JOHN TAYLOR JOHNSTON.

#### Memorial.

To the Senate and House of Representatives of the United States:

To the Senate and House of Representatives of the United States:

The undersigned, a general committee representing a large body of American citizens, beg leave to direct your attention to the project of the French people for commemorating the hundredth anniversary of American Independence by the erection of a colossal statue of "Liberty enlightening the world," in the harbor of New York.

This statue, to be wrought in bronze, will be one hundred feet high, surmounting a pedestal of nearly equal height, and is already in process of execution. It was designed by the eminent French sculptor M. Bartholdi, has met the approval of distinguished artists, and will be forwarded at the expense of the French people, who have already subscribed to it with sufficient liberality to insure its completion. Many of the foremost gentlemen of France, some of whose names are intimately connected with our early annals and endeared to our memories, have taken an earnest and active part in the work with a view to do honor to the ancient alliance and to cement the present friendship and union of the two Republics.

All that is demanded of us is the assignment of a site on one of the islands in the harbor of New York belonging to the United States and the proper inauguration of the statue when it shall have been received. Voluntary subscriptions by the public at large will provide the pedestal and the labor necessary to the placing and crection of this most generous gift.

We therefore ask of your honorable bodies the passage of a law authorizing the proper Department to set off sufficient ground for the purpose on either Bedloe or Governor's Islands, and to provide for its future maintenance as a beacon, and to instructs its agents in such duties as may pertain to the perpetual care and preservation of this grand monument of art and of the friendly feelings of two great nations.

The enterprise is so honorable to the kindly dispositions of the French people.

nations.

The enterprise is so honorable to the kindly dispositions of the French people, so flattering to our own national pride, and so likely to be productive of generous results in both nations, that we are sure it will require no further words from us to commend it to your warm approval.

ommend it to your warm approved. M. M. EVARTS.
E. D. MORGAN.
WM. C. BRYANT.
F. R. COUDERT.
HENRY F. SPAULDING.
CLARK-BELL.
ANSON PHELPS STOKES.
RICHARD BUTLER.
JOHN T. DENNY.
WILLIAM H. WICKHAM.

THEODORE WESTON.
SAMUEL P. AVERY.
PARKE GODWIN.
J. SEAVER PAGE.
WORTHINGTON WHITTREDGE.
THEODORE ROOSEVELT.
JOHN JAY.
JAMES W PINCHOT.
WM. H. APPLETON.
JOHN TAYLOR JOHNSTON.

Mr. THORNBURGH. I move that the message, with the accompanying memorial, be referred to the Committee on Military Affairs.

The SPEAKER. The Chair would suggest that it should be re-

ferred to the Committee on Foreign Affairs.

Mr. THORNBURGH. The property asked for is on a military reservation. All it asks is a part of a military reservation in the harbor of New York.

of New York.

The SPEAKER. It relates to the erection of a statue to liberty by a foreign country. It seems to the Chair that anything that relates to the intercourse of citizens of foreign countries with this country should go to the Committee on Foreign Affairs.

Mr. THORNBURGH. If the Chair will allow me, I move to refer the message and accompanying documents to the Committee on Military Affairs. This is a petition from citizens of New York asking for a piece of land on one of the islands of New York, which are Government reservations for the erection of this statue.

ment reservations, for the erection of this statue.

Mr. HEWITT, of New York. I move to amend the motion of the gentleman from Tennessee by substituting the Committee on Foreign Affairs for the Committee on Military Affairs.

The amendment was agreed to; and the motion, as amended, was adopted.

The message was accordingly referred to the Committee on For-eign Affairs.

# ORDER OF BUSINESS

Mr. VANCE, of North Carolina. I ask unanimous consent that there be an understanding that when the House shall re-assemble to-morrow morning at ten o'clock, a further recess shall then be taken until five minutes before twelve o'clock.

Mr. HOLMAN. I shall have to object to that.
Mr. CONGER. I think that the condition of the public business requires that I should object.

#### VETO MESSAGE-ALFRED ROWLAND.

The SPEAKER laid before the House the following message from the President of the United States; which was read: To the House of Representatives:

I have the honor to return herewith without my approval House bill No. 3367, entitled "An act to remove the charge of desertion from the military record of Alfred Rowland."

The reasons for withholding my signature may be found in the accompanying report received from the Secretary of War.

U. S. GRANT.

EXECUTIVE MANSION, February 13, 1877.

Mr. BANNING. I move that the message and accompanying document be referred to the Committee on Military Affairs and printed. The motion was agreed to.

### MESSAGE FROM THE SENATE.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had further insisted on its disagreement to the amendment of the House to the bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, had agreed to the further conference asked by the House, and had appointed as conferees on the part of the Senate Mr. Sargent, Mr. Dorsey, and Mr. Merrimon.

The message further announced that the Senate insisted on its amendments to the bill (H. R. No. 4452) making appropriation for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1878, and for other purposes, agreed to the conference asked by the House on the disagreeing votes of the two Houses, and had appointed as conferees on the part of the Senate Mr. Allison, Mr. Windom, and Mr. Bogy. Mr. WINDOM, and Mr. Bogy.

#### DEFECTIVE LAND ENTRIES.

Mr. LAWRENCE. I have been engaged for ten days past, while the House has been in session, upon the select committee on the duties, powers, and privileges of the House in the counting of the electoral vote. By the way, that will account for my absence several times when votes have been taken in the House. I ask now unanimous consent to report for consideration at this time a bill from the Committee on the Judiciary, which will take but a few minutes to dispose of. It is House bill No. 4315, for the relief of the holders of defective entries of land.

The SPEAKER. The bill will be read, after which the Chair will

ask for objections to its present consideration.
The bill was read, as follows:

The bill was read, as follows:

Be it enacted, &c., That in all cases where an entry has been or may be made by any persons, other than corporations, in good faith, at the proper local land office, of any tract of land lawfully subject to entry, which may be informal, irregular, defective, or void, and whenever such entry shall be canceled, the person or persons having made such entry, their heirs, devisees, or assigns, shall have the first and preferable right to make a lawful entry of, and procure a patent for, such lands, within one year after notice of such cancellation as herein required; but nothing herein shall divest any right heretofore acquired.

Whenever any entry or patent shall be canceled, the Commissioner of the General Land Office shall give notice thereof by mail, if practicable, to the person claiming the land under such entry, or, if it be impracticable to ascertain the name and post-office address of such person, then notice shall be given by publication in such manner as said Commissioner may deem proper.

The Commissioner of the General Land Office shall have power to prescribe all proper rules and regulations to carry this act into effect.

Mr. LAWRENCE. I will state that I have here a letter from the

Mr. LAWRENCE. I will state that I have here a letter from the Commissioner of the General Land Office indorsing the bill, and it is also indorsed by the Committee on the Judiciary.

Mr. COX. That bill is all right.

Mr. COX. That bill is all right.
Mr. WILSON, of Iowa. Does this bill come from the Committee on Public Lands

on Public Lands?

Mr. LAWRENCE. It does not; it comes from the Committee on the Judiciary, but it has the indorsement of the acting chairman of the Committee on Public Lands, Judge GOODIN.

Mr. SAYLER. I think this bill should be considered by the Committee on Public Lands.

Mr. LAWRENCE. It has the indorsement of Judge GOODIN, who during the absence of the gentleman from Ohio [Mr. SAYLER] has been the acting chairman of the Committee on Public Lands.

Mr. CONGER. I think this bill had better lie over. Some time subsequently,

Mr. CONGER said: From what the gentleman from Ohio [Mr. LAWRENCE] has stated to me, I will withdraw my objection to the consideration of the bill in regard to defective entries of land.

Mr. WALLING. I renew the objection.

Mr. LAWRENCE. I hope not; the bill is all right.

Mr. RUSK. Do not object.

The SPEAKER. Objection being made, the bill is not before the House.

### WING-DAMS.

The SPEAKER laid before the House a letter from the Secretary of War, transmitting a report on Captain Bell's process for building wing-dams; which was referred to the Committee on Commerce.

#### ORDER OF BUSINESS.

Mr. BRIGHT. I must now insist upon my motion that the House take a recess until ten o'clock to-morrow morning.

Mr. HOLMAN. Perhaps eleven o'clock will be too early an hour to take the vote on the pending resolution from the select committee on the election in Florida, and that will be the time for taking the vote if the debate proceeds from ten o'clock to-morrow morning. I therefore ask unanimous consent that there be an understanding that when the House re-assembles to-morrow morning at ten o'clock a further recess bring the resolution to a vote at twelve o'clock. That will bring the resolution to a vote at twelve o'clock.

Mr. CONGER. To that I have no objection.

No objection being made, it was so ordered.

The question was then taken on the motion of Mr. Bright, and

it was agreed to; and accordingly (at four o'clock and fifty minutes p. m.) the House took a recess until to-morrow morning at ten o'clock.

#### AFTER THE RECESS.

The recess having expired, the House re-assembled at ten o'clock a. m Wednesday, February 14.

Mr. CLYMER. There being no quorum present, I make the motion that the House take a further recess till five minutes before eleven

There being no objection, the motion was agreed to.
At ten o'clock and fifty-five minutes a. m. the House resumed its

Mr. KNOTT. I move that the House take a further recess till five minutes before twelve o'clock.

Mr. WILSON, of Iowa. I think that debate on the pending question ought to go on. There will be a full House here at twelve o'clock when we come to vote; and probably a quorum may be here in a few minutes. To take another recess now would be wasting a great deal of time. I think we ought to go on.

Mr. WAIT. We have almost all the appropriation bills yet to dis-

Mr. WAIT. We have almost all the appr pose of; and it looks now as if— The SPEAKER. Debate is not in order.

# CORRECTION.

Mr. WHITTHORNE. I rise to what I believe is considered a question of privilege. I observe that I am recorded in the Congressional Record as not voting upon the amendment of the gentleman from Maine [Mr. Hale] to the resolution of the gentleman from New York [Mr. Field] dissenting from the report of the electoral commission upon the Florida case. I did vote, and most emphatically voted "no."

The SPEAKER. The Record will be corrected. The Journal is

RECESS.

The question being taken on the motion of Mr. KNOTT for a recess until five minutes before twelve, there were—ayes 12, noes 7.

The SPEAKER. The motion is agreed to.

Mr. WILSON, of Iowa. Does the Chair decide that less than a quorum can take a recess. I presume the Chair is aware that the Digest and the Rules are against such a decision.

The SPEAKER. The Chair holds that in the present condition of business a recess is equivalent to adjournment, and has been so held by the House.

Mr. WILSON, of Iowa. Has the Chair so held previously?
The SPEAKER. According to the Chair's recollection, that has

been the ruling.

Mr. WILSON, of Iowa. Then it is too late to raise the point now.

The motion being agreed to, a recess was accordingly taken.

At five minutes before twelve o'clock m. the House re-assembled.

### IMPROVEMENT OF MOUTH OF PASCAGOULA RIVER.

Mr. HOOKER, by unanimous consent, presented a resolution of the Legislature of the State of Mississippi in favor of an appropriation by Congress to deepen the water at the mouth of Pascagoula River; which was read as follows, and referred to the Committee on Com-

A memorial to the Congress of the United States.

A memorial to the Congress of the United States.

Whereas there now exists a large and growing trade at the port of Pascagoula, in this State, in lumber, spars, and timber, there having cleared from that port, from the year 1872 to 1876 inclusive, five hundred and five vessels for ports in the United States, Europe, United Kingdom, Argentine Republic, Spanish, British, and French West Indies, of a total tonnage of 137,900 tons burden, carrying 120,000,000 feet of lumber, valued at about \$15,000,000, inclusive of a large amount shipped to New Orleans and other domestic ports within the Gulf of Mexico;

And whereas there are large forests of yellow-pine timber in the southern portion of this State capable of increasing the commerce of the country and the wealth of the State, and thereby the revenue of the same;

And whereas there are a number of streams running through those forests, to wit, Dog, Chickasaha, and Leaf Rivers, Black. Red, Bonie, Tallahala, and Boguehoma Creeks, and numerous other smaller streams, the combined length of which is over twelve hundred miles;

And whereas these streams all converge, forming the Pascagoula River, which river enters the Mississippi Sound at the port of Pascagoula;

And whereas there is a bar at the mouth of said river, which greatly impedes the commerce of the port of Pascagoula;

And whereas the deepening of the water at the mouth of said river would greatly increase the commerce of the port and the revenues of the State and of the United States;

And whereas an engineer of the General Government, appointed for the purpose, has made a survey of the work necessary to be done and estimated the cost of it: Therefore,

Be it resolved by the Legislature of the State of Mississippi, That our Senators in

Congress be instructed and our Representatives be requested to use all honorable means to secure an appropriation from the Government of the United States to deepen the water at the mouth of Pascagoula River, a work greatly desired and needed by the citizens of the State.

Resolved, second, That the secretary of state be instructed to forward certified copies of these resolutions to our Senators and Representatives in Congress.

Approved February 7, 1877.

OFFICE OF SECRETARY OF STATE

OFFICE OF SECRETARY OF STATE,

Jackson, Mississippi.

Jackson, Mississippi.

I, James Hill, secretary of state, do certify the memorial to the Congress of the United States hereto attached is a true and correct copy of the original now on file in this office.

Given under my hand, and the great seal of the State of Mississippi hereunto affixed, this 7th day of February, 1877.

[SEAL.]

JAMES HILL.

JAMES HILL, Secretary of State.

#### REMOVAL OF SIOUX INDIANS.

Mr. MORGAN, by unanimous consent, presented a concurrent resolution of the General Assembly of the State of Missouri, instructing her Senators and requesting her Representatives to oppose the removal of the Sioux Indians to the Indian Territory; which was referred to the Committee on Indian Affairs, and ordered to be printed in the RECORD. It is as follows:

STATE OF MISSOURI, 88

STATE OF MISSOURI, ss:

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of a concurrent resolution of the General Assembly of the State of Missouri, entitled, "Concurrent resolution instructing Senators and Members of Congress to prevent the romoval of Sioux Indians to the Indian Territory," approved February 9, 1817, as appears by comparing the same with the original roll of said resolution now on file, as the law directs, in this office. In testimony whereof I have hereunto set my hand and affixed my seal of office. Done at office, in the city of Jefferson, this 9th day of February, A. D. 1877.

MICH'L K. McGRATH,

Secretary of State.

Secretary of State.

Concurrent resolution instructing Senators and Members of Congress to prevent the removal of Sioux Indians to the Indian Territory.

the removal of Sioux Indians to the Indian Territory.

Whereas an attempt is being made by parties acting under some pretended authority from the Government of the United States to remove the savage tribes of Sioux Indians from their present location and to settle them in the Indian Territory, bordering on the States of Missouri, Kansas, Texas, and Arkansas;

And whereas by such removal and the location of said savage tribes in the said Indian Territory great injustice and injury would be done to the cause of civilization and to the trade and business of Saint Louis and Kansas City;

And whereas by locating the said wild tribes of Indians in the Territory a large area of the most fertile and productive lands of the Southwest would be permanently withdrawn from settlement or occupation by any useful class of citizens and converted into a haunt of marauders and outlaws, to the serious detriment and period the inhabitants upon our western borders:

Resolved by the house of representatives, the senate concurring therein,) That our Senators be instructed and our Representatives in Congress requested to use all their influence to prevent the removal of said tribes to the said Indian Territory, Resolved, That the secretary of state be requested to forward a copy of these resolutions to each of our Senators and Representatives in the Congress of the United States.

COUNTING ELECTORAL VOTE.

### COUNTING ELECTORAL VOTE.

Mr. PIERCE, by unanimous consent, presented resolutions of the Legislature of the State of Massachusetts, in relation to the counting of the electoral votes; which was referred to the Committee on the Judiciary, and ordered to be printed in the RECORD. It is as follows: COMMONWEALTH OF MASSACHUSETTS:

IN THE YEAR 1877.

Resolutions relating to the counting of the electoral votes.

1. Resolved, That the senate and house of representatives of Massachusetts hereby express their approval of the plan reported by the joint committee of the two Houses of Congress for the counting of the electoral votes for President and Vice-President of the United States.

2. Resolved, That it is desirable that an amendment to the Constitution should be proposed by Congress clearly prescribing the mode of counting the electoral votes, to the end that this nation may be under a government of laws and not of men.

Resolved, That his excellency the governor be requested to transmit a copy of these resolutions to each of our Senators and Representatives in Congress.

House of Representatives, January 25, 1877.

Passed. Sent up for concurrence.

GEO. A. MARDEN, Clerk.

Passed in concurrence, under suspension of rules.

SENATE, January 26, 1877.

S. N. GIFFORD, Clerk. SECRETARY'S DEPARTMENT, Boston, February 6, 1877.

A true copy. Witness the seal of the Commonwealth,
HENRY B. PEIRCE,
Secretary of the Commonwealth. The SPEAKER. The hour of twelve o'clock being at hand, a recess will now be taken, if there be no objection.

There was no objection, and a recess was accordingly taken until twelve o'clock m.

# PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BLAIR: The petition of E. Cabot Wilde and 25 others, for cheap telegraphy, to the Committee on Commerce.

By Mr. CASON: The petition of citizens of Indiana, of similar import, to the Committee on the Post-Office and Post-Roads.

By Mr. CATE: Memorial of the Chamber of Commerce of Milwan-kee Wisconsin for a treaty of reciprocity with Canada to the Com-

kes, Wisconsin, for a treaty of reciprocity with Canada, to the Committee on Commerce.

Also, memorial of the Legislature of Wisconsin, for an appropriation to aid in the completion of the Sturgeon Bay Ship-Canal and to extend the time for the completion thereof, to the same committee. By Mr. CHAPIN: The petition of G. W. Knowlton and 70 others, for the repeal of the bank-tax laws, to the Committee of Ways and Meene.

By Mr. DOBBINS: The petition of citizens of New Jersey, of sim-

By Mr. DOBBINS: The petition of citizens of New Jersey, of similar import, to the same committee.

By Mr. FINLEY: A paper relating to the establishment of a post-route from Micanopy to Ocala, Florida, via Orange Lake post-office and Milwood, to the Committee on the Post-Office and Post-Roads.

By Mr. HARRIS, of Massachusetts: Three petitions, signed respectively by N. D. Freeman and 22 other citizens of Provincetown, Massachusetts; Isaac Pratt, jr., and 11 other citizens of Boston; and of the Greenfield National Bank and Greenfield Savings Bank, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

Also, two petitions, one signed by John H. Davis and 17 others, the other by George W. Bailey and 43 others, of Scitnate, all citizens of Massachusetts, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

the other by George W. Bailey and 43 others, of Scitnate, all citizens of Massachusetts, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HENKLE: Memorial of the faculty of St. John's College, Annapolis, Maryland, for the repeal of the import duty on books, to the Committee of Ways and Means.

By Mr. JONES, of New Hampshire: The petition of citizens of Thornton's Ferry, New Hampshire, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. JONES, of Kentucky: The petition of J. B. Wilgus & Co. and other business men of Lexington, Kentucky, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. KASSON: The petition of S. H. Mallory and others, of Iowa, of similar import, to the same committee.

By Mr. KELLEY: Thirty-one protests from 1,101 citizens of Philadelphia, against the policy and justice of the bill introduced by Hon. JULIUS H. SEELYE providing for the free importation of books, periodicals, &c., and asking that the Committee of Ways and Means grant them a hearing in which to present reasons why said bill should not become a law, to the same committee.

By Mr. KIDDER: Papers relating to the establishment of postrontes from Yankton to Deadwood, and from Deadwood, Dakota Territory, via Tongue, Big Horn, and Stillwater Rivers, to Božeman, Montana Territory, to the Committee on the Post-Office and Post-Roads.

Also, memorial of the Legislature of Dakota Territory for the

Roads.

Also, memorial of the Legislature of Dakota Territory, for the grant of the right of way over the public domain to a railroad and telegraph line from Fort Abraham Lincoln to the Little Missouri

River, to the Committee on Public Lands.

Also, memorial of the Legislative Assembly of Dakota Territory, for the establishment of an additional land district in Northern Dakota

to the same committee.

Also, memorial of the Legislative Assembly of Dakota Territory, remonstrating against the establishment of a Territory out of the Black Hills, to the Committee on the Territories.

By Mr. KIMBALL: The petition of Oliver Peirce and 27 others, of

Wisconsin, for cheap telegraphy, to the Committee on the Post-Office

and Post-Roads.

Also, resolution of the Chamber of Commerce of Milwaukee, Wisconsin, for a treaty of reciprocity with Canada, to the Committee on Commerce.

Also, memorial of the Legislature of Wisconsin, for an appropria-tion to aid in the completion of Sturgeon Bay and Lake Michigan Ship-Canal and harbor, and to extend the time for the completion thereof, to the same committee.

By Mr. LORD: The petition of E. N. Horsford, for a renewal of a patent for a preparation of pulverulent phosphoric acid, to the Committee on Patents

By Mr. MAGOON: The petition of L. J. Weatherby and 33 other citizens of Wisconsin, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. O'NEILL: Remonstrance of the Pennsylvania Editorial Association against the passage of the bill for the free importation of

books, periodicals, engravings, &c., to the same committee.

By Mr. PHILLIPS, of Kausas: Three petitions from citizens of Kansas, for cheap telegraphy, to the Committee on the Post-Office and

Post-Roads.

By Mr. POTTER: The petition of Alexander B. Seeds and 42 citizens of Michigan, of similar import, to the same committee.

By Mr. SAMPSON: A paper relating to the establishment of a post-route from Moravia, via Milledgeville, to Griffinsville, Iowa, to the same committee.

By Mr. SMITH, of Georgia: The petition of John W. Avera and other citizens of Georgia, for cheap telegraphy, to the same commit-

By Mr. STENGER: The petition of citizens of Pottsville, Pennsylvania, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WAIT: Two petitions, one from Thomas L. Watson and 33 others, of Bridgeport, Connecticut, the other from R. P. Spencer and 60 others, of Middlesex County, Connecticut, of similar import, to the Committee on Banking and Currency.

Also, the petition of George A. Bowen and 26 other citizens of

Woodstock, Connecticut, for cheap telegraphy, to the Committee on

Woodstock, Connecticut, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WILLARD: The petition of W. H. Skinner and 36 other citizens of Michigan, for the repeal of the bank tax-laws, to the Committee of Ways and Means.

By Mr. A. S. WILLIAMS: Resolutions of the Board of Trade of Detroit, Michigan, favoring the repeal of the bankrupt law, to the Committee on the Judiciary.

### IN SENATE.

# WEDNESDAY, February 14, 1877-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Sen-

ate resumes its session.

Mr. CAMERON, of Wisconsin. I move that the Senate take a further recess until twelve o'clock.

The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock.

The Senate re-assembled at twelve o'clock m.
Prayer by the Chaplain, Rev. Byron Sunderland, D. D.
The PRESIDENT pro tempore. The Secretary will read the Jour-

nal of yesterday.

The Journal of the proceedings of Tuesday, February 13, was read and approved.

#### PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented the petition of Jesse Ward, praying compensation for property taken and appropriated by the United States forces during the late war; which was referred to the

Committee on Claims.

Mr. CAMERON, of Pennsylvania, presented a memorial of citizens, Mr. CAMERON, or rennsylvania, presented a memorial of citizens, manufacturers, merchants, ship-owners, &c., of the city of Philadelphia, remonstrating against the passage of the bill (H. R. No. 431) for the relief of the heirs of W. A. Graham; which was referred to the Committee on Patents.

Mr. BRUCE presented the memorial of the Legislature of the State of Mississippi, in favor of an appropriation by Congress to deepen the water at the mouth of the Pascagoula River; which was referred to the Committee on Commerce.

Mr. McMILLAN presented a resolution of the Legislature of Minnesota, in favor of an appropriation for the improvement of the navigation of the Red River of the North; which was referred to the Committee on Commerce.

He also presented a resolution of the Legislature of Minnesota, in favor of the passage of a law granting pensions to the surviving sol-diers of the Mexican War; which was referred to the Committee on

Mr. BOUTWELL presented the petition of E. N. Horsford, of Cambridge, Massachusetts, praying an extension of his patent of a pulverulent phosphoric acid; which was referred to the Committee on

Patents.

Mr. DENNIS presented the petition of Selmar Seibert, praying, an appropriation to pay the judgment of the Court of Claims in his case; which was referred to the Committee on Claims.

Mr. STEVENSON presented the petition of P. J. Quattlebaum, a

Mr. STEVENSON presented the petition of P. J. Quattlebaum, a citizen of Georgia, praying the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. CONKLING. I present the petition of Mrs. Mary Wilkes, praying, in consequence of the death of her husband, Admiral Wilkes, that she may be placed, as she is entitled, upon the pension-rolls. I move the reference of the petition to the Committee on Pensions.

The motion was agreed to.

Mr. CONKLING. I present also resolutions of the Board of Trade

Mr. CONKLING. I present also resolutions of the Board of Trade of Buffalo, New York, favoring the repeal of all taxes now levied on the deposits, circulation, and capital of banks. I move their reference to the Committee on Finance.

The motion was agreed to.

### REPORT ON CENTENNIAL EXHIBITION.

Mr. MORRILL. Yesterday morning the message of the President of the United States relating to the report of the board on behalf of the executive department at the international exhibition of 1876 was referred to the Committee on Public Buildings and Grounds. I ask that it may be referred to the Committee on Printing.

The PRESIDENT pro tempore. Is there objection to this change of reference? The Chair hears none, and it is so ordered.

### REPORTS OF COMMITTEES.

Mr. COCKRELL. The Committee on Claims, to whom was referred the bill (S. N. 1045) for the relief of George A. Eades, late collector of customs at Sitka, Alaska, have instructed me to report it adversely, and recommend that it be indefinitely postponed.

Mr. MITCHELL. I was not aware that that case was before the

Committee on Claims.

Mr. COCKRELL. Let the bill go on the Calendar with the adverse report, and the Senator can examine it.

Mr. MITCHELL. I ask that the bill be placed on the Calendar for the present, that I may look into it.

The PRESIDENT pro tempore. The bill will be placed on the Calendar with the adverse report of the committee.

Mr. COCKRELL. The Committee on Claims, to whom was referred the petition of F. G. Schwatka, praying compensation for damages alleged to have been sustained by him by his removal from and occupancy by the United States authorities of certain lands in Oregon and known as departing lands upon which he had settled Oregon, and known as donation lands, upon which he had settled, have instructed me to report adversely thereon.

Mr. MITCHELL. I ask that that report may go on the Calendar

The PRESIDENT pro tempore. The adverse report will be placed on the Calendar

on the Calendar.

Mr. COCKRELL. The bill (S. No. 1127) for the relief of J. B. Mc-Cullough, Mrs. L. S. Fountain, administratrix of James Fountain, and John Howzo, surviving partner of the firm of Howzo & Hendricks, was heretofore considered by the Committee on Claims. The Committee on Claims reported favorably upon the bill for the relief of J. B. McCullough and others, and now at the request of the claimants the committee report back to the Senate the petition of James Fountain and Hendricks, and to ask that the committee be discharged from the further consideration of the petition without prejudice to the claimants, the committee not having considered the claims, not having the evidence before them.

claimants, the committee not having considered the claims, not having the evidence before them.

The report was agreed to.

Mr. COCKRELL, from the Committee on Military Affairs, to whom was referred the petition of W. L. Foulk, late captain in the Tenth United States Cavalry, praying the passage of a law authorizing the President to re-appoint him to his former rank and position in the Army, submitted a report accompanied by a bill (S. No. 1250) for the relief of Willis L. Foulk.

The bill was read twice by its title and the report was ordered to

The bill was read twice by its title, and the report was ordered to

Mr. CAMERON, of Wisconsin. The Committee on Claims reported adversely on the 9th of February, 1876, upon the memorial of Alexander C. Crawford, of Galveston, Texas, praying compensation for the use and occupancy of his property by United States forces during the late war. Additional evidence was filed in the case and the claim was recommitted to the Committee on Claims. The claim has been again examined by the Committee on Claims, and I am instructed by that committee again to report adversely upon the claim.

The report was agreed to.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, to whom was referred the petition of Elizabeth Lucas, praying compensation for property taken and appropriated by United States troops during the late war, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the peti-

tion of Mary Lucas, praying compensation for property alleged to have been taken and appropriated by United States troops during the late war, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition.

Mr. ANTHONY, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 1024) for the relief of Henry M. Meade, late paymaster in the United States Navy, asked to be discharged from its further consideration, and that it be referred to the Committee on

further consideration, and that it be referred to the Committee on Claims; which was agreed to.

Mr. WRIGHT. On the 5th of the present month the Committee on Claims reported the bill (H. R. No. 492) for the relief of William G. Ford, of Tennessee, administrator of John G. Robinson, deceased. The Senator from Arkansas [Mr. Clayton] moved that the order of the Senate indefinitely postponing the bill, be reconsidered, and. as I understood at the time, the bill was to be placed on the Calendar. It seems, however, that the bill was recommitted to the committee. The committee have reconsidered the case upon that order, and report it back to the Senate adjacing to their former recommendation. I do back to the Senate, adhering to their former recommendation. not see the Senator from Arkansas in his seat at present, but I am satisfied his preference is that the bill shall be placed upon the Calendar. I therefore ask that the bill be placed on the Calendar, with the adverse report of the committee.

The PRESIDENT pro tempore. That order will be made, if there be

no objection.

Mr. WRIGHT. There was referred to the Committee on Claims the bill (S. No. 800) for the relief of Sarah P. Chisholm and Samuel P. Chisholm, which proposes to pay to these parties certain sums of money claimed to be due them as a balance in the Treasury for property sold under the direct-tax laws. This matter was referred to the Department, and their recommendation was that we should have a general bill upon the subject. Such bill having been introduced and referred to the Committee on the Judiciary, I am instructed by the Committee on Claims to report this bill back and ask to be discharged. from its further consideration, and that it be referred to the Committee on the Judiciary.

The report was agreed to.

Mr. WRIGHT also, from the Committee on Claims, to whom was referred the bill (S. No. 127) for the relief of John F. Porteus, of the

State of South Carolina, asked to be discharged from its further consideration, and that it be referred to the Committee on the Judiciary;

which was agreed to.

He also, from the same committee, to whom was referred the bill (S. No. 114) for the relief of Anthony Lawson and Thomas A. Brewis and their heirs, asked to be discharged from its further consideration, and that it be referred to the Committee on the Judiciary; which was

Mr. MORRILL, from the Committee on Public Buildings and Grounds, reported a bill (S. No. 1252) for the erection of a fire-proof building for the national museum; which was read by its title. Mr. MORRILL. Let the bill be read at length. It will take but

The PRESIDENT pro tempore. The bill will be read the second

time at length.

The Chief Clerk read the bill, as follows:

The Chief Clerk read the bill, as follows:

Be it enacted, &c., That for a fire-proof building for the use of the national museum, three hundred feet square, to be erected under the direction and supervision of the Regents of the Smithsonian Institution, in accordance with the plan of Major-General M. C. Meigs, now on file with the Joint Committee of Public Buildings and Grounds, on the southwest corner of the grounds of the Smithsonian Institution, the sum of \$250,000 is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said building to be placed westof the Smithsorian Institution, leaving a road-way between it and the latter of not less than thirty feet, with its north front on a line parallel with the north face of the buildings of the Agricultural Department and of the Smithsonian Institution, and all expenditures for the purposes herein mentioned, not including anything for architectural plans, shall be audited by the proper officers of the Treasury Department.

The PRESIDENT pro tempore. The bill will be placed on the Calendar.

Mr. OGLESBY. I am directed by the Committee on Public Lands, to whom was recommitted the bill (H. R. No. 2382) granting the right of way to the Hot Springs Railroad Company over the Hot Springs reservation in the State of Arkansas, to report it with an amendment in the nature of a substitute. I move that the bill be printed as amended, as it contains some important provisions and ought to be on the tables of Senators before Congress adjourns.

The motion was agreed to.

#### JOSEPH E. JOHNSTON.

Mr. CONKLING. I report from the Committee on the Judiciary the Mr. CONKLING. Treport from the Committee on the Judiciary the bill to remove the political disabilities of Joseph E. Johnston, of Virginia. This bill is reported upon the application of the person concerned. A Senator whom I see present [Mr. Johnston] feels a natural and special interest in this case. I imagine there is no objection to it, and if it be the pleasure of the Senate I ask that action may be taken now. The bill is in the customary form and falls within the value which the Senate always observes and power refuses in such taken now. The bill is in the customary form and falls within the rule which the Senate always observes and never refuses in such cases, I believe.

The bill (S. No. 1251) to remove the political disabilities of Joseph E. Johnston, of Virginia, was read twice by its title, and considered as in Committee of the Whole.

The bill was reported to the Senate, ordered to be engrossed for a third reading, read the third time, and passed, two-thirds of the Senators present voting in favor thereof.

### DISTRIBUTION OF MEXICAN AWARDS.

Mr. CONKLING. I am also instructed by the Committee on the Judiciary, to whom was referred the bill (8. No. 1168) to provide for the distribution of the awards made in the convention between the

the distribution of the awards made in the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868, to report it back without amendment. The House has passed a similar bill, which I believe is on the table. The PRESIDENT pro tempore. The bill from the House was referred to the Committee on the Judiciary, the Chair is informed.

Mr. CONKLING. It should not have been so referred, as the committee has considered the subject and as it is the Senate bill in totidem verbis. I move now, if I may have consent, to reconsider the vote referring the House bill to the Committee on the Judiciary in order to bring it back

order to bring it back.

The PRESIDENT pro tempore. Is there objection to the reconsideration? The Chair hears none, and the bill is before the Senate.

Mr. CONKLING. Having reported then the Senate bill, which is in the same terms, I ask, if there be no objection, to take up the House bill. I think there can be no objection in regard to it.

The PRESIDENT pro tempore. The bill will be read for informa-

The Chief Clerk read the bill (H. R. No. 4629) to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. SPENCER. I should like to have the bill go over that we may remain it. I have received a collection for the property of Alabama.

examine it. I have received a telegram from a citizen of Alabama containing an allegation against the justice of awards made by the

Mr. CONKLING. May I inquire how often has the House bill been

The PRESIDENT pro tempore. Twice.

The PRESIDENT pro tempore. Twice.

Mr. CONKLING. The Senator behind me says he has a telegram

Mr. conkling. from a constituent referring to some allegation of fraud touching

some of these awards. In the face of such an allegation as that it would be hazardous for any Senator to insist upon expediting legis-lation; and moreover a single objection probably would carry the bill over. I remind the Senator from Alabama, however, and the Senate, that this bill was introduced on the 22d of January; it was referred to a committee; it has been before the committee ever since; it has been considered with some care; it is reported back, and reported in been considered with some care; it is reported back, and reported in pursuance of a recommendation of some length and particularity which lies on the table, coming from the Secretary of State. I do not know the date of the telegram to which the Senator refers; but I observe that this matter having been pending for some time in the House, and having been pending in the Senate since the 22d of January, considering how near this session is to its close, it behooves every sender of a telegram and every other person possessing information not to tarry so long that the grass may grow under his feet. I will not object to the bill going over; but I hope that the Senator from Alabama will apprise his correspondent that any objection he wishes to make should be made presently, because delay will be as fatal and as good an objection. I think it is not known to the Committee on Foreign Relations or to the Committee on the Judiciary mittee on Foreign Relations or to the Committee on the Judiciary that any room for an allegation of fraud can be found in the case. Nevertheless the allegation is made; and for one I do not wish to take the hazard of concluding a possible opportunity to make allegations against the bill.

Mr. CAMERON, of Pennsylvania. It is hardly worth while to attempt to ask the passage of the bill after an objection has been made, because it will lie over at any rate; but as the Senator from New York has very properly stated, this bill has been before the Judiciary Committee for a long while and was fully investigated. It passed not only unanimously in the committee of the House, but it passed the House of Representatives without a dissenting vote. It is very important. The Secretary of State writes me that the bill should be passed very soon to enable them to carry out the provisions of the law. I ask the Clerk to read the letter of the Secretary of State which explains it perhaps better than I can.

The PRESIDENT pro tempore. The Secretary will read the communications.

The Chief Clerk read as follows:

WASHINGTON, February 12, 1877.

WASHINGTON, February 12, 1877.

MY DEAR SENATOR: The bill to provide for the distribution of the money received from Mexico under the claims convention has passed the House, as I understand, unanimously.

I shall be very much obliged to you if you can have it passed by the Senate without delay and without any amendment to make necessary its return to the House, I am anxious to have the direction of Congress as to the disposition of the money which was paid punctually on the very day prescribed therefor by the treaty.

With great respect, I am very truly yours,

HAMILTON FISH.

Hon. SIMON CAMERON, Chairman of the Committee on Foreign Relations.

Mr. COCKRELL. As I understand, the Senator from New York called up the bill which has already passed the House.

Mr. CONKLING. This is the very bill.

The PRESIDENT pro tempore. The House bill has been read to the

Senate.

Mr. CONKLING. It has been read twice.

Mr. COCKRELL. I hope the bill will be considered. I trust that there will be no objection to the consideration of it. It is the bill reported by the Secretary of State.

Mr. CONKLING. It is the bill recommended by the Secretary of

Mr. CONKLING. It is the bill recommended by the Secretary of State, the bill introduced into the Senate by the Senator from Pennsylvania, [Mr. CAMERON,] the bill considered by the Committee on the Judiciary and reported by that committee to the Senate, and is in the same words as the bill doubtless proceeding from the State Department passed by the House. Therefore the House bill has been taken up and not the other. It has been read twice, but the Senator from Alabama says that a constituent of his telegraphs him that he has an allegation to make against the bill of a nature which the Senate has heard suggested.

ate has heard suggested.

Mr. EDMUNDS. What is the nature of it?

Mr. CONKLING. That there is a fraud in one of the awards.

Mr. SPENCER. I know nothing about this matter personally. A constituent of mine, a resident of Mobile, and a most honorable gen-

tleman, telegraphs me under date of February 10:

Have bill for award for Mexican commission passed House referred to appropriate committee of Senate. I have positive proof of fraud.

As he is on his way here and I have received a letter from him stating that he will be here in a day or two, for that reason I objected to the bill passing this morning. I know nothing about it. I suppose a single objection carries it over.

Mr. KELLY Mr. President—

Mr. COCKRELL. I yielded the floor only a moment.

Mr. KELLY. I believe the bill goes over.

The PRESIDENT pro tempore. Does the Chair understand the Senator from Alabama to object?

Mr. SPENCER. I do.

The PRESIDENT pro tempore. Then the bill will be placed on the Calendar.

PROOF IN HOMESTEAD ENTRIES.

Mr. KELLY. I am instructed by the Committee on Public Lands, to whom was referred the bill (S. No. 1225) to amend section 2291 of

the Revised Statutes of the United States, in relation to proof required in homestead entries, to report it without amendment. I will ask that it be put on its passage, for the reason that a bill exactly like this has passed both Houses.

Mr. EDMUNDS. I think the bill had better go over one day.

The PRESIDENT pro tempore. The Senator from Vermont objects, and the bill will be placed on the Calendar.

Mr. KELLY. I am satisfied the Senator from Vermont will withdraw his objection when I make a very brief statement. This very bill, with one additional section, passed both Houses of Congress during the last session of this Congress. It was returned by the President with his objections, and very properly, on account of a section which I shall read:

Said proofs, affidavits, and oaths shall be properly filed in the land office by the

That objectionable section, which caused the veto, required proofs to That objectionable section, which caused the veto, required proofs to be kept in the local land office, which of course was exceedingly objectionable, as it would revolutionize the whole system of proofs in writing. This bill, as I said, is the same bill with that objectionable clause left out. I would sustain the President's veto, that is, I would vote against the passage of the bill if it were put on its passage in the form in which the bill was sent to the President; but the bill is absolutely required for the purpose of making proofs where people live very remote from the land office. It was introduced by a member of the House of Representatives from the State of Iowa, and he is very anxious on account of the great distance his constituents have to travel to have this bill passed, and so are they anxious for the passage of the bill in every State and Territory in the Union where persons have to travel sometimes over two hundred miles to make proof. I am certain, if the bill is read, that no one can have any reasonable objection to its consideration at the present time.

objection to its consideration at the present time.

Mr. EDMUNDS. I have great respect for the State of Iowa, and for all its members of Congress, so far as I know of it; but I do not know what that has to do with the question of considering this bill. This, it appears, is a part of a bill that has once been satisfactorily vetoed by the President of the United States, and for aught I know there is another section in it that he would have to veto again. I of course have no reason to suppose so from what my friend from Oregon says; I believe it will turn out to be perfectly correct, but in these measures touching public lands, which it seems we are in the habit of hurrying through, and thereby running against obstacles which we admit ourselves are good ones, I think it is better the bill

which we admit ourselves are good ones, I think it is better the bill should lie over again until everybody may see it.

Mr. KELLY. Very good.

Mr. EDMUNDS. I have not the least doubt that in the end the bill will turn out to be perfectly correct.

Mr. KELLY. I ask that the bill be placed on the Calendar.

The PRESIDENT pro tempore. Objection being made, the bill will be placed upon the Calendar.

# PENSIONS TO WOUNDED SOLDIERS.

Mr. INGALLS. In the early part of the present session the Senate passed a bill increasing the pension of soldiers who have lost both an arm and a foot from the present rate of \$24 to \$37 per month. The bill went to the House of Representatives, and was there amended so as to provide that soldiers who were under that physical disability should be entitled to a pension for each of their disabilities at the rate provided by existing laws for those disabilities. The effect of the provision of the House is simply to reduce the amount allowed by the Senate from \$37 to \$36 per month. The bill, with the amendment of the House, was referred to the Committee on Pensions, and I am instructed by that committee to report the bill back to the Senate, with the recommendation that, inasmuch as the difference is so in with the recommendation that, inasmuch as the difference is so insignificant, and as there are but sixteen persons upon the pension-rolls who would be affected by it, it is better that the Senate should concur in the amendment of the House. I therefore move that the Senate concur in the amendment of the House to the bill just re-

ported.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 234) to allow a pension of \$37 per month to soldiers who have lost both an arm and a leg.

The amendment of the House of Representatives was to strike out all after the enacting clause of the bill, and in lieu thereof to insert the following:

That all persons who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand and one foot, or been totally and permanently disabled in both, shall be entitled to a pension for each of such disabilities, and at each a rate as is provided for by the provisions of the existing laws for such disability: Provided, That this act shall not be so construed as to reduce pensions in any case.

The amendment was concurred in.

### BILLS INTRODUCED.

Mr. BARNUM asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1253) to provide for the payment of outstanding certificates of the late board of audit of the District of Columbia and the settlement of certain claims against said District; which was read twice by its title, and referred to the Committee on the District

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1254) to authorize the President to appoint Dr.

Thomas Owens an assistant surgeon in the Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. DAWES asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1255) for the relief of Henry Voelter; which

was read twice by its title.

Mr. DAWES. I have been requested to introduce this bill, and accompanying it there is a memorial. I move that the bill be referred to the Committee on Patents, and that the memorial be referred to that committee without being printed.

The motion was agreed to.

Mr. DORSEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1256) amendatory of and supplementary to the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, and the act supplementary thereto, approved May 2, 1872, and the act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Ocean," approved July 27, 1866; which was read twice by if a title, and referred proved July 27, 1866; which was read twice by its title, and referred to the Committee on Railroads.

Mr. CHAFFEE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1257) to authorize the United States to se-cure a title to the Fort Union military and timber reservation in New Mexico; which was read twice by its title, and referred to the Com-

mittee on Military Affairs.

#### REPORTS ON FISH AND FISHERIES.

The PRESIDENT pro tempore laid before the Senate the report of Spencer F. Baird, United States commissioner of fish and fisheries, for the years 1875 and 1876, in compliance with the order of Congress; which was ordered to lie on the table and be printed.

Mr. ANTHONY submitted the following; which was referred to the Committee on Printing:

Resolved by the Senate, (the House of Representatives concurring.) That there be printed 5,000 extra copies of the Report of the Commissioner of Fish and Fisheries for the years 1875 and 1876; of which 1,500 shall be for the use of the Senate, 2,500 for the use of the House of Representatives, and 1,000 for the use of the commissioner on fish and fisheries.

Mr. ANTHONY submitted the following resolution; which was referred to the Committee on Printing:

Resolved by the Senate, (the House of Representatives concurring.) That there be printed 5.050 extra copies of the Report of the Commissioner of Fish and Fisheries for the year 1877; of which 1,500 shall be for the use of the Senate, 2,500 for the use House of Representatives, and 1,000 for the use of the commissioner of fish and

### EULOGIES ON THE LATE SENATOR CAPERTON.

Mr. HEREFORD submitted the following resolution; which was referred to the Committee on Printing:

Resolved by the Senate, (the House of Representatines concurring.) That 12,000 copies of the eulogies delivered in the two Houses of Congress upon the late Allen T. Caperton, late United States Senator from West Virginia, be printed: 4,000 for the use of the Senate, 8,000 for the use of the House of Representatives; and that the Secretary of the Treasury have printed the portrait of Mr. Caperton to accompany

## AMENDMENT TO AN APPROPRIATION BILL.

Mr. BOGY submitted an amendment intended to be proposed by him to the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes; which was referred to the Committee on Appropriations, and ordered to be printed.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had agreed to the resolution of the Senate providing that during the session of the electoral commission each day when legislative business shall have been transacted shall, by each House when in session, be considered a day for legislative purposes, and that the Journals of the two Houses shall be so kept and dated.

The message also appeared that the Transacted shall are purposed to the two Houses shall be so kept and dated.

The message also announced that the House insisted upon its disagreement to the amendments of the Senate to the bill (H. R. No. 4188) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1878, and for other purposes, it agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. Eugene Hale of Maine, Mr. O. R. Singleton of Mississippi, and Mr. Hiester Clymer of Pennsylvania, managers at the same on its part.

The message further announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4257) to amend an act entitled "An act to authorize

A bill (H. R. No. 4237) to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugns and Allegany reservations and to confirm existing leases," approved February 19, 1875; and
A bill (H. R. No. 4576) to provide for changing and fixing the boundaries of certain property ceded to the Government of the United

States by the city of Memphis, Tennessee.

### ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

A bill (S. No. 1139) to change the time of holding the October term of the United States district court for the district of Nebraska; and A bill (S. No. 1141) to encourage and promote telegraphic communication between America and Europe.

ISRAEL YOUNT.

Mr. CAMERON, of Pennsylvania. I move that the Senate proceed to the consideration of the bill (S. No. 481) for the relief of Israel Yount. It is to pay a small sum of money to a person to whom it will do a great deal of good. It can take but a moment to pass it.

The motion was agreed to; and the Senate, as in Committee of the

Whole, proceeded to consider the bill.

The bill was reported from the Committee on Claims with an amendment to strike out the preamble and all after the enacting clause and insert in lieu thereof the following:

That the Secretary of the Treasury be, and he is hereby, authorized, out of any money in the Treasury not otherwise appropriated, to pay to Israel Yount, of Gettysburgh, Pennsylvania, the sum of \$1,200, in full compensation for the use of his hotel in Gettysburgh, Pennsylvania, for our wounded soldiers, and the use of the property therein by United States troops, as a hospital, in the year 1863.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

DISTRICT TAX BILL.

Mr. SPENCER. There is a bill of pressing importance which I wish to have considered. I move that the Senate proceed to the consideration of the bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purpo

The PRESIDENT pro tempore. Is there objection to the motion? Mr. SPENCER. It is the tax bill of the District of Columbia. Mr. MERRIMON. So I understand, but we cannot get through

with it in the morning hour.

Mr. SPENCER. It can be read and the Senator from Louisiana Mr. WEST] will yield to us to finish it at the expiration of the morning

Mr. WEST. The Senator from Iowa [Mr. WRIGHT] is the man to

whom the Senator must appeal.

Mr. WRIGHT. I am very certain that the bill which the Senator from Alabama moves cannot be disposed of in the morning hour, and at one o'clock I shall be compelled to call for the regular order.

Mr. SPENCER. I desire to give notice that I shall continue to call up this bill every day until I can have it acted upon.

NEW EDITION OF REVISED STATUTES.

Mr. CHRISTIANCY. I move to proceed to the consideration of the bill (S. No. 1216) to provide for the preparation and publication of a new edition of the Revised Statutes of the United States. It is important that it should be taken up at as early a time as possible and disposed of.

The PRESIDENT pro tempore. Is there objection to the motion?

Mr. MERRIMON. That will probably give rise to discussion and consume the whole morning hour.

Mr. CHRISTIANCY. I think it will take but a few minutes.
Mr. MERRIMON. I wish to have the proposed amendment to the
twenty-seventh rule considered in the morning hour.

The PRESIDENT pro tempore. Does the Senator from North Car-

Mr. MERRIMON. I do not like to object to the motion of the

Senator from Michigan.

Senator from Michigan.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the President of the United States to appoint, by and with the advice and consent of the Senate, one person, learned in the law, as a commissioner, for the purpose of preparing and publishing a new edition of the first volume of the Revised Statutes of the United States, and the commissioner shall receive, as full compensation for all services required to be performed by him, the sum of \$5,000.

Mr. CHRISTIANCY. An amendment has been suggested since the

bill was printed which meets with the concurrence of the Committee on the Revision of the Laws, and which I shall therefore propose. I move to amend by adding after the words "Constitution of the United States," in the fifth line of the third section, the words "with foot-notes referring to decisions in the Federal courts thereon;" so

as to read:

That there shall also be included in said edition the Articles of Confederation, the Declaration of our National Independence, the ordinance of 1787 for the government of the Northwestern Territory, the Constitution of the United States, with foot-notes referring to the decisions of the Federal courts thereon, the act to provide for the revision and consolidation of the statute laws of the United States, approved June 27, 1866, &c.

The amendment was agreed to.

Mr. CHRISTIANCY. In section 4, line 9, after the word "cause," I move to insert the words "15,000 copies of;" so as to read:

That said new edition shall be completed in manuscript by said commissioner by the 1st day of January, A. D. 1873, and by him presented to the Secretary of State for his examination and approval, who is hereby required to examine and compare the same, as amended, with all the amendatory acts, and, within one month after having been submitted to him, shall, if the same shall be correct, certify to the correctness of the revision as amended, and cause 15,000 copies of the

same to be printed and bound at the Government Printing Office, under the supervision of said commissioner, at the expense of the United States, and without un necessary delay.

The amendment was agreed to.

Mr. MAXEY. I move at the end of section 2 to add the words "and he shall revise the indexes and incorporate therein references to the additions herein required;" so as to read:

But which, in the opinion of said commissioner, may in any manner affect or modify any of the provisions of the said Revised Statutes, or any of the amendments thereto, indicating in such marginal notes by a difference in type the references to statutes of this kind; and he shall revise the indexes and incorporate therein references to the additions herein required.

Mr. CHRISTIANCY. I think that a very proper amendment. I hope it will be adopted.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### RIVER AND HARBOR BILLS.

Mr. MERRIMON. I gave notice on yesterday that I would endeavor to call up to-day the proposed amendment reported from the Committee on Rules yesterday to Rule 27. I move now that the proposed amendment be considered.

The motion was agreed to.

Mr. MERRIMON. I ask the Clerk to read Rule 27, to which the amendment is proposed, as the amendment will apply to that rule, if adopted

The Chief Clerk read as follows:

27. All general appropriation bills shall be referred to the Committee on Appropriations, except bills making appropriations for rivers and harbors, which shall be referred to the Committee on Commerce; and no amendment shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law, or treaty stipulation, or resolution previously passed by the Senate during that session, or unless the same be moved by direction of a standing or select committee of the Senate, or proposed in pursuance of an estimate of the head of some one of the Departments.

The PRESIDENT pro tempore. The amendment reported from the Committee on Rules will be read.

The Chief Clerk read as follows:

Amend Rule 27 by adding at the end thereof the following:
; and all bills providing appropriations for the improvement of rivers and harbors,
and all amendments thereto, shall be referred by the Committee on Commerce to
the Secretary of War, who shall make inquiry and report upon the extent, expediency of, and necessity for the proposed improvements; and such report shall be
made a part of the report of the committee to the Senate.

Mr. CONKLING. I inquire of the Senator whether the intention

Mr. CONKLING. I inquire of the Senator whether the intention is, after a bill has come to the Committee on Commerce and the committee is apprised of the instances in which appropriations are proposed, the committee shall then refer to the Secretary of War?

Mr. MERRIMON. That is the purpose; the real purpose being to gather information as to the merit of a great many amendments that we find almost uniformly put into the river and harbor bill for improvements that are utterly useless, whereby the Government sustains great loss at every session of Congress.

Mr. SARGENT. I should like to ask the Senator if he intends to include amendments offered in pursuance of estimates made by a De-

include amendments offered in pursuance of estimates made by a De-

partment?

Mr. MERRIMON. It is to embrace the river and harbor bill and all proposed amendments thereto. If estimates have been already made, the inquiries have already been made, and it would give the Secretary of War very little trouble to refer to them and state the merit of the proposed amendment; but as a great many amendments are offered when there has been no inquiry at all about the proposed improvement or its extent or cost, the Committee on Rules are of opinion that such an amendment of the rule would go a long way toward cutting off the pernicious practice that we have all observed in the passage of river and harbor bills.

Mr. SARGENT. The river and harbor bill will not probably pass the House to reach us until the last week of the session.

Mr. CONKLING. It has passed and is here.

Mr. SARGENT. The river and harbor bill does not often pass the House until the last week of the session. I was not aware that it had passed this year. I notice that a bill was proposed in the House extremely sectional in its character, making very liberal appropriaextremely sections in its character, making very neeral appropria-tions for some States in the Union and entirely excluding others, and most others. A bill of that kind reaching us in the last week of the session, as it often does, would require, if an amendment were moved in the Senate, to go to the Secretary of War. It might be reported back during the week and it might not. If it was a subject of any difficulty or any hostility on the part of the Department there would be no report upon it and we would have to take the bill, no matter how partial in its operation, as it came from the House, or have none at all. I am opposed to this amendment for that reason. If exceptions were made, however, in favor of amendments which have already been reported to the Congress, where the items have been considered by the War Department favorably, it would remove much of the

objection.

The PRESIDENT pro tempore. The morning hour has expired.

Mr. MERRIMON. The object is to let the Secretary of War—

The PRESIDENT pro tempore. The morning hour has expired, and it becomes the duty of the Chair to lay before the Senate Senate bill No. 984, being the unfinished business, after which the Chair can entertain a motion to postpone the regular order.

Mr. MERRIMON. I trust that we will proceed with the considera-

tion of this matter.

Mr. WRIGHT. If the consideration can be continued subject to a call for the regular order and concluded in a short time, I shall have no objection; but if it is to take any time, we may as well proceed with the regular order.

The PRESIDENT pro tempore. Is there objection to continuing the consideration of the amendment reported from the Committee on Rules subject to a call for the regular order?

Mr. SARGENT. I object.

The PRESIDENT pro tempore. The Senator from California ob-

Mr. MERRIMON. I shall call the subject up again to-morrow.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had agreed to the report of the committee of conference on the bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas.

The message also announced that the House had passed a bill (H. R. No. 4301) for the relief of A. W. Plymale, of West Virginia; in which it requested the concurrence of the Senate.

#### ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

A bill (H. R. No. 3741) amending an act incorporating the proprie-

tors of Glenwood Cemetery; and

A bill (H. R. No. 4556) to remove the political disabilities of Reuben Davis, of Mississippi.

PACIFIC PAILROAD ACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Governthe Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of the said first-named act, the pending question being on the amendment of Mr. Bourwell, in the third section, line 2, of the substitute reported from the Committee on Railroads, to strike out the words "in lieu of" and insert "in addition to," and to strike out the word "however" in the proviso in line 5, so as to read:

That the payments so to be made by said companies shall be in addition to all payments or other requirements from said companies under said act and the amendments thereto, in relation to the re-imbursement to the Government of the bonds so issued to said corporations: Provided, That until the claims of the Government for said bonds and interest are fully paid, &c.

Mr. BOUTWELL. I wish to make a single suggestion which will occupy but a moment. As I understand from the chairman of the committee who has this bill in charge, the bill is to be a matter of compromise, and it is doubtful whether the company will accept the amendment which I have offered. I withdraw the motion for the amendment which I have observed. I withdraw the motion for the present, reserving to myself, of course, the right to vote against the bill, as the friends of the measure would not accept the amendment.

Mr. BOOTH. Do I understand the Senator from Massachusetts to withdraw the amendment.

The PRESIDENT pro tempore. He has withdrawn it.

Mr. BOOTH. I re-offer it.

The PRESIDENT pro tempore. The Senator from California offers the same amendment, and it is still pending.

Mr. BOOTH. I give notice of an amendment which I propose to section 2. I move to strike out all after the word "that" in the first line of section 2 and insert:

line of section 2 and insert:

The said Central Pacific Railroad Company and the said Union Pacific Railroad Company shall each pay into the Treasury of the United States the sum of \$750,000 per annum in equal semi-annual installments on the 1st day of April and October in each year, commencing on the 1st day of October, 1877, in lawful money, until said sums, with interest thereon as hereinafter provided, shall be sufficient when added to the other sums to the credit of said sinking fund to pay off and extinguish the Government bonds at maturity, advanced as aforesaid, with 6 per cent. interest thereon, from their respective dates up to the date when they are so paid and extinguished as aforesaid. Interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually at the rate of 6 per cent. per annum: Provided, hovever, That if the foregoing provision shall prove insufficient to extinguish the Government bonds and interest thereon at maturity as aforesaid, the semi-annual payments shall be increased to such a sum as shall be sufficient for that purpose.

The PRESIDENT pro tempore. The amendment will be reserved. Mr. BOOTH. I shall further move to amend the bill by striking out section 5 of the substitute and inserting:

That Congress may at any time alter, amend, or repeal this act.

The PRESIDENT pro tempore. The Senator from California also

gives notice of this amendment.

Mr. BOOTH. Mr. President, I rise to speak upon this bill, after the long and exhaustive discussion which has been had, with very considerable reluctance, and I should not speak at all if I could give

my full consent to allow some of the statements which have been

my full consent to allow some of the statements which have been made during this discussion to pass unchallenged.

Under and by virtue of the acts of 1862 and 1864, the Central Pacific and the Union Pacific Railroad Companies received from the Government of the United States a large grant of lands and a loan of the credit of the Government, the principal of which amounts to something more than \$54,000,000. The interest already paid out by the Government, and not repaid by those railroad companies, is about \$20,000,000, making a total indebtedness now due from them to the Government of about \$74,000,000. This advance, this loan of credit, was made upon the express condition as interpreted by the Supreme was made upon the express condition, as interpreted by the Supreme Court, that it should be repaid, principal and interest, at the maturity of the bonds. These companies are now in the receipt of net earnings of something more than \$1,000,000 per month. The Government is annually paying out upon those bonds something more than \$3,000,000 per annum. It has become perfectly evident, too evident for denial, that unless a sinking fund is provided to meet this indebtedness at maturity, the whole security of the Government will fail and the whole sum will be lost.

Upon this state of facts the whole subject was referred to the Committee on the Judiciary. That committee gave it careful attention, they gave it long consideration. It is an able committee. Finally it reported a bill which embodied the theory that it was the duty of these two companies to begin now to provide a sinking fund sufficient to pay this indebtedness at its maturity. That was the scope of the bill, and when it came to the Senate it came with apparent unanimity. The right of Congress to enact such a law is fortified by a long line of precedents, as was ably shown by the Senator from Ohio [Mr. Thurman] and the Senator from Michigan, [Mr. Christiancy,] whose arguments have not been answered, because they cannot be answered.

This bill, so just in all its provisions, in the absence of the chairman of the committee who drew the bill, in the necessary absence of the able Senator who reported it, has been denounced as a violation of the plighted faith of the Government, as a violation of the ten commandments and of a dictum of the supreme court of Massachusetts. It has been held up to the derision of this body day after day, and the language of vitapperation has almost been exhausted in day, and the language of vituperation has almost been exhausted in its abuse. It offends the tender conscience of the Senator from Louiits abuse. It offends the tender conscience of the Senator from Louisiana and the Senator from Massachusetts, [Mr. DAWES.] It has been assumed that there is abroad in this land a spirit of persecution against these companies, a spirit that prevents them from obtaining even-handed justice from the representatives of this people; and it is said that this is a mere exhibition of jealousy engendered by great success, of that envy which resents superior fortune as a personal affront. This constant assumption of superior virtue, this iteration of reproof, has become stale, flat, wearisome, and offensive. I take leave to say that the American people are a generous people, a liberal people, more willing to suffer injustice than to do injustice; and I take leave to add that they are an honest people and that their common take leave to add that they are an honest people and that their common sentiment of honesty was shocked and outraged by the revelation that their large bounty, their munificent gifts were made the opportunity, the means, and the instrument of fraud and corruption full-

blown; and that, when the American people shall not be shocked by a revelation of this kind, corruption will have done its perfect work. The Senator from New York [Mr. CONKLING] admonishes us of the danger that legislative bodies may be betrayed into doing an act of injustice in dealing with corporations which are unpopular. I do not know which most to admire, the learning of the Senator, his eloquence, his ingenuity, or that heroic spirit of self-immolation with which he is willing to stand between a persecuting people and the innocent objects of their wrath. I beg leave to intimate that if we are sometimes in danger of yielding, upon the one hand, too much to the people for the sake of popularity, we are also in danger of magnifying our office until we are prone to believe that allegiance is due from the resolutions of the property of the p from the people to us, not from us to them. We may even reach such an exalted state of self-conciousness as to imagine that we move the springs of human action. The fly upon the chariot-wheel once made a similar mistake. I am unwilling by implication, by giving a silent vote, to be placed in the category of those who follow the hue and cry; who pander to prejudice for the sake of popularity, or who exact from the weak what they would not demand from the

strong.

These companies are not weak. If any one supposes they are, let him attack them in the citadels of their strength. They have but one rule of policy—first, employ all means to convince; failing in that, all means to crush! Since I have had the honor to have a seat that, all means to crush! upon this floor, when any question touching a conflict between them and the people has been under consideration, their agents, attorneys, and lobbyists have swarmed in our corridors; they have blocked the way to our committee-rooms, and have set spies upon our actions. To-day they would occupy these vacant chairs but for the timely or-der of the President of the Senate to double-guard our doors.

The Senator from Massachusetts [Mr. BOUTWELL] in the first speech which he made on this bill said that he would have no difficulty with the provisions of the bill touching the duties imposed upon the railroads if Congress had power to enact them. He seemed to proceed upon the assumption that because there was some limit to the power of Congress to alter, amend, or repeal we must not stir for fear of transcending that limit; that we have no power to do an act of justice because the power may be abused. All legislative power may be abused by error of judgment as well as by disposition to oppress. If it be assumed that government will willfully abuse its power all governments should be abolished, and we should remand ourselves into that primitive state of barbarism which Rousseau dreamed was the condition of happiness.

In order to show that there was a limitation upon the power to alter, amend, or repeal, the Senator from Massachusetts quoted a dictum from the supreme court of the State he represents. He informed us that in the case of a charter granted by the Legislature of Massachusetts to a company to build a dam the Legislature afterward required the company to construct a fish-way. The supreme court of Massachusetts decided that the Legislature had that power, but the Senator told us that the supreme court said in the decision that if the original act had contained words to the effect that the company need not do this thing their decision would have been different. The luminousness of this application is only equaled, in my judgment, by the opinion delivered by the celebrated Judge Bunsby, as reported in Dickens's Dombey and Son, page 331:

"If so be," returned Bunsby, with unusual promptitude, "as he's dead, my opinion is he won't come back no more. If so be as he's alive, my opinion is he will. Do I say he will! No. Why not! Because the bearings of this observation lays in the application on it."

Afterward, however, in further discussion of this case, the Senator told us that this was not a dictum, although the Supreme Court attempted to give construction to words that were not in the statute. He said the pleadings raised that question. How the pleadings could raise such a question is one of the mysteries of the law known to the initiated no doubt, but a puzzle to laymen. In the further consideration of the case, however, the Senator said that when the right was given to this company to construct a dam, there were certain riparian rights which they were bound to protect, and that the Legislature held that the construction of this fish-way was necessary to protect those rights. Grants have been made to these railroads on condition that they shall be repaid. Congress decides that this condition will absolutely fail unless a sinking fund is provided. Do not the cases then go upon all fours? "A Daniel come to judgment."

Further, in order to show that there was a very dangerous limitation that hedged in our footsteps on this question, the Senator said:

tion that hedged in our footsteps on this question, the Senator said: "Suppose the first section of forty miles had been completed and the railroad companies were then entitled to their bonds upon an examination of the road, would Congress have the power then and there to repeal the act?" Then the Senator worked himself into a state of to repeal the act 1" Then the Senator worked himself into a state of eloquent indignation, as though that were the very proposition in this bill. Don Quixote achieved a reputation for chivalrous courage by attacking a wind-mill. It has been reserved for the distinguished Senator from Massachusetts to build a wind-mill for the purpose of attacking it. What would have been that case ? A willful violation by the Government of a contract made after part performance by the party of the other part. What is the case presented here now ? A willful violation by the party of the other part, and legislation asked is to compel them to fulfill their contract.

The Senator says that the act of 1862 and the act of 1864 must be

The Senator says that the act of 1862 and the act of 1864 must be construed together; that the one is amendatory of the other. No one construed together; that the one is amendatory of the other. No one doubts that. The power to alter, amend, or repeal is much broader in the act of 1864 than in the act of 1862. It has been pertinently asked which words govern in law, the first words or the last? What was the consideration upon which this power to alter, amend, or repeal was so broadened? Did the railroad companies take nothing additional by the act of 1864? It doubled their land grant; it increased the time in which they might build the road; it gave them one-half of the pay for all Government business; and more than all it released the first mortgage of the Government and took a second mortgage.

Mr. MORRILL, And released the 25 per cent reserve.

Mr. MORRILL. And released the 25 per cent. reserve.

Mr. BOOTH. And released the 25 per cent. reserve.

Mr. BOOTH. And released the 25 per cent. reserve. They took all these; they took what the Government was willing to give with lavish hands; they have enjoyed it all, and now they come in and endeavor to repudiate the whole condition upon which these additional

deavor to repudiate the whole condition upon which these additional bounties were made. I am sometimes tempted to ask myself the question, what did these words "alter, amend, or repeal" mean in this connection. If they do not give us the power to enforce the contract originally made by necessary legislation, they are the most idle, vain, and nugatory words that ever were ingrafted upon a statute. If they do not mean that, the only meaning I can possibly attribute to them is that the railroad companies may "alter, amend, or repeal," and then I may ask where the sovereignty of this people is represented.

The Dartmouth College case has cut quite a figure in this discussion, and although it is dangerous for a layman to lay irreverent hands upon the law I know that it is the feeling of this people, and I believe it is the feeling of the bench and of the profession, that the Dartmouth College case carried the construction of law to the very verge of logic in favor of corporations. That decision was made at a time when there was a feeling in this country that there was danger from the agrarian tendency of the people; that vested rights would not be secure from popular assault. Time has dissipated that delusion. There is no country under heaven where vested rights are more secure and better protected than in this Republic. They are so highly respected that hoary wrongs borrow their sanction and inmore secure and better protected than in this Republic. They are so highly respected that hoary wrongs borrow their sanction and intrench themselves in their privileges. It was because it was felt in part that the doctrine laid down in that decision was harsh, that ever

since, State constitutions and statutes have constantly reserved the power to alter, amend, and repeal. Apart from that general considera-tion was there any special reason why there should be such a clause in an act like this?

Let us recur for one moment to the circumstances of the case. the time this grant was made the cost of the construction of this great work was entirely unknown. It was problematic. Nobody could estimate it or guess it. Congress might well say, "We will give with unsparing hand; there shall be no stint upon our bounty; if you cannot construct the road we are ready to give more; and if after you construct it it shall prove to be unprofitable, we will not exact the conditions; we are giving with an imperial munificence that is unparalleled in the history of a free government; we are giving what belongs not to us but to the people; we are acting as trustees and we reserve the right to alter or amend this act so as to compel you to comply with the conditions if you are able to do so; and you take this munificent grant subject to that condition; you are dealing with a sovereign; justice is one of the attributes of sovereignty and you must trust to our sense of justice." They did. Justice is one of the attributes of sovereignty; and it is time now that we should show that to the people of this country.

The Senator from New York [Mr. Conkling] finds the bill reported from the Judiciary Committee harsh, oppressive, almost vindictive. Is it so harsh, is it so unjust, to say that these companies which have been enriched by our bounty must comply with the condition upon which those bounties were given, now that they are abundantly able to do it? If that be harsh and oppressive, in the name of Heaven tall market is interned from the proper of the propersive, in the rand of Heaven tall market is interned for the propersive, in the rand of Heaven tall market is interned for the propersive, in the rand of Heaven tall market is interned for the propersive, in the rand of Heaven tall market is interned for the propersive, in the rand of Heaven tall market is interned for the propersive. the time this grant was made the cost of the construction of this great

to do it? If that be harsh and oppressive, in the name of Heaven tell me what is just and fair. The Senator further said that this bill of the Judiciary Committee could only be justified upon the assumption that these companies had persistently and flagrantly violated their contract with the Government; and he cites three instances where it has been charged that the companies have been in default, in which he argues that they have not.

First, in regard to the payment of interest which he said is not due until the principal of the bonds is due. The Supreme Court has passed upon that question and nobody proposes to revive it. The only preposition in the bill of the Judiciary Committee is that they shall provide a sinking fund to meet that liability when the act says it is due.

Second, that there is a difference of opinion between the Government and the railroads as to the time of completion. Such differences of opinion will always arise when there is a conflict of interest. The railroad companies commenced doing through business in 1869. They had the capacity to do all the business then that they have ever had since. In their opinion the road was then completed sufficiently to get the bonds of the United States, but not at all sufficiently completed to commence paying 5 per cent. of the net earnings into the Treasury of

Then we have a disquisition upon what is meant by the net earnings of a railroad company; and I beg to suggest that the honorable Senator seemed to my mind to confuse the ideas as to what are the net profits to the owners of a railroad and what are the net earnings

Senator seemed to my mind to confuse the ideas as to what are the net profits to the owners of a railroad and what are the net earnings of the railroad itself. The earnings of a railroad are the earnings of capital, and so far as determining what net earnings are it is not a matter of the slightest consequence whether the owners pay in their own money or somebody else's money.

But, Mr. President, behind all these technical fulfillments or technical violation there lies a broad fact, that from the time these railroad companies commenced construction, from the very time they realized the fact that large profits could be made out of the construction of their roads, they have steadily and persistently pursued the policy to defeat the security of this Government. Not a contract has been made, not a tie has been laid, not a rail has been placed, not a spike has been driven, without the intention, almost avowed, of absorbing all the gifts of this Government for the purposes of personal profit and plunder. Just how much has been realized by this system of men sitting down at their own desks and making contracts with themselves, just how much profit they have dared give to themselves by that kind of manipulation, will never be known. We have some little evidence, however. There was an investigation in regard to the manner in which the eastern end of this great highway was constructed, and it is a chapter of shame in our national history. So far as the other end is concerned, that is, the Central Pacific, there happened to be a few stockholders who had honestly paid the amount of their subscription, and believing, in the innocence of their confiding bearts that the directors who owned almost the entire franchies. their subscription, and believing, in the innocence of their confiding hearts, that the directors, who owned almost the entire franchises, had no right to make money for themselves out of their trust, they brought suit for a share of their profits, and rather than go into court and have that page of history unfolded, the Central Pacific directors paid to each of these suing stockholders \$5.17 for every dollar that had been paid.

The Senator from Louisiana [Mr. West] especially objects to our taking the report of the Central Pacific Railroad Company as to the amount of its net earnings and assures us that that sum is swelled by the earnings of two roads, the San Joaquin Valley, I believe, and the California and Oregon, which belong to the same company, and have been swallowed up in the same corporate name. It would be easy for the company in making its report to segregate these accounts, but we have no intelligible data. I beg leave to inform the Senator from Louisiana that if the statement is made that these two lines of which he speaks, these four hundred miles of tributary branch road,

have contributed in any material degree to the profits of the Central Pacific, it will strike the California public with amazement and incredulity, and contradict every statement made by the railroad companies themselves before committees of the Legislature and before tax-assessors. These branch railroads have been built out of the profits of the construction and operation of the Central Pacific, a con-trolling interest in the California Pacific has been absorbed in the same manner; five or six hundred miles of the Southern Pacific have same manner; nive or six interest miles of the Southern Pacific have been built out of the same profits; and these profits have given this company the control of every important line of communication in California, and all this is not enough.

I shall proceed now, Mr. President, briefly to consider some provisions of Senate bill No. 1134, the bill as it came to us reported by the Railroad Committee. I will read, in order to refresh the recollection of Senators, the second section of that bill:

That the said Central Pacific Railroad Company and the said Union Pacific Railroad Company shall cach pay into the Treasury of the United States the sum of \$750.000 per annum, in equal semi-annual installments, on the 1st day of April and October in each year, commencing on the 1st day of October, 1877, either in lawful money or in any bonds or securities of the United States Government, apr, until such sums shall, with interest thereon as hereinafter provided, be sufficient, when added to the other sums to the credit of said sinking funds, to pay off and extinguish the Government bonds advanced as aforesaid, with 6 per cent. Interest thereon from their respective dates up to the date when they are so paid and extinguished as aforesaid. Interest on all sums placed to the credit of the sinking funds shall be credited and added thereto semi-annually at the rate of 6 per cent. per annum: Provided, however, That if the foregoing provisions shall prove insufficient to extinguish the Government bonds and interest thereon as aforesaid by the 1st day of October, in the year 1912, the semi-annual payments shall be increased to such a sum as will be sufficient for that purpose.

In any work to a question put, by the Sanator from Michigan [Mr.

In answer to a question put by the Senator from Michigan [Mr. Christiancy] I understood the Senator from Louisiana to say that no addition would be required to this \$750,000 in order to accomplish this result.

Mr. WEST. Then the Senator did not understand me correctly,

Mr. President.
Mr. BOOTH. I will be corrected. I repeat that I so understood it, Mr. BOOTH. I will be corrected. I repeat that I so understood it, and I will give my recollection of what the Senator said. The Senator from Michigan asked the Senator from Louisiana if that was a sum which could be computed to a certainty by a process of arithmetic why not put it in the bill, and I understood the Senator from Michigan further to say that be thought some additional sum would be necessary, and the Senator from Louisiana said, perhaps without rising, that he did not suppose any additional sum would be necessary. I assume that the question has already been worked out. I know that it has been already worked out. I know that the sum has first been fixed upon, and then finally the time determined by the operation of compound interest in which that result will be achieved. It is patent upon the bill.

It is patent upon the bill.

Let us look now at the problem which is presented, and let us see how it is to be worked out. I take one company for illustration, simply because it is more convenient. The Government of the United States is paying out annually to the Central Pacific Railroad Company an interest something more than a million and a half dollars per annum. The railroad company proposes to pay into the Treasury of the United States \$750,000 per annum, and the problem for us to solve is how the \$750,000 can not only pay the million and a half that this Government is paying out, but also extinguish the principal upon which that interest is paid. That looks like necromancy, but it is only arithmetic. Let us see what these sums will amount to. Here is an extension of credit for twelve years. The Government will continue to pay out this million and a half dollars for thirty-six years. How much does that make? Something more than \$50,000,000; \$54,000,000 I take it. In addition to that, it will pay \$27,000,000 for principal. In thirty-six years, at \$750,000 per annum, the Government will receive from this railroad company three-quarters of \$35,000,000, that is, \$27,000,000. Double that and you have the loss which this bill entails upon the Government of the United States. My friend [Mr. Bailey] reminds me what I had forgotten, that there is due from these companies already \$20,000,000 of unpaid interest, and that is to be added to double the pany an interest something more than a million and a half dollars \$20,000,000 of unpaid interest, and that is to be added to double the sum t at I stated. That is what the bill of the Railroad Committee means in arithmetic: the Government shall pay \$128,000,000 for these companies.

But there is another section of the bill of the Railroad Committee, section 5, printed in italics, which I shall read:

SEC. 5. That each of said companies shall be entitled at any time to anticipate any or all of the semi-annual payments provided for in section 2 of this act, by the payment to the Government of the then present value of such semi-annual payments, discounted at the rate of 6 per cent. per annum; but the sum so paid shall not be less than \$1,000,000 at any one time.

What is meant in this section by the payment "of the then present value of such semi-annual payments, discounted at the rate of 6 per cent. per annum?" Suppose this bill should pass, what amount could the Central Pacific Railroad Company pay into the Treasury of the United States and at once discharge the \$37,000,000 which is now due from that company to the Government, to say nothing of

the interest which is to be paid hereafter?

I confess that actuaries may differ exactly as to the best way of ascertaining the "then present cash value" as mentioned in the fifth section. I have taken occasion to have the amount worked out so section. I have taken occasion to have the amount worked out so far as I could by very eminent authority upon two or three different

hypotheses as to the meaning of the words "the then present cash value" as used in this section. One theory is that you should first learn what would be the amount of all these installments with simple interest thereon up to the time when they are to be met and then ascertain the sum which put out now at compound interest would ascertain the sain which put out now at compound interest would make that amount; and very respectable authority contends that is the proper construction of the section. If that be the construction, they could pay their entire debt by paying into the United States Treasury \$6,893,000.50. There is another method, (and I am bound to say that I think on the whole it is the true interpretation of the section, and when I say that I wish to add that the moment this bill shall be enacted we shall have the first construction placed upon the section, and eminent gentlemen on this floor will contend that we are depriving the companies of a vested right in not allowing them to discharge five dollars with one;) the other theory is that you should ascertain the present cash value of each of these installments, add them totain the present cash value of each of these installments, add them together, and the result should be the present cash value which they would be anthorized to pay. That is the most favorable construction of any that can be devised and would yield the largest sum. Upon that calculation that company could discharge its indebtedness by paying into the United States Treasury \$10,957,260, a little more than one dollar in four. I have a table here, such as is used in banking-houses and brokers' offices, recognized as authority everywhere, and from that table I learn that the present cash value of \$1 to be paid thirty-six years hence discounted semi-annually at 6 per cent, is 11 90 thirty-six years hence discounted semi-annually at 6 per cent. is 11 90 cents. Under the operation of this bill eleven cents and ninety one-hundredths at the end of thirty-six years would pay off a dollar of the present indebtedness. That is the theory of the bill.

The Senator from Massachusetts said this bill would extinguish the indebtedness without the Covernment leaves without the

indebtedness without the Government losing a cent! You could pay one dollar into the Treasury of the United States and leave it there at compound interest long enough to pay off the whole debt; but the United States could not be any richer for it doing that. It would be paying by computation, just as you might set up Babbager's calculating machine to work and let that work out the whole result. We have seen marvelous statements of the growth of money at compound interest; but in this bill that machinery is to be reversed and this vast volume of debt is to shrink and vanish by the reverse process of compound discount. The whole of the \$74,000,000 which these two companies owe the Government, under the most favorable construction of that bill, could be discharged to-morrow by the payment of \$24,000,000, leaving a profit to the company of more than \$50,000,000. "There are millions in it." That is the argument for the passage of the substitute. It is an argument which cannot be answered.

The manner in which the bill from the Judiciary Committee has

been denounced and characterized gives me a right to describe the bill of the Railroad Committee. The bill of the Railroad Committee is a bill to take more than \$50,000,000 from the houest industry of this country and transfer it to the coffers of two corporations. of this country and transfer it to the coffers of two corporations. The bill is an attempt to make us particeps criminis in the fraud that the men who hang around our doors would perpetrate. Pass this bill, but change its enacting clause and let it read: Be it enacted by the Central Pacific and Union Pacific Railroad Companies, and then do not send it for approval to the President of the United States; for he represents the sovereignty of this people. Send it for approval to the presidents of the companies. Yet that is scarcely necessary. It is the coin and mintage of their brain. It was approved in advance.

Mr. WEST. I should like to ask a question of the Senator from

It is the coin and mintage of their brain. It was approved in advance. Mr. WEST. I should like to ask a question of the Senator from California, not that I have any intention of replying to his speechjust now, but for the purpose of illustrating a proposition with which he closed his remarks. The Senator very wisely and very properly stated that there might be differences of opinion between actuaries as to the actual value of a dollar; but I will take his own authority and I will ask him if this money were paid into the Treasury of the United States, the amount that he states, using his own calculation, and the Government of the United States should see proper to done that Government of the United States should see proper to loan that amount, as it can be loaned upon its bonds, at 6 per cent. compound interest, would not the realization of that sum at the term specified amount to the total indebtedness of the company?

amount to the total indebtedness of the company?

Mr. BOOTH. Does the Senator wish an answer now?

Mr. WEST. Yes, sir.

Mr. BOOTH. I will answer the Senator with great pleasure. I do not know that I should object to a sinking fund which would meet these bonds at their maturity. I think it would be a very hard proposition for the Government; but I think I should be willing to assent to thet assent to that.

The hidden sophistry of this bill is that whereas we have to pay principal and interest in 1900 we allow compound interest to these railroad companies until 1912, and if the statement be a fair one, you railroad companies until 1912, and if the statement be a fair one, you might just as well postpone the time twelve years more, and in place of paying \$750,000 per annum pay \$375,000, and I am obliged to the Senator for calling me to my feet. Under the law as it now stands these railroads are compelled to pay into the Treasury of the United States 5 per cent. upon their net earnings and one-half the cost of the business of the Government is to be applied upon the interest as Pacific Railroad Company to the Government on account of the 5 per cent. \$400,000. The average amount due from the company to the Government for half transportation is \$175,000. That makes \$575,000 of money which the Government was entitled to receive.

The business of these companies will increase. The business of the Government over the roads will increase. Long before this time expires those two sums will amount to more than \$750,000, and then the proposition of the bill is what? To pay us our own money, and then have us simply sit down and, with a slate and pencil, figure our interest upon it as though we were getting paid. That is the way this debt is to be liquidated. We are to get our own money and then by a sum on the blackboard, which does not give us a cent, we are to figure out the interest and acknowledge that we are paid. It is computation not receipt, and may be worked out as well with counters as putation, not receipt, and may be worked out as well with counters as with money

Mr. HARVEY. Mr. President-

Mr. WEST. If my friend from Kansas will permit me one moment I should like to have an opportunity of reviewing some of the statements that have been made by the Senator from California.

Mr. HARVEY. Very well.

Mr. WEST. I asked the Senator from California a question with respect to the last statement that he had made when he ended his rerespect to the last statement that he had made when he ended his remarks on the preceding occasion, and I do not see that he has replied to the question at all. Now, I wish also to call attention to another concluding remark of his, and that is, that the business of the Government upon these roads is actually increasing.

Mr. BOOTH. I did not quite say that. I spoke of the operation of the roads for the Government, and the idea I had was that there

might be an increase; for instance, in time of war there would be a

wonderful increase.

Mr. WEST. That the Senate may understand this matter thoroughly let me quote from some official documents that are at hand. quote from Executive Document No. 25 of the last session. the Union Pacific Railroad I find that the Army transportation done upon that road since the year 1868 is: In 1868, \$969,000; in 1869, \$478,000; in 1870, \$557,000; in 1871, \$812,000; in 1872, \$399,000; in 1873, \$445,000; in 1874, \$306,000; showing a gradual and continuing diminishment of the extent of the business done by the Government of the United States with these roads. Furthermore, I think we can assume with some degree of confidence that, as time shall roll along and we shall be able to adjust and handle and master the Indian complications on our frontier, the business which will be done by the Government upon these roads will be gradually diminished on behalf of the United States. That was a very important consideration to the Committee on Railroads in considering the amounts likely to be due from these companies to the Government. Furthermore, by a bill of the last session, the post-office appropriation bill, instead of increasing the compensation of these railroads, you cut them down 30 per cent.; so that the Government charges both for mails and Army transportation have been greatly diminished. But, says the Senator, the amount will be augmented by this 5 per cent. upon the net earnings. O, there, Mr. President, is the rock upon which we all stand in danger of splitting. Let me ask the Senator's attention and the attention of the Senate to one paragraph in the original act of 1862, and let each man put his own definition upon it.

SEC. 18. That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road.

There must be some expenditure outside of the inclusive clause most assuredly. Had it been intended otherwise, unquestionably Congress would have said:

After deducting all expenditures for the repairs and the furnishing, running, and managing of said road.

But it says after deducting certain expenditures, making the whole in the aggregate, but inclusive of these items of expenditure. There is a definition by Congress itself that the net earnings are intended to include some other expenditures besides those of running, managing, and operating the road, and were that not all-sufficient of itself, here is another definition put by solemn act of Congress upon what constitutes the actual net earnings of these roads. Take the act approved March 3, 1873, being a section of the act making appropriations for the legislative, executive, and judicial expenses of the Government, and you will find this language:

No dividend shall hereafter be made by said company but from the actual net earnings thereof; and no new stock shall be issued or mortgages or pledges made on the property or future carnings of the company without leave of Congress.

Now let me ask whether the phrase "no new stock shall be issued or mortgages" implied that all existing mortgages, of course both for principal and interest, are a charge upon the earnings of the company, and that no new mortgages or pledges shall be made having such a lien upon the future earnings. It seems to be a provision prohibiting the company from enlarging its interest-bearing debt in order that the actual net earnings may result in something to be realized by the Government by 5 per cent. thereon. I ask and I have asked continually in this discussion for some authoritative definition of what 5 per cent. of the net earnings means. The Senator from Ohio [Mr. Sherman] who last spoke in regard to this bill said that he had seen a decision somewhere, but he gives neither volume nor page, and we are left to infer that in his opinion 5 per cent. on the net earnings means 5 per cent. after deducting the operating expenses. Surely the Senator from Ohio will pardon me if I in this case will scarcely consider him more orthodox as to a question of law than I did on another oc-

casion. When the question of this interest was before the Senate the Senator from Ohio laid down another legal proposition. He said:

As a legal proposition. I have no doubt that the United States have the right to enforce against these railroad companies the payment of all the interest that accrues upon our guarantee bonds. It is a mere question of discretion in the United States. The guarantee of the United States is a secondary liability. The first liability is by the railroad company, and if the United States have been compelled to pay interest on these bonds, in my judgment the United States can at any time enforce its rights under the act of 1864, and compel the railroad companies to pay the interest on the bonds. I have no doubt of it. \* \* \* Indeed I have never had any doubt about the right of the United States to make these railroad companies, if they are able, pay every dollar of interest on the bonds we guaranteed to them as it accrues.

He laid down the law here that it was perfectly competent for the United States to command from these companies that they should pay the interest as it accrued. The case was submitted to the Supreme Court, and with what result we all know. So again when he dogmatically lays down the law for us in this case, we may be permitted to doubt whether his perceptions are any clearer now than they were then. It is because of that very fact, the question being already remitted to the courts of the United States and we awaiting their adjudication, that we should hesitate to take any action either one way or the other to construe what may be their determination, because, even while this debate is going on, we see by telegraph from San Francisco that-

The trial of the case of The United States vs. The Central Pacific Railroad Company, to recover 5 per cent. of the net earnings of the road from the time of completion of the road, July 16, 1869, to October 31, 1874, commenced in the United States circuit court to-day. The amount involved is \$1,836,635.

If the decision in that case is made in the way that it is anticipated by the railway companies, we will be left with barely \$250,000 per annum to come from these companies on their earnings of 5 per cent. Suppose we are left there, what assurance can we have that these companies will not so complicate their expenditures as to make it impossible to distinguish earnings from expenditures? It is in view of all these difficulties staring us in the face in connection with legislation and adjudication on these subjects that the Railroad Committee have brought forward a bill which in their judgment will enable the Government of the United States to be repaid at the time specified by the outlay, but the Judiciary Committee grants compound interest or whatever amount may be put to their credit outside of the amount due to them by law.

I will not reply to the strictures of the Senator from California on

these companies. I know nothing about them. He is more familiar with them and their action, but according to the law, in 1893 unless you prove yourself adequate to deal with the subject, \$125,000,000 of the money of the United States will be sunk irrecoverably; and it is against that contingency and against that loss we have striven to

bring the Senate to such action as will prevent it.

Mr. HARVEY. I desire to offer an amendment to the bill.

The PRESIDING OFFICER, (Mr. McCreery in the chair.) There

is an amendment pending now.

Mr. HARVEY. I will offer it now and it can be considered when it will be reached in order. I move to insert after section 6 of the substitute reported from the Committee on Railroads what I send to

The PRESIDING OFFICER. The proposed amendment will be reported.

The Chief Clerk read as follows:

The Chief Clerk read as follows:

That no provision contained in either the act entitled "An act to aid in the construction of a railroad and telegraph from the Miss-uri River to the Pacific Ocean, and to secure to the Government the use of the same for postal and military purposes," approved July 1, 1862, or the act amendatory thereto, approved July 2, 1864, or in any act of Congress granting lands in aid of the construction of any railroad or wagon-road, shall be so construed as to exempt from taxation by State authority lands which any of the companies in said acts mentioned, or its successors, shall have earned by the construction of its road or parts thereof: Provided, That such road or parts thereof shall have been first accepted by the United States in the manner in said acts prescribed; and taxes assessed e ther before, or as may be assessed after the passage of this act, upon lands carned by said companies, or their successors, or any of them, shall be valid as against any claim or title of the United States in or to such lands.

SEC. —. That if any company entitled to said lands or parts thereof, as aforesaid, shall fail to pay the costs of surveying and selecting the same, or the land officer's fees where such payment is required by any of said acts, the purchaser of any of said lands at tax sale may pay such costs and fees due upon the lands by him purchased to the proper officer; and thereupon letters-patent shall issue to such company conveying said lands to it, but subject to the legal rights and title of such tax-sale purchaser: Provided, That nothing in this act contained shall be construed as enlarging any grant of lands heretofore made to any of said companies.

Mr. HARVEY. Mr. President, the object aimed at in this amendment is a very worthy one indeed; it is to equalize the public burden of taxation by making it bear equally upon the lands of citizens and corporations, or rather, more precisely speaking, natural-born persons and corporations. Hitherto this has not been possible in some of the States for the following reasons: To secure railway connection with the Pacific coast Congress granted to several corporations lands greater in extent than some of the States of this Union, besides the other aid extended: and these companies proceeded to defraud the greater in extent than some of the States of this Union, besides the other aid extended; and these companies proceeded to defraud the States within which their grants lie of the taxes due them, and it is done in this way: the law requires that the companies shall pay the costs of surveying, selecting, and conveying the lands granted; but to avoid the payment of taxes the companies neglect to pay the costs required, thus holding the land in such a condition that even though so held for years for purposes of speculation, they cannot be taxed, for the reason that the Supreme Court has decided upon appeal and upon the plea of the companies that while the cost of surveying, selecting, and conveying remains unpaid, the Government holds such an interest in the land that it cannot permit it to be sold for taxes, because the interest of the Government in the costs yet due from the because the interest of the Government in the costs yet due from the company might be lost, and the same rule applies to such lands when the companies have sold or mortgaged them without paying those costs, thus not only wronging the States by avoiding the payment of taxes on the lands they yet hold, but enabling their vendees to further escape the payment of taxes upon the value of improvements made by them upon the lands, making such immunity an inducement to purchasers to pay a high price for the lands, thus banking, as it were, upon the benefits of a legal subterfuge and perpetrating a great outgree upon the States and local numicinal organizations as well as rage upon the States and local municipal organizations, as well as

upon all property-holders who pay their taxes honestly and promptly.

It will be readily conceded that a State, in return for the protection afforded, has the right to raise the necessary revenue by levying an equitable rate of taxation upon all the property within its boundaries not legally exempted, and surely no one will contend that it was ever the intention of the law-making power that such lands should be exempted from taxation after the time that the companies should be entitled to a conveyance upon the payment of the costs of surveying, &c., for if so they could be held indefinitely free from taxation, in palpable derogation of the rights of the States. In point of fact they are now largely so held either by the companies or their vendees,

are now largely so held either by the companies or their vendees, the vendees in some cases being other corporations formed for the purpose of speculation in these lands, and shamelessly vaunting the exemption from taxation attainded by this evasion of the spirit of the law, and violation of the plainest principles of equity.

The liability to have the lands of the grants not disposed of by the companies within three years after the final completion of the road sold to actual settlers at \$1.25 per acre, and the money paid to the company, is avoided by selling all the land worth more than \$1.25 to a few persons and corporations holding peculiar relations to the grantees, and through their connivance by the neglect to pay the costs of surveying &c., escaping taxation and preventing the settlement and veying &c., escaping taxation and preventing the settlement and improvement of the country; the grantees at the same time pleading the hability to pre-emption before spoken of as an additional reason

for exemption from taxation.

This persistent wronging of the General Government and the States and the nature of the pleas made to the courts makes these corpora-tions appear much like the man who murdered his father and mother and then expressed the hope that the court would not order the execution of a poor orphan. Corporations to be sure cannot be executed or sent to the penitentiary, yet to prevent them from becoming extortioners or tyrants they must be controlled and made subject to law. The manner in which these companies and their vendees use the General Government as an accomplice in cheating the States out of the moneys due to them as taxes is very much like the New Yorker used his brother Jacob to cheat his creditors. I will tell you how they

A New Yorker, while journeying the other day, was recognized by another citizen doing business near the Bowery, he being also away from home on business, and after a little preliminary conversation the first remarked:

"Well, I hear that you had to make an assignment."

"Yes, dat is drew," replied the other.

"And your brother over on Chatham street, he assigned too, didn't he?"

"You zee it was just like dis," said the Bowery man. "I was owing a good deal. I makes over my stock to Jacob and Jacob makes over his stock to me, and I do his peesness and he does my peesness, and dem vellers vhat was after money doan get some!"

The company does business for the Government and the Govern-

The company does business for the Government and the Government does business for the company, and the State tax-gatherer when he goes after money "doan get some."

It may be suggested that without legislation time will bring a remedy. "Lay not that flattering unction to your souls." To ordinary creatures, natural persons, mortal as we are, the flight of time brings death and taxes with a certainty that is proverbial. We live in fear of the one and groan under the periodical infliction of the other; but artificial persons, whose organizations contemplate no dissolution and whose landed estate pays no tribute to the public coffers, can look with complacency upon "Time, the tomb-builder," knowing that his course but tends to strengthen the power of aggregated capital, and hoping that associated knavery, when Credit Mobilier is no longer possible, may still be subserved and the rights of the people, of individual settlers, and of the States may still be ignored or overridden. Like children are said to cry for a favorite patent medicine, these corporations cry for time. Why? Because they expect to transmute fragments of eternity into material wealth. How? you ask. Have they found the philosopher's stone? Not exactly; but a generous Government advanced to them many millions of bonds and interest thereon. They fight in the courts for the longest time for the repayment of that interest to the Government, and succeed in getting a decision that the interest is not payable until the maturity of the bonds. Meantime they cast about for an easy way to pay this great debt and make a proposition new only in its peculiar application.

Allison's History of Europe tells us that Mr. Pitt, more than one hundred years ago, knowing the prodigions powers of accumulation of money at compound interest, and that Dr. Price had demonstrated with mathematical certainty that any sum, however small, increasing

in that ratio, would in a given time extinguish any debt, however great, and that it was shown that a penny laid out at compound interest at the birth of our Saviour would in the year 1775 have amounted to a solid mass of gold eighteen hundred times the whole weight of the globe—so that British statesman proposed that a million pounds sterling should be granted yearly by Parliament, to be vested in commissioners; that the payments should be made to them quarterly; and that the whole sums thus drawn should be by them invested in the purchase of stocks to stand in the name of the commissioners, the dividends on which ware to be periodically applied to the further dividends on which were to be periodically applied to the further purchase of stock to stand and have its dividends invested in the same manner, that is, in the purchase of national stocks from individuals, and invested in the public trustees, called the sinking-fund commissioners. Says the historian:

The powers of compound interest were thus brought round from the side of the creditor to that of the debtor, from the fund-holders to the nation; and the national debt was eaten in upon by an accumulating fund, which, increasing in a geometrical progression, would to a certainty, at no distant period, effect its total extinction.

And so it would have done could the sinking fund have been kept intact; but that is a hard thing to do, and in the case cited it was not done. But let us examine this sinking-fund proposition made by these railroad companies. After the absorption of an imperial gift in lands and becoming indebted to the Government many millions of dollars

and becoming indebted to the Government many millions of dollars for bonds advanced and interest paid, they make this proposition for the liquidation of the debt and redemption of the mortgages.

It will be seen that Mr. Pitt's proposition differed from the one before the Senate in that this one proposes, instead of giving the nation and the people the benefit of compound interest, to give it to corporations, to associations of men banded together for a speculative purpose, for the benefit of their private fortunes.

A cool suggestion on their part certainly. Being neither more nor less than a proposal to pay an insignificant sum into the Treasury and then to lay hold of the law of difference between arithmetical progression and geometrical progression, causing the interest upon their debt to the Government to advance by simple addition and upon their payments by multiplication, thus making time the principal material of payment from the company to the Government. Surely such a company can have the cheek to express a willingness to "negotiate at any time with the propor representatives of the Government," and remind the chairman of the Committee on the Judiciary that—

Meantime it is entirely certain that the United States as a second-mortgage creditor of the company is, more than any other person or corporation, vitally interested in protecting the company and maintaining its credit and financial standing.

Does any one doubt longer in view of all these facts the statement of a former Attorney-General speaking of such acts?

This is but a continuation of the Credit Mobilier iniquity, by which large sums of public money were transferred from the people and put into the hands of these stockholders, out of which some of them were able to make vast fortunes.

In view of the history of these companies and their transactions with the United States and the different States, as well as the people generally, perhaps we ought to regard it as modest in them that their proposition implies that the computation of compound interest on their sinking fund and of simple interest on the Government mortgage should cease at such time as the sums may become equal. No principle of equity would demand that such a system of computations if once adopted should cease at that particular juncture. The money already had and used by them was no more desirable than that which will still be in the Treasury at that period; and having then had profitable knowledge of the truth of the adage that "time is money," they will wish to keep the fierce spirit of the glass and scythe still in their service.

The evidence of this disposition on their part is constantly cumulative. I have cited their pertinacity in resisting the payment of their obligations to the General Government, and we see the same policy adopted by them toward the States, resisting as long as possible any legislation of the character proposed in this amendment, then invoking the aid of their old friend Time once more, "Time, my lord, bears a wallet at his back, in which he places alms for oblivion." They ask you to grant years more of time before the States can collect any of the tayes which accure on these lands bereafter and oblivion of the maker. taxes which accrue on these lands hereafter and oblivion of the rights of the States to collect those already accrued. Do you call this maintaining the rights of the States? I call it gross wrong and outrage upon them and a leniency toward powerful corporations, such as indi-

upon them and a leniency toward powerful corporations, such as individual property-holders never dare hope for.

It is a wrong against the theory of our Government, against the theory of every civilized government. Taxation is the vital power of States, a necessary evil for which there is no remedy in civilized communities, though Sancho Panza said there was a remedy for everything but death. He had evidently forgotten that taxes are equally without remedy, and equally certain the only alleviation possible is to rest the burden equally upon all property of individuals and corporations alike, and provide the most efficient means of collection. This, in the end, is mercy as well as justice to all. To show the Senate that railway companies, however averse to having their property taxed, yet exercise the power of taxation at will monthe transerty taxed, yet exercise the power of taxation at will upon the transportation of persons and property, I will quote from the report of the Senate committee upon transportation:

In the matter of taxation there are to-day four men representing the four great trunk lines between Chicago and New York who possess and not unfrequently exercise powers which the Congress of the United States would not venture to exert. They may at any time, and for any reason satisfactory to themselves, by a single

stroke of the pen, reduce the value of property in this country by hundreds of millions of dollars. An additional charge of five cents per bushel on the transportation of cereals would have been equivalent to a tax of \$45,000,000 on the crop of 1873. No Congress would dare to exercise so vast a power except upon a necessity of the most imperative nature; and yet these gentlemen exercise it whenever it suits their supreme will and pleasure without explanation or apology. With the rapid and inevitable progress of combination and consolidation those colossal organizations are daily becoming stronger and more imperious.

This, remember, is not the unmeasured railing of prejudice; it is the conclusion reached by one of the most important committees of this Senate, and the facts warrant the conclusion.

Why, Mr. President, no longer ago than last night we saw in the press dispatches the following:

PREIGHT RATES FROM THE WEST-IMPORTANT ACTION OF THE CONFERENCE AT CHICAGO.

NEW YORK, February 13.

A Chicago dispatch says a very important meeting of general freight agents of the trunk railroads was held there yesterday. There were representatives present from the Baltimore and Ohio, Michigan Central, Pittsburgh and Fort Wayne, Pittsburgh. Cincinnati and Saint Louis, and the Grand Trunk. The meeting was called to settle the schedule, the complications which have arisen regarding the rate on foreign freight; that is, to adopt a plan for insuring uniform rates in competitive traffic destined to European ports. A tariff was agreed upon. While the plan adopted admits of but one uniform rate on all export freight, the trunk lines are left free to make any inland rate they please, so long as it does not conflict with the agreed tariff of European points. This arrangement goes into effect to-morrow, and as an experiment will remain in force during this week at least, and for as much longer time as may be agreeable to all parties. It is a part of the agreement that the general freight agents shall meet every Saturday and revise, or if necessary revoke the new schedule, and at the meeting in New York on the 27th instant, the plan will be finally approved or disapproved by the eastern and western lines in convention.

Not content with taxing the internal commerce of the country at will, they now propose to tax our international commerce in the same way, operating at first experimentally, a week at a time, until the 27th instant, when the plan will be finally approved or disapproved by the eastern and western lines in convention.

In discussing this bill, a few days ago, the senior Senator from Nebraska, [Mr. HITCHCOCK,] alluding to the Credit Mobilier frauds, said that in its incipiency the Union Pacific Railway Company was marred and scarred by the acts of bad men. This is true, and it is also true unfortunately that the same spirit which then controlled these corporations controls them to-day and will endeavor to so shape events that, in the contingency of the roads reverting to the Government under the mortgages, nothing should remain but two streaks of rust and the right of way. I know that no Senator intends to leave the way open for such results, but events have no pity for good intentions.

It behooves the Senate to consider thoroughly all these propositions. If these roads are to be given the great privilege of making use, in their own favor, of the computation of compound interest on their sinking fund for such time as the bonds may run before maturity, the sinking fund should be made sufficiently large to secure at that time the liquidation of the whole obligation. This requirement should be included in the same bill, and the assent of the company to this legislation should be insisted upon. I say it should be coupled with such legislation as will secure, unquestionably, to the States in which lie the land grants the right and power to secure the taxes due upon those lands. Any other policy would be gross injustice and outrage upon

Mr. CHRISTIANCY. For the purpose of ascertaining the precise purposes and objects which the Railroad Committee and the friends of their bill seek to accomplish by that bill, I desire, at this stage of the debate, to propound to them a few questions, the answers to which ought to have and will be likely to have a very direct bearing upon the question whether it will be sound policy and better for the public interest to substitute that bill in place of this bill from the Judiciary Committee.

First. I wish to inquire if it is the intention and desire of the committee to deprive the Government of the power of amendment and repeal secured by the act of 1864 and of all future power to amend or repeal any of the provisions of the act of 1862 and that of

Second. If such be not the intention, why was the sixth section of the bill inserted and the first sentence of the third section, which clearly would have that effect? I here read this sixth section, to show the pertinency of the question.

The section as reported by the committee is as follows:

That if this act shall be accepted by the said companies within four months from the date of its passage, by votes of the directors and stockholders at regular meetings duly called, the same shall be deemed and construed to be a final settlement between the Government and the company or companies so accepting the same; such acceptance to be filed with the Secretary of the Treasury.

The first part of section 3 also would, as I contend, have the same effect, especially without the amendment proposed first by the Senator from Massachusetts, [Mr. BOUTWELL,] and now renewed by the Senator from California, [Mr. BOOTH:]

That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act, and the amendments thereto, in relation to the re-imbursement to the Government of the bonds so issued to said corporations.

If such be the intention, and this Government is to give up for-ever the security which this power of amendment and repeal might afford, does it not become our imperative duty to see, beyond all doubt or question, that the other provisions of this bill shall be such as to

secure the public interest in all the various contingencies which may arise?

Fourth. In this view is it wise and will it tend to the promotion or security of the public interests to bind the Government until the distant day when it shall receive full payment for its bonds and interest to send all its eastern and western bound freights by this road when perhaps long prior to that period it might profitably avail itself of the lower rates of charges by competing lines? And more especially can it be wise not only to compel the Government to send by this line, but to pay for such transportation as high rates as it would cost if sent by wagon-trains, pack-horses, and pack-mules, between the same points, which would certainly be the effect of the third section of this bill? Fourth. In this view is it wise and will it tend to the promotion

Fifth. And ought the companies to be relieved from all obligations to maintain their railroad and telegraph line even after their other obligations to the Government have been performed, as would be done under this third section?

To show the pertinency of this question, I read the third section as it stands:

it stands:

That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act, and the amendments thereto, in relation to the re-imbursement to the Government of the bonds so issued to said corporations: Provided, koncever. That, until the claims of the Government for said bonds and interest are fully paid, said companies shall not in any manner be released from their present liabilities to keep the said rullroads and telegraph lines, constructed under the acts of Congress aforesaid, in repair and use, and to transmit dispatches over said telegraph lines, and transport mails, troops, munitions of war, supplies, and public stores upon said railroads for the Government, whenever required to do so by any department thereof, at fair and reasonable rates of compensation, (said rates not to exceed the amounts paid by private parties for the same kind of service,) the whole amount of which shall, upon the compliance by the companies with the provisions hereof, be paid by the Government to said companies on the adjustment of the accounts therefor; and that the Government shail at all times have the preference in the use of said railroads and telegraph lines for all the purposes aforesaid: And provided also, That all Government freight and transportation west-bound, destined for points between the Missouri River and the Pacine coast, and on the Pacific coast, and from said coast, or any point east thereof, east-bound, shall be sent by the said railroads until the aforesaid claims of the Government on account of bonds advanced to the companies are fully paid and satisfied, whenever such freight can be so transported to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

Is it wise to extend the time as this bill does for thirteen or four-

Is it wise to extend the time as this bill does for thirteen or four-teen years for the payment to the Government for its bonds and in-terest, while the Government is paying compound interest semi-an-nually, and the company are only bound to pay simple interest at the maturity.

There were a number of other questions which I thought of pre-senting to the committee for explanation, but, as they have already senting to the committee for explanation, but, as they have already been touched upon, several of them by the Senator from California, [Mr. Booth.] and will undoubtedly be answered by the committee as well, I will refrain from propounding any further questions.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from California, [Mr. Booth.]

Mr. WEST. Which one? I should like to have that amendment reported, for the Senator from California offered quite a number of amendments.

amendments

The PRESIDING OFFICER. The Secretary will report the amend-

ment.

The CHIEF CLERK. The pending amendment is to strike out in section 3, line 2, the words "in lieu of" and insert "in addition to;" so as to make it read: "That the payments so to be made by said companies shall be in addition to all payments or other requirements from said companies under said act;" and to strike out the word "however," in the proviso, line 5.

The PRESIDING OFFICER put the question, and declared that

the ayes appeared to prevail.

Mr. CHRISTIANCY and Mr. WEST called for the yeas and nays, and they were ordered.

Mr. WEST. While the officers of the Senate are engaged in get-Mr. WEST. While the officers of the Senate are engaged in getting a sufficient number of Senators here to vote upon this amendment, I should like to say just one word. This is a distinct proposition to make the companies pay an additional sum to that which they are in law bound to pay. They are bound under the law to pay so much. There is a question how that amount may be computed and what will be the extent of the 5 per cent. application; but this is a direct proposition to make them pay more than the law requires them to pay. If the Senate imagine that such a thing can be accomplished except by the mandates of the courts I think they will find themselves very much mistaken.

The proposition, therefore, remits us at once to the litigation that is contemplated by the Judiciary Committee's bill, with the result.

The proposition, therefore, remits us at once to the litigation that is contemplated by the Judiciary Committee's bill, with the result, as I have stated repeatedly before, if decided adversely to the United States, of involving the loss of over \$100,000,000.

Mr. BOOTH. I feel somewhat startled by the proposition that this amendment involves a possible loss to the United States of \$100,000,000, and I feel duly grateful to the Senator from Louisiana for his care.

Mr. WEST. If the Senator will pardon me, he did not understand my remark. I said that the remission of the matter to the courts of the United States would inevitably follow the incorporation of such

the United States would inevitably follow the incorporation of such an amendment into this bill, and that a decision adversely to the Government of the United States would involve the loss of a hundred millions of dollars.

Mr. BOOTH. The Senator says this would be in violation of the

original agreement. The original agreement on the part of the railoriginal agreement. The original agreement on the part of the railroad company was that they should pay a certain sum into the Treasury of the United States, to be applied upon the principal and interest. As interest is due, legal application would first be made for the payment of interest. It is also proposed to pay these bonds, principal and interest, if the interest is not fully paid by this provision, at maturity. This, I acknowledge, changes the theory of the bill, so as to make it conform to the theory that the companies are under obligation to the United States to pay this sum, principal and interest, if it cannot be paid except by the provision of a sinking fund. The object now is to compel them to provide that fund.

Mr. WRIGHT. Mr. President, I wish to say one word before the vote is taken. I do not propose to make any speech on the bill. The

vote is taken. I do not propose to make any speech on the bill. The Senator from Louisiana has several times assumed that the Judiciary Committee's bill contemplated litigation. I am at a loss to imagine Committee's bill contemplated litigation. I am at a loss to imagine why he should assume that. I have no reason to know or believe that the company will or will not accept the propositions that are made in the Judiciary Committee's bill. We have assumed that it would be fair legislation, such legislation as we had a right to indulge in under the law as it stands and under the Constitution. We have assumed the law as it stands and under the Constitution. We have assumed that the companies are prepared to do what the law requires of them or may require of them. We have assumed that they are prepared, as we supposed they pretend all the time to have been, to do their duty under the law and to fulfill their contracts. We have not assumed, nor do I assume, that the bill of the Judiciary Committee insumed, nor do I assume, that the bill of the Judiciary Committee invites, provokes, or brings on unnecessary litigation. I do not know any reason why it should bring on litigation or why the companies are more likely to reject this proposition than to reject the bill reported from the Railroad Committee. However, if it be true that the bill of the Railroad Committee is better for them and worse for the Government they would be more likely to receive it.

But all I desired to say was that I wished no one to accept the proposition of the Santon for I will be the proposition of the Santon f

osition of the Senator from Louisiana that this bill is to invite litiga-tion or that it proceeds upon the theory that litigation is to follow.

tion or that it proceeds upon the theory that litigation is to follow. It goes upon the theory that they are prepared to do their duty, and that we are indulging in such legislation as we have a right to indulge in under the Constitution and the laws.

Mr. CHRISTIANCY. I wish to say one word in regard to the suggestion made now for the third or fourth time by the Senator from Louisiana, that if the Judiciary Committee's bill should pass and the Government should be involved in litigation, and the act should be held unconstitutional, the whole debt against the company would be lost.

Mr. WEST. Does the Senator put that proposition to me now?

Mr. CHRISTIANCY. I say that such have been the intimations on several different occasions from the chairman of the Committee on Railroads, the Senator from Louisiana; while, on the other hand, I undertook to show—whether I succeeded or not is a question for others than myself—that if we should pass the bill of the Judiciary Committee and it should be held void the old law would remain, and we should have the same law that we have to-day.

Mr. WEST. I am glad that the Senator gives me this opportunity

to answer that proposition. I take it for granted that these companies and their successors will be actuated by the common impulse of greed that attaches unfortunately to all human nature; and if we should get a decision from the Supreme Court of the United States, should get a decision from the Supreme Court of the United States, as we got a decision in October, 1875, we will be confronted with the proposition that there shall be placed only to the credit of these companies, between now and 1898, the sum of \$25,000,000. Let them once get a decision that you cannot make them pay any more, and you will lean upon a reed if you trust to the honor of any man that he will pay you more than the law requires or compels him to pay.

The stocks of these companies are in the market in the city of New

and the moment that such a decision would be rendered they York, and the moment that such a decision would be rendered they would instantly pass into the hands of speculators, and be held for their profit and their advantage; and you will find on October 1, 1898, when your bonds are due, that these companies will have paid only the amount of \$25,000,000, and that \$125,000,000 will be due to the Government of the United States, with a prior mortgage on the roads of \$60,000,000. Then what will be your recourse? To step forward and pay the first mortgage of \$60,000,000, and you own a railroad that will have cost you \$185,000,000.

I ask the Senator from Michigan whether it is not in his experience that the ownership, the sovereign power of any works of great pulsaria.

I ask the Senator from Michigan whether it is not in his experience that the ownership, the sovereign power, of any works of great public utility will not fritter away the property of the people, and may we not expect that that will be absolutely the result here, so that you jeopard this money? I put the proposition once more that \$25,000,000 will be compelled to be paid under the loan of the Government, and they will owe you \$125,000,000 more under your first mortgage. Therefore you would be compelled to pay \$185,000,000 to buy a great railroad; and in that case you will embark upon a species of business which I do not think very profitable to the Government.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from California, [Mr. BOOTK,] on which the yeas and nays have been ordered. The Secretary will call the roll:

The Secretary proceeded to call the roll.

Mr. EATON, (when his name was called.) I am paired with the

The Secretary proceeded to call the roll.

Mr. EATON, (when his name was called.) I am paired with the Senator from Delaware [Mr. BAYARD] upon the main question of the bill. I do not know how he would vote on this amendment. If at liberty to vote I should vote "nay" on the amendment. I do not know whether I ought to vote or not and will ask the opinion of my friend from Iowa in regard to his understanding of the pair.

Mr. WRIGHT. I think the understanding was that the Senator from Connecticut was paired with the Senator from Delaware [Mr. BAYARD] on all questions in connection with the bill. I know that the Senator from Delaware is opposed to the substitute, but he would

be in favor of any proposition that would perfect it.

Mr. EATON. Very well. I will consider myself paired and shall decline to vote

Mr. WITHERS, (when Mr. Gordon's name was called.) The Senator from Georgia is detained from his seat by indisposition. He is paired on this bill with myself. If present, he would probably vote against the amendment while I should vote for it.

against the amendment while I should vote for it.

Mr. PADDOCK, (when his name was called.) On the main proposition I am paired with the Senator from Vermont, [Mr. EDMUNDS.] I am informed by the Senator from Iowa, [Mr. WRIGHT,] who has charge of the bill, that if the Senator from Vermont were here he would vote "yea." I should vote "nay."

Mr. COCKRELL, (when Mr. WHYTE'S name was called.) The Senator from Maryland is detained at home by sickness.

Mr. STEVENSON (when his name was called.) On this question.

Mr. STEVENSON, (when his name was called.) On this question I am paired with the Senator from New York, [Mr. CONKLING.] If he were present I suppose he would vote "nay," and I should vote "yea." He is not here, and therefore I decline to vote.

ne were present I suppose ne would vote "nay," and I should vote "yea." He is not here, and therefore I decline to vote.

Mr. CHAFFEE, (when his name was called.) I am paired on the main question with the Senator from Ohio, [Mr. SHERMAN.] Ido not know whether the pair applies to the amendment or not. If he were here I suppose he would vote "yea," I should vote "nay."

The roll-call having been concluded, the result was announced—yeas 22, nays 20; as follows:

YEAS—Messrs. Alcorn, Anthony, Bailey, Booth, Boutwell, Cameron of Wisconsin, Christiancy, Cockrell, Harvey, Hereford, Johnston, Jones of Nevada, McCreery, McDonald, Maxey, Merrimon, Morrill, Oglesby, Robertson, Wadleigh, Wallace, and Wright—22.

NAYS—Messrs. Barnum, Bruce, Cameron of Pennsylvania, Clayton, Cooper, Cragin, Dawes, Dennis, Dorsey, Hamlin, Hitchcock, Kelly, Kernan, Logan, Mitchell, Norwood, Patterson, Spencer, Teller, and West—20.

ABSENT—Messrs. Allison, Bayard, Blaine, Bogy, Burnside, Chaffee, Conkling, Conover, Davis, Eaton, Edmunds, Ferry, Frelinghuysen, Goldthwaite, Gordon, Hamilton, Howe, Ingalls, Jones of Florida, McMillan, Morton, Paddock, Randolph, Ransom, Sargent, Saulsbury, Sharon, Sherman, Stevenson, Thurman, Whyte, Windom, and Withers—33.

So the amendment was agreed to.

So the amendment was agreed to.
The PRESIDING OFFICER. The question recurs on the substi-

tute as amended.

Mr. President, I do not rise to detain the Senatelong in relation to this question; but it is obviously a question of vast moment to the people of this country whether they shall lose all the money they have invested in these roads or whether they shall subject the companies to a re-imbursement. Take the Central Pacific Railroad Company. Their annual receipts are over \$14,000,000, and their run-Company. Their annual receipts are over \$13,000,000, and their running expenses considerably less than 50 per cent. They are able to pay. Under the original charter this stock was to be divided into a hundred thousand shares of a thousand dollars each. That was subsequently amended so as to be a million of shares at a hundred dollars each. Under the first act of 1862 the company could levy and collect as much of the capital stock as they pleased, and no more. Under the act of 1864, they were to hold out subscription books to the extent of hundred million of dellars and they were required to collect the act of 1864, they were to hold out subscription books to the extent of a hundred million of dollars, and they were required to collect that regularly every six months, \$5 on a share, until every dollar of this stock was fully paid, and paid in in money. Now it is claimed here on the part of many Senators that these various acts created a contract and nothing but a contract with these roads, and they insist by all manner of ingenious interpretations that the United States is bound by all unfavorable conditions, by every doubt, and yet they do not even allude to any portion of these various acts which imposes obligations upon these companies. It seems to me that here, at the first outset, these companies have nerrographed a great outrace. at the first outset, these companies have perpetrated a great outrage upon their franchise. They were authorized to obtain subscriptions to the extent of a hundred million dollars, and they were required in 1864 to make their stockholders pay up every dollar of their subscriptions. Does anybody suppose that either one of these companies has forced its stockholders to contribute and pay the stock which has been subscribed for by them? If that had been done, would it have been necessary that this first-mortgage lien, which now stands ahead been necessary that this first-mortgage lien, which now stands anead and in advance of that of the United States, should have been made? Why, sir, they would have had funds in their paid-up capital to build the road if they had strictly complied with their charter. Instead of that, unless they are greatly belied, they distributed as profits some millions of the money obtained for the first-mortgage bonds to holders of unpaid stock. They issued bonds to the utmost limits of the law, whether needed to build the road or not, and now they com-

plain when we propose to require them to pay their own debts.

Again, Mr. President, under these various statutes, they were to pay, over to the United States 5 per cent. of their net earnings. They were to pay over one-half of the amount under the last act, and the whole as under the first, of whatever they might have earned for whole as under the first, of whatever they might have earned for transportation on Government account to the United States, and this was to be "annually applied" to principal and interest. Those are the words. Will anybody contend that it is not a legal proposition that whatever is to be applied to a debt must go first to extinguish the interest? Again, Mr. President, they are under direct obligations to pay over this 5 per cent. annually of their net earnings. For eight long years this has been wholly neglected and refused. And we have heard the various—I can call it by no more respectable term—quibblings in relation to what are net earnings. I have never understood that net earnings meant anything more nor less than the amount left on hand after paying the operating expenses of working and managing the road. No annual railroad report was ever made on any other basis. Will it be contended that these roads may include the expenses which they are called upon annually here to maintain for a large lobby in order to get such legislation as they want or to defeat such legislation as they do not want? Will it be contended that such expenses may be deducted before they can pay this 5 per cent. on their

Mr. EATON. Will my friend allow me to ask him a question?
Mr. MORRILL. Certainly.
Mr. EATON. The first-mortgage bonds of the railroad companies amount to something over \$50,000,000. Now, may I ask the Senator from Vermont whether the interest on the first-mortgage bonds must not first be paid before you commence to calculate the net earnings of your company?
Mr. MORRILL. Of course not. That is not a part of the operat-

ing expenses.

Mr. EATON. I did not say it was. My own impression is that the operation of the road would cease very quickly if the interest on the

first-mortgage bonds was not paid.

Mr. MORRILL. The Senator from Connecticut is a lawyer. If I was asked what are the net earnings he derives from his profession I should say it would be what he earns clear of expenses from his clients; and from no part of that is to be deducted whatever he may owe or pay out on old debts. His net earnings are what he gets from his clients, deducting the cost of daily living.

Mr. EATON. I suppose I may be entitled to deduct what I pay for my library, the rent of my office, &c.

Mr. MORRILL. My friend from Connecticut may make as ingenions an answer as possible to the idea that the interest on the debt of these companies is first to come out of their earnings, but I believe that the common sense of the country will declare, in harmony with all railroad reports, that they can only deduct their operating ex-penses and what would follow from the ordinary management of the road. They may pay out their net earnings on debts, if they have any, or may pay them out in dividends if they have no debts, but these payments are only the application of funds arising from net earnings, without which no such payments could be paid.

Mr WEST. If it will not inconvenience the Senator, will he give

his construction-

Mr. MORRILL. Mr. President, I do not propose to occupy a large amount of time and I would rather occupy it without any interrup-

tion from my very alert friend from Louisiana.

Mr. WEST. I merely wanted to ask the Senator a question. I am

afraid he could not answer it.

Mr. MORRILL. Very likely I could not. I admit my incapacity to answer all of the questions that might be asked. I only propose to talk upon a few points of the case which appear to me to be worthy of some attention.

Mr. President, one thing is very clear, that if there is any ambiguity Mr. President, one thing is very clear, that if there is any ambiguity in the law, the corporation can take no advantage of it. Whatever is ambiguous in its terms gives them no rights whatever. But I do not think, when we come to look at this question, that there is any fatal ambiguity in relation to it. All rights of the Government of the United States are not lost. It appears to me perfectly evident that all that the Government of the United States intended to give to these railroads was a grant of lands and a loan of their credit, which was to be repaid, every dollar of it, principal and interest. Under the bill as reported by the Senator from Louisiana, they are not only to have all the rights that they had under the original acts, but here is perhaps a larger additional gift than was bestowed upon the companies at the very outset. We are to be made to furnish additional capital every year without interest. And how is that to be ditional capital every year without interest. And how is that to be ditional capital every year without interest. And now is that to be brought about? By refusing to apply any payments for the earnings of the company in behalf of the United States, or in any form or manner to the interest as it annually accrues and is paid by the United States, and yet providing that a sinking fund of the charges for services of the road shall be set apart which shall not only be computed at a compound rate of interest but a double compound rate of interest, so to speak. That is to say, it is to be compounded once of interest, so to speak. That is to say, it is to be compounded once in six months instead of once in a year, while all that the Government pays out annually, amounting to between three and four millions of dollars, is to run without any interest under this very astute plan, as reported from the Railroad Committee, until the whole bonds mature, thirty years after their date. And this is said to be the law of the case. If it is, then it is quite time to alter and amend it. But I think it is a subterfuge of the railroad managers.

Mr. President, the grant on the part of the United States that their lien should be suburdinated and come in subsequently to a mortgage

lien should be subordinated and come in subsequently to a mortgage on the road of an equal amount to the bonds which were loaned by the United States to the company did not operate to postpone the payment of a dollar to the United States. We only parted with a val-nable security and postponed it. If there was anything due annually, as time went on, it was to be paid and applied to the bonds and the interest thereon. Now let me read from the original act:

SEC. 6. And be it further enacted, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, sup-

plies, and public stores upon said railroad for the Government, whenever required so to do by any Department thereof, &c.

Then it says:

And all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid.

And then, again:

Said company may also pay the United States, wholly or in part, in the same or other bonds. Treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall also be annually applied to the payment thereof.

These words must be operative with all their force in these acts, and the clear intent beyond all question was that the Government of the United States was to give absolutely nothing but the lands and the loan of their credit, for which they were to have full and entire repayment; yet as a part and parcel of some of these various propositions that have been made here there is one, made undoubtedly with the approval of the railroad company, that strikes me with some little astonishment, which is that the Government of the United States shall buy back their lands, six million acres, and allow these

States shall buy back their lands, six million acres, and allow these companies \$15,000,000 therefor.

Mr. MITCHELL. There is nothing of that kind in this bill.

Mr. MORRILL. That is one of the propositions which has been presented. It is not now pending, but it is one of the propositions which have been seriously presented. It is not here in the bill before us; and I only allude to it as being in character and keeping with all the other propositions that seem to be gotten up here for the sole use and benefit of these roads. That proposition went upon the idea of liquidating at least \$15,000,000 of debt on the part of these companies. Every foot of land of any value has long since been sold or retained. Every foot of land of any value has long since been sold or retained for the benefit of the roads, and under the very provisions of the act these lands after they have been held by the companies three years were to be sold by the companies themselves for a dollar and a quarter an acre. Even this bald proposition, it seems, has been withdrawn to give place to something possibly more advantageous to the corporations.

Mr. President, there is another thing about this matter. By the first act we retained a limited power of alteration and amendment of the charter, but even under that act the power is amply sufficient, because it required that we should protect the general interest and welfare of the United States, and to keep the road in perpetual working order, whereas it seems to me if we should adopt the policy as proposed by some of the bills here in opposition to the bill proposed by the Committee on the Judiciary, we should ere long find ourselves in the position of a man who sells his far n and takes a mortgage back and then finds that the person he had sold it to was tripping and wasting it. These parties mean to get their three or four millions annually from the Government of the United States; yet I can see no provision by which they are to make not only repayment of the money paid out by the United States, but to keep their roads in perpetual repair or in good working order. They are to pay fat dividends as long as the United States can be made to pay between three perpetual and four millions annually on their account and then go into bank-

mruptey.

Mr. President, the last proposition in the second act, that of 1864, sets forth that "Congress may at any time alter, amend, or repeal this act." That was really the operating, life-giving act. It gave additional privileges to these roads of vast amount, and under that act we have retained the right to alter, amend, or repeal at any time the provisions of it. I would not injure these great corporations one jot or title, but I would not let them jockey us. They can afford to live up to the terms imposed by law and good faith.

The Supreme Court may have decided in a case where the terms of

the law were conflicting or ambiguous some provisions against the United States and in favor of the roads, but I have no sort of idea that if the United States Congress should pass an act by which we should give these acts an interpretation of a later date, according to the true intent of Congress, that the Supreme Court would defer to our interpretation. They would not regard this as a closed contract only to be construed in favor of the corporation. There is not one of the various bills before us in relation to these roads which does not present some variance from the letter of the charter. If the bill of the Judiciary Committee is a violation of the contract, so are they all; but our reserved power to alter or amend at any time gives all the power needed to make the original intention of the statutes plain and

explicit.

But, Mr. President, I only desire to call attention for a moment to these various provisions in the law, where, as I claim, the roads have not lived up to their contract, and we should require of them, before we give them any large additional favor, to live up to what they were required to do under the original law. Take the man who was most potential in building the Union Pacific Railroad. I think that if he were here to-day and as influential in the management of this road as he was in building it, he would scorn to take advantage of the United States in the way that some of the provisions of these various amendments propose. He would have wished to leave these roads not only as a source of income, but of honor to his successors.

### EXECUTIVE SESSION.

Mr. INGALLS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive busines

After five minutes spent in executive session, the doors were reopened.

#### ORDER OF BUSINESS.

Mr. SPENCER. I ask to take from the Calendar a private bill (S. No. 1175) granting relief to Major P. P. G. Hall, paymaster, reported from the Committee on Military Affairs.

Mr. WRIGHT. As I was about to move a recess I gave way to the Senator from California [Mr. SARGENT] for the purpose of making a report from a committee of conference, without any expectation that any business would be done or that we should entertain anything else than what was proposed by the Senator from California, and I think it is out of time and out of place to bring up anything in the nature of legislation now.

of legislation now.

Mr. SPENCER. I do not propose to displace the pending order.

The PRESIDING OFFICER. Unanimous consent not being given, it is necessary to make a motion to postpone the present and all prior

Mr. SPENCER. All I ask is that the railroad bill may be laid aside

temporarily

Mr. INGALLS. I think we had better not proceed to the consideration of general business. The Senator from California appealed to the Senate to postpone the consideration of further legislative business for a few moments, in order to allow a conference report to be made. I know that several Senators have left the Capitol, supposing that legislative business for to-day was at an end when we went into executive session, and I trust that the Senator from Alabama will not

call up his bill now.

Mr. SPENCER. I shall insist upon calling up the bill. It has been reported unanimously from the committee and it is a bill that ought to be passed, and a bill that any one who understood it, not even the Senator from Kansas, could object to it. Surprising as it may appear, even the Senator from Kansas, when the bill is understood, would not

object to it.

Mr. INGALLS. The Senator from Alabama is attempting undoubtedly to be facetious at my expense. I do not know anything about the bill and I do not care anything about it. I dare say it is a bill that ought to be passed; but what I say is that at the present time, with the understanding with which we went into executive session, that legislative business would only be resumed for a specific purpose, this bill ought not to be considered.

Mr. SPENCER. Idiffer with the Senator from Kansas entirely. We did not resume legislative business for any specific purpose. Quite a period of time has passed, five or ten minutes, enough to pass just and meritorious bills. There is a majority of the Senate here and I hope they will take up this bill and pass it. I do not attempt to be facetious with the Senator from Kansas.

The PRESIDING OFFICER. Is there any objection to the consideration of the bill indicated by the Senator from Alabama ? Mr. INGALLS. The Senator from Alabama is attempting undoubt-

sideration of the bill indicated by the Senator from Alabama i

Mr. INGALLS. I object.
The PRESIDING OFFICER. That is sufficient. If the Senator from Alabama wishes to make a motion to postpone the present and all prior orders he can do so.

all prior orders he can do so.

Mr. SPENCER. I move to postpone the present and all prior orders for the purpose of proceeding with the bill.

Mr. WRIGHT. I move that the Senate take a recess until to-morrow morning at ten o'clock. The Senator from California appealed to me to withdraw the motion for the purpose of making a report from a conference committee. I did so; and now I think, with the Senator from Kansas, it is not the thing to take up other business at this time, when Senators have left the building, and least of all that we should displace the pending order for the purpose of allowing that bill to come up and to pass at this time.

The PRESIDING OFFICER. The question is on the motion of the Senator from Iowa that the Senate take a recess.

Mr. WRIGHT. I shall not insist on the motion. I am waiting for

Mr. WRIGHT. I shall not insist on the motion. I am waiting for the Senator from California that he may make a conference report. Mr. SPENCER. The Senator from California said it would be five

or ten minutes; and he asked the Senate to wait in the mean time. I am satisfied the Senate would pass this bill as soon as it is understood.

# EXPENSES OF ELECTORAL COMMISSION.

Mr. WINDOM. If in order I desire to submit a proposition which I am sure will not meet with any objection. I ask unanimous consent to report from the Committee on Appropriations the bill (8. No. 1238) making an appropriation for the expenses of the electoral commission, with an amendment, and I ask its present consideration.

Mr. SPENCER. I will not object to that.
Mr. WRIGHT. It is not to displace the pending order, of course.
By unanimous consent, the Senate, as in Committee of the Whole,

proceeded to consider the bill.

It appropriates the sum of \$7,000, or so much thereof as may be necessary, to pay the expenses of the electoral commission provided for by the act approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term compencing March 4, A. D. 1877," the sum to be disbursed upon the certificate of the president of the commission.

The bill was reported from the Committee on Appropriations with an amendment to add at the end of the bill the following proviso:

Provided. That any person employed by said commission may receive such compensation as may be allowed by said commission in addition to any other compensation or salary he may be receiving as an officer of the Government.

Mr. WINDOM. In explanation of the amount appropriated by the bill I desire to state that it was fixed upon consultation with the Senator from Vermont [Mr. EDMUNDS] who is a member of the commission. The Senator from Vermont said that the amount ought to be from \$5,000 to \$10,000. The committee have thought \$7,000 was a little below the average and probably was the judicious sum to be fixed. The amendment reported from the committee was also made at the suggestion of the Senator from Vermont, and I suppose at the suggestion of the commission. That is the information upon which

Mr. WINDOM. The amendment is designed, as I understand it, to pay the persons who are employed extra time the extra compensation which the commission may allow them.

Mr. MERRIMON. What is the character of the services which are

to be paid?

Mr. WINDOM. Of that I am not advised.

Mr. LOGAN. I suppose the stenographers and doorkeepers. Mr. WINDOM. Stenographers, doorkeepers, and all the employés of the commission.

Mr. KERNAN. I should like to inquire whether the bill contem-

Mr. KEKNAN. I should like to inquire whether the bill contemplates paying the commissioners themselves.

Mr. WINDOM. It does not.

Mr. KERNAN. Merely the employés?

Mr. WINDOM. The employés? I suppose the sergeant-at-arms, the doorkeepers, the stenographers, and whatever the employés are. If we can submit to the commission the great question who is to be President, we can trust them a little in regard to the payment of their employée.

Mr. STEVENSON. I do not know so well about that. I should like to have their judgment first upon the other question.

The PRESIDING OFFICER. The question is on the amendment of the committee.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, was read

the third time, and passed.

LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. WINDOM, from the Committee on Appropriations, to whom was referred the bill (H. R. No. 4472) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1878, and for other purposes, reported it with amendments.

# GOVERNMENT PRINTING OFFICE.

Mr. SARGENT submitted the following report:

Mr. SARGENT submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (S. No. 12:2) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment numbered 1, and agree to the same, with an amendment as follows:

Strike out all of said amendment after the word "for," in line 2 of said amendment, and substitute therefor the following: "Composition than fifty cents per thousand ems, and forty cents per hour for time-work, to printers and book-binders."

And the House agree to the same.

That the Senate recede from its disagreement to the amendment numbered 2, and agree to the same.

A. A. SARGENT,
S. W. DORSEY,
A. S. MERRIMON,
Managers on the part of the Senate.
HENRY WALDRON,
JNO. D. C. ATKINS,
Managers on the part of the House.

Mr. SARGENT. This is simply a compromise between the two Houses, and fixes the rate of compensation after the best advice we could get. The second amendment is simply to the title.

The report was concurred in.

HOUSE BILLS REFERRED.

The bill (H. R. No. 4301) for the relief of A. W. Plymale, of West Virginia, was read twice by its title, and referred to the Committee on Claims; and
The bill (H. R. No. 4257) to amend an act entitled "An act to au-

thorize the Seneca Nation of New York Indians to lease lands within thorize the Seneca Nation of New York Indians to lease lands within the Cattarangus and Allegany reservations, and to confirm existing leases," approved February 19, 1875; was read twice by its title, and referred to the Committee on Indian Affairs.

The bill (H. R. No. 4576) to provide for changing and fixing boundaries of certain property ceded to the Government of the United States by the city of Memphis, Tennessee, was read twice by its title, and, on motion of Mr. Cooper, ordered to lie on the table.

Mr. WRIGHT. I move that the Senate take a recess until to-morrow morning at ten o'clock.

The motion was agreed to: and (at three o'clock and fifty minutes)

The motion was agreed to; and (at three o'clock and fifty minutes p. m.) the Senate took a recess until to-morrow, Thursday, February 15, at ten o'clock a. m.

# HOUSE OF REPRESENTATIVES.

WEDNESDAY, February 14, 1877.

The House re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

EXPENSES IN ELECTION CONTESTS.

Mr. HARRIS, of Virginia. By order of the Committee of Elections, I ask unanimous consent to move as amendments to the sundry civil appropriation bill, when it comes to be considered in Committee of the Whole, various items to pay expenses of contestants and contestees in election cases. I suppose there is no necessity of reading the various items.

Mr. WILSON, of Iowa. Let them be read.

The Clerk read as follows:

Mr. WILSON, of Iowa. Let them be read.

The Clerk read as follows:

To pay J. V. Le Moyns, contestant, expenses in contested election case of Le Moyne vs Farwell, third district of Illinois, \$1,200.

J. G. Abbott. contestant, expenses in the contested election case of Abbott vs. Frost, fourth district of Massachusetts, \$2,000.

William B. Spener, contestant, expenses in contested election case of Spencer vs. Morey, filth district of Louisana, \$7:4.05.

James H. Platt, jr., contestant, expenses in contested election case of Platt vs. Goode, second district of Virginia, \$500.

JOHN GOODE, jr., contestee, expenses in contested election case of Platt vs. Goode, second district of Virginia, \$500.

JOEFH H. RAINEY, contestee, expenses in contested election case of Lee vs. Rainey, first district of South Carolina, \$1,200.

Samuel Lee, contestant, expenses in contested election case of Lee vs. Rainey, first district of South Carolina, \$1,200.

CHARLES W. BUTZ, contestant, expenses in contested election case of Buttz vs. Mackey, second district of South Carolina, \$1,200.

JER HARLES, Charlestee, expenses in contested election case of Bromburg vs. Haralson, district of Alabama, \$1,150.

S. FENN, contestant, expenses in contested election case of Fenn vs. Bennett, Idaho Territory, \$1,000.

H. B. Straft, contestee, expenses in contested election case of Cox vs. Strait, second district of Minnesota, \$1,500.

E. St. Julian Cox, contestant, expenses in the case of Cox vs. Strait, second district of Minnesota, \$1,500.

R. S Fost, conteste, expenses in contested election case of Abbott vs. Frost, fourth district of Massachusetts, \$2,000.

Frank Morey, contestee, expenses in contested election case of Spencer vs. Morey, fifth district of Louisiana, \$734.05.

The SPEAKER. Is there objection?

The SPEAKER. Is there objection?

Mr. FORT. I have no objection provided the gentleman will accept an amendedment for Mr. Farwell as contestant for \$5,000.

Mr. HARRIS, of Virginia. I have no objection to accept the amendment with the understanding it shall be liable to a motion to strike out; for there are already two cases I expect myself to move to strike out when the question comes up for consideration.

Mr. FORT. The gentleman has included all others except Mr.

Farwell.

The SPEAKER. It can be the understanding the gentleman from Illinois shall have the opportunity to present his amendment to test the sense of the House upon it.

Mr. HARRIS, of Virginia. There is no objection to that.

Mr. FORT. I want to have my amendment considered at the same

The SPEAKER. Consent is merely asked that the amendment The SPEARER. Consent is merely asked that the december of the shall be in order when the appropriation bill comes up for consideration, so as to test the sense of the House. Then the House can adopt the amendment or reject it, as it may be deemed best. It is understood the gentleman from Illinois shall have the same privilege for his amendment in reference to Mr. Farwell. Both are exactly upon the same footing

Mr. CALDWELL, of Alabama. I should like also to have the privilege of moving an amendment including Mr. Bromberg, contest-

ant from Alabama.

The SPEAKER. The Chair hears no objection, and consent is granted to these offering of the amendments as indicated.

STURGEON BAY AND LAKE MICHIGAN SHIP-CANAL.

Mr. LYNDE, by unanimous consent, presented the memorial of the Legislature of the State of Wisconsin, asking for an appropriation to aid in the completion of the Sturgeon Bay and Lake Michigan Ship-Canal and harbor, and to extend the time for the completion thereof; which was referred to the Committee on Public Lands, ordered to be printed, and also printed in the RECORD.

The memorial is as follows:

Memorial to Congress for an appropriation to aid in the completion of the Sturgeon Bay a d Lake Michigan Ship-Canal and harbor, and to extend the time for the completion thereof.

To the Senate and House of Representatives of the United States in Congress assembled:

To the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the Legislature of the State of Wisconsin respectfully represents that in the year 1866; ongress made a grant of 200,000 acres of land to the State of Wisconsin to aid in the construction of a ship-canal from Sturgeon Bay to Lake Michigan and to construct a break-water and harbor at the mouth of such canal in Lake Michigan; that by the terms of said grant the lands so appropriated could not be used or made available for the commencement of this important work nor for the pro-ecution or completion thereof within the time required; that for the purpose of prosecuting said work the State conferred said grant upon a corporation created, organized, and known as the Sturgeon Bay and Lake Michigan Ship-Canal and Harbor Company. That this company has constructed more than one-quarter of said canal mostly from its own resources and private subscriptions; that said company has exhausted all reasonable efforts to borrow money to prosecute the work by pledging the entire land grant and canal for security, but owing to the depreciation of said grant in consequence of the destructive fire of 1871; which de-

stroyed much of the timber thereon, and the unusual terms of the act granting said lands, in authorizing the Government of the United States to take possession of said canal when completed, the company has been unable to raise means to prosecute the work.

Your memorialists therefore ask that Congress appropriate the sum of \$100.000 to aid in the completion of said canal and barbor, and that the time for completing the same be extended three years from the 1st day of July next.

Approved February 6, 1877.

C. D. PARKER,
President of the Senate.
J. B. CASSADAY,
Speaker of the Assembly.

HARRISON LUDINGTON, Governor.

STATE OF WISCONSIN,

Secretary's Office, ss:

The secretary of state of the State of Wisconsin hereby certifies that the foregoing has been compared with the original on file in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

In witness whereof I have hereunto set my hand and affixed the great seal of the State, at the capital in Madison, this 8th day of February, A. D. 18:7.

[SEAL.]

Secretary of State.

Mr. LYNDE also, by unanimous consent, introduced a bill (H. R. No. 4647) making an appropriation to aid in the completion of the Sturgeon Bay and Lake Michigan Ship-Canaland harbor in the State of Wisconsin, and to extend the time for the completion thereof; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

The SPEAKER. The Chair will recognize gentlemen in their turn

to get rid of business usually presented on Monday.

#### SETTLEMENT OF ACCOUNTS.

Mr. HALE, by unanimous consent, introduced a bill (H. R. No. 4648) authorizing the Treasury Department to settle certain accounts; which was read a first and second time, referred to the Committee on Appropriations, and ordered to be printed.

### HUMPHREY CALLAHAN.

Mr. HALE also, by unanimous consent, introduced a bill (H. R. No. 4649) granting a pension to Humphrey Callahan, late a private soldier in the service of the United States; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### GOVERNMENT SWAMP LANDS.

Mr. FORT, by unanimous consent, presented a memorial of the State of Illinois, concerning Government swamp lands; which was referred to the Committee on Public Lands, and ordered to be printed, and also printed in the RECORD.

It is as follows:

Senate joint resolution No. 11, concerning Government swamp lands.

Senate joint resolution No. 11, concerning Government swamp lands.

Whereas section 2 of the act of Congress approved March 2, 1855, entitled "An act to amend the act approved September 28, 1850, entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," provides that upon due proof by the agent of the State or States before the Commissioner of the General Land Office that any land was located subsequent to the 28th day of September, 1850, by warrants or scrip, the State or States should be authorized to locate a quantity of like amount upon any of the public land subject to entry at \$1.25 per acre or less;

And whereas said law is inoperative on account of the rules and decisions of the Commissioner of the General Land Office, declaring that said indemnity scrip can only be located upon lands subject to entry in the State of Illinois, and of his refusal to further issue said scrip: Therefore,

Be it resolved, (the senate and house concurring therein,) That the Congress of the United States be requested by act or otherwise to instruct the Commissioner of the General Land Office to issue said scrip and to allow its location upon any of the public lands subject to entry at \$1.25 per acre or less, within cr without the State of Illinois, and that he be directed to issue the same in eighty and one hundred and sixty acre tracts.

ANDREW SHUMAN, President of the Senate. JAMES SHAW, Speaker of the House of Representatives.

Adopted by the senate February 2, A. D. 1877.

JAMES H. PADDOCK, Secretary of the Senate.

Concurred in by the house of representatives February 3, 1877.

E. F. DUTTON,

Clerk of the House of Representatives.

I. George H. Harlow, secretary of state of the State of Illinois, do hereby certify that the above is a true copy of a joint resolution of the thirtieth General Assembly of said State, filed in this office on the 5th day of February, 1877.

In witness whereof I have set my hand and the great seal of state at Springfield this 6th day of February, A. D. 1877.

(SEAL)

GEO. H. HARLOW

## COMMISSIONERS OF DEEDS IN THE DISTRICT OF COLUMBIA

Mr. CRAPO, by unanimous consent, introduced a bill (H. R. No. 4650) relating to commissioners of deeds in the District of Columbia for the various States and Territories: which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

### DISTRICT LAW IN RESPECT TO NEGLIGENCE.

Mr. CRAPO, also, by unanimous consent, introduced a bill (H. R. No. 4651) to amend the law in respect to negligence in the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

#### JOHN L. TAYLOR.

Mr. KIDDER, by unanimous consent, introduced a bill (H. R. No. 4652) granting a pension to John L. Taylor; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### JULIA A. NUTT.

Mr. MILLIKEN, by unanimous consent, from the Committee on War Claims, reported back a bill (H. R. No. 807) for the benefit of Julia A. Nutt, widow and executrix of Haller Nutt, deceased, with amendments; which, with the accompanying report, was referred to the Committee of the Whole on the Private Calendar, and ordered

#### ELIZABETH CARSON.

Mr. MILLIKEN also, by unanimous consent, from the same committee, reported back favorably a bill (S. No. 973) for the relief of Elizabeth Carson; which was referred to the Committee of the Whole on the Private Calendar.

#### AMOUNT OF BULLION IN THE TREASURY.

Mr. SAYLER. I ask unanimous consent to introduce the following resolution of inquiry for action at this time.

The Clerk read as follows:

Resolved. That the Secretary of the Treasury be instructed to report to this House within ten days from the passage of this resolution, the actual amount of gold coin and gold bullion and silver coin and silver bul ion respectively now in the Treasury, together with a detailed statement of all outstanding obligations payable on demand in coin, with the balance actually owned by the Government available for the resumption of specie payments. Also, whether any bonds or other interest-bearing obligations have been issued during the past or present year in the purchase or otherwise obtaining of any such coin or bullion.

The SPEAKER. Is there objection to the present consideration of

the resolution ?

Mr. KASSON. I must object to so much of it as relates to bullion owing to its influence on certain speculative operations in the market.

The SPEAKER. The gentleman cannot object in a qualified man-

ner.

Mr. KASSON. It is necessary that I make the objection in that way in order to give the gentleman from Ohio the option of modifying the resolution or not. I object to it in its present form.

The SPEAKER. Does the gentleman from Ohio consent to modify the resolution?

Mr. SAYLER. I do not. I withdraw the resolution and will offer it on another occasion.

### PUBLIC LANDS IN ILLINOIS.

Mr. GOODIN, by unanimous consent, from the Committee on Public Lands, reported, as a substitute for House bill No. 1715, a bill (H. R. No. 4653) to authorize the assignees of the State of Illinois to select and enter public lands, to which said State is entitled under and by the provisions of the several acts of Congress, namely: the act of September 28, 1850, known as the swamp-land act; the act of the 2d of March, 1855, known as the indemnity act, and the act extending the provisions of said act, passed March 3, 1857; which was read a first and second time, recommitted to the Committee on Public Lands, and ordered to be printed.

Mr. GOODIN moved to reconsider the vote by which the bill was recommitted; and also moved that the motion to reconsider be laid on the table.

on the table.

The latter motion was agreed to.

# AGREEMENT WITH SIOUX INDIANS.

Mr. BOONE. I ask unanimous consent to take from the Speaker's table the bill (S. No. 1185) to ratify an agreement with certain bands of the Sioux Nation of Indians and also with the Northern Arapaho

of the Sioux Nation of Indians and also with the Northern Arapaho and Cheyenne Indians, and that the bill be now put upon its passage. Mr. MILLS. I object.

Mr. BOONE. Then I will ask that the bill be made a special order to be considered immediately after the naval appropriation bill is disposed of. It is an important measure, and if gentleman had examined the bill I am sure there could not be an objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky that this bill be made a special order after the naval appropriation bill shall have been disposed of?

Mr. MILLS. I object unless there is an amendment put on the bill prohibiting the Sioux Indians being removed to the Indian Territory.

The SPEAKER. The Chair cannot recognize a qualified objec-

Mr. MILLS. Then I object unconditionally.

Sometime subsequently,
Mr. MILLS said: I withdraw my objection to the assignment of the
Sioux agreement bill as a special order, having the assurances of
friends of the bill that they will not oppose my amendment when it
comes up for discussion and that we will have a free discussion. I

withdraw my objection.

Mr. THROCKMORTON. I rise to make the inquiry if that order will supersede the consideration of the other measures already assigned for consideration as special orders, the Oklahoma bill and the

Omaha bridge bill.

The SPEAKER: The bills to which the gentleman from Texas

[Mr. Throckmorton] alludes are in Committee of the Whole on the state of the Union. This would be a special order in the House.

Mr. THROCKMORTON. Then I make no objection.

The SPEAKER. If there be no further objection the order will be made as requested by the gentleman from Kentucky, [Mr. Boone.]

Mr. HOLMAN. I suggest that it be made a condition of the order that this bill shall not run on from day to day, so as to interfere with

the consideration of the appropriation bills.

The SPEAKER. The order will be so modified as that it will not interfere with the consideration of appropriation bills.

There being no further objection, the bill was taken from the Speaker's table, read a first and second time, and made a special order for consideration immediately after the naval appropriation bill shall have been disposed of.

#### JOHN T. MASON.

Mr. ROBERTS, by unanimous consent, introduced a bill (H. R. No. 4654) to remove the political disabilities of John T. Mason, of Maryland; which was read a first and second time.

Mr. ROBERTS. I ask that the bill may now be put upon its pass-

age.

The bill was read. It provides for the removal of all political disabilities imposed upon John T. Mason, of the State of Maryland, by the fourteenth amendment of the Constitution of the United States by reason of participation in the rebellion.

Mr. CONGER. I ask for the reading of the petition.

The petition was read.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

#### ORDER OF BUSINESS.

Mr. ODELL. I desire to introduce a bill for reference. Mr. HOLMAN. After this I shall have to insist on the regular

The SPEAKER. The Chair would suggest to the gentleman from Indiana that if he will permit it business will be expedited by allowing gentlemen to introduce bills for reference, as they have been cut off for several Mondays, and also by allowing the disposition of other

matters by unanimous consent.

Mr. HOLMAN. Although I think a more appropriate time might have been selected than the present for that purpose, I withdraw the call for the regular order that bills may be introduced for reference.

### BRIDGING NEPPERHAN CREEK.

Mr. ODELL, by unanimous consent, introduced a petition praying for the construction of bridges over the tide-water of Nepperhan Creek, in the State of New York; which was read a first and second time, referred to the Committee on Commerce, and ordered to be

### ESTATE OF GEORGE H. LEE.

Mr. MONEY, by unanimous consent, introduced a bill (H. R. No. 4655) for the relief of the estate of George H. Lee, late of Lowndes County, Mississippi, deceased; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

# A. W. PLYMALE.

Mr. CAULFIELD. I ask unanimous consent to report from the Committee on the Judiciary, for the purpose of putting it upon its passage, the bill (H. R. No. 4301) for the relief of A. W. Plymale, of West Virginia.

The SPEAKER. Is there objection to the present consideration of

the bill ?

Mr. CONGER. Is this a report from a committee?

Mr. CONGER. Is this a report from a committee?
The SPEAKER. It is a report from the Committee on the Judiciary.
Mr. CAULFIELD. I hold in my hand letters from the Secretary of the Interior, showing the propriety of the passage of this bill.
Mr. HOLMAN. I do not object to this bill, nor do I object to the introduction of bills for reference, but I object to any legislation.
Mr. CAULFIELD. I supposed I had the floor.
Mr. HOLMAN. I stated distinctly I did not object to the introduction of bills for reference, but I do object to the introduction of bills for reference, but I do object to the introduction of bills for the purpose of putting them on their passage.
Mr. CAULFIELD. The bill would have been passed by this time if the gentleman had not objected.
The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Secretary of the Interior be, and he is hereby, instructed to direct the pension agent at Wheeling. West Virginia, to issue duplicate check No. 18776, for \$1.032, in favor of A. W. Plymale, for one lost in the mail on or about July 1, 1876: Provided, That the Secretary of the Interior be satisfied that the same has not been paid: And provided further, That said A. W. Plymale shall first execute a bond, with good and sufficient surveites, to be approved by the Secretary of the Interior, to hold the United States harmless against the double payment of such check.

So the bill was passed.

The bill, as amended, was ordered to be engrossed and read a third

time; and it was accordingly read the third time, and passed.

Mr. CAULFIELD moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on

The latter motion was agreed to.

GOLDEN, GEORGETOWN AND CENTRAL RAILROAD COMPANY.

Mr. BELFORD, by unanimous consent, introduced a bill (H. R. No. 4653) granting the right of way through the public lands to the Golden, Georgetown and Central Railroad Company; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

#### GOVERNMENT BUILDING AT AUSTIN, TEXAS.

Mr. WOODWORTH, by unanimous consent, from the Committee on Public Buildings and Grounds, reported a bill (H. R. No. 4657) as a substitute for House bill 1512, to provide a building for the use of the United States district and circuit courts, post-office, and internal-revenue offices at Austin, Texas; which was read a first and second

The bill was read. It authorizes and directs the Secretary of the Treasury to cause to be constructed a suitable building with fire-proof vaults at Austin, in the State of Texas, for the accommodation of the United States courts, post-office, and internal-revenue offices, at a cost not exceeding \$100,000, including the cost of the site, and provides that no money shall be used or paid for the purpose mentioned until a valid title to the land for the site of said building shall be vested in the United States, nor until the State of Texas shall also duly release and relinquish to the United States the right to tax or in any way assess the said site or property of the United States thereon during the time that the United States shall be owners

Mr. CONGER. I suggest to the gentleman from Ohio that he put in an amendment providing that the State of Texas shall cede to the United States jurisdiction over the site.

Mr. WOODWORTH. I think that is included in the bill.

Mr. CONGER. No, it requires the State of Texas to relinquish the right to tax this property, but does not require it to cede jurisdiction

Mr. WOODWORTH. I have no objection to an amendment to that

Mr. CONGER. I move, then, to add to the proviso the words:

And cede jurisdiction thereof.

Mr. HOLMAN. There is no objection to that amendment. That is already done by the bill.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and was accordingly read the third time, and passed.

Mr. WOODWORTH moved to reconsider the vote by which the bill

was passed; and also moved that the motion to reconsider be laid on

The latter motion was agreed to.

### FREEDMAN'S BANK.

Mr. STENGER. In behalf of the select committee in charge of affairs of the Freedman's Bank I ask unanimous consent to report back the bill (H. R. No. 4289) to amend the act entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," approved June 20, 1874, with amendments thereto, and with a recommendation that it do pass.

The bill was read.

Mr. HOLMAN. I must object to that bill on account of the last section. The bill requires more time for its consideration.

Mr. SAVAGE. I demand the regular order of business.

### TONNAGE TAX.

Mr. FAULKNER. I hope the gentleman will allow me to make a report from the Committee on Foreign Affairs.

Mr. SAVAGE. I will yield for that purpose, and then I must insist

on the regular order.

Mr. FAULKNER. I ask unanimous consent to report back with an amendment, from the Committee on Foreign Affairs, the bill (S. No. 994) to amend section 2931 of the Revised Statutes of the United States so as to allow repayment by the Secretary of the Treasury of the tonnage tax where it has been exacted in contravention of treaty

I will state that this bill has been unanimously passed by the Senate and its passage is unanimously recommended by the Committee on Foreign Affairs.

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the provisions of section 2911, of chapter 6, title 34, of the Revised Statutes, shall not apply to cases of the payment of tonnage tax on vessels where the Secretary of the Treasury shall be satisfied that the exaction of such tax was in contravention of treaty provisions; and he may drawh is warrant for the refund of the tax so illegally exacted, as is provided in section 3012½ of said statutes.

The amendment reported from the committee was to make the proviso read as follows:

Provided. That the Secretary of the Treasury is not hereby authorized to refund any tonnage duties that may have been paid before the 14th day of July,  $\Lambda$ . D. 1862.

Mr. HOLMAN. I desire to reserve the right to object for a mo-

The SPEAKER. The gentleman must exercise his right now.
Mr. HOLMAN. Then I shall have to object.
The SPEAKER. Objection being made, the bill is not before the

#### ORDER OF BUSINESS.

Mr. SAVAGE. I now insist upon the regular order.

Mr. PIPER. I ask the gentleman to withdraw his call for the reg-Mr. PIPER. I ask the gentleman to withdraw his call for the regular order until I can ask consent to have taken from the Speaker's table the concurrent resolution of the Senate in relation to printing extra copies of the report of the Select Committee on Chinese Immigration, in order that the resolution may be concurred in by the

Mr. SAVAGE. I must insist upon the regular order.
Mr. CONGER. I desire to make an inquiry of the Chair in reference to the various bills, &c., that have been referred and committed this morning. I would inquire if they can be brought back into the House by motions to reconsider?

The SPEAKER. The Chair will state that under the rule all bills

The SPEAKER. The Chair will state that under the rule all bills introduced and referred by unanimous consent cannot be brought back into the House by motions to reconsider. But bills reported from committees and recommitted may be brought back by motions to reconsider. The Chair has taken occasion this morning whenever there were reports from committees that were recommitted to make himself, as it were, the motion that they shall not be brought back into the House by a motion to reconsider. Sometimes members do not recollect, and the Chair always exercises that right.

#### ELECTION IN FLORIDA.

Mr. HALE. I would inquire of the Chair what is the regular order, and what is its position before the House?

The SPEAKER. The regular order is the resolution reported from the select committee on the recent election in the State of Florida, upon which the gentleman from Massachusets [Mr. Thompson] is entitled to the floor

Mr. HALE. The main question has been ordered upon the resolution ?

The SPEAKER. It has been, and the vote will be taken after one honr for closing debate.

The resolution of the committee is as follows:

Resolved. That at the election held on November 7, A. D. 1876, in the State of Florida, Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock were fairly and duly chosen as presidential electors, and that this is shown by the face of the returns and fully substantiated by the evidence of the actual votes cast; and that the said electors having, on the first Wednesday of December, A. D. 1876, cast their votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, they are the legal votes of the State of Florida and must be counted as such

Mr. THOMPSON. Mr. Speaker, she special committee sent to Florida were charged to investigate the recent election therein, and the action of the returning or canvassing board in that State with reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said State for President and Vice-President, and to a fair understanding thereof by

That is the duty with which this committee was charged. I would not now say a word with regard to their report, as the questions involved in it have been quite fully discussed upon the one side and upon the other, were it not for the fact that the minority of the committee in their report have reflected most severely and unjustly upon the action of the majority of the committee in the conducting of the investigation with which they were charged by this House. They say substantially they were treated unfairly in this investiga-

Mr. Speaker, nothing can be further from the facts of the case. They were treated by the majority with the highest degree of consideration. And certainly the majority would have been justly entitled to the scorn and contempt of this House and of the country had they undertaken in any manner or form to restrict the minority in a fair and full examination of the case as they understood it. The fair and full examination of the case as they understood it. The majority of this committee have done no such thing. They have afforded the minority every possible facility. The minority never asked for anything to be done that was reasonable but what it was always done. They were always consulted as to the time, place, and manner of conducting the investigations; and any charge to the contrary I pronounce here to be untrue.

Now, allow me to call the attention of the House to some matters in reference to which the minority of the committee make this charge. They say that we treated them unfairly in this particular: that we did not permit them to spread upon the record and bring before this House all the papers that were used by the people in the State of Florida before the board of State canvassers. Had we done that we should have been guilty of a gross violation of duty. We

that we should have been guilty of a gross violation of duty. We were sent down there, not to gather up chaff, but to obtain facts.

We were not sent there for the purpose of collecting a mass of exparte affidavits that never were read to the parties. That fact is clearly established that the affidavits were not read to the parties; that they did not know what they signed, and they denied even that they were sworn.

they were sworn.

The majority of that committee would have been pleased to have the minority exercise their right of calling before them every person who made an affidavit before that canvassing board. The minority had the right to call every person whose affidavit was so used to have him examined and the facts made known. They say that we kept from them the papers in the case. Sir, they had access to them in the office of the secretary of state of Florida. They took

from the office of the secretary of state affidavits, summoned their witnesses from them, carried them to places where the examination was had, and conducted the examination from those affidavits. They had over a hundred of these witnesses who had subscribed these affi davits summoned and present before the committee. Finding that they were testifying falsely they dismissed one hundred and eight of them without putting them on the stand. That is the class of testimony they wanted this committee to bring back to this House, testimony they wanted this committee to bring back to this House, testimony they wanted this committee to bring back to this House, testimony they wanted this committee to bring back to this House, testimony they wanted the same testimony that the same testimony they wanted the same testimony they wanted the same testimony that they are the same testimony that they are the same testimony they wanted the same testimony that they are the same testimony that the same testimony that they are the same testimony that the sam

mony they wanted this committee to bring back to this House, testimony of witnesses that they would not put on the stand when they had the opportunity to do so, when they had the witnesses present.

The course pu sned by the majority of the committee I know will meet the approbation of the House. So far as the majority of the committee were concerned we did not intend to bring here any testimony but what would be legal testimony in any court of justice in the United States. We conducted the examination in the same manner that we would have conducted the trial of a cause in court, because we supposed that the country wished to know facts, not rumors. cause we supposed that the country wished to know facts, not rumors. We assumed that the country expected us to bring sworn testimony, to have the witnesses before us and have both parties examine them fully, so that it might be judged whether they were truthful witnesses or not, that their testimony might have such weight as it was honestly entitled to.

Now the minority of the committee complain that we did not ermit them to cumber this record with a great mass of falsehoods. permit them to cumber this record with a great mass of faist hoots. They acknowledge that these affidavits were false; yet they desired to enlighten the country by bringing forward a mass of falsehoods! Certainly the majority of the committee desired to do nothing of that

Ah, but we have an explanation of the disposition of the minority. We have their statement as to what they were anxious to do. Let us see what the minority were laboring for:

The want of these documents thus withheld was felt at every step of our investigation, and rendered us unable in many instances to make that defense of the canvassing board which it justly deserved. We believed then, as we believe now, that the board acted with singular fidelity and utmost fairness.

They were down there for the purpose of justifying the illegal action of the canvassing board. They admit that in the clearest and plainest terms. They were not down there to get facts with reference to the election at all; they were not down there for the purpose of ascertaining whether that returning board acted legally or illegally or their own. gally; but they were down there, as they admit here over their own signatures, for the purpose of justifying the action of the returning board, every act of whom, where they undertook to change the result as it appears upon the face of the returns, was illegal. The minority believe that to be just, believe their illegal acts are just. Mark their language in regard to the canvassing board: "The board acted with singular fidelity and utmost fairness." "Fidelity" to whom?

with singular fidelity and utmost fairness." "Fidelity" to whom? Fide.ity to the country? No; they endeavored to impose upon the country a usurper. "Singular fidelity" to the State of Florida? No; they undertook to cheat the people of Florida out of their governor and to impose upon that State a governor not of their choice. This is the "fidelity" which the minority admire.

I ask the attention of the House to the facts in this case. That returning board, "acting with singular fidelity," made a false return, a return that they knew to be false, which they intended to make false. They intended to put upon the State a person as governor who was not elected; and the minority say that that was "fidelity." That is the spirit of the minority report. I say that the minority of this committee were certainly very faithful in this direction.

who was not elected; and the minority say that that was "fidelity." That is the spirit of the minority report. I say that the minority of this committee were certainly very faithful in this direction.

Why, sir, what did that returning board do? Although they were ordered on the 27th of December to meet and canvass, it was not until the 1st of January, just before the inauguration of Governor Drew, that they made return that he was elected. They exercised "singular fidelity" in this matter! They had said that Stearns was elected by over 400 majority, when, in fact, Drew had a decided majority. In this they showed their "fidelity;" and the minority believe that they were very faithful in this matter.

The minority say that by reason of the majority not allowing all the papers on file in the office of the secretary of state relative to the canvass to be consulted, they were compelled throughout the entire investigation to grope their way in the dark. If they did not see those papers and documents, how did they learn that the canvassing board acted "with singular fidelity and the utmost fairness?"

The majority simply wished to present the facts. They did not go to Florida to justify or condemn the action of that board. They went there to ascertain whether its action was legal or illegal. If it had been legal, the majority would have so reported just as cheerfully as they now report the fact that their action was wholly illegal.

Now, Mr. Speaker, it is charged against the majority that we did

Now, Mr. Speaker, it is charged against the majority that we did not examine the precincts. I say that the charge is untrue in every particular. The minority affirm substantially that they knew of frauds in Florida committed by democrats; but they admit they did frauds in Florida committed by democrats; but they admit they did not bring them to the attention of the committee while there. It ill becomes them now to make that charge here. They have a right to confess their own misdoings, their own shortcomings; but they have no right to make charges here against the majority for not making an examination where they had no notice of the matter to be exam-ined into. It may be true (for I am prepared to believe any wrong they may confess) that, being sent down there by this House to make an investigation, they heard of democratic frauds and did not summon

witnesses to prove such frauds, for the reason that they did not believe the reports. Every witness that they ever asked to have summoned was summoned if he could be found. They summoned one hundred more than the majority did. Yet they come here now and confess before this House and the country that they knew of democratic fraud down there and did not call the attention of the committee to it. They do not state those frauds to-day. They never intimated to the committee while in Florida that they had any information with regard to the committee while in Florida that they had any information with regard to such frands; and I do not believe that they ever did have any information in regard to them which they regarded reliable. They may confess their fault, but they have no right to make the charge that democratic frauds did exist when they failed to report them to the committee or to have the witnesses they were informed knew the

The water water and the state of the state and the state with facts summoned to give the facts.

Why, sir, look at the report of the State canvassing board which the minority have brought in here, although it certainly does not belong here. The minority say that there were as many precincts not examined as we did examine. Examine that report. Nassan County was canvassed according to the face of the returns by a unanimous vote. I suppose that is one of the places where there were democratic frauds, though they never said anything about them and never intimated to us that there were any. In Orange County 7 illegal votes were deducted from the democratic electoral and State vote; and with that deduction the county was canvassed by a unanimous I suppose there were democratic frauds in Orange County; for that is one in regard to which they did not see fit to call any witnesses. It was a county two hundred miles from Tallahassee. At one place in that county there were 7 illegal votes, not fraudulent votes; and the canvassing board had no right to consider those votes or

make the deduction which they did.

In Alachua County 4 republican and 13 democratic illegal electoral votes at Waldo precinct were unanimously thrown out. There is no allegation of fraud; the votes are alleged by the board to be illegal. There being no fraud alleged the committee did not examine into that precinct. The minority did not ask to have it examined into and did not call any witnesses with reference to it. Your committee were advised that the votes were cast by parties under a misapprehension of their rights and without any fraudulent intent. Your committee did not hear of any other allegations of irregularities.

They were to make the canvass upon the face of the returns; and

now the minority come and say because we did not go to Orange, two hundred miles, and inquire into 7 illegal, not fraudulent, votes, votes the canvassing board had no right to make any inquiry into, and did not inquire in the Waldo vote, therefore we are guilty of a great wrong. I ask the gentlemen of the minority, "Why did you not summon witnesses if there was any fraud and have the fraud examined into?" If they knew of fraud why did they not prove it? They had full newer to approach witnesses. had full power to summon witnesses.

had full power to summon witnesses.

They come now and charge upon the majority a want of fidelity. Where is the want of fidelity? Is it not with them and not with us? I say this: we did examine into every case of fraud which we heard of in the State of Florida.

Mr. DUNNELL rose.

Mr. THOMPSON. I cannot allow you to interrupt me; you were

discourteous to me yesterday, and now for me to seem to be so is cour-

Mr. THOMPSON. I cannot allow you to interrupt me, sir; you cut

Mr. DUNNELL rose.

Mr. THOMPSON. I cannot allow you to interrupt me, sir; you cut me off twice yesterday.

Mr. DUNNELL. Stop your questions, then.

Mr. THOMPSON. Not by any manner of means. [Langhter.] I do not propose to let a man who openly upon the floor of the House on two recent occasions declined to have me put a question now claim successfully that which he himself would not grant.

They summoned a witness a thousand miles distant. They took him from Washington to Tallahassee, and after they got him did not call him. They took him I believe to act as side counsel and not for his testimony. Then they called witnesses five hundred miles from where they claimed there was fraud.

I say again, Mr. Speaker, that declaration, that we failed to make a full, fair investigation into all the frauds which were alleged in the State of Florida, is without any foundation in fact at all. If they had made the suggestion of fraud and that they wanted witnesses to made the suggestion of fraud and that they wanted witnesses to prove it, they knew how readily the subpœna would have been issued, how prompt the Sergeant-at-Arms would have been to execute it, and how pleased the majority of the committee would have been to have seen such witnesses. Some of the best witnesses produced were those called by the minority to show up the frauds they seemed auxious to conceal. Their witnesses helped them but little if at all, and they now come here to cover up the fact they did not get any evidence there of value by saying they did not have the opportunity to get

Ah, Mr. Speaker, they admit, as far as the examination went, it was favorable to the majority. Let me read from this report. Sometimes truth is told by accident, and when it is it is most reliable. [Laughter.] Here is what they say in their report :

But ten of these precincts are inquired into, and the other ten shunned, as if rom fear that disclosures there might overturn the findings in the other ten.

Overturn the findings in the other ten! Admitting clearly and conclusively the findings in the ten we did examine were all in favor of

the position which the majority have taken. But I may suggest, if they were informed of any frauds, they believed the success they had had in the examination made by them did not warrant them in call-

ing witnesses to such alleged frauds.

ing witnesses to such alleged frauds.

I am commenting now upon the fairness of the minority. The gentleman from Minnesota [Mr. DUNNELL] said in his place; said it deliberately; said it after his attention was called to the fact in regard to Manatee that no voting-places had been assigned or inspectors appointed there; said that Mr. Graham, the only witness called from Manatee, testified no voting-places had been assigned nor inspectors appointed in that county. I read from the testimony of Mr. Graham in answer to interrogatories put to him by the gentleman from Minnesota, and what does he say? These are the questions put to Mr. Graham by the gentleman from Minnesota himself: Graham by the gentleman from Minnesota himself:

Question. Were there any inspectors appointed by the county commissioners? Answer, Yes, sir.

He says he said no. Let us look at the voting-precincts. It is his own qestion; he knew the facts:

Q. Who were the inspectors †
A. I do not know their names.
Q. Did the county commissioners of that county create voting-places †
A. Yes, sir.

He knew that fact. He put the questions himself, but still knowing that fact, knowing the testimony, he said in his place the witness swore that the county commissioners had not assigned voting-places, that they had not appointed inspectors. And I say this, upon my honor as a member of this House, that is about an average misrepresentation of the minority in their report.

Mr. DUNNELL rose.

Mr. DUNNELL rose.

Mr. THOMPSON. I do not permit the gentleman to interrupt me when I am making a plain statement of facts. [Laughter.] And here is the certificate of the minutes of the county commissioners of Manatee appointing voting-places and inspectors of election, to which his attention was specially called before he made his speech, certified by the clerk of the circuit court of Manatee, who is also clerk of the county commissioners, showing that was done upon the 14th day of September last regularly and lawfully, and he knew it when he made the statement he did upon the floor of this House.

Now Mr. Speaker I want to come to two or three other equally.

Now, Mr. Speaker, I want to come to two or three other equally clear statements. The gentleman says upon the floor of this House that in Alachua County Mr. Moore said that he authorized either Mr. Black or Mr. Vance to sign a paper, and that that fairly interpreted means that he gave them the authority to sign two papers. He admits that they or one of them did sign two in his name. Now, I call the attention of the House to this fact in particular. Let me state it first and then produce the testimony. The testimony of Black and Vance was that there was only one paper which Moore authorized them to sign. And now they say that the authority to sign but one gives the authority to sign two, and that Black and Vance were entitled to write another, to commit a forgery, and sign another return in place of the one which Mr. Moore had already signed. That is their interpretation of the law.

Let me read a little now to refresh their recollection. I read now from the testimony of Mr. Black. Mr. Black says this: Now, Mr. Speaker, I want to come to two or three other equally

Question. After the count was made what did the inspectors and clerks proceed to do?

Answer. After the count was made they proceeded then to count up, make a tally. Then I rise up myself in my seat and asked Moore to come up and sign the returns. The clerk having compared them, I signed my name. Mr. Moore complained of having a sore finger, or something to that effect, and I insisted upon his signing, which he did.

"Which he did." He signed one; and this is the testimony of Mr.

Q. You remember of Moore signing one return?
A. Yes, sir: I know that he came up and signed one. I wrote mine first and then Floyd Dukes's and had him to touch the pen; then Moore came up and signed his; and we did the same way, with the exception of his making that report, as near as I can recollect.
Q. And whether he signed the second one you cannot say?
A. That I can't say now.
Q. He may have signed the second one for aught you know?
A. Yes, sir; as far as I know.

Vance says in answer to the question:

Q. Did you see Floyd Dukes when he made his mark?
A. Yes, sir; he touched the pen.
Q. And Green R. Moore, when he signed it?
A. He signed one of them and the other he asked Black to sign. He says "My finger is sore." I don't know which one it was that he signed? I am not familiar with Q. Do you remember as a distinct fact that Mr. Moore signed one of them? A. Yes, sir. writing.

He remembers as a distinct fact that Moore signed one of them. Moore swears that he signed one of the returns, and now when it is found that neither of them are signed by Moore, that two are brought in neither of which was signed by Moore, they undertake to come before the House and say that his authority to sign one gave authority to sign two. When there was but one to sign they had a right to disregard the one that was signed by Moore and commit a forgery.

There never was a clearer case of forgery proved than was proved in that case. But the minority say that the parties proved to have committed it are unimpeached witnesses; say that that does not impeach the witnesses. They were both guilty of perjury. They speak

of Black and Vance as being two witnesses unimpeached. Let me show you what kind of witnesses they have who they say were not impeached. Here is Mr. Vance who acted as clerk at that election. Let me show his perjury in detail. He went down from Gainesville to Archer for the purpose of acting as the clerk of election there. Let me read his examination as to this. This is Mr. Vance who they say is unimpeached.

By the CHAIRMAN:

By the CHARMAN:

Question. How came you down to Archer on the 7th?

Answer. I went down the day before, on the 6th, to see Mr. Brown.

Q. Where did Mr. Brown live?

A. In Archer.

Q. How far from this voting-precinct?

A. It might be tifty or twenty-five yards.

Q. What time of day did you go down there?

A. I went down on the evening train.

Q. Did you go down there on any business connected with the election?

A. No, sir.

Q. Only private business with Mr. Brown?

A. Yes, sir.

Q. Did you go down with any intention of remaining and acting as clerk of election?

A. I did not at that time.

See whether I meant to entrap the witness or not; whether I used the witness fairly or not.

Q. Do you understand my question? I ask you if you went down to Archer with the intention of acting as clerk at this voting-precinct, or either of them?

A. I went down to see Mr. John Brown.
Q. I ask you now again whether you went down to Archer with the intention of being clerk at either one of these voting-precincts?

A. No, sir.
Q. Had it been suggested to you in any manner or form that you might be wanted as clerk down there?

A. I don't remember of it.

Then, I had the certificate of the clerk, that at Gainsville, on the 6th day of November, before going to Archer, he subscribed and took an oath to act as clerk of election at Archer, Archer being thirteen miles from Gainesville.

Question. Is not that your signature? [Handing document to witness.]

Question. Is not that your signature? [Handing document to witness.] Answer. Yes, sir. Q. Where did you sign that? A. At the polls. Q. Did you not sign it here in this city before you went down? A. No, sir. Q. Are you sure about that? A. I am. Q. Look it over carefully. I do not want you to make any mistake about it. A. I am sure of it. Q. Read it aloud.

I asked the witness to read it aloud. He did so.

I asked the witness to read it aloud. He did so.

"State of Florida, Alachua County. I, the undersigned, Thomas H. Vance, clerk of the election held at Archer, in the county of Alachua, in the State aforesaid, on Tuesday, the 7th day of November, in the year of our Lord 1876, under and by virtue of an act entitled 'An act to provide for the registration of electors and the holding of elections, approved Angust 6, 1868, and an act amendatory thereof, approved February 27, 1872, do solemnly swear that I will perform the duty of clerk of the before-mentioned election according to law; that I will endeavor to prevent all frand, deecit, and abuse in conducting the same. Thomas H. Vance, clerk of election. Sworn to and subscribed before me, this 6th day of November, A. D. 1876. Irving E. Webster, clerk of the circuit court."

And the clerk of the circuit court made oath that he swore him to it. I will read what the clerk says:

TRYING E. WEBSTER recalled and examined.

By the CHAIRMAN:

By the CHAIRMAN:

Question. You were clerk of the circuit court of this county?

Answer. I was. I am now acting clerk.
Q. Have you the oath of the clerk of Archer Precinct No. 2?

A. Yes, sir.
Q. Please produce it.
[Witness produces oath.]
Q. Did you administer that oath to Mr. Vance?

A. Yes, sir.
Q. When did you administer it?
A. On the 6th day of November; on Monday, I think it was.
Q. The Monday before the election?
A. The day before the election.
Q. Where did you administer it to him?
A. In my office in the court-house.
Q. About what time in the day?
A. That I could not state; it has gone from my mind.
Q Did he say anything to you about whether he was going to act and what he wanted the coath for?
A. Yes, sir; I asked him if he was to be clerk of the election there, and he said it was understood so, I believe, and he wished to be sworn.

And this, let me say, is republican testimony. The evidence of the

And this, let me say, is republican testimony. The evidence of the perjury of Black is equally clear. Now the minority say that forgery and perjury do not impeach a witness. I know that in their estimation it does not. I know from their report in their estimation perjury and forgery proved against witnesses in the very cause they are witnesses in does not impeach them. It was the testimony that they wanted, and they took it willingly from such witnesses and present it to the House, claiming it to be reliable, unimpeached testimony. Yet this perjury of the clerk and inspector of election at Archer No. 2 was proved before the member from Minnesota; he heard the perjury; he saw the forgery, and knew it; and now he comes in and says that those witnesses were not impeached. I admit that from his stand-point they were not. [Laughter.] But from the stand-point of the majority they were impeached, and in my judgment and, as I believe, in the judgment of this House and of the whole country, they

were impeached. And when the minority undertake to impose upon this House and the country such witnesses as unimpeached witnesses, they will have very little respect for the report which is made upon such a basis as that and upon such a code of morals as that.

such a basis as that and upon such a code of morals as that.

Now, Mr. Speaker, they say that in Archer the majority did everything to prevent letting in light. There were these perjured witnesses, witnesses from whom they proposed to give us light. These were their witnesses from Archer convicted of perjury and forgery, and yet the gentlemen say we would not let in light. Let in the light of forgery and the light of perjury! That is the light the minority wanted to get in. But the majority would not agree to let in their light; they let in the light of truth, the more of it the better. We sought for it. We love it as we do the light which comes from heaven. Now, sir, I have replied to some charges of the minority of this committee made against the majority of this committee, and I ask this House whether or not I am justified in saying, after the testimony I have read, that these witnesses committed perjury and forgery. Sir, I should deserve to be expelled from this House, and would make no defense to a motion to expel me, if I came upon this floor attack-

Sir, I should deserve to be expelled from this House, and would make no defense to a motion to expel me, if I came upon this floor attacking two innocent men in the State of Florida and charged them with such crimes which were not proved beyond all reasonable doubt. If there were any possibility that these charges were not true, I certainly would not make them. It would be cowardice for me to do it. But when it was proved before the eyes of the committee, when it was established beyond all controversy, justice to this House and justice to the country demands that the declaration should be made, that the mask should be torn off from those who undertake to impose that as truth upon the country which they knew to be false. Now I that as truth upon the country which they knew to be false. Now I find that the clock goes faster than I do, and I must hasten on. All the members of the committee know that Florida went as clearly for the Tilden electors as Massachusetts went for the Hayes electors. the Tilden electors as Massachusetts went for the Hayes electors. I say that the returns in the office of the secretary of state of Florida show that. The exhibits produced here, certified copies of returns from every county in the State, show it. And we presented that exhibit in order that the country might canvass for themselves the vote and see who were elected. We are not compelled to learn it from the canvassing board of Florida, but we lay before the country the testimony upon which they acted in making the canvass, and any person can make the canvass here. I say that the canvass gives a majority of at least 90 to the Tilden electors, and there has not been a word said here which in any manner goes to show that this count

majority of at least 90 to the Tilden electors, and there has not been a word said here which in any manner goes to show that this count is not fair, that result not correct.

Why, I want to read to you a moment. The gentleman from Nevada [Mr. Woodburn] said yesterday that in Clay County the return was uncertain, and that if the board had not thrown out the vote of Clay County they would have been liable for contempt. Let me read the return for electors in Clay County. This is the return as to presidential electors:

That the whole number of votes cast for presidential electors was four hundred and nine (409) votes, as follows, namely: Wilkinson Call received two hundred and eighty-six (286) votes; James E. Yonge received two hundred and eighty-seven (287) votes; Robert B. Hilton received two hundred and eighty-seven (287) votes; Robert Bullock received two hundred and eighty-seven (287) votes; F. C. Humphries received one hundred and twenty-two (122) votes; C. H. Pearce received one hundred and twenty-two (122) votes; T. W. Long received one hundred and twenty-two (122) votes; T. W. Long received one hundred and twenty-two (122) votes.

And yet the minority say that that return in these words is so uncertain and indefinite that the canvassing board were compelled to throw it out. And that is the best foundation they have for saying that Florida went for Hayes. It was one of the clearest returns made in the whole State, and indicates conscientiousness and truthfulness,

and there is nothing in any manner or form to impeach it.

Then they speak of another county, Baker County, where there was a most wicked fraud attempted to be committed on the people of the a most wicked fraud attempted to be committed on the people of the country, where a judge attempted to execute it. The returns from that county were signed by the clerk of the circuit court and justice of the peace, with a certificate explaining fully and clearly the reasons why neither the county judge nor sheriff signed the returns. That is a good and valid return. But the minority say that another return, where the sheriff who had no right to act came in and acted as a member of the board, being a mere intruder, that it should be canvassed. That return is not improved but rendered suspicious by having the name of an unauthorized person upon it. I say that upon having the name of an unauthorized person upon it. I say that upon every principle of law it injures it.

every principle of law it injures it.

This is a plain principle of law, and I call upon the lawyers of the House to decide whether or not I am correct in saying that where a party has authority to act only in special contingency in order to justify his action it must appear of record that the contingency has arisen which authorizes him to act. There is nothing in the return which comes from Baker County, claimed to be the most regular, which shows that any such contingency had occurred which authorized the shoriff to act. ized the sheriff to act. And I say upon every principle of law that the return signed by the clerk of the circuit court and justice of the peace, with the certificate explaining the absence both of the county judge and sheriff, is the return which the State canvassing board were bound to canvass. That board knew that it ought to be canvassed. The minority of the committee know that it should have been canvassed and admit this by approving of the canvass of the returns by the board of State canvassers of the returns from Duval County, signed by the clerk of the circuit court and a justice of the peace, and

where there is no certificate setting forth the reason why either the judge or sheriff failed to act. The certificates state that the judge was present, but does not state that he took any part in the canvass

or give any reason why he did not act.

Where such a return gives the democracts 95 majority it is illegal; where it gives the republicans 930 majority it is perfectly legal. That which the carvassing board, which they say was conducted with singular fidelity and the utmost fairness.

Now I say that the action of the board with regard to those re-

Now I say that the action of the board with regard to those returns shows a willful and corrupt purpose, shows that they acted knowingly, maliciously, and with intent to defraud the legal voters of Florida out of their votes and to defraud the country out of the President of their choice. This is fidelity; this the minority call sin-

President of their choice. This is identity; this the minority can singular fidelity.

They were anxious, very anxious indeed, to justify the action of this canvassing board, and they say we did not give them all the facilities that might have been given to justify this wicked action on their part. Now I submit that we gave them every opportunity which the law would give them. They have had the right to call just as many witnesses as they desired to call. We did not intend to have put upon the record a mass of falsehoods without at least having an appropriate to sift them, to see the witnesses and examine them. opportunity to sift them, to see the witnesses and examine them.

I have said thus much with regard to Baker County, and thus much

with regard to Clay County and Duval County, the counties where they make a question as to how they should be disposed of. The ques-tion is whether upon the face of the returns as they appear in the office of the secretary of state of Florida, according to the record as shown by those returns, the Tilden electors or the Hayes electors had

Now I repeat that it is as clear as demonstration can make it that the Tilden electors did have a majority, and the returns which the returning board had before it and were bound to canvass clearly show this. Any certificate given by them to the contrary is illegal and a false-hood. You need only to read the returns which we produce here to see how utterly false and groundless is the position taken by the board of State canvassers

Now, that being the case, I will devote only a moment or two to the other facts. The minority say that, if it appears upon the face of the returns that the Tilden electors were elected, taking the votes as they appear upon the canvass, upon the examination made in the county, such is not the case.

Now in answer to that I reply that they show no case of fraud on the part of a democratic office-holder in the State of Florida. I will repeat it; they show no case of fraud on the part of any democratic office-holder in the State of Florida. Everywhere where there was a fraud committed it was shown clearly to have been committed with the connivance, knowledge, and aid of republican office-holders in every case. I say that that is the fact about the matter.

Take the case of Leon County, where they stuffed the ballot-box with seventy-two or seventy-three small ballots which were never put into the box as votes, and nobody swears they were except one Joseph Bowes, an appointee of the governor, who went down to Richardson school-house for the purpose of committing that fraud which he did commit. That fraud was proved there beyond all question. It was a small precinct; nobody saw one of these small ballots voted; nobody saw them distributed; no one was brought up who voted one of them, although Joseph Bowes was an inspector there and had a great interest in having the honesty of the votes shown. He would have shown it had they been real votes.

In that case seventy-two names were added to the poll-list for the In that case seventy-two names were added to the pointies for the purpose of covering those 72 small votes that were fraudulently put into the box, and the minority of the committee know that to be the fact, for it was proven beyond all reasonable doubt. Yet they come in here now and undertake to say that, if anything was proven, only 25 illegal votes were proven. The whole 72 were fraudulent. The 25 illegal votes were proven. The whole 72 were fraudulent. The ballot-box was stuffed, and Bowes did it, or assisted in doing it. There can be no possible question as to this. There can be no question but what Wiley Jones, a republican, who went with Bowes from Talla-hassee to act as clerk at this precinct, assisted in it. The seventy-two names put on the poll-list to cover the small votes were in his handwriting.

Then we come to another place where fraud was committed, Archer No. 2. I commend Archer No. 2 to the consideration of the minority. They were at Gainesville, near there, and did not get any testimony at all to disprove the fraud. They had the process of the United States for every witness they wanted. But now, upon the testimony taken by the Senate, or rather upon the report of the Senate committee, made by that committee upon an investigation conducted in secret, where the people of the county did not have an opportunity to know what was going on, where men were brought in and sworn in secret, what was going on, where here were brought in and sworn in sector, they claim that a democratic fraud is proved. When we went there we had the examination conducted openly, we invited the people to come in and hear the evidence, to make charges if any were to be made. When the Senate committee went there they sat with closed doors, and it is upon the report of that committee upon which the minority of this committee relied, although being upon the ground they had an opportunity to examine into the matter. But they took the report of the Senate committee for the purpose of intimating that there was a fraud down there on the part of the democrats.

Why did they not show it there? Why did not they summon their

witnesses? Because they knew that if they summoned a witness and he was brought upon the stand, brought to the light of day before the people of the vicinity, the falseness of his testimony would be made apparent if in fact it were false; and therefore they would not call the witnesses. They did call a few witnesses, and some of them substantiated most forcibly the position taken by the majority of the committee in their report. It was clearly proved that at Archer No. 2 the returns were, as I have before stated, forgeries. The vote was declared on the night of the election as being for Stearns for governor, 180; for Drew, 136. It was clearly shown that not more than that number voted at this precinct. Still the forged returns produced by Black and Vance, forged by them, showed 399 for Stearns and 136 for Drew, thus making a show of 219 more republican votes than were actually cast. This fraud was committed by Black and Vance, republican officers, at this precinct—a most flagrant outrage upon the people not only of the State of Florida but of the whole country.

We are now told by the minority that they have endeavored to report without prejudice and truly the facts. They say they endeavored to do just as fairly as human infirmities would permit. Only think of the term. I do not know that I have got it exactly right. I will read it so that there may be no mistake about it. Here it is: Because they knew that if they summoned a witness and

We endeavored, as far as the infirmities of human nature would permit, to divest ourselves of all partisan prejudice and report truly the facts from the evidence, regardless of political consequences.

"As far as the infirmities of human nature would permit." I regret to say that human infirmities bound them hand and foot. I think they might make the confession of the apostle Paul that "when I would do good evil is present with me." Now, I am willing as a parliamentary matter to concede to them honest intentions; but human infirmities most certainly took away from them the capacity to act fairly in the premises.

I pity human nature. I was not aware that it was in such a sad condition as I find it in this case.

Now, Mr. Speaker, I have briefly gone over this case so far as time would allow. I have done so somewhat disconnectedly. I have spoken earnestly, but I have not misrepresented the minority. I know I have

earnestly, but I have not misrepresented the minority. I know I have not done that. I have not stated the case strongly enough; for I have not language to portray what the minority report contains, its unfairness, its entire misstatement of facts. I say again that it is from beginning to end substantially nntrue, although the facts were well known to the minority when they made that report.

In conclusion, I say that upon the returns as they appear in the office of the secretary of state, Florida elected the Tilden electors by a clear and decided majority; and that upon the examinations made in the country, applying the same principle to every precinct and giving to the Hayes electors the benefit of the most favorable construction, the majority for the Tilden electors is 543. Analyzing the struction, the majority for the Tilden electors is 543. Applying the struction, the majority for the Tilden electors is 543. Applying the priaciple which the minority apply to those precincts where they say democratic irregularities or frauds were proved, the Tilden electors have 1,600 majority. The only way the minority make out that there is a majority for the Hayes electors is by applying one principle to those precincts where the republicans had a majority, and another principle to those where the democrats had a majority. I ask whether that is honest or fair, whether it is stating the case as it is? But I remember that in their report they state that "human infirmities" may have prevented them from stating the facts. may have prevented them from stating the facts.

Their report is hard indeed upon human infirmities. I think I have the right to call upon the minority to apologize to human infirmities.

[Here the hammer fell.]

The SPEAKER. The question is upon the adoption of the pending resolution, on which the main question has been ordered.

The resolution was as follows:

Resolved. That at the election held on November 7, A. D. 1876, in the State of Florida. Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock were fairly and duly chosen as presidential electors, and that this is shown by the face of the returns and fully substantiated by the evidence of the actual votes cast; and that the said electors having, on the first Wednesday of December, A. D. 1876, cast their votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, they are the legal votes of the State of Florida and must be counted as

The question being taken on agreeing to the resolution, there ere—ayes 96, noes 61.

Mr. FOSTER. I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 142, nays 82, not voting 66; as follows:

voting 66; as follows:

YEAS—Messrs. Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning-Beebe, Blackburn, Bland, Bliss, Blount, Boose, Bradford, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Glover, Goode, Goodin, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Hawmond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hurd, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Levy, Luttrell, Mackey, Maish, McFarland, McMahon, Metcalfe, Milliken, Mills, Morrison, Mutchler, Neal, New, O'Brien, Odell, Piper, Poppleton, Powell, Purman, Rea, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Miles Ross, Savage, Sayler, Scales, Schleicher, Singleton, William E. Smith, Southard, Springer, Stanton, Stenger, Stevenson, Stone, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tncker, John L. Vance, Robert B. Vance, Waddell, Gilbert C. Walker, Walling, Walsh, Ward,

Warren, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young-142.

NAYS-Messrs. Adams. George A. Bagley, John H. Baker, William H. Baker,

amis, Jere A. Williams, Willis, Benjamin Wilson, Fernando Wood, Yeates, and Young—142.

NAYS—Messrs. Adams. George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks. Belford. Blair, Bradley. William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon. Caswell, Conger Crapo, Crounse, Danford, Darrall, Davy, Doblins, Dunnell, Eames, Evans, Flye, Fort. Foster, Frye, Hale Benjamin W Harris, Hathorn, Hays, Hendee, Henderson, Hoskins, Hubbell, Hanter, Hyman, Joyce, Kelley, Kimball, Leavenworth, Lynch, MacDougall, McCravy, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Packer, William A. Phillips, Plaisted, Platt, Pratt, Robinson, Sobieski Ross, Rusk, Sampson, Sinnickson, Smalls, A. Herr Smith, Thornburgh, Washington Townsend, Tufts, Van Vorhes, Wait, Alexander S. Wallace, John W. Wallace, G. Willy Wells, White, Whiting, Andrew Williams, Charles G. Williams, Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—82.

NOT VOTING—Messrs. Abbott, Andersou, Bass, Bell, Bright, Buckner, Campbell, Cason, Canlfield, Chittenden, Collins, Denison, Douglas, Durand, Freeman, Garfield, Gibson, Gunter, Haralson, Hoar, Hoge, Hunton, Hurlbut, Kasson, Kehr, King, Lapham, Lawrence, Le Moyne, Lewis, Lord, Lynde, Magoon, Meade, Money, Morgan, Page, Payne, Phelps, John F. Philips Pierce, Potter, Rainey, Reagan, James B. Reilly, Roberts, Schumaker, Seelye, Sheakley, Slemons, Sparks, Stephens, Stowell, Strait, Swann, Martin I. Townsend, Turney, Waldron, Charles C. B. Walker, Warner, Watterson, Wheeler, Whitehouse, Wike, Willard, and Wilshire—66.

So the resolution was adopted.

During the roll-call the following announcements were made:
Mr. A. S. WILLIAMS. My colleague, Mr. Durand, is detained
from the House by sickness. If present, he would vote "ay,"
Mr. CLARK, of Missouri. My colleague, Mr. Philips, who is absent
on account of sickness, would if here vote in the affirmative.
Mr. TERRY. My colleague, Mr. Douglas, is absent by leave of
the House

the House

Mr. RAINEY. On this question I am paired with the gentleman from Virginia, Mr. Douglas. If present he would vote "ay," and I should vote "no."

should vote "no."

Mr. DUNNELL. My colleagues, Mr. Strait and Mr. King, are both absent on account of sickness. If present, they would vote "no."

Mr. MONROE. I desire to state that the gentleman from New York, Mr. Lord, was suddenly called home by illness in his family. The result of the vote was announced as before stated.

Mr. THOMPSON moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to

The latter motion was agreed to.

### NAVAL APPROPRIATION BILL.

Mr. BLOUNT. I rise for the purpose of moving that the rules be suspended and that the House resolve itself into Committee of the Whole on the state of the Union on the naval appropriation bill. As

Whole on the state of the Union on the naval appropriation bill. As a preliminary to that motion I move that all general debate in Committee of the Whole on this bill be limited to one hour and a half.

Mr. WOOD, of New York. I object to that limitation. The time indicated by the gentleman is not long enough for the debate on this great bill. I hope he will consent to three hours of general debate.

Mr. WILSON of Iowa. Will the gentleman on the other side be kind enough to tell us whether this debate is to be confined to the

Mr. BLOUNT. So far as my motion is concerned, the purpose is to confine it to the bill.

Mr. WILSON, of Iowa. The rules of the House require it, but there

is also required the faith of the majority to carry the rules out.

Mr. BLOUNT. I can only say so far as I am concerned that it is our purpose to confine debate strictly to the bill itself.

Mr. WILSON, of Iowa. We found it heretofore difficult to confine members in debate to the pending bill.

The SPEAKER. This is not a special order in the Committee of the Whole, and debate therefore can take a wide range.

the Whole, and debate therefore can take a wide range.

Mr. BLOUNT. Does the Chair say it is not a special order?

The SPEAKER. Such is the Chair's recollection.

Mr. BLOUNT. I thought it was.

The SPEAKER. It was referred to the Committee of the Whole and not made a special order.

Mr. BLOUNT. I ask the gentleman from New York if he proposes to confine the debate to the pending bill.

Mr. WOOD, of New York. The House cannot limit the character of debate in the Committee of the Whole House on an appropriation.

of debate in the Committee of the Whole House on an appropriation bill.

The SPEAKER. Not unless it was made the special order, and the The SPEARER. Not unless it was made the special order, and the Chair is informed this is not a special order. He does not recollect with certainty how the fact is and has sent for the Journal.

Mr. WILSON, of Iowa. Let us have that question settled before we agree to any additional debate.

The SPEAKER. It is a proper question to settle before going into committee

Mr. HOLMAN. This is not a special order.
The SPEAKER. That is the recollection of the Chair.
Mr. HOLMAN. But it may be made the special order at once by vote of the House.

Mr. BLOUNT. It was my understanding that it was a special or-

Mr. BLOUNT. It was my unconstanting the made the special der in committee.

Mr. HOLMAN. I make the motion that it be made the special order in Committee of the Whole.

Mr. BLOUNT. That was my understanding at the time and it was my view until the statement just made by the Chair.

The SPEAKER. The Chair can only give construction to it as it

appears upon the Journal.

Mr. BLOUNT. I did not speak of it as it appeared upon the Journal, but merely stated such was my understanding. The question has now been raised whether or not it is the special order in com-

mittee.

The SPEAKER. The Chair has sent for the Journal.

Mr. HOLMAN. I move that it be made the special order in committee now

The SPEAKER. The Chair is of opinion that motion cannot be received at this time to cut off the amendment of the gentleman from New York

Mr. HOLMAN. That is true if the gentleman from Georgia main-

tains his present motion.

The SPEAKER. The gentleman from Georgia made a motion that general debate on this bill be limited to an hour and a half, and the gentleman from New York rose and was recognized and moved the debate be extended to three hours. The Chair thinks a vote should be taken on that before entertaining a motion by which the gentle-man from New York who wants three hours' debate can be taken off the floor.

Mr. BLOUNT. I hope the House will vote down the motion extending debate for three hours, and agree to limit debate to one hour and a half.

The SPEAKER. The Clerk will read the entry of the Journal.

The Clerk read as follows:

Mr. Blount, from the Committee on Appropriations, reported the naval appropriation bill; which was read twice, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. CONGER reserved all points of order on said bill.

Mr. WOOD, of New York. Let me ask whether according to the order of the House the bill has been printed.

The SPEAKER. It has not been printed, in consequence of the Public Printer declining to print it, and his reason for so declining is that he has not funds. It has, however, been printed in the RECORD of to-day

Mr. WOOD, of New York. Is that in pursuance of an order of the

The SPEAKER. It has been printed in the RECORD in pursuance of an order of the House.

Mr. WOOD, of New York. I adhere to my amendment to allow three hours of debate.

The question recurred on the amendment of Mr. Wood, of New

York.

The House divided; and there were—ayes 41, noes 100.

So the amendment was rejected.

The House divided; and there were—ayes 41, noes 100.

The question next recurred on the motion of Mr. BLOUNT.
Mr. WILSON, of Iowa. I move to amend so as to limit the debate

to one hour, which will permit the gentleman having charge of the bill to explain its provisions.

The SPEAKER. A vote will be taken first on the leavest the special content of t

bill to explain its provisions.

The SPEAKER. A vote will be taken first on the longest time, which will be an hour and a half. Those who desire one hour will reach it by voting down the motion for an hour and a half.

Mr. BLÖUNT. Before that is done, I wish to say to the gentleman from Iowa that the Committee on Naval Affairs have proposed a bill looking to a naval commission for the bettering of our Navy, and I thought it was due to that committee, as a matter of courtesy and as a matter of public interest, they should be heard from on so important a proposition. Therefore I saked for this time vielding most of it to proposition. Therefore I asked for this time, yielding most of it to

Mr. WILSON, of Iowa. If the gentleman assures the House it is to be confined to that subject, I will withdraw my amendment.

Mr. CONGER. I understand the proposed amendment to this bill

The SPEAKER. The Chair has nothing to do with that. The Journal, however, shows the gentleman from Michigan reserved all points of order.

Mr. BLOUNT's motion was then agreed to, limiting debate to one

hour and a half.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States, was received by Mr. SNIFFEN, one of his secretaries.

## RAILROAD LANDS IN KANSAS.

Mr. GOODIN. I desire to ask unanimous consent to take from the

Mr. GOODIN. I desire to ask unanimous consent to take from the Speaker's table a Senate bill for action at this time.

Mr. BLOUNT. I am willing to yield to the gentleman for that purpose if the matter gives rise to no debate.

Mr. GOODIN. I ask unanimous consent to take from the Speaker's table the bill (S. No. 1122) to secure the rights of settlers upon certain railroad lands, and to repeal the first five sections of an act entitled "An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River," approved July 25, 1866.

I desire that the bill may now be put upon its passage. It unanimously passed the Committee on Public Lands of the Senate. It unanimously passed the Senate on yesterday. It has met the unanimous approval of the Committee on Public Lands of this House; and it is a matter of great importance that it should now be acted upon.

it is a matter of great importance that it should now be acted upon.

The SPEAKER. The bill will be read for information, after which it will be open to objections, if any.
The bill was read.

The SPEAKER. Is there objection to the present consideration of the bill

Mr. HOLMAN. I wish to reserve the right to object until I hear read the law sought to be repealed. The five sections sought to be repealed imposed, I presume, some liability on the railroad company, and I think we should hear those sections read.

Mr. HALE. I must object to the present consideration of the bill.

Mr. HALE. I must object to the present consideration of the bill. The SPEAKER. Objection being made, the bill is not before the

House.

#### SALE OF LANDS IN KANSAS.

Mr. SCALES. I rise to a question of privilege. I desire to make

The SPEAKER. That is in order.

Mr. SCALES. I submitt the report which I send to the desk.

The Clerk read as follows:

The colors read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas, having met, after full and free conference, have agreed to recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 1.

That the House recede from its disagreement to the amendments numbered 2 and 3, and agree to the same.

A. M. SCALES, J. H. SEELYE, Managers on the part of the House. W. B. ALLISON, A. S. PADDOCK, L. V. BOGY, Managers on the part of the Senate.

The report was concurred in.

Mr. SCALES moved to reconsider the vote by which the report of the committee of conference was concurred in; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

#### TAX ON BANKS.

Mr. PIPER, by unanimous consent, presented a memorial of the Chamber of Commerce of San Francisco, asking for the removal of the tax on banks; which was referred to the Committee of Ways and Means.

#### ENROLLED BILLS.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (H. R. No. 3741) amending an act incorporating the proprietors of Glenwood Cemetery; and

An act (H. R. No. 4556) to remove the political disabilities of Reuben

Davis, of Mississippi.

### NAVAL APPROPRIATION BILL.

The House then resolved itself into Committee of the Whole on the state of the Union, (Mr. MILLS in the chair,) and proceeded to consider the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other pur-

naval service for the year ending June 30, 1878, and for other purposes.

Mr. WHITTHORNE proceeded to address the committee. After having spoken a few sentences he was interrupted by
Mr. WOOD, of New York, who said: I rise to a question of order. I demand the first reading of the bill.

Mr. WHITTHORNE. That can be done after I am through.
Mr. WOOD, of New York. I prefer to have it done now.
Mr. HOLMAN. I suppose that the gentleman from New York may demand ultimately the first reading of the bill. But he certainly cannot take the gentleman from Tennessee off the floor to require its reading at this time without his consent. We cannot of course proceed to consider the bill for amendments until it has had its first reading. But the gentleman from Tennessee is rightfully on the floor, and cannot now be taken off it by a demand for the first reading of the bill.

Mr. WOOD, of New York. I have no disposition to be discourteous to the gentleman from Tennessee. When he took the floor I was absent from the Hall, and supposed the first reading would be proceeded with, that being the rule and the usage. But if the full reading of the bill shall be required at the conclusion of the gentleman's speech, I will be satisfied.

The CHAIRMAN. It will be the right of the gentleman from New

The CHAIRMAN. It will be the right of the gentleman from New York to call for the reading of the bill at the proper time. He cannot insist upon it now when the gentleman from Tennessee is on the floor.

Mr. WHITTHORNE then resumed and concluded his remarks,

Mr. WHITTHORNE then resumed and concluded his remarks, which are as follows:

Mr. WHITTHORNE. By the courtesy of the gentleman from Georgia [Mr. BLOUNT] I take the floor on the present occasion, and inasmuch as I am indebted to him for the courtesy, I take this occasion to refer to a passage at arms which occurred between us the other day when the deficiency bill was before the House. The question of furlough pay being under discussion when I was upon the floor the gentleman asked me if I referred to him. I believe I said: "If the gentleman puts me to the wall I will say I do." It was intended on my part at the time as a peace of pleasantry. I was satisfied that the gentleman from Georgia knew then, as he knows now, the difference between leave pay and furlough pay.

But my main purpose in taking the floor at this time is to call the attention of the committee to this fact, that pending the considera-

tion of this bill, it is my purpose on behalf of the Committee on Naval Affairs to offer as an amendment what is now upon the files of this House as House bill No. 4389, and which is now a special order before the House. That bill, in brief, provides for the appointment of a mixed commission to inquire and report as to the future naval policy of the United States. The reason which operated upon the minds of the Naval Committee of this House, and induced them to bring this bill before the House for its engaging and induced them to bring this bill before the House for its consideration, was the result of their deliberation and examination into the present condition of

of their deliberation and examination into the present condition of the United States Navy. I beg the committee to go with me for one moment while I pass rapidly in review the condition of the Navy.

First, Mr. Chairman, let it be remarked that from the origin of our Government to the present time there has been expended upon the United States Navy the sum of \$951,820,937.66; and of this since the year 1861 there has been expended down to the close of the last fiscal year the sum of \$591,778,750.48.

In other words, Mr. Chairman, there has been expended since the year 1851 upon the United States Navy up to this date over the sum of \$500,000,000.

or \$600,000,000.

Now, then, our Navy to-day is not, relatively and in comparison with the navies of foreign powers, as efficient as it was in the year 1860. To be sure the President of the United States in his last annual message, and the Secretary of the Navy in his last annual report, draw the attention of the country to this fact, which it seems to them to be true, that the United States Navy is now in a better condition than it ever was before. Now, the country may be misled condition than it ever was before. Now, the country may be misled by that statement. What does constitute the strength of a navy? Is it the number of vessels in commission? Is it the number of its officers? Is it the number of its seamen? Not that, Mr. Chairman: but it is in the power of that navy to injure its adversary; it is in its power to destroy; and I beg to say to you, sir, and to this House, that when the United States Navy in 1860 stood relatively with the navies of the world as third, to-day the United States Navy has sunk to low as not to have a standing among the navies of the world. In the power to destroy an adversary, the United States Navy is to-day below the Brazilian and Turkish navies, and has been since 1861. And while you have expended this vast sum of money which I have named, of over \$600,000,000, will you remember the fact that since 1664, since the close of the active hostilities in our southern waters,

1664, since the close of the active hostilities in our southern waters, you have expended over \$400,000,000, and since that time your Navy has decreased from nearly seven hundred vessels to now one hundred and forty-seven. Four hundred million dollars of your money has disappeared, and with it this long list of naval vessels.

Now, again, since the year 1864, there has been appropriated and used in the Bureau of Construction and Repair, in the Bureau of Steam Engineering, in the Ordnance Bureau, and in the Equipment Bureau, the sum of over \$125,000,000. Now, sir, I dare state to this House, and I make the statement believing that it will not be questioned, that it would have been cheaper to the people of the United States in 1865 to have burned up every vessel, to have given them States in 1865 to have burned up every vessel, to have given them to the winds and the storms, and taken the sum of \$125,000,000 for the purpose of purchasing or building entirely new vessels. If you had done so you would have had to-day a Navy that would have been an honor to our country, instead of as it now is a disgrace.

Now, sir, in what manner have these vast sums of money disappeared? I am not here to-day to state to the committee anything in

a partisan view in reference to the Navy. I am not here to cast any reflections upon the administration of the Navy Department during the last few years. I have a higher and a better motive than that, and that is to put it upon such a footing as that it shall be the honor and pride of the American people. I am not here to say to-day even that this waste, extravagance, and mismanagement is chargeable to the Department or whether it be chargeable to Congress; but I am here to call the attention of the House and the country to the fact that vast sums of money have disappeared and that we have nothing to vast sums of money have disappeared and that we have nothing to show for it. I have to call attention to the fact that under the name of "repairs" vessels have been patched up whose existence should have been terminated at once; they have been doctored so as to exist for a week or perhaps a month and then have been decided to be worthless and turned over to the auctioneer's hammer. To appropriate money to maintain the Navy in this way is like putting water into a rat-hole; it is of no use either to the Navy or to the country. If you desire an economical expenditure of the public money reverse your policy, and with that object and purpose the Committee on Naval Affairs have matured and will submit to the House the amendment which has been referred to.

In this connection I beg to submit to the House a statement of the

In this connection I beg to submit to the House a statement of the

reduction which is to be made by that amendment.

I will read the following statement to show the extravagance in the repairing department of the Navy: The original cost of the Pensacola was \$500,000, the Kearsarge \$292,918, and the Lackawana \$451,069, making the total cost of these three vessels \$1,243,987. The \$401,009, making the total cost of these three vessels \$1,243,987. The repairing of these vessels was as follows: The Pensacola, \$1,000,000; the Kearsarge, \$612,122, and the Lackawana \$766,364. This is nearly a hundred per cent. more for the repairing than the original cost of the vessels. This vast amount of money has been spent on repairs, and yet when they are repaired at this great expenditure of money, they are not the vessels that are required and demanded by the progress made in naval science within the last six or eight years; and to-day you have hardly a single vessel borne upon your Navy

Register which in its enginery, in its armament, is equal to the demands made by the progress in naval science.

I have said that the strength of a navy is not in its numbers, either

of vessels or of officers. It may derive much from the courage and soldierly bearing of its officers. Who can forget, in a brief retrospect of the United States Navy, the daring that made our infant Navy the pride and boast of the Colonies? Of course I refer to the bearing and courage of Paul Jones. Again, who can forget that in 1812, with a small Navy, the courage and gallantry of naval officers and men, together with the speed of our vessels at that time, made

and men, together with the speed of our vessels at that time, made a comparatively small Navy very powerful.

Again, when the curtain was lifted upon the first scene of our civil war, who can forget that one vessel belonging to the Confederate States held in awe the entire Navy of the United States? Or who can forget that it was one vessel, the Monitor, commanded by that brave and gallant officer, Worden, that disabled the Merrimac?

And let we point our recollections in this retrease to that despends to the terms.

And let me point our recollections in this retrospect to that scene. Can we forget that from that day naval warfare has been revolutionized in this world? And while other countries have responded to that revolution and kept pace with it, the United States, notwithstanding the vast expenditures of money to which I have referred, have not kept pace with that revolution.

There have been in naval science, in naval architecture, in naval armament, in what I may term the physical science of naval wararmament, in what I may term the physical science of naval warfare, more improvements than in any other field of friumph whatever during the period of time to which I have referred. But your appropriations and your policy in Congress have not been responsive to those improvements. The management of the Navy Department has not been responsive to them. And to-day the Naval Committee of this House submits that, in view of this progress in naval science, in view of the present condition of your Navy, in view of the demands of the times, there should be a change of policy upon the part of the Legislature and upon the part of the Executive Departments of the Government, and that the policy of the future should be fixed and permanent.

And that brings me to the point, what of that policy; what shall be its character? You, Mr. Chairman, [Mr. Mills,] are a member of the Committee on Naval Affairs of this House. You can appreciate the difficulties which have environed and which do environ a committee composed entirely of men from the civil walks of life. Even now how little are the suggestions from this committee heeded by gentlemen who have been so reared and educated. The House and the country demand something more than that; they demand the experience and wisdom of men who have been trained in this

It is with the view of reaching that end that the Committee on Naval Affairs have suggested a mixed commission, composed of members of the House, of members of the Senate, and of officers of the Army and Navy. I refer now to the composition of the commission as recommended by the committee. The committee recommend a commission composed of the Admiral of the Navy, the General of the Army, three members of the House of Representatives, two Senators, and two effects of the Navy. and two officers of the Navy. It is a commission of nine, the members of the House to be the exponent if not the advocate of the recbers of the House to be the exponent if not the advocate of the recommendations of that committee. This commission is to be charged with the duty of looking into the present condition of our naval laws, the condition of our Navy, our relations with the commerce of the world, our relations with the navies of the world, the progress made in naval warfare and naval armament, our coast defense, and to look to the great future, if you please, and see how in that future our naval policy shall be aligned with our position in the world.

I am free enough to say to you, Mr. Chairman, as I believe I can say for every member of the committee, that we have looked forward not to a large Navy. My judgment is that the day of large navies has passed forever. My judgment is that the day of costly structures, of armored vessels has passed and passed forever. My judgment is that the future naval policy of the United States should be confined alone to the idea of swiftness in our vessels, to speed; in other words, to

to the idea of swiftness in our vessels, to speed; in other words, to

to the idea of swiftness in our vessels, to speed; in other words, to light unarmored vessels.

When you come to look at the coast of the United States you will see how nature has made that coast, if not a barrier at least a fortness against our adversaries. How little likely is it that we should be attacked by the navies of the world. How little have we to fear in our coast defenses from the large vessels now being built by the great powers of Europe. Our coast is protected and defended by nature. What we shall need in the future is to protect our coast either through torpedoes or by fortresses, and then a Navy of light cruisers, swift commerce-destroyers, with which to meet our enemies upon their first appearance.

upon their first appearance.

My friend from Oregon [Mr. Lane] remarks to me that that is all we can do. My mind rests upon that proposition. To my judgment the progress made in naval armament has its parallel in the soldier. the progress made in naval armament has its parallel in the soldier. Centuries ago it was thought wise and best to encase the soldier in his armor, to make his armor impenetrable. It was first made heavy; then it was made light. And then, in the progress of military science, it was found that the best soldier was he who had no armor at all, and who could move with promptness and celerity.

I think you will find this analogy and parallel in the progress of the developments being made in naval warfare. I believe the committee of which you, Mr. Chairman, have the honor to be a member,

in making this recommendation to the Committee on Appropriations and to the House, believe that by basing the future naval policy of the country upon these ideas you will economize and retrench your expenditures. And I dare now say for myself and as the result of my own examination that, if an intelligent naval policy be adopted, you can reduce the expenses of the Navy to a less sum than \$12,000,000.

Mr. BLOUNT. I would like to ask my friend from Tennessee a

Mr. BLOUNT. For a long period before the war and since there has been a feeling in Congress and throughout the country that we has been a feeling in Congress and throughout the country that we have had too many navy-yards. In the hope that there might be a reduction, a commission was created at the last session for the purpose of reporting what navy-yards could be dispensed with. That commission has not met at all the expectations of the country; on the contrary it proposes to retain all the yards but one. That report having disappointed Congress, I ask the gentleman whether we have any assurance that any commission to be appointed in the future will not act as this one and others have, disappointing the expectations of the country by rejecting economical suggestions?

any assurance that any commission to be appointed in the ruture will not act as this one and others have, disappointing the expectations of the country by rejecting economical suggestions?

Mr. WHITTHORNE. I thank my friend from Georgia for having asked the question. It brings to mind certain parallels in the history of other naval powers. In the year 1848 when the French navy had sunk to as low a condition comparatively as the present condition of the United States Navy, when in fact the French navy was not regarded as at all respectable in the opinion of any other naval power, the French government upon the suggestion of the Prince de Joinville raised a mixed commission at the head of which was that prince; and the result was that within a very few years the French navy sprang from its prostrate condition into the position of the leading naval power of Europe. The British government, seeing the result of the French commission, resorted to the same expedient; and time and again when the British navy has degenerated, its fortunes and its prestige have been revived by the creation of similar commissions.

When my friend from Georgia [Mr. BLOUNT] puts his inquiry upon this point, I do not hesitate to express my regret that the commission to which he refers made the report that they did. But it was in accordance with the action of Congress at the time. He will remember that the Committee on Appropriations had made a recommendation looking to the abolition of one or more of our navy-yards, while the Committee on Naval Affairs, acting somewhat in response to the suggestion made by his committee recommended that the

while the Committee on Naval Affairs, acting somewhat in response to the suggestion made by his committee, recommended that the yards be classified into building navy-yards and repairing stations. This House did not concur in the recommendation either of the Naval Committee or of the Committee on Appropriations; and it looks as if the commission responded to what they believed to be the judgment of the majority of this House. I have no other explanation to make of the action of that commission.

I know, and the gentleman knows, how hard it is to get rid of navy-yards throughout the country. Local interests and political consider-ations demand their continuance. But, sir, we are now at the close of one administration and another is about to come in. We do not know whether it shall be democratic or republican; but I dare hope and believe, and I take courage here to express it, that if the administration of the republican party is to be continued by the inauguration of Rutherford B. Hayes, we shall witness a revolution and a reformation in its methods of administration. No matter what may be the politics of the incoming administration, let it start as the friend of the people and as the advocate of retrenchment and reform.

Mr. HOLMAN Will the continue allowed a particular and the property of the people and as the advocate of retrenchment and reform.

of the people and as the advocate of retrenchment and reform.

Mr. HOLMAN. Will the gentleman allow me a question?

Mr. WHITTHORNE. Certainly.

Mr. HOLMAN. During the last session of Congress we organized three commissions or committees: one on the postal system of the country, one on the re-organization of the Army, and one on the question of Chinese immigration, the cooly question. One was a congressional committee purely, another a committee of gentlemen experienced in the field to which they were appointed, and the other a mixed committee. I believe that we appropriated \$10,000 for the expenses of each one of those committees. Has the gentlemen heard anything from them? Have they furnished a single fact upon which to predicate legislation? Year after year for years past we have had pleasant junketing committees traveling over he country; but up to this time I have never known a valuable fact to be brought but up to this time I have never known a valuable fact to be brought out in that way. Why? Because from the very necessity of the case Congress is informed in advance of all the facts which can be

gathered by any of these committees.

Mr. LANE. We have heard from the Chinese committee in a polit-

ical wa

Mr. HOLMAN, Certainly; that is the only way. Mr. LANE. We have heard from them in the carrying of Califor-

mia and Oregon against us.

Mr. PIPER. I would like to correct the gentleman from Indiana on two points. The appropriation for the Chinese committee was not \$10,000, and the committee has made a report.

Mr. HOLMAN. The money was all exhausted, I believe.

Mr. PIPER. No, sir; they put back a part into the Treasury.
Mr. HOLMAN. How much?
Mr. PIPER. One hundred and eighty-nine dollars. [Laughter.]
Mr. RANDALL. The only instance of the kind on record!
Mr. WHITTHORNE. That is an evidence that we are approaching

the days of honesty and reform. I understand that the Chinese committee has submitted its report to the Senate. As to the results of their investigations I am not informed. Again, sir, my friend from

their investigations I am not informed. Again, sir, my friend from Indiana is rather hasty, I believe, in his remarks about the commission appointed to report upon the re-organization of the Army.

Mr. HOLMAN. They have never met yet, have they?

Mr. WHITTHORNE. O, yes. My friend ought not to be unjust. He and other gentlemen on this floor ought to look facts squarely in the face. Whoever examines into the condition of the Navy Department must discover that there is a want of harmony, a want of purpose, a want of co-operation, and this has led to wastefulness and extravagance in that Department.

travagance in that Department.

travagance in that Department.

I say this, Mr. Chairman, without intending to reflect upon any one whatever. The facts are that way. It needs method, it needs harmony, and it needs purpose. I say to gentlemen if they go along year after year as we have been going on since the close of the war, voting so much as the gentleman from Indiana [Mr. Holman] and his colleagues upon the committee now report in this bill, without telling the House what each item is for and the purpose of it, covering np one million and a half to three millions of dollars in half a dozen lines, I tell him and them that they become co-operators and colleagues in the robbery and plundering going on. It will not do for gentlemen like him who are so old in the service and so long here, when it is attempted to reach methods by which these reductions and economies can be made in the public service, it will not do for him or economies can be made in the public service, it will not do for him or them to hide themselves behind half a dozen lines which appropriate a million and a half of dollars and nothing to tell which way it is

to go.

Mr. HOLMAN. I trust the gentleman will give me credit at least for trying to prevent the adding to that plundering of the Treasury of this item of \$10,000 for junketing expenses for members of Confidential.

gress. [Laughter.]

Mr. WHITTHORNE. My friend assumes it will be expended in junketing, an assumption which none but a Christian statesman would intimate. [Laughter.] One of these wicked, cussed fellows would not do it, but for a gentleman who has stood here for years and seen how naval estimates have been submitted, how naval appropriations have been made, when he knows during the last session of Con-gress at the instance of the Naval Committee this House with singular gress at the instance of the Naval Committee this House with singular unanimity passed a bill requiring the Secretary of the Navy should make detailed estimates, itemizing them, and here again permits this thing to be done, it illy becomes him, I say, to charge anybody with junketing. I again say, and I trust I am not partisan in it, this appropriation of one million and a half of dollars may be spent upon tug-boats which are really the junketing concerns under which officers have their pleasure. He might prevent that, but does not, but year after year, (and I trust the House will pardon me for this episode,) year after year these appropriations have been made, no items, no details being submitted to Congress; year after year money has been expended in the manner I have pointed out in the instance or the Pensacola, Kearsarge, and other vessels; year after year these immense sums of money have been wasted without any purpose, because I say it is wasted when it does not accomplish anything in the building up of our Navy.

building up of our Navy.

I ask you, sir, to let us leave the beaten track which has been followed by my friend from Indiana and others. Let us try some other

lowed by my friend from Indiana and others. Let us try some other expedient. Let us see if we can build up the Navy; let us see if we cannot make that Navy as it has been in times past, the pride of the American citizen and the boast of our countrymen abroad. This is the purpose which the Naval Committee have at heart, however illy I may have expressed it to the House in my remarks.

Mr. HARRIS, of Massachusetts. Mr. Chairman, I desire to say a few words in reference to the amendment proposed by the chairman of the Committee on Naval Affairs, [Mr. Whitthorne.] I desire to discuss it, however, entirely outside and above all questions of politics or party feelings. I desire if possible to come to the question before the House, and to present the reasons by which the members of the Committee on Naval Affairs were actuated in reporting this bill.

Mr. Chairman, I shall not stop to make reply to any remarks of the

Committee on Naval Affairs were actuated in reporting this bill.

Mr. Chairman, I shall not stop to make reply to any remarks of the chairman of the committee, which I think are unjust; for if he and I were to discuss the question of who is to be charged with fault in the past administration of the Government, we should doubtless differ widely. While I might admit the facts and figures which he has referred to in the main, I should ask what is the reason there has been waste in the expenditure of public money upon the Navy, and my answer would be because Congress has never had a policy on that subject up to this hour. It is idle to charge that the Secretary of the Navy during the last eight years is responsible for the fact we have no larger Navy than now exists, for I should say in reply that Congress has never appropriated a dollar during the last ten years for the construction of a new ship of war, except for the construction of eight light cruisers, not measuring over nine hundred tons burden each; and if we have a navy at all, it is because during the past administration money has been taken from the general appropriation with which to reconstruct old vessels which otherwise would have sunk out of sight and gone gone out of existence. out of sight and gone gone out of existence.

But, Mr. Chairman, why discuss the question in this way? We have been told by distinguished officers of the Navy there are faults in our system, and I recognize the truth of their statements to some extent. We have a bureau system, a system which comes in for

pretty general abuse from some gentlemen of the House. We have a bureau system; and it is stated by the Admiral of the Navy, Admiral Porter, that it is an inefficient, vicious system; that different officers of the bureaus operate independently of each other.

One has a hobby as to the prow of a vessel; another as to its engine; another as to its armament; another as to some other portion of the vessel. They do not act unitedly and in harmony, and do not produce a vessel of the first class.

Now, sir, how shall we have a policy? How shall we reach a

Now, sir, how shall we have a policy? How shall we reach a policy? The bill presented to the House recommends that a commission, consisting of the Admiral of the Navy, three competent officers of the Navy, (to be appointed by the President,) the General of the Army, and five members of the two Houses of Congress, shall sit to gether, consider the laws, consider the condition of foreign navies, gether, consider the laws, consider the condition of foreign navies, consider the condition of our own American Navy, and recommend to the next Congress of the United States a system and a policy which shall govern the future construction of ships of war. Is there a gentleman in this House who would fail to embrace this opportunity to improve the Navy at the cheap price which it would probably cost? And what are the questions that are to be submitted to this commission? Shall we embark in the building of great ships of war, the immense iron-clad vessels of war which may meet successfully on the ocean the great ships of England, France, and Italy? Shall that he

immense iron-clad vessels of war which may meet successfully on the ocean the great ships of England, France, and Italy? Shall that be our system? Shall we pile five millions of dollars into one hull, in order that we may take our place upon the ocean and be the rival of the European powers in foreign seas? That, sir, is not my view of what should be the American policy. Or shall we confine ourselves to defending our own rivers and harbors and protecting our own seacoasts entirely? I believe that to be one of the great questions to be determined. We ought in my judgment to be able to defend our own coast against all the world; but I doubt the policy of being able to mingle in the wars of Europe with vessels of any class whatever.

But, Mr. Chairman, shall we have vessels to send across the ocean which shall be unable to fight and alike unable to run away? For that, I submit, is the condition of the vessels which we call our fast

that, I submit, is the condition of the vessels which we call our fast cruisers of the present day; light armaments, small power to resist an enemy, and yet not with speed enough to capture an ordinary steamship of the merchant service. Would it not be wise for the American Navy to have some fast cruisers, as suggested by my friend from Tennessee, which should be able to capture, whenever it may be necessary, any of the ships in the merchant service of foreign countries, and be able at the same time to run away from any of the heavy armed vessels of the foreign navies of the world?

Mr. Chairman, the torpedo system which has come to be one of the most important branches of the naval service in our country is suffered to go unattended to. The inventors of America have been discarded and rejected when they have brought to the attention of the American Congress weapons of destruction, in my judgment, far in advance of those which any nation of the world has shown or can produce. Shall we protect ourselves from foreign invasion by the best system of torpedoes that have thus far been produced? that, I submit, is the condition of the vessels which we call our fast

the best system of torpedoes that have thus far been produced?

Many questions will be submitted to this commission, Mr. Chairman, outside of these questions to which I have called attention.

The laws governing our Navy are patched up and amended and altered from time to time, until they have no harmony; until they altered from time to time, until they have no harmony; until they cease to be a system perfect and complete, but are a series of laws independent of each other which in many instances do not harmonize with each other. We have connected with our Navy a great retired list. And I submit, Mr. Chairman, to any gentleman who will see fit to examine it, that the immense retired list of the American Navy needs public examination into it. A system should be adopted which should govern in all future time in the retirement of officers of the Navy, which ought to be forever prohibited. Congress ought to prohibit itself from ever again putting upon the retired list of the Navy an officer who could not reach that class according to the laws and rules laid down governing that subject.

Mr. Chairman, the condition of my lungs will not permit me to occupy more time. I merely desired to say that this bill was originated in

cupy more time. I merely desired to say that this bill was originated in the hope and in the expectation that many of the faults which have been talked about in this and past Congresses may be reached and remedied by sending the whole subject to a commission having no reference to any political question or party; a commission so organized that it can take up the subject independent of every other issue, and present it to the next Congress in such a form as that the system which they recommend may be readily apprehended and, if found to be instead greater and may be readily apprehended and, if found

tem which they recommend may be readily apprehended and, if found to be just and proper, adopted.

Mr. Chairman, with these remarks I submit the question.

Mr. BLOUNT. I now yield to the gentleman from Maine, [Mr. HALE.] How much time does the gentleman want?

Mr. FALE. I think about ten minutes.

Mr. BLOUNT. Very well.

Mr. HALE. Mr. Chairman, the gentleman from Tennessee [Mr. WHITTHORNE] is an eccentric man so far as the management of naval affairs is concerned. He came here having had a large experience in relation to the Navy and in relation to the element upon which the Navy floats. He has given the subject much attention, and I suppose Navy floats. He has given the subject much attention, and I suppose had sailed all over the world in ships, and had compared the condition of the navies of the world. He has from time to time entertained this House with one method or another for reforming the Navy. Last year his method was to impeach the Secretary of the Navy; and [Mr. Hale] a question.

starting out with that end he took up his pilgrim's staff and traveled from one yard to the other, taking testimony as to the conduct of the

Navy Department.

And finally he reported at last that in order to relieve the Navy, in order to put it in good shape, the Secretary of the Navy must be impeached. That experiment failed; the Law Committee of the House peached. That experiment failed; the Law Committee of the House took the case and the papers and have at this session reported exonerating the Secretary. But the gentleman was not satisfied; he has started out again and he has got now an entirely new method, and his new proposition to reform the Navy and to build it up is a commission which I assume may start out at the moment Congress adjourns and at the expense of \$6 a day and their traveling expenses shall again take up a traveling tour and observe the navy-yards of this country and perhaps the navy-yards of foreign governments and report at last to the House some method for changing the policy of the Navy Department. That commission is to be made up of the General of the Army, who of course knows all about its duties and all about its policy and the Admiral of the Navy who has passed his life in its serve. icy, and the Admiral of the Navy, who has passed his life in its service and who would therefore be strangely out of place and not at home with any other member of the commission, and two Senators and three Representatives. Now, I tell the gentleman my experience is that you cannot for a given amount of labor, time, and money get so little in the result from any department of the Government as you do from any commission of that kind.

I never have known in my experience anything to come out of any investigation by a commission made in this way. If this thing is to be done, if you want to appoint an intelligent commission, let the commission be made up entirely or made nearly entirely of men who have passed their lives in the naval service, and who would know more about this Navy and the navies of other nations than other gentlement. I do not believe that whatever as he have a release the result of the contraction of the navier of the result of t men. I do not believe that whatever may be the weakness or the difficulties in the Navy Department that the gentleman's panacea would be efficient now. I have not time nor have I the inclination to go into the general question about the condition of the American Navy to-day; but I will state this, that the gentleman and I are totally at odds on his proposition that the American Navy has sunk to a lower position than it ever held before, for I believe and I think the records will show and the vessels afloat will show that since the year 1869 there has been built up a better navy than this country ever put on the waters of the world. The appropriations for the Navy Depart-ment have, under the system of retrenchment and reform, not inau-gurated by the present committee, but long years ago, been steadily and gradually reduced. And yet while a large portion of these annual and gradually reduced. And yet white a large portion of these annual appropriations have been consumed in paying, clothing, and supplying the Navy, the Secretary of the Navy out of the balance remaining has built up a navy. And the real complaint, and that was the burden of the complaint in the investigation of the gentleman from 1 connessee, is that he had misappropriated funds in building up a navy. Mark you, \$900,000,000 have been appropriated for the Navy, and for a time since the close of the war \$500,000,000 have been appropriated and the gentleman selection was a supplementation. expended and the gentleman asks what you have to show for it. expended and the gentleman asks what you have to show for it. Did it ever occur to the gentleman that almost all annual appropriations for the Navy go for the payment for things that are consumed necessarily and will "show nothing?" The gentleman might just as well arraign the Navy Department before the American people for spending \$100,000,000 for food, clothing, and pay. Supposing that nine hundred million dollars of the property of this country was consumed in whisky, and what is there to show for it? It has all been doubt. Four hydrody stilling of this \$200,000,000 by the for for the state. Four hundred million of this \$900,000,000 has gone for food, pay, and clothing. Pay does not last; clothing does not last; food does not last. They are all consumed. And if gentlemen will examine the facts of the case, they will find that the Secretary had to build up a navy and that no money has been misappropriated or extravagantly spent.

I wish further to state that under the control of the present Secretary of the Navy there are more vessels in the United States Navy better able to cope with the vessels of other nations now affort Navy better able to cope with the vessels of other nations now ahoat than ever before. Should trouble have arisen in the last flurry with Spain I have reason to believe that our Navy, smaller as it is, I will admit, than that of Great Britain or France in the proportion of one to five, would be enabled to cope with the navy of either country. The Secretary of the Navy has built up in five years a navy more effective for actual service than any navy that the United States ever had. He came into the office and inherited a navy composed of rotated that the desired and extraction of the composed of rotated the composed of the composed had. He came into the office and inherited a navy composed of rotten ships, decayed, rotting, or built with too much rapidity under the extravagant system which prevailed during the war, because under the turmoil of the war it was impossible to build ships deliberately, and the Secretary therefore, as I have said, inherited them, and they were liable to fall to pieces at any moment. He sat to work religiously to build up a respectable navy. Now, it has been said in this case we have spent large amounts upon the Navy and we have now nothing to show for it. I would say to the gentleman that I do not believe so, and my belief is as good as his that it is not so, and that the report is true, and that an examination of the Navy will show the report is true, and that an examination of the Navy will show that it is efficient; and I wish to enter my protest against this attempt to decry what has been done by that branch of the public service. With these remarks I leave the question.

Mr. CONGER. I desire to say a few words.

Mr. COCHRANE. I would like to ask the gentleman from Maine

The CHAIRMAN. Does the gentleman from Georgia [Mr. BLOUNT]

The CHAIRMAN. Does the gentleman from Georgia [Mr. BLOUNT] yield for that purpose?

Mr. BLOUNT. The gentleman will have an opportunity before the debate is closed. I understand the gentleman from Michigan [Mr. CONGER] rises in relation to the matter of time for debate.

Mr. CONGER. Yes.

Mr. BLOUNT. I desire to call the attention of the Committee of the Whole to this fact: when I asked that there be allowed an hour and a half for general debate I understood that the gentleman from Tennessee [Mr. WHITTHORNE] would want only about an hour, and that the gentleman from Massachusetts [Mr. HARRIS] would want about ten minutes. I myself desire to have twenty minutes for the purpose of explaining the bill. Since the order limiting debate was purpose of explaining the bill. Since the order limiting debate was made, a disposition has been shown on the part of gentlemen on the other side to discuss this bill. I think it is but fair, it has always other side to discuss this bill. I think it is but fair, it has always been thought fair, to divide the time for debate between the different sides of the House. I therefore ask unanimous consent that twenty minutes' additional time be allowed for general debate.

The CHAIRMAN. The House has limited the time for debate, and it is not competent for the Committee of the Whole to extend it.

Mr. BLOUNT. By unanimous consent.

The CHAIRMAN. The committee cannot transcend the time allowed by order of the House.

Mr. WILSON, of Iowa. If nobody objects I think it can be done; it has been done several times in other cases.

The CHAIRMAN. If nobody objects it may be done. There are

The CHAIRMAN. If nobody objects it may be done. There are twenty minutes of the hour and a half yet left for general debate.

Mr. BLOUNT. I want some time myself.

The CHAIRMAN. What additional time does the gentleman sug-

Mr. BLOUNT. I would ask that twenty minutes more be allowed

for general debate.

The CHAIRMAN. If no objection be made, the time for general

debate will be extended for twenty minutes.

Mr. NEAL. I object.

Mr. BLOUNT. I think it is but fair to the other side of the House that some time should be allowed them for debate; that has always been done. I will therefore move that the committee now rise for the purpose of obtaining from the House an order extending the time

the purpose of obtaining from the House an order extending the time for general debate for twenty minutes.

The motion of Mr. BLOUNT was agreed to.

The committee accordingly rose; and, Mr. WILSON, of Iowa, having taken the chair as Speaker pro tempore, Mr. MILLS reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Sympson, one of its clerks, announced that the Senate had agreed to the report of the conference committee on the disagreeing votes of the two Houses on the bill (S. No. 1222) providing for a deficiency in the appropriation for the public printing and binding for the fiscal current year, and for other

purposes;
The message further announced that the Senate had passed bills of the following titles; in which he was directed to ask the concur-

rence of the House:

A bill (S. No. 481) for the relief of Israel Yount; and

A bill (S. No. 1251) to remove the political disabilities of Joseph E. Johnston, of Virginia.

### NAVAL APPROPRIATION BILL.

Mr. BLOUNT. now resolve itself into Committee of the Whole for the purpose of resuming the consideration of the naval appropriation bill. Pending that motion, I move that twenty minutes additional time be allowed for general debate. I move that the rules be suspended and the House

The question was then taken upon the motion to extend the time for general debate; and it was agreed to.

The question was then taken upon the motion to go into Committee of the Whole upon the naval appropriation bill; and it was agreed

to.

The House accordingly resolved itself into Committee of the Whole,

Mr. MILLS in the chair.

The CHAIRMAN. The Committee of the Whole now resumes the consideration of the naval appropriation bill, and by order of the House the time for general debate has been extended for twenty minutes; making forty minutes in all that there is now for general

Mr. BLOUNT. I yield to the gentleman from Michigan [Mr. Con-

GER] for fifteen miuntes.

Mr. CONGER. I do not desire any time to speak generally upon the bill. But understanding that this amendment would be offered, I took occasion to reserve all points of order upon it. Before the amendment was introduced, one hour of the hour and a half that was allowed for general discussion of the bill before the commit-tee had been spent upon the proposed amendment, unexpectedly to me and to many others in the House. If the point of order is sus-tained—and I have no doubt it must be under our rules—there would

be no time to reply to what has been said or to discuss the proposition. I therefore desire to refer to this amendment before the time

comes for raising a point of order upon it.

The gentleman from Tennessee, [Mr. Whitthorne,] the chairman of the Committee on Naval Affairs, from which committee this amendment is reported, has compared the present condition of our Navy with its condition in former days. He asserts, first, that the Navy at the present time is inferior in condition to our Navy in former times, an place, he asserts that the expenditures upon the Navy at the present time are greater than they were in former times, and that we have a less effective Navy to-day than we had in former days when there was even less expenditure.

Now to remove all these evils the gentleman recommends the appointment of that scape-goat of all iniquities, a commission; a thing which so far as my observation extends has never heretofore been of which so far as my observation extends has never heretofore been of any benefit in our deliberations or in the formation of our laws. How does the gentleman propose to make this commission, which shall take in the whole scope of the world's naval history, the whole field of naval experience, the whole question of naval armament, all our naval laws, and naval rules, and to report at the commencement of the next session of Congress, through the President of the United States, to this House, such a well-digested system upon all these subjects that all wisdom shall die with them and all legislators for the future shall have an infallible guide?

future shall have an infallible guide?

He would have an infallible guide?

He would have that commission composed of three persons connected with the Navy and six persons who from their position and mode of appointment will not necessarily—I may say with a good deal of safety, will not probably—have any knowledge of naval affairs whatever. The Admiral of the Navy is to be one of this commission, and two officers of the Navy are to be appointed by the President. Then comes the General of the Army. Why, my friend thinks that because in the confusion of past years the General of the Army made a "march to the sea," he is perfectly familiar with proceedings on the sea. There is no particular reason why that distinguished officer sea. There is no particular reason why that distinguished officer—a man I venture to say as familiar as any other man in the United States with all branches of the Government service—should be called

from his regular duty to revise naval matters merely.

Mr. HARRIS, of Massachusotts. I wish to ask the gentleman whether the General of the Army does not understand as well, perhaps as any other man in the country, what the coast defense re-

Mr. CONGER. The gentleman had his fifteen minutes. He now sees the importance of my proposition; but during his whole fifteen minutes it did not occur to him to mention it. I regret that he did not then see that this, the most vital of all questions arising here,

should have been spoken to a moment.

But who are to be the other five members of this commission? Two gentlemen from the Senate and three from the House, taken probably from the mountain regions of our country, from the inland, as I have noticed that almost uniformly members of the Naval Committee

of this House are taken from those living most remote from the water, and frequently the case is the same in the Senate.

This is the commission to go forth on a ten-thousand-dollar approriation to gather in the knowledge of the world and report to this House. Those who desire to be appointed upon this commission will advocate it. Those who desire to inform themselves and are active in procuring the passage of this proposition will have the opportunity of travel and of gaining information. Whether this House or the Senate or the country will ever derive any more benefit from this commission than from others which have been appointed to examine into other branches of the Government, I know not.

But one remark of the gentleman from Tennessee struck me as very peculiar. He says the day for large vessels of war is passed; the time has come when we need only swift, fleet, smart craft that can rush upon an unarmed vessel, sink it, and then escape before the larger one approaches. Is that to be the American Navy—swift to attack the unarmed and unoffending? That this was the gentleman's meaning, he illustrated by saying that one of the confederate cruisers put to shame the American Navy. Ah! it put to shame the American Navy because contrary to all precedent in the civilized world it failed to meet an armed opponent but sought the weak and flying failed to meet an armed opponent, but sought the weak and flying merchantman and cruiser. It was magnificent in carrying the torch and lighting up the ocean; it was the fleetest of all vessels in hiding upon the approach of a foe. Shall our Navy follow that illustrious example?

example?

But, sir, for the gentleman's information I wish to compare the expenditures of this Congress for two years with the expenditures of a democratic Congress in former years. In this comparison we shall see what was the expenditure of our fathers for a Navy. I will not go back to the earliest times in our history, nor to the later times. Midway between the two I will take up the subject.

In the year 1846-47 the expenditures in this very Department which the gentleman criticises were under a democratic Congress \$1,325,000, and in the year 1847-48, \$2,500,000, making an aggregate in the two years of \$3,835,000. For construction and repairs we appropriated under the recommendation of the committee last year \$1,750,000, and this year it is proposed to appropriate \$1,500,000 making an aggregate for two years of \$3,250,000, or \$1,625,000 per year. The aggregate appropriation in 1847-48 was \$1,917,500. We had then but seventy-six

vessels in our Navy, only four of them, and those among the smallest vessels in our Navy, only four of them, and those among the smallest of our craft, were steam-vessels. Now we have one hundred and forty-six vessels, of which one hundred and twenty-three are steamers. All men know how much more expensive it is to build, equip, man, and run steam-vessels than sailing-vessels. With seventy-six vessels in the Navy, and only four of them small steamers, the Government expended in the two years I have mentioned \$3,835,000. In these two years the Government expenditure, if we appropriate what is now proposed, will be only \$2,850,000; a little more than half what our fathers expended upon a much less numerous Navy and composed of fathers expended upon a much less numerous Navy and composed of vessels costing far less to keep in service.

But, sir, if the gentleman, in going back to pick up Paul Jones has stopped to examine the Navy in the intermediate time, he will rememstopped to examine the Navy in the intermediate time, he will remember that in those days the wages in our construction yards were \$1.12 a day; at this time the average rate of wages is \$2.80. At that time the men worked ten hours a day; now under the laws of the laud they work but eight hours a day. I might mention many other differences in expense and appropriation between former times and the present. In 1846-'47 there were in commission forty-two vessels; at this time there are in commission eighty-four of these larger vessels. This is from the record, and shows the difference in the size of the Navy. The appropriations then were almost double what they are Navy. The appropriations then were almost double what they are now. That was in the good old honest democratic days which the gentleman will be proud to be referred to. At the present day, also, the democracy control the appropriations for the Navy; but how difthe democracy control the appropriations for the Navy; but how different their spirit! Then they did not leave questions to be settled by commissions. They did not expect such bodies to remedy faults which arise from lack of appropriations. Every man knows that the great fault in our Navy to-day is that appropriations are made with a stingy hand. No vessels are built now; old vessels must be repaired; and the very fault which the chairman of the Naval Committee charges upon the Navy Department arises from the unaltered provision of law which forbids the building of any new vessel. Has the gentleman forgotten how he charged this Navy Department with wrong because they built a vessel on its own keel and said that was violation of law—made it all new except its keel—has he forgotten that? that?

[Here the hammer fell.]
Mr. BLOUNT. I yield now for five minutes to the gentleman from Tenne

Mr. WHITTHORNE. Mr. Chairman, upon cool, calm reflection, I have no occasion to regret that I was born in the interior, and not in view of salt water. I am no salt-water dog, and when I say that, I do not mean to reflect upon the dog, for he is as remarkable for his fidelity as the gentleman from Maine [Mr. HALE] is for his fidelity to everything that concerns the present naval management of the coun-In that, he may be right, as he says, and I may be wrong, but I have to repeat to him, rejecting from the account the pay of the Navy, rejecting from the account the management of the dock-yards, and coming down to the expenditure made for the Bureaus of Conand coming down to the expenditure made for the Bireaus of Construction and Repair and Steam Engineering, and for permanent equipment of vessels, there have been expended during the administration of the present Secretary of the Navy over \$60,000,000! And I dare say in the face of the country, if that \$60,000,000 had been expended in the purchasing or building of new vessels, we would have a better Navy than we have now.

Over \$60,000,000 have been thus expended, and what is the present and it is the present of the present of

condition of the Navy? I need not refer gentlemen to the volumes of testimony taken by the Committee on Naval Affairs, commencing with the testimony of Admiral Porter, Commodore Nichols, and others, to show I am warranted in the statement I submit to the House, but leaving our own officers, going out to the world, seeking the judgment of our adversaries, I beg leave to read to the gentleman from Maine [Mr. Hale] the opinion of a recent distinguished English authority, John C. Paget, upon The Naval Powers and their Policy:

To the nineteenth-century Englishman Spain is simply an incomprehensible country, which pays no interest on her bonds. But even now, low though she has sunk in the scale of nations, she is far from insignificant at sea. A nation which has practically defied the United States cannot be classed with the small powers, however weak may be her forces on land, however torn by civil war. We suppose there can be no dispute about the fact that the United States did "cave in" on the Virginins question on account of their utter inability to cope with the Spanish fleet. Seven iron-clads, including three of the first class, constitute the armada which the United States refused to face.

And no man who looked at our squadron as it exercised at Key West during the Virginius excitement but must hang his head in west during the virginius excitement but himst hand his head in mortification and shame, because we did submit to insult and disgrace for and on account of the inefficient and shameful condition of the United States Navy. And that is the truth of history as testified to by our own officers, to whose testimony I refer gentlemen.

My friend from Michigan [Mr. Congen] compares the expenses as

he says during a period of democratic administration. Now, will he tell the country, at the period to which he referred that democratic Administration was defending and maintaining the honor of the United States; that it was during the Mexican war?

[Here the hammer fell.] Mr. BLOUNT. Mr. Chairman, it was not my intention to take any part in this general debate. I designed simply to state to the House some of the provisions of this bill and to point out wherein it differed from the bill for the present fiscal year, and the reason for the difference,

and then to ask for the consideration of the bill by paragraphs. I think it is germane, however, to the purpose of the Committee on Appropriations, to wit, to endeavor in the midst of the distressed condition of the business interests of the country, and in view of the discussion in that direction, for me to turn from that purpose for a moment.

The gentleman from Michigan [Mr. CONGER] who has just taken his seat stated to the House what was the amount of money expended under the head of Bureau of Construction and Repair, in 1846, 1847, and 1848, and that the appropriations then made were simply for construction and repair. The gentleman has fallen, in the selection of the years which he has presented to the House, either by design or accident—it is unimportant to me which—upon the period of the Mexican war. Simply to illustrate how unfair that statement will be, I refer to the tables for several years, including 1845, 1846, and 1847.

The Secretary of the Navy says in this connection:

I deem it not inappropriate to the occasion, as illustrating the expenditures of the Navy Department since the commencement of the Mexican war, to present a comparative statement of appropriations and expenditures for the last three years, under the heads of appropriation of "pay," "contingent," increase and repair," "provisions and clothing," and "surgeon's necessaries and appliances." These may be denominated the variable appropriations, and will show the increase of expenditure during the war over that of a corresponding period in time of peace. This comparison exhibits the following result:

For the year ending—	Appropriations	Available aggregate.	Expenditures.	
June 30, 1845	\$5 058, 815 71	\$6, 194, 451 28	\$5, 818, 388 79	
	5, 085, 892 00	6, 564, 426 62	6, 471, 544 50	
	6, 434, 349 00	7, 961, 733 48	6, 435, 416 56	

And of the expenditure for increase and repair, during the past year, \$45.571 have been paid for fifteen vessels, store-ships, steamers, and schooners, of suitable draught of water, purchased and sent to the Gulf of Mexico.

Mr. CONGER. That is for 1846. I spoke of 1846-'47 and 1847-'48,

Mr. BLOUNT. I cannot yield to the gentleman. It was an extra-ordinary year and there was an extraordinary demand upon the Navy Department. More than that, we were not then as now with a heavy public debt, with our industries groaning, with an irredeemable paper currency, and with the prospect of resumption remote and in doubt. currency, and with the prospect of resumption remote and in doubt. If the gentleman had been seeking a kindred occasion to the present—although I confess there is nothing exactly similar to it during the whole period of our history, if we except the period of depression just after our Independence—if he had sought, I say, for a kindred occasion he would have gone to a period before the war; and here permit me to say that the Secretary of the Navy has selected that period, or a period prior to the war, but the most expensive period in the history of the American Navy. Herefers to the expenditures in 1856 being \$15,000,000 and in 1858 being \$13,000,000. I use round numbers. Now, sir, by referring to the reports of that year it will be found that we were adding to our naval list the finest vessels in the world, comparing with any navy in Europe and imitated sels in the world, comparing with any navy in Europe and imitated

by those governments afterward.

But, sir, what was the result? The Bureau of Construction and Repair had reached an expenditure of somewhere about three millions, or a little over three millions of dollars. There was discontent, there was a cry of corruption and of extravagance. And the gentleman's own party in this House, in view of these appropriations, perhaps answering to the popular mind at that day, in the person of Mr. Sherman, offered the following amendment, under the head of Bureau of Construction and Repair. Mr. Sherman moved to strike out these

WORds:

"For increase, repair, armament, and equipment of the Navy, including the wear and tear of vessels in commission, fuel for steamers, and purchase of hemp for the Navy, \$3,100,000."

And insert in lieu thereof the following:

"For fuel for the Navy, to be purchased in the mode prescribed by law for other materials, and for the transportation thereof, \$500,000.

"For the purchase of hemp and other materials for the Navy, \$300,000.

"For the repair, armament, and equipment of vessels, \$1,000,000: Provided, That not more than \$1,000 shall be expended in any navy-yard in the repair of any vessel until the necessity of such repair and the probable cost thereof are ascertained by the report of a board of not less than three officersof the Navy."

The result of this motion which was adopted by the House was the reduction of that bureau from \$3,200,000 to \$1,000,000; and, sir, to the credit of the democratic party at the other end of the Capitol, they responded to it, and accepted that reduction.

So, sir, I might take up bureau after bureau and show how the gentleman's own party, in a manner more cruel than that adopted by the Committee on Appropriations of this House in the last session, cut them all down with a relentless hand. And the Senate accepted it, and the next year there was no request on the part of their friends, and the next year there was no request on the part of their friends, or on the part of anybody, as there is now from the Navy Department, that we should allow a million and a half additional for the current year. But they accepted it as an accomplished result, as the flat of the American people.

It is entertaining, sir, to recur to the debates of 1858-759 and 1859-760. There was a cry then, as there is now, that you are ruining the American Navy; that is was not retrenchment and reform but that

it was revolution—a purpose to destroy the Government by paralyzing all its functions. But the cry was useless. The gentleman's own party and many of the democratic party stood by those reduc-

But, sir, again in relation to that period of 1856-'57-'58 to which the Secretary of the Navy refers; while that was the most expensive period selected by the Secretary of the Navy, there the appropriations had been small in previous years; the Department, it was claimed, had been well administered and the Navy was claimed by aval officers as ranking higher than other navies as at this day. I say while that has been the case since the war—for I take a period subsequent to it-it was not to be expected that during war and the subsequent to it—it was not to be expected that during war and the destruction of war there was to be economy. But beginning with the year 1865 you have for that fiscal year an expenditure of \$122,-617,000. You have in 1866 an expenditure of \$43,285,000. You have in 1867 an expenditure of \$31,727,000. You have in 1868 an expenditure of \$25,734,000. You have in 1869 an expenditure of \$20,055,000. The expenditures of the Navy for every year since the war make an average of over \$30,000,000.

But gentlemen tell us that the Secretary of the Navy has rendered the country great service; that out of the bare appropriations made the country great service; that out of the bare appropriations made he has increased the Navy, and it is in a far better condition than it ever has been before. Well, sir, there is a variety of opinion upon this subject. I have very little confidence in my own judgment in regard to it; but the Secretary of the Navy who preceded the present head of that Department in 1868-69, referring to the iron-clads, which are now a part of our cruising vessels, insisted that in time of peace they were utterly useless for cruising or other purposes, and advocated their sale; and Congress accepted that as the true policy. Scarcely had the new Secretary come into power, without experience, or without the long and valued experience which the other one had, before out of this fund he commenced to construct these vessels, to repair them, to change them in various particulars, for the purpose to repair them, to change them in various particulars, for the purpose to repair them, to change them in various particulars, for the purpose as he understood it of rendering them more valuable to the Navy. Now, sir, they are atterly valueless at this time; utterly valueless for cruising purposes; and, I undertake to say, not very valuable in the event of war. He has proposed, in his present report, a change of policy. He seems to think that we only need a few monitors, double-turreted, for the defense of our harbors, with light ships for coasting purposes.

So that, so far as the question of the improvement is concerned, it is at least dubious, and, running back through a period of years, we find the officer at the head of the Navy Department continually changing his opinion as to what is the true policy in relation to our Navy, and so far as I can gather the facts the true interest of the country is to be deduced from the various opinions of the several heads of this Department, belonging to different parties sometimes. But this system of adopting one policy one year and another policy another year is detrimental to the best interests of the service.

Thus much I desire to say, generally, so far as the naval appropriation bill is concerned: The Committee on Appropriations have reported a bill appropriating \$12,489,324.40. The bill of last year which became a law appropriated twelve million seven hundred and thirty odd thousand dollars. The change in this bill over the bill of last year relates to the pay of the Navy, and the increase in this bill over that of last year is about \$250,000.

The question in reference to the pay of the Navy has been discussed very fully in the debate upon the dediciency bill appropriating \$5,000,-000 extra for that pay which passed a few days ago, and there is a little more that should be said here in that connection.

I desire, however, to call the attention of the House to an act passed

by Congress which will be found in the eighteenth volume of the Statutes-at-Large, page 107, in relation to balances, and, as the time is so short, I will simply include that section in my remarks; it is as

All balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund.

It will be very evident from that that the statement made by my It will be very evident from that that the statement made by my colleague on the committee from Maine, [Mr. Hale,] that it was by the appropriations used as unexpended balances under this law that the improvements of which he speaks of in the Navy have been made. It is not true that the law contemplated that any such unexpended balances should be used upon works of this kind. I wish to impress upon the House that the law simply provides that where an appropriation for the pay of the Navy, for instance the pay of men who are off upon a three years' cruise and could not be paid during the fiscal year, it should not lapse into the Treasury to become a permanent fund. But it did not justify any interference with the appropriations in doing work which should be provided for in subsequent years.

The appropriation for construction and repairs which the committee reports is \$150,000. The appropriation bill of last year was \$175,000. The committee have reported the amount which in their judgment is right and proper. During the last session of Congress the House of Representatives added to this appropriation the sum of \$250,000. The reasons for this were then very fully stated, and I

shall not take up the time of the House now, but shall wait until we shall reach the consideration of that paragraph in the bill, and will state at that time more fully the views of the committee. Here the hammer fell.]

Mr. BLOUNT. I ask unanimous consent that the first reading of the bill be dispensed with.

No objection was made, and it was so ordered.

The Clerk proceeded to read the bill by paragraphs, and read as

For pay of commissioned and warrant officers at sea, on shore, on special service, and of those on the retired list and unemployed, and for the actual expenses of officers traveling under orders, and for pay of the petty officers, seamen, or linary seamen, landsmen, and boys, including men of the engineers' force, and for the Coast Survey service, seven thousand tive hundred men, \$6,250,000.

Mr. HALE. I move to strike out in the last line of that paragraph the words "\$6,250,000" and to insert in lieu thereof "\$7,000,000." I will say that if this amendment is not adopted before the next fiscal year expires there will be a deficiency which will have to be appropriated for to cover the pay, &c., for the Navy. As this matter has been much discussed heretofore and I have put my protest against this reduction on record, I will not trespass on the time of the House. I make the

Mr. BLOUNT I desire to say this in reference to the prediction of the gentleman: He may prove to be a prophet; he doubtless knows more than I do at this time about this question. I have had great difficulty, although I have gone to the fountain head, to understand why it was that during the period from the present to the 2d of November last the sum of \$6,500,000 has been expended, when there is a proposition on the part of the Secretary to increase the number of the Navy to 12,000 men, and this increase of expenditures is asked for. had in the Navy 8,500 men at one time, and now cut down to 7,500, and the expenditures have never reached that sum now asked for, taking the average. As I said the other day, there are men in the Navy now upon cruises who have to be paid for several years back, and the force of 13,000 was increased 1,500 more during the war, and it is a singular of 13,000 was increased 1,500 more during the war, and it is a singular fact that never until this House came into operation under the democratic party has the Secretary of the Navy ever said that \$7,500,000 is necessary to support a navy of 8,500 men. Just the preceding year, the very last year of their power in the House, they ran it up to \$6,250,000. When we were met here with these large estimates we were told that the balances were all exhausted, and we were referred to Exhibit E of the Book of Estimates, which was nothing in the world but a pay table, and that is just as near an explanation as this House or the country has ever had while this has been done

House or the country has ever had while this has been done.

My friend stated the other day that it was by reason of the consumption of unexpended balances. Now I make the prediction that if an estimate for deficiency shall come in, it will be found that the money which we have appropriated for the past year, instead of being nsed as the law requires and as should have been done, for the pay of the Navy during that year, has been used for the pay of the Navy during preceding years, and it was done in order to make a record of economy which is perfectly false. That is my prediction.

Mr. WHITTHORNE. I concur with much that has been said by the gentleman from Georgia, [Mr.BLOUNT.] I believe it possible, with an honest, impartial administration of the Navy Department, to reduce

the expenditure for the pay of the Navy without destroying the efficiency of the service, to reduce that expenditure below the sum named in this appropriation bill.

I hold in my hand a table which has been sent to me by a gentle-man, and which shows the difference in the pay of officers of an English frigate and officers of an American sloop of war, (approximate,) both in active service. The table is as follows:

Difference in the pay of officers of an English frigate and an American sloop of war, (approximate,) both in active service.

BRITISH IBON-CLAD FRIGATE RALEIGH, ns 5 200 tons 5 639 hors

(as Ennel place tonel place marco be not sufficiented)	
One captain, (pay and command money)	\$3, 965 00
One commander, (executive officer)	
One first lieutenant	
One navigating lieutenant	1, 100 00
Three watch hentenants	3,000 00
Two sub-lieutenants	. 1,360 00
Four midshipmen	
One paymaster	
One assistant paymaster	820 00
One surgeon in charge, (20 years' service)	
One assistant surgeon	
One chief engineer in charge, (20 years' service)	1,640 00
Six assistant engineers	6,000 00

Total pay and allowances...... 24, 920 00 UNITED STATES SLOOP OF WAR (WOODEN) AVERAGE,

(8 guns, 910 tons, 1,150 horse-power indicated.) 

 (8 guns, 910 tons, 1,150 horse-power indicated.)

 One commander, (pay and money for rations)
 \$3,609 50

 One lieutenant-commander, (pay and money for rations)
 3,109 50

 Five lieutenants at \$2,400
 12,000 00

 One master
 1,800 00

 Four ensigns at \$1,200
 3,000 00

 One surgeon in charge
 3,500 00

 One surgeon in charge
 1,700 00

 One passed assistant surgeon
 1,700 00

 Four warrant officers at \$1,400
 5,600 00

 One chief engineer in charge, (15 years' service)
 3,500 00

One passed assistant engineer	\$2, 200	00
One assistant engineer	1,700	
Two engineers at \$1,200	2, 400	
Four machinists at \$76.50 per month	3,648	
Rations furnished in money for 25 officers at 30 cents per ration	2, 637	50
Pay of officers American corvette	57, 404	50
Pay of officers frigate Raleigh	24, 920	00
	00 404	
Excess of pay to "run" a sloop	32, 484	50

The United States frigate Franklin, (3,173 tons,) cost while in European waters, for pay of officers (and ration in money,) the sum of \$83,523 in gold, or \$58,603 more than the English frigate Raleigh, (5,200 tons,) serving in the same waters.

It will be seen by a reference to this table that the total pay and allowance for the officers of the British iron-clad Raleigh, 22 guns, 5,200 tons, 5,639 horse-power, was \$24,920. The pay of an average United States sloop of war, wooden, 8 guns, 910 tons, 1,150 horse-power, was \$57,404.50, or an excess over the British frigate of \$32,284.50.

By reference to the table, it will be seen that this difference is produced by the multiplication of unnecessary officers who are assigned to duty upon the American vessels. It is this that adds to this item to duty upon the American vessels. It is this that adds to this item
"pay of the Navy." It is the unnecessary duplication of officers upon
high or sea pay. They might be put upon leave pay, and in that way
you could retrench the expenditures of this part of the Navy.

I have no doubt that the expenses of the Navy are increased by
putting officers under what are called traveling orders, under which
they receive mileage. When this item is closely scanned, it will be
seen that during the last few years the amount has been increased.

they receive mileage. When this item is closely scanned, it will be seen that during the last few years the amount has been increased

for this purpose very largely.

It is in the power of the Secretary of the Navy, if he is so disposed, to favor officers by giving them these traveling orders, while, upon the other hand, if he will look to the interest of the tax-payers of the tax-payers of the tax-payers of the results. the country, the expenditures, at least in this respect, can be greatly

Mr. BANKS. I move to strike out the last word. It would give me great pleasure to sustain any well-considered proposition for the reduction of the expenditures of the Navy. I have no doubt that the Committee on Appropriations, at least in their own view, have given proper attention to this bill. But it does not seem to me that

given proper attention to this bill. But it does not seem to me that the conclusions to which they have arrived are calculated to strengthen the Navy of the United States or to maintain the integrity and honor of the Government in that Department.

What the gentleman from Tennessee [Mr. WHITTHORNE] has just said shows that in order to bring the naval service within the appropriation, so far as the pay of officers is concerned, a large number of officers must be put upon reduced pay and a smaller number upon what he calls high pay or pay for sea service. It is undoubtedly true that this may be done; but concludent what he calls high pay or pay for sea service. It is undoubtedly true that this may be done; but gentlemen must remember that to do so would subject a great many honorable officers of the Government to distress and to what they would esteem a degradation. Putting a man upon half pay is to to degrade him.

Mr. WHITTHORNE. If the gentleman from Massachusetts will allow me to interrupt him upon the question of reducing officers of the Navy to furlough pay, I will say that I am totally opposed to that. But leave pay and furlough pay are two different things.

Mr. BLOUNT. The gentleman from Massachusetts [Mr. Banks] had better be careful or the gentleman from Tennessee [Mr. WHIT-

Mr. BLOUNT. The gentleman from Massachusetts [Mr. BANKS] had better be careful or the gentleman from Tennessee [Mr. WHITTHORNE] will charge him, as he did me the other day, with knowing nothing about naval affairs. [Laughter.]

Mr. BANKS. I know there is a difference between leave pay and furlough pay. But a deprivation of employment is considered degradation by the officers of the Navy, and it is so understood by the country at large. Now if in this particular regard a reduction of expenses is to be made, it should be commenced by a re-organization of the naval system, either in regard to the number of officers or in regard to the extent of the service isself. gard to the extent of the service isself.

I do not think it is a wise thing for the committee, nor will it be I do not think it is a wise thing for the committee, nor will it be beneficial to the country, to throw the onus and disadvantages of this reduction upon the class of officers who are employed in this branch of the public service. For that reason I would very gladly vote for the amendment of the gentleman from Maine, [Mr. HALE;] or I would suggest to the gentleman from Georgia, [Mr. BLOUNT,] who has this appropriation bill in charge, that he make this item at least what it has been heretofore, \$6,500,000, instead of \$6,250,000 as proposed in

Now the gentleman from Tennessee, [Mr. WHITTHORNE,] in addressing the committee at length upon this bill, made a remark to which I wish to call his attention and the attention of the commitwhich I wish to call his attention and the attention of the commit-tee. He seemed to assume it as a conceded fact that this Govern-ment had been subject to insults from the government of Spain, be-cause of its incapacity to defend itself. Now I certainly do not un-derstand that to be the case. I do not understand that the Government has recognized or acknowledged that it has received anything that could be considered in the estimation of any nation as a direct or intentional insult. I know there has been a difference of opinion in the minds of our people in regard to the policy of this Government with reference to Spain and the Spanish possessions in the Gulf of Mexico, but I have never yet conceived it to have been admitted that our Government had submitted to insult ou account of the inefficiency of its naval preparations.

Why, sir, I call the attention of the honorable gentleman from Tennes-

see to the fact that we have ourselves kept in repair and kept affoat the naval vessels in the waters of the Gulf of Mexico. But for our naval

establishments, the mechanics in our navy-yards, our materials and supplies, those ships of war could not have been kept affoat there. This has been the case constantly for the last five years, and will be for the next five years if we continue the same policy. How is it possible then that the Government can understand that it has been offended in any degree by the conduct of the government of Spain toward our Government in this regard?

[Here the hammer fell.]

Mr. BANKS. I wish the committee would give me five minutes

Mr. LUTTRELL obtained the floor, and said: I yield my time to

the gentleman from Massachusetts.

Mr. BANKS. I thank the gentleman.

Mr. BLOUNT. Will the gentleman from Massachusetts yield to me

for a moment?

Mr. BANKS. Yes, sir. I want the gentleman from Georgia to understand that I am not complaining of the committee. I only want to state some general views.

Mr. BLOUNT. I understand that. My purpose was simply to ask that the committee now rise, in order that the House may take a recess until half past seven o'clock.

Mr. BANKS. After I have concluded what I have to say, I will vote

Mr. BANKS. After I have concluded what I have to say, I will vote for that proposition.

Mr. Chairman, for this Government to submit to offensive treatment at the hands of another nation would not be justified by the fact that we had no Navy. I do not think this committee or this House of Representatives would be content with any such defense. If our Government or our citizens are not treated properly by other governments, though we had not a ship afloat and our flag was not upon the waters of the world, I think it would still be not only the purpose and determination but within the capacity of the people of this country to defend themselves. I do not think that any consideration of that kind can justify the proposed reduction in expenses or the criticism which was presented in a very just spirit on the part of the gentleman from Tennessee as to the policy of the administration of the Navy

Department in past years.

Let the past go. Whether it has been good or ill, we cannot change it. Let us look at what the country demands now. Let us ask ourselves whether the Navy is in a proper condition at the present moment, whether that which is proposed as the supply for this Department is sufficient in amount and application to make our Navy what it should be. Now, of one hundred and forty-six vessels of ours afloat there are one hundred and twenty-three steamers. to appropriate this year \$1,500,000 for the repair of these vessels, to keep them in proper condition and proper order.

If this appropriation be not sufficient one or more or all of these

vessels will suffer by deterioration infinitely more than will be saved by the Government in the diminution of the appropriation; and another Congress this year or next year or the year after will be obliged to appropriate millions of dollars to make good the damage which these one hundred and twenty-three steamers and twenty-three sail-

ing-vessels will suffer for the want of means to keep them in repair.

"A stitch in time" is a good thing; and if neglected it brings to wreck everything that suffers for the want of it. This consideration applies to the steamers, the sailing-vessels, the machinery, and all the other appurtenances just as it does in all the ordinary affairs of life. To withhold the appropriations necessary for such purposes is not economy. Gentlemen here, if they continue in the direction of affairs in this House, will have to make good the injury resulting to the Navy of the country from insufficient appropriations.

Mr. BLOUNT. Will the gentleman allow me to ask him whether he has taken pains to look in detail to see what is necessary as a "stitch in time" to keep in repair our Navy?

Mr. BANKS. I confess I have not done so, because I have not had the means. To look at this matter in detail is to examine the condition of every ship and ascertain what is necessary to make good that when the means its condition what it should be for the present year. ship, to make its condition what it should be for the present year. I have not done this; but I take it to be the fact that for the repairs of one hundred and twenty-three steamers and twenty-three sailing-vessels a million and a half of dollars is not what the Government under former administrations, democratic or republican, has appropriated and will not suffice now any better than heretofore. The fact must present itself to every member here that with so insufficient an appropriation these vessels and steamers will suffer for want of repairs, and future Congresses will be required to make good the injury.

I withdraw my pro forma amendment.

Mr. BLOUNT. I move that the committee rise. I desire to move that the House take a recess until half past seven o'clock to-night for the sole purpose of considering the naval appropriation bill.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Mills reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes, and had come to no reso-lution thereon.

## PRINTING DEFICIENCY.

Mr. WALDRON. I rise to a privileged question and submit the report of the committee of conference on the disagreeing votes of the two Houses on the printing deficiency bill.

The Clerk read as follows:

The Clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of Senate S. No. 1232, an act to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment numbered 1, and agree to the same with an amendment as follows:

Strike out all of the said amendment after the word "for," in line 2 of said amendment, and substitute therefor the following: "Compensation than fifty cents per thousand ems and forty cents per hour for time-work to printers and bookbinders."

And the House agree to the same.

That the Senate recede from its disagreement to the amendment numbered 2, and agree to the same.

HENRY WALDRON.

HENRY WALDRON,
JOHN D. C. ATKINS,
Managers on the part of the House.
A. A. SARGENT,
S. W. DORSEY,
A. S. MERRIMON,
Managers on the part of the Senate.

Mr. WALDRON. There being no discussion desired in regard to this matter, I will demand the previous question.

Mr. BANKS. I should like to inquire of the chairman of the committee what is the regular reduction of wages proposed by this con-

ference report? Mr. WALDRON. I will state, Mr. Speaker, that the maximum prices under this conference report are a reduction of about 20 per cent. on the existing prices; and that prices here fixed are as high as those paid in any city in the Union, and higher than are paid in many. I

the existing prices; and that prices here fixed are as high as those paid in any city in the Union, and higher than are paid in many. I demand the previous question on the adoption of the report.

Mr. BANKS. I hope not, as I wish to say a word.

Mr. WALDRON. I will yield to the gentleman for that purpose.

Mr. BANKS. Mr. Speaker, the printers in this city are paid less than the large majority of skilled mechanics elsewhere in the country. It may be that they get more pay at the present time than the printers of the same capacity in other cities; but gentlemen must remember their situation here is very different, as they work but a part of the year and are not allowed a regular stipulated period of employment each day, that they are required to work according to the necessities of the Government, sometimes for eight hours, at other times twelve, and sometimes even twenty in the twenty-four.

Mr. RUSK. And sometimes only one.

Mr. BANKS. Yes, sir; and sometimes only one; and all these disadvantages diminish their pay while their expenses are quite as high if not higher by reason of this irregularity of employment.

I do not think the gentlemen of the conference committee ought to insist in placing these skilled mechanics of the Government at the same rate of wages paid in other cities where employment is regular from the beginning to the end of each year. I have a table which I should be very glad to have published with my remarks.

Statistical rate of average weekly wages of some of the trades of the United

Statistical rate of average weekly wages of some of the trades of the United States, February, 1877.

States a corum gj acres	ADDRESS OF THE PARTY OF THE PAR	
Calico-printers	\$22	25
Rolling mills:		
Merchant-rollers	22	50
Rail-rollers		00
Heaters	20	60
	-	
Assayers	94	75
Assayers	Ot	50
Gold-miners	1 100	
Silver-miners		
Copper-engravers	19	
Iron-puddlers		
Plate-rollers		
Ship-anglesmiths	20	
Jewelers	17	40
Sugar-refiners		70
Photographers	18	40
Lithographers	18	60
Longshoremen	17	60
Printers:		10000
Job	17	40
Newspaper		
Book		
Proof-readers		
Pressmen	19	0000000
Feeders		
Book-binders		30
Type-casters	14	30

Mr. ATKINS. This amendment provides where they work by the hour they shall get forty cents an hour, so if they work twenty hours they will get twenty times forty cents.

I will state further, that the prices in New York, Philadelphia, and Baltimore are less than they are here. There is but one city on the continent where they get fifty cents a thousand ems, and that is the city of San Francisco, California.

Mr. BANKS. The gentleman from Tennessee will see that if a printer is employed for one day for one or two hours, and another day is required to work ten, fifteen, or twenty hours, the service is much harder, and ought to be better paid than where the printer works in another city from the beginning to the end of the year a certain number of hours each day. Some days printers here have but very little work, and other days they are obliged to work all day and long into the night; and under the circumstances I say they are entitled to the pay now provided for them as skilled mechanics.

Mr. VANCE, of Ohio. I should like to correct the gentleman in

Mr. VANCE, of Ohio. I should have to correct the gentleman it one or two points.

Mr. BANKS. I should be glad to be corrected.

Mr. VANCE, of Ohio. I wish to correct the gentleman in one or two particulars. The printers employed in the Government Printing Office, as a class, have more and steadier work than those employed in any other office in the country, and they now get a much higher compensation. This bill reduces that compensation somewhat, but it brings it down only to the maximum price paid in one other city in the States, the one to which reference has been made by my friend from Tennessee, [Mr. ATKINS,] and that is the city of San Francisco, California

California.

Mr. CONGER. I should like to ask whether this does not reduce—
and I beg the gentleman's pardon for disputing his statement—the
price 33½ per cent.?

Mr. VANCE, of Ohio. It reduces the price per thousand ems from
sixty to fifty cents, but gentlemen should remember there are but few
men employed in the Government Office by the thousand ems, most
of them being employed by the week.

Mr. WALDRON. I demand the previous question on the adoption
of the report

of the report.

The previous question was seconded and the main question ordered,

and under the operation thereof the report was adopted.

Mr. WALDRON, moved to reconsider the vote by which the report was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### ORDER OF BUSINESS.

I move that the House take a recess until half past Mr. BLOUNT. seven o'clock this evening for the sole purpose of considering the naval appropriation bill.

Mr. FOSTER. No other business to be transacted.

Mr. ATKINS. I move that the recess be until ten o'clock to-mor-

Mr. BLOUNT. I hope my colleague on the committee will not prevent us from having a meeting this evening to proceed with the consideration of this bill.

#### CONSIDERATION OF PENSION BILLS.

The SPEAKER. Before putting the question on the motion for a recess, the Chair desires to submit a request of the gentleman from Illinois [Mr. Bagby] which the Chair thinks will do justice to many deserving recipients under bills now awaiting the action of the House. The Clerk will read the gentleman's request.

Mr. ATKINS. I withdraw my motion.

The Clerk read as follows:

The Committee on Invalid Pensions ask manimous consent that an evening session, commencing at 7.30 p. m., be ordered for Tuesday, the 20th instant, for the consideration of reports from that committee and for no other purpose,

The SPEAKER. The Chair desires to state that there are more than one hundred and thirty pension bills on the Private Calendar, and that unless some evening be fixed for their consideration they

Mr. CONGER. There are other bills on the Calendar of a like character. I ask the gentleman to modify his resolution so that the evening session which he asks for may be considered as objection

The SPEAKER. The Chair thinks there are no bills which press so urgently and tenderly for the consideration of the House as the

pension bills.

Mr. MILLS. I hope the proposition will be extended so as to apply generally to bills of the Private Calendar. If that is not done the work on those bills will have to be gone over again next Congress.

The SPEAKER. The Chair will submit the request of the gentleman from Illinois. Is there objection?

There was no objection, and it was so ordered. Mr. RUSK. I ask that all the pension bills on the Speaker's table be taken from the table and referred to the Committee on Invalid Pensions that they may be able to report them that evening.

Objection was made. Mr. HOLMAN. I demand the regular order.

### RECESS.

The SPEAKER. The regular order is the motion of the gentleman from Georgia, [Mr. BLOUNT,] that the House take a recess till half past seven o'clock this evening to proceed then with the consideration of the naval appropriation bill, no other business to be consid-

The question being taken, there were—ayes 68, noes 18.
Further count not being called for, the motion was agreed to; and accordingly (at four o'clock and fifty minutes p. m.) the House took a recess till half past seven p. m.

## AFTER THE RECESS.

The recess having expired, the House re-assembled at seven o'clock and thirty minutes p. m.

### ORDER OF BUSINESS.

Mr. BANNING. I ask unanimous consent to present a petition for

The SPEAKER. When the recess was taken the understanding

was that no other business would be considered this evening than the naval appropriation bill. If the Chair, therefore, should entertain the gentleman's request there might be some complaint made. Mr. BANNING. If that is the case I withdraw the petition for the

present

#### NAVAL APPROPRIATION BILL.

Mr. BL()UNT. I move that the rules be suspended and the House resolve iteslf into Committee of the Whole on the naval appropria-

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole House on the state of the Union (Mr. Mills in the chair) and resumed the consideration of the bill (H. R. No. 4616) making appropriations for the navel service for the year ending June 30, 1878, and for other

purposes.

The CHAIRMAN. The question is on the amendment of the gentleman from Maine [Mr. Hale] to amend the first paragraph appropriating for the pay of officers and men of the Navy, by striking out "\$6,250,000" and inserting "\$7,000,000."

M. HOLMAN I desire to say a few words to the committee on

Mr. HOLMAN. I desire to say a few words to the committee on this amendment.

The CHAIRMAN. Will the gentleman from Indiana put himself

The CHAIRMAN. Will the gentleman from Indiana put himself in order by offering a pro forma amendment?

Mr. HOLMAN. I move to reduce the sum mentioned in the amendment of the gentleman from Maine \$1 pro forma.

Mr. Chairman, I see the gentleman from Maine is not in his seat. If he was I should like to ask him a question or two, and should be very glad indeed to hear his answer. Nor do I see the gentleman from Massachusetts [Mr. Banks] in his seat.

Mr. WILSON, of Iowa. Suppose you pass this section over and go back to it after awhile, when there are more members present.

Mr. HOLMAN. We cannot do that very wall. I see the gentleman from Massachusetts.

Mr. HOLMAN. We cannot do that very well. I see the gentleman from Massachusetts [Mr. Banks] now in his seat.

These gentlemen have assumed that the appropriation proposed by this bill of \$6,250,000 is an inadequate appropriation for the pay of the officers and men of the Navy, a body of officers and seventy-five hundred men. Indeed it has been intimated that the Government in the poverty of this appropriation is acting unkindly toward the officers of the And yet, sir, it seems to me that in no nation will be found so extraordinary a state of facts as exists in ours in reference to the pay of officers of the Navy in comparison with the aggregate pay of the men of the Navy; and it is the more remarkable when the natural tendency of a Government like ours should have been to reduce the number of high salaried officers rather than increase them beyond the public necessities. In 1872, five years ago, when the Navy was composed of eighty-five hundred men, the estimate was \$6,500,000 as the entire pay; but the appropriation was the same sum as proposed by this bill, \$6,250,000. In that time the pay of the sailors and seamen at a cost of \$300 each was \$2,550,000, and that of the officers was \$3,700,000, making a total expenditure for pay of \$6,250,000, or \$1,250,000 more for the salaries of officers than for the entire naval force. In 1877, when the Navy is reduced to seventy-five hundred men, at a cost of \$2,250,000 per annum, and officers \$4,000,000, still footing up \$6,250,000. No reduction of expense!

But the point which induced me to rise was to call the attention of the gentleman from Massachusetts [Mr. Banks] to the fact that in 1862 it was deemed sufficient to appropriate \$6,250,000. Now, when the force has been reduced from eighty-five hundred to seventy-five number of high salaried officers rather than increase them beyond

the force has been reduced from eighty-five hundred to seventy-five hundred, and we still appropriate \$3,250,000, gentlemen complain that we do injustice to the Navy. It seems to me, without doing injustice to the officers of the Navy, that we might greatly reduce

this amount.

[Here the hammer fell.]
Mr. DANFORD. On the details I support the amendment offered to the bill by the gentleman from Massachusetts; and I believe there is a wise economy required in the Navy, and I think it economical in the long run to keep as large a number of sea-going vessels afloat as possible. And I believe it would be wise economy to put them in commission, even with a full complement of men, in order to keep them in readiness for active service if we have trouble, for instance, in the Gulf. I hold, further, that there would be economy and saving to the Government in the repair of these vessels in branic at the in the Gulf. I hold, further, that there would be economy and saving to the Government in the repair of these vessels, in keeping them constantly in commission, and under the charge of officers of the Navy. I believe, further, that it should be the policy of this Government to keep as large a number of our cruisers as possible. By the action of the past Congress in cutting down this item of appropriation the Department has been compelled to bring home from foreign service a number of our vessels. It is true, undoubtedly, as stated by the gentleman from Tennessee [Mr. Whitthorne] and the gentleman from Georgia [Mr. BLOUNT] that you might largely reduce the pay of the Navy by putting them on shore duty or waiting orders; but it strikes Georgia [Mr. BLOUNT] that you might largely reduce the pay of the Navy by putting them on shore duty or waiting orders; but it strikes me that the true policy of the Government is to keep our flag flying at the mast-head of as many vessels as we can. The very presence of our flag in distant ports encourages our commerce abroad. Our Navy is not supported, for the reason that we may fear insult to our commerce or to our citizens abroad from the larger powers. It is from the smaller powers that we have to look for these difficulties, and it seems to me that the policy of the Government should be to protect American commerce and intercourse in the East, for instance, and

upon the shores of South America. A naval officer, wherever he may go, has a difference between his sea pay and his pay on waiting orders, and that comprises a very large item. The difference between the statement made by the gentleman from Tennessee [Mr. Whitthorne] and the statement made by the head of the bureau is a mere matter of calculation of dollars and cents, as to the amount of money required

of earthacton of donars and cents, as to the amount of money required to pay their claims.

I was opposed to the bill at the last session, because I am opposed to any measure reducing our Navy which would deprive it of the power of bringing home our seamen from foreign ports.

Mr. BLOUNT. As has been said by my colleague on the commit-

service, and a large number of officers are employed in it whose services are not required. We have upon the active list a number of officers equaling almost in cost the British navy.

This seems to be simply an establishment for officers and nothing else, and I therefore think that the complaints made are just and should be heard, and I think that gentlemen in the present condition of the country at this day, when economy is demanded everywhere, can find no place where we could better enforce economy than here. The gentleman from Ohio [Mr. Danford] who has just taken his seat gave us no reason for any increase of this appropriation. He says that we are compelled to have all these iron-clads in commission. I have yet to learn for the first time that any yessel withdrawn from

I have yet to learn for the first time that any vessel withdrawn from commission was not withdrawn for some reason. On inquiry at the Bureau of Equipment I am informed that all vessels are kept in commission which are in condition to be so. There are a number of vessels employed upon the Southern Atlantic and upon the Northern Atlantic because we might by some possibility have difficulty or trouble with the governments south of us.

The gentleman said it was a matter of economy to keep these vessels

The gentleman said it was a matter of economy to keep these vessels in commission; that they are better preserved if they are on a cruise than if they are in ordinary. If that is the full statement of it, the gentleman is correct; but when you add to it the fact that these vessels when on cruising duty or when under convoy, for they are utterly unfit for cruising—when they are carried out to sea simply to make a show of vessels in commission, there is to be added the expenses of the rations and pay of the men. There can be no question but what it is a matter of economy to put them in ordinary. Any large sum of money spent upon them is utterly useless, and therefore I think this appropriation is ample.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. CLYMER. I will take the floor and yield my time to the gentleman from Georgia, [Mr. BLOUNT.]

Mr. BLOUNT. I thank the gentleman for his courtesy. I think this appropriation is ample. I think it is but right that these vessels, so utterly useless in commission, should be withdrawn, that these officers who are unnecessarily on sea duty should be brought home, and cers who are unnecessarily on sea duty should be brought home, and a large number of them put on waiting orders. I think that there are a large number of officers scattered about in sinecures, in these bureaus where they have nothing to do, in the navy-yards where they have nothing to do; about ninety of them are over here at the Naval Academy. I think they should be put on waiting orders; that to do so would be nothing but fair and right to the country, and nothing but a just administration of the Navy. So far as I am concerned, while I am willing to do whatever is right so far as the officers of the Navy are concerned. I do not propose to demoralize and deof the Navy are concerned, I do not propose to demoralize and degrade the Navy by any such subterfuge as this.

Mr. CONGER. Mr. Chairman, I desire to say—

The CHAIRMAN. Debate on the amendment to the amendment

Mr. BLOUNT. I withdraw the amendment to the amendment.
Mr. CONGER. I renew it. The Committee of the Whole not long ago listened with a great deal of interest to the gentleman and his friends when they advocated a reduction of the number of men in the Navy. And gentlemen will remember that the main point of the argument was that the men could be recruited, re-enlisted at any time, upon very short notice, whenever necessary, and the Navy made effective. I submit that that was the main argument, and that the moving power, the executive power of the Navy, the nucleus of the Navy, that is, the officers, should be kept; that was the argument.

Mr. BLOUNT. The gentleman certainly does not claim to quote

me as saying that?

Mr. CONGER. I claim to quote the gentleman as acceding to the argument of his friends on the committee.

Mr. BLOUNT. O, well; that is pretty broad.

Mr. CONGER. The gentleman did not then rise to deny it; I remember that. I think he will not deny the fact now that that was the argument used; the RECORD will show it at any rate.

A reduction in the Navy was made to the extent of one thousand men, much the pretense that the men in the Navy were not then

men, upon the pretense that the men in the Navy were not then necessary, but that it was very important to have all the officers, to keep them on active duty, to keep them bright and efficient.

Mr. HOLMAN. Allow me to inquire who it was that made that

Mr. CONGER.
Mr. HOLMAN.
O, no, no.
Mr. CONGER.
A small part of it.
Mr. HOLMAN.
No part of it, and no member upon this side of the

House, no member of the Committee on Appropriations made it, but

they made exectly the reverse of it.

Mr. CONGER. I think I can furnish the record of the gentleman's own remarks upon that subject, and I shall be happy to do so if I

own remarks upon that subject, and I shall be happy to do so if I find it easily.

Mr. HOLMAN. Refer to the RECORD.

Mr. CONGER. The gentleman's memory fails him sometimes, unless it is in regard to a reduction; on that point it never fails him. That was the argument then, a reduction of the number of men in the Navy, while there was no attempt to reduce the number of officers. It was rather claimed that with the officers, with the nucleus the Navy, while there was no attempt to reduce the number of officers. It was rather claimed that with the officers, with the nucleus of the Navy, a full complement of men could be obtained and organized at any moment. That was very good reasoning if it was adhered to. But what result followed? Gentlemen now use the argument that the effective force of the Navy was reduced a thousand men, and therefore, contrary to what they said a year ago or two years ago, they claim, at least some of them do, that the number of officers should be reduced in proportion.

But what does the gentleman in charge of this bill say? Not that these officers should be reduced in number, not that there are too many of them, but that they should be withdrawn by the strong hand of power from any active, efficient service in the position in which they have been placed, and be planted as ornamental images of a dead Navy, on waiting-orders, on furlough. What for? To save the difference of expense between waiting-orders pay and seaduty pay.

The gentleman says we can save so much by putting the officers of the Navy on waiting orders. That is a grand discovery. Go on with your economy in the same spirit, and I admit that it will be with equal reason, and first put all the officers of the Navy upon waiting orders, and then put them all upon furlough.

And, by the time that is done, gentlemen will come in and tell this committee that in order to economize we have only to remove the officers entirely and that thus we can save still more money to the people. One argument is as logical as the other. Followed out, this mode of argumentation means no Navy at all.

[Here the hammer fell.]
Mr. WILSON, of Iowa. Mr. Chairman, I wish we had more light of the right kind on this subject. I would not hesitate to yote for three times the amount that is asked in this bill, if a comprehensive effort was being made, such as is made by some other governments, to assist the business interests of this country, the merchants, the manufacturers, the traders of the country, to send their wares to all parts of the known world. It used to be an adage that if a pound of British merchandise was in danger in any part of the world, a British

cruiser would heave in sight immediately.

Our people are now on the eve of extending their commerce. It is a necessity. Of the six hundred million dollars' worth of products that we export every year, nearly everything is from the farm; very little comparatively comes from the manufactory. But our manufacturers are ready. They are sending calicoes to England; they are sending glass there. They are sending manufactured articles to Northern Russia. They are looking in every direction to extend our com-

Whether the American trader can go all over the world without protection, I do not know. I think there should be power on the part of our Government to protect our citizens abroad. But it is well part of our Government to protect our citizens abroad. But it is well known to every man who reads that any one of the powers of Europe has a single vessel that could destroy our whole Navy. Italy has such a vessel; so has Turkey, to say nothing of such a power as Great Britain. In fact, Armstrong is making guns for all the powers of Europe; Krupp is engaged in the same way. Iron-clads are being built on the Clyde. We have nothing to compete with those vessels. What is the use of our Navy, I do not really know. I am not prepared to say, however, that we should abandon the education of naval officers. I do not believe that we should. I think that as a nation we should have a better defined policy. How otherwise can we assist the commerce and enterprise of the American people in competing in the markets of the world, as they have never yet competed? It is a melcommerce and enterprise of the American people in competing in the markets of the world, as they have never yet competed? It is a melancholy fact that, as a general proposition, whatever we do send abroad must first go to England, and be distributed from there. We do not trade with the West India Islands; we do not trade with South America; yet we ought to have that trade exclusively. We have scarcely a line of American ocean-going steamers from the United States except on the Pacific coast, and I believe one from the Delaware.

As I have already said I would not hesitate a moment to vote three times the amount here proposed if the luniness interests of the countimes the amount here proposed if the luniness interests of the countimes the amount here proposed if the luniness interests of the countimes the amount here proposed if the luniness interests of the countimes the amount here proposed if the luniness interests of the countimes the countimes and the countimes are considered in the luniness interests of the countimes and the land of the luniness interests of the countimes are considered in the luniness in the lu

times the amount here proposed if the business interests of the country were to be assisted in putting our wares into the commercial markets of the world. But it appears that anything of that kind must be done by American enterprise without Government protection, because we have not vessels enough all told to afford protection anything. where to our commerce. It is perhaps a fact that Americans can trade all over the world without protection better than any other nation; I presume they can. But we have not this matter clearly put before We have not such information as goes to the foundation of this great question; so I suppose we must just drift along; we must strike a balance between the gentleman from Maine [Mr. Hale] and the gentleman from Indiana, [Mr. Holman,] and so let the mat-

ter go.

Mr. BANKS. I listened with great pleasure to the gentleman from In-

diana [Mr HOLMAN] and the gentleman from Georgia, [Mr. BLOUNT.] I thank them for the information they have given to me and the committee. But they must observe that we have to take this question as it is presented. It is presented in an appropriation bill. They state that while the appropriation is the same that it has been heretofore and is as much as or more than it was when our Navy consisted of a and is as inuch as or more than it was when our Navy consisted of a thousand more men than we employ now, yet at the same time we have no naval service at all; and as the gentleman from Indiana has said, if we may take the representations of gentlemen charged with inquiry into the naval affairs of the country, we are without any defense.

Now the difficulty is (and it is this to which I am calling attention) that this question is presented on an appropriation bill in which we are to vote more or less without any possible means of making that re-organization which is necessary to correct the evils described by these gentlemen. If the condition of the Navy is as it is represented, then there should be a thorough revision and re-organization of the laws upon which our naval establishment is based.

How is it that we come here and admit that officers have a claim upon the Government for a certain salary in consideration of certain services that they render to the Government, and yet refuse to approservices that they render to the Government, and yet reruse to appropriate money to pay those salaries, and because we have not money for that purpose put them upon waiting orders and let them float about the country rendering no service to the Government at all? Now I ask the nonorable and intelligent gentlemen who have charge of this matter whether this is a wise course for the Government to of this matter whether this is a wise course for the Government to pursue. I ask gentlemen whether they call this wise administration. Is it economy? Is it a system of legislation that they would recommend to be pursued indefinitely? What would be the result if we should continue it? We would bankrupt the country, so far as the naval service is concerned, and at the same time make it impossible for the officers we employ to perform any duty at all.

What is the result, taking the statement of these gentlemen? The officers are not paid, they render no service, and the navy-yards are idle. The navy-yard at Boston, costing the Government \$12,000,000, having the best machinery for the construction and repair of ships, is idle. Men who have been trained there to the necessities of the Government.

idle. Men who have been trained there to the necessities of the Governndle. Men who have been trained there to the necessities of the Government, with their families, are suddenly thrown upon the community without employment, and this night and this hour are without bed or bread for themselves, wives, and children. The Government is offensively treated by other nations here in our own waters, because we have no defense as the gentleman from Tennessee [Mr. Whitthere with the seas of the earth

on the seas of the earth.

Now, at this moment, when there are more than eight millions of armed men moving from different points in Europe, preparatory to the great conflict which shall not only shake the foundations of na-tions, but possibly change the course of civilization, we, the country most interested in intercourse with other nations, are without protection or any means of maintaining or extending that intercourse.

The gentleman from Iowa [Mr. Wilson] who has just taken his seat says he does not see how the Navy is to assist our intercourse.

He has only to look at Japan and China to see an illustration of the means by which the naval vessels actually open a market to our merchants and to our manufacturers.

merchants and to our manufacturers.
[Here the hammer fell.]
Mr. KELLEY. Mr. Chairman, I am free to say in the outset that I do not know whether the sum named in the bill is too little or too much. I am drawn into the debate by the reflections indulged by my friend from Iowa [Mr. WILSON] as well as by the remarks of the gentleman from Massachusetts, [Mr. BANKS.] I have no apprehension of insult to the American flag at this time in foreign waters or in our own. There is trouble enough in the east. They do not want to involve themselves with this country. I believe our best protections. to involve themselves with this country. I believe our best protection for the future is in the development of our own power and the bringing to us of the choice spirits of foreign lands as immigrants. I mean the choice spirits from humbler classes as well as from the prouder ones

How did England make her commercial and naval supremacy

How did England make her commercial and naval supremacy? Not by her navy, but by the establishment of her mail service with every country approachable by sea-going vessels. But how did she maintain that? Why, by subsidizing lines of steamers.

I dislike to add to the patronage of the Government and therefore would not encourage the establishment of a Government workshop where it could be avoided, either in the form of a navy-yard or of an arsenal. England, with her great naval stations and great naval power, relies upon private ship-yards and private engineering establishments for her ships and their armament. Her flag shadows every water over which commerce floats and her commercial marine furnishes a body of men always ready to man her navy when that navy nishes a body of men always ready to man her navy when that navy

needs expansion for active duty.

Let us revive our commerce. It will take care of the Navy; it will create a Navy. When we wanted thousands of ships to blockade two thousand miles of coast and carry munitions of war and transport troops, we found them, and we found the men and officers to man and to work them through the destruction of our commercial marine. I have favored giving subsidies to steam lines to carry the mails to China and Japan and to the various islands of the sea along the southern coast, to make us neighbors to those people who do not manufacture, who need what we do produce, and who can furnish the

raw material from tropical and semi-tropical countries which we cannot produce. The amount of money which you will expend in making your Navy and maintaining naval stations would if granted in such subsidies give you a world-wide commerce and a body of sailors and officers who would go forth to meet the combined navies of the world. We have no need of a Navy to protect our commerce, for we have no foreign commerce except the export of our raw staples. We are beginning to make one. The recent exhibition, which was called a "Philadelphia job," and to which through the grace of my friend from Illinois [Mr. Springer] we contributed one million and a half dollars without reclamation, has shown the world they can buy better goods more cheaply in the markets of protective America than they can in those of any other country in the world. [Laughter.]
[Here the hammer fell.]
Mr. BANKS withdrew the amendment.

Mr. SPRINGER. I renew the amendment.
Mr. Chairman, the gentleman from Pennsylvania has been kind enough on two occasions to allude to me as responsible for an appropriation of one million and a half of dollars to the Centennial exhibition by reason of an amendment which I offered in the House pending the debate on the Centennial bill. The gentleman assumes

extraordinary intelligence on this subject.

Mr. KELLEY. No; only superior gratitude. [Laughter.]

Mr. SPRINGER. He assumes the most extraordinary intelligence also. The gratitude which he feigns is evidently insincere. If he will recall to his mind the time when that amendment was offered, he will find that he opposed it because he thought it would accomplish the very object which it was intended by me it would accomplish. He understood the amendment then as I understood it and as every member of the House understood it, and as the chairman of the Judiciary Committee in the Senate understood it and so declared at the time the Centennial bill was pending in that body. The gentleman from Pennsylvania voted against that amendment and I voted for it, bewe both understood it alike at that time.

Mr. KELLEY. I beg leave to ask the gentleman whether I did not assure him and the gentleman from Indiana, [Mr. HOLMAN,] the chairman of the Committee on Appropriations, that I had no opinion about it that was worth a cent; because I am but a poor layman, having been out of practice for fifteen or sixteen years. I said if I had a suit about a dog the first thing I did in the case was to pay my lawyer's fee.

Mr. HOLMAN. The gentleman did not say that at the time. He

made up that joke some days afterward.

Mr. KELLEY. It was at least a good joke when it came.

Mr. SPRINGER. If the gentleman from Pennsylvania will, as a layman which he now claims to be, examine the decision of the court in the Centennial case recently pronounced in Philadelphia, he will find that the court decided that case upon the law of 1872, which was not before this House at the time and which was only referred to by In that act, according to the decision of the court, it was provided that the stockholders were first to receive all their stock provided that the stockholders were first to receive all their stock subscriptions back before there was to be any division of assets. The effect of my amendment, then, according to the decision, was simply to give the whole of the profits, whatever they might be, to the United States, after the stockholders should get back their stock as provided in the law of 1872. Hence the amendment which I proposed had nothing to do with the fact that the United States were deprived of the \$1,500,000; but it was the latent act of 1872, which was only referred to by its title in the Centennial bill, that was the turning point in that decision

But I only desire to remind the gentleman from Pennsylvania of the fact that this case is not yet finally decided, but that the Attorney-General has ordered it to be taken to the Supreme Court of the United States, and it will be time enough for the gentleman to pronounce his judgment, as he is a layman only, when the Supreme Court of the United States has finally adjudged that case. I will abide that time and wi'l be perfectly content with the decision when it is made.

and will be perfectly content with the decision when it is made.

Mr. HOLMAN. You can do so with entire safety.

Mr. SPRINGER. Yes, sir; I can do so with entire safely.

Mr. KELLEY. I only meant to impress upon the House that the "Philadelphia job" had served the whole nation by opening up worldwide markets. As my friend from Illinois doubts the sincerity of my gratitude I shall not further give any expression to it; yet I cannot but help feeling kindly to him, though he has persuaded me that he clinched the thing on the other side after the spike had been driven

through by previous legislation.

Mr. SPRINGER. I am much obliged to the gentleman for his kindness. If he gets his \$1,500,000 I shall not regret it, in so far as it has contributed to the success of the exhibition. But few members expected that we should ever be so fortunate as to get a dollar of it back when the bill was passed. But now that the exhibition has proven a success, I insist that the Government should have its appropriation back, according to the letter and spirit of the law, and

appropriation back, according to the letter and spirit of the law, and believe the Supreme Court will so decide.

Mr. KELLEY. You ought to be satisfied, considering the good that it has done to your State.

Mr. BLOUNT. The gentleman from Michigan, in consequence of not having paid attention to the debate during the last session, has been striking in the wrong direction. He has fancied a contract that was not at all in existence and addressed himself to it. As I have

nothing to do with those pledges in the Committee on Appropria-tions, nor this side of the House to which the gentleman was reply-

tions, nor this side of the House to which the gentleman was replying, I shall not pay my respects to him any further on those pledges. But the gentleman says that I want to put all the officers on waiting orders. Mr. Chairman, Congress has seen fit to establish various grades of pay for various kinds of service: sea pay, shore pay, waiting-orders pay, and furlough pay. I simply insisted that there should be no more officers employed on sea pay than the public service requires, and no more on shore pay than the interests of the country demand; and that the country having been served as to those purposes the balance of them should be on waiting orders. So far as the amount of money required by this paragraph is concerned, the matter of pay of the Navy, it is a most singular thing that we are without light as gentlemen see fit to state it—that we are without light. out light as gentlemen see fit to state it—that we are without light from the Secretary of the Navy himself; that he does not furnish detailed information as to the number of vessels in commission, the number required to be in commission, the number of officers neces

number required to be in commission, the number of officers necessary to perform the duty, and the number of officers required and absolutely required on shore duty.

Now, sir, there are abuses here recognized by naval officers that have been recognized for years, and it was simply with reference to this that the Committee on Appropriations have been addressing themselves to reduction. There has been no estimate that would tally with the facts. It has been impossible for us to make an estimate, because we could not say whether our own views as to the number of officers in the service would accord with those of the Secretary, and we cannot say, unless he will conform to what we think economical administration of the Navy, what he will spend. But we can say what he ought to spend. We have done it.

This will not necessarily increase the commerce of the Government.

[Here the hammer fell.]
Mr. HOLMAN. Mr. Chairman, I presume the gentleman offering this amendment will withdraw it.

Mr. STENGER. I withdraw the amendment.
Mr. HOLMAN. I renew it, and do so to say but a single word.
Not a word has been said in defense of the sufficiency of our Navy at this period of peace, and yet a word in favor of it would be very well. In this time of profound peace, and situated as we are with well. In this time of profound peace, and situated as we are with reference to the great maritime powers and not likely to be involved in their conflicts, a great Navy kept up at enormous expense to the people could not be justified. The gentleman from Pennsylvania speaks wisely when he says that our commerce at this period of time requires no extended Navy. Once in the course of a generation, as suggested by the gentleman from Massachusetts, [Mr. Banks,] we may send our Navy to half-civilized nations to open the gates of commerce, but these are but episodes in the history of our time. We need

no considerable Navy. It would be but an expensive ornament without power for real good.

We have at this time about eighty vessels in commission, and I think the Secretary of the Navy has stated fairly and justly, so far as I have been able to examine the subject, that our Navy is now, in the character and condition of its ships, far superior to our Navy of 1869, although it then consisted of two hundred and three ships. "Indeed," to quote the words of the Secretary's report, "our Navy is far more powerful for warlike purposes than it has ever been before in a time of peace." I think the Secretary of the Navy justifiable in the

statement he has made in his last report as to the state of our Navy.

A nation situated as ours is in reference to the great commercial powers, considering the fact that the nations of the globe are being brought every year closer together in commercial intercourse, our Navy is large enough. We have not the motive now that urged us in times gone by to jealously watch and assert our powers, and we are not compelled to keep an armed force in every ocean to maintain our rights, as in former years. Our position among the nations is recognized. We have a large body of educated men, educated at our recognized. We have a large body of educated men, educated at our naval school, whose services are valuable and who are unemployed, hundreds of them are on furlough and leave of absence, and yet they are drawing salaries from the Treasury and swelling by millions this appropriation bill. I think their services can be made available and ought to be. We could utilize their attainments in the revenue-marine service. They would make good custom-house officers. They rine service. They would make good custom-house officers. They would be valuable as consuls in connection with the commerce of our country and ministers at foreign courts, if such employés of the Government were necessary. Why not make this great body of men, swelling to several hundred, unemployed and with high salaries, who are educated and adapted to such pursuits, and graduates of our Naval Academy at Annapolis, valuable to the Republic in time of peace as well as war. At present that large body of officers are drawing minimal times from the net invol Transmire and are yet memplored. You peace as well as war. At present that large body of officers are drawing millions from the national Treasury and are yet unemployed. You cannot employ them in your naval service, and you do not deem it proper to compel them to abandon the profession for which you have educated them. Thus your naval establishment has become enormously expensive. In my judgment we have for all practical purposes a sufficient Navy, but I am satisfied that in its officers and in all of its details it is excessive in its expenditures, and that even the appropriations made by the bill ought to be heavily reduced. It is framed upon the exigencies of this period, and not upon the base of a real upon the exigencies of this period, and not upon the base of a real economy, although it is a reduction of millions from former years.

Mr. WHITTHORNE. I was somewhat surprised at the defense of

the present administration of the Navy by the gentleman from In-

diana, [Mr. Holman.] He is not warranted in his conclusions by the facts. There were more vessels in commission in 1869 then there are

Mr. HOLMAN. There were two hundred and three in commission

Mr. WHITTHORNE. There were more vessels in commission in the year 1869 than there are now. Mr. HOLMAN. I said so.

Mr. WHITTHORNE. I understood the gentleman to say that there

were more now than then.

Mr. HOLMAN. O, no; there were two hundred and three then and but eighty now. I spoke of the capacity and efficiency of the vessels.

Mr. WHITTHORNE. That shows that the gentleman from Indiana does not know what he is talking about, [laughter] because there were not two hundred and three vessels in commission in 1869; that was the number of vessels borne upon the naval register. My friend from Indiana is just as widely mistaken in all of his facts as he is in that. If he will look at the number of vessels now alleged to be in commission he will find somewhere in the neighborhood of twenty or commission he will had somewhere in the heighborhood of twenty of twenty-five that are tug-boats, little fancy things that run from offi-cers' quarters out to the navy-yards and thereabouts. And yet my friend from Indiana, the bull-dog of the Treasury, is here making a defense of the present administration of the Navy. I said "bull-dog;" perhaps I should have said "watch-dog." He is sometimes a bull-dog and sometimes a watch-dog; it depends upon whether his friends are interested or not.

Mr. CONGER. I certainly think that word had better be taken

down. [Laughter.]
Mr. WHITTHORNE. I have withdrawn it. I agree that the in-Mr. WHITTHORNE. I have withdrawn it. I agree that the interest and honor of our country and of our commerce demand a Navy. We should have a Navy, and when we have officers in the service they should be well paid. But it became my duty last session to look into this matter of officers who were performing sea duty so called, and officers who were performing shore duty, and officers who were upon waiting-orders pay, and officers who were upon furlough pay. There were but one or two or three upon furlough pay; but according to the distribution of the officers in the service, there were more upon sea pay than there ought to have been more upon shore nay than there ought. that there ought to have been, more upon shore pay than there ought to have been, and the actual amount of pay required is in the neighborhood of that reported from the Committee on Appropriations.

Mr. BLOUNT, Does not the gentleman find the statement he has just made to be in accord with what is stated by some of the best officers of the Navy?

Mr. WHITTHOONE, The last of the committee on the best officers of the Navy?

Mr. WHITTHORNE. It is in accord with what is stated to be nec-

Mr. WHITTHORNE. It is in accord with what is stated to be necessary and only necessary by some of the most thoughtful and prudent officers of the Navy, who would guard the honor of the Navy as they would guard their own honor and the virtue of their families. This is no attack upon the Navy.

Now while I am up, a word further. My friend from Iowa [Mr. WILSON] has struck the key-note of the difficulties which now environ the Navy. In the matter of modern improvements which have been made, the naval powers of the world have so far surpassed the United States that to-day the United States is not ranked as a naval power at all. It is not owing to the number of your vessels for you power at all. It is not owing to the number of your vessels, for you power at all. It is not owing to the number of your vessels, for you may have eighty in commission. It is not owing to the number of officers, for you have them. It is not owing to any want of power to recruit seamen and fill your naval vessels. But in naval science and naval armament the United States has stood still while other nations have made progress

have made progress.

Right here again I would call the attention of this committee to the fact that England discarded the navy she owned in 1860; she discarded the navy she owned in 1860. And she has so far progressed now that she is building what my friend from Michigan [Mr. Conger] ridiculed to-day as commerce destroyers, what is termed a steel fleet, which promises to give a rate of speed of twenty knots an hour. Heretofore in the history of the naval powers, the United States has given to her maritime service a vessel of the highest rate of speed, the Wampanoag; no other government, up to this good hour, has ever put afloat a vessel her equal in speed. It shows what we can do if

we will but do our duty

e will but do our duty. [Here the hammer fell.] Mr. WHITTHORNE. One word further; I trust some gentleman

Mr. HOLMAN. I will yield to the gentleman for one word more, and only one

The CHAIRMAN. Debate on the pending amendment has been

exhausted.

Mr. LUTTRELL. If the gentleman from Indiana [Mr. Holman] will withdraw his amendment to the amendment I will renew it, and yield my time to the gentleman from Tennessee, [Mr. WHITTHORNE.]

Mr. HOLMAN. I will do so.

Mr. LUTTRELL. I renew the amendment and yield to the gentleman from Tennessee, [Mr. WHITTHORNE.]

Mr. WHITTHORNE. I was going to say that the English government, with a view to the protection of her commerce and of her honor, is creating what is termed a steel fleet, a fleet not made of iron or wood, but of steel, which promises to give a rate of speed of twenty knots an hour. If they are able to build one or two or three vessels of that rate of speed, and arm them with the guns which modern science has produced, the commerce of the world will be at the mercy of those vessels, and they will be free cruisers over every sea.

In replying to what I stated to-day as to the exploits of the Alabama during our recent civil war, my friend from Michigan [Mr. CONGER] cast—I do not know whether to call it a slur or a sneer. But I will tell him that the commander of that vessel simply imitated But I will tell him that the commander of that vessel simply imitated our fathers who had gone before us in 1812. He carried his letters of marque and reprisal. He was practicing a lesson learned from our ancestors. Neither they nor the naval heroes of England considered it dishonorable. But be it honorable or dishonorable, it was a fact, and it is a fact that may occur again in the history of our country; and we should provide against it.

Mr. Chairman, if we will do our duty to the commercial marine, if we will do our duty to its commercial interests of the country, if we will do our duty to its honor we will leave the ruts in which we have

will do our duty to its honor, we will leave the ruts in which we have been traveling and in which the Government has been running; we will lift it from its present position and put it upon a high, noble career. Thus we will do honor to our country and reflect honor upon

our Navy

Mr. CONGER. I rise to oppose the amendment.

Mr. HOLMAN. Will the gentleman from Michigan allow me to correct a mistake in which either the gentleman from Tennessee or myself fell? Mr. CONGER.

I will allow the gentleman a solitary word; the

same courtesy which he extended.

Mr. HOLMAN. If the gentleman from Tennessee undestood me to say that there were two hundred and three vessels in commission in 1869, I presume he misunderstood me; for I had the report of the Secretary of the Navy before me at the time. If I said so it was a mistake. I simply intended to say that in 1869 there were two hundred and three vessels belonging to the Navy, while at the present time there are eighty vessels in commission, still more efficient than the body of those we had in 1869.

Mr. CONGER. Mr. Chairman, the gentleman from Tennessee has had for two years the absolute control and direction of all legislation in this than the second to the Navy and I received the second to the sec

had for two years the absolute control and direction of all legislation in this House in regard to the Navy; and I venture to say that every man who has heard him speak to-night of its downward progress during his two years' administration (for he says that it is growing worse and worse continually) will wonder why he could not, in two years, in a proper bill revising the laws and devising a new plan, have procured something—however indefinite, however unimportant I might almost say—that would look in the direction of legislation to build up this continually sinking Navy, and not in the last hours of this second session, after all his two years' labor, to be compelled to confess here that he has made no effort whatever to change the laws, no effort whatever to remodel the system, no effort whatever to induce the Appropriations Committee to make provision for building different classes of vessels. But he comes here to tell us that two means may be adopted to make our Navy the most glorious in the world. One is the appointment of a commission—a proposition not introduced in this House in due time, but like a parasite to be fastened upon a simple appropriation bill—a commission to tell the House and the country in some way how our Navy can be redeemed. The other great discovery which the gentleman has made he reiterates here, after the whole world has decided that the sending out of fleet, armed ships under letters of marque and reprisal, to destroy unarmed vessels engaged in the commerce of the world, is not the most manly mode of warfare that could be imagined. Under new views of naval policy, this matter has been matter of treaty stipulations and the subject of protest. The gentleman says that England is fitting out these steel runners that can go twenty knots an hour. Shall such vessels go out to fight unarmed vessels of commerce, to destroy the property of the innocent? Is this England's old navy of which the gentleman

spoke?

Sir, if that be the theory, that we are only to protect ourselves and save our commerce by secretly and silently destroying the commerce of our enemy, I can tell the gentleman that he can do it more cheaply by sending men to be shipped on board of merchantmen of other nations, with instructions to rise at a proper time in mutiny, at sea or in harbor, and capture and destroy the vessels in which they are shipped. There are a thousand other ways, less expensive, but not more mean, than this mode of the destruction of the commerce of the

world, in which our nation may engage.

I like to hear the gentleman's views. I am glad that the leader of his party, the exponent of the democracy of the presentday, holds up to the world this modern system of grand national warfare upon the ocean by sending upon unarmed vessels fleet messengers of destruction. In another session he may devise other means: the sending out of incendiaries to go aboard commercial vessels and who shall be paid large wages, perhaps, for the risk they run, but who will be less expensive than the building of these steel runners. You can send out such men and say to them in the language of another, "Go steal

[Here the hammer fell.]
Mr. WHITTHORNE. Will the gentleman tell me what government it was which on the occasion of the treaty of Paris declined to

ment it was which on the occasion of the treaty of Paris declined to give up the right of issuing letters of marque and reprisal?

Mr. CONGER. Will the gentleman tell me how many governments have joined in declaring that the system of the destruction of commerce under letters of marque and reprisal is infamous?

Mr. WHITTHORNE. The United States is not one of them.

Mr. BLOUNT. I ask unanimous consent that debate be closed on this paragraph.

this paragraph.

Mr. BANKS. Will the gentleman let us open it upon another para-

graph?

Mr. BLOUNT. There will be plenty of other paragraphs. Mr. KELLEY. I would like to sa my friend from Tennessee has said. I would like to say a word in connection with what

Mr. HOLMAN. It is certainly time that debate on this paragraph

should cease

Mr. KELLEY. I do not care what paragraph I speak upon; I only want to reply to the gentleman from Teanessee.

The question being taken on the amendment of Mr. HALE, it was

not agreed to.

The Clerk read as follows:

For the civil establishments of the several navy-yards, \$85,000.

Mr. KELLEY. I move to amend by striking out "\$85,000" and inserting "\$90,000."

inserting "\$90,000."

Mr. Chairman, I desire to say to my friend, the chairman of the Naval Committee, [Mr. Whitthorne,] that I have not much apprehension of those twenty-knot steamers they talk about. They propose to make twenty knots. We built the Wampanoag and had the reputation of having the fastest steamer which ever left port, but there is a slight tail to that story as it was found she could not carry coal enough to take her to the nearest coaling station, and the load which was put on board of her so strained her she never attempted to go out again depending on coal. And it will be so with these to go out again depending on coal. And it will be so with these twenty-mile steel steamers of Great Britain.

There is one limitation to the power of Great Britain, indeed there

are many of them, but they may be named in a single phrase, the laws of nature. Salt water is the enemy of fast iron vessels. No iron vessel can make great speed that has to strike the Gulf Stream or tropical salt water. Barnacles accumulate upon every inch of the iron surface, and though one of these steamers may start out on a two years' cruise at twenty miles an hour on leaving the home stream, she will come back at less than ten. And England has no means within her own waters of removing the barnacles which thus impede the

speed of her vessels.

As salt water is the enemy of iron shipping, fresh water is its friend Salt water imparts the disease, and while no mechanical power has been ascertained by which the bottom of iron or steel vessels can be cleared; while Chatham with its hundreds of millions of dollars, the great English station, and Cherbourg, built out in the sea, costing more money than Chatham, are almost useless for an iron navy, we of the United States have abundant means of taking care of all such vessels we have and of curing the disease whenever they come to home ports. I have heard from Russiau, French, and English officers the assertion that ten times the cost of Chatham or Cherbourg would be given for such fresh-water naval stations as we have in this coun-

And the gentleman, although he may have had the naval experience ascribed to him this afternoon by the gentleman from Maine, [Mr. Hale,] could convince nobody and would not believe himself that England will ever be able to make a great iron or steel war vessel which for the destruction of commerce of nations would equal the little vessels that used to come in in spite of our blockade of south-

The wars of the future will be wars of commerce, either restrictive of commerce or destructive of it, as was the policy of England during our late war; and small, fleet vessels, easily run into fresh water to relieve them in three days of barnacles, will after all be the war

to reheve them in three days of barnacies, will after all be the war vessels of all future naval wars.

[Here the hammer fell.]

Mr. BANKS. I rise to oppose the amendment.

Mr. Chairman, the debate I think is quite likely to lead to good results in regard to other matters, as well as that of the Navy. I wish to say to the gentleman from Pennsylvania, and other gentlemen who have talked of commerce, that there is no commerce without a navy. Great Britain and her government depend upon commerce. If her commerce were swept from the seas, her manufactories would be idle and her people made to suffer. It is her navy which protects her commerce; that keeps her alive; and she could not live without it. It is the old story, sir, that everything is necessary, one thing to one man or nation, and another thing to another man or to another

one man or nation, and another thing to another man or to another nation. We want a navy, and my point is that I do not believe the Appropriation Committee can make a navy.

In regard to the people I represent, and the people represented by my colleague who sits in front of me, [Mr. Harris,] they are greatly interested in the restoration of commerce, because for their surplus manufactures they need markets in the world. There is one way to establish commerce in every country, for us as well as others, and that is to begin at the beginning. Our fishing establishments must be protected and supported. They are the nurseries of our seamen, as they were in the beginning those of England, of France, of Iceland, and all Scandinavian countries. We want protection for them, and I am delighted to see gentlemen of the South and gentlemen representing the West looking to this matter, and seeking the means of entering upon this prosperous commercial progress in the future. That is one of the steps they have to take to which they have been opposed so long. We have to do what every commercial country, every navigating people have done before us, make our commerce depend upon a successful coasting trade.

It is the coasting trade that lies at the foundation of every commercial and navigating power. Our coasting trade has been very nearly destroyed. Gentlemen that I have met upon this floor within the last six or eight years have told me that it was with apprehension and in danger that any little craft crept out of our own ports on the southern seas or the Gulf of Mexico. Yet with this coast line greater than that of any other country every port can maintain a small trade, educate its sailors, and increase the trade of the country. From this

coasting trade we come to the trade with foreign nations.

Now, we have to maintain these lines from the beginning as other nations have maintained them—by favor of the Government. No man can maintain a line to Brazil, to China, or to Japan, and compete with other lines to those countries without the favor of the Government. Are gentlemen willing to give that favor? We want other things. The gentlemen from Pennsylvania [Mr. Kelley] knows that the great and powerful and patriotic State which he represents has one heavy foot on the trade of the country. They want heavier duties

one heavy foot on the trade of the country. They want heavier duties than I think are necessary.

Mr. KELLEY. They are not asking for that now.

Mr. BANKS. No; because they can scarcely carry what they have got. But that is one difficulty. And it is a heavy weight, also, on the system of commerce or reciprocal treaties which are the basis of this trade of which the gentleman speaks. How are we to make a trade with these South American countries, or with Japan, or with European governments, or with any new country with which we have not a trade unless we first have commercial agreements with those countries? John Adams, as I remarked before, with the experience he had as a representative of this country to three or four of the large commercial countries of the world, said he would never make or sign any treaty except treaties of peace and reciprocal treaties.

Here the hammer fell.

Here the hammer fell.]
Mr. KELLEY. I shall make no plea in behalf of Pennsylvania now. I will utter a few words of exultation. She maintains the only line of steamers in the foreign trade that float the American flag from any of our ports. She built them with the capital of her citizens, and while they were built for commercial purposes, they serve for the training of officers and sailors to be useful to our Navy when readed. One of them has made the quickest trip on record to Great needed. One of them has made the quickest trip on record to Great Britain from this country. And why? For the reason that I assigned when on the floor before. A gentleman whom I do not see in his place says that Philadelphia is a little village on the muddy creek called the Delaware. But, though the water be muddy, it is fresh, and whenever the iron vessels come into that port they are clean and sail as they did when first launched or fitted for the sea; while vessail as they did when first launched or litted for the sea; while vessels trading between Liverpool and continental ports and ourgreat commercial cities upon the salt water, gather barnacles and their speed diminishes with time unless they make a visit to the Delaware or some other fresh-water stream.

ware or some other fresh-water stream.

This discussion to-night is useful, I think. It is not exactly pertinent to the question, how much money shall be appropriated to buying books, lamps, &c., for the sailors? But I rejoice with the gentleman from Massachusetts [Mr. Banks] that the gentlemen from the South and West are taking an interest in this question. That gentleman has lugged in the tariff. I beg to invite his attention to the fact that protective America is underselling England in Manchester and Sheffield in iron, steel, and other metal goods. I beg to invite his attention to the fact that protected cottons of Wamsutta are being exposed in the windows of the leading dry-goods stores of England. I beg to invite his attention to the fact that nothing but a prohibition ordained in 1793 against our cottons, and which has never been revoked or modified, prevents us from sending our protected cotton goods into France for embellishment by French skill, genius, and taste. Protection has in this case done, as it has ever done, developed home comtection has in this case done, as it has ever done, developed home competition, cheapened production, and reduced the cost of manufactured oods to consumers

That is a little apart from the Navy, but I did not, I wish you to remember, throw the first stone on that question. I reiterate that the navy of the future is to be one that can protect or destroy commerce, one that can run readily into port, one that can cross the great lines of travel with rapidity, and that the great iron ships of England are supplanting her wooden bulwarks, so often sung by Dibdin and other poets of England.

Here the hammer fell.]

The question being taken on Mr. Kelley's amendment, it was not agreed to.

The Clerk resumed the reading of the bill, and read as follows: For wages of one instrument-maker, one messenger, three watchmen, and one porter; for keeping grounds in order and repairs to buildings; for fuel, light, and office furniture, and for stationery, purchase of books for library, chemicals for batteries, and freight, and all other contingent expenses, \$10,000.

Mr. SEELYE. I offer the following amendment:

Insert after the last line of the paragraph just read, the following:
For the reduction of the late observations upon the transit of Venus, \$5,000.
Four years ago the governments of Russia, Germany, France, Great Britain, and the United States fitted out costly expeditions to observe the transit of Venus, our own Government sending out eight separate corps of observers, five to the southern hemisphere and three to the northern hemisphere, who made very successful observations at an expense of \$175,000 incurred by the Government at the time. This expense and these observations are of course useless until the observations shall be reduced. Though the observations are done in a few seconds the reduction of the observations is an exceedingly arduous and protracted duty. The reduction of the observations takes myriads of figures, and no government has yet succeeded in completing this reduction, our own Government being as far in advance and this reduction, our own Government being as far in advance and probably further advanced than any other. It will require the labor of three competent men for a year, possibly a year and a half, to complete these reductions. My amendment allows \$1,500 each for the payment of three assistants, and \$500 for stationery and an instrument for reading the photographical observations and for shelves and cases to preserve the calculations, and it is a very moderate sum.

It is obvious to us all that after we expended so much money for observations beautofore it would be a realess avenditure if the ob-

observations heretofore it would be a useless expenditure if the observations are not reduced. It is not only an important but an in-dispensable work. I hope there will be no objection to my amend-

Mr. HOLMAN. Mr. Chairman, we think there is no necessity for Mr. HOLMAN. Mr. Chairman, we think there is no necessity for this appropriation. The sum appropriated was certainly ample to accomplish all that was originally designed with regard to the transit of Venus. I think the gentleman puts the sum at a very low figure when he puts it at \$175,000. With all the elements of expenditure considered I think this computation will not cost less than a quarter of a million, and I think that having gone to the expense we have, this reduction of the expense for the purpose of making the material available is useless, for it is not very important to us at this time and it will require a large number of nen, and I think it would time and it will require a large number of men, and I think it would be well, instead of employing, as the gentleman from Massachusetts suggests, experts, we take from the service graduates of our naval schools, and certainly there ought to be one or two among this number who are capable of making this computation. These men cost the Government a large expenditure of money and should be re-employed for this work. There is no necessity for expending large sums of money to secure the services of competent men for the performance of such service when we can utilize our officers. The gentleman from Massachusetts thinks very poorly of the graduates of the academy at Annapolis if he thinks those young men not competent to perform this duty. I therefore move to amend his amendment by substi-Annapolis It he thinks the state of the Navy shall detail the necessary number of officers from the Navy, not otherwise employed, to perform the service for the reduction of the observations of the transit of Venus. I will say in addition that this is a service which is in perfect harmony it the service of these gentlemen.

with the service of these gentlemen.

Mr. SEELYE. The suggestion of the gentleman from Indiana [Mr. Holman] is simply preposterous, and so preposterous that it seems idle to discuss it. If these reductions are to be made of any value they will have to be made by the most skillful and competent men, as the slightest mistake will vitiate the whole result that this country has reached as compared with the results of other countries and try has reached as compared with the results of other countries, and for one I am not willing to have it intrusted to incompetent hands. I have no doubt that the gentleman from Indiana [Mr. HOLMAN] might be detailed to a very different position from the one he now occupies and that he would fill it very efficiently; but I might say without disparagement to him that he would not be so valuable as his objections to some of the necessary expenditures of the Govern-

his objections to some of the necessary expenditures of the Government make him here.

Mr. CONGER. If the gentleman from Indiana could be as successful in reducing a calculation as he is in reducing expenses he would be just the man for this service. [Laughter.]

Mr. SEELYE. Exactly. [Continued laughter.] The necessity for the appropriation of this sum must certainly be apparent to every member of the committee. It will need this much; the work caunot be done by less than three accomplished accountants working hard every day for a year and possibly for a year and a half. That not be done by less than three accomplished accountants working hard every day for a year and possibly for a year and a half. That will be requisite. It is confidently expected that the reductions of these calculations will show the results of these observations to be worth as much as at the outset the most sanguine expected. Indeed it is confidently expected that the reduction of the solar parallax will be within less than 0".02 and perhaps within 0".01. This will make the calculation of the distance of the sun from the earth within a hundred thousand miles. When we recognize the fact that this distance of the sun from the earth is the line upon which all our celestial distances and magnitudes are measured, the importance of the calculation must be apparent to every one.

[Here the hammer fell.]

[Here the hammer fell.]
The CHAIRMAN. The time of the gentleman has expired.
Mr. CLYMER. I will take the floor and yield my time to the gen-

Mr. SEELYE. I thank the gentleman. The necessity of having this work done at once is clear from the desirableness of having it done at all. And the impossibility of having it done for a less figure than I have named must be apparent to every one; that is, \$1,500 each for three assistants and \$500 for the necessary contingencies.

That, I am sure, is a very moderate sum.

Mr. HOLMAN. I move to strike out the last word. My proposition was that the Secretary of the Navy should be directed to detail the proper number of officers of the Navy not otherwise employed for the reduction of the observations made upon the transit of Venus. The gentleman from Massachusetts, [Mr. Seelye,] with that positiveness that is admirable and which grows out of—

Mr. SEELYE. Clear convictions.

Mr. HOLMAN. A positive knowledge of the subject, and is always good feature to behold, speaks of the absolute absurdity of my proposition. He says that three skilled gentlemen, perfectly competent in figures—I believe that is all there is about it—are to make this reduction of the calculations made by our officers. Now the gentleman certainly pays a very high compliment to some other institution of learning in this country which can produce such talent, but he pays a very poor compliment to our national institutions of learning which we have all felt a great deal of pride in, which were established a great many years ago, and where the officers of our Navy are educated. We have believed that their education, certainly in the high fields of mathematics, was equal to the education to be obtained in any other university in this or in any other country. Yet we are told that out of four or five hundred unemployed scholarly gentlemen of our Navy, educated at the public expense, there cannot be found three or four to perform this duty.

The gentleman from Massachusetts certainly astonishes me. He proposes to employ three gentlemen with handsome salaries for this purpose. I am led, in this everlasting attempt to increase the number of employés in this Government, to quote words that I heard fall the other evening from rollicking lips: What is this Government for if it cannot give employment? Now, if we have four hundred unemployed scholars educated at the expense of the Government, with every facility and opportunity for education that this nation can furnish, and we still must increase the number whenever the most trivial comportunity is presented, what can we expect to be the result? It is opportunity is presented, what can we expect to be the result? It is the bane, the evil genius of this Government of ours, this everlasting seizing upon every opportunity that presents itself to increase the number of our employés.

number of our employés.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOLMAN. As I am not willing to consume much time over a question like this, I will withdraw my proposition as soon as the gentleman from Massachusetts [Mr. SEELYE] has been heard.

Mr. SEELYE. If the gentleman withdraws his amendment I do not care about speaking further.

Mr. HOLMAN. I shall vote against the gentleman's proposition, however.

Mr. CLYMER. For the information of the committee I would like to ask the gentleman from Massachusetts [Mr. Seelye] if he doubts the capacity of the officers of the Navy in charge of the national observatory to make those computations?

Mr. KELLEY. Before the gentleman answers that question, allow me to ask him whether the fitness for this duty is not the result of

me to ask him whether the throos of this day, it is special experience obtained by special application?

Mr. SEELYE. I was going to make the remark that no person could make these calculations who has not made the subject a special application. cialty. These calculations are not made a specialty at the Naval Academy at Annapolis or at the Military Academy at West Point. They are not made a specialty except by a very select class of students in any of our institutions. It is simply preposterous to say anything upon such a proposition, and I cannot consent to take up the time of the committee with arguing a question of that sort. It simply amounts to this: we have expended this large sum,

\$175,000; and it is thrown away unless we make the reductions which shall render the expenditure available. We are now called upon to make this further appropriation of \$5,000 to complete the work. That is the whole case. The committee are able to judge it properly, I am

Mr. CLYMER. Does the gentleman know whether these reduc-

Mr. CLYMER. Does the gentleman know whether these reductions are now being made by the other governments of the world which joined with us in the expedition?

Mr. SEELYE. They undoubtedly are. Those other governments expended probably as large a sum, taking it all together, as ourselves. Their expeditions were very costly. It is understood that our observers (being favored with clearer weather and some of their instruments being especially excessful) and some advantages which our observers (being favored with clearer weather and some of their instruments being especially successful) had some advantages which are likely to make the results of our observations superior to those of some of the other governments. But all of the governments are of course engaged in reducing these observations, for there was no object in making them except to get the actual reduction.

Mr. CLYMER. For the sake of information on this subject I desire to ask the gentleman a question, because I know he is thoroughly informed upon this matter, which is of interest not only to us as individuals but to our constituents and the world generally. I would like him to state what is the real practical value of the observations. I know the object is to ascertain a distance which has always been in doubt; but what practical results are to flow from the exact ascer-

Mr. SEELYE. The distance of the earth from the sun is likely to be ascertained by these observations within one hundred thousand miles. So it is confidently expected.

miles. So it is confidently expected.

Mr. CLYMER. That I understand.

Mr. SEELYE. This distance of the earth from the sun is the line which we take as the basis of all calculations in astronomy for all celestial distances and magnitudes. The relation of these calculations to navigation and everything else dependent upon the knowledge of the heavenly bodies is very apparent. All our calculations in astronomy and navigation will be influenced and corrected by these observaMr. BLOUNT. I desire to say that at this naval observatory quite a number of computers are already employed. The only reason why this appropriation is asked is because there is a competition between this observatory and others as to which will have these computations That I think is a matter of no practical importance. first made.

We are already paying computers. I hope this additional appropriation will not be allowed.

Mr. SEELYE. Why, Mr. Chairman, the gentleman will assuredly not misapprehend me. Our only object in the computation in which all these governments are engaged is to have as large a variety of ob-

all these governments are engaged is to have as large a variety of observatories as possible, to bring to bear upon the question as many calculations as may be and thus by comparison of them all to reach a result by the accuracy of which all nations may profit.

Mr. BLOUNT. What I said had no reference to the remarks of the gentleman himself, but to the officer who is seeking the appropriation.

Mr. HOLMAN. I wish the gentleman from Massachusetts would state to the House how many computers are now employed at the Natural Control of the second val Observatory, and without increasing the force what length of time will be employed in making these computations? Mr SEELYE. So far as I understand all the employés at the Naval

Observatory are engaged upon work which takes their whole time.

Mr. HOLMAN. How many are employed there?

Mr. SEELYE. Exactly the number, I suppose, that we have made

provision for in this bill.

Mr. HOLMAN. Does the gentleman say that the men engaged there as computers are not competent to do this work?

Mr. SEELYE. Undoubtedly they are; yet if they do this work they cannot do the other work. This in a very simple question, it seems to me.

Mr. HOLMAN. Are not some of these the same persons who made the observations? Are they not still in the employ of the Government?

Mr. SEELYE. They are not. Many of these persons who made the observations volunteered from our different educational and scientific institutions, and are not in the employ of the Government. The Government simply bore their expenses while making the observations.

The question being taken on the amendment of Mr. SEELYE, it was agreed to.

The Clerk read as follows:

BUREAU OF EQUIPMENT AND RECRUITING.

For equipment of vessels: For coal for steamers' and ships' use, including expenses of transportation; storage, labor, hemp, wire, and other materials for the manufacture of rope; hides, cordage, canvas, leather; iron for manufacture of cables, anchors, and galleys; condensing and boat-detaching apparatus; cables, anchors, furniture, hose, bake-ovens, and cooking-stoves; life-rafts for monitors; heating-apparatus for receiving-ships; and for the payment of labor in equipping vessels, and manufacture of articles in the several navy-yards, \$700,000.

Mr. DANFORD. I move to amend by striking out "\$700,000" and inserting "\$1,000,000." I desire to inquire what the estimate of the head of the bureau was for this item.

Mr. BLOUNT. One million two hundred and fifty thousand dollars.

Mr. DANFORD. I shall not detain the committee by any extended

remarks; but it does seem to me that we ought not to give this bureau less for this item than the sum I have named in the amendment. If we deny to this bureau at the very lowest the sum of a million of money we are not providing a sufficient amount for its proper conduct for the next fiscal year. Cutting the estimates down from \$1,250,000 to \$700,ooo is certainly making a serious reduction in the appropriation absolutely necessary to the maintenance of a bureau so important to the Navy. I hope, therefore, the amendment will be adopted.

Mr. BLOUNT. Mr. Charman, the Bureau of Equipment and Re-

cruiting, as the gentleman from Ohio has just stated, is an important one, but I think the reduction proposed is within reasonable limits. Although the bureau estimates \$1,250,000, it was not pretended they could not get along with what has been given them in this appropriation. The head of the bureau so states, and there has been no complaint it is too little.

I desire to call the attention of the committee, and especially of the

gentleman from Ohio, to certain facts in relation to this bureau. The principal items of expense are coal and hemp, as the gentleman well knows. In the report for 1869 and 1870 of the present Secretary of the Navy, in urging upon Congress the necessity for full rigging for all our vessels, he stated by so doing there would be a saving of \$2,000,000 in the item of coal alone. This of course was an extravagant statement, as there never had beeen that amount of coal used in the Navy, but the fact that our vessels were full-rigged was a justification for reduction in the matter of coal. In 1868 and 1869 we purchased only 40,000 tons of coal, and we never did, until the last fiscal year, in the whole history of the Navy, except perhaps during the war, reach 59,000 tons of coal. During the last year it ran up to 60,000

It is a matter of fact that notwithstanding the full-rigging of our ressels they have been using more coal ever since than they had been using in any prior year. It is said by naval officers the only way of restraining naval officers in regard to the use of coal is by cutting off the supply and compelling them to resort to sails.

This appropriation allows the usual amount for hemp, and will furnish quite an ample supply in the way of coal, so that I think we are safe. All that will grow out of it will be to compel the use of sails

instead of steam-power. I have been informed by several officers that it was a great abuse and should be stopped.

Mr. Danford's amendment was rejected.

The Clerk read as follows:

The Cierk read as 10110Ws:

For contingent expenses of the Bureau of Equipment and Recruiting, namely:
For expenses of recruiting and fitting up receiving ships, freight and transportation of stores, transportation of collisted men, printing, advertising, telegraphing,
books and models, stationery, express charges, internal alterations, fluxures, and
appliances in equipment, buildings at navy-yards, foreign postage, car-tickets,
ferriage, and ice, apprehension of d-serters, assistance to vessels in distress, continuous-service certificates and good-conduct badges for enlisted men, including
purchase of school-books for training-ships, \$40,000.

Mr. DANFORD. I move to strike out "forty" and insert "sixty," so it will read \$60,000; and I wish to say in this connection that from this contingent fund the bureau is compelled to transport our seamen from foreign stations when their time has expired. For instance, the time of a crew expires at the Asiatic, European, or any of our foreign stations, and it is this contingent fund, now proposed to be reduced to \$40,000, which furnishes the means of their transportation home. to \$40,000, which furnishes the means of their transportation home. It has been found cheaper to transport the crews of vessels from the Asiatic and other stations by merchant and passenger vessels rathar than to coal a vessel and bring her home with a crew, and then send her back again. This contingent fund is drawn upon for the purpose of taking out and bringing home the crews of vessels on foreign stations. I submit to the committee it is a small figure to fix it at \$60,000 when drawn upon for such uses as I have stated. The chief of this bureau, according to my recollection, asked for \$70,000.

Mr. BI OUNT. I signify design to say to the gentleman that there has

Mr. BLOUNT. I simply desire to say to the gentleman that there has not been half this sum used within the last six months. The amount was reduced much lower, but the gentleman from Maine [Mr. HALE] thought it was entirely too low, and we came to the conclusion to

grant this amount of \$40,000.

Mr. LUTTRELL. I hope the amendment will prevail, and my reason for it is this: During the last year I have made several applications to the Navy Department for transportation for sailors from the Pacific coast, where they had been employed for years, to their homes, and in every instance I have been notified there was no fund out of

which it could be done.

Mr. BLOUNT. Let me say that during this fiscal year \$75,000 was appropriated for this contingent fund, and only \$19,000 have been used. This information I had from the chief of the bureau himself.

The amendment was disagreed to.

The Clerk read as follows:

BUREAU OF YARDS AND DOCKS.

For general maintenance of yards and docks, namely: For freight and transportation of materials and stores; printing, stationery, and advertising, including the commandants' office; books, models, maps, and drawing; purchase and repair of fire-engines, machinery, and patent-rights to use the same; repairs on steam engines, and attendance on the same; purchase and maintenance of oxen and horses, and driving teams, carts, and timber-wheels for use in the navy-yards, and tools and repairs of the same; postage and telegrams; furniture for Government houses and offices in the navy-yards; coal and other fuel; candles, oil, and gas; cleaning and clearing up yards, and care of public buildings; attendance on fires; lights; fire-engines and apparatus; incidental labor at navy-yards; water-tax, and for toll and ferriages; pay of the watchmen in the navy-yards; and for awnings and packing-boxes, \$440,000.

Mr. LUTTRELL. I offer the following amendment:

After "\$440.000," insert the following: "For construction and completion of dry dock at Mare Island, \$200,000."

I wish to know what the estimate is for the completion of the dry-

dock at Mare Island.

Mr. BLOUNT. I do not think there was any estimate at all for

Mr. LUTTRELL. We have expended a large amount of money in the construction of this dry-dock, and it would require a large sum to complete it. Unless an appropriation is made, the large sum we have appropriated will be lost to the Government. Undoubtedly that would be the case and I wish to ascertain how much was recom-

mended by the Department.

Mr. HOLMAN. Nothing at all for this bill. It does not come under this bill.

Mr. LUTTRELL. All right. I only desired to get the informa-

The question being taken upon Mr. LUTTRELL's amendment, it was not agreed to.

The Clerk resumed the reading of the bill, and read as follows:

BUREAU OF CONSTRUCTION AND REPAIR.

For preservation of vessels on the stocks and in ordinary; purchase of materials and stores of all kinds; labor in navy-yards and on foreign stations; preservation of materials; purchase of tools; wear, tear, and repair of vessels afloat, and for general care and protection of the Navy in the line of construction and repair; incidental expenses, namely, advertising and foreign postages, \$1,500,000.

Mr. KELLEY. I move to amend by adding the proviso which I send to the desk, to come in after the words "\$1,500,000."

The Clerk read as follows:

Provided, That no proposal for materials to be furnished under this or any section of this act shall discriminate against or in favor of the productions of any State or section of the Union.

Mr. KELLEY. I submit that proviso, Mr. Chairman, because I am informed and believe that in California there is an inspector by the name of Hillman and a chief inspector by the name of Beamis, and that in advertising for iron for the yard for this bureau they issue proposals to the whole world for the purchase of Hillman's Tennessee

Mr. WHITTHORNE. That is the best iron in the world. [Laugh-

Mr. KELLEY. That may be. Mr. HOLMAN. There is no objection to that amendment on the part of the committee.

Mr. HALE. I hope the gentleman will not discriminate against Tennessee iron.

The question being taken upon Mr. Kelley's amendment, it was

Mr. BANKS. I move further to amend the paragraph by striking out "\$1,500,000" and inserting in lieu thereof "\$2,000,000."
Mr. HALE. Say \$2,500,000.

Mr. HALE. Say \$2,500,000.

Mr. CLYMER. Why not say \$3,000,000?

Mr. BANKS. The enumeration of the purposes for which this appropriation that is recommended by the committee is intended will show very clearly of itself that if anything is to be done in that regard the amount reported is not sufficient:

For preservation of vessels on the stocks and in ordinary; purchase of materials and stores of all kinds; labor in navy-yards and on foreign stations; preservation of materials; purchase of tools; wear, tear, and repair of vessels afloat, and for general care and protection of the Navy in the line of construction and repair; incidental expenses, namely, advertising and foreign postages, \$1,500,000.

Last year, as I understand, the gentleman from Tennessee, [Mr. Whitthorne,] in his remarks this afternoon, so stated the amount appropriated for this purpose was \$1,750,000. Now, sir, it is known to appropriated for this purpose was \$1,70,000. Now, sir, it is known to everybody, of course, that even with that appropriation no work has been done and no work can be done. A little has been done at New York and in some other navy-yards; but as a general thing the work has been suspended. Nothing has been done in the way of repair; not very much in protecting the property—the vessels, the steamers, and sailing-vessels that we have. And I think the committee ought to be willing to increase the appropriation at least to the amount that we appropriated last year. I think it ought to be more, and I have ventured to propose the amendment that it be made \$2,000,000. ventured to propose the amendment that it be made \$2,000,000.

The question being taken on the amendment, it was not agreed to. Mr. BANKS. I now move to amend by making the amount the same as last year, \$1,750,000.

The amendment was not agreed to.

Mr. CONGER. I offer the following amendment, to come in after "\$1,500,000" and before the proviso adopted on the motion of the gentleman from Pennsylvania, [Mr. Kelley:]

Add the following: "of which \$500,000 may, in the discretion of the President, be used during the present fiscal year."

I would hope, Mr. Chairman, that there would be no objection to this amendment. I cannot see that there can be any objection to its being left to the discretion of the President to use it or not. Unfortunately for the service the fiscal year of this Government divides the working year midway. That is so in regard to very many of the appropriations, and the work done under them. It is so especially in

regard to the repairs and buildings in the navy-yards.

I understand from inquiry that it is very essential that work commenced under what is left of the present year's appropriation should have this amount added to it that work may be commenced this spring. The appropriation will be no more for the two years but may be used much more economically by the Government, as I am informed and believe. I cannot think that there can be any objection to leaving it to the discretion of the proper officer, the President of the United States, to use a portion of this during the season of work. If there be I should like to hear gentlemen explain it.

Mr. BLOUNT. I desire to say one word in reference to this appropriation. It is made up largely of labor and material. It is a notori-

ous fact that we have a large amount of material on hand for many years to come; and even now the question is raised as to a change in the kind of vessels we are to have in the Navy, so that I think the appropriation is ample.

Mr. CONGER. I do not ask an increase of the appropriation.
Mr. BLOUNT. The gentleman from Michigan [Mr. CONGER] has asked an appropriation of \$500,000 to be taken from the coming fiscal year to be added to the appropriation for this year. The proposition is wrong. There is always, as gentlemen will find, a pressing fiscal year to be added to the appropriation for this year. The proposition is wrong. There is always, as gentlemen will find, a pressing reason from the Departments for matters in their own favor, and we will soon, perhaps, have a change of administration and a new Secretary at the head of the Department, who will repudiate all the ideas of the present incumbent, no matter what his political opinions may be. I think we have appropriated enough money under the circumstances and I see no reason why we should add millions of dollars to an appropriation of this sort on the statements of gentlemen upon the other side.

men upon the other side.

Mr. CLYMER. I wish to say in reference to the amendment proposed by the gentleman from Michigan [Mr. CONGER] that it should not be adopted by the committee. Last year we appropriated large sums for construction and repairs, at the urgent request of members on the other side of the House, which were expended; yet in defiance of the orders of the Secretary of the Navy, and without authority of law, certain parties, shipbuilders and others, went on with the construction of vessels and making repairs. The amendment of the gentleman from Michigan [Mr. CONGER] would place \$500,000 in the hands of the President, to be appropriated in reality for the payment

of work heretofore done by those parties in defiance of orders and of law. I believe, sir, that the law-making power has a right to determine whether we want new constructions and repairs in the Navy or not. We do not propose to put it into the power of contractors to determine in defiance of orders and law what shall be the policy of the Government in these regards. If we adopt the amendment, it will be paid to those who have defied the law, and in effect will be a deficiency to that amount for this year, caused by the obstinacy and pertinacity of those who have contracts. I do not propose to offer a premium for conduct of this kind; on the contrary, I would teach them a lesson of obedience to law, and therefore I hope the commit-

tee will reject the amendment.

Mr. HALE. How are these contractors ever going to get paid?

Mr. CLYMER. They have acted without regular orders.

Mr. HALE. But when does the gentleman from Pennsylvania propose to pay them? Unless something is done they can never be paid.

Mr. CLYMER. I propose to answer that question when it arises on

the claim of these gentlemen.

Mr. HALE. Where will the money be found to pay them for the work actually done?

Mr. CLYMER. We propose to teach them a lesson—a lesson that the contractors of the Government cannot control its affairs.

Mr. HALE. These contractors are now out of money and are in need of what is due them.

need of what is due them.

Mr. CLYMER. Well, we will teach them this lesson and hereafter they will not transgress the law.

Mr. CONGER. I move to strike out the last word. The object which I had in view was not to pay any old contractors. I know nothing about them. I do know, however, that one of our ships on a foreign squadron on the shores of China and Japan was found to be so unseaworthy that its officers and men dared not make the voyage home in it. They communicated with the Department and the Department sent an inspector who devoted some time to a careful examination and reported to the Department that although the vessel would not be seaworthy as a cruiser, yet he thought that it could be

would not be seaworthy as a cruiser, yet he thought that it could be brought home. That vessel is now on its way home from its place in the squadron. It is perhaps the only vessel of that fleet that is not fit to be used in those seas. There is an absolute necessity for the appropriation set forth in my amendment. It makes no difference in our appropriation for the Navy whether it be by law or under the authority of law. I desire to say that any amount of money appropriated will only take affect on the lat of July very and the share to be performed at a certain season of the year, the summer season. The work has to be performed at that season of the year, and there is no possible reason why you should attempt in this case to divide the year when you do not do it in other cases. You appropriate millions for these works and allow them to be distributed between two fiscal years. Why not do it in this case? Gentlemen say that this appropriation is made without law, and these appropriations have been used prior to this time without law. It may be so; and if it be so I would give the sanction of law to the necessary use of these appropriations, and thus prevent the illegal use of them. Unless some gentleman here will say that these appropriations cannot be more economically expended by commencing the work for which the appropriation is made in April or in May, why should we not leave it to the President of the United States to order the use of so much

of this appropriation as may be necessary before the 1st day of July?

The gentleman says there is to be a change of administration.

Very well; neither he nor I know into whose hands this money will go, nor what President would have the discretionary use of it. he or I certainly can trust whoever is President of the United States to order this money to be expended as may be best. There is no possi-bility of this bill passing so that the appropriation can be used before the 4th day of March.

The question was taken upon the amendment moved by Mr. Con-GER; and upon a division there were—ayes 14, noes 22.

The CHAIRMAN. The "noes" have it.
Mr. CONGER. No. Mr. Chairman, not yet. If the gentleman from Georgia [Mr. BLOUNT] will allow a vote on this amendment in the House I will not call for a further count.
Mr. CURRIEN I call for a further count.

Mr. O'BRIEN. I call for a further count. Mr. BLOUNT. I hope the gentleman will not insist on a further

The CHAIRMAN. Does the gentleman withdraw his call for a

Mr. O'BRIEN. Not unless the amendment may be considered agreed to, so as to have a vote upon it in the House.

Mr. WHITTHORNE. I insist upon a further count.

Mr. HOLMAN. It is manifest that there is no quorum present. Mr. BLOUNT. I move that the committee now rise.

The motion was agreed to.

The motion was agreed to.

The committee accordingly rose; and Mr. Bright having taken the Chair as Speaker pro tempore, Mr. Mills reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4615) making appropriations for the naval service

for the year ending June 30, 1878, and for other purposes, and had come to no resolution thereon.

Mr. BLOUNT. I move that the House now take a recess until to-

morrow morning at ten o'clock.

Mr. WILSON, of Iowa. Is it understood that we will go on with business at ten o'clock?

Mr. CLYMER. Certainly.
Mr. BLOUNT. We will go on with this bill.
The motion was agreed to; and accordingly (at nine o'clock and fifty-five minutes p. m.) the House took a recess until to-morrow morning at ten o'clock.

AFTER THE RECESS.

The recess having expired, the House re-assembled at ten o'clock a.m., Thursday, February 15.

ORDER OF BUSINESS.

Mr. WHITTHORNE. I move that the House take a recess till eleven o'clock

Mr. CLYMER. O, no. Mr. HALE. Let us go on. Mr. JOHN REILLY. I ho I hope that the motion for a recess will not prevail. I do not see why we should not go on with business. This is the regular hour of meeting.

The SPEAKER. The question is not debatable.

The question was put on the motion of Mr. WHITTHORNE; and it

was declared not agreed to.

Mr. WHITTHORNE. Was there a quorum voting?

The SPEAKER. There was not. The Chair is of opinion that there is not a quorum present.

Mr. HALE. It does not require the presence of a quorum upon this

Mr. WHITTHORNE. Under the rules of the House the Speaker is

obliged to observe the fact that a quorum is not present.

Mr. CLYMER. Then let us have a call of the House.

The question being again taken on the motion for a recess, there

ere—ayes 3, noes 7.
Mr. WHITTHORNE. The Speaker is obliged under the rules to observe the fact that there is not a quorum.

Mr. HALE. I move a call of the House.

The SPEAKER. The rule is that less than fifteen members cannot order a call of the House. Only ten voted upon the last vote.

Mr. WILSON, of Iowa. There are at least fifteen present.

The question being taken on the motion of Mr. Hale for a call of

the House, there were—ayes 4, noes 3.

So the motion was not agreed to.

The SPEAKER. The Chair thinks that with so small an attendance of members the House had better take a recess. It would seem

to be trifling to proceed with business under these circumstances.

Mr. HALE. There is one thing that seems unfair. Some of us come up here every morning at ten o'clock, and, as the Speaker is aware, certain committees which ought to be at work cannot have

morning meetings because we do come here.

The SPEAKER. The Speaker is always here.

Mr. HALE. Of course I am making no reflection on the Speaker.

But in this way we are put in a condition in which we can do neither committee work nor business in the House. I suggest that if this is to be the course of proceeding in the morning hereafter, we should, when the recess is taken at the close of the day or evening, have an agreement that when we meet at ten o'clock in the morning there shall be a further recess until twelve o'clock, so that committees that need to do work may go on with their business. As it is now the Committee on Appropriations are very much embarrassed in getting through their work.

Mr. CLYMER. I beg to state that last night when we took a re cess until this morning it was asked whether unanimous consent would be given that a further recess without doing business should be taken from ten to eleven o'clock this morning. That request was refused; and thus notice was given to every one that we would go on with business this morning. But it appears to have resulted in nothing. Thus we are wasting morning after morning.

The SPEAKER. The Chair is advised that not many members

were present when that notice was given.

Mr. WHITTHORNE. It ought to be stated as a matter of justice that we meet here at ten o'clock simply under and by virtue of a law, and that the great body of members have been and are now under the impression that no business is to be done before twelve o'clock. Hence they are not here; and I believe they are attending to their duties at the Departments and in other regards.

The SPEAKER. The Chair thinks that any members of the House

who are absent at this first meeting are not in the least degree repre-

hensible. Mr. HALE.

Mr. HALE. What shall we do then, Mr. Speaker?
Mr. BLOUNT. I move that the House take a further recess till

The motion was agreed to; and at ten o'clock and six minutes a. m. a recess was taken accordingly.

At eleven o'clock a. m. the House resumed its session.

ported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:
An act (H. R. No. 1984) to provide for the sale of certain lands in

NAVAL APPROPRIATION BILL.

Mr. BLOUNT. I move that the House resolve itself into Com-

mittee of the Whole on the naval appropriation bill.

The motion was agreed to; and accordingly the House resolved itself into Committee of the Whole, (Mr. Mills in the chair,) and resumed the consideration of the bill (H. R. No. 4616) making appropriation. priations for the naval service for the year ending June 30, 1878, and for other purposes.

The pending question was upon the following amendment offered

by Mr. CONGER:

In the paragraph relating to Bureau of Construction and Repair add after "\$1,500,000" the following: "Of which \$500,000 may in the discretion of the President be used during the present fiscal year."

Mr. WHITTHORNE. I trust the committee will not adopt this

Mr. CONGER. Debate was exhausted and the committee was dividing when the motion was made to rise.

Mr. O'BRIEN. I insisted upon a vote by a quorum, and I now withdraw that demand.

The question being taken on the amendment, there were-ayes 11, noes 18

The CHAIRMAN declared the amendment not agreed to.

Mr. CONGER. The Chairman may have forgotten that we insisted on a quorum last night.

The CHAIRMAN. The gentleman from Maryland [Mr. O'BRIEN]

withdraws that demand.

Mr. CONGER. I renew it. I ask the gentleman in charge of the bill to consent that we shall have a vote on this amendment in the House. If that is not consented to, we must pursue the ordinary

Tellers were ordered; and Mr. CONGER and Mr. BLOUNT were appointed.

The committee divided; and the tellers reported-ayes 11, noes 29;

no quorum voting.

The CHAIRMAN. No quorum having voted, it will be the duty of

the Chair to order the roll to be called.

Mr. DURHAM. I move that the committee now rise.
Mr. CONGER. If we can be allowed a vote in the House on this amendment I would like to go on with the bill now, and will not

make any further objection.

The CHAIRMAN. It is the duty of the Chair when no quorum has voted to direct that the roll be called.

Mr. CONGER. I believe it is understood that the gentleman in charge of the bill [Mr. BLOUNT] will allow us to have a vote on this amendment in the House.

Mr. HOLMAN. I think we had better have a quorum.
Mr. CLYMER. I object to a vote in the House.
Mr. HOLMAN. There is no quorum present, and perhaps some other business might be transacted in the House. I therefore move

that the committee now rise.

Mr. CONGER. I will withdraw my call for a further count.

The CHAIRMAN. The call for a further count having been withdrawn, the amendment is not agreed to.

The Clerk resumed the reading of the bill, and read the following: BUREAU OF STEAM ENGINEERING.

For repairs and preservation of boilers and machinery on naval vessels: For fitting, repairs, and preservation of machinery and tools in the several navy-yards; for labor in navy-yards and stations not included above, and incidental expenses, and for purchase and preservation of oils, coals, metals, and all materials and stores, \$800.000.

Mr. WHITTHORNE. I move to amend the paragraph just read by striking out "\$500,000" and inserting "\$700,000." I make that motion with a view of calling the attention of the Committee of the Whole to what I understand to be the practice now prevailing in the Navy to what I understand to be the practice now prevailing in the Navy Department. Within the last month the Navy Department has disposed of, privately and secretly, at the city of Charlestown, material belonging to the Navy Department. That has been done with a view of paying debts incurred by the different bureaus of that Department. That is a violation of existing law, and so long as the practice continues Congress ought not to provide the Department with money, or with material for the Department to thus dispose of. I wish the distinguished Representative from Massachusetts [Mr. Abbort] was present in order to state this matter with which he is perfectly familiar. tinguished Representative from Massachusetts [Mr. Abbott] was present in order to state this matter, with which he is perfectly familiar, and what he in his capacity as a Representative brought my attention to as an outrage upon the public service. So long, Mr. Chairman, as this is permitted to be done, Congress should be careful of the appropriations made to these different bureaus. Among the things so disposed of were two if not three engines costing the Government a large sum of money. They were cut up and made into old material, and as junk or old iron disposed of for the purpose of paying these debts incurred by two of the bureaus of the Department.

Mr. HOLMAN. Have not the proceeds of the sale gone into the Treasury?

At eleven o'clock a. m. the House resumed its session.

ENROLLED BILL SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, re
Treasury?

Mr. WHITTHORNE. I think the proceeds of the sale ought to have gone into the Treasury, but let me tell my friend from Indiana that they have not gone into the Treasury.

Mr. HALE. For what were those debts incurred which were paid? Mr. WHITTHORNE. If I am correctly informed, they were for repairs done on the Puritan and Miantanomoh and other vessels.

Mr. HALE. That is for work done in the Navy Department, not for ontside matters

Mr. WHITTHORNE. This mode of proceeding is in violation of

One other remark. The gentleman from Maine on yesterday—
Mr. CONGER. Will the gentleman before he proceeds to other
matters identify the engines, boilers, &c.?
Mr. WHITTHORNE. I do not know them by name.

Mr. WHITTHORNE. I do not know them by name.
Mr. CONGER. Where were they situated?
Mr. WHITTHORNE. At the Charlestown navy-yard.
Mr. CONGER. What were they?
Mr. WHITTHORNE. Engines and boilers.
Mr. CLYMER. At the Charlestown navy-yard, Massachusetts.
Mr. WHITTHORNE. Yes, sir; at the Charlestown navy-yard, Massachusetts. sachusetts.

Now let me make one other remark. On yesterday the gentleman Now let me make one other remark. On yesterday the gentleman from Maine [Mr. HALE] did me the honor to state that during the last session I sought to impeach the Secretary of the Navy but the Judiciary Committee of this House had made a report acquitting or justifying the Secretary of the Navy. I respectfully state to that gentleman I have no information that such a report has been made to the House. It has not been made, and when it is made, if I am correctly advised and informed, the gentleman from Maine will not derive as much comfort from it as he seems now to take. While I have carefully avoided in the discussion of matters in connection with this fully avoided in the discussion of matters in connection with this bill making any reference to the personal administration of the Navy Department, I trust when that report is made I shall have a full opportunity to be heard by the House; and when I do, I have to say to my friend from Maine:

And when he next doth ride abroad, May I be there to see.

[Laughter.] I now withdraw my amendment.
Mr. CONGER. I renew the amendment for the purpose of saying a word or two to my friend here who makes amendments to throw off, on the testimony of a single gentleman or on suppositions, his increased and increasing condemnation of the Department which he has had the control of for two years. I am so surprised—and I am not given much to surprise—indeed so much surprised at this the end of given much to surprise—indeed so much surprised at this the end of the session that my friend should so publicly and frequently confess his inefficiency during two years in bringing the Navy Department to anything like a proper system, as he has had the sole control of it, that I have hardly words to express my own view of the subject. The world knows the gentleman is the prime mover, the Cæsar of the Navy Department, and all the people of the United States have coupled him with that Department as the great regulator and reformer of it. There never is any allusion made to it but my friend fills this House with his songroup voice in condemning all its proformer of it. There never is any allusion made to it but my friend fills this House with his sonorous voice in condemning all its proceedings, or in approval of his own remedies. Has it come to this, that the gentleman is forced finally to condemn the Navy Department on the mere private statement of an individual, with no other proof, and that not very positively stated? That is one point; and has it come to this, that the gentleman admits he has no knowledge of any report of a committee justifying him in his conduct toward a gentleman whom he has followed like a sleuth-hound for the last two years? Is it for the gentleman from Tennessee alone, of all other men in this House, not to have known of the oninjons of the commitmen in this House, not to have known of the opinions of the committee investigating that distinguished Secretary of the Navy? And may I modestly and humbly inquire of the gentleman if his ignorance in this respect and his lack of study and information in regard to the action of the committee is at all a guide to his action in seeking information in regard to the Department or knowing its actual condition?

Now, I would think that the chairman of the Committee on Naval Affairs on such a bill as this would be able to tell this House from his Affairs on such a bill as this would be able to tell this House from his own examination and his own information whether the appropriations ordered and required by law and reported by this committee are necessary; and if not, that he would long before this have brought in a bill, as was his duty, cutting off these appropriations and the occasion for them. I say it in all kindness to my friend. [Laughter.] A perfectly genial gentleman is the chairman of the Committee on Naval Affairs; he is like the Bengal tiger, perfectly peaceable except when irritated. I ask him why these bills making reforms in the service, which he says to-day are so much needed, have not been prepared and offered to this House that we might rush forward and vote for them and reform the abuses of which he complains? Perhaps when the next motion to amend is made the gentleman will inform the committee on some of those more serious subjects. I withdraw the pro forma amendment. the pro forma amendment.

Mr. TARBOX. I renew it.

In this connection, Mr. Chairman, I desire to put upon record a piece of testimony touching the frugality of the management of the Navy Department in some of its branches. A few days subsequent to the election in 1874, the Boston Journal, the leading and most loyal organ of the republican party in New England, said this in an editorial under the caption of "The Navy-Yard Blunder:"

Yesterday several hundred men were discharged from the Charlestown navy-yard because there was no work for them to do, and if there had been, not one in

twenty of those recently appointed were capable of performing it. These men were appointed for the purpose of swelling the vote of certain members of Congress. It is a trick the democratic party introduced. A republican administration ought promptly to have put its foot upon any such movement. In addition to this it was an open, bare-faced violation of the laws of Massachusetts.

The employment was gizen instead of being promised, but it was nevertheless a violation of the spirit, if not of the very letter of the law. Men were sent there who had no knowledge of any labor that they were supposed to be capable of executing. There is to be another discharge of this uscless material. As a bit of political policy it has done more harm than good. Those who became acquainted with this corruption were influenced against the party, and even the men employed, we are told, did not vote as they were expected to do. We trust it is the last time that the administrators of the Government at Washington will ever sanction any such waste of the people's money. We shall soon hear that the appropriation for the Charlestown navy-yard is expended, and then in order to make amends for this great wrong there will come orders for retrenhment. Skilled workmen who are honestly employed will be discharged, and the inevitable result must be that honest mechanics will suffer because these political Ublans wanted a few days' employment. Do not let us hear that the civil-service reform is to be attended to, while the Administration makes it possible for the public service to be thus corrupted and debauched.

I would add, Mr. Chairman, that that statement of fact is true. and

I would add, Mr. Chairman, that that statement of fact is true, and the prophecy was true also. It was about this time that the chief of the Bureau of Construction informed the commandant of the Charlestown navy-yard that the Adminstration desired the election of Messrs. Gooch and Frost to Congress.

I withdraw the amendment.

Mr. WHITTHORNE. I renew the pro forma amendment, simply for the purpose of enabling me to say to my friend from Michigan [Mr. Conger] that I am not surprised that he should enter this debate at the present time; but I am surprised that he enters it so blindly. He usually does not enter a discussion in that way. If my friend had paid attention to the suggestion or the remarks I was making, he would have seen that I was complaining of the violation making, he would have seen that I was complaining of the violation of existing laws. If the existing laws for the government of the naval service had been observed, and its administration had been honest and faithful, no reformatory legislation would be needed. The work of reform that is demanded is a change in the administrators. I have done my duty, sir, in every tribunal where I have had the honor to appear in endeavoring to make this change in the administrators of our Government, and while I confess to-day, in view of the action of that other body that meets midway between the two Houses, I have fears that that change will not take place, yet I trust an over-ruling Providence will lead and guide to that change ruling Providence will lead and guide to that change.

Mr. FORT. Amen. [Laughter.]
Mr. CONGER. I am glad my friend from Tennessee will submit both to the commission and to Providence. It is more than I expected.
Mr. WHITTHORNE. I withdraw the amendment.

The Clerk resumed and completed the reading of the bill. Mr. WHITTHORNE. I offer the following amendment:

Mr. WHITTHORNE. I offer the following amendment:

Add to the bill, as an independent section, the following:
That a commission of nine members be created, in the manner hereinafter provided, whose duty it shall be to examine and inquire into the present condition of the Navy of the United States, as to its personnel and materiel, and into the laws and usages now governing the naval service; to consider the relation of the commercial to the national marine; what active floating naval force, including the type and class of vessels, their armament and equipment, should be maintained in time of peace, and what should be kept in readiness for actual service in event of sudden war; what number and kind of vessels should be constructed annually to make up for decay, destruction, and casualty; what changes are required in naval architecture, in ordnance, in armor, and in the instruments of defensive warfare by the advance of naval science; how the Government can obtain the best designs and models of the same; and especially to consider what measures are necessary to protect and extend our rapidly growing commerce on the Pacific Ocean and in Asiatic waters; and to report to Congress, through the President, during the months of December, 1877, or January, 1878, the results of their investigation, recommending such legislation as they may deem requisite to bring the Navy up to the highest standard of effectiveness consistent with wise economy.

That the said commission shall consist of the Admiral, the General of the Army, two Senators, to be designated by the President of the Senate, and three members of the House of Representatives, and two officers of the Navy, to be designated by the President, one of whom shall also act as the secretary of the commission.

That said commission shall have power to send for records, books, and papers, and to summon and examine witnesses; and the Secretary of the commission with all facilities within his control for the convenient prosecution of their labors.

Mr. CONGER. I gave notice that I would make a point of order on that amendment. I make the point of order that it is new legislation, not germane to the pending bill, and that it makes appropriations evidently providing for an expenditure of money for a collateral object not in the interest of economy.

Mr. WHITTHORNE. If my friend had listened to the reading of the amendment he would have seen that the last section of the printed bill which he holds in his hand is omitted. There is no appropriation in the amendment as I have offered it.

printed bill which he holds in his hand is omitted. There is no appropriation in the amendment as I have offered it.

Mr. CONGER. Was the last section not read?

Mr. WHITTHORNE. No, sir.

The CHAIRMAN. The Chair will hear the gentleman from Michigan on the point of order which he makes.

Mr. CONGER. I make the point of order that this is new legislation, and that it necessarily involves expenditure. The third section provides for the performance of duties which must require expenditure: and it authorizes the use of the property of the Government of the Government of the covernment of the Government penditure; and it authorizes the use of the property of the Government of the United States and authorizes its vessels to be placed at the disposal of this commission. But it is a sufficient point for my purpose that it is new legislation, and not proper on an appropriation

The CHAIRMAN. What rule does the gentleman refer to ?
Mr. CLYMER. The rule on which the point of order is made is Rule 120.

Mr. O'BRIEN. I make the further point that the amendment is not in conformity with existing law.
The CHAIRMAN. Rule 120 is as follows:

No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law—September 14, 1837—unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject-matter of the bill, shall retrench expenditures—March 13, 1838, and January 17, 1876.

Does the gentleman from Michigan raise the point of order that the nendment changes existing law?
Mr. CONGER. Yes, sir.
The CHAIRMAN. Will the gentleman then point to the law which

this amendment would change?

Mr. CONGER. It changes the law in regard to the work of the Departments and as to the disposal of this property. It deliberately and clearly changes the law in regard to what is the duty of the Secretary of the Navy with reference to the disposal of this property, and I wish to call the attention of the chairman of the committee and the gentleman who offered this amendment to that fact. This amendment does not retrench expenses. There is no pretense that it does. It certainly retrenches no expenses upon its face now, and is not germane to the bill.

Mr. HALE. Will the Chairman hear me a moment on the point of

order?

The CHAIRMAN. Certainly.

Mr. HALE. A similar amendment offered yesterday was ruled out

Mr. HOLMAN. Before the gentleman proceeds I ask, on his account as well as my own, that that portion of the amendment now before the committee shall be reported. I understand that all that as read was not intended to be submitted as an amendment to this

Mr. HALE. O, no! the Clerk read only the amendment as pending. After striking out the appropriation it seems to me that the broad fact remains that the commission enters into new duties, duties broad fact remains that the commission enters into hew duties, duties which no commission has to-day, and that therefore it constitutes a body unknown to the law. It is within the knowledge of the Chair and within the knowledge of every member of the House that no commission can go on and perform its duties under a new law without involving the expenditure of public money. Here is a proposition to create a new commission, and certainly such an amendment is not in the line of economy under the rule adopted last winter. An amendment of this kind, unless it appears upon its face that it is in the interest of economy, is out of order.

Mr. WHITTHORNE. I do not think it worth while to consume the time of the House in a discussion of the question whether this

proposition should, as an amendment to the pending bill, be before the House, but the only suggestion that the House, but the only suggestion that may have any force is, whether by a change or modification of the existing law there is economy. The officers appointed under the commission are all officers

economy. The office of the Government.

Would not their traveling expenses, for instance, have Mr. HALE.

to be paid?

Mr. WHITTHORNE. We do not propose to go outside of officers of the Government in the appointment of this commission.

Mr. HALE. But if you do go outside you will have to pay the trav-

aling expenses of these officers, anyhow.

Mr. WHITTHORNE. That is possible and is a power that may be exercised by the tribunal, but the face of the law does not contemplate that, and therefore looking to the face of the proposition the Chair must decide that it is not in order, and therefore I submit that the objection of the gentleman should not be sustained.

The chiect of this amendment is to retrench expenditures in the

The object of this amendment is to retrench expenditures in the Navy Department hereafter, so as to make a saving in the expendi-tures of that Department—a great change from the experience of the last ten years—and to put it upon an economical basis and to have it so organized that the country may know what is being done in that

Department. Mr. HALE. Mr. HALE. I have only one further observation to make. The point is this: Should not the mover of the amendment point to the law which requires the appointment of this commission to decide upon questions in relation to the Navy which Congress has been unable to decide?

Now the mover of the amendment should be asked to put his finger on that provision of the statutes that authorizes this amendment. We should not be asked to ransack the statutes to show what provis-

ion it subverts

The CHAIRMAN. The rule of logic is that he who asserts the affirmative of a proposition should prove it. The gentleman asserts that this amendment will change existing law, and the Chair calls upon him to show what provision of existing law this amendment

Mr. HALE. Is not the objector to an amendment the one who asserts the negative, and is not the propounder of the amendment the one who asserts the affirmative? The objector is defending the law

as it is, and says that there is no law that justifies the amendment. I would be glad to have anybody show any provision of law embodied in our statutes which justifies or authorizes this new commission. If that cannot be done, then I hold it is new legislation and clearly sub-

that cannot be done, then I hold it is new legislation and clearly subject to the point of order.

For instance, new matter may be new legislation and perhaps not in violation of any specific provision of the statutes. Suppose the amendment had provided that there should be a new ship built. It would be difficult to find any law that in terms forbids the building of a new ship; but the mover of the amendment would be obliged to show the law that authorizes the building of a new ship. Just as in the case of a new public building. Some one moves an amendment to a bill providing for a new public building in Galveston. The point of order is made upon the amendment that it is new legislation. The objector could not put his finger upon any provision in the statutes objector could not put his finger upon any provision in the statutes that forbids a new building being built in Galveston. But the mover of the amendment must show the statute that authorizes the building of a new building. So here, the mover of this amendment must put his finger upon the law that authorizes this new commission.

The CHAIRMAN. Will the gentleman from Maine [Mr. Hale] direct the attention of the Chair to any rule that forbids the introduction of a bill in Congress that is not authorized by some prior

act of Congress

Mr. HALE. That is not the point. It is the familiar practice under the rules that new legislation cannot be incorporated in an appropri-

ation bill.

The CHAIRMAN. The gentleman from Maine, the Chair would suggest, confuses the language of the rule. The rule does not prohibit new legislation, but it says that no appropriation shall be made in an appropriation bill that is not authorized by pre-existing law. That is confined to appropriations, and, as the Chair understands the amendment as now offered, the portion which provided for an appropriation is stricken out.

Mr. HALE. Will the Chair hold that any new legislation is in order on an appropriation bill, if it does not in terms change existing

law?
The CHAIRMAN. Unquestionably, if it is germane to the original proposition, and does not provide for expending money.
Mr. HALE. If it changes existing law?
The CHAIRMAN. That is another point.
Mr. HALE. A new law must change existing law.
The CHAIRMAN. The Chair understood the gentleman's argument to be that there was no law in existence authorizing the appointment of this commission. That is a very different proposition from the one that there is an existing law which this amendment proposes to change.

proposes to change.

Mr. HALE. Is it not changing the body of existing law to add a

new law?

The CHAIRMAN. The Chair wants to know what provision of existing law this amendment will change; there may be no law upon the subject

Mr. HALE. That is my point; that there is no law authorizing the

appointment of this commission.

The CHAIRMAN. That, however, is not the rule.

Mr. WHITTHORNE. Allow me to suggest that by a provision in the last Navy appropriation bill a new commission was authorized.

Mr. HALE. Then there could have been no objection to it.

Mr. WHITTHORNE. And there was also a commission authorized

by the last Army appropriation bill.

Mr. HALE. That must have been by unanimous consent or in some other way that did not bring it within the rule.

The CHAIRMAN. The points of order made on the amendment

offered by the gentleman from Tennessee [Mr. Whitthorne] are first that the legislation proposed is not germane to the original bill now before the Committee of the Whole. The Chair thinks that point of order is not well taken. We are now legislating for the Navy, and anything that is calculated to promote efficiency or economy in the Navy is germane to this bill. The Chair would refer gentlemen to a provision contained in the first section of this bill.

For contingent expenses of the Navy Department, namely: For rent and furniture of buildings and offices not in navy-yards; expenses of courts-martial and courts of inquiry, boards of investigation, examining boards, with clerks' and witnesses' fees, and traveling expenses and costs, &c.

The Chair supposes this is the language ordinarily used in these bills. It is one of the specifications set out in each appropriation bill. It is a part of the ordinary administration of the Navy Department to have boards of investigation, as it is for the War Department to have courts-martial and courts of inquiry. Hence the Chair cannot see that there is any inappropriateness to the original bill in the amendment offered by the gentleman from Tennessee [Mr. Whittenerment.] Therefore the Chair overrules that point of order.

Mr. HOLMAN. I rise for the purpose of moving an amendment. The CHAIRMAN. The Chair has not ruled upon all the points of order that have been raised upon this amendment. The other point of order is that the amendment, to be in order, must come under Rule The Chair supposes this is the language ordinarily used in these

order is that the amendment, to be in order, must come under Rule 190

Rule 120 provides that-

No appropriation shall be reported in such general appropriation bills or be in order as an amendment thereto for any expenditure not previously authorized by law—

Then comes the exception-

unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill, or amendment thereto, changing existing law, be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures.

The Chair cannot consider what may be the results of this amendment after it is adopted. This rule is like the rule of damages which courts construe: they cannot look to the consequential damages that may result from a transaction, but they must look to the immediate results. The Chair cannot consider whether Congress may not at some subsequent session authorize the payment of the expenses of this commission. The Chair can only look to the provisions of the amendment, which upon its face contemplates no expenditure of money whatever. The point of order is overruled.

Mr. CONGER. In order to test the sense of the House upon a very

important decision, which may be taken as a precedent, I appeal from the decision of the Chair.

The question being, "Shall the decision of the Chair stand as the judgment of the committee?" there were—ayes 53, noes 25.

Mr. O'BRIEN. I call for a further count.
Mr. DAVY. It is twelve o'clock. I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Mills reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes, and had come to no resolution

Mr. CLYMER. I move that the House take a recess till twelve o'clock.

The motion was agreed to; and a recess was accordingly taken.

#### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk

under the rule, and referred as stated:

By Mr. J. H. BAGLEY: The petition of citizens of Catskill, New York, for the repeal of the bank-tax laws, to the Committee on Bank-

By Mr. BANNING: The petition of A. E. Jones, asking an amendment for the revision and correct distribution of the pension bounty, in which attention is called to a lithograph letter of Bartlett, Butman & Parker, of Chicago, in regard to trusses for pensioners, which the petitioner considers a job, to the Committee on Invalid Pensions.

By Mr. BLACKBURN: The petition of citizens of Owen County, Kentucky, for cheap telegraphy, to the Committee on the Post-Office

and Post-Roads.

By Mr. CAMPBELL: The petition of J. Ivor Montgomery, Moses West, and 66 others, of La Salle and De Kalb Counties, Illinois, for the repeal of the act of 1873 demonetizing silver; also for the repeal of the act for the resumption of specie payments January 1, 1879, and against the repeal of the tax on national banks, to the Committee on Banking and Currency. By Mr. DOBBINS: The petition of citizens of New Jersey for cheap

telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. DUNNELL: A paper relating to the establishment of post-

routes between Austin and Loudon, Spring Grove and Locust Lane, Saint James and Sleepy Eye, Minnesota, to the same committee.

By Mr. HARTZELL: A paper relating to the establishment of a post-route from Clear Creek to Thebes, Alexander County, Illinois, to the same committee.

Also, joint resolutions of the Legislature of Illinois, in relation to swamp-land scrip, to the Committee on Public Lands.

By Mr. HUBBELL: The petition of Amariah Joy and others, of Joyfield, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HUMPHREYS: The petition of citizens of Greene County, Indiana, of similar import, to the same committee.

By Mr. LYNDE: Resolutions of the Chamber of Commerce of Milwaukee, Wisconsin, for the appointment of commissioners to in-vestigate and ascertain on what basis a reciprocity treaty between the United States and the Dominion of Canada can be negotiated, to

the Committee on Commerce.

By Mr. PHELPS: The petition of banks, insurance companies, and other corporations located at Hartford, Connecticut, for the repeal of the bank-tax laws, to the Committee on Banking and Cur-

rency.

By Mr. ROSS, of Pennsylvania: Resolution of the Pennsylvania By Mr. ROSS, of Pennsylvania: Resolution of the Pennsylvania Editorial Association, opposing the free importation of books, engravings, periodicals, maps, charts, and other products of the printing-press, to the Committee of Ways and Means.

By Mr. SINNICKSON: The petition of Edward M. Walsh, and other citizens of New Jersey, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SMITH, of Georgia: The petition of S. T. Morton and other citizens of Miller County, Georgia, of similar import, to the same committee.

committee.

By Mr. SOUTHARD: The petition of Charles Johnson and 40 other citizens of New Castle, Ohio, for the removal of the limitation which

deprives pensioners of arrears of pension, to the Committee on Invalid Pensions.

By Mr. STANTON: The petition of 32 citizens of Winter, Luzerne County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WADDELL: The petition of citizens of North Carolina, for cheap telegraphy, to the Committee on the Post-Office and Post-

Roads.

By Mr. WHITTHORNE: The petition of J. B. Terrell, S. A. Pointer, and 50 other citizens of Tennessee, of similar import, to the same committee.

By Mr. WIGGINTON: The petition of John W. Fuqua and 65 other citizens of California, of similar import, to the same committee.

By Mr. WOODWORTH: The petition of 47 citizens of Hardin County, Ohio, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. YOUNG: The petition of James G. Williams, for a pension, to the Committee on Invalid Pansions.

to the Committee on Invalid Pensions.

### IN SENATE.

## THURSDAY, February 15, 1877-10 a.m.

The Senate resumed its session.
On motion of Mr. HAMLIN, the Senate took a further recess until twelve o'clock.

The Senate re-assembled at twelve o'clock.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D. The PRESIDENT pro tempore. The Secretary will read the Jour-

nal of yesterday.

The Journal of the proceedings of Wednesday, February 14, was read and approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. ADAMS, its Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. No. 1222) to provide for a deficiency in the ap-propriation for the public printing and binding for the current fiscal year, and for other purpose

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 4654) to remove the political disabilities of John

T. Mason, of Maryland; and
A bill (H. R. No. 4657) to provide a building for the use of the
United States district and circuit courts, the post-office, and internalrevenue officers at Austin, Texas.

## ADMIRAL CHARLES WILKES.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives on the bill (S. No. 993) for the relief of Admiral Charles Wilkes.

The amendments of the House were in line 3, after the word "credit," to insert the words "the late;" in line 3, after the word "Wilkes," to strike out the words "now on the retired list of the Navy;" and to amend the title by inserting after the word "of" the words "the late;" so as to make the bill read:

That the proper accounting officers of the Treasury Department be, and are hereby, authorized and directed to credit the late Admiral Charles Wilkes with the sum of \$350, being the amount paid by Paymaster Hosford to Paymaster Tolfree on account of mess-bill, and which was repaid to Paymaster Hosford but not taken up in his account.

The amendments were concurred in.

## PETITIONS AND MEMORIALS.

Mr. MAXEY presented an ordinance of the mayor and board of aldermen of the city of Jefferson, State of Texas, offering to convey to the United States on condition a certain dredge-boat belonging to

said city; which was referred to the Committee on Commerce.

Mr. DAWES. I present the memorial of Isaac Taylor & Co., of Boston, Massachusetts, praying Congress for aid to wrest the com-Hoston, Massachusetts, praying Congress for aid to wrest the commerce between this country and South Africa from the control of the British government. These petitioners, who have been engaged in that trade for the last thirty years, call attention in their memorial to some very striking statistics which show the wonderful growth of population and of all character of business in South Africa, and the great increase of commerce consequent thereon. They also show that it is a market wonderfully attractive to all of the industries and productions of this country, and they call attention to the fact that the policy of the English government has been such as to take entirely from us all the benefits, both commercial and internal, of that trade and of that market. They therefore pray that Congress may refer their memorial to the Committee on Commerce, and invoke its careful consideration of this subject.

The PRESIDENT pro tempore. The memorial will be referred to the Committee on Commerce.

Mr. CAMERON, of Wisconsin. I present resolutions adopted by the Chamber of Commerce of the City of Milwaukee, in the State of Wisconsin, and as the matters referred to in these resolutions are brief

and concern the commercial interests of my State, I ask that they

be read.

The PRESIDENT pro tempore. The resolutions will be read if there

The Chief Clerk read as follows:

CHAMBER OF COMMERCE, Milwaukee, February 7, 1877.

CHAMBER OF COMMERCE,
Milwoukee, February 7, 1877.

At a meeting of the Chamber of Commerce of Milwoukee, held this day, the following preamble and resolutions, offered and supported by William P. McLaren, esq., were unanimously adopted under a suspension of the rules:
Whereas the experience of the last several years has served to deepen the conviction in the minds of the business men of this country that important concessions might be made by both the United States and the Dominion of Canada which would serve to materially increase the trade between them and relieve it from many vexations restrictions to which it is now subjected;
And whereas the treaty of 1854 between Great Britain and the United States was abrogated by a notice from the United States in 1865, it would be courteous and desirable that the first steps toward negotiating a new treaty should be taken by the United States: Therefore,

Resolved, That this chamber of commerce most heartily approves and urges upon Congress the early adoption of the following joint resolution, which was introduced into the House of Representatives on December 15, 1875, to wit:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and is hereby, authorized to appoint three commissioners, by and with the advice and consent of the Senate, to confer with other commissioners duly authorized by the government of Great Britain, or whenever it shall appear to be the wish of that government of appoint such commissioners, to investigate and ascertain on what basis a treaty of reciprocal trade for the mutual benefit of the people of the United States and the Dominion of Canada can be negotiated.

Very respectfully,

N. VANKIRK,

The PRESIDENT pro tempore. The resolutions will be referred to the Committee on Commerce.

the Committee on Commerce.

Mr. MERRIMON presented the petition of James Taylor, Robert Tramper, and others, commissioners of the eastern band of Cherokee Indians of North Carolina, praying the repeal of the law authorizing the Commissioner of Indian Affairs to receive land in payment of judgments to the eastern ban l of Cherokee Indians; which was referred to the Committee on Indian Affairs.

Mr. WALLACE presented the petition of Rev. C. A. Rittenhouse, of Payment in praying for a pension; which was referred to the

of Pennsylvania, praying for a pension; which was referred to the

Committee on Pensions.

Mr. KERNAN presented the memorial of Ward L. E. Gurley and others, of Troy, New York, remonstrating against the passage of the bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes; which was referred to the Committee on Patents.

Mr. CONKLING. I present the petition of John A. Lynch, of Washington, District of Columbia, accompanied by a bill, proposing a survey of the Territory of Alaska. Somebody has suggested that this petition and bill should go to the Committee on Commerce. seems to me it belongs more appropriately to the Committee on Territories. If that be the opinion of the Chair, I make that motion.

The PRESIDENT pro tempore. The petition will be referred to the Committee on Territories if there be no objection.

Mr. CONKLING presented a petition of citizens of New York, numerously signed, praying an amendment of the pension laws so as to allow arrears of pension; which was ordered to lie on the table.

Mr. WADLEIGH presented the petition of Mrs. Ellen Truesdale, of

New Hampshire, praying for a pension on account of the death of her husband, Samuel Truesdale, late of the Sixty-ninth Pennsylvania which was referred to the Committee on Pensions. Volunteers:

Mr. COCKRELL presented additional papers in the case of Mrs. Blair, widow of the late General F. P. Blair, praying to be allowed a pension; which were referred to the Committee on Pensions.

### LANDS OF BROOKLYN NAVY-YARD.

Mr. CRAGIN. I am directed by the Committee on Naval Affairs, to whom was recommitted the bill (H. R. No. 7) to provide for the sale or exchange of a certain piece of land in the Wallabout Bay, in the State of New York, to the city of Brooklyn, to report it without amendment with the recommendation that it pass. I submit a written report from the committee to accompany the bill, and if there is no objection I ask that the bill may be considered at the present

By unanimous consent, the Senate, as in Committee of the Whole,

proceeded to consider the bill.

Mr. CRAGIN. I ask the Clerk to read the report in writing which is submitted with the bill.

The Chief Clerk read the following report, submitted by Mr. CRA-

GIN, from the Committee on Naval Affairs:

GIN, from the Committee on Naval Affairs:

The Committee on Naval Affairs, to whom was referred House bill No. 7, having considered the same, submit the following report: That, after considering the provisions of said bill and the various petitions accompanying the same, together with a memorial from the mayor, aldermen, commonalty, and other officers of the city of Brooklyn, representing the different departments of that minicipal government and all political parties, have decided to recommend its passage on the conditions hereinafter stated. The bill provides for the appointment of three commissioners by the President, to take into consideration the terms and conditions on which certain property shall be sold to the city of Brooklyn or exchanged for certain other property, and to report their conclusions to the Secretary of the Navy, and by him to be submitted to Congress at the beginning of the next session. Before such sale or exchange can take place, the recommendation of the commissioners must be ratified by Congress, and the question as to the propriety of disposing of any part of the premises can then be considered in connection with their report.

The tract of land consists of about twenty-seven acres, and is distinctly defined as to boundaries in the bill. It is low, marshy ground, and, it is claimed, breeds pestilence and disease in the most densely populated part of the city.

The committee express no opinion as to the sale of this land, and unless the amount to be realized is its full value, and can be appropriated to the improvement of the remaining part of the yard, it would not be considered for the best interests of the naval branch of the service to part with it.

The cob-dock, so called, is an important part of the Brooklyn yard and is in great need of repairs. It is an artificial island in Wallabout Bay, and contains about thirty-five acres, twelve of which in the center are already partially dredged and well calculated for a wet basin. It is entirely surrounded by navigable waters and on the East River front has twenty-one feet of water at low tide. Ships can be moored on the East River front out of the tide and free from the risk of ice, and out of the way of the navigation of the river. On the Wallabout channel there is also a large water front entirely out of the tide. This front will need dredging to any required depth. The present piers, wharfs, &c., around this island are in a rotten condition, entirely unit for use and discreditable to the Government. With the money expended upon it which would arise from the proposed sale to the city of Brooklyn, if Congress should hereafter authorize the same, it could be made the most valuable part of the navy-yard, having large water front and wet basin capable of containing at one time from twelve to twenty ships in a perfectly secure position.

The importance of improving the cob-dock is so great that the committee are willing to recommend the sale of land mentioned in this bill, provided the purchasemoney can be wholly applied to said improvement.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### REPORTS OF COMMITTEES.

Mr. CRAGIN, from the same committee, to whom was referred the bill (S. No. 989) for the relief of John G. Tod, of Texas, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 891) for the relief of Robert Small, reported adversely thereon;

and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 228) to authorize the payment of prize-money to the captors of the steamboat New Era No. 5 and cargo, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill

(S. No. 726) to fix and determine the relative rank of officers of the

was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 698) authorizing the President to nominate Ira C. Whitehead an assistant surgeon in the Navy, reported adversely thereon; and the

bill was postponed indefinitely. He also, from the same committee, to whom was referred the bill (S. No. 1157) providing for experiments and the purchase of the best movable torpedo by the Navy Department, asked to be discharged from its further consideration, and that it be referred to the Commit-

Mr. CRAGIN. The same committee, to whom was referred the peti-tion of James N. Carpenter, pay inspector United States Navy, pray-ing to be allowed a credit in the settlement of his accounts for certain moneys alleged to have been embezzled from him by his clerks, ask to be discharged from the further consideration of the petition. The petitioner desires an order that he may be allowed to withdraw the papers, and I suggest that such order be entered on leaving copies.

The PRESIDING OFFICER, (Mr. Anthony in the chair.) If there be no objection, that order will be made. The committee will be discharged from the further consideration of the petition.

Mr. CRAGIN. The same committee, to whom was referred the bill (S. No. 1229) for the relief of Donald McKay, the bill (S. No. 645) for the relief of the legal representatives of Charles W. McCord, the bill (S. No. 799) for the relief of J. B. Cornell and others, the petition of George W. Lawrence, of Damariscotta, Maine, praying for compensa-tion for extra labor and materials required in building certain gunboats for the Government, in consequence of changes made in the conboats for the Government, in consequence of changes made in the contract, the petition of Sarah E. Perine, widow and administratrix of William Perine, deceased, praying to have the claims for certain sums of money alleged to be due to her late husband upon contracts with the Government for the construction of certain war vessels, and for losses sustained therein occasioned by delays on the part of the Government, referred to the Court of Claims for adjudication and settlement, and a petition of Secor & Co., and Perine, Secor & Co., respecting the claims for losses sustained through the action of the respecting the claims for losses sustained through the action of the Government in building certain vessels of war, and in relation to sundry payments received by them as extras on these vessels, have instructed me to report a general bill. I will say that this is identically the same bill that was reported from the Naval Committee about two years ago, which passed the Senate unanimously. I submit with this bill the report that was made accompanying the bill to which I have referred, to accompany the bill now reported.

The bill (S. No. 1258) for the relief of certain contractors for the construction of vessels of war and steam-machinery was read twice

The bill (S. No. 1255) for the relief of certain contractors for the construction of vessels of war and steam-machinery was read twice by its title, and the report was ordered to be printed.

Mr. McDONALD, from the Committee on Pensions, to whom was referred the bill (H. R. No. 1347) granting a pension to Hattie D. McKain, reported it without amendment.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the petition of Hannibal Rowe, of Milton, Florida, praying compensation for services rendered as agent of the United States Government while employed in protecting and preserving the live oak timber in while employed in protecting and preserving the live oak timber in

that State belonging to the United States, submitted an adverse report thereon, which was ordered to be printed; and moved that the claim be rejected; which was agreed to.

Mr. WRIGHT. The same committee, to whom was recommitted the bill (S. No. 723) for the relief of Nannie Hall, instruct me to report it back and recommend the indefinite postponement of the bill. I desire to say that this bill was recommitted in December last, bill. I desire to say that this bill was recommitted in December last, after it had received a very careful and thorough consideration by the committee. It has again received that consideration, having been pressed upon our attention by counsel, and we have been led to consider additional evidence. With every disposition to grant the relief prayed for in this case, we do not see how we can do so under the rules which we have established and under the law. I understand the Senator from Mississippi, [Mr. BRUCE,] who is not now in his place, desired that if the bill should be reported with a recommendation for indefinite nost propagate it should go to the Calendar. I there-

place, desired that if the bill should be reported with a recommenda-tion for indefinite postponement it should go to the Calendar. I there-fore ask that the bill be placed on the Calendar.

The PRESIDING OFFICER. The bill will be placed on the Cal-endar with the adverse report of the committee.

Mr. INGALLS, from the Committee on Pensions, to whom was re-ferred the bill (H. R. No. 3583) granting a pension to Frederick W. Smith, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also from the same committee to whom was referred the bill

He also, from the same committee, to whom was referred the bill (S. No. 1183) granting a pension to Harriet Moss, reported it without amendment, and submitted a report thereon; which was ordered to

be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 2472) granting a pension to John Frey, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. INGALLS. I am also directed by the same committee, to whom

was referred the bill (S. No. 1154) granting a pension to Mrs. Fletcher Webster, widow of the late Colonel Fletcher Webster, of the United States Volunteer Army, to submit an adverse report thereon and recommend its indefinite postponement. The Senator from Massachusetts, [Mr. Boutwell,] who introduced the bill, may desire to have it go on the Calendar.

Mr. BOUTWELL. I should like to have it placed upon the Cal-

endar.

The PRESIDING OFFICER. The bill will be placed on the Calendar, with the adverse report of the committee, and the report will

be printed.

Mr. INGALLS also, from the Committee on Pensions, to whom was referred the bill (S. No. 1116) granting a pension to Sarah A. Chamberlain, guardian of the minor heirs of James Eagle, Company F, Second Regiment Kansas State Militia, reported it without amendment and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. P. N. 2550) granting a president of Packel A Crelies without

(H. R. No. 3580) granting a pension to Rachel A. Cullison, widow of Richard W. Cullison, late a private in Company D, Forty-fifth Regiment Ohio Volunteers, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1129) to amend an act entitled "An act granting a pension to Julia Scroggin," submitted an adverse report thereon; which was or-

dered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill
(H. R. No. 3280) granting a pension to James Johnston, reported it
without amendment, and submitted a report thereon; which was or-

dered to be printed.

He also, from the same committee, to whom was referred the petition of Daniel Houlihan, late sergeant Company I, Eighty-second Regiment New York Volunteers, praying to be allowed a pension, submitted a report thereon accompanied by a bill (S. No. 1259) granting a pension to Daniel Houlihan.

The bill was read twice by its title, and the report was ordered to

The bill was read twice by its title, and the report was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 197) granting a pension to Julia A. Schutt, widow of Martin Schutt, a deceased soldier, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 556) granting a pension to Daniel Huntsinger, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1086) granting a pension to Isaac Herring, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WITHERS, from the Committee on Pensions, to whom was referred the petition of Mrs. Jane Dulaney, widow of the late Colonel William Dulaney, praying to be allowed arrears of pension, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition. He also, from the same committee, to whom was referred the petition.

He also, from the same committee, to whom was referred the petition of William H. Babcock, praying for an increase of pension and forarrears of pension, submitted an adverse report thereon; which was ordered to be printed, and the committee was discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the petition of Edmund H. Cobb, late private Company B, First New Hampshire Heavy Artillery, praying to be allowed a pension, submitted a report thereon, accompanied by a bill (S. No. 1260) granting a pension to Edmund H. Cobb.

The bill was read twice by its title, and the report was ordered to be rejected.

He also, from the same committee, to whom was referred the bill (S. No. 1178) granting a pension to Francis A. Liebschütz, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1200) to grant a provision to Margaret Hunter Hardie, widow of James A. Hardie, inspector-general in the United States army, reported it with an amendment.

#### BILLS INTRODUCED.

Mr. CONOVER (by request) asked, and by unanimous consent obtained, leave to introduce a bill (8. No. 1261) to regulate the appointment of sail-makers in the United States Navy; which was read twice by its title and referred to the Committee on Naval Affairs.

Mr. WADLEIGH asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1262) to cure defects in certain letters-patent

to introduce a bili (S. No. 1262) to cure defects in certain letters-patent for inventions and designs; which was read twice by its title, and referred to the Committee on Patents.

Mr. COCKRELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1263) to establish a post-route in the State of Missouri; which was read twice by its title, and referred to the Committee on Post-Offices and Post Roads.

Mr. CONKLING asked, and by unanimous consent obtained, leave

Mr. CONKLING asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1264) to facilitate the settlement and develop the resources of the Territory of Alaska and for the survey of a line of railroad; which was read twice by its title, and referred to the Committee on Territories.

### SILVER COMMISSION.

Mr. BOUTWELL. I submit the following resolution, under the direction of the members of the silver commission, as it is called, and ask its present consideration:

Resolved by the Senate, (the House of Representatives concurring.) That the monetary commission created by the joint resolution of August 15, 1876, be allowed until the 24th of February, 1877, to submit their report.

The Senate proceeded to consider the resolution.

Mr. LOGAN. I have no objection to extending the time; but I wish to give notice now that I shall call up the bill remonetizing the silver dollar and recoining it, now on the table of the Senate, at the first opportunity. I hope the postponement of this report will not interfere with the consideration of that bill.

The resolution was agreed to.

## ELECTORAL COMMISSION.

Mr. HAMLIN. I submit the following resolution, and ask the action of the Senate on it the present time:

Resolved. That the electoral commission have leave to occupy the Senate Chamber for its sittings in the evening after the Senate shall have taken a recess for the day.

I wish to say, what is probably known to all Senators, that there are no gas-fittings in the room which the electoral commission now occupy, and they are obliged when they do hold evening sessions to resort to candles and lamps, and they become an affliction in the room. I have offered the resolution at the request of one member of the commission. I hope it will be adopted.

The resolution was considered by unanimous consent, and agreed to.

## ENROLLED BILL SIGNED.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the Speaker of the House had signed the enrolled bill (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, and for other purposes; and it was thereupon signed by the President pro tempore.

## AMENDMENT TO APPROPRIATION BILL.

Mr. BOGY submitted an amendment intended to be proposed by him to the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes; which was referred to the Committee on Appropriations, and ordered to be printed.

# DISTRIBUTION OF MEXICAN AWARDS.

Mr. CONKLING. Yesterday morning the Senate considered awhile the bill (H. R. No. 4629) to provide for the distribution of the awards made under the convention between the United States of America made under the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868. A Senator not now here remarked that he had a telegram from a constituent making an objection to the bill. I am told by another Senator who is present that there is no wish to insist upon that objection. My information is since that the allegation referred to rests upon evidence which was submitted to the umpire of the commission upon a motion for a rehearing of the claims which the allegation touched; and it has been considered. Although very reluctantly disposed to pass over even an allegation of fraud, I think it is true that at this stage of the proceeding the Senate could hardly even

with time undertake to investigate again a question of that sort, which seems to have been passed upon. I am informed there will be no further objection. The bill was read at length yesterday, and is on the table; it is a House bill; and if it be the pleasure of the

Senate I ask that it may be taken up for action now.

Mr. STEVENSON. I shall have to interpose an objection. I have received information from a gentleman of high character in the South, who tells me that he has proof in a bank here of the absolute fraud of this case, and he does not think it has ever been considered. I do not know anything about the matter; but when a gentleman, comnot know anything about the matter; but when a gentleman, commended for his respectability and character, comes and tells me he has in a bank of this city absolute proof that this is a fraud and that the testimony by which the award was supported is subornation of perjury, I am obliged to believe it. This gentleman told me that not twenty minutes ago; and I think we ought at least wait long enough to see whether this claim is fraudulent or not. I wish to premise that I know nothing about the gentleman who told me except that he was introduced to me as a gentleman from Mobile of high character; and I believe him to be a man of unimpeachable veracity. He tells me that he knows of his positive knowledge that this award

Mr. COCKRELL. What is the fraud? I ask the Senator to specify. There are some two or three hundred awards made by the bill.

Mr. STEVENSON. I will tell the Senator what it is. This gentleman says that the testimony by which a claim of \$400,000 was allowed is false; that it has no existence and is a fraud in law and in fact. I

hope the Senator is answered.

Mr. CONKLING. May I inquire of the Senator from Kentucky what day in his judgment would enable him and the Senate to receive ade-

quate information to act upon the bill?

Mr. STEVENSON. I have nothing to do with it except to call to the attention of the Senate the statement of a responsible gentleman that the Government is going to be defrauded. If the Senate choose to pass the bill after this statement, I have not a word to say.

discharged my duty.

Mr. CONKLING. I ask my friend to hear me a minute. He entirely misunderstands the spirit of my inquiry. I will say to him that after hearing such an allegation made and made by him, I am not going to press the passage of this bill. Indeed I will go further and say to the Senator that I think he is quite justified in the remarks he has made, although my impression is it will turn out that there is an answer to what has been said. That does not signify. I agree with the Senator that whenever the Senate has information, apparent, reasonable, that an allegation of fraud is made which affects an act of legislation, the Senate should pause and should know as well as it can know that that allegation is groundless, before it Therefore I am not going to press the passage of this bill; but I ask the Senator from Kentucky, who seems to have had personal conference with the gentleman to whom he refers, to indicate if he can how much postponement he thinks would be desirable.

Mr. STEVENSON. As I came into the Senate this morning a Senator in this body asked permission to introduce me to one of his constituents from Mobile who he stated was a gentleman of character and credit. I yielded to that request, and he introduced me to him. This gentleman then said that he desired to see me a moment. All of this took place between that and the other door. He said yesterday a bill providing for the payment of the awards made by the Mexican commission had been pressed; that he had in his possession now, in a bank, proof that one of those claims amounting to some \$400,00J in a bank, proof that one of those claims amounting to some \$400,000 was an absolute fraud; and that he had proof so conclusive of the fact that no human man could doubt it on looking at the testimony, which he could produce. I think he said the testimony was perhaps in one of the banks of this city. I said I knew nothing about the bill, but if he desired I would make the statement public to the Senate as he detailed it to me. He intimated to me that the fraud could be shown either to-day or to-morrow, and that the proofs were ample. I have discharged that duty. I know nothing more about the case. I felt it my duty to make the statement and I have discharged that duty to the best of my ability.

charged that duty to the best of my ability.

Mr. WITHERS. I hope the Senator from New York will withdraw his application for the immediate consideration of the bill.

Mr. CONKLING. I have already virtually done that.
Mr. WITHERS. I beg the Senator's pardon.
Mr. CONKLING. And now I wish to say to the Senator from Kentucky, to be good enough to inform the person he has referred to, and whom I have not the pleasure of knowing, that so far as I am concerned the bill may stand for a day or two, affording him ample op-portunity to give any information he wishes to give, and then I think some action should be taken. If it seems that there is reason to suppose any wrong is involved in the bill it should be recommitted to the committee for re-examination. If, on the other hand, it turns out that this is a mistake, it doubtless will be the judgment of the Senate that action should be had very soon.

Mr. STEVENSON. It would give me great pleasure to introduce this gentleman to the Senator from New York. He is now I think in the lobby, and the Senator would be able to know at once what is the observer and are divisited.

the character and credibility of the testimony which this individual claims to be sufficient to sustain the allegation.

Mr. CONKLING. I mean to be very accommodating to everybody about this matter, but if I can say it in good nature I wish to say

that I do not intend to go out as a member of this body and hunt for evidence in this case. If this gentleman, as he has been described, has any evidence I propose that he shall present it to the Senate. What I know about it I have heard from the Senator from Kentucky; and therefore, although I might be glad to extend my acquaintance, I shall not go and look up anybody on this subject. I hold it to be the duty of anybody who possesses this evidence to present it to the Senate in some form

Mr. STEVENSON. I did not suppose the Senator was going to hunt up this gentleman. I should certainly not desire the Senator from New York to hunt anybody up. I shall state to this gentleman from Mobile that this bill has been postponed at least for to-day, and he can then present his evidence either to the Senator from New York or to the Senate, if you please, and his credibility can be tested. I know nothing about the character of the testimony or the claim. I only desire to warn the Senator not to proceed hastily until this gentleman may have an opportunity to verify his statement as to the invalidity and fraudulent character of this claim.

#### DISTRICT TAX BILL.

I move that the Senate proceed to the considera-Mr. SPENCER. tion of the bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes.

The PRESIDING OFFICER, (Mr. Anthony in the chair.) Is there

objection to the motion?

Mr. DAVIS. Let the bill be read, subject to objection. The PRESIDING OFFICER. The bill will be read.

The Secretary proceeded to read the bill, and, before concluding, was interrupted by

The PRESIDING OFFICER. The morning hour has expired and it becomes the duty of the Chair to call up the regular order, the un-

finished business of yesterday, which is the Pacific Railroad bill.

Mr. SPENCER. I move to lay aside the pending order temporarily in order to proceed with this bill. It is an important bill.

Mr. WRIGHT. Let the pending bill be first laid before the Senate.

The PRESIDING OFFICER. The unfinished business, being Senate bill No. 984, is now before the Senate.

Mr. WRIGHT. If there is no objection on the part of any other Senator, I am willing that the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to all the pending order shall be laid aside informally applied to the pending order shall be laid aside informally applied to the pending order shall be said as the pending order shall be sai

formally, subject to call at any time, to proceed with the consideration of the railroad bill.

Of course if it leads to any debate or discussion for a long time, I

shall insist on the regular order.

Mr. SPENCER. I do not think it will lead to any debate or long

The PRESIDING OFFICER. Is there objection? The Chair hears The reading will proceed.

The Secretary resumed and concluded the reading of the bill By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending

June 30, 1878, and for other purposes.

The bill was reported from the Committee on the District of Columbia with amendments. The first amendment of the Committee on the District of Columbia was in section 1, line 5, to strike out, after the word "levied," the words "upon all lands outside of the cities of Washington and Georgetown held and used solely for agricultural purposes a tax of \$1 on each \$100 of the assessed value thereof;" so as to read:

That for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, there shall be levied upon all other real and personal property in said District, excepting only the real and personal property of the United States and that hereinafter stated, a tax of \$1.50 on each \$100 of the assessed value thereof.

Mr. DAVIS. I desire to ask the Senator having charge of the bill a question as to the rate of taxation. Is it intended that the property outside of the city limits is to be taxed the same as that inside city limits?

Mr. SPENCER. The rate of taxation upon property outside of the city limits is to be the same as upon property inside the city limits,

upon the valuation.

Mr. DAVIS. Then do I understand the Senator that agricultural and other lands in the District, the owners of which receive hardly any benefit from the improvements in the city, are to be taxed the

any benefit from the improvements in the city, are to be taxed the same as property within the city limits?

Mr. SPENCER. Upon their valuation, the same. I will state to the Senator from West Virginia that that is the case now, and it has been the case for several years. This same question was discussed in the two Houses last year, the year and nays called upon it, and the Senate voted by a large majority to tax the lands outside of the city

limits the same as the lands inside.

Imits the same as the lands inside.

Mr. DAVIS. It seems to me there is hardly a parallel to this case in the country, agricultural lands lying perhaps five or six miles from a city are taxed at the same rate as property within the city limits, the owners of which receive the numerous benefits from the large amount of expenditure which takes place. It strikes me at once as wrong, and not only wrong but monstrous. It is unusual, in fact I think unjust, and I could not vote for the bill even if there were no other objections to it. I do not know that there are other objections to the bill, for I have not studied it as carefully as the members of

The Senator from North Carolina [Mr. MERRIMON] the committee. is a member of the committee, and he is more familiar with it than I am; but before the bill can receive my support, it occurs to me that there should be an explanation to show why, as I think, an unjust taxation should be levied upon the agricultural parts of the District. I ask why should the rate of taxation be the same for the country as the city, where the great amount of the debt of the District has been incurred, where the resulting benefit is very great, and where all the improvements are located? Perhaps not a dollar of the debt now upon the District was the result of expenditures outside of the city limits. Those outside portions certainly do not receive the benefit of the same police regulations prevailing in the city, and there are many benefits of which they are deprived. More costly school-houses are built in the city and all other things are more costly. I believe in every city all over the country taxation is greater in the city than it is in the country districts. That there should be an exception made here, and that that part of the District that is to receive no benefit whatever from the vast expenditures of money should be taxed the same as is that portion within the city limits, where the money raised by taxation is expended, to me is strange; and I should like to hear an explanation of the amendment of the committee striking the clause from

Mr. SPENCER. This is an old question. This question was argued at length before the Senate a year ago; the yeas and nays were taken upon it; and the Senate by a large majority voted to sustain the proposition which the committee have reported at this time. The question is very ably stated in a letter from the District commissioners to myself as chairman of the Committee on the District of Columbia, which I shall read. I would like to have attention of the Senator from West Virginia to this communication. They state the question, I think, as ably and plainly as it can be stated. The commissioners Mr. SPENCER. This is an old question. This question was argued

There are also two important changes made by the House of Representatives to which we think your attention should be invited. These are found in section 1, lines 5 to 9 and lines 13 to 15. The first in order provides that a tax of \$1 on each \$100 of the assessed value shall be levied upon lands outside of the cities of Washington and Georgetown "used solely for agricultural purposes," while all other property shall be taxed at the rate of \$1.50 on each \$100 value thereof. We fail to perceive the justice of this discrimination. The theory on which this tax law is founded is that property, real and personal, shall be taxed upon its ea-h value.

The as essment of all things possessed and taxable is to be the value thereof in lawful money; hence all property is to be reduced to a common basis or unit expressed in dollars and cents, including farming-lands in common with city and villa lots, houses, furniture, money, stocks, bonds, notes, &c. When this unit of measure has been reached, however, farming-lands, excepted from the rule otherwise universally applied, are to be taxed one-third less than any other property.

A dollar's worth of property is just as much the equivalent of a dollar in the county as it is in the city. Some lands in the county are assessed at \$50 per acre. Within this city there is land assessed at the rate of \$200,000 per acre; the latter, because of its high assessment, contributes to the treasury four thousand times more than the former; the great value arising, in part, from the advantages of the city improvements which it supports by this four-thousand-times greater burden of tax.

The valuation of property begins at some central point of greatest value and takes.

city improvements which it supports by this four-thousand-times greater burden of tax.

The valuation of property begins at some central point of greatest value, and thence diminishes with more or less regularity in all directions toward the county bounds. Where shall the line of discrimination, if such there is to be, be drawn? It is believed that nowhere within the District is a valuation reached based upon intrinsic worth for agricultural purposes, values being everywhere, within so limited a territory about the cities, dependent upon proximity to them and upon speculative advantages and influences. Moreover, to place farmers on an equality, inter se, their lands should be assessed at the same value per acre; whereas farmlands used now solely as such are assessed at various rates, from \$50 to \$400 per acre, the one of less assessed value being often as desirable as the other for farming purposes. Yet the one would pay, acre for acre, six times more tax than the other.

There are hundreds of acres of land within the limits of this city quite as unproductive in income as are any lands in the county, while yet paying fax upon an assessed value of thousands of dollars per acre. Like the lands of the county, they have a prospective value arising from and dependent upon their proximity to the growth and spread of improvements of the more central portions of the city. This value is contingent upon the advantages derived from the increase of the cities in wealth, population, and all that belongs to luxury and civilization. Should they not contribute to that on which their worth depends, in direct ratio to their cash value?

Other property might claim a discrimination on account of immediate returns given with as much propriety as farming-lands.

The commissioners here state the whole thing as plainly and as ably as it can be stated. I think the difference in valuation covers the objection made by the Senator from West Virginia.

Mr. DORSEY. Every time the District tax bill has been reported from the committee this question has been raised, not only in the committee, but on the floor of the Senate. The committee investigated the matter very thoroughly. While it is true probably in some instances that the farming lands of the country do not pay as large an income in proportion to the valuation as city property, it is not true as a general thing. The fact is that the taxes received by the District commissioners from the farming-lands in the country of Washington commissioners from the farming-lands in the county of Washington commissioners from the farming-lands in the county of Washington outside of the city are very largely less than the amount expended by the District commissioners upon roads, bridges, &c., in the county. That is, the county does not pay its way; the county does not furnish taxes enough to pay the expenses of the county; and I am sure they have hardly a right to complain when compelled to pay the same rate of taxation that is paid in the limits of the cities of Washington and Georgetown.

Mr. MERRIMON. I cannot give the sanction of my judgment to the first proposed amendment in section 1 of the bill under consideration. I believe that it is founded upon a principle that is unjust and unwise, and if the attention of the Senate could be drawn to it in such

a way as to discuss it and understand it fully, I do not believe the amendment of the committee would receive the sanction of the judgment of the Senate.

ment of the Senate.

The bill, as it came from the House, provided that the property according to its value, real and personal, inside of the cities of Washington and Georgetown, should be taxed at the rate of a dollar and a half per hundred dollars' worth of property; and that the like property outside of the city limits should be taxed at the rate of \$1. I believe that the provision of the bill as it came from the House is about fair. I believe there ought to be a distinction, and for the reason that there are many improvements and advantages to property in the cities of Washington and Georgetown which do not appertain at all to property situated outside of these cities. In these cities we have a numerous police which costs a great deal of money, we have the advantage of paved streets, excellent sewerage, public lights; we have a health department; an advantage in the matter of schools and churches; and many other advantages that I cannot now think of to enumerate, which do not appertain to the property outside of the cities of Washington and Georgetown; and yet it is deliberately proposed that those persons who do not enjoy any of these advantages, or who enjoy them very slightly, shall pay as much for their support and maintenance as those who enjoy them absolutely. It seems to me that a mere statement of the proposition is sufficient to I believe there ought to be a distinction, and for the reaeems to me that a mere statement of the proposition is sufficient to

show that it is unjust and unfair.

Mr. DORSEY. Will the Senator allow me to interrupt him? Mr. MERRIMON. Of course I shall allow my colleague on the

Mr. MERRIMON. Of course I shall allow my colleague on the committee to interrupt me.

Mr. DORSEY. The fact is that the tax raised in the county on the property lying in the county outside of the city of Washington is insufficient to pay the expenses of the county outside of the city. Therefore what the Senator says, that we ought not to levy taxes in the county to pay for gas, water, and police, has no application at all. More than that, we have in the county a mounted police which protects all the roads leading out of the city and which is maintained at a very considerable expense.

a very considerable expense.

Mr. MERRIMON. I am not aware of any account that has been taken in order to ascertain whether the statement made by my colleague on the committee is correct or incorrect. I suppose that his statement is mere speculation. I apprehend that if the account should be taken it would appear that the amount of taxes paid by the prop-

oet taken it would appear that the amount of takes paid by the property-owners outside of the city is a great deal more than pays the cost of administering the government to them.

Mr. DORSEY. The Senator certainly ought not to suggest that what I say is mere speculation. I have the same authority for presenting the statement which I make that a Senator has for making any statement in relation to the executive department of this Government. I have the authority of the commissioners of one sitting near any statement in relation to the executive department of this Government. I have the authority of the commissioners, of one sitting near me, and I have their written report to show that the amount of tax raised outside of the city is wholly inadequate to meet the expenses of building county roads, constructing bridges, and the various expenses incident to protecting the county outside of the city of Washington. I have no doubt that that is true, for I certainly do not think

ington. I have no doubt that that is true, for I certainly do not think that the commissioners would make an assertion of that kind in writing and verbally to the committee unless it were true.

Mr. MERRIMON. I am not aware of any paper in which the commissioners say they have taken the account in order to estimate how that is. Very intelligent citizens of the District of Columbia outside of the two cities tell me otherwise. But the point I mean to make to the Senate is that the principle is in itself essentially wrong, for the suggestion that the people outside of the city pay according to the value of their property is more specious than solid. It does not go to the bottom of the argument at all. The point I make is that the people of the District pay taxes for the protection and the privileges which they receive frem the Government, and that there are certain advantages in the cities which do not appertain to the property outadvantages in the cities which do not appertain to the property outside of the cities at all. For example, there is no police in the country, or a very small police. I believe there is a mounted police of six or eight men who ride around over the District outside of the two cities. They have no advantage from public lights, they have no advantage They have no advantage from public lights, they have no advantage from sewerage, they have no advantage from schools, they have no advantage from the paved streets, and no interest in keeping this up any more than anybody who lives in any of the States who comes to the city of Washington. These advantages pertain particularly and specially to the property inside of the cities and not to property outside of the cities; and because the people inside of the cities receive this additional protection, this additional advantage, this additional convenience, they ought to pay for it and not enjoy it at the expense of those who do not get such benefits at all. Take the county of Wake in my own State, in which the city of Raleigh is located. You might as well say that the people in the county of Wake ontside of the city of Raleigh should pay taxes to support the government of the city of Raleigh should pay taxes to support the government of the city of Raleigh, or that the people outside of the city of Baltimore in the county in which it is located should pay the same rate of taxation that the people who live in the city pay.

It is suggested that the people of this District are all under the

same government. They are to some extent, but the laws which apply to the two cities are not the same in all respects which apply to the county outside of the two cities. There are certain laws and ordinances and regulations which govern the cities and which do not govern the people outside of the cities.

But apart from that consideration, it is manifest, it seems to me, But apart from that consideration, it is manifest, it seems to me, to every just mind that there are certain advantages to property inside the cities which do not appertain to the property outside the cities, and surely property outside ought not to be taxed to pay for an advantage which the property-owners do not realize any benefit from at all, or if they do, one which is very slight.

As to the suggestion that the property outside of the cities does not pay enough to support the government that is administered to those outside of the cities, I am not prepared to state to the Senate how it is. As I said a moment ago, no account has been taken, and I understand from respectable property owners that the property outside

stand from respectable property-owners that the property outside does pay for administering the government to them and much more. If it does not, I am very free to say that they ought to pay enough to defray the cost of administering the government, or their proportion of it, and that the city should not be bound to pay a part of that

expense.

These are the points in the case. I have felt it my duty to dissent from the proposed amendment in committee and to bring the subject to the attention of the Senate, and I believe the subject ought to receive serious attention, because it becomes a matter of very grave moment. There is nothing the people are more anxious about than the matter of taxes. While they ought to pay their tax cheerfully, because it is to defray the expense of the government that protects them, still they are sensitive about it and do not like to be taxed unjustly. There is

are sensitive about it and do not like to be taxed unjustly. There is nothing they complain about more bitterly.

Mr. INGALLS. Mr. President, civilization is an expensive luxury; whether it is worth all that it costs is perhaps an open question. But in any event it must be paid for, and the only method that the ingenuity of man has devised by which the expenses of civilization can be met is by taxation. The theory of course is that each individual and all kinds of property in every community shall bear a proportionate share of the expenses of the maintenance of civil society. It has been the problem that has vexed the minds of legislators ever since government began how to distribute the burden of tors ever since government began how to distribute the burden of taxation so that it shall bear equally upon all persons and upon all classes of property. The complaint that is made by the Senator from North Carolina is as ancient as civil institutions, and it will undoubtedly continue to be made so long as those institutions endure; for no method has yet been discovered, no system can be contrived, that will distribute these burdens with absolute uniformity upon every individual who is called upon to contribute to the expenses of civili-

The Senator from North Carolina contends that it is unjust and inequitable that agricultural or farming lands outside of the cities of Washington and Georgetown, in the District of Columbia, should bear the same percentage of taxation as property within the limits of those corporations. It is not wholly without foundation; there does seem to be an apparent injustice, upon casual reflection, in taxing farming lands outside of the city the same percentage that is borne farming lands outside of the city the same percentage that is borne by land inside of the corporation. The Senator says there is no sewerage outside of the city, that there is no police, that there are no sanitary regulations, that the roads are not lighted, and consequently it is unfair to subject property that is outside of the city to a share of the taxation that is imposed for the purpose of maintaining the expenses of these benefits. But if the Senator would reflect a moment he would perceive that if this theory is to prevail as a principle of taxation it would be impossible to devise a scheme which will not be open to precisely the same objection, whether inside of the corporate that it is the corporate th open to precisely the same objection, whether inside of the corporation or outside; for it is evident that real estate on Pennsylvania avenue is worth vastly more, either by the foot or by the acre, than lands which lie immediately adjacent the periphery or circumference of the city. The value of that land is immensely greater; conseence of the city. The value of that tand is immensely greater; consequently it should bear a greater proportion of taxation than real estate which is near the outside limits of the city, if the views of the Senator from North Carolina were to prevail.

The Senator might urge with equal force that there should be a

different distribution of the burden of taxation inside of the city, because the expenses of the police force on Pennsylvania avenue are greater than they are in the streets near the extreme limits of the city. It costs more to light the Avenue than the other streets. The personal property that is there protected is of greater value. Therefore, to carry out the Senator's theory, property in this location ought to bear a larger proportion of the expenses paid to the police force; so that if we are to reduce this question to complete accuracy, to distribute the bard of textures that it is the bard of textures the texture of textures the textures the textures the texture of textures the textures the textures the texture of textures the texture of textures the textures tribute the burden of taxation so that it will bear with absolute uniformity upon everybody, you have got to make a specific rate for every individual in community. Now the Senator sees this is en-tirely impossible. It is beyond human ingenuity to devise a scheme which will permit a uniform rate of taxation upon every individual in community, and yet to insure absolute justice that must be done, because every man in society is benefited in a degree greater or less because every man in society is benefited in a degree greater or less than any of his fellows. The man who owns a million dollars of real estate in this city is benefited more than the day-laborer. The man who owns a similar amount of personal property is benefited more than the man who is worth nothing. Therefore, if you are to devise a scheme that will distribute this burden equally upon everybody, you must make a specific rate for every individual.

Mr. CLAYTON. Let me suggest another idea. Take Seventh street, which extends through the whole District, the citizens living outside of the city limits on that street have greater advantages.

outside of the city limits on that street have greater advantages

than those living in more distant portions, who have no roads and no

Mr. INGALLS. That is undoubtedly true. The Senator from North Carolina is incorrect in saying that the people outside of the city receive no benefits from the improvements which are maintained within the corporation. Real estate which is immediately adjacent to the city is more valuable on account of the street-lamps, pavements, police, and sanitary regulations which are maintained in the city. That is one of the specific reasons which gives an increment of value to property adjoining the city limits; it is because of the greater value of property within the city limits, which depends upon the advantages derived from the improvements that are paid for by the taxation which is imposed upon exterior and interior property alike.

Again, if this idea were to be adopted as a principle of legislation, it would be impossible to impose a tax for State purposes or for any other general fund upon real estate. The Senator knows that within his own State of North Carolina there is a specific tax levied for State purposes upon all the real estate within the limits of that State. Certainly the Senator knows that real estate in the immediate vicinity of the city of Raleigh is of greater value than real estate in the remote rural districts, and yet it would be impossible to adopt a sys-tem of State taxation that should adapt itself to the varying values

tem of State taxation that should adapt itself to the varying values of real estate in the different portions of the State dependent upon their proximity to commercial and manufacturing centers.

The only practical plan that legistors have been able to devise is that each community for the purposes of taxation shall be considered as an integer, as a unit, and that the inequalities which are complained of shall be equalized as far as possible by differences in the assessment and valuation. So in regard to the property here in the District the Senator knows that agricultural lands immediately adiciping the sity are of greater value for purposes of sale than property. District the Schator knows that agricultural lands immediately adjoining the city are of greater value for purposes of sale than property of the same description at the extreme boundaries of the District. It therefore bears a different proportion of the burden of taxation, while the percentage remains the same. By imposing a tax of \$1.50 on the hundred dollars upon all the real estate in the District there is an equation produced by diminishing the assessed value of the real estate proportioned to its distance from the center of valuation in the city. Therefore, I conclude that it is entirely proper that this clause of the bill should be stricken out and that all real estate in the Dis-

of the bill should be stricken out and that all real estate in the District should bear this burden equally, and that the equation should be obtained by differences in the valuation of the property.

Mr. MERRIMON. The argument made by the Senator from Kansas, I must say with all respect to him, is more specious than solid. I have not pretended that it was possible for the Legislature to pass any revenue law that would operate exactly fair upon every person who must pay taxes for the support of the government; but what I said is, and it seems to me that it embodies the very idea and principle of justice, that it is the duty of the Legislature to make the burden of taxation rest as equally upon those who receive protection from the hands of the Government as it is possible for the Legislature to do. That is exactly the principle which I desire to see applied in the District of Columbia. I said, and I adhere to the statement, that the people inside the cities of Washington and Georgetown receive a trict of Columbia. I said, and I adhere to the Statement, that the people inside the cities of Washington and Georgetown receive a larger measure of protection, a greater number of advantages, than the people of the District outside of those cities do or can do, and it is not just that the people outside of the cities should pay for those advantages which they do not realize, and which the Government does not extend to them. The persons and the property of the citizens inside the city of Washington receive a higher degree of protection, and one that costs more, than the persons or property of the people who live outside of the city. Therefore it is not fair that those who receive the less protection, the less advantage, should pay for the advantage and protection of those who receive it in a higher degree.

The illustration which the Senator makes of the property-owner upon Pennsylvania avenue is not sound. It is true, indeed, that property situated immediately upon the Avenue is of much more value than property situated upon F street or G street or M street; but the Senator leaves out of view the fact that the property-owner upon Pennsylvania avenue pays much more tax upon a like piece of property than the man who owns property upon M street.

Mr. INGALLS. He pays the same percentage.

Mr. MERRIMON. He pays more tax because his property is assessed for more money.

sed for more money.

Mr. INGALLS. The percentage is the same.

Mr. NGRILS. The percentage is the same.

Mr. MERRIMON. That is very true, and that is fair and just. The percentage is properly applied to every property-owner inside of the city, and why do I say so? I say so because every person who lives inside the city gets the same measure of protection according to the value of his property from the laws which govern the city and its administration. He has the same advantage of paved streets; he has the same advantage of public lights; he has the same advantage of sewerage and sanitary provisions: and therefore he ought. the same advantage of public lights; he has the same advantage of schools, of sewerage, and sanitary provisions; and therefore he ought to pay according to the value of his property, according to the measure of protection which he receives; but these extraordinary advantages which apply in the city do not apply outside of the city.

Mr. DORSEY. I think my friend from North Carolina is proceeding entirely upon a mistaken theory. This city and this District are under the same government. Every protection, every right, every privilege which any citizen of the city of Washington has every

citizen of this county has. The fire department is just as much required and can respond just as quickly to the distant portions of this county as it can respond to a fire on Pennsylvania avenue. They have a mounted police which goes on all the streets and roads and protects them just as the police on our avenues and streets in the city protect people and property. So far as I know and believe, the citizens of the county have the same protection, the same benefit of the money arising from taxation, that the citizens of the city of Washington have.

zens of the county have the same protection, the same berefit of the money arising from taxation, that the citizens of the city of Washington have.

Mr. MERRIMON. The Senator, I think, is manifestly mistaken in what he says. They do not have the number of schools there; they do not have the proportion of schools among them.

Mr. DORSEY. Last year there were over \$43,000 paid for public schools alone outside of the city, which, as I understand, is considerably more in proportion than the amount applied in the city; and the tax of the county is only about \$100,000, nearly one-half of which was applied for the support of public schools in the county.

Mr. MERRIMON. They do not have the advantage of lights in the country; they do not have the advantage of sewerage; they do not have the sanitary advantages; they do not have the advantage of paved streets and conveniences of that sort. They do not have many advantages which I am not able to enumerate which do not attach to the property outside of the city. Why should they pay the same tax? Why should a principle be applied in the District of Columbia which does not apply in the case of other towns and cities? I learn that in the city of Philadelphia, which covers as large an extent I believe as the District of Columbia, they have three rates of taxation; that they have a rate which applies to the city property, a rate which applies to the suburban portion of the city where it is thinly built up, and another rate which applies to the agricultural lands. That seems to me to proceed upon a just idea of taxation. It proceeds upon the principle which I think ought to apply to the District of Columbia as well as anywhere else in the Union. If it turns out, as has been suggested, that the portion of the District outside of the city does not pay enough taxes to administer the government there, it ought to be increased in that proportion; but I apprehend when the account is

suggested, that the portion of the District outside of the city does not pay enough taxes to administer the government there, it ought to be increased in that proportion; but I apprehend when the account is taken it will be found that such is not the fact.

I will mention a further fact in reply to the Senator from Kansas. If the property which is situated near the boundary of the city is of more value on account of its nearness to the city, it is assessed at a larger value and pays more tax on account of the valuation; but the Senator loses sight of the point I make that there are certain advantages and conveniences which apply to the property on one side of the line which do not apply to it on the other side, and although we cannot make the rule of taxation absolutely fair and equal to everybody, we ought to make the rule as fair and equal as we can. seems to me that it is manifest to the plainest mind that to tax people for a measure of protection which they do not receive, and to make them pay for the measure of protection received by others, is plainly and manifestly unjust and wrong.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) \*The question is on the amendment of the committee to strike out the words.

Upon all lands outside of the cities of Washington and Georgetown held and used solely for agricultural purposes a tax of \$1 on each \$100 the assessed value thereof and.

Mr. MERRIMON. I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 29, nays 19; as follows:

29, nays 19; as foliows:

YEAS—Messrs. Alcorn, Allison, Bailey, Bluine, Booth, Cameron of Wisconsin, Chaffee, Christianey, Clayton, Conover, Cragin, Dawes, Dorsey, Hamlin, Hitchcock, Ingalls, McMillan, Mitchell, Morrill, Paddock, Patterson, Robertson, Sargent, Spencer, Teller, Waddielgh, West, Windom, and Wright—29.

NAYS—Messrs. Bogy, Bruce, Cockrell, Davis, Eaton, Goldthwaite, Harvey, Johnston, Kelly, Kernan, McCreery, McDonald, Merrimon, Norwood, Ransom, Saulsbury, Stevenson, Wallace, and Withers—19.

ABSENT—Messrs. Anthony, Barnum, Bayard, Boutwell, Burnside, Cameron of Pennsylvania, Conkling, Cooper, Dennis, Edmunds, Ferry, Frelinghuysen, Gordon, Hamilton, Hereford, Howe, Jones of Florida, Jones of Nevada, Logan, Maxey, Morton, Oglesby, Randolph, Sharon, Sherman, Thurman, and Whyte—27.

So the amendment was agreed to.

The PRESIDING OFFICER. The next amendment is in line 9 of the first section, to strike out the word "other," which follows, I believe, as a necessary consequence.

Mr. SPENCER. I think there is no objection to that amendment.

The amendment was agreed to.

The next amendment of the Committee on the District of Columbia was in section 1, line 13, after the word "thereof," to strike out the

Thirty cents on every 100 valuation of real and personal property as a special tax for the support of schools.

The amendment was agreed to.

The next amendment was in section 5, line 25, after the word "paid," to strike out the words "out of the general fund" and insert: "By a charge of twenty cents for each lot or piece of property advertised;"

The expenses of said advertising and the printing of said pamphlet shall be paid by a charge of twenty cents for each lot or piece of property advertised.

The amendment was agreed to.

The next amendment was in section 5, line 52, after the word "Columbia," to insert the words "but the property so bid off shall

not be exempted from assessment and taxation, but shall be assessed and taxed as other property;" so as to read:

Provided, That no property advertised as aforesaid shall be sold upon any bids not sufficient to meet the amounts of tax, penalty, and costs; but in case the highest bid upon any property is not sufficient to meet the taxes, penalty, and costs thereon, said property shall thereupon be bid off by the said commissioners, or their successors in office, in the name of the District of Columbia; but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property.

The amendment was agreed to.

The next amendment was in section 5, line 57, after the word "sale," to insert: "And that may have accrued after that date;" so as to

And if within two years thereafter such property is not redeemed by the owner or owners thereof, by the payment of the taxes, penalties, and costs due at the time of the offer of the sale, and that may have accrued after that date, and 10 per cent. per annum thereon, or if any property two years after having been so bid off at any sale whatever in the name of said District, under this or any other law, is not or has not been so redeemed as aforesaid, then the commissioners of the District or their successors in office shall, in the name and on behalf of the District of Columbia, apply to the supreme court of said District, sitting in equity, for the purpose of enforcing the lien acquired as aforesaid by said District on the property aforesaid.

The appropriate was accread to

The amendment was agreed to.

The next amendment was in section 8, line 4, after the word "buildings," to strike out "churches" and insert "church buildings for public worship;" so as to read:

That the property exempt from taxation under this act shall be the following, and no other, namely: First, the Corcoran Art Building, free public library buildings, church buildings used for public worship, the Soldiers' Home, and grounds actually occupied by such buildings.

The amendment was agreed to.

The next amendment was in section 12, line 40, after the word "business," to insert the following:

But when any person shall bring a stock of goods of any character whatever into the District for sale by auction, a tax of 1½ per cent shall be paid to the collector of the District; and it shall be the duty of the auctioneer making such sales to deduct the said tax from the gross proceeds of each and every sale so made by him, and pay the same to said collector; and when goods are so brought into the District to be otherwise disposed of than at auction, and in a place of business temporarily occupied for their sale, then, before it shall be lawful to make any sales whatever, the owner of said goods shall notify the board of assessors, who shall assess the entire stock to be sold at its fair cash value, and the owner thereof shall pay to the collector of the District a tax of 1½ per cent on such assessed value, and shall receive a receipt therefor, which receipt shall be his permit to proceed with the sale of the goods; and any auctioneer or owner of goods who shall violate the provisions of this section, or any part thereof, shall be fined in the police court of said District, on information filed therein in the name of the District of Columbia, in the manner used for breach of municipal ordinances and laws, not less than \$100 and not more than \$1,000;

So as to read:

Where a person coming into the District subsequent to June 30, 1877, engages in trade of a permunent character, he shall pay a tax proportioned to the fraction of the tax year ending June 30, 1878, during which he conducts said trade, and the assessment in suid case shall have reference to the average stock in trade for sixty days from the date of commencing business; but when any person shall bring a stock of goods of any character whatever into the District for sale by auction, a tax of 1½ per cent, shall be paid to the collector of the district, &c.

Mr. COCKRELL. I should like to ask the Senator who reported the bill what is the effect of the words in lines 43, 44, and 45:

And it shall be the duty of the auctioneer making such sales to deduct the said tax from the gross proceeds of each and every sale so made by him, and pay the same to said collector.

The auctioneer auctioning off the goods, according to that language, as soon as he knocks down one article would have to stop and pay the

Mr. SPENCER. O, no; the bill does not intend anything of that kind.

Mr. COCKRELL. Then make it so that it will mean something else, for that is what it says. I suggest a modification of the amend-

ment, so as to make it clear.

Mr. SPENCER. We will accept any modification; but it does not mean anything of the kind that the Senator suggests. It means that the auctioneer shall report at the end of every month, or a specified time, the amount of sales and pay such tax. The object of it is to

mr. COCKRELL. For that reason I suggest in line 45 to insert the words "at the close of each day's sales;" so as to read:

To deduct the said tax from the gross proceeds of each and every sales o made by him at the close of each day's sales and pay the same to said collector.

Mr. SPENCER. I will accept that amendment.

The amendment to the amendment was agreed to.

The amendment to the amendment was agreed to.

The next amendment was to insert at the end of section 16: "And they are hereby required to use the surplus revenues to repair the avenues, streets, and alleys in said District;" so as to read:

avenues, streets, and alleys in said District;" so as to read:

That hereafter no two lots or subdivisions of original or other lots in any square
of ground in the District of Columbia shall be designated by the same number or
by the same letter of the alphabet, and the commissioners of the District of Columbia, or their successors in office, shall cause the numbers and letters designating lots in all the squares of ground in said District to be revised and changed to
conform to this requirement; and they shall make such further changes in the existing numbers or letters designating lots in any of the squares in the cities and
villages in said District as may, in their opinion, facilitate and simplify the labor
of assessing real estate therein. And they are hereby required to use the surplus
revenues to repair the avenues, streets, and alleys in said District.

Mr. SALLISBURY — I should like to know the object of that amend-

Mr. SAULSBURY. I should like to know the object of that amendment. It seems to me very unusual to give this commission the power to appropriate money to improve streets by a general clause in a bill without a specific appropriation for the improvement of the streets and avenues. I think that it is a very loose way of legislating to take money which may be in their hands, collected by taxes from the people, and apply it at their discretion for the improvement of avenues, streets, and alleys in this District. I apprehend we ought to make no such appropriation. There ought to be a special appropriation for avenues and streets, and it is usually done in that way; but this amendment gives the commissioners a general power at their discretion. this amendment gives the commissioners a general power at their discretion to take the surplus fund in their hands and apply it to that purpose. I think it is a very unwise provision, and I hope the amendment will not prevail.

These commissioners are by this amendment authorized to take any surplus revenue in their hands collected from the people by taxes and apply it where they please to the improvement of streets, alleys, and avenues in this city. I am opposed to appropriately apply it where they please to the improvement of streets, aneys, and avenues in this city. I am opposed to any such unlimited power and discretion being vested in the commissioners. Whenever we want to make an improvement upon Pennsylvania avenue, for instance, we generally know what it is about; but this amendment seems to confer on the commissioners a discretion which I am not willing to trust to on the commissioners a discretion which I am not willing to trust to them. If the surplus revenues are in the Treasury, let the money remain to the credit of the District, and if the alleys and lanes and avenues of the city need improvement, let us have some specific legislation on that subject.

Mr. SPENCER. In answer to the Senator from Delaware, I desire to state that there is this year a surplus of \$36,000. The object of the amendment is to enable the commissioners to use that surplus. The Bendelly year types will be an equal amount of surplus. The

the amendment is to enable the commissioners to use that surplus. Probably next year there will be an equal amount of surplus. The avenues and streets of this city are in a very bad condition. There is no power now to do anything with them. Such an amendment is absolutely necessary. The sum is very small indeed, being \$36,000 this year, and the probability is that it will be no greater next year.

Mr. SAULSBURY. I think, if any proceeds come into the hands of the commissioners under this bill, if there is going to be any surplus whatever, we had better reduce the rate of taxation. It is well known that the people in this District have suffered immensely from the

that the people in this District have suffered immensely from the that the people in this District have suffered immensely from the enormous taxes to which they have been subjected, and if there is now in the Treasury a surplus, and if it is probable that there will arise under the tax imposed by this bill a surplus to be placed in the Treasury, we had better, in the interest of the tax-payers in the District, reduce the rate of taxation. I am very glad the Senator from Alabama has informed us that there will probably be a surplus. Bejorg to I say let it remain in the Treasury and let us reduce next year. Alabama has informed us that there will probably be a surplus. Being so, I say let it remain in the Treasury and let us reduce next year the taxes on the people of this District who have been excessively burdened for the last several years by taxes on their property. The fact is the rate of taxation now proposed by this bill, a dollar and a half per hundred dollars to be levied on the tax-payers of this District is an enormous tax. It is three times and more than three times the tax which the people of my State pay for city and county purposes. Our rate of taxation, both for State purposes and for county purposes, does not exceed forty-five cents in the hundred dollars; yet we have an enormous debt for our small State, a debt of about a million and a quarter dollars. We pay the interest on that debt and we pay all our State expenses, all our local county expenses, and accumulate annually a surplus in the treasury to be applied to the liquidation of the debt. Yet a rate of taxation is proposed in this bill more than three times that of my State. I say, reduce the rate of taxation rather than grant an unlimited discretion to these commissioners, and if we are going to levy a tax which is to accumulate a surplus in the Treasury instead of expending that surplus according to their own will and discretion, we should reduce the taxation.

Mr. MERRIMON. This surplus is apparent rather than real.

Mr. MERRIMON. The taxes collected from the people are devoted to special purposes which are enumerated, and those taxes being devoted to those special purposes the result is to leave a surplus of about \$35,000. There is no appropriation for the repair or improvement of the streets at all. There will have to be money raised from some source to improve the streets. As to allowing the commissioners to determine what improvements are absolutely necessary or what are more necessary than others, it is utterly impossible for us to get along with the District government unless we repose a very large discretion in the commissioners. I

what particular appropriation ought to be made and to make all the repairs necessary. The commissioners or their subordinates must determine what particular repairs must be made and at what particular time they must be done. They are better qualified to do it and we are obliged to repose confidence in them. I believe there is no we are obliged to repose confidence in them. I believe there is no complaint against their integrity; I have heard none made. It is practically impossible for us to have commissioners or any other body to administer the government of the District of Columbia without reposing a very large measure of confidence in them, confidence in their integrity, confidence in their judgment. They are obliged to be charged with the expenditure of money in the prosecution of works of this sort. Congress may determine that a great street like Pennsylvania avenue shall be paved and provide how it shall be paved and make all the provision necessary for it; but when you come to make slight repairs and sometimes extensive repairs upon remote

streets and by-streets and by-ways it is impossible for Congress to look into the matter. That must be reposed in the discretion of the commissioners, and this provision is simply to allow the commissioners to use this surplus fund in the repair of the streets, the repair of those places that most need it.

Mr. KERNAN. The amendment reads:

And they are hereby required to use the surplus revenues to repair the avenues, reets, and alleys in said District.

Which would imply that they have got to look out a place to spend

the money on.

Mr. MERRIMON. They will have no difficulty in finding a place; and there are a great many places that they cannot repair because they will not have the money to do it.

Mr. KERNAN. The word "authorized" would be quite broad

enough.

Mr. MERRIMON. That might be; but as the matter now stands, there is no danger of their spending money where it ought not to be spent or where the streets do not need repair. I know from my personal observation in passing over some of the streets that vast sums can be expended in bettering their condition. Some of the streets are in a very ruinous condition, I venture to say in a dangerous condition. We are obliged to repose in the judgment of the commissioners the application of the funds necessary to repair the streets. I think the provision is wise and proper.

provision is wise and proper.

Mr. EATON. I agree with the Senator from North Carolina that the principle is a proper one, but I do not like the wording of the

amendment:

And they are hereby required to use the surplus revenues to repair the avenues, streets, and alleys in said District.

Suppose there was a very large amount of surplus revenue. I apprehend there will not be; I have no idea there will be; but suppose there should be; under this bill the commissioners might feel authorized to expend the entire amount upon the streets of the city. It would be better to change the phraseology of the amendment so as to read:

And in the repair of the avenues, streets, and alleys surplus revenues only shall

Mr. DORSEY. I think the suggestion of the Senator from Connecticut would meet the views of the Committee on the District of Columbia. We may accept the amendment.

Mr. SPENCER. I do not see any objection to it.

Mr. EATON. I should prefer to have it read in that way.

Mr. SPENCER. Let the Senator reduce it to writing.
Mr. EATON. I will then move to strike out the words proposed to be added by the committee, and in lieu of them insert:

And in the repair of the avenues, streets, and alleys surplus revenues only shall

Mr. MERRIMON. Let me make a suggestion. I repeat what I said a while ago that some of these streets and avenues are in a most ruinous condition and some of them are dangerous. It might turn out in the course of the year that the surplus revenue would be very trifling compared to the amount to be expended. The commissioners might be obliged to make a repair upon the streets and they would have no money to do it, because by the amendment suggested by the Senator from Connecticut they could not exercise any discretion at all in the application of the funds which they might use for that purpose. If the amendment as proposed by the Senator from Connecticut should be adopted they would be confined in making repairs to the surplus fund, which might be trifling.

Mr. SAULSBURY. Will the Senator from North Carolina inform me how much revenue will be derived under this bill?

Mr. MERRIMON. The chairman of the Committee on the District of Columbia can state the amount more accurately than I can.

Mr. SPENCER. I do not understand the Senator from Delaware, Mr. SAULSBURY. I made the inquiry of the chairman of the committee or of the Senator from North Carolina as to the amount of revenue that would be derived under the provisions of this bill.

Mr. SPENCER. About \$1,900,000. all in the application of the funds which they might use for that pur-

Mr. SPENCER. About \$1,900,000.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Connecticut to the amendment of the committee. The amendment to the amendment was agreed to.

Mr. SPENCER. I will answer the question of the Senator from Delaware more correctly now. The commissioners inform me that the amount of revenue to be collected under this bill is about \$1,800,000. stated it too high.

Mr. SAULSBURY. What was the amount collected last year?
Mr. SPENCER. About \$1,700,000.
Mr. SAULSBURY. And it is to be \$1,800,000 this year?
Mr. SPENCER. That is the estimate.

The amendment, as amended, was agreed to.
The next amendment of the Committee on the District of Columbia was to insert as an additional section the following:

SEC. 17. That the Secretary of the Treasury is hereby directed to advance to said commissioners between the 1st day of July and the 1st day of November, 1877, such sums as may be from time to time required for the payment of interest on the old funded debt, and for the current expenses of the District government, the aggregate sum so advanced not to exceed \$500,000; and the commissioners shall re-imburse the Treasury the amount so advanced out of the revenues of the District on or before the expiration of the fiscal year ending June 30, 1878.

Mr. SAULSBURY. I wish to offer an amendment to the proposed section. The section provides that the Secretary of the Treasury shall advance to the commissioners moneys and that the commisshall advance to the commissioners moneys and that the commissioners shall re-imburse the Treasury the amount advanced. The Secretary of the Treasury is to advance such sums as may be required between the 1st day of July and the 1st day of November, 1877, and he is to be re-imbursed on or before the expiration of the fiscal year ending June 30, 1878. There is therefore a period of time when the public Treasury will have been out of the money advanced. My amendment is to add after the word "advanced" in line 10 the words "with interest at the rate of 6 per cent.;" so as to read:

And the commissioners shall re-imburse the Treasury the amount so advanced, with interest at the rate of 6 per cent., out of the revenues of the District on or before the expiration of the fiscal year ending June 30, 1878.

The PRESIDING OFFICER. The question is on the amendment

of the Senator from Delaware to the amendment of the committee.

Mr. SPENCER. I hope that that amendment will not be adopted.

I do not see any good reason why the District of Columbia should pay interest to the Government. The District government is very poor interest to the Government. The District government is very poor anyway, and the money is lying idle in the Treasury. I do not see any propriety for the payment of interest. The necessity for the amendment of the committee is because the taxes are not payable until the 1st day of November and there will be no money from July to November to pay the expenses of the District of Columbia.

Mr. SAULSBURY. It is very apparent, if the amendment reported from the committee is agreed to, that the Secretary of the Treasury will be convenied to the Treasury.

from the committee is agreed to, that the Secretary of the Treasury will be compelled to advance the whole amount named in the bill, which is half a million dollars, and the Treasury will be out of the receipt of that money for at least six months in the year. It is not designed by this bill to make any appropriation of money whatever out of the public Treasury; but it is simply to enable the commissioners to go on with the government of the District, and it is proposed that the Secretary of the Treasury shall advance to them the money. They ought to refund this money with interest upon it to the Treasury, just the same as if it had been loaned by an individual. My amendment is simply to indemnify the Treasury. The Government has to pay interest upon its debts. The Government could take this money and appropriate it to the payment of claims against the Government; but if the section is passed without the amendment which I have offered, then the Treasury will be making an appropriation of at least the amount of the interest on the \$500,000 proposed in the bill. I simply want to secure to the Treasury not only the amount of money which is advanced to the commissioners, but interest upon it, and I think that is perfectly fair.

of money which is advanced to the commissioners, but interest upon it, and I think that is perfectly fair.

The question being put, a division was called for.

Mr. DORSEY. We may as well have the yeas and nays. A division will show that there is not a quorum present.

The yeas and nays were ordered.

Mr. MERRIMON. Ordinarily I should be in favor of the amendment proposed by the Senator from Delaware; but in the case before the Senate now I think that it probably would be unwise to adopt his amendment. This advance is required because of the practical impossibility to collect the taxes in time to meet the absolute wants of the District government, which must be supplied before the taxes can be collected. The Government is very largely interested in the government of the District of Columbia, and in its wise and wholesome administration. The property which the Government owns here is of vast value. The Government is more largely interested than anybody else in the administration of the affairs of the District; and it does seem to me that in extending this aid we ought not to be very stingy about the use of a few thousand dollars the District; and it does seem to me that in extending this aid we ought not to be very stingy about the use of a few thousand dollars for a brief while. The interest would be about \$15,000, I understand. If that sum is taken from the aggregate amount to be raised it will be very seriously felt. It may turn out that the money will be out of the Treasury but a brief while. As soon as the money goes into the treasury of the District it can be replaced, and the commissioners will replace it. It may be out about six months, in which case the interest would be \$15,000; or it may be out only three months; in which case the interest would be only half that amount; but, as I said before, I do not think that Congress ought to be very stingy in a matter of this sort.

Mr. DORSEY. The only reason why the Secretary of the Treasury is to be called upon to advance this money is because Congress has not within the last two or three years seen fit to pass the District tax bill in time for the District commissioners to assess and collect the tax by the 1st of July, that is, at the beginning of the fiscal year. After the tax is paid in, which will be in November or December, I believe, the entire amount lies in the Treasury of the United States,

lieve, the entire amount lies in the Treasury of the United States, except as it is used along from day to day, up to the next July; so that, if the District is to pay interest to the Government, certainly the Government ought to pay interest to the District, and the balance would be largely in favor of the District. I hope the amendment to the amendment will not received.

the amendment will not prevail.

The question being taken by yeas and nays, resulted—yeas 15,

nays 26; as follows:

YEAS-Messrs. Alcorn, Bailey, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Hereford, Kelly, Kernan, McCreery, Norwood, Saulsbury, Wadleigh, and Wallace-15.

NAYS-Messrs. Anthony, Barnum, Blaine, Bogy, Boutwell, Burnside, Cameron of Wisconsin, Christiancy, Clayton, Dorsey, Ferry, Hitchcock, Ingalls, McMillan,

Merrimon, Mitchell, Paddock, Patterson, Robertson, Sargent, Spencer, Teller, West, Windom, Withers, and Wright—26.

ABSENT—Messrs, Allison, Bayard. Booth, Bruce, Cameron of Pennsylvania, Chaffee, Conkling, Conover, Cragin, Dawes, Dennis, Edmunds, Frelinghuysen, Gordon, Hamilton, Hamilin, Harvey, Howe, Johnston, Jones of Florida, Jones of Nevada, Logan, McDonald, Maxey, Morrill, Morton, Oglesby, Randolph, Ransom, Sharon, Sherman, Stevenson, Thurman, and Whyte—34.

So the amendment to the amendment was rejected.

The question recurring on the amendment of the Committee on the District of Columbia, it was agreed to.

The PRESIDING OFFICER. This concludes the amendments pro-

posed by the committee.

Mr. SPENCER. In line 66, on page 6, after the word "aforesaid," I move to insert:

And until such judicial proceedings shall be had the property so as aforesaid sold for taxes, and bid off in the name of the District, either at any sale hereafore made or at any sale hereafter to be made, may be redeemed by the owner thereof by the payment of the taxes and all legal penalties and costs thereon.

by the payment of the taxes and all legal penalties and costs thereon.

The object of the amendment is to enable a man to get back his property if he pays his taxes.

Mr. WRIGHT. I wish to make one inquiry in this connection. I wish to inquire of the Senator from Alabama whether there is anything in the bill which contemplates that judicial proceedings shall be instituted touching any sales which have heretofore been made, or whether the sales heretofore made stand upon the law as it stood heretofore, without any authority by the statute of the part of the commissioners to institute proceedings? I ask the question for the reason that this amendment simply implies that such judicial proceedings are necessary or are contemplated. If such authority is not provided in the bill, but rests upon the mere implication to be found in this amendment, it will undoubtedly fail.

Mr. SPENCER. The amendment which I present was prepared by the attorney for the commissioners, and the commissioners say it is absolutely necessary.

absolutely necessary.

Mr. WRIGHT. I can understand the necessity of the amendment, but the Senator from Alabama perhaps does not understand my inquiry. Is it true that as the law stands now it is not necessary that judicial proceedings should be instituted touching sales heretofore If that is true, then I can understand this amendment, and it is but reasonable enough and explains itself; but if that is not the case, and it rests upon the mere implication contained in the amendment, then it puts the commissioners in a difficulty, for parties might say there is no other way of foreclosing your equity than going into court, because this amendment contemplates that you shall go into court; and yet if there is no law heretofore or now in force to provide that you shall go into court, you rest the amendment upon a mere impli-

cation.

Mr. SPENCER. It does apply to all prior cases, I understand.

Mr. WRIGHT. I know what the amendment proposes to apply to,
but I ask whether there is a law in force now which requires it. That

but I ask whether there is a law in force now which requires it. That is the question.

Mr. SPENCER. I am told there is no law.

Mr. WRIGHT. Suppose it to be true that you have had sales heretofore, is there any way of foreclosing the equity against the person who owns the property, as the property has been sold?

Mr. SPENCER. There is none.

Mr. WRIGHT. Then I understand by this amendment the Senator contemplates that the equity would be foreclosed as to all prior sales by going into court, as well as to all subsequent sales?

Mr. SPENCER. Exactly.

Mr. WRIGHT. Then ought you not to provide that expressly for it, instead of leaving it to mere implication, as you do by this amendment?

Mr. SPENCER. Perhaps that would be well; but the understanding is that the amendment does exactly what the Senator from Iowa

Mr. WRIGHT. Let the amendment be read again.
The Chief Clerk read the amendment.
Mr. ALCORN. I have not heard a response to the interrogatory propounded by the Senator from Iowa. I ask the Clerk to read the section which provides for the judicial tribunal, if there be such a

The Chief Clerk read as follows:

The Chief Clerk read as follows:

Provided, That no property advertised as aforesaid shall be sold upon any bids not sufficient to meet the amounts of tax, penalty, and costs; but in case the highest bid upon any property is not sufficient to meet the taxes, penalty, and costs thereon, said property shall thereupon be bid off by the said commissioners, or their successors in office, in the name of the District of Columbia; but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within two years thereafter such property is not redeemed by the owner or owners thereof, by the payment of the taxes, penalties, and costs due at the time of the offer of the sale, and that may have accrued after that date, and 10 per cent. per annum thereon, or if any property two years after having been so bid off at any sale whatever in the name of said District, under this or any other law, is not or has not been so redeemed as aforesaid, then the commissioners of the District or their successors in office shall, in the name and on behalf of the District of Columbia, apply to the supreme court of said District, sitting in equity, for the purpose of enforcing the lien acquired as aforesaid by said District on the property aforesaid.

Mr. ALCORN. That is all I desire.

Mr. ALCORN. That is all I desire. Mr. DORSEY. The object of the amendment is to permit the District to receive money from delinquent tax-payers who have failed heretofore to pay their taxes and who may fail hereafter to pay their taxes where the land is sold and bought in by the District. The District government has now, I understand, about nine hundred thousand dollars' worth of real estate in the District which it has bought in for which it would not be able to receive the money if the owner of the property offered to liquidate the debt. For example, if a man's house has been sold for taxes and the District has become the purchaser, it is now unable to permit the man to pay his taxes after it

chaser, it is now unable to permit the man to pay his taxes after it has become such purchaser.

Mr. McMILLAN. Before voting upon this question I should like to ask whether there is any provision by act of Congress requiring the District authorities to go into the supreme court or any other judicial tribunal of the District of Columbia and foreclose in cases where sales for taxes have already transpired? Is there any such law on the statute-book? And, if there is none, this provision does not provide that remedy, as I understand it, and the mere implication from this amendment would not be sufficient to authorize that right. As it seems to me, with what reflection I have been able to give his bill, it leaves the matter imperfect, and it ought to be plain and dis-

As it seems to me, with what reflection I have been able to give this bill, it leaves the matter imperfect, and it ought to be plain and distinct before final action is taken in regard to it.

Mr. DORSEY. In answer to my friend from Minnesota I will state that at present there is no law by which the District authorities can go into the Supreme Court and forcelose their right to the property. As I said, the District has now upward of nine hundred thousand dollars' worth of property which they have bought off at tax sales for deliverent taxes.

lars' worth of property which they have bought on at tax sales for delinquent taxes.

Mr. DAWES. Cannot the owners redeem their property?

Mr. DORSEY. They not only cannot redeem it, but the District authorities cannot receive the taxes if they are offered. The amendment, I understand, is intended to correct that difficulty; and if it does not cover the ground, I hope the Senator, who is a good lawyer, will suggest an amendment which will accomplish the object.

Mr. WRIGHT. Let the amendment be reported again.

The CHIEF CLERK. It is proposed to insert after the word "aforesaid," in line 66, the words:

And until such judicial proceedings shall be had the property so as aforesaid sold for taxes and bid off in the name of the District, either at any sale hereafter to be made or at any sale hereafter to be made, may be redeemed by the owner thereof by the payment of the taxes and all legal penalties and costs thereon.

The amendment was agreed to.

Mr. KERNAN. In section 8, lines 18 and 19, I move to strike out the words "other than for the government of the District of Co-lumbia:" so as to read:

Thirdly, such property as is now exempt from taxation by laws of the United States.

I am informed that as the law now exists two literary institutions, in-Tam informed that as the law now exists two literary institutions, incorporated colleges and academies, are exempt from taxation. Those institutions which exist here are not money-making institutions. They are literary institutions to give education at a cheap rate; and, as I have been informed, subjecting them to taxation would be a serious burden to them, while it would not add very much to the amount of taxes received. I understand that these institutions heretofore have been free from taxation.

have been free from taxation.

I hope the amendment will meet with favor and that the Senate will strike out those words, leaving those institutions, as they are now by existing law, exempt from taxation. Some of the officers of these institutions have told me that it would be a very serious burden and that they are not able to bear it.

Mr. INGALLS. I do not know that I am opposed to this amendment but helps writing for it I have the Senate from New York.

Mr. INGALLS. I do not know that I am opposed to this amendment, but before voting for it I beg the Senator from New York to specify distinctly to what corporations he alludes.

Mr. KERNAN. I will state two institutions with which I am somewhat familiar. I have been spoken to in reference to Columbia College and Georgetown College. Under the present law they are relieved from taxation, and if the words are left in the bill which I have moved to strike out, they will be subject to taxation like residences, stores, or any other property in the District.

Mr. INGALLS. Are those institutions now exempt from taxation by the laws of the United States?

Mr. KERNAN. Yes, sir; I understand they are.

Mr. INGALLS. Can the Senator point to the statute that exempts them?

them?

Mr. KERNAN. No, I cannot. I am not very familiar with the subject and did not know that this matter was coming up, but a gentleman who is very familiar with it called my attention to it and explained it to me. He said that that was the present condition and that the law was only changed by this bill.

Mr. INGALLS. I think it very important that we should be specifically advised on that point.

Mr. KERNAN. I suppose that other Senators are more familiar with the subject. I spoke to Mr. Sumner often upon the importance of the matter. It was explained that they were now and had been up to this time free from taxation; and they desire, therefore, to be left just as they are. I hope that those institutions in the District now exempt by law from taxation will be left so exempt.

Mr. INGALLS. If those institutions to which the Senator refers are conducted for the purposes of public charity, without charge to the inwates and without profit or income, they are exempt under the provisions of this section.

provisions of this section.

Mr. KERNAN. These institutions are what might be called under the act charitable institutions. They are institutions which have ex-

isted a long time. They educate boys for a moderate compensation, but they are not richly endowed and they barely run their institutions with what they derive from their schools, desiring to make the cost of instruction, as I know as to some of them, as low as they can so as to barely support the institution.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from New York, [Mr. KERNAN.]

Mr. WITHERS. Let it be reported.

The PRESIDING OFFICER. The amendment will be reported.

The CHERK It is proposed in lines 18 and 19, on page 11.

The CHIEF CLERK. It is proposed, in lines 18 and 19, on page 11, section 8, to strike out the words "other than those for the government of the District of Columbia;" so as to make the clause read:

Thirdly, such property as is now exempt from taxation by laws of the United

Mr. DORSEY. I understand if this amendment is adopted and the Mr. DOKSEY. I caderstand if this amendment is adopted and the words are stricken out, the effect will be to relieve a very large number of institutions in this District from taxation, among them, I think, two or three institutions in Georgetown. The Committee on the District of Columbia have carefully considered the question of exemption from taxation, and I think it was the unanimous opinion of that committee that none but buildings actually used for public worship should be exempt, and not institutions for educational purposes or property used by church societies of whatever denomination. They ought to pay taxes. If churches can afford to hold large amounts of

property used by church societies of whatever denomination. They ought to pay taxes. If churches can afford to hold large amounts of property in this District, large lots of land for an increase of price, free of taxes, it is a very great injustice to the citizens. I hope the amendment will not be adopted.

Mr. KERNAN. I do not think there are a very large number of them. It will only affect whatever educational institutions there are. It is true they are not public institutions in a literal sense, such as the national museum, the art gallery, and others of that kind. They are educational institutions. They are institutions, as I think all who know anything about them know, which do not carry on schools to know anything about them know, which do not carry on schools to make money, but they seek to give a good education at as cheap a rate as they can and barely sustain the institutions. They are incorporated by the Federal Government, and, it seems to me, that in looking for objects of taxation we ought not to tax these educational in-

stitutions.

In my own State and I think in other States educational institutions are exempt, and with very great approbation, because they are carrying on that education which we all think should be encouraged carrying on that education which we all think should be encouraged and not discouraged. If such institutions in the city of New York were subjected to a heavy taxation for city purposes, which are all proper, it would cripple them or else they would have to increase the charge on education, which I am not in favor of taxing where other subjects of taxation exist. That is the policy generally adopted in the States, as far as I know; it is in my own State, where all incorporated colleges and literary institutions are excepted expressly; and I hope we shall not say that we are opposed to that policy by now changing the law and subjecting these institutions to taxation which have not heretofore been subjected to it, and as to which there has been no complaint so far as I have heard.

Mr. INGALLS. Mr. President, the Senator from New York seems to be either doubtful or not informed with regard to the effect of his

to be either doubtful or not informed with regard to the effect of his own amendment. I should be unwilling to impose any burdens upon educational institutions that are not shared in common by the other institutions of society. The Senator is not able to inform us what

institutions of society. The Senator is not able to inform us what these institutions are nor what the laws are under which they would be exempt from taxation, if at all. Certainly we have provided in this bill that there shall be a very liberal exemption of all public charities and houses of worship that are used exclusively for that purpose. We have imposed a very specific limitation upon the exemption laws as heretofore enforced in this District.

Now I am advised—but this subject has come up so hastily that my information, of course, is very cursory—that if this amendment prevails a very large amount of property that is held by these institutions, and that is not used for the purposes either of charity, religion, or education, will escape its burdens for the support of the government of this District. That certainly is wrong.

It seems to me that, if there is any injustice contemplated by the terms of this bill as reported by the committee, the Senator from New York ought at least to advise us specifically what it is that he wants to accomplish by his amendment or else leave it to be obtained by some subsequent bill for that purpose.

to accomplish by his amendment or else leave it to be obtained by some subsequent bill for that purpose.

Mr. KERNAN. I am not wanting in information, but I am always very particular in the Senate, as I ought to be. I have not examined these statutes myself, but I am informed that they exempt incorporated literary institutions, teaching institutions, colleges, or academies. I did not look the subject up because, as one of the gentlemen has said, the attention of the committee was called to it. I do not think that any of them have any doubt as to exactly what would be left exempt, and yet I did not myself look up the statutes on the subject. I understand that colleges or academies carrying on the business of teaching are exempt from taxation. One of those institutions of which I have knowledge has no property except that which is used for college purposes; it uses its property for no other purposes. I suppose there are no lands owned by these institutions that are used for other purposes, although I have not examined as to that. There has been no complaint of the law as it now stands, and I think

we should leave it as it is. I speak of what is my information. I understood that the attention of the Committee on the District of understood that the attention of the Committee on the District of Columbia had been called to the subject, and I do not think I misstate the scope of the exemption when I say that it covers incorporated institutions for teaching children.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from New York, [Mr. KERNAN.]

Mr. ALCORN. I ask for the reading of the amendment.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. The amendment is to strike out, in lines 18 and 19, the words "other than those for the government of the District of Columbia;" so that, if amended, the clause will read:

Thirdly, such property as is now exempt from taxation by laws of the United States.

The question being put, there were on a division-ayes 16, noes 18;

mr. KERNAN called for the yeas and nays, and they were ordered.

Mr. WRIGHT. Before this vote is taken, I wish to say that I shall esteem it to be my duty to insist upon the regular order in a very few minutes, unless this bill is disposed of. I call the attention of the friends of the bill to the fact that I shall esteem it to be my duty to call for the regular order.

Mr. SPENCER. This bill will really be disposed of when this amend-

ment is voted upon. I think there is no other amendment to be offered. The committee has no other amendments to offer, and I know of no

The committee has no other amendments to offer, and I know of no Senator who has any.

Mr. ALCORN. Mr. President, I regret that the amendment of the Senator from New York is not in a form in which I can with propriety support it. I do not know what property in this District has been exempted by the United States from taxation heretofore, nor do I know that I would be prepared, if I were to see the exemption, to indorse and continue such exemption. It occurs to me that there should be a more specific declaration of the property that is proposed to be exempted here. If the exemption is to be applied to churches and colleges indiscriminately, to all places of public instruction, it should be so stated in the amendment. Then we should understand exactly what we were doing. To say that we will vote here to exempt from taxation the property that has heretofore been exempted by the Government of the United States, is to say that we will do that which we in truth do not understand the full scope and effect of doing; and, hence, not being able to understand the full effect of doing; and, hence, not being able to understand the full import, scope, and effect of the amendment, I shall vote against it.

The question being taken by yeas and nays, resulted-yeas 17, nays

26: as follows:

YEAS—Messrs. Bailey, Bogy, Davis, Eaton, Goldthwaite, Hitchcock, Johnston, Kelly, Kernan, McCreery, Merrimon, Norwood, Ransom, Robertson, Saulsbury, Spencer, and Wallace—17.

NAYS—Messrs. Alcorn, Allison, Anthony, Blaine, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cockrell, Cragin, Dawes, Dorsey, Hamlin, Ingalls, Mitchell, Morrill, Oglesby, Paddock, Sargent, West, Windom, and Wright—26.

ABSENT—Messrs. Barnum, Bayard, Cameron of Pennsylvania, Conkling, Conover, Cooper, Dennis, Edmunds, Ferry, Frellinghuysen, Gordon, Hamilton, Harvey, Hereford, Howe, Jones of Florida, Jones of Nevada, Logan, McDonald, McMillan, Maxey, Morton, Patterson, Randolph, Sharon, Sherman, Stevenson, Teller, Thurman, Wadleigh, Whyte, and Withers—32.

So the amendment was rejected.

Mr. KERNAN. Mr. President, there was a just criticism, perhaps, made upon the amendment last voted on, that it did not clearly specify the extent of the proposed exemption. With a view of testing the question in a better form and one likely to be more acceptable, I will send to the Chair, as soon as I have read it, an amendment which I have written. I propose to insert at the end of section 8, on page 11, these words:

Sixthly, all property owned and actually occupied and used for the purposes of education by incorporated colleges and academies.

That will show just what it means, that it must be property which

That will show just what it means, that it must be property which is actually used and actually occupied for the purposes of education. The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from New York.

Mr. KERNAN. If one of these institutions owns a farm or property not actually used or occupied as an academy, I am not in favor of exempting it. If it owns bank stock or bonds, I am not in favor of exempting them. But I did mean, and by this provision I certainly cover nothing more than property actually occupied and used for the purposes of education by incorporated colleges and academies. Now, I trust that that will meet the approbation of the Senator.

Mr. DAWES. I hope the amendment of the Senator from New

Now, I trust that that will meet the approbation of the Senate.

Mr. DAWES. I hope the amendment of the Senator from New
York will prevail. I think that all property so used contributes as
largely to bearing the public burdens as does any property that bears
it in the form of taxation. It is an encouragement of a kind that
ought to be recognized by the laws of the District, and I sincerely
hope that it will be adopted.

Mr. DORSEY. Is it recognized by the laws of your State?

Mr. DAWES. The Senator from Arkansas inquires of me whether
it is recognized by the laws of my state. From the foundation of the

Mr. DAWES. The Senator from Arkansas inquires of me whether it is recognized by the laws of my state. From the foundation of the State it has been so recognized, and every attempt to tax property of that kind in my State has signelly failed, and I hope it always will. Mr. INGALLS. I suggest to the Senator from New York to strike out the word "property" and insert the word "buildings" Mr. KERNAN. Say "all real estate."

Mr. INGALLS. "All buildings."

Mr. KERNAN. Let them have the play-ground, the yard, the

Mr. KERNAN. Let them have the play-ground, the yard, the walks, and the gardens.

Mr. INGALLS. I think when we restrict churches and religious institutions to the buildings that are actually occupied for the purposes of the worship of almighty God, that we ought not to extend any greater prerogative to those that are occupied for the purposes of education. Now I am told, if I do not interrupt the Senator from New York

Mr. KERNAN. O, no; I am glad to hear you.
Mr. INGALLS. I am told that the institutions at which I suppose
this amendment is specially aimed have very large landed possessions,
that they have not only what the Senator calls play-grounds and
walks and gardens, but that they have extensive parks and farms that are to a certain extent used or employed for the purposes of the institutions themselves. Now I suggest to the Senator from New York that he use the same language that is applied to church edifices, and limit the exemption to the buildings that are specifically used

for these purposes.

Mr. KERNAN. I do not mean to suggest this language as preferable to any other. I drew this amendment hastily and I will accept anything that makes it clearer. It exempts all property owned and actually occupied and used for the purposes of education. Surely that will not cover the case of a farm that they may cultivate. They themselves did not mean that it should. But if you say merely "the buildings," you would not mean to assess them on their philosophical buildings," you would not mean to assess them on their philosophical apparatus that they have for their boys; you would not mean to assess them on the library they keep for their boys. When you exempt all churches, I imagine you would not tax them for the organs that are played there, because they are not a part of the building. I do not want to use any language in the amendment that will leave an opening for abuse. You may put in anything to show that they shall not have any outlying lands that they rent or use for a farm exempted; but no assessor will let them off from the payment of taxes when they are to pay taxes on "all property actually occupied and used for the purposes of education." You may put in the word "necessary," if you do not think the language I have used is sufficiently explicit, but if you merely put in "buildings" you will allow the assessors to pick up these other things, the very yard where they have a hundred boys and where they must play. That is a very necessary part in modern education where they have many boys.

I have made this amendment conform as nearly as I could from memory to the statutes of my own State in the exemption of prop-

nemory to the statutes of my own State in the exemption of property owned by incorporated colleges or academies and which have existed long. I think that the word they use is "occupied;" and I put this stronger; I say "occupied and used" for the purposes of education. I am sure that there will be no abuse. The assessors will

cation. I am sure that there will be no abuse. The assessors will guard against that.

Mr. DORSEY. I hope the amendment will not be adopted. The practical result of it, if it is adopted, will be, in my opinion, to relieve a number of millions of dollars' worth of property in this District from taxation, and property, it seems to me, that ought to be taxed.

Mr. DAWES. I do not know what may be the application in this District of this phraseology, nor do I care. I cannot discover any distinction between a building and any other property that is devoted to a charitable purpose or devoted to the education of the youth of this District or of this lend. I hold that any property in what. other to a charitable purpose or devoted to the education of the youth of this District or of this land. I hold that any property, in whatever shape it may be properly and necessarily devoted to that great object, should be exempt from bearing the other burdens that fall upon other property not so employed, but employed for purposes of gain and of profit. That kind of property it is that should bear these burdens; but property set apart by gift, by donation, or in any other way, not for the purposes of gain or of profit, but for a higher and a nobler purpose, that of relieving the community from burdens of taxation that would otherwise fall upon it, deserves such a recognition and such an exemption, and it ought not to be confined to a building. There is nothing in principle that would justify any such distinction. The principle should be all property devoted to that purpose, and the more the better. If there be four or five millions of property in this District devoted properly to the purposes of education, it is what I have not heard of before, and what gives me more hope of the relief of this District from the burdens of taxation than anything else that has been suggested.

has been suggested.

Mr. CAMERON, of Pennsylvania. Mr. President, I am old-fashioned enough to believe that all sorts of property ought to pay their share of taxation. There is no reason at all, to my mind, because the community have put up most expensive buildings for school-houses or churches or any other purpose of that kind, that they should be relieved from taxation, while the humble shoemaker or tailor who relieved from taxation, while the humble shoemaker of tailor who has a little bit of a house in this town should be compelled to pay taxes upon his humble house. We all pay our taxes for school purposes; we all, I trust, pay our taxes to sustain the church and church buildings and everything else which tends to Christianize and to cultivate our intellects; but that is no reason why these expensive edifices should be untaxed. Why shall the poor man who has a house worth \$2,000 be compelled to pay \$20 more in the way of taxes upon it because a community having an expensive church that cost half a million of dollars is relieved from taxation? Is that fair? I do not think so at all. Let everybody pay his share of proper taxation of the country.

the country.

Indeed, Mr. President, one of the follies of latter years has been to spend too much money in costly school-houses, too much money in building costly and expensive church edifices. Why cannot God be worshiped in a plain house just as well as He can be in one of the magnificent cathedrals which everybody is taxed to sustain; and why cannot the boy and the girl receive their proper tuition in a plain brick school-house, if you like, or, as in the country, in a plain log house, as the children of former years were used to, instead of having one of these expensive buildings that in any township or county now cost \$40,000 or \$50,000 f Let it be a school-house, not what is called an academy or what is called a college; and even there, there is too much money expended. But it is all wrong that the humble and the poor should be taxed to build up these grand edifices for the benefit, not of the student, not of the pupil who goes to school, but for the benefit of the contractor who builds the school-house and the speculator who gets the material and the man who gets himself speculator who gets the material and the man who gets himself elected councilman that he may have an expensive school-house put up in his ward out of which he or some of his people shall make a speculation.

It is all wrong, Mr. President; and I am glad the subject has come up now, for I have thought a great deal upon it and I am glad of the opportunity of expressing my sentiments at any rate. I never refuse to pay taxes of any kind; I think that the more taxes a man pays the better evidence he gives that he is prosperous; but I am not willing to pay these taxes for the benefit of speculators, theorists, sentimentalists, who talk about saving from taxation edifices built for charitable purposes. There is no sense in that, to my mind. Let every community sustain its own poor: let every community sustain its own poor: munity sustain its own poor; let every community educate its own poor; and, in addition to that, I say not only educate the poor but enable everybody, poor and rich, to go together into the same school-house; and make it so cheap that they can all be educated together, so that there shall be no distinction of class nor of wealth nor of any-

that there shall be no distinction of class nor of wealth nor of anything else in our community.

Mr. KERNAN. Mr. President, I am sorry to differ, as I do, so widely from the Senator from Pennsylvania. I am opposed to taxing the church in which a man worships, no matter what his creed or his denomination, whether that church be humble in form or one of elegance. I am opposed to it because I do not think this country or any other country will be injured by encouraging men to donate their funds to erect a temple worthy of their God, if they have the means to do it. I am in favor of encouraging the spirit which says to men of wealth that if they feel largely interested in education, and they are willing to give of their earnings donations to build up an institution not as a speculation or for a business purpose, but as a place where men, having building donated and apparatus donated, may utilize these facilities and may give the children not merely of the rich but of the poor cheap education, they shall not be taxed therefor. I do not think there is danger to our country from encouraging the spirit of building up academies and colleges any more than there is danger to our country in saving we will assess any more than there is danger to our country in saying, we will encourage men to build houses of worship by at least saying we will not fill the Treasury by taxing your donations made for purposes of philanthropy, which business men are sometimes willing to make and do make.

The policy of all the States is not to encourage extravagance—

The policy of all the States is not to encourage extravagance—they never do encourage extravagance—by saying to men, "If you choose to found an academy, if you choose to found a college, or if you choose to aid in doing it, you are doing what we recognize as a good work," or at least by going to the extent of saying, "We will not burden it with taxation, but will let the poor and the rich all have the benefit of this good work." I am not for extravagance in schools, where the tax-payers pay. I believe that there, so far as we can, we should look to economy. But, with regard to these institutions such as we have in Massachusetts, in Connecticut, in almost every State, which have been largely built up, by the donations of the State, which have been largely built up by the donations of the friends of education, I think we may wisely and well, in pursuance of a policy which has been encouraged by the Federal Government, I believe from its foundation so far as it has the right to do so, and that believe from its foundation so far as it has the right to do so, and that has been encouraged in all the States, say to the people who give of their funds for the purposes of education, "We will sanction your efforts to the extent of saying we will not tax your bounty or take from the student that which the donor meant to give him when he founded the institution." I hope, sir, that we shall act upon this question in the spirit in which our predecessors have acted, in which men in every State have acted, and that we shall exempt those buildings which are "actually used and occupied" for purposes of education. We are not then exempting speculation, we are not exempting schemes of extravagance. I do not know of any State in this Union where there has been extravagance in founding a college or an academy; and I do not think we ought to tax institutions which were founded largely by donations given that there may be education and that it may be cheap.

Mr. CAMERON, of Pennsylvania. Mr. President, the Senator from New York does not seem to comprehend the argument which I tried to use. I am as much in favor of education as he can be, and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school and as much in favor especially of the common school

where the most money has been collected from the rich and from the poor to be put into church edifices are the poorest, and that in those countries the poor are ground down more than they are in any other countries. You will find in many countries of Europe most costly church edifices and other church buildings which have consumed all the means of all the country around, made poverty everywhere except within their walls and within their cloisters. I am not in favor of that. There is no reason at all why if men think proper to donate their money when they are about leaving the world to the purpose of putting it into buildings, those buildings should not pay the same taxes which the buildings of the poor and the industrious are compelled to pay. That is my argument. It is not one which the Senator from New York seemed to carry in his remarks. There is no man in this country now who is not in favor of educating the people, and especially the poor; but I have never seen that any but the rich and the idle and the lazy have been benefited by these great church buildings or these great school buildings. I do not mean by that that I am opposed to donations to colleges or schools; but I am unwilling that, if the money which the charitable have given should be wasted in costly buildings, those buildings should be exempt from taxation, to the injury of the laborer and of the laboring communities in which they are located.

Why shall millions of dollars in this town be exempt from taxation.

to the injury of the laborer and of the laboring communities in which they are located.

Why shall millions of dollars in this town be exempt from taxation when complaints are repeatedly being made of the extravagance and expense of the government of this city? And this city is only a type of the other cities and towns in the country. It has acquired latterly an extravagance in buildings and, as I tried to say before, those buildings are mainly gotten up by persons interested in making money out of them, persons who expect to live there in idleness, not working themselves but depending upon the work of other people and the

of them, persons who expect to live there in idleness, not working themselves but depending upon the work of other people and the charity of the good people who die before them.

Mr. WRIGHT. As I stated that I would do, I deem it to be my duty now to call for the regular order.

Mr. SPENCER. I hope that the Senator from Iowa will yield the floor for a few minutes longer. I believe that if he will withhold his motion the Senate will dispose of this bill in about five minutes.

Mr. SARGENT. What is the regular order?

The PRESIDING OFFICER. The regular order is the Pacific Railroad bill

Mr. WRIGHT. I have waited for about two hours and a half and have allowed that time to be given to the consideration of this bill. I think the discussion now entered upon, from the indications we have, is to be without limit. I know very well it will take up this entire day, and how much more I cannot tell. I therefore call for the regular order. the regular order.

The PRESIDING OFFICER. Does the Senator from Iowa insist

The PRESIDING OFFICER. Does the Senator from lowa insist upon the regular order?
Mr. WRIGHT. I do.
Mr. SPENCER. Mr. President, this is a House bill and it is important that it should pass at this time, while the bill of the Senator from Iowa is a Senate bill, and I do not see the object in passing it anyway. There is no great necessity for its immediate passage. There is an absolute necessity for this bill. If the Senator will not yield, I propose to make a motion to lay aside the regular order in order to dispose of this bill. I think we can settle it in ten or fifteen minutes. teen minutes

Mr. WEST. No; you cannot.

Mr. SPENCER. Give us fifteen minutes.

Mr. WEST. We have given you two hours and a half.

Mr. MORRILL. I would suggest to the Senator from Iowa that this is a bill that must, as a matter of course, receive consideration at the present session of Congress, and that it will perhaps take less time to finish the bill now than it would to give it the go-by and have it considered hereafter. I hope that the consideration of the have it considered hereafter. I hope that the consideration of the

have it considered hereafter. I hope that the consideration of the bill will be continued.

Mr. WRIGHT. If the vote can be taken on the pending proposition at once, I shall not object. I do not know whether any other amendments are proposed to be offered to this bill or not; but if the vote upon the pending amendment can be taken at once, I will not insist upon my call for the regular order. I do not know, however, that there is to be any end to this debate this evening. I have extended every courtesy to the Senator from Alabama on this bill, and I must insist on the regular order.

Mr. SPENCER. I appreciate the Senator's courtesy and am grateful to him for it.

Mr. SPENCER. Now I move to lay aside the Pacific Railroad bill temporarily for the purpose of proceeding with the consideration of the District tax bill.

Mr. WRIGHT. There can be no such thing as "laying aside temporarily." That can only be done by unanimous consent.

Mr. SPENCER. Then I move to postpone that and all prior orders

for the purpose of continuing the consideration of the District tax

Mr. WRIGHT. Mr. President, I desire to call the attention of the Senate now to the condition of this railroad bill. This bill has been before the Senate for several days; it has been considered; we have voted upon one amendment and we are now prepared to proceed to consider other amendments and dispose of them, and, as I suppose, to dispose of the bill. If the motion of the Senator from Alabama is dispose of the bill. If the motion of the Senator from Alabama is carried, the effect of it, as I conceive, is to defeat all further legislation on this subject at this session. The Senate fully understands the merits and claims on either side. I present the matter so that the Senate may understand what will be the effect of the vote which they

propose to take upon the motion to postpone this bill.

The PRESIDING OFFICER. The question is on the motion of the Senator from Alabama to postpone the present and all prior orders.

Mr. WEST. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. WEST. Mr. President, I scarcely think that the action now suggested by the Senator from Alabama is a fair return for the courtesy that has been extended to him and his committee this morning. We have given him two hours and a half. Not satisfied with that, he proposes by this motion to so place the legislation on the railroad bill that it will be impossible to absolutely touch it for the rest of this session. I am free to say that, so far as I am concerned, and I think I can get the co-operation of my friend from Iowa, tomorrow we will give him another hour or an hour and a half, but I do beg the Senate not to encroach upon the courtesy that has been shown, by indefinitely postponing the railroad bill by acceding to this proposition.

Mr. DAWES. The position in which the railroad bill is placed

Mr. DAWES. The position in which the railroad bill is placed arises not so much from the motion of the Senator from Alabama as from the refusal of the Senator from Iowa to permit the motion to be to put it aside temporarily. The Senator from Iowa refuses to have that motion put, which requires nnanimous consent. Therefore the putting the bill in the position in which it will be placed if the motion of the Senator from Alabama should prevail arises rather from the Senator from Iowa than from the Senator from Alabama.

Mr. ALCORN. I think, Mr. President, the economy of business would suggest the propriety of going forward with the bill that is now under consideration. The Senator from Louisiana says that he is willing to give to-morrow and that the Senator from Iowa assents to the pledge that to-morrow they will yield an hour and a half to the discussion of the District bill. I suggest to him the economy of giving that hour and a half just now.

ing that hour and a half just now.

Mr. SPENCER. And finish the bill.

Mr. ALCORN. Just finish the bill.

Mr. SARGENT. It may be very well for Senators to parcel out the time, but I wish to inform them that the Committee on Appropriations will propose to press its business and antagonize anything that may be in the way at this late hour of the session. I wish that any

may be in the way at this late hour of the session. I wish that any understanding between gentlemen may be made with the assurance of the certain determination of that committee to press its work.

Mr. ALCORN. I wish to say, Mr. President, not having yielded the floor, that I am not one of those who undertake to parcel out the time. I was simply saying to the gentlemen who were indulging in what seemed to be a disposition to parcel out the time of others, that, instead of taking an hour and a half to-morrow, we should just take an hour now and thereby save to the country a half hour of time.

Mr. HAMLIN. I take this occasion to say that upon this Pacific Railroad bill I have paired my vote with the Senator from Ohio who sits farthest from me. [Mr. Thurman.] He is necessarily absent from

sits farthest from me, [Mr. Thurman.] He is necessarily absent from this body; and I have agreed to pair with him. I shall therefore withhold my vote upon all collateral questions, in justice to that Senator. I have no doubt, if he were here, he would not vote to displace that bill. I therefore shall not vote upon it.

## THE APPROPRIATION BILLS.

Mr. WINDOM. Mr. President, I can perhaps find no better time to make a very brief statement with reference to the condition of the

make a very brief statement with reference to the condition of the appropriation bills, as we have entered into a discussion of the general condition of the business of the Senate.

I wish to say to the Senate that they are by no means in a satisfactory condition. The pension bill has passed and become a law, and that is the only bill of the twelve general appropriation bills that is yet a law. The Indian appropriation bill, the fortification bill, and the Military Academy bill are all in conference and can probably be disposed of in a short time. The consular and diplomatic bill has passed both Houses and is now awaiting the action of the House of Representatives upon the Senate amendments, and has been in the House for a considerable time. The post-office bill has been reported from the Committee on Appropriations to the Senate and is now awaiting action by the Senate. The same is true of the legislative, executive, and judicial bill. Both of these bills have been reported back to the Senate by the Committee on Appropriations, and neither

of them can be acted upon, because there is no money for printing them. The deficiency bill has passed the House and been referred to

of them can be acted upon, because there is no money for printing them. The deficiency bill has passed the House and been referred to the Committee on Appropriations, but we are unable to obtain a copy of it as it passed the House because we have no money to print.

The sundry civil bill, the Army bill, and the Navy bill have not been acted upon by the House of Representatives.

Now the Senate will see at a glance that, having but fourteen more working days of this session, this is by no means a flattering showing for the condition of these bills, if we hope to pass them at this session. The canse of the present delay is a disagreement between the two Houses upon an appropriation of \$350,000 for a deficiency in the congressional printing. The Senate passed a bill appropriating \$350,000 for that purpose several days ago, nearly a week, I think, and it went to the House of Representatives and was amended by inserting legislation reducing the compensation of employés at the Printing Office. That has been disagreed to by the Senate. Two conference committees have been held, and finally the second committee agreed, and the bill is now awaiting the action of the President, but it will probably be two days at least before we can have either the post-office bill, the legislative, executive, and judicial bill, or the deficiency bill ready for action by the Senate. The Public Printer is forbidden by law to anticipate appropriations; he risks penal punishment by imprisonment, I believe, if he does so, and the committees cannot proceed unless some means can be taken to have those bills printed.

prisonment, I believe, if he does so, and the committees cannot proceed unless some means can be taken to have those bills printed. Now, Mr. President, I make this statement for the purpose of saying that, as soon as we can get money enough to go on with the public printing, these bills will doubtless be pressed upon the consideration of the Senate all the time. I believe we might possibly act upon one or two of them if they were printed in the RECORD, and I suggest that my friend from California has a statement which he wishes to make upon that subject.

Mr. SARGENT. Mr. President, Lask leave of the Senate that the

Mr. SARGENT. Mr. President, I ask leave of the Senate that the deficiency bill, as it came to the Senate from the House, be printed in the RECORD. That will enable me to examine it in a subcommittee, as I desire to do.

The PRESIDING OFFICER. Is there objection to the proposition of the Senator from California? The Chair hears none; and the bill will be printed in the RECORD.

The bill is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the following sums be, and they are hereby, appropriated, to supply deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1877, and for former years, and for other purposes, namely:

DEPARTMENT OF STATE.

Foreign intercourse:

To effect a transfer of accounts in the State Department involving no expenditure of money from the Treasury, namely:

For salaries of consuls-general, consuls, vice-consuls, commercial agents, and clerks, being for the fiscal year 1875, \$1.629.75. Also

For stationery, book-cases, arms of the United States, scals, presses, and flags, rent. freight, postage, and miscellaneous items, being for the fiscal year 1875, \$1.412.84; and for the fiscal year 1875, \$1.5072.62.

Fent. Freight, postage, and miscentineous items, being for the fiscal year 1878, \$1,412.84; and for the fiscal year 1876, \$15,072.62.

TREASURY DEPARTMENT.

For freight on bullion and coin, for the Mint of the United States at Philadelphia, being a deficiency for the year 1877, \$6,000.

To meet the amount of unpaid balances on account of contingent expenses of the Mint at Philadelphia, being a deficiency for the fiscal year 1876, \$191.50.

To pay the salaries of Samuel Falconer and William J. McIntyre, special agents at the seal fisheries in Alaska, for the months of October and November, 1876, at the rate of \$2,190 per annum each, \$730.

For salaries and expenses of collectors of internal revenue, being a deficiency for the fiscal year 1877, \$40,000.

For official postage-stamps, for the use of the Internal Revenue Office in transmitting stamps by mail, \$100,000.

For temporary clerks in the Treasury Department, \$25,000.

For fuel, lights, water, and other miscellaneous items for public buildings under the control of the Treasury Department, being a deficiency for the fiscal year ending June 30, 1877, \$75,000.

Expenses of national currency: To adjust the settled account of the Bureau of Engraving and Printing, Treasury Department, being a mount found due said bureau for printing and sealing, involving no expenditure of money from the Treasury, being for the fiscal year 1878, \$1,007.75

For rent of buildings numbered 211 New Jersey avenue, south, and 215 South Capitol street, being a deficiency for the fiscal year ending June 30, 1876, \$3,600.

Military Academy:

For expenses of the board of visitors at the Military Academy, being a deficiency for the fiscal year 1877, \$1 000.

For transportation of discharged cadets, being a deficiency for the fiscal year 1876, \$300.

Por transportation or discharged cadets, being a deficiency for the fiscal year 1876, \$300.

Office of the Surgeon-General:

For purchase of medical and hospital supplies, medical care and treatment of officers and soldiers on detached duty, expenses of purveying depots, advertising, and other miscellaneous expenses of the medical department, being a deficiency for the fiscal year 1877, \$2100.

For furnishing artificial limbs or appliances, or for commutation therefor, and for transportation, being a deficiency for the fiscal year 1877, \$212,947.

Office of the Quarternsater-General:

Barracks and quarters: For payment of amounts certified to be due by the accounting officers of the Treasury Department for rent or hir of quarters for troops and for officers on military duty, being a deficiency for the service of the fiscal year 1871, and for prior years, \$2,791.35.

Incidental expenses: For payment of amounts certified to be due by the accounting officers of the Treasury Department for incidental expenses of the Army, being a deficiency for the fiscal year 1874, \$3,432.95.

Horses for cavalry and artillery: For payment of amounts certified to be due by the accounting officers of the Treasury Department for purchase of horses for the cavalry and artillery, being a deficiency for the year 1871 and prior years, \$609.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for bridge-trains and equipage, being a deficiency for the fiscal year 1871 and prior years, \$800.

Office of the Commissary-General:
For subsistence: To replace the subsistence stores lost by the burning of the steamer Montana on the Gulf of California, December 14, 1876, being a deficiency for the present fiscal year, \$36,840.71.

Miscellaneous:

Miscellaneous:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for the support of the Bureau of Freedmen, Refugees, and Abandoned Lands, being a deficiency for the fiscal year 1871, and prior years, \$1,036.10.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for expense of military and geographical surveys west of the Mississippi River, being a deficiency for the fiscal year 1873, \$22.30.

For payment of amounts certified to be due by the accounting officers of the Treasury Department to the Chronicle Publishing Company for advertising proposals for stone at Rock Island arsenal, being a deficiency for the fiscal year 1871 and prior years. \$3.4

and prior years, \$54.

NAVY DEPARTMENT.

For pay of officers and men of the Navy, being a deficiency for the fiscal year 1877, \$500,000.

That the accounting officers of the Treasury be, and they are hereby, authorized and directed to adjust and settle the accounts of the officers of the Navy on the active list whose pay has been affected by the general order of the Secretary of the Navy, No. 216, since the 1st day of September, 1876, on the basis of waiting-orders pay; and such sum as may be necessary to make up the difference between the furlough and waiting-orders pay of such officers is hereby appropriated for that purpose out of any moneys in the Treasury not otherwise appropriated.

furlough and waiting-orders pay of such officers is hereby appropriated for that purpose out of any moneys in the Treasury not otherwise appropriated.

Expenses of the United States courts:

For expenses of United States courts, to be disbursed by the Attorney-General, being a deficiency for the fiscal year 1876, as follows:

For safe-keeping of prisoners at the penitentiaries at Auburn, New York, Albany, New York, and at the Eastern Penitentiary, Pennsylvania, for the first and second quarters of the fiscal year ended June 30, 1876, \$5,243.55. Also

For defraying expenses incur. ed in the prosecution of whisky and cotton cases and Credit Mobilier case, for payment of special counsel for the United States, and other expenses incident to the trial of said causes, \$98,755.55.

Topay James St. C. Boal for two months' legal services as special counsel for the United States, assisting the district attorney for the northern district of Illinois, from January 20 to March 20, 1876, \$400.

To pay W. A. Britton, late United States marshal for the eastern district of Arkansas, amount found due him by the accounting officers of the Treasury Department, being a deficiency for the fiscal year 1873, \$8,91207; which is hereby reappropriated from the unexpended balance of the appropriation for expenses of courts for the said fiscal year and made available for said purpose.

For payment of the necessary expenses incurred in defending suits against the Secretary of the Treasury or his agents for the seizure of captured or abandoned property, and for the examination of witnesses in claims against the United States pending in any Department, and for the defense of the United States in the Control of Claims, to be expended under the direction of the Attorney-General, being a deficiency for the fiscal year 1877, \$15,000.

For printing and binding for the Patent Office, by the Public Printer, \$41,000.

For printing and binding for the Patent Office, by the Public Printer, \$41,000.

For contingent expenses of the Pension Office, namely:

For stationery, carpets, mats, furniture, awnings and repairs of the same; for fuel, gas, engraving, and retouching plates; for bounty-land warrants, printing and binding the same, engraving and printing pension certificates, and for other necessary expenses of the office, \$5,000.

For rent of building on the corner of Eighth and G streets, known as "Wright's building," \$5,000, being a deficiency for the fiscal year ending June 30, 1877, and the Secretary of the Interior is hereby directed to terminate said lease on or before the 30th day of June next; and hereafter no contract shall be made for the rent of any building or part of any building to be used for the purposes of the Government until an appropriation therefor shall have been made in terms by Congress; and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building.

To enable the Postmaster-General to provide for the manufacture of postal cards, \$31,000.

\$31.000.

For salary of the Naval Solicitor from August 15, 1876, to June 30, 1877, \$3,072.05.

For the national museum in charge of the Smithsonian Institution:

For restoring to their proper place in the national museum cases removed to the international exhibition, and re-arranging the collections, and for expenses and preservation of the collections and for receiving, packing, and transporting the objects presented to the United States at the Centennial by State and foreign governments, and for properly storing and preserving them until a proper disposition can be made of the same, \$30,000.

For tubs, pots, packing-material, labels, seeds, envelopes, grading, repairing sewer, horse-hire, and manure for the Botanic Garden, \$1,000.

# HOUSE OF REPRESENTATIVES.

HOUSE OF REPRESENTATIVES.

To pay for two thousand copies of Barclay's Digest, ordered by resolution of the House of July 14, 1871, \$2,000; and hereafter the Digest shall be prepared and published by the journal clerk of the House, as the House shall from time to time direct; and for such additional services hereby required the journal clerk shall be paid the sum of \$1,000 per annum.

To pay William Tudge for services under the Postmaster of the House, from September 1, 1876, to March 4, 1877, at the rate of \$600 per annum, \$308.70.

To pay H. T. Burrows for services as messenger of the House, from December 4, 1876, to March 4, 1877, \$301.29.

To pay the clerk of the select committee investigating the Freedman's Savings and Trust Company, from December 4, 1876, to March 4, 1877, at \$6 per day, \$546.

To pay T. C. Mays for services as clerk of the Committee on Expenditures in the Treasury Department, from December 22, 1876, to January 31, 1877, \$46.

To pay stenographers to committees for services performed during the first session of the Forty-fourth Congress, as follows: To Eugene Davis, \$676.50; to A. Johns, \$.39.25; to D. C. McEwen, \$354; to E. C. Bariley, \$114.66; to James W. Tooley, \$87; to John H. White, \$163; to E. C. Barilety, \$6; in all, \$1,740.41; to refund to John G. Thompson, Sergeant-at-Arms House of Representatives, the amount advanced by him to pay the necessary expenses of investigating committees ordered by the House of Representatives, \$27,945, to be paid on vouchers approved by the Committee of Accounts.

SEC. 2. That the following balances of appropriations, carried to the surplus fund under the provisions of the fifth section of the act approved June 20, 1874, being required to complete the service of the fiscal year 1574 and prior years, are hereby continued and rendered available for such purpose, namely:

### TREASURY DEPARTMENT.

Pay of custodians and janitors: For amount due Edward Hughes, deceased, for twenty-four days' services as janitor at the custom-house building at Pensacola, Florida, during the month of J une, 1873, being for the service of the fiscal year 1873, \$59.56.

WAR DEPARTMENT.

Pay of the Army:
For payment of amounts certified to be due by the accounting officers of the

Treasury Department for pay, traveling, and general expenses of the Army, being for the service of the fiscal year 1874, \$7.68.

For payment of amount certified to be due Elizabeth A. Walker, by the accounting officers of the Treasury Department, being the amount due her as the only heir of James P. Timley, deceased, a soldier of the Mexican war, \$34.30.

Providing for the comfort of sick and discharged soldiers:
For payment of amounts certified to be due by the accounting officers of the Treasury Department for transportation of sick and discharged soldiers, being for the service of the fiscal year 1871 and prior years, \$52.

Regular simplies, Ouartemants, 2 Department.

service of the fiscal year 1871 and prior years, \$52.

Regular supplies, Quartermaster's Department:

For payment of amounts certified to be due by the accounting officers of the Treasury Department, for regular supplies of the Army, being for the service of the fiscal year 1871 and prior years, \$7,223.98.

For payment of amounts certified to be due by the accounting officers of the Treasury Department, for regular supplies of the Army, being for the service of the fiscal year 1872, \$16.40.

For payment of amounts certified to be due by the accounting officers of the Treasury Department, for regular supplies of the Army, being for the service of the fiscal year 1874, \$372.15.

Indignated expresses Quartermaster's Department.

Incidental expenses Quartermaster's Department:

For payment of amounts certified to be due by the accounting officers of the Treasury Department, for incidental expenses of the Army, being for the service of the fiscal year 1871 and prior years, \$2,453.69.

Barracks and quarters:
For payment of amounts certified to be due by the accounting officers of the Treasury Department, for rent or hire of quarters for troops and for officers on military duty, &c., being for the service of the fiscal year 1873, \$208.80.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for rent or hire of quarters for troops and for officers on military duty, being for the service of the fiscal year 1874, \$318.83.

military duty, being for the service of the fiscal year 1874, \$318.83.

Transportation of the Army and its supplies:
For payment of amounts certified to be due by the accounting officers of the Treasury Department for transportation of the Army, being for the service of the fiscal year 1871 and prior years, \$181,832.82.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for transportation of the Army, being for the service of the fiscal year 1873, \$61,493.04.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for transportation of the Army, being for the service of the fiscal year 1874, \$54,602.94.

Horse for eavyley and artillery.

Horses for cavalry and artillery:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for purchase of horses for the cavalry and artillery, being for the service of the fiscal year 1872, \$173.

Clothing of the Army:
For payment of amounts certified to be due by the accounting officers of the Treasury Department for clothing of the Army, being for the service of the fiscal year 1871 and prior years, \$493.77.

1851 and prior years, \$493.77.

Subsistence of the Army:
For payment of amounts certified to be due by the accounting officers of the Treasury Department for subsistence stores of the Army, being for the service of the fiscal year 1871 and prior years, \$10,374.56.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for subsistence stores of the Army, being for the service of the fiscal year 1872, \$96.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for subsistence stores of the Army, being for the service of the fiscal year 1873, \$152.80.

For payment of amounts certified to be due by the accounting officers of the Treasury Department for subsistence stores of the Army, being for the service of the fiscal year 1874, \$55.18.

Transportation of officers and their baggage:

Transportation of officers and their baggage:

For payment of amounts certified to be due by the accounting officers of the
Treasury Department for transportation of officers and their baggage when traveling on duty, being for the service of the fiscal year 1871 and prior years, \$111.94.

Relief of persons suffering from the ravages of grasshoppers, limited to September 1, 1875:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for expenses of relief of persons suffering from the ravages of grasshoppers, incurred prior to September 1, 1871, \$288.40.

Support of Bureau of Refugees, Freedmen, and Abandoned Lands:
For payment of amounts certified to be due by the accounting officers of the
Treasury Department for the support of the Bureau of Refugees, Freedmen, and
Abandoned Lands, being for the service of the fiscal year 1871 and prior years,
§196.25.

Signal service:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for the Signal Service of the Army for the fiscal year 1871 and prior years, §42.

Pay, transportation, services, and supplies of Oregon and Washington Volunteers in 1855 and 1856:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for pay, transportation, services, and supplies of Oregon and Washington Volunteers in 1855 and 1856, being for the service of the fiscal year 1871 and prior years, \$425.94.

Military and geographical surveys west of the Mississippi River:
For payment of amounts certified to be due by the accounting officers of the
Treasury Department for expenses of military and geographical surveys west of
the Mississippi River. being for the service of the fiscal year 1873, \$10.56.

Collecting, drilling, and organizing volunteers:
For payment of amounts certified to be due by the accounting officers of the
Treasury Department for collecting, drilling, and organizing volunteers, being for
the service of the fiscal year 1871 and prior years, \$95.58.

the service of the fiscal year 1871 and prior years, \$95.58.

Medical and hospital department:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for medical and hospital supplies and incidental expenses of the medical department of the Army, being for the service of the fiscal year 1871 and prior years, \$2,260.46.

For payment of amounts certified to be due by the accounting officers for medical and hospital supplies and incidental expenses of the Army, being for the service of the fiscal year 1873, \$11.10.

Contingencies of the Army:

For contingencies of the Army certified to be due by the accounting officers of the Treasury Department, being for the service of the fiscal year 1871 and prior years, \$14.10.

Expenses of frequiting:

Expenses of recruiting:
For payment of amounts certified to be due by the accounting officers of the

Treasury Department for expenses of recruiting and transportation of recruits, being for the service of the fiscal year 1872, \$28.40.

General expenses:

For payment of amounts certified to be due by the accounting officers of the Treasury Department for general expenses of the Army, being for the service of the fiscal year 1872, \$6.72.

For payment of amounts certified to be due by the accounting officers for the general expenses of the Army, being for the service of the fiscal year 1873, \$2.72.

Mileage:
For payment of amounts certified to be due by the accounting officers of the Treasury Department for allowances to officers of the Army for transportation of themselves and their baggage when traveling on duty, &c., being for the service of the fiscal year 1873, \$126.60.

INTERIOR DEPARTMENT.

Surveying public lands:
Surveying public lands:
Surveying public lands in California: Amount due John Goldsworthy, deputy surveyor, for surveys executed under contract of October 3, 1873, with the surveyor-general of California, being for the service of the fiscal year 1874, \$1,407.15.
Surveying public lands in Oregon: Amount due Jeremiah M. Dick, deputy surveyor, for surveys executed under contract of July 2, 1873, with the surveyor-general of Oregon, being for the service of the fiscal year 1874, \$2,094.69.

reyor, for surveys executed under contract of July 2, 1873, with the surveyor-general of Oregon, being for the service of the fiscal year 1874, \$2,094.69.

Indian affairs:
Pay of superintendents and agents: For payment of amount certified to be due W. P. Callon, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$178.86.

For payment of amount certified to be due T. J. Galbraith, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$2,391.24.

Pay of interpreters: For payment of amounts certified to be due W. P. Callon, late Indian agent, and W. H. French, jr., late acting Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$200.63.

Buildings at agencies and repairs: For payment of amounts certified to be due W. P. Callon, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$0.61.

Contingencies of the Indian Department: For payment of amounts certified to be due W. P. Callon and Simeon Whiteley, late Indian agents, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$0.80.

Incidental expenses of Indian service in Arizona: For payment of amounts certified to be due Horman Bendell, late Indian superintendent, and Cornelius Brice, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$15.71.

Incidental expenses of Indian service in Dakota: For payment of amount certified to be due W. H. French, jr., late acting Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$98.75.

Incidental expenses of Indian service in New Mexico: For payment of amount certified to be due W. H. Frenc

of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$220.

Incidental expenses of Indian service in Oregon; For payment of amounts certified to be due J. T. Booth, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1874, \$72.44.

Collecting and subsisting Apaches of Arizona and New Mexico: For payment of amount certified to be due Josephus Williams, late Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1873 and prior years, \$52.97.

Maintaining peace among and with the various tribes and bands of Indians: For payment of amount certified to be due W. H. French, jr., late acting Indian agent, by the accounting officers of the Treasury Department, being for the service of the fiscal year 1871 and prior years, \$16.42.

Passed the House of Representatives February 1, 1877. (Calendar day February 9, 1877.)

GEO. M. ADAMS, Clerk,

Mr. WINDOM. Mr. President, one word more as to the deficiency in the appropriation for the public printing. It was stated by myself, last session on the floor of the Senate that the appropriation for public printing was very deficient, and it was then stated that from five to six or seven hundred thousand dollars would be required. The five to six or seven hundred thousand dollars would be required. The appropriation was not made and that deficiency has not yet been supplied. We did appropriate \$125,000 for printing the Agricultural Reports at the last session. We have appropriated by agreement of both Houses (but the bill is not yet signed by the President) \$350,000 more for a deficiency in congressional printing, and the general deficiency bill provides \$200,000 more for that purpose. So the bill of last year was deficient over \$675,000; and for the want of that money to-day the public business is delayed and an extra session of Congress endangered. endangered.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had agreed to the amendments of the Senate to the bill (H. R. No. 859) for the benefit of Andrew Williams, of Weakley County, Tennessee.

The message also announced that the House had passed the follow-

ing bills:
A bill (S. No. 805) relating to indemnity school selections in the State of California;

A bill (S. No. 859) for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850; and A bill (S. No. 1251) to remove the political disabilities of Joseph E. Johnston, of Virginia.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. No. 586) for the relief of Adolph von Haacke;

A bill (H. R. No. 4660) to remove the political disabilities of George W. Citz, of Portsmouth, Virginia;

A bill (H. R. No. 4661) to absolve Frederick Hinkle from his alle-giance as a citizen of the United States of America.

#### ENROLLED BILL SIGNED.

The message further announced that the Speaker of the House had signed the enrolled bill (H. R. No. 1984) to provide for the sale of certain lands in Kansas; and it was thereupon signed by the President pro tempore.

DISTRICT TAX BILL.

Mr. WRIGHT. In view of all the circumstances I think it would, be an economy of time for me to withdraw my call for the regular order, with the understanding that the tax bill shall be disposed of before adjournment this evening. And I take occasion now to say that I shall to-morrow insist upon the consideration of the regular order until it shall have been disposed of. I therefore withdraw my call.

Mr. SPENCER. Under those circumstances, I withdraw my motion.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) By unanimous consent, the regular order is laid aside, and the bill (H. R. No. 4554) for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes, continued before the Senate as in Committee of the Whole. The question is on the amendment offered by the Senator from New York,

Mr. INGALLS. Mr. President, I am opposed to the amendment on principle and shall vote against it in any shape in which it may be presented; but, with the desire of making it as little objectionable as possible, I shall move to amend by striking out, in the first line, the word "property" and inserting in lieu thereof the word "buildings," and by striking out, in the second line, the words "and used;" so that it will read:

All buildings actually occupied for the purposes of education, &c.

I believe that the principle on which the amendment offered by the Senator from New York is based is entirely wrong, and that society is of as much benefit to churches and schools as they are to society; that these advantages are reciprocal, and that there is no more reason why a church should be exempted from taxation than there is why a manufactory should be exempted; and that there is no more reason why an educational institution should be exempted than there is why the store of a tradesman should be exempted. They are all part of the institutions of society; they all receive a portion of the benefits of society, and they ought therefore to bear their share of the burdens. Churches are exempted from taxation simply because in the Middle Ages, in the barbarous epoch of the world, when all the revenues and wealth of empires were concentrated in monasteries and convents, it was for the interest of those who owned them to have them evade their share of public burdens and to exempt them from taxation. But that reason has long since passed away, and the theory of exempting church property from taxation, in my opinion, is

theory of exempting church property from taxation, in my opinion, is totally at war with the theory of free institutions.

So, sir, with regard to educational institutions. The Senator from Massachusetts, with a good deal of energy and with considerable eloquence, enforces his theory that they should not bear any portion of the public burdens. If the Senator from Massachusetts were reduced by the exigencies of his fortune to the necessity of commencing a private school for the tuition of scholars to enable him to gain a livelihood, society would compel him to pay a tax on the building in which he carried on his vocation. What peculiar sanctity there is about a corporation that is carried on for this purpose, from which income and revenue and profit are derived, over and above a private venture that a citizen may carry on for the same purpose, I certainly am unable to understand. To my notion there is nothing more sacred about a book than there is about a shoe, and all these things that share the benefits of society ought certainly to bear their share of the burdens. of the burdens.

The amendment I have offered, if I have not already indicated it, is that the word "property" should be stricken out and the word "buildings" inserted, and that the words "used and" should be omitted.

Mr. DAWES. Mr. President, there is no more apparent fallacy in the world than that which is put forth in opposition to this amendment that it cripples taxation, that it abridges the aggregate of property subject to taxation. Every church that is built in any community, every permanent establishment for the purposes of education, and every establishment for charitable purposes in any community, instead of abridging and diminishing by exempting it from taxation, is an addition to the aggregate property of that community. Strike down the churches in this District; blot them out, and them take a valuation of the property in this District left subject to taxation, its actual value, and you will know that every church that is established here enhances the value of all the other property in this District. So it is of every permanent institution of education in the District and in the land. The locality in which it is established is so benefited by it that the value of all the property around about it is tenfold enhanced by it; and to take from the benefits to taxable property thus conferred upon it, to tax the very instrumentality itself, is to make these institutions and the property devoted to these purposes pay a double tax. The property itself, the men engaged in Mr. DAWES. Mr. President, there is no more apparent fallacy in

the occupation itself, are devoted to the elevation of the material interests, as well as the moral and educational interests of the community round about them—not less the material than the spiritual

and the moral and the intellectual interest.

My friend from Kansas says that the community are as essential to the church and the school as the school and the church are to the community. That is true in one sense, but in another the church and the school are not erected in the community as every other establishment. the school are not erected in the community as every other establishment and every other vocation and every other calling is, for purposes of gain and profit to the individual, but they are public institutions in the largest and the broadest sense; and there is just as much sense in taxing the public school, the Franklin school-building, to bear the expenses of this District, as there is in taxing any private permanent establishment for the same purposes. There is nothing that contributes so much to relieve the District of the burdens of taxation as that system of schools and of religious education that leads its inhabitants up to fraugal and industrious ways and keeps them acits inhabitants up to frugal and industrious ways and keeps them accumulating here and around about themselves the material for taxation. I am surprised to hear my friend from Kansas say that the State of Kansas owes nothing to any religious or any educational institution that would induce her citizens or anybody from abroad who stitution that would induce her citizens or anybody from abroad who had a large and benevolent heart and ample means to answer to the response of a philanthropic spirit, to establish an institution at Lawrence, or at some other of the flourishing towns there, making it a desirable place for a residence and for the establishment of intellectual and social society, to draw the wealth there to help pay the burdens of taxation round about.

Mr. NICALLS I said nothing of the kind

Mr. INGALLS. I said nothing of the kind.
Mr. DAWES. Strike out the institution of Harvard College from

Mr. DAWES. Strike out the institution of Harvard College from Cambridge and all those who gather there and bring their substance there for taxation, and you blot out a large and essential part of the taxation of that city. And what is true of that is true of this city and is true of every educational instrumentality here.

It is a policy not of an hour or of a day, but a policy that looks to the future character of the institutions among which we live. And if the Senator from Kansas, with his family, had just as lief take up his abode where there is neither church nor school, there can be no disputing about tastes; but I suggest to him that he will not thereby escane taxation.

escape taxation.

It is not the poor man; it is the rich man who is opposed to this. For the benefit of the poor man it is that these institutions of learning are erected, these instrumentalities for obtaining that which the rich man can obtain by his own means. It is for him that they are built, and they ought to be encouraged. It ought to be the policy not only of the States but of the United States to encourage any and every man to set apart for such purposes as these such of his means as he can, contributing thereby his full share toward relieving the burdens of society, and in this permanent method; and I would not say to him "After you have so contributed you shall come in and bear part of the burdens which would otherwise rest upon us."

part of the burdens which would otherwise rest upon us.

Mr. ALCORN. Mr. President—

Mr. INGALLS. I desire to say, with the permission of Mr. Alcorn. Mr. Fresident—
Mr. INGALLS. I desire to say, with the permission of the Senator from Mississippi, that if the religion and the education of Massachusetts, under which the Senator was reared, teach him to make such misrepresentations as he has made in regard to my sentiments, I think the less we have of them the better, and that a man had bet-

think the less we have of them the better, and that a had better be an ignorant barbarian.

Mr. DAWES. One would think so from the remarks the Senator made a little while ago.

Mr. ALCORN. There is no doubt of the correctness of the principle that property everywhere should bear its equal burdens of taxa-

ple that property everywhere should bear its equal burdens of taxation; but it is certainly correct that there are exceptions to this rule. I rose, however, to meet as well as I can at this time the position assumed not only by the Senator from Kansas [Mr. Ingalls] but by the Senator from Pennsylvania, [Mr. CAMERON,] who take the ground that all property, without discrimination, should be taxed. It is the policy of the States, it has been attempted to be made the policy of this Government to enforce education among the people. By law the Legislatures of the different States levy taxes for the purposes of common schools. Under the municipalities of the States large sums of money are raised for the purpose of fostering the common schools of the country.

of the country.

These sums being raised, the money arising therefrom necessarily finds itself invested for the convenience of scholars in the erection of school-houses and grounds added thereto for the occupation, for the amusement, and for the comfort of the children. Shall we be told that when the money is raised by taxation for the erection of com-mon-school houses for the education of the children, and for the purmon-school houses for the education of the children, and for the purchase of property upon which to erect school-houses, this property must be subject to taxation and that there shall be no exemption in its favor? If that rule is enforced, the working results will be that the tax-gatherer will be the only person benefited by the operation. The people will be taxed first to purchase the ground and then to erect the school-house. The assessor comes forward and assesses the value of that property, and the assessor and tax-gatherer are the only persons benefited by the operation. Government is conducted upon principles of economy as well as may be, and this principle of taxing the people for the benefit of the tax-gatherer is one that no sensible the people for the benefit of the tax-gatherer is one that no sensible government would ever for one moment tolerate.

Again, if it is proper to exempt property under the circumstances

which I have stated, whence comes the principle upon which private individuals shall by voluntary contribution place their money under an act of incorporation in the form of a valuable edifice for the benefit an act of incorporation in the form of a valuable edifice for the benefit of the children of the country for the purpose of advancing the education of the country? They have come forward voluntarily and have contributed their money for the purpose of education, not for the benefit of speculators, not for the benefit of contractors, but for the benefit of society, for the advancement of civilization, for the promotion of education. Upon what principle would you propose to tax them? In this city there is valuable property which is held for purposes of education. Children who live a thousand miles away from this capital are brought here for the purpose of availing themselves of the advantages for education offered by this city. You propose to tax the college buildings and the college property and thereby you reflect back that taxation upon the children who come from the State of Texas or from the State of Mississippi; for as you tax the property that tax must be repaid in the charge imposed on the education of the children.

Is it not to the advantage of the District of Columbia that educa-

Is it not to the advantage of the District of Columbia that education should be cheapened in this District? I think so. Every child who is brought from abroad to this city for education contributes to who is brought from abroad to this city for education contributes to the interest of every single work of art, to every single mechanic, to every laborer and citizen who may be found in this city. The child who comes from Mississippi first takes an omnibus or a carriage at the depot. He contributes to his tax there. He contributes as he goes forward with his education to your book-stores, to your shoe-stores, to your clothiers, to your jewelers, to every enterprise or industry in fact that belongs to the city. Thus it is that the college pays a tax that repays itself in the prosperity, in the business, and in the increased population of this city.

It is not true that these institutions are fostered without giving back to the people a corresponding benefit for all that is done for them.

them.

The Senator from Kansas says that during the Middle Ages, in times that are past, it was the law in regard to the monasteries that they should be exempt from taxation and that church property was also exempt from taxation, and he thinks it is from this precedent that we derive the idea which we now to-day attempt to enforce. That is not true as a matter of fact. The principles that found a lodgment many centuries ago when the monasteries and churches were exempt from taxation were correct in themselves in this that these institutions. from taxation were correct in themselves in this: that those institu-tions were built by contributions and by taxation among the people, and it was not the logic of the legislation of the countries where they were located to tax those institutions for the benefit of tax-gatherers, for such a tax would have resulted in nothing else. If it were the policy of this Government to possess monasteries, churches, and school-houses, the very same principle that operated in the exemption from taxation in that day would be found to operate to-day. But that is not the policy of this Government. We foster no such institution by law; but we do tax the people for the purpose of building up the institution, and the tax-gatherer should find no place there for profit to him. I hold that this is a correct principle, and that this principle when followed out works no injustice to any person. Therefore the amendment which is offered, as modified by the Senator from Kansas, certainly can work no injury to this country, but will in truth work great good to the city of Washington and to the inhabitants thereof. for such a tax would have resulted in nothing else. If it itants thereof.

Mr. CLAYTON. Mr. President, a proposition to appropriate public money, no matter how small the appropriation might be, for the benefit of churches or the private schools of the District of Columbia, if brought in here, would be hooted out at once as contrary to the spirit of our Government; and yet what is this proposition but indirectly an appropriation for the support of churches and of private schools? Is it anything else but an indirect appropriation of the public money to aid in the support of private schools and churches? If it is, then perhaps we ought to carry this principle still further. There may be pernaps we ought to carry this principle still further. There may be some of these institutions that are languishing for help, and we ought to increase the amount; we ought to bring in an appropriation bill here to aid them still further than this bill actually does. I think the whole principle is pernicious. I do not believe that the Christian religion in this country will ever suffer or that education will suffer by requiring churches and school-houses to bear their just proportion of the public expenses. If a street is paved in front of a large and elegant church edifice, let the trustees pay their proportion of that expense, and not require some person who may live half a mile off, and who gets no benefit from the church, to pay for the ex-

pense.

I think the time will come in this country when the people will discover that the proposition to exempt churches and church property and private institutions from taxation is altogether wrong. I think the growth of that proposition in this country will after awhile teach the people that they must retrace their steps, and make these institutions pay their proportion of the public expenditures.

I shall not vote for the amendment of the Senator from Kansas, because if you exempt the building from taxation there is no reason why you should not exempt the apparatus. The whole principle is either right or it is wrong; and we should either exempt both their buildings and their property from taxation or we should exempt

buildings and their property from taxation or we should exempt nothing. I shall vote to exempt nothing, whenever I can get an opportunity to do so.

Mr. SAULSBURY. Mr. President, I dissent entirely from the views expressed by the Senator from Arkansas and by the Senator from expressed by the Senator from Arkansas and by the Senator from Kansas. I do not think the churches of this country or the private institutions of learning are correct subjects of taxation. I do not think that this bill is perfect by any means. It proposes to exempt church buildings used for public worship. That is all the exemption given to churches, and under the provisions of the bill, if it should pass, you could then levy a tax upon the communion service and upon the very Bible on the altar. I am in favor of exempting not only the churches but all the appurtenances of the churches, exerciting conjected with them so far as the service is required.

recorything connected with them, so far as the service is required.

Therefore I am in favor of the amendment of the Senator from New York, not only exempting the buildings but exempting the campus grounds around, which are requisite for the boys to play. I dissent entirely from the remarks of the Senator from Arkansas, and also from the remarks of the Senator from Kansas. We cannot do without the churches of this land. We all know how they are without the churches of this land. We all know how they are built. They are built by private contributions; they are sustained by private contributions; the pastors of the churches are paid by private contributions. It is a very considerable tax to those who give to their support, and yet it is proposed further to subject that property, which was built by the private contributions of the people who attend those institutions, to a further tax, because of the liberality which they have displayed in the building of these institutions. They are for the public use of the people. They are built by a comparatively few people, and yet they are for the public enjoyment of everybody in the community.

The Senator from Pennsylvania said it was not fair to exempt this property while you tax the property of the poor people. The Sena-

The Senator from Pennsylvania said it was not fair to exempt this property while you tax the property of the poor people. The Senator from Pennsylvania knows very well—for I have no doubt he has contributed out of his abundant means to the erection of churches in different localities—that they are usually built by men of means, at least in some sections of the country, and they are thrown open to the common enjoyment of everybody. Instead of being an oppression to the poor man it is greatly to his relief, and the men of wealth contribute of their substance to erect a church wherein to worship. So it is with reference to colleges. There are hundreds of men who could not educate their children in anything above the common schools of the land, if it were not for the liberality of those who contribute to build up schools of a higher grade. It is no hardship upon any portion of the community to allow schools and academies built up by private contributions to be exempted from taxation, because the advantages of those institutions are open to all alike. Hundreds of poor men have been able to send their children to institutions of that kind simply because they have been erected by the provisions of those in simply because they have been erected by the provisions of those in more liberal circumstances than themselves.

It operates, I say, therefore, as no hardship to any portion of the tax-paying people of the country because these churches and institutions of learning are exempted from the operation of tax laws. I tutions of learning are exempted from the operation of tax laws. I shall vote for exempting not only these institutions, but other institutions. There is one institution in this city, a very admirable one, the Louise Home, which under the operation of this bill would be taxed, unless the bill is amended. That institution was erected by the private contributions of one man as a home for aged women; and yet under the operation of this bill that valuable institution, so creditable to the generosity of the donor, would be subjected, now that his money has been put into that building, to the effect of a tax. I am in favor of exempting that, and if no one else moves the amendaam in favor of exempting that, and if no one else moves the amend-ment, I shall move to exempt specifically the Louise Home. It ought not be subject to tax. Neither would I consent that churches used for worship or any of the appurtenances of churches, the organs or

or worship or any of the appurtenances of churches, the organs or communion-service or anything of the kind, should be subject to taxes imposed upon the property of this District.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Kansas [Mr. Ingalls] to the amendment submitted by the Senator from New York, [Mr. KERNAN.]

Mr. CAMERON, of Pennsylvania. Let the amendment to the amendment be read.

The PRESIDENT pro tempore. The Secretary will report the amendment and the amendment to the amendment.

The CHIEF CLERK. The amendment proposed by the Senator from New York is to insert at the end of the eighth section the follow-

Sixthly, all property owned and actually occupied and used for purposes of edu-cation by incorporated colleges and academies.

It is proposed to amend that by striking out the word "property," in the first line, and inserting "buildings," and, in the second line, to strike out the words "and used," so that, if amended, the amendment will read:

All buildings owned and actually occupied for purposes of education by incorporated colleges and academies,

Mr. MERRIMON. I do not like the words of limitation in the amendment, and I offer what I send to the desk as a substitute when it shall be in order.

The PRESIDENT pro tempore. The proposed substitute will be re-

The CHIEF CLERK. It is proposed to strike out all after the word "sixthly," in the first line of the amendment, and insert "buildings devoted to purposes of education."

Mr. MERRIMON. That amendment would make the section con-

form to the exception of church buildings.

The PRESIDENT pro tempore. The Senator from North Carolina has moved a substitute striking out as stated. The question will be first upon the amendment proposed by the Senator from Kansas to the amendment of the Senator from New York, which is to perfect

The amendment to the amendment was rejected.

The amendment to the amendment was rejected.

The PRESIDENT pro tempore. The question now recurs on the substitute offered by the Senator from North Carolina to strike out all of the amendment proposed by the Senator from New York and to insert "buildings devoted to purposes of education."

Mr. CLAYTON. That would take in all private schools?

Mr. MERRIMON. It includes all buildings devoted to education,

and it conforms to the exception of church buildings devoted to pub

Mr. MERRIMON. It includes all buildings devoted to education, and it conforms to the exception of church buildings devoted to public worship. My object is to prevent any invidious distinctions. I do not see why incorporated schools should have the benefit of this exception when other schools do not.

Mr. DAWES. I wish to apologize to the Senator from Kansas [Mr. INGALLS] for some remarks which I do not think now ought to have been made, and to inquire of him in that connection, after making the apology, which I think is due, and to inquire of those who support this bill and oppose the amendment, to tell us why it is that they exempt the Corcoran Gallery from taxation. It does seem to me that it is exempted upon precisely the same principle which is contained in the amendment proposed by the Senator from New York. I think everybody would say it would be a shame and an outrage to tax the Corcoran Gallery. Why? The Corcoran Gallery is a free gift to this city for purposes that are of great benefit to the city itself and to all the people who live in it. It contributes to make the city a center of attraction, to draw people here, and thereby to draw taxable property within the reach of this very law. It makes all the property in the vicinity of it of more value, and therefore would give this proposed law more power to reach property by taxation. Every view of it which can be taken justifies the exemption of the Corcoran Gallery from taxation, and I cannot see for the life of me any distinction in the purposes, the object, the effect, the origin, between that property and all property devoted honestly and properly to the purposes of education generally. It is education of the highest order which comes of the Corcoran Gallery. The people, the poor people, everybody, goes there and is educated and is made a better citizen, is less likely to become a burden upon the District, less likely to become a charge upon it, more likely to contribute more largely to that which makes the District property itself valuable for the

That the property exempt from taxation under this act shall be the following, and no other, namely: First, the Corcoran art building.

It makes no reference to the statuary and no reference to the paintings; and I wish to know of the Senator from Massachusetts if he thinks the paintings and statuary under that provision of this bill

would be exempt from taxation?

Mr. DAWES. I should as soon think of taxing what the Senator himself alluded to a little while ago: the communion-service of a

Mr. SPENCER. If the Senator will allow me, I will reply to the Senator from Delaware and state that the statuary and the paintings in the Corcoran Art Gallery have never been taxed.

Mr. SAULSBURY I want the exemption in the bill. It is not in

Mr. SPENCER. As the commissioners construe the language of the bill it excludes them.

Mr. DAWES. I should like to know upon what principle it is that we exempt from duty all imported books that are devoted to purposes of education, and philosophical apparatus, and works of art? Why do we exempt the ornamentations of churches, painted windows, and

statuary from duty?

Mr. BOUTWELL. We do not now.

Mr. DAWES. We did until we made a mistake in the Revised Stat-Mr. DAWES. We did until we made a mistake in the Revised Statutes. It was by an accident that we got 10 per cent. upon them; that is the only way it was done. There is something that justifies, in the common opinion and consent of mankind, such exemptions. It does seem to me to be something worthy of consideration and it is a narrow and a mistaken policy. Even if we consider nothing in the world but the best means of getting the most money in the form of taxation out of the property of the District, it is a mistaken view of the question not to encourage the setting apart for all these purposes, out of the bounty and abundance of those who have means, property for the permanent use to which this property is devoted. It would be a great mistake to say to men "your property which you take and devote permanently to these uses shall be compelled always to bear the same burdens that my property that is not devoted to these uses does." It is a mistake and discourages such consecration of property, and we ought never to indulge in it.

Mr. CAMERON, of Pennsylvania. Mr. President, I am sorry to find that my taste is not so refined as that of the Senator from Massachusetts. A taste for the arts is acquired only after a great deal of

time. I heard somebody once say that it took three generations to make a gentleman. I believe it takes four or five generations to enable people to appreciate high art, especially painting and sculpture and their kindred arts. To my mind there is no reason for this at all. I do not pretend to have my taste cultivated so much as other gentlemen; and yet I have seen about all the fine paintings of the world. Of course my mind is obtuse and I cannot take in that fine cultivation so readily as other people; but I can see no reason why the Corcoran Art Gallery should not be taxed as well as any other building. If a Senator comes to this town and builds himself an expensive and beautiful house, he adds just as much in proportion to the money he expends there, in the taste he puts into it, as any public building does; and yet you make him pay taxes for the whole of it.

I believe that great honor is due to Mr. Corcoran not only for the art gallery, but especially for that home for indigent and good women. I think that is the noblest of his charities, and one that will live long after his name will no longer be heard in connection with other donations. If anything will connect his name with the world generations

I think that is the noblest of his charities, and one that will live long after his name will no longer be heard in connection with other donations. If anything will connect his name with the world generations after this, it will be that noble charity which is put up there. But it is no reason why those buildings should not pay city taxes as well as any other property. If Mr. Corcoran wanted the Corcoran Art Gallery to be free from taxation, he could have contributed a fund only a little larger than he gave, making a sinking fund to pay the taxes of the building which he had put there; and so he might have done in regard to the Louise Home.

I would not vote to tax that old woman's home—I say "old woman" because it is a better word than "old lady"—I would relieve that if I did anything. But I can see no reason why the humble man shall be taxed to keep up your streets, to make your pavements, and to plant these beautiful trees which are about to be planted, a bit more than these gorgeous buildings that have been put up by charity. It will require only a little more economy and care in the management of those buildings to pay the taxes and relieve them from this onerous charge which is made against them, of living at the expense of others. To my mind there is no justice in it.

I think the Senator from Delaware said we benefited religion by exempting these edifices from taxation. It is no such thing. Why should not the honest and quiet and industrious Mennonite of Pennsylvania, who builds no church but who preaches to his neighborhood in his own house, have his house exempted from taxen may

sylvania, who builds no church but who preaches to his neighborhood in his own house, have his house exempted from taxation as well as a church here in Washington to which people go often more for fashion's sake than from motives of devotion? Not always, but often, there is not a bit of honesty in it. Every community ought to be taxed in proportion to the property belonging to that community; and a man with his small but ought not to be taxed for the purpose of relieving the rich man who wants a gargeous changle to warshing

and a man with his small hut ought not to be taxed for the purpose of relieving the rich man who wants a gorgeous chapel to worship in. I do not believe in it, Mr. President.

I rose more at this time to pay a just tribute to Mr. Corcoran than anything else. I think that he has been not only a benefactor here, but a noble one. I think he has done a great deal of good, and I would not be willing to give a vote or say a word which would detract from his high merits.

The PRESIDENT was toward. The processing the process of the p

tract from his high merits.

The PRESIDENT pro tempore. The question is on the substitute proposed by the Senator from North Carolina.

Mr. MERRIMON. I beg to call the attention of the Senate to the character of this amendment. I do not say that the exception as to schools should be broader than the exception as to churches. The exception as to churches as adopted by the Senate is as follows:

Church buildings used for public worship.

I propose to make the language of exception as to schools conform to that:

Buildings devoted to the purposes of education.

That is broad and comprehensive. I see no reason why incorporated That is broad and comprehensive. I see no reason why incorporated school buildings should be exempted and why others that are not incorporated and devoted to such purposes should not be exempted. My object is to make all buildings devoted to the purposes of education exempt from taxation. I can see no reason why that class of buildings should have preference over another class. The truth is that if there should be a preference it seems to me it ought to be in favor of those schools that have not so much means.

Mr. CLAYTON. May Leek the Senstra a question?

favor of those schools that have not so much means.

Mr. CLAYTON. May I ask the Senator a question?

Mr. MERRIMON. Yes, sir.

Mr. CLAYTON. I should like to ask the Senator whether his amendment would not exempt all private boarding-schools?

Mr. MERRIMON. I think not.

Mr. CLAYTON. It would exempt all buildings devoted to education?

Mr. CLAYTON. It would exempt all buildings devoted to education?

Mr. MERRIMON. If a building is devoted to education, of course it would be exempt. If a lady kept a house which would be devoted exclusively for purposes of education, it would be exempt undoubtedly.

Mr. CLAYTON. I understand that has been a great evil here in this District. Under the old law there were instances of ladies keeping very large houses, and having, say, half a dozen boarding-pupils. Under the provision of the old law that house and all the appurtenances thereto were exempt from taxation. I am told that heretofore that has been a great evil in this District, and that these methods have been resorted to by boarding a few scholars in their houses to thereby be exempt from taxation; and if the amendment of the Senator from North Carolina is adopted it would lead to the same thing.

Mr. MERRIMON. I inserted the word "devoted" to exclude that very idea. The house must be "devoted to the purposes of education." Mr. CLAYTON. What does the word "devoted" mean in this case? It would not be devoted forever, but for the time being. Mr. MERRIMON. Set apart.

Mr. CLAYTON. Must it be dedicated forever to the purposes of

education 7

Mr. MERRIMON. The Senator can insert the word "exclusively."

I ask the Clerk to insert the word "exclusively." Here is a building put up by private enterprise and encouraged by private enterprise wholly devoted to the purposes of education, and because it does not happen to belong to an incorporated company it must be taxed. It seems to me the discrimination is not just or wise.

The PRESIDENT pro tempore. The Secretary will report the amend-

ment as modified.

The Chief Clerk read as follows:

Buildings devoted exclusively to the purposes of education.

Mr. SAULSBURY. I am opposed to the amendment of the Senator from North Carolina, because it limits the exemption to buildings. There is no exemption of the library, of the apparatus, of the grounds necessary in the enjoyment of the public schools. This exemption is limited to buildings. I am in favor of the amendment of the Senator from New York, [Mr. Kernan,] which meets this whole case. It exempts the property used for school purposes.

Mr. MERRIMON. Then my friend would give the schools an advantage over the churches.

wantage over the churches.

Mr. SAULSBURY. No; I would amend the clause relating to the

Mr. SAULEBURY. No; I would amend the clause relating to the churches. I hope the amendment of the Senator from North Carolina will be voted down.

Mr. WRIGHT. I wish to say one word. I shall vote for the amendment of the Senator from North Carolina, and then I shall vote against the amendment after it is adopted. I think this amendment is logical, if the rule proposed by the Senator from New York is correct; that is to say, there is no reason why you should exempt institutions of learning that are held by incorporated companies; that does not supply to institutions of learning award by private individuals. If

that is to say, there is no reason why you should exempt institutions of learning that are held by incorporated companies; that does not apply to institutions of learning owned by private individuals. If the one should be exempt, the other should be exempt also. I shall vote for the amendment of the Senator from North Carolina, because I would make it as broad as possible; but I shall vote against the amendment, as amended, after it has been adopted.

Mr. SAULSBURY. I ask the Senator from Iowa if he knows of any institution of learning, either owned by a private individual or by a joint stock company, which is not incorporated, in this city?

Mr. WRIGHT. I do not know whether there is or not, nor do I care. I am striking at the principle. I do not know how soon there may be one if there is not now.

Mr. KERNAN. As to the proposed exemption of every building devoted to education I will state that there are fashionable ladies in the city of New York who rent entire buildings, and gentlemen of wealth pay \$1,500 a year to have their daughters educated there. They become great money-making institutions, and the proprietors get rich. But these public academies and colleges are never used to make money. They are generally built with donations, and those in charge seek to educate as many as possible at as cheap a rate as possible.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from North Carolina, [Mr. MERRIMON,] proposed as a substitute to the amendment of the Senator from New York, [Mr. KERNAN.]

KERNAN.]

The amendment to the amendment was rejected.

The PRESIDENT pro tempore. The question recurs on the amendment of the Senator from New York.

The question being put, there were on a division—ayes 24, noes 14. Mr. MERRIMON called for the yeas and nays; and they were ordered.

Mr. MERRIMON. I wish to say that I would not object to this amendment if it were not so limited as it is. I cannot consent to vote that an incorporated institution which may be ever so rich shall be exempt from taxation, while a private building devoted to the purposes of education shall be taxed. I will not do that.

The question being taken by yeas and nays, resulted—yeas 33, nays 19; as follows:

19; as follows:

YEAS—Messrs. Alcorn, Bailey, Barnum, Blaine, Bogy, Boutwell, Cockrell, Conver, Cooper, Davis, Dawes, Dennis, Ferry, Goldthwaite, Gordon, Hereford, Hitchcock, Johnston, Jones of Florida, Kernan, McCreery, McDonald, Maxey, Morrill, Norwood, Paddock, Patterson, Ransom, Robertson, Saulsbury, Spencer, Stevenson, and Wallace—33.

NAYS—Messrs. Allison, Booth, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Clayton, Cragin, Harvey, Ingalls, Kelly, Logan, McMillan, Merrimon, Oglesby, Sargent, Teller, Wadleigh, West, and Wright—19.

ABSENT—Messrs. Anthony, Bayard, Bruce, Burnside, Christianey, Conkling, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamilton, Hamlin, Howe, Jones of Nevada, Mitchell, Morton, Randolph, Sharon, Sherman, Thurman, Whyte, Windom, and Withers—23.

So the amendment was agreed to.

Mr. SAULSBURY. I move to amend the bill by inserting after the word "Home," in the fifth line of section 8, the words "Louise Home and appurtenances;" so as to read:

That the property exempt from taxation under this act shall be the following, and no other, namely: First, the Corcoran art building, free public library buildings, church buildings used for public worship, the Soldiers' Home, Louise Home and appartenances, and grounds actually eccupied by such buildings.

Mr. CAMERON, of Pennsylvania. I should like to know what is meant by "appurtenances?" It is a very comprehensive word.

Mr. SPENCER. I suppose it means the furniture.

Mr. CAMERON, of Pennsylvania. Then I would amend it by inserting the word "furniture." I move that "appurtenances" be stricken out and that the words "furniture within the building" be

Mr. SAULSBURY. I accept the amendment.
The amendment, as modified, was agreed to.
Mr. MERRIMON. In line 3, of section 8, after the word "building," I move to insert "and the works of art therein;" so as to read:

That the property exempt from taxation under this act shall be the following, and no other, namely: First, the Corcoran art building and the works of art therein.

The amendment was agreed to.
Mr. WRIGHT. After line 61 on page 6, after the word "law," I
move to insert the words "and whether heretofore or hereafter made;" so as to read :

And 10 per cent, per annum thereon, or if any property two years after having been so bid off at any sale whatever in the name of said District, under this or any other law, whether heretofore or hereafter made, is not or has not been so redeemed as aforesaid, then the commissioners of the District or their successors in office shall, in the name and on behalf of the District of Columbia, apply to the supreme court of said District, sitting in equity, for the purpose of enforcing the lien acquired as aforesaid by said District on the property as aforesaid.

I offer this for the purpose of making more clear the amendment adopted at the instance of the committee. I understand that it is entirely acceptable to the commission and to the committee.

Mr. SPENCER. It is acceptable. I accept it.

The amendment was agreed to.

Mr. MERRIMON. In line 4 of section 8, after the word "buildings," I move to add the words "and their furniture;" so as to read:

Church buildings and their furniture.

Mr. SPENCER. There is no objection, I think, to that amendment.

The amendment was agreed to.

Mr. WRIGHT. I wish to call the attention of the Senator from Ala-

bama to the last section of the bill: That this act shall remain in force as the tax law of the District of Columbia for each subsequent year after June 30, 1878, until repealed.

There are some provisions of this bill which are not in the nature of a tax law. Is it the intention that those provisions only shall remain in force until June 30, 1878? If it is the intention that it shall remain as a permanent part of the law, I suggest to the Senator from Alabama whether it might not be well to strike out the words "as the tax law of the District of Columbia."

Mr. SPENCER. I think that is a good suggestion. The object is to make it a permanent bill, and not to pass it each year.

Mr. WRIGHT. I suggest therefore to strike out the words "as the tax law of the District of Columbia" in the first and second lines of the eighteenth section.

of the eighteenth section.

Mr. INGALLS. Why not strike out line 3 also, so as to read: "that this act shall remain in force until repealed?"

Mr. SPENCER. This is to be the tax law for one year, but this section was framed to avoid the necessity of bringing in a tax bill

section was framed to avoid the necessity of bringing in a tax bill every year.

Mr. WRIGHT. I suppose the Senator intends by the section that the bill shall remain in force for all purposes until repealed.

Mr. SPENCER. But the first section of the bill says that it is for the support of the government of the District for the next fiscal year.

Mr. WRIGHT. But the last section makes it the law for all coming time until you repeal it. I would make it the law by my amendment for all purposes as well as for tax purposes.

Mr. INGALLS. Amend the title.

Mr. SPENCER. Yes, we might amend the title.

Mr. WRIGHT. The title would not make any difference.

Mr. SPENCER. We would have to amend the bill in several places. I think the first amendment suggested by the Senator from Iowa ac-

I think the first amendment suggested by the Senator from Iowa accomplishes the object.

Mr. WRIGHT. It would accomplish brevity to make it as the Senator from Kansas suggests, but I think it better to strike out the words in the eighteenth section "as the tax law of the District of Co-

lumbia;" so as to read: That this act shall remain in force for each subsequent year after June 30, 1878, until repealed.

Mr. INGALLS. Before the amendment is adopted I will call the attention of the Senator from Alabama, who has the bill in charge, to the language of sections 3 and 4, in which it is provided—

That one half of the tax levied by this act upon real and personal property shall become due and payable on the 1st day of November, 1877, and the other one-half of such tax shall become due and payable on the 1st day of May, 1878.

The same reference to the year is also contained in section 4. It therefore seems to me that, inasmuch as these sections have been framed with reference to the years 1877 and 1878, this amendment ought not to be made, and that in fact the entire section 18 ought to be stricken out. It would be impossible to levy or collect taxes under this bill hereafter unless it is entirely remodeled.

Mr. SPENCER. I am inclined to think the Senator from Kansas is right about that, although the commissioners of the District say

not. They say this will be made a permanent act, but it does not seem so to me

Mr. WRIGHT. I will state to the Senator from Alabama and the Senator from Kansas that my object in offering the amendment is that there are other things in the bill than a mere tax law. The section provides:

That this act shall remain in force as the tax law of the District of Columbia \* \* until repealed.

The effect of that would be to have it discontinued as to everything else than the tax law after this year. If it is the intention to have it dropped as to everything except the tax law, then the section is all right as it stands.

Mr. SPENCER. That was not the intention. The intention was to have it a permanent act so as not to have to go through this thing every year. That was the object of the bill. I hope the amendment

every year. That was the object of the bill. I hope the amendment of the Senator from Iowa will be adopted.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Iowa to strike out the words "as the tax law of the District of Columbia."

The amendment was across to

the District of Columbia."

The amendment was agreed to.

Mr. SAULSBURY. I desire to call attention to a proviso at the end of section 5. Section 5 provides for the sale of real estate, and the parties have a period in which they may redeem the lands, and there is a saving clause in the proviso in favor of minors and other persons under legal disabilities. The provision is that they may redeem in one year after the disability is removed, but it requires them to pay 10 per cent. upon the purchase-money.

And also the value of improvements which may have been made or erected on such property by the purchaser or by the District of Columbia, while the same was in his, her, or their, or its possession.

In the first place I shall move to strike out the word "ten" wherever it occurs in the provise and insert "six," so that the minor shall not be charged more than 6 per cent. I shall also move in line 98 to strike out the words

And also the value of improvements which may have been made or erected on such property by the purchaser or by the District of Columbia, while the same was in his, her, or their, or its possession.

If that provision applies it is no saving at all to any minor or any person laboring under any disability. If they are required to pay 10 per cent, upon the purchase-money in order to redeem and then in addition to that to pay for the improvements which the purchaser may have seen proper to put upon it, he may go on and put improvements there for the very purpose of depriving the minor or person under disability of the ability to redeem. I am, therefore, opposed to encouraging any improvements upon such property by purchasers until after the disability shall have been removed and

purchasers until after the disability shall have been removed and when the time for redemption has passed.

My first amendment, therefore, is to strike out wherever it occurs the words "10 per cent." and insert "6 per cent.," and the other is the amendment which I have indicated, commencing in line 98.

Mr. SPENCER. This is the law as it stands now, but it is immaterial to me whether it is 10 per cent. or 6 per cent.

Mr. ALCORN. Ten per cent. I think is not too much in this case. Money is worth much more than 6 per cent. If you have but 6 per cent. running through the minority of a child, the guardian as a matter of course would let the property be sold. There is no compounding of the interest. Six per cent. for ten years would make it to the interest of the orphan that the property should be sold. The property is worth more than that. Money is worth all of 10 per cent. here or anywhere else in this country, and I am opposed to making it 6 per cent.

6 per cent.

The PRESIDENT pro tempore. The Secretary will report the amendment of the Senator from Delaware.

The CHIEF CLERK. In line 93 of section 5 it is proposed to strike out "10 per cent." and insert "6 per cent." in line 97, to strike out "10 per cent." and insert "6 per cent." and after the word "assessments," in line 98, to strike out the words:

And also the value of improvements which may have been made or erected on such property by the purchaser or by the District of Columbia while the same was in his, her, or their, or its possession.

The amendment was agreed to.

Mr. INGALLS. Upon further examination of this bill I am convinced that section 18 is radically wrong. The Senator from Alabama states that this bill is intended as a permanency for the taxation of subsequent years. I have already called the attention of the Senator to the fact that the words 1877 and 1878 occur repeatedly in connections where they cannot be ignored and which would render this

nections where they cannot be ignored and which would render this bill ineffectual and unavailing for subsequent years.

Mr. SPENCER. The Senator can move to strike out those years.

Mr. INGALLS. There is another difficulty, and that is that section 17 has been inserted, which provides for the advancement by the Government to the District of \$500,000 between the 1st day of July and the 1st day of November, 1877. If this is to be a permanent law and the reason are improved in the second section would him the second section. the years are immaterial, the seventeenth section would bind the Government to advance each year hereafter to the District of Columbia \$500,000 between the 1st day of July and the 1st day of January, irrespective of the revenue each year. Therefore, I am convinced that the section should be stricken out and that the last section should

That this act shall be in force from and after its passage.

I move to strike out section 18 and insert:

That this act shall be in force from and after its passage.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time.

Mr. CAMERON, of Pennsylvania. I ask for the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

Mr. McMILLAN. Mr. President, the principle incorporated into this bill by the adoption of the amendment exempting private incorporated educational institutions from taxation is one which I regard as so erroneous that I must withhold my vote from the bill and shall take occasion to vote against the passage of the bill for that

The question being taken by yeas and nays, resulted—yeas 29, nays 12; as follows:

YEAS—Messrs. Allison, Bailey, Barnum, Blaine, Bogy, Chaffee, Cooper, Cragin, Davis, Dawes, Dennis, Ferry, Goldthwaite, Gordon, Hereford, Hitchcock, Ingalls, Kelly, Kernan, McCreery, Maxey, Merrimon, Morrill, Norwood, Paddock, Ransom, Saulsbury, Spencer, and Wallace—29.

NAYS—Messrs. Alcorn, Booth, Bruce, Cameron of Pennsylvania, Clayton, Conover, Harvey, Logan, McMillan, Sargent, Teller, and Wright—12.

ABSENT—Messrs. Anthony, Bayard, Boutwell, Burnside, Cameron of Wisconsin, Christiancy, Cockrell, Conkling, Dorsey, Eaton, Edmunds, Frelinghuysen, Hamilton, Hamlin, Howe, Johnston, Jones of Florida, Jones of Nevada, McDonald, Mitchell, Morton, Oglesby, Pattgrson, Randolph, Robertson, Sharon, Sherman, Stevenson, Thurman, Wadleigh, West, Whyte, Windom, and Withers—34.

So the bill was passed.

#### ADDITIONAL PETITIONS.

Mr. RANSOM. I beg leave to present the petition of Theophilus H. Holmes, of North Carolina, praying for the removal of his political disabilities, and ask that it be referred to the Committee on the Judiciary. I cannot perform this duty, knowing as I do the great virtues and disinterested patriotism of this venerable man, without expressing the hope that that committee will promptly report a bill in accordance with his petition.

The PRESIDENT pro tempore. The petition will be referred to the Committee on the Judiciary.

Mr. ALCORN. I desire to present the petition of Frank Moore, of

The PRESIDENT pro tempore. The petition will be referred to the Committee on the Judiciary.

Mr. ALCORN. I desire to present the petition of Frank Moore, of Mississippi, late assistant internal-revenue assessor in the northern district of Mississippi, praying for relief, and I ask that it be referred to the Committee on Claims. I wish to make a remark in reference to this petition, and I would be glad to have the attention of the chairman of the Committee on Claims. In 1866, when the Government of the United States began to extend the collection of internal revenue in the Southern States, the Secretary of the Treasury was of opinion that no iron-clad oath, as it is called, was necessary in the premises, but instructed the internal-revenue collectors to permit their deputies to take the modified oath. They went forward and took the modified oath, and performed the service required; but after that time a point was raised that they could derive nothing for their services, nor receive any pay, because they could not take the oath prescribed by law. Here is a man who did work for the Government in 1866. He is a good man. He did his work in good faith. He has an account regularly made out here, and the Government have been chaffering with him for the last ten years because he could not take the iron-clad oath. I hope the committee will give careful consideration to the papers, and not keep this party waiting for his money because he cannot conform to an oath that for all practical purposes amounts to nothing at all.

The PRESIDENT was tempore. The petition will be referred to the amounts to nothing at all.

The PRESIDENT pro tempore. The petition will be referred to the

Committee on Claims.

### PACIFIC RAILROAD ACTS.

Mr. SARGENT. I move that the Senate take a recess until to-morrow morning at ten o'clock.

Mr. WRIGHT. Let the unfinished business be called up.

Mr. SARGENT. I withdraw the motion for that purpose.

The PRESIDENT pro tempore. The Chair will lay before the Senate the unfinished business.

ate the unfinished business.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of the said first-named act, the pending question being on the amendment of Mr. GORDON to strike out all after the enacting clause of the bill and in lien thereof to in-

pending question being on the amendment of Mr. Gordon to strike out all after the enacting clause of the bill and in lieu thereof to insert Senate bill No. 1134, reported from the Committee on Railroads.

Mr. ALLISON. I offer an amendment which I shall propose either to the original bill or to the substitute, and I ask that it be printed in the Record. I do not ask that it be read now. I may desire to modify one feature of the amendment after I have made some calculations with reference to the provision relating to the time when the bonds shall be paid.

The amendment was ordered to be printed in the Record as follows:

The amendment was ordered to be printed in the RECORD, as fol-

A bill to create a sinking fund for the liquidation of the Government bonds advanced to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and to the Union Pacific Railroad Company, under and in pursuance of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the acts amending the same or supplemental thereto, and for the settlement of the claims of the Government on account of said bonds.

and to secure to the Government the use of the same for pestal, military, and pellemental thereto, and for the settlement of the claims of the Government on account of said bonds.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembed. That for the purpose of liquidating the claims of the Government on account of the bonds advanced under the said act of July 1, 1802, and the acts amending the same or supplemental thereto, the Secretary of the Treasury of the United States is hereby authorized and directed to carry to the credit of the sinking fund for the Central Pacific Railroad Company, a corporation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the laws of the State of California, the successor by consolidation organized under the successor of the California of the mails, troops, munitions of war, supplies, and public stores for the Government under the acts aforesaid, up to and including the 1st day of December, 1876, which, if not amounting at said date to the sum of \$1.00,000 for each of said companies, shall be made up by the respect. The successor of the States of the California of the States of the States of the States of the California of the States of the States of the States of the California of the States of the States of the State

Mr. SARGENT. I renew my motion.

The PRESIDENT pro tempore. The Senator from California moves that the Senate take a recess until to-morrow at ten o'clock.

The motion was agreed to; and (at five o'clock p. m.) the Senate took a recess until to-morrow, Friday, February 16, at ten o'clock a. m.

## HOUSE OF REPRESENTATIVES.

# THURSDAY, February 15, 1877.

The House re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

# PLEASURE YACHT MOHAWK.

Mr. BLOUNT obtained the floor and said: I rise to move that the House again resolve itself into the Committee of the Whole upon the naval appropriation bill, but am willing to yield to gentlemen who wish to submit requests for unanimous consent, to be disposed of without debate.

Mr. WHITEHOUSE, by unanimous consent, introduced a bill (H. R. No. 4658) changing the name of the pleasure yacht Mohawk to Queen; which was read a first and second time, referred to the Committee on Commerce, with leave to report at any time, and ordered to be printed.

## CHINESE IMMIGRATION.

Mr. PIPER. I ask unanimous consent that the concurrent resolution of the Senate for printing additional copies of the report of the special committee on Chinese Immigration be taken up for consider-

There was no objection; and the resolution was read, as follows:

Resolved by the Senate, (the House of Representatives concurring,) That there be printed 5,000 additional copies of the report of the joint special committee on Chinese immigration, with accompanying testimony, of which 1.500 copies shall be for the use of the Senate and 3,500 for the use of the House of Representatives.

The resolution was concurred in.

Mr. PIPER moved to reconsider the vote by which the resolution was concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### EXPLORATION OF MEXICAN FRONTIER.

Mr. MACKEY, by unanimous consent, introduced (by request) a joint resolution (H. R. No. 191) authorizing the establishment of a commission for the scientific exploration of the northern states of Mexico and the territory of the United States adjoining the same; which was read a first and second time, referred to the Committee on Foreign Affairs, and ordered to be printed.

#### JOHN CLINTON.

Mr. BRADLEY, by unanimous consent, reported from the Committee of Claims, as a substitute for House bill No. 59, a bill (H. R. No. 4659) for the relief of John Clinton, postmaster at Brownsville, Tennessee; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

## PENSION BILLS REFERRED.

Mr. RUSK. I ask unanimous consent that several pension bills from the Senate which are now on the Speaker's table may be taken up and referred to the Committee on Pensions, for the reason that the committee will have a meeting to-morrow, and as there will be a night session of the House next week for the consideration of such bills it is necessary that these should be considered in time to be acted

There being no objection, bills of the following titles were taken from the Speaker's table, read a first and second time, and referred to the Committee on Invalid Pensions, not to be brought back on a

motion to reconsider:

A bill (S. No. 36) amending the pension laws so as to remove the disability of those who, having participated in the rebellion, have since its termination enlisted in the Army of the United States and

become disabled;
A bill (S. No. 1118) granting a pension to Mrs Amy King; and
A bill (S. No. 1143) for the relief of the legal heirs of Ann Lynch.

### GEORGE W. CITY.

Mr. O'BRIEN. I ask unanimous consent to introduce a bill (H. R. No. 4660) to remove the political disabilities of George W. City, of Portsmouth, Virginia, and to have it put on its passage at this time. The bill, which was read, provides (two-thirds of each House concurring therein) for the removal of all political disabilities imposed upon George W. City, of Portsmouth, Virginia, by the fourteenth amendment to the Constitution of the United States by reason of participation in the sphellion. participation in the rebellion.

Mr. WILSON, of Iowa. Is there a petition accompanying the bill?

Mr. O'BRIEN. There is.

The Clerk read as follows:

Petition of George W. City, of Portsmouth, Virginia, late assistant engineer United States Navy, for removal of political disabilities.

The petitioner would respectfully state he held a commission prior to 1861 as first assistant engineer in the United States Navy and afterward entered the service of the Confederate States. He prays his political disabilities may be removed by act of Congress.

GEORGE W. CITY.

There was no objection, and the bill was read a first and second time, ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed, two-thirds

oncurring therein.

Mr. O'BRIEN moved to reconsider the vote by which the bill was passed; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

# FREDERICK HENKLE.

Mr. MONROE. I ask unanimous consent to report from the Committee on Foreign Affairs, with the unanimous recommendation of that committee, a bill (H. R. No. 4661) to absolve Frederick Henkle from his allegiance as a citizen of the United States of America, and to put the bill on its passage at this time. I can explain the reason for it in a moment.

The bill, which was read, provides that whereas Frederick Henkle, a native of Germany and a naturalized citizen of the United States, having accepted office in the civil service of the German Empire and desiring to remain in such service and renounce his American citizen-

ship, and having petitioned that his naturalization as such citizen be abrogated, therefore it is enacted that the declaration of intention of said Frederick Henkle to become a citizen of the United States of America and his naturalization as such citizen in all their incidents and effect are abrogated and declared to be of no effect, and he is absolved from his allegiance as such citizen.

Mr. MONROE. I can explain in a moment the object of this bill.

Mr. HOLMAN. O, no; let it go.

Mr. MONROE. Very well; if there is no objection to it, I ask that it be put on its pressure.

it be put on its passage.

The bill was read a first and second time, ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. MONROE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the the table.

The latter motion was agreed to.

#### APPOINTMENT OF SAIL-MAKERS IN UNITED STATES NAVY.

Mr. ROBBINS, of Pennsylvania. I ask, Mr. Speaker, on the part of the Committee on Naval Affairs, unanimous consent to discharge the Committee of the Whole on the state of the Union from the fur-ther consideration of the bill (H. R. No. 4300) to regulate the appoint-ment of sail-makers in the United States Navy, and that it be put

upon its passage at this time.

The bill, which was read, provides that no civilian or other person not belonging to the Navy shall be appointed to take charge of or superintend the sail-makers' department of any of the navy-yards, but said appointment shall be made from the sail-makers who are in

the Navy.

Mr. HOLMAN. I suppose there is no objection to that bill?

Mr. CONGER. Yes; I object to it for the reason that there are many sail-makers who would like employment.

The SPEAKER. The gentleman can object without giving his

Mr. CONGER. I object, and do give my reason.

#### ENROLLED BILL.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, re-ported that they had examined and found truly enrolled an act (S. No. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, and for other purposes; when the Speaker signed the same.

## THOMAS LUCAS.

Mr. BUCKNER, by unanimous consent, introduced a bill (H. R. No. 4662) for the relief of Thomas Lucas; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

# COMMERCE AND NAVIGATION.

Mr. DUNNELL, by unanimous consent, introduced a bill (H. R. No. 4663) to amend section 4220 of chapter 3, title 48, Revised Statutes of the United States, entitled "Regulation of commerce and navigation;" which was read a first and second time, referred to the Committee on Commerce, and ordered to be printed.

### IOWA RAILROAD GRANT.

Mr. OLIVER. Mr. Speaker, I move by unanimous consent to take from the Speaker's table the bill (H. R. No. 4168) to amend section 1 of the act of May 12, 1864, for a grant of lands to the State of Iowa to aid in the construction of a railroad in said State, returned from the Senate with an amendment, and to move non-concurrence in said amendment, and to ask for a committee of conference on the disagreeing votes of the two Houses.

Mr. FOSTER. I object.

The SPEAKER. The bill is not before the House.

### JOSEPH E. JOHNSTON.

Mr. BROWN, of Kentucky. Mr. Speaker, I move by unanimous consent to take from the Speaker's table Senate bill S. No. 1251, for the removal of the political disabilities of Joseph E. Johnston, in order that it may be put upon its passage at this time.

There was no objection, and the bill was read a first and second

The bill, which was read, provides for the removal of the political disabilities imposed by the fourteenth amendment of the Constitution of the United States upon Joseph E. Johnston, of Virginia.

Mr. WILSON, of Iowa. Is there a petition?

Mr. BROWN, of Kentucky. There is.

The bill was ordered to a third reading; and it was accordingly read the third time and passed, two-thirds concurring therein.

# SETTLERS ON THE PUBLIC LANDS.

On motion of Mr. CROUNSE, by unanimous consent, the bill (S. No. 1163) for the relief of settlers on the public lands under the pre-emption laws was taken from the Speaker's table, read a first and second time, and referred to the Committee on Public Lands.

### AMANDA M. SMYTH.

Mr. MacDOUGALL, by unanimous consent, from the Committee on Military Affairs, reported back the bill (H. R. No. 1862) for the relie of Amanda M. Smyth, widow of the late Brevet Major-General

Thomas A. Smyth, and moved that the committee be discharged from the further consideration of the same, and that it be referred to the Committee on Invalid Pensions.

The motion was agreed to.

Mr. MacDOUGALL moved to reconsider the vote by which the bill was referred to the Committee on Invalid Pensions; and also moved that the motion to reconsider be laid on the lable.

The latter motion was agreed to.

#### ADOLPH VON HAACKE.

Mr. MacDOUGALL. I am also instructed by the Committee on Military Affairs to report back with an amendment the bill (H. R. No. 586) for the relief of Adolph von Haacke and to ask that the bill be now put upon its passage.

Mr. HOLMAN. After that I will call for the regular order.

The SPEAKER. The bill will be read, after which objections, if

any, will be in order.

The bill was read. It directs the Secretary of the Treasury to pay, out of any money in the Treasury of the United States not otherwise appropriated, to Adolph von Haacke the full pay and emoluments of a major, from the 8th day of August, 1863, to the 1st day of March,

The amendment reported by the committee was read, as follows: Add at the end of the bill these words: "Less whatever pay he may have received as captain or other subordinate officer."

The amendment was agreed to.

Mr. HOLMAN. I ask that the bill be again read as now amended.

The bill, as amended, was read.

Mr. HOLMAN. I wish to inquire from what committee this bill

The SPEAKER. From the Committee on Military Affairs.

Mr. MacDOUGALL. If the gentleman from Indiana desires it, the report is here and can be read.

Mr. HOLMAN. I do not think this is a time to legislate in this way. I had supposed that these bills were being introduced for refer-

The SPEAKER. The Chair stated that the bill could be read for information, after which objections, if any, to its consideration would be in order. The bill was read and there was no objection to its con-

Mr. HOLMAN. I am aware of that.
Mr. MacDougall. I think if the gentleman will hear the report read he will not object to the bill.
Mr. HOLMAN. I know that I have no right to object now.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. MacDOUGALL moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# HASTINGS AND DAKOTA RAILROAD.

Mr. STRAIT, by unanimous consent, introduced a bill (H. R. No. 4664) extending the time for the completion of the unfinished line of railroad of the Hastings and Dakota Railroad Company; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

Mr. HOLMAN. Not to be brought back on a motion to reconsider. The SPEAKER. No bill introduced and referred by unanimous

consent can be brought back by a motion to reconsider.

# E. M. WILLIAMS.

Mr. MILLIKEN, by unanimous consent, introduced a bill (H. R. No. 4665) for the relief of E. M. Williams; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

# SAINT LOUIS IRON MOUNTAIN BANK.

Mr. KEHR, by unanimous consent, introduced a bill (H. R. No. 4666) for the relief of the Iron Mountain Banking Association of Saint Louis, Missouri; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

### ADDITIONAL MESSENGERS, ETC.

Mr. ROBERTS. I am directed by the Committee of Accounts to report the resolution which I send to the desk.
The Clerk read as follows:

Resolved. That the Doorkeeper of the House be, and he is bereby, authorized to employ the following additional force, to wit: six messengers, three laborers, six pages, at the usual compensation, which shall commence from the date of their employment: Provided, They shall have respectively taken the oath of office prescribed by law: And provided further, That their term of service shall expire with

Mr. ROBERTS. I ask for the present consideration of this resolu-

tion.

Mr. HOLMAN. I desire to inquire of the Chair if this is a priv-

ileged report?

The SPEAKER. The Chair would rule that is not a report privileged at this time. If objected to, it cannot now be entertained.

Mr. HOLMAN. I object.

#### JOHN E. CATLETT.

On motion of Mr. PHILIPS, of Missouri, by unanimous consent, the bill (S. No. 807) for the relief of John E. Catlett, of Hannibal, Missouri, was taken from the Speaker's table, read a first and second time, and referred to the Committee of Claims.

Mr. PHILIPS, of Misseuri, moved to reconsider the vote by which the bill was referred to the Committee of Claims; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## DONATION OF CONDEMNED ORDNANCE.

Mr. JOHN REILLY, by unanimous consent, from the Committee on Military Affairs, reported back, with an adverse recommendation, the bill (H. R. No. 4487) donating condemned ordnance to Post No. 1, Grand Army of the Republic, New Bedford, Massachusetts; and the same was laid on the table, and the accompanying report ordered to be printed.

#### ALBERT H. PFEIFFER.

Mr. JOHN REILLY also, by unanimous consent, from the Committee on Military Affairs, reported back, with an adverse recommenda-tion, the bill (H. R. No. 2787) for the relief of Albert H. Pfeiffer, of Colorado Territory; and the same was laid on the table, and the ac-companying report ordered to be printed.

## LAKE GEORGE (FLORIDA) SHIP-CANAL.

Mr. JONES, of Kentucky. I ask unanimous consent to report back from the Committee on Railways and Canals, for present consideration, the bill (H. R. No. 4456) to authorize William A. Dorner and others to construct a ship-canal at the head of Lake George, Florida. It will take but a few minutes to dispose of the bill.

Mr. BLOUNT. I will object if it is likely to give rise to any de-

Mr. JONES, of Kentucky. I think it need not occupy more than two or three minutes.

The SPEAKER. The bill will be read for information, after which

objections, if any, will be in order.

Mr. CONGER. I object to the consideration of that bill.

The SPEAKER. Objection being made, the bill is not before the

I ask unanimous consent to take from the Speaker's table, for consideration at this time, the bill (H. R. No. 859) for the benefit of Andrew Williams, of Weakley County, Tennessee, and that it be passed, with the amendment of the Senate thereto.

The amendment of the Senate is as follows:

Provided. That such land-warrants shall not be issued to the said Andrew Williams until the patents issued to B. R. McNabb shall be returned to and canceled by the Commissioner of the General Land Office, and that fact be certified by him to the Commissioner of Pensions.

There being no objection, the bill, as amended, was passed.

Mr. BOONE moved to reconsider the vote by which the bill and the amendments of the Senate were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## HEIRS OF FRANCIS GRAHAM.

Mr. EDEN, from the Committee on War Claims, by unanimous consent, moved that the committee be discharged from the further consideration of the bill (H. R. No. 4542) for the relief of the legal representatives of Francis Graham, and that the same be referred to the Committee on Invalid Pensions.

No objection being made, the motion was access?

No objection being made, the motion was agreed to.

Mr. McFARLAND. I ask unanimous consent that the Senate bill No. 805, relating to indemnity school selections in the State of California, be taken from the Speaker's table and put upon its passage at this time.

The bill was read, as follows:

The bill was read, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the title to the lands certified to the State of California, known as indemnity school selections, which lands were selected in lieu of sixteenth and thirty-sixth sections, lying within Mexican grants, of which grants the final survey had not been made at the date of such selection by said State, is hereby confirmed to said State and its vendees, in lieu of the sixteenth and thirty-sixth sections, for which the selections were made.

Sec. 2. That where indemnity school selections have been made and certified to said State, and said selection shall fail by reason of the land in lieu of which they were taken not being included within such final survey of a Mexican grant, or are otherwise defective or invalid, the same are hereby confirmed, and the sixteenth or thirty-sixth section in lieu of which the selection was made shall, upon being excluded from such final survey, be disposed of as other public lands of the United States: Provided, That if there be no such sixteenth or thirty-sixth section, and the land certified therefor shall be held by an innocent purchaser for a valuable consideration, such purchaser shall be allowed to prove such facts before the proper land office, and shall be allowed to purchase the same at \$1.25 per acre, not to exceed three hundred and twenty acres for any one person: Provided, That if such person shall neglect or refuse, after knowledge of such facts, to furnish such proof and make payment for such land, it shall be subject to the general land laws of the United States.

Sec. 3. That the foregoing confirmation shall not extend to the land settled upon by any actual settler claiming the right to enter not exceeding the preservibed legal quantity under the homestead or pre-emption laws: Provided, That such settlement was made in good faith upon lands not occupied by the settlement or improvement of any other person, and prior to the da

SEC. 4. That this act shall not apply to any mineral lands, nor to any lands in the city and county of San Francisco, nor to any incorporated city or town, nor to any tide, swamp, or overflowed lands.

Mr. WILSON, of Iowa. I object; it ought to come up on the regular order

Mr. HOLMAN. Before unanimous consent is given I wish to in-quire from what committee this bill comes? And I wish to reserve the point of order.

Mr. McFARLAND. This is a Senate bill from the Committee on Public Lands. They have considered it and instructed me to report it and to move that it be adopted in lieu of the bill (H. R. No. 3364) referred to the Committee on Public Lands at the last session.

The committee have fully considered the matter and have come to the conclusion that the Senate bill covers all the grounds contemplated by the original bill (H. R. No. 3364) which was introduced at the last session and referred to the Committee on Public Lands. Since that time Senate bill No. 805 has been passed, and all I ask now is that the bill have agent as it was a table.

since that time Senate bill No. SUo has been passed, and all I ask now is that the bill be passed as it now stands.

Mr. HOLMAN. This is the same bill that was passed then?

Mr. McFARLAND. Yes, sir.

There being no objection, the bill was passed.

Mr. McFARLAND moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

SECTION 29 OF THE REVISED STATUTES.

Mr. HARRISON, by unanimous consent, introduced a bill (H. R. No. 4667) to amend section 29 of chapter 255 of the United States Statutesat-Large

Mr. HARRISON. I move that the bill be referred to the Committee

of Ways and Means.

Mr. DURHAM. I suggest that it be referred to the Committee on the Judiciary. As it changes existing law I think it should properly be referred to that committee.

The SPEAKER. The Chair thinks the proper reference of this bill would be to the Committee on the Judiciary.

It was so ordered.

Mr. ROBERTS, by unanimous consent, offered the following reso-

Resolved, That the Committee on the Post-Office and Post-Roads be, and they are hereby, instructed to inquire into any irregularities, abuses, or frauds that may exist in the letting of mail contracts or the execution of existing laws relating to such lettings, or contracts based thereon, with a view to ascertaining what change or reformation can be made, so as to promote integrity, economy, and efficiency; and further, that the said committee be, and they are hereby, authorized to send for persons and papers and report by bill or otherwise.

Mr. CANNON. I object to that resolution, as this is a matter which has been investigated to death for the last few years.

Mr. BLOUNT. I move that the House resolve itself into—

Mr. LANE. I hope the gentleman will withdraw his motion, as I Mr. LANE. I nope the gentleman will withdraw his motion, as I desire to move to take from the Speaker's table and put upon its passage the bill (S. No. 859) for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850.

The SPEAKER. The gentleman is too late.

Mr. BLOUNT. I yield to the gentleman from Oregon for a moment.

Mr. LANE. I ask that the bill be read.

The Clerk read the bill, as follows:

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims of such persons who were duly qualified thereto and made bona fide settlements upon lands in the State of Oregon and Washington Territory under the provisions of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," and the legislation supplemental thereto, which have been included, in whole or in part, within the limits of any reservation made by the United States for military purposes subsequent to the date of such settlement and prior to the completion of the period of residence and cultivation required by said act, which reservation has been, or may hereafter be, declared abandoned by the Secretary of War as no longer necessary to the United States for military or other purposes, shall be adjudicated and patented the same as other donation claims arising under said act and supplemental legislation, as though such reservation had never been made: Provided, however. That no claim of any settler coming within the purview of this act shall be validated or confirmed the value of whose improvements, at the time such reservation was made by the United States, has been ascertained and paid for by the Secretary of War, as required by the aforesaid act of September 27, 1850, and the legislation supplemental thereto.

Mr. HOLMAN. This is a matter which it seems to me ought not to

Mr. HOLMAN. This is a matter which it seems to me ought not to pass without some explanation. I ask that the gentleman from Oregon have a reasonable time wherein to explain this matter.

Mr. LANE. I will state to the gentleman from Indiana that this bill has been reported from the Committee on Public Lands of the Senate. I would ask that the report of the Senate be read, which I think would develop all I can say in the premises relating to the bill.

Mr. HOLMAN. It now comes from the Committee on Public Lands of the House?

of the House?

Mr. LANE. It has never been referred.
Mr. HOLMAN. Has it ever been before the committee?

Mr. LANE. No, sir. I am informed that it has received the unanimous approval of the Committee on Public Lands of the Senate and passed that body without any objection whatever, and I trust the gentleman from Indiana will do me the kindness to withdraw any objection whatever is the committee of the committee.

tion he may have to the bill.

Mr. HOLMAN. I see the chairman of the committee [Mr. SAYLER] is present, and perhaps he is more familiar with the facts of this bill,

and I would like him to explain it, as I think it ought to be very carefully considered.

The SPEAKER. The Chair will cause the report to be read, and will reserve the point of order raised by the gentleman from Indiana, [Mr. HOLMAN.

The Clerk read the report, as follows:

The Clerk read the report, as follows:

The Committee on Public Lands, to whom was referred the bill (S. No. 859) for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850, report as follows:

The fourteenth section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to the settlers of the said public lands," authorized the President of the United States to reserve from the operation of said act such portions of the public lands as he might deem necessary for forts, magazines, arsenals, dock-yards, and other needful uses. That section contains this provise:

"Provided, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto out of any money not otherwise appropriated."

Under this law the military officers of the United States, under authority of the President, made quite a number of reservations, including in several instances portions of the claims of settlers upon which improvements had been made before the passage of the act of Congress. Some of these reservations were made merely with the view that possibly they might be needed for military purposes, but were never occupied as such, and were soon afterward abandoned by the military authorities as unsuitable and unnecessary. The Secretary of War never caused the value of the improvements of the settler to be made, as provided by the law, and no compensation was ever made to him. In some such instances, whereno compensation was made to the settler for his improvements, he continued to reside upon and cultivate the land as required by the act of Congress, until the t

The subjoined letter from the Commissioner of the General Land Office is in conformity with these views:

Sir: In reply to your note of yesterday, accompanied by Senate bill No. 859, Forty-fourth Congress, first session, for the relief of cetrain claimants under the donation land law of Oregon, approved September 27, 1850, and asking to be advised whether said bill meets the views of this office, I have the honor to state that said bill fully accords with the views of this office; and I would respectfully recommend its passage.

Very respectfully, your obedient servant,

J. A. WILLIAMSON, Commissio

Hon. NEWTON BOOTH, United States Senate.

The committee recommend the passage of the bill.

Mr. HOLMAN. With this statement of facts I make no further

objection to the passage of the bill.

Mr. SAYLER. I will say that this bill has not been before the Committee on Public Lands, and I know nothing about it except from the statement of the gentleman from Oregon [Mr. Lane] and the report which has been made, and certainly from these statements and the letter of the Commissioner of the Land Office I think the bill ought to be passed and that this property should go to these parties.

The question was taken upon the passage of the bill, and it was

passed.

Mr. LANE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

## NAVAL APPROPRIATION BILL.

Mr. BLOUNT. I move that the rules be suspended and the House now resolve itself into Committee of the Whole for the further consideration of the naval appropriation bill.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole and resumed the consideration of the bill (H. R. No. 4616) making ap-

and resumed the consideration of the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes, Mr. Mills in the chair.

The CHAIRMAN. The pending question when the committee rose was upon the appeal from the decision of the Chair in relation to the amendment of the gentleman from Tennessee, [Mr. Whitthorne.]

Mr. O'BRIEN. I called for a further count upon sustaining the decision of the Chair. I will withdraw the call.

The CHAIRMAN. No further call being made, the decision of the Chair is sustained, and the pending question is upon the amendment moved by the gentleman from Tennessee, [Mr. Whitthorne.]

Mr. HOLMAN. I move to amend the amendment by adding to it the following:

the following:

And no expense shall be incurred by the United States on account of said com-mission except the regular and current salaries of the persons employed on the commission.

Mr. WHITTHORNE. I accept the amendment.
The CHAIRMAN. Then the question is upon the amendment as

Mr. O'BRIEN. I move as a substitute for the amendment as modified that which I send to the Clerk's desk.

The Clerk read as follows:

The Clerk read as follows:

That a commission be created, in the manner hereinafter provided, whose duty it shall be to examine and inquire into the present condition of the Navy of the United States, as to its personnel and materiel, and into the laws and usages now governing the naval service; to consider the relation of the commercial to the national marine; what active floating naval force, including the type and class of vessels, their armament and equipment, should be maintained in time of peace, and what should be kept in readiness for actual service in event of sudden war; what number and kind of vessels should be constructed annually to make up for decay, destruction, and casualty; what changes are required in naval architecture, in ordnance, in armor, and in the instruments of defensive warfare by the advance of naval science; how the Government can obtain the best designs and models of the same; and especially to consider what measures are necessary to protect and extend our rapidly growing commerce on the Pacific Ocean and in Asiatic waters; and to report to Congress, through the President, during the month of January, 1878, or as soon thereafter as practicable, the results of their investigation, recommending such legislation as they may deem requisite to bring the Navy up to the highest standard of effectiveness consistent with wise economy.

That the said commission shall consist of two Senators, to be designated by the President of the Senate, and three members of the House of Representatives, to be designated by the Speaker of the House of Representatives, such as and Representatives being such as will be also members of the Forty-fifth Congress; and four officers of the Navy, to be designated by the President, two of whom shall be officers of the line, not below the rank of captain, who may be selected either from the active or retired list of the Navy; is hereby directed and empowered to furnish the commission with all facilities within his control for the convenient prosecution of their labo

Mr. CLYMER. I desire to reserve all points of order on this sub-

Mr. O'BRIEN. I will make but a brief explanation of the substithe I have offered for the amendment of the gentleman from Tennessee, [Mr. Whitthorne.] Substantially my substitute is the same as the original amendment. I will state that I am opposed to the original amendment, but if it is to be adopted I desire to have it mod-

ified as I propose by my substitute.

The first difference between the substitute and the original amendment is this: I strike out of the amendment the words "of nine members" in the first section. The second difference, and the only important one, is that I omit from the commission the General of the Army. I do not see the propriety of making the General of the Army one of this commission, if it is to be appointed; for he has nothing to do with naval affairs, and I take it for granted that he knows very

to do with naval affairs, and I take it for granted that he knows very little about them. When a military commission was provided for last year in the Army appropriation bill, it was not proposed to name the Admiral of the Navy as one of that commission.

A further difference is, that instead of two officers of the Navy I propose that there shall be four officers of the Navy upon this commission. That will make the commission consist of nine members, of whom four will be officers of the Navy, two of the line and two of the staff, to be selected from the retired or the active list of the Navy see the President may deem proper. as the President may deem proper.

Mr. BLOUNT. If the gentleman will permit me I desire to call his attention to the fact that the amendment offered by the gentleman from Tennessee [Mr. Whithere on Naval Affairs after a full and careful examination of the whole

Mr. O'BRIEN. Mr. O'BRIEN. I understand that perfectly. I understand further also that the chief information which the Naval Committee obtained upon this subject, the strongest appeal made to them, and the best report given of the whole matter, were given by just such officers as those which I propose shall be placed upon this commission in lieu of the officers of the line that are provided for by the amendment of the gentleman from Tennessee.

have also included in my amendment the provisions suggested by the gentleman from Indiana, [Mr. HOLMAN,] and therefore my amendment is not liable to any objection that would not properly obtain against the original amendment. I will say again that the main difference between the two propositions is that I leave off the commission the General of the Army, but place upon it four officers of the Navy instead of two, two of those officers to be from the staff and two from the line, and all of them to be selected at the discr-tion of the President, either from the active or the retired list of the

Navy.
Mr. WHITTHORNE. The amendment submitted by myself was an amendment that was suggested by the Committee on Naval Affairs of this House, whose organ I am upon this occasion. We sought fairs of this Honse, whose organ I am upon this occasion. We sought to avoid if possible the very question now thrust upon the House by the amendment of the gentleman from Maryland, [Mr. O'BRIEN.] Any one at all familiar with the internal administration of the Navy must know that one of the existing evils in that service is this war between officers of the line and of the staff. We have sought to avoid that altogether in our amendment, and leave it discretionary with

that altogether in our amendment, and leave it discretionary with the President of the United States as to whom he shall appoint.

I am free to admit, as an individual, that I trust the President of the United States, if he shall ever be charged with the performance of this duty, will appoint those officers of the Navy who have its honor and interest at heart, and who have such a bright comprehension of the difficulties which now surround it, the difficulties in the way of its progress, that, not being tied down by any previously conceived ideas, they will look only to the interest of the Navy and the

honor of the country. With simply this idea in view the committee sought to avoid this difficulty, and I trust the House will not adopt the amendment of the gentleman from Maryland.

Mr. RIDDLE. Will my colleague permit me to ask him what is the object of having the General of the Army a member of this com-

mission '

Mr. WHITTHORNE. I thank my colleague for asking me that question. It has been asked outside. The General of the Army is an educated gentleman, familiar with the military wants of the United States. A proper naval policy, as every gentleman must see, necessarily takes into consideration the proper coast defense of the country. In the progress of naval science, it has been maintained that monitors hereafter shall be our fortresses for that purpose. It was thought proper by the Naval Committee that, in considering this question in all its relations, the military mind, standing more or less independent between the civil mind as represented in the House and the Senate and the naval mind as represented by the naval officers upon this commission, should stand equally poised to pass judgment upon suggestions that may come before this commission.

Mr. CONGER. I move pro forma to amend by striking out the last ord. The amendment offered by the gentleman from Maryland [Mr. O'Brien] seems to me an improvement upon the amendment of the gentleman from Tennessee, which I have opposed. If such an amendment is to be adopted, I certainly think it desirable that there should be upon this commission a sufficient number of persons thoroughly familiar with the naval service; and I think it especially important that the commission should embrace representatives of one or two or more of those important bureaus for and through which largest portion of our naval appropriations is expended. advice and counsel of practical men, including the Admiral of the Navy, should be called in to the assistance of legislation, for the information of the House and the country. I should have had no objection to the proposition at all, had it confined this commission entirely to men from the naval service. I think it should have been so confined. I can see no reason why two Senators should be put upon it. I can see no reason (unless we admit the inferiority of members of this House to Senators) why we should have three members of the House to balance the two Senators. But the gentleman from Tennessee perhaps has his own estimate of the relative importance of these two classes of public officers, and thinks three to two a fair proportion in ability, in power of judgment, and in capacity for obtaining information. taining information.

Inasmuch as this amendment of the gentleman from Maryland not only provides a larger representation from the naval service, but spec-ifies that at least two of these officers shall be from those important bureaus for which much of the money appropriated is expended, I submit that this is a desirable amendment, and ought to be adopted.

[Here the hammer fell.]
Mr. CONGER. I withdraw the proforma amendment.
The question being taken on the amendment of Mr. O'BRIEN, it as not agreed to; there being—ayes 25, noes 65.
The question then recurred on the amendment of Mr. WHITTHORNE.
Mr. FOSTER. I move to amend the amendment by adding the following:

And the sum of \$10,000, or so much thereof as may be necessary, is hereby appropriated to pay the expenses of the commission herein provided for.

Mr. HOLMAN. That proposition is subject to a point of order, I believe. I reserve all points of order.

The CHAIRMAN. The Chair presumes that the gentleman from Ohio [Mr. FOSTER.] is about to discuss the point of order.

Mr. FOSTER. Mr. Chairman, I expected to hear the clarion voice of the chairman of the Committee on Appropriations [Mr. HOLMAN] raised against the proposition to create this commission. But I want to call him on with the proposition to create this commission. to ask him or any other member whether it can be supposed possible to carry out the objects of this commission without the expenditure of some money. It is a fraud upon the House to attempt to say so. My friend from Indiana has on other occasions opposed the creation of such commissions, and has lectured us upon the bane of the present times, the creation of new offices. Hence I had expected to hear him rise and oppose this proposition. I think it is right; but my friend will agree with me that, if the provision is to have any force, an appropriation to carry it out is necessary. The gentleman from Indiana will not be here in the next House (and I may say I regret it) to favor a deficiency appropriation to carry out the objects of this commission. I say it is no more than honest, it is no more than fair to make

to-day the necessary appropriation for carrying out these objects.

Mr. HOLMAN. My friend from Ohio [Mr. FOSTER] was not here last evening, so that he is not fully informed as to the history of this It was the express stipulation that no expense should be incurred by the United States from the creation of the commission.

Hence it is at least a perfectly innocent measure.

Mr. FOSTER. It certainly will be "perfectly innocent" if no appropriation is to be made.

Mr. HOLMAN. It goes through this House, if it goes through at all, with an express and positive understanding, not only on the part of every gentleman present but upon the face of the record, that these patriotic gentlemen, members of the House and Senate and officers of the Government, are to perform their duty on this commission without any compensation whatever beyond that which they would

receive as members of Congress and as officers of the Government in

Mr. FOSTER. Are they to pay their own traveling expenses?

Mr. HOLMAN. The United States Government is to incur no expense. My friend thinks it impossible that members of Congress and public officers should rise to the attitude of performing these official duties without increased compensation. He ignores this gratifying instance of pure patriotism in which gentlemen are willing, without extra compensation, to devote days and weeks to labors beyond those extra compensation, to devote days and weeks to labors beyond those required by the law or by virtue of their respective positions under the Government. And I submit to my friend that it is ungracious on his part, inasmuch as they are willing to perform this service gratuitously, to try to defeat this measure indirectly, as he seems to do by this amendment, in declaring this commission will be a drain upon the Treasury. I regard this commission in its present form simply and entirely innocent. I never saw any good come from any of these commissions, but as this is to cost nothing I do not object to it.

Mr. FOSTER. It is innocent in this respect, for if there is no ap-

propriation nothing can be done.

Mr. HOLMAN. I never saw any of these commissions produce any good, but inasmuch as this is to cost nothing I hope some good will result from it and therefore do not object to it as it now stands. I do insist on my point of order against the amendment of the gentleman from Ohio.

Mr. FOSTER. Does the gentleman really think that it will cost

Mr. HOLMAN. Yes; or otherwise I should vote against it.
Mr. FOSTER. I hope the gentleman will be one of the members of the commission.

Mr. BEEBE. Is debate exhausted?

The CHAIRMAN. It is,
Mr. DANFORD. I wish to inquire of the chairman of the Committee on Appropriations whether now, within two weeks of the close of the session, in the present condition of our appropriation bills, it is not bad policy to ingraft upon one of them this legislation?

#### MESSAGE FROM THE SENATE.

The committee informally rose, and a message from the Senate, by Mr. Sympson, one of its clerks, announced concurrence in the amendment of the House to the bill (H. R. No. 234) to allow a pension of

\$37 per month to soldiers who have lost both an arm and a leg.

It further announced concurrence in the amendments of the House to the bill (S. No. 993) for the relief of Admiral Charles Wilkes.

It further announced the passage of a concurrent resolution that the monetary commission created by the joint resolution of August 15, 1876, be allowed until the 24th of February, 1877, to submit their report; in which concurrence was requested.

It further announced the passage, without amendment, of an act (H.

R. No. 7) to provide for the sale of exchange of a certain piece of land in the Wallabout Bay, in the State of New York, to the city of Brook-

lyn.

It further announced the passage of a bill (8. No. 1238) making appropriation for the expenses of the electoral commission; in which concurrence was requested.

## NAVAL APPROPRIATION BILL.

The committee resumed its session.

Mr. BEEBE. Is it in order to submit an amendment?

The CHAIRMAN. It would be an amendment in the third degree,

and not admissible.

Mr. BEEBE. I understand debate on the amendment of the gentleman from Ohio has been exhausted.

The CHAIRMAN. It has.

The CHAIRMAN. It has.

Mr. HOLMAN. There is a question of order pending on the amendment of the gentleman from Ohio.

The CHAIRMAN. I understood the point of order was withdrawn. Mr. HOLMAN. Not at all.

The CHAIRMAN. The Chair expected the gentleman from Indiana would raise the point of order.

Mr. HOLMAN. So I did, and insist on it.

The CHAIRMAN. The Chair sustains the point of order and rules the amendment out.

the amendment out.

Mr. BEEBE. I move to strike out the last word; I do not know what it is and it does not matter for my present purpose, as I wish to

speak to the main question.

I rise for the purpose, Mr. Chairman, of stating, although I have not been long a member of the House of Representatives, yet I have served long enough to know the gentleman from Indiana [Mr. HOLMAN] is leading us into a class of legislation which has proved to be the most dangerous of any resorted to in this body. I recollect when the Centennial proposition came before the House that by the action of the gentleman from Indiana, or some other gentleman equally zealous in guarding the public Treasury, it was provided the governor of the State of Pennsylvania should certify to the President that no expense should be involved, nothing which could by any possibility come from the Treasury of the United States, and I have, although serving only last year and this in this body, seen that it has already cost this Government a million and a half of dollars.

mission whatever convenience it may require, it will cost this country something, and next year the story will be necessary that to vintry something, and next year the story will be necessary that to vindicate the honor of the country we must pay the expenses incurred in other nations. Sir, it is better to put the expenditure at some amount; it is better to limit it some way, and say to the gentlemen who shall comprise this commission they shall not expend beyond a certain sum of money, and then if they do it they will come here without a particle of excuse. But if you pass this proposition as it is now before this committee, what are you saying to the country? What to the civilized word? When you authorize this commission you necessarily bind yourselves to pay the essential, necessary expenses of that commission. For that reason I am opposed to this Trojan horse which is to walk into the Treasury of the United States when the gentleman from Indiana will not be here to defend that Treasury.

Mr. HOLMAN. I desire to say but a word. The gentleman from

Mr. HOLMAN. I desire to say but a word. The gentleman from New York assumes that this measure came from the Committee on

New York assumes that this measure came from the committee on Appropriations.

Mr. BEEBE. O, no.

Mr. HOLMAN. The gentleman corrects me. The measure did not come from the Committee on Appropriations. They have not considered it. The gentleman having charge of this bill, the gentleman from Georgia, [Mr. BLOUNT,] thought it was simply a proper courtesy on the part of the Committee on Appropriations not especially to oppose a proposition coming from another committee of the House that had charge of the subject-matter for which these appropriations were being made; and the Committee on Appropriations have simwere being made; and the Committee on Appropriations have simply as a committee not opposed the measure. But in the absence of an assurance from the gentleman who submits this proposition that it should not entail on the Government a dollar of expense, and without the provision being incorporated in the measure that it should be attended with no expense, and the understanding in advance—not an assumption, but a positive understanding in advance—that it should not cost the Treasury one dollar, I should have earnestly opposed the measure. But I will say to the gentleman from New York that I have never seen any beneficial fruits result from these commissions.

Mr. BEEBE. I desire to ask the gentleman from Indiana a ques-

Mr. HOLMAN. Very well.

Mr. BEEBE. Does the gentleman from Indiana believe it possible to have this commission do any work at all without incurring expenses which must be paid?

Mr. HOLMAN. If these gentlemen think proper to meet in this Capitol, which I suppose is the object, no expense will be necessary. The commission is to consist of officers of the Government, members of the Sangta having an interest in this of the House and members of the Senate having an interest in this subject-matter—members, perhaps, at the present time of the respective naval committees, identified with the Government in its general operations. These gentlemen can meet here in the Capitol perhaps a month in advance of the next meeting of Congress and gather facts together to submit to the next Congress; and all this can be done

without incurring a dollar of expense.

Mr. BEEBE. What is meant, then, by the provision that the Secretary of the Navy shall provide facilities for this commission? Are they to sail about the halls of this Capitol?

Mr. FOSTER. Does the gentleman from Tennessee, the chairman of the Committee on Naval Affairs, expect this to be carried out with-

Mr. HOLMAN. If this measure gets through on the assurance that it involves no expense, and expense should then be incurred, it will be a very deliberate fraud, and I know that my friend from Tennessee

will be a party to no such fraud.

Mr. WHITTHORNE. As the gentleman from Ohio [Mr. FOSTER] is very well aware, a large amount of testimony has already been is very well aware, a large amount of testimony has already been taken, disinterested and non-partisan, submitted by over sixty officers of the Navy, commencing with the Admiral, rear-admirals, commodores, captains, commanders, staff officers, line officers. All this evidence has been collected and is now ready for examination.

But very little actual testimony beyond that is necessary, and that is to be had from searching the records of this Government and of other governments. We expect these to be examined and reviewed by this commission

by this commission.

And I will say to my friend from New York [Mr. Beebe] that it is not necessary to sail about anywhere. The facilities contemplated, as provided for by the bill, are, in the event of its being necessary, for this commission or tribunal to examine various reports; for instance, the report on the result of the squadron exercise of the squadron of Key West, and the report of the result of the squadron exercise off Beaufort.

Mr. BEEBE. If the gentleman from Tennessee found it impossible to examine into the condition of the navy-yards of this country without taking his committee to the navy-yards, how does he expect this commission to examine and report upon a better condition of naval affairs by merely holding a solemn conclave in the halls of this

the Treasury of the United States, and I have, although serving only last year and this in this body, seen that it has already cost this Government a million and a half of dollars.

Now if you send this commission roving about the world, with a proposition that the Secretary of the Navy is to subject to this comprehend the difference between the two states of facts or quesproposition that the Secretary of the Navy is to subject to this com-

it will be there will be but very little of practical testimony to be

taken in the examination of witnesses.

Mr. FOSTER. Will it cost anything †

Mr. WHITTHORNE. And I will say to the gentleman from Ohio [Mr. FOSTER] that I trust there will be found ready to serve on this commission officers in the Army and Navy, and members of the Senate and House of Representatives, who are paid by the month their regular salaries for the discharge of their public duties, and who would be unwilling to demand from the Public Treasury any more compen-

sation.

Mr. O'BRIEN. I desire to ask the gentleman from Tennessee a question. When this amendment was first drafted in the Naval Committee there was a section 4 providing for the expenses of the commis-

Mr. WHITTHORNE. I will reply to the gentleman. The original draught of the bill contemplated having citizens on the commission who were not officers of the Government. That is the reason why the

who were not officers of the Government. That is the reason why the section referred to was originally in the bill.

Mr. O'BRIEN. I beg the gentleman's pardon. There is nothing at all in the original draught, which I hold in my hand as it was before the Naval Committee, which provides for citizens being on the com-

Mr. WHITTHORNE. I refer to the original introduced by myself.
Mr. BLOUNT. Is not debate exhausted on the pending amend-

Mr. O'BRIEN. I desire to ask the gentleman from Tennessee

The CHAIRMAN. Debate is exhausted on the pending amendment.

Mr. BEEBE. I offer the amendment which I send to the desk.

The CHAIRMAN. The Chair has recognized the gentleman from Ohio, [Mr. FOSTER.]
Mr. FOSTER. I submit the following as an amendment, to come

Mr. FOSTER. I submit the following as an amendment, to come in at the proper place.

Mr. BEEBE. I have an amendment to offer which I know will meet the views of my friend from Ohio.

Mr. FOSTER. Then I beg to withdraw my amendment, and I will hear that of the gentleman from New York, [Mr. BEEBE.]

Mr. BEEBE. I offer the following amendment:

That the chairman be instructed to report the bill back to the House with the recommendation that it be recommitted to the Committee on Appropriations with instructions to reduce the appropriations so that the amount of the aggregate thereof shall not exceed \$9,000,000.

Mr. BEEBE. Not one step has been taken by the Secretary of the Navy; not a motion has been made by the President of the United States to inquire into the proposition submitted to their attention constates to inquire into the proposition submitted to their attention concerning the proper management of affairs in the Navy. So long as the Navy is administered with such indifference on the part of the President of the United States, this recklessness and extravagance on the part of the Secretary of the Navy, this glaring and infamous negligence on the parts of the chiefs of the bureaus of the Navy, I am unwilling to vote \$12,000,000 for the administration of the Navy for a single year. It is prepostations

single year. It is preposterous.

Gentlemen of the House of Representatives, if you believe this department of the Government is corruptly administered, you have no partment of the Government is corruptly administered, you have no excuse, you cannot justify yourselves to your constituents or to the country in voting this enormous sum of money for carrying on the Navy Department of the Government. It is in the very nature of its terms an outrage upon the credulity of the people to ask them to believe you when you are making your protest in favor of retrenchment and economy, and then at the next step vote with reckless indifference \$12,000,000 of the people's money, to be expended by a man whom you have yourselves, by your own deliberate action, condemned as corrupt and unworthy. The CHAIRMAN. The resolution of the gentleman is not germane to the bill, but it may be submitted as a separate motion.

Mr. BEEBE. It certainly is within the power of the Committee of

the Whole to instruct its chairman to make a particular report to the

The CHAIRMAN. Certainly.

Mr. BEEBE. That is what I propose by my resolution.

Mr. CONGER. Then I rise to oppose the resolution. I would like Mr. CONGER. Then I rise to oppose the resolution. I would like to know what particular animosity the gentleman from New York [Mr. Beebe,] has to the Secretary of the Navy that has slept so long? When the resolution to which he refers was offered here in the House I understood what the object was; I understood the political object that was intended to be effected by its bearing upon the campaign. I could understand why our democratic friends should rush pell-mell after such a resolution as that and adopt it without regard to the facts in the case.

facts in the case.

But the election is now past. Even if that animosity still lingers in the breasts of brave men against this Secretary of the Navy, in common justice to themselves they ought to be soothed by the unanimous report of their own committee, which exonerates the Secretary of the Navy from all blame whatever in the administration of his Department—a report adopted by the House long after the resolution to which the gentleman refers was adopted—exonerating the Secretary of the Navy from the least shadow of reproach, and holding him up to the people to whom the gentleman appeals and to the world as a model officer, who in the midst of very intricate and delicate duties has so

managed the affairs of his Department as to command the unanimous approbation of his political enemies, his political foes. That ought to soothe the irritation of members, even if they were vastly exasperated and excited when they passed the resolution to which the gentleman refers. It ought at least to be a kind of Winslow's soothing sirup to their agitated feelings.

Why is it revived to-day? Why is this attack made upon the Secretary of the Navy, who has been thus honorably and justly and worthily exonerated from all blame in the administration of his Department, and not only that, but he has been held up to the admiration of the world as perhaps the most efficient Secretary of the Navy that we have ever had? managed the affairs of his Department as to command the unanimous

that we have ever had f

Mr. EDEN. To what report does the gentleman refer?
Mr. CONGER. The report exonerating the Secretary of the Navy.
Mr. EDEN. From what committee?
Mr. CONGER. From the Committee on the Judiciary.
Mr. BEEBE. As to that I would say—
Mr. CONGER. I have not time now for the gentleman to say what he ought to have said when he was on the floor. I must go on with the subject-matter of my remarks or I shall be called to order by the Chairman—a very good Chairman, and very prompt in the exercise of his duties he is, too. [Langhter.]

his duties he is, too. [Laughter.]

Why this animosity to the Secretary of the Navy? "Dwells such insatiate wrath in these mortal minds?" Why this bitter unseemly insatiate wrath in these mortal minds?" Why this bitter unseemly attack upon a man who is not here to defend himself? Why is he to be called infamous? Merely because a resolution passed by the democracy used the term "infamous." Who does not know that these are the mere catch-words of the House for partisan purposes? Let the gentleman state the facts, and then let the House judge whether there be infamy or not. But these are immaterial constructions.

I find here a gentleman willing to cut down the appropriations for the Navy Department to the extent of \$3,000,000 because his tastes are not suited by the action or the appearance of two officers in that Department. The sum of \$3,000,000 is to be taken from this appropriation bill because he does not like the Secretary of the Navy, because he does not like the naval constructor; that gentleman would take off \$3,000,000 because those two officers are distasteful to him. Who next, as they say in the barber-shop, who is next in turn to get up here and move to cut off three millions more because two other officers are objectionable to him?

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. CONGER. I am not debating this question under the fiveminute rule as applicable to the bill. I understand that this resolution is an independent proposition, and I prefer to have my hour

Mr. BEEBE. I think the gentleman will find an hour quite insuf-

The CHAIRMAN. All debate upon this bill is now subject to the five-minute rule, and debate upon the pending proposition has been exhausted

Mr. BEEBE. I move to strike out the last word—not the last word of the gentleman from Michigan.
Mr. CONGER. No; leave me that.
Mr. BEEBE. The Chair has saved me that trouble. The gentleman wants to know what animosity toward the Secretary of the Navy actuates me. None in the world. But I ask him what animosity actuated him last year when he sat silent in his seat and permitted this resolution to be passed without recording himself against

Mr. CONGER. I will answer the gentleman; the previous question

cut me off.

Mr. BEEBE. The gentleman will be kind enough to conform to the

Mr. BEEBE. The gentleman will be kind enough to conform to the rules of the House, if not to the rules of courtesy.

Mr. CONGER. If that last remark has a personal application, I desire the gentleman to take it back. [Laughter.]

Mr. BEEBE. I will settle outside of the Hall, if the gentleman likes.

Mr. CONGER. Ah, well; that will do.

Mr. BEEBE. There is no animosity actuating me in this matter, except that animosity which every honest citizen of this country, every honest official of this country, should feel toward an extravagant if not a corrupt administration of public affairs.

Again, sir, the gentleman tells us that last year he understood the object. In virtue of what arrogation of authority or prescience or wisdom on his part does he assume to sit in judgment upon the motives of other members of this House? Sir, I submitted that resolution to the House last year. I secured a vote upon it. That vote stigmatized the chief of the Bureau of Construction and Repair as a dishonest man; and the gentleman raised not his voice against it.

dishonest man; and the gentleman raised not his voice against it.

The facts reported at the time sustained the committee.

I know that the gentleman feels called upon to constitute himself the defender, the bosses of the buckler of the Secretary of the Navy; but, sir, great as is his provess, he wages an unequal war. The people of the United States have condemned the Secretary of the Navy.

The Judiciary Committee of this House has not reported that he has been washed in the waters of that committee and brought here whiter than the driven snow or the fleeces of the lamb. No such action has been taken. They have said that there are not facts sufficient to warrant his impeachment and trial before a Senate that tried and acquitted Belknap.

Mr. WHITTHORNE. Will my friend yield a moment? I stated this morning to my friend from Maine that he was mistaken in the this morning to my friend from Maine that he was mistaken in the statement I understood him to make yesterday, that the Judiciary Committee had made report upon this subject. Upon the reiteration of the statement by the gentleman from Maine a few moments ago I went to the member of the Judiciary Committee who has charge of the report, and with whom I had made a personal agreement that I should be present whenever he did report. I asked him whether he had at any time made that report and he said he had not; that he had it yet in his pocket.

Mr. BEEBE. I do not care to go into a question which is so patent a matter of history as the one to which the gentleman from Tennessee has referred. It is unimportant as compared with other matters pressing upon the consideration of this House in direct connection with this bill and which have pressed upon the consideration of the country too.

The gentleman tells us that there is nothing laid to the charge of the administration of the Navy Department. Why, sir, it has been found to be extravagant and corrupt, and there is no apologist for it

outside of this House.
[Here the hammer fell.]
Mr. BLOUNT rose.

Mr. CONGER. I rise to oppose the amendment of the gentleman

The CHAIRMAN. As the debate has taken a somewhat partisan range, the Chair will have to recognize the gentleman from Michigan [Mr. Conger] and afterward he will recognize the gentleman from

IMP. CONGER] and afterward he will recognize the gentleman from Georgia.

Mr. BEEBE. Is it in order for me to withdraw the amendment? The CHAIRMAN. It is.

Mr. CONGER. I had risen to speak upon the amendment. I hope the gentleman does not wish to withdraw it lest I should speak upon it. The CHAIRMAN. The gentleman from Michigan can renew it.

Mr. HOLMAN. I rise to a question of order. I do not does for the purpose of cutting off the gentleman from Michigan in his five minutes. But my point of order is this: A motion that the committee rise and report a bill to the House is not, as I understand the rules, a debatable motion. If it were, it seems to me it would be almost impossible ever to get a bill reported to the House.

The CHAIRMAN. The Chair will state to the gentleman from Indiana [Mr. HOLMAN] that he would have sustained that point when the question first arose. But the debate has evidently taken a partisan aspect. After the gentleman from New York [Mr. Beebe] had spoken his five minutes, it was but fair to allow the gentleman from Michigan [Mr. CONCER] to speak five minutes in reply. The gentleman from New York having now spoken five minutes again, the Chair has accorded the floor to the gentleman from Michigan for five minutes additional, after which he will recognize the gentleman from Georgia, [Mr. BLOUNT.]

char has accorded the hoor to the gentleman from Michigan for hye minutes additional, after which he will recognize the gentleman from Georgia, [Mr. Blount.]

Mr. HOLMAN. Then I shall insist on the point of order.

Mr. CONGER. Mr. Chairman, I am very glad that neither the distinguished gentleman from Tennessee nor the gentleman from New York denies my statement that the report of the Judiciary Committee exonerates the Secretary of the Navy from all blame. But how do they meet my statement? The gentleman from New York says the report is in the pocket of the chairman. All right; it is the same report; it has been printed; it has been perhaps recommitted. I do not know why and I do not care why. But the country has had that report, and it is undisputed. Now, why does the gentleman desire at this late stage of proceedings to revive that old campaign resolution and those old campaign stories?

Mr. BEEBE. Why did the gentleman support the resolution?

Mr. CONGER. To the discredit of the American people and of American politics (I take to myself and my party our fair share of the reproach) that kind of vituperous calumniating use of language, whether in resolutions of this House or on the stump, is indulged in to such excess that no American citizen to-day attaches the least importance to campaign assaults of that sort, and those of us who make them are applied assaults of that sort, and those of us who make them are applied as a first who were the near the resolution.

importance to campaign assaults of that sort, and those of us who make them are subjects of ridicule from the people. If we have any sensibility we ought to go into quiet places and become humpbacked by stooping down to despise ourselves. [Laughter.]

Mr. BEEBE. May I ask the gentleman why he supported the

resolution ?

Mr. CONGER. Why should these things be revived now? I come back to the question, What is the animus of the gentlemen? What excites their animosity to interrupt the course of business by bringing in at this time a rehash of old political calumnies which have heretofore been embodied in resolutions or spoken on the

have heretofore been embodied in resolutions or spoken on the stump?

Sir, the gentleman will find, as all good men in this House will find, that the administration of the affairs of the Navy during the last four years, under the present Secretary of the Navy, has been as economical, as pure, as honest, as faithful—as the committee reports—as the administration of any other officer who has filled that station. History will give him that place. The common judgment of the people gives it to him to-day. And that hard laboring-man, who commenced with his ax and his adze, as thousands of American boys have done, to work out his own fortune, in his poverty, by labor and by toil, until he has become the chief naval constructor of our Navy, he is to be attacked by members of this House with their kid gloves; he, one

of the laboring-men of the Union, when he is not here to defend himself. Ah, the time was when the democracy protected the rights of the laboring-classes of the country and did not attack them when there was no opportunity for their defense!

Mr. SHEAKLEY. Let me ask the gentleman a question.

Mr. BEEBE. The Administration does not attack Belknap, but, on the contrary ordered the dismissal of the indictment against

on the contrary, ordered the dismissal of the indictment against

Mr. CONGER. The gentleman attacks the only man in the Navy to whom he has referred, who by his own labor and toil raised himself in the working masses by every successive step in the progress of naval building to be the chief naval constructor of the United

States.

Mr. BEEBE. A man who went to a member of this House and offered him \$400, goes to the house and takes tea with the chief of that burean. The gentleman had better read the testimony and understand what he is talking about.

Mr. CONGER. I did not hear what the gentleman said.

Mr. BEEBE. I say, sir, that a member of this House was insulted by the offer of a bribe of \$400 by a man who was taken to the bosom of Isaiah Hanscom immediately on his arrival here as a witness.

Mr. CONGER. Why did not the man report it?

Mr. BEEBE. It has been reported to the House, but the gentleman has not read the evidence.

Mr. SHEAKLEY. It is perfectly plain from the remarks of the gentleman from Michigan that he has not read a word of the evidence.

Mr. BEEBE. He does not know what he is talking about, as is frequently the case with him.

Mr. BLOUNT. I move to substitute for the resolution of the gentleman from New York [Mr. BEEBE] that the committee rise and re-

port the bill and amendments to the House.

Mr. BEEBE. I ask one moment. The Chair stigmatized what I said as a partisan arraignment. If the Chair feels called upon to stand by that assertion, I am content. I meant nothing partisan.

The CHAIRMAN. The Chair would state to the gentleman from New York that he characterized the remark of the gentleman as a party attack—that it took that direction, and it was only fair to let

party attack—that it took that direction, and it was only fair to let the gentleman from Michigan make a party attack on the other side. Mr. BEEBE. I meant no party attack.

The question recurred on the amendment of Mr. BLOUNT, that the committee rise and report the bill with the amendments to the House. Mr. CONGER. I rise to a parliamentary inquiry. I understood the motion was to report the bill to the House and to recommit the bill with instructions.

the hotton was to report the bill to the House and to recommit the bill with instructions.

The CHAIRMAN. The gentleman from Georgia moved, as a substitute for that, that the committee rise and report the bill and amendments to the House.

The House divided; and there were—ayes 63, noes 2.

So the amendment was agreed to.

The motion, as amended, was adopted.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. MILLS reported that the Committee of the Whole on the state of the Union had, according to order, had under considera-tion the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes, and had directed him to report the same back to the House with sundry

Mr. BLOUNT demanded the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the amendments reported from the Committee of the Whole were concurred in.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

Mr. BEEBE demanded the yeas and nays on the passage of the bill. The yeas and nays were not ordered.

The bill was passed.

Mr. BLOUNT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider he laid on the

passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

# VETO MESSAGE.

The SPEAKER. The Chair lays before the House the following reto message from the President.
The Clerk read as follows:

To the House of Representatives :

To the House of Representatives:

I return the House bill No. 3156, entitled "An act to perfect the revision of the statutes of the United States," without my approval. My objection is to the single provision which amends section 3823 of the Revised Statutes.

That section is as follows:

"SEC. 3823. The Clerk of the House of Representatives shall select in Virginia, South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, one or more newspapers, not exceeding the number allowed by law, in which such treaties and laws of the United States as may be ordered for publication in newspapers according to law shall be published, and in some one or more of which so selected all such advertisements as may be ordered for publication in said districts by any United States court or judge thereof, or by any officer of such courts, or by any executive officer of the United States, shall be published, the compensation for which, and other terms of publication, shall be fixed by said clerk at a rate not exceeding \$2 per page for the publication of treaties and laws, and not exceeding \$1 per square of eight lines of space, for the publication of adver-

tisements, the accounts for which shall be adjusted by the proper accounting offi-cers, and paid in the manner now authorized by law in the like cases."

The bill proposes to amend this section as follows:
"By striking out all after the word 'in' in the first line to the word 'one' in the third line, and inserting therefor the words, each State and Territory of the United

"By striking out all after the word 'in' in the first line to the word one in the third line, and inserting therefor the words, each State and Territory of the United States."

Prior to 1867 the advertising of the Executive Departments had been subject to the direction of the heads of those Departments, and had been published in newspapers selected by them, and on terms fixed by them. In the year 1867, (14 United States Statutes-at-Large, pages 466-467.) while the ten States above named were yet unrestricted, and when there existed a radical difference of opinion between the executive and legislative departments as to the administration of the Government in those States, this provision was enacted. Subsequently, during the same year, (15 United States Statutes-at-Large, page 8.) so much of this provision "as relates to the publication of the laws and treaties of the United States "was extended to all the States and Territories, leaving the advertisements ordered by Congress and by the Executive Departments unaffected thereby. The continuance of this provision after the reconstruction acts had taken effect and the bringing it forward into the Revised Statutes were probably through inadvertence.

The existence of this section 3823 of the Revised Statutes seems to have been ignored by Congress itself in the adoption of section 3941, authorizing the Postmaster-General to advertise in such newspapers as he may choose. But the present act, if it should go into effect, would compel him and the other heads of the Executive Departments, as well as all the courts, to publish all their advertisements in newspapers selected by the Clerk of the House of Representatives. It would make general in its operation a provision which was exceptional and temporary in its origin and character. This, in my judgment, would be unwise, if not also an actual encoachment upon the constitutional rights of the executive branch of the Government of the United States should be given, if not an officer of the United States under article 2, sect

U. S. GRANT.

EXECUTIVE MANSION, February 14, 1877.

Mr. DURHAM. I desire to say a few things before I ask for a vote on this veto message. There were a great many supposed inaccuracies in the Revised Statutes sent to the Committee on the Revision of the Laws. I believe I stated on a former occasion that there were over two thousand. When the committee came to present there were over two thousand. When the committee came to present this bill, after having a joint meeting with the similar committee on the part of the Senate, we reported the bill, which I hold in my hand and which the President has vetoed, making corrections amounting to some three or four hundred in number. After the bill had passed both Houses and gone to the President he seems to have sent it to the Attorney-General; and out of all these corrections that have been made, making the Revised Statutes, as we supposed, nearly perfect, the President vetoes one provision, thereby destroying the work of this committee for the whole Congress.

Being apprised on yesterday that this message would be sent in, I called a meeting of the Committee on the Revision of the Laws and also had a conference with certain members of the Senate committee, and I am satisfied, Mr. Speaker, that the veto message should be sustained. When this recommendation was sent down by the Treasury Department, which the President has vetoed, it is proper and due to the House committee to say that we rejected the proposition. The bill was passed by the Senate, and in a conference between the Senate committee and the House committee the House committee gave way on this point, as it now turns out they should not have done.

Mr. HALE. Does the gentleman refer to the particular proposition covered by the President's veto?

Mr. DURHAM. Yes, sir. I hope the gentleman from Maine will not misunderstand me. The proposition was not put by the Senate upon the bill after it passed this House, but it was put on by the Senate committee when we had the joint conference as to perfecting the original bill as presented to the true Houses.

the original bill as presented to the two Houses.

Mr. HALE. So that it is not the fault of the House committee †

Mr. DURHAM. It is not the fault of the House committee, and I think the chairman of the Senate committee will do us the justice to

Now what I desire to say is this. The committee have instructed me to ask the House to sustain the veto of the President. They have further instructed me to ask unanimous consent to report immediately further instructed me to ask unanimous consent to report immediately another bill to this House leaving out this one single correction, and to ask the House to pass that bill immediately. If they do not, then all the work of this committee and all the work of the committee of the Senate during this whole Congress will have been wasted, and this whole matter will have to go before the Committee on the Revision of the Laws at the next session of Congress. And there can be no correct publication of the Revised Statutes of the United States unless this course is pursued.

Mr. BURCHARD, of Illinois. I desire to ask the gentleman a ques-

Mr. BURCHARD, of Illinois. I desire to ask the gentleman a question. Is the provision vetoed by the President an omission from the Revised Statutes of 1873 reported by the Committee on the Revision of the Laws, or is it a mistake of the committee or of the joint committee in reporting the bill now under consideration?

Mr. DURHAM. If the gentleman from Illinois had heard my statement, he would have learned that this was a supposed omission in the Revised Statutes sent to the committee from the Treasury Department. It turned out not to be an omission, and the committee of

this House so decided when it was before them; but the committee of the Senate decided that it was an omission, and consequently the

supposed correction was inserted in the bill.

Now what I ask, Mr. Speaker, is that the vote be taken upon this veto message. I am instructed by the committee, after a conference with some members of the committee of the Senate, to ask that the veto message be sustained. I shall then immediately present a new bill—because that is the only way the object sought can be accomplished—leaving out this objectionable feature, and I shall ask to have that bill put immediately on its passage.

Mr. HALE. The new bill being like the old one except in this re-

spect?

Mr. DURHAM. Precisely like the old one, which I hold in my hand, with the single and solitary exception that it leaves out the clause which has been vetoed by the President of the United States.

Mr. HALE. That is right.

The SPEAKER. The question is: Will the House on reconsideration agree to pass the bill?

Mr. HALE. Those voting no, sustain the President's veto?

The SPEAKER. The pegative vete sustains the veto.

The SPEAKER. The negative vote sustains the veto.

The question was taken, and there were—yea 1, nays 211, not voting 78: as follows:

The question was taken, and there were—yea 1, nays 211, not voting 78; as follows:

YEA—Mr. Atkins—1.

NAYS—Messrs. Adams, Anderson, Ashe, George A. Bagley, John H. Bagley, Jr., John H. Baker, William H. Baker, Ballou, Banning, Beebe, Bell, Blair, Bliss, Blount, Boone, Bradford, Bradley, John Young Brown, William R. Brown, Backner, Horatio C. Burchard, Burleigh, Buttz, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Cannon, Cason, Cate, Chapin, John B. Clarke of Kentucky, Clymer, Collins, Conger, Cook, Cowan, Cox, Crapo, Crounse, Colberson, Cutler, Danford, Darrall, Davis, Davy, De Bolt, Denison, Dibrell, Dobbins, Dunnell, Durham, Eames, Evans, Faulkner, Felton, Finley, Flye, Forney, Fort, Foster, Franklin, Freeman, Frye, Fuller, Gause, Goode, Goodin, Hale, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartsell, Hatcher, Hathorn, Haymond, Hays, Hendee, Henderson, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, Hoskins, Hubbell, Humphreys, Hunter, Hurlbut, Hyman, Jenks, Frank Jones, Thomas L. Jones, Joyce, Kasson, Kehr, Kelley, Knott, Lamar, George M. Landers, Leavenworth, Le Moyne, Lewis, Luttrell, Lynch, Mackey, Magoon, Maish, McCrary, McDill, McFarland, Metcalfe, Milliken, Mills, Money, Monroe, Morgan, Morrison, Nash, Neal, New, Norton, O'Brien, Odell, Oliver, O'Neill, Packer, Phelps, William A. Phillips, Piper, Poppleton, Potter, Powell, Rainey, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Robinson, Miles Ross. Sobieski Ross, Rusk, Sampson, Savage, Sayler, Schleicher, Seelye, Sheakley, Singleton, Simickson, Smalls, A. Herr Smith, William E. Smith, Sonthard, Springer, Stone, Stowell, Strait, Thomas, Thompson, Thornburgh, Throckmorton, Washington Townsend, Tufts, Van Vorhes, John L. Vance, Robert B. Vance, Waldeell, Wait, Waldron, Gilbert C. Walker, Alexander S. Wallace, John W. Wallace, Walling, Walsh, Ward, Warner, Warren, Erastus Wells, G. Williams, Charles

So the bill was not passed the President's objection notwithstanding, two-thirds not voting in favor thereof.

During the roll-call,

Mr. SPRINGER said: My colleague, Mr. SPARKS, is absent on account of sickness.

## REVISED STATUTES.

I now ask unanimous consent to introduce a new bill precisely like the old one with the exception of leaving out the section vetoed by the President.

Mr. HOLMAN. I call for the regular order.

Mr. DURHAM. The whole work of the session will be lost if this

Mr. DURHAM then, from the Committee on Revision of the Laws, reported back a bill to perfect the revision of the statutes of the United States, and of the statutes relating to the District of Columbia; which was ordered to be engrossed and read a third time, and being engrossed, it was accordingly read the third time, and passed.

Mr. DURHAM moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

### DIPLOMATIC APPROPRIATION BILL.

Mr. SINGLETON. I ask leave of the House to take from the Speaker's table and refer back to the Committee on Appropriations the bill making appropriations for the diplomatic service.

The SPEAKER. Does the gentleman desire to have the amendments acted upon at this time?

Mr. SINGLETON. Yes, sir.

Mr. SINGLETON. Yes, sir.

The Clerk read the first amendment of the Senate, as follows:

For salaries and expenses of the United States and Spanish claims commission, amely, for commissioner, \$4,000.

Mr. SINGLETON. I move that the House concur in that amend-

ment with an amendment to reduce the salary from \$4,000 to \$3,500. I am instructed by the Committee on Appropriations to offer this amendment. We have had consultations with the Senate Committee amendment. We have had consultations with the Senate Committee and that arrangement was satisfactory to them, and we therefore make this salary \$3,500 instead of \$4,000, which is the present salary. The amendment of the Senate was concurred in.

The next amendment of the Senate was on page 12, line 10, to strike out the words "of consul at \$3,000" and insert "\$4,000."

Mr. SINGLETON. That is similar to the other amendment, and I are instructed by the Committee on Amenoration to the other than the committee of the consultation of the consult

am instructed by the Committee on Appropriations to move that the House concur in it with an amendment making it \$3,500 instead of

The amendment to the amendment was agreed to; and the amend-

ment, as amended, was concurred in.

The next amendment of the Senate was on page 10, line 25 of the bill, to strike out "\$500" and insert "\$1,000."

Mr. SINGLETON. I am instructed by the Committee on Appropriations to move that this amendment be concurred in with an amendment so as to make the amount \$750.

The amendment to the amendment was agreed to; and the amend-

ment, as amended, was then concurred in.

The last amendment was upon page 10, line 26, to strike out "\$7,700" and to insert "\$10,212.50."

Mr. SINGLETON. I am instructed by the Committee on Appropriations to move to concur in this amendment with an amendment so as to make the amount \$8,962.50.

The amendment to the amendment was agreed to; and the amend-

ment, as amended, was concurred in.

Mr. SINGLETON moved to reconsider the votes of the House upon the amendments of the Senate; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### LATE SPEAKER OF THE HOUSE.

Mr. BAKER, of Indiana, by unanimous consent, submitted the following concurrent resolutions; which were read, considered, and unanimously adopted:

Be it resolved by the House of Representatives, (the Senate concurring therein.) That 2,000 copies, in book form, suitably bound, of the memorial addresses on the life and character of Hon. Michael C. Kerr, late Speaker of the House of Representatives, be printed; 500 copies for the use of the Senate, and 1,500 copies for the use of the House of Representatives.

And be it further resolved, That a steel engraving of the late Speaker be procured for the front title page of the said copies.

## SIOUX NATION OF INDIANS, ETC.

Mr. BOONE. I call for the regular order.

The SPEAKER. The regular order is the bill of the Senate No. 1185, to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the Northern Arapaho and Cheyenne Indians. This bill was made the special order immediately after the passage of the naval appropriation bill, and from day to day until

passage of the navar appropriated disposed of.

Mr. MILLS. I ask unanimous consent that the first and formal reading of the bill be dispensed with and that the bill be now read by paragraphs for amendment.

Mr. BUCKNER. I object.

The SPEAKER. The bill will then be read.

The bill was then read.

Mr. MILLS. I move to amend the bill by adding to the first paragraph the following proviso:

Provided, That nothing in this act shall be construed to authorize the removal of the Sioux Indians to the Indian Territory; and the President of the United States is hereby directed to prohibit the removal of any portion of the Sioux Indians to the Indian Territory until the same shall be authorized by an act of Congress hereafter enacted.

Mr. SEELYE. As I told the gentleman from Texas [Mr. Mills] yesterday, I am perfectly willing that this amendment shall be considered by the House.

Mr. Mills. I understood the agreement to be that the amendment should be made to the bill. I never should have consented that this bill should be brought before the House had I not understood the friends of the bill that the state of the bill that the from the friends of the bill that my amendment should be adopted.

Mr. WILSON, of Iowa. It never can be agreed to without a vote of the House.

Mr. SEELYE. There is no objection to the principle involved in the amendment, so far as I know; but there is an objection to making it to this bill, because of the delay which it would lead to. The gentleman can introduce his proposition in a separate form, if he thinks

Mr. MILLS. I think the gentleman in charge of this bill will agree that there was an understanding with me that my amendment should

be adopted.
Mr. BLAND. If the amendment is not agreed to, then I hope the bill will be voted down.

The SPEAKER. That is within the control of the House.

Mr. SEELYE. I desire to say a word or two on this subject. This country, the Black Hills, is now in the possession of Sioux Indians; it belongs to them, it is theirs by solemn treaty of the United States,

which not only guarantees them in the possession of it, but also guarantees that no white person shall set his foot upon it. Notwithstanding that, during the last season more than ten thousand white persons went there as miners, that among other causes bringing on the Sioux war with results with which we are all familiar. In order to prevent further difficulties of this sort this commission, authorized by an act of the present Congress at its last session, during the last season went there and negotiated this treaty with the Sioux, providing partially that the Sioux Indians might be removed to some other region of country. That provision, however, not having been!

providing partially that the Sioux Indians might be removed to some other region of country. That provision, however, not having been assented to by the Sioux in open council, is stricken out from this bill, which now contains nothing authorizing in any respect the removal of the Sioux to the Indian Territory. It is quite unnecessary, therefore, to introduce any provision respecting that matter.

Now let me state the reason for having this bill passed promptly at this time. No appropriations can be made to carry out the purpose of the bill until it has been passed. Meanwhile the ten thousand miners already occupying the Black Hills are likely to be increased perhaps tenfold. As I am informed this morning by a gentleman coming from that Territory, there is very little doubt that during the coming season there will be 100,000 miners in the Black Hills. Now, there is no law over that Territory, no United States or territorial law; and there cannot be any law until this treaty is carried out; there cannot be until the Territory of Dakota is thus authorized to pass laws for the government of these 100,000 men. I ask the House to consider for a moment the condition of things, both as respects the Indians and the miners, if these thousands of men are allowed to rush in there to work out their own ends without any law to control them.

rush in there to work out their own ends without any law to control them.

Now, the Legislature of Dakota is at the present time in session at Yankton; and it is very important this bill should be passed in order that the Legislature may make prompt provision for extending the authority of the courts over the Black Hills. This bill has passed the Senate without any objection; and while, as I remarked to the gentleman from Texas yesterday, there is no objection to his submitting this amendment, and asking a vote of the House upon it, and while I know of no objection to the amendment itself so far as the principle is concerned, yet the amendment is unnecessary, since the bill does not provide for any removal of the Sioux to the Indian Territory; and it would be quite inexpedient to adopt it, because it will delay the passage of the bill.

Mr. BOONE. Mr. Speaker, I am very sorry to disagree with my colleague upon the committee, the gentleman from Massachusetts, [Mr. Seelye,] in reference to the propriety of this amendment. I can see very good reasons why the people who live contiguous to the Indian Territory should feel some apprehension about the removal of these Sioux Indians to that Territory, because of the frequent incursions which wild, untamed Indians might make upon their settlements. I think it proper, therefore, that we should accommodate ourselves to that feeling so far as we possibly can; and I am sorry there has been any antagonism to the amendment of the gentleman from Texas, because I desire that the passage of this bill shall not be jeoparded by a division of sentiment on this subject.

This bill, as has been well remarked, is one of great importance, and should, in my judgment, be passed. The Black Hills country is to the people of the United States a valuable country. This agreement concedes the Black Hills territory to the Government of the United States, in consideration of which we make provision for feeding these Indians upon the Missouri River at points contignous to the means of transportat

ing these Indians upon the Missouri River at points contiguous to the means of transportation, so that there will be a saving to the Government in feeding the Indians, in addition to the transfer of this valuable country to the United States.

Besides this, the Indians by this bill are to be placed on a part of

the reservation which they now hold which is susceptible of cultiva-tion; and if we are ever to succeed in teaching them the arts of agriculture and civilization they will be in a position where we can carry forward those great enterprises which have succeeded so well in the Indian Territory with much greater facility than can possibly be done in the present scattered and inaccessible condition of these Indians.

In view, therefore, of the interests dependent upon this bill, it occurs to me that there can be no special reason why we should not curs to me that there can be no special reason why we should not accommodate ourselves to the views of those gentlemen who live in contiguous States, and adopt an amendment prohibiting the removal of these Indians to the Indian Territory. While I grant that there is no authority for such removal, and that under this bill it could not be done, because the only provision that ever authorized it has been stricken out by an amendment in the Senate—while I concede all this, yet, to accommodate gentlemen who have fears on this subject, I am willing that the amendment should be incorrected. I am willing that the amendment should be incorporated in the bill, especially as the gentleman from Texas informs me that it was a part of the agreement into which he entered yesterday by which he allowed this bill to be made a special order for to-day. I hope, therefore, that we shall have no trouble upon this subject; that the amendment will be adopted and the bill passed, so that we may accomplish the objects we all have in view. I now move the previous question tion.

Mr. CROUNSE. I wish to inquire of the gentleman what disposition of the Indians is made by this bill? Where are they to go?

Mr. BOONE. They are to be removed up on the Missouri River, on

their own reservation in Dakota.

their own reservation in Dakota.

Mr. CROUNSE. This leaves these Indians in a territory contiguous to Nebraska; and while I should be glad to have them removed as far as possible, yet I do not feel disposed to enter any protest in behalf of my State. It is of the greatest importance that this bill pass and that the Black Hills country be opened up at once. The question as to where these Sioux Indians shall be finally located better be postponed to some future time or referred to the judgment and discretion of the Secretary of the Interior. The Indian Territory is regarded as designed to eventually furnish homes for the various tribes. Whether it would be wise or economical to transfer these Indians there at this time, I will not say. But the amendment of the gentleman from Texas, [Mr. Mills,] which shuts them out in any event, should not be adopted. That Territory, in common with the other territory of the United States, should be open to their introduction as the best interest of the Government and of the Indians may demand. may demand.

But particularly, as the amendment might defeat the bill either

But particularly, as the amendment might defeat the bill either here or in the Senate, it should not be pressed at this time.

Mr. STEELE. I wish to say to the gentleman from Nebraska [Mr CROUNSE] that no provision in this bill as passed by the Senate allows the removal of these Indians to the Indian Territory. I quite agree with the gentleman from Massachusetts [Mr. SEELYE] that the amendment of the gentleman from Texas is entirely unnecessary and accomplishes nothing. There is no authority of law for moving these Indians, but the gentleman and those interested in the southern country desiring this spendiment are willing to accept if for the number of excepting the second ment are willing to accept if for the number of exdesiring this amendment are willing to accept it for the purpose of expediting the bill, which is of the greatest necessity to every one inter-

ested in this country.

There is no proposition in this bill as it stands to remove these Indians, and therefore the gentleman from Nebraska gains nothing by leaving the question open, because subsequent legislation will be necessary before they can be removed. I hope the amendment will

be adopted.

Mr. MILLS. I hope, Mr. Speaker, I may have the attention of the

Mr. MILLS. I hope, Mr. Speaker, I may have the attention of the House. I feel my duty to my constituents requires I should oppose the passage of the bill without the utmost guarantee possible to be written by human hands against the transfer of the Sioux Indians to the Indian Territory.

Gentlemen say that is wholly unnecessary because the law which authorizes the transfer of these Indians to the Indian Territory has been stricken out of the bill and there is no law to authorize it. We are in the same condition we were twelve months ago, when the Commissioner of Indian Affairs brought before this House a bill to authorize the pregnatation of a treaty with the Sioux Indians. The thorize the negotiation of a treaty with the Sioux Indians. The friends who take the view of this question I do, in conjunction with myself, opposed that bill until the Committee on Indian Affairs would

agree to a provision absolutely prohibiting the transfer of those Indians to the Indian Territory.

Why did we do it? Because it is known to all gentlemen here that it is a favorite project of the Administration to concentrate all the Indians throughout the whole United States which can possibly be concentrated there upon that Indian Territory; and without positive interdiction of law they will continue to do it. They have done it. They do not wait for authority of law. I want to lay down the interdiction at their feet, saying "You shall not do it;" and then the President of the United States cannot upon that undertake to go on and put these Indians down there. This would be much the better plan for the Indians themselves, and I am not their advocate; it would be much the better plan for the people living in the States adjacent to the Indian Territory, and much the better plan for the Indians living on that Territory and trying to become civilized, who are reaching far up to the comforts of civilization which they desire to enjoy, as well as their white brethren who live around them. It would be unjust to them to place in their midst an element which it is impossible to civilize, and when, with all the appliances the gentleman has exercised toward them for many years, they are to-day as savage as they ever have been.

I wish to give to this House what General Stanley, who has been in the Army for twenty-four years and who has been among these Sioux Indians, said in his testimony before the committee during the

The Sioux Indians of Dakota are about equally divided into what you might call friendly and hostile Indians. The hostile element is the prevailing or popular element of the tribe. They keep peaceful Indians in constant dread, and their kinspeople are afraid of them. The grand difficulty in the way of civilizing the Sioux has been this dread of hostile Indians. The peaceful Indians arraid to obey or to have a feeling of attachment for the white man, for the fear of incurring the wrath of the hostile Indians. All attempts at raising stock have been frustrated in that way. Their attempts at agriculture have proved futile for the same reason; and notwithstanding the reports that the Sioux have made an advancement in civilization, since my first acquaintance with them—I mean the Sioux as a nation; I do not mean the Santee or Yankton, who for many years have been what you might call civilized—they have never made any advancement at all. I know what I say. It is claimed they have made advancement, but really they have not. With regard to the transfer of these Indians to the War Department, I will say frankly that I do not want to see it done.

The only spot in the Indian Territory the Commissioner of Indian Affairs had is a piece of territory obtained from the Creek Indians, and which he obtained on the plighted faith of the Government it

would not put upon that spot of land as neighbors any but civilized Indians. When the Commissioner of Indian Affairs, without authority of law, sent gentlemen to negotiate with these Sioux Indians he instructed them to press upon them that they had to go upon the Indian Territory, and if they did not go there their rations would be cut off. When that treaty was signed by many of the Sioux chiefs, they came and touched the pen with the declaration that they signed the treaty with the understanding, "We are not to leave the land of our fathers, and you must go and tell our Father at Washington so." Notwithstanding that, they have compelled this people to enter into a treaty and send delegates to select the territory the Creek Indians said should not be yielded to any but civilized Indians. This will carry 35,000 irreconcilable savages into the midst of those people who have been struggling for civilization. It will turn them loose upon the State of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which as the commission of the state of Taxas which are the commission of the state of Taxas which are the commission of the state of Taxas which are the State of Texas, which, as the commissioner himself says in his letter, will be an inviting feast to them. Turn them loose there! letter, will be an inviting feast to them. Turn them loose there! And he says he will send more troops, more cavalry, down there to guard them. But send 35,000 Sioux to go with the Comanche and Kiowa Indians, and then there will be no peace on the borders of Texas, no peace in Missouri, no peace in Arkansas, and no peace in Kansas; and the very sparks of civilization itself that have been struggling into existence in the Indian Territory will be put out in utter darkness forever. These, sir, are the reasons why I object.

Mr. MAGINNIS. I ask the gentleman from Texas if the bill will be satisfactory to him provided his amendment is attached to it.

Mr. MILLS. Yes sir; and I so stated to the friends of the bill at

Mr. MILLS. Yes, sir; and I so stated to the friends of the bill at the time when it was introduced. But one of its friends said he

the time when it was introduced. But one of its friends said he would not agree to that and he would only consent to my being allowed to bring in my amendment before the House.

Mr. MAGINNIS. He thought the amendment unnecessary. But I am satisfied the friends of the bill will support the amendment.

Mr. MILLS. In that case I have nothing more to say.

Mr. SCALES. I would not like to do anything that would jeopardize the passage of this bill in the House. If it be so that it cannot pass without the adoption of the amendment of the gentleman from Texas, [Mr. Mills,] I would have no objection to the amendment and would vote for it. But really I have not seen, and cannot see now, after the speech of the gentleman from Texas, that there is any necessity whatever for this amendment. Such a provision as that to necessity whatever for this amendment. Such a provision as that to which the gentleman objects was in the original bill; but the committee, in deference to the sentiment of the gentleman from Texas and those who object with him, struck that provision out. How did that leave the matter? It left it as it was before. It left it as it had been and as gentlemen had been contented with it for years. It left them without any authority of law on the part of the President or any one else to send these or any other Indians to the Indian Ter-

Why, then, delay this bill? Why postpone action? Is there any necessity for the action asked for by the gentleman from Texas? I sympathize with him in all that he has said in regard to the people of those States that are contiguous to this Territory. I believe their wishes ought to be respected. I desire to respect them. But, sir, if this bill had not been introduced here I ask the gentleman from Texas if he or any other gentleman would have introduced any bill carrying out the provision which he desires put upon this bill. No such intimation has ever been made. They were perfectly contented with the situation of the law as it stood before this bill was introduced.

Mr. MILLS. As the gentleman has asked me a question I will say

that I had a provision put on the Indian appropriation bill positively

forbidding the introduction of these Indians.

Mr. WELLS, of Missouri. And the Senate struck it out.

Mr. REAGAN. Will the gentleman from North Carolina allow me to interrupt him for a moment?

Mr. SCALES. Yes, sir.

Mr. REAGAN. It will be remembered that at the last session of Congress a bill passed the Senate, came to the House, and was referred to the Committee on Indian Affairs, which had for its object the appropriate the committee of the Committee on Indian Affairs, which had for its object the appropriate and the committee of t to the Committee on Indian Affairs, which had for its object the appointment of a commission and an appropriation of money to enable them to treat with these Indians; and, although it was not disclosed distinctly on the face of the bill, it was in the debate in the Senate, that the object was to transfer the Sioux Indians to the Indian Territory. I had the pleasure of going before the committee of which the gentleman from North Carolina [Mr. SCALES] is chairman, and proposed an amendment, which was unanimously adopted, providing that the Sioux Indians by virtue of the treaty should not be removed from the territory on which they live or some part of it. And then in the sioux Indians by virtue of the treaty should not be removed from the territory on which they live, or some part of it. And then, in the face of the positive action of the committee and in the absence of all law, the President, through the Indian Bureau, sent commissioners and made a treaty, making it, as the history of the transaction shows, by placing the Sioux Indians under severe duress to force them to go to that Territory. My colleague, then, is right in seeking to prohibit now the doing of what was done in the face of a quasi-prohibition in the last session.

in the last session.

Mr. SCALES. I was just coming to that, and to the similar statement made by the gentleman from Texas [Mr. MILIS] who first addressed the House. He says he wants this prohibition. Why? He wants it because in this treaty or contract with the Sioux, whatever you may call it, the commission appointed for that purpose had inserted a provision that the Sioux were to go to the Indian Territory

and there select locations, and because the President acted without authority of law. Now, sir, my answer to that is simply this: that provision was in the treaty. But what became of it? It came to this House as it should have done for our sanction. It had no force, no authority, and could have none, because there was no law to give it sanction or force until it came back to us. It came back to us and the Indian Committee struck it out, and we propose to leave the States referred to by the gentleman from Texas, contiguous to that Territory, just as they were under the law. How can they complain, then? There is no indication of any attempt on the part of the President, the Secretary of the Interior, or the Commissioner of Indian Affairs to delay any law of Congress on that subject. And although I am no friend to the Administration, yet I must say that in this particular the only thing that has been done is to provide for this in a treaty which was sent to us afterward for our confirmation, and that and there select locations, and because the President acted without treaty which was sent to us afterward for our confirmation, and that provision has been stricken out.

provision has been stricken out.

Mr. BOONE. I demand the previous question.

Mr. MILLS. I hope that gentlemen will now not go back on their agreement. In view of the misunderstanding that there seems to be upon the subject, I think the whole agreement should be canceled and this bill returned to its place on the Calendar.

Mr. SCALES. If there has been any agreement such as the gentleman indicates, I know nothing about it.

Mr. MILLS. It was agreed that this amendment should be put upon the bill. Then, as soon as I get the floor for the purpose of moving it, I am told that there is objection to the amendment. If objection is made to this amendment, I want an opportunity to dis-

jection is made to this amendment, I want an opportunity to dis-

The SPEAKER. The gentleman from Kentucky [Mr. Boone] has moved the previous question.

Mr. SEELYE. I ask the gentleman to yield to me for a few min-

Mr. BOONE. I will first yield for five minutes to the gentleman from Mississippi, [Mr. Hooker.]

Mr. HOOKER. I do not desire five minutes. I desire simply to say that I think the amendment of the gentleman from Texas [Mr. Mills] should be accepted at once by the friends of the bill. I do not see any necessity for delay in this matter. Even my friend from Massachusetts [Mr. Seelye] does not object to the principle of the amendment. As it seems to have been understood that it should be offered at some stage by those who favored it, I hope all objection will be withdrawn by the friends of this bill to its acceptance.

Mr. BOONE. I will now yield five minutes to the gentleman from Massachusetts, [Mr. Seelye,] after which I think I must insist upon a vote.

There is no objection certainly on the part of the friends of this bill to have this amendment submitted to the House, as was stated yesterday to the gentleman from Texas, [Mr. Mills.] That was my clear understanding of the arrangement between us. There is no objection to the principle involved in the amendment, but it is very clearly understood by us all that there is no necessity for the amendment. There is nothing at all in the bill as now presented which looks in any respect to a removal of these Indians to the Indian

Mr. FRANKLIN. Will the gentleman allow me to ask him a ques-

Mr. SEELYE. I have but five minutes.
Mr. FRANKLIN. I would refer the gentleman to article 9 of this agreement, which contemplates the removal of these Indians.
Mr. SEELYE. Certainly, but not to the Indian Territory.
Mr. FRANKLIN. Certainly not, but to some other place.
Mr. SEELYE. Their removal is an absolute necessity. These Indians are now where even the most cultivated white man could not obtain a living with all his knowledge of agriculture. It is necessary that they should be removed, but the contemplation is that they shall be removed to the Upper Missouri. There is therefore no necessary

shall be removed to the Upper Missouri. There is therefore no necessity for this amendment.

Moreover, if we put this amendment on this bill it will raise a question which I do not like to send to the Senate because of the delay it would involve in the passage of the bill. It involves a question respecting the whole future policy of our treatment of the Indians. I know that certain distinguished Senators are very earnestly convinced that these Indians should be removed to the Indian Territory, and they will not consent to any prohibition against their removal. I am therefore not willing to introduce such a prohibition here, unnecessary as it is

will the House for a single moment contemplate the condition of things there and the result of a failure to promptly pass this bill? We had this trouble with the Sioux Indians last summer. The increase of these miners to perhaps one hundred thousand during the present season is going to intensify these troubles with the Sioux at least tenfold. But even if that was not the case, what will be the condition of affairs with a hundred thousand miners from every coun-

try in the world, without any law, without any provision for pun-ishing crime, without any legal provisions which should regulate the intercourse of man with man?

It is necessary that this bill should be passed, and that it should be passed promptly. I think this amendment would interfere with the prompt passage of the bill, and therefore I hope the bill will be sustained as reported to the House.

Mr. THROCKMORTON. I ask the gentleman from Kentucky [Mr. BOONE] to yield to me for two minutes.

Mr. BOONE. I will yield to the gentleman for two minutes.

Mr. THROCKMORTON. The gentleman from Massachusetts [Mr. SEELYE] says that this amendment is perhaps not wrong on principle. Then why not adopt it? It can be concurred in by the Senate in a moment when the bill is reported there. We of Texas and of the other States contiguous to the Indian Territory believe that it would be a great wrong not only to the semi-civilized Indians of that Territory, but to the people of the surrounding States, to allow these Sioux Indians to go in there.

It was agreed yesterday that this amendment should be adopted. I so understood the agreement, standing here ready all the time with my colleague to object to this bill if there was no such understanding.

The gentleman from Nebraska thinks it perhaps best that these Indians should go to the Indian Territory. Those of us representing the States adjacent to that Territory think differently. Already the Government has colonized over eighteen thousand wild Indians there. The Cheyennes and Arapahoes from the north, and Apaches from New Manual Cheyennes and Arapahoes from the north, and Apaches from New Manual Cheyennes and Arapahoes Indians, the Comanches, Kiowas, Mexico, besides our own southern Indians, the Comanches, Kiowas, Mexico, besides our own southern Indians, the Comanches, Kiowas, and other tribes, are colonized there and immediately on the border of Texas. To place these northern Sioux there would be unjust to Texas and the neighboring States and an outrage upon the Cherokees, Creeks, Choctaws, and Chickasaws. What would the gentleman from Nebraska think if we should attempt to send the wild Indians of the south into Nebraska? We, sir, would stand here and aid him to resist such policy. We ask that these northern savages shall not be sent down on us. I hope the bill will be defeated if the amendment is not adouted. ment is not adopted.

Mr. BOONE. I call the previous question on the bill and amend-

ments.

The previous question was seconded and the main question ordered. The question being upon the amendment reported by the commit-

tee,
Mr. BOONE. I desire to say one word only. While I was not present when that agreement of which the gentleman from Texas speaks was entered into, I clearly understood from the reading of the Journal was entered into, I clearly understood from the reading of the Journal and from the information of other gentlemen that there was such an agreement. Hence, I was perfectly willing to accept his amendment, as I supposed the whole committee was, because I knew that it carried out what I understood to be the views of the whole committee upon the subject of the removal of these Sioux Indians to the Indian Territory. We thought that such removal would not only be unjust to the people of States adjacent to that Territory, but also unjust to the indian Ind the people of States adjacent to that Territory, but also unjust to the civilized Indians who are already quartered there. Hence, as I understood, we were all opposed to it. While I do not believe, as I before remarked, that the amendment was necessary in order to accomplish that result, yet, in order to accommodate myself to the feeling, which I confess I entertain in common with gentlemen who live in those States, that these wild Indians should be kept from their vicinity, I was willing to excele to the prescrition and account the amendment. was willing to accede to the proposition and accept the amendment. I would like the gentleman from Texas, and all others, to know that do not go back upon this agreement or any other that I enter into. now call for a vote upon the amendment.

The question was taken on the amendment; and it was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. BOONE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### OMAHA BRIDGE.

Mr. THROCKMORTON. I move that the House now resolve itself into Committee of the Whole on the state of the Union.

The SPEAKER. The Chair desires to state for the information of the House that the object of the gentleman from Texas in moving that the House resolve itself into Committee of the Whole on the state of the Union is in order to bring up in Committee of the Whole a bill which has been made a special order, being the bill in reference to the rate of tell on the Omelia bridge. to the rate of toll on the Omaha bridge.

to the rate of toll on the Omana bridge.

Mr. BURCHARD, of Illinois. Is that motion in order?

The SPEAKER. The motion which the gentleman from Texas makes is always in order. The idea of the gentleman is to lay aside all the bills upon the Calendar until this bill is reached, and then take it up for consideration.

Mr. CONGER. I would ask whether we could not, by unanimous consent, agree to take that bill up immediately?

The SPEAKER. That is a matter for the committee to deter-

The SPEAKER. That is a matter for the committee to deter-

The question was taken on the motion of Mr. THROCKMORTON; and

The question was taken of the interest it was agreed to.

And the House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. Buckner in the chair.)

Mr. THROCKMORTON. I move that the committee set aside all preceding business on the Calendar and take up for consideration the bill regulating the rate of toll on the Omaha bridge. That will have to be done by laying aside each bill in its order until the special order shall be reached.

Mr. WILSON, of Iowa. It is not necessary to put the question on

anything but special orders.

Mr. MILLIKEN. Why not take up this bill and obviate the necessity of reading over all the bills on the Calendar until this bill is

Mr. HOLMAN. I do not exactly understand the proposition.

The CHAIRMAN. The proposition is that all business on the Private Calendar preceding this bill shall be set aside and the bill taken

up for consideration.

No objection was made, and the committee proceeded to the consideration of the bill (H. R. No. 4532) to provide for fixing the rates and charges for freight and passengers passing over the bridge constructed across the Missouri River at Omaha, Nebraska, on the line of the Union Pacific Railroad.

Mr. PHILIPS, of Missouri. The bill just read represents the views of the majority of the committee. I desire to have read at the Clerk's desk a proposition representing the views of the minority, which I will offer at a proper time as a substitute for the bill reported by the

majority.
The Clerk read as follows:

Be it enacted. &c., That after the passage of this act it shall not be lawful for the Union Pacific Railroad Company, its lessess or assigns, to charge more than \$5 for any car of freight nor more than twenty-five cents for any passenger passing over the bridge and approaches constructed by said company between Council Bluffs, in Iowa, and Omaha, in the State of Nebraska: Provided, however, That nothing herein contained shall be so construed as to give said company the right to charge any special or greater rate for the transportation of freight or passengers over said bridge and its approaches than is now conferred by existing law.

Mr. THROCKMORTON. I am informed that the gentleman from Nebraska [Mr. CROUNSE] desires to discuss this bill. Mr. CROUNSE. Yes, sir.

Mr. THROCKMORTON. For how long?

Mr. CROUNSE. I cannot say. Mr. THROCKMORTON. I yield to the gentleman from Nebraska for half an hour.

Mr. CROUNSE addressed the committee. His remarks will appear

n the Appendix.]
Mr. THROCKMORTON. Will the gentleman yield for a motion that the committee rise ?

Mr. CROUNSE. I am not disposed to occupy the time of the com-

mittee any longer than the patience of members will permit.

Mr. THROCKMORTON. If the gentleman will suspend his remarks for the present, I will move that the committee now rise.

Mr. CROUNSE. With the understanding that I still retain the

Mr. THROCKMORTON. Certainly.
Mr. CROUNSE. I believe my time was not limited.
The CHAIRMAN. The gentleman's time was limited to thirty

Mr. CROUNSE. I may then ask for some more time to-morrow.

The motion of Mr. Throckmorron was then agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Buckner reported that the Committee of the Whole on the state of the Union had had under consideration the bill (H. R. No. 4532) to provide for fixing the rates and charges for freight and passengers passing over the bridge constructed across the Missouri River at Omaha, Nebraska, on the line of the Union Pacific Railroad, and had come to no resolution thereon.

## ISAAC RAINES.

The SPEAKER laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on the bill (H. R. No. 3871) for the relief of Isaac Raines, Eighth Tennessee Volunteers; which was referred to the Committee on Military Affairs.

### SAN FRANCISCO, CALIFORNIA.

The SPEAKER laid before the House a letter from the Secretary of War, transmitting a report of the Adjutant-General on House bill No. 4180, in regard to certain lands in San Francisco, California; which was referred to the Committee on Military Affairs.

### WATER FRONT AT MEMPHIS, TENNESSEE.

The SPEAKER also laid before the House a letter from the chief clerk of the War Department, (in the absence of the Secretary of War,) transmitting a report on the survey of the water front at Memphis, Tennessee; which was referred to the Committee on Commerce.

### MONETARY COMMISSION.

Mr. WILLARD asked and obtained unanimous consent to have the following taken from the Speaker's table; and the same was read

Resolved by the Senate, (the House of Representatives concurring.) That the monetary commission created by the joint resolution of August 15, 1876, be allowed until the 24th of February, 1877, to submit their report.

### WITHDRAWAL OF PAPERS.

Mr. BLAND asked and obtained unanimous consent for the withdrawal from the files of the House of the papers in the claim of Jacob De Haven, there being no adverse report.

#### LEAVE OF ABSENCE.

Mr. LORD, by unanimous consent, was granted indefinite leave of absence on account of severe illness in his family.

#### ORDER OF BUSINESS.

Mr. HOLMAN. I move that the House now take a recess until ten o'clock to-morrow morning; and I ask unanimous consent that there be an understanding that the House will then take a further recess until five minutes before eleven o'clock.

Mr. CONGER. Are there not appropriation bills that the House can excellent the morney of the consequence of the conse

can consider to-morrow?

Mr. HOLMAN. There is nothing we can ask the attention of the House to to-morrow morning.

Mr. HALE. Why not take a further recess until five minutes before twelve?

before twelve?

Mr. HOLMAN. The gentleman can move that amendment.

Mr. LUTTRELL. Can we not take up and consider to-morrow morning some bills now pending before the Committee on Public Lands which have been passed by the Senate?

Mr. CAULFIELD. There will be no quorum here.

The SPEAKER. The Chair would suggest that to-morrow will be

private bill day.

Mr. HOLMAN. We can go on in the morning with the debate upon

The SPEAKER. If there be no objection, it will be the understanding that to-morrow at ten o'clock the House take a further recess until five minutes before eleven o'clock.

There was no objection, and it was so ordered.

The motion of Mr. Holman was then agreed to; and accordingly (at four o'clock and forty minutes p. m.) the House took a recess until to-morrow morning at ten o'clock.

#### AFTER THE RECESS.

The recess having expired, the House resumed its session at ten o'clock a. m., Friday, February 16.

The SPEAKER. In accordance with the order unanimously adopted

yesterday the House takes a further recess until five minutes before eleven o'clock.

At five minutes before eleven o'clock a. m. the House resumed its

#### SOLDIERS OF MEXICAN AND BLACK HAWK WARS.

Mr. STEVENSON, by unanimous consent, presented a joint resolution of the General Assembly of the State of Illinois, concerning pensions for soldiers of the Mexican and Black Hawk wars; which was referred to the Committee on Invalid Pensions, and ordered to be printed in the RECORD.

It is as follows:

Senate joint resolution No. 13, concerning pensions for soldiers of the Mexican and Black Hawk wars.

Whereas the House of Representatives, at Washington City, did, on the 4th day of January last, by a unanimous vote, pass a bill granting a pension of \$8 per month to the soldiers of the Mexican war and to their unmarried widows: Therefore, Be it resolved by the senate of the State of Illinois, (the house of representatives concurring herein.) That our Senators in Congress be, and they are hereby, instructed to vote for and use their influence to secure the speedy passage of said bill by the United States Senate; and that they also be requested to insert in such bill the following: Ulowing:

"That the soldiers of the Black Hawk war and their unmarried widows shall receive as a pension the sum of \$3 per month."

ANDREW SHUMAN,

th."

ANDREW SHUMAN,

President of the Senate.

JAMES SHAW,

Speaker of the House of Representatives.

Adopted by the Senate February 3, 1877.

JAMES H. PADDOCK, Secretary of the Senate.

Concurred in by the house of representatives February 7, 1877. E. F. DUTTON, Clerk of the House of Representatives.

## OMAHA BRIDGE.

Mr. THROCKMORTON. I move that the House resolve itself into Committee of the Whole, to resume the consideration of the bill in regard to the Omaha bridge. The motion was agreed to.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole, (Mr. Buckner in the chair,) and resumed the consideration of the bill (H. R. No. 4532) to provide for fixing the rates and charges for freight and passengers passing over the bridge constructed across the Missouri River at Omaha, Nebraska, on the line of the Union Pacific Railroad.

Mr. THROCKMORTON. I yield ten minutes to the gentleman from California, [Mr. LUTTRELL.]
[Mr. LUTTRELL addressed the committee. His remarks will ap-

pear in Appendix.]
Mr. THROCKMORTON. I yield ten minutes to the gentleman

from Missouri, [Mr. Philips.]
Mr. Philips. Mr. Chairman, I have no disposition to inveigh against this railroad corporation, nor shall I do so. The

question presented here is simply one of right and justice between this corporation and the people of the State of Nebraska and of the city of Omaha and the traveling public; and if I can have the atten-tion of the Committee of the Whole for a few minutes, I think I shall so define the exact issue between the majority and the minority of the committee that the House may at least be able to vote in-

It is complained on the part of the people of the State of Nebraska and of the city of Omaha that the Union Pacific Railroad Company is charging exorbitant and unnecessary rates for the transportation of freight and passengers over the Omaha bridge. It is represented and the fact is conceded that they charge \$10 for every car-load of freight and fifty cents for every passenger that passes over it. Th say that this charge is exorbitant and that it is unnecessary.

The railroad corporation, on the other hand, claims that it is necessary, for the reason that this bridge, under a power given to the Union Pacific Railroad Company by the charter granted in 1871, is mortgaged to secure the sum of two and a half millions of dollars bearing 8 per to secure the sum of two and a half millions of dollars bearing 8 per cent. interest. The mortgage, furthermore, provides for a sinking fund amounting to \$40,000 per annum. So that they claim the bridge must earn the company, in order to meet this interest and this sinking fund, \$240,000 per annum outside of what is required to meet the necessary expenses of operating and maintaining the bridge. There is in the judgment of the minority of the committee no necessity whatever for this company exacting a dollar from the people of Nebraska or from the public beyond this sum.

It is proposed by the majority of the committee by the bill they report here to refer this question to the Government directors of this railroad. And the question presents itself right here: Where is the necessity for this reference? Why cannot this matter be ascertained and determined by the Congress of the United States, where the charter of the road places this whole matter? Because, sir, when this company obtained its charter for this bridge authorizing them to mortgage it, Congress in granting the charter expressly reserved the right—

At all times to regulate said bridge and the rates for the transportation of freight and passengers over the same, and the local travel that might use it.

There was an express reservation in the very charter granted for Congress to regulate this matter of freights and the rates for passen-Congress to regulate this matter of freights and the rates for passengers. It seemed then to be anticipated and supposed probable by Congress that this company under the grant would exact exorbitant and outrageous rates from the people, and therefore it reserved the right in Congress—in this House—to regulate this matter. It is proposed by the majority of the committee, however, to refer this matter to the board of Government directors. For what purpose? For what necessity? We have, sir, a standing committee of this House, a committee known as the Pacific Railroad Committee, who have the same powers and the same rights to do exactly what this commission can decomply the property of the reservoir of the property of the property of the reservoir of the property of the prope do. We have power to inquire and investigate into this matter, to send for persons and papers, and to ascertain the facts. We are just as competent and much less liable to the outside influence and control of this corporation than this commission would be, which, doubtless would be cozened, wined, and cajoled by the railroad magnates beyond

would be cozened, wined, and cajoled by the railroad magnates beyond their sense of propriety and the line of duty.

This duty, sir, ought to be discharged by the committee of this House. The duty is simple. The facts to be ascertained are few and plain. And the committee of this House is already in possession of all the facts necessary to enable us to arrive at a just and proper conclusion and judgment in this matter.

What are those facts? We have called upon the railroad corporation and they have furnished us a full statement of the earnings of this bridge and its expenditures. That presents the whole case. If a commission appointed by Congress were to start out to day to requ-

a commission appointed by Congress were to start out to-day to regulate these rates, the first thing they would do would be to call upon this corporation to ascertain what were the earnings of this bridge, this corporation to ascertain what were the earnings of this bridge, and what were the necessary and legitimate expenditures required to keep it up. And when they had those figures they would have before them all the data upon which to predicate their judgment as to what should be the rates for freight and passengers over it. They have furnished us with that statement. And, sir, according to that statement furnished by President Dillon of the Union Pacific Railroad, the earnings of this bridge for the first six months of 1875 were \$266,750; and if the increase were in the same proportion for the remaining period as it had been in the preceding six months, the earn-\$200,700; and it the increase were in the same proportion for the remaining period as it had been in the preceding six months, the earnings of this railroad bridge for the year 1875 would not be less than \$600,000; \$600,000 earned in one year; and what becomes of it? They undertake to show that the greater part of these earnings is expended necessarily in keeping up and equipping the bridge. But, sir, under the decision of the Supreme Court of the United States, which was made since the bill was introduced into this House by the gentleman made since the bill was introduced into this House by the gentleman from Nebraska, [Mr. Crounse,] it was decided that the Omaha railroad bridge is a part of the Union Pacific Railroad; that its eastern terminus or initial point is at Council Bluffs; and that that bridge is a part of the whole railroad. And, therefore, the legitimate construction of this decision of the Supreme Court is that the expenses incident to the operation of this bridge should be apportioned to the whole line, and therefore the great body of the item which they charged to the bridge should be charged to the whole road. If that be done, I have here a statement furnished by President Dillon showing how the matter stands; it is as follows:

Statement of earnings and operating expenses of the Omaha Bridge Transfer from March, 1872, to December 31, 1875.

	March, 1872, to June, 1873.	Year to June 30, 1874.	Year to June 30, 1875.	Six months to Dec. 31, 1875.
Earnings: Passenger transfer trains. Passenger dummy trains Freight. Mail Express Miscellaneous	12, 779 82 331, 568 37 5, 983 55 4, 922 07	\$65, 049 85 15, 156 91 305, 735 15 4, 366 67 3, 785 21 2, 364 50	\$80, 377 41 14, 144 67 321, 653 54 4, 500 00 6, 109 28 1, 139 00	\$45, 572 80 7, 402 03 208, 343 73 9, 250 00 2, 863 36 318 93
Total earnings	439, 266 37	396, 458 29	427, 923 90	266, 750 85
Operating expenses: Superintendence and clerks. Station agents, clerks, and labor Bridge inspector and watchmen Repairs of bridge. Repairs of station bulldings, &c. Station fixtures and supplies. Books, printing, and stationery. Train labor and expenses. Use and repairs of cars. Use and repairs of engines. Fre! Injuries to persons. Damage to freight Incidentals Interest and discount Taxes. Equipment Riprapping		57, 701 36 2, 774 99 2, 104 48 20, 418 85 2, 041 78 2, 502 39 3, 454 55 23, 421 95 7, 104 22 18, 450 14 12, 698 52 7, 510 00 390 52 494 37 102 44 29, 101 50 559 72 18, 946 52	8, 520 00 60, 863 50 2, 237 27 76 78 28, 427 72 5, 450 11 3, 3+1 85 4, 050 63 22, 049 00 8, 048 24 21, 406 25 11, 318 85 623 35 11, 406 25 12, 000 00 30, 001 7	3,969 16 32,484 75 1,098 70 1,514 90 18,905 17 2,963 71 1,754 64 1,842 12 11,127 51 6,542 01 12,000 42 4,823 240 65 516 94 315 36
Total operating expenses			228, 068 64	109, 421 35
Surplus earnings	185, 323 07	176, 839 75	199, 855 26	157, 329 53

From this should be deducted the following items as properly From this should be deducted the following items as properly chargeable to the whole line, under the decision of the Supreme Court, to wit: Superintendent and clerks; station agents, clerks, and labor; repairs of track; station buildings; station fixtures; books, stationery, &c.; train labor and expenses; use and repair of cars; use and repair of engines; fuel; injuries to persons; damage to freight; incidentals; amounting in the aggregate to \$96,629.99, which, taken from the total operating expenses for six months, would leave \$12,791.33 properly chargeable to the bridge. So the total expense for the year would be \$25,582.66.

The earnings of the road for the whole year of 1876 were \$533.501.70

The earnings of the road for the whole year of 1876 were \$533,501.70 even if there was no increase during the last six months. Deducting operating expenses would leave \$507,919 net earnings. From this deduct \$200,000 for interest and \$40,000 sinking fund, leaving a net surduct \$200,000 for interest and \$40,000 sinking rund, leaving a net surplus of \$293,501.70. So, sir, here are the facts; plain, undisputed, and undisputable. The reduction proposed by the minority of the committee leaves the bondholders secured and affords relief to the people who are unconscionably subjected to this toll. Why therefore remit this adjustment to railroad directors to ascertain that which is already known to this House, already in its possession? The special charter of the bridge reserves the right to and imposes upon Congress—this House—the duty of regulating these rates. Why then shift the responsibility to a set of men outside, to be manipulated and cozened by railroad men who are sharp, smooth, and plausible?

by railroad men who are sharp, smooth, and plausible?

Before I take my seat I offer as a substitute for the report of the majority the bill reported by the minority and which has already

Mr. BLAND. I would ask the gentleman whether the bridge is owned by the Pacific Railroad Company or another company?

Mr. PHILIPS, of Missouri. It is a part of the same line. It has been the policy and the effort of the Union Pacific Railroad Company to treat it as a separate franchise, but under the decision of the Supreme Court it is a part and parcel of the Union Pacific Railroad Company, and ought to be treated as any other bridge upon the same

ond.

Mr. LUTTRELL. The decision of the Supreme Court was that it was a part and parcel of the Union Pacific Railroad Company.

Mr. THROCKMORTON I propose briefly to call the attention of the House for a few moments to the facts in this case, and I ask the attention of members for a very short time, that I may lay the question clearly before them. My friend from California, [Mr. LUTTRELL,] in the political harangue which he delivered, said so much about the Credit Mobilier and things of that kind that I think it proper to make a brief statement so as to lay this question fairly before the House, so that every member may judge for himself.

Now, sir, we find by an act of Congress, February 4, 1871, that there was a charter granted for the purpose of constructing a bridge across the Missouri River between Council Bluffs and Omaha. I would beg to call the attention of members especially to an extract from that charter, in connection with what my friend from California has said in regard to the decision of the Supreme Court. Now, sir,

that act, among other provisions, provides that the company may issue bonds for the construction of a bridge, and it further provides, and I read the exact language of the statute:

Said company may collect tolls and charges for the use of the same, and for the use and protection of said bridge property.

That is what Congress said. There is a difference between my That is what Congress said. There is a difference between my friend from California and Congress. He has stated here this morning that the Supreme Court has decided that they had no right to charge tolls for the use of this bridge. Now, sir, I will read the language that he has referred to, to show the difference between the opinion of the gentleman on the subject and what are the facts. Here is the language marked by him, saying that Mr. Dillon admitted that the Supreme Court had decided that they had no right to collect

Mr. LUTTRELL. I referred to the decision of the Supreme Court which I hold in my hand.

Mr. THROCKMORTON. Let me read:

By a recent decision of the Supreme Court-

Says Mr. Dillon-

it has been decided that the Omaha bridge must be operated as a part of the continuous line of the Union Pacific Railroad Company.

Mr. LUTTRELL. That was what I referred to; not to the end of

Mr. THROCKMORTON. Yes, the court has decided that the bridge must be operated as a part of the line of the Union Pacific Railroad Company. But I ask every intelligent man, does that imply that no tolls may be charged for the use of this bridge? The Supreme Court decided no such thing, but they decided that it must be used as a part of the Union Pacific Railroad Company, but nowhere decided that there was not a right that tolls might be collected for the use of this bridge.

Mr. BAKER, of Indiana. Will the gentleman allow me to ask him a question? If the road is to be operated as one continuous line, how can they separate the rates of toll over this bridge from the rates of toll charged over the whole line?

Mr. THROCKMORTON. Because Congress has said by an act that

this bridge might be constructed, that the company might issue bonds for its construction, and should have a right to charge tolls for the use and protection of their property. I have referred the gentleman to the act of February 4, 1871, 16 Stat., page 430, which says:

The said company may levy and collect tolls and charges for the use of the same, and for the use and protection of said bridge property.

Now, sir, I have said thus much to show what the Supreme Court Now, Sir, I have said thus inden to show what the supreme court did decide as to the rights of this company. I propose now to state what is the difference between the majority and the minority of the committee on the subject. The gentleman from Nebraska [Mr. Crounse] introduced the bill for which the bill offered by the committee is a substitute. Mr. Crounse's bill provided:

That after the passage of this act, it shall not be lawful for the Union Pacific Railroad Company, its lessees, or assigns, to charge more than \$5 for any car of freight, nor more than twenty-five cents for any passenger, passing over the bridge and approaches constructed by said company between Council Bluffs in Iowa and Omaha in the State of Nebraska.

Now I am free to confess as a member of that committee that I believe the present rates of charges fixed by the bridge company, namely, \$10 a car for freight and fifty cents each for passengers, are too high; I believe they constitute an unjust burden upon the commerce and travel of the country. But the act of Congress to which I have alluded, and which was referred to by the member from Missouri, [Mr. Philips,] declares that Congress shall have the right at all times to regulate and control these charges for freight and passengers.

The question that presented itself to the committee was whether that committee, with the knowledge they had before them, would be competent to fix a proper rate of toll. Not a single member of that committee was disposed to fix anything like an exorbitant charge upon the commerce and travel of the country. We were, however, charged with a very difficult duty to perform. Here are five or six, perhaps more, railroads concentrating at Council Bluffs and Omaha, Now I am free to confess as a member of that committee that I be-

charged with a very difficult duty to perform. Here are five or six, perhaps more, railroads concentrating at Council Bluffs and Omaha, and transacting business over this bridge. On the one hand here was the Union Pacific Railroad Company and the bridge company, and on the other hand all these other railroads that are interested in

I believe it is the duty of Congress to act fairly toward all the parties in interest. I ask every man in this House how it is possible for a committee of this House, with little time for investigating these matters, to fix a just and proper rate of charge, having due regard to the interest of the parties who have advanced their money for the construction of this bridge and also a due regard to the great interests of the country.

on the one hand are these different railroad companies which are obliged to use the bridge, and feel that the charges imposed by the bridge company are altogether too high; and they contend for a reduction of the rates. On the other hand is the company, which submits a statement from their books to show that there is a large deficiency, taking into consideration the outlay for building and the expense of maintaining this bridge.

Now, what is the committee to do? For one I believe that instead

Now, what is the committee to do? For one I believe that instead of sitting in our committee-room and attempting to fix an arbitrary rate, which we could not possibly know would be just to the holders

of these bridge bonds and to the owners of this property, and which might operate very unequally upon them, it was the duty of Congress to appoint a commission composed of gentlemen having a knowledge of the cost of constructing and maintaining such a work. I believe that these foreign bondholders who rely upon the action of Congress to maintain the faith and credit of the country have a right to look to Congress to see that justice is done to them.

The committee therefore report this bill, providing that those directors of the Union Pacific Railroad Company, who are appointed by the President, and who represent the Government and who are specially charged with the interests of the public rather than the interests of the Union Pacific Railroad Company, should constitute this commission. We believe that these Government directors would perhaps be better qualified to determine the rates of charges to be imhaps be better qualified to determine the rates of charges to be imposed than anybody else we could select; especially when we made it their duty to give notice by publication in three prominent journals of the Northwest of the time when they would meet for the purpose of determining this question, in order that everybody interested, these various railroad companies and everybody else who felt an interest in the matter, might come before the board, which board could examine engineers and experts, and send for the books and papers of this company for the purpose of ascertaining the cost of its construction and the expense of its maintenance.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. THROCKMORTON. I would suggest to the Chair that we met this morning at five minutes to eleven o'clock. haps be better qualified to determine the rates of charges to be im-

met this morning at five minutes to eleven o'clock.

The CHAIRMAN. There was half an hour of debate yesterday even-

Mr. THROCKMORTON. There has been no limit fixed to the de-

Mr. THROUKMORTON. There has been no limit fixed to the debate yet; the previous question has not been moved.

Mr. PHILIPS, of Missouri. I would suggest that we are in Committee of the Whole, and I do not know that there is any limit to debate. I did not know at the beginning, neither do I know now, what right the gentleman from Texas [Mr. Throckmorton] had to discover of the floor. pose of the floor.

The CHAIRMAN. The Chair was under the impression that the gentleman from Texas [Mr. THROCKMORTON] as chairman of the

gentleman from Texas [Mr. THROCKMORTON] as chairman of the committee had an hour and apportioned the time.

Mr. SAVAGE. The gentleman from Texas [Mr. THROCKMORTON] obtained the floor yesterday for an hour, and yielded thirty minutes to the gentleman from Nebraska, [Mr. CROUNSE.]

The CHAIRMAN. That is the view the Chair took of it.

Mr. THROCKMORTON. I understood I was to have an hour after the previous question was called.

The CHAIRMAN. There is no previous question in Committee of the Whole. There has been no limit fixed to the debate upon the bill but the gentleman from Texas [Mr. THROCKMORTON] can constitute the gentl

bill, but the gentleman from Texas [Mr. THROCKMORTON] can con-

trol only an hour.

Mr. THROCKMORTON. I desire to occupy but a short time longer.

Mr. SAVAGE. I ask unanimous consent that the gentleman's time be extended.

The CHAIRMAN. For how long f
Mr. SAVAGE. For thirty minutes.
Mr. PHILIPS, of Missouri. That would be very unjust to the minority. I have had only ten minutes to present the views of the

minority.

The CHAIRMAN. Is there any objection to allowing the gentleman from Texas [Mr. Throckmorton] to continue his remarks for

hair from reas [Mr. Throckmorrow] to continue his females for thirty minutes longer?

Mr. CROUNSE. I have no objection, but I would like to be recognized afterward to offer an amendment.

The CHAIRMAN. The Chair will recognize the gentleman.

No objection being made, the time of Mr. Throckmorrow was ex-

No objection being made, the time of Mr. THROCKMORTON was extended for thirty minutes.

Mr. THROCKMORTON. Mr. Chairman, the committee thought that this board of Government directors, having the power to send for persons and papers, to examine experts, to hear all parties in interest on either side, would be much better able to determine the proper rate to be charged than would a committee of this House.

In addition to that, this bill provides that after the rates have been fixed by the board of Government directors they shall be re-adjusted by this board of commissioners, and that a similar re-adjustment shall

by this board of commissioners, and that a similar re-adjustment shall be made every twelve months thereafter. This provision was in-cluded on account of a belief that the rates of charge from time to cluded on account of a belief that the rates of charge from time to time should be decreased as the business of the road increases. We believe that such will be the result. In addition to this, one of the last clauses of the bill provides that Congress shall still retain the right to repeal or alter the rates that may be fixed by this board of directors. We cannot act intelligently upon this subject without the finding of a board of commissioners authorized to investigate and report upon this whole question.

Mr. BLAND. I would like to know from the gentleman how this bridge company happens to be a separate corporation from the Union

Mr. BLAND. I would like to know from the gentleman how this bridge company happens to be a separate corporation from the Union Pacific Railroad Company, or whether it is the same company? If the bridge company is controlled by the Union Pacific Railroad Company, I would like to know how the latter obtained control of it.

Mr. THROCKMORTON. I cannot answer as to the constitution of

the bridge company.

Mr. BLAND. There seems to be a mystery about this matter. I do

not think it is understood here. They say that this is a continuous line, yet that the bridge company is a separate corporation.

Mr. LUTTRELL. The construction of the bridge was commenced in 1869, prior to the passage of the act of 1871.

Mr. PHILIPS, of Missouri. The answer to the inquiry propounded by my colleague [Mr. Bland] is found in the decision of the Supreme Court, in which it is held in effect that the bridge over the Missouri River is a part of the continuous line of road from Council Bluffs westward; that the bridge company is not a separate corporation, but a part of the original corporation. The court decides, however, that under the act of 1871 the company is authorized to mortgage the bridge to secure bonds to the amount of \$2,500,000 to be used in its construction; that the additional power to execute such a mortgage to secure this indebtedness is given to the company as if this were a separate property. But it is held, nevertheless, that the bridge is a part of the continuous line of road and comes under the original grant of power made to the company under the act of 1832.

Mr. BLAND. Then this bridge is owned by the Union Pacific Rail-

road Company?

Mr. PHILIPS, of Missouri. Unquestionably; it is the same corporation, and the stockholders are the same.

Mr. THROCKMORTON. I will say to the gentleman from Missouri that originally the Union Pacific Railroad Company claimed that the eastern terminus of their road was Omaha. The Supreme Court has decided that the eastern terminus is Council Bluffs. But before that decision Congress granted a charter for the construction of this bridge.

Mr. CROUNSE. No, sir, not for the construction of the bridge, but simply for the issue of bonds.

Mr. THROCKMORTON. Yes, sir, for issue of the bonds.

Mr. LUTTRELL. The bridge was commenced in 1869.

Mr. THROCKMORTON. In pursuance of the act of Congress, bonds to the amount of \$2,500,000 to provide for the construction of the

to the amount of \$2,500,000 to provide for the construction of the bridge were issued; and the act authorizes the company to charge toll to meet the interest on those bonds and establish a sinking fund

for the payment of the principal.

for the payment of the principal.

I have here a statement made by the bridge company. As a matter of course, I do not pretend to vouch for its accuracy; but it has been submitted by the officers of that company as a correct statement of their expenditures and receipts in connection with this bridge. They issued bonds to the amount of \$2,500,000, which were sold at eighty-two and one-half cents on the dollar, making \$2,060,000, leaving a balance of \$366,463 of the expenses of construction to be paid by the company and not covered by the bonds. According to this statement of earnings and expenses, the deficiency from March 25, 1872, to June 30, 1873, was \$61,145; and the total deficiency, including the redemption of bonds, to December 31, 1875, was \$332,561. That is the statement made by the officers of the company. As a matter of course the committee have no means of referring to books or papers to verify this statement. I give it for what it may be worth.

matter of course the committee have no means of referring to books or papers to verify this statement. I give it for what it may be worth. Mr. PHILIPS, of Missouri. Will the gentleman permit me to interrupt him with a question. I wish to inquire whether the company in the statement which I now hold in my hand did not furnish the items of these expenditures, and whether it was not conceded by the committee upon investigation and inquiry that two-thirds of the items charged to the bridge are now properly chargeable to the whole. line of the road under the decision of the Supreme Court? Is it not apparent from the items here furnished that two-thirds of those which apparent from the items here furnished that two-thirds of those which are charged to the expenses of the bridge ought to be charged to the

whole line of the road?

Mr. THROCKMORTON. I am of the impression some of the items should be charged to the maintenance of the road and not to the bridge property; and that is the reason why we could not enter into this controversy as to what was properly chargeable to the bridge and what to the remaining portion of the road, and therefore agreed to the provision contained in this bill. I do not know who these Government directors are, but from their knowledge of the road and the cost of the construction of the Omaha bridge, it seemed to the committee they were eminently fitted to determine this question. When they have determined it, if the various interests involved are not satisfied it has been fairly and properly adjusted, Congress still has it in its power to change, alter, or amend their determination. For one I believe we owe it to American credit that the bridge property, being charged with the payment by act of Congress of a certain debt, not to pass any law fixing the rate of charges unless we know the money advanced by foreign capitalists will be protected. Members of Congress would hesitate long before they would act upon the advice or argument of parties directly interested on one side or the other and pass a law which would militate against our credit as a nation. As has a matter of course, I presume no member of Congress would stand up here in favor of foreign bondholders to the injury of any American citizen or interest. It is devolved upon Congress to guard carefully all interests concerned and not to determine the question upon the statements of parties interested on the one side or on the other. I will not trespass, however, further upon the time of the House, but ask

that the committee rise, report progress, and ask leave to sit again.

Mr. BLAND. I ask the gentleman if this bridge is mortgaged as a separate piece of property from the road itself, whether if that mortgage is foreclosed it will separate the bridge from the railroad company, or will it continue to be a continuous line? There seems to be

some question about it.

Mr. THROCKMORTON. I do not suppose it could be separated.

Mr. PHILIPS, of Missouri. With the gentleman's permission, I will read some extracts from the decision of the Supreme Court which are pertinent to this matter.

Mr. THROCKMORFON. I yield to the gentleman for that purpose,
Mr. PHILIPS, of Missouri. I thank the gentleman for yielding
to me, and wish now only to call the attention of the committee particularly to the following language of the decision of the Supreme

ticularly to the following language of the decision of the Supreme Court:

Thus far we have confined our attention to the act of 1862, and to the President's action under it. From that act alone we have deduced the conclusion that the company was authorized and required to build their railroad to the Iowa shore. That authority included within itself power to build a bridge over the Missouri. No express grant to bridge the river was needed. Whatever bridges were necessary on their authorized line was as fully authorized as the line itself, and the company were as much empowered to build one across the Missourias they were across the Platte or any other river intersecting the route of their road. (People vs. The Saratoga and Reusellaer Railroad Company, 15 Wendell, 130; Springfield vs. Connecticut River Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad Company, 4 Cush, 63; Mohawk Bridge Company vs. Utica and Schenectady Railroad, and the act declared this anthority to be given to enable the company to make convenient and necessary connections with other roads. This enactment may not have been necessary. The power may have been conferred upon the Union Pacific Railroad Company by the act of 1863, and we think it was. But whether necessary or not, it shows clearly that Congress had in view the constructed without making use of the lowa shore of their road. They were not authorized to use it for other purposes than those of their road. They were not authorized to use it for other purposes than those of their road. They w

If we are correct in this conclusion it is difficult to see why the bridge over the river, built by the railroad company, is not a part of their railroad, and required by law to be operated as a part thereof. It was commenced in 1869 under the acts of 1862 and 1864. These acts were the only authority the company had at the time of its commencement for building it. It is a railroad bridge, a continuation of the line west of the river, and it connects the road with its required eastern terminus. The acts chartering the company manifest no intention to distinguish between the bridge over the Missouri River and other bridges on the line of their road. If it is not a part of their road, are the power to build all bridges was given in the same words.

There is nothing, either in the act of 1862 or 1864 or in that of February 24, 1871, which empowers them to build more than one bridge over the Missouri for the Iowa branch, and the latter act contains an implied recognition of their right under the former acts to build their bridge on its present location. There is no intimation in it of a distinct bridge franchise. It grants no power to build a bridge. Its main purpose manifestly was to give the company additional means and privileges for the completion of a structure already authorized, not to enable them to construct a new and independent road. To hold that the bridge is not a part of the road would defeat the plain object Congress had in view in 1862 and 1864—a continuous line for connection with the Iowa roads.

Holding, then, as we do, that the legal terminus of the railroad is fixed by law on the Iowa shore of the river, and that the bridge is a part of the railroad, there can be no doubt that the company is under obligation to operate and run the whole road, including the bridge, as one connected and continuous line. This is a duty expressly imposed by the acts of 1862 and 1864, and recognized by that of 1871. What this means it is not difficult to understand. It is a requisition made for the convenience of the public. An arrangement, such as the company has made, by which freight and passengers, destined for or beyond the eastern terminus, are stopped two or three miles from it and transferred to another train, and again transferred at the terminus, or by which freight and passengers going west from the eastern end of the line must be transferred at Omaha, breaks the road into two lines, and plainly is inconsistent with continuous operation of it as a whole. If not, the injunction of the statute has no meaning. The mandamus awarded in this case, therefore, imposes no duty beyond what the law requires.

The CHAIRMAN. The time allowed for general debate on this

bill has expired.

Mr. THROCKMORTON. I desire to ask the gentleman from Missouri [Mr. PHLIPS] a question. Did not Judge Dillon of the circuit court of the United States determine that the company had the right to charge toll?

Mr. PHILIPS, of Missouri. I concede that; and for that reason a clause in the minority bill reserves that whole question for determination by the court. We do not think it wise or prudent to trench on nation by the court. We do the prerogatives of the court.

Mr. CROUNSE. I desire to offer the following amendment in the

nature of a substitute.

The Clerk read as follows:

Be it enacted, &c., That after the passage of this act it shall not be lawful for the Union Pacific Railroad Company, its lessess or assigns, to charge any special or greater rate for the transportation of freight or passengers over the bridge and approaches constructed by said company between Council Bluffs in Iowa and Omaha in the State of Nebraska than that charged for the transportation of the same for like distance over other portions of its road; nor shall it charge other companies more than \$5 for every freight and passenger car and contents which any such company may transport over said bridge and approaches except in case of transportation of coal, sait, grain, or lumber, when not more than one-half of said last-named rate shall be charged.

Mr. THROCKMORTON. I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Buckner reported that the Committee of the Whole

on the state of the Union had had under consideration the bill (H. R. No. 4532) to provide for fixing the rates and charges for freight and passengers passing over the bridge constructed across the Missouri River at On that, Nebraska, on the line of the Union Pacific Railroad, and had come to no resolution thereon.

Mr. EDEN. I move that the House take a recess till twelve o'clock. The motion was agreed to; and (at eleven o'clock and fifty-four

minutes a. m.) a recess was accordingly taken.

## PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BANKS: The retition of Ellen D. Lynch, for a pension on account of sickness and death of her son, T. D. Lynch, late of the Fortieth Regiment New York Volunteers, to the Committee on Invalid Pensions.

Mr. BUCKNER: The petition of citizens of Saint Charles County, Missouri, for cheap telegraphy, to the Committee on the Post-Office

and Post-Roads

By Mr. DUNNELL: Joint resolution of the Legislature of Minne-River of the North, to the Committee on Commerce.

By Mr. FINLEY: A paper relating to the establishment of a postroute from Orlando to Tampa, via Barton, Florida, to the Committee on the Post-Office and Post-Roads.

By Mr. FLYE: The potition of citizens of Rockland, Maine, for the erection of a breakwater at the island of Matinicus, Maine, to the Committee on Commerce.

Also, the petition of citizens of Matinicus, Maine, of similar import, to the same committee.

By Mr. FORT: The petition of 70 citizens of Illinois, for cheap telegraphy, to the Committee of Ways and Means. By Mr. FREEMAN: The petition of William Simmons and others, of Pennsylvania, for payment of arrears of pensions, to the Commit-

by Mr. HARTZELL: The petition of J. W. Semple and 19 other citizens of Randolph County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HEWITT, of Alabama: The petition of citizens of Mobile, Alabama, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. HOSKINS: The petition of 64 citizens of Niagara County, New York, for the amendment of the pension laws so as to grant ar-

rears of pensions, to the Committee on Invalid Pensions.

By Mr. JACOBS: The petition of citizens of Washington Territory, for cheap telegraphy, to the Committee on the Post-Office and Post-

Also, the petition of citizens of Washington Territory, for an appropriation for the improvement of the navigation of the Skagit River, to the Committee on Commerce.

By Mr. KIMBALL: The petition of E. C. Collins and other citizens of Wisconsin, for cheap telegraphy, to the Committee on the Post-Office

and Post-Roads

and Post-Roads.

By Mr. McCRARY: The petition of A. W. Chilcote and other citizens of Washington, Iowa, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. MAISH: The petition of citizens of York County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

Post-Roads

By Mr. PHELPS: The petition of Holmes & Parsons, bankers, of Waterbury, Connecticut, of similar import, to the Committee on Bank-

ing and Currency.

By Mr. PHILLIPS, of Kansas: The petition of citizens of Kansas, for cheap telegraphy, to the Committee on the Post-Office and Post-

By Mr. SOUTHARD: The petition of Thomas S. Taylor and 36 other citizens of New Comerstown, Ohio, of similar import, to the same committee.

By Mr. THROCKMORTON: The petition of William. C. Coney, D.

By Mr. THROCKMORTON: The petition of William. C. Coney, D. Stuckey, and others, for a change of the post-route between Cleburne and Glenrose, Texas, to the same committee.

By Mr. WALLING: Three petitions, two signed respectively by Hines, Taylor & Co., and Ide & Co., bankers, of Columbus, the third by Cummings & Couch, bankers, of Carrollton, Ohio, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WILLARD: The petition of William S. Porter and 90 other citizens of Springport, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

# IN SENATE.

# FRIDAY, February 16, 1877-10 a. m.

The Senate resumed its session, and, on motion, took a further recess until twelve o'clock

The Senate re-assembled at twelve o'clock m.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D. The Journal of the proceedings of Thursday, February 15, was read and approved.

#### HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles, and referred to the Committee on the

A bill (H. R. No. 4654) to remove the political disabilities of John

A bill (H. R. No. 4654) to remove the political disabilities of John T. Mason, of Maryland;
A bill (H. R. No. 4660) to remove the political disabilities of George W. Clitz, of Portsmouth, Virginia; and
A bill (H. R. No. 4661) to absolve Frederick Hinkle from his allegiance as a citizen of the United States of America.
The bill (H. R. No. 586) for the relief of Adolph von Haacke was read this by its tills, and referred to the Committee on Military Affairs.

twice by its title, and referred to the Committee on Military Affairs.

The bill (H. R. No. 4657) to provide a building for the use of the United States district and circuit courts, the post-office, and internal-revenue officers at Austin, Texas, was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

#### PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial of the General Assembly of Arkansas, in favor of the passage of an act to facilitate the settlement of conflicts between the United States and the States having the benefit of the swamp-land grant of September 28, 1850;

having the benefit of the swamp-land grant of September 28, 1850; which was referred to the Committee on Public Lands.

Mr. KELLY presented a petition of citizens of Washington Territory, praying for the establishment of a post-route from The Dalles, in the State of Oregon, to Yakima City, in that Territory; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. LOGAN. I present a joint resolution of the Legislature of Illinois, concerning pensions for soldiers in the Mexican war and the Black Hawk war. I ask that it be read.

The PRESIDENT pro tempore. The joint resolution will be read.

The Chief Clerk read as follows:

Senate joint resolution No. 13, concerning pensions for soldiers of the Mexican and Black Hawk wars.

Whereas the House of Representatives at Washington City did on the 4th day of January last, by a manimous vote, pass a bill granting a pension of \$8 per month to the soldiers of the Mexican war, and to their unmarried widows: Therefore, Be it resolved by the senate of the State of Illinois, (the house of representatives concurring herein.) That our Senators in Congress be, and they are hereby, instructed to vote for and use their influence to secure the speedy passage of said bill by the United States Senate. And that they also be requested to insert in such bill the following: United States Senate. And that the following:

"That the soldiers of the Black Hawk war, and their unmarried widows, shall receive as a pension the sum of \$8 per month."

ANDREW SHUMAN,

ANDREW SHUMAN,
President of the Senate. JAMES SHAW, Speaker of the House of Representatives.

Adopted by the Senate February 3, 1877.

JAMES H. PADDOCK. Secretary of the Senate.

Concurred in by the House of Representatives February 7, 1877.

E. F. DUTTON,

Clerk of the House of Representatives.

Mr. LOGAN. I wish merely to call the attention of the Senate to this matter. The bill referred to is before the Committee on Pensions. It seems not to have been reported back. It passed the House of Representatives by a unanimous vote of both parties. It seems to me that it at least ought to receive the consideration of the Senate of the United States. The Legislature of Illinois by this memorial have called the attention of Congress to the bill. I move that the joint resolution be referred to the Committee on Pensions.

The motion was agreed to. Mr. McMILLAN presented the following memorial of the Legislature of Minnesota; which was referred to the Committee on Railroads: A memorial to Congress for right of way and grant of land for railroad purposes. To the Senate and House of Representatives of the United States in Congress as-sembled:

Your memorialists, the Legislature of the State of Minnesota, respectfully represent that the rapidly increasing settlements of the Northwest, the surplus agricultural products and material developments, demand greater and cheaper facilities than now existing, and a more direct transit to the Atlantic seaboard and European ports, and eastern products transported to the Northwest.

That the saving in the distance to eastern markets of three hundred miles, by a railroad route from Saint Paul and Minneapolis to Sault Sainte Marie will tend to more fully develop the great wheat-growing region of Wisconsin, Minnesota, Dakota, Huron, and Montans.

The surplus of wheat which forms one of the most reliable exports from our Government, in shortening the distance to European markets three hundred miles, will give encouragement to this great source of wealth to our whole land, and deserves aid and protection.

That by reason of the facts set forth in this memorial, and many other considerations, the nearest transit makes cheap transportation, and thereby develops the country and increases prosperity.

To further these objects, we ask Congress to donate land to aid, and the right of way through Government land to build a railroad from the cities of Saint Paul and Minneapolis to the falls of Sault Sainte Marie, where it will connect with railroad enterprises fostered and built by the Dominion government.

Your memorialists therefore earnestly request the matters aforesaid may receive the early and favorable consideration of Congress.

J. B. WAKEFIELD,
President of the Senate.
J. L. GIBBS,
Speaker of the House of Representatives.

Approved February 7, A. D. 1877.

OFFICE OF THE SECRETARY OF STATE, Saint Paul, February 7, A. D. 1877.

I, J. S. Irgens, secretary of state of the State of Minnesota, hereby certify that

the foregoing has been compared with the original on file in this office and is a true

Copy.

Witness my hand and the great seal of the State the day and year above written.

J. S. IRGENS.

Secretary of State.

Mr. SPENCER presented the petition of Alfred A. Green for himself and on behalf of others, praying for an investigation into the alleged wrongful action of the joint commission to adjust the claims between citizens of the United States and the republic of Mexico; which was referred to the Committee on the Judiciary.

#### REPORTS OF COMMITTEES.

Mr. ALLISON, from the Committee on Pensions, to whom was referred the bill (H. R. No. 3513) granting a pension to Dr. P. F. Reuss, reported adversely thereon; and the bill was postponed indefinitely. He also, from the same committee, to whom was referred the bill (H. R. No. 2841) granting a pension to Green Edwards, reported adversely thereon; and the bill was postponed indefinitely. He also, from the same committee, to whom was referred the bill (H. R. No. 1238) granting a pension to Esther P. Fox, reported it with an amendment.

He also, from the same committee, to whom was referred the bill (H. R. No. 3011) granting a pension to Mrs. Ann Annis, reported it with an amendment.

Mr. INGALLS, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1232) to repeal an act entitled "An act to incorporate the National Capital Insurance Company" and to provide for winding up the affairs of said corporation, reported it without amendment.

Mr. WRIGHT, from the Committee on Claims, to whom was recommitted the bill (H. R. No. 3373) for the relief of Susan E. Willard, widow of Sylvester D. Willard, of New York, reported adversely thereon, and the bill was postponed indefinitely.

#### OFFICIAL STAMPS FOR THE TREASURY DEPARTMENT.

Mr. SARGENT. I am instructed by the Committee on Appropriations to report a bill which I send to the desk, and I ask for its present consideration.

The bill (S. No. 1265) making an appropriation to supply a deficiency in the appropriation for the purchase of official postage-stamps for the Treasury Department for the current fiscal year was read twice

the Treasury Department for the current fiscal year was read twice by its title.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It appropriates \$100,000 to purchase official postage-stamps for the Treasury Department.

Mr. INGALLS. I should like to hear the bill explained.

Mr. SARGENT. That is what I intend to do. A letter which I send to the desk will explain the bill very tersely. I should like to say, however, before the letter is read that this item was passed by the House in the regular deficiency bill which is now before the Committee on Appropriations of the Senate; but the Department cannot wait the two or three weeks which are likely to elapse before that bill will become a law. The letter explains why.

bill will become a law. The letter explains why.

The PRESIDENT pro tempore. The Secretary will read the letter.

The Chief Clerk read as follows:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY, Washington, D. C., February 15, 1877.

Department, Office of the Secretary,
Washington, D. C., February 15, 1877.

Dear Sir: I have the honor to respectfully call your attention to the item in the deficiency appropriation bill as passed by the House of Representatives which appropriates \$100,000 for official postage-stamps for the Treasury Department for the balance of the current fiscal year, and to state that the Department is at this moment in pressing need of this appropriation, as the regular appropriation for this purpose is entirely exhausted, and the supply of stamps on hand will also be exhausted in a few days. If the Department is left without the means of procuring an additional supply it will suffer most serious inconvenience in transacting its ordinary business, while great embarrassment and pecumary loss will result to many important business interests by the inability of the Commissioner of Internal Revenue to forward to collectors of internal revenue the stamps which must be affixed to every package of distilled spirits, tobacco, cigars, snuff, or fermented liquors, before it can be removed from the place of manufacture or bonded warehouse, and which by existing law are required to be sent to collectors through the mails in registered packages.

This is a very important matter to the Department, and your attention is thus specially called to it with a view of obtaining the needed appropriation at the earliest possible moment.

Very respectfully,

CHAS. F. CONANT. Acting Scoretary.

Hon. WILLIAM WINDOM,
Chairman Committee on Appropriations of the United States Senate.

Mr. SARGENT. I think there can be no question about the bill. The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

# BILL INTRODUCED.

Mr. WEST (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1266) to provide for the election of directors of national banks; which was read twice by its title, and referred to the Committee on Finance.

## REPORT ON EUROPEAN SHIPS OF WAR.

Mr. ANTHONY submitted the following resolution; which was referred to the Committee on Printing:

Resolved. That 1,000 copies of the letter from the Secretary of the Navy, transmitting the report of J. W. King, chief engineer United States Navy, on European ships of war, be printed for the use of the Secretary of the Navy.

## AMENDMENTS TO AN APPROPRIATION BILL.

Mr. CHAFFEE, Mr. DORSEY, Mr. MITCHELL, and Mr. HITCH-COCK submitted amendments intended to be proposed by them respectively to the bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes; which were referred to the Committee on Appropriations, and ordered to be printed.

Mr. LOGAN. I move that the bill (H. R. No. 1231) for the relief of the board of trustees of the Antietam National Cemetery be recom-mitted to the Committee on Military Affairs.

The motion was agreed to.

#### GOVERNMENT PROPERTY IN MEMPHIS.

Mr. MORRILL. I move to proceed to the consideration of House bill No. 4576. It is merely to correct the boundaries of certain lands given to the United States by the city of Memphis for public build-ings there. It has been acted upon by the House. It will give rise to no debate at all.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 4576) to provide for changing and fixing the boundaries of certain property ceded to the Government of the United States by the city of Memphis, Tennessee. Mr. MORRILL. I will merely state that the bill corrects the boundaries and surrenders land that we do not want for land that we do

ant. That is all there is to it.

The bill was reported to the Senate without amendment, ordered

to a third reading, read the third time, and passed.

#### HOT SPRINGS RESERVATION.

Mr. DORSEY. I move that the Senate proceed to the consideration of the bill (H. R. No. 2382) granting the right of way to the Hot Springs Railroad Company over the Hot Springs reservation in the State of Arkansas

State of Arkansas.

The PRESIDENT pro tempore. Is there objection to the motion?

Mr. WRIGHT. When was the bill reported?

Mr. DORSEY. The bill was reported a few days ago from the Committee on Public Lands as a substitute to the bill reported probably two weeks ago, and it has been printed and lies on our table.

The PRESIDENT pro tempore. The Chair is informed that the substitute was reported the day before yesterday.

Mr. WRIGHT. Is there anything in the bill, aside from a mere grant to the road of the right of way over this reservation?

Mr. DORSEY. Yes, sir; there is a provision in the bill for the disposition of the Hot Springs reservation, the entire disposition of that question.

question.

Mr. WRIGHT. I desire to say, then, while I have no wish at all to postpone this bill, that two bills upon that subject have been referred to the Committee on the Judiciary and are now under consideration there. They have been referred by the committee to a subcommittee who are at present considering the subject. I call the attention of the Senate to this fact. I appreciate with the Senator the very great importance of an early disposition of this question, not alone so far as the interests of the Government are concerned, but in the interest of the people upon the reservation as well, yet this bill having been reported day before yesterday I have not had any opportunity to examine it, and I suggest that it go over for at least a day or two that I may have time to examine it.

I may have time to examine it.

Mr. DORSEY. If the Senator from Iowa objects, of course one objection takes the bill over until to-morrow. I shall endeavor to-morrow to have the bill taken up and finally acted upon.

Mr. WRIGHT. I wish the Senator from Arkansas to understand Mr. WRIGHT. I wish the Schator from Arkansas to understand that I do not mean to be understood as in the position of an objector. Mr. DORSEY. Certainly not; I understand the Schator. Mr. WRIGHT. I merely state the circumstance and give the reasons why the Schator should not press the bill at this time. Mr. DORSEY. I shall not press the bill to-day, but to-morrow I will endeavor to call it up and have it acted upon.

Mr. CLAYTON. Do I understand that one objection carries the

The PRESIDENT pro tempore. One objection prevents the Chair from entertaining a motion to go to the Calendar within the morn-

from entertaining a motion to go to the Calendar within the morning hour.

Mr. CLAYTON. I should like to ask the Senator from Iowa whether the bill which has been referred to the Committee on the Judiciary provides for the final disposition of this property? I think there is but one bill which provides for its final disposition, and that is the bill reported from the Committee on Public Lands.

Mr. WRIGHT. My impression is that two bills have been referred to the Committee on the Judiciary on this subject, covering the whole ground with reference to the disposition of the Hot Springs reservation.

Mr. LOGAN. This matter I believe is disposed of for to-day.

Mr. LOGAN. This matter I believe is disposed of for to-day.

The PRESIDENT pro tempore. The motion of the Senator from Arkanas cannot be now entertained, objection being made.

### THE SILVER DOLLAR.

Mr. LOGAN. I gave notice yesterday that I should call up at the first opportunity the bill (S. No. 1026) for the issue of silver coin and

to make the silver dollar a legal tender, reported from the Committee

on Finance.

The PRESIDENT pro tempore. Is there objection to the motion?

Mr. MORRILL. I desire to know whether the Senator from Illinois

The PRESIDENT pro tempore. Is there objection to the motion?
Mr. MORRILL. I desire to know whether the Senator from Illinois proposes to call the bill up this morning for action.
Mr. LOGAN. Why not?
Mr. MORRILL. I will say to him that the Senator from Ohio, [Mr. SHERMAN,] the chairman of the Comimttee on Finance, who is familiar with the bill and reported it, is absent from the Senate and will not be here writil to more results.

with the bill and reported it, is absent from the Senate and will not be here until to-morrow.

Mr. LOGAN. I will say to the Senator from Vermont that this is a bill which I drafted myself and had referred to the Committee on Finance. It was reported back as a substitute for the House bill. The chairman of the Committee on Finance said to me that I could call it up whenever I desired. I do not know that anybody on the committee will urge it very much except two or three members, and I do not think it is material whether the chairman is here or not so far as this bill is concerned. When I say that, I only mean that I do not know that the chairman of the committee desires to urge the bill or to oppose it, but it is a bill which I drew myself and introduced. The chairman of the committee told me to take charge of it. duced. The chairman of the committee told me to take charge of it, and that I could call it up whenever I desired. My desire is to call it up whenever I can. It is a very important measure, and one that the country is looking to the Senate to take same action upon.

Mr. MORRILL. I do not object to the bill being called up at the earliest moment at which action can be properly had and the subject fairly considered; but it seems to me that common courtesy would require that the Senate should wait until the chairman of the Comrequire that the Senate should wait until the chairman of the Committee on Finance, who, I know, and so does the Senator, takes a deep interest in the silver question, is here. I saw by the RECORD of this morning that the Senator from Illinois gave notice that he would call up the bill to-day. I did not happen to be in the Senate yesterday morning when he gave the notice; but I must say that it takes me somewhat by surprise that he should propose to take up in the morning hour a question of such grave import as this is, and one which must lead to a protracted discussion; for no bill of this kind can be expected to pass until it is thoroughly examined, while no more than one or two or three or half a dozen Senators may take part in the debate. I suggest to the Senator to give notice of some day in the debate. I suggest to the Senator to give notice of some day when he will call up and discuss the measure.

Mr. LOGAN. Of course I do not desire to press any measure in

this Senate in opposition to the views of certain gentlemen in the Senate. I am very well aware that neither this bill nor any other bill remonetizing the silver dollar will ever get a hearing in the Senate unless it is pressed.

Mr. MORRILL. I will help the Senator bring up the bill at the

proper time

Mr. LOGAN. I know; but the question has been before the Senate Mr. LOGAN. I know; but the question has been before the Senate over a year. I have time and again asked for a vote, merely a vote, on this question in the Senate. The House have passed two bills, or probably three bills on this subject, which have been referred to the Committee on Finance. None of those bills has been reported back except this which is reported as a substitute for a House bill—a bill that I drafted over a year ago; that has been lying on the table ever since; that has been sent back to the committee once and held there at that if the been always impossible to get this question before the so that it has been almost impossible to get this question before the Senate. It has been, however, discussed before the Senate. It has been discussed by the chairman of the Committee on Finance; it has been discussed by the Senator from Vermont, [Mr. Morrill] it has been discussed by the Senator from Nevada, [Mr. Jones,] the Senator from Missouri, [Mr. Bogy,] and other Senators. There has been a full discussion time and again in this Senate Chamber; but yet the time seems never to come when we can take a vote on a bill of this kind.

I do not wish to find any fault with any gentleman, but I do have this to say: When measures come before the Senate of the United States we ought at least to have candor and fairness enough to oppose a bill if we are opposed to it or to vote for it if we are in favor of it and not try to kill it by lapse of time or by references, or anything of that kind. I fear this bill will be killed because of want of time. I am as well satisfied of it as I can be of anything. It is to be killed by delay, by motions to postpone, and by everything of

The Senator from Vermont, I am satisfied, will oppose the bill when it comes up, for I do not believe he thinks there is anything in the world that ought to be money but gold or diamonds or something of that kind; but I differ with him in that. I propose to the Senator, if he will agree to it, to fix a time when this bill shall be taken up and discussed and acted on. He think it very important that the and discussed and acted on. He think it very important that the chairman of the committee should be here and that we cannot do any business until the chairman is here. I do not understand the Senate to be run in that way. If the chairman of the committee is not here it is not our fault. This matter is important enough before the country to be acted on. I have great respect for the chairman of this committee and for his opinions, and always have had; but I am not responsible for his absence. I feel it my duty to attempt at every opportunity that offers to get this question before the Senate and let the country know how we stand upon it. I have tried for over a year to get a vote on it, but have not been able to do so. Now I propose to take it up on Monday, if the Senator from Vermont will agree to that. Let it be set down for Monday.

Mr. MORRILL. I have not the slightest objection to Monday, and so far as I am concerned shall be ready to consider the bill at as early a day as that mentioned; but the Senator ought not to say that there has been any disposition to push this bill aside. It is well known to the Senate that an able commission was appointed at the last session to investigate and report upon this subject. As a matter due to them, in deference to their thorough investigation of this subject, it has been thought I suppose on all sides of the Senate that we should wait until the report from that commission should be made. I must say that so far as I am concerned I have been disappointed that that commission has not made its report earlier, and I notice by reading the RECORD this morning that they have got a postponement of ten

days more.
Mr. LOGAN. Ten days? No, sir; until the next session of Con-

gress, is it not

Mr. BOUTWELL. Until the 24th of February.
Mr. LOGAN. The 24th of this mouth. That means that this bill shall not be acted on at all. I do not say it means that on the report of the commission. I have great respect for the commission, for their ability, for their perseverance in trying to hunt up the facts in reference to the subject; but at the same time that I have respect for the commission I have just as much respect for my own judg-ment; and I think every other Senator has or ought to have for his; but I do not think the report of the commission will change the judgment of a solitary man in this Senate in reference to the remonetiz-ing of the silver dollar that was demonetized by a trick of legisla-

Mr. MORRILL. Mr. President, I am sure that this commission, so far as I understand its composition, is not unfriendly to a further

issue of silver currency in some form.

Mr. LOGAN. I did not intimate that they were. I know nothing about what their opinions are, and I say I have great respect for their opinions, but I do not think their report will change the views of Senators in reference to restoring that which was destroyed by an act that no Senator or member can stand before this Senate and tell how

was done, and none ever has been able to tell.

Mr. MORRILL. I think the Senator is very much mistaken in characterizing the act of 1873 in the terms in which he does; but when it comes to the question whether our opinions will be changed by the report, it will depend entirely upon the character and the ability of the report. Before I express my opinion as to whether I shall change the views that I have heretofore held on this subject, I would prefer much to hear the report and consider it. I think it would be no more than fair to do that. But I have not the slightest idea of trying to postpone action upon this bill. All I desire is that idea of trying to postpone action upon this bill. All I desire is that we shall have time to consider it, and that there shall be a proper time designated for its consideration, and that we wait until the chairman of the Finance Committee is here, who certainly has taken more time to investigate the subject than perhaps any other member of the Finance Committee. I think it would be eminently proper that we should wait until he is present before the subject is called up.

Mr. LOGAN. I do not suppose it will be necessary for other members of the committee to say anything about their investigations. They might not get very much credit for them if they did. I move that this bill be made the special order for Monday at one o'clock, and hope we may have a vote on that motion.

hope we may have a vote on that motion.

The PRESIDENT pro tempore. The Senator from Illinois moves to make this bill the special order for Monday next at one o'clock.

Mr. BOGY. While I do not object to the motion made by the Sen-

to make this bill the special order for Monday next at one o'clock.

Mr. BOGY. While I do not object to the motion made by the Senator from Illinois, because like him I am anxious for the passage of some bill upon this subject, nevertheless there are a great many reasons why we should not take it up without a great deal of reflection. I will mention, merely by way of illustration, the question of the relation of silver to gold. Whether we should make the silver dollar 16 to 1 or 15½ to 1 is a very grave question. If you make the silver dollar 16 to 1 while in the remainder of the commercial world it is 15½ to 1 very legislation will not only be useless but will be directly into 1, your legislation will not only be useless but will be directly injurious, and the friends of the measure, instead of being benefited, would receive direct injury, as the coined silver would be immediately exported as a mere article of commerce. Therefore, the subject is one full of complications.

I have the honor of being a member of the silver commission, and although the report which will be made by that commission within a very few days may not be very able, yet it will show great labor. I devoted myself two months in the city of New York to the investigation of this subject, and consulted with the best and most intelligent men in that city, and the more I penetrated into the matter the greater the difficulties presented themselves. It is really a great and grave subject, and it assumes complications and difficulties in proportion to the investigation that may be bestowed upon it.

tion to the investigation that may be bestowed upon it.

If we pass the bill of the House, which fixes the relation at 16 to 1, we may commit a very great error. On the other hand, if we attempt to retain the silver dollar at 412.8 grains, as is the case now, it being the old American standard dollar, you may retain what perhaps cannot be maintained. If you attempt to vary the relation by an increase of the gold dollar and let the silver dollar remain at its present weight, you may encounter difficulties which may make it impossible to pass the bill.

So, sir, without detaining the Senate, the subject is one full of complications. The report of the commissioner, I think, will be made in

very few days. In point of fact, it is delayed now, in a great meas-

ure, by the difficulty in having it printed. The report is ready, and would have been ready some days ago if the printing for the Senate was going on, so that each member of the commission could have had was going on, so that each member of the commission of the annot be an opportunity to examine it for himself. As it is now, it cannot be printed, and the consequence is that we are thrown into a basty investigation in a common room and have met with great delay. The report was ready last week; it was all prepared; but we could not get it printed so that all the members of the commission could examine it separately.

I concur with the Senator from Illinois on this subject. We have concurred from the beginning. I am in favor of the restoration of the silver dollar as soon as possible; but while I am in favor of this restoration of the silver dollar, I wish to do it in such a way as to produce a benefit, and not an injury; and if you fix the relation wrong you may do a very great injury. Consequently, while I concur with the Senator and agree with him in views, I am not prepared to urge at this moment that too early a day be fixed. I think it would be wiser to let it lie over for at least two or three days more and then we may dispose of it more intelligently. As it is now it might lead to most disastrous results. The whole West, I may say, is in favor of the restoration of silver as a legal tender; but, while this is so, it

must not be done in a bungling manner.

Mr. LOGAN. I desire to say in answer to the Senator that I think the earlier we reach it, so that we may receive some of this valuable information that these gentlemen have, because of course they cerintormation that these gentlemen have, because or course they certainly have not forgotten it all and they can give it to us in their arguments, the more readily we shall be enlightened on the subject. The Senator certainly shows that it is a very great subject and a very important question, and having given so much time to it as he has he certainly understands it perfectly, and therefore is qualified in every respect to enlighten the Senate upon it on Monday next, and we shall be very glad to hear from him, because it is, I presume, a very difficult question. I do not claim that I have made so great an very difficult question. I do not claim that I have made so great an examination of it myself, I probably go more on general principles than I do on anything else; but I know that it is considered a very important question by the country, and I deem it a very important question, and it is so important that I think it should be acted on and pressed to its passage

pressed to its passage.

Mr. BOGY. I will inform the Senator from Illinois that it is so important that I think it should not be acted on hastily. I feel its importance myself, and the Legislature of my State has passed joint resolutions on the subject, and, if I am not mistaken, they are unanimous in favor of the bill offered by the Senator from Illinois, in favor of the bill designated as Logan's bill. I know the sentiment of the Legislature of my State on that subject, and I may say without regard to party they are in favor of the general proposition.

Mr. LOGAN. This is no question of party.

Mr. BOGY. I think the action of the Legislature of the State of Missouri was unanimous or very nearly so. I think it was unanimous.

Mr. LOGAN. I desire to ask the Senator from Missouri whether in the report that his commission will make to the Senate they propose

the report that his commission will make to the Senate they propose

Mr. BOGY. I will inform the Senator that they do not propose to report a bill, because the preparation of a bill is a very easy and short thing. Your own bill is very short. Although the subject is very comprehensive the bill is very short. It does not require a lengthy

bill, no matter how you may put it.

Mr. LOGAN. That is exactly what I thought. After so much study has been given to this great measure, and so much thought, it doe seem to me that somebody that understands it ought to report a bill, or introduce a bill. These gentlemen who have so thoroughly investigated it ought certainly to propose a bill to us, and then explain it

mr. BOGAN. If I have by accident struck as good a bill as could be prepared. It may be modified as to the relation.

Mr. LOGAN. If I have by accident struck as good a bill as could be prepared, without examination of the question, that bill then can receive the suggestions at least of those gentlemen who do understand the question, when it comes up. I should like, if the bill that I have prepared is not suitable, to have the genius and the learning of these gentlemen exhibited in drafting or supplementing it in some

way by one that would be satisfactory to the country.

Now, Mr. President, I insist on my motion, that this bill be set down for a hearing on Monday next at one o'clock.

The PRESIDENT pro tempore. The Senator from Illinois moves that the bill be made the special order for Monday next at one o'clock.

I do not wish to raise any objections to the consid-Mr. WINDOM. I do not wish to raise any objections to the consideration of this bill, for I am very much in favor of it, or at least in favor of the consideration of the silver question; but I want to notify the Senate that as soon as the Printing Office can be started again, the Committee on Appropriations desire to press their bills. There are two important bills, as I stated to the Senate last evening, the post-office and the legislative appropriation bills, which have been reported back to the Senate and are ready for action. We desire to call them up, but there is no money to print them with, and it is impossible to up, but there is no money to print them with, and it is impossible to act upon them until we can have them printed.

Mr. LOGAN. Special orders always give way to appropriation bills. Mr. WINDOM. With that understanding 1 have no objection to

the motion.

Mr. LOGAN. That has always been done by the Senate, and I certainly should not stand in the way of a great appropriation bill; but I ask that this bill be set down for Monday, subject to the order of the Senate.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Illinois to make this bill the special order for Monday next at one o'clock.

The motion was agreed to by a two-thirds vote.

#### MESSAGE FROM THE HOUSE.

A message from the House of Bepresentatives, by Mr. George M. Adams, its Clerk, announced that the House had passed a bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes; in which it requested the concurrence of the Senate.

The message also announced that the House had concurred in the amendments of the Senate to the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1878, and for other purposes, with cer-

tain amendments in which it requested the concurrence of the Senate.

The message further announced that the House had concurred in the resolution of the Senate that the monetary commission created by the joint resolution of August 15, 1876, be allowed until the 24th

of February, 1877, to submit their report.

The message also announced that the House had passed the Senate concurrent resolution for the printing of 5,000 additional copies of the report of the joint special committee on Chinese immigration,

with the accompanying testimony.

The message further announced that the House had passed a concurrent resolution for the printing of 2,000 copies in book form, suitably bound, of the memorial addresses on the life and character of Hon. Michael C. Kerr, late Speaker of the House of Representatives; in which the concurrence of the Senate was requested.

#### CHARLES C. CAMPBELL.

Mr. WRIGHT. If there be no more morning business, I wish to appeal to the Senate once more to take up a little bill, what is known as the Campbell bill, reported from the Committee on Claims. I refer to the bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County, Virginia.

Mr. INGALLS. I should like to hear the report read.

Mr. WRIGHT. That report has been read, I believe, once or twice. It is a very short time now before the expiration of the morning hour.

I think the report had better be read.

The Chief Clerk read the report submitted by Mr. WRIGHT, submitted by the Committee on Claims on the 17th of January last.

The PRESIDENT pro tempore. Is there objection to the motion of the Senator from Iowa. The question is on that motion.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It provides for the payment to Charles C. Campbell of \$6,000 for property taken and used as supplies by the armies of the United States under Generals Stoneman and Burbridge, in the year 1864, while upon their marches in the States of Virginia and Tennessee; which sum is to be in full satisfaction of all claims of said Campbell against the United States.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

# NAVAL APPROPRIATION BILL.

On motion of Mr. SARGENT, the bill (H. R. No. 4616) making appropriations for the naval service for the year ending June 30, 1878, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

## CHARLES E. BOGGS.

Mr. CRAGIN. I move to proceed to the consideration of the bill (S. No. 457) authorizing the restoration of Charles E. Boggs to the active list.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The Committee on Naval Affairs reported an amendment to strike out all after the enacting clause of the bill and in lieu thereof to in-

That the President of the United States be, and is hereby, authorized, by and with the advice and consent of the Senate, to restore Assistant Paymaster Charles E. Boggs, now on the retired list, to the active list of the Navy: Provided, That no extra pay shall be given him for the period prior to his restoration.

Mr. LOGAN. I should like to inquire on what ground this officer

Mr. CRAGIN. This officer is a young officer, and he was examined for promotion by the board and they failed to recommend him for promotion, and by law he went on the retired list; but it all grew out of a little circumstance that when stationed in New York City he and another officer took some young ladies on board a vessel and they were there entertained, and some of the other officers thought it was unbecoming and they made charges against this young man. The Department recommend his restoration and two members of the board who failed to recommend him for promotion have joined in recommending that he be restored. He is a young officer upon the retired list, drawing almost as much pay as he would upon the

active list. So far as is known to the committee or the board, those ladies were entirely respectable. It was simply a matter of gallantry in the officers. The Department recommend this bill, and the committee have reported it.

Mr. LOGAN. That does not answer the inquiry I made. I asked

why he was retired.

Mr. CRAGIN. The law in relation to the retirement of naval officers is this: When an officer comes to be examined for promotion, if the board fail to recommend him for promotion by law he goes directly upon the retired list. They may fail to recommend him for any cause within their own knowledge, without giving any reason whatever, and they gave no reason in this case.

Mr. LOGAN. They retire, then, irrespective of age.

Mr. CRAGIN. Irrespective of age, if a man fails to be recommended for presention.

for promotion.

Mr. LOGAN. Then I would suggest to the Naval Committee that it had better amend that law, because it certainly is a villainous law, there can be no doubt about that, that where a man fails to be promoted he is to be retired irrespective of his age or condition or anything else. If that is the law, it certainly is a villainous one, and it ought to be amended. I merely make the suggestion. If it is the law, I have nothing to say about this bill. I merely wanted to know how a young man could get on the retired list merely by a failure to be promoted. If that is the law in the Navy, I think the Naval Committee had better make some recommendation for its amendment.

The amendment was agreed to.
The bill was reported to the Senate as amended, and the amendment

was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CONSULAR AND DIPLOMATIC APPROPRIATION BILL.

Mr. SARGENT. I ask that the Senate take up the message from the House of Representatives on the consular and diplomatic appropriation bill.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives on the bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Govern-

ment for the year ending June 30, 1878, and for other purposes.

The CHEF CLERK. The House of Representatives concur in the second, third, fifth, and sixth amendments of the Senate with amendments as follows:

Ments as 10 lows:

Strike out "four," in the second amendment of the Senate, and insert "three;" and after the word "thousand," in line 22, page 10 of the bill, insert the words "five hundred."

Strike out the word "four," in the third amendment of the Senate, and insert the word "three;" and after the word "thousand," in line 23, page 10 of the bill, insert "five hundred."

Strike out the words "one thousand," in the fifth amendment of the Senate, and insert the words "seven hundred and fifty."

Strike out the words "ten thousand two hundred and twelve," in the sixth amendment of the Senate, and insert the words "eighty-nine hundred and sixty-two."

Mr. SARGENT. I move to concur in the House amendments to our amendments. They are matters of detail and of very slight importance, simply reducing by a little the amendments of the Senate.

The motion to concur was agreed to.

## MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed the bill (S. No. 691) for the relief of Edward A. Leland.

The message also announced that the House had passed the bill (S. No. 1184) to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the Northern Arapaho and Cheyenne Indians, with an amendment in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed

signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

A bill (S. No. 993) for the relief of the late Admiral Charles Wilkes;
A bill (S. No. 805) relating to indemnity school selections in the State of California;
A bill (S. No. 859) for the relief of certain claimants under the donation land law of Oregon, approved September 27, 1850;
A bill (S. No. 1251) to remove the political disabilities of Joseph E.

A bill (S. No. 234) to amend section 4698 of the Revised Statutes of the United States, so as to allow a pension of \$37 per month to soldiers who have lost both an arm and a leg, in lieu of \$24 per month,

## PACIFIC RAILROAD ACTS.

The PRESIDENT pro tempore. The morning hour has expired, and the unfinished business is before the Senate.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of the said first-named act.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from California [Mr. BOOTH] to the amendment of the Senator from Georgia, [Mr. GORDON.]

The amendment to the amendment was to strike out all after the

word "that," in the first line of its second section, and in lieu thereof

to insert:

The said Central Pacific Railroad Company and the said Union Pacific Railroad Company shall each pay into the Treasury of the United States the sum of \$750,000 per annum in equal semi-annual installments on the 1st day of April and October in each year, commencing on the 1st day of October, 1877, in lawful money, until said sums, with interest thereon as hereinafter provided, shall be sufficient, when added to the other sums to the credit of said sinking fund, to pay off and extinguish the Government bonds at maturity, advanced as aforesaid, with 6 per cent. Interest thereon, from their respective dates up to the date when they are so paid and extinguished as aforesaid. Interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually at the rate of 6 per cent. per annum: Provided, however, That, if the foregoing provision shall prevent insufficient to extinguish the Government bonds and interest thereon at maturity as aforesaid, the semi-annual payments shall be increased to such a sum as shall be sufficient for that purpose.

Mr. WEST. I presume it is the design of the Senator who offered that amendment to supplement it with some provision in a subsequent part of the bill making that stipulation compulsory on the

part of the companies. Am I correct in that?

Mr. BOOTH. Yes, sir.

Mr. WEST. There are some difficulties connected with this amendment, but they may not be irreconcilable to possible legislation. I would call the attention of the Senator himself, who moved the amendment, to the fact that he had by a preceding amendment provided that the contingent payments of 5 per cent. of the net earnings and the amount retained by the Government for transportation, &c., should be first architect the register of the net earnings. be first credited to the railroad companies and retained in the Treas or mst credited to the railroad companies and retained in the Treasury, and this payment is to be made in addition to that, and that the Secretary of the Treasury shall fix the amount. Now, I ask him, when there is no determining what will be the annual amount accruing to the Treasury of the United States from the earnings, either the 5 per cent. or the amount of transportation, as that amount is floating and vacillating, as he himself remarked, likely to be increased at one time during a war to a very large sum and likely to be abated again to a very trivial sum how can very fix sami annually the again to a very trivial sum, how can you fix semi-annually the amount that shall be paid by these companies and adjusted to that? That is the practical difficulty in the way of the application of that amendment.

There is a much graver difficulty; for whatever there might have been in the way of stringency in the bill reported by the Judiciary Committee, the amendment now offered by the honorable Senator from California [Mr. Booth] makes this proposition still more stringent, much more so than the bill of the Judiciary Committee, because the bill of the Judiciary Committee made a sliding scale, as it were, contingent on the earnings of the companies or their ability to pay, while the proposition of the Senator from California is an absolute one and cannot be varied in any way. Furthermore, it does not do what the Judiciary Committee bill did, provide for the protection of the first-mortgage bonds; but it extends the illimitable power which the Senator contends the Congress of the United States possess of altering, amending receasing even to making the second mortgage of the Gov. amending, repealing, even to making the second mortgage of the Government of the United States take precedence over the first, because this is a provision to pay the Government bonds, and requires that they shall be paid by the companies. Nothing is said as to what becomes of the first-mortgage bonds at all; but where you compel these men to pay this money it must go to the credit of the Government itself by the terms of the Senator's amendment:

That if the foregoing provision shall prove insufficient to extinguish the Government bonds and interest thereon at maturity as aforesaid, the semi-annual payments shall be increased to such sum as shall be sufficient for that purpose.

The Senator says that he will follow up that provision with a stipu-The Senator says that he will follow up that provision with a stipulation compelling these companies to pay this money. Consequently it is really requiring from them to begin now to pay those bonds—something that the Supreme Court has said they are not required to do. These difficulties having occurred to me, I shall be very happy to have any explanation, or have the Senator state that I am incorrect in my view of his amendment. I have stated the amendment to him and to the Senate as I look at it; perhaps I may be in error.

Mr. BOOTH. Mr. President, I wish to state with entire frankness that I have no idea that any amendment can be made to this bill which will secure my support. My only object in offering amendments is to make it so good a bill that its present friends will not support it. The theory of this amendment is that in place of postponing payment by the companies to the Government until 1912, and giving

port it. The theory of this amendment is that in place of postponing payment by the companies to the Government until 1912, and giving them the benefit of this accumulated compound interest, by which \$1 paid into the Treasury now shall discharge \$8.50 of indebtedness, the term shall be fixed when the bonds themselves become due, at which the accumulations of this sinking fund shall discharge the debt. There may be some difficulty in making that calculation; but I do not think it will be an insuperable difficulty. If they should be required to pay too much in one year, it can easily be deducted from the amount they shall pay in the next.

That is the theory of all the amendments I have offered or shall offer; first, that it is in the power of Congress to compel these companies to discharge the amount, principal and interest, of the bonds when the Government itself has to pay them; that they have the power, and it is their duty to exercise it, to compel these companies

to provide such a sinking fund in order to protect this Government. That is the scope, theory, and object of all the amendments that I shall offer; and I frankly repeat that I believe, to borrow an expression from the Senator from New York, [Mr. CONKLING,] that this bill is so paved with dynamite that nobody can touch it with safety.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The question is on the amendment of the Senator from California [Mr.

Mr. WEST. I think we had better have the yeas and nays on this

proposition.

The yeas and nays were ordered.

Mr. BOGY. This appears to be exactly the same as the bill offered by the Senator from Georgia. I do not understand the amendment. I should like to have the amendment explained. I am disposed to concur with the Senator from California in his views as to this measure; but it seems to me, as well as I can understand the reading, that the words read by the Clerk are the same as are now in the bill of the Senator from Georgia. Will the Senator from California explain the

Mr. BOOTH. The purport of the words omitted in the amendment is "1912," and "the maturity of the bonds themselves" is substituted

is "1912," and "the maturity of the bonds themselves" is substituted as the date at which they must be met by the companies.

Mr. WEST. And the fixed amount is omitted.

Mr. BOGY. The result is to fix the period of maturity, to take the actual maturity instead of 1912.

Mr. BOOTH. That is the material object; but there is one other amendment, to strike out from the text of the section the words that amendment, to strike out from the text of the section the words that the companies might pay "either in lawful money or in any bonds." The only object I have in striking out those words is that they would have the effect (although I do not think it was contemplated by the committee that reported the bill) of giving the companies the option to pay into the Treasury bonds of the District of Columbia.

Mr. WEST. The stipulation for the character of the payments that shall be made by these companies is in the original act:

The said company may also pay the United States wholly or in part in the same or other bonds.

And the bill of the Senator from Georgia carries out that intent by And the bill of the Senator from Georgia carries out that intent by its provisions. Omitting that is not, perhaps, a material matter; but this amendment itself makes the Government's second mortgage take precedence over the first. Is it any wonder that the Senator says that he considers the power of Congress in this case i.limitable when, by his amendment, he proposes to proceed to that extent? That is the virtual act of the amendment, and I ask the Senator if it is not so.

Mr. BOOTH. Mr. President, I do not care particularly to get into a debate on cross-examination this morning. The Senator can place his own interpretation on my amendment. He says it has that effect. Lay that practically it will have no such effect; that the first mort-

I say that practically it will have no such effect; that the first mortgage is amply secured and will be amply secured after these companies are compelled to provide this sinking fund. The Senator said, in remarks which he made when this bill was under discussion before, that if these amendments should prevail the practical effect would be that under a decision of the Supreme Court this Government would lose \$100,000,000. Surely the Senator is mistaken. The moral obligation will remain the same. Why, these companies are besieging us all the time to allow them to pay this indebtedness, so that they realize the moral obligation. It requires, according to the Sen-ator, the ingenuity of the Committee on the Judiciary to prevent these

ator, the ingenuity of the Committee on the Judiciary to prevent these companies from coming in and paying off this debt.

Mr. MITCHELL. Will the Senator from California allow me to ask him a question?

Mr. BOOTH. For what purpose?

Mr. MITCHELL. For the purpose of understanding the effect of the amendment that the Senator proposes.

Mr. BOOTH. If I could furnish the Senator with all the understanding he needs on this bill, I should be happy to do so; but I fear I cannot.

I cannot.

Mr. MITCHELL. I presume it is not for the Senator from California to determine for me what my action shall be or what my notives are in connection with the bill. The Senator from California has offered an amendment to the pending bill which he had a perfect right to do. I have a right, it appears to me, to make a proper inquiry of him in connection with the effect of that amendment. What I wanted to know is this, and I think the inquiry is pertinent; I think it is one that the Senate ought to understand: This amendment, as I understand it, if adopted, will compel these companies respectively to pay into the Treasury of the United States as a sinking fund the sum annually of \$1,500,000; in other words, it requires each of the companies to pay the sum of \$750,000 at the end of each six months, whether they earn that amount or not, without any six months, whether they earn that amount or not, without any kind of reference to the question whether their net earnings will be \$1,500,000 annually or will be \$750,000 every six months. Now suppose this provision becomes a law and suppose it should turn out as a matter of fact—I do not say it will turn out that way—that the earnings of each company for a year do not exceed \$1,500,000, then I want to know where the money is to come from with which to pay the interest to the holders of the first-mortgage bonds; and if there is no money left, if the payment of the \$1,500,000 annually should exhaust the net carnings of the companies, then I want to know it this amendment does not interfere directly with the rights of the first-mortgage bondholders !

If it is demonstrative, if it is a fact that the earnings of the companies are largely in excess of this amount, so that there would be a sufficient surplus to meet the interest on the first-mortgage bonds, then so far as this part of my objection to the amendment is con-cerned it amounts to nothing. Of course there are other objections, as I conceive, to the adoption of this amendment. These other ob-jections find their support in the constitutional views that have been urged by very many Senators on this floor against the general character of this legislation, namely, whether Congress has the power to in-terfere by amendment or repeal with what is understood to be and what, in my judgment, is a contract, a solemn contract made between the Government upon the one part and certain railroad companies

upon the other part, a contract sanctioned by the highest power known to this Government in its legislative capacity.

As I said the other day, and as has been stated by several Senators upon the floor, the only reservation made by the Government, and it is plain, so far as such reservation looked to a provision for a sinking fund to meet this indebtedness at its maturity, was the one-half of the compensation for service rendered by these companies to the Government and 5 per cent. of the net earnings annually of the companies. If Congress has a right to so amend this law as to go beyond that and as to compel the payment of interest annually when the Supreme Court of the United States says it is not due for thirty years, and if they can fix a sum total that these companies must pay and if they can fix a sum total that these companies must pay into the Treasury every six months or every year in excess of what these several sums would amount to, then what is to prevent them, I want to know, from going to any extent? Where is the power, I ask the Senator from California? Where do you get it? If he can satisfy me that we have the power, I will vote cheerfully for the bill reported by the Judiciary Committee and be glad to do it; but until I am satisfied of that fact, I will vote neither for that bill nor for any other bill that will in my judgment contravene a solemn contract entered into between the Government and these corporations. And in saving what I do I do not mean to be understood as opposing a proper saying what I do I do not mean to be understood as opposing a proper bill providing for a sinking fund with which to meet this indebted-

The very same objection that is made now by the honorable Sena-The very same objection that is made now by the honorable Sena-ator from California and by others was made here on this floor and in the other end of Congress when the question was raised some two or three years ago in regard to the power of Congress to compel these companies to refund annually to the Government the interest paid by the Government. It was contended by certain Senators and mem-bers of the House that that was something which the Congress of the United States had no power to do. Upon the other hand, it was said that Congress had the power, and that it was the duty of Congress to do it. The whole matter was referred to the Court of Claims. The Court of Claims decided that no such power existed, that the in-terest was not due until the bonds matured; and on appeal to the terest was not due until the bonds matured; and on appeal to the Supreme Court of the United States that decision was unanimously affirmed. And now, in the face of that decision, will it be said that Congress can step in and do indirectly what the Supreme Court has said you cannot do directly, namely, compel these companies to pay

Now I do not think it ought to be said by the Senator from California or by any other Senator that he will try to amend this bill so as to make it such a good bill that even the friends of the bill will not support it. I do not think that the Senators who have vindicated the bill reported from the Railroad Committee are exactly in a pesition to be criticised in that ironical kind of manner. We have stated frankly the reason why we cannot go for the bill reported by the Judiciary Committee; and that is, because we as lawyers do not believe we have the power to go for the bill. We do not stand alone. The Judiciary Committee are not by any means united on the bill reported by that committee. The able lawyers of that committee have divided on this question, if I have understood the debates correctly, in reference to the constitutional power of Congress over this matter. Very able lawyers of the Senate that belong to neither of these committees have taken this position, that Congress has no constitutional powers to pass any such bill. That being the case, I appeal to the Senator from California whether we ought to be subjected to the ironical criticism that he will so amend this bill that it will become under his amendments such a good bill that even the friends of the bill will desert it.

Mr. BOOTH. Mr. President, the Senator from Oregon says that if I can satisfy him of the constitutional power to pass an act that would compel these companies to liquidate their indebtedness when it becomes due he will support it. I have no such power. I am not supernaturally endowed.

supernaturally endowed.

The Senator says that he would be in favor of compelling the companies to provide a sinking fund, if I properly understood him. That is what we are in favor of; that is all. According to the Senator, it is perfectly right and perfectly proper to compel them to pay into the Treasury \$750,000, which, under the operation of compound interest, will extinguish the debt in 1912; but it is a violation of every constitutional right to compel them to pay in double that sum to extinguish the debt when it becomes due. That, sir, is a question of figures, not of constitutional law. That is to say, it is perfectly constitutional to allow them to do an unjust thing, but unconstitutional to compel them to fulfill the letter of their contract.

Why, Mr. President, if I have read this bill from the Railroad Com-

mittee aright they do not provide anywhere that if these railroad companies fail to earn \$1,500,000 a part of it shall be remitted. What is the necessity of providing for a contingency that in no human probability will ever arise, and if it did arise Congress would deal with it then far better than now, because it would have more intel-

ligence on the matter.

Now, one word about the first-mortgage bondholders that flit before our eyes. Whenever we try to do justice to the Government this consideration is something that is held up between the Government and the companies. The first-mortgage bonds were issued subject to that provision of the law reserving the right to alter, amend, or repeal it. Is there any danger that at any time the Congress of the United States will pursue a policy that will impair the contract between the companies and the first-mortgage bondholders? None in the world. No one proposes to assail that. We used to be treated to the injustice that would be done to the Kansas Pacific Railroad Company—the Kansas Pacific Railroad Company, which, under the operation of the Judiciary Committee bill, would not be touched at all.

That was Dives rolling himself in the rags of Lazarus that he might steal into Abraham's bosom.

Mr. LOGAN. I do not wish to detain the Senate by a discussion of the merits of this bill; but I desire to call the attention of Senators to the effect of this amendment. There seems to be a disposition in the Senate on the part of some to make a warfare generally upon the rights of these corporations, and a disposition on the part of others to claim some imaginary rights on the part of the Government, and on the part of others a disposition to act fairly as between the Government and these corporations, for the purpose of satisfying

both if possible, and at the same time protecting the Government in all that it fairly demands of these corporations. I have no personal grievance myself, either with the Government on the one side or the railroad companies on the other. I desire, so far as my action is con-

railroad companies on the other. I desire, so far as my action is concerned, to try to act justly as between these parties.

The Senator from California offered an amendment yesterday to section 3, and this morning to section 2. His amendment to section 3 yesterday was adopted by two majority, I believe, striking out the words in line 2 "in lieu of," and inserting "in addition to." What was the effect of that amendment? Section 2 provides that the companies shall pay a certain amount of money into the Treasury of the United States for the purpose of liquidating the obligations against them on the part of the Government held by the Government, and that these liquidations shall go on until the year 1912, and that if all the deficiency on their part is not supplied by this payment, then additions shall be made to it by the corporations to make up the sum.

This little extension of time is proposed to be given to them by reason of their paying a certain amount of money into the Treasury annually, and that money is to liquidate the obligation on the part of the companies to the Government, and when that was paid in and this obligation liquidated, it was to be received by the Government in lieu of what? In lieu of the amount of the bonds maturing at the end of thirty years. That language in section 3 was important and necessary if section 2 should be adopted by Congress, because if you strike out the words "in lieu of" and insert the words "in addition to," it makes them not only pay the obligations on them to the Governto," it makes them not only pay the obligations on them to the Government, but it makes them pay this million and a half dollars annually in addition to that, thus making a double payment. That is the effect precisely of the amendment of the Senator from California that was adopted yesterday. Now what is the effect of the present proposition of the Senator from California? Section 3 being amended yesterday so as to make this annual payment of one and a half millions in addition to the other payments that they are required to make, now he provides that this payment shall be made at maturity. That is the language, and that is the only change; for I think I know exactly what the Senator is driving at; I mean by that, what his language in the amend-

What then is the proposition? The proposition now is to strike out of section 2 the words "Government bonds advanced as aforesaid," and use the words "at maturity." What is the effect of that? said," and use the words "at maturity." What is the effect of that? The effect of that is to make the railroad companies pay the fifty-odd million dollars, according to the provisions of their charter, at maturity, and pay the million and a half under section 3 of this bill annually in addition thereto, and that total must be paid at the maturity of these bonds. That is the effect of the two amendments. I ask the Senator to tell me what other effect they will have?

Mr. BOOTH. Perhaps I do not understand the effect my amendment would have on this bill. I can only state the effect I intended it to have.

it to have.

Mr. LOGAN. I am speaking of the effect of the amendment.

Mr. BOOTH. I can state what I mean to be the effect of the amend-

ment, taken in connection with the bill. Mr. LOGAN. I shall be glad to hear it.

Mr. LOGAN. I shall be glad to hear it.

Mr. BOOTH. I will try to explain. These companies now are under obligation to pay into the Treasury of the United States 5 per cent. upon the net earnings and one-half of the amount due from the Government to them for Government business. That is to be applied upon the principal and interest of the debt, and under legal construction would first apply upon the interest; and so far as it was a payment it would extinguish it to that amount, leaving less interest to be noid. to be paid.

Now the object of inserting the change in section 3 was this: that in addition to the amount they are already compelled to pay into the Treasury of the United States they should be compelled to pay a sum annually upon which they should be allowed compound interest, and that duly compounded until the bonds matured would meet the principal and the balance of the interest, if any, which had not been paid by this 5 per cent. and half transportation. That was the object. Mr. LOGAN. I believe that I did not mistake the Senator when I

was speaking of the construction of his amendments, not as to what he intended. Evidently the construction of the amendments that he offered, which would be given to them if they should become a part of the law, unless I am very much mistaken, will be as I have stated. Now take it that he is correct—and I do not wish to discuss that propoare required to pay a certain per cent. into the Treasury, what then? For instance, to illustrate, the interest required by section 5 of the act of 1862 was to be paid semi-annually; but the Supreme Court has decided that the word "maturity" used in section 6 of the act of 1862 controlled the obligation, and therefore none of the interest was due

on those bonds until the maturity of the bonds.

Mr. BOOTH. Allow me one moment.

Mr. LOGAN. Certainly.

Mr. BOOTH. Do I understand the Senator to say that the Supreme Court have decided that there is not due annually from these companies 5 per cent. and the half transportation, which amounts shall be paid upon accruing interest?

Mr. LOGAN. No, sir; I was not discussing that proposition at all.

I was speaking of the interest. The amount of the transportation is a very different proposition.

Mr. BOOTH. The point I wished to make simply was that, although the Supreme Court have decided that the interest is not due until the maturity of the bonds, it is subject to the exception that the 5 per cent. upon net earnings and the one-half payment for transportation shall annually be applied to the interest that the Government pays.

Mr. LOGAN. That was not the proposition I was discussing at all. But the Senator is mistaken in reference to a portion of that, though I will not go into it. The proposition I was discussing, and it is the only thing that is material in the objection I make to the amendment, is that the Supreme Court have decided that the bonds and the in-

terest thereon are not payable until their maturity.

In section 3, as I stated, it is provided that the million and a half of dollars to be paid annually shall be paid by the companies in lieu of what? In lieu of the amount that they are under obligation to pay of what? In lieu of the amount that they are under obligation to pay to the Treasury Department on their contract; that it shall be paid in lieu thereof, and up to 1912 that the amount shall liquidate the whole obligation—bonds, interest, 5 per cent., and all. The obligation is to be liquidated by these payments, so far as they go; and if they fail, then they are to pay the addition necessary to liquidate the amount of their obligation to the Government. That is the meaning of it; but you put the words "in addition to" instead of "in lieu of." That changes the whole sense of the section, and it makes them pay a "nillion and a half of dollars in addition to what? In addition to the obion and a half of dollars in addition to what? In addition to the obligation now on them by the Government. That is the meaning of it.

You cannot give it any other construction.

Then if you amend section 2, as the Senator from California has proposed to amend it, so as to use the word "maturity," and then construct that section after it is amended together with section 3 which you must do to get at the sense of the law and the understanding of the authority that makes the law, for you have got to examine them together, construe them together—what would be the meaning? The construction would be that under your amendment to section 2 they would have to pay the 5 per cent., have to pay this half amount of transportation, have to pay a million and a half of dollars annually in addition thereto, and liquidate the whole obligation at the end of thirty years. That is the meaning of the Senator's amendment,

of thirty years. That is the meaning of the Senator's amendment, and you cannot give it any other construction.

Mr. BOOTH. The theory of the amendment is that this payment at 1900 would liquidate the whole obligation, and that is the object. The moneys are paid in for that purpose; they accumulate at compound interest for that purpose. That is the whole theory.

Mr. I.OGAN. I am not talking about compound interest. I am just talking about the meaning of the two amendments the Senator has proposed. When you take them together, instead of showing liberality on the part of the Government and a desire to settle this controversy with these railroad companies, it shows a disposition to crush out and destroy the corporations. As I said, I have no personal grievance either with the Government or with the corporations; therefore I am willing to act as I think is proper between the two, in order grievance either with the Government or with the corporations; therefore I am willing to act as I think is proper between the two, in order that there may be an arrangement made by which we shall not be in interminable litigation. That is my object, and the only object I have; and when gentlemen say they desire to amend these propositions and make the bill so good that the friends of the measure will not take it, it evinces in the presence of this Senate a disposition to crush out the rights of one for the purpose of gratifying something that God knows I will not attempt to describe.

These two amendments would make it impossible, according to the history of these corporations and their success, for them to carry out the bill. Add this obligation, besides that which the contract requires and compels them to live up to, and you say to them that their property shall be placed in such a position by the action of Con-

gress that it is of no value, that the requirement on the part of the Government is far beyond that which the original contract was.

It was said here the other day that the only object was to make them live up to their contract. Is this amendment requiring them to live up to their contract? Is it not going far beyond the original contract? Is it not imposing upon them burdens and obligations that do not exist in the original contract? Where do you obtain that power? Where do you get the power to change the contract and impose burdens by one party upon the other without the consent of the other, except in your theory of your right to amend or alter your law. That I do not wish to discuss. I tried in my feeble way to discuss the power of Congress on that subject heretofore.

Now, sir, I am opposed to this amendment. I voted against the amendment yesterday to section 3. I did it because I believed the effect would be to impose an obligation upon these corporations that they cannot carry out and ought not to be required to do on the part of the Government.

of the Government.

Mr. BLAINE. Mr. President, I have not enjoyed the pleasure or the profit of hearing any considerable part of the able discussion that has been had on this bill. It is quite possible that I may not fully understand all its provisions, and I rise therefore rather in a mood to ask questions than to answer them, to seek information rather than to give it. I have tried, however, to carefully study the bill which is reported from the Railroad Committee, and my conclusion has been that I could not see my way clear to give it my support, and for two or three reasons which I will briefly recapitulate. First, I think the period assigned for the final payment and liquidation of the debt due to the Government is too remote. I do not concur in the entire line of argument presented by the Senator from California [Mr. BOOTH] a day or two since. But there was one point of great importance which the Senator presented with force and aptness, showing that as you remove the date of final liquidation you may decrease the annual installment of the sinking fund, and that if instead of 1912 the date assigned by the pending bill, you insert 1930, or 1940, or 1950, you diminish in a very rapid ratio the sum to be paid each year, scaling indeed the three-quarters of a million now proposed down to a mere nominal sum.

Second. I am still further opposed to the fifth section of the bill. Taking what the amount required for ultimate liquidation would be and counting backward for an existing present value, you do not exactly realize the reductio ad absurdum, yet you do reach such a minimum point as shows that it amounts to no adequate payment at all. It is like looking at a man through one end of a telescope which draws him near to you, but forthwith you change it and look at him through the small end he becomes amazingly remote. I think that section has the power of infinite mischief in it, of disappointment to the people and serious disadvantage if not disaster to the whole funding scheme.

Third. I am opposed also to the proviso in the third section. I am opposed to making any condition that the Government shall or shall not patronize this road. I would leave that with the Government officials. I would leave it, as the phrase of the day goes, to "the laws of trade." I think the Departments of the Government that have had charge of the transportation are generally conscientious and upright. I think especially so in the Quartermaster's Department, which would have most to do on behalf of the Government with these companies in this respect, and that they may be left to select the most advantageous and the cheapest modes of transportation without the law hinding them to use the Pacific Railroad

which would have most to do on behalf of the Government with these companies in this respect, and that they may be left to select the most advantageous and the cheapest modes of transportation without the law binding them to use the Pacific Railroad.

For these reasons and others that I might name I shall be constrained to vote against the bill originally introduced by the Senator from Georgia, [Mr. Gordon,] and substantially adopted by the Railroad Committee, whose chairman [Mr. West] has so ably presented it to the Senate.

On the other hand, I am very sure that I cannot vote for the bill reported from the Judiciary Committee. The judiciary bill simply means a lawsuit. That is all there is of it. I do not mean that the honorable and able committee which reports it means a lawsuit; but in effect it throws this whole case into litigation, where it has been now for years past, and where legislation of that kind will keep it for years to come. I do not believe we can do any greater disservice to the United States Treasury, whatever its effect might be on the railroad, which we are not here specially bound to consider, than to pass a bill of that character. It would be litigation, the law's delay, the law's uncertainty; and the law's uncertainty thus far has been a pretty absolute certainty against the Government in all the controversies and conflicts which we have had with these Pacific Railroad Companies. I want to keep out of the courts. "The burnt child dreads the fire." We certainly, to use a common phrase, have not had luck in the courts in our controversies with these two railroad companies. I do not say that they have not had right on their side; I am bound to presume they have had. They have had most important decisions in their favor from the very highest judicial tribunal known to our laws, and thus far I believe have come off victorious in every contest with the Government.

In its great economic and financial feature this question presents itself just about thus: Under the decision of the Supreme Court of the United States they have the indulgence on their side of such a long postponement of the annual interest as waits until the maturity of the bonds. That is the law. We are bound to respect it. The gross sum owed to the Government by these two railroad companies

when the bonds mature will be somewhere in the neighborhood of \$140,000,000 or \$150,000,000, and above that there lies a mortgage of about \$54,000,000, making an aggregate, if nothing is done and nothing is settled when that point is reached at the end of the present century, of something over \$200,000,000 which the Government would have invested. If it chose on its own account to raise the first mortgage and become the owner of the road the Government would have on its hands some eighteen or nineteen hundred miles of railway in which it had invested at the rate of \$110,000 a mile. I do not think that would be a profitable investment. I do not think we ought to enact any legislation that would render that step possible. Nay, I do not think we ought to take any risks on the subject. Therefore I should be in favor of doing something. These railroad companies act in their own interest, and they will do that of course. There is a great deal said, and has been for a great many years, about the men who control these roads being grasping and avaricious, aiming at monopoly. Well, Mr. President, they are men; that is all. They have got hold of a great property and they maintain their rights and hold on to it, and they intend to keep all the law will give them. Everybody else would do the same thing in their place. They are men, I repeat, and that is all there is of it. They have got a property and they propose to protect it, and to appeal to the law, and I suppose to light it to the bitter end in defense of what they consider their legal rights. They would be more or less than men if they did differently.

ferently.

Now, instead of making a bitter controversy, possibly extending on until the condition of things to which I have spoken comes to pass, when the Government confronts itself as the owner of this railroad at the enormous price of \$110,000 per mile invested in it, is it not better if we can have some sort of adjustment that will be fair to the Government and fair to the railroads?

I was very much struck, I confess, in reading over the bill proposed possibly to be submitted as an amendment by the Senator from Iowa, [Mr. Allison.] It does not propose a specific sum annually. I am a little suspicious of specific sums. Compound interest and Babbager calculators are very deceptive, and there are no tabular statements brought into legislative halls that are not a little tinctured with interest on the one side or the other. They are made out against the railroad or they are made out for the railroads, and I distrust both. The Senator from Iowa [Mr. Allison] proposes, as I read it, to leave it to the Treasury Department to say just what sum shall be paid by those companies that shall entirely liquidate and discharge their obligation to the Government by the year 1905. I understood the Senator from California to indicate that he would go for a sinking fund which would discharge it in 1900. There is only a margin of five years difference then between the Senator from California and the Senator from Iowa. That is not a very great period in the life of a nation. It would hardly be wise to put this whole question at risk on a wrangle or difference between 1900 and 1905. I do not think the public judgment of the American people would justify the Senate of the United States in coming to a sharp issue with the railroad companies and throwing the whole thing to the doubtful hazards and chances of a suit at law, with its prolongations and its doubts and uncertainties, merely on the point of the ultimate liquidation being in 1900 instead of 1905.

I therefore have been and in reading over the amendment suggested.

I therefore have hoped in reading over the amendment suggested by the Senator from Iowa that his proposition might be brought before the Senate for a square vote. I could not support the one which the honorable Senator from Louisiana [Mr. WEST] has presented from the Railroad Committee, and I could not vote for that of the Judiciary Committee, which, in my judgment, means litigation and controversy. But I would like to vote for some middle proposition that would be fair and just to all parties. While I have not examined the details with care and do not know but that there may be some to which I would not wholly assent, yet the general scope and purport of the amendment suggested by the Senator from Iowa is one that

commands my approval.

There is another consideration, Mr. President, which weighs heavily with me. I want to see an end of Pacific Railroad legislation in Congress. I hope to remain in Congress long enough to see a session go by without a Pacific Railroad bill coming before us. That is an ambition which I cherish and yet which in fourteen years I have never had gratified, and I shall never have it realized unless the length of my service should go beyond that of the honorable occupant of the chair [Mr. Anthony] if we go into such bills as the Judiciary Committee reported here. The amendment of the honorable Senator from Iowa proposes to leave this matter to the acceptance of the railroad companies to make a contract. Any bill which will go through here and adjust and end in any manner satisfactorily to the people must be in the nature of a contract; for, shielded as the railroad companies are from the obligation of paying the annual interest, they are in a position more advantageous than the Government itself, and they can continue this controversy and will continue it indefinitely at the Government's expense.

The PRESIDING OFFICER, (Mr. ANTHONY.) The question is on the amendment of the Senator from California [Mr. BOOTH] to the amendment of the Senator from Georgia, [Mr. GORDON,] on which the year and pays have been ordered.

the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. ALCORN, (when his name was called.) On this bill and the

amendments thereto I stand paired with the Senator from Indiana, [Mr. Morton.] I would vote "yea" on this amendment, and if he were here he would vote "nay."

Mr. CAMERON, of Wisconsin, (when his name was called.) On this question I am paired with the Senator from Nevada, [Mr. Sharon.] If he were here he would vote "nay," and I would vote "yea" on this amendment.

Mr. CHAFFEE, (when his name was called.) On this question I am paired with the Senator from Ohio, [Mr. Sherman.] The Senator from Ohio if here would vote "yea" and I should vote "nay" on this amendment.

amendment.

Mr. EATON, (when his name was called.) I am paired with the Senator from Delaware, [Mr. BAYARD.] I have very grave doubts whether the Senator from Delaware would vote "yea" on this amendment; but unless I can have some assurance on that subject I am not inclined to vote. I should vote "nay" if I felt at liberty to do so.

Mr. HAMLIN, (when his name was called.) I stated yesterday that I was paired with the Senator from Ohio [Mr. THURMAN] on the bill.

I was paired with the Senator from Onio [Mr. THURMAN] on the bill. From the general character of the subject I assume the Senator from Onio would not vote for this amendment. I should vote "nay" if at liberty do so, but I shall not vote.

Mr. PADDOCK, (after having just voted in the negative.) I was paired with the Senator from Vermont, [Mr. EDMUNDS.] Yesterday I understood myself to have been relieved from that pair and that it had been prede with my friend from I conjugate. [Mr. West 1] The had been made with my friend from Louisiana, [Mr. West.] The Senator from Louisiana now informs me that that is not the case, Vermont. The Senator from Vermont would vote "yea" if here, and I ask leave to withdraw my vote.

The PRESIDING OFFICER. The vote will be withdrawn if no

objection be made.

The question being taken by year and nays, resulted—year 24, nays 28; as follows:

YEAS—Messrs, Anthony, Bailey, Bogy, Booth, Christiancy, Cockrell, Cooper, Harvey, Kernan, McDonald, McMillan, Merrimon, Morrill, Oglesby, Randolph, Rob-ertson, Sargent, Saulsbury, Stevenson, Wadleigh, Wallace, Whyte, Withers, and

So the amendment to the amendment was rejected.

The PRESIDING OFFICER. The next amendment offered by the Senator from California [Mr. BOOTH] to the amendment will be re-

The CHIEF CLERK. It is proposed to insert at the end of the amendment:

That Congress may at any time alter, amend, or repeal this act.

Mr. BOOTH. I understand that the Senator from Michigan [Mr. CHRISTIANCY] has an amendment which embodies mine, and I ask leave to withdraw it.

The PRESIDING OFFICER. The amendment to the amendment

Mr. CHRISTIANCY. In place of the amendment just withdrawn I move to strike out the whole of sections 6 and 7 and to insert in lieu, as a final section, the following:

Congress shall at all times have power to alter and amend as well as to repeal this

Mr. WEST. As I understood, the Senator from California with-

draws his concluding amendment.

Mr. BOOTH. I have withdrawn the amendment to alter, amend,

Mr. WEST. It is perfectly competent now for the Senator from Michigan to offer an amendment at any stage of the bill, but I ask the ruling of the Chair as to whether the Senator's amendment now takes precedence of the others; for instance the one offered by the Senator from Iowa, [Mr. Allison.] I think that amendment now according to our rules is the amendment under consideration.

Mr. HARVEY. I offered an amendment, but I do not remember in

what order, whether before or after the amendment of the Senator

Mr. WEST. I believe the amendment of the Senator from Mich-

igan does come first. The PRESIDING OFFICER. The amendment of the Senator from Michigan is to perfect the text which is proposed to be stricken out.

It is therefere in order.

Mr. WEST. Very well.

Mr. DAWES. Is it in order to amend the amendment?

The PRESIDING OFFICER. It is.

Mr. DAWES. I will move, therefore, to strike out of the amendment to the amendment the words "six and." That would leave the amendment to be to strike out the seventh section and insert in lieu thereof what I do not object to; but to strike out the sixth section is to propose another lawsuit. Of course, I do not mean to say that the Senator proposes another lawsuit, but it imposes another lawsuit upon the United States. It strikes out all power or all-opportunity on the part of these railroads to have any voice whatever themselves

in the arrangement by which they are to pay their indebtedness to the United States in a different way and at a different time and upon different terms than those upon which they originally contracted.

Mr. CHAFFEE. I desire to offer an amendment to the sixth sec-

The PRESIDING OFFICER. That would be in the third degree. There is an amendment to an amendment already pending.

Mr. CHAFFEE. I wish to propose an amendment to the sixth section of the substitute.

The PRESIDING OFFICER. The Chair will receive it.

Mr. CHAFFEE. I move after the word "same," in the sixth line of the sixth section, to insert: "Provided the said companies shall faithfully comply with all the provisions of this act and shall not be in default in any of the installments when due;" so that, if amended, it will read:

That if this act shall be accepted by the said companies within four months from the date of its passage, by votes of the directors and stockholders at regular meetings duly called, the same shall be deemed and construed to be a final settlement between the Government and the company or companies so accepting the same, provided the said companies shall faithfully comply with all the provisions of this act and shall not be in default in any of the installments when due; such acceptance to be filed with the Secretary of the Treasury.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Colorado, [Mr. CHAFFEE.]

Mr. CHRISTIANCY. I will explain my object in offering my amend-

ment. I think the conduct of these railroad companies toward the Government has not been such as to encourage us to give up the security and the power of amendment and repeal that we now have. The sixth section, as it stands now or as proposed to be amended by the Senator from Colorado, would still cut off all power of amendment and repeal. It will be only necessary to read the section for the purpose of showing that:

That if this act shall be accepted by the said companies within four months from the date of its passage, by votes of the directors and stockholders at regular meetings duly called, the same shall be deemed and construed to be a final settlement between the Government and the company or companies so accepting the same; such acceptance to be filed with the Secretary of the Treasury.

The amendment offered by the Senator from Colorado does not the amendment offered by the senator from Colorado does not change the effect of the section in this respect. It would still bind the Government and would be in effect irrepealable. If the sixth section should be retained, as proposed by the Senator from Massachusetts, then the section which I propose in lieu of the sixth and seventh sections would be repugnant to the previous section in some sense. I prefer, therefore, to strike out entirely sections 6 and 7 and to insert the amendment which I have sent to the desk.

My DAWLES We President I connect understand how it would be

Mr. DAWES. Mr. President, I cannot understand how it would be repugnant, if there was any soundness in the argument of the Senator from Michigan a few days since, as he said that without some such provision the bill would have just the effect that I do not desire that it shall have, that is, to repeal the previous authority of the United States over these railroad acts, whatever it is, I desire to maintain unimpaired. The Senator from Michigan intimated in his argument the other day that, by leaving out, instead of repeating, as in the act of 1864, the reservation of the power of repeal, the power itself by implication would be taken away. I yielded to the force of that argument sufficient to say that, rather than leave any such implication existing whatever, I would supply it. It was in concession to that argument of the Senator from Michigan. Now, the Senator says to put it in would be repugnant to the whole provision.

Mr. CHRISTIANCY. Will the Senator call my attention to the part of my argument to which he refers?

Mr. DAWES. I only speak from recollection. I desire to co-operate with every other Senator here who has any such disposition or purpose. It is not for me to criticise any Senator's purpose. I desire to co-operate with Senators and with these railroad companies in accomplishing one purpose, and that is in providing that when these bonds Mr. DAWES. Mr. President, I cannot understand how it would be

co-operate with senators and with these railroad companies in accomplishing one purpose, and that is in providing that when these bonds and interest become due there shall be a sinking fund that shall liquidate the indebtedness, for I feel that there is danger of the indebtedness becoming so large that the companies will shrink from it, and the obligation will fall upon the United States not only to meet its own bonds but to meet the prior mortgage or lose all it has paid. I think that every business man, whether in the railroad or out of the railroad, looking candidly, quietly, and fairly at this condition of things, will see the same danger.

I am not one of those who desire specially and first to triumph over these railroads. I have not, and I have never had, any war with them. I have no old grievances which come up when any bill proposthem. I have no old grievances which come up when any bill proposing legislation touching them shall appear in the Senate or elsewhere. They never served me; they never injured me. They never served me other than as they have served the people of these United States in common. I have no other expectation from them than as one of forty-five million people looking to this grand work as one upon which the nation can look with pride, and toward which it can turn for incidental and collateral remuneration for every dollar that may have been expended. But I cannot understand the spirit that boils over in hitterness and in malice when we are trying to get such legover in bitterness and in malice when we are trying to get such legislation as in other matters would secure and make safe such a fund as that at the time these obligations shall become due. I must confess I do not understand the Senator from Maine [Mr. BLAINE] in his argument against that provision which shall permit those who have

this obligation to pay when we have determined the time when it shall be paid and the amount that shall then be paid, and say to this our debtor: "You shall not, if you happen to be able now, pay into the Treasury that which is absolutely worth to us just as much as the obligation will be at the time in the distance when it is to be liquidated." I cannot understand the objection as between man and man except as between the loaner of money on long credit and his debtor. There, in view of the profits that he derives from that business, the creditor may be reasonable in declining to take now that which he is under no obligation to take until twenty or thirty or forty years hence; but that is not the relation in which the United States stand nence; but that is not the relation in which the United States stand to these railroad companies or to these obligations. They have not made these obligations as a matter of gain. These obligations were put out to create a great work, as a concession to that work, and why we should not, the moment we can, secure against every vicissitude of the future that which is worth just as much to us as it will be in the distant future, I cannot understand. Of course I know that the Senator from Maine has no spirit in his appreciation to that section of Senator from Maine has no spirit in his opposition to that section of the kind I have indicated, but I cannot well understand the animus of

the kind I have indicated, but I cannot well understand the animus of certain opposition to any provision here that will obtain the consent of the party of the second part to this great contract.

There seems to be a disposition to recoil from any measure, however otherwise reasonable, that contains in it a provision that the party of the second part shall have an opportunity to say whether it will or will not accept these new conditions. Are we not capable, as business men, of bringing into our legislation some of the principles that govern business men in transactions of this kind and let them enter into our legislation?

I said, when I first ventured to express an opinion upon these bills, that I was not quite prepared to give my consent to all the provisions of the Railroad Committee's bill. I thought it was wise and I thought the companies would concede, and that we ought to require them to concede, to such an annual payment as would meet these obligations

concede, to such an annual payment as would meet these obligations when they become due, in 1898 or 1900, rather than postpone them. I thought all the conditions surrounding these questions and these railroads were such as would justify that, and I had no doubt as I they would see the wisdom of some such provision and that we ought to agree to it if we seek solely the making of a provision that will secure that end. I think, if we seek solely that rather than a disposition to triumph over these railroads either in these Halls or in the Supreme Court, we shall obtain such a result and shall do something

Mr. CHRISTIANCY. Mr. President, I have a few words to say in reply to the Senator from Massachusetts. Nothing which I have said authorizes bim to consider me as hostile to these railroad companies.

Mr. DAWES. I do not.

Mr. CHRISTIANCY. I certainly never have indicated anything of

Mr. CHRISTIANCY. I certainly never have indicated anything of the kind. I look upon these roads as a great national enterprise, and I am willing to be liberal to them; but at the same time, I think, we have the power; and it is our duty to insist upon their doing busi-ness upon principles of common honesty, upon common business principles. When the debt which is so large now is pressing upon the United States, and we can receive no relief from the companies the United States, and we can receive no relief from the companies by way of payment of the principal at least or interest to any extent until about 1900, or 1898 at least, it is not asking much from these companies, upon business principles, to lay aside a sinking fund which shall meet that debt at maturity. That is all I want and all I ask. In the mean time, until a more satisfactory arrangement is made than this substitute now submitted, I do not propose, so far as my vote is concerned, ever to yield that security which the Government

now has in the power of amendment and repeal. I shall vote for no part of this bill that will result in that. While we hold that security we are comparatively safe. Part with it, and if any one can see safety he can see farther than I can.

see safety he can see farther than I can.

Mr. McMILLAN. Mr. President, I concur entirely in the views expressed by the Senator from Michigan who has just taken his seat. So far as I am concerned, I certainly have no other desire than that the companies controlling this great thoroughfare shall be protected in all their rights and that the whole country shall receive the benefit of the great channel of communication which it affords. But experience has taught us that the power of alteration or control of the charter of a great corporation of this kind should never be yielded. charter or a great corporation of this kind should never be yielded. So far as the substitute, the Railroad Committee's bill, is concerned, I shall vote against it; for any amendment tending to perfect it and make it fairer, to bring it into the best possible condition, I shall vote; but when perfected, unless it conforms substantially to the terms of the bill reported from the Judiciary Committee, I shall not support it.

Section 7 of the Railroad Committee bill, as it is termed, recognizes the right of the railroad companies to accept the terms of this bill and

thus to make them a party to a contract; and the provisions of this section, if it should be adopted, would constitute a contract in the nature of an accord and satisfaction, which would take away the power of Congress to legislate upon this subject. For one, with the Senator from Michigan, I shall never consent to that. If an amendment is not inserted, the power of repeal, as I understand it, would be taken away from all the acts affecting this corporation. I have no doubt that under existing legislation Congress possesses the power to alter and amend this charter in the respects contemplated by the bill reported from the Judiciary Committee. Having that power, they

have the right to impose this legislation upon the companies, whether or not they accept it. In that condition let us leave this bill; and as the measure proposed by the Judiciary Committee seems to me to be reasonable, and only a security to the Government to protect itself against the loss of the indebtedness accrued from these railroad com-

against the loss of the first and the panies to the Government, it is certainly not only reasonable to duty of Congress to enact it.

I shall therefore support the amendment proposed by the Senator from Michigan to the bill of the Railroad Committee, and, so far as I am concerned in doing so, it cannot be construed as unfavorable to this great railroad passing through the country.

Mr. WADLEIGH. Mr. President, I have seldom taken up the time of the Senate, either at this session or at any other; but, after hearing the remarks of the Senator from Massachusetts [Mr. Dawes] who last spoke upon this bill, I cannot refrain from saying a word or two to explain my opposition to it. The Senators upon this floor who oppose the bill of the Railroad Committee are charged with bitter hostility against these great corporations. That is not my feeling. I pose the bill of the Kaliroad Committee are charged with bitter hostility against these great corporations. That is not my feeling. I have no reason for any such feeling whatever; but I happen to have a constituency; I happen to recollect that there are in this country many millions of people who have hard work to pay their taxes and get a living; I happen to recollect that their money goes into the Treasury of the United States and that any largess that is made by the bounty of Congress to these great corporations comes out of the pockets of the people. I cannot help believing that this bill, however it may be represented, is sheer robbery of the people. I stand here on behalf of my constituents to oppose it. I stand here to oppose it because I believe it to be wrong, and because I see thronging these corridors the same men, the same lobbyists, who on former occasions have imposed upon this people and upon Congress bills similar to this in their character, the effects of which and the evil provisions of which we are now seeking to get rid of. Gentlemen who talk of hostility to these corporations should remember that some of us think we have constituents; and on behalf of those whom I represent upon this floor, I protest against a bill like this, the passage of which is urged by the lobbyists of these corporations by all means in their power, and which is a bill that they at least seem to think is for their especial benefit cial benefit.

I have had but little opportunity, in the duties which have pressed upon me, to examine the provisions of this bill. There are one or two, however, which strike my attention. There is a provision at the end

of the third section-

That all Government freight and transportation west-bound, destined for points between the Missouri River and the Pacific coast and on the Pacific coast, and from said coast, or any point east thereof, east-bound, shall be sent by the said railroads until the aforesaid claims of the Government on account of bonds advanced to the companies are fully paid and satisfied, whenever such freight can be so transported to its place of destination at rates not exceeding the cost at which such freight can be carried by any other means of transportation.

Considering the legislation of the past, I say we have good reason to suppose that this bill, framed in the interest of these railroad comto suppose that this bill, framed in the interest of these railroad companies, as it seems from their efforts to procure its passage, will impose upon this Government the liability, the duty, of doing its business over these railroads at such prices as they may fix, whenever those prices are less than the cost would be of doing the same business by other means than railroad transportation. I see in that clause and in other clauses of the bill new germs of new lawsuits, new germs of trouble, new grounds upon which at some future day the people of this country can again be robbed.

These companies are not entitled to any peculiar sympathy from

this country can again be robbed.

These companies are not entitled to any peculiar sympathy from Congress or from the American people. The bills which have passed Congress have been in their interest. Those bills have been passed as drafted by the friends of the corporations; and the people of this country have found an interpretation put upon those bills which if the full purport of it had been known at the time would have prevented their passage. Now it is proposed to pass a new bill for their benefit, and it is proposed that Congress shall have no power to alter or amend the bill. No matter how many new robberies may be concealed under the bill, no matter what construction may be put upon it in the future, the Congress of the United States is to have no power to alter or repeal it in any respect whatever. I will not vote to tie the hands of Congress in respect to a bill the passage of which is urged by the lobbyists of these corporations in the way that we see this bill urged.

this bill arged.

Mr. WEST. Mr. President, there have been some rather harsh and, it occurs to me, uncalled-for expressions used by Senators on the floor, some contending that Senators who entertain one opinion are endeavoring to oppress the railroads; others contending, in the choice language of the Senator who has just spoken, that those who entertain a different opinion propose to rob the Government. The Railroad Committee, of which I have the knonor to be chairman, had this matter intented to those law the senator of the Senator and the Senator. ter intrusted to them by the command of the Senate, and the Senator who has just taken his seat should not lose sight of the fact that this subject was brought to the attention of Congress by the executive department. If we are discussing and thinking of this measure, we have warrant for it in the recommendation of the late Secretary of the Treasury, a man who is so much honored by the constituency of the honorable Senator who last spoke. Does the Senator forget that this matter was brought to the attention of Congress by the Secretary of the Treasury and upon all the responsibility of his office?

I hold in my hand his recommendation to Congress to do the very thing that the Railroad Committee has reported that you ought to do and might do. Yet we are told that this bill is brought here by the railroad company and that they have a lobby here! Very likely they have, but the bill was brought here by somebody else, and that somebody else was your Secretary of the Treasury. Remember also that this communication from the Secretary of the Treasury was laid before us prior to the decision rendered by the Supreme Court of the United States. The proposition was entertained by the Secretary; and he, with his knowledge of law and with his construction of the acts, saw the danger that we were running upon and recommended as to adopt this course. us to adopt this course.

Mr. McMILLAN. Did the Secretary recommend this bill?

Mr. WEST. I will read what he recommended:

It seemed to me, however, that it was desirable to reach an adjustment whereby the vexations differences which had long perplexed the Government, and largely affected the credit, if not the prosperity, of the companies should be finally com-

"Long perplexed the Government." He appeals on behalf of the Government.

In reaching such a result it is obviously for the interest of both, and especially the Government, that an arrangement should be made by which a fixed amunal or semi-annual sum should be paid by the companies, so that when the principal of the debt becomes due the Government may hold in its Treasury a large sum applicable to the extinguishment of the debt. How and by what means, in what sums, and at what periods, this fund should be obtained and applied, is for Congress to determine; but it was and is my opinion that it would be a wise precaution to place the corporations under a definite and binding obligation, with their causent.

"With their consent"-

With their consent

to set apart from their semi-annual earnings and deliver to the Government a reasonable and fixed sum, so that their managers might constantly feel the pressure of this duty upon themselves, and not be permitted to treat it as a matter to be looked to in the distant future or by a succeeding board of officers.

B. H. BRISTOW, Secretary.

And now, Mr. President, the only difference between the two propositions that are here, one from the Judiciary Committee and one offered by the Railroad Committee—and whatever imperfections they have are subject to modification and adjustment by the Senate—is that the Judiciary Committee propose to do this thing without the consent of the railroads and the Railroad Committee propose to do it with their consent. That is all. It was our duty in such a presentation of the case and in such a reference of the subject to the Committee on Railroads to perfect the bill that they have brought forward. I do not think it is exactly in good taste to impugn their motives on such an authority as I have cited.

Mr. DAWES. I want to ask the Senator from New Hampshire [Mr. WADLEIGH] a single question, as he said he could not sit still

[Mr. WADLEIGH] a single question, as he said he could not sit still [Mr. Wadleigh] a single question, as he said he could not sit still after he heard my remarks. I want to ask him if he understands that I am opposed to the provision being put upon this bill or any other bill reserving the right on the part of the Government to alter, amend, or repeal any act that may be passed? If he so understood me, I failed to be understood. I said I was for it; I wanted it; and why the Senator should have been so disturbed by my remarks and say that now it is proposed to take away that right, I cannot see.

Mr. McMILLAN. Did I understand the Senator from Massachusetts to oppose the amendment of the Senator from Michigan?

Mr. DAWES. No. The Senator from Michigan has got a double-barreled amendment and my friend from Minnesota will understand that there are two distinct propositions in it. One of them I desired to strike out. And in saying that I desired to strike out that provision of his which took away from these railroad companies any voice in

to strike out. And in saying that I desired to strike out that provision of his which took away from these railroad companies any voice in this new arrangement, I desired to retain that other part of the bill which preserved all the rights, whatever they are or ever have been, of the United States to alter, amend, or repeal any of these laws.

Mr. McMILLAN. Will the Senator allow me to ask him whether recognizing the right of these parties to accept this provision would not be held to be a legislative construction of former laws that Congress has no right under the power to alter or amend to pass such a provision #

Mr. DAWES. Followed by another section, I do not think it would. I think it would be a declaration that the people of the United States might approve; I do not know that they would after the remarks of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the business of the Senator from New Hampshire; but that the people of the Senator from New Hampshire; but the Senator from New H ness men of the country might approve, that it was an effort on the part of the Government to see whether by the co-operation of these railroad companies we might not possibly enter into such an arrangement as would secure the final liquidation of the debt and at the same time secure us against all uncertainties and expense and the harassing nature of litigation.

Mr. MORRILL. Then the Senator from Massachusetts, as I understand him, regards this provision in the nature of a contract binding

stand him, regards this provision in the nature of a contract binding upon the railroads but not binding upon Congress.

Mr. DAWES. What provision is Mr. MORRILL. The provision in relation to the acceptance on the part of the railroad companies.

Mr. DAWES. I do not quite understand my friend from Vermont; but I will tell you what I do understand. I am not in favor of the bill as it came from the Railroad Committee and have never said that I was. I have always said that there were provisions in it that

I did not approve; but I wished to be understood as trying to ascertain whether there was not some ground very much like that proposed by the Senator from Iowa [Mr. Allison] by which we could get a sum paid in yearly that would, when the bonds become due, liquidate them; and I thought if we tendered this to the railroad companies and required that before it came into operation it should have their assent, there would be the end of all litigation, and I would add to it to prevent any conclusion such as that which the Senator from Michigan and the learned Senator from Minnesota say it would be open to, a provision that nothing in this act shall be construed to take away or impair in any manner whatever the right of the United States

away or impair in any manner whatever the right of the United States to alter, amend, or repeal this or any other act.

Mr. McMILLAN. But if such a provision as this were inserted would it not be in the nature of a contract between the Government and the railroad companies, which could not be affected, although an and the railroad companies, which could not be affected, although an express power of repeal were reserved? Would the power to interfere with a contract exist; or would not the interference with that contract at any subsequent time be interfering with a vested right? The Senator will observe that the section provides that this shall be a final settlement; and here is a disputed claim between the railroad companies and the Government of the United States, the settlement of which is a final consideration for any contract and the right arise. of which is a final consideration for any contract, and the right arising out of such settlement would be a contract which could not be interfered with, whatever express power might be reserved in the bill.

Mr. DAWES. The Senator from Minnesota unconsciously concedes more to the argument that I submitted here the other day than I should myself claim for it, that there are certain contracts made by the United States with corporations—

Mr. McMILLAN. I wish to correct the Senator. I do not concede anything of that kind.

Mr. DAWES. I know the Senator the moment he sees the appli-

ation that is about to be made shrinks from it himself.

Mr. McMILLAN. The misapplication, if the Senator please.

Mr. DAWES. I submit that it is precisely what I urged feebly upon the Senate a few days ago, and which upon reflection by one of the ablest judicial minds in this Senate he has unconsciously yielded to, that there were contracts entered into by the United States with these railroad corporations that the existence of this clause reserving to Congress the right to amend, alter, or repeal did not permit the Congress of the United States to change. That was what I claimed. I claimed that the United States had entered into a contract, and that this was like writing anew across that contract new terms, and the learned Senator from Michigan said they had that power. Now the Senator from Minnesota says that it is a contract for a valid consideration that even with this reserved power expressed in the bill can-not be altered. Do I understand the Senator correctly?

Mr. McMILLAN. Does the Senator contend that the rights claimed by the railroad company must be valid before their cession would constitute a consideration for this contract proposed in section 7? certainly did not concede that the railroad company had any right of contract which could not be interfered with by the Congress of the

United States, and I do not propose that they shall have.

Mr. DAWES. Then, Mr. President, it will be true that if the railroads accept the provisions of this bill there will be no contract that with this reserved power expressly in the bill the Government cannot control. I think that the Senator from Minnesota is too able a judge and too clear a logician not to see that the logic of the whole thing rests right there; and it is just what I stated a few days ago, that for a proper consideration the Government of the United States could

for a proper consideration the Government of the United States could enter into a contract with these parties that that phrase in the law did not give them the power after it had been accepted to interfere with. Now the Senator says that this section of the bill provides that if this be fulfilled on the part of the railroads it shall be a final settlement with the United States. I want to ask my friend if he is not willing to agree beforehand, I do not mean to say in the terms of the Railroad Committee hill but more some terms by which if they be Railroad Committee bill, but upon some terms by which if they be fulfilled and those terms are such that when these bonds become due

fulfilled and those terms are such that when these bonds become due there shall be in our hands enough to liquidate them, whether he is not willing to stipulate on the part of the Government that when that is done it shall be a final settlement of the case?

Mr. McMILLAN. I am not willing to make any agreement on the part of the Government with the railroad company which recognizes them as having any rights of contract under this bill. I am in favor of asserting the right of the Government to legislate upon this subject in such manner that the interests of the Government will be fully exerted and that the Covernment is delay as shall not enter into protected and that the Government in doing so shall not enter into any complication which will cripple her right to legislate upon this whole subject upon the charter of these railroad companies in any manner she pleases or at any time subsequently to the legislation

manner she pleases or at any time subsequently to the legislation passed at present.

Mr. DAWES. Then I understand the Senator to say that he is unwilling to legislate upon any principle that recognizes any other rights in this country than those of the Government. I understand the Senator that when any other element enters into the legislation upon this subject than that the Government has now and shall ever have the right to treat this solely in regard to its own interests without reference to the rights of other parties, it will receive his opposition; and so I construed the spirit of the Judiciary Committee's bill that so commends itself to the Senator from Minnesota.

Now, sir, with the same desire to protect the rights of the Government that I think animates honestly the Senator from Minnesota, I have a kind of lurking idea that justice requires the recognition of the rights of other parties. I may be mistaken about this; but I have been led along in this view. Whether or not there are any rights of other parties except the Government to be considered, I may be mistaken; but waiving that question and not desiring to enter into any discussion of it further, admitting it to be just as the Senator from Minnesota claims, it is still a question of interest to the United States; and having under consideration for the moment no Senator from Minnesota claims, it is still a question of interest to the United States; and having under consideration for the moment no other element than what the United States may deem its own rights, without regard to the rights of others, I claim that upon no such principle as is enunciated can we ever secure in 1898 or 1900 the liquidation of our obligation beyond the accident of a contingency, of the vicissitudes of the future over which we have no control. We may legislate as guardedly as we can, follow and pursue the companies year after year and session after session with supplemental bills, and chase them around the earth with them, and upon the principle enunciated it will be a vain pursuit. You cannot deal with the world upon any such ground as that. You may complain about it, and you may say that the world is unreasonable and that this part of the world is worse than all the rest, totally depraved; but you have got world is worse than all the rest, totally depraved; but you have got to accept the world as it is; you have got to legislate upon the conditions of things actually existing; and I submit to the Senate that, supposing it to be true that nobody else has any rights that the Government of the United States is bound to respect, still it is wise for

ernment of the United States is bound to respect, still it is wise for us to pay some regard to them.

Mr. BOOTH. Mr. President, if I had never heretofore believed in the doctrine of total depravity the Senator from Massachusetts would have convinced me of its truth. A few days ago when a bill was under consideration that proposed to enforce a contract upon these railroad companies, nothing more, the Senator from Massachusetts said that the clause reserving the right to alter, amend, and repeal did not give us such a power. To-day he tells us that we may come to an agreement as two contracting parties, one proposing and the other assenting, and that agreement may be changed under the power to alter, amend, or repeal.

to alter, amend, or repeal.

Mr. DAWES. The Senator is laboring under a mistake. I made

Mr. BOOTH. I suppose then I am mistaken. It is my misfortune often to misunderstand the Senator from Massachusetts, for since the

days of Talleyrand no man has so perfectly understood the art of saying what he does not mean and meaning what he does not say.

Mr. DAWES. Mr. President, I hope nothing has passed between the Senator from California and myself that justifies any such remark as that at his hands. The Senator from California shall understand from me that nothing shall fall from me that would justify any such remark from him. I have dealt as well as I knew how in my feeble way with the subject presented. I have yielded to every Senator upon this floor precisely what I claimed for myself, entire sincerity in what I have said; and if the Senator from California thinks he is justified in setting himself up here as censor over me and pronouncing to the Senate that I do not mean what I say and do not say what I mean, the Senator from California should understand that that is a mission to which he at least has not been assigned by this body.

I tried to state as well as I knew how that the Senator from Michigan in the state as well as I knew how that the Senator from Michigan is the state as well as I knew how that the Senator from Michigan is the state as well as I knew how that the Senator from Michigan is the state as well as I knew how that the Senator from Michigan is the state as well as I knew how that the Senator from Michigan is the state as well as I knew how that the Senator from Michigan is the state of the

gan the other day argued with some force that there might be an implication from the absence in this bill of the express reservation of power to alter and amend. I tried to say that, while I felt the force of that argument, I did not desire to have it left to uncertainty, and I did desire to preserve all the rights that Congress could have over any of its legislation, as well that which is past as that which it is about to make, and that, therefore, I did desire to co-operate with the Senator from Michigan in having that provision inserted; and the Senator from California feels justified in announcing to the Senate that I say what I do not mean. I may be unfortunate in the way in which I express myself; I doubtless am. I may not be able even to make Senators understand what I desire to say; doubtless I am

in which I express myself; I doubtless am. I may not be able even to make Senators understand what I desire to say; doubtless I am not. I am not used to this Chamber; but there is another thing I am not used to: I am not used to being told that I do not mean what I say.

Mr. WADLEIGH. Mr. President, the Senator from Massachusetts expressed surprise that I should feel myself called upon to respond to the remarks which he made previous to my speaking. Sir, the reason why I did so was this: The first act in favor of the Pacific Railroad Companies, as I understand it, was passed in 1862. That act imposed certain conditions upon the railroad companies and provided that the credit of the Government should be given to them for a large amount of bonds, some \$54,000,000, I think; that those bonds should be paid by them, it not being a gift but a loan; and I say here boldly that the understanding of the country was that the interest on those bonds was to be paid by the companies as it came due, when they were able to do it. A different construction has been put upon that. If any member of the House or any member of the Senate, when that bill of 1862 was passed, had announced that the Government had got to wait till the year 1900 or thereabout for the payment of any interest, not a man in either House would have dared to record his vote for that bill. Yet that construction has been put upon the bill. It has been put upon it by the courts. It is a construction which the people did not expect and at which, I believe, they are very indignant.

Under that construction these railroad companies are bound to pay these bonds and interest at maturity. That is their duty. It is the right of the Government to have them do so. In that bill of 1862 there was a provision in substance that Congress might amend, alter, or repeal the act, with due regard to the rights of the companies. What was the right of these companies in the act of 1862 with reference to the payment of what they owed the United States? It was that they should pay the debt due from them according to the contractive of the active what the debt severage to the legislation. struction of the courts, when that debt comes to maturity. Any legislation compelling them to do what it is their duty to do, and what it lation compelling them to do what it is their duty to do, and what it is the right of the Government to make them do, is not in disregard of their right. The legislation proposed by the bill reported by the Judiciary Committee simply provides that. It is not in derogation of any right of theirs under the law of 1862, because under that law their right was to pay this debt at maturity, and that is all that the bill from the Judiciary Committee provides.

But in 1864 they came to Congress and procured the passage of another act giving them extraordinary privileges against the Government. That act as well as the first was an enormous largess to these

ment. That act, as well as the first, was an enormous largest to these corporations from the pockets of the people. That bill contained the express provision that Congress might at any time amend, alter, or repeal the act. According to the decisions of the courts that act fastened itself upon the previous act, and they must both be considered as one; and I believe that under the well-settled construction of the courts, under the act of 1864 as well as under the act of 1862,

of the courts, under the act of 1864 as well as under the act of 1862, Congress has the right to amend, alter, or repeal any of these acts passed with reference to these Pacific Railroads.

Mr. President, the Judiciary Committee's bill simply provides that these companies shall pay money into a sinking fund so that when their debt matures they can pay it. Every member of the Senate knows that without this provision they cannot pay it, and it never will be paid, but will be lost to the people of the United States. The bill simply provides, not in derogation of their rights but to compel them to fulfill their duties, that they shall put themselves in a position where they can pay the debt to the people; and that is all.

What does the bill which is brought here as a substitute for the bill of the Judiciary Committee provide? It provides that on payment of a sum less than the annual interest, much less than the principal, at the end of a certain time they are discharged from all

ment of a sum less than the annual interest, much less than the principal, at the end of a certain time they are discharged from all obligation. It gives to these corporations, already loaded by the munificence of this Government, another enormous bounty. It takes from the pockets of the people of the United States millions upon millions of the money of the people which these companies are bound in law, in honor, in justice to pay. I am opposed to such legislation as that, here and everywhere else. I am in favor of their meeting their obligations, and that is all the Judiciary Committee ask. They are able to do it, as their annual reports show; there is no reason why they should not do it; and yet everything proposed on this floor is met by lofty harangues about the rights of these corporations under the contracts which they have made.

I ask, Mr. President, if the people of this country have no rights; I ask if bills are to be passed here over and over again upon which new and strange constructions are put, under which the Treasury is, as I believe, robbed for the benefit of these corporations? I undertake to say that legislation such as this will not meet the approval of my constituents or of the American people. I do not believe in it.

my constituents or of the American people. I do not believe in it. I believe that these companies, which have been enriched by the generosity of this Government, whose work was of no such great magnitude as it is here represented to be, these corporations which out of the munificence of this Government have accumulated enormous of the munificence of this Government have accumulated enormous fortunes, these corporations in whose train all schemes of plunder have crowded, should be called upon to do what? Not to submit to any injustice, not to submit to any wrong; no, Mr. President; simply to provide the means of carrying out what they agreed to do, to provide the means of paying to this Government what they justly owe; and when that is the proposition before the Senate, I submit to this Senate, and I submit to the people of the country, here is neither the time nor the place for long declamations upon the rights of these corporations, when all that is asked of them is simply to do what every honest man does; and that is, pay their debts as they are perfectly able to do.

Mr. HITCHCOCK. Mr. President, I have no desire to prolong this discussion, and I certainly would not rise to say a single word but for the very extraordinary statement which has been made by the honorable Senator who has just taken his seat. The honorable Senator asserted that if during the discussion prior to the passage of the Pacific Railroad bill any member of Congress had announced that the

Pacific Railroad bill any member of Congress had announced that the Government was expected to pay the interest due on these bonds prior to their maturity, no member of Congress would have been found so hardened—that is not quite the word he used, but that is the idea—so lost to all sense of honor as to have voted for that bill.

Mr. WADLEIGH. I said no such thing.

Mr. HITCHCOCK. I probably used a little stronger expression than the honorable Senator employed, but the idea conveyed by his remark was that the understanding by Congress and by the country when Congress passed that bill was that the Government was not to pay the interest on those bonds as it accrued. I think I am correct in that.

Mr. WADLEIGH. Yes, sir.

Mr. HITCHCOCK. Now, then, I undertake to say that the whole

discussion prior to the passage of that bill is full of expressions exactly to that extent and greater. I read the other day several extracts from speeches during that debate which prove what I say now, and I will read one extract which exactly covers the case the Senator has made. It is from the speech of Mr. Wilson, of Massachusetts, on the 17th of June, 1862:

In my judgment, we ought not to vote for the bill with the expectation or with the understanding that the money which we advance for this road is ever to come back into the Treasury of the United States.

Mr. DAWES. Will the Senator allow me to interrupt him and call his attention to a motion made in the House of Representatives that these companies be required to pay the interest as it became due, by Mr. White of Indiana, and absolutely voted down.

Mr. HITCHCOCK. Yes, sir, that was exactly true, I am aware.

Mr. Wilson, though, said further:

I vote for the bill with the expectation that all we get out of the road—and I think that is a great deal—will be the mail-carrying, and the carrying of the munitions of war and such things as the Government needs, and I vote for it cheerfully with that view.

Now I will read another extract. Mr. McDougall, of California, in the same debate used the following language:

It is the business of the Government to pay the interest, because we furnish the transportation.

Mr. President, I remember to have seen somewhere a pamphlet, the title of which was Does Protection Protect? I think that anybody who is familiar with the legislation of this country for a few years past in regard to the Pacific Railroad can write a pamphlet on the question whether "economy economizes," and with very good reason. We can go on as we have done for years past, legislating on the false basis that the Pacific Railroad has stolen something from this Government which it is our duty to recover, and we can pass the bill reported by the honorable Senator from Ohio, and what shall we do? We shall inangurate a new series of expensive extensive and never reported by the honorable Senator from Ohio, and what shall we do? We shall inaugurate a new series of expensive, extensive, and neverending litigation. That will be the result of it. Look at our legislation of last session, a fair specimen of the legislation in which we have been indulging for several years past. What was that? Why, certain reformers, certain economists, discovered and announced to us that the Pacific Railroad had been overmeasured; that the companies had received bonds for a length of road that was never built; and they said we must examine this matter, "we must investigate this matter," we must recover back to the Government the bonds that have been fraudulently issued;" and what did we do? Why, sir, we passed a bill for economy's sake to provide for the remeasurement of the Pacific Railroad, and it was remeasured under the direction and control of the Engineer Department of the United States Army. control of the Engineer Department of the United States Army.

Mr. WEST. At an expense of \$10,000.

Mr. HITCHCOCK. What was the result? They discovered the truth. They discovered the fact that the Pacific Railroad had been Mr. WEST. defrauded by the Government out of bonds for between two and three miles, which they had never received, and the Government is called upon to pay up the bonds which are due to the Pacific Rail-road; and the result of the economy is one hundred or one hundred and fifty thousand dollars' expense to the Government. That is a fair

specimen of this much-vaunted economy.

specimen of this much-vaunted economy.

Mr. President, fifteen years ago the American people was engaged in a desperate effort to maintain its national territorial integrity. Nearly half of our territorial possessions were in the hands of an armed, organized, powerful rebellion. We had no means of communication by land with our golden possessions on the Pacific coast. We were threatened with a war with the greatest maritime power in the world. That war would have destroyed absolutely all communication with our Pacific coast and would ultimately doubtless have lost to us those possessions. Congress saw the danger; the country saw the danger; the world saw the danger; and Congress passed the act of 1862 and offered inducements to the patriotic capitalists of this country to provide a remedy by building a railroad across the concountry to provide a remedy by building a railroad across the con-tinent and establishing land communications with our possessions. What followed? The inducements were great, the proposition was liberal, but the undertaking was gigantic; the enterprise was surrounded with such perils, such uncertainties that no capitalists of the country were found brave enough to undertake it. What then? Congress in 1864 passed another bill offering still more liberal induce-Congress in 1864 passed another bill offering still more liberal induce-ments. What followed then? The capitalists of the country ac-cepted those inducements. We know the rest. With a courage that never faltered, with a faith that never wavered, with an energy that never rested, they carried out that enterprise to a glorious consum-mation seven years before the time that they were expected and re-quired by the act to do it. Think of the perils, think of the risks, think of all the doubts and uncertainties of that enterprise. Two thousand miles of railread wave to be built through a savere country. thousand miles of railroad were to be built through a savage country, much of the way without wood and water, a portion of the way over rugged mountains, all, all the way in the face of a savage foe. What then followed? Our Pacific possessions were saved; they were bound to us with bonds of iron. More than that, an empire equal to the possessions on the Pacific coast was opened to us in the center of the continent. The cost of transportation for the mails and supplies for the Way and Indian Department of the Continent. much of the way without wood and water, a portion of the way over rugged mountains, all, all the way in the face of a savage foe. What then followed? Our Pacific possessions were saved; they were bound to us with bonds of iron. More than that, an empire equal to the possessions on the Pacific coast was opened to us in the center of the continent. The cost of transportation for the mails and supplies for the War and Indian Departments of this Government was reduced from eight or ten millions per annum to a few hundred thousand, and that, too, to be indorsed on the railroad debt. And what followed if the way over rugged mountains, all, all the way in the face of a savage foe. What then followed? Now I should like to ask the Senator from Iowa if he believes there is any restriction or qualification binding upon the Government if this phrase should be in the bill; and if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask the Senator from Iowa if he will tell me just where the line is, if he can do it without consuming too much time, I should like to ask him if he has any more objection to saying the line is, if he can do it without consuming too much time, I shou

then? Grave lawyers at once took their books and sat down to see whether there was not a legal way for this nation to absolve itself from its obligations to the men who had wrought that great work; men with a mathematical turn of mind began at once to figure whether they could not have built that road cheaper; men who were very careful not to risk their pocket-books and their precious carcasses in building it themselves sat down to see whether if they had risked them they could not have done it cheaper. That was the feeling, that was the result; and day after day this country has listened to the denunciations of the men who carried out that glorious enterprise, because forsooth possibly they might have made a dollar!

Mr. President, this American nation is a great, a just, and a generous

nation. I believe that the Pacific Railroad was one of the grandest peaceful triumphs this world has ever seen. It was a triumph of this nation, and I for one deny that we, their servants, are called upon to dim the glory of that triumph by an act of bad faith toward the men

who won it.

Mr. WRIGHT. Mr. President, I stated yesterday that I was exceedingly auxious to have a vote upon this bill to-day and proposed to press for a vote before the adjournment; and having that wish, whatever might be my purpose otherwise, I shall refrain from saying anything upon the bill.

I have no doubt in the world that the building of this railroad was

a great enterprise. As has been said, I think there were it." There is one question by millions in it." There is one question, however, as I understand the pending proposition, that I propose to present to the Senator from Massachusetts and get his answer to see if I understand it. I understand the Senator from California to have moved originally to add to the bill a section reserving the right to alter, amend, or repeal. He withdrew section reserving the right to alter, amend, or repeal. He withdrew that and thereupon the Senator from Michigan proposed to strike out the sixth and seventh sections of the substitute and insert substantially the amendment proposed by the Senator from California. That amendment pending, the Senator from Massachusetts moves to strike out so much of the amendment of the Senator from Michigan as would take from the bill as it stands now the sixth section; and therefore the amendment as he now proposes it, and as he says he is in favor of it, would be to strike out the seventh section and put in place of it the amendment of the Senator from Michigan thus leave. in favor of it, would be to strike out the seventh section and put in place of it the amendment of the Senator from Michigan, thus leaving the sixth section to stand. In other words he proposes to leave the sixth section to stand as it is in the bill or as it may be amended as proposed by the Senator from Colorado, [Mr. Chaffee;] but whether amended or not he leaves the sixth section in the bill and proposes to say, instead of the seventh section, that Congress shall have the right to alter, amend, or repeal this act.

Now what I want to present to him is this, I do not know but that the Senator from Minnesota presented the same inquiry, but I present it in this way: Suppose you pass this bill with this amendment reserving the right to alter, amend, or repeal, and the railroad company shall accept the proposition contained in this act, do you think you could interfere in any way in the world with their acceptance and what is included after they have accepted it, and does this power to amend, alter, or repeal amount to anything in the world? Would there be anything left which could be amended afterward?

ward?

Mr. DAWES. I will tell the Senator plainly what I think about it, and of course the Senator will be as willing to respond to any interrogatory of mine. I think the power to alter, amend, or repeal this act is always under the restriction that it cannot interfere with an executed ways indeed the resolution of the contract, that it cannot interfere with a contract entered into by the Government with an individual upon a sufficient consideration moving from that individual, like the undertaking of this great work. I do not think, for instance, that after these people had accepted the conditions of the original acts of 1862 and 1864 and had gone on one hundred and fifty or three hundred miles into the open plains with their road, the right to alter, amend, or repeal would have authorized the Government to repeal that statute and drop them right there. Therefore I think that this provision, whether the sixth section be in or

ort, would always be under such qualification as I have stated.

I have understood the Senator from Michigan and all the Senators who suppose that the Judiciary Committee's bill is within the power of Congress, to nevertheless admit that there were certain qualifications and restrictions to it; but I have understood that they assert and maintain that those qualifications and restrictions were simply that you could not undo a right vested in a third person. Now what I desire is that any arrangement entered into, any provision for a sinking fund, should have the sanction of the companies for the reasons I have stated. I desire that Congress shall have all the power over this or any other act to alter, amend, or repeal that they can possibly have. I think in this, and no more than in any other, it possibly have. I think in this, and no more than in any other, it would be qualified by the fact that one party have accepted a solemn contract.

Now I should like to ask the Senator from Iowa if he believes there

Senator reports almost every day bills for the relief of individuals who have claims against the Government, in which he inserts "that this allowance shall be a full and final settlement." I ask the Senator

this allowance shall be a full and final settlement." I ask the Senator therefore if in a bill that meets his approval as to its terms and conditions, if fulfilled on the part of these corporations, he will not be willing to say beforehand it shall be a final settlement?

Mr. WRIGHT. I am very sorry indeed that my friend after having talked so much does not answer my question. I supposed that he would undertake to answer it, but he has not answered it yet. I asked him the plain question, if you retain the sixth section, and reserve the right in Congress to alter, amend, or repeal, and the railroad companies shall accept the proposition under this bill, what value the reserved right to alter, amend, or repeal will amount to?

Mr. DAWES. Just as much value as it would without. I think I

Mr. DAWES. Just as much value as it would without, I think I

have answered.

Mr. WRIGHT. Just as much as it would without? Now, suppose

the sixth section not in?

Mr. DAWES. I should like to ask the Senator if he believes there would be no power to alter, amend, or repeal if the sixth section and the section offered originally by the Senator from California were in ? Does the Senator from Iowa mean to say that with the sixth section in and the provision offered by the Senator from California in, that

the Congress would have no power to alter, amend, or repeal?

Mr. WRIGHT. I suppose the Senator would be bound to hold that.
I could not differ with him if I held as he does on this subject, that if this sixth section is retained and the railroad companies accept the proposition under it, then he will be bound to maintain that that is

proposition under it, then he will be bound to maintain that that is a concluded contract; and then this provision reserving the right to alter, amend, or repeal is a mere blind, and nothing else.

Mr. DAWES. I was interrupted when the Senator commenced. Does the Senator hold that as his opinion?

Mr. WRIGHT. I say that if I believed and entertained the doctrine the Senator does with reference to the powers of Congress and the Government under the Constitution, and under what he claims is a contract, and this company accepted the proposition, and it became a concluded contract with them—if it was a valid contract such as that they would have a right to stand upon after it was concluded—the reserved right in Congress to alter, amend, or repeal this law would be a blind, and nothing more.

law would be a blind, and nothing more.

Mr. DAWES. The Senator will pardon me. I did not ask him whether he believed as I did. The Senator having asked me what my conclusions were, I thought he would take it kindly, as I know he

Mr. WRIGHT. Certainly I do. Mr. DAWES. If I should ask him what his own opinion was, not

Mr. DAWES. If I should ask him what his own opinion was, not what mine was. Now, that there may not be any mistake between the Senator and me, I ask him, with the sixth section in and a section in these words, "Congress shall have the right to alter, amend, or repeal this act," whether in his opinion, not in mine, Congress would have a right to alter, amend, or repeal?

Mr. WRIGHT. I should say most certainly not, if the contract was concluded between these parties as is proposed here, unless you have some such reserved right. But that is a very different thing from the Judiciary Committee's bill, a very different thing from the legislation as it stood heretofore; for here you make an offer to the companies, and they enter into a contract, and make an agreement for such panies, and they enter into a contract, and make an agreement for such panies, and they enter into a contract, and make an agreement for such a consideration, to pay such and such a sum of money, and then you say you reserve the right to alter or amend it so that you can abolish that contract. Now the Senator attempts to get me upon a different ground entirely from what I have ever proposed to stand on. He himself, I say, by this very proposed amendment, is at war with the whole argument that he has made here as against the Judiciary Committee's bill and in favor of the bill reported from the Committee on

Mr. DAWES. I understood the Senator to say that, if Congress proposes these terms, the terms of this bill, to these railroads and they accept them, he does not think Congress would have the power after that acceptance to alter, amend, or repeal this bill, although they

that acceptance to alter, amend, or repeal this bill, although they reserved the express right?

Mr. WRIGHT. So far as the contract is concerned.

Mr. DAWES. I hope the Senator will answer me categorically.

Mr. WRIGHT. I said so far as the contract was concerned.

Mr. DAWES. So far as the contract was concerned, they would not have the right to alter, amend, or repeal the concluded contract.

Mr. President, I agree with the Senator entirely, and it was because I was of that belief that I supposed after we had offered the terms to these companies upon which, if they complied with them, if they built these railroads twenty miles by twenty miles, we on our part would furnish them bonds of a certain denomination and a certain amount, payable on a certain day, principal and interest, and they accepted it and concluded it by performing their work—it was because I agreed with the Senator from Iowa in the conclusion that that contract could not be altered and they could not be made to pay contract could not be altered and they could not be made to pay those bonds or the interest on those bonds at any other time or in any other manner than as provided in the contract itself, that I shrank from the bill of the Judiciary Committee and sought some way by the co-operation of these companies to accomplish what the Judiciary Committee wanted to accomplish. I know the Judiciary Committee have an answer to that: that we do not require these parties to pay these bonds before 1898; we only take the money of the

corporations and hold it thus in our own Treasury till 1898, and then apply it to the payment of the bonds. I know that is the answer; but it is not an answer that satisfies me.

Mr. CHRISTIANCY. Inasmuch as the Senator from Mussachusetts has referred to what he supposes to be my argument and has endeavored to show that there is some inconsistency in it, I propose to say a few words upon that subject. While I hold that all other incorpora-tion acts as well as these acts in relation to the Pacific Railroads, when made expressly subject to the power of amendment and repeal, may be amended and even repealed so as to reserve vested rights as a que tion of power, yet I have never contended, and it is not very likely that I ever shall contend, that an act containing a great number of provisions may not be so drawn that the intention may clearly appear in some of its provisions that it shall not be altered, but that it pear in some of its provisions that it shall not be altered, but that it shall be final and conclusive, and it would not be subject to that power of repeal at all; but when the courts should take up that statute for the purpose of construction they would say, looking over all its provisions, "Here is a provision of the statute which on its face is of that nature which clearly indicates the legislative intent that it shall not be repealed, notwithstanding this general provision." That is just the position in which this case would stand by leaving in it the sixth section and then attaching the power of amendment and repeal. That is all. I see no inconsistency whatever in it. I do not see that the argument applies at all to the act of 1862 or the act of 1864 in relation to these railroads.

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) The question is on the amendment proposed by the Senator from Colorado, [Mr. CHAFFEE,] which will be reported.

The CHIEF CLERK. It was proposed to strike out sections 6 and 7 of the bill and in lieu of those sections to insert:

Congress shall at all times have power to alter and amend, as well as to repeal, this act.

It is proposed to amend section 6, proposed to be stricken out, by inserting, after the word "same," in line 6, the following proviso:

Provided. The said companies shall faithfully comply with the provisions of this et and shall not be in default in any of the installments when due.

The PRESIDING OFFICER. The question is on inserting the words last read by the Clerk.

The question being put, there were on a division—ayes 18, noes 20. Mr. CHAFFEE. I ask for the yeas and nays. The yeas and nays were ordered.

Mr. WEST. I am sure there can be no objection to that amend-

Mr. MORRILL. Mr. President, it seems a little singular that no one can rise here in the Senate and claim any rights or privileges on the part of the United States under these various railroad acts without being charged with possessing some animus against the railroads, some ill-will, some personal spite. I do not understand that there is a Senator here, I know of no one, who entertains any spite against this railroad; but there are Senators here who believe that the United States still have some rights in spite of any decision of the Supreme Court. I do not understand the Supreme Court to have decided that Congress may not amend, alter, or repeal these railroad acts, nor do I understand that the Supreme Court of the United States have decided that the net earnings of 5 per cent shall not be annually applied to extinguish both interest and principal of their debt, nor have they decided that the half earnings for service on behalf of the Government shall not be annually applied to the extinguishment of interest and principal. Yet here is a bill which proposes not only to extinguish the annual interest that we pay out for the Government, but the entire principal, by paying one-half, or about one-half, of the amount of the annual interest that is being paid by the

If that is not the very "necromancy of arithmetic," I do not understand it; and yet the Senator from Louisiana claims that his bill differs in no particular from the bill reported from the Committee on differs in no particular from the bill reported from the Committee on the Judiciary except that it places it in the power of the railroad companies to accept or reject it as they please. I should like to know whether there is any Senator here who has authority for saying that the railroad companies would accept any of these bills where this provision is inserted. If they will not, then we are left to the conclusion that they will reject any proposal that is made here, unless they stand in some apprehension that a bill in character like that reported from the Judiciary Committee will ultimately pass and force them to accept the provisions as presented by that committee. If they are willing to accept, and I do not think they would reject an offer that wipes out more than one-half of their debt, then I see no occasion for asking their consent. But I am opposed not to giving them fair terms, but to asking of the railroad managers to give validity to acts of Congress by a proclamation of their assent.

I do not understand that the bill of the Judiciary Committee proposes to do more than to make the debt when it matures of some value to the United States, and all of the other propositions that are proposed let these companies off with a much smaller amount than

roposed let these companies off with a much smaller amount than they are obligated to pay to re-imburse the United States for the loan of their credit. Let us look at the position of one of these great corporations, once weak but now strong. The Central Pacific Railroad, as I understand, is owned to-day by less than a hundred stockholders. The gross receipts of that company are over \$14,000,000 per annum.

The amount of operating expenses reduces it so that they have left The amount of operating expenses reduces it so that they have left between eight and nine million of dollars. After paying the interest on their first-mortgage bonds, they have left in round numbers \$6,000,000 to be divided among less than a hundred men, that is to say, about \$60,000 each; and yet the Senate of the United States are called upon to say that rather than reduce the income of these men from this railroad from sixty thousand to fifty thousand dollars per annum the Government of the United States shall continue to pay between three and four million dollars per annum without any in-terest for the next thirty years. Even the proposition of the Senator from Iowa [Mr. Allison] proposes to extend the time when this debt shall mature for seven years, that is to say, from 1898 to 1905. These propositions are not for the interest of the United States, but

they are gratuities to the railroads.

I must say that while I have no sort of feeling hostile to these roads or to any man who is a stockholder or director in them, I cannot sit here and see the interest of the United States wholly sacrificed by the bills as reported from the Committee on Railroads. I adhere to the letter of the law, and the letter of the law provides that 5 per cent of the net earnings shall be annually applied and that the half of transportation services shall be also annually applied. I have not a shadow of doubt that if Congress shall see fit to change, alter, or amend at any time as they have reserved the full power to alter, amend, or repeal, the Supreme Court will accept and interpret the law precisely as Congress shall accept and interpret it. Nor do I believe that it would be against the interest of these roads to make the debt due to the United States good at maturity beyond all question. These roads ought to be made to be perpetually good, good not only in 1900, but in the year 2000, and yet to allow them to go on without any amendment of the statute with their interpretation that they will pay nothing at all, it is perfectly obvious that these debts may be so augmented by accumulated interest that the road itself must finally go into bank-

ruptcy.

Therefore, Mr. President, while I would be willing to moderate the terms of the Judiciary Committee bill in some respects to make it less onerous, I cannot persuade myself to accept of scarcely anything that is proposed in this proposition from the Railroad Committee. Their bill is a complete surrender. The Senator from Louisiana claims that the bill of the Railroad Committee does not differ from

that of the Judiciary Committee except in the provision to allow the railroads permission to accept or reject the proposition.

Mr. WEST. I did not say that in detail they do not differ; I said

in their object.

Mr. MORRILL. I wish to call the attention of the Senator from Louisiana to the second section of the bill of the Judiciary Committee to see how widely different it is in its scope and purpose from any proposition contained in the Railroad Committee's bill.

Mr. WEST. If the Senator desires to do that for his own satisfaction I have no objection, but he misconstrues my language. I said that the object of either committee was to get a settlement, not that the bills which they reported agree in their details.

Mr. MORRILL. Ah! If the Senator only means that they differ

in degree and not in principle, I cannot imagine why this amount of hostility that is manifested should exist against the report of the Committee on the Judiciary. Then the Senator means to say nothing more than this: that the bills do not differ essentially in principle; it is only in the amount of burden that is imposed upon the

Mr. WEST. The Senator must not make me say what I do not say.
Mr. MORRILL. I was merely going to call the attention of the
Senate for a single instant to show the wide difference there is in the
scope of the Railroad Committee bill from the second section of the bill of the Judiciary Committee, which provides that for the services rendered to the Government there shall be retained by the United States one-half, one-half thereof to be presently applied and the other half to go into a sinking fund.

I did not think of saying anything on this subject again after the remarks I submitted a day or two ago, but it seems to me perfectly clear that these provisions in the original act must be obeyed, and

they are as follows:

And to secure the repayment to the United States-

Does it not mean that every dollar that is advanced by the United States shall be repaid to the United States ! as hereafter provided, &c.

Then take the next page. The law says:

And all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid.

Then again it says:

And after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall also be annually applied to the payment thereof.

I think, Mr. President, we need not, in advocating these propositions in favor of these railroads, undertake to take shelter behind the Supreme Court. They never have made any decision overturning the points which I have read in the original charter of the roads, and, so far as I am concerned, I propose to stand by the charter.

Mr. CRAGIN. Mr. President, in considering this subject in the Committee on Railroads we tried to look at it in a practical business point of view. What did we find there? We found that these two

railroad companies had received from the Government bonds to the amount of about \$54,000,000, due twenty-two years hence. We found that the Supreme Court of the United States had unanimously dethat the Supreme Court of the United States had unanimously decided that the interest upon those bonds was not due from the companies until the maturity of the bonds, that is, twenty-two years hence. This interest would then amount to about \$90,000,000. That, added to the principal of the bonds, amounts to about \$145,000,000 due from these two companies to the Government twenty-two years hence. In my simplicity I had no thought or belief under this decision of the Supreme Court that there could be any contrivance by which these companies could be compelled to pay their interest or which these companies could be compelled to pay their interest or any part of the principal before the maturity of the bonds. Look-ing at it in that light I saw that these companies would at that dising at it in that light I saw that these companies would at that distant day be indebted to the Government in the enormous sum of \$150,000,000 more. I concluded and the Committee on Railroads concluded that it would be an impossibility for these roads to pay that sum at that time; and as the Government had only a second mortgage upon the roads, there being \$54,000,000 of prior lien, making over \$200,000,000, we thought it for the interest of the Government, if it could possibly be done, that these companies should begin to pay this debt now, and continue to pay it until by a certain time they should have paid enough to extinguish the debt and interest.

Senators seem to talk here as though there were some way to comselators seem to talk here as though there were some way to compel these corporations to pay this interest, notwithstanding the decision of the court. I wish there was. If I could see any way to do that I should not favor this bill at all; but, as I believe that the Government will ultimately lose every dollar of this debt unless some arrangement is made by which these companies can fund the debt gradually, I am in favor of such a measure, a measure that shall be just to the Government and one that the corporations will accept.

just to the Government and one that the corporations will accept.

Much is said here about compound interest. Suppose I owe to my friend, the Senator from Vermont, \$100,000 payable in twenty-two years, without interest. That is exactly what this case is, as I understand it. These corporations twenty-two years hence will owe this Government \$150,000,000, or thereabouts, and this interest should be reckoned, or may be reckoned for all practical purposes, as principal to-day, for they are not compelled, according to the decision of the courts, to pay a dollar of it until these bonds mature. If I owed my friend, I say, \$100,000 and if he held my note due in twenty-two years from date, without interest, and I desired to begin to pay him now, would he not be willing to accept \$3.000 or \$5.000 a year and now, would be not be willing to accept \$3,000 or \$5,000 a year and allow me interest on that up to the time the note was due? Would not that be right; would it not be just; would it not be according

not that be right; would it not be just; would it not be according to business principles?

Mr. MORRILL. If the Senator will permit me, I will state what I consider business principles and what I consider too to have been the decision of the Supreme Court. The decision of the Supreme Court goes only to the extent that we cannot make the principal of the debt or the interest until the bonds mature; but it does not decide that we may not apply the 5 per cent. net earnings or one-half of the amount received for services performed by the roads for the Government.

Mr. CRAGIN. I want to say to my friend that I wish to compel these roads to pay more than 5 per cent. of the net earnings annually. I want them to pay a sum which, put out at interest, would, at the maturity of these bonds or at a day certain, amount to the principal

and interest.

Mr. MORRILL. I do not know what my friend wants to do, but he advocates a bill paying about one-half of the amount that we pay out for annual interest and proposes that that shall extinguish twice as much interest and the entire principal at the end of thirty years.

Mr. CRAGIN. On the ground that this interest is not due, it is a part of the principal, and the country will find it so in the end. If the Government shall take what money is authorized to be paid under this bill (or if it is not enough let us make it more) and grad-nally buy no the 5.20 bonds upon which we are paying 6 per cent. under this bill (or if it is not enough let us make it more) and grad-nally buy up the 5.20 bonds upon which we are paying 6 per cent. interest, and if that process is continued for thirty years and the in-terest is constantly made to work for the Government, I ask the Sen-ator from Vermont if in the end it will not come to the same identical thing? Will they not save the entire amount of this money? Let me illustrate the principles of this bill. If, instead of paying this money into the Treasury of the United States, these corporations were required to deposit \$2,000,000 in a savings-bank, and annually there-after pay \$1,000,000 each into the savings-bank, and it was allowed to accumulate and interest to be added semi-annually, as is done in savings-banks all over the country, I say to the Senator from Ver-mont that at the end of this time the amount of money in the savings-bank, with the interest and principal accumulating, would amount to bank, with the interest and principal accumulating, would amount to the principal of these bonds, and with the interest that the Govern-ment would be compelled to pay. A friend near me thinks that that big amount would break almost any savings-bank, and I agree with

big amount would break almost any savings-bank, and I agree with
him. The Government is paying interest on these bonds to-day, and
it may take this money and apply it to the extinguishment of the
bonds and the saving of interest.

I do not say that the provisions of this bill are what they should be
in all particulars. It may be that these companies ought to pay more
annually. I should be glad if they could pay enough annually to
extinguish the debt at the maturity of the bonds, both principal and
interest; but the principle upon which this bill goes I advocate under
the circumstances that this interest is not due until the maturity of

the bonds, and is a part of the principal. I do not expect to live twenty-two years; but I make the prediction here to-day that, unless some provision similar in its character to this bill is made for funding this debt, my constituents who may be alive twenty-two years hence will find that the Government will get nothing from these corporations.

rations.

Mr. BURNSIDE. Mr. President, I desire to ask the Senator from New Hampshire one or two questions so that I can understand his argument better than I do now. Does he understand that the 5 per cent. upon the net earnings and the one-half of the amount of the Government transportation in each year go as a credit to the company against the interest which the Government pays each year I in other words, suppose that these two sums amount to \$500,000 annually for each company, is that \$500,000 in making up the account against each railroad taken from the sum that the Government pays for interest annually, leaving the remainder of the annual interest due to the Government. nually, leaving the remainder of the annual interest due to the Gov-

ernment from the companies

There is no interest allowed by the Government upon these \$500,000 annual payments, because when they are paid they are due to Government and are in no sense a sinking fund. The Government of the United States, after thirty years, or at the time the debts become due, will have had the use and benefit of these \$500,000 annual payments, instead of having them go into a sinking fund for the benefit of the companies. Therefore, when the Government of the United States gives up its right to retain one-half the amount that is due to the railroad companies for its transportation, and 5 per cent. upon the net earnings of the roads, and receives in lieu thereof the annual payments proposed by the Railroad Committee bill, it gives to railroad companies all the accrued interest on the amounts represented by the 5 per cent. net earnings and half the Government transportation account, whereas the Government should have the benefit

of the accrued interest.

The Government of the United States should have the advantage of these 5 per cent. and transportation payments during the thirty years that the debt is maturing. By the Railroad Committee bill they work to the advantage of the companies and against the United

A fair calculation will show that annual payments of \$500,000 from each company, placed in a sinking fund by the Government of the United States, would at the end of thirty years produce a large sum of money, which would belong to it and not to the railroad companies. Now, the decision of the Supreme Court of the United States does

not say that none of the interest shall fall due for thirty years; I believe it only meant to say that so much of the interest as shall not have been paid by 5 per cent. of the net earnings, and one-half of the money due from the Government to the companies, is not due for thirty years; or, in other words, that so much of the debt as the companies cannot pay under provisions of the bill as it now stands shall not fall due for thirty years. I do not know whether I make myself understood or not.

Mr. CRAGIN. The Senator's question has expanded into a speech

Mr. CRAGIN. The Senator's question has expanded into a speech which I do not propose to answer. I will only say to the Senator that unless this bill puts the Government in a better position than that in which it now is, I am opposed to it; but I believe it does place the Government in a better position.

Mr. BURNSIDE. The reason that I am opposed to the bill is that it does not place the Government in a better position than it now holds. At the same time I am not disposed to vote for the bill of the Indicious Committee and I am not disposed to vote for the bill of the Judiciary Committee, and I am not ready to vote for any act, no mat-ter what it is, which will in the slightest degree oppress these railroad companies, or bear upon them harshly in any degree. had some experience in the management of railroads, and I know how they are often harassed by Legislatures composed of men who were as honest in their intentions as Senators on this floor.

I would under no circumstances attempt to make these companies, if they demurred to it, pay one single penny for thirty years beyond the 5 per cent. of net earnings and one-half the Government transportation. If they choose to stand upon that, I would agree to let them stand there. For that reason I would not vote for the Judiciary bill, and for that reason I failed to vote for the amendment of the

Senator from California.

As to the amendment of the Senator from Michigan, I am free to say that I think it would be very unwise indeed for Congress to give away a right which the Government of the United States now holds; that is, the right to alter and amend. There is no object in giving it away. There is an object in trying to treat these companies with perfect fairness and trying to impose upon them no burden which they cannot bear. I think the bill of the Judiciary Committee does impose upon them a burden which they cannot bear, therefore I cannot vote for it; neither can I vote for the bill of the Railroad Committee, because I do not think it is fair to the Government.

The PRESIDING OFFICER. The yeas and nays having been ordered on the amendment of the Senator from Colorado, [Mr. Chaffee,] the Clerk will call the roll. As to the amendment of the Senator from Michigan, I am free to

FEE, 1 the Clerk will call the roll.

The Secretary proceeded to call the roll.

Mr. ALCORN, (when his name was called.) On this, as on other amendments to this bill, I am paired with the Senator from Indiana, [Mr. Morton.] I should vote against the amendment, and he would vote for it, perhaps, if he were here.

Mr. CAMERON, of Wisconsiu, (when his name was called.) On

this bill and upon all the amendments thereto, I am paired with the

Senator from Nevada, [Mr. Sharon.] I will decline to vote upon the amendment, not knowing how he would vote if he were present.

Mr. EATON, (when his name was called.) I am paired on this question with the Senator from Delaware, [Mr. Bayard.]

Mr. PADDOCK, (when his name was called.) On this question I am paired with the Senator from Vermont, [Mr. Edmunds.] If he were here he would vote "nay," and I should vote "yea."

The roll-call having been concluded, the result was announced—yeas 30, nays 22; as follows:

YEAS—Messrs. Barnum, Elaine, Boutwell, Bruce, Cameron of Pennsylvania, Chaffee, Clayton, Conover, Cragin, Dawes, Dennis, Dorsey, Goldthwaite, Gordon, Hitchcock, İngalls, Kelly, Logan, McDouald, Mitchell, Morrill, Norwood, Oglesby, Patterson, Spencer, Stevenson, Teller, West, Whyte, and Wright—30.

NAYS—Messrs. Bailey, Bogy, Booth, Burnside, Cockrell, Cooper, Davis, Harvey, Hereford, Johnston, Jones of Florida, Kernan, McCreery, Maxey, Merrimon, Randolph, Robertson, Sargent, Saulsbury, Wadleigh, Wallace, and Withers—22.

ABSENT—Messrs. Alcorn, Allison, Anthony, Bayard, Cameron of Wisconsin, Christianoy, Conkling, Eaton, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Howe, Jones of Nevada, McMillan, Morton, Paddock, Ransom, Sharon, Sherman, Thurman, and Windom—33.

So the amendment of Mr. Chaffee was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Michigan [Mr. Christiancy] to strike out sections 6 and 7 of the substitute of the Senator from Georgia, [Mr. GORDON, ] and insert:

Congress shall at all times have power to alter and amend, as well as to repeal, this act.

Mr. CHRISTIANCY. The amendment just adopted in no way obviates my objections to sections 6 and 7, and therefore I hope that the amendment may be adopted.

Mr. DAWES. I moved an amendment some time ago to that of the Senator from Michigan, to strike out the words "and sixth," leaving the amendment of the Senator from Michigan to strike out the seventh section and insert the repealing clause. That would leave section 6 stand as part of the bill and strike out the seventh section, which provides

That all acts and parts of acts inconsistent with this act are hereby repealed.

The proposition of the Senator from Michigan, if agreed to, would strike out that section and insert in place of it a power to alter, amend, and repeal.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Massachusetts, which is to perfect the part of the bill proposed to be stricken out.

Mr. CHRISTIANCY. The amendment now proposed leaves the objection which I had to section 6 to stand in full force. It will be at least to some extent repugnant to the section which I propose, containing the whole power of amendment and repeal, because upon its face it will bear the construction that it was the intention of Congress to make a final and conclusive provision not subject to the power of repeal; and the courts might then very well hold that the power of repeal would extend to all other portions of the bill except to this. I do not say that that would be my construction; but I say it would leave the courts to the adoption of that construction, and therefore I am opposed to leaving section 6 in the bill at all, because it does conclusively strike out the power of amendment and repeal.

Mr. DAWES. My amendment to the amendment of the Senator

from Michigan, if I may be allowed to state it again, is this: Senator's amendment proposes to strike out two sections and insert one; I propose to amend his amendment so that it will strike out

only one section and insert one; that is, strike out the last section, and put in place of it his repealing section, to which I do not object. What I object to is to striking out the sixth section.

The PRESIDING OFFICER. The Clerk will report the pending amendment offered by the Senator from Massachusetts, [Mr. DAWES.]

The CHIEF CLERK. It is proposed to amend the amendment by retaining the sixth section so as to strike out only the seventh sec-

Congress shall at all times have power to alter and amend, as well as to repeal, this act.

The question being put, a division was called for; and the ayes

Mr. CHRISTIANCY. I ask for the yeas and nays. The yeas and nays were ordered, and the Secretary proceeded to call the roll

Mr. PADDOCK, (when his name was called.) On this question I am paired with the Senator from Vermont, [Mr. EDMUNDS.] If he were here he would vote "nay" and I should vote "yea."

Mr. STEVENSON, (when his name was called.) I find I am paired

with the Senator from New York, [Mr. CONKLING.] I do not know how he would vote, and therefore I will not vote. I should ask leave to withdraw my vote on the previous amendment if that were allow-

The roll-call having been concluded, the result was announced—yeas 25, nays 25; as follows:

YEAS—Messrs, Allison, Barnum, Blaine, Boutwell, Bruce, Cameron of Pennsylvania, Clayton, Conover, Cragin, Dawes, Dennis, Dorsey, Goldthwaite, Gordon, Hereford, Hitchcock, Ingalls, Kelly, Logan, Mitchell, Norwood, Patterson, Spencer, Teller, and West—25.

NAYS—Messrs. Balley, Bogy, Booth, Burnside, Christiancy, Cockrell, Cooper, Davis, Jones of Florida, Kernan, McCreery, McMillan, Merrimon, Morrill, Ogles-

by, Randolph, Ransom, Robertson, Sargent, Sanlsbury, Wadleigh, Wallace, Whyte, Withers, and Wright—25.

ABSENT—Messrs. Alcorn, Anthony, Bayard, Cameron of Wisconsin, Chaffee, Conkling, Eaton, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Harvey, Howe, Johnston, Jones of Nevada, McDonald, Maxey, Morton, Paddock, Sharon, Sherman, Stevenson, Thurman, and Windom—25.

So the amendment to the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the amendment offered by the Senator from Michigan [Mr. Christiancy] to the substitute reported from the Railroad Committee.

Mr. WEST. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. RANDOLPH. Let the amendment be read.

The CHIEF CLERK. It is proposed to strike out sections 6 and 7 of the pending amendment, and insert:

Congress shall at all times have power to alter and amend as well as to repeal this

Mr. WEST. I should like to have the Secretary read the sections proposed to be stricken out.

The PRESIDING OFFICER. The sections proposed to be stricken

will be read.

The CHIEF CLERK. It is proposed to strike out the following

SEC. 6. That if this act shall be accepted by the said companies within four months from the date of its passage, by votes of the directors and stockholders at regular meetings duly called, the same shall be deemed and construed to be a final settlement between the Government and the company or companies so accepting the same, provided the said companies shall faithfully comply with all the provisions of this act and shall not be in default in any installments when due; such acceptance to be filed with the Secretary of the Treasury.

SEC. 7. That all acts and parts of acts inconsistent with this act are hereby repealed.

And in lieu of those words to insert:

Congress shall at all times have power to alter and amend as well as to repeal this act.

The Secretary proceeded to call the roll.

Mr. CAMERON, of Wisconsin, (when his name was called.) As I have already stated, I am paired on this bill with the Senator from Nevada, [Mr. SHARON.] I think he would vote "nay" and I should vote "yea" on this question.

Mr. PADDOCK, (when his name was called.) As before stated, I am paired with the Senator from Vermont, [Mr. EDMUNDS.] If he were here he would vote "yea" and I should vote "nay."

Mr. STEVENSON. I desire to state that I am paired with the Senator from New York, [Mr. CONKLING.] Not knowing how he would vote I refrain from voting.

vote I refrain from voting.

The roll-call having been concluded, the result was announced-

yeas 35, nays 15; as follows:

yeas 35, nays 15; as follows:

YEAS—Messrs. Allison, Anthony, Bailey, Bogy, Booth, Boutwell, Burnside Cameron of Pennsylvania, Christiancy, Cockrell, Cooper, Davis, Dawes, Dennis, Harvey, Hereford, Jones of Florida, Kernan, McCreery, McDonald, McMillan, Maxey, Merrimon, Morrill, Oglesby, Randolph, Ransom, Robertson, Sargent, Saulsbury, Wadleigh, Wallace, Whyte, Withers, and Wright—35.

NAYS—Messrs. Barnum, Bruce, Clayton, Conover, Dorsey, Goldthwaite, Gofdon, Hitchcock, Kelly, Mitchell, Norwood, Patterson, Spencer, Teller, and West—15.

ABSENT—Messrs. Alcorn, Bayard, Blaine, Cameron of Wisconsin, Chaffee, Conkling, Cragin, Eaton, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Howe, Ingalls, Johnston, Jones of Nevada, Logan, Morton, Paddock, Sharon, Sherman, Stevenson, Thurman, and Windom—25.

So the amendment to the amendment was agreed to.

The PRESIDING OFFICER. The question recurs on the motion of the Senator from California [Mr. Booth] to amend the substitute by striking out section 5, which will be reported.

The Secretary read the words proposed to be stricken out, as follows:

That each of said companies shall be entitled at any time to anticipate any or all of the semi-annual payments provided for in section 2 of this act by the payment to the Government of the then present value of such semi-annual payments, discounted at the rate of 6 per cent. per annum; but the sum so paid shall not be less than \$1,000,000 at any one time.

The amendment to the amendment was agreed to.

Mr. WEST. I understand the Senator from Kansas [Mr. Harvey] does not desire to press his amendment at this particular time, that he is willing to have that incorporated hereafter on any bill that the

Senate may determine upon.

Mr. HARVEY. The Senator from Louisiana misunderstood me. I desire to have it incorporated in this bill but not in connection with

desire to have it incorporated in this our database that the particular part of it.

Mr. WEST. Exactly; but you do not want to press it until the details of the bill are agreed on.

Mr. HARVEY. No, sir; not until the details of the bill are per-

Mr. DAVIS. Mr. President, I desire to ask whether or not section

The PRESIDING OFFICER. It was stricken out.

Mr. WEST. I understand now, Mr. President, that the Senator from Kansas waives his amendment, subject to the action of the Senate on the amendment of the Senator from Iowa, [Mr. Allison.]

Mr. HARVEY. What does the Senator mean by "subject to the action of the Senate on the amendment of the Senator from Iowa?" Mr. WEST. I mean that, if that amendment is adopted or declined by the Senate at this time, you will let your amendment come in.

Mr. HARVEY. I shall ask the consideration of the Senate to my amendment, let his be adopted or not.

Mr. WEST. Yes; that is what I mean.

Mr. WEST. Yes; that is what I mean.

The PRESIDING OFFICER. The amendment of the Senator from Kansas is the pending question, and must be disposed of either by unanimous consent or the action of the Senate. Is it with-The amendment of the Senator drawn ?

Mr. HARVEY. No, sir; I ask for its consideration.
The PRESIDING OFFICER. The question, then, is on the amendment of the Senator from Kansas,

Mr. SAULSBURY. I move that the Senate take a recess until to-

morrow morning at ten o'clock.

Mr. MORRILL. I ask the Senator from Delaware to allow an ex-

ecutive session for a moment.

Mr. SAULSBURY. I withdraw the motion for that purpose.

Mr. MORRILL. I move that the Senate proceed to the consideration of executive business.

Mr. HARVEY. Mr. President—
The PRESIDING OFFICER. The Senator from Vermont is enti-

tled to the floor.

Mr. HARVEY. Will the Senator from Vermont yield to me for a moment?

Mr. MORRILL. I will for a moment.

Mr. HARVEY. I wish to ask that the amendment which I offered be read, and I desire to call attention to the fact that in the RECORD of the 15th instant it is not correctly printed. I ask that it be compared and the necessary correction made, so that it may be printed in the permanent edition of the RECORD as it was offered.

The PRESIDING OFFICER. The Chair would suggest it is not

necessary that it be read for that purpose. It may be printed in the

RECORD on a copy being furnished.

Mr. MORRILL. Allow it to be printed in the RECORD without being read. That will accomplish the Senator's object just as well.

Mr. HARVEY. I simply want it to be printed correctly, as it was

Mr. MORRILL. Mr. MORRILL. Then you have only to have it again printed. The PRESIDING OFFICER. Is there objection?

Mr. DAVIS. To what?

The PRESIDING OFFICER. To the printing of the amendment offered by the Senator from Kansas in the RECORD. The Chair hears none, and it is so ordered.

The amendment is as follows:

The amendment is as follows:

That no provision contained in either the act entitled "An act to aid in the construction of a railroad and telegraph from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal and military purposes," approved July 1, 1862, or the act amendatory thereto, approved July 2, 1864, or in any act of Congress granting lands in aid of the construction of any railroad or wagon-road, shall be so construed as to exempt from taxation by State anthority lands which any of the companies in said acts mentioned, or its successors, shall have carned by the construction of its road or parts thereof: Provided, That such road or parts thereof shall have been first accepted by the United States in the manner in said acts prescribed; and taxes assessed either before, or, such as may be assessed, after the passage of this act, upon lands carned by said companies, or their successors, or any of them, shall be valid as against any claim or title of the United States in or to such lands.

Sec. — That if any company entitled to said lands or parts thereof, as aforesaid, shall fail to pay the costs of surveying and selecting the same, or the land-officer's fees where such payment is required by any of said acts, the purchaser of any of said lands at tax sale may pay such costs and fees due upon the lands by him purchased to the proper officer; and thereupon letters-patent shall issue to such company conveying said lands to it, but subject to the legal rights and title of such tax-sale purchaser: Provided, That nothing in this act contained shall be construed as enlarging any grant of lands heretofore made to any of said companies.

Mr. Al LISON — Lunderstand that the printing of amendments is

Mr. ALLISON. I understand that the printing of amendments is going on regularly now at the Printing Office, and I suggest to the Senator from Kansas to have his amendment printed, so that we may see it in the regular form.

The PRESIDING OFFICER. That order will be made if there be no objection. The Chair hears none.

Mr. ALLISON. I move that the amendment I offered last night be

printed; and I desire to modify it by substituting what I send to the Clerk's desk for section 5, as it is in my first amendment.

The PRESIDING OFFICER. Does the Senator from Vermont

ield for the purpose suggested by the Senator from Iowa?

Mr. MORRILL. Certainly.

The PRESIDING OFFICER. Does the Senator from Iowa desire

The PRESIDING OFFICER. Does the Senator from Iowa desire his amendment to be read?

Mr. ALLISON. Yes, sir; it is to modify section 5 as originally offered by me, and I desire to have it printed as modified.

Mr. BLAINE. Let it be read.

The PRESIDING OFFICER. The amendment will be reported.

Mr. SARGENT. I ask is there any question before the Senate except the motion to go into executive session? Is that motion not

pending?

The PRESIDING OFFICER. That is withdrawn.

Mr. SARGENT. I understood that it was withdrawn for a moment. I wish to make this remark to the Senators who are concerned in this bill—I hardly know what particular Senator has charge of it—that they stated that their purpose was to press it to a vote to-night. That seems to have been abandoned, and a motion is now made to go into executive session, and usually when we go into executive session at this hour of the day, we soon find ourselves without a quorum and are compelled to adjourn without transacting any further

legislative business. I now desire to inform the Senate that we have the Printing Office in operation and as the appropriation bills will be printed, the Committee on Appropriations will consider it a duty they owe to the country to urge those bills upon the attention of the Senate no matter what other business may be pending.

Mr. MORRILL. I renew my motion to proceed to the consideration of executive business.

Mr. ALLISON Let my amendment be read and ordered to be

Mr. ALLISON. Let my amendment be read and ordered to be

Mr. WRIGHT. In answer to the Senator from California, [Mr. SARGENT,] I will say that I said I proposed to press this bill to a vote to-night, and I stand here prepared to do it, and want the Senate to remain here until we shall dispose of the bill. I ask the Senate to vote down the motion for an executive session and continue the consideration of this bill.

Mr. ALLISON. I ask the Clerk to read the modification of section

5 which I propose.
The Chief Clerk read as follows:

SEC. 5. That this act shall take effect upon its acceptance by said railroad companies, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that a majority of the stockholders of said companies have agreed to the same at a meeting called for that

The PRESIDING OFFICER. It is moved that the proposed amend-

ment be printed.

The motion was agreed to.
The PRESIDING OFFICER. The Senator from Vermont moves that the Senate do now proceed to the consideration of executive business.

The motion was agreed to.

Mr. BOOTH. While the doors are being closed, I wish to state in justice to myself that, in the excitement of debate and as I thought

justice to myself that, in the excitement of debate and as I thought under some provocation, I used some words in relation to the Senator from Massachusetts [Mr. Dawes] the offensive meaning of which I desire to withdraw. It was not in my mind to say that—

Mr. DAWES. I do not know that the Senator from California will accept any remark from me; but will he wait until the doors of the Senate are opened, so that the statement may be made publicly?

Mr. MORRILL. The reporter is here.

Mr. BOOTH. Certainly I retract all that I have said.

Mr. DAWES. If the Senator will oblige me, I do not know anything of the purpose of his rising now, nor do I desire to interfere with the purpose he may have. I do not know that it is proper for me to ask this of the Senator, but it is a favor that I venture to ask of him under the circumstances, that, if he has any statement to make in reference to what has been said, he should do it in open Senate.

EXECUTIVE SESSION.

## EXECUTIVE SESSION.

The Senate thereupon proceeded to the consideration of executive business. After twenty minutes spent in executive session the doors were re-opened, and (at five o'clock and fifteen minutes p. m.) the Senate took a recess until Saturday, February 17, at ten o'clock a. m.

## HOUSE OF REPRESENTATIVES.

# FRIDAY, February 16, 1877.

The House re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

## CLAIMS ALLOWED BY COMMISSIONERS OF CLAIMS.

Mr. EDEN. I ask unanimous consent to report back from the Committee on War Claims, for consideration at this time, the bill (H. R. No. 4433) making appropriations for the payment of claims reported allowed by the commissioners of claims under act of Congress of March

Mr. HOLMAN. I think that bill should go to the Committee of the

Mr. WILSON, of Iowa. If not acted upon pretty soon it cannot

Mr. WILSON, of lowa. If not acted upon pretty soon it cannot get through during this Congress.

Mr. EDEN. The bill ought to be acted on speedily by the House; otherwise the Senate will not have time to act upon it. These are claims that have been favorably reported on by the commissioners, and under the law of 1871 the faith of the Government is pledged to the payment of such claims as are allowed by the commissioners. If the matter goes over to the next Congress many claimants will doubtless have to sell their claims at a sacrifice. Nothing can be gained by deferring the matter to the next session.

by deferring the matter to the next session.

The SPEAKER. The usual practice in reference to this bill is to consider it in the House as in Committee of the Whole. If the point of order, however, is raised, the Chair must rule that the bill must go to the Committee of the Whole.

Mr. HOLMAN. I do not wish to have this bill acted upon to-day. I desire to look into it.

The SPEAKER. The gentleman from Indiana [Mr. Holman] objects to the consideration of the bill at this time.

Mr. HOLMAN. I shall not object to its being made a special or-

der for some future day.

The SPEAKER. The Chair would suggest to the gentleman from Illinois [Mr. EDEN] that he ask unanimous consent that the bill be made a special order for a future day.

Mr. EDEN. I endeavored in the last session to get the bill through in that way, but I did not succeed. If I can get the floor on Monday, I will endeavor to have the bill passed under a suspension of the rules.

The SPEAKER. The Chair cannot promise to give the gentleman from Illinois the floor on Monday for that purpose, for the reason that there is a long list of gentlemen who desire to move suspensions of the rules, and the Chair feels compelled to take them in the order of their application. The Chair would again suggest to the gentleman from Illinois that perhaps he may get unanimous consent to make the

bill a special order for to-morrow after the morning hour.

Mr. EDEN. I make that request.

Mr. STEVENSON. What is the bill?

The SPEAKER. The title will be again read.

The title of the bill was again read.

Mr. GOODIN. I shall object unless it be made after the morning hour.

hour.

The SPEAKER. That is the proposition.

Mr. SOUTHARD. I object if the bill is to take precedence of the special order in which I am interested.

Mr. HOLMAN. I have no objection to the bill being made a special order for Tuesday, not to interfere with appropriation bills.

The SPEAKER. The Chair will put the proposition in that form: that this bill be made a special order for Tuesday after the morning hour, not to interfere with the consideration of appropriation bills.

Mr. EDEN. I am afraid that the centleman from Indiana will have

Mr. EDEN. I am afraid that the gentleman from Indiana will have appropriation bills in the way.

The SPEAKER. The Chair would rule that this would come up

immediately after the appropriation bill was disposed of.

There being no further objection, the bill was made a special order for Tuesday next after the morning hour, and from day to day until disposed of, not to interfere with the general appropriation bills.

#### PUBLICATION OF THE REVISED STATUTES.

On motion of Mr. DURHAM, by unanimous consent, the bill (S. No. 1216) to provide for the preparation and publication of a new edition of the Revised Statutes of the United States was taken from the Speaker's table, read a first and second time, referred to the Committee on the Revision of the Laws, and ordered to be printed.

PENSIONS FOR SOLDIERS OF THE MEXICAN AND BLACK HAWK WARS.

Mr. CAMPBELL, by unanimous consent, presented joint resolutions of the Legislature of the State of Illinois, concerning pensions for soldiers of the Mexican and Black Hawk wars; which were referred to the Committee on Pensions

# REPORT OF THE COMMISSIONER OF EDUCATION FOR 1876-

Mr. CUTLER, by unanimous consent, introduced a joint resolution (H. R. No. 192) for printing the report of the Commissioner of Education for 1876; which was read a first and second time, referred to the Committee on Education and Labor, and ordered to be printed.

## BRIDGE ACROSS THE MISSOURI RIVER AT GLASGOW.

Mr. KEHR, by unanimous consent, from the Committee on Commerce, reported as a substitute for House bill No. 4342 a bill (H. R. No. 4669) to authorize the construction of a bridge across the Missouri River at or near Glasgow, Missouri; which was read a first and second time, recommitted to the committee, not be brought back on a motion to reconsider, and ordered to be printed.

# DENVER A PORT OF ENTRY.

Mr. KEHR also, by unanimous consent, from the same committee, reported adversely upon the memorial of the Board of Trade of Denver, Colorado, asking that Denver be made a port of entry; and the same was laid on the table, and the report ordered to be printed.

# AMENDMENT OF THE REVISED STATUTES.

Mr. HARRISON, by unanimous consent, introduced a bill (H. R. No. 4670) to amend section 2990, chapter 7, title 34, of the Revised Statutes of the United States; which was read a first and second time, referred to the Committee of Ways and Means, and ordered to be printed.

## PRINTING OF TESTIMONY.

Mr. HARTZELL, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Expenditures in the Treasury Department be permitted to print any or all testimony taken before that committee during the present session.

Mr. HARTZELL moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## AMERICAN MEDICAL ASSOCIATION.

Mr. WILLIAMS, of Alabama, by unanimous consent, presented the petition of H. C. Wood, J. M. Toner, and J. R. Chadwick, a committee representing the American Medical Association; which was referred to the Committee on Printing.

#### LEVEES OF THE MISSISSIPPI RIVER.

Mr. LEVY, by unanimous consent, presented a joint resolution of the Legislature of the State of Louisiana, relative to building the levees of the Mississippi River; which was ordered to be printed in the RECORD, and referred to the Select Committee on the Mississippi

The memorial is as follows:

Joint resolution asking aid of the National Government to rebuild and repair the levees in the State.

Whereas the levees upon the Mississippi River are at present in such condition as to afford no protection to the alluvial lands of this State, and repairs necessary to be made in order to prevent the utter ruin of all classes residing in those parishes subject to inundation are beyond the means either of the State of Louisian a or of the Louisiana Levee Company, and beyond the reach of private enterprise in the present impoverished condition of the people of those sections; And whereas another inundation of the alluvial lands of this State, with which we are now threatened, would reduce a large portion of the population thereof to a condition of want and penury appalling to contemplate, and would compel their abandonment of the most productive and fertile region of the State: Therefore,

Be it resolved by the senate and house of representatives of the State of Louisiana in General Assembly convened, That this General Assembly hereby memoralizes the Congress of the United States for the assistance of the National Government to rebuild and repair the levees of the State.

That the governor of the State be requested to forward copies of this memorial to the Senators and Representatives for this State, and to request them to present the same to their respective Houses.

LOUIS BUSH,

LOUIS BUSH,

Speaker of the House of Representatives.

LOUIS A. WILTZ,

Lieutenant-Governor and President of the Senate.

FRANCIS T. NICHOLLS, Governor of the State of Louisiana.

A true copy.
WILL. A. STRONG,
Secretary of State.

### S. O. HEMMINGWAY.

Mr. GAUSE, by unanimous consent, submitted the following resolution; which was read, and referred to the Committee of Accounts:

\*Resolved\*\*, That S. O. Hemmingway be paid \$200 out of the contingent fund of the House for services as messenger for the months of October and November, 1876.

### CHEAP TRANSPORTATION.

Mr. PHILIPS, of Missouri, by unanimous consent, presented the resolutions of the State Grange of Missouri in respect to cheap transportation; which were referred to the Committee on Commerce.

#### THOMAS P. WESTMORELAND.

Mr. WALLACE, of South Carolina, by unanimous consent, introduced a bill (H. R. No. 4671) for the relief of Thomas P. Westmoreland, for compensation for mail service; which was read a first and second time, referred to the Committee of Claims, and ordered to be

## HENRY SOLOMONS.

Mr. RAINEY, by unanimous consent, introduced a bill (II. R. No. 4672) for the relief of Henry Solomons, postmaster of Kingsbee, South Carolina; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

## REFUNDING OF TONNAGE TAX.

Mr. SWANN. I am instructed by the Committee on Foreign Affairs to report back the Senate bill (S. No. 994) to amend section 2931 of the Revised Statutes of the United States, so as to allow the repayment by the Secretary of the Treasury of tonnage tax where it has been ex acted in contravention of treaty stipulation, with an amendment, and to ask immediate action upon the same. It is a very important meas-ure and has received the concurrence and approbation of every genthe and has received the concurrence and approbation of every gentleman who has heretofore been adverse to its passage.

The SPEAKER. Is there objection? The Chair hears none and the bill is before the House for consideration.

The bill was read.

It provides that the provisions of section 2931, of chapter 6, title 34, It provides that the provisions of section 2.31, of chapter 6, title 34, of the Revised Statutes of the United States shall not apply to cases of payment of tonnage tax on vessels when the Secretary of the Treasury shall be satisfied that the exaction of such tax was in contravention of treaty provisions, and he may draw his warrant for the refunding of the tax that was illegally exacted as is provided in section 3012½ of said statutes, provided that said payment took place during six years preceding the passage of this act, or shall hereafter

The amendment of the committee was to strike out the proviso at the end of the bill and insert in lieu thereof the following:

And the Secretary of the Treasury is not hereby authorized to refund any tonnage duty that may have been paid before the 14th day of July, A. D. 1862.

Mr. HOLMAN. Is the bill before the House now?

The SPEAKER. It is by unanimous consent.

Mr. HOLMAN. Not after it was reported. The Chair has not asked for unanimous consent since it has been reported.

The SPEAKER. The Chair decided that the bill was before the House, but will revoke his decision if the gentleman desires to object.

ject.
Mr. HOLMAN. I wish to hear a communication from the Secretary of the Treasury touching this matter. It is a bill involving a large amount of money and I wish to see what the present Secretary

of the Treasury recommends in regard to it. If he recommends it I shall not object

The SPEAKER. The Chair understood the gentleman from Mary-

land [Mr. SWANN] to state that the bill came from the Committee on Foreign Affairs with a unanimous report in its favor. Mr. HOLMAN. It is a question of much more importance to the Treasury Department than to the Department of Foreign Affairs, and unless we can have some explanation from the Secretary of the Treasury I certainly do not wish the bill to be acted upon.

The SPEAKER. The Chair has no option, the bill being objected

to, except to rule that it is not before the House.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed, without amendment, a bill of the House of the following title:

An act (H. R. No. 4576) to provide for changing and fixing the boundaries of certain property ceded to the Government of the United States by the city of Memphis, Tennessee.

The message further announced that the Senate had passed, with amendments in which the concurrence of the House was requested,

a bill of the House of the following title:

A bill (H. R. No. 4554) for the support of the Government of the District of Columbia for the fiscal year ending June 30, 1878, and for

other purposes

The message also announced that the Senate had passed and requested the concurrence of the House in a bill of the following title:

A bill (S. No. 1265) making an appropriation to supply a deficiency in the appropriation for the purchase of official postage-stamps for the Treasury Department for the current fiscal year.

#### TAX BILL FOR THE DISTRICT OF COLUMBIA.

Mr. NEAL. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee on the District of Columbia the bill of the House No. 4554, with the Senate amendments thereto, for the support of the Government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes. No objection being made, the bill, with the Senate amendments, was taken from the Speaker's table and referred to the Committee on the District of Columbia, not to be brought back by a motion to reconsider.

reconsider.

### ORDER OF BUSINESS.

Mr. BANNING. I call for the regular order.

The SPEAKER. The regular order being called for, the morning hour will now begin at twelve o'clock and thirty-five minutes p. m.

This being Friday, the business in the morning hour is the call of committees for reports of a private nature, the call resting with the Committee on Naval Affairs.

Committee on Naval Affairs.

Mr. BRIGHT. I move that the House now resolve itself into Committee of the Whole on the Private Calendar; and pending that motion I ask unanimous consent that, inasmuch as the last objection day was lost, to-day may be considered as objection day.

Mr. BANNING. I hope the gentleman will allow us to have the morning hour for reports of a private nature from committees.

Mr. BRIGHT. I will withdraw my motion for the present.

## DAVID DE HAVEN.

Mr. WILLIAMS, of Delaware, from the Committee on Naval Affairs, reported adversely Senate bill No. 932, for the relief of David De Haven; and the same was laid upon the table, and the accompanying report ordered to be printed.

## W. A. H. ALLEN.

Mr. JONES, of New Hampshire, from the Committee on Naval Affairs, reported a bill (H. R. No. 4673) for the relief of Passed Assistant Engineer W. A. H. Allen, of the United States Navy; which was read

a first and second time.

Mr. JONES, of New Hampshire. I ask that this bill may be now considered by the House.

The SPEAKER. The bill will be read, after which objections to

its present consideration will be in order.

The bill provides that Passed Assistant Engineer W. A. H. Allen, of the United States Navy, shall receive the increased pay of his present grade from the date that he completed the term of sea service regrate from the date that he completed the term of sea service required by law in the previous grade, according to the laws and regulations in force at the date of the vacancy which he now fills, in the same manner as though there had been no delay in his examination and the subsequent issue of his commission; provided the delay was not due to any fault on his part and he was found qualified on the first examination subsequent to the vacancy.

Mr. HOLMAN. I think that bill should go to the Committee of the

Whole on the Private Calendar.

The bill was accordingly referred to the Committee of the Whole on the Private Calendar, and ordered to be printed.

## WILLIAM L. SCRUGGS.

Mr. HAMILTON, of Indiana. I am instructed by the Committee on Foreign Affairs to report back, with a favorable recommendation, House bill No. 4418, to pay William L. Scruggs, late minister at Bogota, from October 10 to November 21, 1876, and ask that it be considered by the House at the first sidered by the House at this time.

The bill directs the Secretary of the Treasury to pay William L. Scruggs, late minister of the United States of America to Bogota, United States of Colombia, the sum of \$854.17, the amount which would have been due him as minister from the United States of America from October 10, 1876, to November 21, 1876, the time he was actually and necessarily detained in Bogota after his recall by reason of the siege of the city by the revolutionary troops.

Mr. HOLMAN. I think all these bills should go to the Committee of the Whole on the Private Calendar.

Mr. BANKS. This is a claim justly due and the payment of the money is recommended by the Secretary of State. I hope the gentleman from Indiana [Mr. HOLMAN] will withdraw his objection to its present consideration.

Mr. HOLMAN. If there is a report let it be read.

The report was read, as follows:

The Committee on Foreign Affairs, to which was referred House bill No. 4418, to pay William L. Scruggs, late minister resident at Bogota, \$854.17, salary for the time during which he was necessarily detained in Bogota after his recall by reason of the siege of the city by revolutionary troops, report that in the judgment of the committee the claim is just and should be paid.

Mr. HOLMAN. As a general thing I think all these claims involving expenditures, especially where they concern salaries—
The SPEAKER. The gentleman objects, and the bill—
Mr. HOLMAN. I wish to finish my statement.
The SPEAKER. If the gentleman objects that is sufficient.
Mr. HOLMAN. I withdrew my objection, and I was stating my

reason for doing so.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. HAMILTON, of Indiana, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### GEORGE W. CALHOUN.

Mr. RAINEY, from the Committee on Invalid Pensions, reported a bill (H. R. No. 4674) granting a pension to George W. Calhoun; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and, with the accompanying report, ordered to be printed.

### SHIP-CANAL, LAKE GEORGE, FLORIDA.

Mr. JONES, of Kentucky. I am directed by the Committee on Railways and Canals to report back, with an amendment, the bill (H. R. No. 4456) to authorize William A. Dorner and others to construct a ship-canal at the head of Lake George, Florida. Mr. EDEN. I make the point of order that this is not a private

The SPEAKER. The bill will be read, after which the Chair will

The SPEAKER. The bill will be read, after which the Chair will rule on the point.

The bill was read.

Mr. CONGER. Mr. Speaker—

The SPEAKER. A point of order has been raised by the gentleman from Illinois, [Mr. Eden.] Does the gentleman from Michigan desire to be heard on the point?

Mr. CONGER. I did not hear the point.

The SPEAKER. The point is that this is a public bill, and not entitled to be reported at this time.

Mr. JONES, of Kentucky. I desire to say that although this bill is somewhat of a private nature it contains a grant of power to certain individuals to perform a public work which concerns all those who are interested in the commerce and navigation of the Saint John's River. We have therefore been petitioned to report the bill, which contemplates a great public benefit.

The SPEAKER. In reference to what constitutes a private bill it has been the practice to hold—

Mr. CONGER. Will the Chair hear me a moment?

The SPEAKER. Does the gentleman desire to be heard before the decision on the point of order?

The SPEAKER. Does the gentleman desire to be heard before the decision on the point of order?

Mr. CONGER. That is necessary if my remarks are to have any effect, provided the decision is likely to be against the point.

The SPEAKER. The Digest states that such bills are to be considered private as are "for the interest of individuals, public companies or corporations, a parish, city, or county, or other locality."

"To be a private bill, it must not be general in its enactments, but for the particular interest or benefit of a person or persons." The Chair finds that this bill provides for the collection of tolls generally from the public, and that it also provides for the punishment of individuals in the courts of the United States. These provisions, in the opinion of the Chair, bring the bill within the objection that "a private bill must not be general in its enactments." Therefore the Chair rules that the point of order is well taken. The bill must be returned to the gentleman, as it is not in order to be reported to-day.

Mr. JONES, of Kentucky. I withdraw the bill.

Mr. CONGER. I wanted to add that the bill appropriates to a private company a public navigable tide-water river of the United States.

The SPEAKER. The Chair is much obliged to the gentleman for the additional suggestion, which confirms the propriety of the ruling.

### UNION AND CENTRAL PACIFIC RAILROADS.

Mr. JONES, of Kentucky. The Committee on Railways and Canals, to whom was referred a petition of the leading business firms of Cincinnati against abuses of the Union and Central Pacific Railroad Companies in rates imposed for the carriage of freight and praying for relief, have instructed me to report back the same and to move its reference to the Committee on the Judiciary.

The petition was referred to the Committee on the Judiciary, not

to be brought back on a motion to reconsider.

#### HORACE WOODMAN.

Mr. VANCE, of North Carolina, from the Committee on Patents, reported back adversely the bill (H. R. No. 1202) authorizing the extension of the patent granted to Horace Woodman, August 1, 1854, for a new machine for stripping cards; which was laid on the table, and the accompanying report ordered to be printed.

### EDWARD A. LELAND.

Mr. VANCE, of North Carolina, also, from the Committee on Patents,

Mr. VANCE, of North Carolina, also, from the Committee on Patents, reported back, with a recommendation that it be passed, a bill (S. No. 691) for the relief of Edward A. Leland.

The bill was read. It directs the Commissioner of Patents to grant a rehearing of the application of Edward A. Leland for the extension of letters-patent granted to him on the 14th of August, 1860, for improvement in paint-cans, and to revive and extend the letters-patent for the further term of seven years from the 14th day of August, 1874, if, in his judgment, the patentee was the original and first inventor of the invention described in the letters-patent, and the invention is useful, and the patentee has failed, without neglect or fault on his part, to obtain from the use and sale of his invention a reasonable remuneration for the time, ingenuity, labor, and expense betowed upon the same and the introduction thereof into use; and the letters-patent, when so revived and extended, are to have the same effect in law as if they had been originally granted for the term of twenty-one years.

been originally granted for the term of twenty-one years.

Mr. VANCE, of North Carolina. I call for the reading of the re-

The report was read, as follows:

The report was read, as follows:

On the 14th of August, 1860, letters-patent were granted to Mr. Leland for an improved paint-can. The letters-patent expired on the 14th of August, 1874, and have not been extended.

In the opinion of the committee the improvement patented is valuable. The petitioner has expended considerable time, labor, and money in perfecting his improvement and in making efforts to introduce the improved can into use. He was able to procure about twenty-five hundred of the cans to be made, which were sold at a small profit. He has not been able to realize any adequate remuneration for his time and expense in making the improvement and endeavoring to introduce it into use. This has not been his fault. It has arisen mainly from his want of means to manufacture the cans himself and from his inability to procure parties who had means to engage in their manufacture and sale.

The petitioner did not apply for an extension of his patent in time, owing to sickness and poverty.

He believes that if his patent is extended he has made arrangements for the manufacture and sale of the cans by which he will be able to realize a moderate compensation for the invention and expenditures.

The committee recommend that the prayer of the petitioner be granted, and that the bill herewith reported back be passed.

The bill was ordered to a third reading, and read the third time.

The bill was ordered to a third reading, and read the third time. The question being taken on the passage of the bill, it was not

agreed to.

Mr. VANCE, of North Carolina. I did not suppose that there would be any opposition to this measure. In order that I may be heard on the question, I move to reconsider the vote just taken.

The SPEAKER. That motion is in order.

Mr. VANCE, of North Carolina. This man Leland is very poor—
Mr. WILSON, of Iowa. Is it in order to move that the motion to reconsider be laid on the table?

The SPEAKER. The gentleman from North Carolina has been recognized and is on the floor to speak to his motion. The Chair would have recognized an opponent of the bill to make the motion to lay on the table if the motion had been made in time.

Mr. WILSON, of Iowa. I think that the ruling of the Chair is correct.

Mr. VANCE, of North Carolina. The bill before the House proposes only to give this man the time now allowed by law. He has had his patent, which has run for fourteen years. The existing law allows a patent to run for seventeen years. This man is very poor; and in addition to that he is a cripple. He has only been able to realize from his invention about \$28. It is said to be useful. It is for an improved paint-can. It is a matter which I think cannot be detrimental to the interests of the people, but rather in fact to the in-

The bill only enables the inventor to go before the Commissioner of Patents to apply for extension, and I surely think the House of Representatives of the United States of America will not refuse to this poor man a boon so small asked at their hands. If he had received a great sum of money perhaps gentlemen might have reason to object to it, but he has not received enough to re-imburse him for the outlay in securing an original patent from the Patent Office. the outlay in securing an original patent from the Patent Office. I sincerely trust the House will enable this man to go before the Commissioner of Patents in order that he may apply and see whether it is proper his patent should be extended.

It seems to me there is an unnecessary prejudice against patents in

this House, and I say it respectfully. The country is greatly indebted to the Patent Office system for the development of its re-sources. If it had not been that the country had rewarded genius and labor and thought, we would be back now to the old reap-hook instead of the splendid reapers by which grain is gathered upon the widely extended harvest fields of this country. By rewarding genius we have had the telegraph and various other improvements.

It seems there is an unnecessary prejudice in regard to the extension of patents. The Committee on Patents have examined this matter carefully, and while we have determined not to advocate monopolies yet there are some instances where patents ought to be extended. In this case we thought the patent of this poor man ought to be extended sufficiently to enable him to be put upon an analysis of the three tests to the contract of the patents.

equal footing with other patentees.

I have been asked why his patent cannot be extended under the law now. It is because his patent expired before the present law was passed. By adding three years to his time he will have his patent for seventeen years, and that is only the time provided in the exist-

ing law.

If the Congress of the United States want to crush a poor man they have an opportunity here to do it. He has had only about twenty-five hundred of these paint-cans made. Is there any danger to he country in that? Is there any monopoly here? I think not. I yield now for a moment to the gentleman from Michigan.

Ma. CONGER. This is a simple little paint-can invented by a

Mr. CONGER. This is a simple little paint-can invented by a man too poor even to manufacture them. There are some two or three hundred kinds of paint-cans in the world, and it cannot therefore interfere with any other, or increase the price of any other, to allow this patent to be extended. This man was entitled to twenty-one years, under the law which existed when his patent was granted, by an application for renewal at the end of fourteen years. Ignorant of the law, or through some fault of friends, he failed to make the application on the day required by the law. He asks that may be remedied and he may be allowed to ask for an extension. The committee was willing to give him an additional number of years, making seventeen as provided in the present law. It is a matter of little public importance, it is a matter of little private importance, except to this poor man, and the committee felt they were doing nothing but giving him a privilege he was entitled to under the law when his patent was granted. It is a simple thing, and I do not think the House can find fault with the committee for reporting things which their judgment would not approve. I hope this bill will pass.

Mr. NEAL moved to lay on the table the motion to reconsider the vote by which the bill was rejected.

vote by which the bill was rejected.

The House divided; and there were—ayes 40, noes 80.

So the motion was disagreed to.

The motion of Mr. Vance, of North Carolina, to reconsider the vote by which the bill was rejected was agreed to.

The question recurred on the passage of the bill.

Mr. THOMPSON demanded the yeas and nays, and tellers on the

yeas and nays.

Tellers were refused, and the yeas and nays were refused.

The bill was passed.

Mr. VANCE, of North Carolina, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

# FRANCIS M. STRONG AND THOMAS ROSS.

Mr. J. H. BAGLEY, from the Committee on Patents, reported back a bill (H. R. No. 4397) for the relief of Francis M. Strong and Thomas

Ross with an amendment.

The bill, which was read, provides that Francis M. Strong, of Vergennes, in the county of Addison, and State of Vermont, and Thomas Ross, of Rutland, in the county of Rutland, and State of Vermont, have leave to make application to the Commissioner of Patents for an extension of the letters-patent numbered 24161, granted to them for an improvement in weighing-scales, of date the 24th day of May, 1859, for the term of seven years from and after the expiration of the original term of fourteen years for which said letters-patent were granted; such application to be made in the same manner as if the same had been filed not less than ninety days before the expiration of the original term of said patent; and upon such application. the aforesaid original term of said patent; and upon such application so filed, the Commissioner of Patents shall be authorized to consider and determine the same in the same manner as if the original term of said patent had not expired; provided that no persons shall be held liable for the infringement of said patent, if extended, for making use of said invention since the expiration of the original term of said patent, and prior to the date of its extension.

The amendment was read, as follows:

Strike out the words "the expiration of the original term of fourteen years for which said letters-patent were granted," and in lieu thereof insert the words "the date of such extension."

The amendment was agreed to.

The question was on ordering the bill as amended to be engrossed and read a third time.

Mr. J. H. BAGLEY. I ask for the reading of the report. This is a very simple matter, and when it is understood by the House I think they will pass the bill. The report was read, as follows:

The report was read, as follows:

The Committee on Patents, to whom was referred the petition of Francis M. Strong and Thomas Ross, for an extension of letters-patent for improvements in weighing-scales, submit the following report:

The evidence submitted in this case shows that Francis M. Strong, of Vergennes, and Thomas Ross, of Rutland, Vermont, are the joint inventors of certain improvements in weighing-scales, for which letters patent were granted them May 24, 1839 Within ample time, as prescribed by law, these inventors placed in the hands of the Brandon Manufacturing Company a signed petition for the extension of said letters-patent, that it might be forwarded and filed with the Commissioner of Patents. Fearing, however, that some mistake might occur they forwarded to their attorney at Washington a duplicate petition, with instructions that he should file it in case it was not filed in time by other parties. This attorney made frequent inquiries at the Patent Office, and was at length assured that the petition had been filed. The event proved, however, that the clerk in charge was in error and that the petition was not filed, as stated. The mistake occurred through the filing of another application by the same parties for the extension of another patent of the same date. But the error was not discovered until too late to rectify it under the statute, and for this reason the petitioners pray for the passage of an act to enable them to make application, as they certainly would have done if not misled by the information given their attorney at the Patent Office. In view of these facts, the omission to act having arisen by no fault of the patentees, but by the inadvertence of a Government employé, this committee recommend the granting of the prayer and the passage of the accompanying bill.

Mr. J. H. BAGLEY. I hope the gentlemen who are opposed, gen-

Mr. J. H. BAGLEY. I hope the gentlemen who are opposed, generally speaking, to the extension of patents have given heed to the reading of the report in this case. This is one of the most simple reading of the report in this case. This is one of the most simple cases the Committee on Patents has ever presented here. These applicants simply apply to have an error committed by a clerk in the Patent Office rectified. Under the statute they were entitled to seven years' extension of their patent. They placed their petition in the hands of the Brandon Manufacturing Company, expecting them to file their petition. Fearing that these parties might fail in filing their petition, they sent a duplicate of the petition to attorneys in Washington. Those attorneys made application to the Patent Office and were informed by a clerk in the Patent Office that the petition was properly filed. The clerk was in error, and the consequence was that the time passed for the filing of the petition and the opportunity passed for obtaining an extension. This is as just a case as was ever presented to Congress, and I trust that those gentlemen who are honest opponents of the extension of patents will see that this is an exceptional case.

ceptional case.

Mr. WILSON, of Iowa. I believe the proper thing to be done by Mr. WILSON, of lowa. I believe the proper thing to be done by the Committee on Patents is to report an amendment to the patent laws which should be general in its operation. I do not like the idea of one man coming here and getting an extension of his patent when a hundred other citizens who may have just as good a case do not get extensions. If a man has had the use of a patent for fourteen years, that is a good while. A great many of those patents are got on inventions made in other countries, the results of other men's genius. It is true as a general proposition that the men who operate machinery make the necessary improvements and then share fellows finding

make the necessary improvements and then sharp fellows finding these out come to Washington and get patents on them.

When a man invents anything useful or original I would not for a moment oppose his getting a long lease of the benefits arising from it. But that is not the way in which the patent system works. I know, for example, in regard to agricultural machinery—reapers, mowers, cultivators, &c.—that the men who make valuable suggestions for the improvement of these machines are the men who use them in the But the manufacturing companies send out circulars, invite recommendations relative to improvements, and send agents around, and when they have got suggestions from the men who toil in the fields with their machines, then they come here and, having got a patent, first get the benefit of the law as far as it goes and then lobby for an extension of it through Congres

for an extension of it through Congress.

Now I believe this Committee on Patents is perfectly honest. I do not believe you could approach any of them in a corrupt manner. But I believe the system is wrong. When a man has got the benefit of the law, let him abide by that. If he gets all the advantages the law gives him, let him be satisfied. As a general proposition the benefits of those patents go to manufacturers who have bought up the rights of the original inventors who only get some small, miserable pittance out of them. I am opposed to the whole principle of extension; where it does one man justice, it does a thousand men an injury.

Mr. CONGER. I am surprised to hear a gentleman who claims to be the only representative of the farming interest in the House—

Mr. WILSON, of Iowa. I do not claim any such thing. I claim, however, to be about the only farmer in the House.

Mr. CONGER. Who represents himself to be the granger of the House, finding fault with inventors who have made the agricultural

House, finding fault with inventors who have made the agricultural interest of this country what it is and its prosperity a possibility f Why, sir, the gentleman would go back and would go down on his marrow-bones and reap with the old sickle instead of the machine marrow-bones and reap with the old sickie instead of the machine for which we are indebted to the system of patents the gentleman is now condemning. But the gentleman had occasion to say, and must say probably for his own sake and that of his own constituents, what he has against inventors and improvements. That does not apply to this case. Under the law, these men had a right upon application to an extension of seven years. They sent their application to the Patent Office for that extension. An officer in the Patent Office, misled by the number, informed their attorney that the application was already on file. That was a mistake; the application sent by these men was not filed within the proper time, and therefore no extension could be granted. There are gentlemen upon our committee

who are more opposed in principle to any extension of patents even who are more opposed in principle to any extension of patents even than the gentleman from Iowa, who has that hobby very fully developed, and yet there was not a man of them but what admitted in a moment the propriety of correcting an error in the office and giving the citizen his rights. Whatever may be said about other cases, this House has never yet failed to pass bills correcting an error in the conduct of its own officers for the benefit of its own citizens. It is to correct an error of its own officer and permit a citizen to have the benefit of the application which he sent to the office, but which the officer told his attorney had already been filed and therefore it was not necessary to file another. That is the sole purport of this bill.

bill.

Mr. WILSON, of Iowa. I desire to say one word. The gentleman from Michigan does me injustice in supposing that I condemn machines or inventors. I have no such idea. I condemn the principle which steals from inventors, and if there was any way by which I could do it in a parliamentary manner I would condemn the men who help them to do it. I cannot agree with the policy. I think it proposes to give advantages to one that cannot be given to a thousand others.

Mr. CONGER. Does the gentleman mean that if one man makes an invention that a thousand others are entitled to the benefit of it?

Mr. WILSON, of Iowa. No, sir; but I say that one man can get an extension where a thousand cannot.

Mr. WILSON, of Iowa. No, sir; but I say that one man can get an extension where a thousand cannot.

Mr. CONGER. I do not think it necessary to defend the honor and integrity of the committee from the assault of the gentleman from Iowa; let him go on.

Mr. WILSON, of Iowa. I have not made an assault. I do not do such things. I was afraid some one might make an assault upon them, and I think so much of that committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and of the gentleman from Michael when the committee and gentleman from Michael when the committee and gentleman from Michael when the committee and gentleman from Michael when the gentleman f igan that I prefaced my remarks with a eulogy upon the committee, and at that very time I had the gentleman from Michigan in my mind's

Mr. CONGER. I thank the gentleman, but when I need defense I

Mr. COMER. I thank the gentleman, but when I need defense I will select my own counsel.

Mr. WILSON, of Iowa. The gentleman is such a common object of beauty, sense, and appropriateness that we do not need to be invited to eulogize him. We feel like eulogizing the gentleman on occasion without any invitation. But I hope the House will not pass the

Mr. J. H. BAGLEY. In reply to the gentleman from Iowa in relation to what he has said of the duty and business of the Committee on Patents, that it is simply their duty to revise the laws, I wish him to understand that nine-tenths of the business before that committee

on Patents, that it is simply their duty to revise the laws, I wish him to understand that nine-tenths of the business before that committee consists in applications for extensions of patents, and they are generally complicated and difficult cases to understand; and that the committee report nothing but what they deem meritorious and proper. The committee would have been glad at an early period in the session to have been relieved of this business. The House forces this committee to attend to the business referred to them, but when a report is made it is generally rejected. I now yield to the gentleman from Vermont, [Mr. JOYCE.]

Mr. JOYCE. I do not understand that this bill seeks to amend the patent laws of the United States, or anything of the kind. I understand that the bill seeks to give the right to these men that they have lost in consequence of an omission or mistake on the part of the officers of the Patent Office. I understand that these gentlemen had a right under the law to have an extension of their patent for seven years; that they made the necessary application; that they sent it here to Washington to the Patent Office; and then after waiting a sufficient length of time and in superabundance of caution they drew up another application, sent it to their attorneys in this city, and desired that they should go to the Patent Office and inquire there to know whether the original or first application they sent had been filed for an extension of their patent. Those attorneys, living here in the city of Washington, went to the Patent Office, they made that inquiry and were told by the officers or clerks in the Patent Office that the original or first application had been filed, made a mistake and that the original or first application had not been filed, and consequently the time had passed by within which these centlemen could and that the original or first application had not been filed, and consequently the time had passed by within which these gentlemen could make their application to the Patent Office asking an extension of their patent.

Now these are the simple facts. I know both of these gentlemen; I know them to be men of truth; I know them to be men of integrity; I know them to be good men. They come here in good faith and ask this of Congress because it is their right, not to amend the patent laws, not to give them rights that are denied to other men, but simply to give them the right that they had under the law, and which they lost in consequence of the mistake or neglect of an officer in the Patent Office.

It seems to me that there can be no doubt in regard to this matter

at all, and I certainly hope that the House will pass this bill.

Mr. BRIGHT. I call for the regular order.

The SPEAKER. The morning hour has expired.

Mr. BRIGHT. I now renew my motion that the House resolve itself into Committee of the Whole on the Private Calendar, and pending that motion I ask unanimous consent that to-day be considered as objection day, as we lost the last objection day.

### REMOVAL OF POLITICAL DISABILITIES.

Mr. KNOTT. I ask the gentleman from Tennessee [Mr. Bright] to withdraw his motion for the present, until I can report from the Committee on the Judiciary sundry bills for the removal of political disabilities. I think it will take but a few moments to dispose of

them.

Mr. BRIGHT. I will withdraw the motion if the bills do not lead

to debate

to debate.

Mr. CONGER. I have no objection to the bills being reported, but I must reserve the right to object to their consideration at this time until after they have been read.

Mr. KNOTT accordingly, from the Committee on the Judiciary, reported back, with a favorable recommendation, the following bills:

A bill (H. R. No. 3654) to relieve William S. Russell, of Florida, of political disabilities; and

A bill (H. R. No. 4552) to remove the political disabilities of James Austin McCreight, of Alachua County, Florida.

The petitions accompanying the bills were read, and the bills were ordered to be engrossed and read a third time; and they were accordingly read the third time and passed, two-thirds voting in favor thereof. thereof

thereof.

Mr. KNOTT, from the same committee, also reported the following bills; which were read a first and second time:

A bill (H. R. No. 4675) to remove the political disabilities of Henry H. Lewis, of Maryland;

A bill (H. R. No. 4676) to remove the political disabilities of Henry B. Tyler, of Virginia;

A bill (H. R. No. 4677) to remove the political disabilities of William W. Mackall, of Virginia; and

A bill (H. R. No. 4678) to relieve Charles H. Levy, of the State of Louisiana, of his political disabilities.

The petitions accompanying the bills were read, and the bills were severally ordered to be engrossed and read a third time; and they were accordingly read the third time and passed, two-thirds voting in favor thereof. in favor thereof.

## DISTRICT OF COLUMBIA 3.65 BONDS.

Mr. HENDEE, by unanimous consent, introduced a bill (H. R. No. 4679) to prevent default or delay in the payment of the interest on the bonds authorized by the act of Congress approved June 20, 1874; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

## MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had agreed to the amendments of the House to the amendments of the Senate to the bill of the House

of the following title:

A bill (H. R. No. 4251) making appropriations for the consular and diplomatic service of the Government for the year ending June 30,

1878, and for other purposes.

The message further announced that the Senate had passed without amendment a bill of the following title:

A bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County, Virginia.

The message further announced that the Senate had passed and requested the concurrence of the House in a bill of the following A bill (S. No. 457) authorizing the restoration of Charles E. Boggs

to the active list of the Navy.

## ENROLLED BILLS SIGNED.

Mr. HARRIS, of Georgia, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

An act (S. No. 234) to allow a pension of \$37 per month to soldiers who have lost both an arm and a leg;

An act (S. No. 805) relating to indemnity school selections in the State of California;

Au act (8. No. 859) for the relief of certain claimants under the do-nation land law of Oregon, approved September 27, 1850; An act (8. No. 993) for the relief of the late Admiral Charles Wilkes;

and

An act (S. No. 1251) to remove the political disabilities of Joseph E. Johnston, of Virginia.

# SMITHSONIAN REPORT.

The SPEAKER laid before the House a letter from the Secretary of the Smithsonian Institution, transmitting his annual report; which was referred to the Committee on Printing.

## AGRICULTURAL REPORT.

The SPEAKER also laid before the House a letter from the Com-

missioner of Agriculture, transmitting his annual report.

The SPEAKER. If there be no objection this report will be referred

Mr. WILSON, of Iowa. I think that report should go to the Committee on Printing.

The SPEAKER. The Chair thought so, but he was requested by the chairman of the Committee on Agriculture to have it referred to

Mr. WILSON, of Iowa. If it is referred to that committee it cannot be reported to the House this session, perhaps, unless it be by unanimous consent. I think it should go to the Committee on Printing. If the chairman of the Committee on Agriculture, the gentleman from Alabama, [Mr. CALDWELL, ] is not present, I will move that this report be referred to the Committee on Printing. I think it must be apparent to every one that that is the proper reference. The House has passed a resolution to print extra copies of the Agricul-Thouse has passed a resolution to print extra copies of the Agricultural Report, and has instructed the Committee on Printing to so report, and the committee has been waiting for some time for this report of the Commissioner of Agriculture.

The SPEAKER. The Chair thinks that it should go to the Committee on Printing, but at the request of the chairman of the Committee on Agriculture he suggested that it be referred to the Committee on Agriculture.

Mr. WILSON, of Iowa. I do not think the chairman of the Committee on Agriculture when he made that request could have had in mind the necessity for immediate action by the Committee on Printing.
Mr. CALDWELL, of Alabama.

I desire to have it referred to the

Committee on Agriculture, and printed.

Mr. WILSON, of Iowa. It would be better to refer it to the Comnittee on Printing, because that committee would have authority to

report at any time.

Mr. CALDWELL, of Alabama. The House has passed a resolution

providing for the printing of extra copies of this report.

Mr. WILSON, of Iowa. But the Committee on Printing cannot act

upon that resolution until they have the report of the Commissioner of Agriculture before them. If this report is referred to the Commit-

tee on Printing then they can report upon it at any time.

Mr. CALDWELL, of Alabama. I will have no objection to its reference to the Committee on Printing, as that committee has the right

to report at any time.

Accordingly the report of the Commissioner of Agriculture was referred to the Committee on Printing.

## SIOUX NATION OF INDIANS, ETC.

The SPEAKER. When the House had under consideration yester-The SPEAKER. When the House had under consideration yesterday the bill (S. No. 1185) to ratify an agreement with certain bands of the Sioux Nation of Indians and also with the Northern Arapaho and Cheyenne Indians, an amendment was adopted on motion of the gentleman from Texas [Mr. Mills] to come in after the word "confirm" in the ninth line, referring to the printed bill. The amendment should really come in after the word "confirm" in the sixth line of the engrossed bill, by which the clerks are governed in the location of amendments. The Chair asks unanimous consent that the necessary change may be made. the necessary change may be made.

There being no objection, it was ordered accordingly.

## ORDER OF BUSINESS.

Mr. BRIGHT. I move that the House resolve itself into Committee of the Whole on the Private Calendar; and pending that motion I ask unanimous consent that this be considered "objection day."

I ask unanimous consent that this be considered "objection day."

Mr. BANNING. I suggest that the call of committees becontinued until all reports of a private nature have been received.

The SPEAKER. That is not in order unless the gentleman from Tennessee [Mr. BRIGHT] yields the floor for the purpose.

Mr. BLOUNT. I object to the proposition of the gentleman from Tennessee that this be considered "objection day."

Mr. BRIGHT. The gentleman's objection will avail nothing, because we can lay aside by a majority vote every bill which may obstruct our going through with the Calendar.

The motion of Mr. BRIGHT to go into Committee of the Whole on the Private Calendar was agreed to.

the Private Calendar was agreed to.

The House accordingly resolved itself into Committee of the Whole (Mr. Cox in the chair) and proceeded to the consideration of business on the Private Calendar.

## J. M. BRAGG AND OTHERS.

Mr. DIBRELL. I ask unanimous consent that the Committee of the Whole take up the bill (H. R. No. 877) for the relief of J. M. Bragg and others, of Tenne

The CHAIRMAN. There is a bill already pending as unfinished

# PRIVATE LAND CLAIMS IN NEW MEXICO.

The Committee of the Whole resumed the consideration of the bill (H. R. No. 344) to confirm certain private land claims in the Territory

of New Mexico.

Mr. BRIGHT. I move that this bill be laid may proceed with other bills on the Calendar. I move that this bill be laid aside in order that we

may proceed with other bills on the Calendar.

Mr. BLOUNT. I would like to know the gentleman's reason for asking that this bill be laid aside.

Mr. BRIGHT. With the indulgence of the committee I can state my reasons. This bill has had the consideration of the Committee of the Whole during a part of last session, and also during this session on every private bill day which was not "objection day." It has for two sessions blocked the legislation upon the Calendar. I think it has had its day in court; and I am unwilling that it shall occupy further the time of the House during the present session.

Mr. BLOUNT. If the gentleman's objection did not go further, I would not have a word to say. But when I objected to his request

that this be regarded as "objection day," I understood him to say that he would move to pass over every case where there was any question in reference to a claim. That being the case, I must interpose objection to any such course of proceeding.

The CHAIRMAN. This debate is proceeding by unanimous con-

Several Members. Regular order!

Mr. BRIGHT. I move to lay this bill aside so that we may proceed with other bills on the Calendar. A majority vote is sufficient to do

The CHAIRMAN. The question is on the motion of the gentleman from Tennessee to postpone the further consideration of this bill.

The question being taken, there were—ayes 100, noes 51.
Mr. BLOUNT. I call for tellers.
Tellers were ordered; and Mr. BLOUNT and Mr. BRIGHT were appointed.

The committee divided; and the tellers reported—ayes 91, noes 63. So the motion was agreed to.

### NEWPORT BARRACKS.

The next business on the Private Calendar was the bill (H. R. No. 1055) to authorize the Secretary of War to convey to the city of New-port, Kentucky, the grounds at the confluence of the Licking with the Ohio River, in Campbell County, Kentucky, known as the Newport barracks.

Mr. BANINNG. When this bill was reported Newport barracks had not been abandoned. But now I think there is no desire to have the bill passed. I move, therefore, that it be laid aside to be reported to the House, with a recommendation that it be not passed.

The motion was agreed to.

# COLLEGE OF WILLIAM AND MARY.

The next business on the Private Calendar was the bill (H. R. No.

2462) for the relief of the College of William and Mary, in Virginia, for property destroyed during the late war.

Mr. BRIGHT. I observe that this bill was reported by the gentleman from Massachusetts [Mr. HOAR] who is not now in his seat. In order that he may be present when it is considered, I move that it be postponed.

The motion was agreed to.

### RE-IMBURSEMENT TO CITY OF BALTIMORE.

The next business on the Private Calendar was the bill (H. R. No. 2690) to refund to the mayor and city council of Baltimore certain moneys illegally assessed and collected for internal-revenue tax.

The bill was read. It requires the Secretary of the Treasury to

The bill was read. It requires the Secretary of the Treasury to pay to the mayor and city council of Baltimore, out of any money in the Treasury not otherwise appropriated, the sum of \$13,500, which sum, due the mayor and city council as interest from the Baltimore and Ohio Railroad Company, was collected from the company illegally as an internal-revenue tax by Joseph J. Lewis, Commissioner of Internal Revenue, on the 19th day of January, 1864.

Mr. HOLMAN. I ask that the report be read.

Mr. THOLMAN. There is no report accompanying the bill.

Mr. HOLMAN. Has the gentleman any letter from the Secretary of the Treasury?

of the Treasury?

Mr. THOMAS. I have not; but I have two letters from the Commissioner of Internal Revenue which I think will satisfy the gentleman from Indiana.

Now, Mr. Chairman, if the committee will indulge me in a short explanation all will be satisfied of the justice of the claim provided for in this bill and the propriety of paying it. The bill comes from the Committee of Ways and Means with unanimous recommendation the Committee of Ways and Means with unanimous recommendation for its passage. The facts are these: Under the internal-revenue law of 1862 a tax of 3 per cent. was levied upon the interest due on all securities of railroad companies; and under that law it was also provided these railroad corporations should reserve the amount of the tax from the interest and pay it directly to the Government. The city of Baltimore held a mortgage on the Baltimore and Ohio Railroad Company to secure the payment of the principal and semi-annual interest as it accrued upon \$5,000,000 loaned to that company by the city in aid of the construction of its work. This 3 per cent. tax was assessed on the interest due on that mortgage, and after some resistance on the part of the corporation of the city of Baltimore, and also on the part of the Baltimore and Ohio Railroad Company, the railroad company reserved and paid under protest the tax of 3 per cent. on six quarters' interest which had then accrued. That was paid in 1864, on the 19th of January. By a subsequent act, the act of 1864, this 3 per cent. rate of tax was raised to 5 per cent. and a demand was made on the corporation of the Baltimore and Ohio Raildemand was made on the corporation of the Baltimore and Ohio Railroad Company to reserve and pay to the Government the 5 per cent. tax due on this mortgage held by the city of Baltimore. The company resisted it, the city of Baltimore resisted it, and the Government instituted a suit in the circuit court of the United States for the district of Maryland for its recovery. That suit was decided in that court against the Government, and the case was brought by a writ of error to the Supreme Court of the United States, where the judg-

ment below was sustained.

The court decided that it was a tax imposed, not upon the debtor, but upon the creditor, and inasmuch as the creditor was the city of Bal-

timore, and as the city of Baltimore was a municipal corporation and one of the agencies of the State in the administration of its government, its municipal revenues were not liable to taxation. And so it was declared as the bill alleges that this tax was illegal and improperly exacted from the Baltimore and Ohio Railroad Company.

To reclaim this sum of \$13,500 exacted under the act of 1862, this bill is now introduced. I have a letter from the Commissioner of In-

ternal Revenue recognizing this as a just and proper claim and one which ought to be refunded to the city of Baltimore. I ask the Clerk to read the two letters in the order in which he will find them marked.

The Clerk read as follows:

The Clerk read as follows:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, January 18, 1877.

SIR: Your favor of this date is received. The inclosures, consisting of a draught of a bill for the relief the mayor and city council of Baltimore, a memorial from F. C. Latrobe, mayor of Baltimore, and other papers relative to the subject-matter of the bill, are herewith returned.

The facts appear to be that this office considered the question of the liability of the Baltimore and Ohio Railroad Company to withhold and pay over the tax on interest paid to the city of Baltimore, and required the company to pay over such tax to this office. The records show the receipt of \$13,500 on the 20th of January, 1864, from that company on account of tax on interest paid to the city of Baltimore.

more.

I am satisfied that this tax was improperly, exacted in view of the subsequent decisions of the Supreme Court. (See Buffinton vs. Day, 11 Wallace, 113.)

I would add, however, that in the various claims and compromises which the Baltimore and Ohio Railroad Company has had before this office, an allowance may have been made to it for this tax, which allowance would give the city of Baltimore a right of action against the company for recovery of the same.

I would like further time for examination of this point and will give the matter immediate attention.

Respectfully,

GREEN B. RAUM, Commissioner.

Hon. P. F. THOMAS, House of Representatives, Washington, D. C.

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE, Washington, January 19, 1877.

Washington, January 19, 1877.

Sig: An my letter to you yesterday, in relation to the petition of the city of Baltimore to have refunded the sum of \$13,500, I stated that I would have a further search made to determine whether the amount named had been refunded or entered into the settlement of any compromise between this office and the city of Baltimore or the Baltimore and Ohio Ratiroad Company.

I have to state that the claims and compromises above referred to have been examined, as far as discovered on the files of this office, and no evidence has been found that the sum withheld from the city of Baltimore, amounting to \$13,500, has ever been returned to the city or the Baltimore and Ohio Railroad Company, or allowed in any compromise between this office and either of the corporations named.

Respectfully,

GREEN B. RAUM.

GREEN B. RAUM.

Hon. P. F. THOMAS,

House of Representatives, Washington, D. C.

Mr. THOMAS. It will be seen, in addition to the decision of the Supreme Court of the United States in the suit against the Baltimore and Ohio Railroad in the name of the Government, reported in 17 Wallace, the officer having charge of the Internal Revenue Bureau of the Treasury Department tells this House this claim is just and ought to be paid. As the tax was improperly exacted I move the bill be laid aside, to be reported to the House with the recommendation that it

The motion was agreed to; and the bill was laid aside, to be reported to the House with the recommendation that it pass.

## JAMES J. WARING.

The next business on the Private Calendar was a bill (H. R. No. 776) for the relief of James J. Waring, of Savannah, Georgia.

The bill, which was read, authorizes and directs the Secretary of the Treasury to refund to James J. Waring, of Savannah, Georgia, the sum of \$890.01 in gold, out of any money in the Treasury of the United States not otherwise appropriated, on account of said amount having been paid by the said James J. Waring on a portion of the steamplow machinery imported by him, which was ordered when the same was duty free, but a portion of which did not arrive in the United States until after duty was established on the same.

Mr. HARTRIDGE. I ask that the report accompanying the bill be read.

The report was read, as follows:

It is a bill authorizing the Secretary of the Treasury to refund to James J. Waring the sum of \$590.01, gold.

The committee find, after careful examination of the case, that Mr. Waring went to Europe to examine there certain steam-plow machinery, used for the cultivation of the soil, with a view of importing the same to this country, should he find it to be as represented.

In 1872 Congress passed a law (United States Statutes at Large, page 273, section 7) that for a term of two years from date steam-plow machinery, adapted to the cultivation of the soil, might be imported by any person for his own use free of duty.

the cultivation of the soil, might be imported by any person for his own use free of duty.

On the strength of this and on the faith of the Government that no duty would be exacted, Mr. Waring purchased one of these steam-plows, and ordered it shipped to his address at Savannah. The manufacturers completed part of his order and shipped it to him, which Mr. Waring received and entered free of duty.

By a series of unexpected delays, for which Mr. Waring was in no way responsible, the remainder of the machinery to complete the steam-plow, and without which the first consignment was wholly worthless, did not arrive till after the expiration of the time allowed by law for free entry thereof; therefore Mr. Waring was compelled to pay duty on last shipment, which he did under protest, in order to be able to complete his steam-plow.

The committee are, therefore, of the opinion that the relief asked for should be granted, and that the bill (H. R. 776) authorizing such relief should be passed.

Mr. THOMAS. I send to the desk to be read a copy of a letter from the Secretary of the Treasury to the collector at Savannah in regard to this subject.

TREASURY DEPARTMENT,

Washington, D. C., September 18, 1874.

SIR: Your communication of September 14 instant, inclosing protest and appeal 813 C of Mr. J. J. Waring from your assessment of duty on a certain importation of parts of a steam-plow is received.

The limitation of the laws imposing duties, and particularly of the law under which for two years from June 30, 1872, steam-plow machinery was entitled to admission free of duty, affords no opportunity for extension of the time or for consideration of equitable questions in relation to shipments ordered but not received within such limit.

The Department therefore regrets its inability to afford the relief sought, but would cheerfully recommend legislation for that purpose.

Very respectfully,

COLLECTOR OF CUSTOMS, Savannah, Georgia.

Custom-House, Collector's Office, Savannah, Georgia, November 24, 1874.

I certify that the above is a true and correct copy of the original letter on file in JAMES ATKINS, Collector. [SEAL]

The bill was laid aside, to be reported favorably to the House.

## MISSION LAND PATENTS IN OREGON, ETC.

The next business on the Private Calendar was the bill (H. R. No. 631) providing for the adjudication and issue of patents in mission-land cases in the State of Oregon and the Territories of Washington, Idaho, and Montana.

The bill was read, as follows:

631) providing for the adjudication and issue of patents in mission-land cases in the State of Oregon and the Territories of Washington, Idaho, and Montana.

The bill was read, as follows:

Whereas, by the act organizing the Territory of Oregon, passed August 14, 1848, Congress granted the tract of land, not to exceed six hundred and forty acres of land, or one section, settled upon and occupied by sach missionary station among the Indian control of the several religious societies to which said stations, respectively, the properties of the several religious societies to which said stations, respectively, the properties of the several religious societies to which said stations, respectively to the several religious societies of the forest said station among the Indian tribes of said Territory prior to August 14, 1848, and also wherever there existed such a station on March 2, 1853, in the same Territory. Therefore,

Be it enacted, the, That in all cases where it has been or shall be proved to the satisfaction of the Commissioner of the General Land Office or of the Secretary of the Interior that a mission station excited among the Indian tribes of the Interior that a mission station excited among the Indian tribes of the Interior that a mission station excited among the Indian tribes of the Interior that a mission station excited among the Indian tribes of the Interior that a mission station excited among the Indian tribes of the Interior of the Interior that a mission at the Interior that a mission station excited among the Indian tribes of the Interior that a mission at the Interior that the Interior that a mission station excited among the Indian tribes of the Interior that a mission at the Interior that Interior that the Interior that 
or society.

SEC. 7. That all suits or proceedings in equity for any land under the provisions of this act shall be commenced within five years from the date of its approval, or be forever barred.

Mr. BRIGHT. I would inquire of the gentleman from Oregon [Mr.

LANE] who has reported this bill, whether it was reported by a unanimous committee

Mr. LANE. I will state to the gentleman from Tennessee that this bill received the careful consideration of the Committee on Public Lands of the House and was unanimously reported by the committee. The bill makes no grant whatever. It simply provides for an adjudication in the case of conflicts. And had a law of this character existed before this time the trouble that arose relative to the Saint James mission claim, which was so elaborately considered here a short time ago, would not have arisen. I ask now that the report accom-panying the bill may be read. I cannot conceive that there will be any objection to it at all.

The report was read, as follows:

The report was read, as follows:

This bill provides for the adjudication and issue of patents in mission-land cases in the State of Oregon and the Territories of Washington, Idaho and Montana. The first law upon which these particular mission lands are founded is embraced in the actorganizing the Territory of Oregon, passed August 14, 1848, which is in words as follows, the same being a proviso to the first section of said act:

"And provided also, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, and improvements thereon, be confirmed and established in the several religious societies to which said missionary stations in what is now the State of Oregon, buildings had been crected and improvements made. The services of the missionaries were of great value, and were properly appreciated by the act referred to. Upon the organization of the Territory of Washington, the following provision was made:

"Provided further, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the territorial government of Oregon, with the improvements thereon, be, and the same is hereby, confirmed to the several religious societies to which said missionary stations severally belong."

These laws unquestionably conferred a title upon missions occupying lands at that time within the limits of said Territory. It certainly conveyed a title as against the United States; but upon examination of these acts it will be found that there is no provision for the issuance of patents. There is title, but, anomaly in law, no muniment thereof. Can there be a better title than that established by legislative enactment? Why, then, should the ordinary evidence thereof be withheld? Why should there be difficulty in obtaining the same? In the case of a conflict u

perfections were developed. In an opinion rendered in that case May 27, 1864, (Opinions, volume 11, page 47,) Attorney-General Bates thus referred to the matter:

"I do not wonder that legal difficulties should arise in attempting to execute an act of Congress so vaguely and incautiously expressed. With this class of land titles—direct grants by act of Congress, with no provision for after-examination by commissioners of courts—I have been forced to be somewhat familiar. The act of June 13, 1812, (2 Stats., 7, 8), granted many lots of land to persons inhabiting divers towns in Missonai, upon the single condition of inhabitation, cultivation, or possession prior to December 20, 1803, and both the local courts and the Supreme Court of the United States have uniformly held that the act itself is a perfect title when the required facts are found by a jury.

"Under this act the General Land Office declined for a long time to issue patents, seeing that the act itself was a perfect title and that in its terms it did not require a patent to issue.

"But the act of December 22, 1854, (10 Stats., 599.) makes it lawful to issue patents upon such statutory grants. This act, however, does not require the issuing of a patent in any case, but only permits it, makes it lawful, and thereby leaves it to the discretionary judgment of your Department. I do not think any Executive Department (not yours nor mine) is the proper judge of a disputed question of this character, and I would decline to assume the jurisdiction by issuing a patent."

A similar bill to this, in fact in the precise words, was before Congress at the last session, No. 3388. The Secretary of War, in a communication to the House, recommended its passage.

It will be observed that this bill only provides for the extinguishment of the title of the United States to these lands in accordance with the acts referred to in the preamble. The rights of third parties or adverse claimants are well protected, being furnished with an easy and simple method of reaching the civ

I desire to say as a matter of good faith to the gentle-Mr. LANE. man from Washington Territory, [Mr. JACOBS,] that I consented that he should offer certain amendments which do not materially affect the bill, and which I shall not antagonize at this time. I shall consent, if it be in order, that he be permitted to present those amendments now.

Mr. JACOBS. I offer the amendments which I send to the desk The Clerk read as follows:

Amend by inserting after the word "thereof," in the twenty-third line of the second page, the words "or in case a patent has already issued for said land or any part thereof."

Also, strike out the word "therete," in the twenty-fourth line of the second page, and insert in lieu thereof the following: "to said religious society or church."

The amendments were adopted.

The bill, as amended, was laid aside, to be reported favorably to the House.

S. T. MARSHALL.

The next business on the Private Calendar was the bill (H. R. No. 2695) for the relief of S. T. Marshall, of Lee County, Iowa.

The bill was read. It authorizes and directs the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated, to pay to S. T. Marshall, of Lee County, Iowa, whatever sum may be found to be due him on account of beef-cattle furnished the United States for the use of the Indian Department in California in 1851, upon a fair and equitable settlement of his accounts (as assignee of G. M. Marshall) with the Secretary of the Interior.

Mr. HOLMAN. I call for the reading of the report

Mr. HOLMAN. I call for the reading of the report.

The report of the Committee on Indian Affairs accompanying the bill was read, as follows:

The report of the Committee on Indian Affairs accompanying the bill was read, as follows:

As the purchasing and disbursing agent of the commission which was sent to California in 1850 to make treaties with the hostile Indians in California, Reddick McKee made a contract with General Estill to furnish beef-cattle for the escort of United States soldiers which accompanied said McKee and party; that said Estill did furnish a large number of cattle under the contract, in which the claimant seems to have been interested. In December, 1850, at San Francisco, the accounts of Estill and Marshall were settled, and the agent, McKee, gave to them a certificate of indebtedness, showing that there was due them on the beef contract the sum of \$6,598.49, which said McKee said, and still says, he had not the money to pay, in consequence of the appropriation for the service in California having been reduced much below what he supposed it would be. As evidence of said indebtedness, however, said McKee gave to G. M. Marshall a certificate of indebtedness. A copy, as sworn to by said McKee, is herewith submitted, together with the other evidence in the case. And, confirmatory of this, said McKee, in his official report to the Committee on Indian Affairs, states that this amount is due to said Marshall, but qualified by an indorsement in these words, "Subject to credit." But your committee have not been able to ascertain the amount of the "credit." to which said claim is "subject," nor on what account. Your committee are satisfied, however, that a part at least of this claim is just, and ought to be paid.

It may be, and your committee believe it is, true that the contract made by said McKee with Estill and Marshall to furnish beef to the expedition was made without authority of law; but the evidence shows very clearly that said McKee was the accredited agent of the Government, and that these parties contracted with him under the belief that he had authority to contract with them for and on behalf of the Government, and that he hi

Mr. HOLMAN. I did not notice in the reading of the report the date when this sale is said to have been made to the Government.

The CHAIRMAN. The Clerk will again read the portion of the report showing the date of the transaction.

The Clerk read as follows:

As the purchasing and disbursing agent of the commission which was sent to California in 1850 to make treaties with the hostile Indians in California, Reddick McKee made a contract with General Estill to furnish beef-cattle for the escort of United States soldiers which accompanied said McKee and party; that said Estill did furnish a large number of cattle under the contract, in which the claimant seems to have been interested.

Mr. HOLMAN. Now, Mr. Chairman, here is a claim twenty-seven

Mr. FRYE. It ought to be paid then.
Mr. HOLMAN. Without a word of recommendation on the part of
the Interior Department or the Commissioner of Indian Affairs. I move that the bill be passed over in order that business more modern may be considered.

Mr. McCRARY. The only objection that I understand the gentle-

Mr. McCRARY. The only objection that I understand the gentleman from Indiana to raise to the payment of this claim is that it has been due for a long time, if due at all. Being familiar with the evidence in the case, I desire to state to the gentleman and to the House that this delay is fully explained by the evidence. The claim was made very soon after it accrued. The papers were placed in the hands of parties here in the city of Washington for the prosecution of the claim. They were held by those parties for some time without the money being collected, the action of Congress being required. When the war broke out the persons who had possession of the papers and charge of the claim went into the southern army. The claim. and charge of the claim went into the southern army. The claimant has never been able to find them since, and his efforts to find those parties and the original papers have delayed him until within the last year or two, when he has procured duplicates from the original Indian agent himself, which are sworn to and filed in the evidence in this age. dence in this case

There is some little doubt as to the exact amount which is due to this claimant, as stated in the report. But that he furnished property to the United States for which he has never received a cent is entirely clear; and a fair settlement of his accounts at the Treasury Department will determine exactly what is due him. I hope, therefore, that the bill will not be passed over, but will be laid aside to be reported to the House

Mr. HOLMAN. My objection was not simply that this claim had lain over for some twenty-seven years, without any explanation, but it was based on the additional fact that there is no official statement from the Interior Department, from the Commissioner of Indian Affairs, or from any other officer of the Government who might be supposed to be familiar with the transactions of the Government in past posed to be familiar with the transactions of the Government in past-years toward the Indians, upon which to predicate action on a sub-ject like this. Nor is there any explanation why this claim was not paid at the time, except that the appropriation was not such as the Indian agent had expected. I assume, sir, that where an Indian agent or any other agent of the Government enters into a supposed contract without authority of law it furnishes a case that ought to be very closely scanned. The fact of entering into a contract of this kind closely scanned. The fact of entering into a contract of this kind without having money with which to pay it would imply an undue assumption or exercise of authority on the part of the agent; in such a case there may be a reasonable apprehension that the whole transaction is tainted with fraud. Legitimate and proper claims against the Government are all paid except in extraordinary contingencies. Every case that comes to Congress is something out of the ordinary course of the Government, is some transaction having some degree of crookedness about it, and at least it should be made to appear with reasonable certainty that there is an equitable claim against the Gov-

ernment. And the presumption against a claim, coming up after a long lapse of time for settlement, ought to be repelled by a very careful statement on the part of the committee making the examination of it. I do not remember to have known a claim of this vague charof it. I do not remember to have known a claim of this vague character to have been passed through a committee, and ultimately through the House, as old as this one is, without at least a much more thorough explanation than is furnished here by this report, which is exceedingly meager. The committee believe that there was a sale of beef to this agent, and that he had no money to pay for it. But even the voucher seems to be lost, and this report is made upon an alleged sworn copy of the voucher. What became of the voucher? I see no explanation of that. How is it that there is no explanation from the Indian commission or from the Indian Bureau? I do not think any of these irregular claims, entirely outside of the proper administration of the Government, should be acted on except when the case is very satisfactorily made out; for, as I suggested, it must be borne in mind that all these claims brought here for adjudication are outside of the regular order of proceedings. The appropriations made to carry on the Government are generally ample, and the officers of the Government are limited to those appropriations in the expenditures which they are authorized to make. And when these irregular transactions come before us, when the conduct of an officer must be sanctioned, approved, and ratified, it seems to me that it should only be tioned, approved, and ratified, it seems to me that it should only be done when it is shown very satisfactorily that the officer was doing the best he could in the performance of his duty, that by some unforeseen event he had exhausted his appropriation unintentionally, and had not money to pay the claim. And I must insist that, without some

explanation from the Indian Bureau, the bill ought not to pass.

Mr. BOONE. I desire to state, Mr. Chairman, that this bill did
undergo a very close examination by the Committee on Indian Affairs. It is true the report does not set forth all the evidence in support of It is true the report does not set forth all the evidence in support of the claim, and it is further true that this claim is an old one. But that is very easily accounted for. Now there can be no possible doubt about this case. These parties furnished the Government with beef which was consumed, and the Government got the benefit of it. It was furnished at the instance of an officer of the Government, Mr. McKee, who was the agent of the Government in California to treat with hostile Indians, and the reason he had not money to meet this debt arose from a misapprehension on his part as to what would be the appropriation.

the appropriation.

Mr. BLOUNT. Has this matter been considered by the Interior

Mr. BOONE. I do not think it has. This claim was put into the hands of attorneys in Washington City before the war. It dragged itself along here until the war came up, and then the claim was lost in the confusion of that time. The attorneys went away; some of the parties died; the balance became poor, and are now very old men. They were expecting that their attorneys would present their claims and get them allowed, because the agent of the Government (Mr. Mc-Kee) had in his official report of his transactions in California, which has been published, stated that this amount of money was due to has been published, stated that this amount of money was due to these parties. They supposed, therefore, that there would be no difficulty in getting the money. But the claim went along until the war came up, and then passed off with other business of the kind. After the war closed, not knowing how to proceed or where to go, these parties have been kept out of their money.

Now, Mr. McKee states in a written affidavit, as well as in his report, that in his transactions he was acting on the supposition that the appropriation by Congress would be sufficient to cover the necessary expresses of that expedition. He in good faith bought this meet

sary expenses of that expedition. He, in good faith, bought this meat from these parties, supposing that upon the vouchers which he would furnish the claim would be paid.

The claim is a meritorious one, the case is perfectly clear. There is no doubt that the Government got the meat, and that it was furnished at the request of the agent, and that no extraordinary price was paid for it. He was acting under a misapprehension as to what would be the appropriation.

Now I submit whether or not it would be fair in that state of things

for the Government to repudiate what the evidence shows to be a

bona fide and honest debt, because it is nothing else.

Now I did not as chairman of the subcommittee on Indian affairs, Now I did not as chairman of the subcommittee on Indian affairs, who report this bill, think it necessary to incorporate in the report all the evidence on which my judgment rested. It is not usual to do so, but I feel satisfied that the claim is a just one, and ought to be paid, and the fact that it has slept so long ought not to be a conclusive reason against its payment. We all know how such things are managed, and especially when the amounts claimed are small, and belong to men not familiar with parliamentary proceeding and the prosecution of claims at the Capitol. I think there can be no doubt about the justice of this claim, and that this old man ought to have this money, and ought to have had it years ago.

Mr. HOLMAN. There is still no explanation why the claim rested without any action for ten years. It seems to have originated in 1850. This Government between the years 1850 and 1860 was quite

1850. This Government between the years 1850 and 1860 was quite prompt in the adjustment of claims against it. There were comparatively few claims against it. Officers very seldom then exceeded their powers in making contracts. Will the gentleman explain how it happened that ten entire years elapsed without any step being taken to place the claim before the Government? The gentleman lays stress on the fact that the war disarranged all the business of the country

and that the claim agents having charge of these claims went away. That is satisfactory so far. But that covers a very small amount of time. It seems to have all the marks, judging from the explanation of the gentleman from Kentucky, [Mr. BOONE,] of some of those old familiar claims that have been rejected time and again for a quarter

of a century.

Mr. BOONE. I would suggest to the gentleman from Indiana [Mr. Holman] that if he were to remain in Congress much longer this claim would be older still before it is paid; and perhaps that may

account for its not having been paid before this time. [Laughter.]

Mr. HOLMAN. My friend can have the consolation, if it is any, that this claim will not be delayed much longer on that account. My impression is that these ancient claims should be allowed to rest

some time longer.

Mr. WALLING. I am acquainted with all the parties to this claim. I knew them very shortly after the claim accrued, and I am familiar with the statements of those who knew about it at the time, and with the surroundings of the claim and its justice. The claim was presented before the Department and prosecuted for a long time, but unsuccessfully, probably for the reason that the parties did not understand how to present it. It is an old claim, as the gentleman from Indiana [Mr. Holman] states, but I have not the least doubt of its justice. I am familiar with all the facts, as they were stated to me by those who were with these parties in California where the service was rendered. I trust that no objection raised here will be sufficient to defeat a claim as honest as this is simple because if its article.

dered. I trust that no objection raised here will be sufficient to defeat a claim as honest as this is, simply because of its antiquity.

Mr. BLOUNT. I desire to direct the attention of the gentleman from Ohio [Mr. Walling] to the fact that every year there are coming here from the Treasury Department claims against the Indian Department, some of which are audited and some are not. We had Department, some of which are audited and some are not. We had here the other day, while considering the deficiency bill, a large number of claims, some of them audited and some not; we could not tell which had been audited and which had not been. That is the general course in reference to this class of claims. Now I hold that it is right that they should be first passed upon by the Department; that is the general practice in regard to them. I would ask the gentleman if it is not right that the application should be made to the Department and the action of the Department had upon these claims, instead of their first coming before Congress in this manner. I do not say anything in regard to the justice of this claim; I am only speaking of the method of proceeding.

Mr. WALLING. In reply to the gentleman from Georgia [Mr. BLOUNT] I will say that the case which arose the other day, and to which he refers, embraced a large number and a great variety of

which he refers, embraced a large number and a great variety of claims, all put in one amendment. It was entirely proper that this House and each member of the House should know for himself

whether each item of those claims was correct or not.

But where only a single claim is concerned, the party having the claim against the Government has his election either to go the Department or to come to Congress. And if his claim is just it should be paid, whether the Department has passed upon it or not. The appropriation to pay the claim must be made by Congress; an act of Congress must give effect to the action of the Department. If the evidence is such as to satisfy a committee of this House of the justice of the claim, I do not understand why that should not be quite as satisfactory as evidence that would satisfy the head of a Depart-

Mr. BLOUNT. Would it not be wisdom on the part of the House to avail itself of information from a Department as well as information it may obtain from one of its committees?

Mr. WALLING. It is not justice on the part of the House to always defer the payment of a claim until the close of each Congress, and then raise an objection to it and in that way throw it over to

another Congress.

Mr. BLOUNT. That is another question.

Mr. BOONE. This bill does not appropriate any particular amount of money, but leaves it subject to the decision of the Department which is to investigate the claim.

Mr. WALLING. I am not familiar with the details of the bill, but

Mr. WALLING. I am not familiar with the details of the bill, but I know that the claim is a just one.

Mr. BLOUNT. As I understand the gentleman from Kentucky [Mr. Boone] the bill does not pass upon the merits of the claim, but leaves it subject to the action of the Department.

Mr. BOONE. It authorizes the Department to pay whatever amount is found to be due.

Mr. WILSHIRE. I desire to say, as a member of the Committee on Indian Affairs having this bill under consideration, that all the facts which could have been presented to the Department were presented to that committee. The committee examined the evidence, and came to the conclusion set forth in the report made by the gentheman from Kentucky, [Mr. Boone.] Every gentleman on this floor who has had occasion to attend to matters before the Committee on Indian Affairs knows perfectly well how difficult it is to get anything through that committee of the character of the claim now under consideration. I can say for the information of all gentlemen upon this Boone,] who made this report, examined this claim with a great deal of care, and we came to the conclusion that it was a just and honest claim and ought to be paid.

Mr. HOLMAN. I have here a statement which explains why this claim has not been paid; a letter from the Acting Commissioner of Indian Affairs, dated in September, 1853. I ask the Clerk to read it. The Clerk read as follows:

DEPARTMENT OF THE INTERIOR, OFFICE INDIAN AFFAIRS, September 22, 1853.

Sin: I have received your letter of the 19th instant, inclosing one from J. W-Rankin, esq., desiring certain information in connection with a claim, said to be pending in this Department, amounting to \$6,688.47, on account of supplies furnished to the Government through R. McKee, late agent for the Indians in Cali-

In reply I have to say that it appears from a "schedule of debts due and payable at San Francisco, by the disbursing agent of the Department of Indian Affairs in California," forwarded by him to this office under date July 1, 1852, that G. M. Marshall holds his certificate for \$6,598,47 for beef, and that it is qualified by the remark, "subject to credit." The late agent also states in same paper as follows: "I gave Marshall a letter to you submitting that, if equally convenient, his certificate might be paid at Washington. Circumstances have since made it proper that the payment should be made here, and I will thank you to refer him to this office for settlement."

Were there no objections of this character, however, the certificate of indebtedness could not be paid here, inasmuch as it forms one of a large class of claims contracted without authority by the late agents in California, for the payment of which no provision has been made by Congress.

Mr. Rankin's letter is herewith returned.

Very respectfully, your obedient servant,

CHARLES E. MIX, Acting Commissioner.

CHARLES MASON, Esq., Commissioner of Patents, Washington City, D. C.

Washington, September 23, 1853.

Dear Sir: Your letter of the 25th August was referred by me to the Commissioner of Indian Affairs. I have just received the foregoing reply.

Yours truly, CHARLES MASON.

J. W. RANKIN, Esq.

Mr. HOLMAN. This bill seems to be for the relief of S. T. Marshall. Yet I find from these papers that the original claimant was James M. Estel. I ask the Clerk to read the paper I send to the desk. The Clerk read as follows:

SAN FRANCISCO, December 31, 1851.

This is to certify that in the adjustment of the account of James M. Estel for beef-cattle purchased in my late expedition through the Indian country, on the Klamath, there is due to G. M. Marshall as per within order of said Estel, dated 15th instant, the sum of \$6,598.49.

At this time I have not funds in my hands applicable to this claim, but have confidence that Congress during its present session will provide the means for its payment at an early day, and, in my opinion, it should be paid out of the first moneys appropriated for such purposes in California.

REDICK MCKEE.

REDICK MCKEE, United States Indian Agent.

STATE OF IOWA, Lee County:

For value received, I. G. M. Marshall, hereby sell, assign, and set over to S. T. Marshall the above certificate or paper signed by Redick McKee, Indian agent, and he is authorized to collect, settle, and receipt for whatever may be obtained on the same in as full faith and authority as I could do in my own proper person, having sold and transferred said paper or evidence of indebtedness to said S. T. Marshall in the A. D. 1856, and the original having been lost, or placed in the hands of persons for collection and cannot be found; the foregoing being a true copy of original.

G. M. MARSHALL.

Done and subscribed in my presence this 3d day of January, A. D. 1876.
[SEAL.]

R. M. MARSHALL,

Notary Public.

Mr. HOLMAN. Everything pertaining to this transaction has now been read except the three papers which I hold in my hand, which do not seem to be of any particular practical importance; and although this claim is said to have originated in 1851, the earliest paper tending to establish the claim bears date 1857. The reason, then, why the claim was not paid when originally presented was that the Commissioner of Indian Affairs understood the claim to have no legal foundation. When the facts were all fresh in the knowledge of the Departments of the Government, the claim was rejected because it was without authority of law. That was the decision a quarter of a century ago when, if agents of the Government exceeded their authority and attempted to bind the Government by unauthorized contracts, the heads of Departments and bureaus rejected the claims promptly. It was such a practice which produced that wide-spread and universal subordination to law which characterized the history of our versal subordination to law which characterized the history of our country through so many years. But after a looser mode of doing public business has sprung up, it is deemed sufficient to bring in a few affidavits of recent date and copies of a few papers in the Department, upon which we are asked to pass the measure through without any explanation. There is no explanation why this matter should have rested from 1851 to 1861. I again call attention to the fact that in 1853 this claim was rejected by the proper officers of the Government because it was not made in conformity with law; it was not made under law: it was not made by authority of law.

evidence which satisfied them that the Government did receive the supplies for which payment is asked in this bill. The committee also had evidence that the supplies were actually necessary for the proper management of Indian affairs at that place and at that time. If this evidence presented to us is true, then the simple question is whether the Government will do justice or injustice. The lapse of

time cannot possibly be allowed to defeat the ends of justice.

Mr. HOLMAN. Mr. Speaker—

Mr. BUCKNER. I rise to a point of order. I call the attention of the Chair to Rule 63, which provides that-

No member shall speak more than once on the same question without leave of the House.

The CHAIRMAN.

The Chair sustains the point of order. Very good, sir. I move to strike out the last Mr. HOLMAN. clause of the bill.

Mr. BOONE. I call for the reading of the bill. Mr. HOLMAN. After the bill has been read I wish to be heard on my motion.
The bill was again read.

The bill was again read.

Mr. HOLMAN. This paper, bearing date in 1876, and the alleged copy of McKee's certificate, are the only foundation of this claim, with the exception of the affidavit of the claimant himself.

Mr. BOONE. I rise to oppose the motion of the gentleman from Indiana. A complete answer to his inquiry as to why this matter was not pressed before the war is found in the fact which he himself states, that there was no appropriation; and it is confessed that the contract entered into was without authority of law. Consequently there could have been no allowance by the Department; the claim there could have been no allowance by the Department; the claim

could not have been audited.

But that is not the question which this bill presents. The question is whether or not, when this Indian agent was in a foreign country,

when he and the men with him were starving

Mr. BLOUNT. I wish to ask my friend whether he is correct in his statement that the Department could not examine this claim and audit it and transmit it to Congress without an appropriation having been previously made?

Mr. BOONE. I suppose the Department would not have examined a claim that had not its foundation in some law. I suppose that as soon as it was found that there was no law authorizing the claim, the Department would refuse to andit or investigate it. Consequently these parties were driven to the necessity of appealing to Congress to

do them that justice which the Department could not do.

As I before remarked, the claim was put in the hands of attorneys; it slept till the war; when the war came the papers were scattered; the attorneys, so far as I know, have never been heard of since. These the attorneys, so far as I know, have never been heattor since. These claimants, knowing that they could not go to the Department and have their claim allowed, because there was no law authorizing its payment, yet knowing that the officers of the Government had bought and consumed their beef-cattle, thought it but justice that Congress should pay them a fair consideration for the provisions which they had furnished those men in a foreign country. Can the Government in honor refuse to pay a claim of this kind when the evidence shows that these provisions were furnished? The evidence does show it beyour all controversy. I feel that it would be an act of absolute injustice, if not repudiation, to say that these men shall lose all pay for the cattle which they furnished.

Mr. HOLMAN. Will my friend state what evidence proves this

Mr. BOONE. There is a report of the Indian agent, McKee, of record and published in the official documents of the Department. In addition we had the written statement of McKee himself, who is alive and here to-day ready to make the same statement to the House.

alive and here to-day ready to make the same statement to the House. We have his written affidavit that he did buy these beef-cattle from this man Estill who was in partnership with G. M. Marshall, and that it was transferred to S. T. Marshall.

Mr. HOLMAN. There is evidence this man McKee violated the law and purchased, if at all, in direct violation of the law these beef-cattle. There is his certificate, there is the affidavit of the claimant, and there is the letter of the Commissioner of Indian Affairs rejecting the claim. That is all there is about the matter. To put upon record all that there is of this claim. I ask the letter I send up may be read all that there is of this claim, I ask the letter I send up may be read.

The Clerk read as follows:

public business has sprung up, it is deemed sufficient to bring in a few affidavits of recent date and copies of a few papers in the Department, upon which we are asked to pass the measure through without any explanation. There is no explanation why this matter should have rested from 1851 to 1861. I again call attention to the fact that in 1853 this claim was rejected by the proper officers of the Government because it was not made in conformity with law; it was not made under law; it was not made by authority of law.

Mr. WILSHIRE. I would like to ask the gentleman whether he has any information to show that the Government did not actually receive the supplies for which payment is now asked, and that they were not necessary for the maintenance of the Indian Department in California at that time.

Mr. HOLMAN. I very promptly answer that I have no evidence that the Government did not receive this property. But I think the reverse of the question should be presented. Have I any evidence that the Government did receive the property? This question I must answer in the regative, although I have looked over these papers.

Mr. WILSHIRE. I will say that the committee had before them

York, under an assurance from the Department that at the next session of Congress \$100,000 more would be estimated for, and, no doubt, sent me by mail at San Francisco. Relying on this, we commenced operations, and were happily successful in restoring peace in the central part of our field. During the session of 1850-51, however, Commissioner Lea wrote me that the House Committee on Appropriations had cut down his estimate for the service in California from one hundred to seventy-five thousand dollars, and I must be governed accordingly. I obeyed instructions, made no contracts or engagements which I thought would exceed that sum, and none not absolutely necessary for the peace of the country. You can judge of our disappointment, especially my own, on finding that after all Congress appropriated for the service in the whole State but \$25,500, and of this the Department sent me but \$27,500! Of course I was unable to pay Marshall and other contractors, and had to resort to the issuance of certificates of indebtedness. By request of the Department I reported in February, and again in July, 1852, our remaining indebtedness in California, in both of which reports this claim of Marshall's is included. (Vide Senate Ex. Doc. No. 4, special session, 1853, pages 285 and 343.)

Mr. Marshall being anxious to return home, I gave him a letter to the Commissioner to the effect that if the appropriation had not been remitted to me he might be paid here. And hearing nothing further from either the claimant or the Department I took it for granted his claim had been settled. On Inquiry at the Department I took it for granted his claim had been settled. On Inquiry at the Department I now find it has never been paid; and as I know it to be a just claim, I hope Congress will pay it without any longer delay. If Congress shall treat Mr. Marshall as Colonel J. C. Frémont was treated in the settlement of his catile accounts, (Statutes-at-Large, vol. 10, page 804.) the interest will give the poor man some amends for being kept out of his

Subscribed and sworn, on this the 26th of January, 1876, before me, JOHN BAILEY,

Justice of the Peace within and for the District of Columbia.

Hon. G. W. McCrart,

House of Representatives.

Mr. HOLMAN. Now, Mr. Chairman, here are all the facts upon which this claim is predicated except the affidavits of the claimant now before the committee. His affidavit was made last year, twenty-five years after the claim accrued. The claim was rejected in 1853. It now rests upon the statement before the committee. If it is desirable at this time to reverse the policy of former times and allow a claim made in violation of law, so public officers can be held to no responsibility, then very well; but if it is deemed best to return to the policy of older times, when the officer was held to strict accountability in the performance of a public duty and no authority was accorded to go beyond the expenditure of public money for which appropriation had been made, which in my judgment is the wiser and better policy, then this claim should be rejected.

Mr. McCRARY. I will say but a single word before the debate closes.

The objection that this claim has been a long time unpaid I think has been sufficiently answered. It could not be paid without an ap-

has been sufficiently answered. It could not be paid without an appropriation, and all efforts to secure appropriation failed prior to the war and since then the papers have been lost.

The papers which the gentleman from Indiana has had read at the Clerk's desk, so far from furnishing any ground for voting down this bill, completely sustain the committee in the report they have made. There may be, and doubtless is, a technical defense on the ground these beef-cattle were furnished without authority of law. Possibly that might be a good tachnical defense, but here were the ground the second of the country of the c There may be, and doubtless is, a technical defense on the ground these beef-cattle were furnished without authority of law. Possibly that might be a good technical defense; but here was the agent of the United States in charge of our Indian affairs in the far-distant Territory of California under the necessity, having in connection with this expedition a considerable military force, of obtaining supplies for their subsistence. He had been directed by the Commissioner of Indian Affairs to do so. He had been informed the appropriation would be \$75,000, and he acted in view of that information. He made these contracts. He obtained from this gentleman these beef-cattle. They were used for the benefit of the United States. It happened afterward there was some gentleman in the House of Representatives that day not unlike the gentleman from Indiana, [Mr. HOLMAN,] always proposing to cut down every appropriation without regard to the public interest, and instead of \$75,000 being appropriated, as the Commissioner of Indian Affairs had instructed him would be done, there was but about \$40,000 appropriated. Contracts had been made, supplies had been furnished and could not be paid for because the appropriation had been cut down. The report of the Indian agent, which is part of the records of Congress, made in the report of the Department and referred to in the letter which has been read, shows some ten or twelve claims precisely like this of Marshall's which had been contracted for and could not be paid because the appropriation was not as much as expected. Every one of those claims except this one of Marshall's, and perhaps one of ther, has been paid except this one of Marshall's, and perhaps one other, has been paid by the Government.

There is no doubt of the equity of this claim, and though it may

make my friend from Indiana very happy if he could keep this poor man out of the sum due him, I hope the House will pass the bill.

Mr. HOLMAN. Let me ask the gentleman from Iowa when he talks about keeping a man out of his money, how it happened, when these facts were all fresh, this claim was rejected by the Indian Commissioner? How did it happen the strong justice of the claim did not appear then as it appears to the gentleman now?

Mr. McCRARY. The claim was never rejected by the Indian Commissioner except in this way: He said it could not be paid without an appropriation; and all efforts to obtain an appropriation have, up Mr. HOLMAN. And with the facts all fresh how did it happen that

Mr. HOLMAN. And with the facts all fresh how did it happen that the appropriation was not made?

Mr. McCRARY. That has been fully explained. The papers were placed in the hands of gentlemen to look after the claim. Those gentlemen went subsequently into the army and have never since been found. The papers were lost.

Mr. HOLMAN. But there was an interval of ten years.

Mr. McCRARY. That was mostly consumed in the effort to get the money from the Department.

The CHAIRMAN. The question is on the motion of the gentleman from Indiana [Mr. HOLMAN] that the bill be passed over.

The question being taken, there were—ayes 28, noes 95.

Mr. HOLMAN. A quorum has not voted; but inasmuch as I will ask a vote on this bill in the House I will not make the point.

The CHAIRMAN. Further count not being called for, the motion

The CHAIRMAN. Further count not being called for, the motion is not agreed to.

The bill was laid aside, to be reported favorably to the House.

#### CHINESE INDEMNITY FUND.

The next business on the Private Calendar was the bill (H. R. No. 2697) supplementary to the act entitled "An act to carry into effect the convention between the United States and China, concluded on the 8th day of November, 1858, at Shanghai," approved March 3, 1859, and to give the Court of Claims jurisdiction in certain cases.

The bill was read, as follows:

and to give the Court of Claims jurisdiction in certain cases.

The bill was read, as follows:

Be it enacted, &c., That any person or persons, or body corporate, holding and making any claim upon the balance of the fund usually designated and known as "the Chinese indemnity fund," under the control of the Department of State of the United States, and now unappropriated, for losses sustained by the plunder and destruction, in the year 1854, of the bark Caldera, and property on board of said vessel, may, at any time within twelve months after the passage of this act, commence proceedings in the United States, for the same manner as other suits are brought, pursuant to and in virtue of the statutes of the United States and the rules of said court; and that the said Court of Claims shall have full jurisdiction to hear and determine such claim or demand, according to the principles of justice and international law.

Sec. 2. That, at the hearing or on the trial of any suit so commenced, either party, plaintiff or defendant, shall have the right to use, as competent evidence before the court, any records, documents, or papers relating to the said claim which may have been deposited in the office of the Secretary of State under the provisions of the act approved March 3, 1859, entitled "An act to carry into effect the convention between the United States and China, concluded on the 8th day of November, 1859, at Shanghai," or certified copies of such records, documents, or other papers; that, at the hearing or on the trial of any suit so commenced as aforesaid, either party, plaintiff or defendant, shall have the right to produce before the court any additional testimony or documents which may be relevant to and competent upon the issues joined between the parties; and that the proceedings, trial, decision, and judgment of the said court shall be had in the same manner as in all other cases before the said court of Claims, and have the same effect; and that either party, plaintiff or defendant, may appeal from the deci

Mr. HEWITT, of New York. I ask for the reading of the report. The report was read, as follows:

Mr. HEWITT, of New York. I ask for the reading of the report. The report was read, as follows:

The Committee on Foreign Affairs, to whom was referred the petition of the Sun Mutual Insurance Company, the Mercantile Mutual Insurance Company, the New York Mutual Insurance Company, and the China Mutual Insurance Company, for relief in the matter of the bark Caldera and her cargo, respectfully report that the said companies are entitled to the relief asked for, and the committee hereby recommend the passage of the bill annexed to this report, giving the Court of Claims jurisdiction in the case, the facts of which appear to be as follows:

The bark Caldera, under the command of Mathew Rooney, an American eitzen, being laden with a cargo belonging to American merchants, sailed from the port of Hong-Kong, on the 5th day of October, 1854, bound to the port of San Francisco; and having been obliged to seek shelter from a storm in the port of Keolan, on the Chinese coast, was, while at anchor there and the crew employed at the pumps to keep the vessel free of water, boarded by armed bands of Chinese, who drove the men from the pumps, took possession of the vessel, and, after plundering her of all the cargo except granite in the lower hold, burned her, and she became a total loss.

The petitioning insurance companies paid insurances to the amount of \$72.512, being a total loss of the whole sum insured, besides a considerable sum in addition, expended in an unsuccessful effort to recover the property.

The petitioners took all the necessary steps to establish a valid claim on the Chinese government for the amount of the loss, and Mr. Marcy, then Secretary of State, in a dispatch to Dr. Parker, fully recognized the justice of the claim, and directed its prosecution before the Chinese government.

In 1858, Mr. Reed, the then American minister, made a convention with the Chinese government, securing indemnity for this as well as other claims, and about \$700,000 were paid by the Chinese indemnity fund. These commissioners hel

competent tribunal for a final decision as to the justice of their claim. In a similar case, that of the Neva, also entirely rejected by the commissioners, the claimants were allowed a rehearing before the Attorney-General; but your committee are of the opinion that the Court of Claims, from the nature of its constitution, is better adapted to the hearing and decision of such claims than a single executive officer charged with other duties.

Your committee also submit the fact that if this claim be allowed in full by the Court of Claims, no money will be taken from the Treasury.

Your committee, therefore, unanimously recommend the passage of the bill accompanying this report, entitled "A bill supplementary to the act entitled 'An act to carry into effect the convention between the United States and China, concluded on the 5th day of November, 1858, at Shanghai, approved March 3, 1859, and to give the Court of Claims jurisdiction in certain cases."

Mr. HEWITT, of New York. If the House has given attention to the reading of the report, it will scarcely be necessary for me to add any words of explanation. This bill authorizes American insurance any words of explanation. This bill authorizes American insurance companies, underwriters, to go before the Court of Claims and make good if they can the claim against the Chinese indemnity fund which is held by the Department of State. Therefore, it is not a claim against the American Government, but rather against a foreign fund which justice will require us to return to China after we have discharged all the claims that may be justly due to American citizens from it. It seems to me perfectly unnecessary to make any further explanation unless some member of the House requires it.

Mr. HOLMAN. The last proposition of the gentleman from New York should not at all affect the consideration of this claim, for the reason that we have never returned such a fund yet, and I do not be-

York should not at all affect the consideration of this claim, for the reason that we have never returned such a fund yet, and I do not believe it is likely we shall, though on that point we might differ. But whether we should or not, it is clear that this fund, whether it belongs to the United States or to China, should only be subject to legitimate charges. It is to be regarded as a fund simply for indemnity of persons who sustained an injury in those transactions out of which the indemnity grew. I would ask the gentleman from New York, who, I have no doubt, is well informed upon the subject, whether these insurance companies did not go before the arbitration which was raised for the disposition of the fund, and whether their claims were not rejected.

Mr. HEWITT of New York. I will explain that to the gentleman

were not rejected.

Mr. HEWITT, of New York. I will explain that to the gentleman from Indiana. The report states that they did go before the commission; that 40 per cent. of the claim was allowed, and that 60 per cent. was disallowed on the ground of prior damage to the cargo. But there was no evidence before the commission of any such prior damage. There was no appeal from the award of the commission, but age. There was no appeal from the award of the commission, but through a misapprehension the commissioners informed the claimants that there was an appeal. The underwriters having no one to represent them, the 40 per cent. was allowed and the 60 per cent. rejected without evidence; and there is evidence to show it was unjustly rejected. Now they do not ask Congress to appropriate 60 per cent., but they ask to be allowed to go before the Court of Claims and show that the 60 per cent. was improperly disallowed.

Mr. HOLMAN. Ordinarily, Mr. Chairman, where a party has been permitted to go into court and has had his claim fully presented, his right fully adjudicated upon, ordinarily that is the end of it. There seems to be nothing in this transaction that justifies us in going beyond that well-settled rule. "You have had your day in court" is always said to a claimant under such circumstances, "and that ought to be the end of this controversy." But where there is a public fund

to be the end of this controversy." But where there is a public fund to be reached the rejection of a claim seems to amount to nothing.

Mr. HEWITT, of New York. The gentleman from Indiana will allow me to explain. The claimants did not have their day in court. Mr. Reed, the American minister, recommended that that claim should be adjudicated here, but in the mean time Congress passed the act organizing a commission in China. The papers in the case, which were in the State Department, were sent to China, but the insurance companies did not appear before the commission and they were not heard before the commission. One of the commissioners themselves, in a letter which I hold in my hand, and which, if the gentleman from Indiana so desires, I will have read, says the claim was not adjudicated at all upon the merits of the case, but that there was a compromise between him and the other commissioner as to the liability of the Chinese government upon this claim. The commission had no right to pass upon liability. That had been settled between the United States Government and the Chinese government, and the commissioners assumed to do a thing they had no right to do.

Mr. HOLMAN. Will the gentleman explain how it happened that this matter rested so long since that arbitration took place?

Mr. WOOD, of New York. Perhaps I can answer the gentleman from Indiana. In answer to the gentleman as to why this matter has remained unsettled so long, I will say I am reminded of the fact that I had the honor to be a member of the Committee on Foreign Affairs for a number of years. That committee reported unanimously in Mr. Reed, the American minister, recommended that that claim should

had the honor to be a member of the Committee on Foreign Affairs for a number of years. That committee reported unanimously in favor of the payment of this claim for at least two successive Congresses and without one dissenting voice, and the only reason that the bill did not pass the House was that when it was reported from the committee some one gentleman, not conversant with the true facts of the case, objected to its consideration.

Mr. HEWITT, of New York. I would like to state that this is a similar case to that of the Neva, which was rejected in toto by this commission, and they then came to Congress and got their case referred to the Attorney-General, Evarts. Mr. Evarts reported that the claim was a just one and should be paid out of the fund, and in doing so reversed the action of the commission in that case. I think

I can enlighten the gentleman by reading a letter from Mr. Roberts, one of the commissioners

Mr. HOLMAN. Still I would be glad, before the letter is read, if the gentleman would explain why this matter has rested so long. Mr. HEWITT, of New York. My colleague [Mr. WOOD] has just

stated that

Mr. HOLMAN. O, that is no answer at all.

Mr. HEWITT, of New York. I beg your pardon; I think it is.

Mr. HOLMAN. I state that that is no answer at all. Sooner or later a claim of this kind would have been called to the attention of the Government. These great corporations are never slow in pressing their claims against the Government or against any foreign government through this Government. How does it happen that during

ing their claims against the Government or against any foreign government through this Government. How does it happen that during such a long series of years this claim has never been able to arrest the attention of Congress and receive its approval?

Mr. HEWITT, of New York. I wish to say in reply to the gentleman that at every Congress since this money was paid into the Treasury these insurance companies have presented their claim and that every Committee on Foreign Affairs has reported favorably upon it; and as I am told, for I have no personal knowledge of the matter, it failed to pass at one time because it was supposed that it might establish a principal at that would affect the Alabama claims.

failed to pass at one time because it was supposed that it might establish a principle that would affect the Alabama claims.

Mr. HOLMAN. Why does it not?

Mr. HEWITT, of New York. Because the Alabama claims have been disposed of by the award of the commission, and Congress has passed all necessary laws in relation to them.

Mr. HOLMAN. How does it not involve the principle that was involved in the other claims upon the Alabama claims fund?

Mr. HEWITT, of New York. Certainly I think it does not involve any such principle.

Mr. HEWITT, of New York. Certainly I think it does not involve any such principle.

Mr. HOLMAN. The gentleman is certainly mistaken.

Mr. HEWITT, of New York. It merely involves this principle: Shall a claimant whose claim has been presented to a foreign government from whom money has been received to pay such claims and who has received only 40 per cent. of his claim under an error in fact and law have a right to go before the Court of Claims for that court to decide whether he has been wrongfully dealt with? That is all that is involved in it: and it seems to me that every American cities. that is involved in it; and it seems to me that every American citizen ought to have his claim passed on by a proper tribunal, and especially where it takes no money from the Treasury but is to be paid from a fund paid to us by a foreign government for the purpose of paying claims like these.

The question was taken upon laying the bill aside to be reported to the House with a favorable recommendation, and on a division there were—ayes 94, noes 18.

Mr. HOLMAN. No quorum has voted, but I will not make that

So the motion was agreed to.

## CHARLES MASON.

The next business on the Private Calendar was the bill (H. R. No. 2830) for the relief of Charles Mason.

The bill authorizes and directs the Secretary of the Treasury to pay the sum of \$105 to Charles Mason, formerly deputy collector of internal revenue for the third division of the second district of Indiana, to re-imburse him for revenue-stamps stolen in the year 1872.

Mr. COCHRANE. I call for the reading of the report.

The report was read, as follows:

The Committee of Claims, to whom was referred the petition of Charles Mason, have had the same under consideration, and beg leave to submit the following report:

The Committee or Chains, to whom was reterred the petition or Charles alson, have had the same under consideration, and beg leave to submit the following report:

That said claimant was deputy collector of internal revenue for the third division of the second district of the State of Indiana in the year 1872; and that, while in the performance of his duties he had abstracted from a small carpet-bag two hundred and ten eigar-stamps of the denomination of one hundred to the box, and of the value of \$105. That he kept said stamps in his office in an iron safe, inclosed in a small carpet-bag, which he placed on his table when transacting business, and it was from this bag, he thinks, the papers were stolen while his back was turned in serving his customers.

That he missed the stamps and discovered the loss within two or three days, and immediately notified the collector of his district and also made diligent search for said stamps, and, also, all reasonable efforts to detect the thief and recover the stamps. That he subsequently placed upon all stamps of the denomination and description above mentioned private marks before selling the same, and kept up his efforts for more than one year to recover the stamps. That said claimant stated before the subcommittee that he had a person suspicioned of the theft arrested soon after the loss of the stamps, and that, from this fact and other circumstances connected with his efforts to recover the stolen property, he is of the opinion that the thief destroyed the stamps to prevent the discovery of his theft. Judge Mason has supported his character and standing by letters from Hon. William E. Niblack, exmember of Congress, and also a statement from Hon. Bekont S. Fuller, the member of this House from the district in which the claimant resides. These gentlemen give him the best of character for truth and veracity. He is also sustained in his statements by the letter of the collector of his district, certifying to his efforts for the recovery of the stolen property. Mr. Mason su

There being no objection, the bill was laid aside, to be reported to the House with a favorable recommendation.

## L. MADISON DAY.

The next business on the Private Calendar was the bill (H. R. No.

Mr. KNOTT. I move that the committee do now rise.
Mr. BRIGHT. I hope the committee will not rise just yet.
The question was taken on Mr. Knott's motion, and it was agreed

to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. Cox reported that the Committee of the Whole House had had under consideration the Private Calendar, and had directed him to report to the House sundry bills, some with and some without amendments, and with the recommendation that they do pass.

## CITY COUNCIL OF BALTIMORE

The first bill reported to the House from the Committee of the Whole on the Private Calendar without amendment and with a favorable recommendation was the bill (H. R. No. 2690) to refund to the

able recommendation was the bill (H. R. No. 2090) to retund to the mayor and city council of Baltimore certain moneys illegally assessed and collected for internal-revenue tax.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. THOMAS moved to reconsider the vote by which the bill was ordered to be engrossed and read a third time; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### JAMES J. WARING.

The next bill reported to the House from the Committee of the Whole on the Private Calendar without amendment and with a favorable recommendation was the bill (H. R. No. 776) for the relief of James J. Waring, of Savannah, Georgia.

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. THOMAS moved to reconsider the vote by which the bill was reconstructed that the region to reconsider he leid on the

passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

### S. T. MARSHALL.

The next bill reported to the House from the Committee of the Whole on the Private Calendar without amendment and with a favorable recommendation was the bill (H. R. No. 2695) for the relief of S. T. Marshall, of Lee County, Iowa.

The bill was ordered to be engrossed and read a third time; and it

was accordingly read the third time, and passed.

Mr. BOONE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

## CONVENTION BETWEEN THE UNITED STATES AND CHINA.

The next bill reported to the House from the Committee of the Whole on the Private Calendar without amendment and with a favorable recommendation was the bill (H. R. No. 2697) supplementary to the act entitled "An act to carry into effect the convention between the United States and China, concluded on the 8th day of November, 1858, at Shanghai," approved March 2, 1859, and to give the Court of Claims jurisdiction in certain cases.

The bill was ordered to be engrossed and read a third time; and it

The bill was ordered to be engrossed and read a third time; and it was accordingly read the third time.

The question was upon the passage of the bill; and being put, on a division there were—ayes 106, noes 3.

Mr. HOLMAN. No quorum has voted, but I will not insist on that

So the bill was passed.

Mr. HEWITT, of New York, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## MISSION-LAND CASES.

MISSION-LAND CASES.

The next bill reported from the Committee of the Whole was House bill No. 631, providing for the adjudication and issue of patents in mission-land cases in the State of Oregon and the Territories of Washington, Idaho, and Montana; which was reported with amendments. The amendments were concurred in, and the bill, as amended, was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Mr. LANE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

## CHARLES MASON.

The next bill reported from the Committee of the Whole was the bill (H. R. No. 2830) for the relief of Charles Mason.

The bill was ordered to be engrossed and read a third time; and it

was accordingly read the third time, and passed.

Mr. BRIGHT moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the

The latter motion was agreed to.

## COAST SURVEY REPORT.

Mr. BALLOU, from the Committee on Printing, reported back with | body be granted.

a favorable recommendation the following concurrent resolution; which was read, considered, and adopted:

Resolved by the Senate, (the House of Representatives concurring.) That there be printed 1,000 extra copies of the report of the Superintendent of the Coast Survey for 1876, for the use of the Superintendent of the Coast Survey.

Mr. BALLOU moved to reconsider the vote by which the concurrent resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

#### ORDER OF BUSINESS.

Mr. BRIGHT. I move that the House now take a recess until half past seven o'clock this evening, for the purpose of proceeding with the consideration of business on the Private Calendar.

Mr. KNOTT. I ask the gentleman to yield to me until I can sub-

mit a privileged report.

Mr. BRIGHT. I will withdraw the motion for the present.

### COUNTING THE ELECTORAL VOTES

Mr. KNOTT. By direction of the select committee on the powers, privileges, and duties of the House in connection with counting the electoral vote, I report to the House the testimony taken by that committee, and move that it be printed for the use of the House.

The motion was agreed to.

### TIMBER LAND IN ALASKA.

Mr. WALLING. I desire to submit from the Committee on Publica Mr. WALLING. I desire to submit from the Committee on Public Lands a report to accompany House bill No. 4560, authorizing the sale of certain lands in the Territory of Alaska upon paying the Government price therefor, and for other purposes. I desire to say that the committee do not expect action upon the bill at this session, but they desire to have the report printed in order that the facts it contains may be before the next Congress.

Mr. HURLBUT. I have no objection to its being printed and recommitted, not to be brought back on a motion to reconsider.

Mr. WALLING. That is all that I ask.

The report was accordingly ordered to be printed, and recommitted.

The report was accordingly ordered to be printed, and recommitted to the Committee on Public Lands, not to be brought back by a motion to reconsider.

### SMITHSONIAN REPORT.

Mr. McCRARY, by unanimous consent, submitted the following concurrent resolution; which was read, and, under the law, referred to the Committee on Printing:

Resolved by the House of Representatives, (the Senate concurring.) That 10,500' copies of the Report of the Smithsonian Institution for the year 1876 be printed., 1,000 copies of which shall be for the use of the Senate, 2,000 copies for the use of the House of Representatives, and 7,500 copies for the use of the Smithsonian Institution: Provided, That the aggregate number of pages shall not exceed 500, and that there be no illustrations except those furnished by the Smithsonian Institution:

# LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows: Mr. ODELL, until Wednesday next; and To Mr. MacDougall, for five days.

## EASTERN BAND OF CHEROKEE INDIANS.

Mr. VANCE, of North Carolina. I ask unanimous consent to submit for adoption at this time the resolution which I send to the Clerk's desk.

The Clerk read as follows:

The Clerk read as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, required to transmit to this House a statement of the amount of the fund which had been set apart in the Treasury of the United States by virtue of the fourth and fifth sections of an act entitled "An act making appropriations for the current and contingent expenses of the Interior Department, and for fulfilling treaty stipulations with the various Indian tribes, for the year ending June 30, 1849, and for other purposes," approved July 24, 1848, and which was transferred by the act of March 3, 1875, at the request of the Secretary of the Interior, to be applied under his direction to the payment of the costs, charges, expenses, and liabilities attending the litigations by which the eastern band of the Cherokee Indians recovered a tract of land in North Carolina, and that he state each and every payment made from said fund from the date of such transfer (March 3, 1875) to the present time, giving the date and amount of each payment, to whom paid, and for what purpose, and on account of what service rendered. Also to report the amount of such fund now subject to requisition of the Secretary of the Interior.

Mr. HURLBUT. Does this resolution come from any committee for the secretary of the Interior.

Mr. HURLBUT. Does this resolution come from any committee ? Mr. VANCE, of North Carolina. It does not. Mr. HURLBUT. Then I object.

## ADVERSE REPORTS.

Mr. SINGLETON, from the Committee on Printing, reported adversely upon the (bill H. R. No. 4482) making an appropriation for the preparation of a report on immigration and public lands; which was laid on the table, and the accompanying report ordered to be printed. Mr. VANCE, of Ohio, from the same committee, reported adversely upon the petition of Henry Holt, in reference to his publication of an abridgment of the Congressional Record; which was laid on the table, and the accompanying report ordered to be printed.

## BOARD OF HEALTH, DISTRICT OF COLUMBIA.

Mr. VANCE, of Ohio. I am directed by the Committee on Printing to report back to the House the resolution which I send to the Clerk's desk, and to move that the request of the Senate for its return to that

The Clerk read the resolution, as follows:

Resolved by the Senate, (the House of Representatives concurring.) That 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for use and distribution by said committee.

The motion of Mr. VANCE, of Ohio, was agreed to.

POSTAGE-STAMPS FOR THE TREASURY DEPARTMENT.

Mr. HOLMAN. I ask unanimous consent to have taken from the Speaker's table and referred to the Committee on Appropriations Senate bill No. 1265, making an appropriation to supply a deficiency in the appropriation for the purchase of official postage-stamps for the Treasury Department for the concurrent fiscal year.

There being no objection, the bill was taken from the Speaker's table, read a first and second time, and referred to the Committee on

Appropriations.

ORDER OF BUSINESS.

Mr. BRIGHT. I move that the House now take a recess until half past seven o'clock this evening, for the further consideration of busi-

past seven o'clock this evening, for the further consideration of business on the Private Calendar.

Mr. HURLBUT. I move to amend so as to provide that the House take a recess until ten o'clock to-morrow morning.

The amendment was agreed to; there being—ayes 110, noes 49.

Mr. DAVIS. I ask unanimous consent to the understanding that at ten o'clock to-morrow morning a further recess be taken till ten

minutes before twelve.

Mr. WHITE. I object.

The motion of Mr. Bright, as amended, was adopted; and accordingly (at half past four o'clock p. m.) a recess was taken until to-morrow at ten o'clock a. m.

## AFTER THE RECESS.

The recess having expired, the House resumed its session at ten o'clock a.m. Saturday, February 17.

Mr. CLYMER. I move that the House take a further recess till

Mr. WILSON, of Iowa. Five minutes before twelve.
The SPEAKER. The Chair will first take the vote on the longest

The motion of Mr. CLYMER was agreed to; and a recess was accordingly taken.

### PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By the SPEAKER: Memorial from the Legislature of Arkansas, for the passage of an act to facilitate the settlement of conflicts between the United States and the States having the benefit of the swampland grant of September 28, 1850, to the Committee on Public Lands. Also, the petition of Jesse Gunning, of Paris, Illinois, for a pension, to the Committee on Invalid Pensions.

By Mr. ANDERSON: Joint resolution of the Legislature of Illinois, instruction the Senators from that State to support the hill granting.

instructing the Senators from that State to support the bill granting pensions to soldiers of the Mexican war, and to add an amendment so as to entitle soldiers of the Black Hawk war to pensions, to the same committee.

By Mr. BAGBY: The petition of William H. Ray and others, for the repeal of the bank-tax laws, to the Committee of Ways and

Means

Means.

By Mr. BRADFORD: The petition of J. N. C. Brantby, M. H. Toland, John S. Lindsey, and others, of Silver Run, Alabama, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. BROWN, of Kansas: The petition of citizens of Kansas, of similar import, to the same committee.

Also, the petition of Sylvanus Sandford, for compensation for property taken by the United States Army, to the Committee on War

By Mr. CABELL: The petition of citizens of Pittsylvania County, Virginia, for cheap telegraphy, to the Committee on the Post-Office

By Mr. CALDWELL, of Tennessee: The petition of J. H. Collier and other citizens of Tennessee, of similar import, to the same com-

mittee

By Mr. CAULFIELD: Joint resolutions of the Legislature of Illinois, instructing the Senators from that State to support the bill granting pensions to soldiers of the Mexican war and to add an amendment so as to entitle soldiers of the Black Hawk war to pensions, to the Committee on Invalid Pensions.

ation to pay a judgment of the Court of Claims, to the Committee on Appropriations.

By Mr. OLIVER: The petition of L. F. Robinson and other citizens of Iowa, for the removal of limitations in the law governing the granting of invalid pensions, to the Committee on Invalid Pensions.

By Mr. PAGE: Telegraphic memorial of J. J. Valentine and other citizens of California, for a subsidy for a semi-monthly mail between the United States and China, to the Committee of Ways and Means.

By Mr. PHELPS: The petition of L. Robinson and other citizens of Newport and other towns in Vermont, for the repeal of the banks.

By Mr. PHELPS: The petition of L. Robinson and other citizens of Newport and other towns in Vermont, for the repeal of the banktax laws, to the Committee on Banking and Currency.

By Mr. SPARKS: Joint resolution of the Legislature of Illinois, instructing the Senators from that State to support the bill granting pensions to soldiers of the Mexican war and to add an amendment so as to entitle soldiers of the Black Hawk war to pensions, to the Committee on Invalid Pensions.

By Mr. TOWNSEND, of New York: A paper relating to the establishment of a post-route from Nassau to Niverville, by way of Chatham, New York, to the Committee on the Post-Office and Post-Roads. By Mr. WAIT: The petition of William R. Bennett, John Eldridge, and Wm. G. Dewey, of Groton, Connecticut, for compensation for the use and destruction of their property by the United States Army, to the Committee on War Claims.

By Mr. WELLS, of Missouri: Concurrent resolution of the Legislature of Missouri, instructing Senators and requesting Representatives in Congress from that State to prevent the removal of the Sioux Indians to the Indian Territory, to the Committee on Indian Affairs.

## IN SENATE.

# SATURDAY, February 17, 1877-10 a. m.

The Senate resumed its session.

### ELECTORAL VOTE OF LOUISIANA.

The PRESIDENT pro tempore. The Chair will announce that he has received from the president of the commission a communication, being a decision in the Louisiana case. Shall it be submitted to the Senate? The Chair hears no objection.

The Chief Clerk read as follows:

WASHINGTON, D. C., February 17, 1877.

WASHINGTON, D. C., February II, 1871.

SIR: I am directed by the electoral commission to inform the Senate that it has considered and decided upon the matters submitted to it under the act of Congress concerning the same, touching the electoral votes from the State of Louisiana, and herewith, by direction of said commission, I transmit to you the said decision, in writing, signed by the members agreeing therein, to be read at the meeting of the two Houses according to said act. All the certificates and papers sent to the commission by the President of the Senate are herewith returned.

NATHAN CLIFFORD,

President of the Commission.

Hon. THOMAS W. FERRY,

President of the Senate.

The PRESIDENT pro tempore. What is the pleasure of the Senate? Mr. HAMLIN. The commission on electoral votes having notified the Senate that they have arrived at a conclusion and decision on the electoral vote of Louisiana submitted to them, and having communicated that decision to this body, I move that a message be sent to the House of Representatives informing that House that the Senate is

now ready to meet with the House and to proceed in the count of the electoral vote for President and Vice-President.

Mr. WITHERS. Before the question is put I would inquire of the President of the Senate whether it is competent for the Senate as a body to meet the House without the presence of a quorum of this

body The PRESIDENT pro tempore. This is to be a notification to the House, not a proposition to go to the Hall of the House at this time. Mr. WITHERS. The motion embraced also the statement that the Senate is now ready to proceed to the Hall of the House of Represent-

atives.

Mr. HAMLIN. I submitted the motion upon the usual parliamentary assumption that a quorum is present. We who are here and run our eyes over the body of course know that the fact is not so. It is a simple notice to the House. If an objection be made to acting upon it, of course we cannot act. I did not suppose that we would repair to the House with any less number than a quorum, and I supposed a quorum of the body would be here by the time that communication was made to the House, and we should have received a communication in turn from the House that they were ready to receive us. When we receive that communication, of course it will require a majority of this body to comply with it.

sions, to the Committee on Invalid Pensions.

By Mr. COX: The petition of letter-carriers, the postmaster, and the officers and directors of the Merchants' Exchange of Saint Louis, Missouri, for an increase of the pay of letter-carriers, to the Committee on the Post-Office and Post-Roads.

By Mr. HATCHER: Concurrent resolutions of the Legislature of Missouri, protesting against the removal of the Sioux Indians to the Indian Territory, to the Committee on Indian Affairs.

By Mr. HUBBELL: The petition of Justin Shapley, William P. Raley, and 50 other citizens of Eagle Harbor, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. JACOBS: The petition of citizens of Washington Territory, of similar import, to the same committee.

By Mr. MACKEY: The petition of Selmar Seibert, for an appropri-

without a quorum. If the Senator does not object the Chair will put the question on the motion of the Senator from Maine.

The motion was agreed to.

The PRESIDENT pro tempore. The Secretary will give the notice

Mr. WITHERS. I presume, in consonance with the ruling of the Chair on a previous occasion, no legislative or other business will now be in order.

The PRESIDENT pro tempore. No legislative business is in order.

Mr. KELLY. Is it in order to make a personal explanation?

The PRESIDENT pro tempore. That would not be in the nature of legislation. Is there objection to the Senator from Oregon proceed-

ing?
Mr. KELLY. I wish to make a personal explanation, but I desire to make it in a fuller Senate than we have now.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M.
Adams, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:
A bill (H. R. No. 4676) to remove the political disabilities of Henry B. Tyler, of Virginia;
A bill (H. R. No. 4677) to remove the political disabilities of William B. Mackall, of Virginia;
A bill (H. R. No. 4678) to relieve Charles H. Levy, of the State of Louisiana, of his political disabilities;
A bill (H. R. No. 4675) to remove the political disabilities of Henry

A bill (H. R. No. 4675) to remove the political disabilities of Henry

A bill (H. R. No. 4675) to remove the political disabilities of Henry H. Lewis, of Maryland;
A bill (H. R. No. 4552) to remove the political disabilities of James Austin McCreight, of Alachua County, Florida;
A bill (H. R. No. 4418) to pay William L. Scruggs, late minister at Bogota, from October 10 to November 21, 1876;
A bill (H. R. No. 3654) to relieve William F. Russell, of Florida, of political disabilities;
A bill (H. R. No. 2830) for the relief of Charles Mason;
A bill (H. R. No. 2697) supplementary to the act entitled "An act to carry into effect the convention between the United States and China, concluded on the 8th day of November, 1858, at Shanghai," approved March 3, 1859, and to give the Court of Claims jurisdiction in certain cases; in certain cases;

A bill (H. R. No. 2695) for the relief of S. T. Marshall, of Lee County, Iowa; A bill (H. R. No. 2690) to refund to the mayor and city council of

Baltimore certain moneys illegally assessed and collected for inter-

A bill (H. R. No. 776) for the relief of James J. Waring, of Savannah, Georgia; and
A bill (H. R. No. 4668) to perfect the revision of the statutes of the

United States and of the statutes relating to the District of Colum-

The message also announced that the House had agreed to the con-current resolution of the Senate to print extra copies of the report of the board of health of the District of Columbia for the year 1876.

The message further announced that the House had agreed to the concurrent resolution of the Senate to print extra copies of the report of the Superintendent of the Coast Survey for 1876.

## PERSONAL EXPLANATION-OREGON ELECTORAL VOTE.

Mr. KELLY, (at eleven o'clock and fifty minutes a. m.) Mr. President, I desire to make a personal explanation upon a question that has attracted some notice.

The PRESIDENT pro tempore. The Senator from Oregon states that he desires to make a personal explanation. Is there objection? The

Chair hears none.

Mr. KELLY. I ask the Clerk to read a paragraph from the Evening Star of yesterday, which is marked.

The Chief Clerk read as follows:

## SENATOR KELLY AND THE WANTING ELECTORAL VOTE IN OREGON.

The disclosure before the Committee on Privileges and Elections of the interpretation of the cipher dispatches which passed between Tilden's friends in New York and Senator Kelly, of Oregon, in reference to the purchase of an electoral vote, has been a topic of much comment among Senators. The views expressed indicate that some formal notice of the action of Senator Kelly will be taken by the Senato. It is intimated that a resolution of expulsion will be submitted, but whether with the sanction of the committee or upon individual authority has not been determined. The feeling is such that a proposition of that kind would in all probability be acted upon promptly and decisively. The part played by Senator Kelly in the programme of the democratic managers in securing the lacking electoral vote will form a conspicuous feature of the report upon the Oregon electoral question.

Mr. KELLY. Mr. President, it was my desire a day or two ago as soon as the alleged translation of these telegrams was made public to make an explanation. I was dissuaded from doing so by a number of my friends who thought it would be better to wait until the report of the Committee on Privileges and Elections should be made. I deferred to their judgment, and even this morning a number of my warm represent the Lebesgue thought it rather premature that Lebesgue the land and the land of the land personal friends have thought it rather premature that I should make the explanation now; but in this matter I intend to rely upon my own judgment rather than the advice of friends, however well intended that advice may be. It may be necessary for me to state the circumstances at some length so that the Senate will understand fully the part that I have had in this matter.

I had been down to San Francisco sometime previously to the 28th

of November, but for certain reasons thought it prudent or best to return to Oregon before coming East. I reached Salem on Monday the 27th day of November. I staid there a day and then in the afternoon took the cars for Portland. While at the depot at Salem a gentleman learning my name introduced himself as Mr. Patrick, stating that he was authorized by a member of the national democratic committee to come to Oregon and look after such matters as were necessary to ascertain whether Mr. Watts was duly elected an elector. We had some little conversation on the way down from Salem to Portland; and reaching there in the afternoon and both went to the same hotel. Soon after arriving in Portland I went out into town to Portland; and reaching there in the afternoon and both went to the same hotel. Soon after arriving in Portland I went out into town to see Mr. Bellinger, the chairman of the democratic State committee, and had considerable talk with him about the matter of this election. He stated to me that he had partially employed a republican firm of lawyers to defend any proceedings that might be commenced against the democratic elector or against the governor and secretary of state in order to insure the count of the vote for Mr. Watts. He said the bargain had not been fully made, that they had asked \$5,000, but finally had agreed to take \$3,000 and attend to all the business; that is, to prosecute or defend in any writ of mandamus or other proceed. finally had agreed to take \$3,000 and attend to all the business; that is, to prosecute or defend in any writ of mandamus or other proceeding that might be brought in the circuit or supreme courts of the State in regard to the election of Watts. He said that he had written to several gentlemen to make up this fee, if possible, in different counties and found it slow work. We talked over matters of this kind for a few minutes. I mentioned to him that a gentleman by the name of Mr. Patrick had been sent out or stated to me that he had been sent by Dr. Miller, of Omaha; that Dr. Miller was a member of the national democratic committee; and that that committee, from headquarters in New York, but telegraphed to Dr. Miller to go from headquarters in New York, had telegraphed to Dr. Miller to go to Oregon, but, not having time or finding it inconvenient, he had suggested to this gentleman to go. I stated this to Mr. Bellinger and we went down to make a call on Mr. Patrick. We went into his room and talked over these matters and about the employment of this and talked over these matters and about the employment of this firm. I stated again that I thought the fee was altogether too high, that we had quite a number of democratic lawyers who would attend to it for nothing; but for particular reasons it was thought advisable by Mr. Bellinger still to have this firm employed, to which myself and Mr. Patrick consented, or rather advised. We talked over the matter as to what would be the result of the matter. Mr. Bellinger said that it was generally believed the governor would issue a certificate to Mr. Cronin, although the governor was very reticent and no information could be had from him, but somehow that seemed to be the general belief. He said the republicans were of the same opinion and that they said if the certificate was issued to Mr. Cronin the other two republican electors would not recognize the governor's act, and we talked over the matter as to what could be done in that event. In talking about the fee that was to be paid and the expenses to

In talking about the fee that was to be paid and the expenses to be incurred, either Mr. Bellinger or myself said we could ill bear the expense; that it would be difficult to collect the funds necessary for expense; that it would be difficult to collect the funds necessary for that purpose; and that indeed was one of the principal reasons why I was opposed to the employment of the firm. Finally it was either stated by Mr. Bellinger or myself that the national democratic committee ought to bear these expenses, to which Mr. Patrick readily consented, saying, "I came out here fully authorized to transact all such business, and I have full authority to make that arrangement;" and so it was arranged. Hereupon we separated. That was perhaps five o'clock in the afternoon. Quite late in the evening, perhaps three or four hours after that, Mr. Patrick came to my room. He had in his hand a cipher dispatch. I did not look at it, but I was satisin his hand a cipher dispatch. I did not look at it, but I was satisfied it was a cipher dispatch, written, I think, on two sheets of telegraph paper, or, perhaps, three. As near as I can recollect his language, he said: "I have prepared a telegram which I am about to send to Colonel Pelton, the secretary of the national committee, asking him, or the committee, to deposit with my banker or bankers in New York the sum of \$10,000, to be used for the payment of the necessary expenses incurred in these legal proceedings and to pay lawyers' fees." That was the substance of the dispatch, as I undertend his lawgrage. He furthersaid "If the money is not used or if lawyers' tees." That was the substance of the dispatch, as I understood his language. He further said, "If the money is not used, or if any portion of it is not used, it will be returned in a few days, as soon as this matter is settled." He then said to me, "I wish you would indorse it, because you are known as a public man, the committee are acquainted with you, and we will more readily get the money." On that suggestion I said to him that I would. Now, here perhaps

On that suggestion I said to him that I would. Now, here perhaps was my fault.

I took his word for what it contained. It was impossible for me to read it. It was impossible to decipher it except by taking a great length of time. At all events I indorsed it in these words: "I fully indorse the above." I think that was written upon it. I believed from that day until the translation appeared in the public prints that it contained what was represented. I do not know now whether the translation is a correct one or not; it may be or it may be not; I never verified it; I supposed it was simply requesting a deposit of \$10,000, to be used, and that we could use what we wanted, what was necessary, and return the balance.

The next day came back a telegram without signature; I do not know what it is, but I take it for granted that the translation may be correct. Perhaps I had better read the translation of the first one, the one that I indorsed without a full knowledge of its contents. It is in these words:

\*\*PORTLAND, November 28, 1876.\*\*

-That is the day it was sent I know.

PORTLAND, November 28, 1876.

To W. T. PELTON, No. 15 Gramercy Park, New York:

To W. T. Pelton, No. 15 Gramerey Park, New York:

Certificate will be issued to one democrat. Must purchase republican elector to recognize and act with the democrat and secure vote, and prevent trouble. Deposit the \$10,000 to my credit with Kountze Brothers, 12 Wall street. Answer.

J. N. H. PATRICK.

That was the one I indorsed; not the translation but the cipher dispatch. The next day, November 29, came back the answer; I did not see it, but was told that it was a refusal to give anything. I see by the translation it is this:

NEW YORK, November 29, 1876.

To J. N. H. PATRICK, Portland, Oregon:

No. How soon will governor decide certificate? If you make obligation contigent on the result in March, it can be done, and slightly if necessary.

[No signature.]

Then Mr. Patrick, I presume, sent another; and here is at length what purports to be a translation, whether correct or not I cannot

W. T. PELTON, 15 Gramercy Park, New York:

PORTLAND, OREGON, November 30.

W. T. Pelton, 15 Gramerey Park, New York:
Governor all right without reward; will issue certificate Tuesday. This is a secret. Republicans threaten if certificate issues to ignore Patrick's claim and fill vacancy, thus defeating action of governor. One elector must be paid to recognize democrat to secure majority. Have employed three lawyers, editor only republican paper as one. Lawyer fee, \$3,000. Will take five thousand for republican elector. Must raise money; can't make fees contingent. Will sail Saturday. Kelly and Bellinger will act. Communicate with them. Must act prompt.

[No signature.]

This is dated the 30th. He had come there on the 28th, and was going away, on Saturday the 2d of December, from Portland to San Francisco.

rancisco.

Kelly and Bellinger will act. Communicate with them. Must act prompt.

[No signature.]

This I knew nothing of, except a statement to the effect that he had telegraphed for \$8,000. In answer to that this came. There is a dispatch wanting somewhere, according to my recollection; or at least if there is none wanting he certainly stated that in answer to this he could get \$3,000. I will say here that a number of telegrams passed back and forth in relation to this matter, showing that the money could not be used at all. It was deposited with Kountze Brothers, but they had no agents in Oregon, no person there to act for them, and consequently it amounted to nothing.

It is further alleged that Mr. Patrick received a telegram from New York, as follows:

York, as follows:

NEW YORK, December 1, 1876.

PORTLAND, December 1, 1876.

Can't you send special messenger and convene Legislature by Tuesday and elect the elector Necessary expense would be paid. See proceeding other States telegraphed you. Consult governor and Senator. Answer.

To which a dispatch purports to have been sent in these words:

To W. T. PELTON, 15 Gramercy Park, N. Y.:

To W. T. PELTON, 15 Gramercy Fark, N. J.:

Not time to convene Legislature; can manage with \$4,000 at present. Must have it Monday, certain. Have Charles Dimon, 115 Liberty street, telegraph it to Busch, banker, Salem. This will secure democratic vote. All are at work here; can't fail. Can do no more. Sail morning. Answer Kelly in cipher.

[No signature.]

To that came back this:

NEW YORK, December 2, 1876.

To Hon. JAS. K. KELLY:

Telegraphed P. last night and to-day. Have no reply; has he left † Answer. [No signature.]

This dispatch I answered, and it is the first one I did answer. The key was left with me, or rather with Mr. Bellinger and myself, in Portland, by Mr. Patrick when he went away, and this is the first telegram that I sent; although I have a faint recollection that there may be one in my handwriting of no particular account, which happened in this way: Mr. Patrick came to my room one night and said, "I want to have either you or Mr. Bellinger transcribe this in a good hand; I am tired of writing, and I will read it off," as it had been penciled and interlined—"I will read it off and you can write it down." I do not know whether Mr. Bellinger or I wrote it. So there may be one in my handwriting, although I do not know that there is, and even if there is I do not know its contents. The first I sent was this: was this:

PORTLAND, December 2, 1876.

W. T. PELTON, No. 15 Gramercy Park, New York:

Impossible to convene Legislature-

I had received one asking the same question-

Impossible to convene Legislature. P. left before telegraph arrived. Can't draw the eight. Deposit Charles Dimon, 115 Liberty street, to order Burch & Ladd, Salem. Must have it Monday. \* \* \*

That was myself for Patrick. I found we could not get the money at all. We had pledged this firm of republican lawyers that we would pay the fee at the time we had engaged them; it had passed several days and they were anxious for the money; and by the way on Monday it was ascertained that there would be no legal proceedings before the courts, as we had expected when they were employed. One or two of our friends rather desired to repudiate the fee or a portion of it, because there were not to be such proceedings; but I made this statement to them, "No; I was opposed to their employment in the first instance, but you insisted on it, and the agreement was made; and now I insist that it shall be fulfilled to the letter although they have not rendered the service expected;" and it was to get the means to pay this fee that we desired to have the money placed with Charles

Dimon; but finding that impossible I telegraphed them this, at least-this is the translation and it seems to me it is correct as nearly as P remember it:

PORTLAND, December 3, 1876-6.30 p. m .--

This was Sunday, the day after Patrick sailed-

PORTLAND, December 3, 1876-6.30 p. m.

W. T. PELTON, 15 Gramercy Park, New York:

P. will be at Grand Hotel, San Francisco, Monday. Be at Salt Lake City three days thereabout. Have to furnish money on my individual responsibility in trust you can replace.

I had then resolved to place no reliance upon getting the money elsewhere than at the bank by giving my individual note indorsed by a number of gentlemen, which I did on the next day. To that I received an answer, alleged to be as follows:

Hon. JAMES K. KELLY:

NEW YORK, December 3, 1876.

Telegraph Emestic. Go ahead. You shall be re-imbursed. Do not fail—all im-

Now this is the sum and substance of all that I had to do with it. I desired exceedingly to have a portion of that money to fulfill the agreement that we had made. I drew a check myself, that is, having deposited my own note I drew a check for \$3,000 gold coin and delivered it to the firm of lawyers whom we had employed. I drew another check for \$200 to pay the expenses of sending a messenger for Mr. Lasswell, who lived about three hundred and fifty miles distant, and who was one of our candidates for elector. We did not know but that he would be the candidates for elector. know but that he would be the candidate on the democratic ticket having the highest vote, instead of Mr. Cronin, because the returns had not been opened. We desired to have him at Salem. So we sent an express messenger and brought him down at an expense of

sent an express messenger and brought him down at an expense of \$200. This was all the money that was paid before I left Oregon for the East, and amounted to \$3,200 in gold.

Now I call the attention of the Senate to this fact: when Mr. Patrick was about leaving he said that \$4,000 was all that would be wanted, and it was all, because \$4,000 in currency at that time was equivalent to between \$3,500 and \$3,600 in gold. We had to pay everything in coin. So we considered that that would be enough for our wants and sufficient to discharge our obligations.

If I had had any desire to have anyone of the republican electors. It

If I had had any desire to buy anyone of the republican electors, I

If I had had any desire to buy anyone of the republican electors, recrtainly could have raised the money to do so on my individual note indorsed as it was. But I will say this, and the republican electors will bear witness to my statement when I say that I never spoke to them; that I never authorized any person to speak in my behalf to them or either of them about receiving money to influence their conduct; and further, I am satisfied that they would say that no man in Oregon ever proffered to give them \$1 or \$5,000 or any other sum in order to get them to recognize Mr. Cronin as one of the electors.

It may be asked how came Mr. Patrick to make these statements, that the governor would so and so decide? I have my own belief about the matter, and I may be doing him wrong, but I think he came there with the idea that he was to so manage affairs that he was to be virtually the elector of a President; that is, he was to so arrange matters there that Oregon would cast the vote that would determine the result of the election. It is my belief that he came there considering that it was an important mission upon which he was sent, and not only that, but he desired it to be believed in New York that he had achieved many things which really he did not do.

had achieved many things which really he did not do.

I call attention to one thing to show that he was sending dispatches that were not authorized and could not be true, or else there is a mistranslation. I call attention especially to what purports to be a telegram from "governor" to Governor Tilden, reading thus:

December 1, 1876.

I shall decide every point in the case of post-office elector in favor of the highest democratic elector, and grant certificate accordingly on morning of 6th instant. (Signed)

Before the Committee on Privileges and Elections two or three experts were called who testified that this dispatch was in the same handwriting as that one of Mr. Patrick which I indorsed; that if one was Patrick's the other was his also. And yet it is charged that it was the governor of Oregon who sent this dispatch. But the governor of Oregon to my certain knowledge was not in Portland during the time I was there or while Mr. Patrick was. I am as well satisfied of that as that I am standing on the floor of the Senate now; yet it purports to come from the governor and through the cipher dispatch of Mr. Patrick. My own inference is that he desired Governor Tilden to believe that he was instrumental in having this thing settled favorably to him; that he wanted to proclaim his own great services, so that he might look to future reward in case Governor Tilden should be inaugurated President of the United States. This is of course a conjecture. rated President of the United States. This is of course a conjecture. I am certain, however, that the governor of Oregon never sent that dispatch, because, as I said, he was not there, and last evening I received a telegram from him which I will request the Clerk to read.

The Chief Clerk read as follows:

SALEM, OREGON, February 16, 1877.

Hon. J. K. KELLY, United States Senate, Washington, D. C.:

Deny that I sent any telegram to Tilden. I never sent a cipher in my life.

L. F. GROVER.

Mr. KELLY. I have no doubt of the perfect truth of what the governor says, because he could not have had the cipher, or at least it would seem an impossibility that he and Mr. Patrick should have the same cipher. It is in my judgment also true that Mr. Patrick sent it without authority from the governor of Oregon, and I can conjecture no other purpose than that he expected to receive some reward in the future for what appeared to be great services rendered to the democratic party. This, as I said, is only an opinion and may be unfounded. be unfounded.

Now, Mr. President, all I have to say in conclusion is this: that no particle of evidence will show or can show that I encouraged in the least any one to pay money to either of the republican electors; that I ever spoke of it or ever thought of it. I never asked any person to contribute a cent for that purpose, and would not have given anything myself. But it is possible, barely possible, that some one may have had this in view and suggested it to Mr. Patrick.

I make this explanation for the reason that it was due to the Senter as well as to reveal that any folse impression should be corrected.

I make this explanation for the reason that it was due to the Senate, as well as to myself, that any false impression should be corrected. I have been here six years, and I shall soon leave the Senate, and I desire to have the character that I had before. I do not think it is undue vanity in me when I say that I am confident this explanation will be satisfactory to the people of Oregon. I have lived with them for over a quarter of a century and through all the vicissitudes of life I am quite sure that I have won their confidence for at least integrity and truth, and not with the democratic party alone, but the republican party as well. I have no fear of the result where I am known, not the slightest. A reputation for truth, of course, is desirable, and a good name is better than great riches. It is for this reason that I desire to maintain the reputation I have acquired where I have been longest known. Not only that, but it is due that I should make this statement here in the presence of the Senate. Senators here have known me for nearly six years, and it would be inexpressibly painful to me now if I should go out of this body with a cloud resting upon my reputation. I do not wish to be covered by obloquy and reproach when I know it is undeserved.

And above all, I do not wish the fair fame of the State which sent me here, to be tarnished in the least by any act that I have done. So far at least as one of her Senators is concerned, it is my desire that I may leave here with an untarnished and a stainless name.

Mr. SARGENT. Mr. President I do not think the Senator from

far at least as one of her Senators is concerned, it is my desire that I may leave here with an untarnished and a stainless name.

Mr. SARGENT. Mr. President, I do not think the Senator from Oregon could address an audience more willing and anxious to believe in the entire sincerity of his defense. We have known the Senator for a great many years, nearly a full senatorial term; and until this thing occurred I know we were all accustomed to regard him as strictly honorable in the discharge of his duties as a Senator. It will be exceedingly fortunate for the Senator if the country is disposed to take as favorable a view of the defense which he makes as posed to take as favorable a view of the defense which he makes as we out of our friendship are willing to do. Our association with each other from year to year leads us to understand and appreciate each other; and often there are statements which go to the public at large concerning transactions on this floor, or with reference to Senators, that we knowing all the facts and the individuals know to be totally unfounded; and therefore they have very little effect upon our minds as casting reproach upon the person who may be assailed. It is very rarely, however, that a circumstance so grave as this which has just been called to the attention of the Senate is a matter of consideration here. Anything that affects the honor of a member of this body to a certain extent lowers the tone of the whole body; and therefore we deeply regret it. I do not wish to remark, and I will not remark upon the defense which has been made by the Senator from Oregon so far as relates to himself. I only wish to say that I think he does right to do all that is in his power to free his name from the stigma that must attach to every person who had part in the nefarious transac-tions in the State of Oregon. We find that the confidential agent of the highest authority in the democratic party is sent to the Pacific coast with undefined powers, and communicates with his associates at

coast with undefined powers, and communicates with his associates at home, going into the very family of the democratic candidate for the Presidency, and proposes that money shall be furnished to them to buy a republican elector.

Why, sir, if there could be any act more dishonorable than another committed by any man whatever anywhere upon all God's broad footstool, it would be for an elector, a man selected in a college of electors to cast his vote for the succession to the Presidency, taking the brief moment of power thus given to him by a confiding people to betray that people and the principles which he was supposed eminently to represent, and for sordid gain to cast his vote for the other side. We have lived through a centennial and that has not occurred. We have not lived through a centennial however, without seeing it. We have not lived through a centennial, however, without seeing it attempted, ay, and sanctioned by the chief authority of a great political party, for we are told in the reply that if this can be done contingently upon its success, if the money will not be called for until the 4th of March shall show that the treason has succeeded, then it will be sanctioned and the sinews of war will be furnished at that time.

I say the Senator from Oregon does right, if he can, to clear his name from any participation in a transaction like this. He owes it to the honor of this body of which he is a part. He owes it to the dignity of human nature as well as to himself.

## ORDER OF BUSINESS.

Mr. SHERMAN. Mr. President, is it settled that we are not at liberty to offer petitions?

The PRESIDENT pro tempore. No legislative business is now in

Mr. SHERMAN. I have quite a number of petitions in my charge. The PRESIDENT pro tempore. The Chair cannot receive them.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. George M. Adams, its Clerk, announced that the House had passed the following resolution:

Resolved, That the Clerk of the House notify the Senate that the House of Rep resentatives will be prepared at eleven o'clock a.m. on Monday to receive the Senate in the Hall, for the purpose of proceeding under the provisions of the act to provide for and regulate the counting of the vote for President and Vice-President.

#### CREDENTIALS.

Mr. MAXEY presented the credentials of Richard Coke, elected by the Legislature of the State of Texas a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

Mr. NORWOOD presented the credentials of BENJAMIN H. HILL, elected by the Legislature of the State of Georgia a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

### ELECTORAL VOTES-FLORIDA.

Mr. BOGY. Mr. President, while I concur in part in what was said by the Senator from California [Mr. Sargent] in condemning any attempts at fraud which may have been made in reference to the presidential election in Oregon, yet I am not willing to remain silent in my place and permit him to place the democratic party before the country as the only one guilty during the recent election of what the whole world will condemn. I wish it distinctly understood further that I am opposed to fraud in every form, in every shape, and for all purposes, be it political or private.

But, sir, the country knows and there is abundant evidence before the world to establish the fact that efforts at fraud were not confined to the State of Oregon or to the democratic party. We all know what efforts were made immediately after the election to make it appear that the election in Florida had been in favor of the republican party. There may be no legal evidence to insure conviction before a

party. There may be no legal evidence to insure conviction before a court of this fact; but if there be a moral sentiment left in this nacourt of this fact; but if there be a moral sentiment left in this nation, that sentiment will for all time to come be convinced that great frauds were perpetrated in the State of Florida by the republican party, to rob it of its vote; frauds having their inspiration from the very highest quarters in the city of Washington. We all know that frauds were perpetrated in the State of Louisiana, and we know that the fraud perpetrated in both these States have resulted, unfortunately for the country and for the good name of the nation and for republican institutions for all time to come, in a great success for the party who repretrated them the party who perpetrated them.

Therefore, I am not willing as an humble member of the democratic party that it should go forth to the country and be written in history that it should go forth to the country and be written in history that this party in the State of Oregon alone was guilty of fraud. I censure it, I condemn it unqualifiedly. My course through life will show that I condemn fraud and dishonesty in every shape and form. But there is more than one kind of fraud. There may be frauds so garnished over with the coating of apparant formality and legality as to pass current. But, sir, they are like the painted sepulchers spoken of in the Bible, fair without, but within as corrupt as hell and filled with dead men's bones.

Sir, I wish what I here say to go to the country as my understand.

Sir, I wish what I here say to go to the country as my understanding of the frauds that were committed during this presidential election. The result which has been secured by fraud will forever remain a blot that time itself will never efface on the history of the

main a blot that time itself will never efface on the history of the late canvass and its result.

Mr. SARGENT. Mr. President, before the recent tribunal the republican party took the position that, the proper authorities of the States having determined what was the true vote and sent up through the legal, constitutional, authorized channels that result, there was no power on the part of Congress to go behind that State action, to go to the bottom of the poll. Taking that position, it was inconsistent with their argument to discuss the character of the testimony which would be revealed in case the tribunal became a general returning board and endeavored to probe the polls to the bottom. This disadvantage of position, so far as the latter consideration was concerned, was readily taken advantage of by their opponents to shout "fraud," "fraud," "fraud," and that cry was kept up during the whole discussion of the matter by the democratic attorneys and has been repeated elsewhere throughout their papers. My friend from Missouri comes in now this morning and again takes up that old burden. I wish to say to him, however, that after a month's sojourn Missouri comes in now this morning and again takes up that old burden. I wish to say to him, however, that after a month's sojourn in Florida—examining hundreds of witnesses in the presence of an able and scrutinizing minority of that committee, every facility being given to him to prove the democratic side or disprove the republican side, every courtesy extended to him, as he has taken pains on a number of occasions to remark to me as the chairman of the subcommittee—it is my deliberate conviction from the evidence—and I would be almost willing to submit the evidence to a Senator as prejudiced as my friend from Missouri and rely upon his judgment—that there was not proved in Florida, that there could not be proved in Florida, the existence of fraud on the part of the republican party, stimulated from Washington or originating there, and on the other

hand there were gross frauds committed by the democratic party in a number of the counties of that State. Before that tribunal the democratic party never proposed to go back of the county returns. They proposed to take certain papers, fair on their face, in that they were made without erasures, showing certain results, the work of officers of the democratic party, which covered up the frauds that were beneath them. They never proposed to penetrate beyond that fictitious surface and to go down to the bottom of the polls. They never proposed really to pressigned Alachya County or Lackson County were beneath them. They never proposed to penetrate beyond that fictitious surface and to go down to the bottom of the polls. They never proposed really to investigate Alachua County, or Jackson County, or Hamilton County, or any of the other counties where there were frauds piled up by the hundreds of votes by the democratic party, by stuffing the ballot-box, by substituting votes that were not cast for those that were cast, by driving republicans away from the polls or refusing their votes on the most frivolous and illegal pretexts, by taking men and hanging them by the neck until they swore that they would leave the republican party and join the democratic party, and drove them up to the polls to carry it out.

These things they did not propose to go into. I propose to go into a single class of frauds, like ballot-box-stuffing, which would have shown that the vote which purported to be cast for Tilden was corrupt; that a considerable percentage of it should have been counted to the republican party properly. Take the precinct of Campbellton, in the county of Jackson. It was agreed on the morning of election between the republican and the democratic parties—I am speaking of evidence of which there was no dispute, no controversy, no one challenges it—that the voters should vote alternately, hour by hour, one hour being given to the democrats, and so on.

Mr. COOPER. Will my friend read that evidence?

Mr. COOPER. Will my friend read that evidence?

Mr. SARGENT. I have it not with me on my desk.

Mr. COOPER. You will find the division was between colors, and

Mr. COOPER. You will find the division was between colors, and not politics.

Mr. SARGENT. The division, as stated by the evidence, was that the democrats and republicans should vote alternately.

Mr. COOPER. No; the colored men voted one hour and the whites one hour; a very different proposition.

Mr. SARGENT. I state it as I recollect. If the Senator has the testimony he can read it. But it would make no difference even in that view, I contend, no perceptible difference at all, because the colored men voted there under peculiar caution taken by themselves to see that they got the republican ticket. Among the other means of stealing republican votes devised in that county was a spurious ticket headed, "Republican ticket," with a flag upon it, as the republican ticket had, there being none upon the democratic ticket, with the names of the democratic candidates upon it, and they tried their best to get that into the hands of the colored voters. The colored voters, learning that such was the fact, went to their head-men and had their tickets compared and would not receive any tickets except the one which contained the republican names, and marched to the boxes, putting that ticket in. When the ballots were being counted out, there was found only one of the spurious tickets with a flag in the box, therefore showing that the fraud in that respect did not succeed. The colored men voted the republican ticket right straight through, as was proved by abundant testimony. straight through, as was proved by abundant testimony.

I say they made this arrangement in reference to alternate voting.

I say they made this arrangement in reference to alternate voting. After the democratic vote gave out at noon and they could not vote in the afternoon except five or six of them, because they did not have any more to vote; but the republicans kept on voting, and it was shown by actual count and by memorandum kept on the ground and clearly proved that seventy-six republicans voted in the afternoon. Now when they came to count the ballots at night they did not tip the box over and mix the votes up—that was distinctly shown—but the inspectors took from the top of the box the tickets until they got clear to the bottom, and the first seventy-seven tickets taken out were republican, and after that they did not find a single republican vote in the to the bottom, and the first seventy-seven tickets taken out were republican, and after that they did not find a single republican vote in the box in layers as they should have been, a layer of democratic and then a layer of republican tickets, and then a layer of democratic and then a layer of republican tickets; but the seventy-six tickets that were voted in the afternoon and one more were found on the top of the box and the rest were all democratic to the bottom, and it was distinctly proved that there were many more republicans who voted in the forenoon than in the afternoon. What became of the republican votes cast in the forenoon? They were eliminated from that box how? During the noon recess they put the box in a room to which there was access by two doors, one through a store. They all went off to dinner. They had a poor unfortunate colored man on the board of election, and it is just as easy to cheat a colored man as it is to lie; they can cheat him almost before his eyes in these matters. The idea of the old fable of the lamb muddying the water of the wolf is repeated when you talk about the negroes in the presence of white men, educated, intelligent as these are, cheating a white man. It cannot be done. I say they put this box where there was access from two doors, and democrats were seen to go into that room during the noon recess, and they were heard walking about and whispering in there. Then they proceeded with the voting in the afternoon, and the result was very nearest. Then they proceeded with the voting in the afternoon, and the result was very natural. At night they found that all the republican votes cast in the forenoon had been taken from the box and democratic tickets substituted instead of them, and all the votes of the result was that were found were those cast in the afternoon. publican party that were found were those cast in the afternoon. Talk about frauds! Was there anything of that kind alleged to exist

in the republican party in Florida? Nothing of the kind. How did in the republican party in Florida? Nothing of the kind. How did they vote? They voted through a window seven feet high above the ground, so that men had to pass their tickets away up, and they were handed to a democratic inspector, handed by him to another democratic officer, and then put into the box. The people could not see how their tickets were put into the box. There was no show for republicans to see that there was fair play. That was a single precinct, but may be taken as a specimen of democratic proceedings. Then take the precinct of Friendship Church, in the same county. There a democratic supervisor took charge of the polls, and the officers drove away the republican supervisor appointed under the United States laws and given the power to be within the polling-place to see that there was fair play—they drove him out of the room at the point of the pistol and compelled him to stay out of it. Unless they intended some fraud, where was the objection to this man being

they intended some fraud, where was the objection to this man being in there, he being appointed under the law and by the United States judge for this purpose, not to handle ballots or anything of that kind? They drove him out of the room at the point of the pistol; and the

They drove him out of the room at the point of the pistol; and the other supervisor, being a democrat—for the court appointed one from each party in order that there might be fair play—they set to taking tickets at the window, showing that they had not a prejudice against United States supervisors, but only against United States republican supervisors. What was the result?

The box in this case was put away above the heads of the people and they could not see what became of their ballots. I mean that the window through which they voted was six and a half feet or seven feet high at this church, and they could not see what became of their tickets; and when the law expressly requires that the canyase shall tickets; and when the law expressly requires that the canvass shall be made then and there in that room, they carried off the ballot-box two miles and made the canvass in a private house, and then destroyed two miles and made the canvass in a private house, and then destroyed the ballots against the protest of the only republican there, the republican negro officer of election. He said, "No, the ballots ought to be put back in the box and sent to the county clerk's office;" but nevertheless against his protest they destroyed them and would not put them back. The record at that poll stood 145 for the democratic ticket and 44 for the republican ticket, and yet we identified and proved conclusively 67 republicans as voting. What became of the difference between the 44 and the 67, those we proved to have voted the republican ticket? If this system of manipulation could destroy 23 republican votes, as well could the democrats show 300 instead of 145. I have not the faintest doubt, after carefully examining the testimony given in reference to Jackson County, that the democratic party in these precincts alone counted 250 votes that belonged to the republicans.

republicans.
The Senator talks about Tilden having carried the State by 40 votes or 60 votes, and right in these very boxes at these two precincts, and we did not have time to look into others where the allegations were as bad, there were more than sufficient fraudulent votes to counterpoise that majority. I have no doubt that there was three times over on the votes of the polls a vote sufficient to give the State to

the Hayes electors.

the Hayes electors.

Let us go into Alachua County. At Waldo precinct a railroad train having passengers from different States in the Union—some from Kentucky, some from Missouri, some from Illinois—was stopped, and the passengers who desired were allowed to go up and vote, a large majority of them voting the democratic ticket. Eight of them voted for Tilden and Hendricks, tearing off the names of the electors; that is to say, they supposed they had a right, and I presume it was under an impression of right on their part, although the officers of the election should have known better, to vote for them and not for the State officers; and, in their ignorance, they took the electors to be State officers, and did not know that it was necessary that they should vote for the electors in order to vote effectively for Tilden and Hendricks. What did the officers do when they came to count these votes? These eight votes were counted the same as the others for the Tilden and Hendricks electors. The republican officer at the poll obvotes? These eight votes were counted the same as the others for the Tilden and Hendricks electors. The republican officer at the poll objected all the way through to these votes, and finally prevailed so far as to have put on the back of the tickets the name of the person, the State of which he was a citizen; and that vote went to the county canvassing officers. The county canvassing officers refused to consider it, and the matter went to the State canvassing board, who threw out these votes in the canvass of the State; but under the sanctifying decision of the supreme court they were included, and go to swell the vote of the Tilden and Hendricks electors in Florida.

Mr. President I did not expect to be drawn into a debate on this

to swell the vote of the Tilden and Hendricks electors in Florida.

Mr. President, I did not expect to be drawn into a debate on this matter, and I will be as brief as I can in my reference to these precincts. An attack was made upon Archer precinct No. 2 by the democratic party. There they allege frauds to have been committed and they have kept up the cry ever since. It has been repeated this morning in this Chamber by the Senator from Missouri. Archer No. 2 was a place where they say Tilden was terribly cheated, the place where republican genius was exercised for the purpose of creating an appearance of strength for the benefit of the Hayes electors and making false returns. We gave a special attention to Archer No. 2, and I say for one, if I could have detected that there were republican frauds there, I would have denounced them. Instead of that, it was my judgment that there was a democratic fraud there committed. The attack was made upon Archer No. 2 on account of its republican majority, and yet that majority was just about the same proportion which had been at previous elections right straight along,

and there was no question of it that the democratic vote was enorand there was no question of it that the democratic vote was enormously greater than it had been at any previous election. The republican majority there was 263. The democrats claim that they cast at that poll 136 votes and the republicans 180 votes only, which would make a much less majority. We called before the committee the individual voters of the poll. Remember the democrats admitted only 180 republican votes. We called in three hundred and twenty-one republicans and each individually swore, and they gave their reasons—for they were questioned upon their knowledge—that they voted the republican ticket—180 republican votes conceded three hundred and republican ticket—180 republican votes conceded, three hundred and twenty-one republicans swearing that they voted that ticket; and with the utmost exertion that we could use we could find but twelve democrats who had voted at that poll. We could not find anybody who knew of more than twelve democrats who had voted at that poll. Samuel J. Fleming had been brought forward as their principal witness, who said that he took down the names of the voters who voted at that poll, and he himself could name but a dozen names that he thought could have voted the democratic ticket; yet there were 136 democratic votes found in that box. The democrats said the republicans only cast 180 votes and we found three hundred and twentyone individual persons who did actually vote the republican ticket there, and we found them at a season of the year several months after the election, when the crops were all gathered and the colored arter the election, when the crops were all gathered and the colored people were scattered over the country, some fishing, some hunting, some away from home to get a day's work wherever they could. We heard of many of that kind, and if we had staid we could have got them before the committee, though at very considerable expense both of time and money; but we burst the democratic case of fraud all to pieces by showing against their claim of 180 republican votes three hundred and sixty-one republicans who actually did vote.

Now, I should like to know under those circumstances who stuffed the box at Archer. Not the republicans, for we found the individual republican voters, within a small percentage of those who were returned as having voted, to make up the republican majority. I have no doubt, under all the other circumstances of the case, that during the temporary absence of two of the republican officers of election, who were both colored, and who during the day were absent several times, leaving two men by the name of Green R. Moore and Floyd Dukes, the latter being a colored man and a democrat, in possession Dukes, the latter being a colored man and a democrat, in possession of the room—Green Moore being a white man and a pretty low one too, I should judge, by his pursuits in life and by his having sworn on both sides of this case—that these men allowed it to be done or did stuff into this box 100 or more democratic votes and put in between the loose sheets of the poll-list names to correspond. The poll-list was kept by Vance, a colored man; and without numbering the names from 1 up to the whole number cast, (for he found they voted too fast,) he would simply write the number, thereby giving opportunity for from I up to the whole number cast, (for he found they voted too fast,) he would simply write the number, thereby giving opportunity for fraud of that kind to be committed; and thus you can account for 100 democratic votes found there. And under any testimony that has ever been taken by any committee of Congress, the presumption is irresistible that those votes were stolen by the democratic party then and there. That the republican vote was the natural vote of the precinct is evidenced by the fact that there were republican clubs in the neighborhood with a membership to a greater number than the whole republican vote, some thirty or forty greater in number in their active membership than those who voted on that day at that precinct.

I believe the intention of the democratic party was to discredit

that poll, knowing it was a strong republican precinct and that under any circumstances there must be a large republican majority there. They intended to produce confusion in the count, and, failing in that, at any rate to have the advantage of a fraudulent democratic vote stuffed into the box.

I give these as specimens of the proceedings in Florida. If any Senator can show that the republicans have committed frauds there, Senator can show that the republicans have committed tradts there, let him put his finger on the spot, and I will attempt to show, if our investigation covers the case or if the investigation by either House covers the case, whether there is truth in his allegations or not; but I say it is not for those who necessarily are compelled to be silent or defend such gross democratic frauds as I have pointed out, to indulge

in these general aspersions of fraud against the republican party.

Mr. BOGY. Mr. President, I was not a member of the committee
sent to investigate the late election in Florida; therefore I am not
prepared to go into all the details of that election as the Senator from California is, he being a member of that committee. I have only this to say, that a minority report has been made, and which essentially contradicts every position advanced by the Senator from California. But let that be as it may, we know that telegrams from the city of Washington were sent immediately after the election that meant fraud. The Senator from California asks me to repeat them. I cannot do so, but I have read them; the country has read them, and moreover re-

members them now, and will hereafter.

Mr. SARGENT. Does the Senator know that those telegrams are also denied by those who, it was alleged, had sent them?

Mr. BOGY. Some have been denied, not all.

Mr. SARGENT. They were denied under oath.

Mr. BOGY. Some have been denied, but the most significant have never been denied. Telegrams were sent from the city of Washington immediately after the election meaning fraud, palpable and undeniable, not so direct, not so plain as the act of the man in Oregon, because these were men of longer and greater experience in the art

of fraud and rascality and more accustomed how to carry on that kind of business. This man was inexperienced in fraud, therefore he was direct and plain. The others were adepts of great and varied experience and knew well how to tread the dark and sinuous ways, which while they expressed well their hidden and well disguised intent, yet avoided cautiously the use of plain words. But the meaning of the one was as well understood as that of the other.

No matter what the details of the election in Florida may have been

he fact is stamped upon the public mind of this nation that the vote he fact is stamped upon the public mind of this nation that the vote of that State was fairly and honestly given to Tilden for the Presidency. That fact never can be taken from the page of history. Thank God, there is a mysterious agency pervading the world and guiding the pen of the historian; and it has guided it from the earliest period of time, and despite all the efforts of fraud to falsify it, the time always comes, sooner or later, when this mysterious power will guide the pen of truth and vindicate it. Never has it been otherwise, and so it will be again, and truth crushed now to the earth will rise again and stand vindicated, sooner or later, but as certain as destiny.

and stand vindicated, sooner or later, but as certain as destiny.

But I will not dwell any longer on this case of Florida, as I have already said, not being familiar with it in all its details. The Senator from California says it was understood among the republican members of Congress that the commission then about being created

Mr. SARGENT. No, the Senator misunderstood me. I did not state that, for that I do not know. I said the position of the republican counsel before the commission was such that they contended for the regularity of certain proceedings; that those proceedings were conclusive because they were constitutional and legal; and that that argument placed them under the disadvantage of not being able to discuss matters back of the returns. That is all. I did not assume to know anything of the intention of Congress or to speak for any others as to what the commissioners would decide when they convened.

convened.

Mr. BOGY. Mr. President, the commission created by us in the case of Florida laid down two rules for its guidance: first, that they would not investigate anything which had transpired before or preceding the return made by the governor except in relation to the eligibility of electors. Their decision left that question open for investigation by a vote of 8 to 7. It was of course believed by the whole country that the same rule would be applied to Louisiana.

Who on earth would have doubted the propriety of the application of that rule when it had been enforced in the case of the State of Florida? Yet we know that this decision has been reversed. We know that a member of that commission but vesterday changed his

know that a member of that commission but yesterday changed his position upon that subject, and while it was competent in the State of Florida to go behind the returns to examine whether electors were or were not eligible under the Constitution of the United States, when the motion was made by the Senator from Delaware [Mr. BAYARD] to apply the same rule to Louisiana, the decision was reversed. ARD to apply the same rule to Louisiana, the decision was reversed. The case had been made so plain by counsel, so strong, so irrefutable that such an examination could not take place without proving beyond the possibility of doubt that more than one elector from that State was not entitled to hold that position because not eligible under the Constitution of the United States; and hence this decision was changed by this commission, and by the vote of one of its members who had voted one way in the case of Florida and now another way in the case of Louisiana.

Sir, the names of Jeffreys and Norbury have come down to us in English history for ages past, covered with disgrace and shame because they were corrupt judges; and the name of that man who changed his vote upon that commission so as to rob the votes of that State from Tilden to Hayes, Justice Bradley, will go down to afterages covered with equal shame and disgrace. His name will be associated with Norbury and Jeffreys, linked together by a chain of infamy, and never will it be pronounced without a hiss from all good men in this country.

APPROPRIATION BILLS.

Mr. WINDOM. Mr. President, would it not be in order to proceed by unanimous consent with the appropriation bills to-day?

The PRESIDENT pro tempore. Legislative business is not in order.

Mr. WINDOM. Not by unanimous consent?

Mr. HAMLIN. Move to take a recess.

Mr. HAMDIN. Move to take a recess.

Mr. WINDOM. I want to say that we have two bills ready from the Committee on Appropriations. They have been ready, so far as the committee is concerned, for nearly a week, but they have been delayed on account of the impossibility heretofore of printing them. The printed bills have just been received; and if this proceeding

forces upon us an extra session, I want to say that the Committee on Appropriations relieve themselves from all responsibility.

The PRESIDENT pro tempore. The Chair will state that he would be glad to gratify the Senator from Minnesota in order to facilitate public business, but the law is in force which prohibits legislation while the commission is not considering the questions before it. That being the fact, the Chair must rule that no legislative business is in

Mr. HAMLIN. I can see no good purpose to be subserved by re-

maining here, and I will move—

The PRESIDENT pro tempore. The Chair observes the Secretary of the President. The Chair will receive a message from the President.

#### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. U. S. Grant, jr., his Secretary, announced that the President had yesterday approved and signed the act (S. No 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, and for other purposes.

The message also announced that the President had this day approved and signed the following acts:

An act (S. No. 824) for the relief of Hannah L. Lloyd, as executrix, and George W. King, executor of William Lloyd, deceased; and An act (S. No. 1139) to change the time of holding the October term of the United States district court for the district of Nebraska.

#### ELECTORAL VOTES-FLORIDA.

Mr. HAMLIN. I move that the Senate now take a recess until ten

o'clock Monday morning.
Mr. COOPER. Will the Senator from Maine allow me to make a

Mr. HAMLIN. O, yes. If the Senator desires to speak, I withdraw

my motion.

The PRESIDENT pro tempore. The motion for a recess is with-

drawn.

Mr. COOPER. Mr. President, it will be remembered that at the meeting of Congress in December the first proposition made came from the Senator from Vermont [Mr. Edmunds] to send certain committees South to investigate allegations of fraud which were then made through the public press of the country as having occurred in three of the States of the South. The democratic party was represented upon those committees, and as a representative of that party it was my hope then, as it has always been, that if fraud did exist in this country either in the counting of ballots or elsewhere there would be power in this nation to discover it and to guard against it and punish those engaged in it, although the Senate were willing then to examine, although they sent committees to examine in these several States and to take evidence, and we have the reports of those com-States and to take evidence, and we have the reports of those committees accompanied by the evidence, it is now assumed, and in fact has been decided, that there is no power in this Government to be found "here or elsewhere," to use the language of the majority of the committee who examined the case of Florida, to prevent, punish, or relieve against fraud which may have occurred in any State in the appointment of electors. I am sorry that such a decision has been arrived at, either in the Senate or elsewhere, because I am satisfied that upon the evidence submitted by the various committees the American people will be convinced that the highest offices within their gift have been conferred upon those not entitled to them through the most gi-gantic frauds. We are not afraid of the examination of this question gantic frauds. We are not afraid of the examination of this question and the adjudication of that tribunal upon the evidence submitted.

It is folly, Mr. President, now that the door has been shut and that no one can be heard; when no evidence can be presented, to bandy words in the Senate as to what the evidence does or will show. We are wasting time. Open the door and examine the evidence either here or before any jury, constitute it as you may, and we are not afraid of the result. But when our opponents come and throw themselves behind the technicality of the law which denies the power to examine or adjudicate upon the facts at all, it is worse than useless, examine or adjudicate upon the facts at all, it is worse than useless, it is folly, for them to insist before the American people that the evidence shows this, that, or the other thing. I challenge the Senator from California or any other man to point out evidence taken in the State of Florida which will substantiate the frauds which he has alleged. Take the Alachua frauds which he last mentioned and examine them. Let the Senate and the country remember that for years frauds had been perpetrated at Archer precinct in the county of Alachua.

Mr. SARGENT. Where is the great of the country of the count

Mr. SARGENT. Where is the proof of that?
Mr. COOPER. In the record.
Mr. SARGENT. I should like to have the Senator show it.
Mr. COOPER. In Mr. Dennis's testimony.
Mr. SARGENT. Will the Senator allow me to interrupt him?

Mr. SARGENT. Will the Senator allow me to interrupt him?
Mr. COOPER. Certainly.
Mr. SARGENT. Mr. Dennis's testimony and that of several other
republicans was that the democrats had for years on the most frivolous pretext endeavored to break up Archer No. 2 because there was a strong republican majority there.

Mr. COOPER. There never had been Archer No. 2 before the last

election.

Mr. SARGENT. Archer precinct, Archer No. 1 and No. 2 which before this time were one precinct. Mr. Dennis's testimony and the testimony of others shows that it had been a constant object of attack by democrats on account of the large republican majority there. They had endeavored to make appearances of irregularity there and to throw it out, had sometimes succeeded and sometimes had not, and they seemed to play the same game at the late election, but they have not succeeded, although the democrats, as I believe, did get in about one

was charged by the democrats, as I believe, and get in about one hundred illegal votes.

Mr. COOPER. My allegation was that fraud was charged in the box at Archer for two or more elections preceding the last and that it was charged by the democrats that the ballot-box of Archer had been stuffed time and again. Then the republicans divided Archer precinct into No. 1 and No. 2 and placed as election officers over No. 2 a white man a republican kindle intelligent with the state of the control of the white man, a republican, a colored man, a republican, highly intelli-

gent and educated, and a poor old colored man, a democrat, who could neither read nor write, and he was the only democrat around the ballot-box of Archer No. 2. Remember now that the charge had been made for two or three elections that there had been fraud in Archer, that the ballot-box had been stuffed, and at the last election they put one intelligent colored man, a republican, one white man, a republican, and a negro who could neither read nor write, a democrat, to watch the box. Under that state of facts the democratic party placed as near the polls as they could get him an intelligent man, Samuel T. Fleming. They could not get him in the room where the ballot-box was; he had not been appointed as an inspector; but they placed him at the window to take a list of the men who voted, and he took down every name, with the exception, as he testifies, of not exceeding fifteen or sixteen, who voted at Archer No. 2. He was placed as near the ballot-box as it was possible for him to get. He was a man acquainted with everybody in the neighborhood, a merchant for years in the town of Archer. He took the name of every man who voted. The poll was closed at the proper time, the count made, and the result announced. Now you have the man who takes the poll-list standing there recording the names, and four other witnesses who testify as to the result; and what was it? That at Archer No. 2 there were 316 votes polled, out of which the republicans received 180 and the democrats 136. That is announced at the close of the polls. This man's list has three hundred and five names. He says that he wrote every name that voted, unless fifteen or sixteen who were in the room or voted from the inside of the room, to which he had no access. You have the announced result of one hundred and dighty republicans and one hundred and divirty-six democrats that the ballot-box had been stuffed, and at the last election they he had no access. You have the announced result of one hundred aud eighty republicans and one hundred and thirty-six democrats. The colored republican inspector and the colored clerk who was sent down from the town of Gainesville take the ballot-box, after the announcement has been made of 180 republican votes and 136 demo-crats, to the house of this colored inspector, giving the key to the white inspector, also a republican.

One singular circumstance will attract attention if you will examine the evidence in the case. After the result in Archer No. 2 and the vote was announced and the result at Archer No. 1 was announced, both polls held in the same building, making about a set-off in the vote as announced in the counting of the vote, one giving 44 republican majority and the other 41 democratic majority, the proposition was made by the inspectors of Archer No. 1 to the inspectors of Archer No. 2 that they would take these boxes and put them together and stand guard over them that night and deliver them the next day to the guard over them that night and deliver them the next day to the clerk of the county. That proposition was declined by the inspectors of Archer No. 2, who were republicans, Archer No. 1 being in the possession of the democrats. The proposition was made by the inspectors of Archer No. 1 to put both boxes together and place a guard over them. This proposition was declined by the inspectors of Archer No. 2, and they said, "We will keep the box ourselves; we will take care of our box; you take care of your box."

Is it not a little singular, if this immense majority of 263 afterward returned as from Archer No. 2 had been in fact the true return at the close of the polls that the democrats would have cared to grant to grant to grant the close of the polls that the democrats would have cared to grant to grant to grant the close of the polls that the democrats would have cared to grant to grant to grant the grant to grant to grant to grant the grant to grant the grant to grant to grant to grant to grant to grant the grant to grant to grant the grant to 
ward returned as from Archer No. 2 had been in fact the true return at the close of the polls, that the democrats would have cared to guard that ballot-box? Their desire to watch it indicates the majority of 44 which it is claimed was really given. As I said, this proposition was refused by the inspectors of Archer No. 2, and they took the box to the town of Gainesville and there kept it in the possession of the clerk of the election, a colored republican, until eleven or twelve o'clock the next day, when they delivered it to the clerk of the court. The clerk of the court and all the officers of the county are republicans indees sheriff clerk every other officer in the county of Alans. The clerk of the court and all the officers of the county are republicans, judges, sheriff, clerk, every other officer in the county of Alachua, and the only democrat near the polls at Archer No. 2 or who had any supervision or control of the ballot-box there was a colored democrat who could neither read nor write. When the county canvass was made, the boxes opened, Archer No. 2 is reported as giving a republican majority of 263; that is, 399 republican to 136 democratic votes. The democrats insisted that 219 votes had been stuffed in the bellot-box after it was delivered to the inspectors and after the county. ballot-box after it was delivered to the inspectors and after the count

ballot-box after it was delivered to the inspectors and after the count of the votes had been made.

It is said by the Senator from California that the committee examined into Archer No. 2 and called before them three hundred and twenty-one witnesses, who swore that they voted at Archer No. 2 the republican ticket. If you will analyze the vote as proven you will find that but one man, I believe, on the poll-list out of one hundred and sixty-three names on that list, who, Fleming says, did not vote at that box that day, was introduced before the committee to prove that he voted there; and that was a man named Eugene Allen. A colored man, who swore that his name was Eugene Allen and that he A colored man, who swore that his name was Eugene Allen and that he voted at Archer No. 2, was introduced as a witness, and a white man, who said he was registered in the county of Alachua, lived at Archer prior to that time, but that he did not vote that day at Archer, was also examined. The registration-list of the county of Alachua contains only one Eugene Allen. There is but one registered Eugene Allen. A white man of that name proved he was registered Eugene Allen. A white man of that name proved he was registered in the county of Alachua and that he did not vote at Archer No. 2. If the colored man swore truly, then he voted illegally, not having been registered. I conceive that the Fleming list is the correct vote at Archer No. 2; and that if the democrats did not get 136 votes out of the 316, as proven by him, they did not get that number at all. They must have received them out of those 316; because I believe any man who will examine the evidence will be convinced that there never were

but 316 votes polled at Archer No. 2 on the 7th of November; and the inspectors themselves returned 136 democratic votes at that poll.

Now it is insisted by the Senator from California that during the absence of the inspectors Vance and Black, during the day, who had control of the ballot-box and received the votes, the democratic votes were stuffed into the box. My recollection is that they proved that they were absent once and only for five minutes. The two were absent at the same time from the room only once and for that time. Now remember that the only democrat who was in the room or who had access to the room was a colored man who could neither read nor write; and if you take the hypothesis assumed by the Senator from had access to the room was a colored man who could neither read nor write; and if you take the hypothesis assumed by the Senator from California, you must believe that during five minutes of absence of these men from the room, a colored man who could neither read nor write stuffed the ballot-box. If you can believe that, Mr. President, then you can arrive at the conclusion at which the honorable Senator from California does, that there was cheating done there in the interest of the democrats. For one I cannot believe that; I cannot believe that a man who can neither read nor write can stuff a ballot-box, and do it successfully, in the space of five minutes. Remember that the poll-list returned by these inspectors to the clerk was all in the same handwriting.

Mr. SARGENT. If my friend is testifying I should like to cross-

examine.

Mr. COOPER. I am not testifying.
Mr. SARGENT. If he is attempting to repeat testimony, I trust
he will refresh his recollection.

Mr. COOPER. Let the Senator read Webster's testimony and if he does not prove that the return before us was all in the same handwriting I am greatly mistaken.

Mr. SARGENT. O, no.
Mr. COOPER. Vance swears it too.
Mr. SARGENT. Neither of them swore it, and Webster himself says he did not examine to see if it was, but that he noticed part of

says he did not examine to see if it was, but that he noticed part of it was in different colored ink from the rest.

Mr. COOPER. Vance proves it.

Mr. SARGENT. Vance says he made out the list.

Mr. COOPER. The whole list.

Mr. SARGENT. I deny that either of them says it.

Mr. COOPER. Get the testimony. Vance swears it. But there is another singular circumstance about Vance's testimony along there. The returns of the election of Archer No. 2, before us, are all signed by one man in one handwriting that of Black the inspector, a reby one man, in one handwriting, that of Black, the inspector, a re-

mr. SARGENT. Do you say Vance does not sign?

Mr. COOPER. I am coming to Vance. I say the names of the inspectors are all signed in the same handwriting, that of Black; Dukes makes his mark and the name of Moore is signed by Black. I say Vance signs it and signs it with different ink from that used by Black in the signature of the inspectors, as Vance swears when his attention is called to it; and yet he swears that he signed it at the same place and at the same time. But when we come to submit it to him he says it was in different ink. You only had to look at it to see that

it was different ink.

The allegation on the democratic side was that Black and Vance concocted the scheme by which those 219 votes were illegally stuffed in the ballot-box that night or the next morning before they delivered the box to the clerk of the county; and the circumstances to sustain that are that they had full control of the returns of the election, the certified returns, and of the poll-lists, and that Vance made out a different certificate, Vance attesting it after he had increased the poll-list itself by the introduction of these various two hunthe poll-list itself by the introduction of these various two hundred and nineteen names. Why, sir, you have only to look at the poll-list to see that name after name is repeated time and again throughout the poll-list to make the 535 votes, and upon examination you will find that, of the one hundred and sixty-three names heretofore alluded to as not voting, not one of them was produced to testify that they voted; and this was the issue made before the returning board: that one hundred and sixty-three names did not vote at Archer No. 2, as testified by the man who took the poll-lists, and the republican party neither before the returning board, nor before the Rouse committee, nor before the Senate committee, produced and the House committee, nor before the Senate committee, produced a man of the one hundred and sixty-three except this Eugene Allen, as I remember, who said he voted at Archer No. 2.

The distinct allegation made before the returning board was the

fraud of one hundred and sixty-three names who were upon this polllist who did not vote; and yet neither this committee nor the House committee, nor anybody else, has yet produced any of them to testify that they did vote. I say with these facts before us can we hesitate to believe that a fraud was perpetrated? Can we doubt that

fraud existed?

But, says the Senator from California, it was perpetrated afterward. Why, Mr. President, if these three hundred and ninety-nine men had voted at Archer No. 2, as contended for, what would have been the result? The majority returned was 263. Now, if we purge the boxes and take the number voting the republican ticket as proven before the Senate committee, you do not increase the majority of the republicans more than 10 to 20 votes. Would it not have been an absurdity that the democrats should have so stuffed the ballot-box as to only decrease the republican majority from 10 to 20 votes? Would they have engaged in so disreputable an undertaking for so

small an advantage? Mr. President, I would be willing to rest this whole controversy, if we had the power to inquire into it and determine it before any impartial jury, upon Archer No. 2 or the Alachua

Now, what is the testimony upon which my friend from California bases his conclusion? It must be upon the testimony taken before the returning board. I am frank to say that that testimony I paid very little attention to, and I know very little of what it proved. I have based all my conclusions on the testimony taken before the Senate committee itself. I have the testimony of one of those who went down at the request of the President to superintend the count of the down at the request of the President to superintend the count of the vote by the returning board as to the effect of the evidence before that board in relation to Archer No. 2. I have the statement of General Barlow, who was one of the commission, a republican of high character, who, in his letter to the President, says emphatically that he would without hesitation reject the 219 votes polled in Archer No. 2 as fraudulent, and I think any Senator who will examine the testimony carefully will come to a like conclusion.

Now at the Comphelium president Lefer the Senator from Calif.

Now as to the Campbellton precincts, I defy the Senator from California with all his ingenuity to take the testimony before the Senate committee and produce a suspicion of fraud out of what occurred at Campbellton, even the slightest taint or indication of it. What the testimony was before the returning board I know not; I have not examined that; but the testimony taken by the Senate committee does not indicate, much less sustain, the charge of fraud at Campbellton. He will find or anybody else who will examine the testimony will find that at Campbellton they agreed between themselves early in the morning that the colored voters should vote one hour and the white voters one hour alternately; the white vote was exhausted by twelve o'clock and the colored voters continued to vote in the afternoon. It is assumed by the Senator upon such proof that the agreement was that the republicans should vote one hour and the democrats one hour. It was color that divided the voting into alternate hours; and, to come to the conclusion assumed by the Senator from California, you must presume that every colored man voted the republican ticket.

Now, sir, if you will examine all the testimony you will find that the only trouble that occurred during the election in the State of Florida, so far as the evidence before our committees showed, occurred in Campbellton upon a colored supervisor challenging the vote of a colored democrat—a colored man who voted the democratic ticket in an hour allotted to the colored voters. I challenge denial of this fact. The colored democrat was alleged to be under twenty-one years of age. He was sworn and voted. And yet in the face of that fact it is assumed that every colored man must of necessity have voted

the republican ticket.

Then again the Senator says that there were actually counted, after the noon recess of voters who voted there, seventy-six republicans. I think he will find in the testimony that there were seventy-six colored men who voted in the afternoon, and if I am not mistaken the trouble alluded to above occurred after the noon recess. To sustain the allegation that there were seventy-six republicans who voted after noon, it is necessary that every colored man voted the republican ticket; to rebut which you have the actual fact of a colored supervisor challenging a colored democrat, as being under age, at that very box on that day. He says that the ballot-box may have been and was tampered with,

according to his judgment, by some man's being inside of the room at the dinner recess, and that is attempted to be substantiated by one colored individual called Crump Bowie. That I suppose my friend would hardly call reliable testimony.

Mr. SARGENT. Why not? Because he is colored?

friend would hardly call reliable testimony.

Mr. SARGENT. Why not? Because he is colored?

Mr. COOPER. No.

Mr. SARGENT. There were two colored men who testified to it.

Mr. COOPER. No; I am not speaking of them now, but Crump is the main witness. If you will take the testimony of the House committee as to Crump I will leave it to any jury to say whether Crump is to be believed anywhere under any circumstances. I did not examine whether he had a good character or bad character. I thought it was absurd to ask any one to set aside the declared result of an election upon such a shallow pretext as that set up on the testimony of this witness. I therefore did not attempt to show whether Crump was reliable or not. Crump said he heard a noise in the room where was reliable or not. Crump said he heard a noise in the room where the ballot-box was during the dinner recess, and thought it was some one in there drinking whisky. That is all he thought at the time. And the other fellow, McKay, who attempts to corroborate Crump, is the worse man of the two, according to the evidence before the House committee. I concede that I took no evidence on the question and did

committee. I concede that I took no evidence on the question and did not care anything about it. I did not think anybody would insist that the result of an election as shown by the official returns made by two republican inspectors should be rejected upon such evidence as was given by McKay and Crump.

Mr. SARGENT. Who were republican inspectors?

Mr. COOPER. Purdee and the other man; I have forgotten the name. I think there were two republicans and one democrat. There were two democrats and one republicans at Friendship Church, and

during the absence at the dinner recess, when the box was proven to have been locked, proven by the supervisors themselves who superintended the counting, and that the votes were all counted out fair.

Now, Mr. President, I come to Friendship Church, and the charge

of fraud there rests upon precisely the same assumption that every colored man who voted there voted the republican ticket. If they did, then the republicans were entitled to more votes than the count showed they received. I insist the best evidence as to how they voted is found in the returns made by the inspectors. Witnesses swore that a number of colored men voted there, sixty-four or sixty-five; that they kept a list of them. It is assumed that these sixty-five colored men all voted the republican ticket; the ballot counted out by the inspectors only showed 45 republican votes. If they did vote the republican ticket then the fraud as contended for existed; but to substantiate the fraud you will have to believe that no colored man voted the democratic ticket. Those of us who know something about the colored race will not readily accept that conclusion.

The Senator also complains that the republican supervisor of the election at this precinct was not permitted by the officers of election to remain in the room where the votes were received. I would like the Senator from California or any other Senator to show me by what anthority a United States supervisor was there at all. I should like to see the law by which a supervisor of elections was placed at any of the voting-places in Florida. Where is it? It is not in the election law we have passed, because that is limited to cities of a certain num-ber of population, and where the authority comes from to appoint a supervisor at the country precincts is more than I have been able to

Mr. SARGENT. Allow me to ask a question?
Mr. COOPER. Certainly.
Mr. SARGENT. Does the Senator think that it is evidence of good faith on the part of those who took the ground that he had not the

faith on the part of those who took the ground that he had not the right to be there that they allowed a person, being a democrat holding exactly the same title, to remain there and handle the ballots?

Mr. COOPER. He did not do that; he was clerk.

Mr. SARGENT. No; he was a supervisor.

Mr. COOPER. If he was, then that was wrong, clearly wrong, and I have no defense to make if that was the fact. I thought the man who took in the ballots was a clerk. If he was a supervisor and permitted to remain there as a supervisor, it was wrong and inde-

Mr. SARGENT. He was a democrat.
Mr. COOPER. That does not justify wrong. I do not care what
his politics were. If fraud existed I desired it ferreted out and punhis politics were. If fraud existed I desired it ferreted out and punished, whether committed by democrats or republicans; it made no difference to me. Fraud in elections is dangerous, and should be exposed and punished, let it be perpetrated by whom it may, and all the same whether the attempt was by republican or democrat. I stand to-day upon that issue, and am willing to go before the American people upon it. I am willing to investigate it again in every fact, to purge the polls of every illegal or fraudulent vote, and not shut the door against it. I defy the Senator from California or any one else from the testimony to reverse the face of the returns in the State of from the testimony to reverse the face of the returns in the State of Florida by purging the ballot-box of every illegal and fraudulent vote polled on either side.

Now, Mr. President, I wish to mention a single circumstance. It

will be remembered that both the House of Representatives and the Senate had a committee in the State of Florida at the same time. The House of Representatives, by their committee, claimed to have discovered an enormous fraud in the county of Leon, in which the capital of the State of Florida is located. The ballot-box at one of the precincts was stuffed to the number of 76 votes in favor of the republican party, and there was clear proof, as they insisted, that this fact was established by the evidence before them; and although we were in the capital of Florida when that announcement was made upon the streets as to the fraud found out by the House committee, upon the streets as to the traid found out by the House committee, yet we never once examined into the county of Leon or into that alleged fraud in that precinct; not one witness was examined as to the frand in Leon County, although we were located there, although we were examining witnesses there; not one. We could call them from Campbellton and from Friendship, but not one was called in the immediate neighborhood of a fraud which was alleged to have been discovered by the House committee in district No. 13, or whatever the name of it was. There was no examination into that alleged fraud there at all. Forty-eight voters upon the poll-list, as I remember, positively swore that they did not vote there at all; there were 76 fraudulent votes in that box, and yet the Senate committee, sitting within ten miles of it, did not examine a single witness in regard

Then the allegation is made by the Senator from California that frauds on the part of the democrats were to be found almost every-where in Florida, and the one of the facts upon which he rests the where in Florida, and the one of the facts upon which he rests the statement is that eight voters—I believe eight—voted for Tilden and Hendricks without voting for the electors, they being from a different State, not legally entitled to vote at all.

Mr. SARGENT. O, no; they did not vote for them at all, but were counted all the same as if they had. They were only a part of some

twenty or twenty-four.

Mr. COOPER. I thought it was sixteen.

Mr. SARGENT. Twenty-four in all.

Mr. COOPER. Twenty-four clearly illegal votes conceded, but they voted in the best of faith and by the consent of the inspectors of election at Waldo precinct. The county of Alachua was republican largely; and, if you are to purge it upon the theory laid down by the canvassing board, they ought to have thrown out Alachua; and so it is with Archer No. 2. If this enormous fraud was committed, if our old friend Dukes, who could neither read nor write, stuffed the ballot-box with 136 democratic votes when there were but twelve yoted the whole county should be thrown out and not counted twelve voted, the whole county should be thrown out and not counted at all; at least this is the plan upon which the returning board acted

where the county was democratic.

Let us turn to the county of Duval. Here the same fact exists as Let us turn to the county of Duval. Here the same fact exists as existed in Baker County, and not one word of complaint is made of the return from this county for being irregular, although it is in precisely the same situation as that of the county of Baker, which they say ought to be counted out. The clerk and the justice of the peace returned the county of Baker, every precinct in it, and the republicans say that is so irregular that it should not be counted, but that the return certified by the judge and a justice of the peace, made for the occasion, should override it, although in this latter return two of the precincts of the county are excluded. Yet, in the county of Duval, where a similar return is made by a clerk and a justice of the peace, not signed by the county judge, it is all regular and fair. The county of Duval counts 950 republican majority, although to make up that they had to empty the jails and vote the immates. That is the proof; and yet it is said the county of Duval ought to be counted and the county of Baker ought to be rejected. How consistent! and the county of Baker ought to be rejected. How consistent!

But, Mr. President, I did not intend to go into the facts as developed, because, as I said before, it is nonsense for us to be bandying words about what the proof may show as to fraud when there is no power to correct it if it is found to exist. How foolish the attempt of the republican party to decry fraud in any one when it is willing to accept for its candidates for the highest offices in the Republic—those offices in defiance of the will of a large majority of the people—although obtained by the most outrageous frauds, because they say there is no

power under the Constitution to prevent the wrong.

Mr. MORTON. Mr. President, I heard with regret this morning remarks made by the Senator from Missouri [Mr. Bogw] in regard to Mr. Justice Bradley. I think he did Mr. Justice Bradley very great injustice. If the Senator could have heard the discussions before the commission, as I have heard them, I am very sure he would not have made the remarks. I am not at liberty now to speak of them; but the time will come, I doubt not, when the opinions will be published, and the Senator will then realize for himself that in what he said this morning he did injustice to a conscientious judge and commissioner.

Mr. SARGENT. Mr. President, I think I did not say in the remarks which I first submitted upon this matter this morning, that there was no power to examine into frauds at an election of electors; but I hold, and I have no doubt that my friend from Tennessee holds the same opinion, that that power resides in the State and must be exercised by its own tribunals. I am strongly of the opinion, and have expressed it in the Senate, that the tribunal sitting in the center of this Capitol has no right by any proceeding in the nature of a quo warranto, or any method of revising whatever, to go behind the certified official constitutional action in the States for any purpose whatever. I believe this to be the position of the republican counsel and of the republican party; and, that being so, I hold that however we might publican party; and, that being so, I hold that, however we might here discuss the question of what had been done by the people of Florida, or however the result was produced in the ballot-box, we were bound and that tribunal was bound by the Constitution and laws of the United States to refrain from examining those primary acts of the people. But I am not for that reason indisposed to fully examine and fully discuss any allegation of fraud that may be made against and rully discuss any allegation of fraud that may be made against the republican party, to repel it, and to show, if the examination will justify it, as it does in the case of Florida, that the democratic party have been guilty there of frauds. The old cry of "stop thief" should have very little weight in the consideration of a matter of this kind. I desire myself to make no allegations against the democratic party which I think are not sustained by testimony and are not approved by my own conscience, and I am not disposed, simply because demo-cratic Senators rise here and in general terms charge the republican party with fraud, to assent to their right to do so or admit that it is sustained by testimony.

My friend from Tennessee seems to rest his case in Archer precinct No. 2 upon the testimony of Samuel J. Fleming, and he says what a singular circumstance it is that this man, this democrat, being stationed there to take the names of voters, should subsequently have gone to the poll-list and picked out one hundred and thirty-six names and have been right in picking them out as men who had not voted there, with the exception of one. Why, sir, that fact is entirely consistent with the theory which, I think, springs naturally from this testimony. I believe that there was a list of names stuffed into that poll-list in a different colored ink, as testified by the witness, from the kind in which the body of the poll-list was written, and it was the easiest thing in the world for those who laid the plan by which that list should be stuffed into the body of the poll-list to give these very names to Samuel J. Fleming; or, if it does him injustice to suppose that he was cognizant of the fraud, to suggest to him to go afterward to the poll-list and pick out the names that he did not see voting there and pick out picking them out as men who had not voted there, with the excep-

those very names because they did not vote there. There is nothing inconsistent in that. The very fact that all this machinery was set at work at that precinct, this strong republican precinct which two years before at the previous election had given 268 majority, a larger majority than is claimed to have been cast this time by the republicans, the very fact that all this machinery was set at work at that place, that this man Fleming, an intelligent white man, was sent there to take names, and then was sent to the county clerk's office to examine the poll-list and make out a list of those who did not vote there, shows that there was a plan with reference to that precinct there, shows that there was a plan with reference to that precinct sinister in its intent; that they intended some unusual process with regard to it; and they intended, furthermore, that when that process was applied to destroy the character of the poll. It was an obvious conspiracy, of which Fleming was either a knowing agent or used as a tool, because if it was intended to destroy the poll no better way than to insert in the poll-list the names of men who did not vote there and then call attention to the fact and exclude the precinct because so many persons had voted there who had no right to do so, could have been devised. I have no doubt that there were more names upon that poll-list than voted there, but I believe that those who voted there were the ones that were called before us, the three hundred and twenty-one republicans, who swore that they voted at this precinct and voted the republican ticket. Every one of those three hundred and twenty-one men stand as witnesses against the truth of that which Fleming alleges, stand against the conclusions to be drawn from his testimony. If he was innocent in the matter and was made to think by appearances brought to his attention that the republicans to think by appearances brought to his attention that the republicans had not east the number of votes which they pretended honestly to have cast at that precinct, then he is entitled to the benefit of any suggestion that may arise from that consideration; but his single testimony is not to be placed in opposition to that of three hundred and twenty-one men who swear that they did vote and which necessarily overbears any particular individual who relates a train of circumstances which would appear to show that they could not have voted at that precinct. voted at that precinct.

Furthermore, one hundred and four men of those who appeared before us and swore they voted are not on Fleming's list all. He sat there and saw these men vote and did not write their names down. One of these cases was that of Mr. Dansy, preacher in that neighborhood, living then within half a mile of the place where the neighborhood, living then within hair a fille of the place where the election was held, a man of most respectable character, a man whose appearance before the committee I have no doubt favorably impressed every member of the committee, including the minority member of it. This man stated that he was there and voted, that he stepped up and asked Mr. Fleming if his name was on the list, and he said it was not, though he had voted a very few moments before that time. Furthermore, it was in evidence that this man Fleming

Mr. COOPER. Allow me to correct the Senator. This man Dansy's

ann. COOPER. Allow me to correct the Senator. This man Dansy's name was not on the poll-list there.

Mr. SARGENT. I do not know how the poll-list may have been manipulated, but certainly Dansy voted. He is a man who reads and writes, a man whose word my friend will not say ought not to be taken, and he swore that he voted there. It was also proved by a large number of witnesses, and it cannot be disputed. The time when he voted and the circumstances under which he voted were proved. It was made a test case right then and there to show whether Fleming was telling the truth or whether he was not telling the truth. It was proved by Dansy, this intelligent, respectable man, that he did vote there, and we called witness after witness who knew him well, because he was a colored preacher for the whole neighborhim well, because he was a colored preacher for the whole neighborhood, who swore that he voted there, and that at the time he voted the boys said "Now let Mr. Dansy vote," and the crowd gave way for him to vote. The Senator remembers that circumstance, and Fleming should have had his name on the list. I might go on and give other circumstances tending to show that Fleming was deceived or was careless, that he did not take down the names of those who voted There were one hundred and four persons whom he did not see whom he should have seen and must have seen if he told the truth that he was there from the time the polls opened until they closed, and was not absent at any time while voting was going on and took down every name. There is abundant testimony showing that he either is entirely mistaken or he is an infernal liar. I am disposed to think that he was mistaken, that he was not as attentive as he thought he was.

It is said, in order to sustain him, that an announcement was made when the polls closed of what the vote was and that announcement corresponded with the claim of the democratic party. To be sure there was one witness who stated that to be the fact, Fleming himself; and another witness stated that he did not remember, that he himself stood on the outside of the window and kept a tally with his pencil as the clerk tallied, but he did not remember whether the announcement was made or not. Whether the tally was completed at that time or not there might be a question. This witness himself said the count was finished within half an hour after the poll was closed. When asked what he meant, he said, "I think the votes were counted and the vote tallied." I called his attention to that fact that half an hour was an absurdity and he then said it might be an hour, when in fact it could not be, according to the number of votes cast on republican or democratic tally, until nearly midnight, and that

was the fact as proved by many witnesses; and yet he says that an hour after the closing of the poll this tallying took place. He was probably telling the truth, but he was so stupid as to mistake a portion of a tally-list for the whole tally-list, so that Fleming stands un-

supported on the announcement of the votes.

Mr. COOPER. What about Dukes's testimony?

Mr. SARGENT. I do not know that the Senator knows what Dukes did swear to! I do not think that anybody knows. Dukes, I think, is the stupidest man I ever saw. I will throw him in to aid Fleming. But there were some dozen witnesses who were called to testify as to when the announcement of the vote was made; when the count-ing was all done and the certificate was made out, and they said that the announcement was made in the presence of the whole crowd 399 votes republican, and 180 democratic; and it was received with shouts on the outside. The republicans felt good and raised a general cheer. on the outside. The republicans felt good and raised a general cheer. If the announcement had been made as suggested by my friend, of 150 or 160 less majority than they had a right to expect according to previous elections, if it was only half the majority that would be warranted by the fact that they had these large republican clubs in the neighborhood to which I have alluded, there would have been no shout, there would have been astonishment, there would have been chagrin, there would have been suspicion at once; but on the contrary, when the vote was announced which gave them not guite. been chagrin, there would have been suspicion at once; but on the contrary, when the vote was announced which gave them not quite the majority they had the previous years, but a majority of 239, they thought "that is very well," and they raised a general shout over it, and that was nearly at midnight, the time when the vote was actually counted. But my friend, as no doubt he feels is his duty, sees fit to take the scattering and doubtful testimony of a single man scarcely supported by anylody else instead of the testimony of ten scarcely supported by anybody else, instead of the testimony of ten or a dozen men who testified the other way. I do not think that that springs entirely with him from the consideration that those who testified the other way were colored men.

Now the Senator says to take Archer No. 2 and Archer No. 1 this year and there was a set-off of the votes between the republican and the democrats, and that that is right, and shows that the return of the democrats, and that that is right, and shows that the return of the two taken together was perfectly natural. It would be the most unnatural thing in the world that that could be so. At the previous election the democrats cast at that poll only 25 votes while the republicans cast 293; and yet we are to believe that it is perfectly natural that the thing should have been so suddenly equalized. But to show that that was not exceptional, at the election before that the democrats only cast 44 votes. In fact it is a strong republican precinct, and had been so year after year ever since the time of "the surrender," as one of the witnesses expressed it; I believe meaning ever since the emancipation proclamation; and there were reasons this year why it should be more peculiarly republican. It was in testimony that the white population had not increased at all, and by the way we proved by the living testimony of some four or five white men that they voted the republican ticket at that poll, re-enforcing the colored men. It was in evidence that there is a large body of the colored men. It was in evidence that there is a large body of Government land near Archer subject to homestead entry, and that colored men have come in there from Georgia and other States within the last two years in very considerable numbers, and have taken up this land and increased the colored population of the precinct, and that we have the recent that the state of the recent that that was the reason they had these large republican clubs; it was a strong republican settlement.

I have already alluded to the fact that there was a claim of 136 democratic votes, and no democrat, including Fleming himself, could find more than twelve or thirteen democrats to represent them, an obvious fraud in itself. If there was any stuffing it was done right there, in order to make the appearance of 136 democratic votes, and at the other poll there was a democratic vote cast of some 98. I should like to inquire how these two precincts became equalized with should like to inquire how these two precincts became equalized with this large influx of colored republicans into the neighborhood, forming republican clubs, being very enthusiastic during the whole day, taking particular pains with reference to the ticket they voted, and seeing that they were not cheated, skillfully avoiding taking and voting the bogus tickets which were got up kindly for them by the democrats with such names as "Marrullus Steen" instead of "Marcellus L. Stearns," making the print look like the print of the republican ticket, and otherwise fabricating a ticket, by means of which they wanted to cheat and deceive colored men who could not read they wanted to cheat and deceive colored men who could not read and write into throwing away their votes; and upon those very tickets so made up, Marrulius Steen instead of Marcellus L. Stearns for governor, they had put Hayes and Wheeler for President and Vice-Bresident, with the democratic electors, intending to steal votes for electors out of these men, to cheat and rob them. When men would de that as part of the party machinery will you tell me they would be the party machinery will you tell me they would electors out of these men, to cheat and rob them. When men would do that as part of the party machinery will you tell me they would not stuff a few votes in a box? If they would take a man and suppress his right in that way, cheat him in taking his ticket out of his hands and substituting for it another, and inducing him to put that ticket in the box in ignorance of the fraud thus committed upon him—do you mean to tell me that a man who would do that would hesitate about stuffing a lot of names into a poll-list or stuffing a democratic ticket into a box? That itself goes to show that that poll was attacked by men who were determined to destroy its honest value to the republicans, and who intended to cause such an appearance, such a simulation of frand, that it should be thrown out by the State returning board, and failing in that, at any rate to have the advantage of the ballots which they would stuff into it.

There was scarcely anything in connection with the democratic party at Archer No. 2 which did not badly savor of fraud. The efect of this particular machinery which they set to work in sending Fleming there, and Fleming intrusted with the list of names, omit-ting Danzee and men of that sort from his list when they voted under his eye, then going off the very moment he could get access to the poll-list in order to parade this list of names, which probably had been suggested to him by the very men who had put the list into the poll-list—all this goes to show a sinister purpose, stained with fraud from beginning to end.

Now the Sevetor thinks it

Now, the Senator thinks it was a horrible thing that Black and Now, the Senator thinks it was a horrible thing that Black and Vance, who were responsible for the safe-keeping of this ballot-box, did not put it, along with the box of Archer No. 1, in charge of the democratic inspector, or in partnership with the democratic inspectors. The precincts were just as distinct as those of Waldo and Archer. There was no necessary connection between Archer No. 1 and No. 2, except that people lived in the same neighborhood; no more connection than there is between the different wards of a city. Different persons voted at the different boxes, and they simply were located in the same building because it was a central place and because the vote the same building because it was a central place and because the vote was so large that it would be difficult to comply with the State law which requires the canvass to be made that night and without adjournment; and therefore they were divided into Archer No. 1 and Archer No. 2; but the officers of Archer No. 1 had nothing to do with Archer No. 2. The officer of Archer No. 1 was running around the streets with the box under his arm. He did not have his box at home or any other place of safe-keeping. He had not invited any United States marshals to go there to see that that box was not touched, or other officers of the election, but the box of Archer No. 2 was deother officers of the election, but the box of Archer No. 2 was deposited in a safe place, in plain sight of a dozen persons who were in the room and sat up all night guarding it, among those United States marshals, and there was no objection made to anybody, democrat or republican, coming and staying there in the large room where it was contained, in order to see that nobody tampered with it. But the demand that was made upon Black and Vance was, not that this box should be put with the other and be together guarded, but, by the testimony of half dozen men, the demand was made that Black and Vance should give up that box to Blitch who had charge of No. 1. Vance should give up that box to Blitch, who had charge of No. 1, Vance should give up that box to Blitch, who had charge of No. 1, who was the democratic inspector, who was running around the streets with his box, and let him take charge of it till morning; that they sent over and over messengers to Black and Vance demanding possession of that box. That was the testimony of both Black and Vance, and of Adams and of several others, United States marshals and others who were present. The demand was not that they should be put together and jointly watched, but that possession of this box should be given up to these parties who demanded it, and they very naturally refused to do it and should have refused to do it. If they ever had done that it would have been thrown out, because there would have been some further manipulations with that box so that there would have been no correspondence at all between it and the there would have been no correspondence at all between it and the

But, more than that, the officers of No. 2 did take care of their box; they did it all openly and above-board, inviting the attention of whoever saw fit to observe their operations. They took it publicly the next day and deposited it in the county clerk's office. Several witnesses were called in by my ingenious friend in order to show that something must have happened on the transit, and in every case those witnesses testified exactly supporting the testimony of Black and Vance. The box was given into the possession of the county clerk, and then that peculiar election machinery known to the State of Florida, but I trust not to many States was set in exaction on of Florida, but I trust not to many States, was set in operation, and the democratic party immediately took possession of that box; they took possession of the room in which it was contained, the county clerk's office. They organized a guard, which contained not a single republican, under the lead of a captain of a rifle club at Archer. They publican, under the lead of a captain of a rifle club at Archer. marshaled a dozen or two democrats who staid there every night to guard, as they said, the room in which this ballot-box was contained, to keep it from the republican colored bull-dozers. Of course that was their object! And they were so jealous of the republicans that they would not allow even one of them to be a witness of their trans-action; and the room in which it was contained had rickety shutters, without fastenings, and broken panes of glass, and a man could get in and out at pleasure, as was proved by the county clerk and by other witnesses. This office had been presented as a nuisance by the grand jury and it required that there should be a better room for the county clerk's purposes. Into this room the democrats for nights before the county canvassing board met had access as they pleased. They kept out everybody from being a witness of their proceedings unless they were of their own faith.

Mr. COOPER. Does the Senator pretend to say that they had ac-

cess except by breaking open the window?

cess except by breaking open the window?

Mr. SARGENT. Yes; I mean to say the testimony shows that the shutters are unfastened from the outside without trouble and the windows opened. I do not think they could have done it honestly, if that is what my friend means. I think, if they did it, they added to the crime of tampering with the ballot-box the crime of burglary.

Mr. COOPER. They could not without breaking in.

Mr. SARGENT. Not at all; they could not get in unless they went through the windows. They could not get through the windows unless they opened the rickety shutters and pushed up the windows;

but that was very easily done. It is a singular fact that this ballot-box was so treated that when the county canvassing board examined the box they found the screws were all loose as if they had been opened, and was in that condition when handed in before the House committee. It was in that condition when I myself examined it. I knew it was proved to be the fact before the House committee and before the county canvassing board, and, therefore, I did not care whether it was brought in before our committee or not. I did not send for it. In that box there were not found even the number of tickets which the democrats said were cast there; the 180 and the 136 were not there at all.

Mr. COOPER. Two hundred and seventy-seven.
Mr. SARGENT. Showing that somebody had taken those ballots out of the box. Whose interest was it to take them out of the box: the republicans who were contending for the big number that was cast or the democrats who were contending that a smaller number was cast? Obviously it was the interest of the democratic party to tamper with that box and reduce it below the number of ballots which the republicans said ought to be found there and which would corre spond with the announcement which they said was made on the night the election canvass was made. So here was the fraud. I think he would be a bold man who would stand up and reason on these circumstances, and say absolutely that burglary was committed by those men who watched that box; and he would be just as bold a man who would say that there was not a fraud committed by abstracting the ballots from that box by the party who wanted to subtract them to make out a case. The opportunity was in the hands of the democratic party, which excluded republicans from being witnesses of their

cratic party, which excluded republicans from being witnesses of their proceedings.

But the Senator bears with some stress upon the point of the manner in which these election returns were signed. They were signed by Black and by Vance. There is no doubt about that. The evidence is that there were duplicate returns, that one of these duplicates was signed in addition by Green R. Moore, and that with reference to the other, which exactly resembled it in every respect, Moore said, "I have a sore finger and you write for me;" and Floyd Dukes merely made his mark by touching the pen. So one set was signed by all the officers and the other was signed by two persons and by a third by his request and by a fourth by touching the pen, the only way a person who does not write does sign his name. If that is not the testimony, my recollection is certainly very much at fault.

Mr. COOPER. Green R. Moore said he signed one return, but not the one we had before us.

Mr. SARGENT. I thought my friend must have forgotten it; I am glad he has made that explanation. The one we had before us happened to be the one which was signed by Vance and Black and to which,

at his own request, Green R. Moore's name had been written and Floyd Dukes's had been signed by Black, Floyd Dukes touching the pen. The other three were signed by the three and by the signing of the cross. That explanation, I think, rebuts any presumption arising from the remarks of the Senator. The returns were duly signed. There is no contradiction at all upon that point, and the returns correspond with the figures sworn by Black and Vance and others as announced to the crowd at the time the count closed.

nounced to the crowd at the time the count closed.

The Senator thinks it is a very singular circumstance that Leon County was not investigated by the Senate committee. Why, it is a very singular circumstance, if my friend who was there within ten miles of where it was alleged there were gross republican frauds, he being the minority of the committee, and all his requests being complied with, (for any witnesses that he wanted we were willing he should have, and we certainly could have got one ten miles if he had asked it,) did not want to prove these republican frauds.

Mr. COOPER. My friends of the House committee did it for me.

Mr. SARGENT. Very well. Suppose I was satisfied with the probing of the House committee and did not see fit to do it, is it any more strange in that respect? 'It might be strange if I was anxious to find republican frauds.

to find republican frauds.

Mr. COOPER. If the Senator will say that he was satisfied, I have

no complaint to make.

Mr. SARGENT. I was satisfied that there was a minority on that committee conscientious and able, like the minority on mut-tee, and I was satisfied from what they told me from day to day that there were no frauds there; that there was a vigorous attempt to show that there were republican frauds, but that it was a failure, that the case was falling all to pieces. I was satisfied of that. I had plenty of work on my hands, and I intended to work, and so did the committee. During the month we spent in Florida there was very little waste of time. If the Senator should name some other county that was not examined I should probably have to make the same remark in reference to it.

If the Senator says I overlooked republican frauds it might be believed by his party friends that I was not trying to find them; but that he was not searching for republican frauds, that he did not desire to probe them, would be a very singular circumstance and the only thing singular about it. I say I was satisfied that the minority of the House committee were attending to Leon County. At most there were only a few votes, at most there was only a dispute as to from 30 to 74 votes, arising out of two circumstances, one was that there were tickets of a smaller size than were usually circulated found in the box, republican tickets, and therefore it was said at once those must have been stuffed; and the other was that there were names of persons found upon a particular poll-list who were alleged not to have voted at that precinct.

I found out two things in reference to that. In the first place, that the republicans, on account of certain intimidation which occurred in different portions of that State, printed a small ticket to paste inside democratic tickets; and also, to prevent the democratic means of cheating a republican who could not read out of his vote, where the ticket resembled in size and other appearances the democratic ticket, ticket resembled in size and other appearances the democratic ticket, had caused to be printed a smaller-sized ticket, and that those tickets were voted at that precinct. There was proof that those tickets were voted at that precinct, as I was informed. In other words, the allegation was being distinctly disproved. And with reference to the other proposition, I was informed, and the House minority will bear me out in the report they made, that the democrats did not try to prove the politics of the voters who double-voted at this precinct or prove that they voted the republican ticket. I have taken the trouble to run through the testimony taken by the House committee in reference to Leon County, and I cannot find that they do show anywhere that where there was double-voting the man who double-voted voted the republican ticket. He may have voted the democratic ticket, and it is much more likely he would do so, that a white man should come forward and simulate a colored man, than that a colored man in that country would dare come forward and say "I am John Jones," whom a dozen men might know to be a white man. The influence of fear would restrain the colored man from resorting to such things for fear vengeance would fall on him, while the white man might afford to take that chance, knowing he would be sustained, if any complaint was made, by the white men. So, I say, reasoning on the probabilities, if there was double-voting at that precinct, it was by the democrats. The House committee stopped short of finding out who did the double-voting. Considering these things, looking at the small number of votes involved, as the investigation was going on to my entire satisfaction by the members of the minority of the House committee, we did not need to stop longer to investigate it.

My friend certainly does not think the minority should not be had caused to be printed a smaller-sized ticket, and that those tickets mittee, we did not need to stop longer to investigate it.

My friend certainly does not think the minority should not be listened to. A minority sometimes is very wise; my friend is very wise; and I listen to him with great pleasure. Here is a minority of the the House committee, I think equally conscientious and wise with my friend. What do they say? Let me read from their report:

The evidence clearly establishes the fact that the election in this precinct [Leon County] was conducted in perfect compliance with the laws of the State and the regulations issued by the secretary of state. So fairly was the election managed that Amos Rouse, the democratic inspector who was soured in the morning because Isaac Dent was elected inspector to fill his place, testified that he told Mr. Bowes just before the polls were closed that he had seen nothing wrong.

They go on and discuss the matter for two or three pages, showing

that I have stated it correctly.

Mr. JONES, of Florida. I wish to ask the Senator in what part of the State of Florida the testimony shows that intimidation existed? I have never yet been able to see the testimony, although I have been very anxious to see it. I know "exhibits" have been published, but the main testimony has not been.

Mr. SARGENT. I am very sorry to tell the Senator that I have not yet got the testimony; I hope to get it soon. I have got a portion of it, but am waiting for an index, which will be made very soon. It is possible that I have the part of it that will give the Senator the information he wants. It was in Jefferson County, I can say. Is the Senator unaware of what took place in Jefferson County? Mr. JONES, of Florida. So far as the testimony before the Senate

committee was concerned, I am; for I have never yet been able to

ascertain what it was.

Mr. SARGENT. I can state to the Senator what took place in

Jefferson County.

Mr. JONES, of Florida. I should prefer to read the testimony.

Mr. JONES, of Florida. I should prefer to read the testimony.

Mr. SARGENT. I assure the Senator it would not please him to know the facts of what took place in Jefferson County. I think it was the unanimous opinion of the committee—I say so in the presence of my friend from Tennessee—that a gross outrage was committed upon the rights of citizens in Jefferson County which had the effect to intimidate republican voters.

Mr. JONES, of Florida. Was it not made to appear that the vote of Jefferson County at the last election was republican, and was largely increased over the former vote?

Mr. SARGENT. I do not know that I made that comparison. That does not make any difference. I am not speaking about that. A presidential election naturally increases the vote of all parties. But I do say that men acted in total disregard of the laws of both God and man in behalf of the democratic party. In Jefferson County there were acts in behalf of the democratic party which were villainous, for which there could be no defense. They took men who were marching along the road—

Mr. COOPER. That was in Columbia County.

Mr. SARGENT. I mean Columbia County. I say there were acts in behalf of the democratic party there for which there can be no excuse and which the Senator himself would blush—I know he would be a support of the machinery in that blush—to defend, and which were a part of the machinery in that county in behalf of the democratic party, and which made votes,

Mr. COOPER. I dislike to interrupt the Senator-

Mr. SARGENT. I will yield with pleasure.
Mr. COOPER. If he charges that rascality to the democratic party,
he has no proof of that. There were four democrats that did a wrong; but as far as the democratic party was concerned, it was not in that. As far as the proof shows there were four or five democrats that did

a wrong, a gross wrong.

Mr. SARGENT. Mr. President, I do not know what would make the democratic party a particeps criminis in the crime. I know the object of the crime was to break up a republican club and that it succeeded, that the object was to compel the colored men to join a democratic club and it succeeded in that, to compel them to vote for "Tilden, Hendricks, and reform" and it succeeded. Now who will say that the democratic party is not responsible for it? You might as well say the democratic party is not responsible for this transaction in Oregon where the effort was made to buy a republican elector. I do not think my friend is responsible for it as one of the democratic party, and I think a great many, a majority, of the men in the democratic party would repudiate such a transaction. The only thing is for democrats to know what deeds are done in the name of the dem-

ocratic party.

Mr. SAULSBURY. Will the Senator allow me to ask him a ques-

Mr. SARGENT. If the Senater will excuse me, I would prefer not be interrupted. Now, with reference to Jefferson County, it is in proof there, the Senator may call it intimidation or what he pleases, that there were resolutions passed at democratic meetings that they would give 25 per cent. advantage to republicans who either would not vote or would vote the democratic ticket, advantage in business, advantage in the renting of lands, that they would not give employed. advantage in the renting of lands; that they would not give employ-ment to men who voted the republican ticket; that they would dis-criminate in favor of either those who would not vote at all or of those who would vote the democratic ticket. It was also in evidence those who would vote the democratic ticket. It was also in evidence that men by the scores were deterred from voting by these threats, call them intimidation or what you please. I think it is a very unfair means of electioneering and contrary to the principles of republican liberty. If the democratic party is responsible for it, the democratic party is responsible for a very bad thing.

Take Duval County. There, as the evidence shows, they had a series of marked tickets, marked on a numbering machine from noth-

ing up to ten thousand, and the repeated serial numbers were printed in blue ink in the way the figures are stamped on a Treasury note. They circulated these tickets around and gave them to republicans, and said, "We want you to vote that ticket;" and they took the name of the man and the number of the ticket which they gave him, and afterward examined the ballot-boxes for the purpose of seeing that and afterward examined the ballot-boxes for the purpose of seeing that these tickets were put in the box. Yes, sir, they examined the ballot-box to see if these men's tickets were in the box. We found such tickets—ten in one, seventy in another, three in another, and so forth. The evidence shows that they carried that on in a number of counties. The evidence before us was with particular reference to Duval County, but the evidence before the returning board related to other counties. They printed over ten thousand of them, circulated them generally, and compelled men to vote them under threat of loss of employment. Men

compelled men to vote them under threat of loss of employment. Men lost employment for not voting these tickets.

Gentlemen talk about intimidation. I do not know whether you call that intimidation or not. It is threatening a man's interests, if not threatening his life; it is threatening to starve his family, if not to poison his family. I think that that is intimidation. It is contrary to public morals. By that means Tilden and Hendricks got a great number of votes in Florida that they were not entitled to. If it was not to intimidate or to force a vote that way, but merely to find if men who promised to vote the ticket had done so, that is something not to be allowed certainly not where the law requires a secret ballot. not to be allowed, certainly not where the law requires a secret ballot, which is the law in that State. Furthermore, it shows that the democratic party had no confidence in the promise of the colored men to vote their ticket, otherwise they would not have had them watched. But that they were watched goes to show the theory of my friends that colored men vote the democratic ticket is all wrong. His party friends do not believe it.

This system of denying a man bread unless he votes one political ticket or another is certainly un-American. Here they gave certificates to men who would vote the democratic ticket certifying their right to live, to get employment, to support their little ones, and so on. I know nothing more atrocious than this. This is an assassination of public and private rights. It is the very worst form of intimida-tion, and no ballot-box can be pure where such things as these take

I have no desire to prolong this debate; but I wish to say one word in closing with reference to this case of Duval County, which my friend who ordinarily is so clear-sighted cannot see differs from that of Baker County. In Baker County there was not a board assembled, except that on which was the county judge, which had any power under the State law to make a canvass. The canvass is required to be made in the presence of three officers. Their presence is absolutely necessary. Anything short of that is not a canvass. There were simply a county clerk and a justice of the peace present in Baker County, and the returns signed by those only, and there being no explanation accompanying the returns showing why there was not another person present, it vitiated and necessarily vitiated that. I know that the decision of the supreme court requires that in such a case the returns shall be thrown out. And although the State board, actuated by a spirit of fairness, took those returns and corrected them by going back to the precinct returns, by which the democratic party gained, the supreme court came in and said "No; you must take returns that are absolutely regular, if you do anything about them at all." Therefore, after that decision they took the regular returns, which had some precincts omitted, perhaps not for sufficient reasons. For instance, it was shown that one man had offered to vote at a precinct and was told to "Go away from here: we don't want any damped

For instance, it was shown that one man had offered to vote at a precinct and was told to "Go away from here; we don't want any damned republican voting at these polls;" and so he left. That is alleged. That was the reason given by the sheriff who was before us.

Mr. COOPER. No.

Mr. SARGENT. The sheriff stated that that was the reason why it was done. I do not say that that was proved or was not. In the testimony taken by the House committee, they state that that is the reason, state as the fact that the county judge, being called before them, testified that that was the fact and that is the reason why it was thrown out. Now I do not think that the rejection of a single vote in that way, provided it was shown that only one man's vote was thrown out. Now I do not think that the rejection of a single vote in that way, provided it was shown that only one man's vote had been rejected, would have been sufficient; but I say that an election carried on in that spirit, where republicans are told even in a single instance, "You shall not vote here; we don't want any damned republicans voting at this poll," is very doubtful in its results. That is not an election by the people; that is not a poll of the votes of the people. Although only one republican might have come there and insisted upon voting, fifty behind him might have gone away and not insisted on voting because they say we cannot vote at this poll. Those consequences might follow; the thing was not traced out. We do not know whether it was so or not; we do not know how many republicans there were who wanted to vote and who were bluffed off by this man being sent away and refused a chance to vote. I say the by this man being sent away and refused a chance to vote. I say the reason may not have been sufficient; it may have been misguided zeal that induced the county judge and the sheriff and the justice of the peace, who assembled to canvass these returns, to throw out the precinct for that, and for another reason relating to another precinct, precinct for that, and for another reason relating to another precinct, where there were quite a number of persons who it was considered were illegally registered and who had intermixed their illegal ballots with the true votes so that they could not be separated. The reasons may not have been good at all; but the face of the returns, which my friend contends for, showed that those were the true returns which were sent up by the county judge, the sheriff, and the justice of the peace. If they were not that, then no returns were made at all of that county, because the other papers were not legal returns; not because only two signed them, but because only two canvassed them in Baker County. in Baker County.

Mr. JONES, of Florida. Will the Senator allow me to ask him a

question ?

question?

Mr. SARGENT. Not at this moment. I want to make my statement, and then I will yield with pleasure. In Duval County there were present at the canvass the county judge, the clerk, and the justice of the peace, as the law requires. The county judge was there for the purpose. After they were in session he moved to adjourn. The motion was voted down and he remained; he remained until the whole thing was done clear through. They took all the precincts; they conducted the canvass in an entirely honorable way; they unquestionably discharged their duty according to the law, and there will be no dispute upon that. They certainly had the right; my friend assents to that. And then when they got through and they came down to the signing of the names, the county judge refused to sign. Did that vitiate the action of the board of which he was one? The law does not require that all shall sign. The law requires the three to make the canvass. The canvass was made by them then and three to make the canvass. The canvass was made by them then and there, the county judge observing everything that went on and not withdrawing; but when the other two had signed and invited his signature, because he refused it, that is to disfranchise the people of signature, because he refused it, that is to disfranchise the people of the county! Was there ever anything so absurd? There is the difference between Baker and Duval Counties. In one case there was a legal canvass made by the three officers; in the other case the pretended return of the clerk, and justice was not founded upon any legal canvass at all. The only legal canvass under the State law that was made was by the three officers. Now I will yield to allow the Senator to ask the question which he desired to ask.

Mr. JONES, of Florida. How was the fact of the judge's presence at the Duval County canvass made to appear before the State canvassing board unless by the authentication of the two officers?

Mr. SARGENT. By a statement accompanying the returns; and

vassing board unless by the authentication of the two officers?

Mr. SARGENT. By a statement accompanying the returns; and furthermore as being admitted by the parties, who appeared there and tried it as a lawsuit before that body, the democratic counsel admitting the fact and the republican counsel asserting it. Nobody disputed it. The verification of the fact came up with the returns themselves. It was attacked by nobody; and the democratic investigation went off to examine the county upon the theory that the State canvassing board had a right to go behind the county returns and look into the matters of individual and precinct votes.

Now, I am aware of the fact that in a case like this testimony will addressitistly with different force to different minds. I do not feel at all intolerant to my friend for the view he has taken of the testimony of the various witnesses. He has a perfect right to his view of it. I do not know but that the constitution of our respective minds compels us to take entirely different views of the matter; and it may be perfectly

natural and also excusable if my friend, upon reading a dozen pages of testimony, by his peculiar system, takes all that was testified to by the democrats and rejects everything that was testified to by the rethe democrats and rejects everything that was testified to by the democrats and rejects everything that was testified to by the republicans, no matter how many in number. That would be excusable perhaps under the temptation, and possibly under the temptation of my bias and all that I may do the same thing. I only say in this matter that any one who is unprejudiced and impartial, especially any one who stood aside and saw these things going on and who will take this testimony of the House and Senate committees, I think must admit that the republicans did vindicate the good name of their party. I should be very happy indeed to be able to agree that the democrats had acted upon the same principles throughout the State.

Mr. JONES, of Florida. Mr. President, it is due to myself to say that up to this time I have not been able to see the testimony taken by the Senate committee in Florida. This whole discussion is founded upon that testimony, known only I think to the members of the committee. It will certainly be apparent to everybody that they have a great advantage over myself, although I represent in part the State in this Chamber, and other Senators in regard to those facts. This discussion has proceeded upon the idea that this testimony was here, and Senators have addressed themselves to us as though we were familiar with it.

were familiar with it.

I wish to say that up to this time I have never been able to see the testimony taken in the Florida investigation; and I would not in justice to myself and in a disposition to do justice to the distinguished Senator from California undertake to discuss the matter without hav-Senator from California undertake to discuss the matter without having had an opportunity to read that evidence. What it is I know not. Of course I have to accept what the Senator from California and my friend from Tennessee say in regard to it. I know something about the Alachua County frauds, which I gathered from the investigation that was had by the State canvassing board; but I do not know what was proven before the committee in the State. I will also state that when I get an opportunity to read that testimony I may take occasion to address a few remarks to the Senate in regard to the investition into the election in Florida. tion into the election in Florida.

Mr. WHYTE. Inasmuch as we can proceed with no legislative business, as I understand the House of Representatives has taken a recess until Monday morning at ten o'clock, I move that the Senate take a recess until Monday morning at ten o'clock.

The motion was agreed to; and (at two o'clock and forty-six min-

ntes p. m.) the Senate took a recess until Monday, February 19, at ten o'clock a. m.

## HOUSE OF REPRESENTATIVES.

SATURDAY, February 17, 1877.

The House re-assembled at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

REPORT OF THE ELECTORAL COMMISSION.

The SPEAKER. The Chair desires to lay before the House at this time a communication, which will be read.

The Clerk read as follows:

Washington, D. C., February 17, 1877.

Sir: I am directed by the electoral commission to inform the House of Representatives that it has considered and decided upon the matters submitted to it under the act of Congress concerning the same, touching the electoral vote from the State of Louisiana, and has transmitted said decision to the President of the Senate, to be read at the meeting of the two Houses according to said act.

NATHAN CLIFFORD,

President of the Commission.

Hon. Samuel. J. Randall, Speaker of the House of Representatives.

The communication was laid on the table.

Mr. LAMAR. I send up for adoption a resolution, on which I demand the previous question.

The Clerk read as follows:

Resolved. That the Clerk of the House notify the Senate that the House of Representatives will be prepared at eleven o'clock a. m. on Monday to receive the Senate in the Hall, for the purpose of proceeding under the provisions of the act to provide for and regulate the counting of votes for President and Vice-President.

The SPEAKER. The question is on seconding the call for the

previous question.

Mr. KASSON. Before that question is put, I rise, noticing the message from the Senate—

The SPEAKER. That is not the privilege of the gentleman.

Mr. KASSON. It is a privilege, I submit.

The SPEAKER. The gentleman will be seated.

Mr. KASSON. I raise the point of order—

The SPEAKER. The Chair is aware of the fact to which the gentleman wishes to call attention, and does not desire in the least to in-The SPEAKER. The Chair is aware of the fact to which the gentleman wishes to call attention, and does not desire in the least to interrupt the message. On the contrary, the Chair has submitted to the House the fact as communicated from the president of the commis-

Mr. KASSON. Does the Chair permit me to make a point of order?

[Cries of "Regular order!"] I address the Chair, not the other side.

The SPEAKER. What is the point of order?

Mr. KASSON. That the Secretary of the Senate is now at the bar with a message from that body pertinent to the question on which we are to vote.

Several Members. How do you know that?

The SPEAKER. The Chair overrules the point of order.

The question being taken on seconding the demand for the previous question, it was declared agreed to.

Several members called for a division.

Several members called for a division.

Mr. BURCHARD, of Illinois. Mr. Speaker—

The SPEAKER. Debate is not in order.

Mr. BURCHARD, of Illinois. I rise to a question of order.

The SPEAKER. What is the question of order?

Mr. BURCHARD, of Illinois. I desire to make a point of order upon the motion of the gentleman from Mississippi, [Mr. LAMAR,] that under the law the House cannot take a recess beyond ten o'clock or the encountries day.

on the succeeding day.

Mr. LAMAR. I did not move for a recess.

The SPEAKER. The gentleman from Illinois will be kind enough to refer the Chair to that clause in the law to which he alludes.

Mr. BURCHARD, of Illinois. The attention of the Chair has been

called to it heretofore.

The SPEAKER. Not in connection with this point of order, with great respect to the gentleman from Illinois. What provision of law is it upon which the gentleman makes his point of order against the

Mr. BURCHARD, of Illinois. I understood, although I did not

hear distinctly— Mr. LAMAR. Will the gentleman allow me to state that I have

made no motion for a recess.

The SPEAKER. This is not a motion for a recess. The gentleman from Illinois probably has not listened to the reading of it.

Mr. BURCHARD, of Illinois. Will the Chair allow the resolution

to be read again?

The SPEAKER. The Chair will, for the information of the gentle-

man from Illinois.

The resolution was again read.

The SPEAKER. A division is demanded on the question of seconding the demand for the previous question.

The previous question was seconded; there being—ayes 165, noes 104. The main question was ordered.

The SPEAKER. The question now recurs on the adoption of the

Mr. HURLBUT. On that question I call for the yeas and nays.

The yeas and nays were ordered. The question was taken; and there were—yeas 152, nays 111, not voting 27; as follows:

voting 27; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clarke of Kentacky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Gunter, Andrew II. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kohr, Knott, Lamar, Franklin Landers, George M. Landers, Lanc, Le Moyne, Levy, Lewis, Luttrell, Maish, McFarland, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, Neal, New, O'Brien, Phelps, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Sayler, Scales, Schleicher, Schumaker, Sheakley, Singleton, Slemons, William E. Smith, Springer, Stanton, Tacker, Turney, John L. Vance, Robert B. Vance, Walsh, Ward, Warner, Warren, Watterson, Whithorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—NAVS—Messrs, Adams Anderson George A. Barley, John H. Paker, William

Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—152.

NAYS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Goodin, Hale, Haratson, Benjamin W. Harris, Hathorn, Haymond, Hayes, Hendee, Henderson, Hoar, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kelley, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Robinson, Sobieski Koss, Rusk, Sampson, Savage, Seelye, Sinnickson, Smalls, A. Herr Smith, Southard, Strait, Tarbox, Thornburgh, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, Walling, Erastus Wells, G. Wiley Wells, White, Whitehouse, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—111.

NOT VOTING—Messra. Bass, Blackburn, Samuel D. Burchard, John H. Caldwell, Douglas, Durand, Hancock, Hoge, Lord, Lynde, Mackey, MacDougall, Morgan, Odell, Payne, Purman, Rainey, James B. Reilly, Sparks, Stephens, Stowell, Teese, Waddell, Charles C. B. Walker, Gilbert C. Walker, Wheeler, and Wike—27.

So the resolution was adopted.

During the vote.

Mr. A. S. WILLIAMS stated that his colleague, Mr. DURAND, was

absent on account of illness.

Mr. PHILIPS, of Missouri, stated that Mr. BLACKBURN was absent on account of sickness.

Mr. HUNTON stated that his colleague, Mr. Douglas, was absent

by leave of the House.

Mr. RAINEY stated that he was paired with Mr. Douglas, who would vote in the affirmative, while he himself would vote in the nega-

Mr. SOUTHARD moved to dispense with the reading of the names. Mr. TOWNSEND, of New York, objected.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Gorham, its Secretary, announced that he was directed to inform the House that the president of the electoral commission had notified the Senate that the commission had arrived at a decision on the question submitted to them in relation to the electoral votes of the State of Louisiana, and that the Senate was now ready to meet the House to receive the same and proceed with the count of the electoral vote for President and Vice-President.

The vote was then announced as above recorded.

#### MESSAGE FROM THE PRESIDENT.

A message from the President, by Mr. C. C. SNIFFEN, one of his secretaries, announced that he had approved and signed bills of the following titles, namely:

An act (H. R. No. 967) authorizing the survey of certain townships

in Michigan and making an appropriation therefor; and An act (H. R. No. 4556) to remove the political disabilities of Reu-

ben Davis, of Mississippi.

Mr. LAMAR moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. LAMAR. I submit the following resolution, on which I demand the previous question.

The Clerk read as follows:

Resolved, That the House take a recess until ten o'clock Monday morning.

Mr. SAYLER. I ask the gentleman from Mississippi to yield to me for a moment to make a privileged report in order that it may be printed.

Mr. HURLBUT. I demand the regular order.
Mr. HOSKINS. I object.
Mr. SAYLER. I am sure there will be no objection on the other side of the House, or on this, when my purpose is stated. It is merely to make a report from the committee on South Carolina in order that may be printed.
Mr. TOWNSEND, of New York. I object.
The House divided; and there were—ayes 153, noes 108.
Mr. RUSK demanded the yeas and nays.
The yeas and nays were ordered.

The question was taken; and decided in the affirmative—yeas 147, nays 107, not voting 36; as follows:

The question was taken; and decided in the affirmative—yeas 147, nays 107, not voting 36; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Bagby, John H. Bagley, jr., Banning, Beebe, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Chapin, John B. Clarke, ef Kentucky, John B. Clarke, ir., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Davis, De Bolt, Dibrell, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Fuller, Gauze, Gibson, Glover, Goode, Gurter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Heukle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar Franklin Landers, George M. Landers, Lane, Levy, Lewis, Luttrell, Maish, McFarland, McMahon, Meade, Metcalfe, Milliken, Mills, Morrison, Mutchler, Neal, New, O'Brien, Phelps, John F. Philips, Piper, Poppleton, Potter, Powell, Rea, Reagan, John Reilly, Rice; Riddle, John Robbins, William E. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Schleicher, Sheakley, Singleton, William E. Smith, Sonthard, Springer, Stanton, Stenger, Stone, Tarbox, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Walling, Walsh, Ward, Warner, Warren, Watterson, Whitthorne, Wigginton, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—147.

NAYS—Messrs, Adams, Anderson, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Bell, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Campbell, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Cutler, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Franklin, Freeman, Frye, Garfield, Goodin, Haralson, Benjamin W. Harris, Hathorn, Haymend

So the motion was agreed to; and accordingly (at one o'clock and twenty minutes p. m.) the House took a recess until Monday morning at ten o'clock.

## AFTER THE RECESS.

The recess having expired, the House resumed its session at ten o'clock Monday, February 19.

Mr. HALE. I ask unanimous consent that no business be done until the hour fixed for the reception of the Senate—eleven o'clock.

Mr. WILSON, of Iowa. Say until ten minutes before eleven.
Mr. WOOD, of New York. I would suggest to the gentleman from
Maine that if there be any business that would not be objected to by
any gentleman, such as the reference of papers, that might be done.
Mr. HALE. The trouble about that is that so few members are

here that something might come in in that way which might be objectionable.

Mr. WOOD, of New York. The gentleman would have the right to object to anything. He would hold in his own hands entirely the power to object.

power to object.

The SPEAKER. The gentleman from Maine moves that the House take a further recess until ten minutes to eleven.

Mr. HALL. I did not move that the House take a recess, but asked unanimous consent that no business be done until then.

The SPEAKER. Does the gentleman desire the occupant of the chair to remain in his seat all the time? That would be the effect of until the property of the property of the supercess.

putting it in the way he suggests.

Mr. WILSON, of Iowa. I would suggest that the motion be for a

Mr. HALE. Very well. My only object was to give members an opportunity to come in.

The motion was agreed to; and accordingly (at ten o'clock and four minutes a. m.) the House took a further recess till ten minutes before eleven o'clock.

At ten minutes before eleven o'clock a. m. the House resumed its session.

### COUNTING THE ELECTORAL VOTE.

The SPEAKER. The Chair desires to suggest that the four front rows of seats on the right of the Chair be reserved for the use of the

At eleven o'clock a. m. the Doorkeeper announced the Senate of the United States.

The Senate entered the Hall, preceded by its Sergeant-at-Arms and headed by its President pro tempore and its Secretary, the members and officers of the House rising to receive them.

In accordance with the law, seats had been provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; for the Senators, in the body of the Hall upon the right of the Presiding Officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the

Clerk's desk and upon each side of the Speaker's platform.

The PRESIDENT pro tempore of the Senate took his seat as Presiding Officer of the joint meeting of the two Houses, the Speaker of the House occupying a chair upon his left.

The PRESIDING OFFICER. The joint meeting of Congress for

counting the electoral vote resumes its session.

The objections presented to the certificates from the State of Louisiana having been submitted to the commission, the two Houses have reconvened to receive and consider the decision of that tribunal. The decision, which is in writing, by a majority of the commission, and signed by the members agreeing therein, will now be read by the Secretary of the Senate and be entered in the Journal of each House.

The Secretary of the Senate read as follows:

The Secretary of the Senate read as follows:

\*\*Electoral Commission, Washington, D. O., February 16, A. D. 1876.\*\*

To the President of the Senate of the United States, presiding in the meeting of the two Honses of Congress under the act of Congress entitled "An act to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877; "approved January 29, A. D. 1877:

The electoral commission mentioned in said act, having received certain certificates and papers purporting to be certificates, and papers accompanying the same, of the electoral votes from the State of Louisiana, and the objections thereto submitted to it under said act, now report that it has duly considered the same pursuant to said act and has by a majority of votes decided and does hereby decide that the votes of William P. Kellogg, J. Henri Bureb, Peter Joseph, Lionel A. Sheldon, Morris Marks, Aaron B. Levissee, Orlando H. Brewster, and Oscar Joffrion, named in the certificate of William P. Kellogg, governor of said State, which votes are certified by said persons, as appears by the certificate submitted to the commission as aforesaid, and marked numbers one (1) and three (3) by said commission, and herewith returned, are the votes provided for by the Constitution of the United States, and that the same are lawfully to be counted as therein certified, namely:

Eight votes for Rutherford B. Hayes, of the State of Ohio, for President; and Eight votes for William A. Wheeler, of the State of Ohio, for President; and Eight votes for William A. Wheeler, of the State of New York, for Vice-President.

Eight votes for William A. Wheeler, of the State of New York, for Vice-President.

The commission has by a majority of votes also decided, and does hereby decide and report, that the eight persons first before named were duly appointed electors in and by the State of Louisiana.

The brief ground of this decision is that it appears, upon such evidence as by the Constitution and the law named in said act of Congress is competent and periment to the consideration of the subject, that the before-mentioned electors appear to have been lawfully appointed such electors of President and Vice-President of the United States for the term beginning March 4, A. D. 1877, of the State of Louisiana and that they voted as such at the time and in the manner provided for by the Constitution of the United States and the law.

And the commission has by a majority of votes decided and does hereby decide that it is not competent under the Constitution and the law as it existed at the date of the passage of said act to go into evidence aliunde the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Louisiana on and according to the determination and declaration of their appointment by the returning officers for elections in the said State prior to the time required for the performance of their duties had been appointed electors, or by countre-proof to show that they had not; or that the determination of the said returning officers was not in accordance with the truth and the fact; the commission by a majority of votes being of opinion that it is not competent to prove that any of said persons so appointed electors as aforesaid held an office of trust or profit under the United States at the time when they were appointed or that

they were ineligible under the laws of the State, or any other matter offered to be proved aliunde the said certificates and papers.

The commission is also of opinion by a majority of votes that the returning officers of elections who canvassed the votes at the election for electors in Louisiana were a legally constituted body by virtue of a constitutional law and that a vecancy in said body did not vitiate its proceedings.

The commission has also decided and does hereby decide by a majority of votes, and report that as a consequence of the foregoing and upon the grounds before stated that the paper purporting to be a certificate of the electoral votes of said State of Louisiana, objected to by TIMOTHY O. Howz and others, marked "N. C. No. 2" by the commission and herewith returned, is not the certificate of the votes provided for by the Constitution of the United States, and that they ought not to be counted as such.

Done at Washington the day and year first above written.

SAMUEL F. MILLER.

SAMUEL F. MILLER. W. STRONG. JOSEPH P. BRADLEY. GEO. F. EDMUNDS. GEO. F. EDMUNDS.
O. P. MORTON.
FRED'K T. FRELINGHUYSEN.
JAMES A. GARFIELD.
GEORGE F. HOAR.

The PRESIDING OFFICER. Are there any objections to the decision of the commission

Mr. GIBSON. I have the honor to present the following objections to the decision and report of the electoral commission, signed by Senators and Representatives.

The PRESIDING OFFICER. The objections will be read by the

Clerk of the House.

The Clerk of the House [Mr. Adams] and one of the reading clerks [Mr. Pettit] read the objections, and concluded at twelve twenty

p. m.

The PRESIDING OFFICER. The Chair is advised that there are members of the House who desire to add their names to these objections. Is there objection to granting this request?

Senator LOGAN. None whatever.

The PRESIDING OFFICER. The Chair hears no objection, and gentlemen desiring to attach their signatures will step up to the desk and sign their names.

and sign their names.

Mr. CONGER. Will it be in order to add a protest to that document?

The PRESIDING OFFICER. The Chair will entertain any motion that is in order.

Many members then came forward and subscribed their names to the objections, which, with the signatures, are as follows:

The following objections are interposed by the undersigned, Senators and Representatives, to the decision made by the commission constituted by the act entitled "An act to provide for and regulate the counting of votes for President And Vice-President, and the decisions of questions arising thereon, for the term commencing March 4, A. D. 1877," as to the true and lawful electoral vote of the State of Louisiana, for the following reasons, viz:

First. For that the said commission as guides to their action adopted the rejected resolutions. as follows:

"FRIDAY, February 16, 1877.

"The commission met at ten o'clock a.m., pursuant to adjournment, with closed doors, for the purpose of consultation on the question submitted relative to the offers of proof connected with the objections raised to the certificates of electoral votes from the State of Louisiana.

"After debate,
"Mr. Commissioner Hoak submitted the following order:
"Ordered, That the evidence offered be not received."

"Mr. Commissioner Abbort offered the following as a substitute for the proposed order:

"Mr. Commissioner Hoar submitted the following order:

"Ordered, That the evidence ofered be not received."

"Mr. Commissioner Abbott offered the following as a substitute for the proposed order:

"Resolved, That so much of the act of Louisiana establishing a returning board for that State is unconstitutional and the acts of said returning board are void."

"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, nays 8.

"Those who voted in the affirmative were: Messrs. Abbott, Bayard, Clifford, Field, Hunton, Payne, and Thurman—7.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-huysen, Garfield, Hoar, Miller, Morton, and Strong—8.

"Mr. Commissioner Abbott offered the following as a substitute:

"Resolved, That evidence will be received to show that the returning board of Louisiana at the time of canvassing and compiling the vote of that State at the last election in that State was not legally constituted under the law establishing it, in this: that it was composed of four persons all of one political party, instead of five persons of different political parties."

"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, nays 8.

"Those who voted in the affirmative were: Messrs. Abbott, Bayard, Clifford, Field, Hunton, Payne, and Thurman—7.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-huysen, Gartield, Hoar, Miller, Morton, and Strong—8.

"Mr. Commissioner Abbott officed the following as a substitute:

"Resolved, That the commission will receive testimony on the subject of the frauds alleged in the specifications of the counsel for the objectors to certificates Nos. 1 and 3."

"Those who voted in the affirmative were: Messrs. Bradley, Edmunds, Freling-huysen, Gartield, Hoar, Miller, Morton, and Strong—8.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-huysen, Gartield, Hoar, Thurman—7.

"Those who voted in the affirmative were: Messrs. Bradley, Edmunds, Fre

porting to have been made and forwarded to said returning board in pursuance of the provisions of section 26 of the election law of 1672, alleging riot, tumult, intimidation, and violence at or near certain polls and in certain parishes were falsely fabricated and forged by certain discreptuable persons under the direction and with the knowledge of said returning board, and that said returning board knowings asid statements and affidavits to be false and forged, and that none of the said statements or affidavits were made in the manner or form or within the time required by law, did knowingly, wilfully, and fraudulently fail and refuse to canvass or compile more than ten thousand votes lawfully cast, as is shown by the statements of votes of the commissioners of election."

"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, anys 8.

"Those who voted in the affirmative were: Messrs. Abbott, Bayard, Clifford, Field, Hunton, Payne, and Thurman—7.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-huysen, Garfield, Hoar, Miller, Morton, and Strong—8.

"Mr. Commissioner Huxton offered the following as a substitute:

"Resolved, That evidence be received to prove that the votes cast and given at said election on the 7th of November last for the election of electors as shown by the returns made by the commissioners of election from the several polls or voting-places in said State have never been compiled or canvassed, and that the said returning board never even pretended to compile or canvass the returns made by said commissioners of election from the several polls or voting-places in said State have never been compiled or canvassed, and that the said returning board only pretended to canvass the returns made by said supervisors.

"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, anys 8.

"Those who voted in the affirmative were: Messrs. Abbott, Bayard, Clifford, Field, Hunton, Payne, and Thurman—7.

"Those wh

Second. For that the said commission refused to receive evidence offered, as in the annexed paper stated, or any part of said evidence, and decided that the votes mentioned in the certificates numbered 1 and 3 shall be counted for Hayes and Wheeler, said evidence to the contrary notwithstanding.

S. B. MAXEY, Texas;
T. F. RANDOLPH, New Jersey;
LUCIEN L. AINSWORTH,
JOHN D. C. ATKINS,
JOHN C. BAGBY,
HENRY B. BANNING,
GEORGE M. BEEBE,
RICHARD P. BLAND,
JAMES H. BLOUNT,
ANDREW R. BOONE,
TAUL BRADFFORD,
JOHN M. BRIGHT,
JOHN WOUNG BROWN,
AYLETT H. BUCKNER,
GEORGE C. CABELL,
WILLIAM P. CALDWELL,
WILLIAM P. CALDWELL,
MILTON A. CANDLER,
GEORGE W. CATE,
BERNARD G. CAULFIELD,
CHESTER W. CHAPIN,
JOHN B. CLARKE,
JOHN B. CLARKE,
FRANCIS D. COLLINS,
PHILIP COOK,
JACOB P. COWAN,
SAMUEL S. COX,
DAVID B. CULBERSON,
JOSEPH J. DAVIS,
REZIN A. DEBOLT,
GEORGE G. DIBRELL,
MILTON J. DURHAM,
JOHN R. EDEN,
ALBERT G. EGBERT,
E. JOHN ELLIS,
CHARLES J. FAULKNER,
WILLIAM H. FELTON,
DAVID DUDLEY FIELD,

Vheeler, said evidence to the contrary notwithstanding.

W. H. BARNUM, Connecticut;
CHAS. W. JONES, Florida;
FRANK B. E. BAILEY, Tennessee;
FRANK HEREFORD, West Virginia;
FRANK HEREFORD, West Virginia;
FRANK HEREFORD, West Virginia;
GEO. R. DENNIS, Maryland;
GEO. R. DENNIS, Maryland;
GEO. R. DENNIS, Maryland;
GEO. R. DENNIS, Maryland;
A. S. MERRIMON, North Carolina;
W. M. W. EATON, Connecticut;
S. B. MAXEY, Texas;
T. F. RANDOLPH, New Jersey;
T. C. MCCREERY, Kentucky;
J. E. McDONALD, Indiana;
Senators. Senators.

T. C. MCCREERY, Kentucky;
J. E. MCDONALD, Indiana;

GEORGE M. LANDERS,
WILLIAM M. LEVY,
BURWELL B. LEWIS,
JOHN K. LUTTRELL,
WILLIAM P. LYNDE,
L. A. MACKEY,
LEVI MAISH,
WILLIAM MCFARLAND,
JOHN A. MCMAHON,
HENRY B. METCALFE,
CHARLES W. MILLIKEN,
ROGER Q. MILLS,
HERN ANDO D. MONEY,
CHARLES H. MORGAN,
WILLIAM MUTCHLER,
LAWRENCE T. NEAL,
JEPTHA D. NEW,
JOHN F. PHILIPS,
EARLEY F. POPPLETON,
JOSEPH POWELL,
SAMUEL J. RANDALL,
DAVID REA,
JOHN H. REAGAN,
JOHN REILLY,
JAMES B. REILLY,
JAMES B. REILLY,
JAMES B. REILLY,
AMERICUS V. RICE,
HAYWOOD Y. RIDDLE,
JOHN ROBBINS,
MILES ROSS,
JOHN S. SAVAGE,
MILTON SAYLER,
ALFRED M. SCALES,
JOHN G. SCHUMAKER,
JAMES SHEAKLEY,
OTHOR C. SINGLETON,
WILLIAM M. F. SLEMONS,
WILLIAM, F. SLEMONS,

JESSE J. FINLEY,
WILLIAM H. FORNEY,
BENJAMIN J. FRANKLIN,
BENONI S. FULLER,
LUCIEN C. GAUSE,
RANDALL L. GIBSON,
JOHN GOODE, JR.,
JOHN GOODE, JR.,
JOHN GOODE, JR.,
JOHN GOODE, JR.,
HOMAS M. GUNTER.
ANDREW H. HAMILTON,
ROBERT HAMILTON,
ROBERT HAMILTON,
AUGUSTUS A. HARDENBERGH,
HENRY R. HARRIS,
JOHN T. HARRIS,
JOHN T. HARRIS,
LILIAM HARTRIDGE,
WILLIAM HARTRIDGE,
ABRAM S HEWITT,
GOLDSMITH W. HEWITT
BENJAMIN H. HILL,
WILLIAM S. HOLMAN,
CHARLES E HOOKER,
JAMES H. HOPKINS,
JOHN F. HOUSE,
ANDREW HUMPHREYS,
FRANK H. HURD,
GEORGE A. JENKS,
FRANK JONES,
THOMAS L. JONES,
EDWARD C. KEHR,
J. PROCTOR KNOTT.
LUCIUS Q. C. LAMAR,
FRANKLIN LANDERS,

MILTON I. SOUTHARD,
WILLIAM A. J. SPARKS,
WILLIAM M. SPRINGER,
WILLIAM H. STANTON,
WILLIAM S. STENGER,
ADLAI E. STEVENSON,
WILLIAM H. STONE,
THOMAS SWANN,
JOHN K. TARBOX,
FREDERICK H. TEESE,
WILLIAM TERRY,
CHARLES P. THOMPSON,
PHILIP F. THOMAS,
JAMES W. THROCKMORTON,
JOHN R. TUCKER,
JACOB TURNEY,
JOHN L. VANCE,
ROBERT B. VANCE,
ALFRED M. WADDELL,
ANSEL T. WALLING,
ELIJAH WARD,
LEVI WARNER,
WILLIAM WATTERSON,
ERASTUS WELLS,
WASHINGTON C. WHITTHORNE,
PETER D. WIGGINTON,
ALPHEUS S. WILLIAMS,
JAMES WILLIAMS,
JAMES WILLIAMS,
JERE N. WILLIAMS,
JERE N. WILLIAMS,
BENJAMIN A. WILLIS,
WILLIAM W. WILSHIRE,
BENJAMIN WILSON,
FERNANDO WOOD,
JESSE J. YEATES,
CASEY YOUNG,
Representatives.

Representatives.

The "annexed paper" referred to in the foregoing is as follows:

We offer to prove that William P. Kellogg, who certifies, as governor of the State of Louisiana, to the appointment of electors of that State, which certificate is now before this commission, is the same William P. Kellogg who, by said certificate, was certified to have been appointed one of said electors. In other words, that Kellogg certified his own appointment as such elector.

2. That said Kellogg was governor de facto of said State during all the months of November and December, A. D. 1876.

CONSTITUTION OF LOUISIANA.

"ART. 117. No person shall hold or exercise at the same time more than one office of trust or profit, except that of justice of the peace or notary public."

II.

II.

We offer to prove that said William P. Kellogg was not duly appointed one of the electors of said State in A. D. 1876, and that the certificate is untrue in fact. To show this we offer to prove—
(1) By certified copies of the lists made out, signed, and sworn to by the commissioners of election in each poll and voting-place in the State, and delivered by said commissioners to the clerk of the district court wherein said polls were established, except in the parish of Orleans, and in that parish delivered to the secretary of state, that at the election for electors in the State of Louisiana, on the 7th day of November 1sst, the said William P. Kellogg received for elector 6,300 votes less than were at said election cast for each and every of the following-named persons, that is to say: John McEnery, R. C. Wickliffe, L. St. Martin, E. P. Poché, A. De Blanc, W. A. Seay, R. G. Cobb, K. A. Cross. (Sec. 43, act 1872)

(2) In connection with the certified copies of said lists we offer to prove that the returning board, which pretended to canvass the said election under the act approved November 20, 1872, did not receive from any poll, voting-place, or parish in said State, nor have before them, any statement of any supervisor of registration or commissioner of election in form as required by section 28 of said act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt inflaences which prevented or tended to prevent a fair, free, and peace-table vote of all qualified electors entitled to vote at such poll or voting-place.

(3) We further offer to show that in many instances the supervisors of registration of the everal parishes willfully and fraudulently omitted from their consolidated statement, returned by them to the State returning board, the result and all mention of the votes given at certain polls or voting-places within their respective parishes, as shown to them by the returns and papers returned to said supervisors by the commi

voting-places omitted as aforesaid from said consolidated statements of said supervisors.

And that the said returning board willfully and fraudulently neglected and refused to make any canvases of the majorities so omitted or estimate them in any way in their prefended determination that the said Kellogg was duly elected an elector at the election aforesaid.

(4) We offer to show that by the consolidated statements returned to said returning board by the supervisors of registration of the several parishes of the State of the result of the voting at the several polls or voting-places within their parishes respectively, it appeared that said Kellogg received at said election 3,459 less votes for elector thru the said McEnery, Wickliffe, St. Martin, Poché, De Blane, Seay, Cobb, and Cross, and each and every of them.

(5) We further offer to show that the said returning board willfully and fraudulently estimated and counted as votes in favor of said Kellogg 234 votes which were not shown to have been given at any poll or voting-place in said State, either by any consolidated statement returned to said returning board by any of the said supervisors, nor by the statements, lists, tally-sheets, or returns made by any commissioners of election to any of said supervisors, or which were before said returning board.

(6) We offer to prove that the votes cast and given at said election on the 7th of November last for the election of electors, as shown by the return made by the commissioners of election from the several polls or voting-places in said State, have never been compiled nor canvassed; and that the said returning board never even pretended to compile or canvassed; and that the said returning board never even pretended to compile or canvassed; and that the said returning board never even pretended to compile or canvassed; and that the said returning board never even pretended to compile or canvassed; and that the said returning board never even pretended to compile or canvass the returns made by said commissioner

Act of 1572, section 47: "Supervisor must forward." Act of 1572, section 2: "beard must carvase."

(7) We offer to prove that the votes given for electors at the election of November 7 last at the several voting-places or polls in said State have never been opened by the governor of the said State in presence of the secretary of state, they have been presented by the governor of said State over. In presence as aforesaid, examined the returns of the commissioners of election for said clection to assertian therefrom, nor has he ever, in such presence of the said State over. In presence as aforesaid, examined the returns of the commissioners of election for said clection to assertian therefrom, nor has he ever prevended so to . (Revised Statitus, section 2826.)

(8) We further offer to prove—

That the said William I. Kertflinate, by which he certified that himself and others had been duly appointed electors as aforesaid, well knew that said certificate was untrue in fact in that behalf, and that the the said Kellogg, then well knew that he, the said Kellogg, that that behalf, and the the presence of the said Kellogs, then well knew that he, the said Kellogg, that not received, of the legal votes case at the very present that the said said election and the said kellogs and the said kellogs, and the said Kellogs, then well knew that he, the said Kellogg, the said Kellogs and the said kellogs are clearly as a said election of the said kellogs and the said kellogs are clearly as a said clear to the said kellogs and the sai

"To the honorable returning board of the State of Louisiana:

"Gentlemen: The undersigned, acting as counsel for the various candidates upon the democratic-conservative ticket, State, national, and municipal, with re-

upon the democratic-conservative ticket, State, national, and manages, spect show:

"That the returns from various polls and parishes are inspected by this board and the vote announced by it is merely that for governor and electors;

"That the tabulation of all other votes is turned over to a corps of clerks, to be done outside of the presence of this board;

"That all of said clerks are republicans, and that the democratic-conservative candidates have no check upon them, and no means to detect errors and fraudulent tabulations, or to call the attention of this board to any such wrong, if any exist:

"That by this system the fate of all other candidates but governor and electors is placed in the hands of a body of republican clerks with no check against erroneous or dishonest action on their part;

"That fair play requires that some check should be placed upon said clerks and

some protection afforded to the said candidates against error or dishonest action on the part of said clerks:

"Wherefore they respectfully ask that they be permitted to name three respectable persons, and that to such parties be accorded the privilege of being present in the room or rooms where said tabulation is progressing, and of fully inspecting the tabulation and comparing the same with the returns, and also of fully inspecting the returns, and previous to the adoption by this board of said tabulation, with a view to satisfy all parties that there has been no tampering or unfair practice in connection therewith.

"Very respectfully,

"F. C. ZACHARIE.

"F. C. ZACHARIE.
"CHARLES CAVANAC.
"E. A. BURKE.
"J. R. ALCÉE GAUTHREAUX.
"HENRY C BROWN.
"FRANK MCGLOIN.

"H. M. SPOFFORD,

" Of Counsel"-

they, the said Wells, Anderson, Kenner, and Casanave, acting as said board, expressly refused to permit any democrat, or any person selected by democrats, to be present with said clerks and assistants while they were engaged in the compilation and canvass aforesaid, or to examine into the correctness of the compilation and canvass made by said clerks and assistants as aforesaid.

And that said returning board, in pursuance of said unlawful combination and conspiracy aforesaid, and for the purpose of concealing the animus of said board and inspiring confidence in the public mind in the integrity of their proceedings, on the 18th day of November, A. D. 1876, adopted and passed a preamble and resolution, as follows:

"Whereas this board has learned with satisfaction that distinguished gentlemen of national reputation, from other States, some at the request of the President of

"I concur herein.

lution, as follows:

"Whereas this board has learned with satisfaction that distinguished gentlemen of national reputation, from other States, some at the request of the President of the United States and some at the request of the national executive committee of the democratic party, are present in this city, with the view to witness the proceedings of this board in canvassing and compiling the returns of the recent election in this State for presidential electors, in order that the public opinion of the country may be satisfied as to the truth of the result and the fairness of the means by which it may have been attained; and
"Whereas this board recognizes the importance which may attach to the result of their proceedings, and that the public mind should be convinced of its justice by a knowledge of the facts on which it may be based: Therefore,

Be it resolved. That this board does hereby cordially invite and request five gentlemen from each of the two bodies named, to be selected by themselves respectively, to attend and be present at the meetings of this board while engaged in the discharge of its duties, under the law, in canvassing and compiling the returns and ascertaining and declaring the result of said election for presidential electors, in their capacity as private citizens of eminent reputation and high character, and as spectators and witnesses of the proceedings in that behalf, of this board."

But that said returning board, being convinced that a compilation and canvass of votes given at said election for presidential electors, made fairly and openly, would result in defeating the object of said corspiracy, and compelling said returning board to certify that said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross had been at said election duly chosen, elected, and appointed electors by the said State of Louisiana; and, in pursuance of said unawful combination and conspiracy, did afterward, to wit, on the 20th day of November, A. D. 1576, adopt and pass the following rules for

"The returning officers, if they think it advisable, may go into secret session to consider any motion, argument, or proposition which may be presented to them; any member shall have the right to call for secret session for the above purpose."

"That the evidence for each contested poll in any parish, when concluded, shall be laid aside until all the evidence is in from all the contested polls in the several parishes where there may be contests, and after the evidence is all in the returning officers will decide the several contests in secret session; the parties or their attorneys to be allowed to submit briefs or written arguments up to the time fixed for the returning officers going into secret session, after which no additional argument to be received unless by special consent."

That the proceedings thus directed to be had in secret were protested against by the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross; but said board thereafter proceeded and pretended to complete their duties as such returning board; and did perform, execute, and carry out the most important duties devolving upon said board in secret, with closed doors, and in the absence of any member of their board belonging to the democratic party or any person whatever not a member of said board not belonging to the republican party.

That the said Wells, Anderson, Kenner, and Casanave, acting as said returning board, while engaged in the compilation and canvass aforesaid, were applied to to permit the United States supervisors of election, duly appointed and qualified as such, to be present at and witness such compilation or canvass.

That application was made to said returning board in that behalf, as follows:

To the president and members of the returning board of the State of Louisiana:

To the president and members of the returning board of the States of Louisiana:

Gentlemn: The undersigned, of counsel for United States supervisors of election, duly appointed and qualified as such, do hereby except, protest, and object to any ruling made this 20th day of November, 1876, or that hereafter may be made, whereby they are deprived of the right of being present during the entire canvass and compilation of the results of the election lately held in the State of Louisiana, wherein electors for President and Vice-President, and members of the Forty-fifth Congress were balloted for, and the result of which said board are now canvassing. That under the fifth section of the United States act of February 28, 1871, they are to be and remain where the ballot boxes are kept, at all times after the polls are open, until each and every vote cast at said time and place shall be counted, and the canvass of all votes polled to be wholly completed, and the proper and requisite certificate or returns made, whether said certificate or returns be required under any law of the United States, or any State, territorial, or municipal law.

That under said law of the United States, District Attorney J. R. Beckwith, under date of October 30, 1872, gave his written official opinion for the instruction and guidance of persons holding the office now held by protestants, wherein said United States district attorney said:

"It cannot be doubted that the duty of the supervisors extends to the inspection of the entire election from its commencement until the decision of its result. If the United States statutes were less explicit there still could be no doubt of the duty and authority of the supervisors to inspect and canvass every vote cast for each and every candidate, State, parechial, and Federal, as the law of the State neither provides nor allows any separation of the election for Representatives in Congress, &c., from the election of State and parish officers. The election is in law a single election, and the power of insp

In which opinion the attorney-general of the State of Louisiana coincided. Whereupon protestants claim admittance to all sessions of the returning board, and protest against their exclusion as unwarranted by law, as informed by their attorneys has been done and is contemplated to be done hereafter in said proceedings of said board.

F. C. ZACHARIE,
E. A. BURKE,
CHAS. CAVANAC,
FRANK MCGLOIN,
J. R. A. GAUTHREAUX,
H. C. BROWN,
Of Counsel.

But that said Wells, Anderson, Kenner, and Casanave, acting as such returning board, in further pursuance and execution of said unlawful combination and conspiracy, then and there refused to permit said United States commissioners of election to be present for the purpose aforesaid, but proceeded in their absence to the pretended compilation and canvass aforesaid.

That the said returning board, while in session as aforesaid, for the purpose aforesaid, to wit, on the 20th day of November, 1s76, adopted the following rule to govern their proceedings; that is to say:

That the sail returning board, while in session as aforesaid, for the purpose aforesaid, to wit, on the 20th day of November, 1576, adopted the following rule to govern their proceedings; that is to say:

"No ex parts affidavits or statements shall be received in evidence, except as a basks to show that such fraud, infundation, or older Illegal Practices had at some body officers of cleeton, or in verification of statements as required by law, shall be received in evidence as prima Jacis."

But that said board absequently, while sitting as aforesaid, for the purposes of the process of

John McEnery, 10,290; for said R. C. Wickliffe, 10,293; for said L. St. Martin, 20,291; for said F. P. Poché, 10,289; for said A. De Blanc, 10,289; for said W. A. Seay, 10,291; for said R. A. Cobb, 10,261; for said K. A. Cross, 10,288; they, the said members of said returning board, then and there, well knowing that all of said votes which they neglected and refused to canvass and compile had been duly and legally cast at said election for presidential electors by legal voters of said State; and then and there, well knowing that had they considered, estimated, and counted, compiled, and canvassed said votes as they then and there well knew it was their duty to do, it would have appeared, and they would have been compelled to certify and return to the secretary of state, that said Kellogg had not been duly elected or appointed an elector for said State; but that a said election the said McEnery, the said Wickliffe, the said St. Martin, the said Poché, the said De Blanc, the said Seay, the said Cobb, and the said Cross had been duly elected and appointed presidential electors in said State.

And that by false, fraudulent, willful, and corrupt acts and omissions to act by said returning board as aforesaid in the matter aforesaid, and by said nonfeasance, misfeasance, and malfeasance of said returning board, as hereinbefore mentioned, the said returning board made to the secretary of state of said State the statement, certificate, and return upon which the said Kellogg, as de facto governor of said State, pretended to make his said false certificate, certifying that himself and others had been duly appointed electors for said State, as hereinbefore mentioned; and that the said extificate made by the said Kellogg, as de facto governor, each overy, and all were made in pursuance and execution of said unlawful and criminal combination and conspiracy, as was well known to and intended by each and every of the members of said returning board when they made their said false statement, certificate, and return to the secre

We further offer to prove—
That Oscar Joffrion was on the 7th day of November, A. D. 1876, supervisor of registration of the parish of Pointe Coupée, and that he acted and officiated as such supervisor of registration for said parish at the said election for presidential electors on that day; and that he is the same person who acted as one of the electors for said State, and on the 6th day of December, A. D. 1876, as an elector cast a vote for Rutherford B. Hayes for President of the United States and for William A. Wheeler for Vice-President of the United States.

IV.

We further offer to prove—
That on the 7th day of November, A. D. 1876, A. B. Levissee, who was one of the pretended college of electors of the State of Louisiana, and who in said college gave a vote for Rutherford B. Hayes for President of the United States and for William A Wheeler for Vice-President of the United States, was at the time of such election a court commissioner of the circuit court of the United States for the district of Louisiana, which is an office of honor, profit, and trust under the Government of the United States.

We further offer to prove—
That on the 7th day of November, A. D. 1876, O. H. Brewster, who was one of the pretended electors in the pretended college of electors of the State of Louisiana, and who in said college gave a vote for Rutherford B. Hayes for President of the United States and for William A. Wheeler for Vice-President of the United States, was at the time of such election as aforesaid holding an office of honor, profit, and trust under the Government of the United States, to wit, the office of surveyor-general of the land office for the district of Louisiana.

We further offer to prove—
That on the 7th day of November, 1876, Morris Marks, one of the pretended electors, who in said college of electors cast a vote for Rutherford B. Hayes for President of the United States and a vote for William A. Wheeler for Vice-President of the United States, was, ever since has been, and now is holding and exercising the office of district attorney of the fourth judicial district of said State, and receiving the salary by law attached to said office.

We further offer to prove—
That on the 7th day of November, A. D. 1876, J. Henri Burch, who was one of the pretended electors, who in said pretended electoral college gave a vote for Rutherford B. Hayes for President of the United States and a vote for William A. Wheeler for Vice-President of the United States, was holding the following offices under the constitution and laws of said State; that is to say: member of the board of control of the State penitentiary, also administrator of deaf and dumb asylum of said State, to both of which offices he had been appointed by the governor, with the advice and consent of the senate of said State, both being offices with salaries fixed by law, and also the office of treasurer of the parish school board for the parish of East Baton Rouge; and that said Burch, ever since the said 7th day of November, (and prior thereto,) has exercised and still is exercising the functions of all said offices and receiving the emoluments thereof.

VIII.

VIII.

We further offer to prove the canvass and compilation actually made by said returning board, showing what parishes and voting-places and polls were compiled and canvassed and what polls or voting-places were excluded by said returning board from their canvass and compilation of votes given for presidential electors; and we also offer to show what statements and returns of the commissioners of election and of the supervisors of registration were duly before said returning board.

IX.

We further offer to prove that a member of said returning board offered to receive a bribe, in consideration of which the board would certify the election of the Tilden electors.

We offer to prove that the statements and affidavits purporting to have been made and forwarded to said returning board, in pursuance of the provisions of section 26 of the election law of 1872, alleging riot, tumult, intimidation, and violence at or near certain polis, and in certain parishes, were faisely fabricated and forged by certain disreputable persons under the direction and with the knowledge of said returning board, and that said returning board, knowing said statements and affidavits to be false and forged, and that none of said statements or affidavits were made in the manner or form required by law, did knowingly, willfully, and fraudulently fail and refuse to canvass or compile more than 10,000 votes lawfully cast, as is shown by the statements of votes of the commissioners of election.

We further offer to prove—
That said returning board did willfully and fraudulently pretend to canvass and compile, and did promulgate as having been canvassed and compiled, certain votes for the following-named candidates for electors which were never cast, and which did not appear upon any tally-sheet, statement of votes, or consolidated statement or other return before said board, namely: J. H. Burch, 241; Peter Joseph, 1,322; L. A. Sheldon, 1,344; Morris Marks, 1,334; A. B. Levissee, 829; O. H. Brewster, 776; Oscar Joffrion, 1,384.

The PRESIDING OFFICER. Are there further objections to the

decision of the commission?

Senator WALLACE. I offer the objection which I send to the desk, signed by Senators and Representatives.

The PRESIDING OFFICER. The objection will be read by the

Secretary of the Senate.

The Secretary of the Senate read as follows:

The Secretary of the Senate read as follows:

The undersigned, Senators and members of the House of Representatives, object to the decision of the electoral commission as to the electoral votes of the State of Louisiana, because—

First, the said decision was made in violation of the law under which said commission acts, in this, that by said act the said commission is required to decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in said State; yet said commission refused to examine and ascertain who were duly appointed electors in and by the State of Louisiana and what votes from such State are within the provisions of the Constitution of the United States.

Second. Because the act creating said commission was passed to the end that the commission would hear and examine evidence and honestly decide which electors in any disputed State were fairly and legally chosen; whereas the said commission refused to hear and consider evidence offered to show that the electors whose votes the said commission has decided shall be counted were not duly chosen, but falsely and fraudulently acted as such electors, as well as the evidence offered to show that the pretended certificates of election of said electors were produced by corruption and were wholly untrue.

Third. Because the said decision is in disregard of truth, justice, and law, and establishes the demoralizing and ominous dootrine that fraud, forgery, bribery, and perjury can lawfully be used as a means to make a President of the United States against the well-known or easily ascertained will of the people and of the States.

JNO. W. JOHNSTON, W.M. A. WALLACE, J. E. BAILEY, GEO. R. DENNIS, FRANCIS KERNAN, JAMES K. KELLY, GEO. R. DENNIS, FRANCIS KERNAN, JAMES K. HOPKINS, ANDREW R. BOONE,

JAMES H. HOPKINS, ANDREW R BOONE, CHAS. B. ROBERTS, THOS. S. ASHE, H. D. MONEY. HIESTER CLYMER, Representatives.

The PRESIDING OFFICER. Are there further objections to the

decision of the commission.

Mr. COCHRANE. I desire to offer a further objection to the decis-

The PRESIDING OFFICER. The Clerk of the House will read the

objection.
The Clerk of the House read as follows:

The Clerk of the House read as follows:

The undersigned, Senators and Representatives, do object to the counting of the votes as recommended by eight members of the joint commission, and do protest against counting the electoral vote of the State of Louisiana, for there asons following, to wit:

First. It was not denied before the commission that the Tilden electors received a large majority of the votes cast.

Second. It was not denied before the commission that Wells and his associates, who styled themselves a returning board, were guilty of gross fraud; that their certificate given to the Hayes electors was false and fraudulent, and that the raction in canvassing the votes was in violation of the constitution and laws of the State of Louisiana.

Third. The action of the eight members of said joint commission in declining to hear evidence of the above and other facts was a violation of the letter and spirit of the act under which said commission was created and of the spirit of the Constitution of the United States.

R. E. WITHERS,

R. E. WITHERS, JOHN W. JOHNSTON, GEORGE R. DENNIS, HENRY COOPER, S. B. MAXEY,

M. I. SOUTHARD,
ALEXANDER G. COCHRANE,
JOHN H. CALDWELL,
JAMES SHEAKLEY,
A. H. BUCKNER,
WM. MUTCHLER,
BENJAMIN WILSON,
Representatives.

The PRESIDING OFFICER. Are there further objections to the decision of the commission? [After a pause.] There are none. Objections to the decision of the commission having been submitted and read, the Senate will now withdraw to its Chamber, that the two Houses separately may consider and decide upon the objections.

Accordingly (at twelve o'clock and fifty-five minutes p. m.) the Senate withdrew.

## PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BRADLEY: Joint resolutions of the Legislature of Michigan, for an appropriation for the construction of a light-house and steam fog-signal on Stannard's Rock, Lake Superior, to the Commit-

tee on Appropriations.

By Mr. CHITTENDEN: The petition of Rosanna Campbell, for a pension, to the Committee on Invalid Pensions.

By Mr. DE BOLT: Concurrent resolution of the Legislature of Missouri, instructing the Senators and requesting the Representatives in Congress from that State to prevent the removal of the Sioux Indians to the Indian Territory, to the Committee on Indian Affairs.

Also, the petition of R. E. Beazley, L. T. Hatfield, and 25 other citizens of Milan, Missouri, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. HUNTON: The petition of citizens of Alexandria, for an appropriation for an ice-boat to keep open the navigation of the Po-

by Mr. JENKS: A paper relating to the establishment of a post-route from Armah, via Duncan's Mills, to Belsana, to the Committee on the Post-Offices and Post-Roads.

on the Post-Offices and Post-Roads.

Also, the petition of citizens of Pennsylvania, for the repeal of the bank-tax laws, to the Committee on Banking and Currency.

By Mr. KIDDER: The petition of Charles Cavalier and 99 other citizens of Dakota, for an appropriation to build bridges on military roads between Grand Forks and Forts Pembina and Totten, to the Committee on Military Affairs.

By Mr. MAGOON: Memorial of the Legislature of Wisconsin, for an appropriation to aid in the completion of the Sturgeon Bay and Lake Wichigan Canal to the Committee on Bailways and Canals.

an appropriation to aid in the completion of the Sturgeon Bay and Lake Michigan Canal, to the Committee on Railways and Canals.

Also, the petition of Hon. R. M. Miller and 50 other citizens of Crawford County, Wisconsin, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. SMITH, of Pennsylvania: The petition of 74 citizens of Lancaster County, Pennsylvania, that pensions shall in all cases date from the discharge of the soldier, to the Committee on Invalid Pensions

By Mr. SPRINGER: The petition of citizens of Athens, Illinois, for cheap telegraphy, to the same committee.

By Mr. STRAIT: Memorial of the Legislature of Minnesota, for the

right of way and grant of land for a railroad from Saint Paul to the

fight of way and grant of national rathroad from Sainte Fain to the falls of Sainte Marie, to the Committee on Public Lands.

By Mr. THROCKMORTON: The petition of J. G. Griffith, S. Spencer, and others, of Texas, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

## IN SENATE.

# MONDAY, February 19, 1577-10 a. m.

The PRESIDENT pro tempore. The recess having expired, the Sen-

ate resumes its session.

Mr. WITHERS. Information was sent to the Senate that the House would be ready to receive us at what hour to proceed with the count of the votes?

The PRESIDENT pro tempore. At eleven o'clock.
Mr. WITHERS. Would it not be in order for us to take a recess

The PRESIDENT pro tempore. The Senate having already taken a recess, another recess cannot be taken until a new question is raised

a recess, another recess cannot be taken until a new question in the joint meeting.

Mr. WITHERS. Is that the construction of the act?

The PRESIDENT pro tempore. That is the construction.

Mr. WITHERS. Very well.

The PRESIDENT pro tempore, (at ten o'clock and fifty-six minutes a. m.) The House having notified the Senate that it would be ready to receive it at eleven o'clock, as it is within four minutes of that time, the Senate will now repair to the Hall of the House of Representatives.

The Senate accordingly proceeded to the Hall of the House of Representatives

The Senate returned to its Chamber at twelve o'clock and fifty-five minutes p. m., and the President pro tempore resumed the chair.

## ELECTORAL VOTE OF LOUISIANA

The PRESIDENT pro tempore. The Senate having met the House of Representatives in joint meeting to receive a decision from the commission, and objections having been submitted, the two Houses separated for the purpose of allowing the two Houses to consider and decide upon those objections. The Chair will now lay before the Senate the decision of the commission.

Mr. SHERMAN. Unless some Senator desires to have it read, the

decision having been read in the joint meeting, I desire to submit a resolution at this time.

The PRESIDENT pro tempore. The Chair will submit three objections now, if the decision is not to be read.

Mr. DAVIS. I think the decision and the objections onght to be

read.

The PRESIDENT pro tempore. The Senator from West Virginia insists upon the reading.

Mr. SARGENT. Of course if the objections and papers are to be

read at length, there will be no opportunity for any discussion upon their contents, and I should like to inquire of the Senator from West Virginia if he desires that there shall be no discussion upon them.

Mr. WITHERS. How does the Senator make that out?

Mr. SARGENT. Because the time runs, the two hours commence

at once

Mr. WITHERS. The objections must be read before we can consider them.

The PRESIDENT pro tempore. The Chair will rule that when the debate commences, two hours can be occupied in debate. The time occupied in reading the decision or objections will not be included in the two hours.

Mr. SARGENT. That of course will remove my objection.

The PRESIDENT pro tempore. The two hours will be exclusive of that time. Does the Senator from West Virginia insist on the read-

ing?
Mr. SHERMAN. I submit a resolution and then I suppose that the Senator will have a right to ask for the reading of the papers:

Resolved. That the decision of the commission upon the electoral vote of the State of Louisiana stand as the judgment of the Senate, the objections made thereto to the contrary notwithstanding.

Mr. JOHNSTON. Is it in order to offer such a resolution until the

The PRESIDENT pro tempore. The Senator from Ohio has submitted a resolution to be read for information. The Senator from West Virginia insists upon the reading of the decision. The Secretary will read it.

The Secretary read as follows:

ELECTORAL COMMISSION, Washington, D. C., February 16, A. D. 1877.

The Secretary read as follows:

| Washington, D. C., February 16, A. D. 1877. |
| To the President of the Senate of the United States, presiding in the meeting of the two Houses of Congress, under the act of Congress entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, "approved January 29, A. D. 1877.

The electoral commission mentioned in said act having received certain certificates and papers purporting to be certificates and papers accompanying the same of the electoral votes from the State of Louisiana and the objections thereto, submitted to it under said act, now report that it has duly considered the same qursuant to said act, and has by a majority of vites decided, and does hereby decide, that the votes of William P. Kellogg, J. Duri B. The vites active activities, and has by a majority of vites decided, and does hereby decide, that the votes of William P. Kellogg, J. Duri B. The vites activities of William P. Kellogg, governor of said State, which votes ameetified by said persons as appears by the certificates submitted to the commission as aforesaid and marked Nos. one (1) and three (3) by said commission, and herewith returned, are the votes provided for by the Constitution of the United States, and that the same are lawfully to be counted as therein certified, namely, eight (8) votes for William A. Wheeler, of Now York, for Vice-President, and eight (3) votes for William A. Wheeler, of Now York, for Vice-President.

The commission has by a majority of votes also decided, and does hereby decide and report, that the eight persons first before named were duly appointed electors in and by the State of Louisiana.

The brief ground of this decision is that it appears upon such evidence as by the Constitution and the law named in said act of Congress is competent and perthent to the consideration of the subject, that the before-mentioned electors appear to have been

RITES above witten.

SAM. F. MILLER.
W. STRONG.
JOSEPH P. BRADLEY.
GEORGE F. EDMUNDS.
O. P. MORTON.
FREDERICK T. FRELINGHUYSEN,
JAMES A. GARFIELD.
GEORGE F. HOAR.

The PRESIDENT pro tempore. Does any Senator desire the objections to be read? If there is no objection, they will not be read.

Mr. DAVIS. If not read they ought to appear in the RECORD. I think the objections and the decision should go together.

Mr. BOGY. I should like to have the objections read.

Mr. SHERMAN. I have no objection to having the papers read if the Senator desires; but I submit to the Senator from Missouri that the great body of Senators have heard the whole of these papers read in the House and that they will have been reinted twice in the Prein the House, and that they will have been printed twice in the REC-ORD without being read here. I really do not think it would be wise to cumber the RECORD with a repetition of the documents. It seems to me we ought not to cumber the RECORD three times with a long document which has been already printed in the RECORD and which will appear in the proceedings of the two Houses.

Mr. DAVIS. I for one shall insist that if not read the objections shall be printed in the RECORD. The whole proceedings ought to appear in the RECORD of this day's proceedings. This is the only time probably that these papers will come to the Senate in an official way, the objections having been made in the House.

Mr. SHERMAN. The objections will appear in the RECORD to-morrow in the record of the proceedings of the House.

Mr. MORTON. I will say to the Senator from West Virginia that the proceedings of the House will contain the objections, whether they are read here or not.

the proceedings of the House will contain the objections, whether they are read here or not.

The PRESIDENT pro tempore. The Chair will state to the Senator from West Virginia that the objections having been read in joint meeting they will appear in the House Journal.

Mr. DAVIS. We suppose they will appear there, but we know nothing of that. There may be the same movement made there that is made here, for aught we know. Their appearing once would be sufficient if the papers do appear there, but they certainly ought to appear in to-day's proceedings of the Senate, in the Senate proceed. appear in to-day's proceedings of the Senate, in the Senate proceedings as well as in the House proceedings.

The PRESIDENT pro tempore. The Chair only judges from the past. It has been done in the past in making up the Journals.

Mr. ALLISON. The papers will appear in the Journal of the joint

meeting.

The PRESIDENT pro tempore. The Chair will state now that, if any Senator desires, they will appear in the Journal of the Senate

without a formal reading.

Mr. BOGY. This is the most important business which this body has ever been called upon to perform. I do not attach much importance to the objection that the papers if read here will be printed twice. I desire that they shall be printed in the RECORD and I think the papers should be read in the Senate. It will take but a little time, and as I say, it is the most important proceeding that this body has ever been called upon to consummate, and I do not think that the consideration that the reading would consume some little time is of much importance.

Mr. JOHNSTON. Do I understand the Chair to state that the objections will be printed in the Journal without a formal reading?

The PRESIDENT pro tempore. The Chair stated that all the objections would be printed at length in the Journal of the House side.

Mr. EATON. Will they also appear in the RECORD of to-morrow morning

The PRESIDENT pro tempore. In the RECORD of to-morrow morning. Does the Senator from Missouri desire them to be read?

Mr. BOGY. I do not think it would take much time to read those

objections and I should like to have them read.

The PRESIDENT pro tempore. The Senator from Missouri insists upon their being read. The Secretary will read them.

The Secretary read as follows:

The following objections are interposed by the undersigned, Senators and Representatives, to the decision made by the commission constituted by the act entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decisions of questions arising thereon, for the term commencing March 4, A. D. 1877," as to the true and lawful electoral vote of the State of Louisiana, for the following reasons, viz:

First. For that the said commission as guides to their action adopted the rejected resolutions, as follows:

resolutions, as follows:

"FRIDAY, February 16, 1877. "The commission met at ten o'clock a.m., pursuant to adjournment, with closed doors, for the purpose of consultation on the question submitted relative to the offers of proof connected with the objections raised to the certificates of electoral votes from the State of Louisiana.

doors, for the purpose of consultation on the question summitted relative to the orfers of proof connected with the objections raised to the certificates of electoral votes from the State of Louisiana.

"After debate,
"Mr. Commissioner Hoar submitted the following order:
"Ordered, That the evidence offered be not received."
"Mr. Commissioner Arbort offered the following as a substitute for the proposed order:
"Resolved, That so much of the act of Louisiana establishing a returning board for that State is unconstitutional and the acts of said returning board are void."
"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, nays 8.

"Those who voted in the affirmative were: Messrs. Abbott, Bayard, Clifford, Field, Hunton, Payne, and Thurman—7.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-huysen. Garfield, Hoar, Miller, Morton, and Strong—8.
"Mr. Commissioner Arbort offered the following as a substitute:
"Resolved, That evidence will be received to show that the returning board of Louisiana at the time of carvassing and compiling the vote of that State at the last election in that State was not legally constituted under the law establishing it, in this: that it was composed of four persons all of one political party, instead of five persons of different political parties."

"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, nays 8.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-huysen, Garfield, Hoar, Miller, Morton, and Strong—8.

"Mr. Commissioner Arbort offered the following as a substitute:

"Resolved, That the commission will receive testimony on the subject of the frands alleged in the specifications of the counsel for the objectors to certificates Nos. 1 and 3.

"Mr. Commissioner Arbort offered the following as a substitute:

"Resolved, That the commission will receive testimony on the subject of the frands alleged in the specifications of the counsel for the objectors to

"The question being on the adoption of the substitute, it was determined in the negative—yeas 7, may 8."

"Those who voted in the negative were: Messrs. Abbott, Bayard, Clifford, Field, Hunton, Payne, and Thurman—7.

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-Indunon, Payne, and Thurman—7.

"Mr. Commissioner Ausort offered the following as a substitute: "Resolved, That evidence is admissible that the statements and affidavits purporting to have been made and forwarded to said returning board in pursance of the provision of section 26 of the election haw of 1872, alleging fol, tamult, intimidation, and violence at or near certain polls and in certain parishes were falsely the knowledge of said returning board, and that said returning board knowing said statements or affidavits were made in the manner or form or within the time equired by law. did knowingly, willfully, and fraudulently fail and refuse to can-vass or compile more than ten thousand votes lawfully cast, as is shown by the statements or votes of the commissioners of election."

"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, may 8."

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"The question being on the adoption of the substitute, it was decided in the negative—yeas 7, may 8."

"Those who voted in the negative were: Messrs. Bradley, Edmunds, Freling-Invasor, Garrield, Hoar, Miller, Motro, and Strong—8."

"Mr. Commissioner Hunton offered the following as a substitute: "Resolved, That evidence be received to prove that the votes cast and given at said election on the 7th of November last for the election of electors as shown by the returns made by said supervisors."

"Those who voted in the negative were: Messrs. Abbott, Bayard, Clifford, Pield, Hunton, Payne, and Thurman—7."

"Those who voted in the negative were: Mes

S. B. MALEY, ICARS;
T. F. RANDOLPH, New Jersey;
LUCIEN L. AINSWORTH,
JOHN D. C. ATKINS,
JOHN C. BAGBY,
HENRY B. BANNING,
GEORGE M. BEEBE,
RICHARD P. BLAND,
JAMES H. BLOUNT,
ANDREW R. BOONE,
TAUL BRADFORD,
JOHN M. BRIGHT.
JOHN YOUNG BROWN,
AYLETT H. BUCKNER,
GEORGE C. CABELL,
JOHN H. CALDWELL,
WILLIAM P. CALDWELL,
MILION A. CANDLER,
GEORGE W. CATE,
BERNARD G. CAULFIELD,
CHESTER W. CHAPIN,
JOHN B. CLARKE,
JOHN B. CLARKE,
HIESTER CLYMER,
ALEXANDER G. COCHRANE,
FRANCIS D. COLLINS,
PHILIP COOK,
JACOB P. COWAN,
SAMUEL S. COX.
DAVID B. CULBERSON,
JOSEPH J. DAVIS,
REZIN A. DE BOLT,
GEORGE G. DIBRELL,
MILTON J. DURHAM,

w. H. BARNUM, Connecticut;
CHAS. W. JONES, Florida;
FRANCIS KERNAN, New York;
FRANCIS KERNAN, New York;
FRANK HEREFORD, West Virginia;
GEO. R. DENNIS, Maryland;
HENRY COOPER, Tennessee;
LEWIS V. BOGY, Missouri;
WM. W. EATON, Connecticut;
WM. W. EATON, Connecticut;
T. M. NORWOOD, Georgia;
T. F. RANDOLPH, New Jersey;
WILLIAM M. LEVY

R. E. WITHERS, Virginia;
GEO. R. DENNIS, Maryland;
GEORGE GOLDTHWAITE, Alabama;
LEWIS V. BOGY, Missouri;
T. M. NORWOOD, Georgia;
T. C. MCCREERY, Keutucky;
J. E. McDONALD, Indiana;
Senators.

J. E. MCDONALD, Indiana;
WILLIAM M. LEVY,
BURWELL B. LEWIS,
JOHN K. LUTTRELL,
WILLIAM P. LYNDE,
L. A. MACKEY,
LEVI MAISH,
WILLIAM MCFARLAND,
JOHN A. MCMAHON,
HENRY B. METCALFE,
CHARLES W. MILLIKEN,
1 OGER Q. MILLS,
HERNANDO D. MONEY,
CHARLES H. MORGAN,
WILLIAM MUTCHLER,
LAWRENCE T. NEAL,
JOHN F. PHILIPS,
EARLEY F. POPPLETON,
JOSEPH POWELL,
SAMUEL J. RANDALL,
DAVID REA,
JOHN H. REAGAN,
JOHN REALLY,
JAMES B. REILLY,
AMERICUS V. RICE,
HAYWOOD Y. RIDDLE,
JOHN ROBBINS,
MILLS ROSS,
JOHN S SAVAGE,
MILTON SAYLER,

JOHN R. EDEN,
ALBERT G. EGBERT,
E. JOHN ELLIS,
CHARLES J. FAULKNER,
WILLIAM H. FELTON,
DAVID DUDLEY FIELD,
JESSE J. FINLEY,
WILLIAM H. FOENEY,
BENJAMIN J. FRANKLIN,
BENONI S. FULLER,
LUCIEN C. GAUSE,
RANDALL L. GIBSON,
JOHN M. GLOVER,
JOHN GOODE, JR.,
JOHN GOODE, JR.,
JOHN R. GOODIN,
THOMAS M. GUNTER,
ANDREW H. HAMILTON,
ROBERT HAMILTON,
ROBERT HAMILTON,
AUGUSTUS A. HARDENBERGH,
HENRY R. HARRIS,
JOHN T. HARRIS,
JOHN T. HARRIS,
JOHN T. HARRIS,
JULIAN HARTIDGE,
WILLIAM HARTZELL,
ROBERT A. HATCHER,
ELI J. HENKLE,
ABRAM S. HEWITT,
GO'DSMITH W. HEWITT,
BENJAMIN H. HILL,
WILLIAMS S. HOOKER,
JAMES H. HOPKINS,
JOHN F. HOUSE,
ANDREW HUMPHREYS,
FRANK H. HURD,
GEORGE A. JENKS,
FRANK JONES,
THOMAS L. JONES,
EDWARD C. KEHR,
J. PROCTOR KNOTT,
LUCIUS Q. C. LAMAR,
FRANKLIN LANDERS,
GEORGE M. LANDERS,
The "annexed paper" referred t

ALFRED M. SCALES,
JOHN G. SCHUMAKER,
JAMES SHEAKLEY,
OTHO R. SINGLETON,
WILLIAM F. SLEMONS,
MILTON I. SOUTHARD,
WILLIAM M. SPINGER,
WILLIAM M. SPRINGER,
WILLIAM M. STANTON,
WILLIAM S. STENGER,
ADLAI E. STEVENSON,
WILLIAM H. STONE,
THOMAS SWANN,
JOHN K. TARBOX,
FREDERICK II. TEESE,
WILLIAM TERRY,
CHARLES P. THOMAS,
JAMES W. THROCKMORTON,
JOHN R. TUCKER,
JACOB TURNEY,
JOHN L. VANCE,
ALFRED M. WADDELL,
ANSEL T. WALLING,
ELIJAH WARD,
LEVI WARNER,
WILLIAM W. WARREN,
HENRY WATTERSON,
ERASTUS WELLS,
WASHINGTON C. WHITTHORNE,
PETER D. WIGGINTON,
ALPHEUS S. WILLIAMS,
JAMES WILLIAMS,
JERE N. WILLIAMS,
JERE N. WILLIAMS,
JERE N. WILLIAMS,
BENJAMIN A. WILSIN,
BENJAMIN WILSON,
FERNANDO WOOD,
JESSE J. YEATES,
CASEY YOUNG,
Representatives.

The "annexed paper" referred to in the foregoing is as follows:

We offer to prove that William P. Kellogg, who certifies, as governor of the State of Louisiana, to the appointment of electors of that State, which certificate is now before this commission, is the same William P. Kellogg who, by said certificate, was certified to have been appointed one of said electors. In other words, that Kellogg certified his own appointment as such elector.

2. That said Kellogg was governor de facto of said State during all the months of November and December, A. D. 1876.

CONSTITUTION OF LOUISIANA.

"ART. 117. No person shall hold or exercise at the same time more than one office of trust or profit, except that of justice of the peace or notary public."

II.

"ART. 117. No person shall hold or exercise at the same time more than one office of trust or profit. except that of justice of the peace or notary public."

II.

We offer to prove that said William P. Kellogg was not duly appointed one of the electors of said State in A. D. 1876, and that the certificate is untrue in fact. To show this we offer to prove—

(1) By certified copies of the lists made out, signed, and sworn to by the commissioners of election in each pell and voting-place in the State, and delivered by said commissioners to the clerk of the district court wherein said polls were established, except in the parish of Orleans, and in that parish delivered to the secretary of state, that at the election for electors in the State of Louisiana, on the 7th day of November last, the said William P. Kellogg received for elector 6,300 votes less than were at said election cast for each and every of the following-named persons, that is to say: John McEnery, R. C. Wickliffe, L. St. Martin, E. P. Poche, A. De Blanc, W. A. Seay, R. G. Cobb, K. A. Cross. (Sec. 43, act 1872.)

(2) In connection with the certified copies of said lists we offer to prove that the returning board, which pretended to canvass the said election under the act approved November 20, 1872, did not receive from any poll, voting-place, or parish in said State, nor have before them, any statement of any supervisor of registration or commissioner of election in form as required by section 26 of said act, on affidavit of three or more citizens, of any riot, tunult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences which prevented or tended to prevent a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place.

(3) We further offer to show that in many instances the supervisors of registration of the everal parishes willfully and fraudulently omitted from their consolidated statement, returned by them acceptance of the source of the source of the source of the said kello

never been compiled nor canvassed; and that the said returning board never even pretended to compile or canvass the returns made by said commissioners of election, but that said returning board only pretended to canvass the returns made by

never been compiled nor canvassed; and that the said returning board never even pretended to compile or canvass the returns made by said commissioners of election, but that said returning board only pretended to canvass the returns made by Act of 1873, section 43: "Supervisor must forward." Act of 1873, section 43: "Supervisor must be returned to the secretary of state, the opened by the governor of the said State in presence of the secretary of state, the opened by the governor of the said State in presence of the secretary of state, the opened by the governor of the said state in presence of the secretary of state, the opened by the governor of the said state in presence of the secretary of state, the opened state of the secretary of the secretary of state, the secretary of state the secretary of state, the secretary of state that secretary of state the secretary of state that secretary of state the secretary of state that secretary of state of the said state of state that secretary of state of the said state that secretary distance of said state the said state in the

"To the honorable returning board of the State of Louisiana:
"GENTLEMEN: The undersigned, acting as counsel for the various condidates upon the democratic-conservative ticket, State, national, and municipal, with respect show:

spect show:

"That the returns from various polls and parishes are inspected by this board and the vote announced by it is merely that for governor and electors:

"That the tabulation of all other votes is turned over to a corps of clerks, to be done outside of the presence of this board;

"That all of said clerks are republicans, and that the democratic-conservative candidates have no check upon them, and no means to detect errors and fraudulent tabulations, or to call the attention of this board to any such wrong, if anyexist;

"That by this system the fate of all other candidates but governor and electors is placed in the hands of a body of republican clerks, with ro check against erroneous or dishonest action on their part;

"That fair play requires that some check should be placed upon said clerks and some protection afforded to the said candidates against error or dishonest action on the part of said clerks:
"Wherefore they respectfully ask that they be permitted to name three respectable persons, and that to such parties be accorded the privilege of being present in the room or rooms where said tabulation is progressing, and of inspecting the tabulation and comparing the same with the returns, and also of fully inspecting the returns, and previous to the adoption by this board of said tabulation, with a view to satisfy all parties that there has been no tampering or unfair practice in connection therewith.

"Very respectfully,

"F. C. ZACHARIE.

"F. C. ZACHARIE.
"CHARLES CAVANAC.
"E. A. BURKE.
"J. R. ALCÉE GAUTHREAUX.
"HENRY C. BROWN.
"FRANK MCGLOIN.

"I concur herein.

"H. M. SPOFFORD, "Of Counsel"-

they, said Wells, Anderson, Kenner, and Casanave, acting as said board, expressly refused to permit any democrat, or any person selected by democrats, to be present with said clerks and assistants while they were engaged in the compilation and canvass aforesaid or to examine into the correctness of the compilation and canvass made by said clerks and assistants as aforesaid.

And that said returning board, in pursuance of said unlawful combination and conspiracy aforesaid, and for the purpose of concealing the animus of said board and inspiring confidence in the public mind in the integrity of their proceedings, on the 18th day of November, A. D. 1876, adopted and passed a preamble and resolution, as follows;

"Whereas this board has learned with satisfaction that distinguished gentlemen of national reputation, from other States, some at the request of the President of the democratic party, are present in this city, with the view to witness the proceedings of this board in canvassing and compiling the returns of the recent election in this State for presidential electors in order that the public opinion of the country may be satisfied as to the truth of the result and the fairness of the means by which it may have been attained; and

"Whereas this board recognizes the importance which may attach to the result of their proceedings, and that the public mind should be convinced of its justice by a knowledge of the facts on which it may be based: Therefore,

"Beitresolved, That this board does hereby cordially invite and request five gentlemen from each of the two bodies named, to be selected by themselves respectively, to attend and be present at the meetings of this board while engaged in the discharge of its duties, under the law, in canvassing and compiling the returns and ascertaining and declaring the result of said election for presidential electors, in their capacity as private citizens of eminent reputation and high character, and as spectators and witnesses of the proceedings in that behalf, of this board.

"The returning officers, if they think it advisable, may go into secret session to consider any motion, argument, or proposition which may be presented to them; any member shall have the right to call for secret session for the above purpose."

(10)

"That the evidence for each contested poll in any parish, when concluded, shall be laid aside until all the evidence is in from all the contested polls in the several parishes where there may be contests, and after the evidence is all in the returning officers will decide the several contests in secret session; the parties or their attorneys to be allowed to submit briefs or written arguments up to the time fixed for the returning officers going into secret session, after which no additional argument to be received unless by special consent."

That the proceedings thus directed to be had in secret were protested against by the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross; but said board thereafter proceeded and pretended to complete their duties as such returning board; and did perform, execute, and carry out the most important duties devolving upon said board in secret, with closed doors, and in the absence of any member of their board belonging to the democratic party or any person whatever not a member of said board not belonging to the republican party.

That the said Wells, Anderson, Kenner, and Casanave, acting as said returning board, while engaged in the compilation and canvass aforesaid, were applied to to permit the United States supervisors of election, duly appointed and qualified as such, to be present at and witness such compilation or canvass.

That application was made to said returning board in that behalf, as follows:

To the president and members of the returning board of the State of Louisiana:

To the president and members of the returning board of the State of Louisiana:

To the president and members of the returning board of the States of Louisiana:

Gentlemen: The undersigned, of counsel for United States supervisors of election, duly appointed and qualified as such, do hereby except, protest, and object to any ruling made this 20th day of November, 1876, or that hereafter may be made, whereby they are deprived of the right of being present during the entire canvass and compilation of the results of the election lately held in the State of Louisiana, wherein electors for President and Vice-President, and members of the Forty-fifth Congress were balloted for, and the result of which said board are now canvassing. That under the fifth section of the United States act of February 28, 1871, they are to be and remain where the ballot-boxes are kept, at all times after the polls are open, until each and every vote cast at said time and place shall be counted, and the canvass of all votes polled to be wholly completed, and the proper and requisite certificate or returns made, whether said certificate or returns be required under any law of the United States, or any State, territorial, or municipal law.

That under said law of the United States, District Attorney J. R. Beckwith, under date of October 30, 1872, gave his written official opinion for the instruction and guidance of persons holding the office now held by protestants, wherein said United States district attorney said:

"It cannot be doubted that the duty of the supervisors extends to the inspection of the entire election from its commencement until the decision of its result. If the United States statutes were less explicit there still could be no doubt of the duty and authority of the supervisors to inspect and canvass every vote cast for each and every candidate, State, parochial, and Federal, as the law of the State neither provides nor allows any separation of the election for Representatives in Congress, &c., from the election of State and parish officers. The election is in law a single election, and the power of ins

In which opinion the attorney-general of the State of Louisiana coincided. Whereupon protestants claim admittance to all sessions of the returning board, and protest against their exclusion as unwarranted by law, as informed by their attorneys has been done and is contemplated to be done hereafter in said proceedings of said board.

F. C. ZACHARIE, E. A. BURKE, CHAS. CAVANAC, FRANK MGGLOIN, J. R. A. GAUTHREAUX, H. C. BROWN, Of Counsel.

But this said Wells, Anderson, Kenner, and Casanave, acting as such returning board, in further pursuance and execution of said unlawful combination, and conspiracy, then and there refused to permit said United States commissoners of election to be present for the purpose aforesaid, but proceeded in their absence to the pretended compilation and canvass aforesaid.

That the said returning board, while in session as aforesaid, for the purpose aforesaid, to wit, on the 20th day of November, 1876, adopted the following rule to govern their proceedings; that is to say:

That the sail returning board, while in session as aforesaid, for the purpose aforesaid, to wit, on the 20th day of November, 1876, adopted the following rule to govern their proceedings; that is to say:

"No ex purts affidavits or statements of the purpose and the purpose and the sail of the purpose had to be that such fraud, intimate since, or other literal practice had all some poll requires investigation; but the returns and affidavits authorized by law, made by officers of election, or in verification of statements as required by law, shall be received in evidence as prime facile." while sitting as aforesaid, for the purposes aforesaid, shaving become convinced that they could not, pass other that said foresaid, having become convinced that they could not, pass other that said foresaid, having become convinced that they could not, pass other that said feelings, flaving, Joseph, Shallon, Marks, Levisseo, Browster, and Joffrion were elected electors at said election, and in forther pursuance of said unlawful combinations, and they are returned to the said compliance of the said continuous and the said continuous said that the said continuous and the said continuous and the said continuous and the said continuous and the said continuous continuous and the said continuous and the said said that said board of acro or said Kellogg and others; and afterward when the decision of said board of acro or said kellogg and others; and afterward when the decision of said board of acro or said kellogg and others; and afterward when the decision of said to said unlawful combination and conspiracy the said returning board, in violation of a law of said State, approved November 20, 1872, commissioners of election which were before them according to law for caurass and compliance, and according to law for cauras and compliance, and according to law for cauras and compliance and said the said returning board, in pursuance and furtler execution of said unlawful combination and conspiracy. All the said feetures and said the said

John McEnery, 10,280; for said R. C. Wiekliffe, 10,293; for said L. St. Martin, 20,281; for said F. P. Poché, 10,280; for said A. De Blanc, 10,289; for said W. A. Seay, 10,231; for said R. A. Cobb, 10,261; for said K. A. Cross, 10,288; they, the said members of said returning board, then and thore, well knowing that all of said votes which they neglected and refused to canvass and compile had been duly and legally cast at said election for presidential electors by legal voters of said State; and then and there, well knowing that had they considered, estimated, and counted, compiled, and canvassed said votes as they then and there well knew it was their duty to do, it would have appeared, and they would have been compelled to certify and return to the secretary of state, that said Kellogg had not been duly elected or appointed an elector for said State; but that said election the said McEnery, the said Wickliffe, the said St. Martin, the said Poché, the said De Blanc, the said Seay, the said Cobb, and the said Cross had been duly elected and appointed presidential electors in said State.

And that by false, fraudulent, willful, and corrupt acts and omissions to act by said returning board as aforesaid in the matter aforesaid, and by said nonfeasance, misfeasance, and malfeasance of said returning board, as hereinbefore mentioned, the said returning board made to the secretary of state of said State the statement, certificate, and return upon which the said Kellogg, as de facto governor of said State, pretended to make his said false certificate, certifying that himself and others had been duly appointed electors for said State, as hereinbefore mentioned; and that said statement, certificate, and return made by said returning board, and that the said certurning board when they made their said false statement, certificate, and return to the secretary of state of said State, and every of the members of said returning board when they made their said false statement, certificate, and return to the secretary of state

We further offer to prove—
That Oscar Joffrion was on the 7th day of November, A. D. 1876, supervisor of registration of the parish of Pointe Coupée, and that he acted and officiated as such supervisor of registration for said parish at the said election for presidential electors on that day; and that he is the same person who acted as one of the electors for said State, and on the 6th day of December, A. D. 1876, as an elector cast a vote for Rutherfo d B. Hayes for President of the United States and for William A. Wheeler for Vice-President of the United States.

We further offer to prove—
That on the 7th day of November, A. D. 1878, A. B. Levissee, who was one of the pretended college of electors of the State of Louisiana, and who in said college gave a vote for Rutherford B. Hayes for President of the United States and for William A. Wheeler for Vice-President of the United States, was at the time of such election a court commissioner of the circuit court of the United States for the district of Louisiana, which is an office of honor, profit, and trust under the Government of the United States.

We further offer to prove—
That on the 7th day of November, A. D. 1876, O. H. Brewster, who was one of the pretended electors in the pretended college of electors of the State of Louisiana, and who in said college gave a vote for Rutherford B. Hayes for President of the United States and for William A. Wheeler for Vice-President of the United States, was at the time of such election as aforesaid holding an office of honor, profit, and trust under the Government of the United States, to wit, the office of surveyorgeneral of the land office for the district of Louisiana.

We further offer to prove—
That on the 7th day of November, 1876, Morris Marks one of the pretended electors, who in said college of electors cast a vote for Rutherford B. Hayes for President of the United States and a vote for William A. Wheeler for Vice-President of the United States, was, ever since has been, and now is, holding and exercising the office of district attorney of the fourth judicial district of said State, and receiving the salary by law attached to said office.

We further offer to prove—
That on the 7th day of November, A. D. 1876, J. Henri Burch, who was one of the pretended electors, who in said pretended electoral college gave a vote for Rutherford B. Hayes for President of the United States and a vote for William A. Wheeler for Vice-President of the United States, was holding the following offices under the constitution and laws of said State; that is to say: member of the board of control of the State penitentiary, also administrator of deaf and dumb asylum of said State, to both of which offices he had been appointed by the governor, with the advice and consent of the senate of said State, both being offices with salaries fixed by law, and also the office of treasurer of the parish school board for the parish of East Baton Rouge; and that said Burch, ever since the said 7th day of November, (and prior thereto,) has exercised and still is exercising the functions of all said offices and receiving the emoluments thereof.

We further offer to prove the canvass and compilation actually made by said returning board, showing what parishes and voting-places and polls were compiled and canvassed and what polls or voting-places were excluded by said returning board from their canvass and compilation of votes given for presidential electors; and we also offer to show what statements and returns of the commissioners of election and of the supervisors of registration were duly before said returning board.

IX.

We further offer to prove that a member of said returning board offered to receive a bribe, in consideration of which the board would certify the election of the Tilden electors.

We offer to prove that the statements and affidavits purporting to have been made and forwarded to said returning board, in pursuance of the provisions of section 28 of the election law of 1872, alleging riot, tumult, intimidation, and violence, at or near certain polls, and in certain parishes, were falsely fabricated and forged by certain disreputable persons under the direction and with the knowledge of said returning beard, and that said returning board, knowing said statements and aflidavits to be false and forged, and that none of said statements or affidavits-were made in the manner or form required by law, did knowingly, willfully, and fraudalently fail and refuse to canvass or compile more than 10,000 votes lawfully cast as is shown by the statements of votes of the commissioners of election.

We further offer to prove—
That said returning board did willfully and fraudulently pretend to canvass and compile, and did promulgate as having been canvassed and compiled, certain votes for the following-named candidates for electors which were never east, and which did not appear upon any tally-sheet, statement of votes, or consolidated statement or other return before said board, namely: J. H. Burch, 241; Peter Joseph, 1,302; L. A. Sheldon, 1,364; Morris Marks, 1,334; A. B. Levissee, 829; O. H. Brewster, 776: Oscar Joffrion, 1,364.

The undersigned, Senators and members of the House of Representatives, object to the decision of the electoral commission as to the electoral votes of the State of Louisiana, because—

First. The said decision was made in violation of the law under which said commission acts, in this, that by said act the said commission is required to decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in said State; yet said commission refused to examine and ascertain who were duly appointed electors in and by the State of Louisiana and what votes from such State are within the provisions of the Constitution of the United States, Second. Because the act creating said commission was passed to the end that the commission would hear and examine evidence and honestly decide which electors in any disputed State were fairly and legally chosen; whereas the said commission refused to hear and consider evidence offered to show that the electors whose votes the said commission has decided shall be counted were not duly chosen, but falsely and fraudulently acted as such electors, as well as the evidence offered to show that the pretended certificates of election of said electors were produced by corruption and were wholly untrue.

Third. Because the said decision is in disregard of truth, justice, and law, and establishes the demoralizing and ominous doctrine that fraud, forgery, bribery, and perjury can lawfully be used as a means to make a President of the United States against the well-known or easily ascertained will of the people and of the States. JNO. W. JOHNSTON, W.M. A. WALLACE, J. E. BAILEY, GEO. R. DENNIS, FRANCIS KERNAN, JAMES K. KELLY, ELI SAULSEURY, Senators.

JAMES H. HOPKINS, ANDREW R. BOONE.

JAMES H. HOPKINS, ANDREW R. BOONE, CHAS. B. ROBERTS, THOS. S. ASHE, H. D. MONEY, HIESTER CLYMER, Representatives.

The undersigned, Senators and Representatives, do object to the counting of the votes as recommended by eight members of the joint commission, and do protest against counting the electoral vote of the State of Louisiana, for the reasons follow-

against counting the electoral vote of the State of Louisiana, to wit:

First. It was not denied before the commission that the Tilden electors received a large majority of the votes cast.

Second. It was not denied before the commission that Wells and his associates, who styled themselves a returning board, were guilty of gross fraud; that their certificate given to the Hayes electors was false and fraudulent, and that their action in canvassing the votes was in violation of the constitution and laws of the State of Louisiana.

Third. The action of the eight members of said joint commission in declining to hear evidence of the above and other facts was a violation of the letter and spirit of the act under which said commission was created and of the spirit of the Constitution of the United States.

R. E. WITHERS.

R. E. WITHERS, JOHN W. JOHNSTON, GEORGE R. DENNIS, HENRY COOPER, S. B. MAXEY,

Senators.

M. I. SOUTHARD,
ALEXANDER G. COCHRANE,
JOHN H. CALDWELL,
JAMES SHEAKLEY,
A. H. BUCKNER,
WM. MUTCHLER,
BENJAMIN WILSON,
Representatives.

The PRESIDENT pro tempore. The Secretary will now report the resolution proposed by the Senator from Ohio, [Mr. SHERMAN.]

The Secretary read as follows:

 $Resolved, \, {\rm That} \, \, {\rm the} \, \, {\rm decision} \, \, {\rm of} \, \, {\rm the} \, \, {\rm commission} \, \, {\rm upon} \, \, {\rm the} \, \, {\rm electoral} \, \, {\rm vote} \, \, {\rm of} \, \, {\rm the} \, \, {\rm State} \, \, {\rm of} \, \, {\rm Louisiana} \, \, {\rm stand} \, \, {\rm as} \, \, {\rm the} \, {\rm judgment} \, {\rm of} \, \, {\rm the} \, \, {\rm Senate}, \, {\rm the} \, \, {\rm objections} \, {\rm made} \, \, {\rm thereo} \, \, {\rm the} \, \, {\rm$ 

Mr. KERNAN. I offer the following as a substitute for that reso-Intion:

Ordered, That the votes purporting to be electoral votes for President and Vice-President, and which were given by William P. Kellogg, J. H. Burch, Peter Joseph, L. A. Sheldon, Morris Marks, A. B. Levissee, O. H. Brewster, and Oscar Joffrion, claiming to be electors for the State of Louisiana, be not counted, the decision of the commission to the contrary notwithstanding.

The PRESIDENT pro tempore. The question is on the substitute submitted by the Senator from New York.

Mr. MAXEY. Mr. President, should the judgment and decision of the electoral commission in the case of Louisiana, now before the Senate, be sustained? The lawful duty of the commission was entirely clear. It could not well be misconceived. The commission was to report to the joint convention its judgment and decision as to what was the true and lawful electoral vote of the State of Louisiana. It was empowered by the law of its creation to call to its aid, in discovering the truth all the instrumentalities of evidence known and covering the truth, all the instrumentalities of evidence known and acted on by the two Houses acting separately or together. It was a legislative commission—no more, no less—with the same powers of investigation and the same rules of evidence known to and practiced by legislative bodies and their committees and commissions from time immemorial. It was intrusted with the grave duty of judging and deciding "what votes" from the State of Louisiana "are the votes provided for by the Constitution of the United States," and "what persons were duly appointed electors" in that State. This duty, to the faithful performance of which the American people looked forward with anxious solicitude, was, in my judgment, not performed. The commission was sent out with full power to ascertain and judge "the true vote." Instead, they bring us certificates, reeking with

fraud, stinking in the nostrils of honest men of all parties. We asked

for bread; they gave us a stone

Never did any tribunal in all the world's history have so grand, so noble opportunity to render patrotic, invaluable service to the country, and to achieve for themselves immortality. They lost their opportunity; their judgment is weighed in the balances and found wanting. It cannot stand the touch-stone of law, truth, and the

wanting. It cannot stand the touch-stone or law, british, cternal principles of right and fair-dealing.

This mighty Brobdignag has been hopelessly entangled in the cobwebs and illogical technicalities of the special pleader, which, for the first time in history, controlled a legislative commission, as they have now done, at the cost of truth, and justice, and to the hurt of free government. It is painful beyond power of words to express to with the law in t government. It is painful beyond power or words to express to witness what I believe to be the enforcement of a judgment not only without warrant of law, but against the law. It is alarming that the first President inaugurated in the beginning of the second century of our national existence, should enter upon the duties of his exalted station with a title believed by more than half the people grounded and bottomed on fraud and not upon the will of the people; plausible and colorable only by a judgment not upon the merits, but upon the desirabilities as ill founded in law and reason as the fittle they seek to technicalities as ill founded in law and reason as the title they seek to

If the law does not authorize the commission to ascertain the true vote by the use of all the instrumentalities of evidence known to legislative assemblies; if the plain meaning of the letter of the text is controlled by some occult meaning not discernible to the great body of men of all parties, friend and foe, who until this judgment never doubted the power and duty of the commission under the law to try the case upon its merits, then it is the most cunningly devised pitfall that mortal men ever fell into.

pitfall that mortal men ever fell into.

The judgment in effect exalts fraud, degrades justice, and consigns truth to the dungeon. It violates the unbroken teachings of centuries. The world has been taught to believe both by the law of the land and the revealed will of God that the law abhors fraud; that it pollutes with its unhallowed hand everything it touches; that it vitiates; that it is so baneful that the judgment of no tribunal, however exalted, is entitled to any respect in any court on allegation and proof of fraud. Nay, more; this judgment is founded on a denial of the right to prove fraud, on the trial of a franchise whereby the citizen is deprived of his right without due process of law and in violation of the Constitution; and the refusal to admit any of the abundant proof of fraud offered is admission that by this judgment fraudulent certificates of a notoriously corrupt returning board, the proof lent certificates of a notoriously corrupt returning board, the proof of which corruption was offered and refused, pretending to declare elected men who were not elected, and the certificate of a man claiming to be governor who never was lawfully governor pretending to certify the votes of these pretended electors, are good and valid and true, and are the votes provided for by the Constitution of the United States. God save us! Fraud is deified, and the foolish fall down and worship the new Mokanna, from whose hideous features the veil should have been stripped but was not. This judgment, bearing so heavily in favor of fraud and against truth and justice, to the hurt of free government and against the will of the American people fairly expressed through the ballot, will never receive the sanction of the American people. It will be condemned by lawyers and laymen, by honest men

people. It will be condemned by lawyers and laymen, by nonest men of all parties in all climes and countries for all time.

The democratic party cheerfully supported the law, believing that through the commission, under the law, the true vote would be honestly sought and found; and then when found, however the election might be, the result would be satisfactory to all the people, who only want justice and fair play. The truth has not been sought, but all its avenues were closed. We believed the commission would be controlled avenues were closed. We believed the commission would be controlled alone by the law and the evidence, and to these great tests we cheerfully submitted our just cause. The evidence was shut out and thereby the law was perverted. We appeal from this judgment of a meager majority to the American people, yielding this our just cause to the inevitable with that dignity and decorum becoming the great occasion. We urge our friends, bitter and unjust and unlawful as they and we believe the judgment to be to stand by honor and the conand we believe the judgment to be, to stand by honor and the contract, for it has the form and semblance of a lawful judgment, soulless and without spirit though it be; and I counsel and urge lawful and only lawful and peaceful methods in the count, and after a trial of the parties on the merits through the ballot-box, confidently relying on the honesty and intelligence of the people and the justice of

our cause.

Mr. KERNAN. Mr. President, in my judgment the Senate should not, and I trust it will not, affirm the decision which has been made by the commission that the votes cast by the persons known as the Kellogg electors for Louisiana should be counted for President and Vice-President of the United States. By the law recently passed "to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon," Congress conferred upon that commission all the power and authority which both Houses acting together or acting separately had to inveswhich both Houses acting together or acting separately had to investigate and decide what were the votes that were to be counted for President and Vice-President. All the power that is in any department of our Government in this important question of deciding what is a vote and what is a fraud was conferred upon the commission that we might have their advice after a judicial examination and decision, to the end that the truth might prevail and that no officer should come to the head of this Government tainted with suspicion that he came there by fraud, and not by the suffrages of the American

There was received here a certificate made by persons known as the Kellogg electors that they had voted for President and Vice-President, and the evidence to us or whoever were to decide as to the votes that they had any title to cast the votes was the certificate of Mr. Kellogg, the acting governor of Louisiana, based upon the certificate of the returning board that they were duly appointed electors. This is the evidence upon which they came here asking that the votes of Louisiana given by these persons should be counted. The objectors to the counting of the votes cast by these persons went before the commission and offered to prove before them by legal, competent evidence that these certificates were fraudulent and false, and that the certificate of J. Madison Wells and his three associates, upon which was claimed that the certificate of Mr. Kellogg was based, was a fabricated, corrupt, false, and fraudulent certificate, certifying to a falsehood and not to the truth. They offered to prove further that some of the men named in the certificates as electors were declared by the very language of the Constitution of the United States ineligible to be appointed electors, because they held offices of trust or profit under the Government of the United States.

The commission refused to receive the evidence or any of it. If

they had received evidence and found that this certificate was true, nay if the testimony did not clearly overwhelm and destroy it as evidence, I should make no complaint of their decision. These persons asking that these votes should be counted, and producing their certificates as the evidence of their right to Congress, and Congress having sent them to the commission, the commission say by their decision "we will not hear evidence, no matter how clear or overwhelming it may be to show that the certificates are fraudulent and false, and that these men claiming to be electors for Louisiana had no right to vote at all." The testimony was rejected by a vote of 8 to 7 in the commission; and based upon that ruling they made the decision that these are the constitu-tional electors for the State of Louisiana and their votes ought to be counted. Therefore Senators must meet the question whether or not we are bound to count the votes of men claiming to be electors who were never elected by the people of a State, because they obtained by force or fraud the certificates of executive officers of the State falsely certifying that they were appointed. Have we not power to hear evidence to prove the certificates to be false and that they were ob-

tained by fraud?

If false certificates are obtained by duress from State canvassing officers or the governor, as the burglar obtains the key of the bankvault from the cashier, cannot Congress or the commission hear tes

timony to prove the certificate to be false and how it was procured?

If a military officer with a file of men had seized the governor and the members of the canvassing or returning board in Louisiana, and by threats compelled them to sign certificates that persons were duly appointed electors who were in fact defeated, and such persons had in due form cast electoral votes for that State and sent them here with the certificates of their due appointment as electors, must those votes be counted ? could not Congress or the commission rightfully hear testimony of the falsity of the certificates and reject the votes Clearly as it seems to me they could, and it would be their duty to

Fraud in the officers making these certificates falsely is as fatal to them as evidence as though they had been obtained by duress. By rejecting a false and frandulent certificate as evidence that persons claiming to vote as electors had no such right, we do not turn Congress or the commission into a canvassing board of the votes of the State. The law requires that electoral votes shall be accompanied by evidence that the persons giving such votes were duly appointed electors. The certificates of State officers are produced as such evidence; and when it is alleged that this evidence was procured by fraud and is in fact false, testimony to prove these allegations should

The commission decides, as I understand, that it has no jurisdiction, no authority to hear testimony to prove that the certificates of the election of the so-called Kellogg electors were fraudulently made

and issued and are false.

This is the proposition we affirm if we adopt the resolution of the Senator from Ohio. The commission refused to hear any evidence tending to prove that the men casting these votes as electors of Louisiana were not appointed such electors; that the certificates that they were so appointed were fraudulent and false; and so refusing to hear the evidence offered the commission decided that the votes

ought to be counted. This we are asked to approve.

Why, sir, is this correct? Are we to say to the voters of this country, "If corrupt men are able to reach one, two, or three executive officers in a State and by bribery as open and shameless as corrupt men can be guilty of, and procure them to send here in a close presidential beginning. dential election a false certificate as to the appointment of electors, bought with money, there is not power in this Government, there is not power in the two Houses of Congress acting together or separately to hear testimony, ascertain the bribery and fraud, and reject the votes procured by such means?

Sir, I enter my earnest protest against this decision of the commission from a motive higher. I trust then the seed for a tripment of

sion from a motive higher, I trust, than the zeal for a triumph of any party candidate or any political party. I do not want it to go

forth to the world that no matter how the people vote, no matter how well it is known how they voted, yet if fraud, force, or any other illegal means can procure the officer who is to give the certificate of the result of the election, which is not the appointment but the evidence of the appointment, to make a false certificate in favor of those not elected, your commission and your Congress must sit here and be governed by that certificate which objectors are ready to offer to prove is a false, fraudulent, fabricated, dishonest piece of evidence; and the votes evidenced by it alone must be counted, although upon them may depend who shall be the Executive for four years of the Government of these United States. I trust the Senate will not as-

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. THURMAN. Mr. President, the statute of Louisiana creates a returning board, consisting of five persons, to hold office indefinitely, and with power to fill all vacancies that may occur in their body, and commits to this board the canvassing of all elections to be held in the State and power to declare the result. It therefore, in its practical operation, devolves upon five men, or indeed upon a majority of them, the power to say, for all time to come, who shall hold office in the State. It makes the title of all State officers, of the members of the State. It makes the title of all State officers, of the members of the Legislature, and of every inferior officer chosen by election, depend, not upon the votes of the people, but upon the will of the returning board. And its provisions extend to the appointment of electors of President and Vice-President of the United States, and make their appointment, so far as the statute can make it, depend in like manner upon the will of that board. I believe that such a board is utterly destructive of a republican form of government; that no power to create it is delegated by the constitution of Louisiana to her Legislature, nor is any power conferred upon that Legislature by the Constitution of the United States to create such a board for the canvass of the votes for presidential electors. I therefore hold that the

vass of the votes for presidential electors. I therefore hold that the acts of that board were and are unconstitutional, null, and void.

But if the board is not unconstitutional, it nevertheless had no legal validity when it assumed to canvass the votes last November. The statute required it to consist of five persons of different politics; but it then consisted of but four persons, all republicans, and they persistently refused to fill the vacancy. Such a board was not the board required by the statute.

But if the board were legal it could rightfully exercise only such

powers as were conferred upon it by the statute. But its power to canvass and compile was a power to canvass and compile the returns of the commissioners of election, and nothing else. And the result it was authorized to declare was the result of such a canvass and compilation, and not of a canvass and compilation of something else.

pilation, and not of a canvass and compilation of something else.

Now, testimony was offered before the electoral commission to prove that it never made a canvass or compilation of the "commissioner's returns," or of any of them; and this proof was rejected. It seems clear to me that it ought to have been received, and in this opinion I am fortified by the action of both Houses of Congress four years ago in rejecting the vote of Louisiana.

Under the statute, the board had no jurisdiction to reject votes unless the protests provided for in the statute accompanied the returns. Proof was offered that not a single return was accompanied by such a protest, or indeed by any protest, but that nevertheless the board, arbitrarily and without jurisdiction, threw out more than 11,000 votes, and thereby defeated the Tilden electors and declared the Hayes electors appointed. This proof was rejected. It seems manifest to electors appointed. This proof was rejected. It seems manifest to me that it ought to have been received.

Testimony was offered tending to prove that the decision of the board was procured by forgery, fraud, and bribery. It was rejected. I think that it should have been received.

Testimony was offered that two of the Hayes electors, Brewster and Levissee, were, at the time of the election, officers of the United States, whose appointment as electors is expressly prohibited by the Constitution. The testimony was rejected and their votes for Hayes and Wheeler certified by a majority of the electoral commission to be valid. I cannot but regard this as a nullification of the constitu-tional provision. Nor is the matter helped by a resignation of their Federal offices by Brewster and Levissee subsequent to the election

rederal offices by Brewster and Levissee subsequent to the election and their pretended appointment by the remaining Hayes electors to fill vacancies; for, as I understand the Louisiana statutes, there is no power conferred upon the college of electors to fill vacancies.

A majority of the electoral commission have, as I understand it, decided that, no matter by what usurpation of power, fraud, or corruption a man may be declared by a returning board to be an elector of President and Vice-President and no matter how ineligible he may be to receive an appointment as elector or to be an elector de jure, yet, unless he be ousted before he cast his vote for President, (which in this case was manifestly impossible,) that vote must be counted; and neither the State nor Congress can right the wrong or remedy the

I utterly dissent from this decision. In my humble judgment it is destructive of the rights of the States, of the powers of Congress, of constitutional provisions, of the principles of justice, of purity in elections, and of popular rule. In saying this I attribute improper motives to no one; it is not with persons, but with judgments, that I am dealing. Of them and of what appears to me their probable effects, it is my right and my duty to speak; and, thus speaking, I cannot help expressing the fear that this decision will have the effect of a proclamation to dishonest returning boards to perpetrate whatever villainies their interests or their inclinations may dictate, with an absolute certainty that they will prove successful. I have no time left

Mr. SHERMAN. Mr. President, I was very much surprised at the tone and excitement evinced by the objections made to the decision of this tribunal. The tribunal was constituted by the votes of the gentlemen who object to its decisions. They knew that the very question which is now decided against them was to be submitted to that tribunal, and they bound themselves in honor, as well as in law, to abide by that decision without unseemly remonstrance or impugning the character or conduct of these high judges. Though I voted against that bill and resisted it to the uttermost, I made up my mind the moment it became the law of the land to abide by the decision which should be made without carping criticism; and yet the objections that have been made to the decision read this morning are themselves insulting to the court; insulting to those who agree with the decision of the court; they arraign the integrity of that great tribunal and impugn the honest conviction of the majority of the people of the United States, who believe that decision is right, honest, and just.

est, and just.

Now, sir, that the very question now decided was submitted to that tribunal was shown by the honorable Senator from New Jersey, [Mr. Frelinghuysen,] who expressly took the ground in his argument in favor of the bill that the court must decide so, because that was the law. And my honored colleague [Mr. Thurman] expressly said that that question was submitted to the tribunal and was one of the main questions to be decided by it. The Senator from Vermont [Mr. Edwinders] told us that that was the initial point of the whole matter to be decided by the tribunal, and it was to decide how far, if at all, the two Houses could go behind the returns that the commission was organized and created. And when the Senator from Massachusetts [Mr. Dawes] proposed to change the bill so as to compel the court to act upon that view of the matter the Senator from Vermont resisted that, and the Senator said, "No; that is the question the tribunal is to decide." Now because forsooth the tribunal have decided it against some of those who voted for the bill their motives are to be arraigned by Senators and Members of the House of Representatives on written papers filed of record. They have organized the arbitration and chosen the arbitrators, and the tribunal have decided against them. And now let there be no unseemly wrangling, for even those who were opposed to the arbitration are bound by its results, and I would, for one, have abided by the decision, however disastrous or injurious or wrong it might have seemed to me.

might have seemed to me.

Now, sir, I further say that this decision is right. As a question of law three months ago no lawyer in this broad land would have contended that Congress had the power to manipulate and overhaul and reverse the decision of a State in the election of electors. If there is any State right in our system of States, it is the right to elect electors; and the framers of the Constitution guarded that right of a State against the power of either House with jealous care and scrutiny. Sir, this court has upheld the power of the States to vote as they choose in the manner provided by their own laws for electors, and that is all that has been done. This tribunal has but simply said that the law of the State, the mode and manner pointed out by the law of the State for the election of electors, shall control the vote, and that Congress shall not, either by commissions or by committees of investigation, change, overhaul, and reverse the decision and action of a State. Sir, that is the law plainly drawn from an express provision of the Constitution, and Congress has no more power to reverse the decision of electors than any foreign potentate or power or sovereignty whatever. The mode and manner of the election, the officers and agents employed in ascertaining its results, are and must be prescribed by the laws of the State is far more safely lodged with the State and its officers than with the two Houses or a commission created by it; for here the concentrated power and prejudice of party struggles involved in a presidential election utterly disable the two Houses from revising, reversin, or approving the votes of thirty-eight States in the few days intervening between the election and the inauguration of a President.

Mr. President, a good deal is said about fraud, fraud, fraud—fraud and perjury—and we are looked upon and pointed at as upholders of fraud, perjury, and wrong. Why, sir, if you go behind the returns in Louisiana the case is stronger for the republicans than upon the face of the returns. What do you find there? Crime, murder, violence. That is what you find. I see that my honorable friend from Delaware [Mr. Saulsbury] laughs at this. Why, he himself heard the testimony of eighty distinct crimes in a single parish. Now, sir, I tell you that the people are not to be misled. The State of Louisiana provided by law, as she had a right to do, for the mode of overruling violence, murder, and wrong, in the process of elections. By a tribunal constituted by that State, over whom you have no power or control, it has been decided that in certain polling-places, eighty or more in number, there was violence, wrong, intimidation, murder, and outrage. The law requires that in such cases the votes shall be excluded, and you have no power to overrule either the law or the decision apon it, and this tribunal created by you has said you have no such power; and now for you to talk about fraud, when

it was the violence and wrong and intimidation of the democratic party that brought this danger to our country, seems to me not only illogical but wrong in every sense of the term.

I say now, as I said two months ago, that, while there may have been irregularities, while there may have been a non-observance of

I say now, as I said two months ago, that, while there may have been irregularities, while there may have been a non-observance of some directory laws, yet the substantial right was arrived at by the action of the returning board; and you may imprison them, you may harass them, you may drive them to their graves, but I tell you the judgment of mankind will decide that that returning board in rejecting the results of this intimidation and wrong simply obeyed their oaths and the law, and you have no power, thank God, to reverse their decision.

That is all I have to say about the Louisiana case. Though the course by which the result is arrived at may not suit your notions, yet substantial justice and the will of a majority of the people of Louisiana have been brought out of this thing by the action of the State authorities of Louisiana, by the action of their returning officers, in strict pursuance of the laws of that State.

And now, sir, when the case has been decided against you, we have read to you and twice spread on your printed records and signed with theatrical effect a long lawyer's offer of testimony that they would prove, if the tribunal would let them, much of which they knew they could not prove and most of which would be excluded by any rule of evidence adopted in any court. This is but skillful acting to mislead public opinion.

These gentlemen now come forward and say what they will prove! Why did they not prove it? They did not prove it before the committees of investigation, though they invaded the sanctities of private life and held their witnesses as prisoners. I tell you, sir, they knew very well that this court could not enter into that examination, because all the time between now and the 4th of March would have been wasted in a vain and never-ending inquiry. Unless this bill was a conspiracy to defeat a presidential election, it could not have been expected that such an inquiry could be entered upon, for no decision could have been arrived at by the tribunal in time. If it was intended by the law of Congress to conspire against the right of the people of the United States to elect a President, then, sir, these judges might have been justified in opening up the returns and going into an investigation; but they could not have read the papers that bore upon these allegations. No, sir, if they had neither slept nor ate and occupied all the time from now until the 4th of March, they could not have analyzed and acted up the allegatious made in that paper. Now, because they have not done it, because they have decided that they had no power to do it, because they decided that you, the two Houses, had no power to do it, they are to be arraigned and the conduct of able, pure, upright men who have passed through sixty years of honorable life is to be arraigned in the public press by liars and scoundrels and libelers and would-be assassins. No, no, Mr. President. There is something in this country left, a love of honor and a love of character; and I say anew that, when all the facts are sifted, when all the testimony that is gathered by the committees of both Houses is taken and read by the people, they will believe, as I believe most sincerely, that substantial right before God and man has been arrived at by this commission.

Mr. MORTON. Mr. President-

The PRESIDENT pro tempore. The Chair takes this occasion to say to the occupants of the galleries that if there are any marks of approbation or disapprobation, the Chair will order the galleries to be cleared at once; so that the innocent will suffer with those who break the order of the Senate.

Mr. MORTON. Mr. President, the statute of Louisiana creating the returning board provided in express terms that a majority of the number should constitute a quorum to do business and make the returns. The board was to consist of five persons to be elected by the senate. Three of that number, by the express terms of the act, are a quorum to do business. There were four in number upon the board, one more than a majority. The electoral commission has decided that the board was properly constituted. On the other hand it was urged that the existence of a single vacancy destroyed the board. We said not, upon the very best settled principles of law. The Constitution provides that this Senate shall consist of two Senators from each State, yet vacancies from half a dozen States will not destroy the legal character of this Senate. The law provides that the Supreme Court shall consist of a certain number of judges. Two, three, vacancies will not destroy the legal character of the Supreme Court. So I could run through the law in regard to corporations and special tribunals. There are certain commissions created for specific ministerial purposes sometimes where the law requires that the commission shall be full to enable it to perform an act; but here the act creating this tribunal guards against that by specially providing that a majority of the number shall constitute a quorum; and, if there be such a majority present, it makes no difference from what cause there are absentees, whether there are vacancies, or whether members are willfully absent, if there be a majority present, the law is complied with.

Now, Mr. President, a word in regard to the ineligibility of electors.

Now, Mr. President, a word in regard to the ineligibility of electors. The commission decided that it was not competent to prove that certain electors were ineligible on the 7th of November, the day of the election. They decided that upon two grounds; first, because in any point of view the proof would be immaterial, because the substance of the Constitution, the spirit and meaning of it, is that the

electors shall be eligible when they come to act, when they come to vote, and not at the time when they are elected.

Certain persons are ineligible to be members of this Senate. A Sen-

ator must have certain qualifications. If he has them when the time comes to be sworn in, that is enough. It is immaterial whether he has them upon the day of his election. That is well settled. But we decided that the proof was immaterial upon other ground. If it were conceded that an elector was ineligible upon the day he voted, can that fact be proven to strike out his vote? If it can it is overturning the very best settled principles of law.

A man may be ineligible to a seat in this body; he may not be

A man may be inergine to a seat in this body; he may not be thirty years old; he may be under the disabilities of the fourteenth amendment; but if he comes here and is sworn in and takes his seat, he may afterward be turned out upon proof of the fact, but every vote that he casts has the same validity with the vote of every other Senator. A man may be ineligible to be appointed a judge of a court under the fourteenth amendment or for want of age or from any cause provided by the law of the State in which he lives; and yet if he is appointed notwithstanding his ineligibility, every act of hisas judge is just as valid as if he had been eligible. He may be turned out upon a quo warranto, but until that is done his act is valid; and can there be an exception found to this rule? I know of none. In applying it to electors we apply a simple well-settled rule of law, and how absurd it would be to overturn that rule in a case where a discovery is made after the vote is cast, when it is past remedy, that an elector was ineligible and strike out his vote. If we had decided that, we should have overruled a well-settled principle of law. Who six months ago contended for any such principle as that?

This tribunal decided that you could not enter into proof to contradict the returns made by the proper returning officers of the State, those appointed by the State to decide and to declare who had been It seems to me that if any principle of constitutional law is plain, that must be. The Constitution gives to each House the right to judge of the elections, returns, and qualifications of its members. If it were not for that provision of the Constitution, each House could not do that, and if a senatorial election were contested, it would have to be by the Legislature of the State that sends the Senator here; but that power has been given to each House, and it was not given in regard to electors. It is claimed that the two Houses have the same power in regard to electors that the Houses have in regard to their nembers. The answer is, the power was not given. If the framers of the Constitution had intended to give that power, they would have said so. To infer the existence of so great power is to overrule every principle of construction in regard to the Constitution that was adopted in the very beginning. To give to Congress the power to judge of the election, returns, and qualifications of electors, is for the legis-

of the election, returns, and qualifications of electors, is for the legislative to absorb the executive and to place the control of an election of President absolutely in the power of the two Houses.

We know that was not intended. We know, if anything is clear, it was intended to make the election of a President independent of Congress. The Constitution says the certificate shall be opened by the President of the Senate in the presence of the two Houses. Whether he is to count the votes or whether the two Houses are to count the votes, and I assume under this law the two Houses are to do it, or in votes, and I assume under this law the two Houses are to do it, or in certain cases this electoral commission, what can they do if They have but one duty to perform, and that is to ascertain that these certificates came from the electors of the State. When that is done "the vote shall then be counted." They must ascertain the fact whether they came from the electors of the State; and when they have ascertained that their duty is at an end. There is no time, there is no place to try any question of ineligibility or of election when the votes are to be constant. place to try any question of ineligibility or of election when the votes are to be counted. And how are we to know that the certificates come from the electors of the State ! In the first place the act of Congress provides prima facie evidence, the governor's certificate, but that is not conclusive. That is the result of an act of Congress. Congress may repeal that act or it may provide by another to go behind it, but when you go behind that and come to the action of the officers of the State, there your inquiry is at an end. Whenever the officers appointed by a State to declare who have been chosen electors have ested and made that declaration, it is final so far as Congress is conacted and made that declaration, it is final so far as Congress is con-

acted and made that declaration, it is final so far as Congress is concerned. The action of the State officers is the act of the State.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. BAYARD. Mr. President, as a member of the electoral commission I have given all that I could give of earnest, patient, steady labor and devotion to secure the just execution of the law under which I was appointed. I could not now, even if I would, repeat here the arguments made by me during the consultations of the commission is a secure that the security of the commission is a secure that the security of the commission is a secure to the security of the commission is a secure to the security of the commission is a secure to the security of th sion in opposition to the result arrived at by eight of my associates. Hereafter those debates may be given to the public. My labors and my efforts have been crowned only by failure. Deep indeed is my sorrow and poignant my disappointment. I mourn my failure for my country's sake; for it seems to me that not only does this decision of these eight members destroy and level in the dust the essential safethese eight members destroy and level in the dust the essential sale-quards of the Constitution, intended to surround and protect the elec-tion of the Chief Magistrate of this Union, but it announces to the people of this land that truth and justice, honesty and morality, are no longer the essential bases of their political power.

Mr. LOGAN. Mr. President, I was not here when this law was passed. Had I been here, I should have voted against it. After listen-ing to the remarks which I have heard at different times in reference

to the various decisions that have been made by the tribunal organized by the Congress of the United States to settle this vexed question, it does seem to me that there is an amount of irritation on the tion, it does seem to me that there is an amount of irritation on the part of the disappointed portion of Congress in reference to this decision which is rather extraordinary. As I understood it, this law was passed for the purpose of organizing a tribunal to decide this question in accordance with the Constitution, as if the two Houses of Congress could not have been assembled for the ascertainment of the truth in regard to the counting of this electoral vote. It is urged by the objections made in the House of Representatives this morning in joint meeting that this commission failed to perform that duty in accordance with this law and the Constitution, in this that they recordance with this law and the Constitution, in this: that they re-fused to hear testimony, refused to go behind the certificates of the governor and the returning board of Louisiana, in order to ascertain the character of fraud that had been perpetrated in that State on either side.

I have but a single remark to make in reference to that objection: According to the theory of all political parties in this country here-tofore, and the established rule known to all lawyers in this land, where certain rights are believed to be in the States under and by virtue of the Constitution, neither Congress nor the courts have the right to invade them; and certainly on the part of the objectors heretofore it would have surprised and astonished their constituents if they at any time should have claimed that the Congress of the United States had a right to go behind the returning board of a State for the purpose of ascertaining whether any elections of a State officer had been fairly conducted or not.

The electors of a State are understood to be State officers. I believe that is conceded on all hands. If they are, they stand in the same relation to the Congress of the United States up to the time they cast their votes that the governor of a State does. No man, I presume, would maintain for a moment that the Congress of the United States would have a right to investigate the question of the election of the

governor of a State.

Again, in reference to the proposition that the Constitution of the United States contemplated or intended that Congress should investigate a question of this kind, if it was intended that these electors should be officers of the Government there certainly would have been

some means provided for that purpose.

Look at the question for a moment. Congress is invited to go behind the returning board of a State, no matter by whom that board is constituted, and behind the certificate of a governor. If you may do that, by the same reasoning you may go clear to the very bottom in your investigation of the frauds that were perpetrated, if any were in your investigation of the frauds that were perpetrated, if any were perpetrated. There are thirty-eight States, and I ask any reasonable man who reads the Constitution or this law passed in pursuance of it to tell me if any rational man will contend for a moment that Congress is to be held here in counting the vote, in which they have a few days to do the labor, and if an objection is made by Senators or Representatives to each and every State that the election shall be investigated and that you may go behind each and every ward in a city, and that each and every precinct and parish may be examined for the purpose of ascertaining the facts. No man could contend for a moment that that could be done, and yet if you open the door to this investigation you have a right to claim that Congress may go into the precincts, into the wards, into the parishes, and examine fully all the election returns from the different portions of the country to ascertain this fact. This it seems to me would be impossible.

Another objection is made by the objectors, that a portion of these

Another objection is made by the objectors, that a portion of these electors were State officers. I do not know whether or not that is true, and it certainly makes no difference. Suppose they were State officers. The Constitution itself prescribes certain qualifications or disqualifications of an elector, and gives the State Legislature the right to adopt the mode and manner of electing those persons, but the State has no power to make disqualifications for the electors in addition to what are contained in the Constitution of the United

States. In my judgment that objection has nothing in it.

Again, it is objected that two of these electors, I believe, were Government officers. An answer to that by way of argument certainly would be that when the Constitution provided that electors shall not hold a Government office it means what it says; but how are you to determine that fact? The office of elector being a State office, that fact must be determined before the vote is cast. If the vote is once cast it is a vote, for the man is de facto an elector and his vote in law is good. The same disqualification applys to a Senator or a member in either branch of Congress. The Constitution provides that a man shall be twenty-five years old before he shall be admitted to the House of Representatives. Suppose he is elected when he is twenty-four years old but does not take his seat, and when he is twenty-five he is sworn in. Would any man say that he was not a member of Congress under the Constitution? So if an elector is elected to cast the vote for President and has a disqualification at the time, if at the

the vote for President and has a disqualification at the time, if at the time the vote is east he does not hold the office contemplated by the Constitution, he is an elector as contemplated by the Constitution, for the disqualification does not attach at the time he casts the vote. But, as I said before, this fact must be shown, in my judgment. Some means must be provided to ascertain. I think it is the duty of the State to provide the means. If they intend to investigate the question of an elector it is the duty of the State to do that preceding the voting of the electors. Hence I hold the decision of this commission.

sion to be good. They decided that the question was not made against

sion to be good. They decided that the question was not made against these electors at the time of casting the vote, and that the votes of electors are good unless their seats have been contested as electors prior to the casting of the vote.

The PRESIDEN'T pro tempore. The Senator's time has expired.

Mr. WALLACE. Mr. President, the Senator from Ohio [Mr. SHERMAN] states that no Senator or lawyer on this floor when the bill was about being passed said that there was any right to go behind the re-

Mr. SHERMAN. If my friend will allow me, I said that two

months ago, before the question arose.

Mr. WALLACE. I refer now to the RECORD. I quote the Senator from Ohio himself, on the 25th of January, as to what was his opinion of what this bill meant. He said:

One objection to this bill was that the powers conferred on this commission were unlimited, and that the commission was left to judge of their powers; they were left to decide how far they should go back of returns and what faith they would give to executive certificates. The law did not seek to define or limit as was usually done in ordinary acts of legislation. I objected to the bill on that account.

The Senator from Indiana, [Mr. MORTON,] one of the judges, on

the same night said:

I took the ground from first to last that Congress had no right to go behind the decision of the returning board in Louisiana; that when they found that certain members of the Legislature had been elected, although they might have found that fact upon insufficient testimony or upon no testimony at all, still it was an act of the board appointed by the laws of the State for that purpose, and we had no right to go behind it. That was my position then, as it is my position now. I believe it is a vital point in the constitutional doctrine of our country; and I believe that this very bill that I am opposing in vain to-night will violate, and I believe it is intended to violate, that doctrine.

The Senator again said:

What I maintain is that this commission cannot carry out this part of the bill without going behind the returns from a State, and that is what our democratic friends understand by it.

And another of the judges, Mr. Garfield, in the House of Representatives, when the bill was on its passage, said:

It grasps all the power, and holds States and electors as toys in its hands. It assumes the right of Congress to go down into the colleges and inquire into all the acts and facts connected with their work. It assumes the right of Congress to go down into the States, to review the act of every officer, to open every ballot-box, and to pass judgment upon every ballot cast by seven millions of Americans.

It is for Senators and judges to reconcile these opinions.

It is for Senators and judges to reconcile these opinions. Sir, in a court of error or wherever a judgment is up for review, an offer of proof of facts which has been rejected by the court below, establishes for the purpose of reviewal all of those facts as true and proved. This is a well-recognized doctrine of the law. As this record is made up, gross and palpable frauds upon the people of Louisiana, and through them upon the whole American people, are permitted to have voice and power to proclaim a falsebood, to nullify the truth, and to reverse the recorded will of a majority of that people. It is false that the people of Louisiana have by a majority of their votes appointed the Hayes electors; and yet this decision proclaims it to be true. It is true that the majority of the people of Louisiana have by their votes appointed the Tilden electors; and yet this decision nullitheir votes appointed the Tilden electors; and yet this decision nullifies and crushes out this truth, and for the first time in the history of the Republic the recorded will of the majority of the people is ex-punged and reversed by the votes of the electoral college.

punged and reversed by the votes of the electoral college.

The broad offer to prove falsehood and forgery in the destruction of 10,000 lawful votes, by every rule of right and of law, is assumed to be proved true by its rejection, and we are thus compelled to confront the astounding legal declaration that the equities which ought to accompany the power and majesty of a clear majority of the people, the inherent vitality that belongs to every government for its own preservation as well against fraud as force, and the morality that pertains of right to every just system of laws, are utterly and absolutely wanting in ours.

Sir, if the false and forged returns made by four men who, by the testimony of a committee of the House, are proved, one of them to be too weak to be a knave; another unscrupulous, without integrity, tricky, and a defaulter in public office; a third, a sharper who cheats

tricky, and a defaulter in public office; a third, a sharper who cheats at keno and defrauds his State, and the other confessedly guilty of and indicted for forging dead men's names upon the pay-rolls of his city—if such returns, certified by an executive whose only title to his office is the Federal bayonet, are to be the only and conclusive proof of title to the Presidency of the United States, then indeed is a government of law supplanted by a government of force and fraud. Sir, a majority of the people of the United States whose rights are

outraged and denied, a system of jurisprudence that finds a remedy for every wrong, a Government that has repelled force and has within it the inborn vigor to resist the leprous touch of corruption, and a code of morals that shudders at and shrinks from the poisonous con-

tagion of falsehood and forgery, are here to-day in silent but majestic protest against this judgment.

The laws of the people whom I represent upon this floor are based upon common right, common honesty, and common sense, and they have been taught as I have, that the end of legal proceedings is the attainment of justice. They will not respect a decision which refuses to hear the truth, sustains falsehood, indorses forgery, and puts the Federal Government at the absolute control of the base and the unscrupulous. They, sir, will agitate for its reversal until its reversal shall come. The result before us is fitly reached. It is the decree

of party, wrung by party fealty from what should have been a judicial tribunal meeting and deciding a purely legal question.

Mr. SARGENT. Mr. President, my judgment was deliberately made up and strongly expressed against the passage of the electoral bill. Every democratic Senator upon this floor, save one, insisted that that bill should be passed; and it passed both Houses by the strength given to it by democratic votes. Among other things that I urged as an objection to this tribunal was that it would be said that its decision was partisen and that the men sitting upon that tribunal its decision was partisan, and that the men sitting upon that tribunal, whether as judges, Senators, or members of the House, would represent their political principles, a constituent part of their minds, and act upon those principles, and that hence it would be declared that the tribunal was partisan. Democratic Senators scouted at such an idea. They said "O, no, the members of that tribunal will rise above partisanship." I challenge them to deny the fact that not a democratic member of that tribunal has at any time during its sesdemocratic member of that tribunal has at any time during its sessions risen in the slightest degree, ay, in the estimation of a hair, above partisanship. Every utterance that has reached us, every vote cast, has been saturated with democratic partisanship. If, in the final verdict, when it is found that by accident, or some other cause, there happens to be one more republican upon the tribunal instead of one more democrat, why is it that democratic Senators come here and utter this jeremiad over the course of republicans upon that tribunal because they carry out their principles when they carry them out no more than their associates do? It is an unworthy exhibition. That tribunal has been constituted to decide this question, and as there are

The very last night, and almost the last thing said in the debate on this question, when the Senator from Ohio [Mr. Thurman] was insisting that they should go back of the acts of the returning board, and the Senator from Vermont [Mr. EDMUNDS] and those who thought with him were insisting that this should not be done by that tribunal, I called attention to the fact that under this clash of interest there would be carping at the result, and that somebody would think they were cheated. The democratic Senators thought then that such arguments were good for nothing. Then was the time to consider them and to vote down the bill, if it would lead to unfairness or partisan-

Now, sir, it is very easy to get up here and talk about "fraud, fraud, fraud," and fill the air with declarations of that kind; and it is very safe by a fiction of the law to assume that everything offered to be safe by a fiction of the law to assume that everything offered to be proved is true. Objection gives such offer, it is assumed, the nature of a demurrer, and confesses the truth of allegations however monstrons. I understood that to be the idea of my friend from Pennsylvania, [Mr. WALLACE.] And so they go before the tribunal, and offer a long list of things which they propose to prove, knowing there is no time to prove those things or their falsity; and knowing further, I believe, and they must know it if they believe anything in the doctrine of States rights, which it is said their party is founded upon, that the tribunal had no right to ascertain whether the things they therein alleged were true or not. Senators now ever partisagain and therein alleged were true or not. Senators now cry partisanship and frand, because the position of the other party required that they should stand up for the right of the States. It was natural and right that they should stand by the right of the States, and insist that in this matter, confided to the State by the Constitution of the United States, the action of the States through such agency as they saw fit to confide the power to, having taken place, should be respected by our tribunal and by Congress. It was the necessary logical result of the construction of the Constitution held to by the democratic party during all its purer years. The republican party simply comes forward and insists that this time-honored maxim shall not be completely trampled in the dust

Why, you could follow the rights of the States so far as to sanction secession. You could insist upon them so far as to abet an attempt to tear down the whole fabric of our institutions; and yet when it comes to sustaining that natural, necessary right of a State growing out of the Constitution of the United States, that it shall have a voice in selecting the President of the United States inde-

have a voice in selecting the President of the United States independent of the control of Congress, then you desert your doctrine and tradition, vilify your own tribunal, and say that Congress should strip the State of Louisiana of this right necessary to its protection and to the protection of the people of the United States.

Now, sir, I do not concede for a moment, however it may be rung in under a fiction of law, that it is true that these frauds were committed by the republican party of Louisiana. The returning board was organized there in order to guard against the result of that intimidation and murder and violence which experience had shown it was necessary there should be some barrier erected against. At this very election, in order to yield to the democratic claim, you must very election, in order to yield to the democratic claim, you must concede that, where thousands of republicans living in a particular parish were taken by the throat, were strangled, were prevented from voting at all, and their opponents got a fictitious majority by means like these, this false result was the one which should be counted, and the stifled vote, although the State law would equalize the right of the people in the matter, must not be considered at all. Why, sir, that is contrary to every principle of equity, contrary to every consideration springing out of national safety, national honor, national morals. If the people of a parish or of a State can be trampled under foot, if those who hold to a particular set of political opinions, hav-

ing the sympathy of others all over the country who have the right that those men shall vote as they see fit, can be taken by violence, by intimidation, by murder of themselves or of their families, and kept from the polls so that they cannot deposit their ballots therein, and from the polls so that they cannot deposit their ballots therein, and thereby a fictitious appearance is made in favor of their opponents, if that is to be sanctioned by your tribunal, then a wrong has been done. But, if on the other hand the policy of the law of Louisiana was wise, that the returning board should sift these very matters and cast out a fictitious majority thus created, then the decision of this tribunal was right. It was right upon that ground and it will have the sanction of the American people.

You may here appeal to the American people if you will; but this record goes out with your declarations. You may put the bold front on your assumptions; but I tell you when these pages after pages are read by the American people, showing upon their lines, written in blood, the deeds which have been committed in Louisiana by which the voice of the republican party has been stifled in whole parishes, by which

voice of the republican party has been stifled in whole parishes, by which voice of the republican party has been stifled in whole parishes, by which thousands of men have been prevented from voting, the condemnation will be written by the American people upon the record of your party. A party cannot possibly maintain itself which resorts to means like these; and no professions of public spirit, no profession of a desire for fairness will sanctify things like these. Murder is not a fair mode of electioneering. It cannot be used as party machinery; it must not be used so, unless we are to go back to the condition of barbarians. Give us a fair voice of the people, give us the vote of the people, unbribed, uncontaminated, unawed, and then it may be counted and will be counted. Give us a vote that is corrupted by bribery, give us a vote that is depleted by force, and the American people ought not to receive from any tribunal which can be created and will not themselves respect a result which is reached by such means. ought not to receive from any tribunal which can be created and will not themselves respect a result which is reached by such means. Such means as these were employed in Louisiana, and it was but a fitting end of the attempt made to seize the Presidency by such means when the other day assassination was resorted to in the State-house of that State. [Laughter on the democratic side.]

I repeat it was but a fitting end of those things when the other day assassination was attempted in the State-house of Louisiana and an analysis of the state that it is the state of the stat

attempt was made to take the life of a man that one-half of the people at that State believed to be their lawful governor. Do Senators laugh at that? The Senator from Virginia [Mr. Withers] laughs at that; perhaps he laughs at the utterance which was made in a party paper of his own yesterday in this city, where it was advised that Ruther-

ford B. Hayes should be assassinated if he came to this city. Does the Senator laugh at that?

Mr. WITHERS. No.

Mr. SARGENT. Does the Senator laugh at the fact that his party are responsible for the assassination of Abraham Lincoln? Do his

are responsible for the assassination of Abraham Lincoln † Do his party laugh †

Mr. WITHERS. I deny it fairly and squarely.

Mr. SARGENT. So might the Jews their responsibility for the assassination of Christ. The robe of the Senator's party is stained all over with gore, is stained all over with the results of an unnecessary war, is stained all over by dripping assassinations from that of the best man that God ever created on all this broad earth, being wholly man, Abraham Lincoln, down to the poorest negro of Louisiana or Mississippi that in this last election has been slain because of his desire to cast his vote for the party which gave him freedom.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. WITHERS. Mr. President, I had not designed to take any part in the discussion to-day; but I find that I have been forced into it. Before replying to the tirade of the Senator from California, [Mr. Sargent,] however, I will state that I was one of the Senators who voted for the creation of this commission. I did it because I believed it furnished to us the nearest approximation to a fair and judicial

lieved it furnished to us the nearest approximation to a fair and judicial investigation and decision of the great question who had been elected the President of these United States. I did it because while I had no conception that the political members of the commission provided by conception that the political members of the commission provided by that bill could by any possibility rise entirely superior to political considerations in making up their opinion, and as I was conscious that I would have been myself unable to do so if a member of that commission, I did hope and believe and expect that those members of the commission who were drawn from the judicial department of the Government would give judicial consideration to all the legal questions that were presented before them; and I confidently predicted up to the time the vote was cast that on every question before that commission it would be found that the members of the judiciary who constituted a portion of it would be found voting as a unit. And, sir, I undertake to say here to-day that if that prediction had been verified, the decision of this commission would have gone forth to this whole country commanding and receiving the respect and acquithis whole country commanding and receiving the respect and acquiescence of all good men of all parties.

Now, sir, I confess with shame, with disappointment, with deep mortification and humiliation even, that the result of this investiga-

tion has demonstrated that the members of the highest judicial tribunal in this country cannot rise superior to political considerations any more than professed politicians can. I deplore the loss of prestige which must inevitably follow this decision. I deplore the fact that, as the result has demonstrated, instead of lifting this question from the mire of politics into the clearer and calmer arena of judicial decision, the effect has been to drag down into the mire of politics the members of that judiciary who have been hitherto regarded with the deepest reverence and respect by all men of all parties. Mr. BURNSIDE. I should like to ask the Senator from Virginia

Mr. BURNSIDE. I should like to ask the Senator from Virginia which he refers to—

Mr. WITHERS. I cannot yield; my time is too limited; my friend from Rhode Island will please excuse me. I wish to say this in addition on that question, that I have no criticism of one party more than of the other in this respect; but it certainly will strike the country as a very remarkable circumstance that when a naked legal proposition is submitted to this tribunal, involving merely the consideration of continuous large and the constitution of continuous large and the continuous large and the continuous large and the constitution of continuous large and the continuous proposition of constitutional law, one member of the court upon one presentation of the question with regard to one State should have voted one way, and when the same question identically was presented in regard to another State should have cast his vote the other way.

In regard to another State should have cast his vote the other way.

I do not, however, propose for one to do anything except to carry out in good faith the provisions of the bill creating the commission. If there be fraud and wrong and corruption in it, if their findings have been, as alleged, in defiance of every consideration of right, of justice, and of equity; if it shall be proclaimed as the supreme law of this land that the Congress of the United States have no power and authority to go behind the certificate of a governor or the returning board of a State, it will proclaim to this country the establishment of the doctrine of State sovergingty to a degree for beyond what has ever board of a State, it will proclaim to this country the establishment of the doctrine of State sovereignty to a degree far beyond what has ever been claimed for it by its wildest advocate. Sir, not Madison, nor Jefferson, nor Mason, nor Calhoun, nor the resolutions of 1798 and 1799, any of them ever pretended that the States were so sovereign that they could override the powers of the General Government even to the extent of deciding who should be President of the United States when fraud vitiated and destroyed the legality and the validity of the returns of the electors who were sent up to these bodies.

The distinguished Senator from Indiana [Mr. Morron] in his argument seemed to contend for the proposition that ineligibility of election and ineligibility to hold office were the same thing. With all due deference to the legal acquirements of the Senator and his position as a lawyer, I must dissent from the proposition and state that the highest legal authorities draw that distinction, and make it so plain and unequivocal that no one can pretend to deny that there

so plain and unequivocal that no one can pretend to deny that there

exists a difference.

Now, sir, in the minute or two that I have left, I wish to allude simply to the charges which have been made by the Senator from California [Mr. SARGENT] and the Senator from Ohio [Mr. SHERMAN] in such impassioned strain that the democratic party are responsible for all the wrongs and outrages and violence which have been committed in the Southern States, even to that which culminated in the assassination of a President of the United States. It is too late for me to discuss that question, but I will simply express as my earnest conviction, drawn from a minute investigation of the whole subject, that three-fourths of the wrongs and violence and murder which have been perpetrated in the Southern States have been at the instiga-tion and generally provoked by the active interference of the repub-lican party. I stand on this floor and assert my belief that when these returning boards in the Southern States were vested with the right to revise the votes sent up to them and throw out votes from parishes and counties wherein intimidation was alleged, and when the republican party in those parishes and in those counties were then informed that the way to set aside a popular verdict would be by creating scenes of violence and wrong and outrage in order to furnish the basis of action for the returning board, those scenes of outrages and vio-lence and wrong and murder were furnished them and for that specific Who are the beneficiaries of these misdeeds? Not the democratic party. No, the republican party are the beneficiaries; and when wrong and violence and outrage are perpetrated, I take it that we have the right to assume that those who are the beneficiaries of the acts were those who instigated them; and that is my opinion today expressed in the face of the Senate and the people; and if I had time I think I could show some evidence, evidence sufficient to convince any unprejudiced man that such is the actual state of the case and that the whole effort and determination of party in the Southern States has been to direct and concentrate all efforts so as to perpetuate fraud, to perpetuate violence, to perpetuate murders in the community in order that upon their existence they might base the allegation that it was necessary that the returning board should step in and by their acts set aside the verdict of a very large majority of

Mr. BOUTWELL. Mr. President, in these moments when disapointment waits upon so many of our friends on the other side of the pointment waits upon so many of our friends on the other side of the Chamber, I wish to say that I have been disappointed in two particulars. I voted for the electoral bill, not because I had any doubt myself as to the right of Governor Hayes to the office of President for the next term, but I did know that there was a large body of people in this country who entertained a different opinion; and in deference to that opinion, and in the interest as I supposed of public peace, (which I then interpreted to mean general, placid acquiescence in the result which might be reached by this commission,) I voted for the bill under which it was organized. I now see that in that parthe bill under which it was organized. I now see that in that partienlar I have been disappointed. If the demonstrations which have been made in this Chamber to-day are to be taken as the indication of a considerable public sentiment in this country, if the expressions made elsewhere are to be taken as like indications, then that great body of people marshaling more than can be marshaled under the banners of either party is to be disappointed, and in their disappointment I share.

I am disappointed further in this, that when a commission had been

selected by the bill, and when we were told here and elsewhere by those who prepared the bill, not men of one party but men of both parties, that this was not only a patriotic measure in the interest of public peace and as a consummation to crown the centennial year of our national life, but that it was for us a just and proper thing to coincide with their recommendations, the very gentlemen of this Senate who on the other side of the Chamber led us to the support of this measure come here and substantially condemn not only the judgments of their associates, but by abstention of remark condemn the faith by which their associates have been actuated.

I did not anticipate that men would rise above partisan feeling; I never anticipate that in great crises of a nation's life. When the treaty with Great Britain known as the Jay treaty was under consideration, no man was more partisan than the Father of his Country. In the recent contest through which we have passed the nation's life was saved by partisans; and in great crises there are no patriots but partisans—no patriots in great perils in a country's history except partisans. The men who stand independent, who are above the control of the influences which animate most men are utterly incapable trol of the influences which animate most men, are utterly incapable

I am disappointed in this also, that the judgment of eight men, three of them members of the Supreme Court of the United States, is not taken by our friends on the other side of the Chamber as better evidence of the conclusions which have been reached than the discount of the conclusions which have been reached than the conclusions which have been reached than the conclusions which have been reached the conclusions whi senting opinions of seven other men, though they be equally worthy. Their conclusions constitute a prima facie case against which evidence

is to be brought, and which cannot be overthrown by declamation.

I say further that this commission, in my judgment, has done only what the Constitution required it to do. The second section of the second article says:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

That power did not originate with the States, but it came from the whole people in their collective capacity as a nation, and with it the States have been endowed. They take that power from the nation and may exercise it just exactly to the extent that it is granted. The States decide the manner in which the electors shall be appointed; and that power carries with it in the States the right to inquire whether in the appointment of electors the manner of appointment which they have prescribed has been followed by the officers of the States. Here is a clear line between the power of the States and the power of the National Government marked out by the Conand the power of the National Government marked out by the Constitution. Therefore the most that can be said by a commission which represents the two Houses of Congress is that it might inquire whether the manner which is specified in the laws of the State as to the form of proceeding, for example, whether the appointment has been by popular election or by the governor, has been followed or not. But all inquiries touching the details of mode of proceeding, the good faith of public officers, everything that is covered by the phrase "manner of election" is within the control of the State; and I do not share at all in the idea that we have surroudered the Governor. "manner of election" is within the control of the State; and I do not share at all in the idea that we have surrendered the Government and that hereafter bribery, fraud, and corruption are to control. Not at all. The States will take notice, pass laws, establish provisions so that the manner of appointing electors which they may prescribe shall be faithfully carried out; and it will be worth something in these days, when there is truth in the statement that there has been bribery, fraud, corruption, and that a pretty large part of it is chargeable to one particular party in this country, if the leaders of that party take notice of the danger to the institutions of the Republic from allowing these wrongs to be continued until they are chronic in the nation and can only be exterminated by war.

I look for better times; but I am not disturbed by the declaration which the commission has made, believing that it is in conformity to the Constitution, and I believe that the people of this country will accept this opinion of the court and that the court loses no prestige. It has decided a political question, but it will return to its judicial duties with the same judicial spirit which it has manifested from the days of Marshall till now.

days of Marshall till now.

Mr. STEVENSON. The proceedings of the American Senate to-day will live, in my judgment, Mr. President, as long as constitu-tional government lasts, or American liberty has an earnest votary. Our judgment of approval of the findings of the high electoral commis-Our judgment of approval of the findings of the high electoral commission as to the vote of Louisiana must tend strongly to destroy the foundation on which both these rest. I voted for the bill creating this commission, and I assume all the responsibility which such a vote implies. I did it in the interest of justice, I did it in the interest of peace. I was willing to sacrifice any mere supposed party advantage for the peace and honor of my country. Such has always been the course of the democratic party. Their devotion to the Constitution, their respect for law, their love of peace, when consonant with the honor of their country, have been always paramount to the schemes of mere party. It has been always so, sir. Never was it more preeminently manifested than in their support of this electoral commission.

The Senator from California [Mr. Sargent] tells us that there was but one democrat who voted against this bill. I thank God that there was such unanimity. But, sir, that bill would not have received a corporal's guard on either side of this Chamber if there had not been the universal belief that there was to have been, upon an exequo et bono basis—a full, thorough, and impartial inquiry into the alleged

frauds and irregularities of the returning boards in Florida and Louisiana. It was that belief of a full investigation by an impartial tribunal into the alleged illegal acts of the returning board in Louisiana that secured with so much unanimity the prompt passage of that. The country demanded its passage. Why? Because the people—republicans and democrats alike—rejoiced in the creating of a tribunal which they believed would faithfully and impartially investigate and ascertain the charges against the returning boards in Louisiana and in Florida in having fraudulently and falsely suppressed the votes as cast by the people of those States for Tilden and Hendricks electors on the 7th of November, 1876; and in utter violation of the verity of those returns it was charged that said returning boards had issued certificates falsely and fraudulently to the Hayes and Wheeler electors, who had received a minority of the votes cast.

It cannot be denied that as soon as the presidential election took place great doubt prevailed among both democrats and republicans that true returns of the votes as actually cast by the people in those States had not been made. It is also true that serious fears were apprehended that violence might take place when the votes came to be frauds and irregularities of the returning boards in Florida and

prehended that violence might take place when the votes came to be counted by the two Houses of Congress. Hence the proposal and creation of this electoral tribunal was hailed everywhere with satisfaction and approval, and the entire country looked to a thorough scrutiny of all alleged frauds and irregularities.

In entering my warm and earnest protest against a concurrence in the judgment of a majority of this tribunal, I hope to do so with en-tire respect for myself and toward them. But I must confess I was amazed to hear the Senator from Ohio [Mr. Sherman] indignantly amazed to hear the Senator from Ohio [Mr. SHERMAN] indignantly intimate that no one had a right to criticise or question the correctness of the judgment of that tribunal. Why, Mr. President, this is a most extraordinary doctrine. Where are we, that the ruling of any court may not within certain limits be passed upon and questioned? I have had some little experience in my profession, and I say to the Senator that I scarcely know of a court of last resort, whatever its reputation for ability and learning, that has not been frequently appealed to to review its own decisions both as to matters of law and fact, and few that have not at some period on petitions for rehearing fact, and few that have not at some period on petitions for rehearing acknowledged its error by taking back its judgment as originally rendered. What, sir, an insult to a court to criticise its ruling? Why, Mr. President, the Senator from Ohio [Mr. Sherman] must feel the

Mr. President, the Senator from Onio [Mr. Sherman] must feel the weakness of his cause, to be so far carried away with party blindness as to intimate that the electoral tribunal cannot err.

Sir, in my judgment they have erred—gravely erred, and while I will not question or asperse their motives, I intend fearlessly to review their judgment and point out what I regard a fearful and fatal error to free institutions as contained in its conclusions.

It is not the first time I have sought to convince a court of its own errors in cases much less important than this. Let the Senator from Obio [Mr. Shippann] and forget that the indement of this tribunal Ohio [Mr. Sherman,] not forget that the judgment of this tribunal is wholly interlocutory and has no judicial efficacy if the Senate and House non-concur in its findings.

Now I repeat, and I say it without the fear of contradiction, that

both republicans and democrats throughout the length and breadth of this broad land, everywhere, expected when this bill was offered and this commission created that there was to be a free, full, and fair investigation, and that a judgment was to be rendered in accordance with the true facts and proofs exhibited by both sides.

investigation, and that a judgment was to be rendered in accordance with the true facts and proofs exhibited by both sides.

The Senator from Vermont, [Mr. Edmunds,] who more than any other gentleman inaugurated this tribunal, upon the sixth day of the present session offered a resolution to direct the Committee on Privileges and Elections to inquire into this alleged violence and intimidation, as alleged to have been practiced in certain States, and further to inquire into eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th of November, 1876. We all know that the Senator from Vermont is an able lawyer thoroughly versed in constitutional law. Were could not suppose that so distinguished a jurist would have offered a resolution proposing an inquiry which he thought forbidden by the Constitution to be instituted by Congress; still less to have directed a committee of the Senate to take proof on a subject which both Houses of Congress were inhibited from investigating. When the Senator from Vermont offered this resolution—prefaced by a long preamble—the Senator from Maryland [Mr. Whyte] offered to enlarge its scope, to open the door to the widest inquiry and thus let in all that could be offered on either side as to the frauds and venality of returning boards and ineligibility of electors. I heard no whisper then that it was unconstitutional. I saw the Senator from Indiana [Mr. Morron] and the Senator from California [Mr. Sargent] both voting for the resolution, and thereby acquiescing in the unquestioned power of Congress to inquire into and take proof as to all frauds and venality in suppressing the votes in Louisiana and instituting inquiry whether there had been a free and fair election. The committee was authorized to take proof what irregularities existed, which elector was there had been a free and fair election. The committee was au-thorized to take proof what irregularities existed, which elector was

That was the occasion, if any doubt as to the constitutional power of Congress to constitute the proposed inquiry existed, to have interposed it. But none such was interposed. The distinguished republican Senator, like the Senators from Ohio [Mr. Sherman] and from Indiana, [Mr. Morron,] who to-day tell us so loudly that they always believed, and never entertained a doubt that Congress had no power to inquire into fraud of returning boards in suppressing votes of States for electors, altering and forging returns of votes actually east for presidential electors, were present when the resolution of the Senator from Vermont was offered for the proposed investigation, and permitted it to pass by their votes without a word of the want of constitutional power. But why then were they silent? How do they justify their votes for an inquiry which Congress had, in their opinion, no constitutional power to pass?

Mr. President, I feel humbled at the fact that any tribunal, however learned should reject proof which was offered to show frand-

ever learned, should reject proof which was offered to show frand—corruption as practiced by a board of canvassers in a State without legal power, and for venal purposes, whereby the vote of the people of said State as cast for Tilden and Hendricks electors and re-

ple of said State as cast for Tilden and Hendricks electors and returned to said board to be compiled was altered, forged, and changed, and false and fraudulent certificates issued by said board to Hayes and Wheeler electors, and the vote of the people of Louisiana, in utter defiance of the popular will, cast for Hayes and Wheeler for President and Vice-President, when the electors for Tilden and Hendricks were chosen by more than 8,000 majority.

I had supposed that no judicial tribunal organized in the interest of truth, honesty, and fair dealing could rightfully disregard proof of fraud in a transaction it was called upon to investigate. Fraud taints whatever it touches; it invalidates every obligation; it cancels every judgment. I had supposed every election certificate or return shown to have been pronounced absolutely null and void. If the fraudulent suppression of the popular vote by any instrumentality or agency

would have been pronounced absolutely null and void. If the fraudulent suppression of the popular vote by any instrumentality or agency in a State is to find shelter upon any pretense or legal technicality behind the white ermine of any quasi-judicial tribunal, then there is no safety for popular government. If the State cannot apply a remedy, and Congress has no power to inquire and take proof as to the fraud and venality of a returning board in selling out the votes of the people in a State, then popular suffrage is a farce.

I tell you, Mr. President, the people, neither republicans nor democrats, will rest satisfied with this judgment. All jurisprudence, law, and equity abhor fraud. Every State in the Union is interested in the exposure of the election frauds in Louisiana. For any tribunal to say they will not have proof offered to establish the selling-out the vote of a State which is to determine the election of President has no precedent in the past and can never be approved; and what exno precedent in the past and can never be approved; and what excuses are now offered by Senators in support of the judgment? The same threadbare story of violence and intimidation. They seek to exclude all proof as to the mode of conducting the elections, and then when the door is closed, fraud and venality are to be tolerated by the cry of blood and intimidation. I do not know that we ought to wonder at the daring usurpation and outrages of the Louisiana returning board. Poor Louisiana has been for years "the Niobe of States." With all the resources of material wealth, her gallant people have for six or eight years past been crushed by usurpation and military power that defy description. None will ever know the losses, sufferings, and oppression of that people.

Have you not seen her State government overturned by a usurping judge backed by the military power of the United States, who only escaped impeachment for his crimes by an ignoble resignation of his office? Have we not witnessed the soldiers of the United States marched under the military orders of Federal officers into the legislative halls and representatives elected by the people taken forcibly out at the point of the bayonet and their places filled by usurpers? When Congress has been appealed to by this gallant and down-trodden people for redress against such violence, have you not told them to wait until another election? exclude all proof as to the mode of conducting the elections, and then

to wait until another election?

How often have the Senator from Ohio [Mr. SHERMAN] and other How often have the Senator from Ono [Mr. SHERMAN] and other republican Senators resisted any protection upon the ground that at the next election every wrong would be righted and the State restored? Year by year these people have held elections, but the returning boards have by fraud and violence defeated the popular will. Rulers not chosen by the people have been put upon them by the returning board, and these frauds supported by military power.

This returning board, and these frauds supported by military power.

This returning board, self-perpetuating in its duration, and in utter disregard of law, of honesty, of morality, have held Louisiana in absolute control. The will of this organization has been the sole standard of official tenure in that State. Popular suffrage has been a mockery there for years. Republican testimony in support of this statement is to be found in the archives of the Senate. Is it surprising that this returning board, when they have been so successful in their State usurpation, should seek to extend the theater of their operations within the Federal sphere?

If they have by an open disregard of law for six years set at de-

operations within the Federal sphere?

If they have by an open disregard of law for six years set at defiance popular suffrage in the State of Louisiana and governed that State with arbitrary power, why not attempt a wholesale system of suppressing the votes for the appointment of presidential electors, especially when the State of Louisiana would turn the scales? If their success had been so signal in creating governors despite the popular voice in Louisiana, why not make Presidents in the same way? And accordingly they attempted it at the appointment of electors by the people of Louisiana in November last by forgery, falsehood, and fraud in suppressing a majority of 8,000 votes for the Tilden and Hendricks electors and giving the return to the Hayes and Wheeler electors. And by a judgment of the electoral commission this fraud is to be successful, because Congress has no power to investigate or expose it. Can a greater premium be offered for continued exertions by fraudulent returning boards? lent returning boards?

Mr. President, in 1800 a tribunal was proposed by Congress somewhat similar to this. Jurists like Marshall, Dexter, and Hillhouse believed Congress possessed the power of investigation as to fraud in the appointment of electors; and their authority is entitled to some weight. But Senators tell us we knew the law, and we must abide by it. Mr. President, we had every reason to believe that this tribunal would investigate every electoral certificate in Louisiana procured by fraud and corruption. The whole country expected it, republicans as well as democrats. If the technical certificate was to shut out proof of open fraud, why not have allowed the President of the Senate to count? Who could ever have believed that this tribunal would have ignored the express limitation of the Constitution upon the State and upon the elector, that no Federal office-holder should be appointed an elector?

apon the State and upon the elector, that no Federal office-holder should be appointed an elector?

But, Mr. President, I shall go for enforcing that law. My grief, my bitter grief, at this ruling springs from no mere political disappointment. O! no, sir; Mr. Tilden has received a majority of the electors in all the States even if by a technical ruling the fraud by which he was kept out of it is not allowed to be shown. The popular confidence which chose Mr. Tilden is a much higher honor than the mere filling the office. But it is for my country I grieve. Their right to have the services of Mr. Tilden in the executive chair is defeated by fraud in a Louisiana returning board and no proof of the feated by fraud in a Louisiana returning board and no proof of the fraud is allowed.

No returning board can take from Mr. Tilden the approval of the people, and no tribunal can deprive him of that consolation that he was chosen by more than twenty millions of freemen to be their ruler. We shall execute this law, to whatever results its construction by the electoral tribunal may lead. It may defeat the democratic party and

electoral tribunal may lead. It may defeat the democratic party and strip it of power fairly won, but that party will still hold sound its plighted faith to uphold it and preserve untarnished its personal honor amid every disappointment or defeat.

The PRESIDENT pro tempore. The Senator's time has expired. Mr. HOWE. Mr. President, the Senator from Kentucky admonishes us that the proceedings of the Senate this day will live. That is true; and it is a pity in my judgment that it is true. I think it would be better for the fame of the Republic, better perhaps for its welfare, if these proceedings could be buried out of the sight of history when they are closed. But that cannot be done. For days the waves of declamation and vituperation have broken at the feet of this commission to coerce it into the crucifixion of a State in order that somebody besides the State might appoint the men who should give its vote for the choice of President and Vice-President of the United States. And now, sir, in the Senate to-day these same foamy surges beat upon the heads of that commission in the hope of crucifying it, I suppose, because it would not weakly consent to crucify a

surges beat upon the heads of that commission in the hope of crucifying it, I suppose, because it would not weakly consent to crucify a State. Sir, the State yet lives. Let us trust to a beneficent Providence, if we can no longer trust to a wise and prudent people, that the commission and its judgments will survive.

Mr. President, what do we hear here in the Senate? The commission is arraigned because it would not set aside the State's appointment of electors, first because it is alleged here that the returning officers who determined upon the election of those functionaries were an unconstitutional tribunal created in violation of the constitution an unconstitutional tribunal created in violation of the constitution of Louisiana. That is so, or it is not so. If their creation did defy the fundamental law of Louisiana, who ought to know it so well as Louisiana, and who else in God's wide world is authorized to say so but Louisiana? Could the commission tell her that? That combut Louisiana? Could the commission tell her that? That commission was clothed only with such prerogative in this behalf as graced the two Houses of Congress. Will it be said here that these two Houses can tell a State when she has violated her own constitution in the selection of her own electors? If you can tell Louisiana that, you can tell New York that; and I beg to ask among my learned friends on the other side of the Chamber where sits that one lawyer who dares stand up and tell the American profession that the two Houses of Congress can exclude the vote of the electors of New York because they have been appointed not in conformity with the constitution of New York? New York would correct that style of reasoning very promptly.

Again, it is said that their vote ought not to be counted because the board which undertook to ascertain the result of the election was not full, that the law of Louisiana directed that there should be five members upon it and that there were in fact but four. They say the four obstinately refused to add the fifth. That is the allegation. the four obstinately refused to add the fifth. That is the allegation. Suppose it were true, what then? Because four men constituted that board, three of whom constitute a quorum, because they did not discharge their whole duty in the appointment of a fifth, are the two Houses of Congress authorized to say that for that fact they will disfranchise the State of Louisiana; that she forfeits her vote in the great national college which is called upon to select a President and Vice-President simply because four of her citizens did not do that duty? Will that be said of any other State in the Union?

Again, it is said that that board refused to count that and to count this because there was no regular protest filed against those returns. Whose duty was it to file the protest? The duty of the commissioners of election, officers residing at the different polls throughout the State. The law does tell those commissioners to file protests. They ought to do it. I assume if they dared to do it they would. But suppose they refuse to do it, obstinately and corruptly, what then? Because the commissioners of election do not do their whole duty, were the returning officers to turn their backs upon their duty, and for

the returning officers to turn their backs upon their duty, and for

either reason dare that commission, or dare the two Houses, say that the vote of Louisiana shall be excluded from count here? If you can say it of Louisiana you can say it of Pennsylvania, but you never will say it of Pennsylvania, and never dare hint at it.

But the great grievance of all is that the commission would not for the time set aside the decision of Louisiana and open up the question what lay behind the decision of Louisiana. These gentlemen tell us that they could have proved such monstrous frands, such monstrous bribery, such monstrous corruption, if they could but once have had the doors open to them to go behind the returns of Louisiana. Mr. President, as much as any one man I think I may assume to know what would be discovered if they could have got at the decision of Louisiana. If it were possible that the decision of her constituted tribunal could cover those facts from human observation, it were a tribunal could cover those facts from human observation, it were a tribunal could cover those facts from human observation, it were a gladsome thing, I think, to every man who cherishes the good fame of the democratic party. If it were possible that any canvass could cover what lies behind it from the scrutiny of Him who overlooks us all, it would be still happier for that party, still happier for the people of Louisiana. But that cannot be covered. There is no possibility of it. This commission would not inquire into that, and they stood upon the law of Louisiana when they said so, but others will not be so scrupulous. They will be looked into; they will be known to this people, to this generation, and to the generation which shall succeed this. I want to say, Mr. President, in closing, that as a republican, cherishing the past of the republican party, believing in it as thoroughly to-day as I ever believed in it, I shall not as a republican have any occasion to blush when the blankets are all stripped off from what lay beneath that canvass.

occasion to blush when the blankets are all stripped off from what lay beneath that canvass.

Mr. CHRISTIANCY. Mr. President, if I can say nothing to quench, I think I shall say nothing to kindle the fire of partisan animosity which in my opinion bodes no good to the country. As soon as it was known that the result of the presidential election must depend upon the votes of the State of Louisiana—for I had no doubt as to the other States—I felt that a great calamity had fallen upon the nation.

On the one side, about half of the American people felt a deep and thorough conviction that if Mr Tilden should be elected, they would have been defeated by violence, by murder, and intimidation which had kept their voters from the polls, or compelled them to vote against their wishes, as well as by fraud; and I confess I was one of those who thus thought and felt. On the other side, if Governor Hayes should be declared elected, the other half of the American people would have felt that their candidate had been defeated by gross frauds of the returning board of that State, in throwing out the votes actuof the returning board of that State, in throwing out the votes actually given for their candidate; and I am compelled to confess that I have not had, and have not now, a very high confidence in the integrity of that board, and fear that they may have sought to overcome by fraud, on their own part, the fraud and violence and intimidations

by fraud, on their own part, the fraud and violence and intimidations committed by their opponents, thus creating a fearful clashing of wrongs which would not be likely to result in the attainment of right. I have, therefore, felt that whichever party should triumph—and one or the other must—that triumph would be no cause for exultation; that it must be accepted without pride and not wholly without some feeling of humiliation at some unwarrantable means used by its friends for the attainment of its object.

It was for reasons like these and with the hope that a decision by the eminent men who would compose the commission, that I earnestly advocated the bill for that mode of settling the result. It was equally fair to both parties. And here I wish to say that it was equally fair on the very question of introducing evidence going behind the returns. It was asserted here by one of the leading advocates of the bill on the other side, as I understood him, that if it were expressly declared in the bill that the commission might go behind the returns, all the Senators on one side would be against it; and if the opposite were declared in the bill, all the votes on the other side would go against it. Hence this question was itself, with all the other questions,

declared in the bill, all the votes on the other side would go against it. Hence this question was itself, with all the other questions, known and understood to be submitted to that commission. It was equally fair to both parties in every respect; and as to the selection of the fifth judge each took its chances.

I had made up my mind to abide the result with equanimity whatever that result might be. I have not, therefore, since that commission was established, undertaken to further investigate the case of Louisiana, knowing that those eminent men who heard the case and the arguments were much better analiged to reach a just and proper Louisiana, knowing that those eminent men who heard the case and the arguments were much better qualified to reach a just and proper conclusion according to the Constitution and the laws than I could be without the special investigation which other occupations precluded me from making and which they had made.

I shall therefore accept now, as I would cheerfully have accepted had it been the other way, the result at which they have arrived.

Reject this decision now and we are again affoat upon a shoreless sea without light or compass to guide our course, and the result cannot be foreseen by the wisest.

The PRESIDENT pro tempore. The time allowed for debate has expired.

expired.

Mr. McDONALD. I move that the Senator from Michigan be allowed his full ten minutes.

Mr. HAMLIN and others. I object,
Mr. CHRISTIANCY. I only wish a minute more.
The PRESIDENT pro tempore. The Senator's time has expired,
and he asks for one minute more.
Mr. HAMLIN. Let him print it.
Mr. CRAGIN. Let the Senator have leave to print.

The PRESIDENT pro tempore. Debate having lasted two hours, it is now ended. The main question will now be put. The Secretary will read the substitute proposed by the Senator from New York, [Mr.

Mr. WITHERS. Before the question is put, I rise to inquire whether

Mr. WITHERS. Before the question is put, I rise to inquire whether the Senator from Michigan may not be permitted by general consent to append the undelivered portion of his remarks to his speech.

Mr. SHERMAN. There is no objection to printing.

The PRESIDENT pro tempore. There is no objection to printing. The Secretary will read the substitute proposed by the Senator from New York, [Mr. Kernan.]

The Secretary read as follows:

Ordered. That the votes purporting to be the electoral votes for President and Vice-President and which were given by William P. Kellogg, J. H. Burch, Peter Joseph, L. A. Sheldon, Morris Marks, A. B. Levissee, O. H. Brewster, and Oscar Joffrion, claiming to be electors for the State of Louisiana, be not counted, the decision of the commission to the contrary notwithstanding.

The PRESIDENT pro tempore. The question is on the substitute

just read.

Mr. KERNAN. I ask for the yeas and nays.
The yeas and nays were ordered.
The Secretary proceeded to call the roll.
Mr. HAMLIN, (when Mr. BLAINE's name was called.) My colleague is confined to his house by indisposition and he does not leave it today, under the direction of his physician. If he were here I suppose he would vote with me against the substitute.
Mr. MORRILL, (when Mr. Edmund's name was called.) My colleague is paired with the Senator from Ohio, [Mr. THURMAN.]
Mr. THURMAN, (when his name was called.) On this question I am paired with the Senator from Vermont, [Mr. Edmunds.] He is confined to his house by sickness. Were he here he would vote "nay" and I should vote "yea."

The roll-call having been concluded, the result was announced—yeas 28, nays 41; as follows:

YEAS—Messrs. Balley, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Dennis,

yeas 28, nays 41; as follows:
YEAS—Messrs. Bailey, Barnun, Bayard, Bogy, Cockrell, Cooper, Davis, Dennis, Eaton, Goldthwaite, Gordon, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—28.
NAYS—Messrs. Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conover, Cragin, Dawes, Ferry, Frelinghnyson, Hamlin, Harvey, Hitchock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Sargent, Sharon, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—41.
ABSENT—Messrs. Blaine, Conkling, Dorsey, Edmunds, Hamilton, and Thurman—6.

So the substitute was rejected.

The PRESIDENT pro tempore. The question recurs on the proposition of the Senator from Ohio, [Mr. Sherman,] which will be read. The Secretary read as follows:

Resolved. That the decision of the commission upon the electoral vote of the State of Louisiana stand as the judgment of the Senate, the objections made thereto to the contrary notwithstanding.

Mr. STEVENSON. I call for the yeas and nays.
The yeas and nays were ordered, and the Secretary proceeded to

Mr. THURMAN, (when his name was called.) On this question I am paired, as I have already stated, with the Senator from Vermont, [Mr. EDMUNDS.] If he were here he would vote "yea," and I should vote "nay."

The roll-call having been concluded, the result was announced-eas 41, nays 28; as follows:

yeas 41, nays 25; as 1010Ws:

YEAS—Messrs. Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conover, Cragin, Dawes, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertson, Sargent, Sharon, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—41.

NAYS—Messrs. Bailey, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Dennis, Eaton, Goldthwaite, Gordon, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—28.

ABEENT—Messrs. Blaine, Conkling, Dorsey, Edmunds, Hamilton, and Thurman—6.

So the resolution was agreed to. Mr. HAMLIN. Mr. President, the Senate having concluded its action upon the report of the commission on the vote of Louisiana, I now move that the Secretary be directed to notify the House of Representatives that the Senate is now ready to meet the House to proceed with the canvass of the electoral votes for President and Vice-President of the United States.

The motion was agreed to.

Mr. WHYTE. I understand that the House has taken a recess until to-morrow morning at ten o'clock. I therefore move that the Senate take a recess until the same hour.

Mr. SARGENT. Is it not necessary to inform the House also that the Senate has arrived at a conclusion upon the matter of the ob-

The PRESIDENT pro tempore. That will be included in the formal motion of the Senator from Maine. The question is on the motion of the Senator from Maryland, that the Senate take a recess until tomorrow at ten o'clock in the forenoon.

The motion was agreed to; and (at three o'clock and thirty-five minutes p. m.) the Senate took a recess until Tuesday, February 20, 1877, at ten o'clock a. m.

### HOUSE OF REPRESENTATIVES.

MONDAY, February 19, 1877.

The House was called to order by the Speaker at twelve o'clock

and fifty-six minutes p. m.

Mr. WOOD, of New York. I move that the House now take a recess until to-morrow morning at ten o'clock.

The SPEAKER. The Chair will ask the gentleman to withhold his motion for the present. This is now a new day, and the Chaplain will offer present. his motion for the present. This is now a new day, and the Chaplain will offer prayer.

Accordingly (at twelve o'clock and fifty-seven minutes p. m.) prayer was offered by the Chaplain, Rev. I. L. Townsend.

The Journal of Saturday was read and approved.

Mr. WOOD, of New York. I now move that the House take a recess until to-morrow morning at ten o'clock.

Mr. TOWNSEND, of New York, and Mr. WILSON, of Iowa, called for the years and nave.

for the yeas and nays.

for the yeas and nays.

The yeas and nays were ordered.

The SPEAKER. The Committee on Enrolled Bills have a report to make, which the Chair will present if there is no objection.

Mr. CONGER. Let the motion for a recess be withdrawn. I object to any business pending the motion for a recess.

The SPEAKER. The gentleman from Michigan [Mr. CONGER] objects, and the Clerk will proceed to call the roll.

The question was taken upon the motion for a recess; and there were—yeas 140, nays 130, not voting 20; as follows:

The question was taken upon the motion for a recess; and there were—yeas 140, nays 130, not voting 20; as follows:

YEAS—Messrs. Ashe, Atkins, Bagby, Banning, Beebe, Bland, Bliss, Blount, Boore, Bradford, Bright, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowao, Cox, Culberson, Davis, De Bolt, Dibrell, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, House, Humphreys, Hunton, Hurd, Jenks, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Mctcalfe, Milliken, Mills, Money, Morrison, Mutchler, New, O'Brien, John F. Philips, Piper, Poppleton, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Schleicher, Schumaker, Sheakley, Singleton, Slemons, William E. Smith, Sonthard, Sparks, Springer, Stanton, Stenger, Stone, Swann, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Walling, Walsh, Ward, Warren, Watterson, Whitthorne, Wigginton, Wike, Alpheus S. Williams, Jere N. Williams, Benjamin Wilson, Fernando Wood, and Young—140.

NAYS—Messrs. Adams, Ainsworth, Anderson, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banks, Belford, Bell, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Campbell, Cannon, Carr, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Cutler, Danford, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Finley, Flye, Fort, Foster, Freeman, Frye, Goodin, Hale, Haralson, Benjamin W. Harris, Hatcher, Hathorn, Haymon

So the motion for a recess was agreed to.

During the roll-call the following announcements were made: \*

Mr. A. S. WILLIAMS. My colleague, Mr. DURAND, is detained from the House by sickness.

Mr. KNOTT. My colleague, Mr. Blackburn, is confined to his room by sickness; if here he would vote "ay."
Mr. TERRY. My colleague, Mr. Douglas, is absent by leave of the House.

The vote was then announced as above recorded; and accordingly (at one o'clock and twenty-five minutes p. m.) the House took a recess until to-morrow morning at ten o'clock.

## AFTER THE RECESS.

The recess having expired, the House resumed its session at ten o'clock a. m. Tuesday, February 20.

### ORDER OF BUSINESS.

Mr. VANCE, of Ohio. I move that the House take a recess until

Mr. VANCE, of Chio. I move that the House take a constitution of clock.

Mr. WALLING. There is evidently no quorum here.

Mr. WILSON, of Iowa. If there is no quorum here, I will move a call of the House. We had better have a quorum as soon as pos-

Mr. WOOD, of New York. I think we had better go on.
Mr. WILSON, of Iowa. I think so.
Mr. O'BRIEN. I suggest that a recess be taken until eleven

The SPEAKER. The gentleman from Ohio [Mr. VANCE] moves that the House take a recess until twelve o'clock.

Mr. WILSON, of Iowa. I make a point of order on that motion.

The SPEAKER. The gentleman will suspend a moment until the Chair states the proposition.

Mr. WILSON, of Iowa. I beg pardon of the Chair.

The SPEAKER. The gentleman from Ohio moves that the House take a recess until twelve o'clock. The gentleman from Iowa [Mr. WILSON] moves that there be a call of the House.

Mr. WILSON, of Iowa. I wanted to call the attention of the Chair to this point of parliamentary law: The Chair has held that less than a quorum can take the final recess, which is equivalent to an adjournment, but temporary recesses, I think the Chair would hold, cannot be taken by less than a quorum.

The SPEAKER. The Chair recognizes the gentleman from Iowa to make the motion which he has made, that there be a call of the House.

House

House.

Mr. WILSON, of Iowa. But lest the question should be considered as waived, I desired to make in time the point that less than a quorum cannot take one of these temporary recesses.

The SPEAKER. When that question arises the Chair will decide it. The gentleman understands that he has not the privilege of precipitating a point of order on the House before it properly arises.

Mr. WILSON, of Iowa. I am perfectly well aware of that.

The SPEAKER. The Chair recognizes the gentleman from Iowa to make the motion that there be a call of the House.

Mr. WILSON, of Iowa. My excuse for interrupting the Chair with my point at this time is that, as the motion for a recess is similar to the motion for adjournment, the question might sometime be put on a temporary recess and the whole thing decided without an opportunity to say anything. a temporary recess and the whole thing decided without all oppor-tunity to say anything.

The question being taken on the motion of Mr. Wilson, of Iowa, for a call of the House, it was agreed to.

Mr. HOLMAN. If by unanimous consent a recess could be taken

until fifteen minutes before eleven, the same object would be accom-

plished.

Mr. WOOD, of New York. I object.

Mr. WILSON, of Iowa. I think we should go on now.

Mr. HOLMAN. Very well.

The roll was called; and the following-named members failed to

Answer:

Messrs. Adams, George A. Bagley, John H. Bagley, jr., William H. Baker, Bass Belford, Bell, Blackburn, Bland Bliss, Blount, Bright, John Young Brown, William R. Brown, Barleigh, Buttz, Cabell, Candler, Cason, Caswell, Cate, Caulfield, John B. Clarke of Kentucky, Cochrane, Cook, Davy, Douglas, Durand, Ellis, Faulkner, Felton, Finley, Flye, Franklin, Freeman, Frye, Fuller, Glover, Goode, Goodin, Andrew H. Hamilton, Robert Hamilton, Haralson, Benjamin W. Harris, Henry R. Harris, Harrison, Haymond, Hays, Abram S. Hewitt, Hoge, Hopkins, Hoskins, House, Hubbell, Hunter, Jenks, Frank Jones, Thomas L. Jones, Kasson, Lamar, George M. Landers, Lane, Lawrence, Leavenworth, Lewis, Lord, Luttrell, Lynche, Mackey, Magoon, Maish, MacDougall, McFarland, Mead, Metcalfe, Miller, Milliam A. Phillips, Plaisted, Platt, Poppleton, Powell, Purman, Rainey, Rea, John Robbins, William M. Robbins, Sobieski Ross, Schleicher, Schumaker, Sinnielsson, Smalls, A. Herr Smith, Willian E. Smith, Sparks, Stenger, Stephens, Stone, Swann, Thomas, Thornburgh, Turney, Gilbert C. Walker, Alexander S. Weilace, Ward, Warner, Erastus Wells, G. Wiley Wells, Wheeler, White, Whitehouse, Whiting, Whitthorne, Wigginton, Willis, Wilshire, Benjamin Wilson, Woodworth, Yeates, and Young—129.

Before the result was announced,
The SPEAKER said: Less than a quorum has answered; but the
Chair would suggest that gentlemen who have come in since their
names were called be allowed by unanimous consent to respond. The
Chair hears no objection. The Clerk will call the names of gentlemen desiring to be recorded, so that if a quorum is present it may appear on this roll-call.

The names of members present who had not previously answered were then called, the final result of the call being as above recorded. During the call,

Mr. KNOTT said: I desire to say that my colleague, Mr. Black-BURN, is sick and not able to be here.

Mr. HOLMAN, (at the conclusion of the call.) Is there a quorum

The SPEAKER. There is. One hundred and sixty-one members

have answered.

Mr. HOLMAN. Then I move that all further proceedings under

the call be dispensed with.

The motion was agreed to.

## MESSAGE FROM THE SENATE.

During the roll-call a message from the Senate, by Mr. Gorham, its Secretary, announced the Senate had adopted the following resolution:

Resolved. That the decision of the commission upon the electoral vote of the State of Louisiana stand as the judgment of the Senate, the objections made thereto to the contrary notwithstanding.

The Secretary of the Senate further announced that he had been directed to notify the House that the Senate was now ready to meet the House to proceed with the counting of the electoral votes for President and Vice-President.

#### ELECTORAL VOTE OF LOUISIANA.

Mr. GIBSON. I submit the following:

Ordered, That the votes purporting to be electoral votes for President and Vice-President, which were given by William P. Kellogg, J. Henri Burch, Peter Joseph, Lionel A. Sheldon, Morris Marks, Aaron B. Levissee, Orlando H. Brewster, and Oscar Joffrion, claiming to be electors for the State of Louisiana, be not counted.

Mr. HURLBURT. I move to amend the proposition of the gentle-

man from Louisiana [Mr. Gibson] by striking out the word "not."

Mr. NEW. Mr. Speaker, I voted for the bill creating the electoral commission without hesitation or misgiving. I am not ashamed of the support I gave that measure; and I now say to this House and to the country that I accept without qualification my humble share of the recognitibility.

the responsibility.

When I voted for that act I did so with the fullest confidence that no requirement in it, express or implied, would be ignored or treated as surplusage. At that time I believed that every issue made up in conformity with its spirit, its letter, and its purpose would be respectfully considered and fairly tried. When I read the text and found it provided in terms that the commission was authorized to take integrity and other parents as under the into view such petitions, depositions, and other papers as under the Constitution and existing laws would be competent and pertinent to such consideration, and when I remembered further that the Supreme Court of the United States had never omitted with the utmost emphasis when opportunity offered to declare that fraud poisoned, corrupted, debauched—not some things—but everything it created or contributed to the existence of, I, sir, was possessed of enough simplicity and credulity to believe that a commission thus constituted and empowered to act by a law which owed its passage to the existence of controverted questions of fact would not become mere counting tellers to the President of the Senate nor for a political party, but

ing tellers to the President of the Senate nor for a political party, but would open its ears to allegations of fraud contained in the papers solemnly, formally, and lawfully placed in its hands.

Mr. Speaker, when the polls closed on the 7th of last November in the State of Louisiana the question with that oppressed, plundered, and almost ruined people was, Shall we now be free? Will an honest State government now be installed or are we longer to be ruled over

by strangers who not only misgovern but despise us?

It was well known to those people that they could expect no deliverance save through the election of Mr. Tilden. The people of the whole country know this can be their only escape. It is not a matter of surprise that such intense anxiety exists throughout the Union to have the very truth ascertained and declared as to the vote and count in the State of Louisiana. Why has the President hesitated? Why has he not given formal recognition to the Packard State government Has he been waiting to see whether the commission would go behind Mr. Speaker, has not the word more than once in the last sixty days, in form semi-official, gone to the country that the President was waiting to hear from the committees sent into the State of Louisiana to

investigate and report upon questions of fact.

And wherefore, sir, inquire as to the facts? Why has it been thought important by a democratic House and a republican Senate that committees should be sent into the State of Louisiana to ascertain what electors had been chosen? Upon what theory consistent with the action of certain members of this commission did they as Senators vote to constitute the Senate committee? Wherefore, Mr. Speaker, this disease of formers which includes the County County of the County County of the County County of the County of th vote to constitute the Senate committee? Wherefore, Mr. Speaker, this display of figures and printer's ink, signed by John Sherman of Ohio, E. W. Stoughton of New York, the distinguished gentleman from Maine, [Mr. Hale,] and the no less able and prominent gentleman from Ohio, [Mr. Garfield,] and seven others of high standing and character in the republican party? Why after these gentlemen returned from New Orleans, whither they had gone at the request of the President to witness the canvass of the vote, did they make this communication or report to the President? I ask again, sir, why this volume of five hundred and seventy-one pages sent by the President with accompanying message to the Senate and House of Representatives? Will some gentleman familiar with its contents be good enough to point to anything in it which is not addressed or intended to be addressed to questions of fact and fraud? Mr. Speaker, little did the President suspect that his solicitude for an honest count in the State of Louisiana was idle and that his message to the Senate and House of Representatives was almost unlawful.

I shall vote to sustain the objections to the action of the commission, but, sir, I am in favor of proceeding without unnecessary delay to the

but, sir, I am in favor of proceeding without unnecessary delay to the conclusion of the count, and without a doubt in my own mind I declare conclusion of the count, and without adoubt in my own mind I declare it to be my best judgment that the democrats of this body, of the Senate, of Louisiana, and of the Union should submit (I do not now think of a more appropriate word) in this instance to the installation of a minority President if under the finding of the commission it should become necessary. If we do, without revolutionary act or expression, at the sacrifice of our dearest party interests, and of our strongest convictions, for the peace of the country, the near future will witness such condemnation and overthrow of the incoming republican administration as could happen in no country save that of a free people whose choice of a chief executive, fairly expressed at the ballot-box, had been disregarded, discarded, and deposed by a usurper whose only title to the office was derived through the rotten medium of the Louisiana returning board, the most infamous, desperate, and despised body of men ever organized and charged with important political powers and duties in this country, and shall I add, in shame, ever indorsed by such high authority in this or any other land.

If I have any time left, I yield it to the gentleman from Massachusetts, [Mr. Seellye.]

The SPEAKER. The gentleman has three minutes of his time remaining.

Mr. SEELIYE.

maining.
Mr. SEELYE. Mr. Speaker, it is perhaps generally true that in

discussion so earnest not to say so excited as this neither party may be altogether right or altogether wrong. In the bitterest disputes each side may often have somewhat to justify it, both sides perhaps being right in what they affirm and wrong in what they deny. I fancy that there never could be any contention among true-hearted men if each had a clear understanding of the ground occupied by the other. In this case of the Louisiana election it seems to me perfectly clear that the charges made by each side against the other are, in the main, the charges made by each side against the other are, in the main, true. No facts were ever proved more conclusively than the fraud and corruption charged on the one side and the intimidation and cruelty charged on the other. Which of the two sides went the farther, did the worst in this wrong-doing, would be very hard to say. The corruption of the one side seems as heinous as the cruelty of the other side is horrible, and on both sides there does not seem to be any limit to the extent they went, save only where the necessities of the case did not permit or the requirements of the case did not call for any more. I find it therefore quite impossible to say which of the two sets of electors coming up here with their certificate voices the true will of the people of Louisiana in the late election, and therefore equally beyond my power to assent to the propriety of accepting either.

I cannot, Mr. Speaker, exaggerate the reluctance with which I differ from the wise and candid men—wiser and more candid men would be hard to find—

Here the hammer fell.

Mr. SEELYE. May I have two minutes more?

Many Members. Yes, go on.

Mr. SEELYE. And wiser and more candid men would be hard to find than those of this electoral commission who have pronounced the decision on which we are now called to vote. I acknowledge, I think I appreciate the strength of their position. We cannot be too jealous of the constitutional right of a State to choose its presidential electors "in such manner as the Legislature thereof may direct." We cannot be too careful of congressional interference with the duly accomplished the subject of the constitution of credited results of such a choice. Whether we like or dislike it, the right of a State to choose its electors in its own way and to ascertain and certify as to the method of their choice is beyond our lawful con-All this I accept as a formal and technical statement of a clear principle of our Constitution; a principle moreover in its general ap-

plication as wise as it is clear.

But, Mr. Speaker, there are cases where the summum jus becomes the summa injuria, cases where the law strictly interpreted and strenuously enforced works out results contrary to all law, and in such cases equity lays the letter of the law aside and lifts her voice in judgment as the sovereign spirit of the law, the spirit of righteousness and truth declares. I find such a case in the pending issue.

Granted—and I hold this to be incontestable—that this electoral com-

Granted—and I hold this to be incontestable—that this electoral commission has clearly interpreted and accurately applied the Constitution and the laws to the question submitted to them, yet what if the very principle on which the Constitution and the laws must ultimately rest becomes thereby subverted? Granted that the decision reached is fairly within the bond; yet what if the pound of flesh cannot be taken without its drop of blood? What if this jealous care for State rights and constitutional prerogatives may so foster faction and so blunt the sense of justice and so increase the prevalence of fraud that the very foundation of prerogatives and rights has disappeared? Here the hammer fell.

[Here the hammer fell.]

Mr. SEELYE. But a word more. No nation, said Niebuhr, ever died except by suicide; and the suicidal poison is engendered not so much in the unjust statutes of a government, as in the immoral practices of a people which the government is unable to punish and unable to restrain. It is because I fear that the strict and accurate interpretation of the Constitution applied to the electoral vote of Louisiana would imperil that vote in the future and increase the very danger which the Constitution intended to avoid, that I am unable

danger which the Constitution intended to avoid, that I am unable to concur with such an application.

Mr. JOYCE. Mr. Speaker, the law creating the joint commission, and under which the electoral vote is now being counted, provides that the decision of the commission, when rendered, shall be submitted to the two Houses of Congress for affirmance or rejection, and unless the two Houses concur in rejecting it, the decision of the commission shall stand as the judgment of Congress.

This provision was incorporated into the act out of a superabundance of caution, but nobody then supposed that after this commis-

This provision was incorporated into the act out of a superabundance of caution, but nobody then supposed that after this commission had heard, examined, and decided any question which might be submitted to them, touching the counting of the electoral vote of any State, that either House of Congress or any member of either House would for a moment, entertain the thought of dissenting from or rejecting their decision; and I make this statement with more confidence and boldness because we were given to understand by democrats upon this floor, when the bill was under discussion, that the commission which the bill created and provided for would be composed of men whose learning, integrity, and purity would be above all question and beyond all suspicion.

But Mr. Sneaker, we found as we often have before that he who

But, Mr. Speaker, we found, as we often have before, that he who puts his trust in the democratic party leans upon a broken reed, and that he who gives his confidence to that party will surely find it be-

No sooner was the case of the electoral vote of Florida decided by the commission than the majority in this House, the party generally,

and the democratic press throughout the entire country, pitched into the majority members of the commission regardless of truth or decency. They were openly charged with being corrupt, with being influenced by political and partisan considerations, and nothing was too base or too low to be said about them, because after a full and patient hearing and investigation of the whole case they had been led to the honest and righteous conclusion that the people of Florida had clearly and fairly elected the Hayes and Wheeler electors, and that their votes should be counted for them. votes should be counted for them.

Does any one suppose, Mr. Speaker, that if the decision had been the other way we should have heard these wailing sounds about cor-ruption and partisanship from the trembling lips of the immaculate

Would the learned gentleman from Virginia have poured forth the streams of his constitutional wrath? Would the genial, self-deceived, gentleman from Illinois have amused and instructed the House with his eloquence? And would the graceful advocate from New York City have startled the House and the country by his thrilling apostrophe to the American flag, and by upsetting every theory and noble thought we have ever cherished in connection with the Star Spangled Banner

No, Mr. Speaker, all this and much more would have been lost if the commission had been dishonest enough to deprive the people of Florida of an honest vote and count Samuel J. Tilden into the Pres-

idency.

Now, sir, the case of Louisiana has been submitted to the commission and after days and nights spent in hearing, examining, and considering, aided by the learned researches and able arguments of the most eminent men in the land, the commission find no reason to reverse their judgment in the case of Florida, and therefore find that the Hayes and Wheeler electors in Louisiana were duly and legally appointed, and that their votes should be counted for the republican candidates.

The commission was asked to go behind the governor's certificate and hear evidence touching the appointment and acts of the returning board. The offer was made in my opinion with the design and purpose of prejudicing the case and the decision before the country, and not with any idea or expectation that the evidence would be re-

dand not with any idea or especiation that the evidence would be received or that it could be proved if it was.

Besides, sir, the opening of this case and the reception of evidence as claimed by the democracy, would have postponed the decision of this whole matter beyond the 4th of March, and thus have defeated the very object and purpose which the electoral bill was designed to

Again, sir, we hear the cry of partisanship and fraud from the democratic side of this House, and another tirade of calumny and abuse is heaped upon the majority members of the commission for this de-

It is not to be denied that great and unusual powers are vested in the returning board by this act; and nothing, perhaps, but the fear-ful condition of affairs which existed in Louisiana at the time of its passage would ever justify it in the eyes of the people of this country

The democracy were determined to carry the State in every election by force and intimidation, and this law was passed as a means of self-protection and defense to those who desired a free and fair elecself-protection and defense to those who desired a free and fair election, and for the purpose of preventing corrupt and unprincipled men from reaping the fruits of their crimes, and making it impossible for them to finally succeed in their unboly schemes.

The unequal political contest of 1876 closed on the 7th of November, and the result of the vote showed conclusively that democratic violence and intimidation had done their perfect work.

The count of the pretended and fraudulent votes at each polling-place showed that the republican phalanx had been either crushed and driven from the polls or made to fight in the ranks of their enemies, and that Tilden and Nicholls had carried the State.

In this crisis of course the only legal and peaceable remedy and

In this crisis of course the only legal and peaceable remedy and only hope left for honest men was in the returning board, who was in accordance with the law to canvass these fraudulent returns and de-

termine whether they should be counted or excluded.

The votes in the bull-dozed parishes in the late election and the lesson they teach need no comment; they show the existence of a state of violence and intimidation in that State which seeks to disfranchise every republican, whether he be white or colored, and restore

They commenced the political campaign of 1876 with the killing of Gair, Pinkston, and the Dinkgraves, and they followed it up by the murder of Gilbert, Mitchell, and hundreds of others, while they cruelly whipped and drove into exile every active republican they did not

hang or shoot.

As a part of the system they organized a vast number of democratic clubs and compelled the colored men, by force and threats, to join them, while they would not allow a republican club to be established, or a republican meeting to be held unless it was under the protection

of United States muskets.

In this way, and by such means, they succeeded in getting into the ballot-boxes, in the bull-dezed parishes, a majority of pieces of paper with the names of the Tilden electors on them, but they were not the votes of the men that cast them—they were the mandates of a

mob of armed men-and for these reasons the returning board ex-

mob or armed men—and for these reasons the returning board excluded them from the count.

Now, Mr. Speaker, the democrats of this House have no right to find fault and soold about the commission; they made it; it is their offspring, and they, and they alone, are responsible for its existence.

I opposed the electoral bill because I believed it was unconstitutional, and I have just as good a right to my opinion on that question as any other man, and because I was not able to believe in its expediency. But some of the best men in the country thought differently.

diency. But some of the best men in the country thought differently and I bowed in submission and am satisfied.

Again, Mr. Speaker, I firmly believed then, as I do now, that Hayes and Wheeler had been fairly elected, and I was in no mood to give it up or back down. It looked to me like a surrender, and I would not

consent to it.

I must confess also, Mr. Speaker, that I did not propose to be fright-ened by threats of bloodshed or civil war. I did not believe then and I do not now that anybody wants to

fight, and especially I do not look for or fear it from the northern

democracy.

I know them to be child-like and bland in their dispositions and meek and humble in their deportment, especially their leaders, and that they are not at all inspired with a spirit of ambition for military

glory or anxious to seek honor at the cannon's mouth.

Mr. Speaker, I should deplore war and would resort to all honorable means to avoid it, but when a man attempts to rob me of that which honestly belongs to me, you may call it war or what you please, but I do not propose to give it up; I propose to hold on to what is my own and abide the consequences.

Mr. Speaker, since I came into this House, one year ago last December, I have continually heard this howl about republican extravagance,

republican fraud, and republican corruption.

During that time scarcely a democrat has made a speech upon this floor who has not taken up this grand democratic refrain and rung the changes upon these themes.

And much of this, sir, I am pained to say, has come from men who now occupy seats in this Hall through the mercy and magnanimity of the party they slander and malign.

Sir, I have heard this stream of calumny until I am sick of it.

The republican party saved this country in its hour of peril, and has directed its course to its present exalted and honored position among the nations of the earth, while many who now defame and revile it were trying to destroy it; and, sir, I say it in all candor and kindness that it does not lie in the mouths of those men, and it is not modest or becoming for them to come here now and scald, accuse or modest or becoming for them to come here now and scold, accuse, or

modest or becoming for them to come here now and scold, accuse, or lecture the republican party.

The democratic party, sir, would do well to turn their attention to their own household when they cry fraud and corruption. Why, sir, their whole policy, and their every act since 1854, has been one grand system of fraud and deception.

The whole scheme to elect the Grand Fraud of Gramercy Park to the Presidency in the late election was a superb democratic cheat.

They started out in the campaign with the impression that they could buy every man they could not frighten or delude.

The great democratic paymaster from Connecticut was sent to In-

could buy every man they could not frighten or delude.

The great democratic paymaster from Connecticut was sent to Indiana to look after the election in that State and to pay off the Kentucky volunteers, and the gallant gentleman from New York boldly telegraphed to him in the very pinch of the campaign that he might "buy seven more mules."

The States of Mississippi, Georgia, and Alabama were carried for Tilden by an organized system of violence and intimidation which shocked humanity and caused cruelty even to blush. And you attempted to carry South Carolina, Florida, and Louisiana in the same way, but you have not succeeded.

The great State of New York was captured by the democracy in 1868 by the use of barrels of money and thousands of fraudulent registrations.

Turn now, sir, to Oregon and behold how the great reformer and his friends attempted to obtain an honest count in that State. It was necessary to have one more vote to secure the triumph of democracy and disgrace the executive chair. A confidential agent is sent to Oregon to negotiate with Grover and secure that vote. Now, sir, read the telegrams that passed between the men who were trying to barter away a nation's rights and bring shame and dishonor upon the

Barter away a nation's rights and bring sname and dishonor upon the Republic.

[Here the hammer fell.]

Mr. JOYCE. I desire just a moment more.

The SPEAKER. The gentleman's time has expired.

Mr. JOYCE. I ask the indulgence of the House a single moment.

The SPEAKER. The Chair has received notice that objection will be made to requests for extensions of time. But the Chair will ask unanimous consent that the time of the gentleman be extended.

Several members objected.

Several members objected.

The SPEAKER. The Chair cannot consent by his own arbitrary act to extend the time of gentlemen, because he has received notice

that it will be objected to.

Mr. LEVY. Mr. Speaker, as a Representative of Louisiana, I should be recreant to my duty and faithless to a sacred trust, if I failed to raise my voice in earnest protest against the action of the majority of the electoral commission, which has violated the majesty of the

State, outraged right and justice, and arbitrarily substituted falsity

and fraud for the true voice of the people.

The spirit of partisanship has so plainly asserted itself in the tribunal whose decision is now under discussion that, it is vain to expect its reversal by the concurrence of the two Houses of Congress,

pect its reversal by the concurrence of the two Houses of Congress, in last resort. But, sir, there is another tribunal which must pass judgment, and to which it is proper we should make a final appeal, the mighty tribunal of public opinion, whose judgment will be inscribed upon the tablet of our national history in ineffaceable letters. To the calm dispassionate sentiment of the honest masses, to the great, generous American heart, Louisiana appeals in this hour of national gloom and of her domestic peril—in this hour, when her peace, her prosperity, her honor, her very household altars and firesides are threatened with destruction. Now, when stripped of the drapery of her constitutional robes and clad in the sackcloth which emblematizes her degradation; now when the chains are fettering drapery of her constitutional robes and clad in the sackcloth which emblematizes her degradation; now when the chains are fettering her limbs and the iron is entering her soul, uttering no whining cry for pity or for mercy, but proud and erect, even in the nakedness of her desolation, she raises her voice in earnest tones and sends forth to the good, true people of this land her last, her "Macedonian cry for help." For nearly eight long years she has been subjected to the domination of adventurers who, under a bold usurpation deriving its usurped authority from an illegal judicial decree, conceived in corruption, perfected in perfidy, and promulgated from the haunts of profligacy, have preyed upon the vitals of the Commonwealth and reveled in the fruits of iniquitous legislation, until the financial credit of the State and her fair name has become a by-word of reproach. All this and more has Louisiana borne in patient sufferproach. All this and more has Louisiana borne in patient suffering, looking forward to a near future when the sound, sober sense of the people of other sections would right her wrongs and redress her grievances, through, what she believed to be, the omnipotent power her grievances, through, what she believed to be, the omnipotent power of the ballot-box. In spite of odious, unconstitutional laws, enacted in the interest of party and administered with all the bitterness of partisan hate, the people of Louisiana in 1872 and 1876 triumphed, at the polls, over their enemies and by the fair expression of their ballots entitled themselves to full redemption. By the fraudulent manipulations and perjured acts of the returning board, whose name is synonomous with all that is disreputable, the popular will has been nullified and truth prostrated at the feet of fraud.

Heretofore the people of Louisiana were alone immediately involved.

nullified and truth prostrated at the feet of frand.

Heretofore the people of Louisiana were alone, immediately involved in these perfidies and outrages. To-day the cause of Louisiana is not confined to her territorial limits, but the blighting influences of the successful conspiracy against civil liberty and constitutional freedom are felt by forty millions of people, who must in common with Louisianians bear their share of this national dishonor and national disgrace.

Louisiana, through her Representatives on this floor, reflecting the sentiment emblazoned on her shield "Union, justice, and confidence," voted for the electoral bill and submitted her case to the tribunal created, as she believed for the purpose of investigating thoroughly.

created, as she believed, for the purpose of investigating thoroughly, honestly, and patriotically the question as to how her people had honestly cast their votes in the recent election. The very words of the oath prescribed for the members of the commission, in the law tiself, would seem to convey to every candid mind a certain guarantee that the questions submitted would be decided, after full examination, according to the law and the evidence.

The spirit, intent, and fair construction of the law justified us in

The spirit, intent, and fair construction of the law justified us in believing, that, the commission, composed of members selected from among the ablest of the legislative and judicial departments of the Government, would fully and carefully examine and decide upon the questions submitted, and adjudicate the objections based upon proffered testimony, the submission of which served to give them jurisdictional vitality. These expectations have not been realized. Our hopes, "like Dead Sea fruits, have turned to ashes on our lips." A partisan majority, forgetful of the exalted duties required of them and regardless of the high trust and confidence reposed in them, have cruelly dashed to the ground the cooling draught of political right, and sinking the character of the calm, impartial judge, assumed the rôle of the paltry politician, and thus "given to party what was meant for mankind."

The judicial grandeur which they had an opportunity to illustrate has sunk into the insignificance of the sharp practitioner, and the cuteness and tricks of the artful pettifogger have been preferred, by them, to the grand and ennobling qualities of the jurist and the statesman.

The mere certificate of a de facto governor (the synonym in Louisiana of unprincipled usurpation) is accepted as sacramental, and the prima facie evidence which it affords, covered though it be with fraud and redolent of corruption, is treated as though it were pure as Vestal

yow and immaculate as Deity itself.

If William Pitt Kellogg and his facile secretary of state, conspiring with a corrupt returning board, had certified that certain persons had been duly appointed presidential electors, and these electors had forbeen duly appointed presidential electors, and these electors had forwarded their statement and list, to the effect that they had cast their votes for Peter Cooper, although, in fact, not one of these spurious electors had ever received a single vote as such, and although allegations, in proper form and under the law, had been submitted, accompanied with tender of proof to show the fraud and villainy of the proceedings, such mendacious documents, under the ruling of the partisan majority of this "high commission," (kigh on the principle of 'lucus a non lucendo,") must be accepted as unimpeachable, final, and conclusive.

By such arbitrary ruling, Louisiana is robbed of her constitutional

By such arottrary ruling, Louisiana is robbed of her constitutional rights and the true voice of her people suppressed.

She is, of herself, powerless to remedy all the wrongs of this commission. Her appeals to her sister States have been ringing in their ears for nearly a decade, and when at length the coveted prize of her regeneration, relief from her terrible thralldom and restoration to equality in the household of States, seemed almost within her grasp, the mailed hand of relentless tyranny with its iron glove smites her to the earth. Prostrate at the feet of her enemies, worn and tired in the struggle in which, single handed, she has engaged, she now raises her voice in the arony of despair, and invokes the she now raises her voice in the agony of despair, and invokes the good people of our common country, in the name of holy recollections of the past, by the memory of her dead sons whose deeds of valor once saved the great Southwest from desolation by a foreign foe, in the cause of truth and honor, in the name of civil liberty and constitutional freedom, to save her from the polluting touch which approaches but to desecrate, and, before God and man, protests against

approaches but to desecrate, and, before God and man, protests against the fearful wrong about to be perpetrated on her.

Mr. TOWNSEND, of Pennsylvania. Mr. Speaker, I was one of the few republicans, comparatively speaking, who voted for the electoral-commission bill. I voted for it in good faith, believing that it was intended as a measure of peace and harmony calculated to carry us over a great danger that was hanging over us. We were assured that it was to be the great solution of our difficulties by the distinguished gentleman from Mississippi [Mr. Lamar] and the equally distinguished gentleman from Georgia, [Mr. Hill.] both of whom are about being translated to a higher sphere. I suppose that they and their democratic companions were acting in good faith, as I was. And I have been perfectly astonished at the large amount of opposition that has been made to it by the democratic party when they have refused to accept the determination of the tribunal of their own creation. It seems to me as if it were a want of good faith toward the ation. It seems to me as if it were a want of good faith toward the House and toward the people. They, however, must be the judges of that.

The democratic party is endeavoring to get away from the decision of that tribunal with the cry of fraud. They are ringing the changes on it from one end of the Union to the other, and they are now quarreling with the decision of their own tribunal because, as they allege, it has refused, contrary to what they call the spirit of the law, to receive evidence with regard to the election in Louisiana. But if they will carry their minds back to the time when that bill was under discussion before the two Houses, they will find that that question of evidence was mooted both here and there, and before the committee that had the matter in charge in drafting the bill; when it was decided in every case that there should be no imperative injunction upon the commission to receive evidence, and that there was to be

cided in every case that there should be no imperative injunction upon the commission to receive evidence, and that there was to be no absolute prohibition against it, but that, in the language of the act, "they may therein take into view such petitions, depositions, and other papers, if any, as shall, by the Constitution and now existing law, be competent and pertinent in such consideration."

In fact I think I can show by the record that it is they who have opposed the introduction of a provision for the reception of evidence into the bill. When that bill was before the House, on the 25th day of January, the gentleman from Ohio [Mr. Payne] had that bill in charge; the gentleman from Pennsylvania [Mr. HOPKINS] rose in his place and offered to the democratic party and to the House the introduction of a proposition that would have admitted all the evidence that they now contend for, but the democracy refused to acdence that they now contend for, but the democracy refused to accept it. In the bill of the gentleman from Ohio it was provided, among other things, that—

When all such objections so made to any certificate, vote, or paper from a State shall have been received and read, all such certificates, votes, and papers so ob-jected to, and all papers accompanying the same, together with such objections, shall be forthwith submitted to said commission, which shall proceed to consider the

The gentleman from Pennsylvania [Mr. HOPKINS] then rose and offered the following amendment:

Together with all the testimony relative to the recent presidential election in said States which has been taken under authority of either House of Congress, so far as the same may by the said commission be considered as relevant.

Here was an offer to the gentlemen who had that bill in charge to Here was an offer to the gentlemen who had that bill in charge to introduce all the testimony that could be gathered from the two commissions to Louisiana, and they refused to admit it. As I have said, the gentleman from Ohio, [Mr. PAYNE,] who had charge of the bill, refused to admit the amendment; but it was in the power of the majority of the House, if they desired to have that evidence before the commission, to vote down the previous question on the bill and have that privilege and that principle ingrafted into it, they refused to do it; and it comes, then, with a bad grace from anybody, and especially from the majority of this House, to charge upon the commission that they have refused to admit evidence. They were tied down to the Constitution and laws by the terms of the bill. The Constitution and laws, as they were expounded before that commission by the ablest laws, as they were expounded before that commission by the ablest counsel in the country, clearly provide that they were bound to adhere

to the certificates that were returned and that they could not go behind them. The precedents to that effect are sufficiently numerous. But even if they had agreed to accept as evidence the testimony taken by the committee, where would they have got evidence that would have satisfied the minds of that commission? They could not have found it in the report of the committee of this House that went

down to Louisiana to take testimony, because the testimony that was brought before that committee only gave a one-sided view of the case. When we went down to the city of New Orleans the minority of the committee asked the privilege of having the testimony taken of witnesses there who had been driven in from their parishes, the "bull-dozed" parishes, because of the intimidation and violence there. There were a hundred and more of such witnesses within rifle-shot of the room in which the committee sat. The majority of the committee refused to have them subpœnaed and brought before the committee. I say then that if the testimony that had been taken by that committee had been admitted, there would have been no testimony that would have shown more than a one-sided view of the case. True it is that by dint of cross-examination and by some opportunities that were accidentally afforded by individuals residing in the city of New Orleans, we were enabled slightly to lift the curtain that had been kept down to shield the enormities that had been practiced in the different parishes, and we were enabled to get a glimpse of the whippings, the scourgings, the murders, and the massacres perpetrated in parts of Louisiana. But I have no hesitation in saying here to-day to this House and the country that a history of the dark and bloody ground of the bull-dozed parishes in Louisiana has never yet been written and never will be written so long as the democratic party in Louisiana can prevent it. that would have shown more than a one-sided view of the case. True

been written and never will be written so long as the democratic party in Louisiana can prevent it.

They talk of fraud. I want to know if there be any greater fraud in the whole history of this question than that presented by the certificate of John McEnery purporting to be governor of Louisiana? There was no greater fraud attempted to be perpetrated upon the American people than that attempted to be perpetrated by the democratic party through the agency of said John McEnery. He, a private citizen of Louisiana, certified that eight more private citizens of Louisiana were the legally constituted electors for that State for President and Vice-President of the nation. Now he never was governor of and Vice-President of the nation. Now he never was governor of Louisiana except for two short days, when he was kept in the guber-natorial chair by the bayonets of the White League of the State of Louisiana in the city of New Orleans headed by Colonel Ogden. The gentlemen whose names he has sent forward as electors are not entitled to hold those offices. They have no certificate from the legally constituted authorities or returning board of Louisiana in their hands. The only legally elected governor of that State was W. P. Kellogg, recognized by the national Executive, recognized by this House, rec-Louisiana, through the agency of the Wheeler compromise made two years ago, and he gave certificates to the eight electors whose votes the commission has decided should be counted.

[Here the hammer fell.]
Mr. McMAHON. We have had two decisions from the joint commission; one in the case of the State of Florida, and the other in the case of the State of Louisiana. We have already rejected for good reasons the decision in the case of the State of Florida. We are now to consider whether we shall receive or reject its decision in the Louisiana case. In my judgment the report which is now before us is worse in its consequences upon the American people than the one we have already rejected. In the one case the majority of the commission disregarded the Constitution of the United States, but in the

sion disregarded the Constitution of the United States, but in the present case it has been so bold as to overrule it.

We have but one more State to submit to that commission, the State of Oregon. I think that none of us on this side of the House look forward with much hope, unless the instinct which seems to have directed this tribunal from the beginning of its deliberations shall continue unto the end, and that is the instinct to give votes to persons which do not belong to them.

What has been decided in the two reports already laid before this House? In the Florida case it was decided that the State court has no power to rectify the wrong, that the Legislature has no power, and that the governor of the State, following the decision of the court and pursuing the direction of the Legislature, has no power to give relief from the fraud which has been perpetrated in giving that State relief from the fraud which has been perpetrated in giving that State

We then come to the State of Louisiana, and having foreclosed by the Florida decision every State tribunal that might give us relief, what do we find? Why, sir, according to the commission, that there is no national tribunal to which we can appeal for relief from perjury, forgery, and bribery of the basest kind when they have combined to steal or sell the vote of a State. This makes a compendium of continuously of the base of the state of the stitutional law that I for one would be ashamed to hand down to my

children or to posterity.

What was offered to be proved in the Louisiana case? That the returning board was composed of men without character and without the confidence even of their co-conspirators in infamy; that they refused to fill the vacancy upon the board in order that there might be no honest man to spy out or prevent their dishonest transactions no honest man to spy out or prevent their dishonest transactions; that they had taken returns sent to them by the people and forged and altered and destroyed the true returns; that they had sworn to falsehoods before several committees of your House in an attempt to defend their netarious conduct; that they had paraded the country with the electoral vote of the State of Louisiana in their hands, looking for the highest bidder, in order that this great empire of modern days might be knocked down to the best purchaser in the presidential market. In ancient days the power of the pretorian guard was necessary to deliver the throne it had sold. We simplify the trans-

action. We organize a tribunal to confirm the sale by refusing to hear any proof of the fact.

And this great tribunal of ours, for which we voted with so much innocence and simplicity of heart, and from which we who were lawyers, with the instincts of our profession, hoped so much, this great tribunal says there is no relief in the executive, judicial, or legislative power of the State, no relief in Congress, no relief anywhere, but the purchaser can come into the presence of the two Houses, before as many witnesses as can be assembled upon so solemn an occasion, with the representatives of foreign nations looking on, with the eyes of the intelligent world upon us, and shamelessly demand in front of the presiding officers of the two Houses and from the two Houses an indispensable title to the high offices he has bought.

O what a doctrine for the members of this House to hand down to posterity! In my judgment this monstrous law does not come from

In my judgment this monstrous law does not come from

posterity! In my judgment this monstrous law does not come from the heart of the patriot or from the head of the lawyer. The commission that gives us such a decision has been caught by the immense prize in its power and within its grasp, rather than influenced by a desire to perform its honest and conscientious duty.

I was one of those who went to Louisiana to investigate the election in that State. I went into the very midst of what is known as the bull-dozed country. I saw the men and the women of Louisiana; and lived among them for a time. And I say here, with all the light we were enabled to gather there, not only from what we saw and what was testified to before us, but from what was reported by others of other subcommittees—I say that Samuel J. Tilden carried the State of Louisiana as fairly and honestly as Rutherford B. Hayes carried of Louisiana as fairly and honestly as Rutherford B. Hayes carried the State of Ohio.

the State of Ohio.

O, Mr. Speaker, it grieves one to think of the condition of that State! Rich in all her resources, peopled by as honest and as upright a community as any in the country—the gentleman from Vermont [Mr. JOYCE] to the contrary notwithstanding—held captive for four years in the den of thieves and robbers, compelled to submit to every outrage that a people could be subjected to. After she, by superhuman efforts, has burst the bonds of the robbers who held her and of the plunderers who were sucking her life-blood, and after she had escaped from her captures and thrown hereaft before that we Houses for protections. from her captors and thrown herself before the two Houses for protec-tion, she is dragged back to her prison and her woes, and partisanship under the pretense of judicial sanctity binds her hand and foot, and gives her over again to the pursuing scoundrels who have captured her in the very face of the nation. Can the country tolerate such in-

famy?

If I have any time left, Mr. Speaker, I will yield to my colleague,

[Mr. RICE.

The SPEAKER. The gentleman has three minutes of his time re-

maining. Mr. RICE. Mr. RICE. Mr. Speaker, I arise to enter my solemn, earnest protest against the finding of the majority of the commission in the case of Louisiana. Sir, monstrous as was their finding in the case of Florida, which isiana. Sir, monstrous as was their finding in the case of Florida, which amazed and confounded the people of the whole country, it is as nothing compared to the enormous iniquity of their verdict in the case of Louisiana, which has outraged every sense of decency and propriety, and put the b'ush of shame upon the face of every American citizen who loves truth, justice, and fair dealing, and who detests deception, violence, fraud, and crime. In the Florida case evidence of the ineligibility as to electors was admitted by the commission. In the Louisiana case the commission reverses without reason or consistency its own decision, dealining to reverse without reason or consistency its own decision, declining to receive evidence of the ineligibility of electors from that State, and absolutely refusing to arbitrate questions in dispute, notwithstanding fraud, illegality, crime, and corruption was shown to exist to such an extent that 10,000 sovereign voters of that State were disfranchised.

What is the status of the case? An act has been passed to provide for and regulate the counting of votes for President and Vice-President and the decision of questions arising thereon. The second section of this act provides that all returns counting from disputed States, or States that have more than one return purporting to but ed States, or States that have more than one return purporting to be certificates of electoral votes given at the last preceding election for President and Vice-President in such State, shall be submitted to a commission of fifteen, who solemnly swear "to impartially examine and consider all questions submitted to them." Further, the act provides that all certificates, votes, objections, and papers accompanying, from the disputed States or States with double returns, shall be submitted to the commission to consider and decide what are the votes from such States, and what persons were duly appointed electors in such States. Now the simple question is: has the commission considered and passed upon the questions submitted to them in the Louisiana case as contemplated by the law? Clearly not, and no one will pretend to say they have. The prisoner is convicted and sentenced without trial and without a word of evidence. Has the commission not violated the law, both in letter and spirit?

The consideration of this question is above all persons and parties. It is not whether Tilden or Hayes was elected to the Presidency, but what electors fairly and honestly received the votes at the ballot-boxes, and who ought in right and justice be inaugurated President and Vice-President. For this was the commission created and clothed with all the powers of both Houses of Congress. Have they done it? No; but, refusing to consider fraud and corruption, the legality of the returning board, the constitutionality of the State government be submitted to the commission to consider and decide what are the

the returning board, the constitutionality of the State government of Louisiana, the ineligibility of certain electors, they have by their

action legalized fraud and re-affirmed the conclusions of the infamous Louisiana returning board, which tried to sell the electoral vote of that State at from two hundred thousand to one million of dollars. Yes, sir; they have solemnly proclaimed to the civilized world that fraud is an element in our institutions stronger than the Constitution, more potent than law, and by the exercise of which the very pinnacle of fame in this country, if not in the world, may be attained. Alas for liberty and free government! Alas for republican institutions and the freedom of the ballot, if such thingsmust be endured! A despotism of power controlling, through a fraudulent returning board and a commission not less despicable, the freedom, rights, and liberties of the American people.

But it is said it would not be acting honorably and in good faith to interpose objections and delay the action of the commission and counting the votes. Is it wrong to prevent crime? Is it dishonorable to intercept fraud? The electoral bill was passed in order that its provisions might be carried out. The commission, having all the its provisions might be carried out. The commission, having all the powers and duties of the two Houses, were called upon to exercise them in arbitrating and deciding various questions in dispute in the State of Louisiana. This they entirely failed to do. Members of Congress, acting in a spirit of conciliation and patriotism and in response to the universal demand that went up in its favor all over the land, in good faith voted the commission these duties and powers. The commission has failed to exercise them; and furthermore refuse to so do. This non-performance on their part entirely absolves the members; and, now that the law is broken and disobeved, every principle bers; and, now that the law is broken and disobeyed, every principle of honor and good faith disregarded, would it not be cowardly in us not to protest and if possible prevent the consummation of so great

not to protest and if possible prevent the consummation of so great a wrong?

The commission by their action say they have no jurisdiction over Louisiana matters; that is, that they have not the power to do that which they were created and given authority to do. Mr. Speaker, I would remand the whole question of the Louisiana matter to them for reconsideration. Ask them again to consider and pass upon these crimes and frauds at which the world is appalled, and which the two Houses of Congress and the whole country expected and demanded they should do. Let the sunlight of heaven shine in, and whatever the verdict, so that it be truthfully and honestly made upon investigation of the facts, the people will be satisfied, and not otherwise. Should the tribunal again refuse to act, claiming they have no jurisdiction, then let the two Houses of Congress displace them, and create a tribunal that can and will act. create a tribunal that can and will act.

Mr. Speaker, I would exhaust all legal and constitutional means within the law to prevent the terrible fraud that is sought to be imposed upon the people of this country. I would see that this law should be executed in good faith, in letter and spirit, as it was intended by those who framed and made it. Less than this will not satisfy the people of this country; and I appeal to this democratic House not to disappoint their honest expectations.

If this finding stand, a Government of order is supplanted by a Government of violence and fraud; and is it not the beginning of the

end of our republican institutions?

Mr. CRAPO. Mr. Speaker, the vital and overshadowing issue presented to the returning board of Louisiana was whether there had been such violence and intimidation in certain localities as would invalidate the election and which would compel or justify the returning board in throwing out from their return the votes actually cast in those localities. It is possible, as often happens in cases before courts, that both parties in this contest may have made exaggerated statements and claims.

The republicans allege a cruel, barbarous state of affairs; the dem-crats make a wholesale denial and assert that the election and can-vass preceding it were quiet and peaceful and without the slightest taint of violence and intimidation. Which position is the correct one, or shall we find the exact truth between these two extremes? In my judgment there were disorders, turbulence, violence, lawless-ness, and intimidation, which affected the election. I come to this

conclusion after a candid examination of the evidence, after hearing the testimony of witnesses, and after conversations with people of Louisiana of all shades of political opinion. It is impossible, in the brief time allotted to me, to go into any detail of incidents, but the general result is this: that the election was not entirely free, fair, and peaceable; that it was influenced by threats and violence; that there was in some localities a determination on the part of certain democrats to carry the election, which led to lawlessness and excesses which no good citizen can applaud and which the people where I live would not tolerate.

I can appreciate the desire of the white people of Louisiana to gain political control of their State; the sense of humiliation they feel that negroes and strangers occupy the positions of trust and profit, and their indignation and resentment at the wrongs they believe they have suffered; but I cannot understand how fair-minded men, who have studied the condition of Louisiana and the history of the recent election, can assert that the democrats of that State have been blameless

Now, the question presents itself: did these disorders and corrupt and illegal practices, which must have had more or less influence upon the election, change the result? Were they sufficient to change the majority for Tilden, as shown by the ballots actually cast, to a majority for Hayes? This is the question to which the people desire an answer.

The prejudiced democrat who goes to Louisiana, either as one of a board of distinguished visitors or as a member of a congressional committee, listening eagerly and giving credence only to such statements as will aid his party and secure the success of his candidate, comes back and declares the charges of fraud and intimidation to be a mere lying pretense. The prejudiced republican who goes there with his mind inflamed with the memory of the political murders of 1868 and the cruel atrocities of subsequent years in that excited and unhappy State, and who listens only to the revolting details of hangings, shootings, and whippings, exaggerated in number and in description, comes back with the conviction that there was wide-spread

scription, comes back with the conviction that there was wide-spread terror which made a free ballot impossible.

Who is to judge between these partisans? Shall the decision come from official bodies required by law to ascertain the truth, or shall the judgment be based upon partisan inquiries instituted by partisan clamor and warped by partisan wishes? Are we to accept the decisions of the legally constituted authorities, or shall we insist upon preconciled with the property of the proper preconceived opinions which spring from prejudices and personal in-terests? The lawful and sole tribunal charged by the laws of the State of Louisiana to adjudicate this question is the returning board. The result declared by them is the legal result. The law has made them the jury and has not vested in this House the authority to re-verse or annul their verdict. Still the American people are interested to know whether the conclusion of this returning board be right, whether the result declared by them be equitable.

In my judgment, and I will not pretend to be free from party bias, there was intimidation and terrorism in certain portions of Louisiana, such as the laws of that State declare shall render the election void; and this existed to such an extent as substantially to change the result. I do not claim that every polling-place thrown out by the returning board stands proved by unequivocal testimony. There are precincts where a careful weighing of the testimony by other minds would have resulted in a different conclusion; but the main, substantial fact remains that the election in sundry parishes was controlled and influenced illegally, and to an extent which changed the result from what it would have been had the vote been freely, fairly, and honestly expressed.

It is quite the habit in this Hall to denounce the returning board. All the epithets of the language which denote vileness, corruption, and rascality have been applied to the members of this board. I do not defend them. But when told how vile are these men, how wickedly they have used their power, how they have desolated and impoverished that fair State, and how they have beggared and disfranchised the people, I cannot but reflect what must have been the condition of a State which made such a board a necessity; which required such a system to guard against violence and to protect in their political rights the timid and ignorant and inoffensive against the political rights the timid and ignorant and inoffensive against the strong and desperate and lawless. The woes which Louisiana suffers, the misfortunes and miseries and poverty which she has endured, come not from her returning board, but from those evils which made such an institution a necessity. The returning board is not the cause and origin of their troubles. In order to make violence fruitless it has been deemed wise by her own people to confer this power. I do not defend or approve the system. But I do condemn the practices and influences which gave an excuse for the creation of such an institution. And when the men of Louisiana and elsewhere declaim, not without reason, that such a board is anti-republican and the possessor of powers which can be corruptly and despotically used against a free people, I beg to remind them that the sure way to accomplish its repeal is to remove its necessity. This cannot be done by treating lightly, without a word of deprecation, the many done by treating lightly, without a word of deprecation, the many murders, whippings, and other outrages which lawless and ruffianly men have perpetrated upon defenseless republicans. Waving them one side with a simple statement that they have no political signifione side with a simple statement that they have no political significance, and are of no consequence, does not satisfy the people of the country. When such things cease and when the conservative, intelligent, peace-loving, property-holding citizens of Louisiana put away their indifference and incredulity and stamp with public disapproval and condemnation these crimes of whites against the blacks, whether political or non-political, then there will be no returning boards to vex them.

Our free institutions can only be maintained under a fair and just exercise of the rights of citizenship at the ballot-box. Secure to the people the free and unrestrained exercise of the right to vote, and there will be no complaint about the fairness and honesty of the count. A free election is not possible where laws are not respected and where vigilance committees and rifle companies undertake to re-strain and punish crime. When violence and intimidation control the election to an extent that prevents a full, free, and fair vote, it is the grossest injustice to allow such votes to decide the result. returning board of Louisiana may be a suspicious body, but the rifle clubs of Ouachita Parish are none the less so. This affectation of su-perior virtue on the democratic side is useless. With the knowledge that threats and violence were aiding to increase the democratic vote, which no active democratic politicians denounced or prevented, they now demand an "honest count." That count cannot be honest which registers the votes influenced and controlled by lawlessness and crime. I have no feeling toward the people of Louisiana but good-will, and I would say nothing to offend or injure any of the citizens of that State. I sympathize with them in their misfortunes, in their paralyzed industries, their depreciated values; in their disorganized society,

in their burdensome taxation, and in the maladministration of their local government which has failed to secure proper protection for life and property. A restored prosperity, with peace and good order, will come to them not through the acts of violent politicians obstructing the free vote of her people in any national political contest, but by the correction of the mistakes and errors which caused this imbecility, disorganization, and disorder.

Mr. COX obtained the floor and said: I yield ten minutes to the gentleman from Kentucky, [Mr. WATTERSON.]

Mr. WATTERSON. Mr. Speaker, if the acceptance of the inevitable with resolution and dignity be the highest, as it is the rarest, form of courage known among men, it is made in this present instance the harder by the consciousness of double-dealing and foul play. Two courses are open to the majority on this floor: on the one hand, Two courses are open to the majority on this floor: on the one hand, passionate outery, at once impotent and childish; on the other hand—offering no needless obstruction to the progress of events—an earnest, manly, but temperate protest against what we believe to be a great and grievous wrong. In my judgment the latter is our duty, plain and clear. We owe it to the necessities of the case, we owe it to the country, we owe it to ourselves. That we were duped by false pretenses into a snare furnishes no reason why we should forget the obligations that always press upon honorable men. In the very act of passing the electoral commission bill we provided for the contingency which has come upon us. I voted for that measure in perfect good faith. The result has gone against me, and detestable as I must think the means that brought it about I accept it as a finality. I shall go to my people and shall tell them all, for as at the present advised they know only a part of it. And when they have taken time vised they know only a part of it. And when they have taken time for reflection I am sure that they will illustrate the wisdom and the grace of moderation, doing nothing that does not become good citizens. Life will go forward in spite of all this. There is yet much to live for in this rough world, and among the rest that day of reckoning, dies ira, dies illa,

When the dark shall be light, And the wrong be made right.

And the wrong be made right.

[Applause.]
Mr. COX. Mr. Speaker, after many years of active service as a member of this House, recalling all the vicissitudes of our politics for twenty years, I cannot feel responsible to-day that after the verdict of the American people it should prove a fruitless verdict. In 1864, on the 16th of May, I presented a resolution to this House which passed. It related to the regularity and authenticity of the returns of electoral yetes and for a leav to provide for the invisidiction as well of electoral votes and for a law to provide for the jurisdiction as well as the course of proceeding in case of a "real controversy." The Judiciary Committee took no action at that time. Allow me to quote the resolution. It is a compend of the situation:

Resolved. That the Judiciary Committee be directed to take into consideration the propriety of reporting a bill providing for the decision of any questions which may arise as to the regularity and authenticity of the returns of the electoral vote for President and Vice-President of the United States, or the right of the persons who gave the votes, or the manner in which they ought to be counted; and that such law provide for the jurisdiction, as well as the course of proceeding, in a case of real controversy.

Peril gives the lessons of years in a day. Unless danger is followed by diseased and gloomy misfortune, its lessons are medicine and its teaching light. All the remedies for human ills do not come from political society; nor do all the splendors of the heavens cure the political society; nor do all the splendors of the heavens cure the remediless. Hope buoyed up the soul of a great people during fifteen years of wrong. It still sustained them after fraud had tainted and pestilent wrong had shrouded the verdict of an uprisen people. Hope itself almost perished in view of the events since the election, and especially those which this Congress has witnessed.

The people of the United States, desiring unity and peace, honesty and rejuvenescence, spoke in all legal forms provided by a complicated system of electors in favor of a party whose traditions, principles and history of honorable services have rendered it deathless.

ciples, and history of honorable service have rendered it deathless, ciples, and history of honorable service have rendered it deathless, and against a new party of expedients and pretensions. It was unmistakably called to the high places of the land. It matters not who were its select exponents or candidates; and it matters not now what were its shibboleths and platforms. Whether wise or not, far sighted or not, just to all races and sections or not, prudent in economy, provident in matters of tax and fisc or not, organic and faithful to the rules of construction applied under the genius of our peculiar polity or not, the unquestioned popular majority of three hundred thousand pronounced for relief and change, and for the democracy as the directing organ of that relief and change.

By the system of State and Federal authority this Federal change and relief was to be certified by certain State organisms and verified

and relief was to be certified by certain State organisms and verified

by a certain procedure under our Federal Constitution.

It was early made clear by certain maneuvers and devices of politicians that the voice of the people of two if not three States was to be muffled, or rather that a false voice was to be heard in the land proclaiming that which was not for that which was. It was the siren voice of Duessa and not the blessed voice of Una. It was a voice which sounded high for State rights like that of the actor through the Grecian mask, hollow and mocking, while at the same time it seemed to proceed from some hero or demigod raised to unusual height by the tricks of the stage.

Nor, sir, do I feel responsible for the steps which were wisely per-haps, or unwisely, but certainly with a view to prudence, taken in

framing the electoral bill. That bill is the law. We know what it is, what its provisions are. I knew and felt that some virtue had gone out of this House when we had passed it, but I did not exactly see where the virtue had alighted. [Laughter.] I knew the old privileges of the Commons had departed, but in the interest of peace I gave a reluctant vote for the bill.

gave a reluctant vote for the bill.

It was voted in a spirit of confidence and in a moment of peril, and under terror of force and revolution which speaks more for the caution than for the pluck of our people. Still it was voted. We are bound by its decisions, but not by its reasons. The faith of those who voted it was strong in the integrity and purity of their case; and next in the fidelity and independence of the tribunal. We besed our faith in the armine.

placed our faith in the ermine.

placed our faith in the ermine.

But one strange thing about the bill is this: that while we are permitted to vote in this House, yet after all it is a sort of post mortem vote. [Laughter.] Although we are permitted to argue, it is a argumentum ad post factum. Although, sir, there is some utility in the dissection of the dead and although there may be something gained by the dissection of the living, [laughter,] yet it seems to me to be proper now to look at one particular clause of the law before I state my reasons for making protest against this measure.

We are graciously permitted under this bill to argue after the matter is accomplished, and although we vote and although we carry our vote in the House we are "gone." [Laughter.] We gain nothing. We are permitted to talk ten minutes after the counting and the conclusion. It is the old Virgilian line over again about Rhadamanthus, judge of hell—Castigatque auditque dolos—the old rule of hanging a man and trying him afterward. [Laughter.] That is our condition to-day.

condition to-day

condition to-day.

And what is it we try? Why, sir, everything as to testimony and facts, and forgery and perjury, and force is aliande—outside—not to be considered. Truth and justice and morality and fair dealing—aliande. The House is aliande. [Laughter.] All its acts and the acts of its committees and their reports, all the facts gathered in these southern States—aliande! [Laughter.] Nothing to be considered but the bare, naked fact of a certificate, based upon what? On forgery and chicanery. On a returning board, which returned the fact that 10,400 democratic votes were not counted; and the supervisor of registration of Louisiana whose business was to transmit the votes, but who failed to transmit 2,900 democratic votes, and after they came but who failed to transmit 2,900 democratic votes, and after they came only four hours were left between the time of the organization of the board and the decision! Where and how could the State correct such returns in that time? It is a mockery. Why, sir, nothing but forgery and chicanery are pertinent and competent. It is said that beauty deformed and mutilated is more hideous than natural ugliness. The Parthenon is deformed by Turkish barbarism and despoiled by Lord Elgip's archaeological science; and so our institutions. poiled by Lord Elgin's archæological science; and so our institutions, including, I fear, the high judicial tribunal, are made detestable, not merely by adventurous, barbarous, ignorant, and reckless rascality, but legal science comes in with its spotless ermine to make the spectacle a hideous deformity, by consummating the grand outrage of history. Fraud taints everything; all codes, human and divine, pursue it into every relation of society and avenue of trust.

Why, Mr. Speaker, some member over there said he was sick of fraud, of the cry of fraud. Earth is sick and heaven is weary of the hollow words which statesmen and judges use when they talk of right and justice when such things can be accomplished. I tell you, Mr. Speaker, by human law there is no statute of limitations, to protect fraud. It never runs for fraud. In divine law it is written, "There is no rest for the wicked." [Laughter.] Every avenue of society, every relation of trust which fraud permeates shall at last be investigated and made null. The time will come, if not now, in some investigated and made null. The time will come, if not now, in some near future, when gentlemen on the other side, who now langh and taint because of this condition in which the democrats are caught, will repent of this great crime of history of which they are participes

Time never runs to condone fraud, and in all God's universe there is to be ceaseless unrest for its vicious votaries. Quibbles from lawyers, technicalities from judges, special snapperadoes from the intellect are as grass before the mower where fraud taints and blackens. The people cannot understand why it should be protected. Chop logic and split hairs to the nicest division of logomachy, call in the schoolmen, make your legal syllogisms and refine your subtleties, the everlasting rule remains that where fraud is found unlity and void follow. Foxes by no doubling or hunting, can confound the fact follow. Foxes by no doubling or hunting, can confound the fact that fraud is the most offensive element in human society, and most to be feared when the fox takes the form of the ermine.

to be feared when the fox takes the form of the ermine.

Ah! they called in the ermine to help them. The ermine is a little animal. It is an emblem of purity; it would rather be caught than be bedraggled in the mire. Hunters put mud around its haunt to catch it. But where is the ermine now? Ah! the fox has become the ermine. But no canning, no craft, no human law, no divine law can ever condone fraud. All codes and the histories of all nations cry out against it. Crime cannot breed crime forever. Ask the people of this country. Fraud is to them an endless offense. I was about, Mr. Speaker, before the hammer fell, to refer to the holy writ, so that gentlemen on the other side may have time for repentance.

[Here the hammer fell.]

[Here the hammer fell.] [Laughter and applause.] Mr. DANFORD rose. Mr. COX. With permission of the House I will read from Psalms

Shall the throne of iniquity have fellowship with thee, which frameth mischief

Mr. KELLEY.

Mr. KELLEY. I object. [Laughter.]
Mr. SOUTHARD. I hope the gentlemen on that side will listen to those words, that they may have time to repent.

Several members objected.

Mr. COX. The Bible is aliunde with these gentlemen. [Great

laughter.]
Mr. DANFORD. Mr. Speaker, early in December it was found that from the States of Florida, Louisiana, and Oregon there were at least more than one set of electoral returns. Questions growing out of the elections in these States became the subject of heated party controversy; and Congress determined on the last day of January that there was either not wisdom or not patriotism enough in Congress to there was either not wisdom or not patriotism enough in Congress to determine these vexed questions; and a law was enacted by which it was provided that if more than one return, or paper purporting to be a return from a State, shall have been received by the President of the Senate, all such returns and papers should be submitted to the judgment and decision as to which is the true and lawful electoral vote of such State, of a commission, &c.

The law creating the electoral commission passed in both Houses by a large majority. The question as to which was the true and lawful return of the State of Louisiana was submitted to this commission, and we have before us for our present consideration its decision. We have the decision denounced from the other side of the House. We have the decision denounced by the party that created it. The commission is denounced for what? For having decided in the first place that neither House of Congress nor Congress itself can look further for the appointment of the electors of a State than to the certicate of its governor based upon the finding of its returning officers. This was the first proposition decided by the commission. In the second place they found that William Pitt Kellogg was the governor of that State in December last. They have found that this returning board was the legally constituted returning officer of that State. These are the main propositions found by the commission and sub-mitted to us for our consideration. And for the reason that they have decided what, in my judgment, putting aside party passion, would be the almost universal voice of the whole American people, they are met in this House with denunciation, with a charge of unfair dealing and double-dealing, by the very party that created them. And the assumption is made by gentlemen on the other side of the House that, because the commission have decided that under the Constitution and laws of our country they have no right to go down beyond the certificate of the governor, beyond the action of the returning board, to look into the votes cast at the various precincts and parishes of Louisiana in November last—because they have thus held that they cannot do an impracticable and an impossible thing, the assumption is made on the other side of the Howe that there is read at the better of the the other side of the House that there is fraud at the bottom of these returns, thus begging the entire question before the country, begging the entire question that was presented to the returning board.

Mr. Speaker, we by no means concede that fraud is at the founda-tion of the returns made in favor of the Hayes electors from Louisi-ana. My judgment is that when the history of the November election shall be written it will be found rather that murder, intimidation, and outrage failed in their purpose in Louisiana than that the State

was given to Hayes by fraud.

I want to call attention to one single fact that is made to stand out prominent in the picture presented in this House. I refer to Vernon Parish. Vernon Parish! We hear of it in the protest read at the Clerk's desk and signed by every democratic member of the House. I concede that in the case of Vernon Parish there was a tampering with the record. I concede that the votes that should properly have with the record. I concede that the votes that should properly have been credited to the Tilden electors were transferred to the Hayes electors. But who did it? It changed no result in the State whatever. Who were responsible for it? Every member of the returning board has sworn that he knew nothing of this transposition. [Ironical laughter on the democratic side of the House.] But I know the fact that a committee of this House had before it a clerk of that returning heard who by his own confession was villain enough to have turning board who by his own confession was villain enough to have done this thing. I know further, from the the testimony of a democratic witness, Duncan S. Kenner, that there was democratic money in the hands of the reform party of Louisiana to corrupt either the returning board or any member of that body. These are facts that the country knows in regard to Vernon Parish. No, Mr. Speaker, I believe that the true was that the full rot of Louisiana to believe that if the true vote, the full vote of Louisiana had been recorded in November last there would have been a large majority in favor of the Hayes electors. I can stand upon these returns in the consciousness that right and justice have been done.

Mr. Speaker, a few hours hence the early watcher from New York may learn that the flag upon the Capitol has again been furled, and he will know that through the legally constituted authorities of the country it has been pronounced that Rutherford B. Hayes, having received 185 electoral votes, is duly elected President from the 4th day of March next. This declaration will be made and it will be accepted by the American people as a finality. And when it comes to his in-auguration, there is not an honest man in the whole of this land who will not congratulate himself upon the fact that, although investi-gating committees were sent to Florida and to Louisiana and to Or-

egon and found in those States much crookedness, in all the words spoken, the letters written, the telegrams sent, there has not been traced to the President-elect and to no member of his household one word that brings the blush of shame to the American people. [Applause on the floor and in the galleries.]

[Here the hammer fell.]

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. ATKINS: The petition of T. R. Wingo and other citizens of Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

and Post-Roads.

By Mr. FORT: The petition of Jos. H. Brown and 163 other citizens of Minauk, Woodford County, Illinois, for the repeal of the banktax laws, to the Committee of Ways and Means.

By Mr. HARDENBERGH: Twelve petitions, signed respectively by the officers of the American Society of Civil Engineers; of Oberlin College, Ohio; of the University of Wisconsin; of the School of Mines of Columbia College; of the Lyceum of Natural History; of the American Iron and Steel Association; of the Stevens Institute of Technology; of the American Institute of Mining Engineers; of the Rennsselaer Polytechnic Institute: of the Massachusetts Institute of Rennsselaer Polytechnic Institute; of the Massachusetts Institute of Refinsshaer Polytechnic Institute; of the Massachusetts Institute of Technology, and of Cornell University, that an appropriation be granted to the United States board appointed to test iron, steel, and other metals, to be expended in carrying out the investigations of the board, to the Committee on Appropriations.

By Mr. HOSKINS: The petition of 50 citizens of Haverstraw, New York, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. MILLIKEN: The petition of Chives & Osborne, for com-pensation for tobacco taken by the United States Army, to the Committee on War Claims.

By Mr. WADDELL: The petition of citizens of North Carolina, for cheap telegraphy, to the Committee on the Post-Office and Post-

By Mr. WALLACE, of Pennsylvania: The petition of M. L. Armstrong, John A. Gibb, and other citizens of Beaver County, Pennsylvania, of similar import, to the same committee.

By Mr. WILLARD: Four petitions, signed respectively by Annabella L. Townsend and 151 other citizens of Pennsylvania; J. H. Rogers and 84 other citizens of Wyoming County, New York; J. H. Porter and 21 other citizens of Essex County, New Jersey, and H. Gertrude Baldwin and 47 other citizens of Orange, New Jersey, against licensing prostitution in the District of Columbia, to the Committee for the District of Columbia.

District of Columbia.

By Mr. A. S. WILLIAMS: The petition of Samuel Lewis and other citizens of Detroit, Michigan, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WILLIAMS, of Wisconsin: Two petitions, one signed by W. C. Tillson and 30 other citizens of Cheboygan County, Michigan, the other by J. A. Trent and 31 other citizens of Sharon, Wisconsin, of interior to the second county. Similar import, to the same committee.

By Mr. W. B. WILLIAMS: The petition of 42 citizens of Ottawa County, Michigan, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

#### IN SENATE.

# TUESDAY, February 20, 1877-10 a.m.

The PRESIDENT pro tempore. The recess having expired, the Senate resumes its session.

MESSAGE FROM THE HOUSE.

At one o'clock and thirty minutes p. m., Mr. GEORGE M. ADAMS, Clerk of the House of Representatives, appeared below the bar and

Mr. President, the House has passed the following order:

Ordered, That the votes purporting to be electoral votes for President and Vice-President and which were given by William P. Kellogg, J. H. Burch, Peter Joseph, L. A. Sheldon, Morris Marks, A. B. Levissee, O. H. Brewster, and Oscar Joffrion, claiming to be electors for the State of Louisiana, be not counted.

I am directed by the House of Representatives to inform the Senate that the House is now ready to meet the Senate in the Hall of

The PRESIDENT pro tempore. The Senate will now repair to the Hall of the House of Representatives.

The Senate accordingly proceeded to the Hall of the House of Rep-

The Senate returned to its Chamber at two o'clock and twenty-eight minutes p. m., and the President pro tempore resumed the Chair.

ELECTORAL VOTE OF MICHIGAN.

The PRESIDENT protempore. The Senate having withdrawn from the joint meeting of the two Houses upon the submission of an objection to the certificate from the State of Michigan, the Chair will now lay before the Senate and have read such objections.

The Secretary read as follows:

The undersigned, Senators and Representatives, object to the vote of Daniel L. rossman as an elector for the State of Michigan upon the grounds following, to

wit:

That a certain Benton Hanchett, of Saginaw, Michigan, was voted for and certified to have been elected and appointed an elector for the State of Michigan. That the said Benton Hanchett was on the 7th day of November, 1876, the day of the presidential election and for a long period prior thereto had been, and, up to and after the 6th day of December, 1876, the day on which the electors voted, according to law, continued to be an officer of the United States, and held the office of United States commissioner under and by appointment of the United States court for Michigan, which was an office of trust and profit under the United States, and that as such officer he could not be constitutionally appointed an elector under the Constitution of the United States.

And further, that by the laws of the State of Michigan there is power to fill vacancies in the office of electors under and by virtue of the following statute, and not otherwise:

vacancies in the office of electors under and by virtue of the following statute, and not otherwise:

"The electors of President and Vice-President shall convene at the capital of the State on the first Wednesday of December; and if there shall be any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend by the hour of twelve o'clock at noon of that day, or on account of any two of such electors having received an equal and the same number of votes, the electors present shall proceed to fill such vacancy by ballot and plurality of votes, and when all the electors shall appear or vacancies shall be filled as above provided, they shall proceed to perform the duties of such electors as required by the Constitution and laws of the United States."—Compiled Laws of 1871; compiler's section, 115.

And the undersigned further state that there was no vacancy in the office of elector for which said Hanchett was voted and to which he was not appointed by reason of the disquallification aforesaid; nor was any vacancy therein occusioned by the death, refusal to act, or neglect to attend of any elector at the hour of twelve o'clock at noon of the 6th day of December, 1876, nor on account of any two electors having an equal vote, nor in any manner provided for by the statute aforesaid.

And the undersigned therefore object that the election of Daniel L. Crossman by the electors present at Lansing, the capital of Michigan, on the 6th day of December, 1876, was wholly without authority of law, and was void, and he was not appointed an elector in such manner as the Legislature of Michigan directed.

Wherefore they say that said Daniel L. Crossman was not a duly appointed elector for the State of Michigan, and that his vote as an elector should not be counted.

And the undersigned hereto annex the evidence taken before the committee of the House of Representatives on the powers, privileges, and duties of the House to sustain said objection.

T. M. NORWOOD, Georgia;
WILLIAM A. WALLACE. Pennsylv

T. M. NORWOOD, Georgia; WILLIAM A. WALLACE, Pennsylvania; W. H. BARNUM, Connecticut; FRANK HEREFORD, West Virginia; Senators.

A. S. WILLIAMS, Michigan; J. R. TUCKER, Virginia; JOHN L. VANCE, Ohio; J. A. McMAHON, A. V. RICE, WILLIAM A. J. SPARKS, JOHN S. SAVAGE, LEVI MAISH, FRANK H. HURD,

Representatives.

COMMITTEE ON PRIVILEGES, January 30, 1877.

BENTON HANCHETT sworn and examined.

By Mr. TUCKER:

Question. Where is your residence? Answer. Saginaw, Michigan. Q. Were you a candidate for the position of presidential elector in Michigan at the late election?

A. I was. Q. On what ticket? A. On the republican ticket. Q. Were you elected?

A. On the republican ticket.

Q. Were you elected?

A. I was.

Q. Did you vote in the college of electors?

A. I did not.

Q. Were you present?

A. No, sir; I was not present.

Q. Did you absent yourself?

A. I remained away; I did not attend.

Q. For what reason did you remain away?

A. The facts are these: In the spring of 1863, when I was living at Owassee, in the county of Shiawassee, Michigan, some statements were made to me in reference to a man living in an adjorning town, who, I think, sold liquor and paid no taxes under the revenue law. The parties desired me to write to the district attorney, living in Detroit, in reference to the matter. I did so. I received a reply from the district attorney saying that he would have me appointed a commissioner by the United States court, and he inclosed to me instructions what to do in the case. About the same time that I received that I received a letter from the clerk of the court saying that I had been appointed, and, I believe, inclosing the form of oath for me to take as commissioner, and, I believe, I took it and returned it to him. I have no recollection on the subject, but I suppose I did of course. I forwarded instructions to the district attorney in reference to the matter and issued a warrant for the man. He came in and paid it, the matter dropped, and there my services as commissioner ended, to the best of my recollection. It was not an office which I wanted to hold, but I performed that duty. In the fall of 1855 I went from that county to where I now reside, in Saginaw. The matter had entirely passed out of my mind. I have never acted since. Two or three days before the time appointed for the meeting of the electors, my attention was called to the subject in two ways. One was that some person spoke to me and said, "You are a United States commissioner;" and the other was that I had noticed that an objection had been made to one of the electors in New Jersey on that ground. This called my mind to the circumstances which I have related to you, and in ord

A. No. sir, I never made any there was to it.
Q. How did you decline to act?
A. Some persons applied to me to do further duties as commissioner, and I stated that I would not act.
Q. And you never resigned your position?
A. I never resigned my position formally.

Q. Then you failed to perform the duties of the office after the particular case tentioned I

A. Yes, sir.
Q. But you never resigned the position?
A. I never resigned the position.
Q. Do you know who was appointed in your place in the college of electors?
A. I know by hearsay.
Q. Who was he?
A. Mr. Daniel L. Crossman, of Williamstown.

Q. Did you resign the office of elector?
A. No, sir.
Q. You just failed to attend?
A. I just failed to attend.

Mr. ALLISON. I offer the following resolution:

Resolved, That the vote cast by Daniel L. Crossman as an elector for the State of Michigan be, and the same is hereby, directed to be counted, notwithstanding the objections made thereto.

The PRESIDENT pro tempore. The question is on agreeing to the resolution

resolution.

Mr. STEVENSON. I should like to ask the Senator from Iowa if he knows the fact whether this man was an office-holder or not?

Mr. ALLISON. I have heard the testimony appended to these objections read, and from the testimony itself I thought there would be no question about it.

Mr. STEVENSON. But does it not show that he was?

Mr. LOGAN. He was not.
Mr. STEVENSON. I should like to have that testimony read, as I have not heard it. I was not in the other Chamber and do not know really what the testimony is.

The PRESIDENT pro tempore. The Secretary will read the testimony accompanying the objection.

The Secretary read the testimony of Benton Hanchett appended

to the objection.

Mr. STEVENSON. I should like to have the Clerk read the law of Michigan, which I understand is given in the objection.

The Secretary read as follows:

The electors of President and Vice-President shall convene at the capitol of the State on the first Wednesday of December; and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend by the hour of twelve o'clock at noon of that day, or on account of any two of such electors having received an equal and the same number of votes, the electors present shall proceed to fill such vacancy by ballot and plurality of votes; and when all the electors shall appear, or vacancies shall be filled, as above provided, they shall proceed to perform the duties of such electors, as required by the Constitution and laws of the United States.—Compiled Laws of 1871, compiler's section 115.

Mr. BAYARD.—Mr. President, the testimony is not as electrons.

Mr. BAYARD. Mr. President, the testimony is not as clear upon Mr. BAYARD. Mr. President, the testimony is not as clear upon this very important subject as we might desire it to be, but from a hasty reading of the deposition it would seem that a person was voted for at the late election as a presidential candidate for elector in the State of Michigan, who, on the day of the election, held an office under the Government of the United States of profit, to wit, the office of commissioner of the circuit court. This is an office authorized by section 627 of the United States Statutes, to be filled by the circuit section 627 of the United States Statutes, to be inted by the vamination courts. I understand the fact to be established by the examination of the party himself before a committee of the House that he was appointed, that he did at one time act, and that he never resigned, but that he had declined to perform at some subsequent time the duties of his office.

Grant to its fullest extent the doctrine claimed that a man can put off at will the robes of office and that resignation in order to be accomplished shall not be accepted by the appointing power, yet it would seem in this case that no resignation has ever been attempted. Therefore it seems that on the night of November 7, when the polls closed and when the power of the State of Michigan under the Constitution of the United States regulated by the law of Congress had been exercised of appointing electors in number warranted by the Constitution of the United States, that the limitation imposed by the Constitution of the United States, that the limitation imposed by the Constitution upon the State in appointing electors not having been observed by the State, a failure to appoint according to the Constitution occurred. The grant of power to the States to appoint electors, and the limitation by way of exclusion of the class from whom the electors shall be chosen are in the same paragraph of the Constitution. The State may appoint a certain number, but she shall not appoint a Senator or Representative in Congress nor a certain class of officials.

There is no more power in the Congress for a ceept and count a greater number of electoral votes from a State than there is to accept any one or more of the disqualified class of persons, and it is in vain to say that either House of Congress may regard these limitations of the Constitution as to number and not regard the qualifications as to selection. There can be no answer made to this, there has been no answer made to it. The Constitution of the United States authorizes the State of Michigan to appoint eleven electors. Why eleven? Because that is the number of her Representatives and Senators combined. Suppose that she send here twenty-two or twelve, why would you reject the extra one or the extra eleven? Simply because the number which the State is authorized by the Constitution to appoint had been

exceeded. Look further. Look further. You may appoint eleven, but you shall not appoint an officer of the United States, and the power to appoint eleven is conveyed in the very same frame of words, in the very same phrase of the Constitution, as the power containing the limitation that you shall not appoint from a certain official class.

Mr. President, if the Constitution of the United States is to guard and regulate the filling of this most important office, if we who are sworn to support this Constitution are to assist in protecting it, then how can we say that we are more bound by those words which limit us as to number than we are bound by their associate words that limit us as to class? Each has the same force, neither one more than the other. They are coupled in the same frame of words; and I have not yet heard any ingenuity that will answer that question. You may tell me that on the face of the certificate the number of electors appears. Suppose on the face of that certificate the names of the two Senators and the nine Representatives from Michigan had appeared as electors, do you tell me that these two Houses, recognizing these Senators and Members as of their respective bodies, and finding them returned as electors, in plain violation of the Constitution, are we not as much bound to exclude such votes and prevent their action as electors, when the Constitution directs us that no Senator or Representative shall be appointed an elector?

Are we not bound to observe our fealty to the Constitution as much when it describes our duty or limits the power of a State as to numbers as when it limits it as to classes? How can it be otherwise? Let some gentleman give answer to this, if answer there be; I have heard none to it as yet. The language of the Constitution on this subject cannot be torn apart. The limitation as to number and the limitation as to class are in the same sentence, and bind those who would obey the Constitution each with equal force.

Thus it is as to the time when this qualification must exist. You shall appoint so many, but they shall not be of a certain class. Of what time does that appointment speak? Clearly the day of the election, which is the time of the appointment. You shall not elect these men; you are not at liberty to vote for these men unless you choose to vote in violation of the constitutional limitation upon your power to choose electors at all. You may choose electors, but they shall not be from a certain class. Why, Mr. President, no argument is necessary to make the meaning of these words plain; no illustration is necessary. The duty to us comes charged in the same frame of words. The certificate itself will disclose the same state of facts, because it is in vain to say that you are more bound to exclude a Senator or Representative than you are to exclude this man if he was an officer of the United States holding an office of trust and profit on the night when the appointment must have been completed when the election failed.

Now, one word further. I have not had time to examine the statute of Michigan as to filling vacancies. Undoubtedly the act of Congress provides for that as it also provides for holding a new election where there has been a failure to elect, and I understand no such election has been here had. A vote for a man who cannot be appointed under the Constitution is a vote for no man. It is a vote thrown away. It is the same as a vote for a dead man; it is the same as a vote for the man in the moon; and therefore it was not a case of vacancy, because the office had not been filled. The terms "vacancy" and "to fill a vacancy" imply that the office has been filled and has from some cause been vacated. This distinction is well known. This Senate has recognized it; this Government in every department, judicial and legislative, has recognized it; the laws of the land administered in the States have recognized it; and the jurisprudence of other countries has recognized it, that where you are to fill a vacancy the office must have been filled before a vacancy can ex vi termini be said to have existed at all. Therefore it is

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. McMILLAN. Mr. President, under the decision of the commission there is no doubt whatever in my mind that the proceedings of the electoral college in Michigan are entirely regular and valid; and upon the broad ground of those decisions I can support the vote of Michigan. But, sir, there is another ground which I urge with reference to this objection. There is no testimony before the joint meeting of the two Houses of Congress, or before the Senate of the United States, that the elector in question ever was an officer of the United States. The mere statement, the mere production of what purports to be an examination of some person before a House committee is not evidence before the two Houses in their joint meeting that this man was an officer. No evidence whatever was offered in our joint meeting that this man was an officer. Objection was made that he was, and a certain paper purporting to be his affidavit before a House committee was read in connection with the objection; but the joint convention received no evidence upon the fact. Why, sir, in this case how will you attempt to prove that an elector was an officer of the United States at the time he was voted for as an elector? Are you going to prove it by his action as an officer merely? Are you going to prove it by his action as an officer merely? Are you going to prove it by his mere declaration? Why, sir, if this elector was an officer of the United States, it tends to defeat his right to be an elector, not to support an official act. You can support an official act by reputation that the person is an officer, but you cannot bring into operation or invoke a provision of the Constitution to take away the right of a citizen by proving by oral testimony that he was an officer. No, sir, the very best evidence the case will admit of in that instance must be presented to the body; and that is the written record of his appointment. You cannot prove that this man was an officer by merely his having ac

tend to take away a right, and it must be established by the highest evidence the case will admit of.

Not only have we no such evidence before the two Houses in their joint session and before the Senate in its separate session, but there is no evidence whatever offered upon that point. Have we not as a joint meeting of the two Houses of Congress the right to have the witnesses before us? Have we not a right to examine and cross-examine them? Are we to take such evidence as this in support of an objection which deprives a sovereign State of the Union of her vote for President of the United States? Has it come to this, that a great political party will seek to deprive a sovereign State of her rights in this matter? Why, Mr. President, at any other time and on any other occasion, the party or the persons who would attempt a thing of this kind would meet with such a rebuke from this whole nation that would prevent anything like a repetition of it.

But, sir, I think the point is unanswerable, that we have no evidence whatever that this man ever was an officer. The constitution of Michigan provides that in case of the neglect of an elector to attend at the electoral college, his place may be supplied, and under the constitution and under the law of Michigan his vote must be counted.

Mr. CHRISTIANCY. Mr. President, I look upon this objection, as it clearly is, as one of mere technicality, without merit, which if it could prevail would disfranchise the people of the State of Michigan, or at least it would be virtually disfranchising one-eleventh part of the people of that State. This certainly should not be done unless upon strictly legal grounds; unless we are compelled by the law to submit to such a result. The objection, however, is based upon no evidence whatever. What is it? It purports to be the verbal testimony of a man who testifies to facts creating an office; and, in doing so, testifies to the contents of a judicial record. It is a fact which must be proved by the record; and nobody has been competent, or had authority, to waive that kind of evidence. We are not competent to waive it. It lies upon those who raise this objection to sustain it by legal evidence, and that legal evidence was the record of a judicial court.

See where the danger lies in admitting evidence of this kind.

See where the danger lies in admitting evidence of this kind. Here was a man who was appointed as a circuit-court commissioner for a single transaction, some twelve or thirteen years ago, and has never acted since, never himself supposed he was a commissioner, never acted as such, nobody else supposing him to be such. The people voted for him in good faith. Now during that period of time who knows how many other persons have been subsequently appointed to that very position which he held? Who knows that that office has not become vacant or his appointment revoked, and so on, half a dozen times since? And what would show the fact one way or the other but the record of that court? And yet no attempt is made here to produce that, the only legal evidence of the fact. Again, he acted but once, which, according to the opinions of some, would not

make him even a de facto officer.

So much for the question of evidence. Now, in the residue of what I have to say I shall place this case upon the broad ground that it stands the same as if Mr. Hanchett, once appointed circuit-court commissioner, had been the elector who cast the electoral vote, instead of Mr. Crossman, who was elected to fill his vacancy, and that is certainly fair. I put it precisely upon that ground, and now let us see what would be the result. I think the main object of the exclusion of persons holding office under the Federal Government was to protect the States from the undue influences of the Federal Government in the States upon the election of a President; and that unless the State or the United States have made some provision for trying the question of eligibility, by which the unqualified elector shall have been ousted before the time when he is called upon to exercise the duties of his office and before the functions of the office have ceased, he must certainly, in the absence of any proof of fraud or irregularity, be considered an elector de facto, and his acts as such, so far as regards the public, are valid and effectual; and the office itself having expired without any such ouster, the title of the elector cannot now be inquired into for the purpose of invalidating an election depending in part upon his vote as an elector.

That is the broad ground upon which I wish to place this whole matter. I believe the statute of the State of Michigan, however, would admit of a construction which would cover this vacancy. The language of the statute reads:

The electors of President and Vice-President shall convene at the capitol of the State on the first Wednesday of December; and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend by the hour of twelve o'clock at noon of that day, or on account of any two of such electors having received an equal and the same number of votes, &c.—

then the remaining electors are to fill the vacancy. I look upon this provision in reference to the failure to attend as covering this case precisely. It certainly does here, for there is no particle of legal testimony to show that Mr. Hanchett was ever a circuit-court commissioner, much less that he has not ceased to be such, and that several others in succession have since been appointed, which could only be shown by the record of the court.

shown by the record of the court.

Mr. HEREFORD. Mr. President, I have occupied a seat in this body but a very short time, and I have not taken part in the discussion of any question; but such remarks have fallen from the lips of various Senators on this floor and such startling propositions are

announced in the decisions of the commission that I feel that I should dissent thereto, and give somewhat of my reasons therefor.

It has been told us on this floor, and time and time again by the commission, by their decisions, that there is no power under the Con-

stitution or the laws to examine the question as to the eligibility or ineligibility of the electors at the time they were appointed. The reason for that decision, as I gather it from the arguments of the eminent counsel who appeared before the commission, was this, as stated very distinctly by one, that the Constitution was not self-executing; that there was no law to put in force that provision of the Constitution. The language of the Constitution on this subject reads thus:

But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

It seems to my mind that the language is clear, explicit, and cannot be explained away. "Shall not be appointed an elector." are told by the commission, we are told by distinguished Senators on this floor, that there is no power under the Constitution and the laws to inquire into that fact, because the Constitution is not self-execut-ing, and there is no law to carry it out. Let us test this. It has been by example tested time and again. In the same article of the Constitution we read this:

No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-nve years, and been fourteen years a resident within the United

Now, Mr. President, suppose that the electors thus appointed had Now, Mr. President, suppose that the electors thus appointed had been ineligible, suppose each one of the majority of the electoral college had been ineligible because they were not natives of the United States and had never been naturalized, and suppose they had chosen to east their votes for one born in England as the Chief Magistrate for us of the United States, and that question should have been raised, are we to be told by this commission and by learned Senators on this floor that there is no power to inquire into that? If there is no power in the one case, there is no power in the other; and yet our forefathers when they negned that instrument said that no man not born in ers when they penned that instrument said that no man not born in the United States or a citizen of the United States at the time of the adoption of the Constitution should be President thereof. But what is the logic of the gentlemen who occupy the opposite side? say there is no power to inquire into the subject at all because the Constitution is not self-executing, because there is no law. If their position be correct in the one case, and a foreigner, one never naturalized, can be an elector for the reason given by them, then why can there not be a man elected President of the United States who was never born upon our soil? Does not the reason apply with equal force in the one case as in the other? Where is the want of analogy between the two? I cannot while I occupy a seat on this floor give my assent to such a dangerous proposition as that, to such a violation of the Constitution; I cannot give my assent by my silence to the doctrine that the whole of the Constitution of the United States is nugatory, worthless, inoperative, because we have not seen fit to pass a law upon each and every subject mentioned in the Constitupass a law upon each and every subject mentioned in the Constitu-tion. In other words, although the Constitution may forbid this or command that, because there is no law forbidding this or no law com-manding that, the Constitution is blank paper! That is the logic, that is the inevitable result of all the reasoning of Scnators on this floor in opposition to this proposition, and that is the necessary logical result of the decision of the commission!

Mr. ALLISON. I ask leave to modify my resolution.

The PRESIDENT pro tempore. The Senator from Iowa modifies his resolution. The modified form will be read.

The Chief Clerk read as follows:

Resolved. That the objection made to the vote of Daniel L. Crossman, one of the electors of Michigan, is not good in law and is not sustained by any lawful evidence. Resolved. That said vote be counted with the other votes of the electors of said State, notwithstanding the objections made thereto.

Mr. MORTON. Mr. President, the Senate yesterday, by a solemn vote, affirmed this decision made by the electoral commission:

The commission by a majority of votes is also of opinion that it is not competent to prove that any of said persons so appointed electors as aforesaid held an office of trust or profit under the United States at the time when they were appointed or that they were ineligible under the laws of the State, or any other matter offered to be proved aliunde the said certificates and papers.

Yesterday the Senate sustained and indorsed that position; I believe it is the law; and I shall not argue it here to-day. But if it were not the law, I then put this question: In a time when there is so much said about fraud, I ask what greater fraud could be practiced upon the people of a State than to deprive them of their suffrage and of their right to take part in the presidential election by proving that an elector held a petty, contemptible office, which was unknown to the people of Michigan at the time when they voted for him, which he himself had forgotten and only had called to his attention two or three days before the electors were to meet; an office which I do not believe comes within the definition of the Constitution, to which it is said he had been appointed in 1863, and which had been exercised by him but once, and that in 1863.

Now, sir, upon that pretense to deprive the people of Michigan of

their voice and to change the result of a presidential election would be a fraud upon the people of that State and upon the whole country for which, in my judgment, there is neither justification nor excuse.

But, sir, if there was anything in this, it would be the merest bar-ren technicality, and it would be quite sufficient to meet it by another, and the complete answer would be that it is not proven at all that this man ever was a United States commissioner. He says that the district attorney wrote to him that he would have him appointed; he says the clerk wrote to him that he had been appointed and inclosed to him the form of an oath for him to subscribe and return to the clerk's office, and he thinks he did it; but he never had any commission; and if he had a commission how could it be proven? By a transcript of the record under the seal of the court. Need I argue to any lawyer here that that is the first and best proof, and cannot be dispensed with in a court of justice except by proving that the records of the court have been destroyed and that the transcript could not have been obtained! It was just as easily obtainable here as the witness himself. But there is no verbal proof that the record was ever made. He says the clerk wrote to him—the clerk was not under oath when he wrote that—the clerk wrote to him that he had been appointed and inclosed to him a form of an oath which he subscribed; and that is all the evidence he ever had that he had been appointed. Need I argue that that is no proof at all? That objection is entirely sufficient to meet the barren, miscrable technicality that an elector is to be disfranchised, the people of a State to be disfranchised, by al-

leging that he had been appointed to a small office of that kind.

But, Mr. President, the broad principle is, and that which was sustained by the Senate yesterday, which was argued at great length before the electoral commission and decided by that commission, that it is not competent to prove at this stage of the proceedings that an elector was ineligible on the 7th day of November last. It seems to

me, Mr. President, it is not necessary to argue this case.

Mr. STEVENSON. Mr. President, I think it is our duty to adhere to the Constitution and see that all its requirements are carried out. I think the oath which each Senator takes when he enters this Chamber demands a faithful compliance with that obligation. I do not ber demands a faithful compliance with that obligation. I do not assent to the doctrine just announced by the Senator from Minnesota, [Mr. McMillan,] that the ineligibility of an elector cannot be proved by the parol admission of the candidate himself. It is not the law. It is not in accordance with usage. Mr. Webster, in the debate upon General Shields's ineligibility as a Senator from Illinois, when it was urged that the record proof of his naturalization was not properly authenticated and there was therefore no legal proof of his alienage, distinctly stated that record proof was not necessary, inasmuch as Mr. Shields admitted that he was a foreigner, and his statement was all the proof required. the proof required.

Mr. MORTON. That is a matter not to be proved by record. He was born abroad. That is not a matter of record.

Mr. STEVENSON. But his statement as to the period of his natu-

ralization was sufficient, and was the sole question at issue. rainzation was sufficient, and was the sole question at issue. Admission that he had not been in this country nine years Mr. Webster insisted was sufficient, and that no record was required to prove that fact. I have this statement of Mr. Webster before me in the debate upon the ineligibility of Shields to a seat.

Mr. President, by the Senator from Minnesota [Mr. McMillan] that it would be sacrilege to the rights of the State of Michigan to exclude this vote of one of her electors. If that elector was ineligible do not our oaths require us to exclude him? Is it sacrilege to obey the Constitution? Did not the Senate of the United States exclude Albert Gallatin from this Chamber because he had not been nine years a citizen? Was that a sacrilege to Pennsylvania? Did not a democratic Senate exclude General Shields as a Senator from Illinois for exactly the same reason? Have not our fathers always excluded ineligible Senators? Did they ever fail to uphold with fidelity every requirement of the Constitution as to the eligibility of the applicant irrespective of party? Has not this Senate refused to allow Louisiana a Senator in this Chamber for six years? Why? Will the Senator from Minnesota tell me? The republicans have held the power. Where, then, all this new-born zeal, this nascent jealousy of State rights? A new spirit seems to have come over the spirit of the dream of certain Senators on the other side of the Chamber.

But we are told that the high commission decided the principle in the Louisiana case on yesterday, and the Senate by an overwhelming majority decided to sustain their judgment. Mr. President, the an thority of the high commission is not binding on the Senate, certainly not beyond the cases submitted to that tribunal. The high commission decided in the Florida case that proof was allowable as to the ineligibility of an elector, but in Louisiana such proof was declared

by the same tribunal incompetent.

Now I insist that it is perfectly competent for any elector to prove that he was ineligible. If the elector was a United States office-holder when he was appointed no jurist of reputation has ever held until the past week that he was eligible. For myself, I cannot doubt that the Constitution demands that we should reject his vote. I am not satisfied, however, in this case from the elector's own statement that he was ineligible when he was appointed. I shall never permit my party zeal to carry me one iota beyond my conviction of what the Constitution demands. I am not satisfied from the statement of this elector that he held office under the United States when he was appointed. Fifteen years before he had been United States commissioner, but he has not acted since that time. The presumption is after such a lapse of time that he resigned that position, and that his resignation was accepted. I will not, therefore, consent to ostracize an elector in Michigan upon untenable ground, even though it might change the result of the Presidency. No party should indulge a presumption that this elector continued in office as United States commissioner after having failed for fifteen years to discharge its duties. Senators, let us adhere to the Constitution, and make all party requirements yield to the mandates of that instrument. Believing this Michigan elector was an eligible elector when he was appointed, I shall vote to count the vote. I cannot, however, agree to the grounds on which it is sought to place his vote by the republican majority in this Chamber. this Chamber.

Mr. BOGY. Mr. President-

Mr. BAYARD. I ask the favor of the Senator from Missouri to give me one moment of his time. I merely desired to affirm the importance of the legal positions I stated; and I do desire also to add what I could not say within the time allotted, that I did not consider that the facts in this case are made out sufficiently to exclude this man upon constitutional grounds. Taking his admission that he once held the office, we are bound also by his statement that he had ceased

for years to exercise its duties-

for years to exercise its duties—

Mr. BOGY Mr. President, this presents only a question of fact and the result of that fact. There is no testimony before the Senate excepting the statement of this person himself made before the committee on the privileges of the House. Whether that be testimony for this body to consider or not I am not prepared to say; but taking his statement to be evidence, it seems to me that he was not at the time he was voted for an officer within the meaning of the Constitution of the United States. It is true that he had acted as a commissioner some fifteen years before. He gives the reason why and how he came to be appointed for a special occasion, but he further states day he has never acted as a commissioner and has that since that day he has never acted as a commissioner and has never considered himself a commissioner; and although it is true he has not resigned, yet it is equally true that in law he was not in office at that time, and it is suggested to me by my friend from Iowa [Mr. Allison] that he actually changed his residence to another part of the State, which of itself would have vacated the office. Therefore it seems to me a very plain case that this man was not in office and ineligible.

My interpretation of the law as to the filling of vacancies is this: Where the person voted for was at the time ineligible because he held office, his failure to attend does not, under the law of Michigan and under similar laws of the different States, create a vacancy, and it would not have been competent in that State to have filled the socalled vacancy. Therefore if he had not been eligible at the time that he received the votes of the people of Michigan, the remaining electors electing a third person to fill what they called a vacancy would not have acted in accordance with the law; but as he was eligible at that time in my estimation, because he held no office, and as

gible at that time in my estimation, because he held no office, and as he did not appear before the college of electors, a vacancy did exist which they had a right to fill under that law.

Therefore it seems to me very clear that this man was eligible as an elector, and the person elected in his place, because he did not attend, is also eligible, and the vote should be received.

Mr. KERNAN. Mr. President, I have thought and still think that if a candidate for elector on the day of election holds an office of trust or profit under the United States he is not eligible and cannot be legally elected by the votes given for him while he holds that office; but I am not satisfied from the evidence given that this gentleman was an officer at the time of the election. I think that where you are to decrive a State of an electoral vote by reason of a fact. teman was an officer at the time of the election. I think that where you are to deprive a State of an electoral vote by reason of a fact, that fact should be clearly established by competent evidence. We should not on doubtful evidence or without competent evidence hold that a man voted for held an office under the United States on the day when the people gave their votes for him. Taking all this evidence together which I have heard read, I should not feel at liberty to yote against receiving this vote on the ground that he was the receiving this vote on the ground that he was the receiving this vote on the ground that he was the receiving this vote on the ground that he was the receiving this vote on the ground that he was the receiving this vote on the ground that he was the receiving this vote on the ground that he was the receiving the vote of the ground that he was the receiving the vote of the ground that he was the receiving the vote of the ground that he was the receiving the vote of the ground that the properties of the properties to vote against receiving this vote on the ground that he was an officer on the day of election. In my judgment, the objection is not sustained by the evidence.

Mr. SARGENT. Mr. President, I agree with the Senators as far as the facts in this case are concerned; I think their position is eminently judicious. I am not sure but that I would go even further than they do and say that the facts are not sufficient in the case of New Jersey, where there was an elector recognized who cast his vote for Tilden, or in the case of Virginia, where there was an ineligible elector who resigned and his place was filled by the other electors, or in the case of Missouri, where a person was disqualified by the four-teenth amendment of the Constitution of the United States, or it was claimed that he was. In either of these cases I certainly would not raise an objection. I think that the people of a State, having in good faith endeavored to exercise their rights under the Constitution and to contribute their votes to the election of President of the United States, ought not to be impeded or crippled in attaining the result at which they honestly aimed.

This broad principle of equity should cover all minor imperfections. However that may be, the law of this matter is plain to my mind. It has been settled in all the courts of all the States of the States wherever the question has been raised. I believe it has been settled in this body and in the House of Representatives. It is a general principle of law insisted upon by all the courts that full faith is to be given to the acts of an officer de facto, acting under the color of

an election, where they concern third parties or the public. an election, where they concern third parties of the public. I understand that to be the clear rule, although the man had no right whatever to the office, although there may have been a constitutional disability to his holding the office, that his acts in that office are valid as concerns third persons and the public. This matter was well considered in the case of Pritchett and others vs. The People in the supreme court of Illinois as reported in 1 Gilman, 529. In the course of the onlying the court say: of the opinion the court say:

It is a general principle of the law that ministerial acts of an officer defacto are valid and effectual when they concern the public and the rights of third persons; although it may appear that he has no legal or constitutional right to the office. The interests of the community imperatively require the adoption of such a rule.

Certainly the interests of the State of Michigan require the application of such a rule in this case, for if it loses one of its eleven votes in the selection of President, that proportion of its people would be disfranchised. Such a rule, certainly, should be beneficially construed to secure the highest justice to a State. I have other authoristically construed to secure the highest justice to a State. ties to the same effect and I find them uniform.

Therefore this person, Crossman, being elected by the college of electors under a statute authorizing such election by the State of Michigan, to take the place of Hanchett, who had failed to appear,

full faith must be given to his acts; they cannot be inquired into collaterally; they are good as concerns the public or third parties.

Mr. MAXEY. Mr. President, I have not a doubt in my own mind that Senators and Representatives and persons holding offices of trust and profit under the United States cannot be appointed as electors, and that if such a person is attempted to be appointed it is simply a failure to elect, and I have no doubt whatever of the constitutional power of the Houses, and each of them, to inquire into the facts of ineligibility and act thereon; but I understand the doctrine of evidence to be that in every case the best evidence must be produced. This is not the case of an action of trespass brought against a man acting in an office for trespass committed under color of that office. The question here is: has the State of Michigan appointed her elector; and prima facie this man is the elector. The best evidence that this man was a person holding an office of trust and profit under the United States at the date of his election or appointment is the exemplification of the record under, I believe, the act of 1792; and secondary evidence of that fact cannot be introduced until the want of primary evidence is accounted for. That not having been done, there is no competent evidence before the Senate that this man was a commissioner, and believing that non-user of an office for a long series of years, as is the case here, operates its forfeiture, and believing as I do always in doing justice, let the consequences fall where they may, I say that we have no evidence here justifying us in preventing the State of Michigan from voting, and I shall therefore vote to admit the vote objected to.

Mr. MORRILL. Mr. President, I am rather delighted with this occasion. I had feared that I should not be able to give a non-partisen vote. but on this consistent when the property of the constant of the con

san vote; but on this occasion, though it may be rather a cheap one, I propose to give a non-partisan vote, and to vote with my friends on the opposite side of the Chamber.

Mr. McDONALD. Mr. President, I have no doubt whatever that we have a right and that it is our duty to refuse the vote of an incompetent person, one incapable of being appointed an elector; and when that case is presented to us I shall certainly vote for its exclusion. I do not understand that the electors selected by the several States under the Constitution are, in the sense that has been contended in this discussion, public officers to whom the doctrine of de facto office can apply. They are electors, special electors selected from the body of electors of the State by such provisions as the Legislature of the State may provide for that purpose. They are elected for the purpose of casting their votes, although in that they may represent the people who have selected them; and when one who is incapable of being appointed under the Constitution casts such a vote, and it comes before us for consideration, I shall have no hesitation in voting against

receiving it.

But, Mr. President, I concur with my friends who have expressed themselves upon this question, that in this case there is no evidence of disqualification that should preclude the vote that is tendered at this time; and therefore I shall vote against the exclusion, not because a disqualified person may cast a vote and that it may not be disregarded, but because there is not sufficient evidence of disquali-

Mr. SAULSBURY. Mr. President, I have no doubt in my mind that the person who was run as a republican elector in Michigan was a circuit court commissioner, but according to his own statement he has not exercised the duties of that office for years, and a long non-user of the office in my opinion amounts to a resignation of the office. According to the view which I take, he would have been eligible to have cast the vote as an elector. He did not choose to do that; he kept away from the electoral college of that State and another party under the laws of Michigan was appointed, and the vote was cast. In my opinion that vote was a proper vote and it ought to be received.

I do not base this opinion upon the decision to which reference was

made by the Senator from Indiana [Mr. Monton] that that question had been decided by the commission and that we could not properly inquire into the eligibility of an elector. In my opinion, if the facts were clear that the man at the time of his appointment was in the due exercise of the office the disqualification attached and then his vote would not be a legal vote.

I objected yesterday by my vote to the decision of the tribunal upon that point in the case of Louisiana, and I say here and now that I shall fail for coming years to recognize that decision as binding upon me in conscience or in law. I believe that there was a great outrage perpetrated upon the people of Louisiana by that decision, and I do not intend that that ruling shall ever govern my action in the vote which I am called upon to give. I put the vote which I shall give upon this occasion on other grounds, namely: that the party who had been elected an elector was himself eligible because he had not been in the expresse of the duties of the office of commissionar for been in the exercise of the duties of the office of commissioner for many years, and therefore the substitute in his place was a proper appointment and the vote cast a legal vote. I would not deprive Mr. Hayes of any vote to which he is entitled. I would much prefer, if any man is to take the presidential office with a clouded title, that it shall be the candidate to whom I am opposed rather than the candishall be the candidate to whom I am opposed rather than the candidate for whom I cast my vote. I never want to see a democratic President in the White House unless he is there by the judgment of his countrymen. I shall vote therefore to count this vote.

Mr. WHYTE. Mr. President, I cannot vote for the resolution in the language in which it is presented by the Senator from Iowa, and therefore I propose as a substitute for the order offered by him the

following:

Ordered, That while it is the sense of the Senate that no Senator or Representa-tive or person holding an office of trust or profit under the United States shall be appointed an elector, and that this provision of the Constitution shall be carried in its whole spirit into rigid execution, yet that the proof is not such as to justify the exclusion of the vote of Daniel L. Crossman as one of the electors of the State of Michigan, and that his vote should be counted.

Mr. NORWOOD. Mr. President, I desire simply to say that when Mr. NORWOOD. Mr. President, I desire simply to say that when I signed the objection this morning my signature was based upon the legality of the ground if proved. I adhere to that opinion now. I knew nothing then as to what the proof would be as to the holding of this office. I am satisfied from the evidence which has been submitted that it is not sufficient. The best evidence would be a certified transcript from the record of the court that appointed this man a commissioner.

The PRESIDENT pro tempore. The question is on the substitute

proposed by the Senator from Maryland, [Mr. WHYTE.]

Mr. WHYTE. I call for the yeas and nays.
The yeas and nays were ordered.
Mr. MITCHELL. Would an amendment be in order to the sub-

stitute?

The PRESIDENT pro tempore. It would be in order.

Mr. MITCHELL. I move to amend by inserting after the words "rigid execution" the words "by the States respectively."
Mr. McDONALD. I should like to have the original resolution re-

ported.

Mr. DAVIS. Let it be reported as it would read if amended. The Secretary read the resolution in its original form and then as

proposed to be amended.

Mr. MITCHELL. I am opposed to the substitute and would be opposed to it even if amended as I suggest, and as it is not probable that the substitute can carry I hope it will not. I withdraw the amendment for the present, so that we may come to a direct vote on the question.

The PRESIDENT pro tempore. The amendment of the Senator from Oregon being withdrawn, the question recurs on the substitute proposed by the Senator from Maryland, [Mr. Whyte,] on which the

yeas and nays have been ordered.

The question being taken by yeas and nays, resulted-yeas 27, nays 39; as follows:

39; as follows:

YEAS—Messrs. Bailey, Barnum, Bayard, Bogy, Cockrell, Cooper, Davis, Dennise Eaton, Goldthwaite, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—27.

NAYS—Messrs. Alcorn, Allison, Anthony, Booth. Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conover, Cragin, Dawes, Dorsey, Ferry, Frelinghuysen, Hamlin, Harvey, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Paddock, Patterson, Robertson, Sargent, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—39.

ABSENT—Messrs. Blaine, Conkling, Edmunds, Gordon, Hamilton, Hitchcock, Oglesby, Sharon, and Thurman—9.

So, the substitute was rejected.

So the substitute was rejected.

The PRESIDENT pro tempore. The question recurs upon the resolution of the Senator from Iowa, [Mr. Allison.]

Mr. McDONALD. I move to strike out, in the first resolution, the words "is not good in law, and;" so as to read:

Resolved. That the objection made to the vote of Daniel L. Crossman, one of the electors of the State of Michigan, is not sustained by any lawful evidence.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Indiana [Mr. McDonald] to the resolution proposed by the Senator from Indiana [Mr. McDONALD] to
Mr. McDONALD. I ask for the yeas and nays.
The yeas and nays were ordered.
The Secretary proceeded to call the roll.

The yeas and nays were ordered.

The Secretary proceeded to call the roll.

Mr. EDMUNDS, (when his name was called.) I should vote against this motion to strike out. My friend from Ohio [Mr. Thurman] kindly paired with me in my absence yesterday and without my knowledge, when I was ill. I have reason to believe he is ill to-day, and as I think he would probably vote in favor of this amendment I withbold my vote. I withhold my vote.

The roll-call having been concluded, the result was announcedyeas 26, nays 38; as follows:

yeas 26, nays 38; as follows:

YEAS—Messrs, Bailey, Bayard, Bogy, Cockrell, Cooper, Davis, Dennis, Eaton, Goldthwaite, Hereford, Johnston, Jones of Florida, Kelly, Kernan, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Saulsbury, Stevenson, Wallace, Whyte, and Withers—26.

NAYS—Messrs, Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Burnside, Cameron of Penusylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Conover, Cragin, Dawcs, Borsey, Ferry, Frelinghuyseu, Hamlin, Howe, Ingalls, Jones of Nevada, Logan, McMüllan, Mitchell, Morrill, Morton, Paddock, Patterson, Robertson, Sargent, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—38.

ABSENT—Messrs, Barnum, Blaine, Conkling, Edmunds, Gordon, Hamilton, Harvey, Hitcheock, Oglesby, Sharon, and Thurman—11.

So the amendment was rejected.

The PRESIDENT pro tempore. The question recurs on the resolution proposed by the Senator from Iowa, [Mr. Allison.]

Mr. COOPER. If the question is divisible I call for a separate

vote upon the two resolutions.

The PRESIDENT pro tempore. The question is divisible and will be first taken on the first resolution, which will be reported.

The Secretary read as follows:

Resolved, That the objection made to the vote of Daniel L. Crossman, one of the electors of Michigan, is not good in law and is not sustained by any lawful evidence.

Mr. SAULSBURY. Let the first branch of the proposition to be

voted upon be the question that the objection is not good in law.

The PRESIDENT pro tempore. The first resolution cannot be divided, because a rejection by the Senate of a motion to strike out the words referred to is equivalent to a vote to retain the same; and it cannot now be divided.

Mr. COOPER. I do not ask that it be divided in that way

The PRESIDENT pro tempore. The Chair understood the Senator to ask for a separate vote upon the first resolution.

Mr. COOPER. Yes, sir.

The PRESIDENT pro tempore. The question is on agreeing to the first resolution.

Mr. COOPER. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BAYARD. I merely wish to understand the question. Do we vote now upon the question of law contained in the first resolution?

The PRESIDENT pro tempore. The vote is to be taken upon the

first resolution in whole.

Mr. BAYARD. Upon the first proposition; that is, that the vote is sustainable as a matter of law.

The PRESIDENT pro tempore. The Secretary will report the first resolution, which is now to be voted upon.

The Secretary again read the first resolution.

The Secretary proceeded to call the roll.

Mr. EDMUNDS, (when his name was called.) I withhold my vote for the same reason that I stated before.

The roll-call having been concluded, the result was announcedyeas 40, nays 19; as follows:

yeas 40, nays 19; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cragin, Dawes, Dorsey, Ferry, Frelinghuysen, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones of Nevada, Logan, McMillan, Mitchell, Morrill, Morton, Oglesby, Paddock, Patterson, Robertsom, Sargent, Sherman, Spencer, Teller, Wadleigh, West, Windom, and Wright—40.

NAYS—Messrs. Bailey, Barnum, Bogy, Cooper, Davis, Dennis, Goldthwaite, Hereford, Jones of Florida, Kelly, McCreery, McDonald, Maxey, Merrimon, Norwood, Randolph, Ransom, Stevenson, and Withers—19.

ABSENT—Messrs. Bayard, Blaine, Cockrell, Conkling, Conover, Eaton, Edmunds, Gordon, Hamilton, Johnston, Kernan, Saulsbury, Sharon, Thurman, Wallace, and Whyte—16.

So the first resolution of Mr. Allison was agreed to.

The PRESIDENT pro tempore. The question is on agreeing to the second resolution.

Mr. COOPER. I ask for the yeas and nays on the second resolution.

The yeas and nays were ordered; and the Secretary proceeded to

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. CAMERON, of Pennsylvania, (when his name was called.)

I am paired with my colleague [Mr. WALLACE] on all these votes.

I thought he was here, however, before, and voted.

The roll-call having been concluded, the result was announced—yeas 63, nay 0; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Bailey, Barnum, Bayard, Bogy, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Chaffee, Christiancy, Clayton, Cockrell, Conover, Cooper, Cragin, Davis, Dawes, Dorsey, Ferry, Frelinghuysen, Goldthwaite, Hamlin, Harvey, Hereford, Hitchcock, Howe, Ingalls, Johnston, Jones of Florida, Jones of Nevada, Kelly, Kernan, Logan, McCreery, McDonald, McMillan, Maxey, Merrimon, Mitchell, Morrill, Morton, Norwood, Oglebob, Paddock, Patterson, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sherman, Spencer, Stevenson, Teller, Wadleigh, West, Whyte, Windom, and Wright—63. NAY—6.

NAY-0.

ABSENT—Messrs. Blaine, Cameron of Pennsylvania, Conkling, Dennis, Eaton, Edmunds, Gordon, Hamilton, Sharon, Thurman, Wallace, and Withers—12.

So the second resolution of Mr. Allison was agreed to. Mr. CHRISTIANCY. I move that the House be notified of the action of the Senate on the objection to the vote of Michigan, and that they be informed that the Senate are now ready to meet the House

to proceed with the count. The PRESIDENT pro tempore. The Senator from Michigan moves